



Office of the City Manager

INFORMATION CALENDAR  
January 22, 2013

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Robert Hicks, Director, Finance  
Subject: Availability Study to Allow Affirmative Action in City Contracting

INTRODUCTION

This report is in response to City Council’s request that the City Manager consider an Availability study to analyze the City’s use of local, small emerging, minority and women business enterprises on City construction, architecture and engineering, professional services, and goods and other service contracts. The purpose of the study is to determine if disparities in the awarding of City contracts exist among the above identified classes. The City of Berkeley and its residents have a longstanding commitment to diversity and to advancing the development of local businesses. Part of this commitment is to ensure that contracting opportunities are accessible to the entire Berkeley business community. The request from Councilmember Worthington and Anderson is to get a rough estimate of what the cost of an Availability study would be to the City of Berkeley.

BACKGROUND

At the May 1, 2012 Council meeting, Councilmember Kriss Worthington and Councilmember Max Anderson introduced item number 29 on the Council Consent Calendar regarding what the cost would be to contract with a firm to do an Availability study that examines the City’s procurement activities and identifies any disparities in the awarding of contracts that affect local, small emerging, minority and women business enterprises, given the availability of willing and able businesses.

The General Services Division of the Finance Department gathered information from the City of Oakland, and Alameda County regarding the process utilized by each of these entities to procure such a study.

**BACKGROUND FOR THE CITY OF OAKLAND**

The Oakland City Charter states that the City will conduct two racial and gender disparity studies.

Article VII, Section 808(B), of the City Charter entitled “Bids and Awards” provides that the City shall “conduct a race and gender disparity evaluation” (commonly referred to as a “Croson study”) to determine whether the City has played “an

active or passive” role in “actual, identifiable discrimination within its relevant market place” in regards to contracting; and Article IX, Section 900 (b) of the Oakland City Charter provides that the City shall “study its workforce in comparison to the relevant labor pool to determine if there are manifest racial or gender imbalances in traditionally segregated job classifications.”

On February 22, 2005, City of Oakland council passed Resolution 79108 C.M.S. that was introduced by President Ignacio De La Fuente. The resolution directed the City Administrator to conduct an RFP or RFQ process to identify an independent consultant of national reputation to conduct either a single study covering both of the above issues or two separate studies. After the RFP/RFQ process and before hiring a consultant(s) the City Administrator was to return to Council to get authorization to hire the City Administrator’s recommended consultant(s), and authorize the funds that would be required to complete the study or studies.

On March 24, 2005, a request for proposal was prepared and mailed to forty-nine (49) firms across the country. Four firms submitted proposals. The consultants were interviewed and evaluated by a panel of five representatives, who ranked Mason Tillman & Associates as the number one choice.

On July 19, 2005, the City Council passed Resolution number 79385, which authorized the City Administrator to negotiate and execute a contract with Mason Tillman Associates LTD, in the amount not to exceed \$489,620 to complete the Fairness in Contracting and Procurement Study (Disparity Study) for the City of Oakland and Oakland Redevelopment Agency. The Resolution also made it clear that the City of Oakland would provide sufficient information to the selected consultant(s) to complete the evaluation and study in an expedited manner.

The initial findings of the Disparity Study by Mason Tillman and Associates warranted the need to conduct additional public hearings that were not in the original Scope of Work. At the February 16, 2010 Council meeting, a Resolution was introduced to amend Resolution 79385 to increase the contract by \$14,125 so that the additional needed series of public hearings could be held in each council district. The hearings were conducted in order to improve outreach that will encompass a more ethnically balanced interview pool. At this meeting Resolution number 82525 was passed amending Resolution number 79385 to increase the contract to cover the additional public hearing services by \$14,125 from \$489,620, to a new Not to exceed (NTE) of \$503,745.

The total cost of the study was \$503,745.

<http://cces.oaklandnet.com/ContComp/Pdf/CityofOaklandExecutiveSummaryMay20075-11-07.pdf>

<http://cces.oaklandnet.com/ContComp/Pdf/CityofOaklandVolume1MasterReportMay20075-11-07.pdf>

### **BACKGROUND FOR ALAMEDA COUNTY**

Before 2002, the County of Alameda implemented several programs to advance the economic growth and development of local businesses: The Minority and Women Business Enterprise (M/WBE) Construction Outreach Program, the Disadvantage Business Enterprise (DBE) program, required of US Department of Transportation (USDOT) fund recipients and the race and gender neutral Small Local Emerging Business (SLEB) Program for all industries.

In 2002, the County had an interest in determining the impact of these programs on the local business community. To that end, in July 2002, Mason Tillman was awarded a contract to conduct an Availability Study for Alameda County.

The purpose of the Availability Study was to examine the County's procurement activities to ensure that contracting opportunities were accessible to the entire local business community. Included in the Study were the County's construction, architecture and engineering, professional services and goods and other service contracts issued during the July 1, 2000 to June 30, 2003 study period. Contracts were analyzed at the following thresholds: Contracts under \$500,000, \$25,001 to \$100,000 and \$25,000 and under. The draft Availability study was submitted to the County on August 24, 2004.

- In October of 2004, the Board of Supervisors received the study.

<http://www.acgov.org/government/documents/availabilitystudy.pdf>

- The study was referred to "Procurement and Contracting Policy Committee (PCPC)
- In January 2005, Executive Steering Group begins review of the report
- In December 2005, Executive Steering Group submits draft report to the Procurement and Contracting Policy Committee (PCPC).
- In January 2006, Procurement and Contracting Policy Committee (PCPC) submits draft report to Community Advisory Group (CAG)

The total cost for the study was \$400,000.

### **FINANCIAL IMPACTS**

General Services asked for an informal rough estimate from Mason Tillman and Associates, the vendor that conducted the studies for both City of Oakland and Alameda County. They informed City staff that the cost of a disparity study would be between \$150,000 and \$200,000, depending on the availability of electronic Prime Contract records and subcontract records for the last three years and whether

information from such records can be reduced to an electronic format that allows Mason Tillman to access the information.

POSSIBLE FUTURE ACTION

The only program the City currently has is the Local Vendor Preference program. This is a program which the City extends a 5% preference on bids to local business enterprises for supplies, equipments and professional services from \$100 to \$25,000. If the City is interested in determining the utilization of other vendors such as minority and women owned enterprises, a vendor must be retained to perform an Availability/disparity survey.

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