



Travis County Commissioners Court Agenda Request

Meeting Date: December 4, 2012

Prepared By/Phone Number: Peter Einhorn, 854-9229

Department Head: Cyd Grimes, Purchasing Agent

Commissioners Court Sponsor: Commissioners Ron Davis (Precinct 1) and Sarah Eckhardt (Precinct 2)

Agenda Language:

CONSIDER AND TAKE APPROPRIATE ACTION ON PURSUING CONTRACT FOR A DISPARITY STUDY TO INFORM OUR HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM POLICIES

(THIS ITEM MAY BE TAKEN INTO EXECUTIVE SESSION UNDER THE CONSULTATION WITH ATTORNEY EXCEPTION)

Purchasing Comments:

On Thursday, November 15, 2012, we presented in a work session an overview and history of Travis County's Historically Underutilized Business (HUB) Program. We invited the City of Austin, Bexar County and the HUB community to present.

We are ready to begin drafting a statement of work to begin negotiating with the City of Austin's winning firm which is anticipated to be selected in April or May 2013. Attached is a "sample" statement of work that we will begin with.

Request the Commissioners Court give direction on how to proceed with HUB Program improvements.

SAMPLE - BEXAR COUNTY

ARTICLE V SERVICES TO BE PERFORMED BY CONSULTANT

5.01 This Agreement sets forth the Services to be provided in detail. The professional services to be provided by CONSULTANT under this Agreement (collectively the "Project") are those identified in:

- A. COUNTY Request for Proposal No. 2009-108, as amended;
- B. CONSULTANT's proposed scope of services attached hereto and incorporated herein for all purposes as Exhibit "A"; and
- C. As agreed to by the Parties and more fully described in this section below.

If there is a conflict or ambiguity between or among the provisions of this Agreement, COUNTY's RFP, and CONSULTANT's Proposal, the order of priority is as follows:

- A. The provisions of this Agreement;
- B. CONSULTANT's proposed scope of services (Exhibit "A"); and
- C. COUNTY's RFP as amended;

5.02 CONSULTANT will provide the following services:

- A. Immediately after Agreement is executed, CONSULTANT shall:
 - 1. Prepare a Work Plan to outline the mutual responsibilities for producing data, analyzing data, and reviewing work product;
 - 2. Hold one meeting with key COUNTY officials to discuss the scope, approach and methodology of the project; and
 - 3. Hold one meeting with COUNTY manager and key staff to discuss the scope, approach and methodology of the Project; this meeting will be held on the same day as the meeting in section 5.02(A)(2) above.

In addition, upon completion of the Final Report, CONSULTANT shall attend one meeting of the Commissioners Court and make a final presentation regarding study results, if requested by COUNTY.

- B. Assessment of COUNTY's Program:
 - 1. CONSULTANT shall study the following:
 - a. Statutes, court rulings, county regulations, resolutions and policies that guide the Program;

- b. Contracting and purchasing policies for the study period and currently in use;
 - c. Electronic contract compliance records and reports on MWBE participation;
 - d. County Business Development Summary Reports, in electronic format, for goods, professional services, other services and construction prime and subcontractors over the study period;
 - e. Department and organization policies and operating procedures; and
 - f. Background reports and studies that may have been conducted relating to the Program.
2. CONSULTANT shall analyze utilization of firms by specifically:
- a. Converting COUNTY contract payment data for 2007, 2008, and 2009 from National Institute of Governmental Purchasing Code (“NIGP”) format to a five-digit North American Industry Classification System (“NAICS”) format. If the description of a contract provides insufficient information to assign a NAICS code, the contract shall be marked and excluded from analysis until such time as the COUNTY provides sufficient information.
 - b. Determining utilization of goods, professional services, other services, and construction firms by COUNTY for each five-digit NAICS code based on the amount of the contracts awarded. If the description of a contract provides insufficient information to assign a NAICS code, the contract shall be marked and excluded from analysis until such time as the COUNTY provides sufficient information
 - c. Surveying prime contractors on professional services, other services, goods, and construction contracts over \$100,000 in order to obtain additional subcontracting data; and
 - d. Categorizing M/WBE firms in accordance with COUNTY’s definition of M/WBE’s, which adheres to 49 C.F.R. Part 26 and COUNTY Policy 8.0, provided that the utilized Asian American prime and subcontractors are categorized by the COUNTY in accordance with 49 C.F.R 26 and COUNTY Policy 8.0.

3. CONSULTANT shall analyze availability of firms by specifically:
 - a. Utilizing a cluster analysis to delineate the geographic market area where the COUNTY awards prime contracts;
 - b. Categorizing available M/WBE firms in accordance with COUNTY's definition of M/WBE's, which adheres to 49 C.F.R. Part 26; and the County Policy 8.0;
 - c. Relying on surveys and additional data sources to assess the willingness of firms initially identified from professional and trade organization lists; and
 - d. Analyzing COUNTY's procurement process for professional services with express reference to statutory limitations imposed by Tex. Gov't Code Sec. 2254.003.
4. CONSULTANT shall specifically calculate disparity statistics by:
 - a. 5-digit NAICS code, provided that the number of contracts under each NAICS code is sufficient to perform either a parametric or non-parametric analysis; and
 - b. By applying a regression analysis or otherwise controlling for non-discriminatory factors.
5. CONSULTANT shall interview and gather information from the following:
 - a. A survey of COUNTY Officials, Procurement Managers, and the M/WBE Program Manager; the information will be used to determine the COUNTY's procurement and contracting procedures;
 - b. Review of judicial and/or Administrative data to ascertain allegations of discrimination against contractors, subcontractors, vendors, consultants and local government agencies;
 - c. A survey of Program and non-Program business owners to determine if barriers exist within the contracting and purchasing procedures and programs of the offices and departments;

- d. One representative organization provided COUNTY dollars under general fund or other business processes such as the AT&T Center;
- e. A sample consisting of 10 representatives of trade and professional organizations and educational institutions;
- f. At least 30 anecdotal study participant-firms, the final number and distribution (by industrial classification) to be determined based on CONSULTANT's findings from the survey of Program and non-Program business owners. The anecdotal participant firms shall be drawn from the pool of participants in the survey who allege that they have experienced discrimination or discriminatory effects and be a representative cross section of industry sectors, races and genders. The anecdotal study interviews are intended to follow up on the allegations made in the survey in more detail.

Interviews of anecdotal study participant-firms shall be held at a COUNTY facility and be recorded and/or videotaped at the COUNTY's expense. The substance of the statements of all anecdotal study participant-firms used in the study shall be (1) under oath, (2) identify the declarant by name, and (3) identify any industry sector(s) involved. If incidents of discrimination of any kind are alleged by an interviewee, the CONSULTANT shall attempt to obtain as much detail regarding those incidents as possible, including, but not limited to, the time, date, alleged perpetrator and specific comments or actions and the context of the comments or actions.

The COUNTY does not believe that the use of anonymous, unsworn surveys is ultimately defensible in court cases, legislative hearings, or administrative proceedings, given the problems seen with their use in other studies.

The CONSULTANT does not propose to use the anecdotal interview data to establish a factual predicate. The anecdotal data are qualitative accounts provided by a business as their perceptions of experiences doing business in the market area. The information is being collected for the sole purpose of formulating race-neutral recommendations.

The CONSULTANT is obligated to complete 30 interviews using the mandated method which requires interviews to be

held in a COUNTY facility, recorded and/or videotaped, sworn and identified by the declarant's name.

The CONSULTANT is obligated to contact at least 90 businesses for the purpose of achieving the 30 completed interviews using the mandated method. If a potential interviewee declines to provide an interview because of an expressed concern or fear of possible retaliation or other adverse consequences due to any negative or critical comments that he or she might make about COUNTY agencies, agents, or prime contractors, the record will be documented and submitted with the invoice for full compensation.

The parties agree that if the CONSULTANT is unable to complete 30 interviews using the mandated method, the CONSULTANT shall receive full compensation (\$7,000) for the Anecdotal Analysis Chapter.

The COUNTY reserves the right to request the CONSULTANT to contact additional businesses for the purpose of securing 30 interviews, using the method set forth in the CONSULTANT's proposal No.2009-108 (see Appendix A). These additional interviews will be conducted at the COUNTY's expense.

6. CONSULTANT shall prepare the following written documents, and provide them to COUNTY's Project Manager in Microsoft format, in addition to the other formats set out in Exhibit A:
 - a. Detailed policy and procurement chapter with recommendations for incorporating the Program into the Bexar County Purchasing Procedures;
 - b. Chapter identifying state statutes, county ordinances, regulations, policies, procedures, and programs, related to procurement, contract and minority, women-owned business programs;
 - c. Chapter describing Program and non-Program M/WBE firm utilization within the market area;
 - d. Utilization tables reflecting prime and subcontractor data by industry and ethnic and gender classification; and

- e. Utilization chapter showing percentages of COUNTY contract and purchase order dollars for fiscal years 2007 to 2009 for the following categories: industry, ethnic and gender classification, prime and subcontractors contracts, and type of funding, if available.

C. Public Participation:

CONSULTANT shall plan, coordinate and conduct one public hearing to seek public input relating to the Program. The public hearing will be used to solicit testimony from the business community concerning possible barriers they may have faced unrelated to race or gender that has adversely affected their ability to successfully participate on COUNTY contracts. The public hearing shall be held at a COUNTY facility and shall be recorded and/or videotaped at the COUNTY's expense. The substance of the statements of all public hearing participants used in the study shall be (1) under oath, (2) identify the declarant by name, and (3) identify any industry sector(s) involved. If incidents of discrimination of any kind are alleged by an interviewee, the CONSULTANT shall attempt to obtain as much detail regarding those incidents as possible, including, but not limited to, the time, date, alleged perpetrator and specific comments or actions and the context of the comments or actions. With the exception of the existing condition of the COUNTY's facility itself, CONSULTANT shall ensure compliance with the Americans with Disabilities Act during the hearings.

- D. CONSULTANT shall make recommendations and perform follow-up work as set forth Tasks 11 and 12 of Part V of Exhibit A.

ARTICLE VI
SUBCONSULTANTS

6.01 COUNTY agrees and acknowledges that CONSULTANT intends to use the following subconsultants ("Subconsultants") in the performance of this Agreement:

6.02 Subconsultants may not be removed without the prior written consent of COUNTY. COUNTY understands and recognizes that extraordinary circumstances may arise which necessitate a Subconsultant being substituted during the progress of the work. In such event, CONSULTANT shall replace the Subconsultant with an entity or individual that has demonstrated superior expertise within the relevant field as well as suitability for this project with the substitution being subject to prior review and written approval by COUNTY.

6.03 CONSULTANT shall replace Subconsultant if so directed by COUNTY in writing should COUNTY make a good faith determination, in its sole discretion, that any individual is incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interest of COUNTY.

6.04 At COUNTY's request, CONSULTANT shall provide COUNTY with a fully executed copy of each contract that CONSULTANT enters into with Subconsultants. Each contract between CONSULTANT and a Subconsultant must reflect that COUNTY is the intended third-party beneficiary to the contract. CONSULTANT shall pay for all the Subconsultant's services set out in this Agreement out of the fees provided for in this Agreement. COUNTY shall have no responsibility of any kind for payment of the Subconsultant's fees.

6.05 Subconsultants shall attend meetings with COUNTY staff and officials as necessary and shall attend up to two Commissioners Court meetings and participate in presentations, if requested.