
Allegheny County MBE Advisory Committee Meeting Minutes
505 County Office Building
Thursday, July 26, 2012
9:00 a.m.

Advisory Committee Members in Attendance:

Larry Brinker – President/CEO, Brinker Group

Austin Davis – Executive Assistant, Office of the Allegheny County Executive

Victor Diaz – CEO, Pittsburgh Metropolitan Area Hispanic Chamber of Commerce

Amy Griser – Deputy Controller, Office of the Allegheny County Controller

Ola Jackson – Founder/CEO – Onyx Woman Network (OWN)

Deborah Lewis – MBE/WBE Contract Administrator, Allegheny County Department of Public Works
(For Joseph Olczak)

Marc Little – CEO/President, Minority and Women Educational Labor Agency (MWELA)

James Overton – Chairman/President, City of Pittsburgh Equal Opportunity Review
Commission/Overton Financial Group

Roxanne Sewell – President, LJS Publishing/Talk Magazine

Toni Silva – Supplier Relations Director, UPMC

Gregory Spencer – President/CEO, Randall Industries, LLC

Advisory Committee Members Absent:

Abass Kamara – Director of Government Affairs, Pittsburgh Penguins

Iftikhar Malik – President, Shawn Malik, Inc.

M. Gayle Moss – Chair/President, MBE Advisory Committee/NAACP Pittsburgh Branch

Joseph Olczak – Director, Allegheny County Department of Public Works

Tim Stevens – Chairman, Black Political Empowerment Project (B-PEP)

Also Present:

Ruth Byrd-Smith – Director, Allegheny County Department of M/W/DBE

Lisa Edmonds – Deputy Director, Allegheny County Department of M/W/DBE

John Graves—President/CEO, PR Networks, Inc.

Agenda:

- I. Open Meeting/Introductions**
- II. Approval of Previous Meeting Minutes**
- III. Old Business**
- IV. Presentation on Good Faith Effort**
- V. Discussion**
- VI. Adjournment**

I. Open Meeting/Introductions**II. Approval of Previous Meeting Minutes**

Since Committee Chair M. Gayle Moss was unable to attend the meeting, she asked Ruth Byrd-Smith to give a presentation to the Committee on the process that the M/W/DBE Department follows when vetting contracts. Ms. Byrd-Smith suggested that she cover the certification process at a subsequent meeting.

The minutes from the June 5, 2012 meeting were approved.

III. Old Business

Regarding Chapter 435 of the County's Administrative Code, Amy Griser stated that the Solicitor in the Controller's Office had concerns on the reporting requirements from the Controller specifically related to monitoring the bid process. She explained that the Controller's Office is not involved in that process, that they only get contracts executed by the County Executive. She was not sure as to where the revised Chapter 435 was in the approval process but mentioned that the Controller's Office will likely offer some edits to that portion of the legislation. Austin Davis answered that the revised Chapter 435 had been forwarded to County Council but that it would not come up until the fall. Ms. Griser offered to get in touch with Walt Szymanski or Jared Barker to let them know of the proposed edits.

IV. Presentation on Good Faith Effort

Ms. Byrd-Smith explained the County's contracting goals of 13% minority business enterprise and 2% women business enterprise. The process begins with the M/W/DBE Department's review of the bid documents and M/W/DBE participation paperwork forwarded by the Purchasing Division. She explained these documents to the Committee, along with the fact that the County also lets contracts for the City of Pittsburgh with the exception of construction. Gregory Spencer asked if a vendor's M/W/DBE participation plan influences whether they are a low bidder. Ms. Byrd-Smith explained that if a low bidder has no participation and if areas of work within the contract that can be performed by M/W/DBEs are identified, the low bidder is encouraged to meet the County's goals or the County will move to the next vendor. Victor Diaz added that in other jurisdictions a low bidder without a participation plan can become ineligible. He is hopeful that the County will get to that point. A discussion on accountability ensued.

It was asked if a company who is MBE and WBE can qualify for both goals. Ms. Byrd-Smith answered that the company can only count towards one of the goals. She added that a company owned by a disabled white male may qualify for PA UCP certification as a DBE. Mr. Diaz asked if the Participation Statement is filled out 100% of the time and Ms. Byrd-Smith answered no. Since the Participation Statement states that failure to complete the form could lead to

rejection of the bid, Mr. Diaz asked why the bid would not be rejected. Ms. Byrd-Smith felt that upcoming slides would answer that question.

Full participation consists of a completed M/W/DBE Participation Statement listing minimum 13% MBE participation and 2% WBE participation. At that point the M/W/DBE Department contacts the M/W/DBEs to verify that they received contact from the low bidder and that the estimated percentage and dollar amount listed are accurate. The M/W/DBE Department then issues a memo of recommendation to the Purchasing Division. Ms. Byrd-Smith added that no award is made until Purchasing receives the M/W/DBE Department's memo.

An M/W/DBE participation waiver must be requested anytime both the MBE and WBE goals will not be completely fulfilled. Ms. Byrd-Smith explained that because the County has a need for so many diverse supplies and services, on occasion there are contracts for which full participation is not achieved. In these cases, the low bidder must submit the following items: a detailed explanation of the vendor's business process, an inventory profile, a subcontractor/supplier diversity plan or policy and an explanation as to why the vendor is requesting a waiver. The vendor must also provide documentation of their good faith effort in the form of PA UCP and DGS database searches. When asked if in these cases the M/W/DBE Department follows up with M/W/DBEs with which the vendor interacted, Ms. Byrd-Smith answered affirmatively. Someone asked if reaching out to a group such as the African American Chamber of Commerce can be considered making a good faith effort and she answered no, the effort must be more aggressive. She referenced that 49 CFR Parts 23 and 26 of the federal regulations define a good faith effort, and the Committee might want to go over them at a subsequent meeting.

Ms. Byrd-Smith reviewed the e-mail that the M/W/DBE Department sends to vendors with partial or no participation requesting documentation of a good faith effort and if necessary, the waiver request items. Mr. Diaz offered that the City of Baltimore has a template that vendors can follow to establish a diversity policy for their business. Ms. Byrd-Smith stated that the M/W/DBE Department provides a sample policy when necessary. James Overton asked if there is more than one low bidder, does the M/W/DBE Department suggest the subcontracting resources that others found or is that a sign that a vendor could or should be able to get participation. She responded that because vendors want the work most of them will try to obtain participation. However, some vendors have been uncooperative with this requirement.

Partial participation means that the vendor has some participation but will not completely fulfill both the MBE and WBE goals. In this case the M/W/DBE verifies the commitment(s) with the M/W/DBE(s) and requires the vendor to submit the waiver request documents since they need to request a waiver of the participation that they will not meet.

With regard to contracts with both City and County spend, once the M/W/DBE Department completes its review, the bid documents and participation plans are forwarded to the City of Pittsburgh Equal Opportunity Review Commission for its review and approval.

Next in the presentation was an explanation of participation monitoring through Outreach Manager. The Outreach Manager internet module allows prime vendors to submit M/W/DBE subcontractor payments online. Ms. Byrd-Smith stated that prime vendors must report their M/W/DBE spend every 30 days. If there was no spend with M/W/DBEs within that 30 days they still must report a \$0 payment in Outreach Manager. Once a payment has been entered, the system forwards an e-mail to the subcontractor so the subcontractor can confirm or dispute the payment. She displayed the e-mail correspondence that goes to the prime and the sub. It was asked if this was encouraged or required, and she answered that it is required. Once a vendor has

entered all of its payments into Outreach Manager, they are to print out a payment summary page, sign and date it, and submit it with copies of corresponding invoices and cancelled checks.

Ms. Byrd-Smith described the process that takes place when a prime vendor is noncompliant with their M/W/DBE reporting. After two reminders, a memo is sent to the Purchasing Division stating that the prime vendor has not provided their M/W/DBE reporting and is therefore not in compliance with their contractual obligation to Allegheny County. Purchasing then sends a letter of noncompliance to the prime vendor giving them a time period by which to provide their reporting or their contract will be terminated and they will be placed on the County's ineligible source list.

Marc Little asked about the process followed to terminate a vendor's contract, and Ms. Byrd-Smith advised him to inquire with the Chief Purchasing Officer, John Deighan. Originally there was a discussion as to whether payment should be withheld or the contract should be terminated. Withholding payment was ruled out because the supplies/services would have already been provided. A discussion regarding contract reporting and responsibility ensued.

V. Discussion

Mr. Overton felt that the reporting system puts the M/W/DBE Department in a position to be proactive on participation such that if a portion of the contract period has passed and no participation has been reported, follow up with the prime vendor can be performed. Mr. Diaz contributed that there are occasions where County contracts are in place but no work relating to that contract is performed. Mr. Spencer stated that he had confidence in the M/W/DBE Department to manage this process but the challenge is things are not working like they should. Toni Silva asked Mr. Spencer what would determine whether the process is working. He answered that the data shows that minority businesses lack the capacity to hire people. He stated that there are very few minority prime contractors and manufacturers. Ms. Byrd-Smith offered that regarding commodities, the biggest ticket items are construction-related: architecture, engineering and construction overseen by Public Works and in-field housing overseen by Economic Development. Mr. Spencer stated that unless something is done differently, people will leave the area. Mr. Diaz said that he has seen improvements and hopes that the new County leadership will make this a priority. Ms. Byrd-Smith encouraged the Committee to make recommendations.

Larry Brinker noted that in other parts of the country where participation numbers are met there is a large pool of minority companies. Being that the construction side requires sworn statements of payment, he felt that this tracking system is good for the commodities side. Mr. Little asked Mr. Brinker with regard to what he has seen around the country, what he thought was missing in this region that would be necessary to help to develop local companies. Mr. Brinker responded that there is a mindset where people are not used to minority companies from other areas coming into town. With construction, this is not a negotiating type of market and it is difficult as a company new to the area to bid against the locals. Mr. Diaz thought that there is a difference between how business was conducted in the past and how business is conducted today, with federally-funded projects. Now that a different pool of revenue exists, it is a right of the city or entity to be the manager. He compared Pittsburgh with Baltimore, stating that in Pittsburgh there is less work available but fewer requirements to meet. Mr. Little outlined M/W/DBE participation with the CONSOL Energy Center and a discussion ensued.

Regarding SBA certification, Ms. Byrd-Smith explained that it is not used for anything except to establish the size standard for a business. A Committee member stated that he knows of a certified WBE for which the husband does all of the work. Ms. Byrd-Smith advised him to put that information in writing and the M/W/DBE Department can do a third-party challenge. She explained

that a WBE prime must meet the same requirements and complete the same paperwork as an MBE prime. Ms. Silva stated that capacity is the biggest obstacle to MBE success that she sees. If there is no local company that can handle the capacity of a project, she must look nationally for a company that can. Mr. Spencer would like to see some mentorship with firms like Mr. Brinker's so this same situation does not occur in the future. Mr. Brinker stated that a lot of corporations in Pittsburgh could take specific types of work and set it aside for minority companies. A discussion on this topic ensued.

Ola Jackson asked in what areas the area is lacking with regard to minority businesses. Mr. Diaz answered that construction and professional services are lacking. Ms. Byrd-Smith referenced a meeting the M/W/DBE Department held a few years ago to attract construction managers. Companies attended from around the country. It was discovered that if you are involved at the beginning of the process there is a strategy for success that can be carried out. It was suggested that if the Committee could identify several bids without minority participation, they can advise minority youth interested in entrepreneurship to pursue those industries. Mr. Diaz offered that firms should consider broadening their work descriptions to make their businesses more marketable. A discussion on this topic ensued.

Ms. Byrd-Smith stated that recently her department identified some major financial houses and bond counsel that are minority-owned. Ms. Griser said that Darryl Ponton is the only local bond counsel who is M/W/DBE certified and there are no local M/W/DBE-certified underwriters so the Budget and Finance Department had to look outside of this region.

It was asked if the Committee should make any recommendations. Ms. Jackson suggested that the Committee identify areas where minority businesses are needed and make a plan on how they could move forward in developing businesses for these areas. Ms. Byrd-Smith reviewed the minutes from the subcommittee meeting to give the Committee some points dealing with policy enforcement to consider.

VI. Adjournment

Ms. Byrd-Smith ended the meeting by gathering everyone for a group photo.