HISTORY OF MINORITY PROCUREMENT PROGRAMS

Ord. 1983-1200-647: amended Procurement Code to add a new Part 6 – Minority Business Enterprise Participation. Established a goal of 10% MBE participation in capital projects. The goal may be waived for reasonable cause at the request of the Chief of Procurement if subsequently approved by the Awards Committee and the Mayor.

Executive Order 84-64: Mayor Jake Godbold approved the Procurement Division to adopt policies and procedures to implement the MBE program as adopted by City Council.

Ord. 1984-142-52: amended the MBE program to establish a set-aside of 10% to the total amount of the annual CIP budget for MBEs plus an amount equal to 10% of the appropriations made during the course of a fiscal year for capital improvements.

Ord. 1985-407-220: added a provision that the 10% set-aside for MBEs shall also apply to expenditures on bond issues approved by the City Council for capital improvements.

Res. 1985-1095-551: urging and requesting the City’s independent agencies to adopt an MBE program similar to the City’s program.

Ord. 1987-1388-891: makes the MBE program applicable to the procurement of the City’s independent agencies.

Ord. 1988-37-143: refined the definition of MBE to mean a business 51% owned, operated or controlled by a minority group person or women; allowed projects to be subdivided to allow part of a project to be included in the set-aside if approved by the Mayor; provided for the MBE program to automatically sunset and be repealed in 5 years (from October 1, 1988) unless re-enacted by the Council because the disparity in MBE participation in City procurement has not been remedied.

Ord. 1988-1377-686: exempted the School Board from participation in the MBE program.

January 1989 – *City of Richmond v. J.A. Croson Co*.: the case in which the U.S. Supreme Court ruled that the minority set-aside program of Richmond, Virginia, which gave preference to minority business enterprises (MBE) in the awarding of municipal contracts, was unconstitutional under the Equal Protection Clause. The Court found that the city failed to identify both the need for remedial action and that other non-discriminatory remedies would be insufficient. The case set off a spate of challenges to city minority business programs across the country.

April 1989 - Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville: the Associated General Contractors sued the City in federal district court over the EBO program’s 10% set-aside for Minority Business Enterprises (MBEs). The trial court ruled that the City’s minority set-aside program violated the plaintiffs’ 14th Amendment equal protection rights and issued a temporary restraining order prohibiting the implementation of the EBO program. The City appealed and the U.S. 11th Circuit Court of Appeals vacated the judgement on the grounds that the plaintiffs lacked standing to file the lawsuit because they hadn’t proved that, absent the EBO program, their companies would have won the contracts. The Contractors Association appealed that ruling to the U.S. Supreme Court which found that the organization did not have to prove that its members would have won contracts absent the effect of the EBO program and remanded the case to the lower courts for re-hearing. Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville, 508 U.S. 656 (1993); 113 S.Ct. 2297 (1993) The City did not re-start its EBO program after the initial ruling that it was unconstitutional.

Ord. 1989-1314-642: the City, JEA, JPA and School Board jointly fund a procurement disparity study to determine MBE availability and capacity in the marketplace and MBE participation in public agency contracting.

Disparity study – D. J. Miller and Associates of Atlanta, 1990: $378,000 contract to “1) assess and document the impact of identifiable instances of past discrimination, if any, on minority and women business enterprises, and 2) to determine the availability of minority and women business enterprises operating in the Duval County area capable of taking advantage of public procurement opportunities.”

Executive Order 91-146: Mayor Tommy Hazouri ordered that the recommendations of the D. J. Miller disparity study be effectuated by all departments forthwith, to the extent permissible by law, and that the City fully comply with all federal affirmative action requirements. The City Council was urged to enact a comprehensive remedial program including, but not limited to, set-asides, to remedy the significant under-representation of African-American and women-owned businesses in City contracting opportunities.

City Council Select Committee on Minority Business Enterprise was created to study the procurement disparity issue and, using the D. J. Miller disparity study evidence, to propose a revised procurement program to fairly include minority- and women-owned businesses in City contracting opportunities.

Procurement Division study, 1992: found that after the minority set-aside program was invalidated by the courts in 1989, minority-owned businesses got only 1% of City contracting expenditures in the subsequent 2 years (FT89-90 and FY90-91).

Ord. 1992-263-497: MBE program repealed and replaced by an Equal Business Opportunity Program to establish participation goals and alternative means of achieving those goals; providing for certification of African-American and women-owned businesses and for graduation of certified businesses from the EBO program; establishing provisions for “good faith effort” to comply and providing for monitoring and penalties. *The bill was enacted by City Council and vetoed by Mayor Ed Austin; the Council did not override the veto.*

Ord. 1992-1269-1132: MBE program was again repealed and replaced by an Equal Business Opportunity Program which replaced set-asides with “participation goals” of various percentages depending on the type of contract (capital improvements, contractual services, contractual supplies, professional) and they ownership of the company (African-American and women-owned businesses). Participation goals could be met by one of four methods (Participation Percentage Plan, Sheltered Market Plan, Direct Negotiation Plan, or Bid Preference Plan). The Sheltered Market Plan reserved certain contracts for African-American or women-owned businesses exclusively if there were two or more certified companies that could bid for that contract. The plan was to remain in place for 10 years and then automatically sunset unless renewed by Council action.

Executive Order 92-160 (October 1992): Mayor Ed Austin accepted and adopted the findings of the City Council Select Committee on Minority Business Enterprise and created an EBO Impact Program in the Procurement Division to attempt to remedy persistent discrimination in procurement by means of a program to incentivize non-minority contractors to utilize minority- and women-owned businesses in their bids. The Executive Order was subsequently rescinded by Mayor Austin in November 1992 after adoption of the Impact Plan by City Council.

Ord. 1992-1464-1133: created a minority procurement Impact Plan by which non-minority contractors could gain points in a competitive procurement ranking process by taking one or more actions to assure MBE and WBE participation in their contracts (i.e. by pledging to hire M/WBE subcontractors, providing apprenticeship training programs for minorities and women, providing assistance with bonding, etc.) An EBO Advisory Committee and technical assistance program were created.

February 2002 - *Utility Contractors Association of North Florida v. City of Jacksonville*: the UCA sued the City over the minority and women-owned business set-aside provisions in the Better Jacksonville Plan. The case was settled out of court when the City agreed to eliminate the MBE program and create a new JSEB program in 2004 that aimed to assist all small and emerging businesses without specific race- or gender-based set-asides, but with aspirational goals for minority- and women-owned businesses.

Ord. 2003-629-E: in light of the upcoming expiration of the EBO program and informed by a body of evidence indicating that race- and gender-neutral programs have been insufficient to achieve the goal of eliminating the lingering effects of past and ongoing discrimination in the marketplace, a Small Disadvantaged Business Enterprise (SDBE) Program (for companies owned by socially and economically disadvantaged persons) and a Small Business Enterprise (SBE) Program (for small businesses as defined by the U.S. Small Business Administration) were created. The SDBE program provided a range of assistance to small and disadvantaged businesses to help them navigate the City’s procurement processes and to eliminate artificial barriers to their participation. It set “aspirational goals” of various percentages depending on the type of contract (capital improvements, contractual services, contractual supplies, professional) and they ownership of the company (African-American, Hispanic-American, Asian- and Native-American and women-owned businesses).

Executive Order 04-02: Mayor John Peyton created a Mayor’s Commission on Small and Disadvantaged Businesses to review the City’s Small Disadvantaged Business Enterprise (“SDBE”) and Small Business Enterprise (“SBE”) programs, including their effectiveness and equity in their application for both small and large businesses using existing ordinances

2004: City Council appoints a Special Committee on Small and Disadvantaged Businesses to review minority procurement history and opportunities.

Ord. 2004-602-E: created the Jacksonville Small and Emerging Business (JSEB) program and JSEB Monitoring Committee; 20% of CIP work shall be accomplished by JSEBs using set-asides, prime contracting and subcontracting goals, with specific aspirational goals for spending on construction, construction-related professional services, contractual services, and commodities contracts and targets for African-American, Hispanic, Asian/Native American, and women-owned businesses. It provides for a bonding assistance program, created an Access to Capital program, a continuing education program, and a mentoring program for JSEBs. It creates a JSEB Monitoring Committee. It provides for good faith efforts in lieu of achieving the stated goals. It provides for certification of JSEBs and MBEs and for their graduation from the program. The JSEB program will sunset in 5 years on September 20, 2009 unless a future procurement disparity study determines that the race and gender-conscious goals have not been met and the City Council renews the program.

2009-10: the City hired D. Wilson Consulting Group to conduct an audit of the JSEB program to determine its effectiveness. It found that from FY04-05 through FY07-08 the City expended 18.73% of its procurement dollars with JSEBs, but data was not provided by the City in sufficient detail for each of the expenditure categories (construction, construction-related professional services, contractual services and commodities) to determine achievement of the goals by type of procurement. It recommended that the program be continued and made a number of recommendations for improvements to program operations. It also recommended the commissioning of a new disparity study to evaluate the current marketplace and detail contracting percentages by type of procurement.

2010: $795,061 contract awarded to Mason Tillman Associates of Oakland, CA to perform a procurement disparity study for the City, JEA, JTA, JPA and Duval County Public Schools “to determine if there is a disparity between the number of disadvantaged, minority-owned, and women-owned businesses within Duval County that are ready, willing and able to provide construction services, professional services, and other contractual goods and services, and the number of these same business types that are actually participating in these types of contracts with the Agencies.” The final report issued in 2013 found that JSEB participation in City contracts was 6%.