THE CITY OF ASHEVILLE

Staff Report

Council Meeting Date: September 27, 2022

Subject: Disparity Study Contract -- Miller 3 Consulting, Inc.

Staff Resource(s): Frank McGowan, Interim Assistant Director, Community and Economic Development Department; Nikki Reid, Director, Community and Economic Development Department

Action Requested: Adoption of a resolution authorizing the City Manager to execute a contract with Miller 3 Consulting, Inc. for consulting services to complete the City of Asheville's Fiscal Year 2022-23 Disparity Study.

Background:

- A disparity study determines whether a governmental entity is awarding public contracts in a manner that disportionately excludes or limits participation by minority, women-owned, and disadvantaged business enterprises (M/WBEs).
- Such a study compares the utilization of M/WBEs with the availability of M/WBEs in the relevant market area.
- A disparity study is legally required for the City to continue its race and gender conscious Business Inclusion (M/WBE) program.
- Asheville's most recent disparity study was conducted in 2018 covering fiscal years 2012 through 2017, reviewing the City's contractual awards in construction, goods, services, architectural, and engineering services.
- In April 2019, the study was presented to the Asheville City Council and indicated that both women-owned businesses and minority-owned businesses (African American, Hispanic, Asian, and Native American owned businesses) showed substantial disparities on contracts that the City awarded during the study period.
- The 2018 Disparity Study established a strong basis in evidence that supports the use of narrowly tailored race- and gender-conscious procedures to more adequately address the ongoing effects of marketplace discrimination on City contracts.
- The study recommended race- and gender-conscious measures to address identified disparities.
- This Disparity Study provided the strong evidentiary basis needed for the City of Asheville to create a new Business Inclusion Policy which prescribes additional methods by which the City may achieve parity.
- The Asheville City Council adopted the policy on October 27, 2020, with an effective date of January 1, 2021.
- Pursuant to law, a new disparity study must be conducted at least every (5) five years in order to continue any race- and gender-conscious contracting program.
- The sunset provision within the Business Inclusion policy is November 1, 2023, so a new disparity study is needed to evaluate the effectiveness of the City's Business Inclusion Policy and provide the legal justification for continuing the program, if warranted.
- Given this upcoming expiration, the City issued a Request for Proposals on July 14, 2022 for qualified vendors to complete a disparity study in keeping with current case law and appropriate statistical research methodology, utilizing the time frame of July 1, 2017 through June 30, 2022.
- The study will determine the utilization of M/WBEs by the City for the appropriate time frame through a review of all or a statistically significant portion of the City's respective contracts for General Services, Professional Services, Construction and Repair, and procurement of goods.
- The results of the disparity study will provide recommendations for updates of the City's goals, market area and recommendations for changes in the current Business Inclusion Program.
- The RFP review team consisted of representatives from the following departments: Community and Economic Development, Capital Projects, Equity & Inclusion, and IT Services - Office of Data & Performance.

- The selection criteria included: Experience and qualifications of the firm and proposed staff, relevant experience & references, proposed project plan, proposed cost, overall proposal & completeness.
- Interviews with the firms were also conducted by the review team.
- After a thorough review of the submitted proposals, Miller 3 Consulting, Inc. was the top ranked firm of the selection team.

Vendor Outreach Efforts:
- The City utilized standard outreach methods, including posting on the State's Interactive Purchasing System.
- The City received four proposals, three being Minority Business Enterprises.
- The selected firm is a minority-owned business.

Council Goal(s):
- Diverse Community
- Thriving Economy

Committee(s):
- Planning and Economic Development Committee -- Sept. 12, 2022, information only, no vote was taken.

Pro(s):
- Completion of a disparity study is required to maintain compliance with Federal law to continue any race- and gender-conscious contracting program.
- The results and recommendations of the FY23 Disparity Study will inform updates to the Business Inclusion Program to ensure it is compliant with all current legal requirements and best practices.

Con(s):
- None identified

Fiscal Impact:
- Funding for this contract is available in the Community and Economic Development Department operating budget.

Suggested Motion:
- Motion to adopt a resolution authorizing the City Manager to execute a contract with Miller 3 Consulting, Inc. for consulting services to complete the City of Asheville's FY23 Disparity Study in the amount of $287,275.00.

Attachment(s)
- Resolution

RESOLUTION NO. 22-_____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH MILLER 3 CONSULTING, INC. FOR THE COMPLETION OF THE FISCAL YEAR 2022-2023 DISPARITY STUDY.

WHEREAS, the City of Asheville has authority pursuant to Article 3 of Chapter 160A of the North Carolina General Statutes to enter into contracts for services with other entities; and

WHEREAS, Asheville's most recent disparity study was conducted in 2018 covering fiscal years 2012 through 2017, reviewing the City's contractual awards in construction, goods, services, architectural, and engineering services; and

WHEREAS, the 2018 Disparity Study provided the strong evidentiary basis needed for the City of Asheville to create a new Business Inclusion Policy which prescribes additional methods by which the City may achieve parity and the Asheville City Council adopted the Policy on October 27, 2020 via Resolution No. 20-192 , with an effective date of January 1, 2021; and

WHEREAS, pursuant to federal law, a new disparity study must be conducted at least every (5) five years in order to continue any race- and gender-conscious contracting program; and

WHEREAS, the sunset provision within the City's current Business Inclusion Policy is November 1, 2023, and therefore, a new disparity study is needed to evaluate the effectiveness of the City's Business Inclusion Policy and provide the legal justification for continuing the program, if warranted;

WHEREAS, the City issued a Request for Proposals (RFP # 298-DISPARITYSTUDY23) on July 14, 2022 for qualified vendors to complete a disparity study, the results of which will provide recommendations for updates of the City's goals, market area and recommendations for changes in the current Business Inclusion Program; and

WHEREAS, the City received four responses to the RFP and Miller 3 Consulting, Inc. was selected as the most qualified applicant to complete the Disparity Study for the City of Asheville; and

WHEREAS, the total negotiated fee for this contract is $287,275.00, and funding for the project is allocated within the General Fund;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The City Manager is hereby authorized to execute a contract with Miller 3 Consulting, Inc. for consulting services to complete the City of Asheville's FY23 Disparity Study in the amount of $287,275.00.

Read, approved and adopted this the 27th day of September, 2022.

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City Clerk Mayor

Approved as to form:

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City Attorney