



City of San Antonio

Agenda Memorandum

File Number:16-2728

Agenda Item Number: 2.

Agenda Date: 4/27/2016

In Control: City Council B Session

DEPARTMENT: Economic Development

DEPARTMENT HEAD: Rene Dominguez

COUNCIL DISTRICT(S) IMPACTED: City-wide

SUBJECT: Proposed SBEDA Ordinance Amendments

SUMMARY:

On December 3, 2015, City Council adopted the Disparity Study conducted by National Economic Research Associates, Inc. (NERA), which supports the legal basis for the continuation of the SBEDA Ordinance and the opportunity to implement proposed amendments to enhance the ordinance.

BACKGROUND:

In June 2010, City Council adopted significant revisions to the SBEDA Ordinance following findings from a 2010 Disparity Study. The amended ordinance incorporated best practices from around the country and extensive public feedback to address results of the 2010 study. The study was conducted to meet the legal standard set by the U.S. Supreme Court case *Richmond v. J.A. Croson Co. (1989)*. The *Croson* case requires that race-and-gender specific programs established by government entities pass a “strict scrutiny” test, which requires documentation of persisting discrimination and “narrowly tailored” remedies to cure the discrimination in order for the ordinance to be legally defensible.

The new program marked a turning point for the SBEDA Ordinance because it was redesigned to provide a narrowly tailored approach while creating meaningful Affirmative Procurement Initiatives (“tools”) that would make an impact on the utilization of small, minority and women-owned enterprises (S/M/WBEs) in the San Antonio area.

Best practices recommend that disparity studies be conducted every five years. Therefore, on April 17, 2014, City Council authorized a contract with NERA to conduct a new disparity study which was adopted on December 3, 2015. The study indicated the City exhibited progress in utilizing M/WBEs on City contracts during the evaluation period. During this time, the City paid more than 23%, or \$343 million, to M/WBEs. This amount is more than double the dollars paid since the previous study. Although this is an example of progress, the study and supporting qualitative evidence clearly reveal the availability of M/WBEs in San

Antonio exceeds the level of utilization suggesting that a disparity still exists.

The study adopted by City Council concluded and recommended that the application of the SBEDA Ordinance be continued.

Since January 2016, City staff has conducted significant outreach to review potential amendments to further enhance the SBEDA Ordinance. On March 3, 2016, the Small Business Advocacy Committee (SBAC) hosted a public hearing where the City's outside legal counsel, Franklin Lee, presented potential amendments to the ordinance. The potential amendments were posted on the City's website on March 4, 2016 to allow for public comment and input.

City staff embarked on an extensive public comment period, wherein comments of various policy options were presented and discussed. Staff held individual meetings with numerous stakeholder groups to include professional and trade organizations and chambers of commerce to communicate the benefits of the various components within the proposed amendments and to gather feedback.

ISSUE:

To address the results found in the 2015 Disparity Study and alter careful consideration of all comments received, City staff proposes the continuation of the SBEDA Ordinance with the addition and/or expansion of the following proposed amendments:

- *The Emerging Prime Contractor Program*, which allows up to 20 evaluation points to be awarded to Emerging S/M/WBE prime respondents (those firms ¼ the size of an SBE per the SBA size standard), will now be applicable for S/M/WBEs in the Architecture and Engineering, Professional Services, Other Services, and Goods and Supplies Industries;
- *The Prime Contractor Program*, which allows up to 20 evaluation points to be awarded to S/M/WBE prime respondents, is now being expanded to the Construction, Other Services, and Goods and Supplies Industries;
- *The Joint Venture Program*, which provides up to 20 evaluation points to a joint venture respondent per their S/M/WBE percent makeup on a contract, is being expanded for both SBEs and S/M/WBEs in the Construction and Architecture and Engineering Industries;
- *The Mentor Protégé Program*, which pairs firms with a mentor to learn best industry practices, is being expanded to the Architecture and Engineering Industry;
- S/M/WBEs awarded a City contract under \$10 million at the prime contractor level will be able to self-perform any S/M/WBE contract-specific subcontracting goals that may apply to the contract, which will allow the S/M/WBE prime contractor to perform a greater percent of the contract and further build their capacity;
- *The Subcontracting Program*, which can require up to 40% of a contract be subcontracted, will apply to S/M/WBEs in Architecture and Engineering and will apply to SBEs and S/M/WBEs in Goods and Supplies; and
- *The Segmented Subcontracting Program*, which sets subcontracting goals for certain segments such as African American Business Enterprises (AABEs) or Asian Business Enterprises (ABEs), would be applied

to those segments that are experiencing the greatest disparity a given year and industry, based on the most recent data.

These proposed amendments will add to the current tools the SBEDA Ordinance utilizes on City solicitations, which will enhance the City's utilization of S/M/WBES.

On April 27, 2016, the proposed SBEDA Ordinance amendments are being presented to SBAC which will consider and vote to recommend that City Council adopt the potential amendments.

City Council consideration of the proposed ordinance with an appropriate modification based upon public comment and other relevant evidence is scheduled for May 19, 2016.

ALTERNATIVES:

This item is intended for briefing purposes only.

FISCAL IMPACT:

There is no fiscal impact as potential amendments to the SBEDA Ordinance are intended to enhance the program at no additional cost.

RECOMMENDATIONS:

This item is intended for briefing purposes only.