



Recommendation for Action

File #: 20-1008, **Agenda Item #:** 52.

1/23/2020

Posting Language

Authorize negotiation and execution of a contract with Colette Holt & Associates, to conduct an availability and disparity study of minority-owned and women-owned business enterprises and disadvantaged business enterprises, in an amount not to exceed \$1,000,000.

(Note: This solicitation was reviewed for subcontracting opportunities in accordance with City Code Chapter 2-9C Minority Owned and Women Owned Business Enterprise Procurement Program and subcontractor goals were applied to the solicitation. The subcontracting goals were exceeded and the resulting contract will include 7.00% MBE participation).

Lead Department

Purchasing Office.

Client Department(s)

Small and Minority Business Resources Department.

Fiscal Note

Funding is available in the Fiscal Year 2019-2020 Operating Budget of the Small and Minority Business Resources Department.

Purchasing Language:

The Purchasing Office issued a Request for Qualification Statements (RFQS) 7600 CTE4001 for these services. The solicitation issued on August 19, 2019 and it closed on October 3, 2019. Of the three offers received, the recommended contractor submitted the best evaluated responsive offer. A complete solicitation package, including a log of offers received, is available for viewing on the City's Financial Services website, Austin Finance Online. Link: [Solicitation Documents](https://www.austintexas.gov/financeonline/account_services/solicitation/solicitation_details.cfm?sid=132296)
<https://www.austintexas.gov/financeonline/account_services/solicitation/solicitation_details.cfm?sid=132296>.

For More Information:

Inquiries should be directed to the City Manager's Agenda Office, at 512-974-2991 or AgendaOffice@austintexas.gov <<mailto:AgendaOffice@austintexas.gov>>

NOTE: Respondents to this solicitation, and their representatives, shall continue to direct inquiries to the solicitation's Authorized Contact Person: Cyrenthia Ellis, at 512-974-1709 or Cyrenthia.Ellis@austintexas.gov <<mailto:Cyrenthia.Ellis@austintexas.gov>>.

Council Committee, Boards and Commission Action:

Recommended by the Small Business Enterprise Procurement Program Advisory Committee on a 7-0 vote.

Additional Backup Information:

The contract is for a contractor to conduct a Minority Business Enterprise (MBE), Women Business Enterprise (WBE), and Disadvantaged Business Enterprise (DBE) disparity study consistent with constitutional mandates,

governing law, and MBE/WBE/DBE best practices. The final report shall outline the results of the disparity study and shall include recommendations. The disparity study shall analyze whether disparity exists between the number of available MBE/WBE/DBEs in the City's geographic and product markets and the number being utilized on City contracts.

The City's MBE/WBE/DBE Program is based on a series of disparity studies that were conducted in response to the 1989 U.S. Supreme Court decision, *City of Richmond v. J.A. Croson Co.* The *Croson* decision held that a local government may redress race discrimination in its contracting activities if it can demonstrate through relevant evidence a compelling governmental interest sought to be remedied, and that the measures adopted are narrowly tailored to remedy the discrimination identified by way of the collected evidence.

Even prior to *Croson*, in anticipation of the adoption of the City's first MBE/WBE Ordinance, the Council determined the need for an affirmative action program based on evidence collected in 1987 showing disparities in MBE/WBEs performing work for the City as prime contractors and subcontractors.

In 1992, the City responded to *Croson* by engaging a contractor to conduct a disparity study to measure the availability of MBE/WBEs in the City's marketplace and any disparities in the City's utilization of these businesses. Evidence continued to demonstrate that MBE/WBEs were being underutilized in contracting opportunities on City contracts as a result of private sector discrimination. The Council adopted a revised MBE/WBE Ordinance to reflect these conclusions.

In 2003, the City engaged a contractor to conduct an updated disparity study of the availability and utilization of MBE/WBE firms. The 2003 study indicated that there continued to be an underutilization of MBE/WBEs available to perform the work on City contracts. These efforts produced a revised MBE/WBE Ordinance based upon the new evidence and recent court rulings.

The City retained a contractor again in 2005 to gather and evaluate additional statistical and anecdotal evidence of discrimination. Again, significant barriers to full and fair participation on City contracts remained. In response, the City amended the MBE/WBE Ordinance in 2006. The City engaged a consultant in 2008 to gather and evaluate additional statistical and anecdotal evidence of discrimination. Again, significant barriers to full and fair participation on City contracts remained. In response, the City amended the MBE/WBE Ordinance in 2010.

In 2013, the Council authorized a contract to conduct a disparity study to determine whether a disparity exists between the number of available MBEs/WBEs/DBEs and veteran-owned businesses in the City's geographic and product markets and the number being utilized on City contracts, and to document any evidence of continued discrimination in the marketplace and the necessity of the program. Again, significant barriers to full and fair participation on City contracts remained. The last disparity study was completed in 2015.

The recommended contractor, Colette Holt of Colette Holt & Associates, has provided legal counsel and advice to the City relating to its Program for almost two decades. Ms. Holt is a nationally recognized expert on disparity studies and the development of MBE/WBE/DBE programs. She has been involved with several disparity studies conducted for the City's program and has conducted many studies in support of other MBE/WBE/DBE programs nationwide.

An evaluation team with disparity study expertise evaluated the offers and recommended Colette Holt & Associates as the best offerors to provide the disparity study. The offerors were required to provide: experience of disparity study firm, experience of project lead, experience of principal researcher, proposed methodology, experience with municipal entities, and references.