

## A G E N D A



## Recommendation for Council Action (Purchasing)

Austin City Council	Item ID:	24770	Agenda Number	37.
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Meeting Date:	June 20, 2013
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Department:	Purchasing
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## Subject

Authorize award, negotiation, and execution of a professional services contract with NATIONAL ECONOMIC RESEARCH ASSOCIATES, INC (NERA), or one of the other qualified responders to RFQS No. SMW0051, to conduct an availability and disparity study of minority owned and women owned business enterprise, disadvantaged business enterprise, and veteran owned businesses in an estimated amount not to exceed \$1,000,000.

## Amount and Source of Funding

Funding is available in the Fiscal Year 2012-2013 Operating Budget of the Small and Minority Business Resource Department.

## Fiscal Note

There is no unanticipated fiscal impact. A fiscal note is not required.

Purchasing Language:	Best qualified response.
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Prior Council Action:	
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For More Information:	Shawn Willett, Business Process Consultant Sr, 974-2554
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Boards and Commission Action:	
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Related Items:	
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MBE / WBE:	This contract will be awarded in compliance with City Code Chapter 2-9C (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation. However, NERA will subcontract with Bryan Cave LLP, D'Moriea Consulting Agency, CR Dynamics & Associates, Inc., J&D Data Services, and Business Resource Consultants (MBE).
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### Additional Backup Information

This contract will establish an agreement for a consultant 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. In addition, veteran owned businesses will be included in this disparity study analysis for further review by the City. The Consultant's final report shall outline the results of the disparity study and clearly and concisely offer the Consultant's recommendations consistent with the results of the disparity study and governing law.

The City's MBE /WBE 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 remedies 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 City 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 consultant 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 City Council adopted a revised MBE /WBE Ordinance to reflect these conclusions.

In 2003, the City engaged a consultant 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 consultant 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 last disparity study was completed by consultants in 2008. The current MBE /WBE Ordinance reflects the findings of this study, which identified disparities between the number of available MBE /WBEs and the number actually utilized on City contracts.

The Disparity Study shall analyze whether a disparity exists between the number of available MBE /WBE /DBE and veteran owned businesses' in the City's geographic and product markets and the number being utilized on City contracts.

A City of Austin team with expertise in this area evaluated the responses and unanimously chose this submittal as the best to provide these services. Evaluation criteria included project approach, demonstrated experience, personnel qualifications, business organization, schedule for completion, and presentations.

This request allows for the development of a contract with a qualified responder that Council selects. If the City is unsuccessful in negotiating a satisfactory agreement with the selected responder, negotiations will cease with that provider. Staff will return to Council so that Council may select another qualified responder and authorize contract negotiations with this provider.

**MBE/WBE solicited: 43/22**

**MBE/WBE bid: 0/0**

**PRICE ANALYSIS**

- a. Adequate competition.
- b. Four hundred and thirty-nine notices were sent including forty-three MBEs and twenty-two WBEs. Five responses were received, with no response from the MBE/WBEs.

**APPROVAL JUSTIFICATION**

- a. Most qualified response received.
- b. The Purchasing Office concurs with the Small and Minority Business Resource Department's recommended award.
- c. Advertised in the Austin American-Statesman and on the Internet.