

QBS Considerations

**Local Business Presence including
MBE/WBE Evaluation Criteria**

Objectives

- Local Business Presence
 - Review of state statute regarding Local Presence
 - Review of Professional Services Procurement Act & Texas AG Opinion governing qualifications based selection (QBS)
 - Review of Local Business Presence programs in other entities
- Local Presence – Certified MBE/WBE
 - Review of MBE/WBE Scoring in other entities
 - Review of MBE/WBE Program related to QBS scoring

Texas Government Code

- TX Local Govt Code Chapter 271
 - Allows municipalities in certain instances to consider bidder's principal place of business
 - Local business presence is available for:
 - **Construction** – if local bidder is within 5% of non-local bidder and contract is less than \$100,000 (§ 271.9051)
 - **Non-Professional Services** – if local bidder is within 5% of non-local bidder and contract is less than \$500,000 (§ 271.9051)
 - **Commodities** – if local bidder is within 3% of non-local bidder (§ 271.905)
 - City Council must determine, in writing, that the local bidder offers best combination of contract price and additional economic development opportunities, including:
 - Employment of local/city residents
 - Increased tax revenue to the city

Professional Services

- **§ 252.022 Local Gov't Code (General Bidding Statute)**
 - Does not apply to procurement for personal, professional, or planning services
- **§ 2254.003 Gov't Code (Professional Services Procurement Act)**
 - Governmental entity may not select a provider of professional services...for the services on the basis of competitive bids...., but shall make selection and award:
 1. on the basis of demonstrated competence and qualifications to perform the services; and
 2. for a fair and reasonable price

Statute Describes Process

- In procuring architectural, engineering, or land surveying services, a governmental entity shall:
 - FIRST select the most highly qualified provider of those services ***on the basis of demonstrated competence and qualifications***; and
 - then attempt to negotiate with that provider a contract at a fair and reasonable price.
- If a satisfactory contract cannot be negotiated with the most highly qualified provider, the entity shall:
 - formally end negotiations with that provider;
 - select the next most highly qualified provider; and
 - attempt to negotiate a contract with that provider at a fair and reasonable price.
- The entity shall continue the process until a contract is entered into.

Consequences

§ 2254.005. Void Contract

- A contract entered into or an arrangement made in violation of the Act is void as against public policy.

Texas AG Opinion

- Letter Opinion No. 93-73 (1993)
 - Municipalities are required to select solely based on “demonstrated competence and qualifications”.
 - If satisfactory contract cannot be negotiated with the most highly qualified provider....entity shall select the next most highly qualified provider.
- Summary Finding –
 - According to the Opinion: “Professional Services Procurement Act, article 667-4,... **prohibits** a home-rule city from giving a preference to a local engineering firm in awarding a contract for professional engineering services.”

Source: Attorney General of Texas Cumulative Subject Index AG Opinions (1990-Present)

Local Business Presence Program Comparison

Construction			
Municipality	Contract Limits		
	\$0-under \$50,000	\$50,000 – under \$100,000	\$100,000 and up
City of Austin	SBCP 5% Preference	5% preference Up to 5 pt. awarded on ADMs	Up to 5 pt. awarded on ADMs
City of Dallas	No preference	5% preference	No preference
City of El Paso	5% preference	3% preference	3% preference
City of Ft. Worth	No preference	No preference	No preference
City of Houston	5% preference	5% preference	3% preference
City of San Antonio	No preference	3% preference	No preference

Local Business Presence Program Comparison

Commodities/Goods				
Municipality	Contract Limits			
	\$0-under \$50,000	\$50,000 – under \$100,000	\$100,000 – under \$500,000	\$500,000 and up
City of Austin	3% preference	3% preference	3% preference	3% preference
City of Dallas	No preference	3% preference	3% preference	3% preference
City of El Paso	5% preference	5% preference	3% preference	3% preference
City of Ft. Worth	No preference	5% preference	5% preference	3% preference
City of Houston	5% preference	5% preference	3% preference	3% preference
City of San Antonio	No preference	3% preference	3% preference	3% preference

Local Business Presence Program Comparison

Services				
Municipality	Contract Limits			
	\$0-under \$50,000	\$50,000 – under \$100,000	\$100,000 – under \$500,000	\$500,000 and up
City of Austin	5% preference	5% preference	5% preference	No preference
City of Dallas	No preference	5% preference	5% preference	No preference
City of El Paso	5% preference	5% preference	3% preference	3% preference
City of Ft. Worth	No preference	5% preference	5% preference	No preference
City of Houston	5% preference	5% preference	3% preference	3% preference
City of San Antonio	No preference	3% preference	3% preference	No preference

Local Business Presence Program Comparison

Based on state law, Local Business Presence does not apply to Professional Services contracts:

- **City of Austin**
- **City of Dallas**
- **City of El Paso**
- **City of Ft. Worth**
- **City of Houston**

City of San Antonio

- When procuring services under TX Govt. Code 2254, San Antonio may award up to 20 points based on:
 - “Knowledge of and experience regarding local conditions”

Ordinance 2013-03-21-0167, Sec. 2-547. Purchases of Professional Services

City of Austin

CONSIDERATION ITEM 7

TEAM'S EXPERIENCE WITH AUSTIN ISSUES

10 Points Maximum

City is interested in team's (including subconsultants) experience with Austin issues, as may be evidenced by work in the Austin area during the past five (5) years. Briefly describe experience in the following areas and reference projects relating to that experience:

- City of Austin site development and/or building permit requirements.
- Austin area construction in the public right-of-way.
- Austin area construction costs and practices.
- Austin environmental community, conditions, and constraints.
- Public awareness and involvement in project development in the Austin area.
- Responsiveness due to proximity of projects to local office.
 - Used when considering if proposed staff (Key personnel) will be able to respond to the City within a specified time frame following notification, including holidays and emergencies.

MBE/WBE Scoring Comparison

Municipality	MBE/WBE Component	Austin
City of Dallas	-Respondent's past performance of complying with Minority and Women-Owned Business Enterprise Goals <ul style="list-style-type: none"> Up to 15 pts. 	Item 8 (History)
City of El Paso	No MBE/WBE Program	
City of Ft. Worth	-Statement from each firm agreeing to comply with the requirements of the City's MBE Ordinance and the goal established -Brief history of past participation on similar projects and -Brief outline of firm's proposed approach to using certified firms on the project <ul style="list-style-type: none"> Pts. awarded may vary for each solicitation 	Compliance Plan Item 3B (Approach) Item 8 (History) Item 9 (Interview)
City of Houston	-Demonstrated ability to fulfill M/WBE goals <ul style="list-style-type: none"> Pts. awarded may vary; panels establish scoring system 	Compliance Plan Item 8 (History)
City of San Antonio	-M/WBE Prime Contract Program & M/WBE Joint Venture Program <ul style="list-style-type: none"> Up to 20 pts. Certified MBE/WBE firms receive pts. for submitting as a prime or utilizing certified subs up to 51% of the project 	Our program focuses on participation at all levels – prime and sub

City of Austin

- MBE/WBE compliance – Functions as Gatekeeper – Must comply before even considered
- 6 of 9 Consideration Items in the City's QBS Evaluation Matrix implicate MBE/WBE Utilization
- SMBR Director is part of the executive team who reviews and approves composition of all evaluation panels
- SMBR staff attends all evaluation meetings including interviews, to provide insight and guidance on the City's experience with the firm's compliance with the MBE/WBE Procurement Program

City of Austin

- Consideration Item 1 – MBE/WBE Procurement Program
 - Gate Keeper
- Consideration Item 3A – Team’s Organizational Structure
 - Requests information on how subconsultants will interface with team structure
- Consideration item 3B – Team’s Project Approach
 - Requests information on major subconsultants placement in the overall approach to the project
- Consideration Item 6 – Major Scopes of Work
 - Requests information on the success of the proposed firm (sub or prime) to perform the work
- Consideration Item 8 – COA’s Experience with Prime Firm
 - Consultant Evaluation Process specifically scores compliance with MBE/WBE Procurement Program
- Consideration Item 9 – Interview
 - Specific Question posed to all interviewees regarding MBE/WBE utilization and reporting to COA and SMBR- “Describe your firm’s plans to monitor and assure compliance with the City of Austin’s MBE/WBE goals on this project. Include past experience with sub-consultants, Communication and Management plans, and previous achievements with this program, if applicable.”

City of Austin

- Evaluation criteria provides for up to two (2) points on compliance with MBE/WBE.
 - Design Phase:
 - One point – The consultant utilized the subconsultants identified to perform work during the Preliminary, Design, and/or Bid Award phases.
 - One point – During the Preliminary, Design and Bid Award phases, the consultant complied with the City's MBE/WBE Procurement Program requirements, including but not limited to the requirements associated with post award changes.

City of Austin

- Construction Phase:
 - One point – During the construction phase, the consultant complied with the City's MBE/WBE Procurement Program requirements, including but not limited to the requirements associated with post award changes.
 - One point – The consultant fulfilled the contracted goals or subgoals taking into account all approved substitutions, terminations, and changes to the Consultant's scope of work.

Summary

	City of Austin	City of Dallas	City of El Paso	City of Ft. Worth	City of Houston	City of San Antonio
Local Presence as a part of QBS?	No*	No	No	No	No	Yes
MBE/WBE participation is a scored item?	No	Yes	No	Yes	Yes	Yes

Local Presence – Item 7 – Team’s Experience with Austin Issues

MBE/WBE – Stronger emphasis – woven into the fabric of overall procurement process. Focuses on subcontracting and increases opportunities.

Questions?