

**CITY OF AUSTIN  
PURCHASING OFFICE**

**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 (City) seeks a qualified Consultant experienced in conducting Minority Business Enterprise (MBE), Women Business Enterprise (WBE), and Disadvantaged Business Enterprise (DBE) disparity studies. The Consultant shall conduct a MBE/WBE/DBE disparity study, covering the City's purchases during fiscal years 2013 through 2018, 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 clearly and concisely offer the Consultant's recommendations to the City's program consistent with the results of the disparity study and governing law.

**2. DEFINITIONS:**

For purposes of this scope, 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-C)-4(31) and §2-9D-4(32).  
**WBE:** refers to Women-owned Business Enterprise as the term is defined in the MBE/WBE Ordinance at § 2-9AA-4(47) and §2-9(B-C)-4(48).
- b) **MBE/WBE Ordinance:** refers to City Code Chapters 2-9A, 2-9B, 2-9C, and 2-9D, found at:  
[https://library.municode.com/tx/austin/codes/code\\_of\\_ordinances?nodeId=TIT2AD\\_CH2-9AMINEWONEBUENPRPRCO](https://library.municode.com/tx/austin/codes/code_of_ordinances?nodeId=TIT2AD_CH2-9AMINEWONEBUENPRPRCO)
- c) **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](http://www.austintexas.gov/sites/default/files/files/Small_Minority_Business/mbe_wbe_rules.pdf).
- d) **DBE:** refers to Disadvantaged Business Enterprise, as the term is defined by the federal regulations at 49 CFR § 26.5.

- e) **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 the 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 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 City retained a consultant in 2008 to complete a disparity study. The current MBE/WBE Ordinance reflects the findings of this study, which identified disparities between the number of available MBE/WBES and the number of MBE/WBES actually used on City contracts.

The last disparity study was completed in 2015 and found discrimination continued in the Austin marketplace.

The current MBE/WBE Ordinance sunsets on March 30, 2020. However, the City may 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 [https://austintexas.gov/sites/default/files/files/City\\_Org\\_Chart\\_\\_Revised\\_06.27.pdf](https://austintexas.gov/sites/default/files/files/City_Org_Chart__Revised_06.27.pdf).

SMBR will be the pivotal department for the Consultant.

#### **4. ANTICIPATED SERVICES:**

##### **Objective:**

The Consultant shall perform a comprehensive disparity study of contracting and procurement activities in the City's geographic and product markets (the Disparity Study). The Disparity Study shall be based on five years of historical data (FY 2013-2018) collected by the City. The City's data includes total contract amounts and total amounts paid to MBE/WBEs and DBEs, recorded by industry, race/ethnicity, and gender. 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. The City's data for the 2008-2013 disparity study contained 475 contracts categorized as "construction", 1,539 contracts categorized as "commodity", 479 contracts categorized as "professional services", and 1,439 contracts categorized

as “general services/non-professional services”. In all, a total of 3,932 contracts/purchase orders were contained in the data sets.

The Disparity Study shall analyze whether a disparity exists between the number of available MBE/WBE/DBE owned businesses in the City’s geographic and product markets and the number of MBE/WBE/DBEs being utilized on City contracts. The Disparity Study shall analyze MBE/WBE/DBE 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 shall not be expected to analyze the data associated with contracts with a value of less than \$50,000. More specifically, the 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/DBEs (classified by industry, race/ethnicity, and gender) 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/DBEs , classified by industry, race/ethnicity and gender 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/DBEs 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/DBEs private sector success relative to non-MBE/WBE/DBEs private sector success.
- h. Identify potential additional industries (not reflected in the City's current data or the City's MBE/WBE Program) by commodity code with MBE/WBE availability.
- i. 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.
- j. Provide a draft final report including, but not necessarily limited to, an executive summary, an overview of up-to-date, relevant case law, the Disparity Study with detailed discussion of the Consultant's methodology and analysis, (including the Consultant's formulas used to calculate availability) and recommendations based on Consultant's findings and review of the City's MBE/WBE Program.
- k. Respond to concerns raised by the City, revise the report as the Consultant determines appropriate, and present in final form.
- l. Present Disparity Study findings to relevant City Departments, relevant Boards and Commissions, SMBR stakeholders and the City Council, and otherwise cooperate with the City in facilitating dissemination of the Disparity Study results to the City and the public.
- m. 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.

**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, SMBR stakeholder groups, and the City Council.

**5. PROPOSED SCHEDULE:**

The MBE/WBE/DBE availability study shall be completed by the Consultant within 12 months after issuance of notice to proceed from the City. The completed study shall be submitted to the City's Contract Manager.

**6. ANTICIPATED BUDGET:**

The City's Fiscal Year 2018-19 budgeted permits \$1,000,000.00 to be spent on the Consultant's contract, legal services, and any other associated costs. By executing a contract with the City, 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.