



Item 22

Travis County Commissioners Court Agenda Request

Meeting Date: April 23, 2013

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Elected/Appointed Official/Dept. Head: Cyd Grimes, Purchasing Office
Commissioners Court Sponsor: Judge Biscoe

Agenda Language: CONSIDER AND TAKE APPROPRIATE ACTION ON APPROVING THE SCOPE OF WORK FOR THE HUB DISPARITY STUDY.

The County was approached in March 2012 to participate in the City of Austin's next Disparity Study through an Interlocal Agreement. In August 2012, money was earmarked by the Commissioners Court for the County to participate in the study. Since that time, staff has participated in a series of meetings to discuss potential participation. In November 2012, the Purchasing Office participated in a work session, along with the City of Austin. Bexar County presented results of their Disparity Study, and community small business representatives expressed their support of the County participating in the study. During a voting session on December 4, 2012, the Court directed staff to begin developing the County's scope of work for a Disparity Study with community input, but has not authorized participation as of yet. On April 11, 2013, during a work session, Purchasing staff presented the first draft of the scope. Purchasing staff has been extensively involved in preparations by attending ongoing meetings/discussion with Commissioner Eckhardt's Office, City of Austin and several other government agencies.

The City of Austin issued an RFQ in late December 2012 and received submittals in February 2013. We are expecting to be able to meet with the City's consultant by June 2013. Staff is requesting Court approval of the Scope of Work, and authorization to commence negotiations with the Consultant. Any resulting contract will be presented to the Court for approval.

COUNTY DISPARITY STUDY DRAFT (4-2-13)

TRAVIS COUNTY

1. OBJECTIVE OF THE PROJECT:

The selected Consultant shall conduct a Minority Business Enterprise (MBE), Women Business Enterprise (WBE), and Historically Underutilized Business (HUB) disparity study consistent with constitutional mandates, governing law, and MBE/WBE/HUB best practices. 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 project, 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) **HUB:** refers to Historically Underutilized Businesses as the term is defined in the Texas Government Code Chapter 2161, Subchapter A (2).
- d) **VTS:** refers to Vendor Tracking System, the County's web-based system used to electronically track payments to subcontractors and subconsultants.
- e) **H-T-E:** refers to County's previously used financial system.

3. BACKGROUND:

In 1988, the Travis County Commissioners Court appointed an advisory committee to study any evidence of past discrimination on the part of Travis County with respect to County contracts awarded to or subcontracted to minority or women owned business entities. Through an official Preamble, testimony, complaints and a study evidencing continuing disparity between the participation of minority and women owned business enterprises and the dollar value of contracts awarded by County government, there was evidence of past discrimination on the part of Travis County with respect to its procurement and contractual activities, and that convincing evidence existed that remedial action was warranted. The Preamble was adopted on November 16, 1988. No official documentation was found other than the Preamble

During this same time, Travis County, specifically David Escamilla County Attorney, was approached to participate in discussions and legal research into doing a disparity study. The City of Austin asked the County to be involved and share the cost of the study and to help select a consultant. The Court felt at that time that the money would instead be taken to hire staff to handle minority procurement and the pre-cursor to the HUB Coordinator position; therefore, opted to not be a part of the study. But, this limited the County on what could be done for minority participation.

In May 1994, the Travis County Commissioners Court unanimously passed a resolution creating the Historically Underutilized Business (HUB) Program within Travis County. The primary objective of the HUB program is to ensure HUBs receive a fair and equal opportunity for participation in the County's procurement process.

It is the policy of the Travis County Purchasing Office that a "Good Faith Effort" is made to ensure that 30% goal of all eligible procurement dollars are spent with HUBs in the area of commodities, services (professional & non-professional) and construction. The County adopted the 30% goal based on the State of Texas HUB Program.

Travis County only recognized the certifications through the State of Texas as a HUB, the City of Austin as a Minority or Woman-Owned Business Enterprise (M/WBE) or the federal Disadvantaged Business Enterprise (DBE). Travis County does not certify vendors, operating instead through the recognition of the three certifications mentioned.

Through the County's development of an "In-Reach" and "Out-Reach" awareness program, both internal County employees and external vendors are identified and educated on the County's HUB Program and the importance of utilizing ready, willing and able minority and woman-owned businesses and HUB certification.

In 2003, the County's "Construction Trade Enhancement Advisory Committee" was established in July to assist the Court in developing HUB policy initiatives, paying special attention to the construction trade. Membership included local minority and non-minority construction contractors. Due to schedule conflicts, the committee discontinued in May, 2005. During the same year, the Court approved a contract to obtain services to review the County's HUB Program. Colette Holt & Associates, a nationally recognized legal expert in designing, implementing and defending affirmative action programs issued a report that included ten recommendations for revising the current HUB Program and adopting a new approach.

As part of a new approach, the Court approved during a voting session held on July 15, 2003, for the County to adopt the City of Austin's M/WBE goals and sub-goals which would replace the initial 30% goal. This change was supported by the Construction Advisory Committee and Colette Holt. Although new goals were adopted, the County still faced legal boundaries of what it could and could not do to enact a program that has a racial preference component. Goal achievement was still based on a voluntary approach. Additionally, in 2006 Colette Holt did a second HUB Program review followed by an oral presentation to Commissioners Court on May 23, 2006. Recommendations were categorized by Race and Gender-Neutral and policy revisions.

In the 77th Texas Legislative Session (2001) SB 510 was enacted on September 1, 2001 (Texas Local Government Code 271.111 – 271.121) authorizing government entities to use alternative delivery methods in construction. One of those methods, Design-Build was approved by the Travis County Commissioners Court on February 1, 2005 to permit the Purchasing Office to issue a solicitation for the Travis County Correction Complex Expansion. Travis County was able to give minority participation numerical value with the Design-Build method. Another alternative delivery method used by the County was Construction Manager-at-Risk (CMAR). The Commissioners Court authorized use of CMAR on April 12, 2011 for the renovation of the 700 Lavaca Building Ground, 1st and 2nd Floors for the new Commissioners Courtroom and Executive Offices. Texas

Local Government Code 271.111 – 271.121 was replaced by Texas Government Code 2267, Subchapter G on September 1, 2011 from the 82nd Texas Legislative Session. Competitive pricing for subcontractor work was established as one of the advantages of the CMAR method. Purchasing was able to work a little closer with the primes to encourage and increase minority participation.

With an increased HUB staff from one to three positions, and the procurement of a web-based tracking system, recommendations by Colette Holt have taken the Program to a new level of increased outreach and better tracking of payments to subcontractors.

The County's HUB staff located in the Purchasing Office is responsible for managing, implementing, and operating the County's HUB Program and DBE Program. HUB staff performs an array of services including reviewing HUB requirements at pre-bids/pre-proposal/pre-cons/kick-offs and other meetings. Reviewing HUB Subcontracting Declaration plans, verifying HUB/M/WBE certifications, and preparing a Good Faith Effort Report; providing prime and subcontractor training on the Vendor Tracking System; coordinating delivery of project manuals/plans; semi-annual HUB reporting; coordinating annual County liaison workshop; disseminating electronic newsletters and other relevant information; distributing/collecting various surveys; serving on various committees and boards, and other duties as assigned.

4. ANTICIPATED SERVICES:

Objective:

The selected Consultant will be required to perform a comprehensive disparity and availability study of contracting and procurement activities in the County's relevant geographic market area and product markets (the Disparity Study). The Disparity Study will be based on three years of historical data (FY 2009-2011) collected by the County. The County's data may include total contract amounts and total amounts paid to MBE/WBE/HUBs, recorded by industry, race/ethnicity, and sex. The County has collected this data on prime contractors and subcontractors. The County's prime contractor data has been catalogued using H-T-E financial system and subcontractor data in the web based tracking system or the Vendor Tracking System (VTS) and both are available in electronic format

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

The Disparity Study will analyze MBE/WBE/HUB 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. 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 and gender-conscious and race and gender-neutral government efforts in public contracting;
- b. Determine the County's appropriate geographic market area;
- c. Determine the County's product markets, or those industries within the major procurement categories (construction, construction-related

professional services, construction-related non-professional services, and commodities) that are most indicative of work performed on County contracts.

- d. Provide statistical evidence of disparities in business enterprise activity in the County's geographic and products;
 - i. Determine the availability of MBE/WBE/HUB businesses (classified by industry, race/ethnicity, and sex) in the County'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.
 - ii. Determine the County's utilization of available MBE/WBE/HUB businesses', classified by industry, race/ethnicity and sex in the County'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 County;
- e. Collect and analyze anecdotal evidence on the experience of businesses in the County's markets, including business-owners and community stakeholder's inputs; which may include County precinct specific public hearings, interviews, surveys and other methods approved by the County Purchasing Office, to support identified statistical disparities.
- f. To the extent necessary and possible, collect data regarding other public entities' utilization of MBE/WBE/HUBs 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/HUBs businesses' private sector success relative to non-MBE/WBE/HUBs businesses' private sector success.
- h. Based on analysis and review of the County's contracting and purchasing policies, electronic contract compliance records, HUB utilization reports, and any HUB Program background reports and studies that may have been conducted relating to the Program, and 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), and any other related compliance issues. Provide monthly progress reports to the County.
- 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 County's HUB Program.
- j. Revise the report subject to concerns raised by the County and present in final form.
- k. Present Disparity Study findings to County Departments and relevant staff, Commissioners Court, and otherwise cooperate with the County in facilitating dissemination of the Disparity Study results to the County and the public.
- l. In the event the County's HUB Program is challenged any time from three years of completion of the Disparity Study, the Consultant may be required to testify on the constitutionality of the County's HUB Program 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 County has separately retained legal counsel to provide legal advice to the County throughout this process. (NOTE: AS OF 4-15-13 LEGAL COUNSEL HAS NOT BEEN RETAINED.)**

Deliverables:

The Consultant shall specifically deliver the following:

- a. Hold one meeting with key County officials to discuss the scope, approach and methodology of the project.
- b. Prepare a Work Plan to outline the mutual responsibilities for producing data, analyzing data, and reviewing the work product.
- c. Work with the County's Project Manager and key staff to refine Work Plan and scope, approach and methodology of the project.
- d. Monthly progress reports, including, when appropriate, summaries of analyses and assessments in progress or completed.
- e. A draft of the Consultant's final report for review and comment by the County, and a final version of all relevant reports.
- f. 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 Consultant's methodology and analysis, and recommendations based on Consultant's findings and review of the County's HUB 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 County, the final report and all data and records developed in conjunction with the final report and Disparity Study shall be submitted to the County as two hard copies and one electronic copy (in or compatible with Microsoft Office 2007 or later) to permit future use by the County.
- g. Presentations before relevant County Departments and the Commissioners Court.

5. QUALIFICATIONS:

The experience, knowledge, and capabilities of the Consultant's personnel and subconsultants (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 the project.

6. PROPOSED SCHEDULE:

The MBE/WBE/HUB businesses availability study shall be completed by the Consultant within twelve (12) months after issuance of notice to proceed from the County. The completed study shall be submitted to the County's Project Manager.

7. ANTICIPATED BUDGET:

The County's FY 2013 budget permits \$200,000 to be spent on the Consultant's contract.