



Travis County Commissioners Court Agenda Request

Meeting Date: April 9, 2013
Prepared By/Phone Number: David Salazar, 854-9555
Elected/Appointed Official/Dept. Head: County Judge
Commissioners Court Sponsor: Judge Biscoe

AGENDA LANGUAGE:

CONSIDER AND TAKE APPROPRIATE ACTION ON A PROPOSAL REGARDING ENHANCING MINORITY PARTICIPATION IN TRAVIS COUNTY'S CONTRACTING PROGRAM SUBMITTED BY THE BUREAU OF BUSINESS RESEARCH IC2 INSTITUTE AT THE UNIVERSITY OF TEXAS AT AUSTIN.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

Please see attached information

STAFF RECOMMENDATIONS:

ISSUES AND OPPORTUNITIES:

FISCAL IMPACT AND SOURCE OF FUNDING:

REQUIRED AUTHORIZATIONS:

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials should be submitted as a pdf to the County Judge's office, agenda@co.travis.tx.us by **Tuesdays at 5:00 p.m.** for the next week's meeting.



IC² INSTITUTE
THE UNIVERSITY OF TEXAS AT AUSTIN

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February 14, 2013

The Honorable Samuel T. Biscoe, Travis County Judge
PO Box 1748
Austin, TX 78767

Dear Judge Biscoe:

Thank you again for meeting last month with Dr. Jim Jarrett, Jorge Anchondo and me to discuss the proposed project on Travis County's Historically Underutilized Business (HUB)/Minority and Women-owned Business (M/WBE) contracting program. As my team and I mentioned to you, we decided to approach Travis County because of the *Austin American Statesman* article (November 25, 2012) that reported that Travis County might consider other options to enhance its HUB program participation besides sanctioning a business disparity study. For this reason, we suggest that this is the right time to infuse some creativity and innovation into this otherwise legally-sensitive policy area.

We believe the attached project proposal offers the best course of action for HUB/MWBE participation in Travis County's program. You may note that our proposal is clearly management and operations-oriented, with special attention to race- and gender-neutral initiatives. We want to identify the race- and gender-neutral measures that provide the best potential for HUB/M/WBE development. As you may have read, the United States Supreme Court decreed these measures were the most significant alternatives to disparity studies.

Critics of disparity studies often urge universities in their reports and testimony to conduct more research in this area. We have. In 2012, the IC² (*Innovation - Creativity - Capital*) Institute at the University of Texas at Austin, which I direct, conducted a statewide survey of Hispanic businesses to identify their challenges to growth. This year we will undertake a similar survey about African American businesses. This primary research will complement any future study efforts such as the one we propose with Travis County.

Our project profiles show that we have assembled a team which has the required and necessary background to successfully complete this ground-breaking research. We are eager to partner with you, the Commissioners, and Travis County officials via an interlocal agreement.

You suggested that we come before the Commissioners Court to discuss this matter. We would be pleased to do that on either February 26th or March 5th after two o'clock, due to my teaching schedule. Scheduling can be arranged via Sheri Gonzales at 512-471-5287.

Thank you for your consideration.

Sincerely,



John Sibley Butler
The Herb Kelleher Chair in Entrepreneurship
The J. Marion West Chair of Constructive Capitalism
Director, IC² Institute
The University of Texas at Austin

file HUB/Purchasing

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**ENHANCING MINORITY PARTICIPATION
IN
TRAVIS COUNTY'S CONTRACTING PROGRAM**

Submitted To:

Travis County Commissioners Court

Prepared By:

The Bureau of Business Research

IC² Institute

The University of Texas at Austin

Background

Since the 1989 United States (US) Supreme Court landmark decision *J.A. Croson vs. The City of Richmond* significant resources have been devoted to conducting disparity studies. Comparatively few resources and efforts have been expended on making minority contracting programs more successful.

To a certain extent the almost complete focus on conducting a disparity study is understandable. Advocates of affirmative action in public contracting and most, if not all, disparity study consultants can cite the complexity and detailed requirements of a disparity study as major reasons for not devoting more time to devising realistic, workable recommendations and tackling issues of implementation. *Croson*, filed under the equal protection clause of the 14th Amendment and subsequent appellate court rulings, provide the legal guidance for conducting a business disparity study. *Croson* requires that the statistical and anecdotal evidence of discrimination developed in disparity studies pass “strict scrutiny”, the highest judicial review, in order to assert that a “compelling governmental interest” exists for sponsors to enact public contracting programs. Governments must then also “narrowly tailor” remedial action to the groups most affected by the discovered disparities or discrimination.

A disparity study’s main task is therefore to try to show significant disparities or garner discriminatory evidence directly from the governmental sponsor’s contracting records and administrative actions, respectively. Increasingly studies have resorted to private sector disparities to justify the legal basis of many contracting programs. These disparities are found by applying sophisticated statistical methods to large, specialized data bases such as the US Census and national credit reports. With the major focus of most studies on establishing the legal basis of a sponsor’s contracting program and developing an ordinance that names the office to administer the program and specifies the revised utilization goals and their accompanying formulas, corresponding “good faith efforts”, sanctions or penalties for non-compliance, and “graduation” requirements for firms that surpass adopted qualification standards, minimal time remains for anything else.

That is very unfortunate. Essentially the current situation is that a disparity study is necessary, but it is not sufficient for implementing a successful minority contracting program. After a disparity study, the governmental elected officials and staff who have oversight and administrative responsibility for their entity’s contracting programs are left to fend for themselves in trying to respond to the study recommendations. (All consulting firms provide virtually the same race neutral and race and gender neutral initiatives in their studies, although the specificity on how to enact these measures varies.) Even more importantly, no literature exists that provides strong evidence about how governmental entities have implemented, managed, and operated the recommendations, and whether so-called “best practices” actually work after being implemented.

Proposed Approach

The IC² (*Innovation - Creativity – Capital*) Institute at the University of Texas at Austin proposes a multi-faceted approach to assist in the enhancement of Travis County’s minority and

women-owned business (M/WBE, HUB and DBE) contracting program. The UT-Austin team proposes to focus on actions that Travis County can implement to enhance the participation of minority and women-owned businesses in its contracting program. The IC² Institute approach will combine significant entrepreneurial data gathering/research experience with demonstrated prior experience in conducting business disparity studies.¹ The IC² approach is unique as it will address (1) management and operational aspects of Travis County's contracting program directed at minorities and women and (2) analyze business traditions and practices that have affected their participation.

In addition to documenting the target groups' experiences in obtaining both private sector and public sector contracts generally, we will assess the groups' experiences with Travis County's HUB Program. IC² will examine specific management and operational HUB issues including:

- certification
- contract bidding and performance
- training and business assistance
- networking and communications
- program policies and procedures

Another important work element will include assessing so-called "race- and gender-neutral initiatives" that are often recommended in business disparity studies:

- unbundling of contracts
- surety bonding and insurance requirements
- small business enterprise program
- linked deposits program
- mentor-protégé and internship programs
- capital/credit or business financing

This is an essential, although perhaps counterintuitive task element. As noted previously, disparity studies determine whether a government sponsor can operate a "legally enforceable program." Ironically, a government's contracting program is still susceptible to a legal challenge even after it has sanctioned or approved/accepted a completed disparity study. In other words there is some likelihood, albeit fairly low, that Travis County may be at risk even after the disparity study has occurred. If that occurred, Travis County's best recourse would be the race neutral initiatives, if a litigant was successful and the program was enjoined.

The UT-Austin effort will complement and not overlap the forthcoming business disparity study. Disparity study methodologies as a rule solicit information from all the stakeholders involved with the governmental jurisdiction's contracting program using such tools as interviews, surveys

¹ The Bureau of Business Research, a unit within the IC² Institute at UT-Austin, recently conducted a statewide survey of Hispanic Owned Businesses. That research is described in a report available at: <http://www.ic2.utexas.edu/bbr/back-issues/other-bbr-publications/index.php> A similar project is about to begin that will survey African-American Owned Businesses within Texas.

and focus groups. The UT-Austin study team will utilize the plethora of information gathered to develop its proposed implementation and management scheme and conduct more in-depth interviews and focus groups with all stakeholders to obtain insights on how to more effectively structure any adopted initiatives.

This study effort will undertake case studies of public contracting programs elsewhere in the United States that have successfully implemented and managed significant race and gender neutral initiatives. These will encompass city governments as well as counties. The two selection criteria are that the programs have been successful and that they could be replicated, in whole, or in part, by Travis County. Also a second set of case studies will be developed that highlight best practices of prime contractors. These will be focused on Texas prime contractors in a variety of key industries, with some consideration given to exceptional prime contractor programs outside of Texas.

Because implementation issues are the primary focus of the proposed UT implementation planning grant, we feel strongly that the proposed activities should be conducted simultaneously with the disparity study, and not wait until the disparity study is completed. First, all consulting firms provide virtually the same race neutral and race and gender neutral initiatives in their studies. Second, identifying successful contracting programs and best practices elsewhere will require time. Third, developing cases on best practices and analyzing what changes may be needed for Travis County will take time. And fourth, UT is quite likely to develop potential activities which have yet to be implemented by other jurisdictions, but which have proven successful in starting and expanding small businesses. (Please see below for background about the IC² Institute, a research and implementation center at the University of Texas at Austin.) For all these reasons, Travis County should not lose time and wait until the recommendations from the forthcoming disparity study are issued.

The UT team from the IC² Institute proposes to collaborate with Travis County in this project through an interlocal agreement, which can be implemented without a formal RFP process. An interlocal agreement allows Travis County and the IC² Institute to develop a mutually agreeable Statement of Work, enables the initiative to be started quickly, and would be conducted with UT's standard, lower overhead rate (15%) for such agreements.

Profiles of UT-Austin Team

Dr. John Sibley Butler is a Professor in Entrepreneurship and Small Businesses in the Department of Management at the University of Texas at Austin. He directs the Herb Kelleher Center for Entrepreneurship and the IC² Institute at UT-Austin. His research and lectures are primarily on new ventures, general entrepreneurship, and minority small businesses.

Current research projects and select publications include a number of books:

John Sibley Butler, Alfonse Morales and David Torres, *An American Story: Mexican American Entrepreneurship and Wealth Creation*. Purdue University Press, 2010.

Mark Rice, Patricia Gene Greene and John Sibley Butler. *Business Eco-Systems*. Edward Elgar Publishing, UK, 2010.

Entrepreneurship and Self-Help Among Black Americans: A Reconsideration of Race and Economics. State University of New York Press. 2005.

John S. Butler and Estate of George Kozmetsky, eds. *Immigrant and Minority Entrepreneurship: Building American Communities and Economies*. Greenwood/Praeger Publishers. 2004.

Select articles include:

Butler, John S., Patricia Greene, and M. Johnson. 2005. "Forgotten Citations: Studies in Community, Entrepreneurship, and Self-Help among Black Americans."

Colbert Rhodes and John S. Butler. 2004. "Understanding Self-Perceptions of Business Performance: An Examination of Black American Entrepreneurs." *Journal of Developmental Entrepreneurship* 9, 55-71.

John S. Butler. 2001. "The Benefits and Mechanisms for Spreading Asset Ownership," in *Assets for the Poor*, Thomas M. Shapiro and Edward N. Wolff, eds. New York, NY: Russell Sage Foundation.

John N. Doggett, John S. Butler, and Jay Whitman. 2000. [A Report on How American Venture Capital Firms and Incubators Evaluate Business Plans](#). Mitsubishi Research Institute, Inc..

John S. Butler and Patricia Gene Greene. 1999. "Don't Call Me Small: The Contribution of Ethnic Enterprises to the Economic and Social Well Being of America," in *Are Small Firms Important?* Zoltan J. Acs, ed. Kluwer Academic Publishers.

John S. Butler and Patricia Gene Greene. 1997. "Entrepreneurship and Wealth Building: From Pakistani/Ismaili Enterprise," in *Frontiers of Entrepreneurial Research*, Wellesley, MA: Center for Entrepreneurial Studies.

John S. Butler and Patricia Gene Greene. 1997. "Ethnic Entrepreneurship: The Continuous Rebirth of American Enterprise," in *The State of the Art of Entrepreneurship*, Donald L. Sexton and Raymond W. Smilor, eds. Upstart Publishing Company.

John S. Butler and Cedric Herring. 1991. "Ethnicity and Entrepreneurship." *Sociological Perspectives* 34, 79-94.

John S. Butler and Kenneth L. Wilson, eds. 1990. Entrepreneurial Enclaves in the African American Experience. The National Center for Neighborhood Enterprise Neighborhood Policy Institute Publication Series.

John S. Butler. 1990. "Resurrecting Black Business in America." *The World and I* 5, 128-134.

Professor Butler is a current Board Member of the *Journal of Developmental Entrepreneurship* and *Journal of Small Business Management*, and a former board member of the J. William Fulbright Foreign Scholarships. Professor Butler has occupied the Distinguished Visiting Professor position at Aoyama Gakuin University in Tokyo, Japan, where he lectured on new venture start-ups and general entrepreneurship. Professor Butler has served as a consultant for many firms and the U.S. Military. Professor Butler has appeared on over 30 radio and television programs and his research has appeared in *The Wall Street Journal*, *The New York Times*, *The Chicago Tribune*, *Time Magazine*, *U.S. News and World Report*, and other newspapers and magazines across America.

J. Jorge Anchondo operates his own consulting firm, **Anchondo Research Management & Strategies (ARMS)**. Mr. Anchondo started **ARMS** in January 2000 to transition his over 25 years experience in public policy, analysis and evaluation to the private sector. Throughout his career Jorge has conducted studies on a variety of intergovernmental issues, worked with large task forces and special study committees involving elected and appointed public officials, noted academic researchers and civic leaders and activists and minority and majority business owners. Mr. Anchondo has served as the principal investigator at the federal and state government, university and private sector levels, on a range of multi-year and short-term studies and projects sometimes involving multi-agencies.

Mr. Anchondo has also collaborated with the National Economic Research Associates, Inc. (NERA) and Colette Holt and Associates (CHA) in conducting business disparity studies. **ARMS**, NERA and CHA successfully completed business disparity studies for such clients as the City of Austin, Travis County, Capital Metropolitan Transit Authority, City and County of Denver, City of Baltimore, Memphis Airport Authority, Massachusetts Housing Authority and the State of Maryland.

Prior to starting **ARMS** Mr. Anchondo held senior research scientist appointments (from December 1989 to January 2000) in three schools at the University of Texas at Austin. All appointments were contract related. Jorge held appointments at the Graduate School of Business, School of Engineering and at the Lyndon Baines Johnson School of Public Affairs.

At the LBJ School, Mr. Anchondo collaborated solely with Dr. Ray Marshall, professor of economics and former Secretary of Labor under the administration of United States President Jimmy Carter, and Dr. Jon S. Wainwright, a specialist on affirmative action and minority business enterprise. This LBJ team led a variety of studies and projects involving minority and women-owned businesses, disadvantaged business enterprises (DBEs) and historically underutilized business enterprises (HUBs).

Mr. Anchondo served as a (1) co-principal investigator in three business disparity studies, (2) conference director for three statewide conferences for state and local government agencies that operated HUB/M/WBE programs in Texas, (3) director of the HUB office, a joint project with the Graduate School of Business, (4) policy consultant on the *State of Texas Disparity Study*, (5) project manager for the implementation of the *State of Texas Disparity Study* findings, and (6) senior policy advisor to the Texas State Legislature Joint Select Committee on HUBs.

Dr. James E. Jarrett
(forthcoming)