

RESOLUTION NO. 20221027-034

WHEREAS, since 1987, the City has operated a Minority-Owned and Women-Owned Business Enterprise (MBE/WBE) Procurement Program (MBE/WBE Program) to provide minorities and women equal opportunities to participate in all aspects of City contracting, including, but not limited to, construction, professional services, non-professional services, and commodities consistent with federal, state, and local laws; and,

WHEREAS, consistent with the legal standards established by the U.S. Supreme Court in the case of *City of Richmond v. J. A. Croson*, the City has periodically updated the factual predicate for its MBE/WBE Program, and by way of its most recent disparity study completed by Colette Holt & Associates (CHA) in 2022 (Disparity Study), has once again established a strong basis in evidence to support consideration of narrowly tailored race and gender-conscious remedies for the ongoing effects of marketplace discrimination on contract participation of MBE/WBE firms on City contracts; and,

WHEREAS, CHA examined the MBE/WBE Program for locally-funded contracts and 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 by funding source, and any disparities between the City's utilization of MBE/WBE firms and MBE/WBE firm availability for City contracts; and,

WHEREAS, 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, and gathered

and evaluated qualitative data about the experiences of MBE/WBE firms in obtaining City contracts and associated subcontracts; and,

WHEREAS, Disparity Study results reveal the City's MBE/WBE Program has proven successful, with a weighted availability of MBE firms – 8.0% and WBE firms – 6.5% and a disparity ratio showing the following utilization: 118.0% - Blacks, 122.1% - Hispanics, 142.5% - Asian, 119.5% - MBE firms, and 104.4% - White Women, with a significant disparity for Native Americans of 20.0%; and,

WHEREAS, despite the City's success, disparities still exist in the marketplace, with qualitative evidence identifying key issues such as systemic racial exclusion, discriminatory attitudes, negative perceptions of competence, gender bias, hostile work environments, exclusion from industry networks, access to contract opportunities, financial barriers to contract opportunities, and barriers to equal contract terms; and

WHEREAS, the Disparity Study recommends the City further pursue race-neutral measures as opposed to race-conscious measures, develop an annual procurement forecast, centralize the Program's data collection and reporting of the B2Gnow system, enhance strategies on professional services contracting processes, use the Disparity Study availability data to assist in setting MBE/WBE contract goals, implement a comprehensive supportive services program, and adopt a mentor-protégé program; and

WHEREAS, the Disparity Study was provided to Council and the public, and briefings of the study and its findings were provided to the MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee, Hispanic/Latino Quality of Life Resource Advisory Commission, African American Resource Advisory Commission, LGBTQ Quality of Life Advisory

Commission, Construction Advisory Committee, Asian American Quality of Life Advisory Commission, Inclusive Procurement Working Group, Minority Trade Associations, and Council, for review and consideration, and public input regarding soundness of methodology, accuracy of data, and reasonableness of factual findings and recommendations: and

WHEREAS, in accordance with Resolution No. 20200326-053, the City Manager worked with the Inclusive Procurement Working Group for its review and assessment of programmatic and administrative issues related to the existing MBE/WBE Program ordinances, so that it may recommend ways that the City could improve the function of the program to better meet the needs of the community while remaining within the bounds of the City's legal authority; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

After full consideration of the Disparity Study's detailed findings and recommendations, the City Council hereby accepts the 2022 Disparity Study's findings as providing a strong basis in evidence that establishes a compelling interest for action by the City to remedy the ongoing effects of marketplace discrimination adversely affecting the participation of ready, willing, and able MBE/WBE firms, and that establishes a rational basis for action by the City to enhance contracting opportunities for ready, willing, and able MBE/WBE firms in City contracts;

BE IT FURTHER RESOLVED:

The City Manager is directed to review and assess the final recommendations from the Inclusive Procurement Working Group to assess fiscal and procedural impact of implementing its recommendations, seek additional input

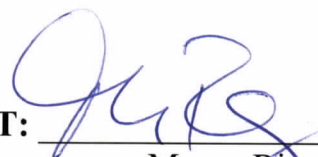
from City staff and the City's outside counsel regarding appropriate legally-defensible policy options that are narrowly tailored to address the effects of identified marketplace discrimination, including, but not limited to, the proposed policy and administrative recommendations outlined in the Disparity Study, and based upon such feedback, to draft ordinances for City Council's consideration that appropriately amend the MBE/WBE Program to incorporate such policy options and to enhance opportunities for small MBE/WBE firms in City contracts in a manner that is legally defensible, effective, and feasible.

BE IT FURTHER RESOLVED:

The City Manager is directed to seek additional input from the Inclusive Procurement Working Group regarding the proposed recommendations outlined in the Disparity Study, and based upon such feedback, develop recommendations for policy options to enhance participation opportunities for MBE/WBE firms in City contracts in a manner that is legally defensible, effective, and feasible.

ADOPTED: October 27, 2022

ATTEST:



Myrna Rios
City Clerk