

PIA requests: City falls short on minority business plan

Frederick actions contradict self-imposed diversity goals

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Max Brand described energy audits — evaluating buildings for sustainability improvements — as his company's "sweet spot."

So when the city of Frederick published a request for proposals for a contractor to perform such an audit of the William R. Talley Recreation Center, Brand was interested.

That the city purchasing policy encourages contracts go to minority-owned businesses was not a factor in Brand's decision to submit a bid, despite the fact that his company, Capital Brand Group, qualifies as a minority business. Brand was born in Argentina and identifies as Hispanic, one of several identified minority groups under the city's Disadvantaged Business Enterprise (DBE) plan.

Brand's Silver Spring-based company was picked from seven bids for the \$6,600 contract, according to data from the city purchasing department. Two of the seven, including Capital Brand, were disadvantaged businesses, and two had DBE participation, meaning the companies were part-owned by minority members or subcontracted with a minority-owned businesses, according to the data.

How many other minority-owned businesses were awarded city contracts in fiscal 2017 remains

(See **BUSINESSES A5**)

Businesses

(Continued from A1)

unclear, as does the dollar figures for those contracts. The lack of data contradicts the city's DBE plan, which states that the city should track and provide annual updates to the mayor and aldermen on the number and dollar amounts of contracts awarded to minority businesses or those with minority business subcontractors.

The plan also tasks the mayor to appoint a review panel with at least one citizen minority representative to help compile the annual reports and review the plan's effectiveness.

The discrepancy between the city's self-imposed plan and its actions was recently revealed after Willie Mahone, president of the Frederick County NAACP, filed a series of Public Information Act requests asking for the data and the reports. He was told it did not exist. Copies of his requests and the city's responses were shared with *The Frederick News-Post*.

THE BLAME GAME

City records indicate these requirements have gone unfulfilled in the 22 years since the plan was approved, according to Katie Barkdoll, the city's director of budgets and purchasing.

Under the city's DBE plan, all bidders for city contracts must be minority-owned businesses or they must subcontract with at least one minority-owned business. A non-minority business can also bid if it shows it was unable to find minority subcontractors after a "good faith effort."

This effort is shown through additional documentation reviewed and vetted by the purchasing department, according to Keisha Brown, city purchasing manager. Asked if she had ever determined proof of effort to be insufficient to meet the plan, Brown could not remember a single such instance.

Alderwoman Donna Kuzemchak denounced the good faith clause as "baloney."

Acknowledging that the mistakes of the past can't be undone, Mahone criticized the current administration for failure to take action since he filed the first PIA request in July.

The new mayor and aldermen indicated in questionnaires from the NAACP conducted prior to the November election that contracting with minority-owned businesses was a priority, Mahone said. But since the new slate of officials took office three months ago, Mahone has seen little, if any, progress on bringing the city into compliance with its own plan.

Crunching the numbers on city minority contracting

In a recent letter to the editor published in *The Frederick News-Post*, Willie Mahone, president of the Frederick County NAACP, cited information from the city purchasing department about the number and percentage of contracts awarded to minority-owned businesses in fiscal 2017.

However, that information, a copy of which was also provided to *The News-Post*, is incomplete, according to Keisha Brown, the city's purchasing department. Several of the contracts listed are missing key information such as the value of the contract, how many bids were submitted and whether or not the contract was awarded to a minority-owned business. Without this data for all 25 listed contracts, it is impossible to determine what percentage of city contracts were awarded to minority-owned businesses.

Brown anticipated the data-collection would be completed and shared with the mayor and Board of Alderman, Mahone, and the public in the coming weeks.

"As of today, it does not exist," he said of the data, the annual reporting and the review panel. "What does that tell you? If this was a priority, they would have something."

Kuzemchak also expressed frustration with the pace of progress.

"Every day we are not following our own policies and procedures ... I see it as a failing," she said.

Kuzemchak called for leeway, though, noting that all parties — elected officials, city employees and advocates such as Mahone — shared a common goal.

Mayor Michael O'Connor defended his administration, expressing his commitment to rectify the problem.

"What I can't do is fix what has already happened, but I can move forward," he said.

O'Connor wanted to have data before appointing the review panel. At the city meeting Thursday, he announced intentions to appoint six people — three within city government and three community representatives — within "the next few weeks."

In the interim, the city purchasing department has begun collecting information on all contracts awarded since fiscal 2013.

The data gathering process is time-consuming and laborious, requiring employees to review every contract and enter relevant information into a spreadsheet, according to Brown. Her department requested funding in the city's upcoming fiscal 2019 budget for software to more easily track and aggregate the information, a request O'Connor said he intends to fund.

As for why the city has never upheld its own requirements for the plan, none of the city officials and employees interviewed for this story could recall the topic ever coming up during their tenure with the city. Mahone, who took the helm of the local NAACP chapter in Octo-

ber 2016, did not know if previous chapter leaders had brought the issue to the city.

PUSHING FOR PROGRESS

Mahone, who worked with then-president of the Board of Aldermen Fran Baker to pass the plan in 1996, said improving the city's contracting policy for minority businesses is a priority for the Frederick NAACP.

"It's a fair thing to do," he said. "We want to be proactive, to look at these systemic type issues and how we can fix them going forward."

He continued, "The purpose of the information-gathering obviously is to assess that information and determine whether or not there needs to be improvements ... with the ultimate goal of having minority participation."

Specifically, Mahone wanted parity. If black residents made up 19.1 percent of the city population, according to the U.S. Census Bureau's 2016 American Community Survey five-year estimates, the same percentage of city contracts should be awarded to black-owned businesses, Mahone said.

"Ideally, we would want everything we do at the city to be reflective of the community as a whole," O'Connor said.

In practice, though, there are constraints. For one, minority-owned businesses have to actually submit bids to get the contracts.

Elements of the city's DBE plan already in place include keeping a list of certified local minority businesses on its website and including the plan requirements in information given to all bidders. Whether the city's efforts to advertise and promote the plan have been enough to attract sufficient interest from those companies is unclear, absent the data.

Fast facts on Frederick's Disadvantaged Business Enterprise plan

The city's Disadvantaged Business Enterprise (DBE) plan, approved in 1996, defines a disadvantaged business as one owned and controlled by "socially and economically disadvantaged individuals" who identify with one or more of the following demographic groups: women, African-Americans, Hispanics, Native Americans, Asian-Pacific Americans and Asian-Indian Americans.

In order to bid on a city contract, a company must either:

- be a disadvantaged business,
- subcontract a portion of the project to a disadvantaged business, or
- Adversely affect a "good faith effort" was made to include disadvantaged businesses if none are included.

The city gives preference to whichever company offers the lowest bid, as long as it meets one of these requirements.

The plan also lists procedures the city must enact to "invite participation and ensure an opportunity to disadvantaged business enterprises." They include:

- Inviting DBEs to seminars about how to do business with the city and distributing brochures with similar information,
- Advertising the city DBE policy for 20 days before publishing a formal bid or proposal request,
- Maintaining a directory of local DBEs and contacting those with notice of bids that fall within the speciality area of those businesses,
- Offering help securing bonding and insurance requirements, and
- Preparing an annual report to be presented to the mayor and Board of Aldermen with results of the plan. These reviews should include data on DBE participation and dollar values of contracts awarded to DBEs. A review panel made up of members appointed by the mayor will help guide the review and help develop the reports. The panel should include at least one citizen minority representative.

Source: city of Frederick Disadvantaged Business Enterprise plan

There are 48 businesses listed in the city's online DBE directory, which is updated based on business' requests to be included. The last new business was added in fiscal 2016, according to Brown.

The Maryland Department of Transportation's Office of Minority Business Enterprise also keeps a database of all state-certified minority and disadvantaged businesses. There were 96 Frederick County businesses, out of 6,371 statewide, listed in the state database.

ADDING 'TEETH'

Even when minority businesses do submit bids to the city, it's not a shoo-in that they secure the contract.

The existing plan states that preference is given to the lowest qualified bidder.

It's harder to include minority participants on smaller projects that don't require subcontractors, as well as certain types of projects, Barkdoll said. For example, the city drew from a limited pool of prospective companies for the employee health and life insurance contracts awarded in fiscal 2017.

Barkdoll framed any changes that would give more weight to minority-owned companies as being out of the purchasing de-

partment's control.

"By the time we get to actual procurement, it's pretty cut and dry," she said. "It's up to our elected officials to set a policy, and how much teeth they want in the plan."

Kuzemchak blasted the city's lowest bidder preference as "bull---" and said she would like to see more weight given to bids from minority businesses. But she hesitated to push for changes before having the available data and the review panel to consult.

Brand also said he thought putting more weight on bids from minority-owned companies would be beneficial. But any policy that helps minority businesses succeed was still important, assuming it's followed, he said.

In fact, knowing those policies existed was a source of encouragement in Brand's decision to start his own firm in 2013, he said.

"When trying to go after a contract, that requirement ... helps companies like me, even in getting subcontracts that give us the experience to go for bigger projects later," Brand said. "We always try to look for opportunities where there's a disadvantaged or small business set-aside."

Staff writer Mallory Panuska contributed to this report.

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