

MINORITY OWNED AND LOCAL SMALL BUSINESS TASK FORCE

MEETING MINUTES

July 1, 2015 – 5:30 p.m.

6th Floor Council Conference Room, Council Office Building

Members Present

Mayra Bayonet
Warren Fleming
Janice Freeman
Julian Haffner

Margo Briggs
Herman Taylor

Member Absent

Cherian Eapen
Bethsaida Wong

County Staff Present:

Linda Price, County Council
Karen Federman-Henry, County Attorney's Office
Mary Anne Paradise, County Council

I. Call to Order

The meeting was called to order by Task Force Chair Taylor at 5:40 p.m. and the minutes of June 17, 2015, were unanimously approved by all members present.

II. Review of Staff Material

Mr. Taylor commented on Bill 25-15, Economic Development - Reorganization - Montgomery County Economic Development Corporation, which the Council recently enacted with an amendment, suggested by Mr. Taylor to factor in diversity and support for minority businesses, with a provision to provide some type of financing to minority businesses. Mr. Taylor plans to stay involved in the process as the new entity is implemented. Mr. Fleming commented on the need for continued pressure on the County to utilize minority businesses. Ms. Price will provide a copy of the enacted legislation to members.

Ms. Price reviewed handouts provided at the meeting on the Minority, Female, Disabled Owned Business Program and the Local Small Business Reserve Program. The Task Force had a robust discussion regarding the MFD program and the high occurrences of prime contractors not meeting subcontracting requirements.

- Ms. Freeman highlighted that the MFD program is a goal and not a mandate, meaning consequences are not as severe.
- The Task Force discussed gaps in the Procurement Regulation that gives discretion to the implementing department. There is no mention of appropriate circumstances to grant a waiver or exemptions. There could be more description in the regulations outlining when waivers are appropriate. The Director of the Office of Procurement can grant a waiver. The Task Force requested information on what qualifies for a waiver or exemption.
- Ms. Price read the three waiver types currently granted by the Office of Procurement under the “appropriate circumstances” standard:
 - Good-Faith Efforts Impaired. The prime contractor, in its effort to comply with MFD requirements, is also required to meet the costs and delivery schedules set by the County that cannot be met by an identified MFD sub-

contractor(s), whose costs and schedules are in excess of those covered in the prime contractor's bid or proposal to the County. The result is that the prime contractor and the prospective minority businesses cannot come to terms.

- MFD Unavailable/Not Identifiable. The apparent awardee, after extensive efforts and often with the support of the Office of Business Relations and Compliances, is unable to identify minority businesses that perform the type of work called for in the solicitation, or that MFD businesses possessing the required financial capacity or expertise are unavailable for work at the time the prime contractor requests their participation.
- MFD Involvement Not Possible. Montgomery County agencies acquire goods or services through manufacturer direct distribution where the goods or services are delivered from the manufacturer directly. Or through manufacturer certified or licensed distributors that have a proprietary sale agreement with the manufacturer, and have exclusive rights from the manufacturer for the provision of the goods or services.
- Mr. Taylor suggested the waiver process be strengthened so that it can't be circumvented, and that criteria be created that must be evaluated by the Director or a body.
- Mr. Taylor noted pricing differences between prime and subcontracts as a waiver requirement; Ms. Federman-Henry noted that possibly overhead costs are higher for smaller businesses. Mr. Taylor suggested that pricing differences be evaluated earlier in the solicitation process (during scoring and/or negotiation). Many members expressed the view that prime contractors often try to manipulate subcontractors out of participants by setting unreasonable pricing expectations, which can't be met, and then ask for a waiver. It was mentioned that the County could possibly step in and make up the difference to bridge the pricing gap between prime contractors and subcontractors.
- Mr. Fleming said prime contractors must be discouraged from stating a MFD contractor is not available.
- Ms. Bayonet said more public information should be made available around making parts of this process more open and transparent.
- Mr. Haffner suggested examples be obtained of where utilization of MFD businesses is not possible.
- Mr. Haffner suggested the standard be raised from "good faith" to "best efforts" and that criteria be defined for what would be considered "best efforts", which would be defined in the Procurement Regulations.

Regarding the LSBRP, Ms. Price agreed to provide the list of 10 questions needed for self-certification as LSBRP.

- Mr. Taylor suggested the County should be stricter about using LSBRPs, as is done in the District of Columbia. He requested that Council staff determine the fiscal significance of DC's LSBRP.
- Mr. Fleming suggested a process to establish set-asides under the LSBRP is needed to address disparities as noted in the Griffin & Strong Disparity Report, with special attention paid to African-American owned businesses. He

additionally stated that the program should not be focused on relegating MFD firms to subcontracting, but should be geared towards prime contracting.

- Ms. Federman-Henry cautioned that there are always legal risks with local preferences and that goals for minority-owned business participation need to be consistent with the percentages set forth in the Griffin & Strong report.
- The Task Force discussed the possibility of adding a component to the MFD program for prime contractors (not just the current subcontracting component)

Ms. Price said when the Task Force's final recommendations are complete, there will be a public comment period prior to consideration by the County Council. It was decided that she would collaborate with Procurement and DED Staff to see if it was possible to gain access to their mailing lists.

The next Task Force meeting is scheduled for July 15, 2015.

The meeting adjourned at 7:46 p.m.