



JACKSONVILLE CITY COUNCIL

**TRUE COMMISSION
DISPARITY STUDY COMMITTEE MEETING MINUTES
April 18, 2012
12:00 p.m.**

**City Council Conference Room B
Suite 425, City Hall
117 W. Duval Street**

Attendance: Committee Members Ernest McDuffie (Chair) and Joe Andrews

Also: Jeff Clements – Council Research Division

The meeting was called to order at 4:02 p.m. by Chairman McDuffie who explained the purpose of the committee and today's meeting. He proposes that the committee recommend to the full TRUE Commission that the commission adopt a resolution taking two actions: 1) ask the City Council to appoint a select committee to conduct hearings, take testimony and gather evidence on the City's minority procurement disparity; and 2) to ask the Mayor to issue an Executive Order mandating that the City and all of its associated agencies (independent authorities, School Board) fully comply with Part 8 of the City's Purchasing Code – Federal Affirmative Action Compliance.

Mr. McDuffie stated that the City has not fulfilled the requirements of federal civil rights law and its own Procurement Code with regard to affirmative action for many years. For years the City has waived the Code's minority and female business goals. After the Florida First Coast Chapter of the National Business League sued the City and won, the City stopped waiving the code but now simply ignores its existence. He believes the City Council needs to be involved in the disparity study process as it was in the early 1990s, taking testimony, gathering documents, and double-checking the disparity study consultant's work. Unlike 1990 when the City hired an Atlanta consulting firm to do the study that had some knowledge of the Florida business climate, this year the City hired a California firm that has no knowledge whatsoever of the City's racial and business history.

Mr. McDuffie stated that the City does nothing to encourage training and apprenticeship programs because it so frequently waives Part 8. Contractors are currently meeting their minority participation figures by hiring day laborers (unskilled sweepers and diggers) from labor pools, which does not provide decent wages and does not train young people for careers in the building trades. If the City doesn't mandate affirmative action it won't happen because of Jacksonville's pervasive history of discrimination. If it's not in the City's contract specifications there is no reason for majority contractors to make any effort at all. He stressed that affirmative action is not synonymous with set-asides. The courts have outlawed set-asides, but that is not what Part 8 is about; it's about legitimate affirmative action efforts and apprenticeship and training to build the skills of minority workers. He believes that Mayor Brown can issue an executive order demanding use of and compliance with Part 8 of the Purchasing Code based on the City's history of racial discrimination in contracting opportunity.

Commissioner Andrews asked to see examples of City contracts that omit the language the Mr. McDuffie says is supposed to be there. He needs to see convincing, tangible evidence that the City is failing to meet

its obligations, not just unfounded claims of discrimination. With regard to the City utilizing local preference to hire companies for City business, he referred to a 1990 letter from then-General Counsel James Harrison to the local manager of the federal Department of Housing and Urban Development which Mr. McDuffie had cited in his remarks as evidence that the City should have used a local company to do the disparity study. Mr. Andrews read a quote from the Code of Federal Regulations which Mr. McDuffie had used as evidence of a federal requirement for the City to use local contractors on federally-funded project, Mr. Andrews noted that the section says that procurements are prohibited from using local preference “except in those cases where applicable Federal Statutes expressly mandate or encourage geographic preference.” He asked to see evidence that federal statutes actually make that mandate applicable to City procurement and questioned Mr. McDuffie’s evidence for his contention that if the City takes any federal funds for any of its operations, then the federal requirement for affirmative action in all City procurement applies.

Several members of the public, including John Speights and Rosa Carter, stated that Jacksonville has a long history of racial discrimination in contracting and failing to use best efforts to promote affirmative action. They are sure the current disparity study, if properly done, will clearly prove that City efforts to remedy the effects of decades of racial discrimination in contracting have been insufficient and that discriminatory practices continue. The group discussed various interpretations of what “affirmative action” might mean.

Mr. McDuffie felt that local contractors would be more comfortable telling their stories and turning over their business documents to a City Council special committee than they would be to a California company. Assistant General Counsel Tim Horkan stated that the current study covers a five year time period because the purpose is to evaluate the effectiveness of the Jacksonville Small and Emerging Business (JSEB) program, not to evaluate the history of City procurement since the last disparity study in the early 1990s. A full-blown disparity study for the time preceding the JSEB program would not be indicative of current discrimination and was not mandated by the Ordinance Code.

Mr. McDuffie explained that the current JSEB evaluation process started last August and is supposed to last 18 months. The California consultant has hired a local subcontractor to interview minority- and women-owned businesses about their experiences with attempting to contract for City projects. Mr. Andrews wondered whether having two evaluation processes going on simultaneously (the mandated JSEB evaluation and a separate City Council special committee) would affect the outcome that either one produces. Mr. McDuffie responded that when the lawsuit was filed by majority contractors in the 1990s challenging the last disparity study, the court called the City’s study “generic” because it didn’t attribute specific allegations to specific minority contractors by name. Written affidavits were then required to identify specific testimony from specific contractors. Minority contractors will be more comfortable giving testimony to a City Council special committee than to a consultant.

Mr. Andrews questioned whether the issue of procurement disparity belongs within the TRUE Commission’s scope of authority. Mr. McDuffie believes it is because it deals with the proper expenditure of \$700,000 for the study, and because of the larger issue of the proper compliance with federal law in the expenditure of over \$390 million in federal funds by the City and its associated entities in the 2009-10 fiscal year. Mr. McDuffie said that he had asked General Counsel Cindy Laquidara for a legal opinion on the applicability of Part 8 of the Procurement Code to the City’s expenditure of federal funds but has not gotten a reply. He relies on the letter of former General Counsel James Harrison cited earlier that quotes from the Code of Federal Regulations. Mr. Andrews repeated his contention that a definitive ruling is needed on whether or not the receipt of any federal funds binds all of the City’s spending of non-federal funds to the application of federal affirmative action standards. Mr. Horkan stated that the City is not willfully ignoring Part 8, but has a different interpretation than Mr. McDuffie of when Part 8 applies and what it requires. He will discuss the matter with Ms. Laquidara.

There being no further business, the meeting was adjourned at 5:42 p.m.

Jeff Clements, Chief
Council Research Division
630-1405

Posted 4.20.12
5:00 p.m.