July 25, 2006

Community & Economic Development Committee

Chairman/Committee, Thank you for this opportunity to address this distinguished body.

Preference my remarks by saying that I am not an expert in this area but I am as knowledgeable as anyone in the State of Wisconsin on issues related to emerging, disadvantaged, minority business enterprise and participation. My interest began in earnest as law student serving on the Ford Foundations Post Bakkee Strategies committee in the late seventies. Since then I have served in numerous capacities and worked on many projects dealing with participation issue including City, County, State and private projects such as Miller Park, Lambeau Field, Camp Randall Stadium, 875 East, Cathedral Place to name a few. I've served as a consultant, project monitor, legal counsel for contractors, Joint certification hearing examiner as well as in other capacities. In my law practice I am a contract attorney with an emphasis on construction and labor related matters and I have served on numerous boards and committees including the first County DBE program committee under the late County Exec..O'Donnell. So I have an extensive background in this area. (Can provide resume or other background information.)

My interest in equal opportunity, fairness and issues dealing with participation deals more often than not with issues of unfairness and the disparity related to minority participation in contracting opportunities.

Because of time I want to expedite my comments because I currently chair the Milwaukee County Park East Community Advisory Committee and we are meeting today to evaluate two Park East development proposals as they relate to the Park East Redevelopment Compact (PERC). Just want to say that the PERC does in fact work.

I want to focus my brief comments on the proposed changes in City EBE program Ordinance 360. These changes are long over due and because of it's not functioning as it was proposed by the ordinance, in it's current capacity it only adds to the economic disparity that exists in the city of Milwaukee.

360.02 (Emerging Business Enterprise Program) States in part that:

"There is created and emerging business program to assist and protect the interests of individuals who are at a disadvantage and small business concerns in order to promote and encourage full and open competition in this city, and to enhance opportnities for individuals who are at a disadvantage to successfully compete in a free market as independent business owners in this city. The program shall apply to all contracts and shall include the taking of steps to increase the participation of emerging business enterprises, assisting in emerging business enterprise development programs and the identification and elimination of barriers that deny emerging business enterprises equal opportunity." .05(2) (Administration) goes further to say to,
" Develop appropriate rules, procedures and regulations for assuring participation of emerging business enterprises in city contracts, subject to approval of the common council, and supervise, coordinate, monitor and enforce the implementation of emerging business enterprise participation goals for all city procurement in accordance with those rules, procedures and regulations."

In my opinion CO 360 is well meaning but is currently powerless in carrying out it's mission as stated. There is currently no functioning mechanism to protect the rights of certified, qualified well deserving protected class EBE's as required by the ordinance. I personally asked the Mayor in a letter over two years ago to conduct a diversity study in order to evaluate the current effectiveness of the EBE program and to point out why the disparities in city contracts continue to exist.

As an example the EBE office currently has no enforcement or sanctioning powers against contractors who violate the spirit of the program but can punish EBE's with decertification barring them from city contract opportunities. I can agree that the EBE office is underfunded and understaffed but this is no excuse to not have the authority to sanction other than EBE's.
Over all there appears to me to be a consistent lack of genuine political will to make sure the goals and objectives of CO 360 are met. At this point, and with all due respect to all members of the council, I would like to publically thank Alderman Joe Davis, Willie Wade and especially Ald. Mike McGee for their efforts in championing more accountability and participation of EBE's in city contracting opportunities and for the record I'd also like to mention former Ald. Paul Henningsen for his efforts in bringing fairness in contracting to the forefront.

I strongly feel that the City's legal interpretations in this area are flawed. I am familiar with the Croston and Adderand decisions which allow for race based remedies when proven disparities exists. A disparity study would show this but, this is not new. Its like deja vu all over again because the previous M/WBE Disparity Study done in 1992 has already made this point.
(I work with Milw. Co and their DBE program now recognizes the need to have race conscious contracting in their participation programs in recognition of the tremendous economic gap that exists in this community.)

This Committee receives EBE reports but who scrutinizes the numbers? Percentages don't tell the whole story? Is 18% of the city contracting dollars fairly going to EBE's? It's really ironic to me that white males receive 82% off the city contracting dollars off the top with white females also receiving a disproportionate share if the EBE contract dollars while Hispanics, blacks and others receive what's left. This is totally contradictory to the concepts of equality and fair share when the current ethnic make up of the city is majority minority. And, on that point, how much of the contracting dollars stay in the City of Milwaukee impacting the lives of Milwaukee residents and Milwaukee taxpayers? Do you really know? Don't just look at the statistics, count the numbers. They tell a different story.

Let me give you an example: A contractor, who does not have to be certified and does not live in the city, can win a tax supported collection contract with an 18% EBE requirement. In order to obtain the contract they can use me as a certified EBE attorney to get the bid. Then, after a month, they can replace me with a white female janitorial firm for good, bad or no explainable reason at all and the EBE office has no authority and is powerless to do anything about it. The EBE's office p3is only concerned with the contractor fulfilling it's 18% participation obligation regardless of how it is achieved. There is no mechanism for entertaining EBE complaints or questioning the

contractors actions or motives. Where is my protection, or anyone similarly situated, as a certified, qualified, deserving, experienced, tax paying protected class EBE professional?

In professional services we sometimes get ignored all together. Recently a published report mentioned over $100 million being spent by Wisconsin municipalities (Milwaukee $5-6 million) on outside attorneys. Do you want me to tell you how much black attorneys received? I've talked about this matter with the Governor. I know for a fact in the tobacco lawsuit, for instance, there were no black attorneys involved. And the same question I asked the Governor I ask you. How can my children and grand children expected to compete with the children and grand children of the white attorneys who received all of the money? Disparity is not just a city issue. It's pervasive throughout all aspects of public and private contracting. Just do the math.

This has got to change. One way or the other and by what ever means available. (Lawsuits and challenges to current policies)

My preference and the better and easier way is to seek a change in attitudes towards EBE participation with a conscious political will and determination to change for the betterment of the entire community by addressing this issue and disallowing the pretexts and resistance often used to deny inclusiveness and equal opportunity in city contracting.

As I have expressed in writing to Alderman McGee, these proposed changes do not go far enough but I agree with him that this is a start and hopefully a disparity study will show the true nature of the situation and make the recommendations that are necessary.

I look forward to continuing to work with the city in eliminating the existing disparities in city contracting and in strengthening the EBE ordinance. It is unfortunate that in this day and age we continue to need these programs but I realize that is just the nature and reality of the times in which we live. Like renewal of the Voting Rights Act we will have to remain vigilant in our efforts to provide equal opportunity to everyone and protect the rights of our historically disenfranchised citizens. It is your duty as Alderman and my duty as a citizen of this city.

Be insured that my efforts towards change are dedicated to the future of my children and grandchildren and to the future of your children and grandchildren. If we fail, what will be said about our legacy to the commitment to fairness and equality as leaders and elected officials? Hopefully substantive and meaningful changes to CO 360 will move us towards enjoying some of the fruits of change during our own lifetimes.

Any question? Written comments if needed.

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