



## Recommendation for Action

**File #:** 18-4008, **Agenda Item #:** 19.

2/21/2019

### **Posting Language**

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

(Note: This procurement was reviewed for subcontracting opportunities in accordance with City Code Chapter 2-9C Minority Owned and Women Owned Business Enterprise Procurement Program. For the services required for this procurement, there were no subcontracting opportunities; therefore, no subcontracting goals were established).

### **Lead Department**

Purchasing Office.

### **Client Department(s)**

Small and Minority Businesses Resources Department.

### **Fiscal Note**

Funding is available in the Fiscal Year 2018-2019 Operating Budget of the Small and Minority Business Resources Department.

### **Purchasing Language:**

Professional Service.

### **For More Information:**

Inquiries should be directed to the City Manager's Agenda Office, at 512-974-2991 or [AgendaOffice@austintexas.gov](mailto:AgendaOffice@austintexas.gov) <<mailto:AgendaOffice@austintexas.gov>> or to the buyer, Cyrenthia Ellis, at 512-974-1709 or [Cyrenthia.ellis@austintexas.gov](mailto:Cyrenthia.ellis@austintexas.gov) <<mailto:Cyrenthia.ellis@austintexas.gov>>.

### **Additional Backup Information:**

The contract is 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. The consultant's final report shall outline the results of the disparity study and shall offer the consultant's recommendations consistent with the results of the disparity study and governing law. The disparity study shall analyze whether disparity exists between the number of available MBE/WBE/DBEs in the City's geographic and product markets and the number being utilized on city contracts.

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

Even prior to *Croson*, in anticipation of the adoption of the City's first MBE/WBE Ordinance, the 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.

Subsequently, the City engaged consultants to conduct updated disparity studies of the availability and utilization of MBE/WBE firms in 2003, 2005, and 2008. Each of these studies indicated that there continued to be an underutilization of MBE/WBEs available to perform the work on city contracts and resulted in a revised MBE/WBE Ordinance based upon the new evidence and recent court rulings each time.

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

The recommended contractor is not the previous provider of these services.

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