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# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Deborah Barnes  
Director

**SUBJECT:** An Informational Report on the Status  
of the Disparity Study Request for  
Proposal

**DATE:** April 18, 2016

City Administrator Approval

Date:

4/28/16

## RECOMMENDATION

Staff recommends that the Council accept this informational report on the status of the Disparity Study.

## BACKGROUND / LEGISLATIVE HISTORY

City voters in 1996 added Section 808(b) to the City Charter. Section 808(b) obligates the City to conduct "a race and gender disparity evaluation to determine if the City has been an active or passive participant in actual, identifiable discrimination within its relevant market place." "If such disparity evaluation evidences such discrimination the City Council, in order to remedy the discrimination, shall establish a narrowly tailored race and/or gender business participation program, as substantiated by the disparity evaluation, for the bidding and awarding of purchases and contracts. Any such program shall continue only until the discrimination has been remedied. The City Administrator or an officer authorized by him or her shall require all awardees and bidders to comply with the established program."

In December of 2010, Mason Tillman and Associates completed a "Fairness in Purchasing and Contracting" race and gender Disparity Study for the City of Oakland and presented its findings to the City Council. Based on those findings, the City implemented a number of race neutral recommendations from the study that summarily and significantly modified the City's Local and Small Local Business Enterprise Program as well as the City's contracting policies and procedures as a whole.

Through a Request for Proposals (RFP), the City now seeks a consultant to conduct an updated Charter Section 808(b) inquiry to determine whether the City is currently actively or passively discriminating against women and minority-owned business enterprises (W/MBE) subsequent to the implementation of the recommendations from the 2010 analysis.

The consultant will be asked to analyze whether current race neutral policies and programs sufficiently remedies the previously identified discrimination and, in the event that the race-neutral strategies were not sufficient, the consultants analysis should include a discussion of race-conscious remedies sufficient to remedy the identified disparities.

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The consultant will need to determine whether patterns and/or practices (if any) of discrimination against non-minority/women-owned business enterprises, MBEs, or WBEs exists. For this, the consultant must analyze: (a) historical context, (b) oral history evidence, and (c) anecdotal data.

Section 808(b) must be considered in conjunction with federal and state equal opportunity and non-discrimination laws. For example, in 1997 California voters approved Proposition 209. This law, now Article I, Section 31 of the state constitution, provides that the City "shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of . . . public contracting." Subdivision (e) provides an exception to the general rule of Article I, Section 31: "Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State."

### **ANALYSIS AND POLICY ALTERNATIVES**

The specific purpose of the study that will be requested through an RFP is to satisfy the requirements of Oakland City Charter, Section 808(b) which states as follows: "Every two years, the City shall conduct a race and gender disparity evaluation to determine if the City has been an active or passive participant in actual, identifiable discrimination within its relevant market place. If such disparity evaluation evidences such discrimination, the City Council, in order to remedy the discrimination, shall establish a narrowly tailored race and/or gender business participation program, as substantiated by the disparity evaluation, for the bidding and awarding of purchases and contracts. Any such program shall continue until the discrimination has been remedied. The City Administrator or an officer authorized by her shall require all awardees and bidders to comply with the established program."

The study will include the following procurement categories:

1. Goods/Commodities (i.e. products, equipment and supplies)
2. Construction Services
3. Professional Services (i.e. technical, architecture, engineering and para-professional)
4. Grants

The study period will include procurement data from the three (3) most recent completed fiscal years: (a) 2012-2013, (b) 2013-2014, and (c) 2014-2015.

The scope will include all purchases made and grants issued by the City including both for-profit and not-for-profit agreements, contracts and grants, and will also include the analysis of data from sub-contractors and sub-consultants.

The consultant will be asked to evaluate the City's purchasing and contracting activities to determine whether or not there is a statistically significant underutilization of Minority and Women Owned Business Enterprises and if so, whether the City has a compelling governmental reason to apply race based remedies to address that underutilization.

Should the consultant find a statistically significant disparity in the number of Minority and Women Owned Business Enterprises (M/WBEs) or awarded purchase agreements and

contracts as compared to the number of ready, willing and able M/WBEs, the consultant will then assess whether evidence other than statistical variations indicate that there are patterns of identified discrimination by the City and the extent to which identified disparities are the result of that discrimination.

If the data and analysis conclude that race based remedies are necessary to remedy identified disparities, the selected firm will be asked to develop a defensible definition of "disadvantaged business" appropriate to the Oakland market. The definition should take into consideration, but need not be limited to the following: ethnicity, gender, location, number of years in business, personal net worth, size in terms of gross receipts and number of employees.

The consultant will also be asked to determine how compliance with Proposition 209, Article I, Section 31 of the state constitution, has affected utilization of MBEs, WBEs.

It is anticipated that the Disparity Study RFP will be released no later than May 31, 2016 with a 30 day release period.

Staff will ensure that all of the City's contracting policies will be adhered to, and that the selected consulting team will be representative of the City's diversity and inclusion of small and small local business enterprises. Once the RFP/RFQ process is completed, staff will review the responses and the City Administrator will return to Council with a recommendation for a consultant (or consultants) for its authorization

### **FISCAL IMPACT**

Funds have already been allocated for this purpose. An appropriation of \$550,000 has been allocated for completion of the study in the General Fund (Fund 1010, Org 02611, Project A468576, and Program IP70).

### **PUBLIC OUTREACH / INTEREST**

It is anticipated that the Disparity Study will generate a great deal of interest in the business community. During the study process, anecdotal data will be collected through public meetings to assist in determining the impact of race and gender based procurement practices on the general public and business owners and operators in particular. That anecdotal data will be used to corroborate the results stemming from the numerical data collected and analyzed as a part of the study.

### **COORDINATION**

The consultant must submit a detailed plan outlining specific community engagement and outreach strategies by district.

The consultant must work closely with the City Administrator or her/his designee and the City's legal counsel in the analysis of data and the summary of findings and recommendations. The

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consultant will be required to: (a) explain study findings and methodology to the City Council and Council committees as requested; (b) testify in any litigation relating to the study or otherwise assist the City Attorney in any litigation related to the consultant's work on the project; and, (c) assist in managing the presentation of public testimony relative to any identified underutilization.

The request for proposals is being reviewed by the Public Works Department, the City Attorney's Office, the Office of Economic Development and Finance and Management.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** The disparity study will result in a more equitable distribution of dollars among local businesses and grantees, which will ultimately strengthen the City's economic base.

**Environmental:** There are no environmental impacts anticipated as a result of this report.


**Social Equity:** The disparity study will inform the policy makers if the City has been an active or passive participant in actual, identifiable discrimination within its relevant market place. If such disparity evaluation evidences such discrimination, the City Council, in order to remedy the discrimination, shall establish a narrowly tailored race and/or gender business participation program.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the Council accept this informational report on the status of the Disparity Study.

For questions regarding this report, please contact Deborah Barnes, Director, at (510) 238-6270.

Respectfully submitted,

  
Deborah Lusk-Barnes  
Director, Contracts and Compliance

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