



City of San Antonio

Agenda Memorandum

File Number:

Agenda Item Number: 30

Agenda Date: August 31, 2023

In Control: City Council A Session

DEPARTMENT: Economic Development Department

DEPARTMENT HEAD: Brenda Hicks-Sorensen

COUNCIL DISTRICTS IMPACTED: Citywide

SUBJECT:

Ordinance adopting the 2023 Disparity and Causation Analysis Study (Disparity Study) and extending the sunset date of the Small Business Economic Development Advocacy (SBEDA) ordinance until the earlier of City Council adoption of an amended ordinance or December 31, 2024.

SUMMARY:

An ordinance adopting the 2023 Disparity and Causation Analysis Study (Disparity Study) that identifies ongoing racial and gender contracting disparities in the San Antonio marketplace. The study provides a factual predicate and legal basis to continue the City's preferential contracting program. This ordinance also amends the SBEDA ordinance sunset clause until amendments are approved by City Council but no later than December 31, 2024.

BACKGROUND INFORMATION:

In 1989, the City of San Antonio's Small Business Economic Development Advocacy (SBEDA) program was established to remedy the effects of ongoing marketplace discrimination that adversely affected the participation of small, minority, and woman-owned business enterprises (S/M/WBEs) on City contracting opportunities. As established in the Supreme Court case of *Richmond v. Croson* (1989), a government entity that utilizes a race and/or gender-based public

contracting policy must show a “compelling government interest” to withstand constitutional “strict scrutiny” under federal law. A compelling interest may be supported by statistical evidence of disparities in the market area, anecdotal evidence of barriers to full and fair inclusion that supports such statistical evidence, and “narrowly tailored” remedies to address that evidence.

Industry best practice is to update disparity studies every five to seven years. To date, the City of San Antonio has conducted disparity studies in 1992, 2010, and 2015. The 2010 Disparity Study led to a significant overhaul of the SBEDA Ordinance, which called for the creation of a central vendor registry, compliance module, goal setting committee, and contract specific race-and gender-neutral and race- and gender-conscious tools such as subcontracting goals, segmented subcontracting goals, and prime evaluation preference points. While the 2015 Disparity Study found a continuing disparity between the availability and utilization of minority and woman-owned businesses (M/WBEs) on City contracts, as well as market-based disparities impacting M/WBEs regarding business formation rates and earnings, it also affirmed the City was making progress in the utilization of M/WBEs. As a result, there were minor programmatic adjustments, such as the expansion of effective SBEDA tools to all industries (i.e., the M/WBE prime evaluation preference point tool was not available in the construction industry but was expanded to this industry post the 2015 Disparity Study) and the ability for certified vendors to self-perform SBEDA subcontracting goals. The current SBEDA Ordinance is scheduled to sunset on December 31, 2023.

The 2023 Disparity Study, conducted by the firm approved by City Council in August 2021, Colette Holt & Associates (CHA), would update the data contained in the City’s 2015 Study. Colette Holt, principal of CHA, has conducted court-approved disparity studies and designed court-approved programs for over 30 years, including for numerous Texas public agencies. Colette Holt is also a frequent expert witness and a media author on these issues and has co-authored the National Model Disparity Study Guidelines that have become the accepted standard to conduct studies that can withstand judicial scrutiny.

The City of San Antonio received a draft of the study in March 2023. The study was publicly released in May 2023 followed by a briefing to the SBEDA Committee and initiation of a public outreach campaign. Along with creating a dedicated webpage and SASpeakUp campaign, the Economic Development Department hosted approximately 20 briefing and listening sessions on the Study findings. Approximately 90 individuals attended the sessions, which included representation from over 20 local small business stakeholder organizations.

On June 28, 2023, the Economic and Workforce Development City Council Committee was briefed and on June 29, 2023, the SBEDA Committee voted to recommend City Council adopt the Study. In addition, on August 9, 2023, City Council was briefed during a “B” Session meeting.

ISSUE:

The 2023 Disparity Study indicates that 53% of all City contract payments during the seven-year study period were paid to M/WBEs, which exceeds the 25% availability rate of M/WBEs in the San Antonio marketplace. While M/WBEs overall have achieved or exceeded parity, African American-Owned Businesses, Asian American-Owned Businesses, and Native American-Owned

Businesses have not met their respective availability rates in the San Antonio Market Area, suggesting that disparity in City contracting remains.

The 2023 Disparity Study also identified continued disparities in the broader San Antonio market through statistical analysis, which show M/WBEs earn less, are less likely to start businesses, and have greater difficulty accessing capital as compared to non-M/WBEs. The Study also suggests that while the City has made great progress in creating opportunities for M/WBEs, barriers related to race and gender remain.

This ordinance will adopt the Disparity Study conducted by Colette Holt & Associates to serve as the evidence for continuation and potential amendment to the SBEDA ordinance, which currently sunsets on December 31, 2023. Extending the sunset date until revisions to the ordinance until approved by City Council, but no later than December 31, 2024, ensures ample time to conduct public outreach prior to City Council consideration of amendments and communications and marketing following amendment adoption.

ALTERNATIVES:

City Council could decline to adopt the Disparity Study findings. However, this could significantly impact the legal defensibility of the SBEDA ordinance's race- and gender-conscious application of the program. Further, failing to extend the SBEDA ordinance sunset clause may limit stakeholder engagement and education to accommodate the current sunset date of December 31, 2023.

FISCAL IMPACT:

There is no fiscal impact associated with adoption of the Disparity Study.

RECOMMENDATION:

Staff recommends adoption of the Disparity Study and amendment to the SBEDA ordinance sunset clause with direction that staff proceeds with the identification and development of SBEDA ordinance amendments that are based on the Disparity Study findings and subject to City Council approval.