

Minutes

City of Tacoma Equity in Contracting Advisory Committee

Date: Wednesday, November 15, 2023

Time: 7:30am – 9:30am

Location: Tacoma Municipal Building, Room 243, 747 Market Street, Tacoma Washington 98402

Zoom Information

Dial: 253-215-8782

Meeting Link: <https://zoom.us/j/93921755135?pwd=UHB1Ym00dGJWZmtLeUE3cHBNWDFKdz09>

Webinar ID: 939 2175 5135

Passcode: 959442

CALL TO ORDER

Kacee Woods, Equity in Contracting (EIC) & Workforce Programs Manager called the meeting to order at 7:43AM

STATEMENT OF PURPOSE

Kacee Woods stated the City of Tacoma's mission with the purpose of this meeting

LAND ACKNOWLEDGEMENT

Malika Godo stated the Land acknowledgement

ROLL CALL – EIC Advisory Committee

Present: Michael Jordan, Trena Payton, Angela Michaelis, Clint Myers

Absent: Timothy "Tim" Pinckney, Jai Briar

Consent Agenda & Minutes

Approval of August 16, 2023 Meeting Minutes

- Motion to approve made by Trena Payton, seconded by Michael Jordan
- No added comments or discussion
- Motion passes and minutes of the August 16, 2023 meeting are approved

Approval of November 15, 2023 Meeting Agenda

- Motion to approve the August 16, 2023 Meeting Agenda made by Trena Payton, seconded by Clint Myers
- No added comments or discussion
- Motion passes and agenda for the November 15, 2023 meeting are approved

City Staff Updates – Kacee Woods

- Welcome new Advisory Committee Members: Clint Myers and Angela Michaelis
- 2023 Disparity Study Updates: Has officially kicked off. Study website is located at this address: [Disparity Study - City of Tacoma](#). The City of Tacoma is contracting with Keen Independent Research. The study will be based on five years of historical data, from January 1, 2017, to December 31, 2022. We're currently collecting data for the consultant to analyze. The Study will take 10 months to complete, and community members will have time to provide comments.

Question: Where should the EIC Advisory Committee Members send people that are interested in providing comments for the disparity study?

Send them to the Consultants' website as well as the Disparity Study's website

What is the timeline for the Study's publishing? 10 Months

What portion of the study is public information? The entire study will be available online. Currently, the 2018 Disparity Study is available at [MergedFile \(cityoftacoma.org\)](#)

- **City of Tacoma Legal department shares information on response to recent court rulings.**

In response to EIC Advisory Committee's request from August 15, 2023, we have invited Martha Lantz, Deputy City Attorney for the City of Tacoma is here to respond to EIC Advisory Committee member's questions on what the City of Tacoma is doing to be prepared and be proactive in their stance related recent issues.

What does it mean to be socially and economically disadvantaged.

Martha's Summary of the related recent issues: The current state of federal law is something we're concerned with and paying attention to. What came out of the US supreme court was to rule that any version of what we commonly call affirmative action that designates a particular treatment to remedy discrimination on the ground of race is unconstitutional. The case involved admissions at private universities. I believe we're going to see ripples from that across the legal landscape for decades. There's been recent actions in federal district court with challenges to the make up of MBDA Programs and similarly to the federal government SBA 8a Program. Both of those programs are based on the presumption that to be entitled for the benefits of the program you have to be a socially and economically disadvantaged business and the presumption is that a minority is socially disadvantaged and eligible to receive assistance. In one of the cases brought forward, there was an argument that the presumption is unconstitutional because it relies on the assumption that only certain groups are socially disadvantaged. This case is still sitting in the court and has not been settled. The second challenge was against the SBA 8a Program and has not been settled yet. In terms of what the City of Tacoma is going to do, at this point, I believe it's too early. The City of Tacoma is prepared to respond and defend the Equity in Contracting Program and is keeping an eye on things as they progress. These are serious issues, and the ripple effect could make its way to our program and we're keeping an eye on it.

Question from Michael: There is a history of strategy to wipe out opportunities for people getting access to equity as far as businesses are concerned, like I-200. Shouldn't we be more proactive instead of waiting for something to happen?

Martha's answer: We're taking steps to fine tune our policies and procedures with the development of the EIC Regulations, sharpen and make more defensible the criteria that are utilized to direct participation and to ensure that participation is robust and meaningful. We have initiated the Disparity Study and will start including the goods & services contracts in the Equity in Contracting Program. In terms of strategic involvement in lawsuits, there's nothing that we can do in the legal space as there is no challenge before us that we can participate in.

Question from Trena: From the Legal perspective, it may seem as if it's still in the early stages, but the SBA has already started taking steps to making the certification process more difficult and traumatic to the program participants. People who have experienced racism have to write statements in order for someone in the SBA to determine if they should continue participation. It seems like it's well advanced

and if they continue it will hit the City and have a chilling effect on those contracting officers that are able to incorporate inclusion in their contracting procedures. How is the City of Tacoma preparing?

Martha's answer: I can't speak for the SBA or the Department of Justice, but I think at the City of Tacoma, the policy direction is to continue to be mindful in developing our programs and be ready to defend the elements should they be challenged. We're continuing to implement and charge forward the Equity in Contracting program, within the parameters that these challenges are out there. We are prepared to defend the City's program.

Question from Trena: My initial request in having a lawyer respond was the fact that they're coming for those programs and for your current defense of those programs. Is there anything that the City is doing to prepare for those discussions. The SBA was caught unaware. If you know that the snowball is coming, why wait until it hits you before you have some discussions so that you're not caught off guard.

Martha's answer: The City Attorney is aware of the legal challenges and it's on our radar. We're following these developments and will continue to monitor.

- **At-A-Glance Program Performance Dashboard**

Kacee is working on updating the dashboard. We're working with IT to create a dashboard to include other data points that were previously requested.

General Data as of 11/07/2023, which will be shared via email:

Total payments to OMWBE certified firms: \$4,524,477.49

Total payments to OMWBE + DES certified firms: \$6,316,422.63

The information broken down by ethnicity will be shared in an email

Of the DES and OMWBE Firms, 95% are certified with both. As we look at different certification options, we will complete a matrix to see how those certifications are verified to see if there is room to add different certifications to the EIC Program.

Question from Trena: What is the difference between DES and OMWBE Certification? Is it possible to include self-certification? Also, other companies have federal certifications and should be counted. Veteran's certifications should be added as well.

Answer from Kacee: The difference between the two are the criteria and the process used to certify businesses. We will make sure we add the information to our matrix and we're conducting the research to present to the committee.

Question from Trena: Will the disparity Study look at additional certification types?

Answer from Kacee: No it will not. The Disparity Study includes OMWBE and we added a component to analyze data around those who are certified with Veteran status.

Trena's feedback: The whole purpose is to accurately count the spin within the community. There are other types of certifications out there and we're doing companies a disservice by not looking at the whole landscape.

Kacee's response: In relation to this question, we're working with the Purchasing and Tax & Licensing divisions of the Finance department to look at specific data points. What you're proposing is a valid concern. I don't have a concrete answer, but it is our intention to show dollar spend with OMWBE certified firms but in general, speaking to the whole landscape of spending locally.

We're also part of the Tacoma Anchor Network and we recently got a grant to look at local spending between the 13 largest employers in the region. That information will be inclusive of all categories you have mentioned. We're in the data collection process right now and will be working on this topic on a larger scale.

Trena's comments: I definitely want to have that particular issue stay on the top front of the initiatives accomplished by the committee, because it's important that people understand that there's more than one way

to count spend. Numbers can be low because we only count OMWBE spend. The City wants a picture that is true by counting everyone.

Angela's comment: I can understand the difficulty of getting certified. Their standards are very high, however, allowing self-certifying would be unfair to those who had to go through difficulties to achieve the same status. It's a good idea to have a set standard for all.

Kacee's comments: There might be two ways to communicate what has been outlined here: The EIC Program requirements are specific to a certain type of certification.

To look at local spending and reporting we could report beyond the OMWBE spending.

Michael's comments: As far as OMWBE's process, there's some questions about its effectiveness and purpose. If you have a process that makes it more difficult for minorities because of fraudulent behaviors of non-minorities, and then wanting to raise the level of all other certification that increases barriers, it is not an equitable shift. There shouldn't be a complex pathway to get certified because it's had an impact on minorities. Tacoma Public Schools has been doing good in shifting policies. That might be a good group to pull from.

Tacoma Public School is part of the Anchor Network group. There are some differences between the programs, and we're working on making a matrix to outline the different programs. Tacoma Public Schools has aspirational goals. We're working to learn from each other and improve.

Clint's comments: The OMWBE program went from being too lax to being very stringent. Even though the program is in place, it's not the easiest thing to navigate and it still seems like it's hedged in a way to benefit people that have more resources behind them.

- **Overview of EIC Regulations, Code Revisions, and Advisory Member Feedback**

Malika shares the highlights:

EIC Requirements Methodology

- **EIC Requirements Option 1:** EIC Staff applies three (3) separate requirements (MBE, WBE, SBE) in accordance with the EIC Requirement Setting Methodology.
- **EIC Requirements Option 2:** If after setting the EIC Requirements, reviewing the OMWBE directory and discussing with the Project Delivery Team, it is determined that fulfilling each requirement separately might present a challenge for contractors, EIC staff will apply an overall EIC Requirement. The overall EIC Requirement is the sum of the three (3) requirements initially established as a result of using the EIC Requirement Setting Methodology.

Waiving EIC Requirements for projects with a Value of \$150,000 or less

EIC Requirements will not be set on public works and improvement projects with an engineer's estimate value of \$150,000 or less.

Self-performing certified bidders

Bidders who are themselves Certified Businesses can meet the EIC requirements by self-performance. When a Certified Business is the prime bidder, an adjustment may be made to the EIC Requirements. In such cases the self-performing Certified Business can be found to be a responsible bidder even if the bid did not satisfy all three stated EIC Requirements (SBE, MBE and WBE).

More stringent Substitution Request Process to hold primes accountable.

Change orders affecting certified subcontractors will come through the EIC Office for review.

Application of EIC Non-Compliance Remedies and thorough monitoring process

- Publish notice of the contractor's noncompliance
- Cancel, terminate, or suspend the contractor's contract, or portion thereof
- Withhold funds due contractor until compliance is achieved; and/or
- Disqualification of eligibility for future contract awards by the City (debarment) per Section 1.06.279 TMC

The EIC Committee Members can provide feedback by reaching out to the EIC Office at EICOffice@cityoftacoma.org

747 Market Street, Tacoma, WA 98402 Room 900

253-591-5075

[Equity in Contracting Advisory Committee - City of Tacoma](#)

- **Committee Member Required Training** <https://www.atg.wa.gov/open-government-training>

Most people have completed the required training

Clint & Angela will receive a separate email from Kacee with training requirements as well as EIC Program information. Kacee will set up some time to talk with Clint & Angela separately.

EIC Advisory Committee Recruitment

We've received 9 applications and are recommending 7 for interviews. Meeting will take place on 12/12/2023 and at the end of the interviews, we will recommend applicants to the council for approval.

Once that is finalized, we will have a 12-member committee and it'll leave us with 3 open seats.

We're hiring a Contract & Program Auditor. This position will be specific to setting EIC Requirements and conducting outreach in the community. Hiring will take place in January.

Good of the Order

2024 Priorities – Quarter 1: Disparity Study, implementation of EIC Regs, updating the Program performance dashboard

2023 Closeout: Kacee will be providing an annual report for the end of the year which will be posted online.

Future Meetings

- Vote for a Chair/Vice Chair, Adopt Bylaws, Subcommittees
- Annual Work Plan by which the committee could guide their work (which will include certification and data)
- EIC Program Outreach Plan – Request to share the draft outreach plan with the committee
- Tacoma Anchor Network Information
- Business Financing: Dierdre Patterson to attend to share her portfolio with the members

Public Comment

Items to Consider for Next Meeting

Trena: As we start to raise issues and require actions, there should be some documentation of those issues and where they stand at any given time. Is there a spreadsheet to list issues that are brought up and what actions have been taken, so we can see a resolution to the things that we do bring up and the ideas that we have to improve the EIC Program.

Kacee's response: EIC Staff will identify a scope that we're comfortable with to focus our attention on. We can outline what we own, what we can influence and what is strictly informational.

Angela's request: Share contact list of EIC Advisory members

Adjournment at 9:05 AM

Minutes taken by City of Tacoma