

Sample Scope of Work for Legal Services

Submitted by Franklin M. Lee, Esquire
Tydings & Rosenberg LLP

At your direction, we can prepare a proposal to undertake any or all of the following tasks on behalf of the City of Riviera Beach, FL:

I. Race- / Gender-Neutral Policy Development (Phase I)

1. **Centralized Bidder Registration System.** Establish or refine administrative rules to implement a centralized bidder registration process for all bidders and vendors. This centralized bidder registration process would enable the use of targeted electronic outreach and solicitation of bids from firms that express an interest in selling relevant categories of goods and services to the City. (Such an administrative process would also greatly reduce staff hours and expense in complying with reporting requirements for accurate contract award and payment data by industry and by firm name and type. It will also enable the City to accurately measure the success and impact of its various procurement and contracting policies.)
2. **Review of Contracting and Procurement Procedures and Practices.** Applicable provisions of City Procurement Code and contracting administrative procedures will be reviewed for the purpose of identifying elements that may adversely affect the participation of small-, local-, minority-, and women-owned businesses in City contracts. Actual administrative practices will also be reviewed for the same purposes. Modifications to these contracting and procurement procedures and practices will be recommended for the enhancement of opportunities for such firms to effectively compete. Topics for review may include, but not be limited to, the following:
 - Dollar thresholds for bonding;
 - Dollar thresholds for small purchases;
 - Prompt payment and “quick pay” provisions;
 - Use of blanket purchase orders;
 - Use of intergovernmental purchases;
 - Contract bundling and size of contracts;
 - Contract specification language;
 - Timeframes for bidding process;
 - Bid solicitation process;
 - Alternative construction processes (e.g., construction management and multi-prime contracts);
 - E-Commerce as a vehicle for enhancing small-, local-, minority-, and women-owned businesses’ access to City contracts;
 - Centralized Bidders Registration process for all contractors and vendors.
3. **A Commercial Non-discrimination Policy.** Draft a Commercial Nondiscrimination Policy that requires the City not to engage in business with firms that discriminate in the solicitation,

selection, or treatment of subcontractors, vendors, or suppliers. Provide training to staff on the implementation of this policy. Incorporate appropriate nondiscrimination language into boilerplate for bid documents and contracts.

4. **Capital Access Programs.** Develop programs and establish policies designed to enhance small-, local-, minority-, and women-owned businesses' access to equity and debt capital, including, but not limited to:
 - Linked deposit programs to leverage City banking deposits by encouraging its depository banks to establish aggressive commercial lending programs to provide working capital and financing to small-, local-, minority-, and women-owned businesses;
 - Revolving working capital fund for use by the City's small-, local-, minority-, and women-owned businesses on City-funded construction jobs;
 - Social policy and investment criteria for the City's selection of depository banks, investment managers, and other financial institutions.
5. **A Small and/or Local Business Enterprise Program.** Draft an SLBE policy that provides an array of race- and gender-neutral means for enhancing the contract participation by small and/or local business enterprises ("SLBE"), including, but not limited to, a provision for mandatory SLBE subcontracting goals that require the City's prime contractors to subcontract a certain portion of prime contracts to Small Local Business Enterprises ("SLBE") based upon availability of such subcontractors and such subcontract opportunities. This program would also authorize the City to award certain evaluation point credits to SLBE firms that are competing for professional services contracts.
6. **Capacity Development Initiatives.** The Capacity Development Initiatives will seek to develop new capacity and encourage diversification of SBE / MBE / WBE / DBE contractors into construction specialties and trades in which they are under-represented in the industry (e.g., pipe construction and paving). These initiatives may include the use of demonstration projects and a classroom curriculum developed, taught, and demonstrated in the field by established contractors with the participation of aspiring entrants. The curriculum for such initiatives would include technical knowledge and trade know-how, business management techniques, marketing, estimating, bidding, project management, etc.

II. Factual Predicate/ Disparity Study Analysis and Development (Phase II)

7. **Review Current Factual Predicate and Policies.** Conduct an inventory of any existing factual predicate or any available studies or data relating to the Riviera Beach / Palm Beach County relevant marketplace, including current programs and policies aimed at encouraging greater participation of small, minority, women, and / or disadvantaged businesses in City contracts. Summarize and analyze the results of any existing policies and administrative procedures implemented by the City to facilitate

greater participation by small and / or minority, women, and / or local business enterprises.

8. **Advise Regarding Multi-Jurisdictional Disparity Studies.** Provide technical assistance, legal, and practical advice regarding the efficacy of engaging in a multi-jurisdictional disparity study with one or more other jurisdictions. Among factors to be considered are the relevant geographic and product market definitions for goods and services purchased by each respective participant; study cost-sharing, overlapping markets for sources of vendors and contractors, appropriate study time frames, time constraints for completion of disparity study; participation in the selection of a disparity study consultant; responsibility and authority for governance / oversight of the disparity study; and gained efficiencies in study participation (e.g., surveys and interviews). In addition, practical and legal advice will be provided regarding the pros and cons of participating in a multi-jurisdictional disparity study such as elimination of potential conflicts in data and findings.
9. **RFP Scope of Work.** Provide technical assistance and legal advice in the development of a scope of work for a disparity study RFP that is consistent with the standards and methodologies enunciated in the most recent court decisions (including any controlling legal precedents from the 11th Circuit, the 10th Circuit decision in *Concrete Works v. City and County of Denver*, and the 8th Circuit decisions in *Gross Seed* and *Sherbrooke*. This scope of work will address any perceived weaknesses and gaps in data, evidence, and analysis that currently exist in the City's factual predicate for consideration of race- and gender-conscious programs as evaluated against the current legal framework. The scope of work for the draft RFP will also include selection criteria that the City should follow in selecting a study consultant that will best serve its needs in providing a legally defensible product that is also useful in informing the City's policy-making decisions regarding public contracting and procurement.
10. **Selection Process Guidance.** Provide technical assistance and legal advice regarding a timetable, schedule, and process for soliciting proposals from study consultants, fairly ranking proposals submitted by study consultants, and negotiating key contract terms with the selected study consultant.
11. **Proposal Review.** Provide an independent detailed review and critique of proposals submitted by consultants in response to an RFP for the study. (This critique would be advisory only, and would be intended only for demonstration purposes. It would not be counted in the overall scoring of proposals.)
12. **Draft Study Review.** Provide an independent and detailed critical review of the draft disparity study as submitted by the selected study consultant. This review will include an assessment of methodology and data sources as examined against the current legal framework for studies, and the defensibility of findings and various program and policy recommendations. This detailed critique of the draft study will also provide recommendations for improvements and modifications. This review is

intended to help the City ensure that the consultant has performed the scope of work and complied with specifications within the terms of its contract, and that consultant's policy recommendations are adequately supported by underlying evidence and data.

13. **Public Hearing Process.** Establish a process for community forums and public hearings to facilitate community education and input regarding the factual predicate and recommendations for SBE / SLBE / MBE / WBE / DBE policy development. At these forums and public hearings, provide a full presentation outlining relevant findings from the study, pertinent legal issues, and the pros and cons of various policy options.

III. Narrowly Tailored Race- / Gender-Conscious Policy Development

14. **Drafting of MBE/WBE/DBE Programs and Policies.** To the extent supported by the final study findings and evidence, race- and gender-conscious programs and policies will be drafted to remedy the specific barriers and forms of discrimination that cannot likely be overcome through neutral efforts alone. The use of an array of innovative and more traditional approaches for encouraging the formation, growth, and participation of minority- and women-owned businesses will be explored on an industry-specific basis. Such policies will be drafted with the current legal requirements and the past experiences of other jurisdictions firmly in mind.