

**LEGISLATIVE REFERENCE BUREAU FISCAL ANALYSIS**

**FINANCE & PERSONNEL COMMITTEE**

**ITEM 12, FILE #081438**

**MARCH 20, 2009**

**AMY E. HEFTER**

File Number 081438 is a resolution relating to the acceptance of funding from the Milwaukee Metropolitan Sewerage District (MMSD) to proceed with conducting a disparity study.

**Background**

1. On January 23, 1989, the Supreme Court of the United States decided the case of CITY OF RICHMOND vs. J.A. CROSON COMPANY. As a result, on November 10, 1989, the Mayor and Common Council of the City of Milwaukee repealed and recreated Chapter 360 of the Milwaukee Code of Ordinances and the Equal Opportunities Disadvantaged Business Enterprise Program.
2. Within the ordinance, there was a provision directing the City to initiate a study to compile, analyze and review statistical and anecdotal information to determine in part, if past and/or current race and gender discrimination by the City limits the ability of minorities and women to effectively compete for City contracting opportunities and to what extent. The purpose of the study was to assist the City in determining whether the City of Milwaukee would be justified implementing a Minority and Women Business Enterprise program relative to City contracting and procurement opportunities.
3. After the study was completed in April 1992, City officials determined that a race and gender neutral program would be in the best interests of the City at that time. In accordance with Chapter 360, the City's Emerging Business Enterprise Program (EBEP) certifies qualified firms, works closely with each of the City's contracting departments to ensure that the opportunities in commodity procurement, development, construction, service orders and professional services are available to emerging businesses, and monitors all contracts with EBE participation for compliance. The pool of EBE vendors is limited (370 vendors as of April 25, 2008) and in many areas of the goods and services procured by the City, there are few, if any certified vendors.
4. In 2007, a study was done to determine the effectiveness of the City of Milwaukee's Emerging Business Enterprise Program. The report was issued in August of 2007 and the consultant chosen to conduct the study found an underutilization of emerging business enterprises in certain types of contracts, particularly an underutilization of African American emerging business enterprises on the City's construction and goods and other services contracts when compared to the availability of the businesses in the City's market area. One of the recommendations of the study was that a disparity study should be commissioned to conduct a statistical analysis of disparity and to determine if race-conscious remedies may be legally instituted.

**Discussion**

1. The City of Milwaukee and MMSD have issued this RFP collaboratively in that the findings from the study will be of mutual benefit to both entities.
2. In Phase I of the study the consultant will determine if a statistically significant disparity exists between the number of minority-owned and women-owned business enterprises that are ready, willing, and able to provide goods and services to the City and MMSD and

the number of minority-owned and women-owned businesses that were actually providing goods and services to the City and MMSD for the fiscal years 2005, 2006 and 2007. If the analysis reveals an under-utilization of minority-owned and women-owned businesses by the City and MMSD, the City and MMSD may authorize the consultant to proceed with Phase II.

3. Phase II will consist of researching and analyzing the reasons for such under-utilization, and based on the results of that research, making specific recommendations to the City and MMSD for eliminating the disparity, including evaluating the current EBE program in effect in the City. The consultant will also provide recommendations specific to the MMSD's existing Small, Women, Minority Business Enterprise Program.
4. If the work of Phase I reveals no statistically significant disparity, the consultant shall still recommend activities specific to the City and MMSD to improve or modify its procurement processes to the extent necessary to ensure that all minority and women-owned businesses have a fair and adequate opportunity to participate in the City's procurement processes. Additionally, the Contractor shall recommend activities to address the challenges of capacity building and growing more minority owned businesses.
5. The RFP is currently under evaluation. Proposals were received from the following firms:
  - Anderson and Associates, P.A.
  - D. Wilson Consulting Group, LLC
  - Mason Tillman Associates
  - Miller 3 Consulting, Inc.
  - Sponsored Projects Administration, University of Minnesota

**Fiscal Impact**

1. This resolution will allow the City to enter into an Intergovernmental Cooperation Agreement for the acceptance of funding, in the amount of \$99,000, from MMSD to proceed with conducting a disparity study.
2. MMSD shall not be responsible for any increase in the contract amount payable to the consultant, except as it may result from a change in the scope of services that is requested by MMSD.

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