

REQUEST FOR LEGISLATIVE ACTION

Completed by County Counselor's Office:

~~Res~~/Ord No.: 4549

Sponsor(s): Garza-Ruiz, Williams & Tindall

Date: August 12, 2013

<p>SUBJECT</p>	<p>Action Requested <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Ordinance</p> <p>Project/Title: <u>An ORDINANCE transferring \$35,000 from the general fund undesignated fund balance to the general fund non departmental legal services account and authorizing the County Executive to execute an agreement with Collette Holt & Associates for the purpose of preparing a proposed ordinance for Minority and Women Owned Business participation in county contracts.</u></p>														
<p>BUDGET INFORMATION <i>To be completed By Requesting Department and Finance</i></p>	<table border="1"> <tr> <td>Amount authorized by this legislation this fiscal year:</td> <td>\$35,000</td> </tr> <tr> <td>Amount previously authorized this fiscal year:</td> <td>\$</td> </tr> <tr> <td>Total amount authorized after this legislative action:</td> <td>\$35,000</td> </tr> <tr> <td>Amount budgeted for this item * (including transfers):</td> <td>\$35,000</td> </tr> <tr> <td>Source of funding (name of fund) and account code number:</td> <td>FROM ACCT</td> </tr> <tr> <td>FROM: 001-2810 – General Fund Undesignated Fund Balance</td> <td>\$35,000</td> </tr> <tr> <td>TO: 001-5101-56020 – General Fund Non-Dept Legal Services</td> <td>\$35,000</td> </tr> </table> <p>* If account includes additional funds for other expenses, total budgeted in the account is: \$</p> <p>OTHER FINANCIAL INFORMATION:</p> <p><input type="checkbox"/> No budget impact (no fiscal note required) <input type="checkbox"/> Term and Supply Contract (funds approved in the annual budget); estimated value and use of contract: Department: _____ Estimated Use: \$ _____</p> <p>Prior Year Budget (if applicable): _____ Prior Year Actual Amount Spent (if applicable): _____</p>	Amount authorized by this legislation this fiscal year:	\$35,000	Amount previously authorized this fiscal year:	\$	Total amount authorized after this legislative action:	\$35,000	Amount budgeted for this item * (including transfers):	\$35,000	Source of funding (name of fund) and account code number:	FROM ACCT	FROM: 001-2810 – General Fund Undesignated Fund Balance	\$35,000	TO: 001-5101-56020 – General Fund Non-Dept Legal Services	\$35,000
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<p>PRIOR LEGISLATION</p>	<p>Prior ordinances and (date): _____</p> <p>Prior resolutions and (date): _____</p>														
<p>CONTACT INFORMATION</p>	<p>RLA drafted by (name, title, & phone): Shelley Kneuvean, Chief Operating Officer</p>														
<p>REQUEST SUMMARY</p>	<p>The County Counselor's Office has worked with several members of the legislature to begin drafting a policy with regard to Minority and Women Owned Businesses (MBE/WBE) participation in county contracts. As part of this work, a disparity study is planned for the region through a partnership with several other governmental entities. In advance of the disparity study, research could be prepared and an ordinance drafted to better clarify MBE/WBE goals. Ms. Holt is a nationally recognized expert in this area of law and was identified by the County Counselor's Office to manage this process and draft a proposed interim ordinance. In the longer term,</p>														

	once the disparity study is completed, the ordinance will likely be redrafted to strengthen the enforcement provisions of the participation goals. However, in an effort to promote the participation of MBE/WBEs, this agreement will provide the county with a legally defensible ordinance to increase participation.	
CLEARANCE	<input type="checkbox"/> Tax Clearance Completed (Purchasing & Department) <input type="checkbox"/> Business License Verified (Purchasing & Department) <input type="checkbox"/> Chapter 6 Compliance - Affirmative Action/Prevailing Wage (County Auditor's Office)	
ATTACHMENTS		
REVIEW	Department Director:	Date:
	Finance (Budget Approval): <i>If applicable</i> <i>Robert S Ball</i>	Date: <i>8-6-13</i>
	Division Manager: <i>[Signature]</i>	Date: <i>8/6/13</i>
	County Counselor's Office:	Date:

Fiscal Information (to be verified by Budget Office in Finance Department)

- This expenditure was included in the annual budget.
- Funds for this were encumbered from the _____ Fund in _____.
- There is a balance otherwise unencumbered to the credit of the appropriation to which the expenditure is chargeable and there is a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made each sufficient to provide for the obligation herein authorized.
- Funds sufficient for this expenditure will be/were appropriated by Ordinance # _____
- Funds sufficient for this appropriation are available from the source indicated below.

Account Number:	Account Title:	Amount Not to Exceed:
2810	Undesignated Fund Balance, General Fund	\$35,000

- This award is made on a need basis and does not obligate Jackson County to pay any specific amount. The availability of funds for specific purchases will, of necessity, be determined as each using agency places its order.
- This legislative action does not impact the County financially and does not require Finance/Budget approval.

**Fiscal Note:
Jackson County, Missouri**

Funds sufficient for this transfer are available from the sources indicated below.

Date: August 6, 2013 PC# _____ RES # 4549

Department / Division	Character/Description	From	To
General Fund - 001			
	2810 - Undesignated Fund Balance	35,000	
5101 - Non-Departmental	56020 - Legal Services		35,000

Fiscal Note:

This expenditure was included in the Annual Budget.

PC# _____

Date: August 6, 2013 RES # _____

Department / Division	Character/Description		
General Fund - 001			
			Not to Exceed
5101 - Non-Departmental	56020 - Legal Services		35,000
Total from General Fund			<u>35,000</u>

Heberant Ball 8-6-13
Budgeting



COLETTE HOLT & ASSOCIATES
3350 BRUNELL DRIVE
OAKLAND, CA 94602
(773) 255-6844
COLETTE.HOLT@MWBELAW.COM

2 July 2013

Re: Proposal to Develop an Interim M/WBE Ordinance and Report

Dear Mr. Hayden:

Thank you for the opportunity to provide the following proposal of Colette Holt & Associates (“CHA”) in to develop an Interim Minority- and Woman-owned Business Enterprise (M/WBE”) Program ordinance and Report for Jackson County, as well as recommendations for future County efforts to reflect best practices in M/WBE program design.

Other members of the CHA team include:

- Steven Pitts, Ph.D., Labor Policy Specialist at the University of California at Berkeley’s Center for Labor Research and Education and economist. Dr. Pitts has studied market issues regarding minorities for over 20 years. Dr. Pitts received his Ph.D. in economics with an emphasis on urban economics from the University of Houston and holds a B.A. in economics from Harvard University. He has extensive experience in using large databases, including those of the Census Bureau, to perform statistical analyses of labor and employment issues.
- Abaci Research & Consulting, LLC (“ARC”), an Austin certified WBE and Texas certified DBE firm. ARC is staffed by the most experienced researchers in the country on data issues related to disparity studies and M/WBE program implementation. ARC will assist with data collection tasks, community outreach and overall project management.

The proposed work plan reflects my 20 plus years of experience in developing and supporting court-approved affirmative action contracting programs for over 50 clients across the country. Our team combines long experience in designing and implementing the disparity study methodology that has been repeatedly upheld by the courts with equally long experience in addressing the narrow tailoring requirements of strict scrutiny, as well as a 100 percent winning litigation record that fully supports the objectives of M/WBE programs.

Thank you for the opportunity to present this proposal.

Sincerely,

A handwritten signature in cursive script that reads 'Colette Holt'.

Colette Holt

I. PROJECT WORK PLAN

In the following section, we describe in detail the concepts and tasks related to the development of the Interim Ordinance and program recommendations.

A. Review the County's Current M/WBE Ordinance and Program

We will review the County's current M/WBE Program's policies and operations and make recommendations for interim improvements. We will also interview relevant County personnel to learn in depth how current efforts managed and to identify areas for improvement. This will include analyzing current contract data collection processes, as well as the personnel resources available for compliance. We have extensive experience with governmental contract record keeping practices and can provide the County with a comprehensive assessment of its current practices and solid, realistic recommendations for improving data collection and record keeping methods.

B. Conduct a Public Hearing

Strict scrutiny requires that local governments consider anecdotal evidence of discrimination against minorities and women consistent with the statistical evidence. Anecdotal information is useful both for determining whether there is strong evidence of discrimination and for narrowly tailoring the County's M/WBE Program.

While interviews with M/WBEs and non-M/WBEs are essential to a fully defensible disparity study, to meet the County's timetable, we propose to conduct a public hearing. This would serve to elicit anecdotal testimony about race- and gender-based barriers to County contracts and associated subcontracts, as well as inform the community about the County's new efforts and build support. Topics would include difficulties in obtaining bonding and loans; utilization on projects without affirmative action requirements compared to projects with such goals; the County's current procurement practices; and suggestions for improvements or new initiatives. The results will be presented as part of the report and enhance our recommendations for future initiatives.

To ensure that there is as much public participation as possible, we will work with the County to conduct outreach through all available channels, including traditional and social media, to encourage participation in the public hearing.

C. Review Relevant Past Disparity Studies

We will also review past Missouri disparity studies, legislative findings and any other relevant materials to provide statistical anecdotal data about the experiences of firms in the Kansas City market area and discriminatory barriers to contracting opportunities. The 2012 Disparity Study for the Missouri Department of Transportation, to which I served as counsel and for which I supervised the anecdotal data collection and drafted the recommendations, provides recent and probative quantitative and qualitative evidence of barriers in the market for construction and construction related professional services

contracts, including an economy-wide analysis based on US Census data and Federal Reserve Board/Small Business Administration studies. The City of Kansas City, Missouri also conducted a study that will be useful for some anecdotal data. We will summarize these studies in the Report in support of the Interim Ordinance, as well as any other relevant data sources.

D. Conduct an Economy-Wide Disparity Analysis of Non-Construction Contracts

If the County desires to include contracts other than those for construction and construction-related professional services– the scope of the 2012 MoDOT Disparity Study– we suggest conducting an economy-wide analysis of these additional industries.

While not sufficient standing alone, this type of analysis is a critical component of the foundation for a defensible M/WBE program. It addresses the recognition in *Croson* that an agency may be passively participating in a discriminatory system even if its own contracting activities do not display the hallmarks of discrimination.

As we did for the MoDOT Study, to evaluate possible barriers to the formation of M/WBEs, we will use linear and limited dependent variable regression techniques, including logit and probit analyses, to analyze recent federal census data for Missouri (data as not further disaggregated by geography). Data from the Public Used Microdata Sample (PUMS) of the *American Community Survey* (“ACS”) will be used to determine if minorities or women form businesses at lower rates than comparable non-minority men, and whether minorities or women who do form businesses earn less from their entrepreneurial activities than comparable non-minority men. We will prepare the ACS datasets for analysis, utilize statistical software to produce descriptive statistics and carry out relevant regression analyses of business formation and business owner earnings, with associated statistical tests. We will then test alternate regression specifications, conduct post-estimation testing, and analyze results.

To evaluate possible barriers to the fair competition of M/WBEs outside construction, we will examine the Census Bureau’s *Survey of Business Owners and Self-Employed Persons* (SBO), formerly known as the *Surveys of Minority- and Women-Owned Business Enterprises*, which collects and disseminates data on the number, sales, employment, and payrolls of businesses owned by women and members of racial and ethnic minority groups. This survey has been conducted every five years since 1972. Although the level of local area detail from this data source is limited, it nevertheless contains substantial amounts of informative data at the metropolitan, state, and national level, and for that reason will be incorporated into the Study. We will first prepare the 2007 SBO dataset for analysis, which was released in 2011, and utilize statistical software to produce descriptive statistics and carry out relevant disparity comparisons, with associated statistical tests. Using this data source, the percentage of sales or receipts attributable to minority-owned or woman-owned firms (utilization) can be compared to the corresponding percentage of minority-owned or woman-owned businesses in any given geographic or industry category (availability). The results of such comparisons will then



be tested for statistical significance for those cases where data have not been suppressed and where standard errors have been published.

E. Draft an Interim M/WBE Ordinance and Report

Based on the results of the Program review and the qualitative and quantitative data analysis, we will provide a draft Interim Ordinance and Report, including recommendations for revising current procurement policies and procedures, annual and contract goal setting, contract data collection and record keeping protocols, outreach and supportive services strategies, etc., consistent with constitutional standards and best practices for M/WBE programs.

F. Present the Draft Interim Ordinance and Report to the County

Upon completion of the above tasks, I will present the draft interim ordinance and the supporting Report to the County's Board of Commissioners and senior staff.

II. STUDY TEAM

Colette Holt, J.D.

Colette Holt will be responsible for the overall conduct of the project. She has extensive experience in defending M/WBE programs, and in addressing the narrow tailoring requirements of strict scrutiny through the development of defensible and successful race- and gender-conscious programs, including those of the Missouri Department of Transportation, Lambert/St. Louis International Airport and the City of Kansas City, Missouri. Her most recent Missouri project was to advise the County Counselor of St. Louis County regarding the legal sufficiency of a recent disparity study conducted by another consultant for the Metropolitan Sewer District of St. Louis because of concerns about the methodology and results of the study.

Ms. Holt has been instrumental in the development of the law governing Disadvantaged, Minority- and Women-Owned Business Enterprise programs, and in designing the standards for defensible availability and disparity studies. Further, she has a 100 percent winning litigation record in defending programs based upon her work and that fully supports the objectives of M/WBE programs. She has written and taught extensively on these issues, including for the US Department of Transportation and groups such as the American Bar Association, the American Association for Affirmative Action, etc. She has been General Counsel for the American Contract Compliance Association, the only group in the nation that provides university level continuing education training for contract compliance professionals, for over a decade. She has written articles on M/W/DBE topics for publications such as the American Bar Association Journal, Contract Management Magazine, and the Labor Law Journal.



Additionally, Ms. Holt co-authored the National Cooperative Highway Research Program Report 644, "Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program" for the National Academy of Sciences' Transportation Research Board. She was chosen for this important national project because of her legal and program expertise, national experience with DBE programs and litigation, and demonstrated ability to meet the level of excellence demanded by the National Academies. This proposal fully conforms to the Guidelines, the case law, and the program best practices that led to their development.

Ms. Holt has extensive experience serving as an expert witness on M/W/DBE matters. She was retained by the U.S. Department of Justice in the successful defense of the Small Business Administration's 8(a) Program, and worked as an expert for the City of Chicago, the City and County of Denver, the Minnesota Department of Transportation, the Illinois Department of Transportation, the Illinois State Toll Highway Authority and other agencies in upholding their programs. She has also testified on the correct design of contracting affirmative action programs and the legal and proper legal administration of programs. Ms. Holt has been hired to provide expert advice on multiple occasions when counsel has expressed concerns about another consultant's disparity study or programs based on that study have been legally challenged.

Ms. Holt received her B.A. in Philosophy from Yale University and her J.D. from the University of Chicago Law School. She is a former Law Clerk to the Chief Judge of the U.S. Court of Appeals for the Seventh Circuit, and served as a Deputy Corporation Counsel for the City of Chicago before starting her own practice. She has written and taught extensively on M/W/DBE issues, including co-authoring the National Guidelines for Disparity Studies for the National Academy of Sciences, and has served as an expert witness in numerous cases.

Steven C. Pitts, Ph.D.

Steven C. Pitts, Ph.D., Labor Policy Specialist at the University of California at Berkeley's Center for Labor Research and Education and economist. Dr. Pitts will be responsible for the economic and statistical private market analyses of the Census Bureau databases, if the County chooses to augment the existing study for MoDOT.

Dr. Pitts has studied market issues regarding minorities for over 20 years. Dr. Pitts received his Ph.D. in economics with an emphasis on urban economics from the University of Houston and holds a B.A. in economics from Harvard University. Dr. Pitts focuses on issues related to opportunities and conditions for Black workers. He has extensive experience in using large databases, including those of the Census Bureau, to perform statistical analyses of labor and employment issues. Dr. Pitts works closely with the US Department of Labor on issues related to minorities, with emphasis on African Americans. He recently provided the econometric review of the MSD study for St. Louis County, and has been retained by the City and County of San Francisco to evaluate a draft disparity from another consulting team. He is currently working with CHA on several disparity studies, including for Cook County, Illinois.



Dr. Pitts received his Ph.D. and M.A in Economics from the University of Houston and his A.B. in Economics from Harvard University. He is the author of numerous publications and the recipient of many grants and honors.

Abaci Research & Consulting, LLC

Abaci Research & Consulting, LLC, a woman-owned firm, is staffed by the most experienced researchers in the country on identifying, collecting and preparing data for statistical analysis, identifying and evaluating governments' contract record keeping practices, and with assisting with overall project management. ARC is currently working with CHA on several disparity studies, including for Cook County, Illinois. Under Ms. Holt's supervision, ARC will assist with evaluating current data collection and contract record keeping practices; the public hearing and County staff interviews; and general study management.

Ms. Stewart holds M.S. and B.A. degrees in organizational leadership and ethics and organizational communication, respectively, from St. Edwards University.

III. HOURLY RATES

Our hourly rates are as follows:

Colette Holt: \$375.00/hour
Dr. Steven Pitts: \$300.00/hour
Abaci Research & Consulting: \$180.00/hour

Based on our experience with similar projects for other agencies, we estimate the following numbers of hours for each Project task:

- Review the Current M/WBE Ordinance and Program
Ms. Holt: 15 hours; ARC: 5 hours
- Conduct a Public Hearing
Ms. Holt: 12 hours; ARC: 10 hours
- Review Relevant Past Disparity Studies
Ms. Holt: 3 hours
- Conduct an Economy-Wide Disparity Analysis of Non-Construction Contracts
Ms. Holt: 2 hours; Dr. Pitts: 20 hours
- Draft an Interim M/WBE Ordinance and Report
Ms. Holt: 15 hours; ARC: 5 hours
- Present the Draft Interim Ordinance and Report to the County
Ms. Holt: 8 hours

We estimate that total fees will total \$30,225.00. We estimate our out-of-pocket travel costs will total approximately \$2,000 for two trips for Ms. Holt (the public hearing and the Board presentation).