

MEMO

TO: Members of the Economic Development Committee  
FROM: Jim Owczarski, Legislative Research Analyst  
DATE: April 2, 2002  
RE: Questions related to the M/W/DBE programs in other communities

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The following is in response to your questions related to the M/W/DBE programs (for sake of clarity, DBE henceforth) in other communities. I contacted 15 communities comparable to the City of Milwaukee, receiving responses from 13<sup>1</sup>, as well as Milwaukee County. Based on interviews with officials from each of these jurisdictions as well as a review of their respective program descriptions and enabling legislation, I offer the following general findings:

- ◆ **Of the jurisdictions surveyed, only Milwaukee County charges an DBE certification or re-certification fee.** Its fee is \$150, charged both for initial DBE certification and then every 3 years for re-certification.
- ◆ **Nationwide, DBE programs are undergoing significant change due to legal challenges.** Of the 14 jurisdictions considered, 6 have either recently settled or are in the process of litigating challenges to their DBE programs based on a charge that they unfairly discriminate against non-DBE's. At present, the metropolitan government of Nashville-Davidson has no DBE certification process of any kind, despite the findings of a 1992-1996 disparity study, because of legal concerns. The City of Columbus is struggling to reestablish its local DBE program after having it struck down in court and the official to whom I spoke was quite candid in admitting she did not know what, if any, form the program there would take. Likewise, on January 14, 2002, the metropolitan government of Charlotte-Mecklenburg repealed the sex and race components of its DBE program after it was ruled discriminatory. It is currently in the process of trying to draft new DBE code provisions.
- ◆ **Given the origin of most DBE programs as certifying agencies for 49 Code of Federal Regulations (CFR) Part 26 and other federally-mandated DBE contract programs, it is not surprising that most have moved only gradually to supplement their certification role with programs intended to nurture DBE's.**

<sup>1</sup> Indianapolis, Columbus, Austin, Baltimore, Memphis, Boston, Nashville-Davidson, El Paso, Seattle, Denver, Charlotte-Mecklenburg, Cincinnati and Minneapolis.

Most agencies responsible for DBE certification do little more than provide the certification and then act as a clearinghouse or listing agency for contractors interested in connecting with DBE's. This is true whether the DBE agency is responsible for certification to a federal or local program or both. Fewer jurisdictions provide a basic suite of services specifically tailored to the needs of DBE's. These services include:

1. Periodic inspection of requests for proposals submitted for municipal business or under the terms of a DBE program to insure that reasonable efforts have been made to "break down" the work or commodity in question into a size small enough for a DBE to bid. In Baltimore, for example, a recent municipal janitorial contract was broken down into 4 component pieces, one of which eventually went to a WBE and the other an MBE, the latter of which had 100% MBE subcontractor participation.
2. Periodic review of insurance requirements, particularly between general contractors and subcontractors, to insure that they reasonably reflect the risks involved and are not being used to exclude DBE's.
3. Clerical and professional support, such as insuring that DBE's complete necessary regulatory paperwork – including that required for certification – and review of business plans and proposals.
4. The establishment of mentor relationships between established contractors and DBE's.
5. Loan packaging among groups of DBE's.

In fairness, it should be noted that many jurisdictions have small business programs, some of which pre-date the current DBE concept and attendant structure, and which continue to operate separate from a DBE program. That said, of the agencies contacted, the City of Austin stands out as a community which has made a sizeable commitment to the development of DBE's, although within the confines of its existing small business development structure.

- ◆ **There was marked ambivalence towards the notion of DBE's "graduating" from the certification programs to which they belong.** At best, the officials to whom I spoke said it was a case of businesses simply becoming too large, or their owners too wealthy, to comply with DBE standards and being refused re-certification. I received no indication, however, that these officials believed this necessarily equated with the businesses no longer needing to be identified as DBE's. At worst, one official, from the City of Denver, said he felt some businesses, when they leave the DBE list, are suddenly no longer contacted by major contractors for subcontractor work because they provide no competitive advantage to the contractor and the "old boy's network" closes behind the DBE's.

None of the agencies contacted has a graduation process or monitors the progress of a DBE towards graduation.

### **Particular Cases (In Alphabetical Order)**

**Austin:** As said before, Austin has the most extensive operating DBE development and support system encountered during the preparation of this report. Its DBE program is housed within – but is operationally distinct from -- the City’s “Small Business Development Program” which reports directly to the City Manager. Attached, please find information related to the history of the Austin program, its legislative mission as well as its current minority participation goals. The approximately 1,000 certified businesses participating in the program receive not only the more generic services listed earlier, but the City has partnered with the Austin Chamber of Commerce to provide broader outreach, many components of which are conducted at a structure purpose-built for the small business program. I have attached a copy of the February 2002 schedule of classes offered by the program for all eligible small businesses as well as a description of meeting rooms and other facilities available for use by DBE’s. These rooms are available for rent at below market rates.

**Baltimore:** In a somewhat unusual case, Baltimore’s DBE certification program operates out of the City’s Law Department, the functional equivalent of our own City Attorney’s office, which is responsible for tracking the eligibility of DBE’s. The actual **use** and **development** of DBE’s, on the other hand, is left to the “Mayor’s Office of Minority Business Development”. Two matters bear particular note. First, the City does **not** accept mutual certification from the State of Maryland (or vice-versa) and the 2 jurisdictions operate separate programs. As a result, contractors interested in participating in both must comply with 2 sets of regulations. Highway grants and other federal contracts require a state certification. The 900 certified businesses in the City program, on the other hand, are eligible for the “Baltimore City Market Area” program which encourages the use of businesses that are both DBE’s and located within a certain portion of the Baltimore metropolitan area. More information about this program is attached.

**Charlotte-Mecklenburg:** Attached, please find information related to the impressive array of resources the City makes available to small business enterprises, particularly through its Business and Entrepreneurial Skills Training (BEST) program, a joint effort between the metropolitan government and Central Piedmont Community College. As was mentioned earlier, however, the government has had to strip the sex and race components from its DBE programs.

**Memphis:** Memphis is one of 2 communities (Minneapolis being the other) that contracts out its certification program to a third party. The Uniform Certification Agency (information about which is attached) was created in 1994 under the aegis of the Mid-South Minority Business Council. Funding for the program (for which there is no fee to DBE’s) is provided by the Memphis and Shelby County Airport Authority, the Tennessee Valley Authority and Memphis Light, Gas and Water. As the attached pages indicate, the

agency provides few services other than certification and acting as a clearinghouse for certified DBE's.

**Nashville-Davidson:** As was mentioned earlier, the metropolitan government of Nashville-Davidson, at present, has no DBE certification process. Instead, the staff of the "Division of Minority and Small Business Assistance", a part of the Finance Department is reviewing not only the 1992-1996 disparity study, but the government's entire purchasing process to prepare recommendations to the metropolitan council some time within the next 6 to 9 months. Given the present legal climate, however, the official to whom I spoke said she was unsure when or even if the government would recommend a sex or race component to any DBE certification program.

Should you have further questions, please feel free to contact me at your convenience. I am at extension x2299.