City of Chicago M/WBE Program

Background on City’s Ordinance

- Adopted in 1990
- Construction portion challenged in BAGC case
  - Ordinance was held to be based on a “compelling interest” but it was no longer “narrowly tailored” in 2004
- Construction Program adopted in 2004; modified and extended in 2009 and 2015
- Current Program sunsets 12/31/2020
Disparity Study Team

- **Colette Holt & Associates**
  - Colette Holt, J.D. - Project Manager
    - Nationally recognized expert, educator and author on D/M/WBE issues
  - Steven Pitts, Ph.D. - Economist and Statistician
    - Nationally recognized expert, educator and author on market issues regarding minorities for over 30 years
  - Joanne Lubart, J.D. - Associate Counsel
    - National expert DBE & M/WBE programs
  - Glenn Sullivan - Director of Technology
    - Extensive experience with CHA data collection and website management
Disparity Study Team

• Ilene Grossman, B.A. - Assistant Project Manager
  ▪ Coordinates all study requirements and oversees CHA day-to-day operations

• Victoria Farrell, M.B.A. - Researcher
  ▪ Coordinates with Project Manager

• Carol Borst - Contract Data Collection Team Manager
  ▪ Coordinates all follow up activities to ensure complete study contract data files

▪ Sandi Llano & Associates (WBE)
  • Specializes in D/M/WBE consulting services to government, small and large firms and nonprofits
M/WBE Program Legal Standards

- Must have a “strong basis in evidence” to use the highly disfavored remedy of race-conscious behavior
  - Strict constitutional scrutiny applies to race-based government decision making
  - Government can use its spending powers to eradicate private discrimination
  - Government must be a “passive participant” in a discriminatory marketplace
  - No need to prove the agency discriminated
  - Motive cannot be politics or racial stereotyping
M/WBE Program Legal Standards

- Program must be narrowly tailored to the evidence in the disparity study
  - “Societal” discrimination is not sufficient
  - All racial and ethnic groups must suffer discrimination in the local marketplace (“social disadvantage”)
  - Owner must suffer “economic disadvantage” (personal net worth test)
  - Firms must be “small”
  - Remedies must be flexible; no quotas or setasides
  - Race-neutral measures must be seriously considered
  - There must be a sunset provision requiring periodic program review
Disparity Study Objectives

- Comply with constitutional mandate to regularly review evidence supporting race- and gender-based programs
- Provide a defense if the program is challenged
- Develop accurate data for annual and contract goal setting
- Gather feedback for program improvements
- Educate elected officials, City staff, assist agencies, and business owners on these issues
Disparity Study Elements

- Legal Review
  - Overview of *Croson* standards
  - Current cases
- City’s utilization of M/WBEs as a percentage of all dollars
  - Geographic market
  - Industry market
  - Study period is FY 2015 to FY 2019
Disparity Study Elements

• Step 1: Gather City’s prime contracts to create Initial Contact Data File

• Step 2: Gather any additional data for contracts in the Sample Contract Data File

• Step 3: Contact primes for missing subcontractor data
  - Collect at least 80% of the contract dollars
  - Assign missing race and gender ownership status
  - Assign missing NAICS codes
Disparity Study Elements

- Step 4: Determine geographic and product markets
  - Determine the unconstrained product market
  - Analyze data for primes, subs and primes and subs combined
  - Determine the geographic market for at least 75% of the contracts
  - Determine product market constrained by geographic market to create Final Contract Data Utilization File
  - Determine detailed utilization by race, gender and 6-digit NAICS codes
Disparity Study Elements

- Availability of M/WBEs in the City’s markets
  - Create Master List of M/WBEs from multiple entities
  - Develop list from the contract Data File and other City lists
  - Obtain Hoovers/Dun & Bradstreet for initial business universe
  - Assign missing race and gender status and NAICS codes
  - Estimate detailed, unweighted and weighted availability combined and disaggregated by race, gender and industry codes
Disparity Study Elements

- Disparity analysis
  - Disparity ratio = M/WBE utilization ÷ weighted availability
    - 80% or less is substantive, supporting the inference of discrimination
    - Confidence intervals for statistical significance
  - Calculate disparity indices for:
    - All race and sex groups and all industry groups combined and race and sex disaggregated
    - To the extent data are available, calculate disparity indices separately for contracts with and without goals
Disparity Study Elements

- Economy-wide disparity analyses
  - Compare M/WBEs’ revenues to non-M/WBEs’ using the Census Bureau’s Survey of Business Owners
  - Compare M/WBEs’ formation rates and business earnings to non-M/WBEs’ using the Census Bureau’s American Community Survey
  - Critical for evaluation of effectiveness of race- and gender-neutral measures
Disparity Study Elements

- Anecdotal data collection and analysis
  - Stakeholder Sessions
  - Small group business owner interviews
    - M/WBEs and non-M/WBEs
    - Group firms into construction and construction related services
    - Explore
      - Barriers to M/WBEs’ success in the Chicago area markets
      - Experiences with discrimination
      - Ability to access City prime and subcontracts
      - Possible supportive services or other race- and gender-neutral measures
  - City of Chicago staff interviews
Disparity Study Elements

- **Program Review**
  - Review policy/program documents
  - Solicit stakeholders’, business owners’ and City staff’s suggestions
  - Topics will include:
    - Barriers to City contracting and subcontracting
    - Outreach to M/WBEs and small firms
    - Program elements
    - Contract data collection processes
Disparity Study Elements

- **Recommendations**
  - Race- and gender-neutral measures to reduce barriers and increase opportunities
  - Potential narrowly tailored race- and gender-conscious remedies
    - Program eligibility
    - Annual M/WBE goals
    - Contract goal setting methodology
    - Bid/proposal evaluation
    - Monitoring and data collection
Study Participation Information

- Stakeholder Interviews in April 2020
- Business Owner Interviews June 2020
- Study completion December 2020
- Study information
  - http://chicago.disparity-study.com
  - chicago-study@mwbelaw.com
  - 855-692-3529 (855-MWBELAW)