

**CITY OF SAN ANTONIO
PROPOSED SBEDA ORDINANCE**

FREQUENTLY ASKED QUESTIONS

1. Question: Why does the City need a Small Business Ordinance?

Answer: The U.S. Supreme Court, in the case *City of Richmond v. J.A. Croson Company*, mandated that in order to have a program that remedies disparities in the utilization of women- and minority-owned businesses through the use of race- or gender-conscious remedies, there must be a strong basis in evidence that supports the need for such a program and this program must be narrowly-tailored. San Antonio just completed its current Disparity Study, the first since 1992, which provided strong evidence of significant disparities in the utilization of women and minority-owned businesses in the public and private sectors of San Antonio's marketplace. The new Ordinance is narrowly tailored to target and remedy the specific disparities and barriers to M/WBE formation, growth, and participation evidenced by the current Study. Moreover, the proposed Ordinance provides for careful consideration and use of a variety of race- and gender-neutral remedies so that any burdens to innocent third-parties from these remedial efforts are minimized.

2. Question: How is the Local component addressed in the new SBEDA Ordinance?

Answer: The proposed SBEDA Program tools apply only to San Antonio Metropolitan Statistical Area (SAMSA) contractors. The SAMSA consists of 8 counties: Bexar, Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina and Wilson (the "relevant marketplace" per the Disparity Study data). To qualify for this program, a Small, Minority or Woman-owned business must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area, from which one or more of its employees is regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

3. Question: Will the City continue to utilize local, HUE and SBEDA Compliance (total 20 points) as scoring criteria for discretionary contract projects?

Answer: The evaluation criteria has been modified depending upon the Affirmative Procurement Initiative utilized. Under contracts awarded pursuant to the proposed Ordinance, the City could utilize some evaluative scoring based

upon the Affirmative Procurement Initiative selected by the Goal Setting Committee. Two examples: (1) for a professional services contract, the Committee could allocate up to 20 points of the evaluation criteria for an SBE or MBE Joint Venture, based on specified percentages of partner ownership; (2) for a construction contract over \$1.5 million, the Committee could assign up to 25% of the weighted selection criteria for a certified SBE Firm where a “best value” method of contracting is employed.

4. Question: Will the City continue to utilize contracting goals for S/M/WBE participation?

Answer: Yes. The ordinance establishes a Goal Setting Committee that will assign narrowly- tailored goals for specific City contracts based on the availability of firms for the required industry. Non-mandatory annual aspirational goals shall also be established by the Goal Setting Committee. However, such annual goals are not to be applied on a contract-specific basis, and are to be used only as a benchmark to evaluate the relative effectiveness of the program and to indicate where adjustments to the program’s tools and aggressiveness are warranted.

5. Question: How will the Goal Setting Committee (GSC) determine goals?

Answer: Initially, the GSC will examine a combination of past S/M/WBE participation levels on similar contracts, and a master vendor database obtained from the City’s Disparity Study vendor, MGT of America reflecting the availability of ready, willing, and able firms by industry and commodity code. However, within 18 months after the proposed ordinance is adopted, the City will establish an automated Centralized Bidder Registration system (CBR), which will become the City’s definitive measure of current availability. The GSC will analyze the availability pool established in the CBR, measured against the disparities noted in the Disparity Study for the particular industries to be utilized, to determine what Affirmative Procurement Initiative and / or goal is most appropriate for that solicitation.

6. Question If I am a construction contractor or a professional services firm, how does the effect of the proposed Ordinance differ from the existing?

Answer: The proposed Ordinance calls for the establishment of contract-specific goals that are narrowly-tailored based upon the true current availability of firms in the required industry based on contract scope.

7. Question: What are the consequences to a firm that doesn’t meet the S/M/WBE goals specified in its contract?

Answer: All bidders are required to make good faith efforts to meet the goals specified in the applicable solicitation and contract. If a firm is unable to meet the specified participation goals, in the alternative, it must provide documentation of good faith efforts made to achieve the required level of S/M/WBE participation. If a qualified firm cannot be found after exhausting good faith efforts, then a waiver of the participation goals may

be approved. If a firm is found to have not utilized good faith efforts, then the City may reject the bid as being non-responsive. There are other penalties associated with a firm's non-compliance with the Ordinance, such as contract suspension, withholding of funds, contract rescission, debarment, etc.

8. Question: Will certain components of the Ordinance be established first (e.g. bidder registration and goal setting) and then will other components (e.g. Mentor-Protégé program) be added in later, or will the comprehensive parts of the program be established at the same time?

Answer: The proposed Ordinance will be phased-in as component parts of the program are implemented. There will be more than one Goal Setting Committee (GSC) established, composed of members with the necessary expertise for the type of project. As noted above, the availability pool will first be established through analysis of similar past contracts and review of a master vendor database. However, within 18 months of the effective date of the new ordinance, availability will be established through analysis of the newly installed automated Centralized Bidder Registration system. All of the different Affirmative Procurement Initiatives available to the GSCs will be refined over time, on a project-by-project basis. A policy and procedures manual will be developed after a new Ordinance is approved to facilitate implementation and understanding by COSA staff and the public.

9. Question: Will new projects and contracts awarded as part of the 2007-2012 bond program fall under the new ordinance? How will this affect overall S/M/W/AABE program goals for the bond program?

Answer: To the extent the contract bids and contract awards are issued prior to the effective date of the new Ordinance, the old SBEDA ordinance shall apply. To the extent the contract bids and contract awards are issued after the effective date of the new Ordinance, the new Ordinance shall apply.

10. Question: Can a firm participate in both the SBE and M/WBE program?

Answer: Yes, but each solicitation will utilize either a race-neutral (e.g., SBE or Emerging SBE) or, if race-neutral means are determined by the GSC to not be likely to fully eliminate disparities, a race-conscious (M/WBE) Affirmative Procurement Initiative.

11. Question: Once a new SBEDA Ordinance is approved, how will the Ordinance affect previous on-going contracts with the City?

Answer: On-going contracts awarded prior to the passage and effective date of the new Ordinance will be monitored according to the SBEDA Ordinance in place at the time the contract was approved by City Council.

12.Question: How does the Small Business Economic Development Advocacy Ordinance promote greater economic inclusion of small and minority businesses in the private sector?

Answer: The proposed ordinance establishes a standard of conduct through adoption of a commercial nondiscrimination policy wherein the City will not engage in business with firms that discriminate on the basis of race, gender, etc. in their solicitation, selection, or treatment of contractor's vendors, suppliers, or commercial customers. In addition, the ordinance promotes long-term collaborations among contractors, vendors, and suppliers that might not otherwise work together. Through a series of Affirmative Procurement Initiatives, such as joint venture incentives, evaluation preferences, subcontracting goals, etc., prime contractors are encouraged to reach out to Small Business Enterprises, Minority Business Enterprises, and Women Business Enterprises to find ways to team and work together on COSA contracts. While it is anticipated that these successful relationships can also be carried over into private sector business opportunities, the ordinance imposes no mandates and no direct burdens on private business transactions.

13.Question: Is the City open to amending the Ordinance if issues arise once the Ordinance is implemented?

Answer: The new ordinance shall be subject to periodic review and annual assessments by the Small Business Division, the Small Business Advisory Committee, and the Goal Setting Committee regarding recommendations for improvements. Moreover, beginning in July 2011, the Ordinance shall be subject to sunset consideration every four years based upon the findings from an updated disparity study. Absent an extension in the enabling legislation by City Council, this program is due to sunset November 30, 2013.