



Richland County Council
Office of Small Business Opportunity Ad Hoc Committee
July 10, 2018 – 3:00 PM
4th Floor Conference Room
2020 Hampton Street, Columbia 29204

COMMITTEE MEMBERS PRESENT: Norman Jackson, Chair; Bill Malinowski, Yvonne McBride, and Paul Livingston

ADDITIONAL COUNCIL MEMBERS PRESENT: Dalhi Myers

OTHERS PRESENT: Michelle Onley, Jamelle Ellis, Michelle Rosenthal, Melissa Watts, John Thompson, Beverly Harris, Nathaniel Miller, Jennifer Wladischkin, and Bryant Davis

1. **Call to Order** – Mr. N. Jackson called the meeting to order at approximately 3:05 PM

2. **Approval of Minutes**

- a. March 6, 2018 – Mr. Malinowski moved, seconded by Ms. McBride, to approve the minutes. The vote in favor was unanimous.

3. **Adoption of Agenda** – Dr. Ellis requested to add an item entitled “Guidance concerning PDT contract and Sheltered Market”.

Mr. Malinowski moved, seconded by Ms. McBride, to adopt the agenda as amended. The vote in favor was unanimous.

4. **Items for Discussion/Action**

- a. New Function and Staffing of the OSBO Office – Dr. Ellis requested clarification of this item.

Mr. N. Jackson inquired if the OSBO Office has been restructured. He has been hearing there are some partnerships and changes in the office.

Dr. Ellis stated, in the packet distributed to Council members, Memorandum 9-7 details the structure of the office. Nothing has changed, in terms of the function of the office.

Ms. McBride inquired if the office is fully staffed now.

Dr. Ellis stated the office is not fully staffed. We are in the process of looking for a new OSBO Manager. The Financial Resources Coordinator has moved to Procurement, so we are looking to fill that position,

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as well. Because of our limited funding for FY19, the Assistant position is frozen for the current fiscal year.

Mr. N. Jackson inquired if the funding was reduced.

Dr. Ellis stated the funding has been reduced for those five (5) positions.

Mr. N. Jackson stated, for clarification, they presented a budget, and it was reduced.

Dr. Ellis stated we have been told that the budget is currently frozen. It is not that the position is not there, we just do not have access for the position.

Mr. N. Jackson inquired if Council or Administration froze the budget. It is going to affect the function of the office. He stated he would like some information on why it is frozen.

Dr. Ellis stated she will forward some information regarding this by the end of the week.

Ms. McBride stated she is not aware of any positions being frozen.

b. Partnership with SBA

1. What is the benefits and cost to the County? Dr. Ellis stated she had included the initial agreement that the SBA presents to any entity that they enter into an agreement with, as well as, the IGA we developed based on the agreement.

c. OSBO and the Transportation Department – Mr. N. Jackson stated he wanted to the know the relationship and/or the partnership with the Transportation and OSBO Office. A lot of the firms that are qualified and tracked by the OSBO Office are then awarded a contract through the Transportation Department. The last few times we have asked questions; we were told that you would have to go to the Transportation Department. In the past, the Transportation Department was also here with OSBO because both of you work together.

Dr. Ellis stated the current staff works very closely, in terms of trying to understand what the status of prompt payments are. She sat in for a few minutes today on one of the meetings with the Transportation Department over at the PDT. We understand there have been some gaps in the past, and we are working diligently to try to close the gap.

Mr. N. Jackson inquired if the OSBO Office is supposed to track the payment.

Dr. Ellis stated they track the payments through the B2G Software.

Mr. N. Jackson stated it is his understanding if the prime gets paid, the sub will be paid within 7 business days.

Dr. Ellis stated according to the prompt payment ordinance. It is 30 days for the prime, and then 7 days for the subs to be after the prime has been paid.

Mr. N. Jackson stated he is getting some calls that there are some subs that have not been paid since

September.

Dr. Ellis stated she had conversations yesterday with Transportation, and we are trying, through a cross functional team, to work with Procurement to make sure we understand where the payment is. She thinks the issue, in the past, has been OSBO is not necessarily formally written into the process. So, now we are trying to determine at what points, in the process, from the time the invoice is received until that final payment is made, so we can ensure the firms are paid on time.

Mr. N. Jackson stated we pay for the software, and if OSBO is going to track to ensure payment, at what point do you contact the prime to make sure the subs get their money.

Dr. Ellis stated OSBO follows up immediately. They follow up with the PDT, and work with the 2 entities, in terms of the prime and the SLBE. There is no lag time when the office finds out about late payments.

Mr. N. Jackson stated he wanted to know what the benefits of tracking the payments, and what the OSBO Office and Transportation are doing to try to get the firms their money.

Dr. Ellis inquired if Mr. N. Jackson has, or if he could provide her with a list of those companies. She is not aware of any right now.

Ms. McBride inquired as to who uses the software.

Dr. Ellis stated OSBO uses the software.

Ms. McBride inquired as to who makes the payments.

Dr. Ellis the payments do not come from the OSBO. They come from the prime contractor.

Ms. McBride stated, for clarification, the prime contractor sends the payments directly.

Dr. Ellis stated the PDT pays the prime contractor, and the prime has a contract with the SLBE, which the prime pays directly.

Ms. McBride stated the OSBO Office just follows it through the tracking.

Dr. Ellis stated they have issues sometimes where SLBEs are working to try to ensure their invoices are uploaded into B2G, in a timely fashion, to help us to better track it. If they do not upload the invoice into the software package, it is a hindrance to us, in terms of us being able to have an eye on where they are in receiving their payment.

Mr. N. Jackson inquired if the SLBE is notified when the prime is paid. He stated that has been one of the problems, the SLBE do not know when the prime gets paid. They are waiting a couple months, and then they find out the prime was paid. If we are ensuring the SLBEs that we are working to make sure they get paid in a timely manner, the notice should go out to the sub that the money has been released to the prime.

Ms. Myers inquired if the PDT would do that because they are the ones that are paying.

Mr. N. Jackson stated either the PDT or the OSBO Office. When the PDT makes the payment, the OSBO Office is tracking it, so they know when the prime is paid.

Mr. Beaty stated, for clarification, the PDT has about 12 other firms that are part of their team, and not all of them are SLBEs. He stated they always pay within 7 days, when they get paid. The issue is they do not always get paid within 30 days. Sometimes the check gets held up. They do not know when they are going to get paid, so they cannot tell their teammates when they are going to get paid. He stated the PDT has no control over the 5 OETs, and all of their teammates. The PDT has no control over construction contractors, and all of their subcontractors.

Ms. Myers inquired if Mr. Beaty is referring to lack of control over all of the participants in the “food chain” for PDT contracts, or non-PDT contracts.

Mr. Beaty stated he was referring to non-PDT contracts.

Mr. N. Jackson stated his concern is the subs being paid in a timely manner, and the notification to the subs.

Mr. Beaty stated the PDT is relatively up to date.

1. Benefits of Merging Offices
2. Separating OSBO and SLBE – Mr. N. Jackson stated this came up when the court ruled about the OSBO and SLBE. The SLBE was part of the referendum.

Dr. Ellis stated she could speak to the ordinance. The program was established in 2013, and the office was established in 2014.

Mr. N. Jackson stated the office was designed to complement the SLBE.

Dr. Ellis stated that is the first program listed in the OSBO ordinance. The OSBO is to be responsible for the SLBE Program.

Mr. N. Jackson inquired if the funding was cut on the OSBO or SLBE part.

Dr. Ellis stated funding, as it relates to the ruling, was just moved so that it is 100% from the General Fund. The funding is still there to operate the office. It is just not funded from the Penny Program anymore.

Mr. N. Jackson inquired as to what has been frozen.

Dr. Ellis stated it is just the position, and she will have to follow-up to get better information.

Mr. N. Jackson stated one of his concerns was the ruling of the court, and if it had any effect on what we have staff doing. For example, certain promotions/advertising cannot be outsourced anymore.

Dr. Ellis stated that portion of the ruling did not have anything to do with OSBO. It was specifically for the Penny Program.

- d. Status of Mentor Protégé Program and Projects – Dr. Ellis stated they have been working diligently to secure mentors, in order to establish the program. There are different elements of the mentor protégé program that is working, but they have established March 1, 2019, in tandem with the release of the annual letting schedule, to also roll out a formal mentor protégé program. She has been talking with Mr. McBride at the City of Columbia, and she knows one of the recommendations is for us to work closely with the City, and they are trying to do that. There are a lot of elements they have in place. It is just going to take them some time to sit down and meet with the companies that can serve as mentors. As the City does, for instance, they have an agreement with mentors. They have to formalize the process, so that they can get to the point where they do not just have people signing agreements, but they are committing to a comprehensive program.

Mr. N. Jackson stated part of the mentor protégé program was 20% of the set aside for the program. Since it has not been established, some of the contractors have not had the opportunity to benefit or participate in that program.

Ms. McBride stated, based on what was just said, we do not have an actual mentor protégé program in place, at this time.

Dr. Ellis stated it is not a formal program. They have workshops that are established through the end of the year, which are listed online. There are some of the SLBEs and primes, in the area, that have committed to leading those sessions. From that perspective, that is one of the elements they have in place, but it is not presented anywhere yet in a formal, written packet. She stated she will give updates at each ad hoc committee meeting.

- e. Status of NAICS Code Funding Limit – Mr. N. Jackson stated, as you recall, we have had several discussions that some firms are limited because they are at \$3.5 million. There is a discussion about taking it to \$7 million or using what the federal government uses. He inquired if there has been a recommendation from the body, so we can address it. He stated the business community has had concerns about it.

Ms. McBride inquired what NAICS stood for.

Dr. Ellis stated she does not remember the exact acronym.

Mr. Malinowski stated it is the North American Industry Classification System.

Dr. Ellis stated she knows we have had this topic as a discussion for several meetings. She thinks, in the past, staff has recommended no change in status. That being because there has been no evidence of a need to do that, in order to nurture new businesses. She believes it could be counterproductive, and this has been determined collectively by the team. If you look at the purpose of the program, and nurturing businesses, and allowing new businesses in those different areas of specialty to get involved and grow, it is more conducive to graduate those firms out, if at all possible. That beings said, they understand fully this is a Council decision. Just as we follow the ordinance now, if Council decides to change that staff will certainly honor it.

Mr. N. Jackson stated, if some of these companies reach a certain limit, and graduate out of the program, then we will have to begin going outside of Richland County, to certify more people to get in the program. If a company bids, and get a \$3.5 million contract, it does not mean the company is going

to make \$3.5 million. The argument was that it was unfair that they are limited to that number when they are not getting that amount. A lot of the work is subbed out. It should be based on what they made, and not the contract they receive.

Dr. Ellis inquired if the issue is the wording. Administration has not dissected the wording, in the way Mr. N. Jackson described. She stated they could certainly go back and look at that.

Mr. N. Jackson stated the wording was one of the concerns.

Mr. Malinowski stated his recollection is, that several meetings ago, Ms. Diane Sumpter had offered some recommendations on figures, and how to correct the problem. He inquired if anyone had contacted her, and gotten any input from her.

Dr. Ellis stated this is the first she is hearing about that.

Mr. Malinowski stated she attended severally of these meetings.

Dr. Ellis inquired if it was specifically regarding size standards.

Ms. Myers stated, if the language currently reads that it is based on gross annual revenue, that is distinct for contract size. The gross annual revenue is not tied to the...you could get 10 contracts for \$3.5 million, and your gross annual revenue is not necessarily a reflection of that. Your gross annual revenue is what goes into your business. So, tying it to contracts, based on what Dr. Ellis just said, seems like the language already ties it to what you make. To the extent that you are growing companies, you would then have a new business, if you doubled that number. You have a new business competing with a \$7 million business. That would defeat the whole point of the program. She has worked with the NAMC for years, and she would dare say they would support that.

Mr. N. Jackson stated, he understands, but when we had the meetings those were the comments that came in. He did hear the other comments. He is just addressing what they said. He is not sure exactly what the code says, but whatever it is, it was affecting them.

Ms. Myers inquired if it was consistent, or inconsistent, with national standards.

Dr. Ellis stated it is not common practice. It is done, but it is not something that is gone into lightly.

Mr. N. Jackson stated different counties have different tomography. He inquired what the federal size standards are. He is just saying, we can adjust it. When we built up the SLBE program, it was to train small, and local businesses in Richland County, and for them benefit. We have limited amount, and then they have to graduate. Based on what they were telling us was affecting them, we were trying to fix the problem.

Ms. Myers stated, all she is asking is, how big you want a small business to be, and still meet the definition of a small business.

Ms. McBride stated, obviously there is an issue, because you have raised it. What is the actual problem that we are seeing now?

Mr. N. Jackson stated, from the industry, when they spoke the last time, they unfairly have to leave the

program because the ceiling was too low.

Ms. McBride inquired if we have a number of businesses that are involved.

Mr. N. Jackson stated even if you have 2 codes you are still limited to one ceiling.

Ms. McBride stated, for clarification, so we do not have enough businesses participating in the initiative.

Dr. Ellis stated the point that has been made by the graduating firms is, that if you graduate out there will be no other firms with that skill set to fill the gap.

Ms. McBride inquired as to what the small businesses are saying.

Mr. Malinowski stated, the problem, as he understands it, is we are not taking the Internal Revenue gross maximum. What is happening is that if a small business gets a \$1 million contract awarded by the County, that \$1 million is charged to them as revenue, even though they may be paying 40% of it to subcontractors.

Dr. Ellis stated she does not believe that is not the way it is done. She will follow-up.

Mr. Willie Farmer, Farmer Construction, stated that will be totally different between Professional Services, Architectural Engineering, and a construction contract. He stated it is understandable, as a general contractor, that they may keep 40% of the \$1 million, and 60% is going out to the subcontractors. For an Architect or Engineering firm, they get all of that, even though he still has expenses, it still goes to his company.

Ms. McBride stated that is the distinction.

Mr. Andy Tolleson, Tolleson Engineering and Design, stated he is a SLBE on the PDT Team. He was on another team, on another matter under the Penny. He stated we use the term small business, local business enterprise. It sounds small business might be defined under other terms (i.e. federal SBA Program), so size standards differ, in different kinds of programs. There are probably a couple ways to manage this. In professional liability (i.e. insurance), you can exclude contractor, or subcontractor services, to establish a size standard. There would be a way the County could differentiate...the small business approach. He stated, he thinks, early on when this program was being developed, and we had a consultant, Franklin Lee, he sat with him a number of times and talked about a "Super SLBE". For example, his firm could have 9 employees, a web presence, and professional licensures. And, then, an emerging company only has 1 or 2 people. If he can get all the contracts, and you make the standard high enough, he could graduate up to the upper tier, and will get just about all of the work. In other words, all of the rain will not fall on everybody. He thinks that whatever you do, if you are interested in the emerging, and smaller shop, an effective Sheltered Market, with tangible goals, would be the way to get there.

Mr. N. Jackson stated he would like to see the small business community meet with staff to work on these problems, and bring back recommendations to the committee. He stated staff is trying to develop these programs, the industry has a better idea of how it affects them, and how it works.

Mr. Malinowski moved, seconded by Ms. McBride, to direct staff to work with the small business community, and bring recommendations back to the committee by September 11th.

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Mr. Tolleson stated every time he has called the Transportation Department, the OSBO Office, or Administration he receives a call back. He believes responsive is good, so what he is thinking is if you had a quorum of the SLBEs to discuss amongst themselves.

Ms. McBride inquired if we will have staff to organize that meeting.

Mr. N. Jackson responded in the affirmative.

The vote in favor was unanimous.

- f. Status of Sheltered Market Projects – This item was taken up with Item (e).
- g. Discussion of original intention of OSBO and Penny Sales Tax Program for Small Local Businesses – This item was taken up with Item (e).
- h. Training/Certification Programs for SLBE Status (SCDOT) – This item was taken up with Item (e).
- i. Status of Quick Pay/Prompt Pay – This item was taken up with Item (e).
- j. Guidance concerning PDT contract and Sheltered Market – Dr. Ellis stated one of the things that comes up frequently is the Sheltered Market discussion. In the packet she provided, she included an example. The OSBO Office met with part of the PDT Team this morning, and we are trying to figure out the balance between what is practical for primes, but we are bound by contract to the PDT contract, which requires 51% SLBE participation for the life of the contract. What the OSBO Office has done is to go through the packet line by line and pull out the projects that are eligible for Shared Markets. In talking with the PDT this morning, they have some concerns because, as we have identified, in terms of participation for this particular package is a little over 27%. Some time back in the Fall, they were given 3%. There is obviously a discrepancy between 3% and 27%. Now, there are some concerns about what is practical. If you enter into the discussion with primes, and they have to give 27% of their business to SLBEs, there will not be enough primes to bid on the packages. By contract, we have to meet, both the PDT and the SLBE, because the SLBE is written into the contract. It is a part of their responsibility to ensure that we are meeting that 51%. She stated they need guidance from the committee, in terms of enforcing the 51%, and perhaps if it is impractical, what are the alternatives to not meeting the 51%? For clarification, 51% is not on each contract, it is the life of the contract, but we have to work toward that incrementally. If we settle for 3%, we are never going to meet 51%. She stated they want to work with the PDT in getting the work done, but by law/contract, we are obligated to meet the 51%.

Mr. N. Jackson stated, by law it is what it is, and they understand that when they get involved with the contract.

Mr. Livingston stated it is just not practical right now.

Mr. N. Jackson stated we need some recommendations on what the problem is.

Ms. Myers inquired how we are determining that it is not practical. Have we found out what efforts they have used to get to the number. She would say there are a lot of small businesses around town that would be willing to do some of this work. She would not like for us to shy away from it because it's not practical. She would like to know what efforts have been used to get the number up. She stated 3% is

small. She believes we can do better than that. She stated she could give them a list of small businesses that would be delighted to be doing some of this Penny work. She would like for us to exhaust the options before saying that is it not practical.

Mr. Livingston stated, for clarification, the 51% is based on the contract agreement with the Program Development Team. The main problem is the changes in the Program Development Team when we pulled out the SLBE from there. We pulled out the folks that were doing the Public Information. All of the stuff that was pulled out will tremendously effect this number.

Ms. Myers inquired if the number has dramatically dropped.

Dr. Ellis stated, one of the questions she has is, you have the ruling, which has led to the office no longer being funded by the Penny Program, but you still have an active contract. So, does the ruling impact the PDT contract, only as it relates to SLBE? She inquired how the ruling impacts the SLBE's involvement with an active contract. As it stands right now, we are bound and operating according to an active contract.

Mr. Beaty stated, we are talking a little bit of apples, and a little bit of oranges. The PDT's Program Management Contract, which involves their 13 teammates. When they got selected, and got under contract, they said they would attempt to make a goal of 51%, based on a number of givings, and assumptions. Now, things have changed in the last 3 ½ years, including the SCDOR ruling, which removed 2 of their SLBE teammates from their team. Things have changed in regards to the PDT's goal of 51%.

Ms. Myers inquired as to what the number was before the change.

Mr. Beaty stated around 39% – 40%. He stated, that is just the PDT's contract. They are not held accountable, contractually, for what contractor's percentages are. For example, a construction contract may be 3%, or may be 20%. They have no role. They do not set that number, and they are not held accountable for meeting that number.

Ms. Myers inquired who drafts the procurement guidelines for that.

Mr. Beaty stated County staff does. The PDT presents the project, and the quantities, then County staff looks at it and says, out of these quantities, these can be done by the SLBE community. So, some projects have more, and some projects have less. County staff says, the SLBE goal on this construction contract is 5%. The PDT does not set that.

Ms. McBride stated, for clarification, the PDT has to fulfill it.

Mr. Beaty stated the PDT does not have to fulfill it. The contractor, who bids on the construction, has to fulfill it. They administer the contract. They do not set the contractor's goal, that is a commitment by the contractor when they bid on the project.

The contractor has a contract with the County, not the PDT. The OETs have contracts with Richland County, and not the PDT.

Mr. Malinowski stated, the way he is looking at what Dr. Ellis provided, it says there can be changes in the 51% SLBE representations, and it is recognized that the parties, at the time this agreement went into

effect, there are a lot of unknown factors involving the future implementation. It says, the County recognizes that the contractor, should the contractor act in good faith to comply, but does not meet those representations because of those factors beyond their reasonable control, they will work with the OSBO Office, and make reasonable efforts to adjust those figures, and reach as high of an overall percentage that is commercially possible. He believes the answer is in the ordinance provided. It also mentions, something about an aggregate over 5 years. Does that mean that if they get 10% per year, over 5 years, that they have met their 50%? As long as they are working to achieve it, but the Council can change it.

Mr. Livingston stated the question sometime is good faith effort.

When PIO was pulled out of their contract, the 51% is coming down big time. They are probably losing a good 15% - 20%. As you probably well know, both of the firms in the program were SLBEs.

Mr. N. Jackson stated, he would suggest based on what is written in the ordinance, that the PDT and OSBO meet, and make some recommendations to the committee.

Ms. McBride inquired if there is a timeframe we are trying to get this information.

Mr. N. Jackson stated the first meeting in September.

Dr. Ellis stated we also need to loop in Gerald Walker and Brian.Keys.

5. **ADJOURN** – The meeting adjourned at approximately 3:57 PM