

A U S T I N C I T Y C O U N C I L
AGENDA

Thursday, May 18, 2006

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Item #23

**Small & Minority Business Resources
RECOMMENDATION FOR COUNCIL ACTION**

Subject: Approve an ordinance adopting a new Chapter 2-9A of the City Code (Minority-Owned and Women-Owned Business Enterprise Construction Services Procurement Program) to establish a procurement program for construction and repealing the current Chapter 2-9 of the City Code (Minority-Owned and Women-Owned Business Enterprise Procurement Program)

Amount and Source of Funding:

Fiscal Note: There is no unanticipated fiscal impact. A fiscal note is not required.

Additional Backup Material
(click to open)
No Attachments Available

For More Information: Jeffrey Travillion, Sr., Director, 974-7607; Karen Kennard, First Assistant City Attorney, 974-2177
Prior Council Action: December 15, 2005 Council approved extension of the ordinance sunset deadline to June 30, 2006
Boards and Commission Action: Recommended by the MBE/WBE Citizens Advisory Committee

Chapter 2-9 A Construction

The City's Minority-Owned and Women-Owned Business Enterprise Procurement Program is scheduled to sunset on June 30, 2006. The current ordinance, Chapter 2-9 of the City Code, covers all city procurements related to construction, professional services, non-professional services, and commodities.

In 2005, the City Council engaged a consultant to conduct an updated study to determine the continued need for the MBE-WBE Program. Based on the evidence from this study, the city's MBE-WBE program is still needed. The evidence from the study indicates that absent this program, minority-owned and women-owned business enterprises would be underutilized on City contracts relative to their availability.

The 2005 study found that the MBE-WBE ordinance is narrowly tailored to address the identified current effects of past discrimination and private sector discrimination in the City's marketplace.

Additionally while reviewing the current ordinance, it was determined that establishing separate programs for each procurement sector would:

- (1) increase the ease and flexibility of administration of each program; and
- (2) help tailor each program more narrowly to the goals each program attempts to achieve

The proposed changes will separate the current ordinance into four (4) separate ordinances tracking the City's procurement categories. The new ordinances are:

Chapter 2-9- A Construction

Chapter 2-9- B Professional Services

Chapter 2-9- C Non-professional Services

Chapter 2-9-D Commodities

The new Chapter 2-9-A establishes a Minority-Owned and Women-Owned Business Enterprise Program in the City with respect to the procurement of Construction services.

Significant ordinance changes are as follows:

Section 2-9A-1 Findings are revised to update the history of the ordinance's legal justification by adding findings indicating that the city obtained an updated study to determine whether the MBE/WBE program was still needed, and to determine whether the program could be more narrowly tailored. This new ordinance establishing a MBE/WBE Procurement Program related to Construction is added to provide narrow tailoring of the program to achieve its goals.

Section 2-9A-4 Definitions are standardized across all departments, including Public Works, Purchasing, and DSMBR. Definitions are also harmonized with federal regulations.

The definition of MINORITY OWNED BUSINESS ENTERPRISE AND WOMEN OWNED BUSINESS ENTERPRISE is amended to require that the business owner be ECONOMICALLY DISADVANTAGED.

ECONOMIC DISADVANTAGE is defined to mean a person whose personal net worth is equal to or less than \$900,000 excluding the person's equity in the business enterprise or firm seeking certification and excluding the value of the person's personal residence. The definition also requires that the \$900,000 amount shall be indexed annually for the Austin Metro Area Consumer Price Index as published by the U.S. Department of Labor.

The definition of WOMEN OWNED BUSINESS ENTERPRISE is also amended to allow a person to apply for dual certification as both a WBE and a MBE.

Section 2-9A-5 Updates the types of race and gender neutral measures that the city will engage in to ensure equal opportunity for all contractors

Section 2-9A-6 The Adoption of Rules Section cross references the general City Code provisions that govern how all city departments adopt rules and eliminates duplicative procedures.

Section 2-9A-13 The MBE/WBE Advisory Committee are consolidated into the general City Code provisions and conforms this provision to the code provisions that authorize all city Boards and Commissions.

Section 2-9A-15 Amends the MBE/WBE Program Eligibility criteria to require that a person's ownership in a Socially and Economically Disadvantage firm must be real, substantial, and continuing. Only a firm that is managed and controlled by a Socially and Economically Disadvantaged person may be certified as a MBE/WBE.

Section 2-9A-20 Clarifies that a WBE that is dually certified as a MBE may only be counted once when counting participation goals on a contract.

Section 2-9A-26 Establishes a new sunset date for the ordinance of December 31, 2010