




## MEMORANDUM

**TO:** Mayor and Council Members

**FROM:** Edward Campos, Director, Small and Minority Business Resources Department 

**DATE:** March 10, 2023

**SUBJECT:** Update regarding Resolution No. 20200326-053 - Inclusive Procurement Working Group's report and MBE/WBE Procurement Program Ordinance

---

This memo serves to provide you with an update to Resolution No. [20200326-053](#) and to provide you with the final report from the Inclusive Procurement Working Group and an update regarding the revision process to the Minority-Owned and Women Business Enterprise (MBE/WBE) Procurement Program Ordinance.

### **Background**

The Inclusive Procurement Working Group (IPWG) participated in a near 2-year long review process of the MBE/WBE Program Ordinance and performed an assessment of the programmatic and administrative issues related to the ways that the City could improve the function of the program to better meet the needs of the community while remaining within the legal bounds of the City's authority.

As a part of their important work, the IPWG received a presentation of the findings of the [2022 Disparity Study](#), which provided an opportunity to meet with the consultant and receive additional insight for when finalizing their recommendations.

The review process was supported by a cross-departmental collaborative effort, including the following departments: Small and Minority Resources Department, Financial Services Department-Central Procurement, Financial Services Department-Office of Performance Management, Law Department, Equity Office, and Communications and Public Information Office-Community Engagement Division.

### **IPWG's Report and Final Recommendations**

The IPWG initially proposed 43 preliminary recommendations. Staff performed analysis and provided follow-up responses to the working group on each of the 43 preliminary

recommendations. Based on the staff analysis, the initial preliminary recommendations were reduced to twenty. The **20 recommendations** were assigned one of the following specifications:

- **Current Practice:** The recommendation is currently a practice of the City; however, additional communications and/or outreach may be needed to ensure stakeholders are aware of the service/practice. There are **five (5)** recommendations under this specification.
- **Minor Modification:** Implementation of the recommendation may be easily accomplished by modifying department administrative operations (policies/procedures) and does not require an administrative rule change of the MBE/WBE Procurement Program nor changes to the MBE/WBE Procurement Program Ordinances (City Code 2-9A-D). There are **six (6)** recommendations under the Minor Modification specification. Note: Recommendation 10 is separated into two recommendations, 10 (a) and 10 (b); 10 (a) is captured under this specification.
- **Major Modification:** Implementation of the recommendations would require an administrative rule change of the MBE/WBE Procurement Program and/or changes to the MBE/WBE Procurement Program Ordinances (City Code 2-9AD). In addition, these recommendations may require Council action for additional funding and/or full-time employees (FTEs) for implementation. There are **10** recommendations that fall under this specification. Note: Recommendation 10 (b) is captured under this specification.

The attached report includes the final 20 recommendations and staff's analysis/response to each recommendation. This final report will be shared with the MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee during their March/April meetings.

### **Next Steps**

#### **MBE/WBE Procurement Program Ordinance**

On October 27, 2022, Council approved extending the sunset date of MBE/WBE Procurement Program Ordinances (City Code 2-9AD) to August 31, 2023. Currently, staff is working to incorporate revisions (including those recommendations that directly impact the ordinance and/or administrative rule function), and we anticipate a draft ordinance ready in stakeholder comment in Spring 2023. The MBE/WBE and Small Business Enterprise Procurement Advisory Committee will review and consider these modifications prior to Council action.

Staff has begun working on the recommendations that are categorized as Minor Modifications. The department will continue to administer the recommendations that are categorized as Current Practices and will explore expanding and enhancing communications so that the MBE/WBE firms are aware of the current practice, processes and services available.

SMBR looks forward to continuing the work to enhance the City's program that promotes equity and accessibility. We greatly appreciate the MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee, the Inclusive Procurement Working Group community members, City leadership and City staff for their dedication and efforts to this process.

Should you have questions, please do not hesitate to contact me at [Edward.Campos@austintexas.gov](mailto:Edward.Campos@austintexas.gov).

cc: Jesús Garza, Interim City Manager  
Rodney Gonzales, Assistant City Manager  
Anne Morgan, City Attorney, Law Department  
Felecia Shaw, Acting Assistant Director, SMBR

Attachment: Inclusive Procurement Working Group's Final Report & Recommendations



# Inclusive Procurement Working Group Report & Recommendations

Resolution No. 20200326-053

# TABLE OF CONTENTS

<b>APPRECIATION, INCLUSIVE PROCURMENT WORKING GROUP AND CITY DEPARTMENTS .....</b>	<b>3</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>5</b>
Background .....	5
Inclusive Procurement Working Group (IPWG) Recommendations .....	6
<b>IPWG MEETINGS .....</b>	<b>11</b>
Meeting Framework.....	11
Final Review Process .....	11
<b>IPWG’S FINAL RECOMMENDATIONS BY SPECIFICATION .....</b>	<b>12</b>
Current Practice .....	12
Minor Modifications .....	13
Major Modifications.....	15
<b>NEXT STEPS .....</b>	<b>20</b>
<b>APPENDICES.....</b>	<b>21</b>
Appendix A.....	21



## Appreciation

The City would like to thank the members of the Inclusive Procurement working group (IPWG) and staff for participating in this near 2-year long review process. The IPWG is grounded in core values that promote access and equity and economic opportunities for small, minority-owned, women-owned, and disadvantaged businesses.

The IPWG dedicated many hours of listening, participating in robust discussions, providing their knowledge, expertise and shared lived experiences that helped form their final recommendations. We also recognize the staff's efforts, ongoing support and contributions helped the IPWG through this process. The IPWG community members and department contributors include the following:

## Inclusive Procurement Working Group - Community Members

- Aletta Sung, Executive Director, Asian Contractor Association
- Ali Khataw, CEO, Encotech Engineering (Certified MBE firm)
- Barbra Boeta, Executive Director, Economic Growth Business Incubator (MBE/WBE Advisory Committee member and small business advocate)
- Brittney S. Rodriguez, CEO, Greater Austin Hispanic Chamber
- Cloteal Haynes, Haynes-Eaglin-Waters, LLC (HEW), representing Austin Area Black Contractors Association, Inc.
- Crystal Smith, President, Associated Builders and Contractors of Central Texas
- Darrell Pierce, President, SNAP Management Group (Certified MBE/WBE firm)
- Diana Maldonado, President, Greater Austin Hispanic Chamber (replaced by Ms. Rodriguez)
- Fang Fang, President, Greater Austin Asian Chamber of Commerce
  - o Mark Hanson, Operations Manager, Greater Austin Asian Chamber of Commerce
  - o Moin Baig, Chief of Staff, Greater Austin Asian Chamber of Commerce
- Gino Macias, Macias & Associates LP (Representing Austin Minority and Women Alliance)
- Paul Saldaña, Principal, Saldaña Public Relations (Community Advocate and representing U.S. Hispanic Contractor's Association de Austin)
- Phil Thoden, President, Associated General Contractors of America – Austin Chapter (Building Branch), representing prime contractor community
- Reginald Worlds, Trini Construction Builder, representing MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee
- Rick Garrett, CEO, TES Careers (Certified MBE/WBE firm)
- Tam Hawkins, President, Greater Austin Black Chamber
- Usha Boddapu, President, eSolvit (Certified MBE/WBE firm and MBE/WBE Advisory Committee member)

## City of Austin Departments

- Small and Minority Resources Department
- Financial Services Department, Central Procurement
- Financial Services Department, Office of Performance Management
- Law Department
- Equity Office
- Communications and Public Information Office, Community Engagement Division

# Executive Summary

## Background

On March 26, 2020, City Council approved Resolution No. [20200326-053](#), establishing the Inclusive Procurement Working Group (Working Group). The working group was tasked to review and perform an assessment of programmatic and administrative issues related to the minority business enterprise/woman business enterprise (MBE/WBE) procurement ordinance and recommend ways that the City could improve the function of the program to better meet the needs of the community while remaining within the legal bounds of the City's authority. The 11 key areas to be reviewed included:

- Reciprocity of the City of Austin's MBE/WBE certification with the State of Texas HUB certification or other regional certifications;
- Eligibility criteria for certification, including economic disadvantage criteria such as limit on personal wealth;
- Whether existing certification types are sufficient to cover the need for gender- and race-conscious remedies to demonstrated local industry disparities;
- Whether the four sections of the MBE/WBE ordinance sufficiently reflect the procurement methods used by the City;
- Best practices used by other cities in Texas and other cities outside Texas with populations and business environments comparable to those of Austin, both with respect to ordinances and the structure and functioning of comparable inclusive procurement programs;
- What methods could improve transparency in decision-making regarding MBE/WBE procurement policies in general and goals on individual projects;
- How communications and functions between SMBR and relevant contract management divisions within the Financial Services Office can be improved;
- Effective methods of outreach to improve participation among the MBE and WBE business communities, as well as to improve knowledge and information among the larger business community;
- What, if any, additional resources and services may be helpful for the City to offer to support MBE and WBE firms;
- Whether payment policies are effective in ensuring that both prime and subcontractor MBE/WBE firms are paid quickly and in full; and
- Prioritization of local businesses.

Additionally, the City was to ensure the Working Group received a presentation of the findings of the [2022 Disparity Study](#), prior to adoption.

The Small and Minority Business Resources Department (SMBR) initiated the overall review and assessment process and convened the Working Group meetings in August 2021. The Working Group is



comprised of various stakeholders representing diverse groups from the MBE/WBE business community and mirrored the stakeholders outlined in the resolution.

The Working Group meetings were designed to have departmental subject matter experts provide an overview of the key topic areas to generate robust discussions and propose recommendations. The eleven issues were categorized into four primary areas: Certification, Resources to MBE/WBEs and Local Businesses, Communications & Transparency, and Best Practices. Staff also presented information on payment policies and goal setting for the IPWG's review and discussion. After each meeting proposed recommendations submitted by the group were noted by staff and presented to the members in a "*What We Heard*," presentation to ensure staff captured the proposed recommendation(s) accurately. All proposed recommendations were outlined in a tracking sheet that outlined if the item required an ordinance revision and/or an administrative rule change, procedure change or if there was any fiscal impact and an analysis/response from staff. The tracking sheet was shared with the Working Group to further refine the language and/or request clarification from staff.

Since their first meeting, the Working Group has convened 28 times. On June 17, 2022, the Working Group received a briefing from the Disparity Study consultant (Colette Holt & Associates) on the findings and recommendations of the study. July 2022 through December 2022, the IPWG finalized recommendations working jointly with SMBR, City Departments, and the Communications and Public Information Office's Community Engagement Division to review proposed recommendations, and voting to determine whether to keep, revise or remove proposed recommendations. Proposed recommendations that required more in-depth and extensive discussion were identified and moved into a second review process.

## IPWG Recommendations

After an extensive review process, the IPWG initially proposed 43 preliminary recommendations, that staff performed analysis and provided follow-up responses to the working group. The IPWG was guided by the Community Engagement Division through a secondary review process and decided to retain **20 recommendations**.

Each of the 20 recommendations are assigned one of the following specifications:

- **Current Practice:** The recommendation is currently a practice of the City; however, additional communications and/or outreach may be needed to ensure stakeholders are aware of the service/practice.
- **Minor Modification:** Implementation of the recommendation may be easily accomplished by slightly modifying administrative operations (policies/procedures) and does not require an administrative rule change of the MBE/WBE Procurement Program nor changes to the MBE/WBE Procurement Program Ordinances (City Code 2-9AD).

- **Major Modification:** Implementation of the recommendations would require an administrative rule change of the MBE/WBE Procurement Program and/or changes to the MBE/WBE Procurement Program Ordinances (City Code 2-9AD). In addition, these recommendations may require Council action for additional funding and/or full-time employees (FTEs) for implementation.

Staff's detailed analysis to each of the final recommendations may be viewed on pages 12-20.

Additionally, the 2022 Disparity Study Consultant provided recommendations related to the MBE/WBE ordinance and best practices that were presented to the IPWG for their discussion and consideration. These recommendations are also highlighted in this section of the report.

### **IPWG Recommendations - Certification**

- *Recommendation 1: Reciprocity should only occur if other entities match the City's MBE/WBE certification process and requirements.*
  - o Specification: Current Practice
- *Recommendation 2: If the City is going to have reciprocity, it should be with agencies that match City programs.*
  - o Specification: Current Practice
- *Recommendation 3: Keep Personal Net Worth (PNW) but modify/revisit the structure. PNW might be low for Austin area. What is included or excluded should be reviewed.*
  - o Specification: Major Modification
- *Recommendation 4: The City should review its use of the South Region Consumer Price Index (CPI) in establishing its PNW, to determine if this index accurately reflects the unique Austin economic marketplace. In addition, the City should review the calculation of assets used to determine the PNW of an applicant.*
  - o Specification: Major Modification
- *Recommendation 5: The City should not get rid of Personal Net Worth (PNW) limitations.*
  - o Specification: Current Practice

### **IPWG Recommendations - Resources to MBE/WBEs and Local Businesses**

- *Recommendation 6: City needs to consider cohorts and training overall for certified firms.*
  - o Specification: Major Modification

- *Recommendation 7: Equip and provide resources/tools for smaller businesses that will take them to the next level.*
  - o Specification: Major Modification
- *Recommendation 8: Assistance needs to be provided to MBE/WBEs in developing a creative loan funds contract. Begin utilizing existing CDFIs with a history of success to work closely with local, minority-owned, and small businesses. The City shouldn't have to contribute funding because CDFIs have the loan funds.*
  - o Specification: Major Modification
- *Recommendation 9: There needs to be continued technical assistance offered and looking to nonprofit lenders for help.*
  - o Specification: Major Modification
- *Recommendation 10 (a): Offer hands-on assistance to help MBE/WBEs understand the bidding process.*
  - o Specification: Minor Modification
- *Recommendation 10 (b): Provide a program to help them understand what they're getting into and then provide a mentor protégé program.*
  - o Specification: Major Modification
- *Recommendation 11: Provide a list of City spend by work code. This information would help SMBR recruit firms in those areas that don't have a lot of spending. This information would also help the chambers and SMBR identify areas of need and where spend is going; therefore, helping them be more effective in targeting those areas*
  - o Specification: Current Practice
- *Recommendation 12: The local ordinance should be stronger. There should be preference for local firms first, as opposed to larger national firms.*
  - o Specification: Major Modification

## **IPWG Recommendations - Communications & Transparency**

- *Recommendation 13: SMBR should feature successful MBE/WBE businesses at events and presentations so that they may share their achievements, experiences, and knowledge.*
  - o Specification: Minor Modification
- *Recommendation 14: The City should have more mandatory pre-bids to assist MBE/WBE firms with networking.*

- *Recommendation 15: The City should do more to identify primes and subcontractors at pre-bids and networking events.*
  - o Specification for Recommendations 14-15: Minor Modification
- *Recommendation 16: Utilize social media to connect primes and sub primes, such as highlighting a prime contractor, so that subs know who they could work with.*
  - o Specification: Current Practice
- *Recommendation 17: A prime should provide bid notifications ten business days in advance from the due date to the prime.*
  - o Specification: Major Modification
- *Recommendation 18: The following content should be included in a prime's initial invitations to the subs, so they understand their options in the bidding process.*

*§ 2-9A-21(3)(a) A MBE/WBE that has submitted a response or Bid to a Prospective Offeror may contact SMBR to request a meeting with the Prospective Offeror to determine if their response (bid) will be used on the project. SMBR will schedule a meeting between the MBE/WBE and the Prospective Offeror. If such a meeting does not occur and the MBE/WBE submitting the response (Bid) to the Prospective Offeror is not selected, the Prospective Offeror must explain the reason for not selecting the MBE/WBE and provide written documentation supporting the stated reason. As a reminder, bid shopping is prohibited.*

- o Specification: Minor Modification

## **IPWG Recommendations - Goal Setting**

- *Recommendation 19: Evaluate existing processes to ensure checks and balances are in place to assess projects over \$50k being submitted to Council with appropriate goals.*
  - o Specification: Minor Modification
- *Recommendation 20: On non-construction services projects over \$50k, with availability, review the procedures used to establish an overall MBE/WBE goal. The goal is to allow availability to be the driving factor versus number of scopes. Number of scopes is not always the best indicator for subcontracting opportunities. Size of project, availability, and the prime's capacity are equally important factors.*
  - o Specification: Major Modification

## Consultant's Recommendations (MBE/WBE Ordinance and Best Practices)

The Disparity Study Consultant evaluated the MBE/WBE Program for conformance with constitutional standards and national best practices for designing race- and gender conscious- programs, and concluded the City implements a program that complies with constitutional requirements and MBE/WBE program national best practices.

Overall, MBEs and WBEs were able to access the programs for City prime contracts and associated subcontracts. The IPWG was briefed on the disparity report results, recommendations and discussions centered around strategies that would align with best practices.

On December 2, 2022, staff briefed the IPWG on potential changes to the MBE/WBE ordinance and best practices recommended by the consultant. Staff is in agreement with the consultant's recommendations.

Recommended ordinance revisions include:

- *Decrease the number of ordinances from four to two;*
- *Delete numerical goals cited in the ordinance to address confusion;*
- *Certify firms in the local program using North American Industry Classification System (NAICS) codes rather than National Institute of Governmental Purchasing, Inc. (NIGP) codes;*
- *Implement a more extensive and detailed industry code review process when it is time for a firm to seek recertification; and*
- *Adopt the federal approach to revise the policy so that a firm remains certified until its eligibility is removed rather than having a firm's certification "expire".*

Additionally, the following strategies were highlighted for the City to consider implementing to refine the program further:

- *Develop written criteria to determine when to set ethnic-specific goals, perhaps using a checklist or menu approach;*
- *Consider bidding some contracts without goals that is determined to have significant opportunities for MBE or WBE participation;*
- *Drop the requirement that bidders must place advertisements in newspapers; and*
- *Clarify the standards for counting the participation of certified firms in joint venture agreements.*

Based on this information presented, the IPWG supported the consultant's recommendations and strategies. Regarding best practices, the consultant recommended the City augment race and gender-conscious measures and continue to implement race and gender-neutral measures. Such strategies include developing an annual procurement forecast, centralizing the program's data collection and reporting, developing additional performance measures for program success, and implementing a comprehensive supportive services program.

# Inclusive Procurement Working Group Meetings

## IPWG Meeting Framework

The Inclusive Procurement Working Group (IPWG) began meeting August 6, 2021. The Communications and Public Information Office's Community Engagement Division served as meeting facilitators for the working group discussions.

Based on the IPWG's feedback at the initial meeting, SMBR started sending meeting materials seven days prior to the meeting date and implemented a "*What we Heard*" follow-up presentation, which provided the opportunity for staff to highlight the IPWG's input gathered to ensure comments and recommendations were accurately captured. In addition, subject matter experts from City departments presented on various topics and were available to answer questions and provide clarification if needed. Staff shared the weekly tracking log to receive feedback, make appropriate revisions, and present each *draft* item during meetings.

Table A (APPENDIX A) provides an overview of the 29 working group meetings and the area of focus each meeting. SMBR along with representatives from the IPWG provided City Council a progress update at the Council Work Session meeting on February 15, 2022. At this meeting Council extended their appreciation to the working group and staff for the ongoing work and progress updates.

## Final Review Process

Starting July 22<sup>nd</sup>, the IPWG worked jointly with the Community Engagement Division to review its proposed 43 recommendations for the working group to vote to keep the recommendation as proposed, revise recommendations or remove recommendations. In addition, proposed recommendations that required more in-depth and extensive discussion were identified and moved into a second review process. This review process spanned over five months and was designed to allow staff to work with the working group to revise language and receive final approval from the working group. After the review process was complete, staff recorded 20 final recommendations.

### Recommendations 10-14

- 10. City needs to consider cohorts and training overall for certified firms.
- 11. Equip and provide resources/tools for smaller businesses that will take them to the next level.
- 12. Assistance needs to be provided to MBE/WBEs in developing a creative loan funds contract. Begin utilizing existing CDFIs with a history of success, to work closely with local, minority owned, and small businesses. The City shouldn't have to contribute funding because CDFIs have the loan funds.
- 13. There needs to be continued technical assistance offered and looking to the non-profit lenders for help.
- 14. Offer hands-on assistance to help MBE/WBEs understand the bidding process. Provide a program to help them understand what they're getting into and then provide a mentor protégé program.

### Recommendation 17

The local ordinance should be stronger. There should be preference for local firms first, as opposed to larger national firms

Financial Services Department – Central Procurement (FSD) is currently reviewing the City's Local Preference procurement program, to develop options to expand the program, either by itself or in combination with other programs. In accordance with further direction from Council, FSD will seek input in developing these program

### Recommendations

- Augment race- and gender-neutral measures
  - Develop an annual procurement forecast
  - Centralize the Program data collection and reporting
  - Increase interdepartmental communication
  - Develop virtual training tools for City staff and vendors
- Increase awareness of existing City programs and resources
- Conduct targeted outreach
- Enhance opportunities on professional services projects



## IPWG's Final Recommendations by Specification

The IPWG initially proposed 43 preliminary recommendations, that staff analyzed and provided feedback to the working group that resulted in the 20 final recommendations outlined in this section.

The recommendations are categorized by three specifications, Current Practice, Minor Modifications, and Major Modifications, which are defined on pages 6-7.

### Current Practice

The following recommendations are current practices of the City; however, additional communications and/or outreach may be needed to ensure stakeholders are aware of the service/practice.

- *Recommendation 1: Reciprocity should only occur if other entities match the City's MBE/WBE certification process and requirements.*
- *Recommendation 2: If the City is going to have reciprocity, it should be with agencies that match City programs.*

Staff Analysis: The proposed recommendation supports SMBR's current practice regarding reciprocity. No other Texas Certification agencies have an MBE/WBE Certification Program that requires a Personal Net Worth (PNW) (Economic Disadvantage) as a part of their certification standards.

There are no changes in current processes related to this recommendation.

- *Recommendation 5: The City should not eliminate Personal Net Worth (PNW) limitations.*

Staff Analysis: This recommendation aligns with the recommendations from the City's 2022 Disparity Study Consultant.

The PNW should remain, and SMBR will continue utilizing the Economic Disadvantaged requirement for all certification applicants. The City is working with an Economist, Jon Hockenyo, from the Austin Area and will review SMBR's overall PNW process to provide an assessment and feedback. Any recommendations from this assessment will be shared with the IPWG and stakeholders.

- *Recommendation 11: Provide a list of City spend by work code. This information would help SMBR recruit firms in those areas that don't have a lot of spending. This information would also help the chambers and SMBR identify areas of need and where spend is going; therefore, be more effective in targeting those areas*

Staff Analysis: Financial Service's Central Procurement (FSD) can generate this report by Commodity and can provide this report for individual Vendors for Commodity Codes they

registered for. FSD is assessing adding the function within Austin Finance Online (AFO) to allow Vendors to run these reports, on demand, directly from AFO. These reports are shared at each of the last Small Contractor Forums.

- *Recommendation 16: Utilize social media for ways to connect primes and sub primes, such as highlighting a prime contractor so that subs know who they could work with.*

Staff Analysis: SMBR has enhanced the department's social media presence (LinkedIn, Facebook, Twitter), and is utilizing public engagement platforms such as Research.Net, ConstantContact and Canva to further its marketing, outreach and promotions/ SMBR continues to explore ways to utilize these resources to connect primes and subs.

## Minor Modifications

The following recommendations will require Minor Modifications, which means implementation may be easily accomplished by slightly modifying administrative operations and does not require an administrative rule change of the MBE/WBE Procurement Program, nor changes to the MBE/WBE Procurement Program Ordinances (City Code 2-9A-D).

- *Recommendation 10 (a): Offer hands-on assistance to help MBE/WBEs understand the bidding process.*
- *Recommendation 13: SMBR should feature successful MBE/WBE businesses at events and presentations so that they may share their achievements, experiences, and knowledge.*

Staff Analysis for Recommendations 10 (a) and 13: SMBR will continue to promote Austin Finance Online, which offers vendors tutorials for "Doing Business with the City". SMBR is also exploring expanding tutorials featured on its Govology website to include the bidding process.

SMBR will explore coordinating, promoting and hosting a "Live Mentoring Events" series featuring industry experts for panel discussions, sharing successes and challenges, and will include a Q&A segment. Mentors may include experts in each of the key areas: construction services, professional services, non-professional services, and goods & commodities.

SMBR will highlight certified business' stories, testimonials as a part of the quarterly newsletter and first annual report. In January 2023, SMBR will relaunch its pre-certification workshop, which will allow business owners to learn about certifying with the City of Austin and its benefits. During these workshops, SMBR has invited certified MBE/WBEs to share their experiences and success stories with participants.

- *Recommendation 14: The City should have more mandatory pre-bids to assist MBE/WBE firms with networking.*

- *Recommendation 15: The City should do more to identify primes and sub-consultants at pre-bids and networking events.*

Staff Analysis for Recommendations 14-15: Incorporating networking into each Pre-Bid/Pre-Response meeting is an opportunity for subcontractors to build and strengthen Sub/Prime relationships.

Pre-Bids/Pre-Response meetings are held for every construction and construction-related professional services solicitation. Project Managers (PM) make the determination when a pre-bid/pre-response will be mandatory and notify the Financial Services Department for solicitation issuance purposes.

Staff appreciates the intention behind this recommendation and will review existing procedures to see if there are ways to achieve this strategy without negatively impacting the participation or competitiveness of City solicitations. In general, attendance in Pre-Response Meetings is mandatory only when it is imperative that prospective Offerors observe or acknowledge the specific conditions or environments applicable to the forthcoming contract. Otherwise, attendance at Pre-Response Meetings is always optional.

- *Recommendation 18: The following content should be included in a prime's initial invitations to the subs, so they understand their options in the bidding process.*

*§ 2-9A-21(3)(a) A MBE/WBE that has submitted a response or Bid to a Prospective Offeror may contact SMBR to request a meeting with the Prospective Offeror to determine if their response (bid) will be used on the project. SMBR will schedule a meeting between the MBE/WBE and the Prospective Offeror. If such a meeting does not occur and the MBE/WBE submitting the response (Bid) to the Prospective Offeror is not selected, the Prospective Offeror must explain the reason for not selecting the MBE/WBE and provide written documentation supporting the stated reason. As a reminder, bid shopping is prohibited.*

Staff Analysis: This or similar language could potentially be added to SMBR's template document provided in the MBE/WBE Program packet included with solicitation documents. Currently, SMBR's compliance process requires on the Compliance Plan (CP) that the Bidder/Proposer provides justification for failure to use an MBE/WBE sub when a non-minority sub is indicated on the CP. The current Good Faith Efforts analysis considers this information along with the utilization of other MBE/WBE firms on the CP as well as other Bidders/Proposers ability to meet the goal.

- *Recommendation 19: Evaluate existing processes to ensure checks and balances are in place to assess projects over \$50k being submitted to Council with appropriate goals.*

Staff Analysis: SMBR's current process is to review all procurements that are moving forward for Council consideration and action. The SMBR MBE/WBE Compliance Plan currently requires a Bidder/Proposer to provide justification why a non-certified firm was selected in lieu of a MBE/WBE as a subcontractor/subconsultant.

The Financial Services Department (FSD) currently have processes to ensure the review of goals. To address this recommendation, a change to the MBE/WBE Program Rules and an administrative bulletin can be developed by SMBR in coordination with FSD that would outline provisions and procedures for procurements at \$50,000 and above. SMBR will also enhance direct outreach efforts to increase participation of MBE/WBEs on City procurements.

## Major Modifications

Implementation of the following recommendations will require Major Modifications; therefore, will require an administrative rule change of the MBE/WBE Procurement Program, and/or changes to the MBE/WBE Procurement Program Ordinances (City Code 2-9AD). These recommendations may require Council action for additional funding and/or full-time employees (FTEs) for implementation.

- *Recommendation 3: Keep Personal Net Worth (PNW) but modify/revisit the structure. PNW might be low for Austin area. What is included or excluded should be reviewed.*
- *Recommendation 4: The City should review its use of the South Region Consumer Price Index (CPI) in establishing its PNW, to determine if this index accurately reflects the unique Austin economic marketplace. In addition, the City should review the calculation of assets used to determine the PNW of an applicant.*

Staff Analysis for recommendations 3 and 4: The PNW statement is used to determine whether you meet the economic disadvantage criteria set forth by Austin City Code § 2-9A-4 (21). Any discrepancies or questions regarding a vendor's form may be returned to the vendor for correction and completion. An individual's personal net worth includes only their share of assets owned separately and/or jointly and excludes and includes a variety of resources.

SMBR is collaborating with an economist to review SMBR's PNW current structure, and to determine if a new index can be developed to replace the South Region Consumer Price Index.

- *Recommendation 6: City needs to consider cohorts and training overall for certified firms.*
- *Recommendation 7: Equip and provide resources/tools for smaller businesses that will take them to the next level.*
- *Recommendation 8: Assistance needs to be provided to MBE/WBEs in developing a creative loan funds contract. Begin utilizing existing CDFIs with a history of success, to work closely with local,*

*minority owned, and small businesses. The City shouldn't have to contribute funding because CDFIs have the loan funds.*

- *Recommendation 9: There needs to be continued technical assistance offered and looking to the nonprofit lenders for help.*

Staff Analysis for Recommendations 6-9: SMBR began contracting with Govology in 2021 to launch an online education portal for certified MBE/WBE vendors at no-cost. The Govology online portal supports businesses with resources and education by offering: a mix of live webinars, on-demand trainings, government market fundamental e-courses, podcasts and digital resources. Key topics featured on Govology include, accounting & finance, marketing, proposal writing, and subcontracting. SMBR will launch a promotional campaign for Govology in early 2023.

SMBR began promoting the Economic Development Department's (EDD) services to leverage EDD's existing small business programs EDD currently contracts with a variety of nonprofit resource providers such as Economic Growth Business Incubator (EGBI), PeopleFund, BiGAustin, and Business & Community Lenders of Texas (BCL), who offer coaching, technical assistance, financial capacity and business resource training. SMBR has promoted and will continue promoting EDD's resources in the department's quarterly online newsletter and social media.

Finally, SMBR is assessing contracting with a firm to implement a 7-month turnkey program for one cohort annually (approximately 20 businesses). The program provides resources created by subject matter experts on topics such as, business, finance, banking, legal, accounting, and from other professional resources to assist minority and women small business owners in further developing and successfully growing their small businesses. The department anticipates providing in update about this program and next steps early Spring 2023.

- *Recommendation 10 (b) Provide a program to help them understand what they're getting into and then provide a mentor protégé program.*

Staff Analysis: SMBR will explore coordinating, promoting and hosting a "Live Mentoring Events" series featuring industry experts for panel discussions, sharing successes and challenges, and will include a Q&A segment. Mentors may include experts in each of the key areas: construction services, professional services, non-professional services, and goods & commodities.

SMBR will highlight certified business' stories, testimonials as a part of the quarterly newsletter and first annual report. The relaunch of the pre-certification workshop has provided an opportunity for businesses to learn from certified firms on the benefits of certification. Staff will explore developing a mentorship program and the budgetary impacts to implement such a program.

- *Recommendation 12: The local ordinance should be stronger. There should be preference for local firms first, as opposed to larger national firms.*

Staff Analysis: Staff agrees with this recommendation, although a local preference program would be administered by the Procurement Office. In compliance with procurement statutes, existing procurement methods provide consideration of local firms in the selection process. Staff will examine existing processes to see if they may be enhanced in compliance with procurement State statutes. Implementation of a local preference program will be imbedded as an aspect of the City's procurement process and administered by FSD. SMBR will coordinate with FSD and Law regarding how local preference may impact the requirements of strict scrutiny and narrowly tailored on the MBE/WBE Procurement Program.

On October 27, 2022, Council approved adopting the 2022 Disparity Study and gave additional [direction](#) for the City Manager explore the development of additional, complementary procurement programs that will promote further contracting opportunities for small businesses, including but not limited to minority and women owned businesses. Such programs should consider a local preference feature and be presented to council for action before August 31, 2023, so that Council can align their adoption with the implementation of future updates to the disparity study goals for MBE/WBE.

The City has maintained a Local Preference procurement program, in both Construction and General procurement, for several years. FSD's Central Procurement is currently reviewing this program to determine its effectiveness and any further opportunities to better meet Council objectives in this area.

- *Recommendation 17: A prime should provide bid notifications 10 business days in advance from the due date to the prime.*

Staff Analysis: This recommendation will increase the current bid notification timeline from seven (7) business days to 10 business days, which may impact the procurement schedules developed by FSD and project schedules.

- *Recommendation 20: On non-construction services projects over \$50k, with availability, review the procedures used to establish an overall MBE/WBE goal. The goal is to allow availability to be the driving factor versus number of scopes. Number of scopes is not always the best indicator for subcontracting opportunities. Size of project, availability, and the prime's capacity are equally important factors.*

Staff Analysis: SMBR uses standard industry guidelines recommended through various federal court cases outlining what meets "strict scrutiny" in the application of the program to government contracts. The courts have been clear that subcontracting opportunities must exist to apply goals on contracts. The MBE/WBE program must be narrowly tailored. Using the recommended



approach could potentially place the program in jeopardy, as goals would be placed on almost all projects in which the main scope has availability, including single scope procurements. Staff will however consider the use of a combined MBE/WBE goal on solicitations for non-construction projects which have shown limited to no utilization in the 2022 Disparity Study in addition to direct targeted outreach for solicitations where no goals are established in which the main scope has MBE/WBE availability.

- *Ordinance revisions recommended by the 2022 Disparity Study Consultant, including, decrease the number of ordinances from four to two; delete numerical goals cited in the ordinance to address confusion; certify firms in the local program using North American Industry Classification System (NAICS) codes, rather than National Institute of Governmental Purchasing, Inc. (NIGP) codes; implement more extensive and detailed industry code review process when it is time for a firm to seek recertification, adopt the federal approach to revise the policy so that a firm remains certified until its eligibility is removed, rather than having a firm's certification "expire"; develop written criteria to determine when to set ethnic-specific goals, perhaps using a checklist or menu approach; consider bidding some contracts without goals that it determines have significant opportunities for MBE or WBE participation; drop the requirement that bidders must place advertisements in newspapers, and clarify the standards for counting the participation of certified firms in joint venture agreements.*

*Note, the IPWG were overall supportive of these revisions; however, indicated concerns deleting references to actual MBE/WBE goals from the ordinance is concerning for fear the City won't adhere to them.*

Staff Analysis: Staff agrees with the consultant's recommended ordinance revisions. Staff provided clarification to the IPWG regarding their concerns with deleting references to the MBE/WBE goals from the ordinance.

- *The consultant recommended best practices for the City to implement, which are outlined below. The IPWG were briefed on these best practices.*

Displayed below in Table B and Table C displayed on page 19, provide statuses of each best practice strategy outlined by the consultant.

Table B - Best Practices Recommendations (Race- and Gender-Neutral Measures)

Race- and Gender-Neutral Measures	
Best Practice Recommendations	Status
Develop an Annual Procurement Forecast	In Progress
Centralize the Program's Data Collection and Reporting	In Progress
Increase Inter-departmental Communication	In Progress
Develop Virtual Training Tools for City Staff and Vendors	In Progress
Increase Awareness of Existing City Programs and Resources	In Progress
Conduct Targeted Outreach	In Progress
Enhance Opportunities on Professional Services Projects	Future Project

Table C - Best Practices Recommendations (Narrowly Tailored Race- and Gender-Conscious Measures)

Continue to Implement Narrowly Tailored Race- and Gender-Conscious Measures	
Best Practice Recommendations	Status
Use the Study to Set the Overall, Annual Aspirational MBE and WBE Goals	Future Project
Use the Study to Set MBE and WBE Contract Goals	In Progress
Update Program Administration Policies and Procedures	Future Project
Implement a Comprehensive Supportive Services Program	In Progress
Adopt a Mentor-Protégé Program	Future Project
Develop Additional Performance Measures for Program Success	In Progress
Continue to Conduct Regular Program Reviews	Future Project

Staff analysis: Staff agrees with the consultant's recommended best practice strategies. SMBR will continue collaborate with City departments to implement these best practices.

## Next Steps

Currently, the MBE/WBE Procurement Program Ordinances (City Code Chapter 2-9A-D) sunset on August 31, 2023.

Staff has begun working on the recommendations that are categorized as Minor Modifications. The department will continue to administer the recommendations that are categorized as Current Practices and will explore expanding and enhancing communications so that the MBE/WBE firms are aware of the current practice, processes and services available.

The recommendations that are classified as Major Modifications will take more time, effort and cross-departmental coordination and may require external agency collaboration to implement. Staff has begun connecting with key partners and looks forward to developing a more conclusive timeline of necessary planning efforts and steps for implementation. It is important to note that the recommendations specified as Major Modifications may require additional funding and personnel to fully implement and administer.

This final report will be issued and presented to the MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee and will be posted on SMBR's website and shared with stakeholder organizations and certified MBEs/WBEs via email distribution.

This work process was both insightful and necessary for both IPWG community members and City departments. Working together we had robust open dialogue, shared knowledge and expertise, and learning about each other's professional and lived experiences guided the working group to develop and define recommendations that will strengthen the effectiveness of the City's M/WBE procurement program.

SMBR thanks City Council, the MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee, the Inclusive Procurement Working Group community members, City leadership and City staff for their commitment, dedication and recognizing the significant role that minority, women and disadvantaged business enterprises serve in the continued success and growth of Austin.

# APPENDICES

## APPENDIX A: Table A - IPWG's Meeting Schedule

Meeting Date	Topic
August 6, 2021	Meet and Greet: Establishing terms of engagement, frequency of meetings, and the <i>"What we Heard"</i> follow-up process.
September 7, 2021	Meet and Greet recap
September 17, 2021	Certification Process including, what is certification?, certification types, and current process
October 8, 2021	Certification Process recap
October 15, 2021	<i>"What we Heard"</i> – Certification Process recap
November 12, 2021	<i>"What we Heard"</i> cont. – Certification Process recap
November 19, 2021	Resources including outreach & engagement, informational workshops, partnerships, and additional resources
December 3, 2021	<i>"What we Heard"</i> – Resources recap
December 17, 2021	Payment Policies including processes outlined by Capital Contracting, Public Works Dept, and Controller's Office
January 21, 2022	Progress Update for February 15, 2022, City Council Work Session
February 11, 2022	Goal Setting and Good Faith Efforts (GFE)
February 25, 2022	Transparency, Communications and Local Prioritization
March 11, 2022	<i>"What we Heard"</i> – Goal Setting, GFE, Transparency, Communications and Local Prioritization
April 8, 2022	Recommendations for Certification and Resources
April 22, 2022	Review Responses to Proposed Recommendations
May 6, 2022	Review Responses to Proposed Recommendations
May 20, 2022	Review Proposed Recommendations – tracking log
June 3, 2022	Review Proposed Recommendations – tracking log
June 17, 2022	2022 Disparity Study briefing
July 22, 2022	Review Proposed Recommendations – Certification
August 5, 2022	Review Proposed Recommendations – Resources and Payment Policies
August 19, 2022	Review Proposed Recommendations – Communications and Transparency
September 2, 2022	Upcoming Dates and Meeting Outcomes
September 16, 2022	Review Proposed Recommendations – Goal Setting and remaining recommendations
October 14, 2022	Review Proposed Recommendations – Goal Setting cont.
October 28, 2022	Review Proposed Recommendations – Goal Setting cont.
November 17, 2022	Final Review of Proposed Recommendations
December 2, 2022	MBE/WBE Ordinance and Best Practices
December 16, 2022	<i>"What we Heard"</i> – MBE/WBE Ordinance and Best Practices