

RESOLUTION NO. 30643

A RESOLUTION TO ACCEPT THE CITY OF CHATTANOOGA 2019 DISPARITY REPORT IN ITS FINAL FORM AND TO AUTHORIZE THE OFFICE OF MULTICULTURAL AFFAIRS AND THE PURCHASING DIVISION TO WORK WITH OTHER INTERESTED ORGANIZATIONS, STAKEHOLDERS, AND CITY DEPARTMENTS TO EXPAND AND STRENGTHEN THE CITY'S PURCHASING EQUITY PROGRAMS.

Accept City of Chattanooga Disparity Study Report and direct the Office of Multicultural Affairs and the Purchasing Division to take immediate action to enhance the City of Chattanooga's purchasing equity programs and to bring forward recommendations to the Chattanooga City Council to further expand and strengthen the purchasing programs to fully utilize all minority and women owned firms available for bidding on municipal contracts for the City.

WHEREAS, the City of Chattanooga (City) is committed to equal opportunity through policies that promote diversity and equity in contracting; and

WHEREAS, as part of the City's commitment to encourage fair and equitable contracting for women and Black and Brown people, the City engaged a nationally recognized consultant firm in 2018 to conduct a disparity study on our current efforts to promote a "level playing field" for minority-and women-owned firms in contracting; and

WHEREAS, in August 2016, a Request for Qualifications for a disparity study was issued and the evaluation committee chose Griffin & Strong P.C. to perform the disparity study for the City; and

WHEREAS, Griffin & Strong P.C. has conducted disparity and availability analyses for state and local governments across the United States and has had the methodology used in this report upheld by the federal courts; and

WHEREAS, the Griffin & Strong study team began the assignment in October 2018 and presented a draft report to the City in September 2019; and

WHEREAS, research was conducted to analyze procurement data to determine the utilization of Minority Business Enterprises (MBE) and Female Business Enterprises (WBEs) (collectively, "MWBE") relative to the availability of such firms to compete for City business in the following five (5) industries: Construction, Architecture and Engineering ("A&E"), Professional Services, Goods, and Other Services contracts, examining a five year contracting period from July 1, 2013 – June 30, 2018; and

WHEREAS, the study team also evaluated the legal framework governing the considerations and related evidentiary requirements for developing and sustaining a legally defensible MBE/WBE program, analyzed marketplace conditions, and explored possible explanations for any disparities; and

WHEREAS, the City conducted extensive outreach to solicit public input via the Internet, letters, email, and meetings, and the final report reflects the public's comments; and

WHEREAS, the report is comprised of three essential, legally significant components: 1) Statistical results of utilization and disparity; 2) The catalogue of anecdotal evidence; and 3) The individual and group representative commentary collected from the public input efforts; and

WHEREAS, the results of the study found statistically significant underutilization of minority and female owned firms as prime contractors in all five (5) work categories that were analyzed, with the results specifically showing that 22% of businesses are minority owned (minorities make up 38% of Chattanooga's population), but according to the City's Disparity Study only 10.78% of total awards were given to Minority and Women owned businesses; and

WHEREAS, courts have indicated that for a race-based or gender-based remedial program to be maintained, there must be a clear evidentiary foundation established for a new program or the continuation of existing programs designed to remedy disparities in the marketplace; and

WHEREAS, the current administration has made attempts to respond to perceived disparities in the Chattanooga marketplace, but the framework for aggressive, race-conscious remedies was unavailable for use by the City without having the factual basis in evidence outlined in the United States Supreme Court case *City of Richmond v. J.A. Croson Co.*¹ and the cases that followed; and

WHEREAS, despite the fact that prior to completion of this Disparity Study, the City of Chattanooga did not have the evidentiary foundation, per *Croson*, required to pursue more aggressive remedial programs, the City took efforts to remedy perceived disparities in its marketplace through the use of race neutral measures and programmatic initiatives, although these policies lacked the means for aggressive enforcement; and

WHEREAS, the Griffin & Strong team presented the data collected from the Disparity Study and their recommendations as a result of that data to City Council in June 2020; and

WHEREAS, from the statistical results, the anecdotal evidence, and public comments the City has legal grounds to continue, enhance, and expand its current equity programs; and

WHEREAS, the study additionally provides direction on issues such as bonding, insurance, prompt payment, prequalification, and other systemic obstacles to the success of minority-and women-owned businesses in Chattanooga; and

¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

WHEREAS, the Tennessee General Assembly recently enacted new legislation that requires all construction service providers doing business in the State of Tennessee to maintain workers' compensation insurance coverage throughout the duration of their work; and

WHEREAS, all construction service providers doing business with the City shall abide by the new legislation and all other applicable state laws related to construction services.

NOW, THEREFORE BE IT RESOLVED, that the City of Chattanooga hereby accepts the City of Chattanooga 2019 Disparity Study report in its final form attached as **Exhibit A**; and

BE IT FURTHER RESOLVED, as a first step, City Council directs the Office of Multicultural Affairs and the Purchasing Division to take the following immediate actions:

- **Formal (MWOBE) Initiative Legislation**
 - Propose a Council Resolution to acknowledge the findings and recommendations of the Disparity Study.
 - Present a draft implementation plan.
 - Rename the current Supplier Diversity Initiative to Minority and Women Owned Business Enterprises (MWOBE) to become more inclusionary and to give the initiative a more strength based description.

- **Enhance Existing Reciprocal Certification Process**
 - Collect documentation for desk audits & site visits
 - Accept 3rd party certifications such as State of Tenn GoDBE
 - Enhance our existing certification process to encourage MWOBE's participation in the certification process.

- **Enhance Coordinated Vendor Outreach**
 - Targeted outreach for (MWOBE) suppliers in Vendor Registry to register in the new supplier portal.
 - Coordinated outreach events to walk suppliers through the registration process.
 - Ongoing assistance to register products/services in the supplier portal.

- **Contract Forecasting**
 - Separately identify blanket contracts expiring in 6 months and publish on the City's website.
 - Hosting events to let MWOBE know about upcoming opportunities.

- **Prompt Payment Policy Ordinance for Prime Contractor**
 - Include prompt payment language in construction bid documents.
 - Include language to stress the importance of prompt payment in pre-construction meetings.

- **Contract Debundling**
 - This is a longer-term goal that needs to become part of future capital budgets. This would require us to develop project specifications to explore ways to debundle contracts into smaller project scopes.

- **Subcontractor Utilization Tracking**
 - The City currently does not track subcontractor utilization in any form, however there has now been a demonstration of an add-on to the new Oracle system to track. Do not know cost, implementation timeframe and additional staffing needs.

 - This prime contracting information could be tracked as a part of the invoicing process, contract closeout documents or affidavits

- **Subcontracting Goals**
 - This recommendation would include a phased approach over the next three (3) years to develop a robust race, gender and ethnicity-based subcontractor initiative that included both weighted contract goals and annual aspirational goals in Construction.

BE IT FURTHER RESOLVED, that the City Council hereby directs the Office of Multicultural Affairs and the Purchasing Division to work with other interested organizations, stakeholders, and City Departments to review the guidance provided by the Disparity Study and bring forward recommendations to City Council to expand and strengthen the City's purchasing equity programs through the adoption of a new vendor and procurement implementation plan for the City.

ADOPTED: February 9, 2021

HGB/mem/v4