



## STATE OF NEW JERSEY

### DIVISION OF PURCHASE AND PROPERTY REQUEST FOR INFORMATION DISPARITY STUDY

#### PURPOSE

The purpose of this Request for Information (RFI) is to solicit potential options, approaches and strategies for conducting comprehensive disparity studies of two distinct elements of State contracting. (1) the level of use of minority and women-owned contractors and subcontractors by the State of New Jersey for (a) construction and construction-related services; and for (b) goods and services, including professional services contracts (Contractor Study); and (2) the level of employment of qualified women and minorities by State contractors and vendors (Contractor Employment Study) who receive State construction, construction-related, and goods and services, including professional services, contracts.

#### INTRODUCTION

The New Jersey Department of the Treasury, Division of Purchase and Property (the "Division"), on behalf of the State of New Jersey ("State"), is issuing this Request for Information ("RFI") to identify options available to the State in connection with its anticipated procurement of consulting services to conduct a comprehensive disparity study regarding both the State's use of minority and women-owned businesses as contractors and subcontractors for construction and procurement and the employment of women and minorities by State contractors and vendors.

In 2005 two different disparity studies concerning the level of use of minority and women-owned businesses in State contracting were completed and published by the State, specifically the "Construction Services Disparity Study: 2000-2002" (Construction Disparity Study) and the "Disparity Study of Procurement in Professional Services, Other Services, and Good and Commodities" (Procurement Disparity Study)." Both analyzed data from 2000-2002. The Construction Disparity Study is available online at [www.state.nj.us/state/disparity/pdf/csdsfr.pdf](http://www.state.nj.us/state/disparity/pdf/csdsfr.pdf) and the Procurement Disparity Study is available online at [www.state.nj.us/state/disparity/pdf/FR%20-2343.pdf](http://www.state.nj.us/state/disparity/pdf/FR%20-2343.pdf).

On September 15, 2006, Governor Jon S. Corzine issued Executive Order 34 to promote purchasing and procurement processes that were more inclusive of minority and women owned businesses. The Executive Order, among other things, created the Division of Minority and Women Business Development within the Office of Economic Growth ("DMWBD"), and directed DMWBD to track, monitor and report levels of the use of minority and women owned businesses to satisfy the State's construction and procurement needs by each State department, agency, authority, college, and university; develop utilization goals; and create and maintain an electronic supplier database of minority and women-owned businesses for the purpose of expanding business opportunities for minority and women-owned businesses in New Jersey

On August 28, 2009, the Governor issued Executive Order 151, which "re-affirms the State's commitment, expressed in statute and regulation, that every public contract, whether for construction services, goods, or other services, shall provide equal employment opportunity for women and

minorities,” and specifically strengthening the performance accountability of State agencies, authorities, commissions, colleges and universities, as it relates to business development, procurement and employment with minorities and women. Executive Order 151 also reaffirmed promoting purchasing and procurement processes that appropriately include minority and women owned businesses.

Presently, the State sets goals for contractors for the employment of qualified women and minorities based on information about the number of qualified minorities and women available by county, in occupational classes as reported by the New Jersey Department of Labor and Workforce Development, Division of Planning and Research in its report, EEO Tabulation-Detailed Occupations by Race/Hispanic Group.

Executive Order 34 is available online at [www.state.nj.us/infobank/circular/eojsc34.htm](http://www.state.nj.us/infobank/circular/eojsc34.htm) and Executive Order 151 is available online at [www.state.nj.us/infobank/circular/eojsc151.htm](http://www.state.nj.us/infobank/circular/eojsc151.htm).

Please note that this is an RFI, not a Request for Proposal (“RFP”). Responses to this RFI will not lead directly to a contractual relationship between a vendor or vendors and the State of New Jersey. It is anticipated that information received in response to this RFI will be used to develop appropriate documentation (such as an RFQ or RFP) in support of a future procurement or procurements. While it is anticipated that many of the respondents to this RFI will be vendors, the State solicits information from any interested party on the topics described herein.

All information submitted by respondents to this RFI shall be considered public information.

#### **GENERAL REQUIREMENTS**

The State of New Jersey anticipates conducting a new disparity stud(y/ies) in order to appropriately fashion race- and/or gender-conscious goals and methods of achieving those goals for State contracts and employment by State contractors, consistent with prevailing law, including the legal doctrines set forth in City of Richmond v. J. A. Croson Co., 488 U.S. 469 (1989).

The purpose of the Contractor Study is to comprehensively determine whether there is a disparity between the number of qualified minority and women-owned businesses ready, willing and able to perform the services, and the number of contractors/vendors actually engaged as contractors or subcontractors to perform such services. The Contractor Study may include contracts for construction, goods and services, or professional services<sup>1</sup> or some combination thereof.

The purpose of the Contractor Employment Study is to comprehensively determine whether there is a way to supplement the existing data with further information about whether there is a disparity between the number of qualified minorities and women ready, willing and able to perform services for those contracted by the State, and the number of qualified minorities and women actually employed to perform such services for state vendors and contractors. The Contractor Employment Study may include contracts for construction, goods and services, or professional services or some combination thereof.

The State will use the completed Disparity Studies to determine whether, to what extent and how vendor contracts for the studied contract categories by contracting agencies and entities within the State of New

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<sup>1</sup> “Professional services” refers to services performed by a person authorized by law to practice a recognized profession, the practice of which is regulated by law, or the performance of the services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services include those services rendered in the provision of goods or performance of services that are original and creative in character in a recognized field of artistic endeavor as well as extraordinary, unspecifiable services if, after evaluation and assessment, the services cannot reasonably be described by written specifications. See N.J.S.A. 52:34-10.8

Jersey should be subject to race- and/or gender-conscious goals and if so, the appropriate methods of achieving those goals for programs consistent with prevailing law.

The State has not yet determined the full breadth of the disparity analysis or analyses it will conduct. The State therefore would like to gather information to inform the development of a Request for Proposals for a new comprehensive disparity study or studies for the State of New Jersey. It also seeks information regarding available specialists (referred to herein as “vendors” or “consultants”) to conduct such a study. The State is interested in receiving information about conducting studies on disparity in any one or all of three areas: (1) the procurement of (a) construction and construction-related services, (b) the procurement of goods and services, including professional services, and (2) employment of women and minorities by those who contract with the State. The State also welcomes information from interested parties that identify qualified vendors who can conduct the analysis for any or all of the areas under consideration.

### *Particular Areas of Interest*

The State is interested in receiving information that it can utilize to ultimately decide how best to approach the procurement for and conduct of the above-referenced areas of study.

The State must decide whether to conduct a single or separate disparity studies for vendors of (1) goods and services, including professional services or (2) construction and construction-related services. If the State decides to conduct the studies separately, the State will need to determine whether to conduct them simultaneously or sequentially. Additionally, the State must determine whether to conduct a disparity study on the employment of women and minorities by State contractors.

Consequently, the State invites information from the vendor community and other interested parties as to whether to conduct all the studies identified above, or any combination thereof, including prioritization recommendations based on strategic considerations and potential impact on the State’s economy.

The State is interested in potential options and strategies in all or some of the following areas:

1. Disparity in the use of minority and women owned businesses as contractors or subcontractors for (a) construction and construction-related services and (b) procurement in goods and services, including professional services.
2. Disparity in the employment of qualified women and minorities by State contractors who receive (a) construction and construction-related contracts, and (b) goods and services, including professional services, contracts.

The State welcomes information from vendors and other interested parties on any of the areas listed above, or any combination thereof. Throughout this RFI there will be references to both “study” or “studies” and the State welcomes information from vendors interested in either performing a single study, or any combination thereof; the State has not made a determination as to which study or studies it will conduct and welcomes all responses to this RFI.

The State’s past disparity studies included an analysis of ethnic groups, a market area analysis, a business demographics analysis, a market dynamics analysis, a utilization analysis, a statistical disparity analysis, and an anecdotal analysis. The State welcomes information about whether a future disparity study should include all of these elements, be similarly structured and weighted, and what modifications to the past methodologies might be appropriate.

In 2006, the United States Commission on Civil Rights issued a report, “Disparity Studies as Evidence of Discrimination in Federal Contracting,” which is available online at [www.usccr.gov/pubs/DisparityStudies5-2006.pdf](http://www.usccr.gov/pubs/DisparityStudies5-2006.pdf). This report (pp. 76-79) included two findings and sixteen recommendations with regard to states and localities conducting disparity studies. The State is interested in learning how these findings and recommendations should bear upon the structure and design

of a future disparity study by the State. The State is also interested in learning whether subsequent developments in the fields of such study or the law suggest different or additional elements or approaches to a future disparity study. Further, the State is keenly interested in information about whether, and in what manner, an anecdotal analysis should be part of a disparity study.

### *Available Data to Conduct Studies*

As to the Contractor Study, because of Executive Order 34, the State anticipates that it will have available data from each State department, agency, authority, college, and university relating to their respective purchasing and procurement activities, for at least the three most recent State fiscal years (July 1, 2007 to June 30, 2008, (FY2008), July 1, 2008 to June 30, 2009 (FY2009) and July 1, 2009 to June 30, 2010, (FY 2010)). The State also has the data used to conduct the 2005 Disparity Studies. Other data before FY2008 may be available but likely will not be aggregated. The Division welcomes information on what additional data collection, if any, would be required to conduct a comprehensive disparity study.

As to the Contractor Employment Study, the State has the New Jersey Department of Labor and Workforce Development, Division of Planning and Research's reports (EEO Tabulation-Detailed Occupations by Race/Hispanic Group or predecessor reports) and workforce data from contractors and vendors which details the work hours and numbers of non-minorities, minorities and women employed on public contracts dating back to the 1980s.

### *Summary of Areas of Interest*

In sum, for each possible study (Contractor Study and Contractor Employment Study), the State is interested in receiving recommendations and the considerations therefore as to:

- Whether to conduct separate studies as to construction contracts, goods and services contracts including professional services contracts;
  - If such studies are recommended to be conducted separately, the sequencing of the studies;
- the appropriate time-frame to be studied and considerations therefore;
- the specific data needed by vendors to conduct such disparity studies;
- the specific methodologies to be used to conduct the disparity analysis that are both consistent (a) with the good practice or the state of the art in the relevant fields, and (b) the relevant legal decisions and current case law, including:
  - an effective "availability analysis" that will be necessary to study the number of qualified, willing and able minority and women contractors and professional service vendors, or qualified employees;
  - analysis of ethnic groups;
  - market area analysis;
  - business demographics analysis;
  - market dynamics analysis, a utilization analysis;
  - statistical disparity analysis; and
  - anecdotal analysis.
- How the specific methodologies should (or should not) be used together, including structure, sequencing and weighting of each to produce a reliable study;
- Any other factor bearing on conduct of a disparity study that will heighten the effectiveness and use of the study in developing appropriate goals or methods of achieving appropriate goals;
- The amount of time to complete the stud(y/ies) based on the scope and methodologies to be employed in producing the stud(y/ies).

Finally, the State is interested to learn the range of cost associated with performing a stud(y/ies) and what factors in the specification of such a study bear more or disproportionately to their importance, on the cost of a study).

## **SUBMISSIONS IN RESPONSE TO THE RFI / CONTACT INFORMATION**

Responses to this RFI must be directed to:

New Jersey Division of Purchase and Property  
Attention: Mary Lou Goho  
33 West State Street  
P.O. Box 039  
Trenton, NJ 08625-0039  
marylou.goho@treas.state.nj.us

Responses to this RFI must be received electronically so as to be received no later than 2:00 PM EDT on November 23, 2009. Responses will be acknowledged electronically by return e-mail.

The State reserves the right to use, adopt or incorporate any recommendations presented in the responses to this RFI in the development of an RFP for all or part of the procurement of any contracts to conduct a comprehensive disparity study.

Issuance of this RFI does not obligate the State to any particular course of action with regard to the disparity study contract(s). The State reserves the right both to engage one or more vendors through an RFP process. Potential bidders and other interested parties that respond to this RFI are responsible for all costs associated with developing and submitting a response.

Potential providers and other interested parties should supply contact information for follow-up.

## **SUBMISSION IN RESPONSE TO THIS REQUEST FOR INFORMATION**

The State reserves the right to use, adopt or incorporate any recommendations presented in responses to this RFI in the development of a comprehensive state disparity stud(y/ies) and an RFQ, RFP or other process for the procurement of consulting services to conduct a comprehensive disparity stud(y/ies) for the State of New Jersey.

Neither the State nor the responding vendor or interested party has any obligation under this RFI. A vendor or interested party responding to this RFI is responsible for its own costs of responding, and is not guaranteed in any way that it will secure a contract with the State for conducting a state disparity study, or for any other purpose.

The State may request that some or all vendors or interested parties submitting responses to this RFI present oral presentations and/or demonstrations relating to their responses, products and services.

In response to this RFI, the vendor or responding party is requested to supply the following information:

1. Introduction to the respondent's organization, and if the respondent is a vendor, information such as parent company, age, size, number of customers, offices, number of employees, etc.). Please include ownership structure.
2. Contact name(s) and information for questions the Division might have concerning this information and, if respondent is a vendor, the products and services offered.
3. List of relevant web sites for the respondent and its offerings, including, if Respondent is a vendor, URL references for disparity studies the company has successfully completed and a list of government entities for which the vendor completed any disparity study. The respondent should identify major customers who use the vendor's services and are willing to serve as a

reference regarding the preparation of a disparity study. Please provide the appropriate contact information.

4. Information and recommendations regarding the preliminary designs, specifications, business requirements, and features that would best address the “General Requirements,” and in particular the Summary of Particular Interests, set forth above. This should include:
  - (a) The data that will be required from State agencies for the study or studies, and the manner in which the consultant retained to perform this task would obtain other material data that that may be unavailable from the State. Also, the State is interested in recommendations on the extent to which surveys would be used, and the extent to which anecdotal evidence would be gathered, analyzed and used in the disparity study or studies, consistent with governing legal standards.
  - (b) A brief summary estimate of expected costs, expenses and charges to be associated with conducting and completing the disparity study or studies as outlined in this RFI. It would be appropriate to use ranges of fees and charges in response to this section as well as explanations about what factors in the specification of a disparity study bear more or disproportionately to their importance, on the cost of the study.
  - (c) Information and recommendations as to any of the issues outlined above under “Areas of Interest” regarding the structure and scope of the disparity study.
  - (d) Information and recommendations regarding whether the Contractor and Contractor Employment studies should be conducted as a single project, or whether either should be divided into separate studies for vendors of (1) construction and construction-related services, and (2) goods and services (including professional services).
  - (e) Information regarding any subcontracting needs that the consultant retained to perform this task may require for completion of the study or studies, including type of subcontracting service, projected costs, and management oversight of subcontractor(s).
  - (f) A brief summary of the cost savings, efficiencies realized, or other business case support for implementing or utilizing the vendor's products or services if a single vendor is used to conduct the multiple disparity studies as listed in “Areas of Interest.”
  - (g) Information about the projected schedule necessary to complete a disparity study as outlined in “Areas of Interest,” or any combination thereof. The State is interested in completing the disparity study within nine to twelve months after engaging a contractor. The State welcomes information about a vendor’s capacity to commence and complete the disparity study or studies within a period of nine to twelve months.
5. If the respondent is a vendor, identification of current or completed engagements to conduct similar disparity studies for other state or local governmental entities. Respondents other than vendors are also welcome to provide references to disparity studies that they believe would be useful to the State in devising its anticipated study.
6. If the respondent is a vendor, a clear indication among the two different disparity study areas, as listed in “Areas of Interest,” in which the vendor is qualified and has the capacity to successfully perform.