



City of San Antonio

Agenda Memorandum

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Agenda Date: November 28, 2023

In Control: Economic and Workforce Development Committee Meeting

DEPARTMENT: Economic Development Department

DEPARTMENT HEAD: Brenda Hicks-Sorensen

COUNCIL DISTRICTS IMPACTED: Citywide

SUBJECT:

Briefing and possible action on the recommended amendments to the Small Business Economic Development Advocacy (SBEDA) Ordinance based on findings from the 2023 Disparity Study.

SUMMARY:

This briefing will provide an overview on the recommended SBEDA Ordinance amendments based on findings from the 2023 Disparity Study. The study identified ongoing race and gender contracting disparities in the San Antonio marketplace and provided a factual predicate and legal basis to continue the City's preferential contracting program.

BACKGROUND INFORMATION:

In 1989, the City of San Antonio's SBEDA Ordinance was established to remedy the effects of ongoing marketplace discrimination that adversely affected the participation of small, minority, and women-owned business enterprises (S/M/WBEs) on City contracting opportunities. As established in the Supreme Court case of *Richmond v. Croson* (1989), a governmental entity that

utilizes a race and/or gender-based public contracting policy must show a “compelling governmental 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. To demonstrate a “compelling government interest”, the City of San Antonio has conducted four disparity studies in 1992, 2010, 2015, and 2023. Industry best practice is to update disparity studies every five to seven years.

In August 2021 the City Council commissioned Colette Holt & Associates (CHA) to conduct an update to the 2015 Disparity Study. CHA has conducted court-approved disparity studies and designed court-approved programs for over 30 years. The 2023 Disparity Study found that 53% of all City contract payments during the seven-year study period were paid to minority and woman-owned businesses (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. Further, the 2023 Disparity Study also identified continued disparities in the broader San Antonio marketplace 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. On August 31, 2023, City Council adopted the 2023 SBEDA Disparity Study, which was followed by City staff’s identification of potential amendments to the SBEDA Ordinance based on Study findings.

To initiate the SBEDA Ordinance amendment process, the Economic Development Department (EDD) briefed the SBEDA Committee on the proposed amendments and launched a public outreach campaign on October 20, 2023. Along with creating a dedicated webpage and SASpeakUp campaign, the EDD hosted approximately 15 briefing and listening sessions on the proposed SBEDA Ordinance amendments, to which over 50 business stakeholder organizations and over 14,000 businesses were notified.

On November 16, 2023, the SBEDA Committee voted to recommend City Council adopt the proposed SBEDA Ordinance amendments.

ISSUE:

EDD recommends the continuation of the SBEDA Ordinance along with the following recommended amendments:

- Support the Continued Utilization of M/WBEs on City Contracts
 - Utilize 2023 Disparity Study business availability data to set annual aspirational and contract-specific S/M/WBE contracting goals.
 - Adjust key program tools and processes:
 - Add Emerging Small Business Enterprises (ESBE), those firms one-fourth (1/4) the Small Business Administration size standard, to all SBEDA contracting goal tools.

- Eliminate contract renewal incentive tools, such as the Joint Venture and Distributorship Development Incentive tools, due to their historical ineffectiveness in spurring S/M/WBE utilization.
 - Eliminate the HUBZone tool due to the lack of SBEDA eligible HUBZone S/M/WBEs, which results in the inability to apply the tool to solicitations.
- Streamline Program Processes
 - Adjust SBEDA Ordinance language, forms, and application to reduce complexity and encourage additional bids and awards from S/M/WBEs.
 - Eliminate the Goal Setting Committee that establishes SBEDA Program tools on City solicitations and move the responsibility to the EDD with oversight from the SBEDA Committee.
 - Encourage more joint venture respondents by counting their S/M/WBE partner utilization toward SBEDA contracting goal requirements.
 - Sunset the Diversity Action Plan Ordinance and consolidate functions into the SBEDA Ordinance.
- Ensure the Narrowly Tailored Application of the Program
 - Retain the race- and gender-neutral prime evaluation preference points for Small Business Enterprises (SBEs) but eliminate the race- and gender-conscious prime evaluation preference points for M/WBEs.
 - Apply a \$1.32M personal net worth standard to gain SBE certification and be eligible for the SBEDA Program benefits in alignment with the federal Disadvantaged Business Enterprise (DBE) criteria.
 - Eliminate eligibility criteria that allows S/M/WBEs not headquartered in the SAMSA to have a significant business presence (a branch office in the SAMSA for one year, in which 20% of the S/M/WBEs total employees work out of the SAMSA office).
 - Revise the Good Faith Effort / Waiver criteria regarding S/M/WBE contracting goals.

Upon favorable EWDC consideration of the proposed amendments, staff is prepared to brief and seek approval from the full City Council in December 2023. Upon adoption of the SBEDA Ordinance amendments, staff anticipates the revised program to be implemented on April 1, 2024 following the completion of updated policies and procedures, forms, software algorithms, and public engagement.

FISCAL IMPACT:

There is no fiscal impact associated with adoption of the SBEDA Ordinance amendments.

ALTERNATIVES:

The Committee could decline to move the amendments to the SBEDA Ordinance forward to full City Council consideration. However, this could significantly impact the legal defensibility of the current SBEDA Ordinance.

RECOMMENDATION:

Staff recommends the Committee's approval of the proposed SBEDA Ordinance amendments to proceed onto full City Council briefing and consideration.