

## SCOPE OF SERVICES/SPECIFICATIONS

### A. Project Management Plan

The Consultant shall develop a project management plan that sets forth, among other things, a timeline for the initiation, progress and completion of each component of the disparity study; including the provision of periodic drafts of the disparity study report and the submission of a written final disparity study report; identifies the project management team that will be the city's primary contact throughout the disparity study, delineating the specific component(s) of the disparity study for which each member of the team shall be the primary contact; includes details regarding a project initiation meeting and regular progress and status update meetings with and reporting to the city, including DEI, to ensure any potential obstacle to the completion of the disparity study and submission of the final disparity study report on-time and within budget is identified at the earliest possible date; identifies records and data sources the Consultant will need to review in connection with the disparity study data collection and analyses; specifies plans the design and implementation of community engagement that is direct, meaningful and sets forth plans for participation in public hearings, and presentations to City leadership.

### B. Legal Review and Analysis

The Consultant shall design and conduct a disparity study that meets the requirements of existing law, including the *Croson* decision and subsequent case law, with a specific, although not exclusive, consideration of cases from the 6<sup>th</sup> Circuit Court of Appeals, and any other relevant jurisprudence. Within a legal review section of the final disparity study report, the Consultant will provide an analysis of relevant law and will set forth both the requirements for a legally sound study and for the implementation of legally defensible remedies that will meet the applicable standard for judicial scrutiny if challenged. The legal section of the disparity report shall make clear how the disparity study and recommended remedies satisfy those requirements.

### C. Availability Review and Analysis

The Consultant shall perform an appropriate review and analysis to determine the availability within the relevant market area of minority-owned-and-controlled and women-owned-and-controlled businesses, disaggregated by racial/ethnic group and gender, that are qualified, ready, willing, and able to do business with the City of Cincinnati, broken down by Construction, Architecture and Engineering, Professional Services, Other Services, and Supplies contracts.

1. The Consultant shall conduct an appropriate review and analysis to determine the relevant market area considering relevant jurisprudence, instructive caselaw, and the geographic distribution of city contracts during the study period. The final disparity study report shall identify the relevant market area, discuss the manner in which the Consultant made its determination, and include the summary data that supports the market area determination.
2. The final disparity study report shall discuss the manner in which the Consultant determined availability, specifically (although not necessarily exclusively) as it relates to how the Consultant (a) made its determination that a contractor is ready to do business with the city; (b) made its determination that a contractor is willing to do business with the city; and (c) made its determination that a contractor has the capacity/is able to do business with the city. To the extent to which the Consultant utilized the directories or other lists maintained by government agencies, chambers of commerce, or other organizations as a resource in determining availability, the final disparity study report shall specify each specific directory or list the Consultant determined was a credible and reliable source of such information and upon which it relied. In its determination of availability, the Consultant shall utilize, among other resources,

the City of Cincinnati's directory of city-certified SBE, SLBE, ELBE, MBE and WBE firms.

3. The Consultant shall categorize each minority-owned-and-controlled and women-owned-and-controlled businesses identified by the Consultant to be available ("ready, willing, and able to do business with the city") as a prime contractor or as a subcontractor and located within the relevant market area by race/ethnicity, gender, primary classification/contract type (Construction, Professional Services, Non-Professional Services, and Supplies/Services), and the primary North American Industry Classification System ("NAICS") code the Consultant determines is most appropriate for the nature of the work performed by the firm. If there is no appropriate NAICS code for the work, the Consultant shall identify the primary National Institute of Government Purchasing ("NIGP") code applicable to the firm.
4. The final disparity study report shall include summary information that indicates the number (disaggregated by racial/ethnic group and gender) and fractional proportion of those minority-owned-and-controlled and women-owned-and-controlled firms by classification/contract type and in total.
5. A detailed list of those firms included in the summary information shall be provided to the City of Cincinnati in an acceptable database format accessible by the City of Cincinnati and from which the city can filter, sort and export data and generate reports and visualizations. The information contained in the database detail shall include the name of the firm; any contact information (address, email, telephone number, etc.) provided to or culled from other resources by the Consultant; the primary NAICS code the Consultant determined was most appropriate for the nature of the work performed by the firm or, if there is no appropriate NAICS code for the work, the primary NIGP code applicable to the firm; the race/ethnicity and gender of the interests representing majority ownership of the business; the Consultant's determination as to the contract category in which the firm was included for purposes of the study; the source from which the firm was identified; and any other demographic information upon which the Consultant relied in its analysis.
6. The Consultant should determine, and the final disparity study report should address, whether there is evidence that private marketplace conditions and/or racial/ethnic or gender discrimination exists which may cause an imbalance in the availability and capacity of minority-owned-and-controlled and women-owned-and-controlled firms in the relevant market area.

*D. Utilization Review and Analysis*

The Consultant shall perform an appropriate review and analysis to determine the actual utilization of minority-owned-and-controlled and women-owned-and-controlled firms within the relevant market area as prime contractors and as subcontractors on city contracts during the identified study period, disaggregated by race/ethnicity and gender, by contract type, and by contract size.

1. The Consultant shall collect and review prime contractor payment data maintained by the City of Cincinnati in the City's financial system ("CFS"), the prime and subcontractor payment and award data exported to or directly entered into the B2Gnow third-party vendor system for contracts subject to subcontracting inclusion goals, the award data maintained by the City's Department of Economic Inclusion for contracts valued at \$50,000.00 or more that were approved by the City Manager through the Procurement Review process and were awarded to MBE or WBE firms and/or were subject to mandatory MBE/WBE inclusion goals, and all other project files, documents, databases, surveys, questionnaires or other information relevant to a determination of prime and subcontract awards and payments during the study period. To the extent there may be gaps in the city subcontract data, the Consultant shall reach out to

prime contractors to ascertain any necessary information.

2. The final disparity study report shall identify all sources from which the Consultant extracted prime utilization data and all sources from which it extracted subcontract utilization data.
3. All contracts valued at \$5,000.00 or above are to be included in the utilization analysis.
4. If the volume of purchases under \$5,000.00 makes it cost-prohibitive to include each of those individual purchases in the disparity study, the Consultant may utilize a statistically significant random sample of appropriate sample size and methodology for those purchases. The proposal should identify the sample methodology likely to be utilized, and the final disparity study report shall describe in greater detail the methodology utilized for selecting its representative sample.
5. The Consultant shall organize the utilization data using contract value ranges that, at a minimum, mirror the thresholds for the various procurement processes set forth in the relevant City ordinances and administrative regulations, i.e, \$5,000.00 and under, \$5,000.01 to \$49,999.99, \$50,000.00 to \$249,999.99, and \$250,000.00 or more. The Consultant may further subdivide that utilization data into smaller subsets if the Consultant believes useful and appropriate.
6. The final disparity study report will provide summary data for prime contractor utilization within each contract value range, disaggregated by contract type and further disaggregated by race/ethnicity and gender, indicating the number and relative percentage of total contracts and the dollar value and relative percentage of total dollar value of all contracts of that type for each racial/ethnic and gender group.
7. The Consultant separately shall provide to the city the underlying data identifying the specific prime contractors included in the summary information in an acceptable database format accessible by the City of Cincinnati and from which the city can filter, sort and export data and generate reports and visualizations. The information contained in the database detail shall include the name of the prime contractor; the contract number; the contract name (if applicable); the awarded value of the contract, including amendments and change orders; the award date; the primary NAICS code the Consultant determined was most applicable to the contract or, if there is no appropriate NAICS code for the contract, the primary NIGP code applicable to the contract; the race/ethnicity and gender of the prime contractor as considered by the Consultant in its utilization analysis; the Consultant's determination as to the contract category (Construction, Professional Services or Supplies/Services); the total payments made to the prime contractor under the contract; the Retained Payments (payments made by the City less payments made to subcontractors); and any other information upon which the Consultant relied in its utilization analysis.

*E. Disparity Review and Analysis*

The Consultant shall use the information from its Availability Review and Analysis and the information from its Utilization Review and Analysis to determine whether a statistically significant disparity exists between the expected utilization of minority-owned-and-controlled firms and women-owned-and-controlled firms (based on their availability in the relevant market area) and the actual utilization of those firms on City contracts during the study period.

1. The statistical analysis shall be conducted separately for prime contract utilization and for subcontract utilization within each contract dollar value range determined in the Utilization Review and Analysis.

2. Within each such prime contract and subcontract analysis, the Consultant shall determine and report whether there is a statistically significant disparity in the utilization of contractors by contract type (Construction, Professional Services, and Supplies/Services), with the information specifically disaggregated by race/ethnicity and by gender. The reported information included in the final disparity study report shall include the dollar value of the utilization, the percentage of utilization, the determined percentage of availability, the expected dollar value of utilization based on availability, and the identified disparity between the expected utilization and the actual utilization, if any.
3. The final disparity study report shall identify and generally discuss the statistical model and methodologies utilized to determine whether a statistically significant disparity in utilization exists within each group.
4. If the Consultant determines that a disparity exists in any category or group, the Consultant shall determine whether evidence exists, including but not limited to anecdotal evidence, that the disparity is the result of active or passive discrimination. That analysis also shall include a review of the city's relevant procurement ordinances, policies, regulations, and practices to determine whether there are any barriers to full participation in city contracting by minority-owned-and-controlled and by women-owned-and-controlled firms. The final disparity study report shall address those findings with specificity and shall discuss the existence or non-existence of such evidence. The information collected from interviews, surveys, questionnaires and other means during the disparity study shall be the property of and made available to the City at the end of the contract, or earlier if requested.

*F. Recommendations and Remedies*

The Consultant shall formulate and present recommendations for both race-and-gender-neutral and race-and-gender-conscious remedies, including amendments or modifications to existing programs, designed to address any identified statistically significant disparities in the utilization of minority-owned-and-controlled and women-owned-and-controlled firms in the relevant market area that are ready, willing and able to do business with the city.

1. Recommendations for race-and-gender-conscious remedies must be designed to meet the evidentiary requirements for the level of judicial scrutiny applicable to each such remedy if challenged. Such recommendations also should consider the effectiveness of the existing MBE/WBE Program and related procurement rules in achieving more inclusive and proportionate contracting with minority-owned-and-controlled and women-owned-and-controlled firms when compared to their availability in the market area.
2. Recommendations for race-and-gender-neutral remedies should take into consideration the effectiveness of the existing SBE Program and existing race-and-gender-neutral procurement rules in achieving more inclusive and proportionate contracting with minority-owned-and-controlled and women-owned-and-controlled firms when compared to their availability in the market area.
3. In the event any race- and/or gender-conscious remedies implemented by the city in accordance with the recommendations of the Consultant are challenged through litigation, the Consultant, if requested, shall serve as an expert witness to defend the disparity study and the recommendations of the final disparity study report, and the Consultant shall cooperate with the City in its preparation and presentation of a defense against such action.

*G. Periodic Project Deliverables*

1. Within 14 days of receiving notice to proceed with the disparity study, the Consultant shall have completed its initiation meeting with the city.
2. Within 30 days of receiving notice to proceed with the disparity study, the Consultant shall provide the DEI with a preliminary outline of the proposed final disparity study report, identifying the main section headings and any anticipated sub-section headings with a general description of the type of information that will be included within each heading and sub-heading.
3. Beginning 30 days after receiving notice to proceed with the disparity study, and continuing every 30 days throughout the contract period, the Consultant shall provide written progress reports to DEI that set forth, at a minimum:
  - a. A description of the specific activities conducted since the date of the last report;
  - b. The to-date progress toward completion on each component of the disparity study delineated in the approved Project Management Plan;
  - c. A description of the specific activities the Consultant plans to conduct within the next 30 days;
  - d. An indication as to whether any potential obstacles or issues have arisen or are foreseen but were not originally anticipated that may create a delay or cost overrun in the completion of any component of the disparity study; quantification of the projected resulting delay and/or cost overrun; the efforts made to-date to resolve those matters; and the proposed plan for moving forward; and
  - e. Any other information the Consultant believes may be relevant or the city, acting through DEI, may request.
4. At the midpoint in the established disparity study timeline, the Consultant's report for that month shall include the following additional information:
  - a. Provision to the city of access to all preliminary database information that has been collected to-date relative to the Availability Review and Analysis and the Utilization Review and Analysis;
  - b. Preliminary observations made from the data reviewed and analyzed to-date, including any assumptions made by the Consultant and any identified conditions that may impact the disparity study;
  - c. A list of all of the data sources reviewed by the Consultant to-date;
  - d. A supplemental outline of the draft final disparity study report with additional detail regarding the information to be included within each heading and sub-heading and the identification of any additional sub-headings; and
  - e. Any additional information that may be requested by the city.
5. No later than 60 days before the scheduled date for the submission of the final disparity study report, the Consultant shall submit a preliminary rough draft of the report in electronic form to DEI for the City Administration's review and comment. At the time of the submission of the preliminary rough draft, the services and analyses required by the scope of work under the contract may not be complete. However, the preliminary rough draft must be complete for any component of the disparity study for which the timeline for completion of review and analysis has passed without agreed amendment and must be substantially complete for any component of the disparity study for which additional time remains for completion of the review and analysis. If preliminary rough drafts of individual sections of the final disparity study report

are completed earlier than 60 days prior to the scheduled date for the submission of the final disparity study report, those individual sections can and should be submitted to DEI for review and comment as soon as they are available.

6. Within 14 days of receipt from DEI of the City Administration's comments, the Consultant shall revise the report to provide any clarification or supplementation DEI identifies as necessary to the provision of a clear, thorough, comprehensive, and legally defensible report, and the Consultant shall submit the revised draft to DEI for a final review.
7. Once finally approved by DEI as complete without the need for further clarification or supplementation, the final Disparity study report shall be provided to DEI in pdf form along with 12 bound paper copies.
8. At the conclusion of the contract, the Consultant shall provide the city with all notes, working papers, underlying records and analyses that may be helpful in defending the disparity study or any final disparity study report recommendations implemented by the city if the same were to be challenged by the initiation of any legal proceeding. A presentation shall be given in person to the City Council by the consultant summarizing the findings.