

City of Delray Requirements and Scope of Work Tasks	Sub- or Other Tasks	M <sup>3</sup> Consulting Tasks / Deliverables
<b>4.2 PRE-DISPARITY STUDY ANALYSIS</b>		
<p>i. Conduct a detailed legal review and analysis of the relevant case law applicable to race- conscious programming. Conduct a detailed review of the City's legal background/climate for M/WBE and small and local businesses programs.</p>	<p><b>4.5</b> The Disparity Study and any recommended remedial programs shall follow legal standards set forth in the following federal court decisions: City of Richmond v. J.A. Croson Co., 488 U.S. 469, (1989); Adarand Constructors. Inc, v Pena, 515 U.S. 200 (1995); Engineering Contractors Association of South Florida. Inc. et al v. Metropolitan Dade County, et al., 122 F.3d 895 (11th Cir.1997); and Florida A.G.C. Council, Inc v. Florida, 303 F.Supp2d 1307 (N.D. Fla 2004). These legal standards are summarized as follows:  *Strict Scrutiny of Preferences Based on Race or Ethnicity  *Intermediate Scrutiny of Preference Based on Gender  <b>4.7.iv.</b> Analyze any available judicial or administrative public hearing transcripts, summaries, or findings as to allegations of commercial discrimination made against contractors, subcontractors, vendors, proposers, and local government agencies.</p>	Task 1: Legal Analysis
<p>ii. Determine the City's appropriate geographic market.</p>		Task 4. Relevant Market
<p>iii. Determine the City's product market or those industries within the major procurement categories (construction, construction-related professional services, other professional and general services, and commodities) that are most indicative of work performed on City contracts.</p>		Task 4. Relevant Market
<p>iv. Determine the Minority Business Availability (classified by industry, race, ethnicity and sex) in the City's geographic and product markets.</p>		Task 5. Availability
<p>v. Determine the City's Small and Minority Business Utilization (classified by industry, race, ethnicity and sex) in the City's geographic and product markets. The Proposer shall consider total awards and total payments.</p>		Task 6. Utilization

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vi. Conduct a detailed, in-depth review of the City's purchasing and contracting policies and procedures found in the City Code.		Task 2. Procurement & M/WBE Culture & Systems Analysis
vii. Establish data parameters for information relative to the report.		Task 3. Data Collection
viii. Conduct a detailed analysis of the City's data and record keeping process, including the collection and retention of all relevant data.	<p><b>4.7.i.</b> Interview City staff for budget, construction, architecture, information technology, engineering, accounting, finance, public works, utilities, parks and recreation, City Manager's office, purchasing, police, fire, and others as requested by the City regarding the types of contracts and market areas covered by formal solicitations and quotes, advertising, and electronic mailing.</p> <p><b>4.7.ii.</b> Interview the City's Purchasing Department Director and staff, and review the records of the City for information regarding the number and identity of M/WBEs.</p>	Task 3. Data Collection
ix. Identify and evaluate the race and gender-neutral alternatives available to the City, and providing recommendations based on this review.		Task 2. Procurement & M/WBE Culture & Systems Analysis
x. Develop recommendations and an implementation plan for any recommendations based on the findings discovered during the Pre-Disparity Study analysis.		Recommendations
xi. Attend meetings with the City Manager and appropriate City staff to discuss the Final Pre- Disparity Study Report.		Project Management
xii. Present findings to the City Manager, Purchasing Director, and the City Commission and cooperate with the City in scheduling and facilitating dissemination of the Pre-Disparity Study results to the City and public.		Findings and Recommendations Interim Reports
<b>4.3 COMPREHENSIVE DISPARITY STUDY ANALYSIS</b>		
A. Review of City purchasing policies, gathering of documentation, and analysis of data for the identification of potential statistically significant disparities in the utilization of M/WBE classifications.	<b>4.6</b> For this RFP, the Disparity Model should be based upon the existing federal case law on the use of racial and gender preferences in the awarding of governmental contracts, including but not limited to the following court opinions: Engineering Contractors Association of South Florida, Inc. et al v. Metropolitan Dade County, et al., 122 F.3d 895 (11th Cir.1997); and Hershell Gill	7. Disparity Analysis & Statistical Significance

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	<p>Consulting Engineers, Inc. v. Miami-Dade County, Fla., 333 F. Supp. 2d 1305, 1326-29 (S.D. Fla. 2004).</p> <p>Additionally, the Successful Proposers shall adhere to the following standards:</p> <ul style="list-style-type: none"> <li>i. A statistical comparison shall be made by category by year of (i) Percentage of qualified available prospective bidders that were M/WBE firms; (ii) the percentage of Proposers that were M/WBE firms, and (iii) the proportion of contract dollars that were awarded to M/WBE firms.</li> <li>ii. The Successful Proposer shall determine when any statistical disparity is deemed "significant".</li> </ul>	
<p>B. In the event that one or more statistically significant disparities are identified in the utilization of M/WBE firms, the Successful Proposer may complete and deliver the following disparity analysis tasks:</p>		
<p>B.i. Collect, summarize, and evaluate anecdotal or qualitative evidence to determine the extent to which any identified disparity has likely been caused, in part by various forms of unlawful race or gender discrimination. Also identify with particularity and summarize any qualitative evidence that reflects barriers, other than race and/or gender, which may be adversely affecting the participation of M/WBE firms in City contracts.</p>	<p>4.7.v. Summarize anecdotal evidence collected and analyzed in other disparity studies from the relevant geographic market for the City.</p>	<p>9. Anecdotal &amp; Survey Analysis</p>
<p>B.ii. Determine whether identified discrimination in the relevant marketplace has had an adverse effect on the ability of M/WBE owned businesses to compete successfully in the City's contracting and procurement process. Include in the analysis whether the City would likely become a "passive participant" in private sector discrimination.</p>		<p>10. Marketplace Analysis</p>
<p>B.iii. Based upon survey responses and/or other data sources, perform regression analyses to determine the extent to which identified disparities in M/WBE participation may be attributable to various factors such as race, gender, ethnicity or other factors that may appear to be neutral, such as length of time in business, home ownership, and marital status.</p>	<p>4.7.iii. Design and administer a survey of contractors, subcontractors, vendors, and Proposers (by ethnic group and gender) as to the type of work, capacity and utilization on various types of contracts, reasons for levels of utilization, identification of any instances of discrimination (past or present), and effects and</p>	<p>8. Capacity Analysis</p>

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	sources of past or present discrimination, and interest in bidding (or submitting proposals) on the City's solicitations/contracts.	
B.iv. If discrimination is identified, determine to what extent each respective category of M/WBE firms have been subject to discrimination in the award of City contracts. Include the extent to which the effects of such marketplace discrimination can be fully addressed through race and gender- neutral means, and alternatively whether narrowly tailored, race and gender-specific remedies would be necessary and effective to fully address significant disparities.		10. Marketplace Analysis 11. Analysis of Race/Gender-Neutral Initiatives
B.v. Identify what level of M/WBE availability and contract participation would otherwise be achieved by the City in the absence of the effects of discrimination.		Task 10. Marketplace Analysis
C. Based upon the findings obtained in the completion of previous tasks, the City anticipates that the Successful Proposer may complete and deliver the following remedy analysis tasks:		
C.i. Identify and evaluate the effectiveness of any alternative race- and gender-neutral policies and initiatives that have been used by the City, or by other governments, within its relevant geographic market, in eliminating the effects of discrimination and/or increasing M/WBE participation in public contracting. Make recommendations for the adoption of alternative race and gender-neutral program policies and practices that may effectively address each identified barrier to M/WBE formation, growth, availability, and contract participation.		Task 11. Analysis of Race/Gender-Neutral Initiatives
C.ii. To the extent the Successful Proposer determines that race and gender-neutral remedies alone are unlikely to fully eliminate the ongoing effects of marketplace discrimination in City contract awards and subcontracts, draft policy recommendations that are appropriately and narrowly tailored to address disparity study findings.		Task 12. Recommendations
C.iii. If the Successful Proposer identifies statistically significant underutilization of M/WBEs, and determines that such underutilization resulted, in part, from discrimination, the Successful Proposer will		Task 12. Recommendations

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recommend remedial programs to address the effects of any such identified discrimination and to discourage its reoccurrence. In recommending remedial programs, the Successful Proposer will assess the extent to which the effects of discrimination can be addressed through race and gender-neutral means.		
<b>4.4 PROGRESS REPORTS</b>		
i. Monthly Progress Report	<b>4.7.vii.</b> Coordinate all efforts, including meeting logistics, identify a Project team that includes a Project Manager, who will be the point of contact between Proposer and the City's representative. The Project Manager shall be available to the City for updates and reviews on Project progress.	Project Management
ii. Interim Reports	<b>4.7.viii.</b> Be available to make periodic presentations to the Purchasing Director and/or the City Manager, or designee, to explain study methods, results, and reports; and	Interim Reports—Pre-Disparity Study
iii. Final Written Report – Draft		Task 13. Final Report—Comprehensive Disparity
iii. Final Written Report - Final	<b>4.7.vi.</b> Assist City staff in the preparation of testimony, presentation of Disparity Study findings, and recommendations to the City Commission. a. Present all finding and recommendations to the City Commission. b. Provide sample ordinances/policies to the City Purchasing Department for consideration of implementation as deemed appropriate.	Task 13. Final Report—Comprehensive Disparity
iv. Computer Databases		Task 13. Final Report—Comprehensive Disparity
<b>4.8 LITIGATION</b>		
In the event the City's M/WBE Program is challenged, the Proposer may be required to testify on all aspects of the pre-disparity study and comprehensive disparity study report.		Task 14: Post-Study