



## Recommendation for Action

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**File #: 22-3151, Agenda Item #: 34.**

10/27/2022

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### **Posting Language**

Approve a resolution adopting the 2022 disparity study completed by Colette Holt & Associates regarding the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program.

### **Lead Department**

Small and Minority Business Resources.

### **Fiscal Note**

This item has no fiscal impact.

### **Prior Council Action:**

January 23, 2020 - Council authorized a contract with Colette Holt & Associates, to conduct the disparity study. The motion authorizing negotiation and execution of a contract with Colette Holt & Associates was approved on consent on Council Member Cesar's motion, Council Member Ellis' second on a 10-0 vote. Mayor Adler was absent.

### **For More Information:**

Edward Campos, Director, Small and Minority Business Resources Department, (512) 974- 7206.

### **Council Committee, Boards and Commission Action:**

July 12, 2022 - Briefing presented to the MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee.

July 26, 2022 - Briefing presented to the Hispanic/Latino Quality of Life Resource Advisory Commission.

August 2, 2022 - Briefing presented to the African American Resource Advisory Commission.

August 8, 2022 - Briefing presented to the LGBTQ Quality of Life Advisory Commission.

August 9, 2022 - Briefing presented to the Construction Advisory Committee.

August 16, 2022 - Briefing presented to the Asian American Quality of Life Advisory Commission.

September 13, 2022 - The MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee adopted the disparity study on an 6-0 vote. Committee Members Schiller Liao, Terry Mitchell, and Talan Tyminski were absent. Committee Members Daniel Berner and Tina Cannon were not present at the time of the vote.

### **Additional Backup Information:**

The City's Minority-Owned Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) Program (Program) is based on a series of disparity studies that were conducted in response to the 1989 U. S.

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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 if the remedies adopted are narrowly tailored to remedy the discrimination identified by way of the collected evidence.

In 2020, the City Council authorized an agreement with Colette Holt & Associates (CHA) to conduct a disparity study examining the MBE/WBE Program for locally-funded contracts. CHA determined the City's utilization of MBE/WBE firms during fiscal years 2013 through 2018; the availability of these firms as a percentage of all firms in the City's geographic and industry market areas; and any disparities between the City's utilization of MBE/WBE firms and MBE/WBE firm availability for City contacts. CHA further analyzed disparities in the Austin Metropolitan Area and the wider Texas economy, where contracting affirmative action is rarely practiced, to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention is not imposed. In addition, qualitative data about the experiences of MBE/WBE firms in obtaining City contracts and associated subcontracts was gathered and evaluated. Based on the findings, the MBE/WBE Program was evaluated for conformance with constitutional standards, national best practices, whether a disparity exists between the number of available MBE firms, WBE firms, 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 continued necessity of the Program.

The study was presented to Council on June 14, 2022. The disparity study has been available to the public since June 29, 2022, posted on a dedicated webpage which features an email address (DisparityStudy@austintexas.gov) that is being promoted via social media and in communications to stakeholders, in order to encourage individuals to reach out with questions or comments. In addition to the briefings before specified boards and commissions, the department has provided briefings to the Inclusive Procurement Working group (June 17, 2022), the Minority Trade Associations (August 9, 2022), and various stakeholder organizations. The department also held two virtual public briefings (July 20, 2022), which are featured on the City's YouTube channel.

After approval of the resolution accepting the disparity study, staff will continue its work with the Inclusive Procurement Working Group and the MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee to consider revisions to the MBE/WBE Program ordinances and program rules and develop comprehensive support services to enhance participation of MBE/WBE firms and to reflect the conclusions and recommendations of the consultant. Staff will provide a comprehensive report to Council regarding the recommendations from the disparity study and the Inclusive Procurement Working Group. Staff will come back to the Council later to adopt a new MBE/WBE Program Ordinance.

**Strategic Outcome(s):**

Economic Opportunity and Affordability; Government that Works for All.