

SMALL BUSINESS COMMISSION
Wednesday, September 8, 2010, 10:00 a.m.
Senate Room B, General Assembly Building
Richmond, Virginia

Summary

Members Present.

Senator W. Roscoe Reynolds, Senator Frank M. Ruff, Jr., Senator R. Creigh Deeds, Senator George L. Barker, Delegate G. Glenn Oder, Delegate Bill Janis, Delegate John A. Cox, Delegate Algie T. Howell, Jr., Carlos Del Toro, Robert A. Archer, Lana McG Ingram.

Overview.

The Small Business Commission ("Commission") met in Richmond, Virginia, on September 8, 2010. Delegate Oder, one of the Commission's co-chairmen, called the meeting to order. Members of the Commission provided brief introductions. Presentations made to the Commission can be found on the Commission's website at <http://dls.state.va.us/business.htm>.

Presentations.

I. Virginia Department of Minority Business Enterprise.

Ida Outlaw McPherson, Director of the Virginia Department of Minority Business Enterprise (DMBE), provided the Commission with an overview of the mission, objectives, and achievements of DMBE. DMBE promotes the growth and development of small, women-owned, and minority-owned businesses (SWaM) as well as service disabled veteran-owned businesses in the Commonwealth, enhances the participation of these small businesses in Commonwealth procurement opportunities, promotes access to Commonwealth contracting opportunities, and ensures fairness in the procurement process. DMBE certifies qualified businesses and works to pair certified businesses with state contract opportunities.

Notable achievements of DMBE include increasing the total number of certified businesses in Virginia from 4,956 in fiscal year 2006 to 17,346 in fiscal year 2010; establishing regional business connection offices throughout the Commonwealth; increasing contracts awarded to certified businesses by 20 percent annually since 2006; streamlining the certification and application process from a 90-day paper application process to a faster, user-friendly, web-based process that applicants can track online; implementing an electronic document management system to increase operational efficiency; implementing a certification program for service disabled veteran-owned businesses without requiring a budget increase; and reducing the cost of processing each certification from \$650 in fiscal year 2009 to \$187 in fiscal year 2010.

Ms. McPherson presented the issues and concerns of the small businesses served by DMBE which include requests for a more user-friendly way to find state contracts, eliminated or graduated user fees for small businesses accessing the Virginia web-based

purchasing system (eVa) for state contract awards, a centralized small business development center and services, and bonding service assistance. Additional concerns of small businesses include assistance with contract negotiation with prime contractors and partnering agreements, simplified access to capital expansion to meet the needs of a new state contract award, and an integrated reporting system.

In response to questions from Delegate Howell relating to the number of contracts awarded to certified SWaMs, Ms. McPherson recognized that traditional small businesses, which are businesses that are 51 percent owned by companies that have 250 or fewer employees or whose income is \$10 million aggregate over the most recent three-year period, working with DMBE have been awarded more contracts than women-owned, minority-owned, and service disabled veteran-owned businesses. DMBE is actively seeking to increase the number of contracts awarded to certified SWaMs through methods such as reviewing the products or services listed by certified businesses in the DMBE database and partnering smaller businesses with larger ones to meet contract demands.

After noting that increased competition for state contracts reduces costs and increases the value of the final product to taxpayers and leads to greater innovation, Mr. Del Toro queried as to how DMBE approaches individual agencies and convinces agencies that particular requests for proposals (“RFPs”) are appropriate for SWaMs. Ms. McPherson responded that agencies do not resist, but cooperate with DMBE. She noted that agencies need more information about qualified businesses and that DMBE is fostering long-term relationships by assigning staff to serve as specific agency liaisons.

In response to a series of questions from Senator Reynolds, Ms. McPherson explained that DMBE qualified businesses can be service providers and vendors. Small businesses have requested graduated user fees for using eVa to accommodate small contracts. In contrast, agencies have found eVa to be a valuable, centralized tool for businesses and have found user fees for small businesses to be reasonable.

Ms. McPherson answered questions from Senator Barker on the number of small, women-owned, and minority-owned businesses in Virginia as compared to neighboring states, noting that a recent Virginia-commissioned study listed Virginia in the lower tier of 100 organizations for awarding contracts to women-owned and minority-owned businesses. Virginia has a large proportion of small businesses and DMBE is focusing on coordinating contracts for small businesses first, then concentrating on women-owned and minority-owned businesses to reach the 20 percent target set by Executive Order 33. Ms. McPherson reported that part of her role was to identify barriers to qualified businesses, such as whether qualified businesses are not taking advantage of DMBE services or problems with bonding, and to overcome them. Although a business may have multiple category certifications, it would only receive one classification for reporting purposes. Mr. Del Toro noted that Virginia could, as the federal government is considering, write the percentage of small business involvement in contracts into RFPs to guarantee a certain level of participation by small businesses. Finally, Mr. Del Toro requested a report on the number of SWaMs with current contract awards. Ms. McPherson will submit these numbers to the Commission.

II. Virginia Small Business Development Centers Network.

Jody Keenan, Director of the Virginia Small Business Development Centers Network (SBDC), presented the Commission with a report on SBDC programs, services, results, and the upcoming agenda. SBDC is a partnership between the United States Small Business Administration, George Mason University, and 18 education and economic development institutions throughout Virginia. SBDC is a statewide economic development program with 29 offices whose objectives are to (i) deploy job creation initiatives, (ii) assist firms in job creation, job retention, access to capital, marketing, start-up, and survival, and (iii) provide individual, ongoing assistance to small businesses.

In addition to confidential business counseling, SBDC provides clients with small group training seminars, conference and workshop series, and resource referral to government and private resources. From 2003 through 2009, SBDC counseled 26,412 clients, created 12,261 jobs, retained 15,485 jobs, and generated \$20,581,924 in state and \$20,217,281 in federal taxes. Eighty-five percent of current and all new SBDC counselors are credentialed under the certified business analyst program and many hold advanced business degrees. SBDC as a whole is part of a national accreditation process as well.

SBDC has developed strong relationships with local partners, and hopes to have an office within an hour's drive from any Virginia small business. Specialized SBDC programs include partnering with the Virginia Department of Transportation, Veterans Assistance, and the Small Town and Merchant Program as well as developing strategies for an economic downturn and participating in the Entrepreneur Express, a collaborative effort between business assistance groups. SBDC is developing programs for "growth firms" and international trade assistance. SBDC clients experienced sales growth of 3.2 percent in 2008, compared to -0.2 percent for Virginia businesses and job growth of 10.4 percent, compared to -1.4 percent for Virginia businesses. SBDC clients generate \$3.66 in new tax revenues for every \$1 spent on the SBDC program. Total investment in SBDC from 2007 through 2009 equaled \$14 million (including \$6.5 million in federal and \$7.5 million in local funds, but does not include free rent and use of computer systems) which resulted in \$305.6 million output (6,551 jobs, \$122.4 million increase in sales, \$173.5 million in investments, and \$9.7 million in state tax revenues). There are no state funds allocated to SBDC.

Throughout her presentation, Ms. Keenan responded to questions from members of the Commission. Senator Reynolds requested a regional breakdown of the figures relating to job creation and return on investment in SBDC. Ms. Keenan also explained that clients were often referred to SBDC by a banker, a local department of development or chamber of commerce, or another business. Most businesses can receive counseling within a week to 10 days after submitting an application, but SBDC can accelerate the process in an emergency situation. Senator Deeds remarked that 50 percent of clients are women-owned and 20 percent are minority-owned businesses and requested further information on the types of businesses serviced by SBDC and regional investment.

In response to a question from Delegate Janis, Ms. Keenan clarified that SBDC works with clients over multiple years and through different stages of their small business development and that SBDC only reports increased revenue, job growth, and other positive gains for businesses with which SBDC has an established relationship involving five or more hours of counseling per year. Approximately 15 percent of SBDC clients drive job growth and other reported gains.

Mr. Del Toro shared his experience with working with SBDC as a retired naval serviceman starting up his own small business. SBDC provided assistance with developing a business plan. His company has grown from one to a company of 55 in five years, and will probably double in the next year. He has returned to SBDC for assistance in maintaining job growth, tax plans, and sustaining his business. He lauded the services of SBDC as invaluable to small businesses in Virginia. Delegate Cox asked Ms. Keenan to elaborate on ways that SBDC has found funding and developed collaborative partnerships to make up for state funds, which made up 30 percent of SBDC's budget before they were cut completely in 2003. Senator Reynolds expressed support for SBDC's effort to secure state-level funding and encouraged Ms. Reynolds to contact Commission members for support.

III. House Bill 1258: Construction contracts; indemnification provisions.

Delegate Oder introduced Ben Lacy, an attorney with Sands Anderson Marks and Miller, to present arguments in favor of House Bill 1258, <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=101&typ=bil&val=hb1258>, concerning contract provisions limiting the liability of contractors for damages arising from negligence at construction sites. Mr. Lacy described the bill as a subcontractor's small business bill that will assist subcontractors in their work with contractors and owners of construction sites. Delegate Oder gave several examples of how current Virginia law allows contract provisions to indemnify contractors and pass liability on to subcontractors who (i) take actions according to contractor instructions, (ii) are required to carry expensive insurance policies on construction sites, and (iii) bear the burden of liability for damages outside of the scope of their work.

Mr. Lacy introduced David Bright, president and owner of United Masonry, who explained that construction contracts transfer the risk of construction site accidents to the subcontractors. Contractors are not allowed to transfer liability for accidents for which they are solely liable, but few accidents are the sole liability of one party at a construction site. Mr. Bright pointed out that the construction industry is second only to the mining industry for on-the-job accidents resulting in death or maiming and stated that the current law does not create any incentive for contractors to ensure safety at construction job sites. The law puts the onus and the insurance cost on the subcontractors, who do not have control over the safety of the worksite and property.

Delegate Oder next recognized Bill Axselle, an attorney with Williams Mullen, who spoke against House Bill 1258. Mr. Axselle stated that the amendments to the law would change all aspects of construction law and would affect all parties, not just subcontractors. Mr. Axselle pointed out that in the two years the bill has been before the General Assembly, there has been no litigation regarding the current law, which has been in place for 37 years. Implementing this change in the law would interfere in private contract rights and increase construction litigation and costs as all parties involved would attempt to determine liability in court. He argued that changing the laws would not increase workplace safety at construction sites, but that parties are safe because they are required to be safe by OSHA and other applicable laws.

In response to questions from Senator Deeds, Mr. Axselle responded that he believed that the law implemented 37 years ago replaced unlimited freedom of contract and had not researched laws in neighboring states to compare their laws to Virginia's. In

response to Senator Barker's question on how House Bill 1258 would increase litigation, Mr. Axselle underscored that the current law provides certainty as to which party would bear the burden of liability and the proposed changes would remove this certainty.

Delegate Oder ended the conversation by acknowledging that the Associated General Contractors of Virginia, Inc. has proponents and opponents of the suggested change and that they would be the appropriate group to develop a compromise to bring before the General Assembly in the future.

IV. Report of Work Group on House Bill 309 and House Bill 310.

Delegate Oder delivered a report on the Small Business Commission Work Group on House Bill 309, <http://leg1.state.va.us/cgi-bin/legp504.exe?101+sum+HB309>, and House Bill 310, <http://leg1.state.va.us/cgi-bin/legp504.exe?101+sum+HB310>, which convened at 8:30 am on the morning of Wednesday, September 8, 2010 in the fifth floor west conference room of the General Assembly building. House Bill 309 and House Bill 310 were thoroughly discussed, and opposing sides were unable to reach a compromise. The Commission decided not to recommend House Bill 309 and encouraged the Virginia Trial Lawyers Association and the Virginia Association of Defense Attorneys to work out a compromise for House Bill 310 to present to the Commission at a later date.

Public Comment, Adjournment, and Future Meetings.

Following a period allowing for public comment, the Commission adjourned. The Commission plans to meet again prior to the start of the 2011 Session of the General Assembly.