



The MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee convened in a Regular meeting on Tuesday, March 2, 2021 via videoconference.

CALL TO ORDER

Committee Chair, Eliza May calls meeting to order at 5:30pm.

BOARD MEMBERS IN ATTENDANCE:

Eliza May (Chair), Reginald World (Vice-Chair), Lena Banks, Daniel Berner, Barbra Boeta, Schiller Liao, Ahmed Moledina, Tina Cannon

CITIZEN COMMUNICATION: GENERAL

There were no speakers.

1. APPROVAL OF MINUTES

The minutes for the regular meeting of February 2, 2021 were considered for approval. The minutes were approved on a motion by Committee Member, Tina Cannon and seconded by Committee Member, Schiller Liao. Minutes approved on an 8-0 vote.

2. NEW BUSINESS

For discussion and possible action on recommendations to City Council (City Code § 2-1-163(B)) regarding the following:

- a. Director's Updates and Announcements with discussion and possible action
 - We will partner with our procurement offices for the 3rd annual Small Business Contracting Forum to be held on Wednesday, March 24th. It will be a virtual forum put on by the City of Austin Purchasing office in conjunction and partnership with SMBR and other entities around the city.

3. OLD BUSINESS

For discussion and possible action on recommendations to City Council (City Code § 2-1-163(B)) regarding the following:

- a. Discussion and appropriate action regarding information on the City's MBE/WBE participation and usage; and the use of a Personal Net Worth (PNW) and the Economic Disadvantage definition in the MBE/WBE Procurement Program.
 - SMBR Certification Division Manager, Elton Price provided information that was requested by the committee. The committee requested an overview of the personal net worth (PNW) process and what tools used for site audits.

- Cloteal Davis-Haynes of Haynes-Eaglin-Waters and a representative of the Austin Black Contractors Association shared their position regarding the PNW proposal brought forth by the US Hispanic Contractors Association and Hispanic Chamber. If PNW is eliminated millionaires or billionaires that fall into these racial categories would be allowed to participate in this program which not acceptable. Consider the valuation of property and the rising median income in the Austin MSA. Let's review the PNW process and increase it as appropriate but do not eliminate it. We are not in favor of accepting the State of Texas certification because their HUB certification program is the least stringent. We support looking at the net worth limits that are currently in place but keeping in mind our unique situation in Austin, with property valuation and median income.

Discussion:

Committee Member, Daniel Berner comments that there is a problem when 40% of businesses in Austin are minority-owned but only 20% of these businesses are receiving contracts. This would be the organization that would be tasked with addressing that gap. He is open to methods addressing this issue.

Cloteal Davis-Haynes responds that perhaps part of the gap is that the number of minority and women-owned businesses that make up that 40% happen not to meet the personal net worth requirement. It is important to do a good job of assessing the PNW. The thought that the 40% is totally explained by the PNW limit should be up for discussion.

Committee Member, Barbra Boeta comments that she is concerned if the PNW is eliminated and higher net worth individuals are allowed into our program. She supports reviewing the personal net worth and increasing the limits.

Committee Member, Ahmed Moledina comments that he agrees with Cloteal Haynes to not remove the PNW limit. We talked about increasing values and increasing home values in Austin. Was this homestead excluded from the personal net worth calculation?

SMBR Interim Director, Edward Campos responds that Elton Price's presentation will cover what is included/excluded in the personal net worth calculation.

Committee Member, Ahmed Moledina adds that if these PNW calculations excluded the homestead then there may not be a need to increase the number or increase it by a small increment. There is really no calculation that fundamentally comes into play for that justification of increasing it.

Committee Member, Reginald Worlds comments that it seems the 40% (percentage of businesses in Austin that are minority owned) is skewed. Is it the number of minority-owned businesses that are registered with the City or state? He agrees with Cloteal to look at increasing the property value on the PNW. He does not support removing the PNW but increasing it slightly if necessary, after an economic evaluation is completed.

Sal Chavarria of the US Hispanic Contractors Association stated that the gap is not from 40% to 20%, the gap is from 40% (goal) to 6% (actual amount of spend) if awarded to the MBE/WBE. Sal requested recommendations from Cloteal Haynes and her organization. We can provide more information regarding the 40% so the Committee is more informed. We are tasked with fixing the problem.

Committee Member, Lena Banks asks Committee Member, Barbra Boeta how much of that does she think may be an education problem?

- SMBR Certification Division Manager, Elton Price continues his presentation (posted on the Advisory Committee website) an overview of the personal net worth (PNW) process and what tools we use for site audits. The information in this presentation will answer a lot of the questions being asked.
 - In his presentation, he will cover the historical data who is considered economically disadvantaged to personal network exclusion, what supplemental documents staff requires and researches to verify some of the personal net worth information, the difference in City's network compared to the DBE and ACDBE net worth, site visits, and the alternate personal net worth form.
 - Personal net worth was established based on a recommendation from a Disparity Study that the City conducted back in 2005. It was adopted as an ordinance in June of 2006. And it became a requirement for certification back in January of 2007. The amount is indexed annually. It has increased incrementally from that 2007 initial PNW to \$900,000. The current PNW is \$1.583 million.
 - A poor individual is a business owner whose Personal Net Worth (PNW) does not exceed \$1.583 million for the MBE/WBE program or \$1.32 million for the DBE/ACDBE program. An individual's personal net worth includes only the applicant's share of assets and liabilities held separately and/or jointly, or as community property. There are some exclusions from the PNW that are listed in the presentation.
 - Supplemental documents are required as part of the review process. We require a full copy of your most recent Personal Tax Return(s) to include all schedules, Bank Statement Printouts –within 30 days of your PNW date, Trust Documents: Trust, Bill of Sale, Trust Tax Returns, Attachments for PNW Sections, as needed. Certification staff may request additional documents if required. All information provided by the applicant is confidential and protected by the state's Open Records Act.
 - There are several differences between the DBE/ACDBE PNW. If applying for both programs, application should complete only the DBE PNW. There are differences in the form layout. Applicant does not have the ability to indicate if an asset or liability is joint or separately owned or foreign or domestic. Applicant's personal residence is listed but is not included in the PNW calculation. Application does not have to list other sources of income or contingent liabilities. The MBE/WBE asks for additional information related to other business investments or businesses owned.
 - The ordinance and rules give us the latitude to ask for information so that we can verify the listings that are on the PNW or in the application. We can ask for additional information as required to make the best determination for certification.
 - SMBR Interim Director, Edward Campos adds that part of the process is to educate businesses on what we are going to be looking at for PNW. Elton and his team have been conducting some virtual online overviews of the certification process so that everyone knows what the City will be looking at as part of our personal net worth process.

- Committee Member, Tina Cannon asks if commercial real estate is counted as part of the personal net worth.
- SMBR Certification Division Manager, Elton Price responds that if it is not part of the business that is seeking certification.
- Site visits are performed on almost all of the companies. Site visits are an opportunity to meet the business owner and sit down at their place of business and discuss their aspiration and goals, certification, how they are going to procure if awarded a City contract, scopes of work provided. Site visits are required for the DBE/ACDBE program. During the pandemic, site visits are conducted virtually. We interview the applicant to confirm the company operations, the management and control by the applicant, we interview employees. Does the owner have the technical expertise in the field? Certification staff may not always be knowledgeable or have the expertise in a certain field. We rely heavily on our library of questions, our Texas Unified Certification Program partners, industry experts within the City. The industry expert may provide us with a list of questions to ask the applicant. We view all scopes of work performed by the firm to ensure that the profile that they have listed in Austin Finance Online accurately supports the services and goods that the firm is seeking to be certified in. The registration of goods and services is different from a company being certified in those goods and services.
- For the Alternate MBE/WBE form, only applicants to the City's MBE/WBE program. Must be completed by a Texas CPA in good standing with the Texas State Board of Accountancy. Supporting documents provided to CPA can be requested and viewed by an SMBR Certification team staff member. Personal Tax Returns are not typically due with the Alternate PNW form.

Discussion:

Committee Member, Tina Cannon requests a comparison in the first presentation on the questions that has the net worth cap, if other metros have a net worth cap, and if other metros offer the state HUB reciprocity?

SMBR Certification Division Manager, Elton Price responds we are the only entity in the state of Texas that has a personal net worth requirement as it relates to the local program. There are no other entities out there that has a personal net worth requirement for the local program.

SMBR Interim Director, Edward Campos was asked in the disparity studies for those other cities, whether or not the adoption of a personal net worth was a recommendation out of that disparity study? Edward stated that in previous discussions with other cities they noted that they were recommended to have a personal net worth, but it becomes an issue of their respective City Councils' deciding that it is a policy decision they choose to not adopt. It is a matter of risk when it comes to the adoption of local programs like our MBE/WBEB program, but all consultants have said, as a recommendation, you should have a personal net worth on your program.

SMBR Certification Division Manager, Elton Price states that as it relates to HUB certification, none of the entities that are part of the Texas Unified Certification Program has reciprocity with the HUB certification.

Committee Member, Tina Cannon states that if there was a conversation at some point regarding increasing the personal net worth, she wants to make sure that we are being

deliberate about what we tie it to. And where we tie it to reflects the growth of our community. Currently the personal net worth is tied to the South Region Consumer Index.

SMBR Interim Director, Edward Campos states that we have requested that the Disparity Study Consultant to look at if we do not use the South Region Consumer Index, what other index could we use?

Committee Member, Lena Banks asks what happens to applicants that exceed the PNW at the time of recertification?

SMBR Certification Division Manager, Elton Price responds that the applicant is no longer considered economically disadvantaged. The criteria the applicant must meet is to be socially and economically disadvantaged, so those persons would not be recertified.

Committee Member, Lena Banks asks Committee Member, Barbra Boeta about what she sees with her clients. How much of that is an actual issue or is it really about education regarding how your business finances work and how much liquid capital you should have on hand, etc.

Committee Member, Barbra Boeta responds that she sees clients that do not have access to capital so that they can compete and handle the cash flow. Also, her clients do not understand the bidding process and/or how to submit a competitive bid. Also, horror stories prevent her clients from bidding.

Committee Member, Daniel Berner asks Edward Campos could a metric for minority-owned businesses, irrespective of the size of the company, irrespective of personal net worth, that does not cannibalize also our objectives or reduce the effectiveness of our objectives for smaller companies?

Colette Holt of Colette Holt and Associates provides clarification on the data she is collecting. The disparity study methodology includes firms that are certified but also to the extent that we can identify them minority and women owned firms that are not certified. Firms may not be certified for many reasons. We know that just limiting the availability methodology to just certified firms is too limited. We reached out to any all minority women owned firms that we could identify. We asked the stakeholder groups, the assistance agencies, the chambers of commerce, to vote if they were willing to share their lists with us which most were not. And if not, to please help us do the outreach to get people to come to the interview sessions. There were not any complaints about PNW limits from certified and non-certified firms. She states that she does not know of a better data source than the one that the City of Austin has been using. There is not a lot of good data out there especially about PNW because people do not want to provide the personal financial information required to become certified. Colette Holt adds that a program that does not have a PNW is unlikely to survive a legal challenge.

Colette Holts responds to Committee Member, Daniel Berner's last question. She has seen agencies do that or they carve out a program that is for firms that are smaller than the existing limits. But within the constraints that the courts put on us, one could have a program that was for micro firms.

Committee Member, Lena Banks asks Elton Price about the criteria for graduating a company from the program.

SMBR Certification Division Manager, Elton Price responds that the criteria are a three-year average on receipts. The industry standards vary from \$7-8M in engineering to \$16M in construction. It varies based on industry. There is also number of employees in retail or manufacturing so that is not based on a three-year average. We look at how many employees a business has and if the employee number meets the threshold, they are longer considered a small business for that particular industry, so the business graduates from the program based on size also.

Committee Member, Lena Banks asks if the same can be done for personal net worth with the idea of the business being ushered out of the program when your snapshot exceeds the limit.

SMBR Certification Division Manager, Elton Price responds that less than 10 firms. We get firms occasionally, that do not recertify because they believe their PNW is over the limit. It is very rare that we get firms that do not want to be a part of the program because of the PNW.

Sal Chavarria of the US Hispanic Contractors Association comments that the PNW process is making it hard for minority firms to qualify because they do not want to go through the process. He asks Colette how the other four larger cities in Texas fare without a PNW qualification.

Colette Holt of Colette Holt and Associates responds San Antonio's program is essentially race neutral in which the City of Austin's program is not. We have been telling agencies in their Disparity Study for years that they need a PNW. The problem is not for the larger sophisticated businesses that's keeping them from becoming certified. It is more for smaller firms. So maybe the City could provide more assistance with the application. If you go to a bank, you're going to have to have all this information. So maybe it's support to help people as opposed to taking the legal risk that an agency could lose their entire program.

Committee Member, Lena Banks agrees with Colette's view on PNW. Business plans are going to be more involved than putting together a PNW.

SMBR Interim Director, Edward Campos adds that this is where the need for continued education is not lost on anyone at SMBR. These firms know what they are doing, and they know their trade, but they are lacking on the business side in some instances. There is a strong need for additional things that SMBR can undertake with partnerships with the Minority Trade Alliance and the Chambers, is that educational piece. How do we educate h them? How do we provide them with those resources? There are certain things that SMBR will be undertaking in the next couple of months that we feel can help a bit. Once we have that contract in place, we can come back and give you an overview of that.

- b.** Discussion and appropriate action regarding the prospect of a resolution supporting the inclusion of Lesbian, Gay, Bisexual and Transgender-Owned Businesses in the City's procurement process.
 - Jonathan Lovitz, Senior Vice President of the National LGBT Chamber of Commerce (NGLCC) in Washington, D.C. represents the national organization that does the certification for all LGBT owned businesses in the public and private sector.
 - Along with coalition partners in city government, state government courts, his local

affiliates help pave the way for government inclusion wherever women, people of color and other diverse businesses are recognized. No new staff or cost is needed because the NGLCC provides their roster of services to the city or state government at absolutely no cost as a true partner through an establishment of a Memorandum of Understanding (MOU).

- Impossible to do a disparity study for the LGBT community because it is difficult do when you are trying to uncover disparities in a community that cannot be traced. LGBT are not counted in the census, in the SBA, small and minority economic business data. The Commerce Department just began looking at the LGBT community several years ago. When the California Public Utilities added LGBT for the, for the first time in the country back in 2015, there was a 420% increase in the number of small businesses that got certified with the state.
- Since California, 4 states, 28 cities, 11 federal agencies, more than half the fortune 500 are already including our LGBT business community and our certification. Excited about starting the dialogue with the City.

Discussion:

Committee Member, Schiller Liao asks has good question are other LGBTQ organizations been excluded in the City bidding process or they have been open?

SMBR Interim Director, Edward Campos responds that the City does not exclude anyone from providing a bid or proposal based on any rationale, gender, race, or LGBTQ status.

Committee Member, Schiller Liao asks what is the problem that we have right now?

Committee Member, Daniel Berner adds that no governmental entity has discriminatory practices ostensibly with respect to any entity, but then when viewing numbers and the facts, that is where the evidence of discrimination lies.

Committee Member, Lena Banks asks if there is data to show discriminatory practice or institutional discrimination, or any type of discrimination? We recognize it is an issue but if a public policy is to be implemented, is there data to back it up?

Jonathan Lovitz of NGLCC responds that you cannot fix what is not tracked. Other than race or gender you may not know much about your vendor pool. First, you must begin tracking so that you can find out where the disparities are. All over the country is a recommendation that has been implemented through law to allow the LGBTQ community to first participate in the system in a way that has no specific goal. Allow them to take advantage of the diverse small business programs that are out there because every city has some kind of program like specialized support and economic development initiatives, small business training for diverse communities, but their idiosyncratic needs that are specific to LGBTQ people, particularly intersectional ones.

Jonathan Lovitz of NGLCC suggests building that data set to get to your goal, look at the people in the Austin business communities. For example, California, have welcomed LGBTQ businesses to participate five years ago, but we're just now studying the participation to set a goal in 2021, five years later. Now we can see there were LGBTQ people participating all along but were never asked to check the box. It is all about saying everyone is welcome here because that benefits the city's economy.

Committee Member, Lena Banks responds that she does not know if this problem can be solved in this committee, because of the nature of this program. We are trying to engage people who would not have a seat at the table. Wants to know the number of LGBTQ owned businesses that have been shut completely out of the system, which is so often what seen with women or blacked-owned businesses. To Jonathan's point, it should be part of what this committee does - trying to be as inclusive as possible and determining where the gaps exist in not including everyone.

Committee Member, Schiller Liao comments that there is no survey for the number of LGBTQ firms in construction or design for procurement. In the Asian community it is hard to find enough Asian contractors in construction to participate because they don't usually participate in that kind of business. For the LGBT, we must add them to the survey then determine how many will do business with the City then setup a goal for that.

Jonathan Lovitz of NGLCC responds with that is what we are recommending. A good example is what we are doing in Chicago. For example, their policy which was voted on by Council, let us add an LGBTQ survey question to our minority supplier database. It allowed us to start to see participation and the interest from those communities. So, if there is a how to start a small business program for minority communities, do not just use the word minority say, every community your spell it out, which they had not previously done. That city wondered why LGBQ people were not participating it was because that community was never told they were welcomed in the space. Just by doing that, it increased participation from the local affiliate chambers. He gave an example regarding a trans/woman-owned construction company that was told not to tell people she was a woman. She was also told by a city employee that being transgender is bad for business, so she did not participate in city contracting.

Committee Member, Barbra Boeta ask if the cities he referred to, have they implemented the certification similar to our certification or are they currently just surveying?

Jonathan Lovitz of NGLCC responds that any city or state that has any kind of agreement with us to include LGBTQ businesses. The NGLCC goes above and beyond what is called for in most public sector certification programs. So not only are LGBTQ firms going to have to prove 51% ownership that every community does, the amount of information that the NGLCC requires has made it so that in the 20 years we have been certified, we have yet to see a single example of the same kind of waste, fraud or abuse that is seen in other minority communities. The first goal in the country is going to be set this year by the public utilities in California. For the majority of cities that we are working with all goals are aspirational. These cities are trying to get the time spent. That said, everyone does it differently. But step one is to capture the data. You won't have the data until we share, all of the existing certified LGBT business enterprises in your region with you to begin studying and surveying.

Committee Member, Daniel Berner comments that first the LGBTQ communities should be included in data surveys. Next, determine if there is a discrepancy, and if so let's include them as part of the targets of programs such as ours. If there is a discrepancy, then how quickly can we include the LGBTQ community in programs such as ours?

SMBR Interim Director, Edward Campos states that it boils down to the fact that we are not collecting the data. Committee members requested that Jonathan Lovitz and Committee Member, Tina Cannon provide a comprehensive list of the types of information we should be collecting.

Committee Member, Eliza May asks committee if willing to entertain a motion that would direct staff to begin the process of data collection for LGBTQ businesses. Committee Member, Lena Banks enters a new motion to direct staff to investigate data collection for LGBTQ populations. Committee Member, Schiller Liao seconds.

Committee Member, Tina Cannon enters a new motion to direct City staff to work with Austin LGBT Chamber and the National Chamber to evaluate and the analysis of the gap for LGBT entrepreneurs in the City's procurement process.

Committee Member, Lena Banks withdraws previous motion so that the new motion entered by Committee Member, Tina Cannon can be considered.

Committee Member, Eliza May presents to the Committee the new motion from Tina Cannon and seconded by Committee Member, Lena Banks. The motion was passed on an 8-0 vote.

- c. Update on the Disparity Study with discussion and appropriate action:
 - SMBR Compliance Officer, Tamela Saldaña gives the update.
 - SMBR has submitted all the contract data so the consultant is analyzing that data and a possible delivery date is in May.
- d. Monthly update on the 1) Council Awards; 2) Third-Party Project; 3) Request for Change (RFC); and 4) Certification Roll.
 - SMBR Compliance Officer, Tamela Saldaña gave the updates on the Council Awards, Third Party Project, and the Request for Change reports. These reports are posted on the MBE/WBE Advisory Committee website.
 - Certification Division Manager, Elton Price gave the update on the Certification Roll report. This report is posted on the MBE/WBE Advisory Committee website.

4. FUTURE AGENDA ITEMS

- SMBR Interim Director, Edward Campos requests that an “update on contractor payment process improvements” be added to the agenda for the next meeting. This item was originally requested by Committee Member, Daniel Berner.

ADJOURN

Committee Chair, Eliza May adjourned meeting at 8:10pm.