



**TO:** Mayor & Council  
**FROM:** Veronica Briseño, Director, Small & Minority Business Resources Department  
**DATE:** December 3, 2018  
**SUBJECT:** Disparity Study Contract and MBE/WBE Program Ordinance Revisions

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At the December 13, 2018 Council meeting, the Small & Minority Business Resources Department (SMBR) will be bringing forward two items for your consideration that will favorably impact the MBE/WBE Procurement Program. The first item is a Code amendment to the MBE/WBE Ordinance, specifically targeted to enhance the certification process. The second item is a contract with Colette Holt & Associates to conduct a new disparity study. Both items were the focus of a November 27, 2018 letter that was sent to Mayor and Council, detailing a list of concerns by the U.S. Hispanic Contractors Association (USHCA).

Provided below is a response from my staff regarding each of these concerns:

1. ***“While we absolutely support an ongoing MBE/WBE Ordinance and Program, the local, small, MBE/WBE community and stakeholders have not been involved in a transparent and inclusive process to develop the proposed scope of work, tasks, and deliverables which includes qualitative, quantitative and anecdotal data requests, in this proposed \$1 million disparity study contract scheduled for your November 29, 2018 Council meeting.”***

SMBR’s response:

The City has conducted several disparity studies in support of the City’s MBE/WBE Procurement Program over the last 25 years. The scope of work for each of these studies is constitutionally mandated, as interpreted by case law, and does not deviate from prescribed best practices and constitutional requirements. It has been reviewed by the City’s Law Department and Purchasing Office and meets all applicable requirements. The qualitative and anecdotal data will be drawn from outreach efforts and interviews with our stakeholders to include local, small, minority and women-owned businesses as part of the disparity study process. Quantitative data will be drawn from the City’s internal contract databases based on expenditures for the study period (2013-2018) and will be analyzed by the consultant.

2. ***“Sadly, since January of 2017, the Austin City Council appointed MBE/WBE Small Business Enterprise Procurement Program Advisory Committee which is supposed to represent the local, small, MBE/WBE stakeholder community has only met six times in the last twenty-three months. In fact, there were no full meetings in 2018 with the exception of a 30-minute quorum***



in March 2018 (see Attachment A for the 2017-2018 meeting schedule of the MBE/WBE Small Business Enterprise Procurement Program Advisory Committee).”

SMBR’s response:

Quorum has been an issue with the current MBE/WBE Small Business Enterprise Procurement Program Advisory Committee. SMBR reached out to the City Clerk’s Office this past May regarding the issue and provided attendance log documentation. The committee has a dedicated core group of five members, however, getting a sixth member to make quorum has been difficult. The March 6, 2018 meeting was the most recent. At that meeting the committee received an update on a 3<sup>rd</sup> party project; voted on the 2018 meeting schedule; received an overview of the MBE/WBE Outreach Plan that was developed in support of the 2016 Corridor Mobility Program; and received a briefing on the Corridor Mobility Program from the Corridor Program Office. The meeting convened at 5:30 p.m. and adjourned at 7:19 p.m.

3. ***“Within the last twenty-four months, the City of Austin has failed to formerly adopt the last Disparity Study report due to ongoing disputes with the last consultant regarding data points, work methodologies, and recommended MBE/WBE goals (which costs the City \$1 million in 2013). In addition, the City has made administrative changes to the MBE/WBE Ordinance and Program without City Council action and/or approval creating a pilot program that now places portions of the Good Faith Efforts notification process on the City’s SMBR Department. This administrative rule change in our ongoing opinion, completely violates the spirit and intent of the original MBE/WBE Ordinance and Program which requires firms who aspire to seek contracting and procurement opportunities with the City of Austin to either meet the aspiration goals and/or independently demonstrate and meet Good Faith Efforts. And finally, it is also our understanding that City staff will be bringing forward additional MBE/WBE Ordinance and Program changes for your consideration at the December 13<sup>th</sup>, 2018 regarding MBE/WBE certification requirements. None of these issues were formally presented to the Council appointed MBE/WBE Small Business Enterprise Procurement Program Advisory Committee for review, consideration, discussion and/or approval. In addition, since the Austin City Council no longer has an Economic Development Council Committee, nor the MBE/WBE Council Subcommittee these concerns for the most part have also been by-passed by the Council. Only most recently has there been MBE/WBE discussions at the Council’s Audit and Finance Committee.”***

SMBR’s response:

Per Resolution No. 20160303-016 (<http://austintexas.gov/edims/document.cfm?id=249890>) City Council adopted the 2015 Disparity Study finding it had a strong basis in evidence to justify continuation of the Program. The Council subsequently received a presentation in executive session in February 2018 regarding the disparity study.

As allowed by City Code, the changes to SMBR’s departmental Administrative Rules do not require approval from Austin City Council or the MBE/WBE Small Business Enterprise Procurement Program Advisory Committee. However, SMBR has continuously communicated with both on proposed changes. As noted above, on March 6, 2018, the MBE/WBE Outreach Plan was presented to the MBE/WBE Small Business Enterprise Procurement Program Advisory Committee. SMBR also presented the plan to MBE/WBE stakeholders last December at an event hosted by SMBR, the Corridor Program Office, Austin Transportation Department and Capital Contracting Office.



The proposed ordinance changes are a direct result of the 2016 Corridor Mobility Program's MBE/WBE Outreach Plan, which was developed in conjunction with HDR Engineering, Inc. and HDR's subconsultant, Haynes-Eaglin-Waters, LLC (HEW). If adopted by Council, the proposed changes will:

- Eliminate annual certification renewal updates;
- Extend the certification period from three years to four years; and
- Incorporate the findings of disparity from the 2015 Disparity Study.

Both the Good Faith Efforts Pilot Program and the proposed ordinance revisions were presented to the committee by Veronica Briseño and Cloteal Davis Haynes from HEW. In addition, Ms. Briseño briefed the Council Audit and Finance Committee on the Disparity Study and ordinance revisions at their October 24, 2018 meeting.

4. ***"With regards to Item#33 requesting approval of a multi-term contract with Colette Holt & Associates for an amount not to exceed \$1 million on your agenda this week, we believe additional backup materials should be made available to the public including a list of the firms that submitted proposals to facilitate the Disparity Study, a copy of the evaluation matrix used to determine staff's recommendation, a response from staff regarding why no MBE/WBE goals and/or subcontracting opportunities were identified for a study intended to address the ongoing passive participation and discriminatory practices of the City in contracting and procurement opportunities for local, small, MBEs and WBEs."***

SMBR's response:

Due to the expertise required to conduct a disparity study, the field of firms capable of conducting a disparity study are limited. Before deciding on the procurement process best suited for the new disparity study, SMBR worked closely with the Purchasing Office and Law Department to review options. Given the tight timeframe as well as the limited number of firms who specialize in conducting disparity studies, the best approach was to select a firm using the professional services exemption allowed by state law rather than seeking a request for proposal from the limited field of firms. Texas Local Government Code Subsection 252.022(4) allows for the selection of a firm for professional services without utilizing a particular procurement method. These exemptions are used for various reasons and has been used by the City in the past to secure firms to conduct its disparity studies. Most recently, SMBR used the professional service exemption to contract directly with the U.S. Hispanic Contractors Association, Austin Area Black Contractors Association, and the Asian Contractors Association to provide outreach services, technical assistance and training. Council took action on these contracts at their September 20<sup>th</sup> meeting.

The scope of work for the disparity study did not lend itself to the establishment of MBE/WBE goals. The previous disparity studies did not include MBE/WBE goals. However, the consultant has identified two areas for potential subcontracting (marketing and outreach).

If you have any additional questions related to either of these two RCA items, or the concerns raised by the USHCA, please contact me at (512) 974-2156. Thank you.



cc: Spencer Cronk, City Manager  
Ray Baray, Chief of Staff, CMO  
Anne Morgan, City Attorney  
Edward Campos, Assistant Director, SMBR

