

MBE Advisory Committee Conference Call October 19, 2010

Participants:

Ruth Byrd-Smith – Allegheny County M/W/DBE Department
Lisa Edmonds – Allegheny County M/W/DBE Department
Amy Griser – Allegheny County Department of Budget and Finance
Jim Johnston – Allegheny County Department of Economic Development (for Dennis Davin)
M. Gayle Moss – NAACP Pittsburgh Branch
Joyce Query – I2, Inc.
Tim Stevens – B-PEP

Absent:

Dennis Davin – Allegheny County Department of Economic Development
Victor Diaz – Pittsburgh Metropolitan Area Hispanic Chamber of Commerce
Mark Patrick Flaherty – Office of the Allegheny County Controller
Kenneth Huston – Huston Trust, Inc.
Timothy Johnson – Allegheny County Department of Administrative Services
Abass Kamara – Pittsburgh Penguins
Marc Little – MWELA
Iftikhar Malik – Shawn Malik, Inc.
Joseph Olczak – Allegheny County Department of Public Works
Im Sook Reinhart – Controls Link, Inc.
Toni Silva – UPMC

Also Present:

Ted Trbovich, Allegheny County Law Department

Gayle Moss explained that the purpose of this conference call was to get clarification from Assistant Solicitor Ted Trbovich on Allegheny County's M/WBE contracting goals and also to identify goals that the Committee would like to meet during the upcoming year. Ted Trbovich referenced the fact that in 1981 the County's goals of 13% MBE and 2% WBE participation were established. Joyce Query asked if a disparity study was performed at that time and Mr. Trbovich answered negatively. In subsequent years the federal Department of Transportation moved to a 10% DBE goal. Allegheny County has required a 13%/2% or 15% since then. Legal cases throughout the years have worked to establish goals, but a disparity study is required to modify existing goals.

Ruth Byrd-Smith stated that the City of Pittsburgh and four of its authorities conducted a disparity study in the late 1990s, and the State of Pennsylvania completed a disparity study but due to budget constraints only looked at construction-related activity. She listed factors that are examined in a disparity study, such as the geographic region, the businesses that are available, the number of businesses, the types of revenue and the

anecdotal information available. The burden of proof is based on a preponderance of evidence available that can prove past and discrimination along with possible future discrimination situations if nothing is done. Ms. Moss asked if a disparity study is conducted, would it be possible for the 13/2 goals to be reduced, and Ms. Byrd-Smith answered that it is possible due to the demographics of Allegheny County as compared to the City of Pittsburgh, which is a more urban area. Ms. Query asked if a disparity study was conducted and the results indicated so, would Allegheny County lower its goals. Mr. Trbovich replied that Allegheny County would probably not do so on its own, but would end up lowering them as a result of lawsuit(s) filed that challenge whether the 13/2 goals accurately represent of the County's demographics.

Mr. Trbovich stated that he is not aware of any contractors voicing dissatisfaction with the current 13/2 goals. Ms. Query stated that she knows hundreds of woman owned businesses that do not pursue County contracts because it is not worth putting in the amount of the work necessary to receive 2% of a contract. She went on to say that primes tend to give only the 2% since that is the minimum requirement. Ms. Byrd-Smith wondered if the industry cluster affects that, and gave examples of large County contracts that have had 2% WBE participation. Ms. Query made reference to the fact that the County did not meet the WBE goal overall and Ms. Byrd-Smith replied that the County did in fact meet the goal. Ms. Query raised the possibility of looking at trends in other areas and Ms. Byrd-Smith emphasized that a disparity study is still key. She stressed that it would reflect this specific region, and brought up the fact that there are historic issues that have affected other areas and not this one. When Ms. Query mentioned ALCOSAN, Ms. Byrd-Smith stated that their diversity program is voluntary. Also, ALCOSAN funds their operations with rate-payer dollars, which differs from the revenue streams that Allegheny County uses. A discussion ensued regarding the M/WBE requirements of various funders.

Ms. Query asked if a joint City of Pittsburgh and Allegheny County disparity study could be done, and Mr. Trbovich answered that both areas are very different in demographics and types of projects. Ms. Query offered that the City's disparity study suggested goals of 25/10, but the City elected to lower them to 18/7. Ms. Edmonds stated that the City's goals were 25/10 until the disparity study lowered them to 18/7, and Ms. Byrd-Smith concurred. Mr. Trbovich does not recall that the County has been sued regarding the M/W/DBE program. When Tim Stevens expressed his feeling that it would be an embarrassment for anyone to sue the County in an effort to lower the 2% goal, Mr. Trbovich said that any lawsuit would be against both goals collectively. Ms. Query reiterated her opinion that the 2% goal is a hindrance to WBEs.

Mr. Trbovich wondered if WBEs would be more at risk if there would instead be a straight 15% DBE goal. When Mr. Stevens challenged him on that statement, Mr. Trbovich explained that he does not think that a contractor cares who the participation goes to so long as the designated participation requirement is satisfied. Both the Airport Authority and Port Authority follow the 15% DBE goal. However, Ms. Edmonds offered that for federal transportation projects that use a DBE goal, it is usually 5%. Mr.

Stevens asked where the 2% WBE goal came from, and Ms. Byrd-Smith answered that both goals were based on demographics.

Ms. Query asked whether the County would want a disparity study so as to defend their goals. Mr. Trbovich again stated that he does not see anyone challenging the goals. Ms. Moss felt as well that the 2% is very low. Ms. Byrd-Smith offered that she can oversee any program no matter what the basis, so the Committee needs to discuss what it feels is best, and Ms. Moss agreed. Mr. Trbovich advised in the volatile political climate today to not push numbers either way unless there is legal justification to do so. Ms. Query responded that requesting the disparity study was being discussed in response to County Council's urging that the Committee make actionable recommendations.

Amy Griser explained that a fiscal note to document any cost or savings in taking an action will need to be completed if the Committee decides to request a disparity study. She posed that Council may ask for the cost of comparable disparity studies and/or if there are any existing disparity studies that Allegheny County could expand or piggyback upon. She also offered that Council must adopt next year's budget 25 days before year's end. Ms. Byrd-Smith stated that the cost of the disparity study could be anywhere from \$500,000 to \$800,000 depending upon the extensiveness of the study. Ms. Griser wondered if some of the information could be taken from a database that already exists, such as demographic statistics, but Ms. Byrd-Smith answered that it is best to defer to researchers as they create the criteria and examine the issues surrounding the amount of disparity. Ms. Griser suggested going through a proposal process so that proposers can address the criteria the Committee delineates. Mr. Trbovich asked if the University of Pittsburgh has been involved in past studies, and Ms. Byrd-Smith replied that Mason Tillman performed the City of Pittsburgh's and City of Nashville's disparity studies. Ms. Moss suggested putting together a subcommittee to specifically address the disparity study. Ms. Griser wondered if some of the funding for a study could come from state, federal and foundation sources.

Ms. Moss thought that if the Committee wanted to pursue the disparity study recommendation, another meeting would need to be held before the next scheduled meeting, which is November 10th. Mr. Stevens asked how the Committee could estimate a reasonable price range for a study, and Ms. Byrd-Smith offered to contact Dr. Ralph Bangs at Pitt for his input. Ms. Griser suggested that the Committee's request be submitted to Jennifer Liptak, County Council's Budget Director. She proposed to contact Ms. Liptak to obtain the date by which the request would be due and pass it along to the Committee, but recommended that the Committee use November 11th as a target for now. Mr. Trbovich urged the Committee to make the request soon and take time afterwards, if necessary, to determine criteria. A discussion ensued on whether a prescribed format exists that the Committee would need to utilize. Mr. Trbovich thought that Ms. Byrd-Smith could add any necessary language to emphasize the importance of the request.

Mr. Stevens asked if the current goals include construction, and Ms. Byrd-Smith explained that it depends on the funding stream for each project. He asked how well the County has done and Ms. Byrd-Smith deferred to the contracting statistics presented in the M/W/DBE Department's 2009 annual report, 18% MBE and 2% WBE. Included in the 18% MBE goal are some WBEs, and how they are counted depends upon whether those companies were used as an MBE or a WBE on the contracts on which they performed. Ms. Moss asked Councilman Robinson to attend the next meeting, and he asked for advance notice.

Mr. Stevens does not want to move forward with anything that could possibly lower the MBE goal in an effort to raise the WBE goal. Ms. Query feels that the MBE goal would go up, and asked if a disparity study could be performed just regarding WBEs. Mr. Trbovich wondered if Dr. Bangs could provide that answer. Ms. Byrd-Smith will ask Dr. Bangs what is normally included in a disparity study, the expected cost range, and if Mason Tillman would be able to utilize the information they gathered when performing the City of Pittsburgh study. Mr. Trbovich wondered if the last point could be addressed in the proposal process. Jim Johnston offered that Mason Tillman lists information regarding past disparity studies they have performed on their website, along with general information on the criteria they look at when conducting a disparity study. He feels that since the data from the City of Pittsburgh study is 11 years old, its age would prohibit its inclusion into a new study. Ms. Query suggested that the Committee vote on whether it wants to request the disparity study of County Council.

Mr. Stevens asked how ALCOSAN, a County Authority, can have higher goals than Allegheny County. Ms. Byrd-Smith reiterated that their program is voluntary, and they are funded by rate-payer dollars. She also stated that ALCOSAN's budget is much lower than Allegheny County, and therefore the amount of construction projects is typically lower. She recapped for the Committee the County's government structure at the time that the 13/2 goals were enacted, and a discussion regarding this issue ensued.

Ms. Query still thinks that the Committee could request a disparity study for WBEs only. Ms. Griser felt that it would be out of Council's purview as their function is fiscal in nature, and Mr. Trbovich might be able to address that. Ms. Byrd-Smith revisited her earlier explanation of reasoning to justify the performance of a disparity study. Ms. Query wondered how the Committee could get a gut feel for where the current numbers may lie. A discussion on this point ensued. Mr. Stevens referred to a large meeting that the County Executive had within the last year or two where he discussed altering the goals. Ms. Query countered that the meeting was to address the dollar amount of discretionary spending that County directors have.

Ms. Moss suggested that Ms. Byrd-Smith retrieve what information she can from Dr. Bangs before the end of the week, and that the Committee have another conference call at the beginning of next week to discuss the findings. Since Ms. Byrd-Smith will be out of town then, she will e-mail the Committee her findings. This next conference call was scheduled for Monday, October 25th at 9:30 a.m.