

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED ORDINANCE OR
RESOLUTION ADOPTED BY CITY COUNCIL**

AN ORDINANCE

**ADOPTING AMENDMENTS TO THE SMALL BUSINESS ECONOMIC
DEVELOPMENT ADVOCACY ORDINANCE BASED ON FINDINGS OF
THE 2023 DISPARITY STUDY, TO ENCOURAGE THE FULL AND
EQUITABLE UTILIZATION OF SMALL, MINORITY, AND WOMAN
BUSINESS ENTERPRISES IN THE SAN ANTONIO MARKETPLACE.**

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WHEREAS, the Small Business Economic Development Advocacy (SBEDA) Ordinance, adopted by the City Council of San Antonio in 2010 and later amended and adopted in 2016, seeks to encourage the full and fair utilization of small, minority, and woman-owned business entities (S/M/WBEs) on City of San Antonio (City) contracts; and

WHEREAS, the SBEDA Ordinance requires the periodic completion of a Disparity Causation Analysis Study (Disparity Study) to review the factual predicate for the SBEDA Program and evaluate whether barriers to participation in contracting continue to exist in the San Antonio marketplace for minority and woman-owned businesses (M/WBEs); and

WHEREAS, on August 19, 2021, City Council authorized a contract with Colette Holt & Associates to conduct an updated Disparity Study for the City to determine whether a compelling interest remained for the City to continue or modify implementation of its narrowly tailored M/WBE program; and

WHEREAS, Colette Holt & Associate's Disparity Study was completed and released for public comment on May 12, 2023; and

WHEREAS, the 2023 Disparity Study evaluated the contracting period between January 2014 and December 2020 and found that although the City's SBEDA Ordinance has significantly improved the participation of M/WBE firms in City contracts beyond the level reflected in a 2015 study, disparities in the City's utilization of M/WBE firms continue to persist in various industry segments; and

WHEREAS, the 2023 Disparity Study confirmed, based upon regression analysis and other firm evidence, that market-based disparities adversely affect M/WBE formation, earnings, and access to capital rates as compared to similarly situated non-M/WBE; and

WHEREAS, public testimony and comments received during the Disparity Study process and public comment period following release of the 2023 Disparity Study further supported study findings; and

WHEREAS, based upon the 2023 Disparity Study, the City is relying upon a strong basis in evidence in concluding that there are ongoing effects of marketplace discrimination adversely affecting the utilization of M/WBE firms on City contracts and in the City's relevant marketplace; and

WHEREAS, in June 2023, the Disparity Study was reviewed and formally recommended for acceptance for the purpose of reliance in the formulation of public policy by the SBEDA Committee, a citizen group appointed by the Mayor and City Council to advise on issues concerning the SBEDA Ordinance, as well as also recommended for approval by the City Council's Economic and Workforce Development Committee; and

WHEREAS, on August 31, 2023, after a considerable period of public review and comment, the San Antonio City Council voted to formally accept the 2023 Disparity Study findings for purposes of policy formulation; and

WHEREAS, following Disparity Study adoption, staff developed amendments to narrowly tailor the SBEDA Ordinance to 2023 Disparity Study findings, and on October 25, 2023, the proposed amendments were released to the public, initiating meetings with numerous business entities and local small business stakeholder groups, including professional/trade organizations and chambers of commerce; and

WHEREAS, on November 16, 2023, after consideration of public feedback, the SBEDA Committee voted to recommend that the City Council approve proposed SBEDA Ordinance amendments, and on November 28, 2023, the Economic and Workforce Development Committee also voted to recommend City Council approval; and

WHEREAS, through the 2023 Disparity Study, the City of San Antonio finds that decades of small business programs and other race- and gender-neutral remedies have failed to fully eliminate statistically significant underutilization of ready, willing, and able M/WBE firms; and

WHEREAS, based upon the 2023 Disparity Study, the City of San Antonio continues to have a compelling interest to remedy the ongoing effects of marketplace discrimination against M/WBE businesses and to avoid becoming a passive participant in market-based discrimination; and

WHEREAS, the underutilization of available M/WBE firms continues to be a drain on the local economy and continues to undermine the economic vitality and development of the San Antonio region; and

WHEREAS, the City of San Antonio is fully committed to not only remedying the ongoing effects of marketplace discrimination, but to also using its spending powers in a manner that promotes a robust and inclusive economy that fully utilizes all segments of its business population regardless of race or gender; and

WHEREAS, based upon an extensive factual predicate, the City Council has determined that a narrowly tailored and modified combination of race- and gender-neutral and race- and gender-

conscious remedies and programs are necessary to serve these compelling interests and needs of the City of San Antonio. **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The following amendments to the SBEDA Ordinance No. 2016-05-19-0367 as set out in Attachment “A” are hereby approved and adopted for purposes of furthering the narrow-tailoring of remedies necessary to effectively address the aforementioned compelling interests and needs of the City of San Antonio.

SECTION 2. Scope and Exclusions: Attachment “A” of this Ordinance shall apply to all contracts for the purchase of services, goods or supplies awarded by, or on behalf of, the City, including, but not limited to, every contract or other agreement between the City of San Antonio and any governmental agency, quasi-governmental agency, corporation, developer or contractor, under which the agency, corporation, developer or contractor receives any fiscal assistance from or through the City for the purpose of contracting with businesses to perform real estate development, renovation, maintenance or other services and as such, the City shall require the agency, corporation, developer or contractor to comply with this Ordinance in awarding and administering that contract or agreement; provided, however, that the following categories of contracts shall be excluded from the scope and application of this Ordinance:

- (a) Contracts that are subject to the U.S. Department of Transportation Disadvantaged Business Enterprise Program and Airport Concessions Disadvantaged Business Enterprise Program as set forth in 49 CFR Parts 23 and 26 or any successor regulations or legislation;
- (b) Any expenditure or revenue contract with a value that is less than the amount that is required to be bid pursuant to state law (Chapter 252, Texas Local Government Code, and as amended), currently \$50,000 or less;
- (c) Contracts for the purchase of goods or supplies of a unique nature for which the City Originating Department and the Finance Department confirms there is only a sole source of supply;
- (d) Contracts for electricity or water and sewage services from a municipal utility district or governmental agency;
- (e) Emergency contracts for goods or supplies that the City Manager or designee determines are necessary for the preservation of public health or safety and whose immediacy of need is so great that it is impractical for the City to apply the terms of this Ordinance to the contract;
- (f) Contracts for the City’s lease or purchase of real property where City is lessee or purchaser;
- (g) Economic Development Agreements (Chapter 311 Tax Increment Financing, Chapter 312 Tax Abatements, and Chapter 380 Grant or Loan Agreements);

- (h) Contracts for Personal Services involving the unique abilities or style of a particular individual;
and
- (i) Contracts under federal award and governed by U.S. Office of Management and Budget procurement standards which require full and open competition in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference and/or preferential business certification programs.

SECTION 3. This Ordinance shall be effective _____.

PASSED AND APPROVED this 5th day of December 2024.

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Debbie Racca-Sittre
City Clerk

Andy Segovia
City Attorney

ATTACHMENT A

DRAFT