



COMMITTEE ON CONTRACTING OVERSIGHT AND EQUITY

City Council, City of Chicago

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COMMITTEE ON CONTRACTING OVERSIGHT & EQUITY MONTHLY RULE 45 REPORT SEPTEMBER, 2021

Pursuant to Rule 45 of the City Council Rules of Order, the Committee on Contracting Oversight & Equity (CCOE) submits the following Monthly Rule 45 Report for **SEPTEMBER 10, 2021** (to be approved at the next CCOE Meeting).

Date, Time & Location of Meeting: On September 10, 2021, at 10:00 A.M., the Committee on Contracting Oversight & Equity held a virtual committee meeting via videoconferencing, was called to order at 10:02A.

Attendance: 14 of the 19 appointed committee members were present at the August 24, 2021 Committee on Contracting Oversight & Equity Meeting: Vice Chairman David Moore (17), LaSpata (1), Dowell (3), King (4), Cardenas (12), Taylor (20), Sigcho-Lopez (25), Burnett (27), Ervin (28), Cardona (31), Austin (34), Ramirez-Rosa (35), Villegas (36) and Vasquez (40).

The following non-members were also present:

The following internal witness was present: Monica Jimenez, Acting Chief Officer of Procurement Services. Jerel Dawson, Assistant Director of the Mayor's Office, was likewise in attendance.

The following external expert witness present was: Attorney Colette Holt of Colette Holt & Associates.

The Committee on Contracting Oversight & Equity addressed the following items:

The three agenda items referred, from either Committee and/or City Council, which were discussed and voted upon include the following:

1. Approval of the August 2021 Rule 45 Report for the Committee on Contracting Oversight and Equity

Acting Chairman Moore called the meeting to order, opened floor for a scheduled public speaker, who was not on the line. He therefore acknowledged 3 items for

discussion, moved to hear said items. He conveyed Item 1 was an approval for the Rule 45 Report of Committee's subject matter hearing held on August 24th @ 1:00P, and stated the report had been transmitted electronically to the Membership. Alderman Ervin moved to pass and hearing no objection, Moore so ordered by the same roll call vote used to establish a quorum. The Report was thus adopted. Moore next moved forward to Item 2, conveying Acting Chief Procurement Office Monica Jimenez would provide a statement on Item 1 and Attorney Colette Holt would be available to answer questions after.

**2. A communication recommending a proposed ordinance concerning an amendment to Sections 2-92-660, 2-92-770 and 2-92-780 of the Municipal Code of Chicago regarding minority-owned and women-owned (MBE/WBE) business participation in City construction contracts.
(O2021-2865)**

Acting Procurement Chief Officer Monica Jimenez identified her office, conveyed department being contracting, certification and compliance arm for the City of Chicago. Procurement pursues every opportunity to ensure a procurement process that is diverse, fair and equitable. As a unit of government it is our obligation all firms have opportunity to participate in contracts that are paid for with tax payer dollars. Today we are here to seek your approval for the extension of the MBE Program in construction, scheduled to sunset this September. The Department of Law engaged leading national expert Colette Holt to conduct a disparity study to access our local market place and provide recommendations. She and her team conducted an extensive analysis through economic data, candid conversations with businesses of all sizes throughout Chicagoland, resulting in recommendation of a number of strategies for improving the conditions for success of minority and women owned businesses. The continuation of the program together with the revised eligibility requirements that better reflect the financial challenges small minority and women owned businesses face, to enter the market place to grow and prosper. Over the past several month we have conducted meetings and briefings with assist agencies, other stakeholders and participated in a subject matter hearing before this body. We received letters of support for this ordinance from organizations representing over 1,800 small and diverse businesses committed to the growth and development of small minority and women owned businesses. We will continue to work in partnership with key stakeholders including you Aldermen, to identify and promote opportunities for our shared diverse vendor community. Thank you for the continued support of the work we are doing to advance the needs of our diverse vendor community and to vote on the extension of our M/WBE program in construction. With that Ms. Holt and I are open to any questions. At the conclusion of CPO Jimenez, Acting Chairman Moore recognized Colette Holt.

Attorney Colette Holt acknowledged the Body, initiated she had no separate statement from Jimenez, but was happy to answer questions. Moore than

intervened and stated that he knew there was a briefings, hearings on the matter and asked if Holt could address content changes summarizing the enhancements expected on this ordinance. Holt identified 3 important transferences: (1) extend the program to avoid it sun-setting; (2) raise the cap on gross receipts (150%) following SBA guidelines; and (3) personal assets were too restrictive as liquidity was a key factor with the objective to increase number of assets are exempt from calculation (limit didn't change, rather number and types could be expanded). And further, for the City to not require full-time workforce majority of applicants to reside in the city, which unduly burdens M/WBE firms. This concluded commentary from Holt and Moore opened floor to Council Members for comment or query.

Alderman Austin was recognized summarily recapped Holt's extended research of disparities dating back to the former/late Alderman Austin, acknowledged former CPOs Rhee and Andrews, and conveyed that if possible, the ordinance would go further in extending access to M/WBEs, concluding with calling for colleagues to support passage of the ordinance. Moore next recognized Alderman Ervin, who expressed support of the extensive work put forth by Attorney Holt, members of the Procurement Team, including Deputy Officer Sims for bringing content of bear despite acknowledging numbers should go up further, but again thanked Holt for the defensible path leveraging growth of M/WBE and called for a motion to pass. Moore refrained conveying other Councilmen were waiting to speak, then called upon Alderman Taylor, who failed to respond due to technical difficulties.

Moore called upon Alderman Cardenas' questioned the disposition of legal standing for litigation in the court. Attorney Colette welcomed the query and highlighted several court challenges, one in particularly in Memphis, Tennessee where case was settled and resulting in the dropping of the M/WBE program. Also referenced a case since the Committee's subject matter hearing with federal courts redressing race discrimination filed in the Biden Administration regarding minority farmers—largest cased filed against USDA, sued in 4 courts, named Wyoming and Texas and that courts moving to use class action for such cases was not a good sign, citing federal courts remain hostile to such programs. Cardenas concluded by stating support for strengthening programs.

Alderman Villegas was next acknowledged, who did not have any questions, rather stated whole-heartedly supporting ordinance, echoing that he wished we could go further. He expressed we were pushing the envelope and with Attorney Holt's advice we are on solid legal ground. But also conceded the necessity for caps lifting more and gross receipts for M/WBE to have more opportunities to be prime level to hire more minorities. He acknowledge Attorney Holt had been accessible and tipped his hat to Holt for her professional advice, concluding with encouraging colleagues to support ordinance. Next recognized was Alderman King.

Alderman King thanked Attorney Colette for study work, then asked if on Memphis deal, was there a councilman who wanted to put a hold on the program, a major company that didn't have minorities, and wanted to suspend companies from getting tax breaks until more minorities were included. I think there was a pilot program. Do you know anything about that? Whereby Attorney Holt conveyed that she had no indications from her contacts in Memphis, continuing with currently conducting a disparity study for the Memphis airport and had many conversations with general council as well as lawyers for the county. She added the case was actually filed by three white mechanical firms, Memphis Mechanical Contracts Association, and pending for a couple of years, not because of some council member—the white contracting firms challenging the contractor ordinance. King went on to state someone was trying to build an IKEA, not hiring minority contractors, some councilman got upset and wanted to suspend, there pilot program. Nevertheless, the number for available minority firms. How do you calculate availability? Attorney Colette replied there are three sources of availability. The courts require us to only look at ready, willing and able firms providing goods and services the city buys in their geographic market place. First, the Master Minority Women's Disadvantage Business Directory, we put together, list of city certified, county, state, Illinois Unified Certification Enterprise Program for disadvantage businesses for the USDOT, assist contacts and other private list, from the Federation of Women Contractors and other groups that provide information on their members. We use that as our overall master directory. We also supplement with City of Chicago's contractor business records, both MBE/WBE prime contractors in its database as well as subcontractors. The third overall source is Hoover's, formerly Dunn & Bradstreet, availability is a percentage, so they use the numerator as a minority owned firm, you have to have something as your denominator that fits within those perimeters. So D&B is a source of business information, it's comprehensive and current, about 90 days. Overall business universe we have used over the years for our studies. We use them as a successful defense for clients, including the Illinois Toll Way a couple of years ago. In our study there's two different types of analyses of availability; current head count (straight out there now) and disparities in Census Bureau American Survey, came up with estimate of what availability might be if some of the discriminatory barriers were reduced. Point/Question of what availability looks like but for these barriers or discrimination. The report provides both estimates: current head count and expected availability. King next questioned: How does it relate to the utilization number, the availability, or does it? Or do you count just the utilization for a particular year? Attorney Colette replied: We looked at 5 years of data from the city, utilization of minority and women owned businesses both as prime and subcontractors, on associated contracts. We count who got contracts, who they were, what 6 digit industry code they were in, race and gender, what services they perform, and were they prime or sub. So the utilization file reflect the city's activity. The contracting disparity study compared utilization to availability. We also want to do that in the report.

King then asked: What is the reason for the Afro American utilization numbers declining from the last study to now? Attorney Colette explained, to be honest, can't say you had an analysis close to what we did in your previous report from Dr. Blanchflower (spelling). I really can't compare them in that, he didn't engage in that type of extensive utilization analysis, he looked at a tiny subset of contracts. I really couldn't tell you why it might have a decline in his previous work, it didn't have this depth of work. I really don't think we could compare the two. King asked if his study calculated all the contracts from Procurement that were left, average from 2013-2014 and that's how he got his. How did you get to yours? Attorney Colette stated study looked at contract records, filled in all the information, looked at prime and subs, all city contracts for the 5 year study period. I can't speak to what Danny did, looked at a tiny hand full of contracts, he didn't fill in contract data or fill in any codes. Can't say what his results might have been had he employed our methodology. King next asked: Did you reweight the data for Afro Americans using the but for? If so, how did you do it? Attorney Colette response was that in the chart/table, race by race, what the expected availability would be. The power point provided to the committee included that table as well. So what you do is take the disparity ratio found in the American Community Survey data. Our Economist Dr. Pitts then used it as a multiplier off of the basis of the actual head count. Let's walk thru, it's pretty simple math, though it seems complicated. You take the basis number, see what the disparity number is then just apply it. We tried to estimate what availability is for. Doesn't account for any and all factors out there in the world. Has limitations to it. There's other variables that could have impacted it up or down. It's an approach the courts have looked at, here in Illinois and in the 7th Circuit Court of Appeals, so we felt very comfortable in employing it. King went on to ask: what was the difference in number that was calculated and what did you reweight for? What was the change? Attorney Holt conveyed that she would have to go back to the report, I don't like to do numbers from memory several months away. We took an actual head count, let me make up a number. King then injected, if you don't know, don't want you to guess. Acting Chairman Moore added that it's in the report, so if there's a difference, you can provide it through the Chair before City Council. King – Restriction on certified firms. Speak to what that is and the change? Attorney Colette responded that there were 2, limit on gross receipts. King injected that she got that one, it's the limitation of location of workforce and further that she thought this means the majority of the company has to be domicile in the 6 county region. Attorney Colette responded that the city has always applied this restriction. After 31 years, don't know why. Was never continued in any other ordinance or across the country. It was a burden placed on minority-owned firms that non-minority firms didn't have to have. Starting in theory we want to place people in equal position and only impose what the courts want us to do. It could potentially be decreasing the ability for minority firms to compete. Again, does not address the residency ordinance or require the firm itself to have residence, it's where your employees are. It's something we burden MBE's, nothing else. We should try to remove any burden from our MBE certified firms as compared to their counterparts. Alderman King conveyed that I do think

there's relevance to have the majority of your workforce from the city or area. She agreed it shouldn't be burdensome for firms of color than it is for majority of firms. We talked about doing something, given perhaps there are some things in Procurement that give consideration incentives for firms that are domiciled here. If not, it is something we should work for. There are all types of economic benefits for someone living in the city, paying taxes, so on and so forth. I appreciate the work you have done. King shared her thoughts that we should increase our numbers, mostly because of the but for clause, because of the discrimination, Afro American firms haven't been able to grow. The numbers show they have decreased, although as you state Blancheflower's (spelling) numbers weren't done as extensively. What I looked at seemed pretty extensive. But think anecdotally they haven't grown. My experience it's not that there's not availability, the majority of firms are going to the suburbs and hire people they know and have consistent relationships with, there is availability there just not considered. I think increasing the numbers, forces consideration. It's something we should look at deeper. That's my experience in my ward, we've done hundreds of millions of dollars' worth of work. So based on that it would be my recommendation. Thanks for letting me speak and entertain the questions I have. Acting Chair Moore then recognized Alderman Rodriguez to speak.

Alderman Rodriguez first expressed gratitude for the presentation and Moore for leadership in chairing the meeting. He then went on to express that the data from the study may not support increasing the floor of the M/WBE goals, which Rodriguez hoped legal minds and colleagues could come to figure out in the future. He conveyed interest in hearing from City, City Staff and others on how to achieve more minority business for more work at the prime level for minorities, as he felt they were only getting crumbs and not the pie. He wanted to hear about the thinking for tough question about the prime level. Moore then concurred, adding he believed that was reason for increasing gross receipts and then alluded to Attorney Holt to add to such inquiry. Attorney Holt conveyed several recommendations were made in the report addressing how to increase MBE/WBE's in accomplishing prime work. She agreed that was important, then acknowledged payment delays, referencing the Mayor's Prompt Payment Task Force to support such need, as many minorities don't want to be prime due to slow payment, reiterating the study's findings that many larger primes have the ability to pay their MBE subs prior to receiving payment from the City, which is burdensome to MBEs as primes. She followed up with a range of resources that range from bundling contracts more, increasing use of small business initiatives, mid-size business initiatives, adopting mentor protégé program that would help firms on how to move from subcontractor to functioning as primes and also City adding a bonding and financing program so firms can increase their bonding capacity, access to cash flow and other technical assistance they need. And other recommendations. Alderman Rodriguez conveyed he was a supporter in that effort, adding that he was aware of the simple fact that the City's payout is problematic for small businesses. He reiterated to count on him as a partner, then asked how we implement, and soon, and wanted to hear Attorney Holt's

suggested next steps. Moore inserted that through this Committee we've had those conversations and the Mayor's Deputy Chief of Staff Candace Moore's office, along with the Mayor's Executive Orders and as a part of this Committee with your leadership we can put processes in place with the Mayor's commitment along with the Council we can get it done. Rodriguez concluded. Alderman Dowell was next recognized.

Alderman Dowell thanked Acting Chairman Moore, greeted and thanked both Holt and Jimenez for their work in this endeavor, agreeing with a previous colleague's assertion we need to take baby steps, but we had to get moving because this program expires at the end of the month. Question for Jimenez: how will Procurement implement new provisions with existing MBE firms, upon re-certification? Jimenez responded that Procurement had already started with the prompt payment program spearheaded by the Comptroller, which was already in process and we're improving the process. And within the last 4-6 months unbundling contracts, working with user departments, have them be more accountable. All contracts are initiated by user departments and when Procurement receives the acquisition the engineer has already made an estimate, so we're trying to get in front by doing more upfront planning and pre-planning, asking that we look at project to determine if we can make smaller, etc. Alderman Dowell interrupted to convey she was not talking about pay, rather the new requirements and standards recommended, and Acting Chairman Moore further inserted clarity of how is Procurement going to being to implement recommendations coming out of the report from Holt and Dowell enlightened further that she meant for existing M/WBE certified firms. CPO Jimenez stated Procurement having been going through policy looking to make changes, conceded it was going to be a huge effort, etc. After Jimenez wrapped her response, Alderman Dowell asked for Attorney Holt's input. She added that the thinking was to try to look at process through firms and see where they found burdens. Summarily, functions of this program needs more resources, e.g., payment, certification, outreach, etc. Surprisingly, currently programming is thinly staffed to execute helping minorities succeed. Alderman Dowell thanked Holt for the response, identified herself as Budget Chair and stated she would be reaching out to Attorney Colette to see what areas to review to ascertain where more opportunities could be achieved for Blacks and browns. Her second question: did recommendations apply also to suppliers? Holt answered yes, adding if they following construct NICS codes, which were developed by the U.S. Census Bureau. She referenced the two ordinances—construction versus non-construction. Enlarging that if under construction the implementations apply, if under non-construction no. Holt conferred whether CPO Jimenez thought her response a fair assessment. To which the CPO responded yes. This concluded Dowell's questioning. And the Acting Chair again called upon Alderman King for follow-up questioning.

Alderman King conveyed piggybacking off of Alderman Dowell, thanked Holt for recommending more staff and asked could Holt speak on recommendation for

a separate department to assist with implementing resources. Attorney Holt clarified that a separate department would help but conveyed that getting enough staff to ease the burden on city staff, speed up processes and do more would suffice, and doesn't necessitate it being structured that way. King then asked was there examples of other cities that had done programming well, specifically best practices we can look at. Holt conveyed that a separate unit, special unit focused and referred to Houston, Denver, Austin, Philly, where separate units addressing programming was common, but reiterated the main issue was getting the recommended work done. King then followed-up regarding NICS code, asking do we need a separate one. Attorney Holt assured the city structure was fine, and would not recommending another breakdown as it would add complexity. Moore then thank King in conclusion. Thanked CPO Monica and DPO Shaunna, and especially Holt in making herself assessable and for the extensive work and making it more understandable of what the Body needed to do to scope the work, as well as thanked the Mayor's Office for being available. Alderman Taylor spoke and stated she had experienced issues with getting through to pose questioning. Acting Chairman Moore opened the floor for her inclusion.

Alderman Taylor requested Attorney Holt to provide numbers of MBE/WBE contracts and businesses over the last five years. Holt stated absolute and acknowledge she would direct Taylor to pages within the report that contain the information requested.

Alderman Ervin's earlier motion to pass Item 2 was motion was observed and Acting Chair Moore adopted the do pass recommendation was so order by the same roll call vote establishing the committee quorum, then conveyed it would be reported out at the next City Council Meeting on Tuesday, September 14th. Item 3 was then recognized for discussion by the Acting Chair.

**3. A proposed ordinance concerning an amendment to Section 2-92 of the Municipal Code of Chicago by adding new Section 2-92-955 regarding veteran-owned small local businesses participation goal pilot program.
(O2021-2782)**

CPO Jimenez was called upon to make statement regarding Ordinance #2021-2782. The previous M/WBE ordinance statement was referenced as being similarly committed to veteran-owned small business participation ordinance in terms of growth and development of diversity, including a 5% incentive for small business, etc. as well as veteran enterprises getting a 2% incentive on veteran-owned certified businesses extending through to July 2023. Acting Chair Moore queried a clarification that Item 3 was an extension of the veteran-owned small business participation ordinance, which was acknowledged as correct. Alderman Austin motioned if there being no further questions, moved for do pass, then acknowledged Alderman Ervin's hand raised signal, which the Acting Chair recognized and Ervin posed questioning.

Alderman Ervin directed inquiry to CPO Jimenez for an update surrounding ordinance for returning citizens, more specifically, a status of where Procurement was on the matter. CPO had no information and no further conversation at the time and deferred providing requested information through the Chair. Alderman Ervin contributed other legislation regarding LGBT and Returning Citizens were without status, while the Veterans ordinance was the only one moving forward, which concluded Ervin and all other such Committee questioning.

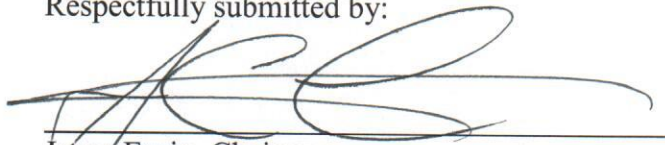
(A video recording of the full meeting with committee members, internal and external experts, as well as any/all public speaking content can be reviewed on the Chicago City Clerk website under Committee Meeting Web Stream Archive dated August 24th. Additionally, a full copy of the Disparity Study and other supporting documents are available on the City of Chicago website under both the Mayor's and Procurement department's links.)

PASS COMMITTEE Friday, September 10th

PASS CITY COUNCIL Tuesday, September 14th

The Committee on Contracting Oversight & Equity having no further business, on Motion made by Alderman Moore, seconded by Alderman Dowell, by same Roll Call that established the Quorum, meeting was adjourned.

Respectfully submitted by:



Jason Ervin, Chairman
Committee on Contracting Oversight and Equity