



Financial and Administrative Service Department
Purchasing Office
PO Box 1088, Austin, Texas, 78767

July 31, 2013

National Economic Research Associates Inc. (NERA)
Jon Wainwright
3801 South Capital of Texas Highway, Suite 330
Austin, TX, 78704

Dear Mr. Wainwright:

The Austin City Council approved the execution of a contract with your company to conduct an availability and disparity study of minority & women owned, disadvantaged, and veteran owned businesses in accordance with the referenced solicitation.

Responsible Department:	Small & Minority Business Resource Dept.
Department Contact Person:	Debra Dibble
Department Contact Email Address:	Debra.Dibble@AustinTexas.gov
Department Contact Telephone:	(512) 974-1656
Project Name:	Availability and disparity study of minority & women owned, disadvantaged, and veteran owned businesses
Contractor Name:	National Economic Research Associates Inc. (NERA)
Contract Number:	MA-7600-NA130000145
Contract Period:	July 31, 2013 through January 30, 2015
Dollar Amount:	Not-to-exceed \$998,279.96 for the initial contract term and no additional funding for the extension option
Extension Options:	One 6-month options
Requisition Number:	RQS-7600-12121200207
Solicitation Number:	RFQS SMW0051
Agenda Item Number:	37
Council Approval Date:	June 20, 2013

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact me at (512) 974-2554.

Sincerely,

Shawn M. Willett

Shawn M. Willett
Senior Business Process Consultant
Purchasing Office
Finance and Administrative Services Department

MA-7600-NA130000145
Contract Between the City of Austin ("City")
and
National Economic Research Associates, Inc. ("Contractor")
for
Minority and Women Owned and Disadvantaged Business Enterprise Disparity Study

The Contractor proposes an offer and the City accepts the Contractor's Offer (as referenced in Section 1.1.3 below) for the services described herein and enters into the following Contract.

This Contract is between Contractor having offices at 3801 South Capital of Texas Highway, Suite 330, Austin, TX 78704 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number SMW0051.

- 1.1 **This Contract is composed of the following documents and is incorporated by reference for all purposes:**
 - 1.1.1 This Contract, and its exhibits,
 - 1.1.2 The City's Solicitation, Request for Qualification Statement (RFQS), SMW0051 including all documents incorporated by reference, and
 - 1.1.3 Contractor's Offer, dated February 25, 2013, excluding Tab XI (Suggested Exceptions), including subsequent clarifications.
- 1.2 **Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
 - 1.2.1 This Contract, and its exhibits,
 - 1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference, and
 - 1.2.3 The Contractor's Offer as referenced in Section 1.1.3, excluding Tab XI (Suggested Exceptions), including subsequent clarifications.
- 1.3 **Services.** The Contractor shall conduct the Disparity Study pursuant to Contractor's Offer and subject to the terms and conditions of this Contract. Contractor is fully responsible for its subconsultants' performance, actions and obligations under this Contract.
- 1.4 **Compensation.** Unless otherwise amended by the parties in writing or reduced in accordance with Section 1.6.2.4 below, the Contractor shall be paid a total amount not-to-exceed \$998,279.96, including all labor, expenses and reimbursables, detailed on the budget attached as Exhibit A. The compensation set forth in Exhibit A, is an estimate of the labor and expenses to be required in the performance of the various tasks provided for under this Contract. Should the actual costs of the services rendered under this Contract be less than such estimated cost, the Contractor shall only receive compensation for those services actually rendered. In the event the labor costs and expenses of the Contractor and its subcontractors exceeds the total not-to-exceed compensation to be paid under this Contract, then the Contractor assumes the financial risk and Contractor is obligated to continue working and complete the work at no additional cost to the City until the Contractor satisfies all its obligations under this Contract.
- 1.5 **Term of Contract.** The Contract shall be in effect for a term of eighteen (18) months and may be extended thereafter for up to one (1) additional six (6) month period, subject to the approval of the Contractor and the City Purchasing Officer or his designee. Time is of the essence.

1.5.1 Upon expiration of the initial term, the Contractor agrees to hold over at no additional cost to the City under the terms and conditions of this Contract for such period of time as is reasonably necessary to complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

1.6 Clarifications and Additional Agreements.

1.6.1 **Reimbursable Expenses.** Expenses are incorporated into the Contract and will only be paid within the total not-to-exceed compensation amount referenced in Section 1.4 above and described on the attached Exhibit A.

1.6.1.1 **Administrative.** Notwithstanding Section 12 D of document 0300 (City's standard terms and conditions) prohibiting mark ups of actual costs, the Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract as described on the attached Exhibit A and supported by any applicable invoices.

1.6.1.2 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid except as may be provided for in Exhibit A subject to the not-to-exceed compensation amount in Section 1.4 above. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

1.6.2 Interlocal Purchasing Agreements.

1.6.2.1 The City has entered into Interlocal Purchasing Agreements with other governmental entities pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible agencies that have an interlocal agreement with the City.

1.6.2.2 The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

1.6.2.3 Contractor shall advise the City in writing of any additional contracts it executes with governmental entities located within the Austin geographical area. Contractor shall prioritize the City of Austin's work.

1.6.2.4 Contractor shall advise the City of the amount and description of duplicative work performed for the City and other governmental entities and provide the City a discount to the Contract price proportionate to the amount of duplicative work subject to the number of entities contracted with and performance under such agreements.

1.6.3 **Indemnification.** The City's indemnity clause in the Solicitation is modified to read as follows:

1.6.3.1 Definitions:

"Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees

for damage to or loss of property, including tangible property of the City, including its officers, agents, and employees acting in their official capacity.

1.6.3.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

1.6.3.3 NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING LOSS OF PROFITS.

1.6.3.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, EXCEPT FOR ANY CLAIM FOR PERSONAL INJURY OR DEATH ARISING OUT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CONTRACTOR OR ITS AGENTS, OFFICERS, EMPLOYEES AND SUBCONTRACTORS, CONTRACTOR'S LIABILITY (WHETHER BASED ON ANY ACTION OR CLAIM IN CONTRACT, TORT, OR OTHERWISE) TO CITY ARISING OUT OF OR RELATING TO SERVICES PROVIDED BY CONTRACTOR WILL NOT EXCEED THREE (3) TIMES THE TOTAL COMPENSATION AMOUNT LISTED IN SECTION 1.4.

1.6.4 Insurance. Contractor shall provide certificates of insurance along with the associated endorsements as set forth in the RFQS.

1.6.5 Ownership of Materials. Without limiting the City's ownership of the deliverables set forth in Section 38 of the City's Standard Purchase Terms and Conditions section 0300, Contractor shall retain all of its rights in its methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, models, tools, techniques, skills, generic industry information, knowledge and experience (and any graphic representations of any of these) whether now possessed or hereafter acquired by Contractor; however, Contractor grants to the City a license to use such deliverables as needed in the operation of City functions.

1.6.6 Confidentiality/Maintenance of Information. Section 37 of the City's Standard Purchase Terms and Conditions section 0300 shall be modified to add the following language:

1.6.6.1 Collection of Information. Contractor acknowledges and understands it and its subcontractors are collecting potentially sensitive information from the public. Contractor, at its own expense, has a duty to and shall protect any information and data which they come to possess or control under this Contract, and data may only be released in accordance with subsection 1.6.6.2 below. Information collected shall be maintained and managed solely by the Contractor to comply with the terms of this Contract and for the provision of the services described herein. Contractor shall implement and maintain a comprehensive data security program for the protection of information.

1.6.6.2 Release of Information. Contractor shall maintain the integrity of the information collected and analysis of same to ensure the final disparity study is defensible against potential formal or informal challenges. Contractor shall sign and cause all persons providing services on this Contract to sign and execute prior to commencement of any work, a Confidentiality and Non-Disclosure Contract in the form shown on the attached Exhibit B. Contractor shall not release or otherwise share raw or manipulated data and information with third parties, including release to its subcontractors (except for its legal counsel protected by attorney client privilege or attorney work product), unless approved by the City in advance. Contractor shall notify the City as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any information which Contractor possesses or controls has been released without City authorization.

1.6.6.3 During the Term of this Contract and for one year after final payment by the City, Contractor agrees to take no action which is intended, or would reasonably be expected, to harm

the City's, its employees' or officers' reputation or which would reasonably be expected to lead to unwanted or unfavorable publicity to the City in regard to this Contract, except nothing shall prohibit the Contractor from making any truthful statement in connection with any legal proceeding or investigation by the Contractor or any governmental authority.

1.6.6.4 Contractor shall incorporate the requirements of this Section 1.6.6 in all agreements it enters into with each subcontractor or subconsultant, and shall enforce this section to the greatest extent possible.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

National Economic Research Associates, Inc.

City of Austin

Jon Wainwright
Signature

Shawn M Willett
Signature

Jon Wainwright
Printed Name of Authorized Person

Shawn M. Willett
Printed Name of Authorized Person

Senior Vice President
Title

Business Process Consultant Sr.
Title

7/29/2013
Date

7/31/2013
Date

Exhibit A – Budget

Exhibit B - Confidentiality and Non-Disclosure Agreement

Exhibit A
Not-to-Exceed Budget

1.0. Project Initiation Conference/Initial Data Review

LABOR					
FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	6.00	450.00	2,700.00
EXPENSES					
TYPE	SUBTYPE		UNITS	UNIT PRICE	SUBTOTAL
TASK 1.0 SUBTOTAL	LABOR				\$ 2,700.00
TASK 1.0 SUBTOTAL	EXPENSES				\$ -
TASK 1.0 TOTAL					\$ 2,700.00

2.0. Establish Disparity Study Task Force

LABOR					
FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	2.00	450.00	900.00
EXPENSES					
TYPE	SUBTYPE		UNITS	UNIT PRICE	SUBTOTAL
TASK 2.0 SUBTOTAL	LABOR				\$ 900.00
TASK 2.0 SUBTOTAL	EXPENSES				\$ -

TASK 2.0 TOTAL

\$ 900.00

3.0. Execute Client-Maintained Data Collection Plan**LABOR**

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	64.00	450.00	28,800.00
NERA	CHRISTIE KIRKENDALL	JUNIOR	12.00	130.00	1,560.00
SUB-BRC	CAROL HADNOT	OFFICER	2.00	150.00	300.00
SUB-DMC	SUNDRA DAVIS	OFFICER	2.00	150.00	300.00
SUB-BRC	PAUL SALDANA	OFFICER	2.00	150.00	300.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
TASK 3.0 SUBTOTAL	LABOR			\$ 31,260.00
TASK 3.0 SUBTOTAL	EXPENSES			\$ -

TASK 3.0 TOTAL

\$ 31,260.00

4.0. Assemble Master M/W/DBE Directory**LABOR**

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	17.50	450.00	7,875.00
NERA	CHRISTIE KIRKENDALL	JUNIOR	35.00	130.00	4,550.00
NERA	MATTHEW DAVIS	JUNIOR	104.00	110.00	11,439.91
NERA	NERAAUS RESEARCH STAFF	JUNIOR	104.00	90.00	9,359.93
NERA	NERAAUS RESEARCH STAFF	JUNIOR	104.00	90.00	9,359.93
NERA	NERAAUS RESEARCH STAFF	JUNIOR	104.00	90.00	9,359.93
SUB-BRYANCAGE	DON O'BANNON	OFFICER	1.00	350.00	350.00
SUB-BRC	CAROL HADNOT	OFFICER	2.00	150.00	300.00
SUB-DMC	SUNDRA DAVIS	OFFICER	2.00	150.00	300.00
SUB-BRC	PAUL SALDANA	OFFICER	2.00	150.00	300.00
SUB-BRC	JUAN OYERVIDES	OFFICER	2.00	75.00	150.00
SUB-BRC	ALETTA BANKS	OFFICER	2.00	75.00	150.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
DATA-NERA	MWBE DIRECTORIES	1.00	1,500.00	1,500.00
TASK 4.0 SUBTOTAL	LABOR			\$ 53,494.70
TASK 4.0 SUBTOTAL	EXPENSES			\$ 1,500.00

TASK 4.0 TOTAL

\$ 54,994.70

5.0. Legal Review**LABOR**

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	4.00	450.00	1,800.00
SUB-BRYANCAGE	DON O'BANNON	OFFICER	24.00	350.00	8,400.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
TASK 5.0 SUBTOTAL	LABOR			\$ 10,200.00
TASK 5.0 SUBTOTAL	EXPENSES			\$ -

TASK 5.0 TOTAL

\$ 10,200.00

6.0. Prepare Master Contract/Subcontract Database**LABOR**

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	160.00	450.00	72,000.00
NERA	JOHANNA BALLON	JUNIOR	12.00	170.00	2,040.00
NERA	CHRISTIE KIRKENDALL	JUNIOR	184.00	130.00	23,920.00
NERA	KIRSTEN DESKINS	JUNIOR	384.00	110.00	42,240.00
NERA	MATTHEW DAVIS	JUNIOR	560.00	110.00	61,600.00
NERA	NERAAUS RESEARCH STAFF	JUNIOR	560.00	90.00	50,400.00
NERA	NERAAUS RESEARCH STAFF	JUNIOR	560.00	90.00	50,400.00
NERA	NERAAUS RESEARCH STAFF	JUNIOR	560.00	90.00	50,400.00

EXPENSES

TYPE	SUBTYPE		UNITS	UNIT PRICE	SUBTOTAL
DATA-JDDS	SUBCONTRACT DATA COLLECTION	JDDS	800.00	11.00	8,800.00
SHIPPING-NERA	TO/FROM CLIENT	FEDEX	16.00	12.00	192.00
SHIPPING-NERA	INTERNAL	FEDEX	16.00	12.00	192.00

TASK 6.0 SUBTOTAL

LABOR

\$ 353,000.00

TASK 6.0 SUBTOTAL

EXPENSES

\$ 9,184.00

TASK 6.0 TOTAL

\$ 362,184.00

7.0. Define Geographic & Product Markets

LABOR

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	16.00	450.00	7,200.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
TASK 7.0 SUBTOTAL	LABOR			\$ 7,200.00
TASK 7.0 SUBTOTAL	EXPENSES			\$ -

TASK 7.0 TOTAL \$ 7,200.00

8.0. Review Race- and Gender-Neutral Alternatives

LABOR

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	12.00	450.00	5,400.00
SUB-BRYANCAVE	DON O'BANNON	OFFICER	24.00	350.00	8,400.00
SUB-DMC	SUNDRA DAVIS	OFFICER	16.00	150.00	2,400.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
TASK 8.0 SUBTOTAL	LABOR			\$ 16,200.00
TASK 8.0 SUBTOTAL	EXPENSES			\$ -

TASK 8.0 TOTAL \$ 16,200.00

9.0. Economy-Wide Disparity Analysis: SBO data

LABOR

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	16.00	450.00	7,200.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
TASK 9.0 SUBTOTAL	LABOR			\$ 7,200.00
TASK 9.0 SUBTOTAL	EXPENSES			\$ -

TASK 9.0 TOTAL \$ 7,200.00

10.0. Economy-Wide Disparity Analysis: ACS PUMS data

LABOR

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	36.00	450.00	16,200.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
TASK 10.0 SUBTOTAL	LABOR			\$ 16,200.00
TASK 10.0 SUBTOTAL	EXPENSES			\$ -

TASK 10.0 TOTAL \$ 16,200.00

11.0. Economy-Wide Disparity Analysis: Capital Markets

LABOR

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	24.00	450.00	10,800.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
TASK 11.0 SUBTOTAL	LABOR			\$ 10,800.00
TASK 11.0 SUBTOTAL	EXPENSES			\$ -

TASK 11.0 TOTAL \$ 10,800.00

12.0. Merge Master M/W/DBE Directory and Baseline Universe of Firms

LABOR

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	24.00	450.00	10,800.00
NERA	JOHN BRODOFF	JUNIOR	12.00	180.00	2,160.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
DATA-NERA	DUN & BRADSTREET/HOOVERS	1.00	29,000.00	29,000.00
TASK 12.0 SUBTOTAL	LABOR			\$ 12,960.00
TASK 12.0 SUBTOTAL	EXPENSES			\$ 29,000.00

TASK 12.0 TOTAL \$ 41,960.00

13.0. Business Experience Mail Surveys

LABOR

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	4.00	450.00	1,800.00
NERA	JOHANNA BALLON	JUNIOR	16.00	170.00	2,720.00
NERA	CHRISTIE KIRKENDALL	JUNIOR	17.00	130.00	2,210.00
NERA	KIRSTEN DESKINS	JUNIOR	17.00	110.00	1,870.00
NERA	MATTHEW DAVIS	JUNIOR	17.00	110.00	1,870.00
SUB-BRC	CAROL HADNOT	OFFICER	120.00	150.00	18,000.00
SUB-BRC	PAUL SALDANA	OFFICER	45.00	150.00	6,750.00
SUB-BRC	JUAN OYERVIDES	OFFICER	39.00	75.00	2,925.00
SUB-BRC	ALETTA BANKS	OFFICER	39.00	75.00	2,925.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
DATA-JDDS	BIZ EXPERIENCE MAIL SURVEYS	12500.00	2.25	28,125.00
DATA-CRDYNAMICS	BIZ EXPERIENCE NONRESP SURVEYS	2500.00	2.75	6,875.00
SHIPPING-NERA	TO/FROM CLIENT	2.00	12.00	24.00
SHIPPING-NERA	INTERNAL	10.00	12.00	120.00
TASK 13.0 SUBTOTAL	LABOR			\$ 41,070.00
TASK 13.0 SUBTOTAL	EXPENSES			\$ 35,144.00

TASK 13.0 TOTAL \$ 76,214.00

14.0. Business Owner Interviews

LABOR

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	4.00	450.00	1,800.00
NERA	CHRISTIE KIRKENDALL	JUNIOR	40.00	130.00	5,200.00
SUB-BRYANCAVE	DON O'BANNON	OFFICER	54.00	350.00	18,900.00
SUB-BRC	CAROL HADNOT	OFFICER	293.00	150.00	43,950.00
SUB-BRC	TEMP01 ONSITE @ SUB	JUNIOR	152.00	55.00	8,360.00
SUB-DMC	SUNDRA DAVIS	OFFICER	54.00	150.00	8,100.00
SUB-BRC	PAUL SALDANA	OFFICER	138.00	150.00	20,700.00
SUB-BRC	JUAN OYERVIDES	OFFICER	109.00	75.00	8,175.00
SUB-BRC	ALETTA BANKS	OFFICER	109.00	75.00	8,175.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
OTHER-NERA	CATERING	14.00	125.00	1,750.00
DATA-BIGSKY	TRANSCRIPTION	14.00	265.00	3,710.00
OTHER-NERA	MISCELLANEOUS	14.00	100.00	1,400.00
DATA-JDDS	FOCUS GROUP INVITATIONS	7500.00	0.90	6,750.00
SHIPPING-NERA	TO/FROM CLIENT	2.00	12.00	24.00
SHIPPING-NERA	INTERNAL	10.00	12.00	120.00
TRAVEL-DON	AIRFARE	2.00	325.00	650.00
TRAVEL-DON	LODGING	4.00	231.00	924.00
TRAVEL-DON	TAXI	2.00	60.00	120.00
TRAVEL-DON	PER DIEM	6.00	60.00	360.00
TRAVEL-DMC	AIRFARE	2.00	325.00	650.00
TRAVEL-DMC	LODGING	4.00	231.00	924.00
TRAVEL-DMC	TAXI	2.00	60.00	120.00
TRAVEL-DMC	PER DIEM	6.00	60.00	360.00
OTHER-BRISA	OTHER EXPENSE	12500.00	1.00	12,500.00

TASK 14.0 SUBTOTAL LABOR \$ 123,360.00

TASK 14.0 SUBTOTAL EXPENSES \$ 30,362.00

TASK 14.0 TOTAL

\$ 153,722.00

15.0. Produce Race & Sex Misclassification Surveys

LABOR					
FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	32.00	450.00	14,400.00
EXPENSES					
TYPE	SUBTYPE		UNITS	UNIT PRICE	SUBTOTAL
DATA-CRDYNAMICS	RACE MISCLASSIFICATION SURVEYS CRDYNAMICS		20000.00	2.75	55,000.00
TASK 15.0 SUBTOTAL	LABOR				\$ 14,400.00
TASK 15.0 SUBTOTAL	EXPENSES				\$ 55,000.00
TASK 15.0 TOTAL					\$ 69,400.00

16.0. Produce Public Sector Utilization Estimates

LABOR					
FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	24.00	450.00	10,800.00
EXPENSES					
TYPE	SUBTYPE		UNITS	UNIT PRICE	SUBTOTAL
TASK 16.0 SUBTOTAL	LABOR				\$ 10,800.00
TASK 16.0 SUBTOTAL	EXPENSES				\$ -
TASK 16.0 TOTAL					\$ 10,800.00

17.0. Produce Availability Estimates

LABOR					
FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	24.00	450.00	10,800.00
EXPENSES					
TYPE	SUBTYPE		UNITS	UNIT PRICE	SUBTOTAL
TASK 17.0 SUBTOTAL	LABOR				\$ 10,800.00
TASK 17.0 SUBTOTAL	EXPENSES				\$ -
TASK 17.0 TOTAL					\$ 10,800.00

18.0. Produce Public Sector Disparity Analyses

LABOR					
FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	24.00	450.00	10,800.00
EXPENSES					
TYPE	SUBTYPE		UNITS	UNIT PRICE	SUBTOTAL
TASK 18.0 SUBTOTAL	LABOR				\$ 10,800.00
TASK 18.0 SUBTOTAL	EXPENSES				\$ -

TASK 18.0 TOTAL \$ 10,800.00

19.0. Prepare Draft Study Report

LABOR

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	64.00	450.00	28,800.00
NERA	KIRSTEN DESKINS	JUNIOR	16.00	110.00	1,760.00
NERA	GRETCHEN POLK	ADMIN	12.00	95.00	1,140.00
SUB-BRYANCAVE	DON O'BANNON	OFFICER	56.00	350.00	19,600.00
SUB-DMC	SUNDRA DAVIS	OFFICER	56.00	150.00	8,400.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
TASK 19.0 SUBTOTAL	LABOR			\$ 59,700.00
TASK 19.0 SUBTOTAL	EXPENSES			\$ -

TASK 19.0 TOTAL \$ 59,700.00

20.0. Procurement Review and Program Design Recommendations

LABOR

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
SUB-BRYANCAVE	DON O'BANNON	OFFICER	32.00	350.00	11,200.00
SUB-DMC	SUNDRA DAVIS	OFFICER	24.00	150.00	3,600.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
TASK 20.0 SUBTOTAL	LABOR			\$ 14,800.00
TASK 20.0 SUBTOTAL	EXPENSES			\$ -

TASK 20.0 TOTAL \$ 14,800.00

21.0. Finalization of Final Study Report and Presentation

LABOR

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	JON WAINWRIGHT	OFFICER	28.00	450.00	12,600.00
SUB-BRYANCAVE	DON O'BANNON	OFFICER	20.00	350.00	7,000.00
SUB-DMC	SUNDRA DAVIS	OFFICER	24.00	150.00	3,600.00

EXPENSES

TYPE	SUBTYPE	UNITS	UNIT PRICE	SUBTOTAL
OTHER-NERA	OTHER	25.00	75.00	1,875.00
TRAVEL-DON	AIRFARE	4.00	325.00	1,300.00
TRAVEL-DON	LODGING	4.00	231.00	924.00
TRAVEL-DON	TAXI	4.00	60.00	240.00
TRAVEL-DON	PER DIEM	4.00	60.00	240.00
TRAVEL-DMC	AIRFARE	4.00	325.00	1,300.00
TRAVEL-DMC	LODGING	4.00	231.00	924.00
TRAVEL-DMC	TAXI	4.00	60.00	240.00
TRAVEL-DMC	MILEAGE	4.00	0.57	2.26

TASK 21.0 SUBTOTAL LABOR \$ 23,200.00
 TASK 21.0 SUBTOTAL EXPENSES \$ 7,045.26

TASK 21.0 TOTAL \$ 30,245.26

GRAND TOTAL

LABOR

FIRM	PERSONNEL	POSITION	HOURS	RATE	SUBTOTAL
NERA	*JON WAINWRIGHT	OFFICER	585.50	450.00	263,475.00
NERA	*JOHN BRODOFF	JUNIOR	12.00	180.00	2,160.00
NERA	*JOHANNA BALLON	JUNIOR	28.00	170.00	4,760.00
NERA	*CHRISTIE KIRKENDALL	JUNIOR	288.00	130.00	37,440.00
NERA	*KIRSTEN DESKINS	JUNIOR	417.00	110.00	45,870.00
NERA	*MATTHEW DAVIS	ADMIN	681.00	110.00	74,909.91
NERA	*GRETCHEN POLK	ADMIN	12.00	95.00	1,140.00
NERA	*NERAAUS RESEARCH STAFF	JUNIOR	664.00	90.00	59,759.93
NERA	*NERAAUS RESEARCH STAFF	JUNIOR	664.00	90.00	59,759.93
NERA	*NERAAUS RESEARCH STAFF	JUNIOR	664.00	90.00	59,759.93
SUB-BRYANCAVE	*DON O'BANNON	OFFICER	211.00	350.00	73,850.00
SUB-BRC	CAROL HADNOT	OFFICER	417.00	150.00	62,550.00
SUB-BRC	TEMP01 ONSITE @ SUB	JUNIOR	152.00	55.00	8,360.00
SUB-DMC	*SUNDRA DAVIS	OFFICER	178.00	150.00	26,700.00
SUB-BRC	PAUL SALDANA	OFFICER	187.00	150.00	28,050.00
SUB-BRC	JUAN OYERVIDES	OFFICER	150.00	75.00	11,250.00
SUB-BRC	ALETTA BANKS	OFFICER	150.00	75.00	11,250.00

EXPENSES

TYPE	SUBTYPE		UNITS	UNIT PRICE	SUBTOTAL
DATA-NERA	MWBE DIRECTORIES	VARIOUS	1.00	1,500.00	1,500.00
DATA-NERA	DUN & BRADSTREET/HOOVERS	VARIOUS	1.00	29,000.00	29,000.00
OTHER-NERA	CATERING	VARIOUS	14.00	125.00	1,750.00
DATA-BIGSKY	TRANSCRIPTION	BIG SKY	14.00	265.00	3,710.00
OTHER-NERA	MISCELLANEOUS	VARIOUS	14.00	100.00	1,400.00
DATA-JDDS	FOCUS GROUP INVITATIONS	JDDS	7500.00	0.90	6,750.00
DATA-JDDS	SUBCONTRACT DATA COLLECTION	JDDS	800.00	11.00	8,800.00
DATA-JDDS	BIZ EXPERIENCE MAIL SURVEYS	JDDS	12500.00	2.25	28,125.00
DATA-CRDYNAMICS	RACE MISCLASSIFICATION SURVEYS	CRDYNAMICS	20000.00	2.75	55,000.00
DATA-CRDYNAMICS	BIZ EXPERIENCE NONRESP SURVEYS	CRDYNAMICS	2500.00	2.75	6,875.00
SHIPPING-NERA	TO/FROM CLIENT	FEDEX	20.00	12.00	240.00
SHIPPING-NERA	INTERNAL	FEDEX	36.00	12.00	432.00
OTHER-NERA	OTHER	VARIOUS	25.00	75.00	1,875.00
TRAVEL-DON	AIRFARE	DON O'BANNON	6.00	325.00	1,950.00
TRAVEL-DON	LODGING	DON O'BANNON	8.00	231.00	1,848.00
TRAVEL-DON	TAXI	DON O'BANNON	6.00	60.00	360.00
TRAVEL-DON	PER DIEM	DON O'BANNON	10.00	60.00	600.00
TRAVEL-DMC	AIRFARE	SUNDRA DAVIS	6.00	325.00	1,950.00
TRAVEL-DMC	LODGING	SUNDRA DAVIS	8.00	231.00	1,848.00
TRAVEL-DMC	TAXI	SUNDRA DAVIS	6.00	60.00	360.00
TRAVEL-DMC	MILEAGE	SUNDRA DAVIS	4.00	0.57	2.26
TRAVEL-DMC	PER DIEM	SUNDRA DAVIS	6.00	60.00	360.00
OTHER-BRC	OTHER EXPENSE	VARIOUS	12500.00	1.00	12,500.00
GRAND TOTAL	LABOR				\$ 831,044.70
GRAND TOTAL	EXPENSES				\$ 167,235.26
GRAND TOTAL					\$ 998,279.96

Only those persons identified above with an asterisk (*) by their name may have unlimited access to raw and final data prior to or concurrent to the release of information to the City.

Note: Veteran data is included in the tasks listed above and scope of services to be provided by the Contractor to the extent such data is available.

EXHIBIT B

Confidentiality and Non-Disclosure Agreement

This Confidentiality and Non-Disclosure Agreement (this "Agreement") concerns any information I may obtain or have access to regarding certain of the City's and/or its licensors' confidential information including inventions, employee information, trade secrets, confidential know-how, confidential business information, other information which the City or its licensors consider confidential, and any other data and information gained, accessed, given to or otherwise in possession by me or my company in the provision of services on the Minority and Women Owned and Disadvantaged Business Enterprise Disparity Study contract by and between the City of Austin and National Economic Research Associates, Inc. (collectively "Confidential Information").

YOU ACKNOWLEDGE AND AGREE THAT THE CONFIDENTIAL INFORMATION IS THE VALUABLE PROPERTY OF THE CITY AND/OR ITS LICENSORS AND ANY UNAUTHORIZED USE, DISCLOSURE, DISSEMINATION, OR OTHER RELEASE OF THE CONFIDENTIAL INFORMATION WILL SUBSTANTIALLY INJURE THE CITY AND/OR ITS LICENSORS AND THE CITY MAY EXERCISE ALL AVAILABLE REMEDIES UNDER THE LAW DUE TO SUCH INJURY AND DAMAGE TO THE CITY.

I will not disclose any Information at any time unless I am instructed to do so by the City or by a court of law.

I will submit any request for information given to me under the Texas Public Information Act (open records request) to the Purchasing Office of the City for submission to the Texas Attorney General for resolution.

Jon Wainwright
Printed Name

Jon Wainwright
Signature

7/29/2013
Date

CITY OF AUSTIN, TEXAS
Purchasing Office
REQUEST FOR QUALIFICATION STATEMENT (RFQS)
Offer Sheet

SOLICITATION NO: SMW0051

COMMODITY/SERVICE DESCRIPTION: Minority and Women
Owned and Disadvantaged Business Enterprise Disparity Study

DATE ISSUED: December 17, 2012

REQUISITION NO.: RQS-7600-12121200207

PRE-RESPONSE CONFERENCE TIME AND DATE: January 4,
2013 at 10:30 AM

COMMODITY CODES: 91835, 91812, &
91879

LOCATION: Austin City Hall, Council Chambers, 301 West 2nd Street,
Austin, TX 78701

Webcast URL : <http://ci.austin.tx.us/webcast.htm>

***Attendance via Web will be available**

Please note: The City of Austin is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Meeting locations are planned with wheelchair access. If requiring Sign Language Interpreters or alternative formats, please give notice at least one week before the meeting date to the contact person for this solicitation.

**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT:**

QUALIFICATION STATEMENT DUE PRIOR TO: 10:00 AM on
February 12, 2013

Shawn M. Willett

COMPLIANCE PLAN DUE PRIOR TO: N/A

Supervising Senior Buyer
Phone: (512) 505-7351

RESPONSE CLOSING TIME AND DATE: 10:00 AM on February 12,
2013

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 310, AUSTIN, TEXAS 78701

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin, Purchasing Office
Purchasing Office	Municipal Building
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

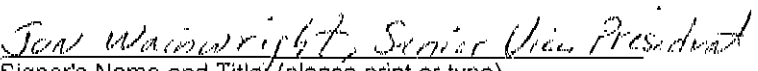
Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

**SUBMIT 1 ORIGINAL MARKED AS "ORIGINAL", 4 SIGNED COPIES MARKED AS "COPIES" AND 5 CDs
OF OFFER**

OFFER SUBMITTED BY

By the signature below, I certify that I have submitted a binding offer.


Signature of Person Authorized to Sign Offer


Signer's Name and Title (please print or type)

FEDERAL TAX ID NO. XXXXXXXXXX

Date: 2-25-13

Company Name: National Economic Research Associates, Inc.

Address: 3801 South Capital of Texas Highway, Suite 330

City, State, Zip Code Austin, TX 78704

Phone No. (512) 371-8995

Fax No. (512) 371-9612

Email Address: jan.wainwright@NERA.com

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE DEFINITIONS**

Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

1. **Addendum** - a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.
2. **Alternate Offers** - multiple Offers with substantive variations from the same Offeror in response to a Solicitation.
3. **Appropriate, Appropriated, or Appropriation** - the adoption by the City Council of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
4. **Authorized City Representative** - a person designated by the City Manager to act for the Contract Awarding Authority.
5. **Best Offer** - the best evaluated Offer in response to a Request for Proposals or Request for Qualification Statements.
6. **Best Offeror** - the Offeror submitting the Best Offer.
7. **Bid** - a complete, properly signed response to an Invitation for Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
8. **Bidder** - a person, firm, or entity that submits a Bid in response to an Invitation for Bid. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **Bid Guaranty** – a form of security assuring that the bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
10. **Bid Sheet** - a document, signed and dated by a Bidder, containing unit and extended bid prices for all goods and/or services, identified by item numbers and descriptions, for which Bids are being submitted.
11. **Central Purchase Order (CT)** - a financial system document issued by the Contract Awarding Authority to encumber funds to pay for the deliverables identified in a Contract.
12. **City** - the City of Austin, a Texas home-rule municipal corporation.
13. **Compliance Plan** - is defined in chapter 2-9 of the City Code.
14. **Construction** - the construction, repair, rehabilitation, alteration, conversion or extension of buildings, parks, utilities, streets or other improvements or alterations to real property.
15. **Contract** - a binding legal agreement between the City and the Offeror. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
 - A. any exceptions to the Offer accepted in writing by the City
 - B. the Supplemental Purchase Terms and Conditions

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE DEFINITIONS**

- C. the Standard Purchase Terms and Conditions
 - D. the Offer, exhibits, and attachments; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.
- 16. **Contract Awarding Authority** - a City department authorized to enter into Contracts on behalf of the City.
 - 17. **Contractor/Consultant** - a person, firm or entity that supplies or provides goods and/or services to the City by Contract.
 - 18. **Deliverables** - the goods, products, materials, and/or services to be provided to the City under a Purchase Order, Contract, or Master Agreement.
 - 19. **Delivery Order** - a release against a Master Agreement authorizing delivery of goods and/or performance of services. A financial system document issued by the Department to encumber funds to pay for the deliverables.
 - 20. **Disadvantaged Business Enterprise** - is defined in 49 Code of Federal Regulation Part 26 or other applicable federal regulations.
 - 21. **Due Date** - the date and time specified for receipt of Bids, Proposals, Qualification Statements, Quotations, Responses, Submittals and Compliance Plans.
 - 22. **Goods** - supplies, materials, or equipment.
 - 23. **Highest Responsible Offer** - the highest Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid-Sale or Request for Quotation-Sale.
 - 24. **Highest Responsible Offeror** - the Offeror submitting the "Highest Responsible Offer."
 - 25. **Invitation for Bid (IFB)** - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or on the Internet.
 - 26. **Late Offer** - a Bid, Proposal, Quote, Response, or Submittal that is received after the Due Date and time specified in the Solicitation.
 - 27. **Lowest Responsible Offer** - the Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid or Request for Quotation resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Vendor to perform the Contract, past performance of the Vendor, and compliance with all City ordinances concerning the purchasing process.
 - 28. **Lowest Responsible Offeror** - the Offeror submitting the Lowest Responsible Offer.
 - 29. **Master Agreement** - a term contract that is used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits with deliveries on demand. A Master Agreement does not create a financial obligation.
 - 30. **Minority-Owned Business** - is defined in chapter 2-9 of the City Code.
 - 31. **Non-Professional Services** - services performed that are not of a professional nature such as lawn care, security, janitorial, etc.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE DEFINITIONS**

- 32. **Offer** - a complete signed response to a Solicitation including, but not limited to, an Invitation for Bid, a Request for Proposal, a Request for Qualification Statements, or a Request for Quotation.
- 33. **Offeror** - a person, firm, or entity that submits an Offer in response to a City Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. Includes Bidders, Proposers, Quoters, Contractors and Consultants.
- 34. **Pre-Bid / Proposal / Quote / Response / Submittal Conference** - a conference conducted by the Contract Awarding Authority, held in order to allow Offerors and Vendors to ask questions about the proposed Contract and particularly the Contract specifications.
- 35. **Professional Services** - services that use skills that are predominantly mental or intellectual, rather than physical or manual such as accounting, architecture, land surveying, law, medicine, optometry, professional engineering, etc.
- 36. **Proposal** - a complete, properly signed response to a Request for Proposals, which if accepted, would bind the Proposer to perform the resultant Contract.
- 37. **Proposal Guaranty** - a form of security assuring that the Proposer (a) will not withdraw the Proposal within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Proposer upon execution of a Contract.
- 38. **Proposer** - a person, firm or entity that submits a Proposal in response to a Request for Proposals. Any Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
- 39. **Purchase Order (PO)** - an order placed by a City department for the purchase of Goods and/or Services written on the City's standard Purchase Order form and which, when accepted by the Vendor becomes a Contract. The Purchase Order is the Vendor's authority to deliver and invoice the City for Goods and/or Services specified, and the City's commitment to accept the Goods and/or Services for an agreed upon price.
- 40. **Purchasing Office** - refers to the Purchasing Office in the Financial and Administrative Services Department of the City.
- 41. **Quote** - a complete, properly signed response to a Request for Quotation, which if accepted, would bind the Offeror to perform the resultant Contract.
- 42. **Quoter** - a person, firm or entity that submits a Quote in response to a Request for Quotations. Any Quoter may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
- 43. **Request for Information (RFI)** - a solicitation used to obtain "state of the art" information on goods and/or services for informational purposes only.
- 44. **Request for Interest (RFINT)** - a solicitation used to identify interest in a City requirement.
- 45. **Request for Proposal (RFP)** - a solicitation used to acquire goods and/or services when a clearly defined scope of work or specification is not available.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE DEFINITIONS**

- 46. **Request for Qualification Statements (RFQS)** - a solicitation used to acquire professional services as defined by the State of Texas Government Code, Chapter 2254.
- 47. **Request for Quotation (RFQ)** - a solicitation used to acquire goods and/or services with a total dollar value less than the State of Texas competitive bidding amount.
- 48. **Resident Bidder** - a person, firm, or entity whose principal place of business is in the State of Texas, including a Contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.
- 49. **Response** - a complete signed reply to a Solicitation including, but not limited to a Request for Information and/or a Request for Interest.
- 50. **Response Guaranty** – a form of security assuring that the Offeror (a) will not withdraw the Offer within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Offeror upon execution of a Contract.
- 51. **Responsible** - refers to the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.
- 52. **Responsive** - meeting all the requirements of a Solicitation.
- 53. **Services** - include all work or labor performed for the City on an independent Contractor basis other than construction.
- 54. **Solicitation** - as applicable, includes Invitation for Bid, Invitation for Bid - Sale, Request for Proposal, Request for Qualification Statements, Request for Quotation, Request for Quotation – Sale, Request for Information, Request for Interest, or such other request as defined by the City.
- 55. **Subcontractor/Subconsultant** - a person, firm, or entity providing goods and/or services to a prime Contractor / Consultant to be used in the performance of the prime Contractor/Consultant's obligations under a Contract.
- 56. **Unbalanced Offer** - an Offer that is based on prices which are significantly less than cost for some items and significantly more than cost for others.
- 57. **Vendor** - a person, firm, or entity that sells Goods and/or Services.
- 58. **Woman-Owned Business** - is defined in chapter 2-9 of the City Code.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
5. **TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK:** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

13. PAYMENT:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

- 14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

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No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

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- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. **WARRANTY-PRICE:**

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled deliverables shall be clearly identified as such.

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- B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event

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that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In

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the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised 6/01/98).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

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- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first

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class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.
- A. **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and

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the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

- C. **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.
39. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
44. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor.

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The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
46. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
47. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
49. **DISPUTE RESOLUTION**:
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
50. **JURISDICTION AND VENUE**: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code,

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Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

51. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
52. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

55. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-

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compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)

- A. Definitions. As used in this paragraph –

- i. "Component" means an article, material, or supply incorporated directly into an end product.
- ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office no later than 5:00 pm on February 4, 2013 either via Fax at (512) 322-6490 or email at shawn.willett@austinenergy.com.

2. **PRE-RESPONSE MEETING**

January 4, 2013 at 10:30 AM
Austin City Hall, Council Chambers
301 West 2nd Street
Austin, Texas 78701

Webcast will be available at <http://ci.austin.tx.us/webcast.htm>

3. **INSURANCE.** Insurance is required for this solicitation.

A. **General Requirements.** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

B. **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

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- (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC 420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC 420601, or equivalent coverage
- ii. Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage (X,C,U).
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.
- iv. Professional Liability Insurance. The Contractor The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.
- C. Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

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4. **INVOICES and PAYMENT** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a non-duplicated invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	Small and Minority Business Resources Department
Attn:	Debra Dibble, Assistant Director
Address	4201 Ed Bluestein Blvd
City, State Zip Code	Austin, Texas 78721

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

5. **LIVING WAGES AND BENEFITS**

- A. In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.
- C. The City requires Contractors submitting Offers on this Contract to provide a signed certification (**see the Living Wages and Benefits Contractor Certification included in the Solicitation**) with their Offer certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan. The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- D. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:
- i. employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

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- ii. time and date of week when employee's workweek begins;
 - iii. hours worked each day and total hours worked each workweek;
 - iv. basis on which employee's wages are paid;
 - v. regular hourly pay rate;
 - vi. total daily or weekly straight-time earnings;
 - vii. total overtime earnings for the workweek;
 - viii. all additions to or deductions from the employee's wages;
 - ix. total wages paid each pay period; and
 - x. date of payment and the pay period covered by the payment.
- E. The Contractor shall provide with the first invoice and as requested by the Department's Contract Manager, individual Employee Certifications (**see the Living Wages and Benefits Employee Certification included in the Solicitation**) for all employees directly assigned to the contract containing:
- i. the employee's name and job title;
 - ii. a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;
 - iii. a statement certifying that the employee is offered a health care plan with optional family coverage.
- Employee Certifications shall be signed by each employee directly assigned to the contract.
- A. Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract.
- G. The Department's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified in paragraph D above to verify compliance with this provision.

6. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING

- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If a Respondent has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Respondent is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit, certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at:
<http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

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7. NON-SOLICITATION

- A. During the term of the Contract, and for a period of six (6) months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.
- B. In the event that a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.
- C. During the term of the Contract, and for a period of six (6) months following termination of the Contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.
- D. In the event that a breach of Paragraph C occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 100 percent of the employee's annual compensation while employed by the Contractor.

8. INTERLOCAL PURCHASING AGREEMENTS

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- A. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

9. CONTRACT MANAGER

The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Debra Dibble

Assistant Director

(512) 974-1656

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

**CITY OF AUSTIN
PURCHASING OFFICE
REQUEST FOR QUALIFICATION STATEMENTS (RFQS)**

SOLICITATION NUMBER: RFQS SMW0051

**MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (MBE/WBE) AND
DISADVANTAGED BUSINESS ENTERPRISE (DBE) DISPARITY STUDY**

SCOPE OF WORK

1. OBJECTIVE OF THE PROJECT:

The City of Austin, hereinafter referred to as the City, seeks submittals in response to this Request for Qualification (RFQS) from a Consultant qualified and experienced in conducting Minority Business Enterprise (MBE), Women Business Enterprise (WBE), and Disadvantaged Business Enterprise (DBE) disparity studies. The selected Consultant shall conduct a MBE/WBE/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.

2. DEFINITIONS:

For purposes of this RFQS, the following terms have the meanings set out below:

- a) **MBE:** refers to Minority-owned Business Enterprise as the term is defined in the MBE/WBE Ordinance at § 2-9(A-D)-4(31).
- b) **WBE:** refers to Women-owned Business Enterprise as the term is defined in the MBE/WBE Ordinance at § 2-9(A-D)-4(47).
- c) **MBE/WBE Ordinance:** refers to Chapter 2-9(A-D) of the City's Ordinance, found at [http://www.amlegal.com/nxt/gateway.dll/Texas/austin/title2administration/chapter2-9aminority-ownedandwomen-ownedb?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:austin_tx\\$sanc=JD_Chapter2-9A](http://www.amlegal.com/nxt/gateway.dll/Texas/austin/title2administration/chapter2-9aminority-ownedandwomen-ownedb?f=templates$fn=default.htm$3.0$vid=amlegal:austin_tx$sanc=JD_Chapter2-9A).

- d) **City's MBE/WBE Program:** refers to the City of Austin's Minority and Women Business Enterprise Procurement Program, as incorporated in the MBE/WBE Ordinance and the City's Program Rules, found at http://www.austintexas.gov/sites/default/files/files/Small_Minority_Business/mbe_wbe_rules.pdf.
- e) **DBE:** refers to Disadvantaged Business Enterprise, as the term is defined by the federal regulations at 49 CFR § 26.5.
- f) **City's DBE Plan:** refers to the program the City has established in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City's DBE Plan can be found at <http://www.austintexas.gov/department/disadvantaged-business-enterprise-dbe-program>

3. **BACKGROUND:**

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 conduct an updated disparity study. 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 current MBE/WBE Ordinance sunsets on December 31, 2013. However, the City will extend this sunset date to allow sufficient time to complete and implement this study.

As the owner and operator of Austin-Bergstrom International Airport (ABIA), the City has also established a program for DBEs, hereinafter referred to as the City's DBE Plan. The City's DBE Plan was designed to provide small businesses owned and controlled by socially and economically disadvantaged individuals an equal opportunity to participate on City contracts utilizing DOT federal contract dollars, pursuant to 49 CFR Part 26.

The City's Small and Minority Business Resources (SMBR) Department is responsible for managing, implementing, and operating the City's MBE/WBE Program and DBE Plan. SMBR performs an array of services including contractor certification, contract compliance (pre-award and post-award), community outreach, and coordination of City solicitations and resource services (plan room and bonding assistance). It serves as an enforcement arm to ensure compliance with the MBE/WBE Ordinance by all City departments. The link for the City's governmental structure organization chart can be found at http://www.austintexas.gov/sites/default/files/files/City_Manager/2012-org-chart.pdf.

SMBR will be the pivotal department for the selected Consultant.

4. ANTICIPATED SERVICES:

Objective:

The selected Consultant will be required to perform a comprehensive disparity study of contracting and procurement activities in the City's geographic and product markets (the Disparity Study). The Disparity Study will be based on five years of historical data (FY 2008-2012) collected by the City. FY 2012 data will be available by January 15, 2013. Data can be provided through Q3 for FY 2012 now. The City's data includes total contract amounts and total amounts paid to MBE/WBES and DBEs, recorded by industry, race/ethnicity, and sex. The City has

collected this data on prime contractors and subcontractors. The City's data has been catalogued using Advantage Financial and eCapris (in-house) software and is available in electronic format. An example of this data is included as Attachment A. The City's data reflects that it spends approximately \$800,000,000 on approximately 13,000 contracts for goods and services per year. Of those expenditures, \$20,000,000 relates to ABIA spending, with approximately 700 ABIA contracts for goods and services each year.

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. The Disparity Study will analyze MBE/WBE/DBE and veteran owned businesses' availability and participation both as prime contractors and subcontractors in specific industries (identified by commodity codes) within the broader categories of construction, construction-related professional services, construction-related non-professional services, and commodities for those contracts with more than one scope (including, but not limited to, IT contracts). The Consultant will not be expected to analyze the data associated with smaller contracts, likely those with a value of less than \$50,000. More specifically, the selected Consultant must perform the following elements of work (collectively referred to as the Project):

- a. Provide detailed and up-to-date overview of current constitutional standards and case law on race-conscious government efforts in public contracting;
- b. Determine the City's appropriate geographic market area;
- c. Determine the City's product markets, or those industries within the major procurement categories (construction, construction-related professional services, construction-related non-professional services, and certain commodities) that are most indicative of work performed on City contracts. In terms of commodities, the consultant shall collect data and make determinations based only on those contracts for commodities that include more than one scope of work.
- d. Provide statistical evidence of disparities in business enterprise activity in the City's geographic and products;
 - i. Determine the availability of MBE/WBE/DBE and veteran owned businesses' (classified by industry, race/ethnicity, and sex) in the City's geographic and product markets. The Consultant's methodology for determining availability shall rely on more than just census data to ensure most firms are captured and that ownership is verified. When determining DBE availability, the Consultant shall analyze whether an adjustment to the availability figures is warranted to account for any effects discrimination may have had on the availability of such firms, as

- is required under 49 CFR § 26.45(d) of the DBE federal regulations (referred to as the “Step 2 adjustment”);
- ii. Determine the City’s utilization of available MBE/WBE/DBE and veteran owned businesses’ , classified by industry, race/ethnicity and sex in the City’s geographic and product markets;
 - iii. Examine, document and detail if there is statistical evidence of disparities in the contracting and subcontracting activities within the City;
- e. Collect and analyze anecdotal evidence on the experience of businesses in the City’s markets, including business-owners and community stakeholder’s inputs; which may include interviews, surveys and other methods approved by SMBR, to buttress identified statistical disparities.
 - f. To the extent necessary and possible, collect data regarding other public entities’ utilization of MBE/WBE/DBE and veteran owned businesses with similar geographic and product markets. Document and explain the significance of these findings.
 - g. If appropriate, determine whether and to what extent discrimination exists in the private sector. This determination will require an analysis of MBE/WBE/DBE and veteran owned businesses’ private sector success relative to non-MBE/WBE/DBE and veteran owned businesses’ private sector success.
 - i. Identify potential additional industries (not reflected in City’s current data or the City’s MBE/WBE Program) by commodity code with MBE/WBE availability
 - h. Based on analysis and review of the City’s MBE/WBE Program (the MBE/WBE Ordinance and accompanying rules) and the City’s DBE Plan and applicable governing law, provide recommendations, including race- and gender-neutral means, for addressing any identified disparities. These recommendations should address annual ethnic-specific goals (and provide guidance on determining project-specific goals), the certification process, and any other related compliance issues. Provide monthly progress reports to the City.
 - i. Provide a draft final report including, but not necessarily limited to, an executive summary, an overview of relevant case law, the Disparity Study with detailed discussion of the Consultant’s methodology and analysis, and recommendations based on Consultant’s findings and review of the City’s MBE/WBE Program.
 - j. Revise the report subject to concerns raised by the City and present in final form.
 - k. Present Disparity Study findings to relevant City Departments, relevant Boards and Commissions, and the City Council, and otherwise cooperate with the City in facilitating dissemination of the Disparity Study results to the City and the public.

- I. In the event the City's MBE/WBE Program or DBE Plan is challenged any time from six years of completion of the Disparity Study, the Consultant may be required to testify on the constitutionality of either the City's MBE/WBE Program or DBE Plan.

This Scope of Services does not include legal services, nor does it include a legal component other than what is specifically provided above. The City has separately retained legal counsel to provide legal advice to the City throughout this process.

Deliverables:

The consultant shall specifically deliver the following:

- a. Monthly progress reports, including, when appropriate, summaries of analyses and assessments in progress or completed.
- b. A draft of the Consultant's final report for review and comment by the City, and a final version of all relevant reports.
- c. A final report on the Disparity Study, including an executive summary, an overview of relevant case law, the Disparity Study with detailed discussion of the of the Consultant's methodology and analysis, and recommendations based on Consultant's findings and review of the City's MBE/WBE Program. The final report shall be written in clear and concise language using consistent terms; easy to understand; organized in a logical manner; fully illustrated with relevant examples; and consistent with widely accepted methodology. Unless otherwise permitted by the City, the final report and all data and records developed in conjunction with the final report and Disparity Study shall be submitted to the City as two hard copies and one electronic copy (in Microsoft Office 2007 or later) to permit future use by the City of Austin.
- d. Presentations before relevant City Departments, relevant City Boards and Commissions, and the City Council.

5. QUALIFICATIONS:

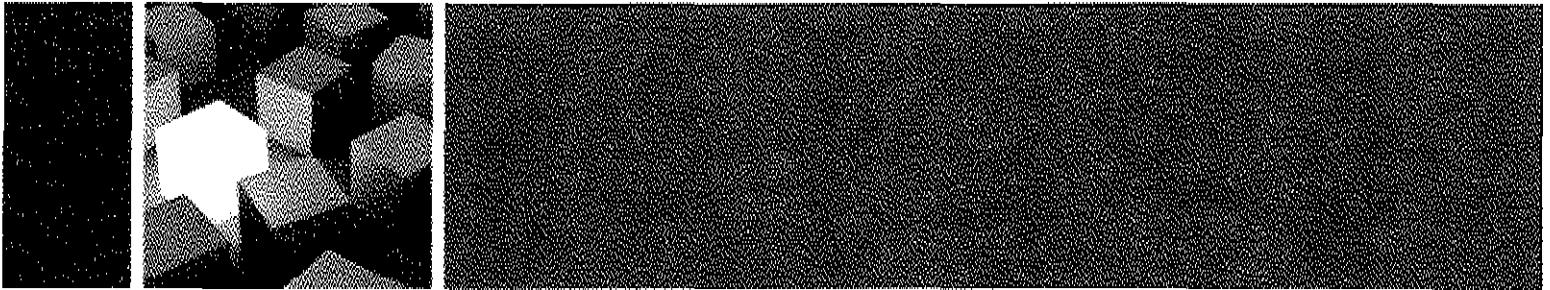
The experience, knowledge, and capabilities of the Consultant's personnel and sub-consultants (the Project Team) will be thoroughly evaluated to determine the Consultant's ability to timely deliver a legally defensible Disparity Study developed consistent with best practices. It is the Consultant's responsibility to secure all services necessary to meet the requirements of this solicitation.

6. PROPOSED SCHEDULE:

The MBE/WBE/DBE and veteran owned businesses availability study shall be completed by the consultant within twelve (12) months after issuance of notice to proceed from the City. The completed study shall be submitted to the City's Contract Manager.

7. ANTICIPATED BUDGET:

The City's FY 2013 budget permits \$1,200,000 to be spent on the Consultant's contract, legal services, and any other associated costs. By submitting a response to this RFQ, the Consultant acknowledges this overall budget and represents that the Consultant believes its anticipated costs will not cause the City to exceed the overall budget.



Proposal to Conduct a Minority and Women Owned and Disadvantaged Business Enterprise Disparity Study

Prepared for the City of Austin in response to
RFQS SMW0051

February 26, 2013

NERA
ECONOMIC CONSULTING

National Economic Research Associates, Inc.
3801 South Capital of Texas Highway
Barton Creek Plaza, Building II, Suite 330
Austin, Texas 78704
512 371 8995 Fax: 512 371 9612
www.nera.com

February 26, 2013

Ms. Shawn M. Willett, Supervising Senior Buyer
City of Austin Purchasing Office
Municipal Building
124 W. 8th Street, Rm 310
Austin, TX 78701

Re: Request for Qualification Statement SMW0051, for a Minority and Women Owned and Disadvantaged Business Enterprise Disparity Study

Dear Ms. Willett:

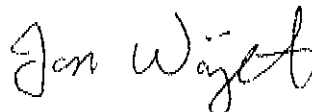
Thank you for providing National Economic Research Associates, Inc., doing business as NERA Economic Consulting (NERA), the opportunity to present our proposal for performing a Disparity Study for the City of Austin in response to the above referenced RFQS.

The designated Project Director and primary contact for this submission is NERA Senior Vice President Dr. Jon Wainwright. His mailing address, telephone, and fax number appear above. His e-mail address is jon.wainwright@nera.com.

NERA's submittal is valid for a period of one hundred and eighty (180) calendar days subsequent to the closing date of RFQS SMW0051.

Thank you for considering NERA.

Sincerely,



Jon Wainwright, Ph.D.
Senior Vice President

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Executive Summary

National Economic Research Associates, Inc. doing business as NERA Economic Consulting (www.nera.com) is a global firm of economists who understand how markets work—including public contracting and procurement markets. We provide economic analysis and advice to corporations, governments, law firms, regulatory agencies, trade associations, and international agencies. Our global team of more than 400 economists and other professionals operates in over 20 offices across North America, Europe, and Asia Pacific. NERA provides practical economic advice related to highly complex business and legal issues arising from public policy, regulation, competition, strategy, finance, and litigation. Founded in 1961 as National Economic Research Associates, our more than 50 years of experience creating strategies, studies, reports, expert testimony, and policy recommendations reflects our specialization in industrial and financial economics. Because of our commitment to deliver unbiased findings, we are widely recognized for our independence. Our clients come to us expecting integrity and the unvarnished truth.

NERA's proposal addresses all the tasks and deliverables discussed in the RFQS. The NERA team will provide an overview of legal challenges to Minority/Women Business Enterprise (M/WBE) and Disadvantaged Business Enterprise (DBE) programs; undertake statistical analyses, including geographic and product market definition, the availability of M/WBEs and DBEs, the utilization of M/W/DBEs by the City of Austin and its contractors, disparities facing M/W/DBEs in both the public and private sectors of Austin's market area; and collect and analyze anecdotal information as a check on the validity of the statistical evidence. NERA will produce a high quality M/W/DBE disparity study including essential documentation and explanation, and we will present our study findings and recommendations to the City at the conclusion of the project.

Our proposed plan of action consists of the following major work tasks. Each task is described in detail below in Section II.E.

1. Hold Project Initiation Conference and Conduct Initial Data Review
2. Establish Disparity Study Task Force
3. Execute Client-Maintained Data Collection Plan
4. Assemble Master M/W/DBE Directory
5. Conduct Legal Review
6. Prepare Master Contract/Subcontract Database
7. Define Geographic & Product Markets
8. Review Race- and Gender-Neutral Alternatives
9. Conduct Economy-Wide Analyses Using Data from the *Survey of Business Owners*
10. Conduct Economy-Wide Analyses Using Data from the *American Community Survey*
11. Conduct Economy-Wide Analyses Using Data from the *Survey of Small Business Finances*
12. Merge Master Directory and Baseline Business Universe of Available Establishments
13. Gather Anecdotal Evidence Using Business Experience Mail Surveys
14. Gather Anecdotal Evidence Using Business Owner Personal Interviews
15. Collect Race and Sex Misclassification Adjustment Factors Using Telephone Surveys
16. Produce Final Estimates of Public Sector M/W/DBE Utilization
17. Produce Final Estimates of Public Sector M/W/DBE Availability
18. Produce Final Estimates of Public Sector M/W/DBE Disparities
19. Prepare Draft Study Report
20. Develop Program Design Recommendations
21. Submit Final Study Report

We welcome the opportunity to defend our work product in the event of a constitutional challenge, and we prepare our work product with this possibility always in mind. NERA Senior Vice President Dr. Jon Wainwright, our trial-qualified and seasoned expert witness, and his project team, coupled with NERA's court-tested availability and disparity study work plan, will meet the legal and regulatory requirements of strict constitutional scrutiny. He has worked extensively with in-house counsel and outside lawyers, who turn to his team when the complex economic and statistical issues related to M/W/DBE programs must be addressed. NERA is the only consultant whose research has survived repeated scrutiny by the courts, both at trial and on appeal, including the landmark decisions upholding the Minnesota DOT and Illinois DOT Disadvantaged Business Enterprise programs, the City and County of Denver's M/WBE Program, and others.

The NERA team is best choice for governments that demonstrate their commitment to equal business opportunity by providing a strong basis in evidence for their M/W/DBE programs and narrowly tailoring their program objectives. We value our integrity and professionalism and look forward to an opportunity to demonstrate those characteristics for the City of Austin.

We have assembled a highly diverse, qualified, and experienced team of sub-consultants for this project, including stakeholder and community outreach specialist and SMBR-certified Business Resource Consultants, led by principal Carol S. Hadnot, and their team of sub-consultants including Paul Saldaña of Brisa Communications, Aletta Banks of the Asian Contractor Association, and Juan Oyervides of the U.S. Hispanic Contractors Association, Austin Chapter. The NERA team includes as well attorney Don O'Bannon of Bryan Cave LLP in Dallas; M/W/DBE consultant Sundra Davis of the D'Moriea Consulting Agency in Fort Worth; Computer-Assisted Telephone Interviewing (CATI) survey specialist CR Dynamics & Associates, Inc. in Baltimore, Maryland; and Optical Mark Recognition (OMR) survey specialist J&D Data Services in Plano, Texas.

I. Business Organization

A. Full Name of Organization

National Economic Research Associates, Inc. doing business as NERA Economic Consulting (“NERA”).

B. Address

360 Hamilton Avenue, 10th Floor, White Plains, NY 10601.

C. Ownership

NERA is a 100 percent, indirect, wholly-owned subsidiary of Marsh & McLennan Companies (NYSE:MMC). Marsh & McLennan’s corporate headquarters is located at 1166 Avenue of the Americas, New York, NY 10036.

D. Branch Office Performing the Proposed Work

3801 South Capital of Texas Highway, Suite 330, Austin, Texas 78704. NERA has had a branch office in Austin since 2001.

E. Legal Form of Organization and State of Incorporation

NERA operates as a corporation and is incorporated in the State of California.

II. Project Approach

A. About NERA

NERA Economic Consulting (www.nera.com) is a global firm of economists who understand how markets work—including public contracting and procurement markets. We provide economic analysis and advice to corporations, governments, law firms, regulatory agencies, trade associations, and international agencies. Our global team of more than 400 economists and other professionals operates in over 20 offices across North America, Europe, and Asia Pacific. NERA provides practical economic advice related to highly complex business and legal issues arising from public policy, regulation, competition, strategy, finance, and litigation. Our more than 50 years of experience creating strategies, studies, reports, expert testimony, and policy recommendations reflects our specialization in industrial and financial economics. Because of our commitment to deliver unbiased findings, we are widely recognized for our independence. Our clients come to us expecting integrity and the unvarnished truth.

In addition to our labor and employment economics practice, which includes disparity studies, NERA's primary practice areas include the economics of antitrust, commercial damages, energy and environment, health care and life sciences, intellectual property, mass torts and product liability, regulatory activity, securities and finance, transfer pricing, and white collar litigation and compliance.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economic and statistical experts backed by the resources and reliability of one of the world's premier economic

consultancies. As a result, NERA is ranked the No. 1 firm for economic consulting on the Vault.com lists of top consulting firms from 2009-2013.¹

B. NERA's Experience Developing and Conducting Disparity Studies

NERA has the understanding and experience to successfully and efficiently complete the requested disparity study. We have been conducting research on employment discrimination since 1972 and on minority-owned and women-owned business enterprise (M/WBE) and Disadvantaged Business Enterprise (DBE) discrimination since shortly after the U.S. Supreme Court's decision in *City of Richmond v. J.A. Croson Co.* NERA is the leading provider of high quality, legally defensible, disparity studies, and is the only consultant whose clients' programs, based on our studies and expert testimony, have repeatedly met constitutional strict scrutiny, both at trial and on appeal.

With a reputation for independence and objectivity, NERA's disparity studies examine a wide variety of quantitative and qualitative evidence on disparate impact and disparate treatment in business enterprise activity that assists our clients to develop effective and lawful affirmative action programs for procuring goods and services from MWBEs and DBEs. We not only analyze the client's own contracting and associated subcontracting activities; we also look beyond these to analyze disparities in our client's surrounding market area. Our experts also focus on key factors—such as firm size, time in business, qualifications, and experience—likely to be adversely impacted

¹ "NERA consultants strive to provide the firm's clients with the gold standard in economic analysis and support," said NERA President Dr. Andrew Carron. "NERA's continued exceptional Vault rankings, based on surveys of industry professionals, are a testament to NERA economists' expertise, hard work, and dedication." Vault's 2013 ranking of consulting firms in the economics category can be viewed here: <http://www.vault.com/wps/portal/usa/rankings/individual?rankingId1=237&rankingId2=78&rankings=2®ionId=0&rankingYear=2013>.

by discrimination. In support of these goals, NERA specializes in creating, organizing, analyzing, and interpreting complex databases of local, regional, and nationwide business enterprise activity. Our resulting studies provide the most accurate and relevant picture possible of the state of business discrimination the particular geographic regions and procurement categories of interest.

NERA economists were among the first to recognize the importance of periodic evaluation of public contracting affirmative action programs. NERA's first disparity study, for the Metropolitan Washington Airports Authority, was completed in February 1990. Since that time, NERA has successfully delivered disparity studies and related M/WBE and DBE research to public sector clients throughout the United States, including state governments and agencies in Texas, California, Illinois, New York, Maryland, Massachusetts, Missouri, Minnesota, Washington, and Hawaii; and major metropolitan area governments and agencies in Austin, San Antonio, Houston, New York, Los Angeles, Chicago, Philadelphia, Washington DC, Miami-Fort Lauderdale, Atlanta, Boston, San Francisco, Seattle, Minneapolis, St. Louis, Baltimore, Denver, Cleveland, Milwaukee, Jacksonville, Memphis, Richmond, New Orleans, Salt Lake City, and elsewhere.

NERA has particular expertise with disparity studies for Austin and for Texas. We completed the City of Austin's most recent disparity study, which forms the basis for the City's current MBE/WBE Ordinance, in 2008. We performed the first ever statewide disparity study for Texas in 1994. We have also performed studies for the City of San Antonio, VIA Metropolitan Transit, Houston Metro, and the San Antonio Water System. Our most recent study in Texas was completed for the City of Houston in 2012.

Additionally, NERA economic experts been retained to testify or provide litigation support in numerous constitutional challenges to M/WBE and DBE programs. Here the value of NERA's approach to disparity research is evident. In every case, programs based upon our studies have

withstood legal challenge—at summary judgment, at trial, and on appeal. NERA’s disparity research formed the basis for Court of Appeals decisions to uphold Denver’s M/WBE program (10th Circuit), the Minnesota DOT’s Disadvantaged Business Enterprise (DBE) program (8th Circuit), and the Illinois DOT’s DBE program (7th Circuit), among others.

A further indicator of NERA’s superior track record is our selection by the *Transportation Research Board* of the *National Academy of Sciences* to develop the first ever national guidelines for producing disparity and availability studies.² As the prime contractor on this peer-reviewed project, NERA determined that the best benchmark for judging a disparity study’s success was whether the M/WBE program based on that study could survive a strict scrutiny constitutional review if it was challenged. From this starting point, NERA produced a comprehensive report documenting study design principles, model disparity study tasks and elements, legal parameters, and study resource issues.

NERA’s collective depth and breadth of experience in this field makes us the best choice for governments such as the City of Austin that desire to demonstrate their commitment to contracting and procurement diversity by directly and defensively addressing the constitutional challenges that face these programs.

C. Understanding and Approach: What Constitutes a Legally Defensible Disparity Study?

Race- and gender-conscious government classifications are subject to the highest level of judicial scrutiny. Any public policy employing such classifications must be supported by a strong basis in

² *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, Transportation Research Board of the National Academies, NCHRP Report, Issue No. 644.

evidence and any remedies employed must be narrowly tailored.³ A disparity study determines if such strong evidence is present in the geographic and product markets for which it is performed, and, if so, to recommend for consideration remedial actions that directly address the study's findings—no more and no less, and are thereby narrowly tailored.

Strong evidence includes properly calculated and sufficiently detailed statistics showing: how M/WBEs and DBEs are being utilized relative to their current availability in the market area; the rates at which minorities and women form businesses relative to similarly situated nonminority males; the business earnings of minorities and women relative to similarly situated nonminority males; and the degree to which minorities and women can access commercial capital and credit relative to similarly situated nonminority males. Strong evidence also typically includes qualitative, or anecdotal, accounts derived from surveys, public hearings, and/or personal interviews with M/W/DBEs and non-M/W/DBEs that are consistent with the statistical evidence.⁴

Recommended remedial actions may include race- and gender-conscious, or demand-side, elements such as overall goals and contract-specific goals that encourage prime contractors, consultants, and vendors to make good-faith efforts to include M/W/DBEs as subcontractors, sub-consultants and suppliers on publicly-funded contracts. They may also include race- and gender-neutral, or supply-side, elements designed to increase the number of M/W/DBE firms that can be certified to participate and to enhance the ability of minority- and women-owned firms to compete effectively in the contracting market. Examples of such activities include structuring contract documents and specifications to facilitate increased participation by M/W/DBEs; assisting

³ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (applying strict scrutiny to non-federal contracting); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (applying strict scrutiny to federal contracting).

⁴ *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, Transportation Research Board of the National Academies, NCHRP Report, Issue No. 644, 2010.

M/W/DBEs to overcome barriers related to surety bonding and other types of financing; assisting start-up M/W/DBE firms to become established; implementing communications programs regarding contracting procedures and specific contract opportunities; implementing supportive services programs to develop business management and related skills, helping firms learn to handle increasingly complex and diverse project types; and assisting firms in the adoption of emerging technologies.⁵

The principal goals of a legally defensible disparity study are to ensure compliance with constitutional mandates and equality of opportunity in the award and implementation of public contracts and purchase orders. The relevant geographic and product markets for this disparity study are those pertaining to the contracting and purchasing activities of the City of Austin. The contracting and purchasing activities that are of interest include: (1) construction, (2) construction-related professional services including architecture and civil engineering, (3) other professional and general services, (4) commodities, supplies and equipment,⁶ and (5) airport concessions.

Key research questions to be asked and answered by the proposed disparity study include:

- What are the current constitutional standards and case law governing strict scrutiny review of race- and gender-conscious government efforts in public contracting applicable to the City of Austin?
- What is the relevant geographic market for the City of Austin and how is it defined?
- What are the relevant product markets for the City and how are they defined?

⁵ See, e.g., 49 C.F.R. 26.51(b).

⁶ We recommend including all types of commodity purchases—those with multiple scopes of work as well as those with a single scope of work.

- What percentage of all businesses in the City of Austin market area are owned by minorities and/or women? How are these availability estimates constructed?
- Do minority and/or female wage and salary earners earn less than similarly situated nonminority males? Do minority and/or female business owners earn less from their businesses than similarly situated nonminority males? Are minorities and/or women in the City of Austin market area less likely to be self-employed than similarly situated nonminority males? How do the findings in the City's market area differ from the national findings on these questions?
- Have minorities and/or women faced discrimination in the market for commercial capital and credit compared to similarly situated nonminority males? How, if at all, do findings from the Austin region differ from findings nationally?
- To what extent have M/W/DBEs been utilized by the City of Austin and its prime contractors and vendors on contracts awarded from FY2008-FY2012, and how does this utilization compare to the availability of M/W/DBEs in the relevant market area?
- How many M/W/DBEs report experiencing disparate treatment during the study period? What types of discriminatory experiences are most frequently reported by M/W/DBEs? How do the experiences of M/W/DBEs differ from those of similar non-M/W/DBEs regarding difficulties in obtaining prime contracts and subcontracts?
- What general policies and procedures govern the City of Austin's contracting and purchasing activities? What were some of the most frequently encountered comments from M/W/DBEs and non-M/W/DBEs concerning the City's contracting and purchasing policies and procedures?

Our study approach complies with strict constitutional scrutiny in our best professional judgment. Working with the City and County of Denver to defend their M/WBE program in the *Concrete Works of Colorado, Inc. v. City and County of Denver* litigation,⁷ NERA first developed its current approach to conducting disparity studies. Denver correctly recognized that the proper statistical inquiry in a disparity study is not only whether disparities remain despite the operation of a race- and gender-conscious public sector program but, more importantly, whether disparities are observed when remedial intervention is *not* present in the market area, as reflected by, for example, M/W/DBE participation on contracts without affirmative action goals, either in the public sector, the private sector, or both. This is a statistical nuance that many consultants' disparity studies, then and now, fail to appreciate.⁸ Based largely on NERA's work, Denver was successful in its defense of their program, and *Concrete Works* established new and comprehensive law on the standards to meet a local government's compelling interest in remedying discrimination that remains the major case upholding a local contracting affirmative action program.

NERA's approach includes the following major elements:

- A legal review discussing *Croson*, *Adarand*, and subsequent case law and legal standards;
- An empirical assessment of the appropriate geographic and product markets relevant to an agency's contracting activity;
- An estimate of the fraction of businesses within the relevant geographic and product markets that are owned by M/W/DBEs (i.e., "availability"), overall and disaggregated by detailed industry category and detailed race and sex categories;

⁷ 21 F.3d 950 (10th Cir. 2003).

⁸ *Guidelines for Conducting a Disparity and Availability Study*, *op. cit.*, p. 51.

- An estimate of the percentage of all prime contract and subcontract dollars earned by M/W/DBEs (i.e., “public sector utilization”), overall and disaggregated by detailed industry category and detailed race and sex categories;
- A statistical comparison of public sector utilization to availability (i.e., “public sector disparity ratios”);
- Econometric analyses of M/W/DBE success, relative to non-M/W/DBE (e.g., in business formation rates and in business owner earnings), and holding non-discriminatory factors constant, in the market area surrounding the agency in question (i.e., “private sector disparity ratios”);
- Econometric analysis of M/W/DBE access to capital and credit relative to non-M/W/DBE, holding balance sheet and creditworthiness information constant;
- Qualitative (i.e., anecdotal) evidence from M/W/DBEs and non-M/W/DBEs concerning experiences doing business or attempting to do business in the relevant market area, including experiences of institutionalized discrimination and/or individual disparate treatment, gathered through surveys, personal interviews, and/or public hearings (i.e., “anecdotal evidence”);
- Qualitative and/or quantitative analysis of the effectiveness of race-neutral measures to address low M/W/DBE participation in public contracting;
- Review of existing policies and procedures, with recommendations for changes/revisions designed to improve M/W/DBE participation and increase legal compliance.
- Post-study assistance in developing overall goals and contract-specific goals, as appropriate.

NERA pioneered the application to business disparity studies of such large and complex statistical databases as the Census Bureau’s *Decennial Census Public Use Microdata Samples*,

American Community Survey Public Use Microdata Samples, and its *Survey of Business Owners*, as well as the Federal Reserve Board's *Survey of Small Business Finances*. NERA also refined the application of private sources to disparity studies, such as those from *Dun & Bradstreet*, *Hoover's*, and *McGraw Hill/F.W. Dodge*. We will apply these capabilities as required for the City of Austin M/WBE and DBE programs. No other consultant has this demonstrated capacity.

NERA defines markets, availability, utilization, and disparity empirically based on our clients' actual and reconstructed contract and subcontract data. Our study methods offer other features that are also unmatched by our competitors. Most importantly, we conduct our statistical contract analyses at the detailed industry level using four-, five-, and six-digit *North American Industrial Classification System* (NAICS) codes. No other consultant provides this level of industry detail in their analyses. Critically, our availability and utilization analysis has protocols to reconstruct statistically sufficient data in the face of missing or incomplete client information on subcontractors, sub-consultants, and suppliers. Quite often, such subcontract records for M/W/DBEs and non-M/W/DBEs have not been completely collected or retained by our clients. This is a significant factor for almost every government agency that commissions a disparity study. Although, based on the answers provided to bidder questions for this RFQS, the City of Austin's data appears to be more complete than we often encounter, we still expect to have to reconstruct significant elements of the database, especially with regard to payment records to non-M/W/DBE subcontractors (as opposed to award records). It is our view that reconstructing missing subcontract and subcontractor information should be the responsibility of the consultant, not that of the City of Austin.

NERA's availability analysis is free from variables that are readily tainted by discrimination. Starting from known business establishment lists (such as those from *Dun & Bradstreet/Hoover's*) we cross-reference dozens of listings and directories of M/W/DBE firms in the relevant geographic

and product markets in order to improve the classification of firms according to their race and gender status. Next, we take the additional step of validating our putative race and gender assignments using results of telephone surveys from large, statistically random, samples of business enterprises. No other consultant provides this sort of validation.

NERA's anecdotal analysis includes both quantitative and qualitative research. First, we conduct a detailed survey, provided by mail as well as online to a large, random sample of both M/W/DBE and non-M/W/DBE firms. The survey elicits data on firms' experiences with discrimination, as well as experiences in bidding with the agencies and prime contractors. This approach assures that the anecdotal findings are representative of the M/W/DBE and non-M/W/DBE community at large in the relevant markets. Since response rates to voluntary mail surveys are typically low, we take additional steps to increase responsiveness, including an outreach campaign, professionally designed surveys, cover letters signed by top agency officials, multiple reminders, and dedicated WATS lines and email addresses for requesting replacement surveys and asking questions. Moreover, representativeness is statistically validated through the use of non-response surveys—something no other consultant in this field provides.

NERA also collects qualitative anecdotal information through in-depth focus groups of both M/W/DBE and non-M/W/DBE business owners throughout the relevant market area. These personal, face-to-face interviews likewise explore barriers to the full and fair participation of minorities and women in the City of Austin's markets and whether the City's current contracting and purchasing policies and procedures address these challenges. Additionally, we explore whether barriers are experienced by all small firms, to determine the efficacy of race- and gender-neutral approaches. These interviews yield valuable information about the day-to-day realities of M/W/DBEs and how to structure effective answers to those challenges.

The results of NERA's approach to conducting disparity research have been dramatic. We are the only consultant whose study methods for gathering statistical and anecdotal evidence in M/W/DBE cases have been repeatedly upheld by the courts after the rigors of a full trial on the merits and upon appeal. Specifically, Minnesota DOT's NERA study and corresponding expert testimony was held to be "thorough" by the Eighth Court of Appeals in supporting that agency's narrowly tailored Disadvantaged Business Enterprise (DBE) program.⁹ The City of Chicago established the continuing compelling need for its M/WBE Program using this framework, based in part on availability analyses pioneered by NERA.¹⁰ The Seventh Circuit Court of Appeals upheld the Illinois DOT's DBE program, based largely on NERA's expert reports and testimony.¹¹

D. Cross-Reference for Section 0600, Part II (Project Approach) to Detailed Work Plan

All of the items required by the RFQS to be specifically included in the narrative for Section 0600 Part II are covered below under Section II.E of our proposal, entitled "Detailed Technical Work Plan." The following paragraphs provide a specific cross-reference between RFQS Section 0600 Part II, items I through VII and NERA's detailed work plan.

- I. A description of the empirical assessment approach that will be used for determining the City's appropriate geographic and product markets

See Section II.E.7. Also II.E.1, II.E.2, II.E.3, and II.E.6.

⁹ *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation and Gross Seed Co. v. Nebraska Department of Roads*, 345 F.3d, at 973 (8th Cir. 2003).

¹⁰ *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003).

¹¹ *Northern Contracting Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7th Cir. 2007).

- II. How available MBE/WBE/DBE/VBEs will be identified and verified (including factors analyzed when determining if a Step 2 Adjustment is necessary in order to determine DBE availability), and whether firms' capacity will be taken into account when determining availability

See Section II.E.17, especially the note on capacity. Also II.E.4, II.E.7, II.E.12, II.E.15.

- III. The methodology that will be used for determining the City's utilization of identified available firms, including what size contracts will be evaluated

See Section II.E.16. Also II.E.1, II.E.2, II.E.3, and II.E.6, including footnote 14.

- IV. The statistical model that will be used to determine the disparity ratio

See Section II.E.18. See also Section II.E.10.

- V. In the event that it is necessary or possible, the method used for comparing the City's utilization of firms versus other public entities' utilization

See Section II.E.16.

- VI. The method that may be used, if appropriate, to analyze private sector data

See Section II.E.9–II.E.11.

- VII. A description of the information that will be collected for anecdotal evidence, how it will be collected, and the significance of this analysis

See Section II.E.13–II.E.14.

E. Detailed Technical Work Plan

The sequence and elements of our recommended Work Plan reflect our experience in conducting legally defensible studies, as well as the Transportation Research Board’s *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*.¹² For example, the first step in a disparity study is building the project database of contracts and subcontracts since the results impact every subsequent task. Our Work Plan includes all elements described in the RFQS and necessary for a legally defensible study.

Unless otherwise indicated, all Study Tasks below apply to:

- All departments within the City of Austin (collectively, the “Client” or the “City of Austin”, or the “City”) that contract for or procure construction, construction-related professional services, other professional and general services, commodities, supplies and equipment, and airport concessions
- African Americans, Hispanics, Asians, Native Americans, and Non-Hispanic White Females.
- Veterans, where data are available. It is important to note that veteran status, unlike race, is not subject to constitutional strict scrutiny.
- Study time period of October 1, 2007 (start of Fiscal Year 2008) through September 30, 2012 (end of Fiscal Year 2012).

¹² *Guidelines for Conducting a Disparity and Availability Study, op. cit.*

Our Work Plan assumes that the City of Austin will facilitate the team's access to all available prime contract and subcontract-, sub-consultant- and supplier-related records at the outset of the study.

1. *Project Initiation Conference/Initial Data Review*

Following the Notice to Proceed, we will hold a conference with the City's Project Manager. The purpose is to facilitate project planning and scheduling, acquisition of all relevant client-maintained contract, purchase order, and subcontract records, and to prepare for the acquisition and/or collection of prime contract records and associated subcontract records from our statistical sample of the client's prime contracts, as well as airport concession revenues records. The study scope will encompass all contracts in the major contract categories identified above, regardless of whether or not they had M/W/DBE requirements. In addition to the City's Project Manager, a successful study outcome will require the active involvement of a variety of personnel.

Sub-Tasks:

- Identify key managers at the City with responsibility for construction contract administration, design services contract administration, other professional and general services contract administration, and commodity purchasing.
- Identify IT/MIS personnel at the City with responsibility for contracting and purchasing systems, project management systems, and accounts payable systems.
- Designate a study workgroup consisting of the City's Project Manager and the previously identified managers and legal counsel. The workgroup will have responsibility for facilitating NERA's access to all requested data, for monitoring study progress, and for providing feedback on the draft report and recommendations.

- Develop Client-Maintained Data Collection Plan in tandem with the City's Project Manager.
- Request City's Project Manager to circulate Client-Maintained Data Collection Plan to all workgroup members.
- Request City's Project Manager to schedule an initial teleconference with the workgroup to review the Client-Maintained Data Collection Plan.

2. *Establish Disparity Study Task Force*

If needed, following the Project Initiation Conference, we will consult with the Study Task Force to review and finalize the Client-Maintained Data Collection Plan and to prepare, if necessary, any revisions of supplementary information based on the Study Task Force members' input.

Sub-Tasks:

- Finalize scheduling for the initial meeting with the Study Task Force.
- Review Client-Maintained Data Collection Plan with Study Task Force.
- Receive feedback and other input from Study Task Force concerning the Client-Maintained Data Collection Plan.
- Finalize the Client-Maintained Data Collection Plan, as necessary, based on Study Task Force feedback.
- Develop subcontracting data collection plan in consultation with the Study Task Force. To the extent subcontract data has not been collected and/or maintained by the

City, we will seek to obtain this information directly from the relevant prime contractors and vendors.¹³

- Submit Finalized Client-Maintained Data Collection Plan to the Client's Project Manager and other Study Task Force members.

3. *Execute Client-Maintained Data Collection Plan*

Following our submission of the Client-Maintained Data Collection Plan, we will begin following up via telephone and/or e-mail with the City's Project Manager and/or the designated individual study task force members, in order to secure our access to each item in the Plan. On-site follow-up will occur in cases where telephone and e-mail follow-up and electronic data transmission proves impractical. It is critical to the Study Schedule that the requested data be accessed as quickly and efficiently as possible, and that designated study task force members actively work to facilitate our expedited access to and acquisition of relevant contract and subcontract data.

Sub-Tasks:

- Conduct telephone and e-mail follow-up with those workgroup members designated as the point of contact for each data item in the Client-Maintained Data Collection Plan to secure access to each requested data item.
- Review all received data items for completeness and consistency with the Client-Maintained Data Collection Plan.

¹³ For more on this, see Task 6 below.

- Schedule and conduct on site follow-up, if and where necessary, to collect hard copy records in cases where electronic data cannot be provided and hard copy files cannot be readily provided.
- Work with the Client's Project Manager to troubleshoot any difficulties in obtaining Client-maintained data.

4. *Assemble Master M/W/DBE Directory*

Immediately following the Project Initiation Meeting, we will begin an exhaustive search to obtain all public and private directories and other listings of M/W/DBEs in the City of Austin's market area.

Sub-Tasks:

- Identify and acquire all listings or directories of M/W/DBEs maintained or used by the City of Austin.
- Identify and acquire all listings or directories of M/W/DBEs maintained or used by other area governments.
- Identify and acquire all listings or directories of M/W/DBEs maintained or used by the State of Texas, including the State UCP.
- Identify other public jurisdictions that maintain separate listings or directories of M/W/DBEs, including cities, counties, and special districts.
- Identify private entities that maintain listings or directories of M/W/DBEs, including private sector firms that run supplier diversity programs and for-profit firms that compile/distribute M/W/DBE directories.
- Acquire copies, where permitted, of all directories and lists identified above.

- Work with City's Project Manager to resolve confidentiality, data-sharing, or other concerns that may arise with some jurisdictions or entities.
- Key punch hard copy lists or directories where electronic data is not available.
- Perform a computer-assisted match-merge of all electronic directories and lists (including keypunched materials), consolidating information across fields, resolving field conflicts, and removing duplicates. Each record will contain the following fields: primary name, secondary name, address, city, state, five-digit zip code, telephone, executive name, executive title, primary type of work, secondary type of work, preliminary race, Hispanic origin, gender, and veteran status (if available).
- Add a unique key field to the Master M/W/DBE Directory to facilitate cross-referencing to business universe data drawn from the Dun & Bradstreet/Hoover's database.

5. *Legal Review*

Under attorney Don O'Bannon's supervision, we will produce a legal report detailing our research and evaluation of current legal standards relevant to M/W/DBE programs. While no one can guarantee the outcome of litigation and much of the federal judiciary appears to remain hostile to affirmative action, Mr. O'Bannon's familiarity with the case law and with the programmatic issues affecting M/W/DBE programs will ensure that results delivered will reflect best practices and current case law.

6. *Prepare Master Contract/Subcontract Database*

The Master Contract/Subcontract Database will provide the statistical platform upon which much of the utilization, availability, and disparity analyses will be built. Substantial data processing is required to properly assemble the Master Contract/Subcontract Database from the raw data provided via the Client-Maintained Data Collection Plan and the Prime Contractor Statistical Sampling Frame.

Immediately after the Client-Maintained Data Collection Plan is filled, we will use the records obtained to finalize the Prime Contractor Statistical Sampling Frame for each major contracting category (i.e., construction, construction-related professional services, other professional and general services, and, commodities, supplies, and equipment).¹⁴ We will then proceed to collect the required subcontract records from the primes in our sample, utilizing the information already in-hand from the City's existing records.¹⁵

Experience has taught us that this latter effort will require the active involvement of Client personnel in order to encourage expedited cooperation from relevant prime contractors.

Sub-Tasks:

- Prepare statistical sampling frame for each major contract category.
- Prepare and mail letters and data collection forms to prime contractors. Prime data collection forms will require a cover letter signed by Mayor Leffingwell.
- Follow-up with prime contractors to complete forms and return them in a timely manner.
- Key punch hard copy records as necessary.
- Import all electronic data into Stata[®], an integrated statistical package designed for research professionals. Stata[®] is a fully configured and customizable statistical software that provides database management, basic statistics, linear models, limited dependent variable models,

¹⁴ At this point in the study, in consultation with the City's project management team, we will make a determination regarding the appropriate dollar threshold below which contracts and purchase orders will not be analyzed (this is a cost efficiency issue; the City issues tens of thousands of small contracts and POs each year that account for the numerical bulk of the purchasing activity but which only account for a small fraction of total dollars spent). The RFQS calls for this threshold to be set at \$50,000. However, in RFQS SMW0051 Amendment No. 2, at item 14, the City has allowed, as an option, for consideration of a different threshold, if warranted by the data.

¹⁵ Judging from the sample data provided by the City as part of RFQS SMW0051, we expect that in some, though not all, cases, we will be able to provide prime contractors in the sample a listing of all subcontractors, sub-consultants, and suppliers that were included in the contract at its initiation (both M/W/DBE and non-M/W/DBE), along with their original award amounts. Missing will be contracts and purchases for which this pre-award data was not compiled, change order amounts, and, at least for non-M/W/DBEs, payment amounts.

non-parametric methods, resampling and simulation methods, sample survey models, model testing, post-estimation support and more. Stata[®] results and datasets are easily exported into most standard PC formats, such as Microsoft Excel[®] or Microsoft Access[®].

- Create relational database structure linking subcontractors to subcontracts, subcontracts to prime contracts, and prime contracts to prime contractors.
- Create and/or clean-up variable names, variable labels, data labels, and data definitions.
- Ensure field values are consistent within prime contract, subcontract, prime contractor, and subcontractor: firm name, address (street, city, state, zip, phone), work type, race, Hispanic origin, gender, disability status, etc.
- Remove duplicate records and field values.
- Assign race and sex status based on reconciled race and gender fields.
- Assign county values based on city and state or zip code.
- Assign NAICS codes to each contractor and subcontractor based on contractor work type, project description, and/or contractor name. Contractor name searches are performed using Dun & Bradstreet/Hoover's, InfoUSA, Lexis/Nexis, and other sources.

7. Define Geographic and Product Markets

After the Master Contract/Subcontract Database is completed, we will use it to empirically determine those counties that account for at least 75 percent of contract/subcontract dollars in Client contracts and purchases. Similarly, we will use it to determine those NAICS codes that account for the largest 75 percent of contract/subcontract dollars in the databases. The relevant geographic and product market definitions will define a subset of business universe data to be licensed from the Dun & Bradstreet/Hoover's database.

Sub-Tasks:

- Using the Master Contract/Subcontract Database, collapse the dollar amounts according to county/state or zip code.
- Sort resulting records by dollar amount, create a cumulative distribution, and define the geographic market based on the top 75 percent of the geographic distribution.
- Using the Master Contract/Subcontract Database, collapse the dollar amounts according to NAICS code.
- Sort resulting records by dollar amount, create a cumulative distribution, and define the product markets based on the top 75 percent of the industry distribution.
- License Dun & Bradstreet/Hoover's data based on the defined geographic and product markets.
- Dun & Bradstreet/Hoover's data includes the following fields: DUNS number, business name, alternate business name, address, city, state, zip code, phone, fax, executive name, executive title, ethnicity, gender, six-digit NAICS code. This database will serve as the Baseline Business Universe.

8. *Review Race- and Gender-Neutral Alternatives*

The courts require that the City of Austin explore whether race- and gender-neutral approaches effectively remedy discrimination before adopting affirmative action programs. To meet this legal mandate and programmatic objective, we will undertake three approaches. First, to the extent of available information, we will examine the utilization of M/W/DBEs in state and local race- and gender-neutral efforts and any other initiatives, including City contracts without affirmative action goals, compared to the availability estimates.

Next, we will examine the impact of the City's race- and gender-neutral policies on opportunities for M/W/DBEs. Criteria for prequalification, contract size, procurement policies, *etc.*, can have profound effects on small firms. This analysis will include our review of existing contracting policies and procedures in key departments as they relate to contracting affirmative action efforts. We will also, to the extent data are available, evaluate the participation of M/W/DBEs in race- and gender-neutral programs targeted towards small businesses.

Based upon these evaluations, we will provide recommendations on establishing remedial initiatives.

Sub-Tasks:

- Compile information on the City's and other race- and gender-neutral programs operating in the relevant market area.
- Evaluate the City's race- and gender-neutral contracting policies and procedures for impacts on M/W/DBEs.
- Collect data, if available, on M/W/DBE utilization in race- and gender-neutral programs.
- If data allow, compare utilization in race- and gender-neutral programs to availability estimates.

9. *Economy-Wide Disparity Analysis: Results from the Survey of Business Owners*

We have pioneered the use of Census data to test for the presence of disparities in the economy as a whole, including the private sector. The Census Bureau's *Survey of Business Owners and Self-Employed Persons* (SBO), formerly known as the *Surveys of Minority- and Women-Owned Business Enterprises*, collects and disseminates data on the number, sales, employment, and payrolls of businesses owned by women and members of racial and ethnic minority groups. This survey has

been conducted every five years since 1972. The most recent data, for 2007, was released in late 2011. Although the level of local geographic detail from this data source is limited, it nevertheless contains substantial amounts of informative data at the metropolitan, state, and national level.

Using the SBO data, the percentage of sales or receipts attributable to minority-owned or women-owned firms (utilization) can be compared to the corresponding percentage of minority- or women-owned businesses in any given geographic or industry category. The results of such comparisons will then be tested for statistical significance for those cases where data have not been suppressed and where standard errors have been published.

Sub-Tasks:

- Prepare SBO dataset for analysis.
- Program Stata[®] to produce descriptive statistics and carry out relevant disparity comparisons, with associated statistical tests.

10. *Economy-Wide Disparity Analysis: Business Formation Disparities and Business Owner Earnings Disparities*

If business disparities are observed, the next question becomes whether phenomena other than discrimination can account for them. This is a crucial issue and one Dr. Wainwright has addressed extensively in his expert reports and testimony for other states and local governments. To focus our answer to this question on the relevant market, we will use linear and limited dependent variable regression techniques to analyze federal census data for Texas and the Austin region in recent years. Microdata from the Public Use Microdata Sample (PUMS) of the *American Community Survey* (ACS) for 2007-2011 (the most recent data available) will be used to determine (A) if minorities or women form businesses at lower rates than comparable nonminority men, and (B) if minorities or women who do form businesses earn less from their entrepreneurial activities than comparable nonminority men.

In addition to providing a test of whether observed disparities are consistent with the presence of current and/or past discrimination, these regression analyses allow us to gauge the extent of disparities facing minority-owned and women-owned firms in the local economy. The ability to gauge these disparities is important in order for the City to avoid or reduce passive participation in private discrimination in its market area.

Sub-Tasks:

- Prepare ACS PUMS dataset for analysis.
- Program Stata[®] to produce descriptive statistics and carry out relevant regression analyses of business formation and business owner earnings, with associated statistical tests.
- Test alternate regression specifications, conduct post-estimation testing, and analyze results.

11. *Economy-Wide Disparity Analysis: Access to Commercial Capital Markets*

In addition to potential discrimination in the private sector by nonminority contractors, retailers, manufacturers, suppliers, and service providers (as gauged in the ACS and SBO data), another major source of potential discrimination cited in the minority business literature and in anecdotal reports is discrimination by commercial lending institutions in providing access to capital. The court in *Northern Contracting*, for example, relied upon our analysis in finding that commercial credit discrimination still impeded the ability of construction and design firms to do business in the relevant market area.

In this task, we will expand on the national and regional evidence of race disparities in commercial lending drawn from the Federal Reserve Board's *National Survey of Small Business Finances* (SSBF) with corresponding results from our own past local surveys of firms' access to commercial credit, conducted between 1999-2007.

Sub-Tasks:

- Prepare SSBF data for analysis.
- Program Stata[®] to produce descriptive statistics and carry out relevant regression analyses of loan denial rates and interest rate differentials, with associated statistical tests.
- Program Stata[®] to produce descriptive statistics and carry out relevant regression analyses on local survey results.

12. Merge Master M/W/DBE Directory and Baseline Business Universe

By merging the Master M/W/DBE Directory with the Baseline Business Universe from Dun & Bradstreet/Hoover's, we will significantly improve the identification of minority-owned and women-owned businesses in the baseline universe.

Sub-Task:

- Using Stata[®], we will merge the records in the Master M/W/DBE Directory with the Baseline Business Universe Population, updating race and sex fields and discarding non-merging records.

13. Anecdotal Evidence of Discrimination: Business Experience Surveys

Strict scrutiny requires anecdotal evidence of discrimination against M/W/DBEs consistent with the statistical evidence. Anecdotal information is significant both for determining whether there is strong evidence of discrimination and for narrowly tailoring any program recommendations. The personal experiences of disparate treatment suffered by minorities or women in seeking and performing public and private sector work in the relevant market place have been held by courts to buttress sound statistical evidence of disparate impacts. Information will also be elicited about the utilization and success of M/W/DBEs on projects without mandatory affirmative action efforts. As

several courts have recognized, such anecdotal evidence is probative of whether there is a continuing need for governmental remedial intervention in a market made imperfect by the operation of discrimination.

For this study, we will use several techniques to gather anecdotal evidence—both quantitative and qualitative. First, we will conduct a large scale mail survey of M/W/DBEs as well as non-M/W/DBEs about their experiences in working or attempting to work on prime contracts and subcontracts with the City, with other public agencies in the surrounding area, and in the private sector. We will ask M/W/DBEs about their experiences with disparate treatment resulting from applying for commercial loans, applying for surety bonds, applying for commercial or professional insurance, obtaining price quotes from suppliers, payment practices, hindrance or harassment at the work site, joining or dealing with trade associations, double standards in performance, and other areas.

The mail surveys will also ask M/W/DBEs and non-M/W/DBEs the same set of questions regarding each firm's characteristics, its experiences regarding various bid requirements, bonding, financing, and the impact of these requirements on the firm's ability to obtain awards. We will then program Stata[®] to conduct regression analyses that compare M/W/DBEs with non-M/W/DBEs experiences while holding observable firm characteristics constant. A telephone survey of non-respondents to the mail survey can also be conducted to examine if there are any systematic differences between respondents and non-respondents. Non-response surveys are important if the Client is concerned that the survey results might be challenged in litigation.

Sub-Tasks:

- Stratified statistical sampling from the Baseline Business Universe Population to generate mail survey sampling frame.

- Design mail survey instrument. Survey will require a cover letter signed by Mayor Leffingwell.
 - Work with the City and with our sub-consultant team to conduct stakeholder outreach to publicize the surveys.
 - Administer business experience survey (setup, printing, postage, mail-out, reminders, mail-back, OMR scanning).
 - Program Stata[®] to produce descriptive statistics and carry out relevant regression analyses on survey results.
 - Incorporate non-response survey adjustments as applicable.
 - Program Stata[®] to produce descriptive statistics for non-response survey results as applicable.
- Check results for selection bias.

14. *Anecdotal Evidence of Discrimination and Client Program Feedback: Business Owner Interviews*

In addition to the findings from our mail survey, we will interview representative groups of M/W/DBEs and non-M/W/DBEs to examine their experiences with bidding prime contracts and subcontracts in the public and private sectors; discriminatory behaviors or practices; obtaining elements necessary for success such as bonding and loans; working with public sector personnel and with area M/W/DBE programs; and utilization on projects without affirmative action requirements compared to projects with such goals. The City will be asked to assist us in securing a meeting location, identifying potential participants from their list of active contractors and vendors, and publicizing the sessions online on the City's website. Interview sessions will be held to ensure a representative cross section of firms by M/W/DBE status and industry sector. We expect to hold

eight sessions—one each for M/W/DBEs and for non-M/W/DBEs in construction, construction-related professional services, other services and commodities, and airport concessions.

In addition, we will interview City of Austin personnel responsible for contracting and purchasing functions regarding the effects of existing procurement policies and procedures on M/W/DBE and non-M/W/DBE firms. The results will be used to determine whether race- and gender-neutral measures have been effective and guide narrowly tailored recommendations regarding the potential use of race- and gender-conscious measures to eliminate barriers.

Sub-Tasks:

- Develop written interview questions.
- Work with the City to conduct stakeholder outreach to publicize focus group sessions.
- Work with our sub-consultant team to secure M/W/DBE and non-M/W/DBE participation in interviews.
- Identify appropriate City personnel with responsibility for contracting and purchasing functions.
- Conduct interviews.

15. *Determine Race and Sex Misclassification and Non-Classification Adjustment Factors*

Experience has taught us that some firms putatively classified as minority- or women-owned in Dun & Bradstreet/Hoover's or in the Master M/W/DBE Directory are not, in fact, minority- or women-owned. Similarly, there are firms in the Baseline Business Universe Population that are not classified as minority- or women-owned when, in fact, they are. The former, if left uncorrected, will cause estimates of M/W/DBE availability to be biased *upward* from their actual level. The latter, left

uncorrected, will cause estimates of M/W/DBE availability to be biased *downward* from their actual level.

To prevent these types of bias in our estimates of M/W/DBE availability, we will select a stratified random sample of firms from the Merged Master M/W/DBE Directory and Baseline Business Universe Population and survey them to validate the race and gender of their owner(s). Stratification will be by preliminary minority status, gender status, and industry. Results from these surveys will be used to construct unbiased estimates of M/W/DBE availability.

Sub-Tasks:

- Prepare misclassification/non-classification survey instrument.
- Select stratified random sample from the Merged Master M/W/DBE Directory and Baseline Business Universe Population.
- Conduct misclassification/non-classification phone survey.
- Using Stata[®], we will code the survey results and analyze them to calculate appropriate bias-correction factors.

16. Produce Public Sector M/W/DBE Utilization Estimates

Using the Master Contract/Subcontract Database, we will produce estimates of M/W/DBE utilization for: (1) All race and sex groups combined and all industry groups combined, (2) all race and sex groups combined by detailed NAICS industry, (3) all NAICS industry groups combined by detailed race and sex, and (4) detailed race and sex by detailed NAICS industry groups. If possible with the available data, we will also make these calculations for veteran-owned businesses.

To the extent possible, we will also attempt to ascertain the level of M/W/DBE utilization achieved by other public entities in Austin's market area by accessing relevant secondary data sources such as contract compliance reports, regulatory submissions, and other disparity studies.

This data can be valuable, especially when it shows levels of M/W/DBE utilization in the absence of race- or gender-conscious goals.

Sub-Tasks:

- Calculate preliminary utilization estimates.
- Apply misclassification/non-classification bias adjustments, if applicable.
- Calculate final utilization estimates.
- Collect and evaluate utilization data from other jurisdictions in the market area

17. Produce M/W/DBE Availability Estimates

Using the results of the Misclassification/Non-classification Surveys coupled with the Merged Master M/W/DBE Directory and Baseline Business Universe, we will produce estimates of M/W/DBE availability for: (1) all race and sex groups combined and all industry groups combined, (2) all race and sex groups combined by detailed NAICS industry, (3) all NAICS industry groups combined by detailed race and sex, and (4) detailed race and sex by detailed NAICS industry groups. If possible with the available data, we will also make these calculations for veteran-owned businesses. For the availability figures applicable to the DBE and ACDBE program, analysis will be performed to allow for consideration of Step 2 adjustments of availability as called for under 49 C.F.R. § 26.45(d).¹⁶

Sub-Tasks:

- Calculate preliminary availability estimates.
- Apply misclassification/non-classification bias adjustments.
- Calculate final availability estimates.

¹⁶ Consideration of these Step 2 adjustments will be required for inclusion when, after the study is complete, the City submits its annual or triennial DBE and ACDBE plans to the Federal Aviation Administration.

a. Note on Understanding “Capacity”

Some observers, primarily opponents of efforts to remedy discrimination in contracting, argue that M/W/DBE availability estimates must be adjusted for “capacity.” Such assertions, however, are never accompanied by specific suggestions about how such adjustments could be made consistent with professional social science standards and how they would not themselves be affected by the presence of discrimination.

NERA’s method for measuring potential availability adjust for several appropriate characteristics of firm capacity, including industry affiliation, geographic location, owner labor market experience, and educational attainment. However, we are careful not adjust for capacity factors that are themselves likely to be adversely impacted by discrimination. In our view, capacity indicators such as firm age, firm revenues, employment size, largest contract received, and bonding limits are all subject to the impact of discrimination.

Moreover, terms such as “capacity,” “qualifications,” and “ability,” are not well defined in any statistical sense. Does “capacity” mean the level of annual firm revenues, employment size, bonding limits, or number of contracts bid or awarded? Does “qualified” or “able” mean possession of a business license, certain amounts of training, types of work experience, or the number of contracts a firm can perform at a given moment? What mix of business attributes properly reflects “capacity”? Does the meaning of such terms differ from industry to industry, locality to locality, or through time? Where and how might such data be reliably gathered? Even if capacity was well-defined and adequate data were gathered, when measuring the existence of discrimination, the statistical method used should not improperly limit the availability measure by incorporating factors that are themselves impacted by discrimination, such as firm age, annual firm revenues, bonding limits, or numbers of employees.

Consider a hypothetical example where discrimination has completely prevented the emergence of any minority-owned firms. Suppose that racial discrimination was deeply ingrained in a city's construction market. As a result, few minority construction employees are given the opportunity to gain managerial experience in the business; minorities who do end up starting construction firms are denied the opportunity to work as subcontractors for nonminority prime contractors; and nonminority prime contractors refuse to work with minority firms and put pressure on bonding companies and banks to prevent minority owned construction firms from securing bonding and capital. In this example, discrimination has prevented the emergence of a minority highway construction industry with "capacity." Those M/W/DBEs that exist at all will be smaller and less experienced and have lower annual individual firm revenues, bonding limits, and employees (*i.e.* "capacity") because of discrimination than firms that have benefited from the exclusionary system.

Using annual firm revenues as the measure of qualifications illustrates the point. If M/W/DBEs are subject to market area discrimination, then their annual firm revenues will be smaller than nonminority male-owned businesses because they will be less successful at obtaining work. Annual firm revenues measure the extent to which an individual firm has succeeded in the market area, perhaps in spite of discrimination—it does not measure the ability to succeed in the absence of discrimination and should not be used to evaluate the effects of discrimination.

For this reason, focusing on the capacity of businesses in terms of employment, annual firm revenues, bonding limits, number of trucks, and so forth is simply wrong as a matter of economics because it can obscure the existence of discrimination. A perfectly discriminatory contracting market would actual lead to a finding of zero capacity and a finding of no discrimination. Excluding firms from an availability measure based on their capacity in a discriminatory market merely affirms the results of discrimination rather than ameliorating them.

Adopting a capacity requirement could potentially preclude the City of Austin from doing anything to rectify passive participation in a discriminatory market. The capacity argument fails to acknowledge that discrimination may have obstructed the emergence of “qualified, willing, and able” minority firms. Without such firms, there will be no statistical disparity at all.

Further, in dynamic business environments, particularly in the construction sector, such qualifications or capacity can be obtained relatively easily. It is well known that small construction companies can expand rapidly as needs arise by hiring workers and renting equipment, and many general contractors subcontract the majority of a project. Firms grow quickly when demand increases and shrink quickly when demand decreases. Subcontracting is one important source of this elasticity, as has been noted by several academic studies.¹⁷ Other industry sectors, especially in this era of Internet commerce and independent contractors, can also quickly grow or shrink in response to demand.

Finally, even where capacity-type factors have been controlled for in statistical analyses, results consistent with business discrimination are still typically observed. For example, large and statistically significant differences in commercial loan denial rates between minority and nonminority firms are evident throughout the country, even when detailed balance sheet and creditworthiness measures are held constant.¹⁸ Similarly, economists using decennial census data have demonstrated that statistically significant disparities in business formation and business owner earnings between minorities and non-minorities remain even after controlling for a host of additional relevant factors, including educational achievement, labor market experience, marital status,

¹⁷ Bourdon, Clinton C. and Raymond E. Levitt. 1980. *Union and open-shop construction, compensation, work practices, and labor markets*. Lexington Books: Lexington, Massachusetts; see also Eccles, Robert G. 1981. “Bureaucratic versus Craft Administration: The Relationship of Market Structure to the Construction Firm.” *Administrative Science Quarterly*. 26.; and Gould, Frederick Elliot. 1980. “Investigation in Construction Entrepreneurship” Masters Thesis, MIT, May.

¹⁸ See, e.g., Chapter 6 in either of the sample studies provided on the enclosed CD-ROM.

disability status, veteran status, interest and dividend income, labor market attachment, industry, geographic location, and local labor market variables such as the unemployment rate, population growth rate, government employment rate, or per capita income.¹⁹

To summarize, it is inappropriate to adjust measures of M/W/DBE availability for capacity factors because:

- “Capacity” has been ill-defined; and reliable data for measurement are generally unavailable;
- Small firms, particularly in the construction industry, are highly elastic with regard to ability to perform;
- Many disparity studies have shown that even when capacity and qualifications-type factors are held constant in statistical analyses, evidence of disparate impact against M/W/DBE firms persists; and
- Most important, identifiable indicators of capacity are themselves impacted by discrimination.

18. Produce Public Sector Disparity Analyses

Using the Final Public Sector M/W/DBE Utilization Estimates and the Final M/W/DBE Availability Estimates, we will calculate a Disparity Index, formed by dividing the latter into the former and multiplying the quotient by 100. The smaller the Disparity Index, the greater underutilization in the market area. For example, a Disparity Index near zero indicates availability far in excess of actual utilization, while a Disparity Index near 100 indicates availability levels similar to actual utilization.

A given disparity index is said to be “statistically significant” if the probability that the difference between utilization and availability is zero is sufficiently small. A disparity index is said to be “substantively significant” if the difference between utilization and availability is large. For

¹⁹ Wainwright, Jon S. 2000. *Racial discrimination and minority business enterprise, evidence from the 1990 Census*, *Studies in Entrepreneurship Series*. Edited by S. Bruchey. New York, Garland Publishing.

example, a disparity index of 98 could be statistically significant, but it is not large enough to cause concern. Calculations of statistical significance will be carried out using statistical routines in Stata⁰⁰.

A separate Disparity Index will be calculated for: (1) All race/gender groups and all industry groups combined, (2) All race/gender groups combined by detailed NAICS industry, (3) All NAICS industry groups combined by detailed race/gender; (4) Detailed race/gender by detailed NAICS industry groups. If possible with the available data, we will also make these calculations for veteran-owned businesses.

This task will also allow for a post-study review of over-concentration of M/W/DBEs or non-M/W/DBEs in specific detailed industry categories, as required by 49 C.F.R. Part 26.

Sub-Tasks:

- Produce statistical comparison of M/W/DBE availability and M/W/DBE utilization.
- Produce Disparity Indices for all race, sex, and industry categories.
- Apply statistical significance testing and report results.

19. Prepare Draft Study Report

Based on the data, methods, and findings of the tasks detailed above, we will prepare a Draft Study Report for the City of Austin. After receiving comments and feedback from the Study Task Force, we will prepare a Final Study Report for submission.

Sub-Tasks:

- Prepare Draft Study Report and submit to the City for comments and feedback.

20. Develop Program Design Recommendations

If warranted based on the Study's findings, we will provide advice on revising current contracting policies and procedures at the City of Austin, consistent with constitutional obligations and affirmative action program best practices. Recommendations will be designed to improve

program effectiveness and provide for narrow tailoring of any adopted remedies. Recommendations will address, at a minimum, overall goal-setting, contract-specific goal-setting, certification issues, and other regulatory compliance issues.

In particular, recommendations for overall goal-setting and contract-specific goal-setting will be discussed in detail in this section. NERA also expects to have available an Excel-based software template to facilitate contract-specific goal-setting by the City, using detailed six-digit NAICS availability estimates that will be provided to the City as a contract deliverable.

Sub-Task:

- Review the Study's findings regarding availability, utilization, and disparity.
- Prepare race- and gender-neutral and M/WBE program and goal-setting recommendations.

21. Finalization and Presentation of Final Study Report

After receiving comments and feedback from the workgroup on the Draft Report, we will prepare the Final Study Report and submit it to the City. After approval of the final report we will work with the City to schedule the presentation of our findings and conclusions to the City Council, the MBE/WBE & Small Business Council Committee, the MBE/WBE & Small Business Advisory Committee, the City Manager's Office, and the Small and Minority Business Resource (SMBR) Department. We recommend planning for a total of seven presentations to allow for some flexibility beyond the five outlined above and in the RFQS.

F. Assistance Expected from the City of Austin

A certain amount of assistance of City of Austin personnel will be required at several stages of the study process. First will be the startup stage of the project when NERA will be assessing the availability and quality of the City's existing contracting and purchasing records, its contractor and vendor records, its accounts payable records, its contract compliance records, and other data relevant

to the study. During Tasks 1 and 2, described above, we will seek to identify key personnel at the City who will be asked to provide assistance and support in this process. This will include answering our questions about the data and facilitating our access to both electronic and, if necessary, hard copy records. It is critical for the study timeline that City personnel are able to give sufficient priority to these requests during this time. We recommend that one individual at the City should be designated to be the primary point of contact with the NERA team for the duration of the study process.

Next will be the subcontract data collection stage where we will be contacting prime contractors, consultants, and vendors to reconstruct any missing data necessary for the successful completion and legal defensibility of the study, primarily for non-M/W/DBE and M/W/DBE subcontractors, sub-consultants, and suppliers.²⁰ During this process, we will assuredly encounter prime contractors and vendors who cannot identify the contract we are asking about, who tell us it belongs to another firm, or whose contact information is incorrect. In these cases, we will require informational assistance from the City in order to proceed. Later in this process, there will be a small fraction of prime contractors who are unable or unwilling to cooperate with the data collection process despite repeated requests from NERA. At the appropriate time, we may ask the City to contact these primes and attempt to secure their submission of the requested information. Often, a telephone call or e-mail message from their client (i.e., the City of Austin) will be successful in securing their cooperation.

Additionally, we will ask to have cover letters provided for different tasks in the study process, including the subcontract data collection packets that will be distributed to primes, as well as the mail surveys and focus group invitations that will be distributed to various business owners.

²⁰ For a detailed review of the importance of reconstructing missing subcontract data, see *Guidelines for Conducting a Disparity and Availability Study*, *op cit.*, pp. 60-67.

Finally, it is likely that other minor requests for assistance and/or guidance will arise during the course of the project. These requests will be routed directly to the City's Project Manager as they arise.

G. Methods for Setting Overall Goals and Contract-Specific Goals

As requested in the RFQS, and if warranted by the findings in the disparity study, the following section discusses in detail NERA's proposed methods for setting overall M/W/DBE goals and contract-specific M/W/DBE goals.

1. Overall Goals

Estimates of the availability of M/W/DBEs in Austin's market area for each major procurement category (construction, construction-related professional services, other professional and general services, commodities, and airport concessions) will be provided in as part of the final study report. We will recommend that these form the starting point for consideration of setting overall targets for annual spending with M/W/DBEs. However, these estimates of current availability may not *per se* reflect the level of M/W/DBE utilization to which the City should aspire. As will be discussed elsewhere in the final report, the effects of discrimination may depress current levels of M/W/DBE availability, and therefore case could be made for setting a overall goals that reflect a discrimination-free market area rather than the results of a discrimination infected market area. This is similar to the reasoning behind the "Step 2 adjustment" under the federal rules for the DBE and ACDBE programs²¹ Using the measured disparities in the business formation of M/W/DBEs compared to non-M/W/DBEs the final NERA report can provide a quantitative basis for making such a determination. However, we may not necessarily recommend setting goals at the level that would be

²¹ See, e.g., 49 CFR §26.45(d) (DBE goal must reflect the recipient's "determination of the level of DBE participation you would expect absent the effects of discrimination").

expected “but for” discrimination, depending on what we learn about the City’s actual utilization of M/W/DBEs during the study period and the estimated levels of current availability.

2. *Contract-Specific Goals*

The NERA study’s detailed estimates of availability can also form the basis for setting contract-specific goals for M/W/DBE utilization that are narrowly tailored to the specific circumstances of a given contract. To estimate an initial contract goal, three steps are required.

First, each specific work element or bid item in the contract can be classified according to its primary NAICS code. There are a number of ways to identify each work element or bid item in a prime contract or purchase order requirement. In construction, for example, the engineer’s cost estimate that is typically developed in advance of putting a contract out for bid is an excellent source. Each bid item in the engineer’s estimate can be assigned to a NAICS code, or split among multiple NAICS codes, for example in cases where both materials and labor are involved and would typically be supplied by more than one firm. In this manner, all the dollars in the engineer’s cost estimate can be accounted for by NAICS code.

Second, the total anticipated dollar amount of the contract can be distributed among those specific work elements or bid items. Typically, this distribution will be available as part of the engineer’s estimate, since each bid item will have an associated dollar cost as part of that estimate. For each bid item, the associated dollar cost can be converted into the percentage of total contract dollars accounted for by that bid item. This is achieved by dividing the estimated cost of the bid item by the total dollar cost of the contract. For example, if the engineer’s estimate for a given bid item is \$500,000 and the total cost of the contract is \$5,000,000, then the percentage allocated to that particular bid item would be 10 percent. The sum of percentages across all bid items should equal 100 percent.

Third, the detailed NAICS availability estimates provided as a deliverable by NERA²² are then combined with the percentage distribution of contract dollars by NAICS codes to create a weighted average availability figure. That weighted average then becomes the initial contract goal. To illustrate this process, consider the simplified example below with just five bid items.

Figure 1. Sample Contract-Specific Goal –Setting Matrix

Bid Item	Dollar Cost	NAICS Code	Percentage Cost	M/W/DBE Availability
#1	\$400,000	236220	40.00%	20.00%
#2	\$175,000	238910	17.50%	30.00%
#2	\$100,000	238110	10.00%	25.00%
#3	\$200,000	238210	20.00%	30.00%
#4	\$75,000	238390	7.50%	15.00%
#5	\$50,000	484220	5.00%	40.00%
TOTAL	\$1,000,000		100.00%	24.88%

In the example above, bid item #1 has a value of \$400,000. Converting this to a percentage by dividing it by the total project cost of \$1,000,000 yields 40 percent. Percentages for the remaining four bid items are derived in a similar manner and the five percentages sum to 100 percent. Next, the M/W/DBE availability figure associated with each NAICS code is recorded in the final column. Finally, the initial contract goal is then derived as a weighted average of all five line items.²³ The formula for the weighted average is as follows:

$$A = \sum_{i=1}^6 (A_i * w_i)$$

²² To the best of our knowledge, no other consultant has provided detailed six-digit or four-digit (or even two-digit) NAICS availability estimates as part of their disparity studies. This service is unique to NERA.

²³ Even though there are only five numbered bid items, there are six line items since bid item #2 is associated with two distinct NAICS codes and bid item #2's value has been divided between them.

Where i is the number of NAICS codes represented in the project (in this example there are six), A_i is the availability percentage associated with each NAICS code, and w_i is the percentage of total cost (the “weight”) associated with each NAICS code. In the formula, this percentage is expressed as a decimal (for example, 40.00 percent would be expressed as 0.4000).

In this example, this formula yields an initial contract goal of 24.88 percent. Estimating the initial contract goal, however, is just the initial step. The final step requires experienced City staff to refine the initial goal estimate—based on their knowledge of the project, the market area, and the available contractors and their current capacities—to set a reasonable and achievable goal for the contract. Should the target prove to be too high, of course, waivers should be granted and good faith efforts to meet the goal should be approved. Justifications for refining the initial goal suggested by the formula should be documented.

H. NERA’s Project Management Capacities

1. Overview

NERA has the corporate resources and capacity to fully support the work being proposed for the City of Austin. NERA is a Marsh & McLennan Company. MMC is a global professional services firm, and a world leader in consulting, insurance, risk management, and investment management. In 2012 MMC ranked #231 on the Fortune 500 list of America’s largest corporations, with over 52,000 employees and global revenues exceeding \$11 billion.

In addition to our court-approved study methods and our project manager/director’s expertise, NERA’s management capabilities are further enhanced through the use of sophisticated time and billing management software that follow Generally Accepted Accounting Principles (GAAP), detailed Business Continuity and Disaster Management planning, and state-of-the-art project equipment, including hardware and software resources. Described in more detail below.

2. *Project Equipment and Resources*

NERA has a full suite of office equipment, both hardware and software, available to support this project. This includes desktop and laptop PCs, servers, printers, copiers, scanners, modems, telephones, faxes, and projectors in every NERA office. Each office is also equipped with internet access, a company-wide intranet (LAN and WAN), multi-way conference calling hardware and software, and web-conferencing hardware and software.

Software is standardized on the Microsoft Windows 7 and the Microsoft Office suite of software and productivity tools, including Microsoft Exchange Server and Outlook e-mail clients and collaboration software. Other specialized hardware and software is also available. For example, our server farm in White Plains provides nationwide access to a series of high-end workstations dedicated to large scale batch processing jobs in Stata, SAS, and other statistical software formats.

3. *Time Management and Billing Management*

NERA has a professional support staff to ensure that our time management, expense reporting, and billing systems adhere to the highest professional standards. NERA personnel report their time on a daily project-by-project basis via a company-wide web-based time management system (Elite™®). Sub-consultants typically bill us monthly and include all necessary backup for their fees and expenses. Direct costs as well (acquisition costs for publications and data, for example) are also tracked in a computerized Oracle-based accounting system and backed up by original receipts and invoices following Generally Accepted Accounting Principles (GAAP).

4. *Business Resiliency/Disaster Recovery Plans*

A cornerstone of NERA's and MMC's client relationships is our commitment to the integrity and security of client information and to our continuation of services, even in the event of a disaster. To

support that commitment, we strictly adhere to Business Resiliency/Disaster Recovery plans that cover our ability to serve our clients.

Every one of our offices maintains a Business Resiliency/Disaster Recovery plan with specific provisions for staff mobilization, alternate work spaces, recovery of the local area network (LAN), restoration of data, recovery of telecommunications, and communication with clients. These plans were created based on the Business Impact Analysis that identifies every office's recovery requirements and priorities.

a. Alternate Work Sites

We use a multi-layered matrix approach to providing alternate work sites in case an office is unable to provide service for any reason. This approach is aligned closely with each of our businesses and functions, and it recognizes important support requirements of all phases of our operations. In this matrix approach, our staff may work from any of the following places:

b. Local Office Technology

Local area networks in all our offices use a fault-tolerant approach to system designs. That is, we have implemented technologies that limit our vulnerabilities in case of a systems failure, office location failure or natural disaster. Each office's computing environment is established using NERA global standards that facilitate remote support. All NERA workstations are secured against use by unauthorized persons. Employees are required to enter a user ID and password to gain access to our systems and can enter only appropriate areas on the network.

c. Data Backup

We back up data nightly (differential backup) and weekly (full backup). Backups are retained indefinitely. Backups are stored both at offsite storage facilities and in secured onsite data-storage

facilities. The standardization of backup systems and storage procedures across NERA offices enables recovery efforts at alternate sites.

d. Operations at an Alternate Facility

Our Business Resiliency/Disaster Recovery plans provide for employees to have remote access in the event of local or regional disasters. Should there be a complete facility disaster, critical operations of an affected office can be up and running at another company facility within 72 hours for tier one applications. Alternate local equipment and facilities can be available within one week after the disaster.

e. Successful Plan Execution

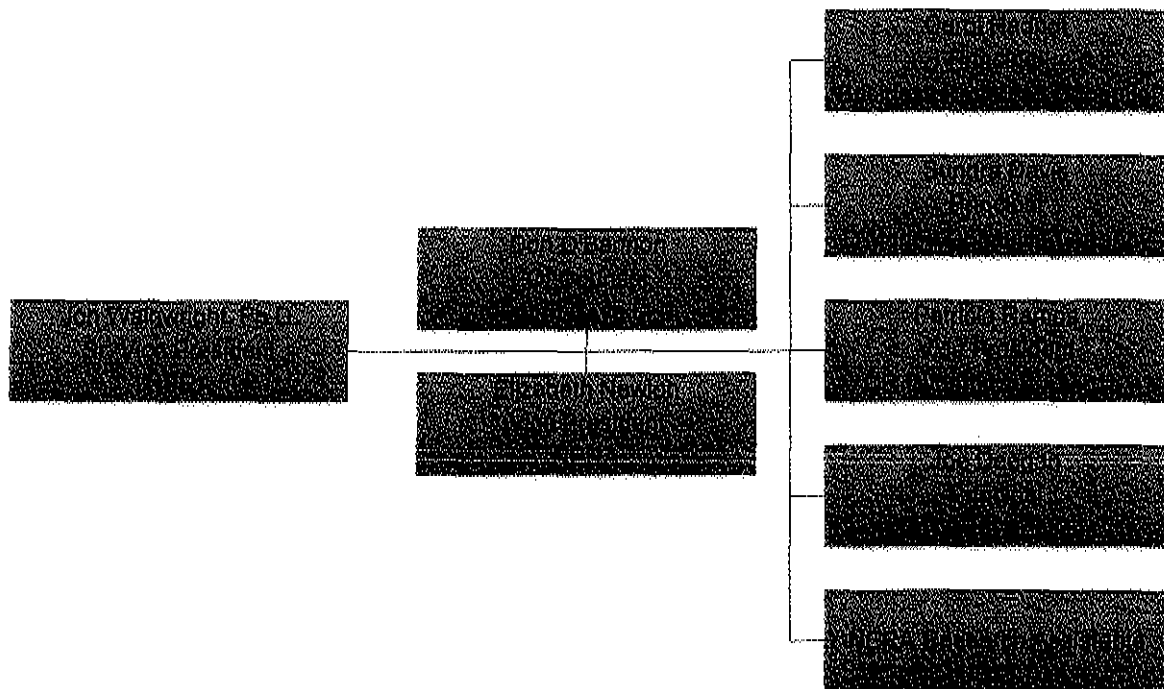
We have successfully supported critical business activities during disruptions of normal business processes resulting from both natural and man-made disasters. We maintained continuity of service to our clients during a number of events, including:

- Power Blackout: Northeast
- Potential Mass Transit Outages: New York, Los Angeles, Toronto
- Building Power Distribution Outage: Philadelphia, Hoboken
- Hurricanes: Northeast, Bermuda, Cayman Islands, Florida, Gulf of Mexico (New Orleans & Houston)
- Memphis Blackout (11 days)

III. Project Team Structure

NERA has assembled a highly qualified, diverse, and experienced team for this proposed project, organized as follows:²⁴

Figure 2. NERA Team Organization Chart for RFQS SMW0051



A. Prime Consultant

The project director and principal investigator for the proposed study will be NERA Senior Vice President Dr. Jon Wainwright, based in NERA's Austin, Texas office. Dr. Wainwright has been with NERA since 1995 and is the head of NERA's national disparity study practice. He has directed and

²⁴ Our team's qualifications and experience are described below in Section V.

successfully completed over 25 disparity and availability studies while at NERA, including the most recent studies conducted for the City of Austin.

As project director, Dr. Wainwright will have day-to-day responsibility for all aspects of the study process. He will serve as the primary point of contact with the City of Austin's study management team, and will be readily available to the City's team by telephone, e-mail, and in-person throughout the course of the study. He will conference regularly—frequently on a daily basis—with key staff and sub-consultants during the course of the proposed study to assign tasks and due dates and to monitor progress on previous assignments. Work assignments are tracked electronically and monitored for variances, which can in turn be conveyed to the client through the progress reporting process.

As principal investigator, Dr. Wainwright will direct and supervise all tasks related to the proposed study. He will work directly with the City of Austin's study management team in gathering the critical contract, procurement, and related business data the study requires. He will also directly conduct all key statistical and economic analyses. No other consultant matches this daily proximity to the work, proven “hands on” management style, and econometric and statistical expertise.

Assisting Dr. Wainwright at NERA will be a team of research assistants, based in NERA's Austin office, as well as NERA Vice President Dr. Elizabeth Newlon, based in NERA's Los Angeles office. Dr. Newlon will be available not only to assist with the various statistical and econometric analyses to be performed but will also serve as backup project director.

B. Sub-Consultants

NERA has assembled a team of sub-consultants for the proposed study to assist in accomplishing certain study tasks that are outside Dr. Wainwright's and NERA's direct areas of expertise. These include:

- Management consultant and DBE/MBE/WBE consultant Carol S. Hadnot of *Business Resource Consultants* (BRC) in Austin, Texas. BRC is an SMBR-certified MBE/WBE/DBE and will have, along with its team of sub-consultants assembled specifically for this proposed study, responsibility for all stakeholder and community outreach activities.²⁵
- Attorney Don O'Bannon of *Bryan Cave LLP* in Dallas, Texas, who will have responsibility for the legal review and analysis, and share responsibility for the policy and program review and for moderating the business owner interviews.
- DBE/MBE/WBE consultant Sundra Davis of the *D'Moriea Consulting Agency* (DCA) in Fort Worth, Texas. DCA is an MBE/WBE (though not currently SMBR-certified) and will share responsibility for moderating the business owner interviews.
- Computer-Assisted Telephone Interviewing (CATI) specialist *CR Dynamics & Associates, Inc.* (CRD) in Baltimore, Maryland. CRD is a City of Baltimore-certified MBE and will have responsibility for executing the race and gender misclassification telephone surveys and the mail survey non-response surveys.
- Optical Mark Recognition (OMR) survey specialist *J&D Data Services* in Plano, Texas, which will have responsibility for executing the mail surveys, and for assisting with other required mail-out and mail-back activities.

Each of these sub-consultants will report directly to Dr. Wainwright during the course of the proposed study. Internally, Business Resource Consultants' team will be managed by and report to Principal Carol S. Hadnot; the Bryan Cave LLP team will be managed by and report to attorney Don

²⁵ The uniquely qualified team of sub-consultants assembled by Business Resource Consultants for this proposed study is described below in Section V.

O'Bannon; the CR Dynamics & Associates, Inc. team will be managed by and report to Vice President and co-owner Patricia Ramos; the D'Morica Consulting Agency team will consist of sole proprietor Sundra Davis; and the J&D Data Services team will consist of sole proprietor Joe Deegan.

IV. Prior Experience

A. Relevant Project Experience

NERA has conducted disparity studies and related research for many public sector clients since 1990. We have successfully performed disparity studies covering four of the five largest statewide procurement markets, and 25 of the 50 largest metropolitan area procurement markets, including the Austin-Round Rock-San Marcos Metropolitan Statistical Area (MSA).²⁶

Other consultants have produced more studies than NERA, but none rival the high quality and legal defensibility that our studies and trial work have been recognized for. Below is a synopsis of four recently completed NERA disparity studies. NERA was the prime contractor in all cases. Final approved reports were issued for all of the studies listed. In all cases study findings were implemented, and goals were adopted. None of our clients' M/WBE or DBE programs have been successfully challenged.

1. ***State of Maryland and Maryland Department of Transportation***

a. Project Name and Year Conducted

The State of Minority- and Women-Owned Business Enterprise: Evidence from Maryland, prepared for the Maryland Department of Transportation, February 2011.

b. Project Description

This study covered all Maryland State agencies. The study included Construction, Construction-related Professional Services, Maintenance Services, Information Technology Services,

²⁶ The relevant geographic market area for NERA's May 2008 disparity study for the City of Austin was the Austin-Round Rock MSA (now the Austin-Round Rock-San Marcos MSA), which includes, in descending order of general population size, Travis County, Williamson County, Hays County, Bastrop County, and Caldwell County.

Commodities, and in a separate report, Airport Concessions. The study covered over \$15 billion in spending over the five-year study period. The final report served as the basis for the State of Maryland's most recent revision and reimplementation of its MBE statute and program.

c. Client Reference

Richelle Thomas, Director of MBE, Maryland Department of Transportation, 410-865-1240, rthomas6@mdot.state.md.us.

2. State of New York

a. Project Name and Year Conducted

The State of Minority- and Woman-Owned Business Enterprise: Evidence from New York, prepared for the New York State Department of Economic Development, April 2010.

b. Project Description

The study covered all New York State agencies. The study included Construction, Construction-related Professional Services, Other Professional and General Services, and Commodities. The study covered \$33 billion in spending over the five-year study period. The final report served as the basis for the State's revision and reimplementation of its M/WBE statute and program.

c. Client Reference

Jeffrey Metzler, Esq., currently Chief of Litigation, New York City Council, 212-803-3222, jmetzler@council.nyc.gov.

3. City of Baltimore

a. Project Name and Year Conducted

Race, Sex, and Business Enterprise: Evidence from Baltimore, Maryland, prepared for the City of Baltimore, September 2007.

b. Project Description

The study covered all City departments. The study included Construction, Construction-related Professional Services, Other Professional and General Services, and Commodities. The study covered \$1.1 billion in spending over a six-year study period. The study formed the basis for the revision and reimplementation of the City's current M/WBE ordinance and program.

c. Client Reference

Thomas Corey, Esq., Chief, Minority and Women's Business Opportunity Office, 410-396-3305, thomas.corey@baltimorecity.gov

4. Memphis-Shelby County Airport Authority

a. Project Name and Year Conducted

Race, Sex, and Business Enterprise: Evidence from Memphis, Tennessee, prepared for the Memphis-Shelby County Airport Authority, December 2008.

b. Project Description

The study covered all departments at the Airport. The study included Construction, Construction-related Professional Services, Other Professional and General Services, and Airport Concessions. The study covered \$430 million in spending over a seven-year study period and almost \$0.5 billion in concessions sales over a six-year period. The study formed the basis for the Authority's current M/WBE, DBE and ACDBE programs.

c. Client Reference

Mahi Chambers, Director of Staff Services, 901-922-8012, mahic@mscaa.com.

B. Experience with Minority Contracting Communities

1. *Prime Consultant*

In conducting over 25 disparity studies while at NERA, Dr. Wainwright has interfaced with minority contracting communities throughout the United States, including in Austin as part of its most recent disparity study and elsewhere in Texas. NERA has sent surveys to more than 100,000 firms, collecting information on owner demographics and firm capacity, and asking detailed questions about disparate treatment, hiring or solicitation for work in the absence of goals, and the impact project size, bid deadlines, prior dealings with owners, and other factors on the ability to win contracts. As a result, we have gained insight into the differences between M/W/DBEs and non-M/W/DBEs in the incidence of disparate treatment, the way in which certain business environment factors disproportionately impact M/W/DBEs, and the challenges faced obtaining work in the absence of race- and gender-conscious efforts. Furthermore, NERA team members have personally interviewed hundreds of M/W/DBE business owners, recorded their experiences with discrimination, and solicited feedback on the strengths and weaknesses of the M/W/DBE policies affecting them.

2. *Sub-Consultants*

NERA is very proud to be teaming with Business Resource Consultants (BRC), and its principal, Carol S. Hadnot. BRC, in turn, has assembled a team of sub-consultants including Mr. Paul Saldaña of Brisa Communications, Mr. Juan Oyervides, Executive Director of the U.S. Hispanics Contractors Association, Austin Chapter, and Ms. Aletta Banks, Executive Director of the Asian Contractor Association. Collectively, this group will take responsibility for all the stakeholder and community outreach activities of the proposed disparity study. Jointly, the experience this group of professionals has with Austin's minority contracting community is unparalleled.

At BRC, Ms. Hadnot has managed or co-managed the M/W/DBE marketing and outreach services for many large and significant construction projects in and around Austin, including the New Central Library, the Holly Street Power Plant Decommissioning, the ABIA Infill East project, the Green Water redevelopment project, the construction of Austin City Hall, the Computer Sciences downtown campus, and the Travis County Criminal Justice Facilities, and the Austin Energy System Control System project, among others. In addition to her work at BRC, Ms. Hadnot currently serves as Program Manager/Consultant for the Austin Area Black Contractors Association. She has previously served on the Board of the Capital City African American Chamber of Commerce, as chair of the City of Austin's MBE/WBE Procurement Advisory Committee, as a delegate to the White House Conference on Small Business, and as a member of the City of Austin African American Quality of Life Economic Development Committee.

Mr. Saldaña's background and experience are equally impressive. He and his team at Brisa Communications have managed the community outreach, M/WBE outreach, and other public relations consulting services for many large significant projects in the Austin area, including the Westin Hotel at the Domain, the Villas on Sixth Street, the Holly Street Power Plant Decommissioning, the Green Water Treatment Plant Redevelopment Project, and the Holly Shores Master Plan. In addition to his work at Brisa, Mr. Saldaña currently serves on the Boards of the Texas Association of Mexican American Chambers of Commerce and the Austin Area Urban League, and in the past has served on the Boards of the Greater Austin Hispanic Chamber of Commerce and Business Investment Growth (BiG).

The deep ties to and experience with Austin's minority community that Ms. Hadnot, Mr. Saldaña, Ms. Banks, and Mr. Oyervides bring to the NERA team will help to ensure that the disparity study

achieves the maximum amount of participation in the surveys and interviews that comprise the core of the qualitative data collection elements of the study.

C. Current and Past Disparity Studies

1. Current Studies

1A. Baltimore City Public Schools.

1B. City of Baltimore.

Personnel working on these studies includes:

- Jon Wainwright (project director)
- Elizabeth Newlon (backup project director)
- Don O'Bannon (Bryan Cave LLP) (legal review, policy/program review, focus groups)
- CR Dynamics & Associates, Inc. (CATI telephone surveys of race/sex misclassification and mail survey non-response)
- J&D Data Services (OMR mail surveys, assistance with other required mail-out and mail-back activities)
- Various NERA researchers (assist Dr. Wainwright)

1C. Memphis-Shelby County Airport Authority

Personnel working on this study includes:

- Jon Wainwright (project director)
- J&D Data Services (OMR mail surveys, assistance with other required mail-out and mail-back activities)
- Various NERA researchers (assist Dr. Wainwright)

2. *Past Studies (Since 2003)*

- 2A. Jackson (MS) Municipal Airport Authority (2012) (2012)
- 2B. City of Cleveland (2012)
- 2C. Missouri Department of Transportation (2012)
- 2D. City of Houston (2012)
- 2E. State of Maryland (2011)
- 2F. Broward County, Florida (2010)
- 2G. Hawaii Department of Transportation (2010)
- 2H. City of Minneapolis (2010)
- 2I. Massachusetts Division of Capital Asset Management (2010)
- 2J. State of New York (2010)
- 2K. Augusta-Richmond County, Georgia (2009)
- 2L. Salt Lake City International Airport (2009)
- 2M. Memphis International Airport (2008)
- 2N. City of Austin (2008)
- 2O. City of Baltimore (2007)
- 2P. Massachusetts Housing Finance Agency (2006)
- 2Q. Maryland State Highway Administration (2006)
- 2R. Maryland Aviation Administration (2006)
- 2S. Maryland Transit Administration (2006)
- 2T. Illinois State Toll Highway Authority (2006)
- 2U. City of Austin (2006)
- 2V. City and County of Denver and DIA (2006)
- 2W. State of Maryland (2006)
- 2X. Washington State Department of Transportation (2005)

2Y. Minnesota Department of Transportation (2005)

2Z. Metro St. Louis (2005)

2AA. Missouri Department of Transportation (2004)

2AB. Illinois Department of Transportation (2004)

2AC. City of Baltimore (2004)

2AD. City of Jacksonville (2003)

Personnel working on the above studies include:

- Jon Wainwright (project director)
- J&D Data Services (OMR mail surveys, assistance with other required mail-out and mail-back activities)
- Various NERA researchers (assist Dr. Wainwright)

3. *Litigation Experience*

a. Programs Based on NERA Studies Formally Challenged in Court

NERA's experience and expert knowledge has led to successful litigation outcomes for our M/WBE and DBE program clients.

Of the studies listed above, only 2E, NERA's 2006 MBE disparity study for the State of Maryland and 2AB, NERA's 2004 DBE availability study for the Illinois Department of Transportation were involved in formal challenges to their respective programs.

In *Richard F. Kline, Inc., et al v. John D. Porcari and Maryland Department of Transportation* (U.S. District Court for the District of Maryland), Civil Case No. 1:08-cv-03197-RDB, filed in 2009, plaintiffs challenged the State of Maryland's MBE statute and also the federal DBE Program and its implementation by the State of Maryland, both of which were supported by NERA's study 2E above and associated materials. NERA Senior Vice President Dr. Jon Wainwright was retained as the

testifying expert economist, was qualified by the court under the federal rules of evidence, and submitted an expert report in support of the defendants' MBE statute and the federal DBE Program. Dr. Wainwright did not, however, testify at trial, as the case was settled in 2011 on terms largely favorable to the defendants.

In Northern Contracting, Inc. v. State of Illinois, Illinois Department of Transportation, et al. (U.S. District Court, Northern District of Illinois, Eastern Division), No. 00 C 4515, filed in 2000, plaintiff's challenged the federal DBE Program and its implementation by the State of Illinois, which was supported by NERA's study 2AB above and associated materials. NERA Senior Vice President Dr. Jon Wainwright was retained as the testifying expert economist, was qualified by the court under the federal rules of evidence, and submitted an expert report in support of the DBE Program.

In March 2004, the District Court decided the parties' cross-motions for summary judgment, granting the federal defendants' motion dismissing all claims against them and denying the remaining motions. In November 2004, Dr. Wainwright testified at trial on behalf of the State. In September 2005, the District Court entered judgment in favor of the defendants, finding the Illinois Department of Transportation's DBE plan to be narrowly tailored to the goal of remedying the effects of racial and gender discrimination within the construction industry.²⁷ Plaintiffs appealed the ruling to the Seventh Circuit Court of Appeals. In January 2007, the Appeals Court affirmed the judgment of the district court.²⁸

²⁷ 2005 U.S. Dist. LEXIS, 19868 (N.D. Ill., Sept. 8, 2005). A copy of the decision is included on the enclosed CD-ROM.

²⁸ 473 F.3d 715 (7th Cir. 2007). A copy of the decision is included on the enclosed CD-ROM.

b. Other Relevant Litigation Experience

In addition to the two cases discussed above, NERA's litigation work in this field is extensive and includes the following additional matters, among others:

Associated General Contractors of America, San Diego Chapter, Inc., Plaintiff v. California Department of Transportation, Randell Iwasaki, Defendants, Coalition for Economic Equity and National Association for the Advancement of Colored People, San Diego Chapter, Defendant-Intervenors, United States District Court, Eastern District of California, No. 2:09-CV-01622-JAM-GGH. Dr. Wainwright was retained by the defendant-intervenors to provide an expert witness report. At trial, the court ruled in favor of the defendant and defendant-intervenors. The case has been appealed to the Ninth Circuit.

Kevcon, Inc. v. The United States, No. 09 625C (United States Court of Federal Claims) for defendant, concerning the constitutionality of the government's Small Business Administration 8(a) minority business set-aside program. Dr. Wainwright was retained by the U.S. Department of Justice to provide an expert witness report and testimony. The court ultimately dismissed the case with prejudice against the plaintiff.

Builders Association of Greater Chicago v. City of Chicago, 298 F.Supp.2d 725 (N.D. Ill. 2003). Dr. Wainwright produced an M/WBE availability study for the City's economic expert. The court held that the program was based upon a compelling constitutional interest, based in part upon the testimony that derived from NERA's statistical work.

Sherbrooke Turf v. Minnesota Department of Transportation, 345 F.3d 964 (8th Cir. 2003), cert. denied, 124 S.Ct. 2158 (2004). The Eighth Circuit upheld Minnesota DOT's DBE program based in part upon NERA's Availability Study and Dr. Wainwright's expert testimony. See also *Gross Seed Company v. State of Nebraska Department of Roads*, 4:00CV3073 (D. Neb., May 6, 2002).

Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir, 2003), cert. denied, (2003). The court ruled Denver's M/WBE program met a compelling constitutional interest, based in part upon NERA's expert trial reports and testimony.

North Shore Concrete & Associates, Inc. v. The City of New York et al., 94 Cv. 4017, 1998 U.S. Dist. LEXIS 6785 (E.D. New York, 1998). Disparity study, 1991-92. Plaintiff's motion for summary judgment was denied in favor of the City, based in part upon NERA's study.

Additionally, Dr. Wainwright has recently been retained by the United States Department of Justice to serve as the principal economic and statistical expert witness in three pending challenges to federal contracting affirmative action programs in *Geyer Signal, Inc. et al. v. Minnesota Department of Transportation, et al.* (U.S. District Court for the District of Minnesota, Case No. 11-cv-321-JRT-LIB); *Midwest Fence Corp. v. United States Department of Transportation, et al.* (U.S. District Court for the Northern District of Illinois, Eastern Division, Case No. 10-CV-5627); and *Rothe Development, Inc. v. Department of Defense and Small Business Administration* (U.S. District Court for the District of Columbia, Civil Action No. 12-CV-744). NERA will produce expert reports and expects to provide expert testimony in all three cases.

4. Sample Disparity Studies

Samples of two recently completed NERA disparity studies are provided on the enclosed CD-ROM. These include our 2011 study for the State of Maryland and the Maryland Department of Transportation and our 2010 study for the State of New York.

V. Personnel

A. Key Participants

Jon Wainwright, Ph.D. Senior Vice President, NERA. Head of NERA's national disparity study practice. On this project, Dr. Wainwright will serve as Project Director and Principal Investigator. Experience: 20 years. Time percentage: approx. 30%.²⁹

Elizabeth Newlon, Ph.D. Vice President, NERA. On this project, Dr. Newlon will serve as Backup Project Director. Experience: 13 years. Time percentage: approx. 9%.

Don O'Bannon, J.D. Of Counsel, Bryan Cave LLP. Former director of Business Diversity and Development for DFW International Airport and immediate past chairman of the Airport Minority Advisory Council. On this project, Mr. O'Bannon will serve as an advisor for the legal review, policy and program review, and business owner interviews. Experience: 25 years. Time percentage: approx. 15%.

Sundra Davis, B.A. Principal, D'Moriea Consulting Agency. First manager of the City of Fort Worth's M/W/DBE Program and later Assistant Director of Business Development. On this project, Ms. Davis will serve as an advisor for the policy and program review and the business owner interviews. Experience: 25 years. Time percentage: approx. 11%.

Patricia Ramos, B.S., M.B.A., Vice President, CR Dynamics & Assocs., Inc. (CRD). CRD's client list includes among many others the U.S. Department of Veterans Affairs, FEMA, SSA, and the Census Bureau. On this project, CRD will have responsibility for the CATI telephone surveys. Experience: 20 years. Time percentage: N/A. CRD will be reimbursed on a per survey basis.

²⁹ Time percentages are estimates and subject to change, if NERA is selected, based on the final budget negotiated for the project.

Carol Hadnot, B.A., M.C.A., Principal, Business Resource Consultants (BRC). For this project Ms. Hadnot will supervise a unique team of sub-consultants assembled to perform all of the stakeholder and community outreach. Her firm has managed the M/W/DBE marketing and outreach process on many significant multi-million projects in and around the Austin community. She has served on the Board of the Capital City African American Chamber of Commerce, as a past chair and member of the City of Austin's MBE/WBE Procurement Advisory Committee, as a delegate to the White House Conference on Small Business, and serves as Program Manager/Consultant to the Austin Area Black Contractors Association. Experience: 35 years. Time percentage: approx. 13%.

Paul Saldaña, B.B.A., President, Brisa Communications. On this project, Mr. Saldaña and his team will serve as subconsultants to BRC for the study's stakeholder and community outreach. Mr. Saldaña's firm has managed the community outreach, M/WBE outreach, and other public relations consulting services for several significant projects in the Austin area, including the Westin Hotel at the Domain, the Holly Street Power Plant Decommissioning and the Green Water Treatment Plant Redevelopment Project. Mr. Saldaña sits on the executive Board of Directors of the Texas Association of Mexican American Chambers of Commerce and is a former chair of the Greater Austin Hispanic Chamber of Commerce and. Experience: 20 years. Time percentage: approx. 13%.

Aletta Banks, M.S. Executive Director, Asian Contractor Association. She also sits on the Boards of the Network of Asian American Organizations and the Travis County Citizens International Program. On this project, Ms. Banks will serve as a subconsultant to BRC for the study's stakeholder and community outreach. Experience: 5 years. Time percentage: approx. 6.5%.

Juan Oyervides, B.S. Executive Director, U.S. Hispanic Contractors Association, Austin Chapter. Former HUB Coordinator for the Texas Commission on Environmental Quality and Government Business Development Manager for an Austin-based minority-owned technology

services and equipment company and its sister construction company. On this project, Mr. Oyervides will serve as a subconsultant to BRC for the study's stakeholder and community outreach.

Experience: 10 years. Time percentage: approx. 6.5%.

B. Prime Consultant's Testifying Expert

In the event of a challenge to the City's MBE/WBE or DBE program, Senior Vice President Dr. Wainwright would serve as the testifying expert in support of the disparity study. He is a leading authority on business and employment discrimination and on disparity studies, and is NERA's principal expert witness in this practice area. He holds a Ph.D. in economics from The University of Texas at Austin. He has been with NERA since 1995 and led their national disparity study practice since 2004. He has directed and successfully completed over 25 disparity and availability studies while at NERA, including the most recent study for the City of Austin. In addition to his numerous disparity and availability studies, Dr. Wainwright has authored or co-authored two monographs and several articles on M/W/DBEs and other topics.

Dr. Wainwright has testified directly or by deposition or affidavit in federal and state courts on M/W/DBE issues and other matters on over ten occasions, before state legislatures and other bodies, and before the U.S. Senate and House of Representatives.³⁰ He has been repeatedly qualified as an expert economic witness under the federal rules of evidence, and has qualified as an economic expert under the rules of evidence in Texas and in Illinois as well. Recently, he was been retained by the U.S. Department of Justice to serve as their primary economic expert in four cases involving constitutional challenges to the DBE and SBA 8(a) programs.

Brief resumes for all of the above personnel appear on the following pages.

³⁰ Dr. Wainwright's resume, below, contains a complete listing of his testifying engagements.

NERA

Economic Consulting

JON S. WAINWRIGHT

Education

University of Texas at Austin

Ph.D., economics

Colorado State University

B.S., economics

Professional Experience

	NERA Economic Consulting, Austin and Chicago
2011-present	Senior Vice President
2004-2011	Vice President
2003-2004	Senior Consultant
1998-2003	Consultant
1995-1998	Special Consultant
	LBJ School of Public Affairs, University of Texas at Austin
1992-1998	Research Associate Professor
1990-1992	Social Science Research Associate
	Brimmer & Company, Inc., Washington, DC
1990-1993	Staff Economist
	Bureau of Labor Statistics, U.S. Department of Labor, Washington, DC
1989	Economic Analyst
	Department of Economics, University of Texas at Austin
1988-1990	Assistant Instructor

Testimony in Judicial, Legislative, and Regulatory Proceedings

Maryland House of Delegates and the Maryland Senate, March 2-3, 2011. Hearings on the State of Maryland disparity study.

U.S. Senate, Ctte. on Small Business and Entrepreneurship, Roundtable Hearing on Small Business Contracting, September 24, 2009.

U.S. House, Ctte. on Transportation and Infrastructure, Hearing on "The Department of Transportation's Disadvantaged Business Enterprise Programs," March 26, 2009

Circuit Court of Cook County, Illinois, *Jeffrey N. Moeller v. Del Global Technologies Corp., Del Medical Imaging Corp., and Walter Schneider*, for the defendants, concerning estimated economic losses resulting from alleged wrongful termination, employer defamation and employer retaliation.

U.S. House, Subctte. on Information Policy, Census, and National Archives of the Ctte. on Government Oversight and Reform, Hearing on "How Information Policy Affects Small and Disadvantaged Businesses in Federal Contracting," September 24, 2008.

U.S. Senate, Ctte. on Small Business and Entrepreneurship, Hearing on "Business Start-up Hurdles in Underserved Communities: Access to Venture Capital and Entrepreneurship Training," September 11, 2008.

U.S. Senate, Ctte. on Small Business and Entrepreneurship, Hearing on "Minority Entrepreneurship: Assessing the Effectiveness of SBA's Programs for the Minority Business Community," May 22, 2007.

Northern Contracting, Inc., v. State of Illinois, Illinois Department Of Transportation, et al., No. 00 C 4515 (N.D. Ill., E. Div.) for the defendants, concerning statistical evidence of minority and female business enterprise availability and disparity.

Daniel Webster, et al. v. Fulton County, et al., 1:96-CV-2399 (N.D. Ga.) for the defendants, concerning statistical evidence of minority and female business enterprise discrimination.

Engineering Contractors Association v. Metropolitan Dade County, 94-1848-CIV-Ryskamp (S.D. Fl.) for the defendant, concerning statistical evidence of minority and female business enterprise discrimination.

Bilbo Freight Lines, Inc., et al. v. Dan Morales, et al., H-93-3808 (S.D. Tx.) for the defendant, concerning statistical evidence of discrimination in public contracting.

Testimony by Deposition, Declaration, or Affidavit

Geyer Signal, Inc. and Kevin Kissell v. Minn. DOT, et al, 0:11-cv-00321-JRT (Dist. Mn.), Report of Defendant Intervenor's Expert.

AGC of America v. California DOT, et al, Defendants, Coalition for Economic Equity and NAACP, Defendant-Intervenors, 2:09-CV-01622-JAM-GGH (E.D. Ca.), Report of Intervenors' Expert and Deposition Testimony.

Keycon, Inc. v. The United States, 09 625C (U.S. Ct. Fed. Claims), for defendant, concerning the constitutionality of the government's Small Business Administration 8(a) minority business set-aside program.

Thomas N. Janusz v. Keystone Illinois, Inc., et al., No. 03 L 008543 (Circuit Court of Cook County, Illinois) for the defendants, concerning economic losses resulting from wrongful termination and employer defamation.

Utility Contractors Association of North Florida, Inc. v. City of Jacksonville, Civil Action No. 3:02-CV-137-J-32-TEM (M.D. Fl., J. Div.) for the defendants, concerning statistical evidence of minority and female business enterprise availability and disparity.

Patricia K. Crye v. Rohmax USA, Inc. Cause no. 2001-32337 (District Court, Harris County Texas, 295th Judicial District) for the defendants, concerning statistical evidence of sex discrimination in employee discipline.

Craig Coleman, Ted Edwards, et al. v. BP Amoco Corp., Amoco Corp., et al. C.A. #G-00-222 (U.S. District Court, Southern District of Texas, Galveston Division) for the defendants, concerning statistical evidence of discrimination under ERISA statutes.

Sherbrooke Turf, Inc. vs. Minnesota Dept. of Transportation, et al. 00-CV-1026 (D. Mn.) for the defendants, concerning statistical evidence of minority and female business enterprise availability.

Equal Employment Opportunity Commission v. Amoco Chemical Company, Inc. and BP Amoco Corp. H-99-1414 (S.D. Tx.) for the defendants, concerning evidence of liability resulting from alleged age discrimination in hiring.

Carrell R. Scammahorn and Jerry L. Hope v. Schlumberger Ltd., et al. 98-4005-JPG (E.D. Ill.) for the defendants, concerning estimated economic losses resulting from alleged wrongful termination due to age discrimination.

Daniel Webster, et al. v. Fulton County, et al., 1:96-CV-2399 (N.D. Ga.) for the defendants, concerning statistical evidence of discrimination in public contracting.

Engineering Contractors Association v. Metropolitan Dade County, 94-1848-CIV-Ryskamp (S.D. Fl.) for the defendant, concerning statistical evidence of discrimination in public contracting.

Acevedo Cordero, et al. v. Cordero Santiago, et al., CIV 89-986-RLA (D. P.R.) for the plaintiffs, concerning employment discrimination by a public entity during a mass layoff.

Bilbo Freight Lines, Inc., et al. v. Dan Morales, et al., H-93-3808 (S.D. Tx.) for the defendant, concerning statistical evidence of discrimination in public contracting.

NERA

Economic Consulting

ELIZABETH NEWLON

Education

Carnegie Mellon University

Ph.D., Economics, Tepper School of Business, 2001

Carnegie Mellon University

M.S., Economics, Tepper School of Business, 1994

The Ohio State University

B.S., Economics, 1993, Summa Cum Laude

Professional Experience

NERA Economic Consulting

2012- Vice President

2007-2011 Senior Consultant

2006-2007 Consultant

Navigant Consulting

2005 Managing Consultant

Welch Consulting

2003-2005 Economist

University of Kentucky

2000-2002 Assistant Professor, Gatton College of Business and Economics

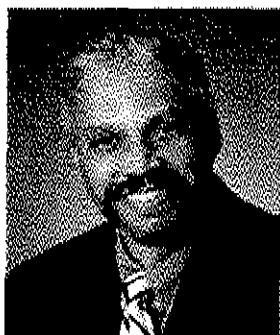
Employment Litigation & Consulting Experience

- » Recommendations for a compensation model for clinic medical directors' pay for Part 494 hours worked for a national chain of dialysis clinics.
- » Analysis of calculation of regular rate for the purpose of overtime and missed meal penalty payments to nurses at a major hospital in Southern California.
- » Analysis of overtime and meal/rest break claims against a California electrical contracting company.
- » Analysis of compensation and promotion practices of a major aero-space company with respect to claim of gender discrimination in compensation and promotion.
- » Audit of differences in compensation by gender and race for group of financial and business consulting companies.

- » Survey analysis for matter involving claim of misclassification of independent contractors by IRS against California City.
- » Estimated damages in a wrongful termination action against a California software company.
- » In a collective action against a technology company, analyzed allegation that older workers were more likely to be discharged through reductions in force.
- » Estimated damages in a wrongful imprisonment action against State and County police.
- » For a wage and hours class action against a telemarketing company, analyzed meal and break violations.
- » RAND Research & Development: Performed analyses of gender disparities, controlling for pre-company experience and subtle differences in research experience.
- » Consolidated Freightways: Compiled analytical data set and calculated damage scenarios in a national case involving WARN Act damages. The case covered both unionized and non-unionized employees.
- » Lowes Home Improvement: Conducted a study of termination rates across gender and race in a major audit of employment practices. Analysis used a cohort-based hazard model to capture similarly situated employees.
- » Fortune 100 Retailer: Provided analytical data set compilation and damage analyses in a meal and break time violation matter.
- » Fortune 100 Retailer: Conducted a comprehensive analysis of promotions to manager and selections for manager training programs in a case involving claims of disparate treatment by gender and race.
- » Fortune 100 Retailer: Studied bonus plans for all levels and created an analytical tool to replicate existing bonuses and calculate alternative bonuses for damage scenarios. The analysis was performed in relation to evaluate the legality of bonuses based on company net profits.
- » Analyzed error-rate in responsive and privileged documents for a large-scale document production effort in order to improve the classification by both contract attorneys and linguistic document filters.

Selected Publications

- » “Implications of the Fair Pay Act for Statistical Analysis in Wage Discrimination Suits,” with Chris Erath and Denise Martin, March 2009.
- » “Revenue Sharing Agreements: Do They Restrict Competition?” with Kristin Terris and Thomas McCarthy, October 2010.
- » “Ability Tracking, School Competition, and the Distribution of Economic Benefits,” with Dennis Epple and Richard Romano, *Journal of Public Economics*, January 2002.



Don T. O'Bannon

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Dallas*

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Don O'Bannon is Of Counsel with the firm's Real Estate practice. Mr. O'Bannon has more than 25 years of experience in litigation, business and public sector representation.

Mr. O'Bannon focuses his practice on providing guidance and counsel to airport concessionaires operating in food and beverage, news and gifts, duty free, bookstores and specialty retail businesses including: counseling on Airport Concessions Disadvantaged Business Enterprises (ACDBE) certification issues; preparing proposals for concession operators and ACDBE partners; negotiating concession license, lease and sublease agreements; structuring joint venture partnerships; counseling concessionaires before or during investigations by government authorities; and representing airport authorities on the legal perimeters of race- and gender-based contracting, program development and with internal auditing procedures to comply with the Department of Transportation and Federal Aviation Administration policies.

Select Representations

Airport Concessions

DBE Certification Process. Represented a professional service provider in applying for DBE certification to ensure compliance with regulations under the US DOT certification process in Texas.

Structured Joint Venture Agreement to respond to an RFP. Represented a food & beverage operator in structuring the terms and conditions of a joint venture agreement to comply with the Joint Venture Guidance in Texas.

Duty-free/Duty Paid Concession Operator. Represented a duty free/duty paid concession operator in appealing the selection committee's evaluation of the operator in Florida.

Title VI Complaint. Represented a construction firm in pursuing a Title VI complaint with FAA against an airport in California.



Availability/Disparity Study. Represented an airport in providing guidance to the Airport Board on the constitutional perimeters for a race and gender conscious public contracting program.

Dallas Fort Worth International Airport. Developed and implemented all aspects of the airport's DBE, ACDBE and MWBE supplier diversity programs including drafting of all related policies, manuals, corresponding solicitation and contractual provisions and compliance with the joint venture guidance.

Bar and Court Admissions

Texas, 1982

U.S. Court of Appeals for the Fifth Circuit

U.S. District Courts for the Northern, Southern, Eastern and Western Districts of Texas

U.S. Tax Court

Education

University of Virginia, J.D., 1982

Dartmouth College, B.A., 1979

Publications

"Texas Financial Institutions and the Consumers Rights to Privacy," *Texas Tech Law Review*, Vol. 24. No. 3., 1993

Professional Affiliations

Airport Minority Advisory Council, National Chairman

Airport Council International

Civic Involvement and Honors

Fort Worth Metropolitan Chamber of Commerce, M/WBE Advocate of the Year, 2010

Black Contractors' Association, Chairman's Award, 2009 - 2010

Dallas Business Journal, Public Advocate of the Year, 2008

Hispanic Contractors' Association, Business Advocate of the Year, 2008

African Chamber of Commerce, Dallas Fort Worth, Chairman of Board of Directors

NAACP, Life Member

Greater Dallas Asian Chamber of Commerce, Advisory Board Member

Patricia Ramos
3680 Shadow Shape Pl
Columbia, MD 21045

Home: 410.290.8904

Work: 410.347.5600

Education:

University of Maryland, College Park, MD MBA Marketing 1998
Worcester State College, Worcester, MA BS Business Administration 1987

Experience:

CR Dynamics & Associates, Inc. - Baltimore, MD June 1996 - Present

Vice President, Operations / Account Management. Designed and implemented all operational aspects of the call center from its beginnings as a small start up company. Successfully designed, implemented all aspects of human resources management. Carried out sales support, operational functions, and staffing. Established processes and procedures for managing customers and employee relations resulting in improved client satisfaction levels. Designed and implemented specialized customer satisfaction surveys resulting in increased levels of quality and client satisfaction. Increased profitability by introducing and implementing an automated call center solution. Designed and implemented a process to track quality and productivity simultaneously. Evaluated and improved employees by designing and implementing Quality Assurance functions and performance appraisals. Developed and motivated an entire call center management staff. Designed and created all company literature and web pages.

Digital Equipment Corporation - Hyattsville, Maryland October 1988 - June 1996

Telesales Rep 1. Use broad product and sales knowledge to initiate calls to sell hardware and software service contracts. Identify new business opportunities from lead referrals, personal research. Determine customer need, presents solutions, negotiates and closes sales orders from standard to complex non-standard service and support contracts. Decide customer tactics and targets. Work with Sales Account Managers, Sales Support organizations, administration groups and Service Delivery Managers. Provide guidance to less experienced personnel. Cross functional or cross organization influence and involvement. Make's decision on operating procedures, analytical approaches and work flows. Complete and process necessary documentation to execute sales or contracts. Responsible for revenue opportunities by as much as \$3.7 million dollars.

Customer Account Rep 1 & 2. Responsible for profit generating functions. Formulate and provide customer reference and business reporting. Provide external and internal technical and administrative consulting service to resolve product and service issues. Support sales in customer service contract negotiations. Decide and develop customer tactics and recommendations. Create and implement procedure improvements, analytical approaches, and work flows.

Administrative Assistance. Provide administrative support to the Channels Marketing group. Maintained marketing literature distributions. Utilized organizational, interpersonal and coordination skills.

Department Coordinator. Focal representative in vendor code assignment group. Maintained, researched and verified vendor code database. Performed administrative duties. Daily interaction with global purchasing and accounts payable groups.

Department Coordinator. Coordinated all aspects of a Personnel Executive Search group. Established and maintained applicant resume control system under highly confidential restrictions. Compiled employment data required by law. Working knowledge of personnel, petty cash, and reimbursement procedures. Arrange travel and relocation plans. Internal and external daily interactions with VP level management.

Telemarketing Resource Center May 1986 - December 1989

Supervisor. Support management in supervising groups of telemarketers. Cold calling for future sales prospects. Statistical reporting and administrative functions. Participated in market and demographically research projects.

Personnel Pool Temporary Service April - September 1987

Personnel Coordinator. Coordinate personnel functions within clerical and light industrial groups, along with the interviewing, hiring and dismissals of employees. Established a large customer account base. Outside sales calls and marketing for recruiting via advertising, mailers and telemarketing. Prepare payroll, bank credit check and third party billing reports.

CR Dynamics & Associates, Inc.

CR Dynamics & Associates, Inc.
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Baltimore, MD 21202
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Fax: (410) 347-5603
www.crdynamics.com
info@crdynamics.com

Overview

CR Dynamics (CRD) develops and promotes total integrated **Call Center** Solutions. CRD is a privately held Maryland S-Corporation headquartered in Baltimore, Maryland. The company location is easily accessed to Washington, DC, Baltimore metro, Northern Virginia, and central Maryland.

Founded in 1994, CRD directly sells and markets our services to commercial and government agencies.

DUNS #: 835670506
NAICS Code #: 541519
HUBZone #: 17048
MDOT #: 97-093
Cage Code#: 1HWW0
GSA #: GS35F0561R



- HUBZone Certified
- Hispanic Owned
- GSA Sched IT-70
- MDOT Certified
- MD/DC MSDC
- INC5000 winner

CAPABILITIES STATEMENT

Exploring Call Center, Help Desk Opportunities

Service Center Operations

- Informational / Tier I Help Desk
- Market Research Surveys
- Information Center
- Registrations & Reservations

Technical Service Operations

- Password Trouble Shooting
- Warranty Support
- Account Set up

Experiences:

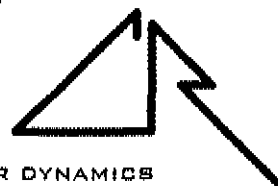
- Homeland Security – FEMA
- United States Coast Guard (USCG)
- Social Security Administration (SSA)
- Magellan Behavioral Health
- Northrop Grumman Corporation - ES Division
- MD Public Service Commission
- MD Division of Business & Economic Dev
- Census 2000 – Dept of Commerce
- US GSA
- US Veterans Affairs
- Doral Dental, USA

Specialty Services

- Onsite Staffing
- Back Office Administration

Business Processing

- Database Management
- Application Processing
- Validating data
- Information Capture
- Literature Fulfillment



CR DYNAMICS
& ASSOCIATES, INC.

D'MORIEA CONSULTING AGENCY



Sundra Davis, sole proprietor, has over twenty years of experience in the Disadvantaged and Small Business Enterprise arena. As the first Manager of the City of Fort Worth's Disadvantaged/Minority/Women Business Enterprise Program and later as Assistant Director of Economic Development, Ms. Davis acquired a wealth of knowledge and practical operation of this industry and understands how vital inclusion is to the economic stability of a community.

With a degree in Marketing from the University of North Texas, Ms. Davis played an intricate role in the formation and operation of a family owned business for five years. Equipped with the knowledge of actually operating a small business combined with formal training, Ms. Davis became professionally involved with Disadvantaged/Minority/Women Business Enterprise development starting in 1979.

Relevant Experience:

- Initiated the City of Fort Worth's Disadvantage Business Enterprise program as it related to complying with receipt of U. S. Department of Transportation (DOT) funds. Program was subsequently applied to all City procurement/contracts over \$25,000.
- Wrote and submitted the City's annual policy and goal-achievement to required federal departments for approval and continued receipt of federal funds, including FAA.
- Administered two complete City of Fort Worth Disparity Studies and one update. Conducted public hearings to ascertain issues and concerns from vendors participating in program
- Wrote and presented to governing body City's D/M/WBE Ordinance based on the results of Disparity Studies.
- Created computerized system to monitor applicable contracts and report dollars to administrative staff and elected officials.
- Established outreach programs to locate, certify, and assist D/M/WBEs to participate as subcontractors and/or prime contractors on bids and proposals issued by owner.
- Instituted D/M/WBE Advisory Council representing relevant businesses affected by program, including prime contractors.
- Assisted with the formation of the country's first centralized Certification Agency based on compliance with DOT certification requirements.
- Worked extensively with community based contractor groups to establish a trust relationship
- Worked as subconsultant on two public entity contracts to assure compliance with D/M/WBE goals

Relevant Training:

- Received continuous training on certification and compliance requirements by USDOT
- Obtained a Masters of Contract Compliance from American Contract Compliance Association
- Completed Disadvantaged/Minority/ Women Business Enterprise course through Associated General Contractors

Business Resource Consultants' Company Profile Resume

Carol S. Hadnot

PRINCIPAL

BUSINESS RESOURCE CONSULTANTS AUSTIN, TEXAS

Carol S. Hadnot is an Independent management consultant and the principal owner of Business Resource Consultants, a 23 year old management consulting firm based in Austin, Texas. Ms. Hadnot has dedicated her professional career as an advocate for the development of small and minority businesses by promoting legislation and initiatives for the establishment of effective programs that are successful in enhancing the growth and development of small and minority businesses. As a result, Ms. Hadnot has facilitated over \$103 million dollars in contract awards for small and minority businesses. Currently, Ms Hadnot serves as the Assistant Program Manager responsible for marketing and outreach for Hensel Phelps Construction Co., \$200M City of Austin New Central Library; Outreach and Employment Consultant, TRC Environmental Solutions, Inc., \$12M Decommissioning of the Holly Street Power Plant; Outreach Consultant, Hensel Phelps, \$40M Austin Bergstrom Airport Infill East project; Co-Outreach Coordinator, Trammell Crow's \$500M Green Water Redevelopment Project; and Program Manager/Consultant for the City of Austin's Minority Trade Associations' Marketing and Outreach Program. Ms. Hadnot's firm recently served as--- Austin Independent School District's 2004 & 2008 School Bond HUB Program and the District's 2002 Health & Safety Bond Program, Small & Local Business Program as Assistant Program Manager responsible for marketing and outreach; Program Manager/Consultant for the City of Austin Development Assistance Services Program; Marketing and Outreach Consultant for City of Austin Small Contractor Support Network; Marketing and Outreach Consultant for Hensel Phelps Construction Co., \$40M New Austin City Hall Building and Austin Bergstrom International Airport Baggage Expansion Project; Marketing and Outreach Consultant for the City of Austin, \$45M Computer Sciences Austin Downtown Campus; HUB Outreach Consultant, Fluor Daniel, \$78M Travis County Criminal Justice Facilities; DBE Outreach Consultant, Morganti, Inc., \$1B City of Austin, Austin Bergstrom International Airport Passenger Terminal Facility; Community Outreach Consultant, \$9M Central City Entertainment Center; Outreach Consultant, Gregory Cook Pipeline Contractors, \$2B Pacific Gas Transmission-Electric Pipeline Expansion Project, Portland, OR; Outreach Consultant, DPR Construction, Inc., \$65M Austin Energy

System Control System; Outreach Consultant, Chasco Constructors, \$11City of Austin Aquatics Facilities Improvement Project; and publisher of the City of Austin Purchasing Office's 2008 Vendor Source Guide and DAS Bid Briefs disseminated electronically on a weekly basis to over 1,500 subscribers.

Services Offered . . .

- Business & Economic Development
- Small & Minority Business Consulting
- Meetings, Events & Conference Planning
- Public Involvement & Awareness Programs
- Administrative Support Services
- Publications—
Directories • Newsletters • Bid Briefs • Bid Alerts • Austin Energy's Power Bids • Source Guides • Contractor's Tool Box Reference Guides • Company Profile Resumes • Annual Reports

Additionally, Ms Hadnot has served as . . .

- State of Texas Representative, United States Trade Mission, Johannesburg, South Africa
- Delegate, White House Conference on Small Business
- Chair & Member, City of Austin MBE/WBE Procurement Advisory Committee
- Member, City of Austin Disparity Study-Work Group
- Secretary and Board Member, City of Austin Convention & Visitors Bureau
- Board Member, Capital City African American Chamber of Commerce
- Guest Lecturer, University of Texas Sociology Department's Entrepreneurial Series; and as
- Member, City of Austin African American Quality of Life Economic Development Committee

Education and Affiliations —

Ms. Hadnot received a Bachelor of Arts Degree in Sociology and Political Science from Bishop College, Dallas, Texas, Master Compliance Administrator Certification from the American Contract Compliance Association, Training Institute; member of the Construction Specifications Institute (CSI), Travis County Construction Trade Enhancement Committee, Austin Area Black Contractors Association; served as a Mentor for Reagan High School Career Program; partner with the Austin American Statesman's Newspaper in Education Literacy Program for Central Texas Schools; sponsor of the Golden Eagle Pop Warner Football Team; and Co-Chair of the 2007 American Contract Compliance Association National Training Institute.

**TEAM RESUMES FOR
NERA SUB-CONSULTANT
BUSINESS RESOURCE CONSULTANTS**

Aletta Banks

Address: 9616 Copper Creek Dr., Austin, TX 78729

Tel: (512) 918-0294 or Cell: (512) 300-7644

E-mail address: alettabanks@aol.com

Work Experience

Community Outreach Experience

Title: Executive Director of Asian Contractor Association (2009-Present)

Duties: Provide business counseling to Asian contractors regarding MBE/WBE certification, procurement process, and project opportunities with the City of Austin; conduct networking and outreach events to help Asian businesses participate in Austin City's purchasing opportunities; distribute city bid notices to Asian contractors; refer subcontractors to prime contractors bidding on city projects; write and produce quarterly newsletters, reference guide, and other resource publications for distribution; translate MBE/WBE program-related information from English to Chinese and have it published in local Chinese community papers; work with Vietnamese translators to have the same information translated and published in local Vietnamese community publications; attend meetings with city officials for progress report and contract issues; ensure contract compliance with the City of Austin; update ACA website contents on a monthly basis.

Accounting/Database Management Experience

Title: Account Maintenance Specialist of Dell Financial Services (2007-2009)

Duties: Managed \$24 million portfolio, serviced multi-billion corporate accounts, such as GE and Coca Cola; managed and maintained account relationships; kept track of detailed billings on an asset and term level, maintained account accuracy without delinquencies.

Account Management Experience

Title: National Account Manager of RMTC (2005-2007)

Duties: Managed and serviced multi-billion pharmaceutical corporate accounts such as P&G, Eli Lilly; made regular client calls/visits, conducted service presentation in person or on the web, exhibited products and services at various national industry conferences, prepared quotes and proposals, created and implemented marketing campaigns, performed contract negotiation and daily customer services.

Management and Counseling Experience

Title: Owner and Operator of CFS, Inc. (1999-2005)

Duties: Served as a franchise agent for two national banks; enrolled members in a financial educational program; provided members with financial counseling; guided members through credit applications; provided FCRA and TILA disclosures; conducted regular employment and income verifications; launched monthly print and radio marketing campaigns; managed member database and daily business operations.

Training Experience

Title: Communication Specialist of First USA Bank (now part of Chase) (1993-1995)

Duties: Produced and distributed weekly "TableTalk" as a company-wide communication tool on latest product updates, policy and procedure changes; worked with trainers to produced training materials; coordinated with trainers in other locations throughout the country to design and plan for upcoming training classes.

Education and Certification

Degree: Master of Science of Mass Communications / Arkansas State University

Certificate: Customer-Centric Sales Training Certificate from Common Sense Advisory in Cambridge, MA

Certificate: Intermediate Excel Certificate from ExecuTrain in Austin, TX

Certificate: International Friendliness Training Certificate from Austin Community College

Community Participation

Board Member of NAAO (Network of Asian American Organizations)

Board Member of Travis County Citizens International Program

Member of Austin Chinese Society

Member of Taiwanese Chamber of Commerce, Austin Chapter

Member of Greater Austin Asian Chamber of Commerce

Community Activities

1. Meals on Wheels volunteer
2. World Congress on Information Technology volunteer
3. Helped build an orphanage in Mexico
4. Teacher of Sunday school and nursery at Northwest Chinese Church and Hill Country Bible Church
5. Teacher of Community Bible Study children's program
6. Coordinated and trained volunteers at HCBC to teach ESL to newly arrived adults from China, Japan, Korea, and Taiwan.

Juan Oyervides

323 Congress Ave, Ste 250 Austin, Texas 78701
(512) 922-0507 cell execdirector@ushca-austin.com

U.S. Hispanic Contractors Association

Jan 2006-Nov 2006, Mar 2007-Present

Executive Director, Austin Chapter

Trade Association in the Construction Industry. Daily administration of a non-profit organization including without limitation, planning, purchasing, coordinating, and directing the business affairs, programs, budgets and operations and all other duties customarily delegated to a chief operating officer. Plan and manage special events, assist minority contractors with city, state and federal certification and government contract opportunities, networking events with general contractors and government agencies, support and promote contractors with legislative advocacy, develop marketing materials and newsletters, safety training and construction language programs, maintain plan room, manage Certification Outreach contract with the City of Austin.

Solid State Displays

Dec 2004-Jan 2007

Operations & Lab Manager

Start-up research and development company. Managed day to day business affairs and laboratory operations of the company. Requisition and purchase lab supplies & equipment, develop lab methodologies and analysis of polymer dispersed liquid crystal, microscopy and characterization of PDLC morphology and development of flexible transparent Zinc Oxide transistors. Routine preparation of reagents, set up lab space and equipment, prepared business plan and budgets, public relations functions at events, prepared powerpoint presentations, write grant and contract proposal responses for department of defense, state of Texas and investor networks and basic accounting functions.

QA Systems, Inc.

April 2003-Nov 2005

Government Business Development Manager

A minority owned technology services and equipment company. Manage government procurement and business development program for the company and a sister construction company, QA Construction Services. Identify and prepare responses for city, county, state, federal, school district and private contract opportunities. Marketed technology and construction products and services to government purchasers and diversity coordinators and associations. Prepare bid packet responses and bonding documentation dealing with diversity requirements, minority certifications, HUB sub-contracting plans and required outreach. Coordinated and represented both companies at trade shows and networking events, prepared marketing brochures and materials.

Texas Commission on Environmental Quality

April 2002 - Aug 2002

HUB Coordinator

A regulatory and enforcement agency responsible for the environment. Administered and directed agency Historically Underutilized Business (HUB) Program. Representative and spokesperson for agency at outreach events held statewide, attending forums and other local and state community events. Assist and advise minority and women-owned enterprises (MWBE's) to do business with the agency. Produce agency reports for internal agency management, state and federal agencies. Promote and identify minority vendors and their contact information for purchasers and other internal agency staff. Review contracts greater than \$100,000 for sub-contracting opportunities, present the HUB Subcontracting Plan at pre-bid conferences, and evaluated submitted HUB Subcontracting Plans from bid responses. Conducted internal staff training regarding the agency supplier diversity program. Successfully completed training in State of Texas Basic Public Purchasing (Certificate, 20 Credit Hours).

EDUCATION

Texas Tech University, Lubbock, Texas

Bachelor of Science in Microbiology
Minor in Chemistry

1980

University of Texas at Austin Graduate School of Business

1991-1992

Completed 24 hours of Master of Business Administration Program, General & International Business

• References available upon request •



PAUL M. SALDAÑA, PRESIDENT & PARTNER BRISA COMMUNICATIONS, LLC

WINNING STRATEGIES INC.
*Government Relations
Public Outreach
Crisis Issues Management
Media and Communications*

Education

National Hispanic Executive
Leadership Academy Graduate, 2007
University of Chicago Graduate
School of Business
B.B.A., 1997, Business Administration,
St. Edward's University
Undergraduate Studies, 1994, Austin
Community College Austin, Texas

Professional History

Brisa Communications, LLC, President &
Partner 2010- Present
Adelante Solutions, Inc.
President/Principal, 2003 - 2010
Martin & Salinas Public Affairs, Vice
President, 2003-2006
Office of Mayor Gus Garcia Austin City
Council, Chief of Staff, 2001 - 2003
Western Integrated Networks (WIN)
Telecommunications, Inc., Regional
Director, Franchising and
Government Relations, 2000 - 2001
Office of Council Member Gus Garcia,
Executive Assistant, 1990 - 2000

Professional Affiliations/Boards

Texas Association of Mexican American
Chambers of Commerce, Executive
Vice Chair of Legislation, Executive
Board of Directors
Austin Geriatrics Center (RBJ) Senior
Housing, Vice Chair, Board of
Director
Greater Austin Chamber of Commerce,
Past Executive Board of Directors
Greater Austin Hispanic Chamber of
Commerce, Past Chairman, Board of
Directors
Austin Area Urban League, Board of
Member,
Tri-Chair, Austin ISD Community
Committee on Neighborhoods & Schools
Tri-Chair, Austin ISD Superintendent's
Task Force on Strategic Plan Review
Business Investment Growth (BiG)
Austin, Past Chairman Board of
Directors/Board of Advisors
Austin Hispanic Network Member,
Previous Board Member
National Council of La Raza (NCLR),
Affiliate Member
KLRU's Hispanic Board of Advisors

In January 2003, Paul Saldaña co-founded Adelante Solutions, Inc. a public affairs consulting firm offering government relations, crisis issues management, public affairs, public relations, business development strategies, media and communication services. In 2010, Adelante Solutions, Inc. transitioned to Brisa Communications, LLC to expand existing services to include marketing, advertising, creative branding and real estate consulting services for development and construction clients.

Born and raised in Austin, Texas, Mr. Saldaña has spent more than 20 years in local municipal government, public policy public affairs and political consulting. Saldaña served as a Political Consultant, Campaign Director and the Chief of Staff for the first elected Hispanic Mayor of Austin, Gus Garcia. As Chief of Staff, he served as the lead policy advisor to the Mayor developing comprehensive public policies and strategies in the areas of public safety, transportation, affordable housing, telecommunications, public finance, water/wastewater issues, economic development, education, and health care. In addition, he was directly responsible for managing media, community and intergovernmental relations.

Saldaña serves as a resource consultant and advisor on Hispanic quality of life issues including education, voting, economics, healthcare and affordable housing to governmental entities, clients and the media.

Mr. Saldaña is a firm believer in giving back to the community through volunteer work, service on various Boards and Commissions and being actively involved in issues that enhance and impact the quality of life for all citizens of Austin. Saldaña currently serves as the Executive Vice Chair of Legislative Issues on the Executive Board of Directors for the Texas Association of Mexican American Chambers of Commerce and as Vice Chair of the Board of Directors for the Austin Geriatrics Center - RBJ Senior Housing Project. He previously served as the Chairman of the Board for the Greater Austin Hispanic Chamber of Commerce and on the Executive Board of Directors for the Greater Austin Chamber of Commerce.

In 2007 Saldaña was also among thirty-five national Hispanic Executives selected to participate in the inaugural National Hispanic Executive Leadership Academy at the prestigious University of Chicago Graduate School of Business.

Saldaña is married to Ms. Lisa Vasquez-Saldaña, an elementary bilingual and special education school teacher and has three sons, Ryan Alexander, age 21, Joshua Daniel, age 18, and Jacob Nicholas, age 4.

VI. Project Schedule

The proposed schedule of starting points, durations, and end points for each task in the study, expressed in weeks, appears on the following page. In addition to the draft report, final report, and presentation, deliverables will include monthly written progress reports. Our ability to meet the proposed schedule depends critically on the timeliness with which the City of Austin can provide us with access to their machine-readable and (if applicable) hard copy records on contract awards; purchase orders; payments; contract compliance records of subcontractors, subconsultants, truckers, and suppliers; and related information.

The primary causes of delays that we have experienced with past disparity studies have largely been due to matters beyond NERA's control and have fallen into three basic areas: (1) Extra time required by our clients to make prime contract and purchase order information accessible to NERA; (2) Extra time required by NERA and our clients to secure cooperation from prime contractors and vendors asked to provide missing subcontract data that had not been previously collected or maintained by the client; and (3) Extra time taken by our clients after submission of the draft report to approve and authorize issuance of a final report document and schedule final presentations.

Strategies to Minimize Delays

In our experience, the above types of delays are mostly minimized when the client has been able to do three things: (1) convey the importance of the disparity study and its priority completion schedule from city leaders to city staff; (2) assign a dedicated project manager who has the flexibility in his or her other duties to devote time to troubleshooting issues if and when they arise; and (3) ensure that other staff whose short-term assistance will be required at various points in the study (e.g. legal, IT, contract compliance, public works, purchasing, airport) are willing and able to make the study a priority when the need arises. NERA will do its utmost to minimize our requests to the City.

Task Completion/Deliverable Due Dates	Start Week	Duration	End Week
1.0. Project Initiation Conference/Initial Data Review	1	1	2
2.0. Establish Disparity Study Task Force	2	2	4
3.0. Execute Client-Maintained Data Collection Plan	4	5	9
4.0. Assemble Master M/W/DBE Directory	1	14	15
5.0. Legal Review	1	50	51
6.0. Prepare Master Contract/Subcontract Database	10	28	38
7.0. Define Geographic & Product Markets	10	33	43
8.0. Review Race- and Gender-Neutral Alternatives	7	44	51
9.0. Economy-Wide Disparity Analysis: SBO data	23	18	41
10.0. Economy-Wide Disparity Analysis: ACS PUMS data	23	18	41
11.0. Economy-Wide Disparity Analysis: Capital Markets	23	18	41
12.0. Merge Master Directory & Baseline Universe	15	19	34
13.0. Business Experience Mail Surveys	15	19	34
14.0. Business Owner Interviews	25	23	48
15.0. Produce Race & Sex Misclassification Surveys	25	23	48
16.0. Produce Public Sector Utilization Estimates	39	9	48
17.0. Produce M/W/DBE Availability Estimates	39	9	48
18.0. Produce Public Sector Disparity Analyses	39	9	48
19.0. Prepare Draft Study Report	38	9	47
20.0. Develop Program Design Recommendations	38	9	47
21.0. Finalization of Study Report and Presentation	48	4	52

VII. Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying

NERA's signed Section 810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit appears below in Appendix II.

VIII. Offer Acceptance Period

NERA's submittal is valid for a period of one hundred and eighty (180) calendar days subsequent to the closing date of RFQS SMW0051.

IX. Proprietary Information

Not applicable.

X. Authorized Negotiator

The authorized negotiator for this submittal is NERA Senior Vice President Jon Wainwright.

Address: 3801 South Capital of Texas Highway, Suite 330, Austin, Texas 78704

Telephone: 512-371-8995

E-mail: jon.wainwright@nera.com.

XI. Suggested Exceptions

The following are suggestions for modifications to the Standard Purchase Terms and Conditions provided by the City of Austin (the "Client") in connection with RFQS SMW0051 relating to an MBE/WBE and DBE Disparity Study. National Economic Research Associates, Inc. ("We" or the "Consultant") is willing to discuss and consider alternatives that are mutually acceptable to Consultant and Client.

CLAUSE NO.	PROVISION	SUGGESTED CLARIFICATION
31	Indemnification	We suggest clarifying that "Indemnified Claims" include loss or damage to Client's "tangible" property. We also suggest that Consultant and Client not be liable for any indirect, special, punitive, consequential or incidental damages, including loss of profits. We also suggest that notwithstanding anything to the contrary in the Contract, except for any claim for personal injury or death arising out of the negligence or wilful misconduct of Consultant or its agents, officers, employees and subcontractors, Consultant's liability (whether based on any action or claim in contract, tort, or otherwise) to Client arising out of or relating to services provided by Consultant will not exceed the total professional fees paid to Consultant for such services.
32	Insurance	Consultant is covered under a comprehensive insurance program designed by Marsh & McLennan Companies, Inc. ("MMC"), its ultimate parent company. The insurance program provides limits of coverage that meet or exceed usual and customary standards of insurance for similar firms insuring similar risks. Should Consultant be awarded the work hereunder, the specific insurance requirements are subject to review by MMC's Risk Management department.
38	Ownership of Materials	We suggest clarifying Consultant shall retain all of its rights in its methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, models, tools, techniques, skills, generic industry information, knowledge and experience (and any graphic representations of any of these) whether now possessed or hereafter acquired by Consultant.

Additional Terms

We suggest including a provision substantially similar to the following:

“Jury Waiver. Each party, on behalf of itself and its affiliates, to the fullest extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this Agreement or the services provided hereunder. The foregoing waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise. Each party, on behalf of itself and its affiliates, also agrees not to include any employee, officer or director of the other party or its affiliates as a party in any such action or proceeding.”

Appendix I. Certifications and Affidavits



ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN, TEXAS

REQUEST FOR QUALIFICATION STATEMENTS NO: SMW0051

ADDENDUM NO. 1

DATE OF ADDENDUM: DECEMBER 26, 2012

This addendum is to incorporate the following changes to the solicitation:

1. Attendance of the pre-response meeting being held on January 4, 2013 at 10:30am in City Hall Council Chambers is hereby changed to mandatory attendance. Proposers may be credited with "mandatory attendance" in one of the following three ways:
- Signature of one or more respondent representatives on the sign in list completed at the meeting; OR
 - Watching the live meeting broadcast available online at the following web address:
<http://ci.austin.tx.us/webcast.htm> ; OR
 - Viewing the recording of the entire broadcast available on-line at <http://ci.austin.tx.us/webcast.htm> in the Videos tab after the pre-response meeting and confirming that your company has submitted all questions applicable to the solicitation in accordance with dates and times established in the solicitation document package.

Check ONLY one box, sign, date, and return with your qualification submittal:

- ☒ The signature of one or more of my firm's staff is shown on the sign in list completed at the meeting.
- ☐ My firm viewed the entire pre-response meeting on-line while it was being broadcast live.
- ☐ My firm viewed the entire pre-response meeting after it was initially broadcast and has submitted all applicable questions.

All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, Addendum #1 is hereby incorporated and made a part of the above referenced Solicitation.

APPROVED BY: Shawn M. Willett
Shawn M. Willett, Supervising Senior Buyer
Purchasing Office, 512-505-7351

AFFIRMED BY:

National Economic Research Assoc. Inc. (NERA) Jon Wainwright 1/7/2013
SUPPLIER AUTHORIZED SIGNATURE DATE

RETURN ONE (1) COPY OF THIS ADDENDUM TO PURCHASING OFFICE, CITY OF AUSTIN, WITH QUALIFICATION STATEMENT OR PRIOR TO RESPONSE CLOSING. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION OF YOUR OFFER.



ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN, TEXAS

REQUEST FOR QUALIFICATION STATEMENTS NO: SMW0051
ADDENDUM NO. 2
DATE OF ADDENDUM: JANUARY 17, 2013

This addendum is to incorporate the following changes to the solicitation:

- A. The sign in sheet from the Pre-Response meeting is attached and added as Exhibit 1.
- B. Section 0605, which was listed in the submittal section but not included in the solicitation documents, is not required of this solicitation. Section 0835 is hereby removed from the solicitation and is not required to be submitted. This is a Request for Qualifications for a professional service thus selection and award must only be made on the basis of demonstrated competence and qualifications.
- C. No Goals Summary with explanation of good faith effort requirements for subcontracting from the Department of Small and Minority Business Resources (SMBR) is attached as Exhibit 2. Please contact SMBR directly if you are planning to subcontract any of this work at (512) 974-7600.

D. Questions and Answers:

- 1 The formal deadline for submitting questions is February 4th, just eight days prior to the due date. If questions are received by the City prior to the deadline, will the City wait until after February 4th to answer them, or will the City provide answers on a flowing basis throughout the month of January?

RESPONSE: The City will provide questions and answers as we receive them via Addenda

- 2 Please provide a listing of everyone that attended the mandatory pre-bid meeting. Also, what is the deadline by which the webcast must be viewed in order to be marked as having attended the pre-bid meeting?

RESPONSE: See Exhibit 1 for the sign in sheet from the Pre-Response meeting. As per Addendum #1, respondents must view the meeting prior to submitting a response.

- 3 The RFQ "Offer Sheet" requests one original Response and four "signed" copies. Do the signatures on the copies need to be originals, or is it acceptable that they be copies of the original document?

RESPONSE: Only the submittal marked and deemed as the "Original" requires original signatures

- 4 Please indicate which governmental entities the City of Austin has executed Interlocal Purchasing Agreements with.

RESPONSE: Some of the entities the City has existing agreements with include: Travis County; City of Cedar Park, Texas; Austin Independent School District, City of Seattle, Washington; City of Denver, CO; and City of El Paso, Texas.

- 5 The document entitled "Qualifications Statement Preparation Instructions and Evaluation Factors," Item 1.G. "Part V – Personnel," states "Additionally, provide a two page maximum resume for each

person.” Will the City allow longer, more complete, resumes for key personnel (e.g. the principal investigator) to be included as appendices to the Response?

RESPONSE: No, please keep resume to a two page limit summarizing the most applicable experience for this solicitation.

- 6 Please clarify the broad procurement categories that the City desires to have included in the study, in particular, please confirm that general services (both professional and non-professional) unrelated to construction should be included.

RESPONSE: As stated in the RFQS, we are seeking consultants that are capable of analyzing construction, construction-related professional services, construction related non-professional services and commodities for contracts with more than one scope. As an option for consideration, a respondent may include non-construction related non-professional services in the submittal.

- 7 Please indicate whether the City would like the ACDBE Program to be included in the study.

RESPONSE: Yes, ACDBE concessionaires should be included in this study.

- 8 If the City gathers data, but hasn't tracked veterans data or non-minority subcontracting data, will consultant have to provide data or the will City get this data?

RESPONSE: The City plans to capture veteran classification for all existing registered vendors in the database and will provide that information to the selected consultant.

- 9 Please clarify whether commodities items with no subcontractable scope should be included in the study. We recommend their inclusion, to facilitate comparison to M/W/DBE participation on other types of contracts.

RESPONSE: As an option, a Respondent may include how they will consider this information in their submittal for review.

- 10 What is the distinction between construction-related professional services and construction-related non-professional services? Can you provide an example of each?

RESPONSE: Construction related professional services are Engineering, Architect, Landscape Architect and Surveying. Construction related non-professional services are hauling, janitorial, landscape, plumbing, electrical and many other services.

- 11 Can you provide an example of a commodities contract with more than one scope and an example of a commodities contract with one scope?

RESPONSE: Commodities contract with more than one scope – Computer Purchase includes software; software installation & imaging; maintenance; accessories; setup & delivery; disposal of existing equipment, and other services. Commodities contract with one scope – Janitorial supplies.

- 12 Does this Study need to be based on Commodity Code or classification by industry?

RESPONSE: Classification by Industry

- 13 Please list all of the industry categories to be included in the Study.

RESPONSE: The procurement categories to be considered in this study will be commodities, professional services, non-professional services and construction.

- 14 Please clarify whether contracts below \$50,000 should be included in the study. We recommend their inclusion, although having some minimum threshold below which no analysis would be performed (say \$10,000) is also recommended.

RESPONSE: As an option, a Respondent may include how they would consider contracts less than \$50,000 in the study.

- 15 How many meetings is it anticipated that the consultant be expected to make a presentation for? What are the relevant boards and commissions etc. which a presentation is expected at?

RESPONSE: Multiple Presentations will be required including presentations to the Small and Minority Business Resources (SMBR) Department , City Manager's Office, MBE/WBE & Small Business Advisory Committee , MBE/WBE & Small Business Council Committee and City Council. The exact number of meetings is not possible to predict but would include a minimum of at least one presentation to each of these groups.

- 16 Item 4 in the "Scope of Work" document states that "The City's data [on prime contractors and subcontractors] includes total contract amounts and total amounts paid to MBEs/WBEs and DBEs, recorded by industry, race/ethnicity, and sex." With respect to this statement:

- i. When the City uses the term "subcontractors" does this include subconsultants, suppliers, and truckers in addition to traditional subcontractors?

Response: Yes. As per the ordinance they are defined as follows:

- **SUBCONSULTANT.** A person, Firm or Business Enterprise providing professional or nonprofessional services to a prime Consultant if such professional or nonprofessional services are procured or used in fulfillment of the prime Consultant's obligations arising from a Contract with the City, and including every level of subconsulting required to fulfill a Contract with the City.
- **SUBCONTRACTOR.** Any person or Business Enterprise providing goods, labor or services to a Contractor if such goods, labor or services are procured or used in fulfillment of the Contractor's obligations arising from a Contract with the City. Subcontractor includes every level of subcontracting required to fulfill a Contract with the City.

- ii. Does the City collect and maintain address, city, state, and zip code for each prime contractor or vendor it contracts with?

Response: Yes

- iii. Does the City collect and maintain address, city, state, and zip code for each M/W/DBE subcontractor it tracks?

Response: Yes

- iv. Does the City collect and maintain a telephone number for each prime contractor or vendor it contracts with?

Response: Typically

- v. Does the City collect and maintain a telephone number for each M/W/DBE subcontractor it tracks?

Response: Typically

- vi. Does the City collect and maintain an e-mail address for each prime contractor or vendor it contracts with?

Response: E-mail addresses are not mandatory, thus the City may not have one for each vendor

- vii. Does the City collect and maintain an e-mail address for each M/W/DBE subcontractor it tracks?

Response: E-mail addresses are not mandatory, thus the City may not have one for each vendor

- viii. Does the City collect and maintain a contact name and contact title for each prime contractor or vendor it contracts with?

Response: The City maintains contact information as it is recorded on the Vendors record. However, a title is not included.

- ix. Does the City collect and maintain a contact name and contact title for each M/W/DBE subcontractor it tracks?

Response: The City maintains contact information as it is recorded on the Vendors record. However, a title is not included.

- x. Does the City collect and maintain a brief description of work performed for each M/W/DBE subcontractor it tracks?

Response: A brief Scope of Work is generally provided for each subcontractor on a project

- xi. Does the City track subcontractors by veteran status?

Response: No

- xii. Does the City track subcontractors that are not MBEs, WBEs, or DBEs?

Response: Yes, Prime Contractors are required to submit all sub contractors regardless of certification status.

- 17 A list of subcontractors is available on-line; can we use this list rather than contacting SMBR for a list of subcontractors for any subcontracting identified?

RESPONSE: To ensure that consultant submittals are compliant, the consultant will need to request an availability list from SMBR for any subconsulting opportunities identified.

All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, Addendum #2 is hereby incorporated and made a part of the above referenced Solicitation.

APPROVED BY: Shawn M. Willett
Shawn M. Willett, Supervising Senior Buyer
Purchasing Office, 512-505-7351

AFFIRMED BY:

National Economic Research Associates, Inc. (NERA) John W. Jett 2/25/13
SUPPLIER AUTHORIZED SIGNATURE DATE

RETURN ONE (1) COPY OF THIS ADDENDUM TO PURCHASING OFFICE, CITY OF AUSTIN, WITH QUALIFICATION STATEMENT OR PRIOR TO RESPONSE CLOSING. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION OF YOUR OFFER.



ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN, TEXAS

REQUEST FOR QUALIFICATION STATEMENTS NO: SMW0051
ADDENDUM NO. 3
DATE OF ADDENDUM: FEBRUARY 7, 2013

This addendum is to incorporate the following questions and answers to the solicitation:

- A. In order to allow more time for respondents to adequately prepare a response and to allow more time for input from community partners, the response due date and time are hereby changed to:

QUALIFICATIONS STATEMENT DUE PRIOR TO: 10:00 AM ON FEBRUARY 26, 2013

RESPONSE CLOSING TIME AND DATE: 10:00 AM ON FEBRUARY 26, 2013

- B. Questions and Answers:

- 1 Can the sample completed disparity studies be provided electronically on CD?

RESPONSE: Yes

- 2 Can the exhibits be single-spaced?

RESPONSE: Yes

- 3 Can we include appendices?

RESPONSE: As long as the format described in section 0600 is followed, the company can provide additional information in appendices if they choose to do so.

- 4 Are we required to demonstrate good faith in all services we intend to subcontract, or can we seek participation on certain services and meet the good faith efforts requirement?

RESPONSE: Yes, you are required to comply with the City's MBE/WBE Procurement Program, which includes good faith efforts, if areas of subcontracting are identified.

- 5 For the Good Faith Efforts requirement, if the proposing firm intends to utilize certified and non-certified subcontractors, is the demonstration and documentation of good faith required since there are no goals?

RESPONSE: Although no goals have been established for this solicitation, the proposing firm is required to comply with the City's MBE/WBE Procurement Program, which includes good faith efforts, if subcontracting opportunities are identified.

- 6 As we understand, non-M/WBE subcontract data is not tracked for the proposed study period. Please explain how non-DBE and non-W/MBE subcontractor/subconsultant information (those utilized by a prime contractor) are maintained for the proposed study period.

RESPONSE: Yes, as per Addenda #2, ACDBE concessionaires should be included in this study. From the data we have collected, the revenue generated by car rental agencies for the proposed study period (FY2008-2012) is displayed in the table below:

2008	\$83,426,100.05
2009	\$83,208,653.09
2010	\$88,487,113.46
2011	\$95,921,110.32

For FAA reporting purposes, FY12 data will not be available until February 15, 2013.

Additionally, the revenue generated by concessions for the proposed study period (FY2008-2012) is displayed in the table below:

2008	\$37,632,942.53
2009	\$30,706,612.56
2010	\$33,963,162.73
2011	\$38,735,112.47

For FAA reporting purposes, FY12 data will not be available until February 15, 2013.

- 15 Which department or entity (such as Aviation Department, AUS, airlines) is responsible for maintaining AUS concessions and car rental data? Also, is this data centralized?

RESPONSE: The data is currently not centralized. The type of data maintained determines the responsible department. For example, the Department of Aviation currently maintains concession and car rental data including but not limited to leaseholder/ tenant contracts.

SMBR maintains certification data for those firms which are ACDBE and DBE certified as well as construction compliance data for projects within Part 26.

The ACDBE Liaison maintains contracting and compliance data, the Austin ACDBE Plan, and FAA reporting data as it pertains to Part 23.

- 16 With respect to this statement: Should the City decide to include concessions as well as car rentals, what is the format (such as Excel spreadsheets, hard copy files, scanned PDF documents) of the data? Can the data be provided in a format that can be easily imported into a database?

RESPONSE: As the data is currently not centralized the formats range from electronic (word, PDF, excel) to scan and hard copy. Therefore the data may not be easily imported into a database.

- 17 As far as concessions and car rental data. Are the following vendor-related data available?
- a. Unique Vendor ID (such as system generated and/or Tax ID)? In addition, if not the same data source, can this ID be cross referenced to other data sources in order to identify the same vendor?

Response: A Unique Vendor ID (UVID) is generated for firms who register with Vendor Connection via Austin Finance Online (AFO) to transact business with the City of Austin. Other forms of information (Legal Name, DBA, Tax ID) may be used as cross referencing tools to identify the same vendor across data sources not exclusive to the City of Austin. For example, a UVID is not available as a cross reference tool to identify DBE vendors within the Texas Unified Certification Program (TUCP) DBE database.

- b. Company Name?

Response: Yes

MBE/WBE AND DBE DISPARITY STUDY SOLICITATION

February 2013

Finalist Clarification Information for Evaluation Panel

(Written responses due by 12 PM CDT on April 3, 2013)

- Please provide examples of prior recommendations for three (3) race and gender based and three (3) race and gender neutral disparity studies from your firm.
- Please identify any disparity studies completed by your firm which resulted in recommendations that were not adopted by the jurisdiction(s) commissioning the work.
- Please cite cases of any challenges to race and gender based recommendations made by your firm which were upheld by a court.
- Please provide proposed team's designation time for this project and list current projects and percent time allocated.

Finalist Presentation Contents:

(Ensure all areas below are included in firm's presentation)

Firm's General Overview

- Provide a breakdown of the firm's structure and all areas of operations.
- Describe specific experience of the Lead Consultant and how effectively their past disparity study expertise has been implemented/utilized.

Data Collection

- Describe the firm's most successful strategy in obtaining missing data.

Outreach

- Describe all outreach team member's strength/expertise and prior outreach strategies used on previous disparity studies. Provide details of what recognized methods were most effective and those that were not.

Process Mechanics

What prior experience do you have working between owner's Project Manager, staff, commissions and Council?

April 4, 2013

Ms. Shawn M. Willett
Business Process Consultant Senior
City of Austin Purchasing Office
Municipal Building
124 West 8th Street, Room 308
Austin, TX 78701

Dear Ms. Willett:

Below, in red, please find NERA's responses to the clarification questions submitted to us on March 27th.

1. Please provide examples of three race and gender based and three race and gender neutral recommendations from prior disparity studies conducted by your firm.

Three Examples of Race and Gender Conscious Recommendations

A. Set Contract-Specific M/W/DBE goals.

Regardless of whether and on what basis our clients adopt overall annual aspirational M/W/DBE target goals, the courts insist that governments set goals on particular contracts that are narrowly tailored.

Administratively, although it is easier to simply apply the same overall annual goal to each contract, doing so could prove fatal in the event of a constitutional challenge. This practice also tends to generate more cases where target goals are unrealistic and therefore increases the burden on bidders and as well as on public personnel responsible for conducting compliance reviews.

Contract-specific goals must therefore not simply reiterate the overall annual goals. Instead, contract goals must be derived from the specific scopes of work

anticipated for any given project and the known availability of M/W/DBEs to perform those scopes. The size and the type of the contract are also relevant to goal-setting: if opportunities for subcontracting are small or limited, perhaps no goal should be set, since the costs of compliance to prime contractors may outweigh the benefits to M/W/DBEs. Narrowly tailored contract goals should also diminish the temptation of prime contractors to employ brokers, who add little value to the transaction other than goal credit or to make contractual commitments that are unlikely to be kept.

Additionally, contract-specific goals can also reflect a public agency's current progress toward meeting its overall annual goals. Contract-specific goals can be set higher in cases where progress toward annual targets is slower than expected. On the other hand, if the client finds that they are meeting or exceeding their annual goals, they should consider reducing the use of contract-specific goals to ensure that the implementation of their M/W/DBE programs remain narrowly tailored.

The availability estimates produced in NERA's studies provide an objective starting point for contract-specific goal-setting. Moreover, NERA has recently developed client-customized software that can be employed once a study is completed to ease the burden of contract-specific goal-setting.

B. Scrutinize M/W/DBEs' Commercially Useful Function.

All proposed M/W/DBE utilization should be carefully evaluated to determine whether the firm is serving a commercially useful function. Even a firm that is legitimately owned by minorities or women can be used as a "pass through" or "front" on a specific contract. Commercially useful function means responsibility for the execution of distinct elements of the work of the contract and carrying out the M/W/DBE's responsibilities by actually performing, managing, and supervising the work involved. Some M/W/DBEs and non-M/W/DBEs have told us in our interviews that brokers are often used to meet goals, particularly in industries with little subcontracting. It should be noted that the setting contract-specific goals based upon the real subcontractable scope of work will reduce the incentives to claim credit for work that is not commercially useful to meet artificial goals.

C. Establish Control Contracts.

We urge most of our clients to issue a small number of contracts each year that are deemed to have significant opportunities for M/W/DBE participation without placing any M/W/DBE goals on them. These “control contracts” can help to demonstrate whether M/W/DBEs are used or even solicited in the absence of formal goals. This type of evidence of what happens in the absence of race- or gender-conscious efforts can be particularly powerful in the event of a constitutional challenge to a client’s program arguing that M/W/DBE goals are no longer necessary to level the playing field for its contract expenditures.

Three Examples of Race- and Gender-Neutral Recommendations

A. Improve Contract and Procurement Data Collection and Retention Procedures to Facilitate Future Monitoring of M/W/DBE and Non-M/W/DBE activity.

Unfortunately, although the specific elements vary depending on the types of IT and MIS systems in use and the specific data gaps we find, this is a recommendation we must frequently make to our clients. Almost 25 years after *Croson*, most public agencies with race- and gender-conscious subcontracting programs still do not systematically collect and maintain sufficient subcontract, subconsultant, and supplier data. Although many maintain adequate records on their M/W/DBE subcontracting, virtually none maintain comparable records regarding non-M/W/DBE subcontracting.

Although non-M/W/DBE subcontract data are not necessary to produce the typical types of M/W/DBE utilization reports requested by our clients’ executive leadership, they are critical to producing a high quality and legally defensible availability or disparity study. Without such data, it is impossible to construct overall weighted availability estimates and it is impossible to conduct industry-level disparity analyses. Moreover, it is impossible to create industry-level availability estimates that are critical for contract-level goal-setting. Any public entity in 2013 that is operating a race- or gender-conscious subcontracting program and is not establishing narrowly-tailored contract-specific M/W/DBE goals is significantly, and unnecessarily, increasing their litigation risk.

This recommendation also often includes suggested improvements for prime contract and purchase order data collection as well. Examples from past studies include:

“The client’s payment data cannot readily be linked to contract award data. Ideally both award and payment data should be jointly available for future disparity analyses.”

“Telephone numbers are not currently maintained as part of the client’s vendor records. Telephone numbers should become a part of the standard vendor profile record.”

“The relationship in the data between contract start and end dates and various audit dates is complex and sometimes results in difficulties determining when a given contract truly started or ended. An effort should be made to make these relationships more transparent in the data.”

“Data concerning change orders, contract renewals, and similar circumstances were not tracked completely or consistently and often could not be linked back to the original unique contract identification number.”

“Data fields such as vendor ID were sometimes populated with dummy data, reflecting poor data entry practices. This situation could be improved through increased training and guidance for contracting and purchasing personnel and by introducing additional controls into the financial and contract management information systems to require data entry personnel to provide all the requisite information for any given contract or purchase.”

“The information necessary for performing a high quality disparity study cannot currently be accessed directly from any of [client’s] primary MIS/IT systems. We recommend that [client] work directly with its software vendors to develop custom SQL-type reports for each of these systems that can readily output the requisite data items needed to implement a periodic disparity study. The report should be capable of outputting these data items in a machine-readable row by column format (contracts and purchase orders in rows, data items in columns) that can be easily imported directly into spreadsheet software such as Microsoft Excel, database software such as Microsoft Access, and/or statistical software such as SAS or Stata. The data fields to be included in these reports should include, at a minimum, the following:

- Unique identification number or code for each prime contract or purchase order. Extensions, renewals, changes orders, etc. should be capable of being linked to the original contract via this numbering or coding scheme.

- Unique identification number or code for each prime contractor, consultant, or vendor.
- Full and complete business name of prime contractor, consultant, or vendor.
- Business address of prime contractor (street, city, state, zip code).
- Business area code and telephone number of prime contractor.
- Executive contact person at prime contractor, consultant, or vendor (name, title, telephone, e mail).
- Date of prime contract award or purchase.
- Original dollar amount of prime contract award or purchase.
- Brief description of the nature of the contract or purchase.
- Cumulative dollar amount of all change orders.
- Amount (percentage or dollars) of M/W/DBE goal(s) (if any) placed on original contract award.
- Amount (percentage or dollars) of M/W/DBE goal(s) (if any) placed on change orders.
- Indicator for whether prime contractor is a M/W/DBE (including certification status).
- If prime contractor is a M/W/DBE, indicator for race/sex of owner(s) (*i.e.*, African American, Asian, Hispanic, Native American, nonminority female).
- Contract start date if different from award date or purchase date.
- Contract completion date, if applicable.
- Total dollar payments to prime contractor, consultant, or vendor through contract completion date.
- Indicator to show if the contract or purchase has USDOT federal funding assistance that would subject the contract to the requirements of the federal DBE Program.

Additionally, to the extent that any of the above fields are not presently being populated into the IT/MIS software systems, their addition is recommended to facilitate future disparity studies.”

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B. Review contract size and specifications to increase contract unbundling.

“Unbundling” contracts into smaller segments was endorsed by almost all firm owners we spoke with as one method to provide fair access to [client’s] projects. M/W/DBEs and non-M/W/DBEs agreed that breaking up contracts so that small firms can submit bids or proposals would increase opportunities, especially for M/W/DBEs and smaller firms to obtain work as prime vendors. In conjunction with reduced insurance and bonding requirements where possible, smaller contracts are an important race-neutral component to a defensible program. Unbundling must be conducted, however, in such a manner as to continue to ensure efficiency and control costs.

C. Ensure that M/W/DBEs are solicited for smaller purchases.

Purchases that do not exceed \$5,000 may be made without advertising or requesting competitive bids. Purchases over \$5,000 but not over \$50,000 may be made by obtaining two written quotes. We suggest that [client] adopt a policy that the purchases not subject to competitive bidding procedures require the solicitation of *all* M/W/DBEs that provide the appropriate service or product. While these purchases are not large, they can be important to small firms and help to establish relationships and familiarity with the [client].

2. Please identify any disparity studies completed by your firm which the study in its entirety or any major recommendations from the study were not adopted by the jurisdiction(s) commissioning the work.

All of NERA’s disparity studies completed since 2003 and listed in our response to RFQS SMW0051, have been approved and accepted by our clients.

In the case of our three most recently completed studies, our clients are still in the process of reviewing NERA’s recommendations and making decisions on if, when, and how to implement them.

As a general matter, our clients do not apprise us of whether or not they adopt all of our recommendations, nor do we ask them to. However, of the 30 studies listed in our response to RFQS SMW0051, to the best of our knowledge, only the Salt Lake City Department of Airports (SLCDA) declined to establish goals based on the availability statistics provided in our report. Although SLCDA did not provide us with an explicit reason for this, our understanding was that their Board of Directors was not comfortable establishing goals as high as were indicated by NERA’s availability estimates.

We believe that our disparity study recommendations have always been given serious consideration by our clients. In cases where specific recommendations were not adopted, it is likely that some were not adopted due to resource constraints, while others were not adopted due to differences of opinion among city or state leaders and/or inability to reach consensus among the same.

3. Please cite cases of any challenges to race and gender based recommendations made by your firm which were upheld by a court. Note: As clarified via e-mail by Ms. Shawn Willett on 3/29/13: "The panel would like to know any incident where a client's program was challenged based on the disparity or availability study conducted by the firm and what was the outcome."

The experience and expertise of NERA's lead consultant and expert witness, Dr. Jon Wainwright, has led to successful litigation outcomes for our M/WBE and DBE program clients.

Of the studies completed since 2003 and listed in NERA's response to RFQS SMW0051 at pages 55-58, only two—NERA's 2006 MBE disparity study for the State of Maryland and NERA's 2004 DBE availability study for the Illinois Department of Transportation were involved in formal challenges to their respective programs.

In *Richard F. Kline, Inc., et al v. John D. Porcari and Maryland Department of Transportation* (U.S. District Court for the District of Maryland), Civil Case No. 1:08-cv-03197-RDB, filed in 2009, plaintiffs challenged the constitutionality of the State of Maryland's MBE statute and also of the federal DBE Program and its implementation by the State of Maryland, both of which were supported by NERA's study and associated materials. Dr. Jon Wainwright was retained as the testifying expert economist, was qualified by the court under the federal rules of evidence, and submitted an expert report in support of the defendants' MBE statute and the federal DBE Program. Dr. Wainwright did not, however, testify at trial, as the case was settled in 2011 on terms largely favorable to NERA's client.

In *Northern Contracting, Inc. v. State of Illinois, Illinois Department of Transportation, et al.* (U.S. District Court, Northern District of Illinois, Eastern Division), No. 00 C 4515, filed in 2000, plaintiff's challenged the federal DBE Program and its implementation by the State of Illinois, which was supported by NERA's study and associated materials. Dr. Jon Wainwright was retained as the testifying expert economist, was qualified by the court under the federal rules of evidence, and submitted an expert report in support of the DBE Program. In March 2004, the District Court decided the

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parties' cross-motions for summary judgment, granting the federal defendants' motion dismissing all claims against them and denying the remaining motions. In November 2004, Dr. Wainwright testified at trial on behalf of the State of Illinois. In September 2005, the District Court entered judgment in favor of the defendants, finding the Illinois Department of Transportation's DBE plan to be narrowly tailored to the goal of remedying the effects of racial and gender discrimination within the construction industry.¹ Plaintiffs appealed the ruling to the Seventh Circuit Court of Appeals. In January 2007, the Appeals Court affirmed the judgment of the district court.²

Prior to 2003, two other NERA studies were directly involved in challenges to our clients' M/WBE or DBE programs—our 2000 DBE availability study for the Minnesota Department of Transportation and our 1992 disparity study for the City of New York.

In *Sherbrooke Turf v. Minnesota Department of Transportation*, 345 F.3d 964 (8th Cir. 2003), cert. denied, 124 S.Ct. 2158 (2004), the Eighth Circuit upheld Minnesota DOT's DBE program based in part upon NERA's Availability Study and Dr. Wainwright's expert witness testimony.

In *North Shore Concrete & Associates, Inc. v. The City of New York et al.*, 94 Cv. 4017, 1998 U.S. Dist. LEXIS 6785 (E.D. New York, 1998), the plaintiff's motion for summary judgment was denied in favor of NERA's client, the City of New York, based in part upon NERA's study and the testimony of its expert witness, Dr. David S. Evans.

In addition to these four cases and studies cited above, in the following five cases, although NERA did not produce an initial disparity study, we were retained after litigation had commenced to produce new reports and testimony to assist in defending the underlying programs that had been challenged.

In *Associated General Contractors of America, San Diego Chapter, Inc., Plaintiff v. California Department of Transportation, Randell Iwasaki, Defendants, Coalition for Economic Equity and National Association for the Advancement of Colored People, San Diego Chapter, Defendant-Intervenors*, United States District Court, Eastern District of California, No. 2:09-CV-01622-JAM-GGH, a challenge to the constitutionality of the California Department of Transportation's DBE Program, Dr. Wainwright was retained by the defendant-intervenors to provide an expert witness report. At trial, the court ruled

¹ 2005 U.S. Dist. LEXIS, 19868 (N.D. Ill., Sept. 8, 2005). An electronic copy of this decision was included with NERA's response to RFQS SMW0051.

² 473 F.3d 715 (7th Cir. 2007). An electronic copy of this decision was included with NERA's response to RFQS SMW0051.

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in favor of the defendant and defendant-intervenors. The case is currently on appeal to the Ninth Circuit.

In *Kevcon, Inc. v. The United States*, No. 09 625C (United States Court of Federal Claims), a challenge to the constitutionality of the federal government's Small Business Administration 8(a) minority business set-aside program, Dr. Wainwright was retained by the U.S. Department of Justice to provide an expert witness report and testimony. The court ultimately dismissed the case with prejudice against the plaintiff.

In *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003), a challenge to the constitutionality of the City's M/WBE Program, Dr. Wainwright produced an M/WBE availability study for the City's principal economic expert witness. The court ruled that the City's program served a compelling constitutional interest, based in part upon the testimony that derived from Dr. Wainwright's statistical work.

In *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950 (10th Cir, 2003), cert. denied, (2003), a challenge to the constitutionality of Denver's M/WBE Program, NERA was retained after concern arose on the defendant's part regarding the quality and defensibility of their original study, produced by another consultant. NERA was retained to provide expert reports and expert witness testimony on behalf of Denver. The court ultimately ruled that Denver's M/WBE program met a compelling constitutional interest, based in part upon NERA's expert trial reports and testimony.

In *John Goode d/b/a Mr. Bones BBQ v. City of Austin, Texas and Fine Host Corp.* (W.D. Tex 1999), aff'd, 202 F.3d 265 (5th Cir. 1999), cert. denied, 529 U.S. 1124 (2000), plaintiff alleged intentional racial discrimination against the defendant resulting from a lost concessions contract at the City's airport resulting from plaintiff's lapsed M/WBE certification. Defendant retained Dr. Wainwright to prepare a statistical analysis of minority business enterprise availability in the eating and drinking industry in the Austin metropolitan area. The district court granted defendant's motion for summary judgment, the Fifth Circuit affirmed, and the Supreme Court denied certiorari.³

Finally, Dr. Wainwright is currently retained by the United States Department of Justice, Division of Civil Rights, to serve as their principal economic and statistical expert witness in three pending challenges to federal contracting affirmative action programs in *Geyer Signal, Inc. et al. v. Minnesota Department of Transportation, et al.* (U.S. District

³ At the time this litigation commenced, NERA was in the midst of producing a M/WBE availability study for the City of Austin, but that study was not yet completed.

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Court for the District of Minnesota, Case No. 11-cv-321-JRT-LIB); *Midwest Fence Corp. v. United States Department of Transportation, et al.* (U.S. District Court for the Northern District of Illinois, Eastern Division, Case No. 10-CV-5627); and *Rothe Development, Inc. v. Department of Defense and Small Business Administration* (U.S. District Court for the District of Columbia, Civil Action No. 12-CV-744). NERA has produced expert reports in two of these three cases to date and may be called upon to provide expert testimony at deposition and at trial in all three cases.

4. Please provide proposed team's designation time for this project and list current projects and percent time allocated. As clarified via e-mail by Ms. Shawn Willett on 3/29/13, "The panel is looking for a list of all listed team members' current projects and the percent time allocated to those existing projects. They would also like to know the estimated percent of time that will be allocated specifically to the disparity study project."

NERA is currently conducting two other disparity studies—one for the Memphis-Shelby County Airport Authority and one for the City of Baltimore. The Memphis Airport study is expected to be completed by the end of April 2013 and therefore will not factor in to any capacity considerations for the City of Austin's study.

The Baltimore study is currently scheduled to conclude in September 2013. Currently, approximately 25 percent of Dr. Wainwright's time is allocated to that project. Time allocations for Dr. Wainwright's research staff on the Baltimore project vary, ranging from approximately 10 percent to 20 percent. In addition to the Baltimore study, approximately 12 percent of Dr. Wainwright's time is currently allocated to two other, smaller, projects—expert witness services for the Department of Justice (discussed in more detail under item #3, above, and post-disparity study M/WBE- and DBE-related research for the State of Maryland and the Maryland Department of Transportation.

Attorney Don O'Bannon is participating as part of the NERA team for the City of Baltimore project. His current time allocation for that project is approximately 11 percent. In addition to his work with NERA, Mr. O'Bannon currently allocates approximately 40 percent of his time providing legal services to his various clients.⁴ Significant current projects include *TGI Friday's Inc. vs. CBIF Ltd. Partnership*. This case is scheduled for trial later this month and is expected to be completed by the end of this month.

⁴ Individual client names cannot be provided due to attorney-client privilege issues.

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Ms. Sundra Davis has just completed her only current outstanding consulting project and is therefore 100 percent available.

Ms. Carol Hadnot's current projects include: the City of Austin Outreach Service Provider Program, outreach, compliance, and employment consultant for the City of Austin Decommissioning of Holly Street Power Plant Project; outreach consultant for the Austin Bergstrom International Airport East Infill Project; outreach consultant for the City of Austin New Central Library Project; and outreach and employment consultant for the Green Water Redevelopment Project. Approximately 65 percent of her time is currently allocated to these projects.

Mr. Paul Saldaña's current projects include: the Green Water Redevelopment Project, the City of Austin Decommissioning of Holly Street Power Plant Project, the Austin Fire Department/Travis County Emergency Services District #4 Project, the Minority Trade Alliance project, and the Fiestas Patrias project. Approximately 48 percent of his time is currently allocated to these projects.

Ms. Aletta Banks' current project includes: the City of Austin Outreach Service Provider Program. Approximately 50 percent of her time is currently allocated to this project.

Mr. Juan Oyervides' current project includes: the City of Austin Outreach Service Provider Program and the U.S. Hispanic Contractors Association of Austin. Approximately 75 percent of his time is currently allocated to these projects.

Since the budget for the City's study has not yet been negotiated or finalized, percentage time allocations to that project are estimates. Current estimated allocations are 30 percent for Dr. Wainwright, 9 percent for Dr. Newlon, 15 percent for Attorney O'Bannon, 11 percent for Ms. Davis, 13 percent for Ms. Hadnot, 13 percent for Mr. Saldaña, 6.5 percent for Ms. Banks, and 6.5 percent for Mr. Oyervides. Time percentages for team members CR Dynamics & Associates, Inc. & J&D Data Services are not applicable as their services are not provided on an hourly basis but rather on a per survey or per mailing basis.

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Jon Wainwright

Thank you for the opportunity to respond to this information request. Please let me know if you have any questions or require additional information.

Regards,

A handwritten signature in black ink that reads "Jon Wainwright". The signature is written in a cursive, flowing style.

Jon Wainwright
Senior Vice President



**Minority and Women Owned Business
Enterprise (MBE/WBE) and Disadvantaged
Business Enterprise (DBE) Disparity Study
(RFQS SMW0051)**

Austin, Texas
8 April 2013

Insight in Economics™

About Our Firm



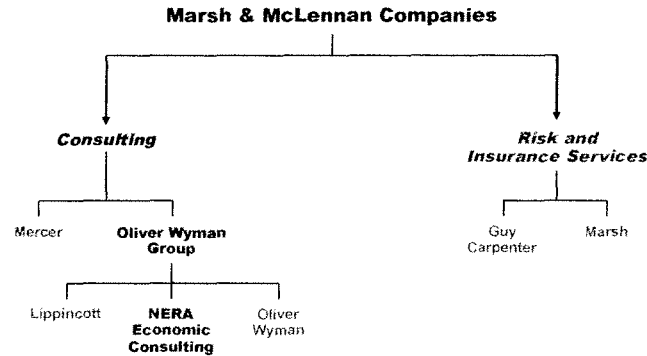
NERA Economic Consulting is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges

- For over half a century, NERA's economists have been providing objective economic and statistical analysis, expert testimony, regulatory insight, and policy recommendations for government authorities and the world's leading law firms and corporations
- Clients value our ability to communicate clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence

Our Structure



**NERA Economic Consulting is a unit of Oliver Wyman Group,
part of Marsh & McLennan Companies**



NERA has had a local Austin office since 1998

2

Our Areas of Operations



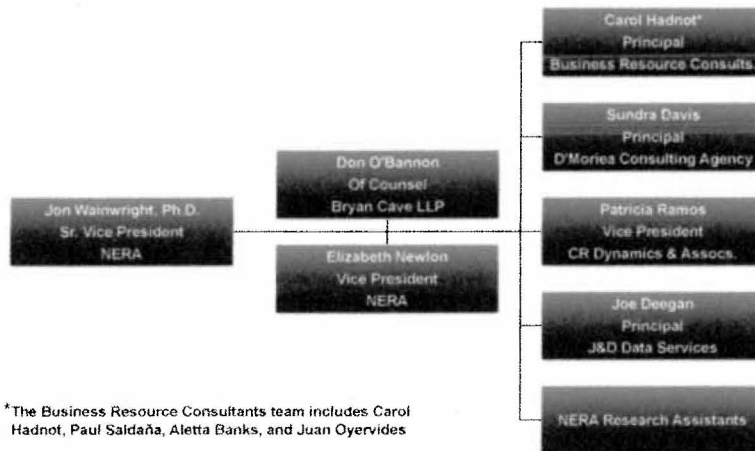
- Affirmative Action
- Antitrust and Competition
- Bankruptcy
- Class Actions and Class Certification
- Commercial Litigation and Damages
- Communications
- Consumer Protection
- Corporate Governance and Compliance
- Employment and Labor
- Energy
- Environment and Climate Change
- Financial Institutions and Banking
- Health Care and Life Sciences
- Intellectual Property
- International Arbitration
- Mass Torts and Product Liability
- Postal Services
- Public Contracting
- Radio Spectrum
- Regulatory Economics
- Risk Advisory Services
- Securities and Finance
- Statistical Sampling and Analysis
- Survey Research, Design, & Analysis
- Transfer Pricing
- Transport
- Valuation
- Water

3

NERA's City of Austin Study Team



NERA has assembled a team of strategic partners with deep knowledge and experience in M/W/DBE research methods, outreach, and program operation



*The Business Resource Consultants team includes Carol Hadnot, Paul Saldaña, Aletta Banks, and Juan Oyervides

4

Our Lead Consultant: Dr. Jon Wainwright



- The leading economic authority on designing and conducting disparity studies
- Holds a doctorate in economics from The University of Texas at Austin
- More than 20 years of experience directing disparity studies and as an expert witness in economics and statistics
- Repeatedly qualified as an expert economic witness under the federal rules of evidence & state rules of evidence in Texas and elsewhere
- Participated in the successful defense of M/W/DBE programs for the United States, Illinois, Maryland, Minnesota, California, Baltimore, Chicago & Denver
- Testified in federal and state courts on M/W/DBE issues and other matters on 13 occasions
- Testified on five occasions before the United States Congress on M/W/DBE issues
- Prime Consultant selected to develop peer-reviewed National Guidelines for Disparity and Availability Studies by the *National Academy of Sciences*
- Currently as U.S. Department of Justice's principal economic expert witness on three challenges to the federal DBE and SBA 8(a) programs
- Personally led and successfully completed over 25 disparity studies, including Austin's most recent study in 2008

5

Data Collection Protocols



- Public agencies rarely collect and retain all of the contract and subcontract data necessary to perform a high quality and legally defensible disparity study
- Despite this, almost all consultants tend to rely only on data that public agencies have readily at hand. The reason is simple—it's less work and it's cheaper. But this can lead to disastrous results.
- Recently, e.g., in a metro area comparable in size to Austin, we were retained to review another consultant's finished disparity study and discovered that 80% of contract and subcontract activity was unaccounted for by the disparity study! The lack of strong data collection protocols in this example ultimately led to that City's M/WBE program being dismantled.

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Data Collection Protocols



- Reconstructing missing data is a complex, expensive, and time-consuming process—but one that is absolutely crucial to a successful disparity study outcome.
- NERA works with our clients to identify the entire universe of all prime contracts and purchases from the prior five years
- A large, statistically representative, sample of contracts from that universe is identified
- NERA conducts intensive outreach to the prime contractors and vendors for those contracts to obtain all associated subcontract, subconsultant, supplier, and trucker data
- Primes may supply data using our customized fillable PDF forms or using our dedicated website
- NERA reviews all submissions for consistency and completeness and conducts follow-ups where necessary

7

Data Collection Protocols



- Not all primes are initially willing to cooperate in this process. Working with our clients, NERA has developed “escalation” procedures for obtaining data from intransigent firms
- Data collection continues until at least 80% of contracts and 80% of dollars have been collected—a level of completeness expected to stand up well in court
- NERA pioneered this procedure and has successfully employed it on all of our disparity studies going back to 2000.
- This unique approach allows us to create availability, utilization, and disparity statistics by detailed NAICS code—something found in no other consultant’s published studies.
- These detailed statistics are crucial for legally defensibility and for allowing clients to set contract-specific M/W/DBE goals.

8

Outreach Expertise



- Carol Hadnot, principal owner of Business Resource Consultants, will lead NERA’s outreach team to alert and inform stakeholders about the disparity study and to identify local business owners to secure their participation in the study
- Additionally, the outreach team includes Paul Saldaña of Brisa Communications, and independent consultants Aletta Banks and Juan Oyervides. This team has unmatched knowledge and experience with Austin’s M/WBE, contractor, and vendor communities
- All four are locally-based minority business owners who work on a daily basis with Austin’s M/W/DBE and non-M/W/DBE community. They know many of them on a first-name basis
- Strong relations have been established through years of advocacy and support—relations that will enhance and ensure responsiveness of the community to NERA’s outreach activities

9

Outreach Expertise



- Ms. Hadnot has performed community outreach on a *pro bono* basis on every City of Austin disparity study project reaching back to the original 1993 disparity study
- Ms. Hadnot and Mr. Saldaña have managed and co-managed community outreach, M/W/DBE outreach, prime contractor liaisons, and public relations activities on many of the City's most significant construction and development projects in recent years.
- Mr. Oyervides and Ms. Banks bring extensive networks, cultural insights, multilingual fluency, and community respect to the team, stemming from their work with the Hispanic Contractors Association and the Asian Contractor Association, respectively
- Collectively, this group will successfully reach the African American, Hispanic, Asian, and Women contractor communities, as well as the majority contractor community.

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Outreach Expertise



- Most successful strategies:
 - Working to educate businesses and get the word out up front about the study
 - Our calling efforts will draw on an extensive and fully developed network of business owners and trade groups, coupled with a broader outreach campaign by mail and in the media
 - Business owners will be contacted by people they feel they can trust and will protect their confidentiality
 - Meetings will be timed to coordinate well with contractors' busy schedules
 - Specialized software tools and dedicated 1-800 lines will be employed to assist in disseminating messages and to track and validate receipt of notices
- The least successful strategies are the flip side of this:
 - Lack of a clear message to get the “word out” early about the disparity study
 - Not educating stakeholders on what a disparity study is & its importance
 - Isolated cold calling—unfamiliar with the team conducting study
 - Cultural value disconnect—perceived lack of confidentiality and trust
 - Ignoring contractor schedules when timing meetings/interviews
 - Inability to track and verify stakeholder contacts

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Outreach Expertise



- We are confident that the community outreach team assembled by NERA and BRC for this project has a superior ability to reach and engage M/W/DBEs and non-M/W/DBEs
- We look forward to the opportunity to continue to demonstrate these skills on behalf of the City of Austin, Texas

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Process Mechanics



- NERA works closely with our client's project manager and other key staff on all of our projects
- In addition to the project manager, we recommend establishing a study working group—consisting of key staff who can facilitate access to data and personnel and who can monitor NERA's progress and provide feedback throughout the course of the study
- Formal monthly progress reports will be a key monitoring vehicle for the City
- Less formally, NERA's lead consultant will be easily reachable by the City of Austin throughout the entire study process—by phone, by e-mail, and in person. Our office is only minutes away from SMBR. NERA has maintained a local Austin office since 1998.
- Dr. Wainwright's availability extends beyond normal business hours to include evenings and weekends when necessary

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Process Mechanics



- NERA will work diligently with City Council and Commission members at the beginning of the study process to educate members about the purpose and goals of the study
- NERA will be available to the City Council and Commission members at the end of the study process to summarize the study's data, methods, findings, and conclusions
- During the study process, however, we will insist that the study team is allowed to operate independently from City Council and Commission member influence, in order to protect the integrity of the study process and to allow for the strongest, most legally defensible finished product
- These process mechanics worked successfully during the last study we performed for the City and have worked successfully for all our other disparity study clients as well

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Impact of Separate Contracts for Community Outreach



- NERA will make every possible effort to modify our methodology to successfully accommodate the City should they decide to use separate contracts for community outreach
- However, our own view is that separate contracts will be detrimental to a successful study.
- They will reduce or eliminate effective project management control, responsibility, and accountability by the lead consultant over the community outreach team
- As a result, you risk moving from a strategy that created an integrated, seamless study team designed to gather robust feedback from business owners, to a fragmented one that could harm the final study outcome
- In NERA's case it would also unfairly harm the MBE/WBE participation we worked very hard to achieve for this proposal, most of which is centered on our community outreach team

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Parting Thoughts: The Majority of NERA's Clients Are Repeat Clients



- Broward County, Florida
- Chicago Metra (repeat client)
- Chicago Transit Authority
- City of Austin (repeat client)
- City of Baltimore (repeat client)
- City of Boston & two related agencies (repeat client)
- City of Chicago (repeat client)
- City of Cleveland, Ohio
- City & County of Denver (repeat client)
- City of Hayward, California
- City of Houston, Texas
- City of Jacksonville (repeat client)
- City of New Orleans, & seven related agencies
- City of New York
- City of Richmond
- City of San Antonio & five additional Bexar County agencies
- Counties of Contra Costa & Alameda, California (repeat client)
- Denver Regional Transportation District
- Illinois DOT (repeat client)
- LA County Metropolitan Transit Authority
- Maryland Department of Transportation (repeat client)
- Memphis Shelby County Airport Authority (repeat client)
- Metropolitan Washington Airports Authority
- Minnesota DOT (repeat client)
- Missouri DOT (repeat client)
- New York City Housing Authority
- Bay Area Regional Transit Authority & seven related agencies
- Salt Lake City Department of Airports
- San Francisco Muni Railway (repeat client)
- Southeastern Pennsylvania Transportation Authority (repeat client)
- State of Illinois (repeat client)
- State of Maryland (repeat client)
- State of Massachusetts (repeat client)
- State of New York
- State of Texas (repeat client)
- Washington State DOT (repeat client)

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The NERA Expert Advantage



	NERA	Firm A	Firm B	Firm C
Hands-on Day-to-Day Study Management by the Lead Consultant and Expert Witness	✓			
Lead Consultant/Study Manager holds Ph.D. in economics, repeatedly qualified court expert on M/W/DBE matters, and repeatedly successful defending clients' programs in court	✓			
Lead Consultant/Study Manager is principal expert witness for U.S. DOJ in its defense of all current challenges to federal contracting affirmative action programs	✓			
Lead Attorney/Program Expert has extensive experience with M/W/DBE programs and is a former DBE Director	✓			
Lead Moderator/Program Expert has extensive experience with M/W/DBE programs and is a former M/WBE Director	✓			
Decisions in the 10 th , 8 th , 7 th Circuit, the U.S. Court of Federal Claims & U.S. District Courts have relied on consultant's studies and/or expert testimony	✓			
Chosen by Nat'l Academy of Sciences to develop disparity study guidelines and by Congress to create modern DBE program predicate	✓			

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The NERA Research Advantage



	NERA	Firm A	Firm B	Firm C
Availability statistic's numerator is consistent with the denominator	✓			
Availability statistics are reported by <u>broad</u> procurement category for each race/gender group	✓	✓	✓	✓
Utilization statistics are reported by <u>broad</u> procurement category for each race/gender group	✓	✓	✓	✓
Disparity testing is conducted by <u>broad</u> procurement category for each race/gender group	✓	✓	✓	✓
Availability statistics are reported by <u>detailed</u> industry level (NAICS) for each race/gender group	✓			
Utilization statistics are reported by <u>detailed</u> industry level (NAICS) for each race/gender group	✓			
Disparity testing is conducted by <u>detailed</u> industry level (NAICS) for each race/gender group	✓			

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The NERA Research Advantage



	NERA	Firm A	Firm B	Firm C
Conducts economy-wide disparity analyses using <i>American Community Survey</i> , decennial census, and <i>Survey of Business Owners</i> data	✓			
<u>Always</u> reconstructs missing subcontract, subconsultant, and supplier data	✓			
Disavows "capacity" or "willingness" tests tainted by discrimination – "capacity" approach explicitly rejected by courts	✓			
Conducts credit discrimination analysis for nation and region	✓		✓	
Conducts credit discrimination analysis narrowly tailored to state or locality	✓			
Publishes response rates for all surveys	✓		✓	✓
Conducts statistical testing for survey non-response bias	✓			

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City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

SOLICITATION NO **SMW0051**

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.**

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 25th day of February, 2013.

CONTRACTOR

National Economic Research Associates, Inc.

Authorized Signature

Jim Waigel

Title

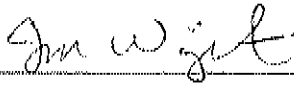
Senior Vice President

City of Austin, Texas
NON-SUSPENSION OR DEBARMENT CERTIFICATION

SOLICITATION NO. SMW0051

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:	<div style="border: 1px solid black; padding: 2px;">National Economic Research Associates, Inc.</div>		
Signature of Officer or Authorized Representative:		Date:	<div style="border: 1px solid black; padding: 2px;">Feb 25, 2013</div>
Printed Name:	<div style="border: 1px solid black; padding: 2px;">Jon Wainwright</div>		
Title:	<div style="border: 1px solid black; padding: 2px;">Senior Vice President</div>		

CITY OF AUSTIN
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT
SOLICITATION NO. SMW0051
FOR

Minority and Women Owned, Disadvantaged, and Veteran Owned Business Enterprise Disparity Study

State of Texas

County of Travis

The undersigned "Affiant" is a duly authorized representative of the Offeror for the purpose of making this Affidavit, and, after being first duly sworn, has deposed and stated and hereby deposes and states, to the best of his or her personal knowledge and belief as follows:

The term "Offeror", as used herein, includes the individual or business entity submitting the Offer and for the purpose of this Affidavit includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and anyone or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

1. **Anti-Collusion Statement.** The Offeror has not in any way directly or indirectly:
 - a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
 - b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.
2. **Preparation of Solicitation and Contract Documents.** The Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
3. **Participation in Decision Making Process.** The Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract hereunder, no individual, agent, representative, consultant, subcontractor, or subconsultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
4. **Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.
5. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.
6. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:
 - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;

**CITY OF AUSTIN
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT**

- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.
- c. as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/departments/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation in the space provided below or, as necessary, on separate pages to be annexed hereto.

Offeror's
Explanation:

--

7. **Anti-Lobbying Ordinance.** As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a City official or to a City employee, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.

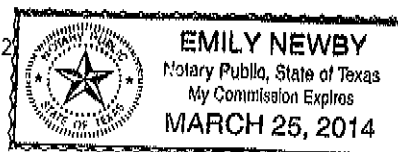
Contractor's Name:	National Economic Research Associates, Inc.
Printed Name:	Jon Wainwright
Title:	Senior Vice President

Jon Wainwright
Signature of Officer or Authorized Representative:

Subscribed and sworn to before me this 25 day of FEBRUARY, 2013.

Emily Newby
Notary Public

My Commission Expires MARCH 25, 2014



CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION
(Please duplicate as needed)

SOLICITATION NO. SMW0051

Pursuant to the Living Wages and Benefits provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this contract:

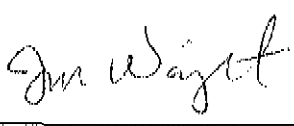
- (1) are compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) are offered a health care plan with optional family coverage.

(To add additional employees to this page, click the Add Button.)

	Employee Name	Employee Job Title
Add	Jon Wainwright	Senior Vice President
Delete		
Add	Elizabeth Newlon	Vice President
Delete		
Add	Christie Kirkendall	Research Assistant
Delete		
Add	Kirsten Deskins	Research Assistant
Delete		

- (3) all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.
- (4) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment.

Contractor's Name:	National Economic Research Associates, Inc.		
Signature of Officer or Authorized Representative:		Date:	Feb 25, 2013
Printed Name:	Jon Wainwright		
Title:	Senior Vice President		

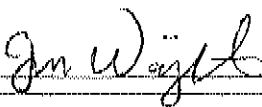
**CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number:	
Description of Services:	Minority and Women Owned, Disadvantaged, and Veteran Owned Business Enterprise Disparity Study
Contractor Name:	National Economic Research Associates, Inc.

Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	Senior Vice President		
Signature of Employee:		Date:	Feb 25, 2013
Employee's Printed Name:	Jon Wainwright		


(Witness Signature)


(Printed Name)


**CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

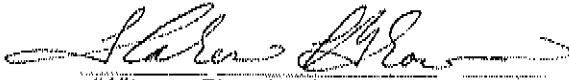
Contract Number:	
Description of Services:	Minority and Women Owned, Disadvantaged, and Veteran Owned Business Enterprise Disparity Study
Contractor Name:	National Economic Research Associates, Inc.

Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	Vice President		
Signature of Employee:		Date:	Feb 25, 2013
Employee's Printed Name:	Elizabeth Newlon		


(Witness Signature)

Karen Brown
(Printed Name)

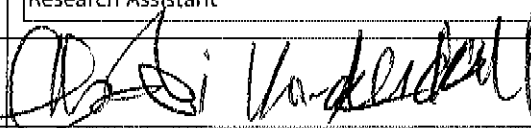
**CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number:	
Description of Services:	Minority and Women Owned, Disadvantaged, and Veteran Owned Business Enterprise Disparity Study
Contractor Name:	National Economic Research Associates, Inc.

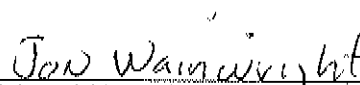
Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	Research Assistant		
Signature of Employee:		Date:	Feb 25, 2013
Employee's Printed Name:	Christie Kirkendall		


(Witness Signature)


(Printed Name)


**CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number:	
Description of Services:	Minority and Women Owned, Disadvantaged, and Veteran Owned Business Enterprise Disparity Study
Contractor Name:	National Economic Research Associates, Inc.

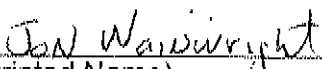
Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	Research Assistant		
Signature of Employee:		Date:	Feb 25, 2013
Employee's Printed Name:	Kirsten Deskins		


(Witness Signature)


(Printed Name)

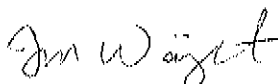
City of Austin, Texas
NONRESIDENT BIDDER PROVISIONS
SOLICITATION NO. SMW0051

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "Non-resident Bidder"?

- ☐ Texas Resident Bidder - A Bidder whose principal place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
- ☒ Non-resident Bidder

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state? ☐ Yes ☒ No

Bidder's Name:	National Economic Research Associates, Inc.		
Signature of Officer or Authorized Representative:		Date:	Feb 25, 2013
Printed Name:	Jon Wainwright		
Title:	Senior Vice President		

**AUSTIN CITY COUNCIL
MINUTES****REGULAR MEETING
THURSDAY, JUNE 20, 2013**

Invocation: Mark Washington, City of Austin

The following represents the actions taken by the Austin City Council in the order they occurred during the meeting. While the minutes are not in sequential order, all agenda items were discussed. The City Council of Austin, Texas, convened in a regular meeting on Thursday, June 20, 2013 in the Council Chambers of City Hall, 301 West Second Street, Austin, Texas.

Mayor Leffingwell called the Council Meeting to order at 10:05 a.m.

CONSENT AGENDA

The following items were acted on by one motion.

1. Approve the minutes of the Austin City Council work session of June 4, 2013 and regular meeting of June 6, 2013.
The minutes from the City Council work session of June 4, 2013 and regular meeting of June 6, 2013 were approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

Item 2 was pulled for discussion.

3. Authorize negotiation of two power purchase agreements with Duke Energy Renewables, Inc. for terms of up to 25 years for up to 200 megawatts of wind-generated electricity under each agreement, in an estimated amount of \$20,000,000 per year for each agreement, for an estimated total contract amount of \$500,000,000 for each agreement. Unanimously approved by the Electric Utility Commission on a 7-0 vote; Due to lack of a quorum, the Resource Management Commission did not vote on this item.
The motion authorizing the negotiation of two power purchase agreements with Duke Energy Renewables, Inc. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
4. Authorize negotiation of a power purchase agreement with E.ON Climate and Renewables North America, LLC, for a term of up to 25 years for up to 170 megawatts of wind-generated electricity in an estimated amount of \$15,500,000 per year, for an estimated total contract amount of \$387,500,000. Unanimously approved by the Electric Utility Commission on a 7-0 vote; Due to lack of a quorum, the Resource Management Commission did not vote on this item.
The motion authorizing the negotiation of a power purchase agreement with E.ON Climate and Renewables North America, LLC was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

5. Approve an ordinance amending the Fiscal Year 2012-2013 Austin Water Utility Operating Budget (Ordinance No. 20120910-001) by increasing appropriations in the amount of \$3,000,000 and reducing the ending balance by the same amount for costs of extinguishing a fire at the Hornsby Bend Biosolids Treatment Plant. Related to Item #36.
Ordinance No. 20130620-005 was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
6. Authorize negotiation and execution of a professional services agreement with HARUTUNIAN ENGINEERING, INC. (WBE/FW - 63.50%) (staff recommendation) or one of the other qualified responders to RFQ Solicitation No. CLMP126, to provide engineering services for the South Austin Regional Wastewater Treatment Plant - Electrical Substation No. 1 Replacement in an amount not to exceed \$3,020,000. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9B (Minority Owned and Women Owned Business Enterprise Procurement Program) by meeting the goals with 20.50% MBE subconsultant participation, 63.50% WBE prime and 1.00% subconsultant participation.)
The motion authorizing the negotiation and execution of a professional services agreement with Harutunian Engineering, Inc. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
7. Authorize execution of a construction contract with MID-STATE PLUMBING & MECHANICAL, INC., (WBE/FW-39.43%) for ABIA Terminal Fire Protection Improvements - Phase 2, in the amount of \$2,878,000, plus a \$287,800 contingency, for a total contract amount not to exceed \$3,165,800. (Notes: This contract will be awarded in compliance with Chapter 2-9A of the City Code (Minority Owned and Women Owned Business Enterprise Procurement Program) by meeting the goals with 10.04% MBE and 1.00% WBE subcontractor participation and 39.43% prime participation.)
The motion authorizing the execution of a construction contract with Mid-State Plumbing & Mechanical, Inc. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
8. Authorize execution of a construction contract with SMITH CONTRACTING CO. INC., for the North Acres Water and Wastewater Improvements - South project in an amount not to exceed \$5,542,230.50, plus a \$554,223 contingency for a total contract amount not to exceed \$6,096,453.50. (Notes: This contract will be awarded in compliance with Chapter 2-9A of the City Code (Minority Owned and Women Owned Business Enterprise Procurement Program) by meeting the goals with 7.08% MBE and 2.32% WBE subcontractor participation.)
The motion authorizing the execution of a construction contract with Smith Contracting Co. Inc. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
9. Authorize execution of a construction contract with PRISM DEVELOPMENT for the Austin Bicycle Commuting Project for the Waller Creek Center and Parks and Recreation Department Headquarters in the amount of \$515,000 plus a \$51,500 contingency, for a total contract amount not to exceed \$566,500. (Notes: This contract will be awarded in compliance with the requirements of 49 CFR Part 26 (Disadvantaged Business Enterprise Program) and City Code Chapter 2-9A (Minority Owned and Women Owned Business Enterprise Procurement Program) by meeting the goal with 80.94% DBE prime participation and 19.06% DBE subcontractor participation.) Approved by the Water and Wastewater Commission on a 6-0-1 vote
The motion authorizing the execution of a construction contract with Prism Development was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
10. Authorize execution of a construction contract with SMITH CONTRACTING CO. INC., for changes to Davis and Deer Lanes that will provide a connection between Brodie Lane to Corran Ferry in the amount

of \$4,285,741, plus a \$214,300 contingency, for a total contract amount not to exceed \$4,500,041. (Notes: This contract will be awarded in compliance with Chapter 2-9A of the City Code (Minority Owned and Woman Owned Business Enterprise Program) by meeting the goals with 7.10% MBE and 2.85% WBE participation.)

The motion authorizing the execution of a construction contract with Smith Contracting Co. Inc. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

11. Authorize additional funding for PARD Aquatic Complex Improvements Design-Build Agreement, West Enfield Pool Complex construction phase services, with Design-Builder CHASCO CONSTRUCTORS, LTD., L.L.P., in the amount of \$2,526,593, plus \$379,007 owner contingency, for a total amount not to exceed \$2,905,600. (Notes: The Design-Build contract and approved Amendments have been awarded in compliance with Chapter 2-9A of the City Code (Minority Owned and Women Owned Business Enterprise Procurement Program.)

The motion authorizing the additional funding for PARD Aquatic Complex Improvements Design-Build Agreement was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

12. Authorize negotiation and execution of an amendment to the professional services agreement with PARSONS BRINCKERHOFF INC. for engineering services related to the IH-35 Corridor Development Program, a 2010 MOBILITY BOND PROJECT, in the amount of \$400,000 for a total contract amount not to exceed \$2,600,000. (Notes: This contract was awarded in compliance with City Code Chapter 2-9B (Minority Owned and Women Owned Business Enterprise Procurement Program) with 17.38% MBE and 28.23% WBE subconsultant participation to date.)

The motion authorizing the negotiation and execution of an amendment to the professional services agreement with Parsons Brinckerhoff Inc. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

13. Authorize execution of an extension option to the construction contract with FACILITIES REHABILITATION INC., (MBE/MH-91.74%) for Annual Service Agreement for Wastewater Manhole Rehabilitation Indefinite Delivery / Indefinite Quantity Service Contract to extend the contract duration by 7 months to February 28, 2014, at no additional cost to the City for a contract amount not to exceed \$3,601,780. (Notes: This contract was awarded in compliance with City Code Chapter 2-9A (Minority Owned and Women Owned Business Enterprise Procurement Program) with 91.74% MBE prime participation, 1.18% MBE and 7.08% WBE subcontractor participation to date including this change order.)

The motion authorizing the execution of an extension option to the construction contract with Facilities Rehabilitation Inc. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

14. Authorize execution of a change order to the construction contract with PEABODY GENERAL CONTRACTORS (WBE/FW-62.64%) for Wastewater Line Relay and Spot Repair Indefinite Delivery / Indefinite Quantity service contract to extend the contract duration by 7 months to February 28, 2014, at no additional cost to the City for a contract amount not to exceed \$11,492,441.90. (Notes: This contract was awarded in compliance with City Code Chapter 2-9A (Minority Owned and Women Owned Business Enterprise Procurement Program) with 4.43% MBE and 3.31% WBE subcontractor participation; and 62.64% WBE prime participation to date including this change order.)

This item was withdrawn on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

Item 15 was pulled for discussion.

16. Approve an ordinance designating Blackland Community Development Corporation, Chestnut Neighborhood Revitalization Corporation and the Guadalupe Neighborhood Development Corporation as Community Land Trusts and granting those corporations property tax exemptions on certain properties, and declaring an emergency.

Ordinance No. 20130620-016 was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

17. Authorize the negotiation and execution of all documents and instruments necessary or desirable to acquire a permanent drainage easement of approximately 5.153 acres, a permanent slope easement of approximately 1.618 acres, a temporary drainage easement of approximately 4.126 acres, and a temporary working spaces easement of approximately 5.674 acres for the Howard Lane Extension II, from Cameron Road to SH 130 and Cameron Road Interceptor Improvement Project, all being out of and a part of the Mariquita Castro League Survey No. 50, Abstract No. 160, in Travis County, Texas, located at Cameron Road and Boyce Lane, Austin, Texas 78653, from AUSTIN HB RESIDENTIAL PROPERTIES, LTD., a Texas Limited Partnership, in a total amount not to exceed \$101,000.

The motion authorizing the negotiation and execution of all documents and instruments necessary or desirable to acquire a permanent drainage easement was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

Items 18 and 19 were pulled for discussion.

20. Authorize the Parks and Recreation Department to issue a lifetime swim pass to Barton Springs Pool to Nancy McMeans Richey.

The motion authorizing the Parks and Recreation Department to issue a lifetime swim pass was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

Item 21 was pulled for discussion.

Item 22 was pulled to be heard after the related item.

Items 23 and 24 were pulled for discussion.

25. Authorize award and execution of a 60-month supply requirements contract with BASF CORPORATION, for the purchase of liquid emulsion polymer for the Austin Water Utility in an estimated amount not to exceed \$3,763,339, with three 12-month extension options in estimated amounts not to exceed \$869,236 for the first extension option, \$912,698 for the second extension option, and \$958,333 for the third extension option, for a total estimated contract amount not to exceed \$6,503,606. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation.)

The motion authorizing the award and execution of a supply requirements contract with BASF Corporation was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

26. Authorize award and execution of a 24-month requirements supply agreement with WESTCOAST ROTOR, INC., for the purchase of Robbins and Myers progressive cavity pump repair parts for the Austin Water Utility in a estimated amount not to exceed \$300,000 with two 12-month extension options in an estimated amount not to exceed \$150,000 per extension option for a total estimated contract amount not to exceed \$600,000. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore no goals were established for this solicitation.)

The motion authorizing the award and execution of a requirements supply agreement with Westcoast Rotor, Inc. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

27. Authorize award and execution of a contract with THIELSCH ENGINEERING, INC. for site clean-up related to the decommissioned Williamson Creek Wastewater Treatment Plant, in a total amount not to exceed \$84,398. (Notes: 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.)
The motion authorizing the award and execution of a contract with Thielsch Engineering, Inc. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
28. Authorize award and execution of a 36-month requirements Service contract with MCCOURT & SONS EQUIPMENT, INC., for the rental of a front-end loader and trommel screener for the Austin Water Utility in an amount estimated not to exceed \$192,000, with two 12-month extension options in an estimated amount not to exceed \$64,000 each for a total contract amount estimated not to exceed \$320,000. (Notes: 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.)
The motion authorizing the award and execution of a requirements service contract with McCourt & Sons Equipment, Inc. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
29. Authorize award and execution of two 36-month requirements supply contracts for the purchase of brass and copper fittings of various types and sizes for the Austin Water Utility with TECHLINE PIPE LP, in an estimated amount not to exceed \$1,219,269, with two 12-month extension options in an estimated amount not to exceed \$406,423, per extension option, for a total estimated contract amount not to exceed \$2,032,115; and FERGUSON ENTERPRISES, dba FERGUSON WATERWORKS in an estimated amount not to exceed \$31,350, with two 12-month extension options in an estimated amount not to exceed \$10,450 per extension option for a total estimated contract amount no to exceed \$52,250. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore no goals were established for this solicitation.)
The motion authorizing the award and execution of two requirements supply contracts with Techline Pipe LP and Ferguson Enterprises doing business as Ferguson Waterworks was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
30. Authorize award and execution of a contract with BIOAIR SOLUTIONS, LLC, for the purchase and installation of a vapor phase bio trickling filter odor control system for the Austin Water Utility in a total contract amount of \$142,680. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore no goals were established for this solicitation.)
The motion authorizing the award and execution of a contract with BioAir Solutions, LLC was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
31. Authorize award and execution of a 24-month requirements supply contract with ALLAN BAKER, INC., dba Korrekt Optical for the purchase of prescription safety eyewear for City employees in an estimated amount not to exceed \$72,000 with two 12-month extension options in an estimated amount not to exceed \$36,000 per extension for a total estimated contract amount not to exceed \$144,000. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned

Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore no goals were established for this solicitation.)

The motion authorizing the award and execution of a requirements supply contract with Allan Baker, Inc. doing business as Korreect Optical was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

Item 32 was pulled for discussion.

33. Authorize award and execution of a contract through the Texas Multiple Award Schedule with TENNANT SALES AND SERVICE COMPANY for the purchase of two floor scrubbers for the Austin Convention Center Department in an amount not to exceed \$96,098. (Notes: This contract is in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this contract.)

The motion authorizing the award and execution of a contract through the Texas Multiple Award Schedule with Tennant Sales and Service Company was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

34. Authorize award, negotiation and execution of a 4-month service contract with ELECTRONIC DATA, INC. (EDI), for software maintenance enhanced support for The Department of Aviation Tivoli Maximo Asset Management version 7.1 software, IBM Tivoli BIRT Reporting, EDI SuiteReq software modules and EDI PART 139 for Airport Operations mandated security procedures reporting requirements in an estimated amount not to exceed \$9,667, with two 12-month extension options in an amount not to exceed \$33,500 per extension option, for a total contract amount not to exceed \$76,667. (Notes: 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 contract.)

The motion authorizing the award, negotiation and execution of a service contract with Electronic Data, Inc. (EDI) was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

35. Authorize award and execution of a 36-month requirements service agreement with ONE TOUCH POINT GINNY'S for flat sheet printing services for the Austin Resource Recovery Department in an amount not to exceed \$909,000, with three 12-month extension options in an amount not to exceed \$303,000 per extension option, for a total contract amount not to exceed \$1,818,000. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation.)

The motion authorizing the award and execution of a requirements service agreement with One Touch Point Ginny's was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

36. Approve ratification of an emergency contract with OMI ENVIRONMENTAL SOLUTIONS, LLC, for emergency fire control services at Austin Water Utility's Hornsby Bend Biosolids Treatment Plant, in an amount of \$2,943,505. Related to Item #5. (Notes: This contract was awarded in compliance with City Code Chapter 2-9C (Minority-Owned and Women-Owned Business Enterprise Procurement Program). This was an emergency purchase; therefore, it is exempted under Chapter 791 of the Texas Local Government Code and no goals were established for this solicitation.)

The motion to ratify an emergency contract with OMI Environmental Solutions, LLC was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

Item 37 was pulled for discussion.

38. Authorize award and execution of a 36-month service agreement with GRUENE ENVIRONMENTAL COMPANIES, for rapid response remediation services and transportation and disposal of non-hazardous and hazardous solid wastes for the Watershed Protection Department in an amount not to exceed \$145,500, with three 12-month extension options in an amount not to exceed \$48,500 per option, for a total contract amount not to exceed \$291,000. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation.)
The motion authorizing the award and execution of a service agreement with Gruene Environmental Companies was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
39. Authorize award and execution of a 36-month requirements supply contract with UNIFIRST CORPORATION, for the rental of work uniforms for the Field Operations Division of Watershed Protection, in an estimated amount not to exceed \$50,880, with three 12-month extension options in an amount not to exceed \$16,960 per extension option, for a total contract amount not to exceed \$101,760. (Notes: This contract will be awarded in compliance with Chapter 2-9D of the City Code (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation.)
The motion authorizing the award and execution of a requirements supply contract with Unifirst Corporation was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
40. Approve award and execution of a professional services contract with ZARA ENVIRONMENTAL LLC, for structure design and implementation for recharge feature maintenance of caves in the Blowing Sink Balcones Canyonland Preserve (BCP) for the Watershed Protection Department in an amount not to exceed \$246,345. (Notes: 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 contract.)
The motion authorizing the award and execution of a professional services contract with Zara Environmental LLC was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
41. Authorize award, negotiation, and execution of a 12-month service agreement through The Cooperative Purchasing Network (TCPN), with CARAHSOFT TECHNOLOGY CORP., to provide cloud-based subscriptions with Box.com for secure online file sharing and collaboration tools in an amount not to exceed \$40,000, with two 12-month extension options in an estimated amount not to exceed \$42,000 for the first extension option and \$48,000 for the second extension option, for a total estimated contract amount not to exceed \$130,000. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this contract.)
The motion authorizing the award, negotiation and execution of a service agreement through the Cooperative Purchasing Network (TCPN) with Carahsoft Technology Corp. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
42. Authorize award, negotiation, and execution of a 60-month requirements service and supply contract with ZOLL MEDICAL CORPORATION or the other qualified offeror to RFP No. CEA0114, to provide portable monitor-defibrillators, supplies, and maintenance and repair services for the Emergency Medical Services Department in an amount not to exceed \$10,000,000, with five 12-month extension options in an amount not to exceed \$2,000,000 per extension option, for a total contract amount not to exceed \$20,000,000. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D

(Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation.)

The motion authorizing the award, negotiation and execution of a requirements service and supply contract with Zoll Medical Corporation was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

43. Authorize award, negotiation and execution of a 12-month service contract with CUES, INC., Orlando, FL for software maintenance and support for Granite XP software for Austin Water pipeline operations in an estimated amount not to exceed \$21,560, with four 12-month extension options in estimated amounts not to exceed \$23,716 for the first extension option, and \$25,200 for each of the remaining extension options, for a total estimated contract amount not to exceed \$120,876. (Notes: This contract will be awarded in compliance with Chapter 2-9C of the City Code (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this contract.)

The motion authorizing the award, negotiation and execution of a service contract with Cues, Inc. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

44. Authorize award and execution of a contract through the Texas Local Government Purchasing Cooperative (BuyBoard) with PHILPOTT MOTORS, LTD., for the purchase of medium-duty vehicles in an amount not to exceed \$2,103,767.81. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation.) Unanimously approved by the Electric Utility Commission on a 7-0 vote.

The motion authorizing the award and execution of a contract through the Texas Local Government Purchasing Cooperative (BuyBoard) with Philpott Motors, Ltd. was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

45. Authorize award and execution of three contracts through the Houston-Galveston Area Council with MAGNUM TRAILERS for the purchase of assorted trailers in an amount not to exceed \$114,109 and SANTEX TRUCK CENTERS for the purchase of International Cab & Chassis in an amount not to exceed \$1,796,872. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation.)

The motion authorizing the award and execution of three contracts through the Houston-Galveston Area Council with Magnum Trailers and Santex Truck Centers was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

46. Authorize award, negotiation and execution of a 36-month requirements service contract with LOCKHEED MARTIN DESKTOP SOLUTIONS, INC., or with another qualified respondent to RFP No. BKH0156, for a hosted software solution to provide an enterprise-wide Public Information Request System in an amount not to exceed \$263,924. (Notes: This contract will be awarded in compliance with Chapter 2-9C of the City Code (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this contract.)

This item was withdrawn on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

47. Authorize award and execution of a contract through the Texas Multiple Award Schedule (TXMAS) with TIME MANUFACTURING CO., dba Versalift Southwest for the purchase of truck-mounted aerial lifts in an amount not to exceed \$661,638.00. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation.)

The motion authorizing the award and execution of a contract through the Texas Multiple Award Schedule (TXMAS) with Time Manufacturing Co. doing business as Versalift Southwest was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

48. Approve issuance of a street event permit under City Code Chapter 14-8 for the 9th Annual Bat Fest, a fee-paid event in the 100 to 300 blocks of Ann Richards Bridge / Congress Avenue Bridge between Cesar Chavez Street and Barton Springs Road which is to be held on Saturday, August 24, 2013.

The motion to approve issuance of a street event permit for the 9th Annual Bat Fest was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

49. Approve an ordinance authorizing negotiation and execution of an Advanced Funding Agreement between the Texas Department of Transportation (TxDOT) and the City to construct a back-up transportation management center, purchase additional dynamic message signs and related equipment, and purchase additional equipment to enhance the operation of the Austin Advance Transportation System; accepting funds in the amount of \$2,884,000 from the TxDOT; amending the Fiscal Year 2012-2013 Austin Transportation Department Operating Budget Special Revenue Fund (Ordinance No. 20120910-001) to appropriate \$2,884,000; and amending the Fiscal Year 2012-2013 Austin Transportation Department Capital Budget (Ordinance No. 20120910-002) to transfer in and appropriate \$2,884,000 from the Austin Transportation Department Operating Budget Special Revenue Fund to be used for these transportation projects.

Ordinance No. 20130620-049 was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

50. Approve an ordinance amending the Fiscal Year 2012-2013 Austin Transportation Department Capital Budget (Ordinance No. 20120910-002) to reallocate \$50,000 from the Intelligent Transportation System (ITS) United States Highway 290 Project to the ITS Loop 360 Project.

Ordinance No. 20130620-050 was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

Item 51 was pulled for discussion.

Item 52 was pulled to be heard after the related item.

53. Approve appointments and certain related waivers to citizen boards and commissions, to Council subcommittees and other intergovernmental bodies and removal and replacement of members.

The following appointments and waivers were approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

Nominations

Board/Nominee

Nominated by

Mexican American Cultural Center Advisory Board
Veronica Forsyth

Council Member Tovo

Nominations to Intergovernmental Bodies

Board/Nominee

Nominated by

Capital Area Council of Governments, Criminal Justice Advisory Committee
Dr. Jerome Schmidt

Council

Waivers

Approve a waiver of the attendance requirement in Section 2-1-26 of the City Code for the service of Cory Coles and Angelica Noyola on the Community Development Commission. The waiver includes absences through today's date.

Approve a waiver of the attendance requirement in Section 2-1-26 of the City Code for the service of Katherine Nicely on the Sustainable Food Policy Board. The waiver includes absences through today's date.

54. Approve a resolution directing the City Manager to initiate a code amendment to allow off-site accessory parking as a conditional or permitted use in the Limited Office District Designation. (Notes: SPONSOR: Council Member Chris Riley CO 1: Council Member William Spelman)
Resolution No. 20130620-054 was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
55. Approve a resolution directing the City Manager to assess the public health risk from the transport of hazardous materials through the City, determine an appropriate process and potential timeline in the event the City chooses to pursue a designated route for the transport of hazardous materials, and report back to the City Council on all findings. (Notes: SPONSOR: Council Member Laura Morrison CO 1: Council Member Chris Riley CO 2: Mayor Pro Tem Sheryl Cole)
Resolution No. 20130620-055 was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
56. Approve a resolution directing the City Manager to ensure that the Neighborhood Connectivity Division of the Public Works Department and the transportation planners reviewing zoning cases include in the staff report what effects, if any, the zoning change or its conditions may have on connectivity. (Notes: SPONSOR: Council Member Chris Riley CO 1: Council Member Kathie Tovo)
Resolution No. 20130620-056 was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
57. Approve a resolution directing the City Manager to include funding in the FY2014 budget to create a citywide staff coordinator and implement recommendations from the Economic Growth and Redevelopment Services Office local food system economic impact analysis and the Sustainable Food Policy Board regarding local food production, distribution, and consumption. (Notes: SPONSOR: Council Member Chris Riley CO 1: Council Member Mike Martinez)
This item was withdrawn on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
58. Approve a resolution supporting the inclusion into the IH-35 National Environmental Policy Act study process of a fully recessed "Cut & Cap" alternative for reconnecting East & West Austin from approximately River Street to Martin Luther King, Jr. Boulevard and directing the City Manager to develop an economic impact study and associated financing options. (Notes: SPONSOR: Mayor Pro Tem Sheryl Cole CO 1: Council Member Chris Riley)
Resolution No. 20130620-058 was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
59. Approve a resolution directing the City Manager to present options for funding the Congregate Meals Program that provides free meals for senior citizens through the end of the fiscal year, and determine if next fiscal year's allocation to the Capital Area Council of Governments for this purpose can be increased to maintain current levels of service. (Notes: SPONSOR: Council Member Kathie Tovo CO 1: Council Member Mike Martinez CO 2: Council Member Laura Morrison)

Resolution No. 20130620-059 was approved on consent on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

60. Set a public hearing and consider an ordinance amending City Code Chapter 25-1 to change the requirements for neighborhood plan amendment procedures. (Suggested date and time: August 8, 2013, 4:00 p.m. at Austin City Hall, 301 W. Second Street, Austin, TX).
The public hearing was set on consent for August 8, 2013 at 4:00 p.m., City Hall at 301 W. Second Street, Austin, TX on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
61. Set a public hearing and consider an ordinance regarding floodplain variances for the remodeling of and construction of an addition to an existing single-family residence at 4518 Avenue D as requested by the owner of the property. The property is partially in the 25-year and 100-year floodplains of Waller Creek. (Suggested date and time: June 27, 2013, at 4:00 p.m., Austin City Hall, 301 West Second Street, Austin, TX).
The public hearing was set on consent for June 27, 2013 at 4:00 p.m., City Hall at 301 W. Second Street, Austin, TX on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
62. Set a public hearing and consider a rate review mechanism for reviewing the gas rates of Atmos Energy Corporation, Mid-Tex Division. (Suggested date and time: June 27, 2013, 4:00 p.m., Austin City Hall, 301 W. Second Street, Austin, TX)
The public hearing was set on consent for June 27, 2013 at 4:00 p.m., City Hall at 301 W. Second Street, Austin, TX on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.
63. Set a public hearing and consider an ordinance amending Article 1 of City Code Chapter 25-12, the Building Code, to address noise mitigation for high rise residential Group R structures. (Suggested date and time: August 22, 2013, 4:00 p.m. at Austin City Hall, 301 W. Second Street, Austin, TX)
The public hearing was set on consent for August 22, 2013 at 4:00 p.m., City Hall at 301 W. Second Street, Austin, TX on Mayor Pro Tem Cole's motion, Council Member Martinez' second on a 7-0 vote.

Items 64 and 65 were items with closed public hearings.

Items 66 and 67 were briefing items set for 10:30 a.m.

Items 68 through 73 were Executive Session items.

Items 74 through 85 were zoning items set for 2:00 p.m.

Items 86 through 92 were public hearing items set for 4:00 p.m.

DISCUSSION ITEMS

Items 21 and 23 were acted on in a combined motion.

21. Approve an ordinance authorizing negotiation and execution of a joint development agreement and related documents between Waller Creek Conservancy, the City and the Waller Creek Local Government Corporation concerning the revitalization of the Waller Creek District. Related to Item #23.
Ordinance No. 20130620-021 was approved with the following amendments, friendly amendments and direction on Mayor Pro Tem Cole's motion, Mayor Leffingwell's second on a 7-0 vote.

Direction was given to staff to include the Mexican American Cultural Center Advisory Board in the discussions.

There was a motion made by Council Member Morrison and seconded by Council Member Tovo to amend the design guideline to include cocktail lounge use as a conditional use. The motion passed on a 6-1 vote. Mayor Leffingwell voted nay.

There was a friendly amendment made by Council Member Morrison to include in the master plan the language “for ground floor residential we would recommend promoting a separation between the residential and the public space by design.” The amendment was accepted by the maker of the motion and Mayor Leffingwell, who made the second.

There was a friendly amendment made by Council Member Morrison to add language to the Refuge sub-district to read, “4. The encroachment maintains a minimum eight foot clear zone to facilitate and ensure public circulation and access way through Creek Corridor encroachment areas.” The amendment was accepted by the maker of the motion and Mayor Leffingwell, who made the second.

Council Member Morrison gave direction to staff to help craft direction for the Local Government Corporation that it is ensured that waivers to City policies are not allowed without Council approval and restrictions on City property, to make it clear that waivers approved by the Local Government Corporation would be limited to minor adjustments that are needed for successful construction purposes.”

Council Member Morrison gave direction to staff to have the value statement added to the naming section.

Council Member Morrison gave direction to staff to add a statement in section 6.01 that states the art projects will be presented for discussion to the Arts Commission. The amendment was accepted by the maker of the motion and Mayor Leffingwell, who made the second.

Mayor Pro Tem Cole gave direction to staff to include language that we will maintain flexibility with respect to the public land.

23. Approve the Waller Creek Design Plan as developed by Michael Van Valkenburgh Associates/Thomas Phifer & Partners. Related to Item #21.

The motion to approve the Waller Creek Design Plan was approved on Mayor Pro Tem Cole’s motion, Mayor Leffingwell’s second on a 7-0 vote.

2. Approve an ordinance amending City Code Chapter 15-9 regarding utility service, billing and adjustments, and administrative reviews and hearings. Unanimously approved by the Water & Wastewater Commission with a change incorporated in the revised draft ordinance; Not approved by the Electric Utility Commission on a vote of 7-0 due to questions regarding the billing section of the ordinance.

Ordinance No. 20130620-002 giving the authority to go ahead with administrative reviews and hearings only was approved on Council Member Spelman’s motion, Mayor Pro Tem Cole’s second on a 7-0 vote. Direction was given to staff to understand that there are continuing issues to be discussed and the section being approved today will be considered for improvement or recommendation from the Electric Utility Commission.

CITIZEN COMMUNICATIONS: GENERAL

Kunda Wicce - Costs of Fayette powerplant

Suzanne Rittenberry - Coal plant **Not present when name was called.**

Paul Robbins - City issues

Kathy Correa - Lamar/Justin Lane Austin Energy Site Development Scenerio Report

Walt Olenick - Water fluoridation

Heidi Johnson - Crestview Park

Jamie Lezine - Proposed park at Austin Energy site

Hope Young - Indoor air quality health risk concerns (smoke related)

Adrian Moore - At risk youth

Roy Cavanaugh - Managed Growth Agreement Application

BRIEFINGS

66. Briefing on the Colony Park Sustainable Community Initiative consultant selection.
The presentation was made by Rolando Fernandez, Assistant Director, Contract and Land Management Department; Betsy Spencer; Director, Neighborhood Housing; Urban Design Group: Laura Toups, Urban Design Group; Doug Farr, President and CEO and Courtney Kashima, Farr Associates; and Scott Bernstein, President, Center for Neighborhood Technology; McCann Adams Studio: Jana McCann, AIA-Principal; Jim Adams, AIA, Leed AP-Principal; and Jim Musbach, Managing Principal, Economic & Planning Systems, Inc.

Mayor Leffingwell recessed the Council Meeting to go into Executive Session at 1:22 p.m.

EXECUTIVE SESSION

The City Council went into Executive Session, pursuant to Chapter 551 of the Texas Government Code, to receive advice from Legal Counsel, to discuss matters of land acquisition, litigation, and personnel matters as specifically listed on this agenda and to receive advice from Legal Counsel regarding any other item on this agenda.

68. Discuss legal issues related to the transition to electing the council from single-member districts (Private consultation with legal counsel-Section 551.071 of the Government Code).
This item was withdrawn.
69. Discuss legal issues related to Open Government matters (Private consultation with legal counsel-Section 551.071 of the Government Code).
This item was withdrawn.
73. Discuss legal issues related to the City Auditor (Private consultation with legal counsel-Section 551.071 of the Government Code).

Executive Session ended and Mayor Leffingwell called the Council Meeting back to order at 2:05 p.m.

BOND SALES

Items 74 and 75 were acted on in a combined motion.

74. Approve an ordinance authorizing the issuance of City of Austin Water and Wastewater System Revenue Refunding Bonds, Series 2013A, by December 31, 2013, in an amount not to exceed \$500,000,000 in accordance with the parameters set out in the ordinance, authorizing related documents, and approving related fees.

Ordinance No. 20130620-074 was approved on Mayor Pro Tem Cole's motion, Council Member Spelman's second on a 7-0 vote.

75. Approve an ordinance authorizing the issuance of City of Austin Water and Wastewater System Revenue Refunding Bonds, Taxable Series 2013B, by December 31, 2013, in an amount not to exceed \$200,000,000 in accordance with the parameters set out in the ordinance, authorizing related documents, and approving related fees.

Ordinance No. 20130620-075 was approved on Mayor Pro Tem Cole's motion, Council Member Spelman's second on a 7-0 vote.

Mayor Leffingwell recessed the Council Meeting to go into Executive Session at 2:08 p.m.

EXECUTIVE SESSION CONTINUED

The City Council went into Executive Session, pursuant to Chapter 551 of the Texas Government Code, to receive advice from Legal Counsel, to discuss matters of land acquisition, litigation, and personnel matters as specifically listed on this agenda and to receive advice from Legal Counsel regarding any other item on this agenda.

70. Discuss legal issues related to ZFB, Ltd. v. City of Austin; Cause No. 12-0336-C26; In the District Court of Williamson County, Texas 26th Judicial District (Private consultation with legal counsel-Section 551.071 of the Government Code).
71. Evaluate the performance of and consider compensation and benefits for the City Clerk (Personnel matters-Section 551.074 of the Government Code).
72. Evaluate the performance of and consider the compensation and benefits for the City Auditor (Personnel Matters - Section 551.074 of the Government Code).

Executive Session ended and Mayor Leffingwell called the Council Meeting back to order at 4:01 p.m.

ZONING CONSENT ITEMS

The following zoning items were acted on by one motion. No separate action occurred on any of the items.

78. C814-2012-0160 - 211 South Lamar Boulevard Planned Unit Development - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 211 South Lamar Boulevard (Lady Bird Lake Watershed) from general commercial services (CS) district zoning and general commercial services-vertical mixed use building (CS-V) combining district zoning to planned unit development (PUD) district zoning. Staff Recommendation: To grant planned unit development (PUD) district zoning. Planning Commission Recommendation: To grant planned unit development (PUD) district zoning. Owner: Post Paggi, LLC (Jason Post). Applicant: Winstead PC (Stephen O. Drenner). City Staff: Lee Heckman, 974-7604.

This item was postponed on consent to August 8, 2013 at the neighborhood's request on Council Member Riley's motion, Council Member Spelman's second on a 7-0 vote.

79. C14-2012-0100 - Woodland Commercial Park - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 1640 South IH-35 (Harper's Branch Watershed) from community commercial-conditional overlay-neighborhood plan (GR-CO-NP) combining district zoning to general commercial services-conditional overlay-neighborhood plan (CS-CO-NP) combining district zoning. Staff Recommendation: To grant general commercial services-conditional overlay-neighborhood plan (CS-CO-NP) combining district zoning, with conditions. Planning Commission Recommendation: To be reviewed on June 25, 2013. Owner: Woodland I-35, LP (Billy Reagan II). Applicant: Brown McCarroll LLP (Nikelle Meade). City Staff: Lee Heckman, 974-7604.
This item was postponed on consent to June 27, 2013 at the staff's request on Council Member Riley's motion, Council Member Spelman's second on a 7-0 vote.
80. C14-2013-0012 - Hopper Communities - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by zoning and rezoning property locally known as 9710-9718 Anderson Mill Road (Lake Creek Watershed; Bull Creek Watershed) from general commercial services-conditional overlay (CS-CO) combining district zoning and interim-rural residence (I-RR) district zoning to general commercial services-mixed use-conditional overlay (CS-MU-CO) combining district zoning. Staff Recommendation: To grant general commercial services-mixed use-conditional overlay (CS-MU-CO) combining district zoning. Zoning and Platting Commission Recommendation: To grant general commercial services-mixed use-conditional overlay (CS-MU-CO) combining district zoning. Owner/Applicant: Pohl Partners, Inc. (Kristiana Alfsen). Agent: ZFB, Ltd. (William Pohl, General Partner). City Staff: Sherri Sirwaitis, 974-3057.
The public hearing was conducted and the motion to close the public hearing and adopt Ordinance No. 20130620-080 for general commercial services-mixed use-conditional overlay (CS-MU-CO) combining district zoning was approved on consent on Council Member Riley's motion, Council Member Spelman's second on a 7-0 vote.
81. C14-2013-0020 - Oak Creek Village - Approve second/third reading of an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 2324 Wilson Street (Bouldin Creek Watershed) from multi-family residence medium density-neighborhood plan (MF-3-NP) combining district zoning to multi-family residence-highest density-conditional overlay-neighborhood plan (MF-6-CO-NP) combining district zoning. First reading approved with conditions on June 6, 2013. Vote: 7-0. Owner: 2007 Travis Heights, LP (Rene D. Campos). Applicant/Agent: Winstead PC (John Donisi). City Staff: Lee Heckman, 974-7604.
This item was postponed on consent to June 27, 2013 at the staff's request on Council Member Riley's motion, Council Member Spelman's second on a 7-0 vote.
82. C14-2013-0025 - Spicewood Springs Homes - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 4101 Spicewood Springs Road (Shoal Creek Watershed) from family residence (SF-3) district zoning to townhome condominium residence (SF-6) district zoning. Staff Recommendation: To grant townhome condominium residence-conditional overlay (SF-6-CO) combining district zoning. Zoning and Platting Commission Recommendation: To grant townhome condominium residence-conditional overlay (SF-6-CO) combining district zoning. Applicant: Harold Silberberg. Agent: PSW Real Estate (Ryan Diepenbrock). City Staff: Clark Patterson, 974-7691.
This item was postponed on consent to June 27, 2013 at the applicant's request on Council Member Riley's motion, Council Member Spelman's second on a 7-0 vote.
83. C14-2013-0034 - Ross-Conley Lot 1, L.L.P. - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 3447 Northland Drive (Shoal Creek Watershed) from neighborhood commercial (LR) district zoning to community commercial (GR) district zoning. Staff Recommendation: To grant community commercial-conditional overlay (GR-CO) combining district zoning. Zoning and Platting Commission Recommendation: To be

reviewed on June 18, 2013. Applicant: David C. Conley, P.C. (David C. Conley). Agent: Thrower Design (Ron Thrower). City Staff: Clark Patterson, 974-7691.

This item was postponed on consent to June 27, 2013 at the applicant's request on Council Member Riley's motion, Council Member Spelman's second on a 7-0 vote.

84. C14-2013-0058 - Cedars Montessori School (East) - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 9528 and 9600 Circle Drive (Williamson Creek Watershed; Slaughter Creek Watershed-Barton Springs Zone) from rural residence-neighborhood plan (RR-NP) combining district zoning to limited office-neighborhood plan (LO-NP) combining district zoning. Staff Recommendation: To grant limited office-mixed use-conditional overlay-neighborhood plan (LO-MU-CO-NP) combining district zoning. Planning Commission Recommendation: To grant limited office-mixed use-conditional overlay-neighborhood plan (LO-MU-CO-NP) combining district zoning. Owner: Cedars Montessori School, Inc. (Jill Young). Applicant: Brown McCarroll, LLP (Kell Mercer). Agent: Stansberry Engineering Co, Inc. (Blayne Stansberry). City Staff: Lee Heckman, 974-7604.

The public hearing was conducted and the motion to close the public hearing and adopt Ordinance No. 20130620-084 for limited office-mixed use-conditional overlay-neighborhood plan (LO-MU-CO-NP) combining district zoning was approved on consent on Council Member Riley's motion, Council Member Spelman's second on a 7-0 vote.

85. C14-2013-0059 - Cedars Montessori School (West) - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 9704 Circle Drive (Williamson Creek Watershed; Slaughter Creek Watershed-Barton Springs Zone) from rural residence-neighborhood plan (RR-NP) combining district zoning to limited office-neighborhood plan (LO-NP) combining district zoning. Staff Recommendation: To grant limited office-mixed use-conditional overlay-neighborhood plan (LO-MU-CO-NP) combining district zoning. Planning Commission Recommendation: To grant limited office-mixed use-conditional overlay-neighborhood plan (LO-MU-CO-NP) combining district zoning. Owner: Cedars Montessori School, Inc. (Jill Young). Applicant: Brown McCarroll, LLP (Kell Mercer). Agent: Stansberry Engineering Co, Inc. (Blayne Stansberry). City Staff: Lee Heckman, 974-7604.

The public hearing was conducted and the motion to close the public hearing and adopt Ordinance No. 20130620-085 for limited office-mixed use-conditional overlay-neighborhood plan (LO-MU-CO-NP) combining district zoning was approved on consent on Council Member Riley's motion, Council Member Spelman's second on a 7-0 vote.

DISCUSSION ITEMS CONTINUED

37. 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. (Notes: 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).) **The motion authorizing the award, negotiation and execution of a professional services contract with National Economic Research Associates, Inc. (NERA) was approved on Council Member Martinez' motion, Council Member Spelman's second on a 7-0 vote.**

15. Approve a resolution amending to the City personnel policies, Section III.B.1.c, relating to FMLA including the establishment of a new Parental Leave Benefit and insertion of language that aligns City policy with Federally Mandated Military Exigency and Military Caregiver requirements.

Resolution No. 20130620-015 with the following friendly amendment was approved on Council Member Spelman's motion, Council Member Martinez' second on a 6-0 vote. Mayor Leffingwell abstained.

There was a friendly amendment made by Council Member Martinez to have Part 1, (2) read, "Paid Parental Leave is available to mothers and fathers for the birth of the employee's child and the placement of a child with the employee for adoption or foster care without regard to the marital status or sexual orientation of the parenting individual. All employees in regular budgeted positions that qualify for FMLA leave can utilize the Parental Leave except those employees whose terms and conditions of employment with the City are negotiated through a collective bargaining agreement or a meet and confer agreement." The amendment was accepted by the maker of the motion.

Direction was given to staff to report back to Council in a year regarding this item.

18. Authorize the negotiation and execution of an 84-month lease for approximately 14,037 square feet of office space located at 3701 Lake Austin Boulevard from the LOWER COLORADO RIVER AUTHORITY, in an amount not to exceed \$2,846,304.52.
The motion authorizing the negotiation and execution of a lease for approximately 14,037 square feet of office space from the Lower Colorado River Authority was approved on Council Member Spelman's motion, Council Member Martinez' second on a 7-0 vote. Direction was given to staff to consult with Council on who moves and where they will move and to negotiate a possible parking cash-out program with the Lower Colorado River Authority consistent with the City's parking cash-out program.
19. Authorize negotiation and execution of a 48-month lease for approximately 27,971 square feet of office space located at 200 West Cesar Chavez from SILICON LABORATORIES, INC., in an amount not to exceed \$5,620,000.
The motion authorizing the negotiation and execution of a lease for approximately 27,971 square feet of office space from Silicon Laboratories, Inc. was approved on Council Member Spelman's motion, Mayor Leffingwell's second on a 7-0 vote. Direction was given to staff to consult with Council on who moves and where they will move.
24. Approve an ordinance accepting funds in the amount of \$150,000 from BIKE SHARE OF AUSTIN for a portion of the local matching funds necessary to meet the grant requirements for the Bike Share Program; amending the Public Works Department Operating Budget Special Revenue Fund (Ordinance No. 20120910-001) in the amount of \$150,000; and amending the Public Works Department Capital Budget (Ordinance No.20120910-002) to transfer in and appropriate \$150,000 from the Public Works Department Operating Budget Special Revenue Fund for the Bike Share Program. Related to Item #32.
Ordinance No. 20130620-024 was approved on Council Member Morrison's motion, Council Member Spelman's second on a 7-0 vote.
32. Authorize award, negotiation, and execution of a supply contract with B-CYCLE LLC, or the other qualified offeror to RFP EAG0111 for the purchase of bicycles, kiosks, and software for the Bike Share Program for the Public Works Department for a total estimated contract amount not to exceed \$2,000,000. Related to Item #24. (Notes: This contract will be awarded in compliance with City Code Chapter 2-9D (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this contract.)
The motion authorizing the award, negotiation and execution of a supply contract with B-Cycle LLC was approved on Council Member Morrison's motion, Council Member Spelman's second on a 7-0 vote.

51. Approve an ordinance amending City Code Chapter 13-2 (Ground Transportation Passenger Services) to revise the definitions, amend the regulations, and add requirements related to the operation of charter services.

Ordinance No. 20130620-051 was approved with the following friendly amendment on Council Member Morrison's motion, Council Member Spelman's second on a 7-0 vote.

There was a friendly amendment made by Council Member Spelman to add the following definition, "Prearranged Service means ground transportation that is scheduled by an initial reservation a minimum of one half hour in advance of the trip, excluding performance under a corporate contract." The amendment was accepted by the maker of the motion.

22. Authorize negotiation and execution of the Estancia Hill Country Final Annexation and Development Agreement, concerning annexation and development of approximately 600 acres in southern Travis County, west of IH 35 South, approximately eight tenths of a mile south of the intersection of IH 35 South and Onion Creek Parkway. Related to Items #52, #64, #65, #76, #77, and #90.

The motion authorizing the negotiation and execution of the Estancia Hill Country final annexation and development agreement was approved on Council Member Morrison's motion, Mayor Pro Tem Cole's second on a 7-0 vote.

ACTION ON ITEM(S) WITH CLOSED PUBLIC HEARINGS

Items 64 and 65 were acted on in a combined motion.

64. Approve second and third reading of an ordinance to annex the Estancia annexation area for limited purposes (approximately 600 acres in southern Travis County west of IH 35 South approximately eight tenths of a mile south of the intersection of IH 35 South and Onion Creek Parkway). THE PUBLIC HEARINGS FOR THIS ITEM WERE HELD AND CLOSED ON MARCH 21, 2013 AND MARCH 28, 2013. Related to Items #22, #52, #65, #76, #77, and #90.

Ordinance No. 20130620-064 was approved on Mayor Pro Tem Cole's motion, Council Member Morrison's second on a 7-0 vote.

65. Approve second and third reading of an ordinance approving a regulatory plan for the Estancia annexation area, which is being annexed for limited purposes. THE PUBLIC HEARINGS FOR THIS ITEM WERE HELD AND CLOSED ON MARCH 21, 2013 AND MARCH 28, 2013. Related to Items #22, #52, #64, #76, #77, and #90.

Ordinance No. 20130620-065 was approved on Mayor Pro Tem Cole's motion, Council Member Morrison's second on a 7-0 vote.

ZONING DISCUSSION ITEM

77. C814-2012-0085 - Estancia Hill Country PUD - Approve second/third readings of an ordinance amending Chapter 25-2 of the Austin City Code by zoning property locally known as 12814 Interstate Highway 35 South and FM 1327 (Puryear Road) at South IH 35 Service Road Southbound (Onion Creek Watershed) from unzoned to planned unit development (PUD) district zoning, with conditions. First Reading approved on May 9, 2013. Vote: 6-1, Council Member Tovo voted nay. Owner/Applicant: Sevengreen One LTD; Quartersage II LTD; Reverde Three LTD; IV Capitol Pointe LTD; Stone Pointe Five LTD; Saladia VI LTD; Paol Grande Seven LTD; High Point Green VIII LTD; Golondrina Nine LTD; X Cordoniz LTD; Ciero Eleven LTD; Zaguan XII LTD; Thirteen Canard LTD; Ruissea XIV LTD; Dindon Fifteen LTD; Bois de Chene XVI LTD; Etourneau Seventeen LTD; Moineau XVIII LTD; SLF III - Onion Creek LP (The Stratford Company) (Ocie Vest). Agent: Metcalfe Wolff Stuart & Williams, LLP (Michele Rogerson Lynch). City Staff: Wendy Rhoades, 974-7719. Related to Items #22, #52, #64, #65, #76, and #90.

Ordinance No. 20130620-077 for planned unit development (PUD) district zoning, with conditions was approved on Council Member Spelman's motion, Mayor Pro Tem Cole's second on a 7-0 vote.

PUBLIC HEARINGS AND POSSIBLE ACTIONS

90. Conduct a public hearing relating to the proposed assessments on the Public Improvement District for the Estancia Hill Country project (approximately 600 acres in southern Travis County west of IH 35 South approximately eight tenths of a mile south of the intersection of IH 35 South and Onion Creek Parkway). Related to Items #22, #52, #64, #65, #76, and #77.
The public hearing was conducted and the motion to close the public hearing was approved on Mayor Pro Tem Cole's motion, Council Member Morrison's second on a 7-0 vote.

DISCUSSION ITEMS CONTINUED

52. Approve an ordinance accepting and approving a Service and Assessment Plan and Assessment Roll related to the property located in the Estancia Hill Country Public Improvement District and further related to the City of Austin, Texas Special Assessment Revenue Bonds Series 2013 (Estancia Hill Country Public Improvement District) and levying special assessments on the property within the Estancia Hill Country Public Improvement District. Related to Items #22, #64, #65, #76, #77, and #90.
Ordinance No. 20130620-052 was approved on Council Member Morrison's motion, Council Member Spelman's second on a 7-0 vote.

BOND SALES CONTINUED

76. Approve an ordinance authorizing the issuance of City of Austin, Texas Special Assessment Revenue Bonds, Series 2013 (Estancia Hill Country Public Improvement District), in an amount not to exceed \$12,590,000 and authorizing all related documents and fees. Related to Items #22, #52, #64, #65, #77, and #90.
Ordinance No. 20130620-076 was approved on Council Member Spelman's motion, Mayor Pro Tem Cole's second on a 7-0 vote.

PUBLIC HEARINGS AND POSSIBLE ACTIONS CONTINUED

86. Conduct a public hearing to receive citizen comments on the City's Draft Fiscal Year 2013-2014 Action Plan, as required by the U.S. Department of Housing and Urban Development, and the Community Development 2013-2014 Program as required by Texas Local Government Code Chapter 373.
The public hearing was conducted and the motion to close the public hearing was approved on Council Member Spelman's motion, Council Member Morrison's second on a 7-0 vote.
87. Conduct a public hearing and consider a resolution regarding approval of the permanent use of approximately 7,508 square feet of land and temporary working space use of approximately 5,108 square feet of land for construction, use, maintenance, repair, and replacement of a wastewater line for the Austin Water Utility Wastewater Line Relay and Spot Repair Services, 2506 Hartford Road to 2614 Jefferson Street Project through dedicated parkland known as Hartford Park in accordance with Texas Parks and Wildlife Code, Section 26.001 et seq.
This item was withdrawn on Mayor Pro Tem Cole's motion, Mayor Leffingwell's second on a 7-0 vote.

Items 88 and 89 were acted on in a combined motion.

88. Conduct a public hearing and consider an ordinance amending City Code Section 25-2-861 relating to heli-facilities or heliports. Related to Item #89.

The public hearing was conducted and the motion to close the public hearing and approve Ordinance No. 20130620-088 was approved on Council Member Morrison's motion, Council Member Tovo's second on a 7-0 vote.

89. Conduct a public hearing and consider an ordinance amending the City Code Title 13 relating to Heli-Facilities. Related to Item #88.

The public hearing was conducted and the motion to close the public hearing and approve Ordinance No. 20130620-089 with the following amendments was approved on Council Member Morrison's motion, Council Member Tovo's second on a 7-0 vote.

The amendments were:

In section 13-1-188 the title should read, "Inspection Authorized".

Part II, section 13-1-181, (D)(1)(c)(ii) should read, "within 10 days of the receipt of an administratively complete application, individual notice shall be delivered by mail to property owners, and utility customers within 500 feet of the proposed helistop and to property owners and utility customers within the proposed helistop's 65 Leq dB noise contour as modeled by the FAA noise model."

Part II, section 13-1-181, (D)(2) should read, "The public comment period shall commence on the date the required notice has been provided and end 30 days after a filed application is administratively complete in all respects."

91. Conduct a public hearing and consider an ordinance amending City Code Chapter 25-2, Subchapter C, Article 3, Division 9 (University Neighborhood Overlay District Requirements) relating to affordable housing regulations in the university neighborhood overlay (UNO) district.

This item was postponed to June 27, 2013 on Council Member Morrison's motion, Council Member Spelman's second on a 7-0 vote.

92. Conduct a public hearing and consider an ordinance amending City Code Chapter 25-2 relating to the use classifications of electronic prototype assembly and electronic testing in the downtown mixed use and central business district base zoning districts.

The public hearing was conducted and the motion to close the public hearing and approve Ordinance No. 20130620-092 was approved on Mayor Pro Tem Cole's motion, Council Member Spelman's second on a 7-0 vote.

Mayor Leffingwell recessed the Council Meeting for Live Music and Proclamations at 5:24 p.m.

LIVE MUSIC

Este Vato

PROCLAMATIONS

Certificate of Appreciation -- Walmart -- to be presented by Mayor Lee Leffingwell and to be accepted by Walmart representatives

Proclamation -- World Refugee Day -- to be presented by Mayor Lee Leffingwell and to be accepted by Jo Kathryn Quinn

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.

RFQS SMW0051 Minority and Women Owned and Disadvantaged Business Enterprise Disparity Study

	Points	National Economic Research Associates, Inc. Austin, TX	Colette Holt & Associates Oakland, CA	BBC Research & Consulting Denver, CO	MGT of America, Inc. Austin, TX	Mason Tillman Associates, Ltd Oakland, CA
Project Approach (Demonstration of clear understanding of the requirements of the solicitation by outlining methodology to be utilized and summarize delivery approach of project deliverables)	25	24.2	23.4	19.4	19.8	18.4
Demonstrated Experience <ul style="list-style-type: none"> Experience with advising and evaluating governmental entities' minority & women procurement programs Capacity of staff & equipment, experience and knowledge in managing and ability to provide deliverables required Examples of past performance on similar type studies & evidence of outcome Professional references 	30	28	24.6	28.8	28.4	28.6
Personnel Qualifications (Individual personnel designated to work on the project as qualified to provide specified services)	20	18	16.4	14.8	15.2	14.5
Business Organization (Evidence of sound organization and management practices outlined)	15	14.6	13.8	14.2	13.6	12.8
Schedule/Timeline for completion (Detailed timeline that stays within the one year timeframe requested)	10	9.6	9.6	9.6	9.8	9.1
SUBTOTAL	100	94.4	87.8	86.8	86.6	83.4
Presentations <ul style="list-style-type: none"> Overview of Firm Data Collection Outreach Process Mechanics 	25	21	22.4	16.2	15.8	15.4
TOTAL	125	115.4	110.2	103	102.6	98.8

Appendix II. MBE/WBE Procurement Program Package

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**

SOLICITATION NUMBER: RFQS-SMW-13-01

PROJECT NAME: Minority and Women Owned and Disadvantaged Business Enterprise Disparity Study

(To be completed by the bidder)

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	National Economic Research Associates, Inc.		
Address	3801 South General Texas Highway, Suite 300		
City, State, Zip	Austin, Texas 78744		
Phone	512-371-8395	Fax Number	512-371-8612
Name of Contact Person	Jon Wainwright		
Is company City certified?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Jon Wainwright, Senior Vice President

Name and Title of Authorized Representative (Print or Type)

Jon Wainwright
Signature

2-25-13

Date

Provide a list of all proposed subcontractors, consultants, or suppliers that will be used in the performance of this Contract. Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.

Sub-Contractor/Consultant	Bryan Cave LLP		
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Firm's Gender Code	<input checked="" type="checkbox"/> NON CERTIFIED
Vendor ID Code			
Contact Person	Don O'Bannon	Phone Number	214-721-8104
Amount of Subcontract	\$ RFQS N/A		
List services, products & description of services	36149 - legal services (attys)		

Sub-Contractor/Consultant	Business Resource Consultants		
City of Austin Certified	MBE <input checked="" type="checkbox"/> WBE <input checked="" type="checkbox"/>	Firm's Gender Code	FB <input type="checkbox"/> NON CERTIFIED
Vendor ID Code	8150885250		
Contact Person	Carol S. Hadnot	Phone Number	512-467-8394
Amount of Subcontract	\$ RFQS N/A		
List services, products & description of services	91873 9 879 95805 - stakeholder and community outreach services		

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Reviewed by: *Raymond M. Young* 3/7/2013
 Reviewing Officer: *Raymond M. Young* Director, Deputy Director Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS FORM**

SOLICITATION NUMBER: RFQS SMW0051

PROJECT NAME: Minority and Women Owned and Disadvantaged Business Enterprise Disparity Study

The City of Austin has determined that no goals are appropriate for this project. Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No _____ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes X If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

National Economic Research Associates, Inc.
Company Name

Jan Wainwright, Senior Vice President
Name and Title of Authorized Representative (Print or Type)

Jan Wainwright
Signature

2/25/13
Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**

SOLICITATION NUMBER: RFQS SMW0051

PROJECT NAME: Minority and Women Owned and Disadvantaged Business Enterprise Disparity Study

(Please duplicate as needed)

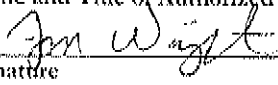
PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	National Economic Research Associates, Inc.		
Address	3801 South Capital of Texas Highway, Suite 330		
City, State Zip	Austin, Texas 78704		
Phone	512-371-8995	Fax Number	512-371-9612
Name of Contact Person	Jon Wainwright		
Is company City certified?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>	

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Jon Wainwright, Senior Vice President

Name and Title of Authorized Representative (Print or Type)



2-25-13

Signature

Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

Sub-Contractor/Consultant	Bryan Cave LLP		
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input checked="" type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Don O'Bannon	Phone Number:	214-721-8104
Amount of Subcontract	\$ RFQS-N/A		
List commodity codes & description of services	96149 - legal services (attys)		

Sub-Contractor/Consultant	Business Resource Consultants		
City of Austin Certified	MBE <input checked="" type="checkbox"/> WBE <input checked="" type="checkbox"/>	Ethnic/Gender Code: FB <input type="checkbox"/>	NON-CERTIFIED
Vendor ID Code	BUS0885250		
Contact Person	Carol S. Hadnot	Phone Number:	512-467-6894
Amount of Subcontract	\$ RFQS-N/A		
List commodity codes & description of services	91876, 91879, 95805 - stakeholder and community outreach services		

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor _____ Date _____ Director/Deputy Director _____ Date _____

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**

SOLICITATION NUMBER: RFQS SMW0051

PROJECT NAME: Minority and Women Owned and Disadvantaged Business Enterprise Disparity Study

(Please duplicate as needed)

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	National Economic Research Associates, Inc.		
Address	3801 South Capital of Texas Highway, Suite 330		
City, State, Zip	Austin, Texas 78704		
Phone	512-371-8995	Fax Number	512-371-9612
Name of Contact Person	Jon Wainwright		
Is company City certified?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Jon Wainwright, Senior Vice President

Name and Title of Authorized Representative (Print or Type)

Jon Wainwright

2-25-13

Signature

Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.

Sub-Contractor/Consultant	D'Morica Consulting Agency		
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethnic/Gender Code: FB <input checked="" type="checkbox"/> NON-CERTIFIED		
Vendor ID Code			
Contact Person	Sundra Davis	Phone Number:	817-229-1595
Amount of Subcontract	\$ RFQS-N/A		
List commodity codes & description of services	91035, 91079 - business owner interviews moderation		

Sub-Contractor/Consultant	CR Dynamics & Associates, Inc.		
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethnic/Gender Code: MH <input checked="" type="checkbox"/> NON-CERTIFIED		
Vendor ID Code			
Contact Person	Patricia Ramos	Phone Number:	410-347-5600
Amount of Subcontract	\$ RFQS-N/A		
List commodity codes & description of services	Computer-Assisted Telephone Interviewing (CATI) services		

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor _____ Date _____ Director/Deputy Director _____ Date _____

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**

SOLICITATION NUMBER: RFQS SMW0051

PROJECT NAME: Minority and Women Owned and Disadvantaged Business Enterprise Disparity Study

(Please duplicate as needed)

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	National Economic Research Associates, Inc.		
Address	3801 South Capital of Texas Highway, Suite 330		
City, State Zip	Austin, Texas 78704		
Phone	512-371-8995	Fax Number	512-371-9612
Name of Contact Person	Jon Wainwright		
Is company City certified?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>	

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Jon Wainwright, Senior Vice President

Name and Title of Authorized Representative (Print or Type)

Signature: *Jon Wainwright*

2-25-13

Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.

Sub-Contractor/Consultant	J&D Data Services		
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input checked="" type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Joe Deegan		Phone Number: 972-596-6474
Amount of Subcontract	\$ RFQS-N/A		
List commodity codes & description of services	Optical Mark Recognition (OMR) survey services		

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person			Phone Number:
Amount of Subcontract	\$		
List commodity codes & description of services			

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor _____ Date _____ Director/Deputy Director _____ Date _____

I. Good Faith Efforts Documentation

A. Identifying Available Subcontracting Opportunities

NERA determined the following subcontracting opportunities were potentially available for RFQ SMW0051:

1. Legal services (attorneys). Prior experience designing and/or defending MBE/WBE/DBE programs is preferred.
2. Staffing and temporary services (accounting, auditing, bookkeeping, and/or data entry personnel).
3. Computer Assisted Telephone Interviewing (CATI) services. Ten (10) or more CATI stations is preferred.
4. Optical Mark Recognition (OMR) survey services. Ability to combine OMR with turnkey mail-out, mail-back survey services is preferred.
5. Transcription services, using mp3 format tape recordings as inputs.
6. Catering services, with the ability to provide beverages and light snacks to a series of meetings to be held in downtown Austin over a 2-4 day period.
7. Marketing, public relations, contractor relations, and/or business research services to support an outreach/stakeholder involvement effort to secure survey and interview participants from the MBE/WBE and non-MBE/non-WBE business community in the Austin metro area. Previous experience with these specific communities is preferred.

B. Identifying Available Certified Firms

Based on these identified opportunities, lists of relevant M/WBEs were requested from SMBR and also extracted from the online SMBR M/WBE directory in the following categories:

1. NIGP 96149 (Legal Services)
2. NIGP 96130 (Temp Staffing)
- 3, 4. NIGP 96160 (Public Opinion Surveys)
- 3, 4. NIGP 95605 (Business Research Services)
5. NIGP 96172 (Transcription)
6. NIGP 96115 (Catering)
7. NIGP 91835 (DBE Consulting)
7. NIGP 91879 (MBE/SBE Consulting)
7. NIGP 91876 (Marketing Consulting)
7. NIGP 96153 (Marketing Services)
7. NIGP 91800 (General Consulting)

C. Refining the List of Available Certified Firms

After removing duplicates due to firms being listed in more than one commodity code, there were 160 distinct certified firms available from these lists. Of these, 92 were eliminated from consideration, primarily because they did not provide the types of services NERA requires for this project. Of the 92 eliminated firms, 76 (83%) were eliminated for this reason. Commodity codes with the greatest amount of elimination included:

91800 – General Consulting. Eliminated 37 firms providing services in Architecture, Engineering and other Construction-Related Professional Services; Other Construction-Related Services, Information Technology Services, Lobbying Services, Insurance Services, Archaeology Services, Career Consulting Services, Security Services, Management Consulting, and Transportation Consulting.

91876 – Marketing Consulting. Eliminated 18 firms providing services in Advertising, Architecture, Engineering and other Construction-Related Professional Services; Other Construction-Related Services, Book Publishing, Fleet Services, Graphic Design, Information Technology Services, Management Consulting, and Transportation Consulting.

96130 – Temporary Staffing Services. Eliminated 12 firms providing temporary employees in, Architecture, Engineering and other Construction-Related Professional Services; Building Maintenance, Construction, Investigations, Information Technology Services, and Landscaping.

91879 – Minority and Small Business Consulting. Eliminated 5 firms providing services in Architecture, Engineering and other Construction-Related Professional Services; Other Construction, Certified Public Accounting, and Information Technology Services.

96153 – Marketing Services. Eliminated 3 firms providing services in Advertising and Graphic Design.

95605 – Business Research Services. Eliminated 1 firm providing services in Aviation Consulting.

Additionally:

Thirteen firms were eliminated because they were outside the SLBP and did not provide required services.

Two firms were eliminated because NERA has worked with either the firm or the firm's principals before, was unsatisfied with their job performance, and would not consider hiring them again.

One firm was eliminated because they did not provide an e-mail address.

D. Soliciting Available Certified Firms

The remaining 68 firms were sent an e-mail solicitation the morning of January 22, 2013, requesting a response no later than 5:00 p.m. on Wednesday, January 30, 2013. Of these, 65 were successfully delivered and three failed due to the domain no longer existing or the address being rejected by the incoming mail server.

In addition, the solicitation notice was sent to the Capitol City African American Chamber of Commerce, the Asian Contractor Association, the Greater Austin Asian Chamber of Commerce, the U.S. Hispanic Chamber of Commerce, Austin Chapter, the Greater Austin Hispanic Chamber of Commerce, and Business Investment Growth Austin (BiG),

The 65 successful transmissions (plus the six additional transmissions to the various chambers) resulted in 11 responses expressing interest. Of the 11 responses received:

One response, from Triple Threat Analytics, LLC, acknowledged receipt of the solicitation but indicated it did not provide any of the services being requested.

No responses at all were received from firms interested in providing services in Categories 1 (legal), 3 (CATI interviewing services), 4 (OMR survey services) or 6 (Catering services), above.

One response was received from a firm, Austin Staffing Inc., interested in providing services in Category 2 (temporary staffing services), but they later declined citing concerns with the living wage ordinance.

One response was received from a firm, American International Translators, interested in providing services in Category 5 (transcription services). However, after discussions with this firm revealed they do not provide transcription services. Rather they specialize in translation services. NERA agreed to keep this firm's contact information on file in case the need for translation services arose on this or any other NERA project.

The eight remaining respondents were all interested in Category 7 (outreach/stakeholder involvement for M/WBE and non-M/WBE survey and interview participants). These eight firms were:

Adisa Communications

Business Resource Consultants (Carol Sue Hadnot)

Beverly Silas & Associates

Boaz Enterprises

Cultural Strategies, Inc.

Montgomery Consulting Group, Inc.

Sue Ellen Jackson Marketing & Communications

The Infinity Movement, Inc.

NERA corresponded with all of these firms, acknowledging their responses, thanking them for replying, and requesting follow-up information where appropriate. Three did not respond to our follow-up correspondence.

After due consideration of all eight firms, NERA selected Business Resource Consultants as the most highly qualified respondent for our needs.



Financial and Administrative Service Department
Purchasing Office
PO Box 1088, Austin, Texas, 78767

June 10, 2013

Sent via email : kwilliams@bbcresearch.com

Kevin Williams
Director
BBC Research & Consulting
1999 Broadway Street, Suite 2200
Denver, CO 80202

**RE: Minority and Women Owned and Disadvantaged Business
Enterprise Disparity Study
Request for Qualification No. SMW0051**

Dear Mr. Williams,

The above City of Austin requirement has been recommended for award to the firm listed below.

National Economic Research Associates, Inc. (NERA)

Thank you for submitting your response and for your interest in doing business with the City of Austin. While all information in regards to the responses is confidential until after award, I would be glad to arrange a meeting including a representative from SMBR to discuss your submittal as part of a debriefing after the contract is awarded. Should you have any questions, my number is (512) 974-2554.

Sincerely,

Shawn M. Willett

City of Austin
Finance & Administrative Services Department
Purchasing



Financial and Administrative Service Department
Purchasing Office
PO Box 1088, Austin, Texas, 78767

June 10, 2013

Sent via email : Colette.holt@mwbelaw.com

Colette Holt
Principal
Colette Holt & Associates
3350 Brunell Drive
Oakland, CA 94602

**RE: Minority and Women Owned and Disadvantaged Business
Enterprise Disparity Study
Request for Qualification No. SMW0051**

Dear Ms. Holt,

The above City of Austin requirement has been recommended for award to the firm listed below.

National Economic Research Associates, Inc. (NERA)

Thank you for submitting your response and for your interest in doing business with the City of Austin. While all information in regards to the responses is confidential until after award, I would be glad to arrange a meeting including a representative from SMBR to discuss your submittal as part of a debriefing after the contract is awarded. Should you have any questions, my number is (512) 974-2554.

Sincerely,

Shawn M. Willett

City of Austin
Finance & Administrative Services Department
Purchasing



Financial and Administrative Service Department
Purchasing Office
PO Box 1088, Austin, Texas, 78767

June 10, 2013

Sent via email : FSeamon@mgtamer.com

Dr. Fred Seamon
Senior Partner
MGT of America, Inc.
502 East 11th Street, Suite 300
Austin, TX 78701

**RE: Minority and Women Owned and Disadvantaged Business
Enterprise Disparity Study
Request for Qualification No. SMW0051**

Dear Dr. Seamon,

The above City of Austin requirement has been recommended for award to the firm listed below.

National Economic Research Associates, Inc. (NERA)

Thank you for submitting your response and for your interest in doing business with the City of Austin. While all information in regards to the responses is confidential until after award, I would be glad to arrange a meeting including a representative from SMBR to discuss your submittal as part of a debriefing after the contract is awarded. Should you have any questions, my number is (512) 974-2554.

Sincerely,

Shawn M. Willett

City of Austin
Finance & Administrative Services Department
Purchasing



Financial and Administrative Service Department
Purchasing Office
PO Box 1088, Austin, Texas, 78767

June 10, 2013

Sent via email : eramsey@mtaltd.com

Eleanor Mason Ramsey, Ph.D.
President
Mason Tillman Associates, Ltd.
1999 Harrison Street, Suite 1440
Oakland, CA 94612

**RE: Minority and Women Owned and Disadvantaged Business
Enterprise Disparity Study
Request for Qualification No. SMW0051**

Dear Ms. Ramsey,

The above City of Austin requirement has been recommended for award to the firm listed below.

National Economic Research Associates, Inc. (NERA)

Thank you for submitting your response and for your interest in doing business with the City of Austin. While all information in regards to the responses is confidential until after award, I would be glad to arrange a meeting including a representative from SMBR to discuss your submittal as part of a debriefing after the contract is awarded. Should you have any questions, my number is (512) 974-2554.

Sincerely,

Shawn M. Willett

City of Austin
Finance & Administrative Services Department
Purchasing



Financial and Administrative Service Department
Purchasing Office
PO Box 1088, Austin, Texas, 78767

June 10, 2013

Sent via email : jon.wainwright@nera.com

Jon Wainwright
Senior Vice President
National Economic Research Associates, Inc.
3801 South Capital of Texas Highway, Suite 330
Austin, TX 78704

**RE: Minority and Women Owned and Disadvantaged Business
Enterprise Disparity Study
Request for Qualification No. SMW0051**

Dear Mr. Wainwright,

The above City of Austin requirement has been recommended for award to the firm listed below.

National Economic Research Associates, Inc. (NERA)

Thank you for submitting your response and for your interest in doing business with the City of Austin. While all information in regards to the responses is confidential until after award, I would be glad to arrange a meeting including a representative from SMBR to discuss your submittal as part of a debriefing after the contract is awarded. Should you have any questions, my number is (512) 974-2554.

Sincerely,

Shawn M. Willett

City of Austin
Finance & Administrative Services Department
Purchasing

RFQS SMW0051 Minority and Women Owned and Disadvantaged Business Enterprise Disparity Study

	Points	National Economic Research Associates, Inc. Austin, TX	Colette Holt & Associates Oakland, CA	BBC Research & Consulting Denver, CO	MGT of America, Inc. Austin, TX	Mason Tillman Associates, Ltd Oakland, CA
Project Approach (Demonstration of clear understanding of the requirements of the solicitation by outlining methodology to be utilized and summarize delivery approach of project deliverables)	25	24.2	23.4	19.4	19.8	18.4
Demonstrated Experience <ul style="list-style-type: none"> • Experience with advising and evaluating governmental entities' minority & women procurement programs • Capacity of staff & equipment, experience and knowledge in managing and ability to provide deliverables required • Examples of past performance on similar type studies & evidence of outcome • Professional references 	30	28	24.6	28.8	28.4	28.6
Personnel Qualifications (Individual personnel designated to work on the project as qualified to provide specified services)	20	18	16.4	14.8	15.2	14.5
Business Organization (Evidence of sound organization and management practices outlined)	15	14.6	13.8	14.2	13.6	12.8
Schedule/Timeline for completion (Detailed timeline that stays within the one year timeframe requested)	10	9.6	9.6	9.6	9.8	9.1
SUBTOTAL	100	94.4	87.8	86.8	86.6	83.4
Presentations <ul style="list-style-type: none"> • Overview of Firm • Data Collection • Outreach • Process Mechanics 	25	21	22.4	16.2	15.8	15.4
TOTAL	125	115.4	110.2	103	102.6	98.8

PRE-RESPONSE CONFERENCE ATTENDANCE SHEET



RFQS No. SMW0051

Commodities/Services Minority and Women Owned and Disadvantaged Business

Enterprise Disparity Study

Date 1/4/13

Time 10:30 AM

Company Name:

Representative:

Address:

Phone #/Fax #:

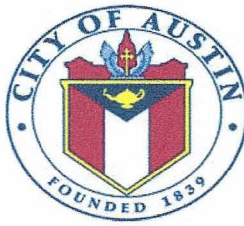
E-Mail Address:

MGT	MARC EBSTEIN	502 E. 11th #300 AUSTIN	512-476-4697	mepstein@mgtaamer.com
SMBR	Raymond M. Young		512-924-9183	Raymond.young@atata.texas.gov
SMBR	Veronica Lara		974-2156	veronica.lara@ci.austin.tx.us
SMBR	DEBRA DIBBLE		(512) 79-1656	debra.dibble@austintexas.gov
TEG	Gary Shearod		(512) 553-3928	gary@keateamedia.com
Russell	Dave Kucko		43364	
AE	Amelie Flores		512-322-6169	amelie.gonzales-flores@austintexas.gov
ARC	Kim Stewart		512 663 0493	Kim@abacirc.com
NERA	Jon Wainwright		512 371 8995	jon.wainwright@nera.com
ARC	Wesley Stewart		512 663 2602	wesley@abacirc.com
SMBR	Blender Hill		974-7677	Blender.hill@austintexas.gov
Innovative Strategies	Mario Trevino		210 387-2852	mario@ISDiversity.com
"	Majella Whitehead		" "	majella@isidiversity.com
SMBR	ELTON Price		512-974-7725	elton.price@austintexas.gov

Using Dept. Representative:

Conducted By: Shawn Willett

SW



TO: Veronica Lara, Director
Department of Small and Minority Business Resources

FROM: Shawn M. Willett, Supervising Senior Buyer
DATE: December 12, 2012

SUBJECT: Approval to use for Solicitation No. SMW0051
Project Name: Consultant to Conduct Disparity Study
Commodity Code(s): 91835, 91812, 91879
Estimated Value: \$1,000,000 est.

The Purchasing Office has determined that the following Goals are appropriate for this Commodity solicitation:

☒ No Goals (Goal of 0%)

This determination is based on the following reasons:

This is a very specialized service with extremely limited vendors, and very few subcontracting opportunities.

Per paragraph 8.2.1 of the Rules Governing the Minority and Women Owned Business Enterprise Procurement Program, please approve the use of the above goals by completing and returning the below endorsement. If you have questions, please call me at 505-7351

☒ Approval is hereby granted to use the above Goals.

☐ Approval is hereby denied. Recommend the use of the following goals based on the below reasons:

a. Goals: ☐ % MBE ☐ % WBE

b. Subgoals ☐ % African American ☐ % Hispanic

☐ % Native/Asian American ☐ % WBE

This determination is based on the following reasons: THE CONSULTING SERVICE IS SPECIALIZE AND LIMITED AVAILABLE FIRMS. THE SOLICITATION DOES NOT LEND ITSELF TO MULTIPLE SUBCONTRACTING OPPORTUNITIES TO SET GOALS.



Veronica Lara, Director

Date: 12/12/12

cc: Lorena Resendez, DSMBR
Lynda Thorpe, Purchasing