CITY OF MILWAUKEE
DISPARITY STUDY WITH RESPECT TO BUSINESSES WHICH CONTRACT WITH THE CITY OF MILWAUKEE AND THE MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

SCOPE OF SERVICES
REQUEST FOR PROPOSAL #0000002132
JULY 15, 2008

BACKGROUND

On January 23,1989, the Supreme Court of the United States decided the case of CITY OF RICHMOND vs. J.A. CROSON COMPANY. Attachment A is the formal opinion of the City Attorney for the City of Milwaukee regarding the effect of the CROSON decision on the City's program. As a result, on November 10, 1989, the Mayor and Common Council of the City of Milwaukee repealed and recreated Chapter 360 of the Milwaukee Code of Ordinances and the Equal Opportunities Disadvantaged Business Enterprise Program. Within the ordinances, there was a provision directing the City to initiate a study to compile, analyze and review statistical and anecdotal information to determine in part, if past and/ or current race and gender discrimination by the City limits the ability of minorities and women to effectively compete for City contracting opportunities and to what extent. The purpose of the study was to assist the City in determining whether the City of Milwaukee would be justified implementing a Minority and Women Business Enterprise program relative to City contracting and procurement opportunities. After the study was completed, City officials determined that a race and gender neutral program would be in the best interests of the City at that time. In accordance with Chapter 360, the City's Emerging Business Enterprise Program (EBEP) certifies qualified firms, works closely with each of the City's contracting departments to ensure that the opportunities in commodity procurement, development, construction, service orders and professional services are available to emerging businesses, and monitors all contracts with EBE participation for compliance. The pool of EBE vendors is limited (370 vendors as of April 25, 2008) and in many areas of the goods and services procured by the City, there are few, if any certified vendors.

The Milwaukee Metropolitan Sewerage District (hereafter referred to as MMSD or District), is a state-chartered, governmental agency providing wastewater services for 28 municipalities with a population of about 1 million. The District's governing body is the Milwaukee Metropolitan Sewerage Commission, which is composed of 11 members. Of the 11 members, seven are appointed by the mayor of the City of Milwaukee, and four are appointed by the Intergovernmental Cooperation Council, which includes elected officers of the municipalities within the District other than the City of Milwaukee.

The District supports Small, Women, and Minority-Owned Business Enterprises (hereafter referred to as SWMBE) in the community by encouraging their participation in District contracts

and purchases. To that end, the District Commissioners approved 1-78.01 in 1979 (Attachment B) which ensures that all procurement, including the procurement of professional services and construction contracts, includes the solicitation of certified SWMBE firms. Administrative Policy 2-78.01, "SWMBE Policies for Construction and Professional Services Consultants" (Attachment C) provides the direction for the implementation of Commission Policy 1-78.01.

In 2007, a study was done to determine the effectiveness of the City of Milwaukee's Emerging Business Enterprise Program. The report that was issued in August of 2007 by the consultant chosen to conduct the study found an underutilization of emerging business enterprises in certain types of contracts, particularly an underutilization of African American emerging business enterprises on the City's construction and goods and other services contracts when compared to the availability of the businesses in the City's market area. One of the recommendations of the study was that a disparity study should be commissioned to conduct a statistical analysis of disparity and to determine if race-conscious remedies may be legally instituted.

The City of Milwaukee and MMSD have issued this RFP collaboratively in that the findings from the study will be of mutual benefit to both entities.

SCOPE OF SERVICES The study shall be in two phases.

2.1. In Phase I, the Contractor will determine if a statistically significant disparity exists between the number of minority-owned and women-owned business enterprises that are ready, willing, and able to provide goods and services to the City and MMSD and the number of minority-owned and women-owned businesses that were actually providing goods and services to the City and MMSD for the fiscal years 2005, 2006 and 2007.

The relevant marketplace for the City of Milwaukee is the counties of Milwaukee, Ozaukee, Washington and Waukesha as defined in the EBE Study conducted in 2007.

The relevant marketplace for Sewerage District construction and engineering procurement is the Standard Metropolitan Statistical Area (SMSA) and the North American Industry Classification System (NAICS) code 237110 water and sewer construction work. The relevant legal standards for the Sewerage District are the "proposed" U.S. EPA regulations, 68 Fed. Reg. 43823-43852 (July 24, 2003), Participation by Disadvantaged Business Enterprises in Procurement under EPA Financial Assistance Agreements. MMSD receives significant funding from EPA. The proposed rules are intended to harmonize EPA's statutory directives (small business and MBEs or WBEs) with the 1995 U.S. Supreme Court decision in Adarand.

2.2. If the analysis reveals an under-utilization of minority-owned and women-owned businesses by the City and MMSD, the City and MMSD may authorize the Contractor to proceed with Phase II. Contractor must define which minority groups have been under-utilized as follows: Black American, Hispanic American (origins based in Puerto

Rico, Mexico, Cuba, South or Central America), Native-American (Tribal members, Eskimo, Aleut, Native Hawaiian) and Asian-Pacific roots (ancestors from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. trust Territories of the Pacific, Northern Mariana Islands, Laos, Cambodia, Taiwan and the Indian subcontinent. Indian subcontinent includes Pakistan, Bangladesh, Afghanistan, Sri Lanka, Nepal, Bhutan, the Maldive Islands and possibly Myanmar (formerly Burma). Phase II will consist of researching and analyzing the reasons for such under-utilization, and based on the results of that research, making specific recommendations to the City and MMSD for eliminating the disparity, including evaluating the current EBE program in effect in the City. The Contractor will also provide recommendations specific to the MMSD's existing Small, Women, Minority Business Enterprise Program.

2.3. If the work of Phase I reveals no statistically significant disparity, the Contractor shall still recommend activities specific to the City and MMSD to improve or modify its procurement processes to the extent necessary to ensure that all minority and women-owned businesses have a fair and adequate opportunity to participate in the City's procurement processes.

2.4. If the work of Phase I reveals no statistically significant disparity, the Contractor shall recommend activities to address the challenges of capacity building and growing more minority owned businesses.

2.5. The Contractor must be available to testify in Court if a program designed as recommended in report is challenged. If retained for such purpose, Contractor shall be paid based on the hourly rate as quoted herein.

3. **CONTRACTOR REQUIREMENTS**

3.1. The Contractor, at a minimum, must achieve and maintain the performance outcomes and produce deliverables as listed herein, consistent with performance standards agreed to by the City and MMSD in the contract resulting from this RFP.

3.2. In Phase I the Contractor shall:

3.2.1. Conduct a detailed analysis of relevant court cases and rulings, emphasizing methodological requirements;

3.2.2. Identify the statistical sampling of contracts for construction, professional services and goods and other services typically awarded by the City and MMSD, and number of contracts and dollar amounts spent in each category;

3.2.3. Determine the availability of minority and women-owned businesses ready, willing and able to perform (by ethnic group) in the relevant market area for the statistical sampling of categories of goods, services and construction procured by the City and MMSD as either prime or subcontractors. While analyzing availability, the contractor shall precisely define its measure of availability and explain how such availability was calculated. For the purpose of this RFP, the City and MMSD consider "ready, willing and able to perform" businesses as those businesses which are capable of providing the required specific type of goods and/or services and are also available to perform when solicited;

3.2.4. Analyze the contracting and procurement data for the categories for the study period (FY 2005, 2006 and 2007) for the City and MMSD and calculate the share of contracts awarded to minority businesses and non-minority businesses.

3.2.5. Devise a disparity model and using such model, identify any disparity existing between the City's and MMSD's utilization of minority and women-owned businesses and their availability in the identified market area for the categories. The disparity model shall be created by using appropriate statistical methodology, and will be a model consistent with the standards established by City of Richmond v. J.A. Croson Co., 488 U.S. 469, 109 S.Ct. 706, 102 L.Ed.2nd 854 (1989) and subsequent cases applying Croson. If a disparity is found to exist, the relevance and significance of such disparity will be documented and explained through statistical analysis, comparing the utilization of minority and women owned businesses in City contracts with the availability of such firms in the defined market area, categorized by industry, race, ethnicity and gender for each of the above identified purchasing methods.

3.3. <u>If work completed in Phase I reveals a statistically significant disparity, and the City and MMSD authorize the Contractor to proceed with Phase II of the Study, the Contractor shall:</u>

3.3.1. Review the City's purchasing policies and procedures as described in the EBE Study that can be found on the City's website at: http://www.city.milwaukee.gov/ImageLibrary/Groups/doaBusinessOp/EBEP_STUDY.pdf to determine whether any of the City's policies, procedures, or practices discriminate or have a discriminatory effect based upon race, ethnicity, or gender in the awarding of purchases to vendors. A similar review will also be provided specific to the MMSD purchasing policies and procedures.

3.3.2. Identify and provide a record and analysis of any specific anecdotal instances of discrimination and/or patterns and practices of the City and MMSD in the procurement of goods and services. Interviews/public hearings should be conducted with current and former minority and women owners and professionals, City and MMSD agency officials, and others in the commodity/service, and in the construction industries. Investigate, where possible, to determine if the anecdote is in fact the result of discrimination related to City or MMSD contracting, or has another cause unrelated to the race or sex of the vendor.

3.3.3. Determine and evaluate the extent to which any identified disparity has likely been caused in part by unlawful race or sex discrimination. This will entail identifying, collecting and evaluating any and all relevant evidence (statistical, historical, sociological and anecdotal). It will also require documenting and analyzing factors or variables that may have impeded the formation, growth, availability, or utilization of minorities and women and that may have directly been affected by the effects of past

discrimination or by ongoing discriminatory practices against minorities and women within the City's and MMSD's defined market area. This analysis shall determine if discrimination in the public or private sector has had an adverse effect on the ability of minorities and women to compete successfully in the City's and MMSD's procurement processes;

3.3.4. Perform a regression analysis to determine the extent to which identified disparities may be attributable to various factors including race, gender, and other factors that appear to be neutral (for example length of time in business and size of the firm);

3.3.5. If discrimination is identified, determine to what extent each respective ethnic group has been subjected to discrimination, respectively, in the awarding of City and MMSD business;

3.3.6. Identify and evaluate the effectiveness of any race/gender neutral initiatives that have been used by the City and MMSD in eliminating discrimination and/or increasing minority and women participation in public procurement; and

3.3.7. Identify narrowly tailored race/gender based activities to remedy the effects of any discrimination identified, and to reduce or eliminate any other marketplace barriers that adversely affect the procurement participation of such minorities and women-owned businesses and other activities the City and MMSD can undertake to improve or modify its contracting and procurement processes to the extent necessary to ensure that all businesses have a fair and adequate opportunity to participate in the City's and MMSD's procurement processes.

3.4. Reporting Requirements

3.4.1. Biweekly progress meetings between the City and MMSD and the Contractor are to take place during normal business hours, Monday through Friday, excluding City holidays;

3.4.2. Copies of all research summary documents for Phase I shall be delivered to the City and MMSD in paper and electronic formats compatible with City and MMSD programs.

3.4.3. A draft final report for Phase I describing in detail the Contractor's methodology and findings for Phase I, and containing all deliverables described in this RFP;

3.4.4. A final report for Phase I that meets the foregoing requirements and addresses any deficiencies or concerns raised by the City and MMSD regarding the draft Phase I final report;

3.4.5. Copies of all research summary documents for Phase II shall be delivered to the City and MMSD in paper and electronic formats compatible with City and MMSD programs.

3.4.6. A draft final report for Phase II describing in detail the Contractor's methodology and findings for Phase II, and containing all deliverables described in this RFP;

3.4.7. A final report for Phase II that meets the foregoing requirements and addresses any deficiencies or concerns raised by the City and MMSD regarding the draft Phase II final report;

3.4.8. For each report provide a clear, organized, and succinct executive summary which may be easily referenced and used, and which provides adequate and useable detail regarding the contents of the full study;

3.4.9. Each document shall be (a) written in clear and concise language using consistent terms; (b) easy to understand; (c) organized in a logical manner; (d) fully illustrated with relevant examples; and (e) consistent with widely accepted methodology;

3.4.10. The Contractor shall provide all notes, work papers, records and documentation that would be useful in legally defending the study if it were ever challenged;

3.4.11. In electronic format, provide all data and records developed that will permit future use of the data by the City.

3.5 The Contractor shall be required to appear in person at a joint meeting of the Mayor, the Common Council and the Milwaukee Metropolitan Sewage District Commission to report and discuss its findings at the conclusion of the Study.

4. **MILESTONE PAYMENT SCHEDULE**

4.1. The City of Milwaukee and MMSD shall pay for all services and deliverables after successful completion and acceptance by the City and MMSD in accordance with the City's prompt payment policy. No monies shall be paid as deposits or in advance of service. The following values are the maximum that the vendor may invoice after the successful completion of each stage:

4.1.1. Phase I Research 25%

4.1.2. Phase I Draft Report 40%

4.1.3. Phase I Final Report and Presentation 35%

The City and MMSD desire Phase I be completed in four months from date commencement of contract.

4.1.4. Phase II Research 30%

4.1.5. Phase II Draft Report 40%

4.1.6. Phase II Final Report and Presentation 30%

The City and MMSD desire Phase II be completed in four months from date of authorization from City and MMSD to proceed with Phase II.

5. **PROPOSAL REQUIREMENTS**: Proposals shall include:

5.1. The first (title) page of the proposal shall be the City-provided "Cover Sheet & Signature Page" found in this solicitation packet, completed with the requested information and signature of the Proposer's representative.

5.2. Required Information and Response Format. The items listed below shall be submitted with each proposal and should be submitted in the order shown. Each section should be clearly labeled, with pages numbered and separated by tabs.

5.2.1. Tab 1: Management Summary - provide a cover letter indicating the underlying philosophy of your firm in providing the service.

5.2.2. Tab 2: Business Plan - describe in detail how the service will be provided, including:

5.2.3. Tab 2.1: Detail regarding the legal basis for the methodology to be used in conducting the study;

5.2.4. Tab 2.2: Detail regarding methodology for determining relevant market area to be used in study;

5.2.5. Tab 2.3: Detail regarding proposed timeline for project completion;

5.2.6. Tab 2.4: Description of the proposed contract team, and the role to be played by each member of the proposed team;

5.2.7. Tab 2.5: Detailed plan of approach, including major tasks that shall be provided;

5.2.7.1. Estimate the tasks, resources, and hours you require of City and MMSD staff.

5.2.7.2. Recommendations of other avenues of investigation and analysis that you believe are appropriate.

5.2.7.3. Discussion of any particular issues that may need to be resolved in carrying out this project, and any suggestions you hay have for supplementing the Scope of Work.

5.2.8. Tab 3: Corporate Experience and Capacity - Provide information, which documents your firm's and subcontractor's qualifications to produce the required outcomes, including the ability, capacity, skill, financial strength, and number of years of experience in providing the required services. This section should also detail proposer's familiarity with public and private procurement and contracting issues.

5.2.9. Tab 4: Key Personnel - attach resumes of all members of the Contractor's and Sub-contractor's team that are to provide services to this account, including relevant experience for the work they are to provide. Proposer shall also describe how, if during the performance of this contract, Contractor or Sub-contractor should have to substitute any personnel assigned to this project, selection of qualified individual would be made and approved by the City and MMSD.

5.2.10. Tab 5: References - provide a listing of at least three previous customers during the past three years for all work of similar size and scope. The services provided to these clients shall have characteristics as similar as possible to those requested in this RFP. Information provided for each client shall include the following:

5.2.10.1. Client name, address, and current telephone and fax numbers.

5.2.10.2. Description of services provided.

5.2.10.3. Time period of the project or contract.

5.2.10.4. Clients' contact information, name, title, phone & fax numbers.

5.2.10.5. Detail as to whether study methodology was legally challenged and the outcome of any litigation.

5.2.10.6. Names and duties of key personnel assigned to this project.

5.2.11. Tab 6: Committed Level of EBE participation. This rfp does not have a mandatory EBE participation percentage assigned. However, proposers may receive up to 10 points for the inclusion of a City certified EBE firm in their contract. Proposal must specify how the EBE firm will provide a meaningful function within the contract.

5.2.12. Tab 7: Teaming arrangements. The Proposer must describe the support that it requires and expects from the City, including the nature and extent of the support required, the assistance from City staff and any other support or resource requirements. The City may not be able or willing to provide the additional support needed. Proposers are strongly encouraged to seek out teaming arrangements with universities or colleges in the City of Milwaukee in an attempt to keep the study economically feasible. This section must clearly describe how the undergraduate students will be utilized, other teaming arrangements the Proposer has made and what, if any, additional City resources the Contractor will require.

5.2.13. Pricing (submitted in a separate, sealed envelope) Proposers must use the cost proposal forms provided and submit a detailed budget breakdown with the cost proposal form showing the hours and dollars allocated to the specific tasks herein.

6. SUBMITTAL PROCESS AND REQUIRED COPIES

6.1. Each Proposer shall submit one original, clearly marked as such, and ten (10) copies of the complete proposal, securely sealed, and addressed using the label provided with the RFP package, to the issuing office not later than the date and time previously specified. The cost of preparing proposals is the responsibility of Proposers.

7. EVALUATION CRITERIA

7.1. Proposals will be evaluated based on the following criteria:

7.1.1. Experience/Capacity of firm and assigned personnel – 20

7.1.2. Approach and Methodology of conducting study including the ability to be fair and impartial - 20

7.1.3. EBE participation – 10

7.1.4. Familiarity with public and private procurement and contracting issues - 15

7.1.5. Proposed timeliness of project completion – 5

7.1.6. Other teaming arrangements - 5

7.1.7. Proposer's cost – 25

8. ANTICIPATED TIMETABLE

DATE	SELECTION PROCEDURE
May 30, 2008	RFP release date
June 13, 2008	Deadline for submitting questions
June 26, 2008*	Date for posting answers to questions
July 15, 2008*	Proposal closing date
July 29, 2008*	Selection of most qualifying firms
August 12, 2008*	Final selection of highest ranked proposer
August 22, 2008*	Contract negotiations
August 29, 2008*	Contract commencement

*Tentative dates, subject to change

9. POINT OF CONTACT

The DOA-Business Operations Division-Procurement Services Section issues this RFP on behalf of City of Milwaukee, which is the sole point of contact during the procurement process. No information provided verbally or by any other personnel will be considered binding. All respondents should use this written document and its attachments as the sole basis for proposal at this time.

In addition, the City of Milwaukee prohibits communication initiated by the respondent to any City personnel other than the Purchasing Agent listed on the RFP.

10. CLARIFICATIONS

If additional information is needed to interpret the specifications/requirements, written questions must be received by the cut-off date listed in the proposal. All questions and answers will be listed in the form of an addendum to the City's website. If additional

time is needed, the proposal due date will be extended to allow adequate time for answers to be posted and proposers to incorporate them into their proposals.

11. **CONTENT OF THE RFP**

The "Invitation to Bid" document with a signature and all attachments, additional pages, addenda or explanations supplied by the vendor with the proposal will be considered as part of the proposal response. If an oral interview/presentation is required of selected finalists, it shall be at the respondent's expense. However, an award may be made without discussion with the respondents. Therefore, all proposals should be submitted initially on the most favorable terms, from both technical and cost standpoint. Elaborate Inclusions (artwork brochures, etc.) unless requested, are strongly discouraged.

12. **OTHER CONSIDERATIONS**

Factors which include, but are not limited to, quantity involved, time of performance, purpose, financial capacity of vendor, ability to render satisfactory service, use of a City certified EBE vendor, and past performance will be considered in determining status as a responsible vendor. The City reserves the right to request additional information as may be reasonable in order to determine the qualifications of a respondent.

13. **AMENDING A REQUEST FOR PROPOSAL**

After a Request for Proposal has been filed with the DOA-Business Operations Division, if the responder desires to amend the proposal, PROPOSER MAY DO SO BEFORE THE DUE DATE AND TIME set for the receipt of proposals in the Request for Proposal by filing an amendment fully identified with the original proposal submitted by number, commodity or service. All the conditions and provisions of the original proposal will be in effect. NO REQUESTS FOR PROPOSAL OR AMENDMENTS WILL BE ACCEPTED AFTER THE DUE DATE AND TIME FOR RECEIPT OF PROPOSALS AS SPECIFIED IN THE REQUEST FOR PROPOSAL. This does not preclude the City from requesting additional information and/or clarification.

14. **FOLLOW-UP INTERVIEWS**

The City may conduct discussions with the highest ranked proposer(s) who submitted a proposal. Proposers must be available for interviews/presentations at City facilities or by phone on the specified dates.

15. **INCURRED COSTS**

Those vendors submitting proposals do so entirely at their expense. There is no expressed or implied obligation by the City to reimburse any individual or firm for any costs incurred in preparing or submitting proposals, for providing additional information when requested by the City or for participating in any selection or follow-up interviews, including negotiations.

16. **JURISDICTION, VENUE, CHOICE OF LAW**

This RFP and any resulting contract shall be contract shall be governed by and construed according to the laws of the State of Wisconsin.

17. **NEGOTIATIONS**

The City may at its sole option, open negotiations with the highest ranked proposers after the proposal closing date and prior to award.

18. **ASSIGNMENT**

The proposer may not reassign any award made as a result of this RFP, without prior written consent from the City.

19. **REJECTION**

The City reserves the right to reject any and all proposals, to waive any informality in the proposals that are received, to accept or reject any or all items in the proposal, and to award a contract in whole or in part. Moreover, the City reserves the right to make no selection if proposals are deemed to be outside the fiscal constraint or not in the best interests of the City.

20. **RFP RESULTS**

RFP scores will be available to the public after contract award, which is approximately 90-120 days from the date of opening. RFP results can be found on the City's website at:

http://www.city.milwaukee.gov/display/router.asp?docid=338