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ACA Newsletter

Disparity Study Finds Business Discrimination in City Contracting

Austin—The final results of the City's two-year Disparity Study were presented to the public on March 10th at City Hall by the chief consultant, Dr. Jon Wainwright (seen in the above photo), revealing the positive impact minority participating goals set by the city in city contracts have on the outcome of the city's M/WBE (minority and women-owned enterprises) procurement program.

When comparing M/WBE utilization in city contracts with goals vs. without goals, the study found the utilization of M/WBE firms dropped significantly from a total of 28.84% to 15.40%.

The utilization of Asian/Pacific Islanders in Construction projects went from 1.72% to 1.40%; from 9.55% to 4.32% in Professional Services; from 3.9% to 2.98% in Non-Professional Services; with the only exception in Commodities going from 0% to 0.26%.

In the 751-page report, the study found statistically significant evidence to support the continuation of the city's M/WBE program, which began in the late 80s to redress disparity in city contracting, with a sunset law which expires each year on December 31st.

NERA Research, the consulting firm also awarded in 2008 for the city's last disparity study, examined a total of 3,934 prime contracts and 9,533 associated subcontracts active during 2008-2013. These contracts and purchases had a total award value of $4.94 billion and a total payment value of $ 4.22billion.

In the City of Austin market place, however, minorities and women are less likely to be business owners due to the discriminatory environment and their earnings are also significantly lower than non-minority male counterparts either an employees or entrepreneurs, the study finds.

"These disparities reflect more than mere 'societal discrimination' because they demonstrate the nexus between discrimination in the job market and reduced entrepreneurial opportunities for minorities and women," stated the report.

In business owner earnings, the study also found substantial disparities showing 19.9% lower for self-employed Asian/Pacific Islanders, 32.8% lower for Native Americans, 41.1% lower for African Americans, 15.7% lower for Hispanics, and 40.8% lower for non-minority women than for non-minority males.

SMBR Division Manager Thomas Owens (far right) and Executive Assistant Angela Hills (second from right) welcome attendees to the meeting

In over 20 focus group sessions, the study team also found the lack of project goals attributed to the rare hiring of minority and women contractors and business discrimination.

Many participants of the 200 M/WBE and non-M/WBE business owners also reported discriminatory attitudes and negative perceptions and expectations of minorities' and women's competence; workplace harassment; not being paid on equal terms,; exclusion from industry and information networks among other unpleasant experiences.

The study is concluded with two sets of recommendations which included clarifying SMBR authority, review sanction policy, adopt annual M/WBE goals, consider the effects of discrimination on current levels of availability when setting M/WBE goals, and standardizing good faith efforts waiver requirements and M/WBE program implementation across City department.

(The public has until April 15th to ask questions/make suggestions. Email to: DisparityStudy@austintexas.gov)

Who is Who at City Hall

Assistant City Manager Rey Arellano began his service with the City of Austin in September 2013. He was initially assigned the Support Service Group Departments that included the Small & Minority Business Resource Department. City Manager Marc Ott subsequently assigned Rey to the Public Safety Service Group in December 2014 where he currently serves today. Prior to coming to the City of Austin, Rey served as a Deputy City Manager for the cities of Tacoma, Washington and San Diego, California. He is a 22-year U.S. Navy Veteran, having served as a nuclear-trained Submarine Officer on various submarines and other staff assignments.

City Service

With over two years working for the City under his belt, Rey enthusiastically declares how much he enjoys the work he is doing and the people he is working with – both within the City organization and in the community. He sees his work having a more tangible impact in the community than when he served in the military. As an Assistant City Manager, Rey describes his role as supporting the City Manager in achieving the City Council's policy goals, participating in significant City initiatives and facilitating the efforts of Public Safety Service departments in achieving their goals. Most days are spent in meetings to accomplish these roles, with a significant amount of time during the week preparing for and participating in Council-related meetings.

How does he do it all? "Well, first you have to have a good way to track tasks; I wouldn't want things to slip through the cracks, especially when I've given my word to do something." says Rey. "It's very important to maintain the big picture and then make sure to set aside time to work on those big initiatives. Too often, we get drawn into what's easy to do or urgent instead of focusing time on what's important or hard to do."

So, what are some of those challenges that are important and hard to do? The City's budget process is one of the City's most important annual efforts. As a member of the City Manager's Executive Team, Rey will be helping the City Manager prepare a budget proposal for City Council consideration on July 27, 2016. Delivering a balanced budget proposal that matches services and programs with projected revenue sources is a very difficult thing to do, especially in light of increased demand for services, limited revenue sources and the concern over affordability.

Rey is also overseeing the Asian American Quality of Life study. Established by City Council resolution, the study's objective is to develop strategies to address the quality of life issues identified by the study, and to make recommendations for enhanced or new programs and practices. The study team will be completing its work this summer.

"I'm very grateful for the opportunity to work for the City of Austin on this initiative and others that can have a positive impact in the community I now call home."

City of Austin Business Lending Programs

City of Austin Micro-Loan Program

Why a Micro-Loan?

• The Micro Loan Program offers a number of advantages over traditional financing:
• **Interest Rates:** Interest rates on MLP loans are below regular market interest rates for a variety of business expansion projects
• **Low Equity Requirement:** MLP only requires a 10% equity injection from the borrower--a common barrier to conventional financing.
• **Working Capital:** Each loan can include up to $35,000 of working capital financing.

Eligible Projects

• Must meet the size standards of the U.S. Small Business Administration.
• Must be located in, and continue to be located in the City of Austin.
• Any business involving any type of gaming operation, gambling, pornography, illicit activities or affiliated with such activities, are prohibited from applying for the program.
• Preference to borrows will be given in the following order:
a. Borrower with at least one year's experience.
b. Borrower with at least six months experience.
c. Start-ups.

City of Austin Family Business Loan Program

WHAT IS THE AUSTIN FAMILY BUSINESS LOAN PROGRAM (FBLP)?

The Family Business Loan Program is a public-private partnership between the City of Austin, HUD, and participating private lenders to offer low-interest loans to qualified small businesses that are expanding and creating jobs.

WHERE DID FBLP COME FROM?

FBLP is a targeted economic initiative launched in May 24, 2012 by the City of Austin Economic Development Department. The Family Business Loan Program's mission is to enable existing local businesses to expand and create jobs, revitalize communities, increase the tax base of the City of Austin, and enhance the overall quality of life for Austin residents.
To accomplish that mission, the Family Business Loan Program has partnered with private lending institutions to leverage a private-public partnership that allows for greater flexibility on the type of eligible business-expansion projects.

WHY BORROW THROUGH FBLP?

The Family Business Loan Program offers advantages over traditional commercial financing:
• Interest Rates: Interest rates on FBLP loans are significantly below regular market interest rates for a variety of business expansion projects
• Low Equity Requirement: FBLP only requires a 10% equity injection from the borrower, eliminating a common barrier to conventional financing

WHO IS ELIGIBLE?

There are a few things you should know about the program before you decide whether it is right for you. Small businesses must meet the following criteria to be considered for the program:
1.In operation for at least two years
2.Financial documentation must show successive profits for the previous two years
3.Tangible net worth of less than $15 million
4. After-tax profits less than $5 million (on average for the last two years)
5. Must be willing to locate project in the Austin Energy Service Area
6. Must commit to create one job for every $35,000 borrowed
Additional Housing and Urban Development (HUD) and Small Business Administration (SBA) guidelines for eligibility and underwriting criteria apply.

WHAT KINDS OF PROJECTS ARE ELIGIBLE?

• Working capital financing (only considered in conjunction with the total project and will not be financed independently)
• Renovation and new construction of commercial and industrial buildings
• Acquisition of commercial and industrial land and buildings
• Refinancing of existing debt to an independent institutional lender (as part of a new project creating new job opportunities)
** Loan funds cannot be used to reimburse costs incurred prior to completion of the HUD Environmental Review with the exception of project planning costs.

HOW TO APPLY?

If you think this is the right program for you or if you would like to get more information, call 512.978.2502 to set an appointment to discuss your project with a Loan Program Advisor. Our advisors will discuss in greater detail how the Family Business Loan Program can help you expand your business.

Can or Should an IRA Own Your Business?

By Barbara Weltman—Article Reprinted from SBA Blog Web Site

The basic idea is for the IRA or a qualified retirement plan to own the business and you own the IRA or qualified retirement plan, so you indirectly continue to own your business. Some do this because the arrangement offers financing for the business (funds within the IRA or other retirement plan buy the business). Some do this because of anticipated tax advantages. All risk having the arrangement challenged by the IRS and, if the IRS challenge is successful, very unfavorable tax consequences for the owner result. So how does this arrangement work, is it a good idea to use it, and what are the pitfalls to avoid?

Financing

Assets held in qualified retirement plan or IRA can be used to fund businesses. Known as ROBS (rollovers as business startups), it works like this: A person leaving a corporate job with a fat 401(k) rolls the account over to his or her self-directed IRA. The person then sets up a regular corporation for a business he or she is starting, and has the IRA buy the shares in the corporation. Alternatively, the new corporation sets up a qualified retirement plan and the person then rolls over funds from the 401(k) to the corporation's retirement plan (usually a 401(k)); the new plan then buys shares in the corporation's stock. In effect, the money from the 401(k) is funneled to the corporation with no tax on the retirement plan funds.

The IRS has said that ROBS are *not* per se problematic, but they can have serious issues (e.g., incorrect valuations of stock) that lead to unfavorable tax results. In 2011, the IRS completed an audit program on ROBS. Interestingly, the biggest finding was not a tax but a financial one: these arrangements often led to the complete loss of the person's retirement savings. "[W]hile some of the ROBS were successful, many of the companies in the sample had gone out of business within the first 3 years of operation, experiencing significant monetary loss, bankruptcy, personal and business liens, or had their corporate status dissolved by the Secretary of State (voluntarily or involuntarily)." The investment of retirement funds in the businesses was wiped out.

So, when many entrepreneurs have difficulty raising capital from traditional sources, such as commercial banks, they may turn to alternative financing arrangements. Despite the potential downside, ROBS continue to be used today. The following are some of the tax issues that arise when you try to use your retirement accounts to help further your business aspirations.

Subsequent financing

What happens when there is already a self-directed IRA holding the stock of the person's company but there is a need for additional financing? That was what happened in a recent case where a person wanted his self-directed IRA to use $50,000 to buy additional shares in his corporation, much of which was already owned by the IRA. He asked his IRA custodian to make the purchase, but the custodian refused to buy the stock directly (even though this was not prohibited). So instead he had the custodian make a wire transfer directly to the corporation and the corporation issued shares to the IRA, although this was more than 60 days after the wire transfer. Was the wire transfer a taxable distribution from the IRA? The IRS said yes (and wanted to also impose a 10% penalty because he was under age 59½), but the Tax Court said no.

Here there was no literal distribution to the taxpayer. He was at most a conduit of the IRA funds. He was merely directing how his IRA should use its funds (i.e., buy shares of his corporation). Being a conduit does not amount to constructive receipt of the funds. The wire transfer was only a way to complete the purchase of the shares for the IRA, so he was not taxed on the funds as he would have been if it was treated as a distribution. His corporation got its additional financing. (continue on page 5)

Can or Should an IRA Own Your Business? (Continued from page 4)

Abusive Roth IRA transactions

More than a decade ago, the IRS identified arrangements designed to avoid the limitations on Roth IRA contributions as an impermissible tax shelter. In these arrangements, there are three parties involved, a taxpayer who owns a preexisting business, a Roth IRA maintained by the taxpayer, and a corporation (called a Roth IRA corporation) of which substantially all of the shares are owned or acquired by the Roth IRA. The business and the Roth IRA corporation enter into various transactions based on undervaluations of assets with the aim of transferring value to the Roth IRA. Examples:

- The Roth IRA corporation acquires property (e.g., accounts receivable) from the business for less than fair market value

Contributions of property, including intangible property, by a person other than the Roth IRA, without receiving stock ownership commensurate with the value of the contributions

In the IRS's view, the substance of the transaction is that the amount of the value
shifted from the business to the Roth IRA Corporation is a payment to the taxpayer, followed by a contribution by the taxpayer to the Roth IRA and a contribution by the Roth IRA to the Roth IRA Corporation. Here is a list of the negative consequences that can result:

- The IRS will deny or reduce the deduction to the business; may require the business, if a C corporation, to recognize gain on the transfer; and may require inclusion of the payment in the income of the taxpayer (for example, as a taxable dividend if the business is a C corporation).
- The IRS can reallocate income among the taxpayer, the business, and the Roth IRA corporation. This would mean that funds in a Roth IRA may be viewed as excess contributions, subject to a 6% excise tax each year until the excess contributions are corrected (e.g., withdrawn, applied toward subsequent Roth IRA contributions).
- The arrangement may result in one or more prohibited transactions subject to a tax penalty.

The arrangement may be considered a "listed transaction", which requires a taxpayer to disclose the arrangement with the IRS on Form 8886. If this disclosure it not made, there are tax penalties.

S corporation within a Roth IRA

Despite this IRS position, some taxpayers continue to try for tax benefits using variations on the Roth IRA scheme. In a recent case, a taxpayer who used an S corporation for his consulting services had the S corporation enter into a subcontracting agreement with a corporation owned mostly by his Roth IRA. Alas for him, the arrangement failed. The consultant owed a 6% excise tax for excess contributions in the Roth IRA. He was also penalized for failing to file Form 5329 to report the excise tax and for failing to pay the excise tax. And he owed a penalty for not disclosing a listed transaction. The lesson: Tax schemes that seem too good to be true usually wind up costing a taxpayer more in penalties than the anticipated tax savings.

Bottom line

Entrepreneurs desperate for financing may seek risky arrangements. The biggest winners in these arrangements are the promoters who convince taxpayers to go along and charge them hefty fees. In some instances, taxpayers who carefully follow tax rules can avoid adverse results, but this requires great care. It's usually much better to use other forms of financing and keep retirement funds free of tax penalties and safe for the future.

About the Author:

Barbara Weltman
Guest Blogger
Barbara Weltman is an attorney, prolific author with such titles as *J.K. Lasser's Small Business Taxes*, *J.K. Lasser's Guide to Self-Employment*, and *Smooth Failing* as well as a trusted professional advocate for small businesses and entrepreneurs. She is also the publisher of Idea of the Day® and monthly e-newsletter Big Ideas for Small Business® and host of Build Your Business Radio. She has been included in the List of 100 Small Business Influencers for three years in a row. Follow her on Twitter: @BarbaraWeltman.

City News Highlights

Unleash your working Capital & Fixed Assets

The **Commercial Real Estate Economic Development Act (CREED)** was permanently reinstated by Congress on December 18, 2015, can be used by small businesses to refinance conventional Commercial Real Estate and Capital Equipment loans. The U.S. Small Business Administration (SBA) estimates it would take 4 to 6 months to provide the final rules of the newest version of the program.

Highlights **The highlights "could be valid again" when SBA makes the final rules available in the late spring or summer of 2016. 1) Finance up to 90% of the current appraised property value,or 2) 100% of the outstanding principal (whichever is lower), plus 504 eligible refinancing costs, 3) 20 year fully amortizing, fixed-rate, below market working capital

2016 Emerging Leaders Executive Training Program

This training is for established business owners and is not for start-ups or people who are thinking about starting a business. The Emerging Leaders Initiative advanced training series is open to small business owners and executives that:

- Have annual revenues of at least $400,000
- Have been in business for at least 3 years
- Have at least one employee, other than self

For more information please visit—https://www.sba.gov/about-sba/sba-initiatives/sba-emerging-leaders-initiative

Austin Animal Center looking for homes for roosters rescued from a cockfighting bust

The City's municipal animal shelter has been caring for 26 roosters that were seized from a cockfighting bust in Travis County on Feb. 14.

All of the roosters are now in good health after being treated by the Animal Services Veterinarians. The Animal Services staff report that the birds are generally docile and friendly around people. The Austin Animal Center has found possible homes for about 10 of the roosters but still needs placement for 16 of them. Several of them will be housed in a public area on Wednesday, March 9 and Thursday, March 10.

If your organization wants to be included in finding homes for the roosters email animal.rescue@austintexas.gov or call (512) 978-0500.

City of Austin Career Expo

The City of Austin will host the CAREER EXPO to help build a stronger and more vibrant community by providing opportunities for employers to fill their openings and for attendees to find gainful employment. Tuesday, March 29, 2016 from 12 p.m. to 5 p.m. Palmer Events Center 900 Barton Springs Road.

No registration for attendees is required and the event is free and open to the public. Last year the Expo brought together 110 employers with more than 4,000 job openings.

Pay-by-phone parking app coming to Austin

Parking in Austin may soon get a lot easier, as the City of Austin is preparing to introduce ParkX, a smartphone application that allows users to pay for parking remotely from their devices.

ATD will initially implement the pay-by-phone service on March 22 in West Campus, bordered by Martin Luther King, Jr. Boulevard, 29th Street, North Lamar Boulevard and Guadalupe Street. ParkX will expand to all City-owned, metered parking spots in April.

Check it out! "Study: Transportation expenses reveal true cost of affordable housing"

"Experts say that poverty is harder to climb out of in car-centric regions like Texas' metro areas. That's largely because car ownership — which includes loan payments, insurance, maintenance and gas — is far more expensive than other modes of transportation like walking or public transit."

Read the full report here: http://transportationblog.dallasnews.com/2016/02/section-8-housing-not-so-affordable-once-transportation-costs-are-counted-study-says.html/

Advocacy Releases February 2016 Edition of The Small Business Advocate

This edition highlights the testimony of Chief Counsel Darryl L. DePriest before the House Small Business Committee, Subcommittee on investigations, Oversight and Regualtions.

The newsletter also covers an OSHA roundtable, the release of The Missing Millennial Entrepreneurs, and an Advocacy visit to Union Kitchen.

https://www.sba.gov/advocacy/small-business-advocate-february-2016