

AGREEMENT

THIS AGREEMENT, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through **ECONOMIC DEVELOPMENT**, herein referred to as “**METRO GOVERNMENT**”, and **TYDINGS AND ROSENBERG, LLP**, with offices located at One East Pratt Street, Suite 901, Baltimore, Maryland 21202, herein referred to as “**CONSULTANT**”.

WITNESSETH:

WHEREAS, the Metro Government wishes to engage Consultant to provide professional services with respect to efforts to increase utilization of the services of Minority, Women and Disabled-owned business enterprises; and

WHEREAS, the Consultant has been determined by the Metro Government to have the necessary experience, expertise and qualifications to provide those services,

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

I. SCOPE OF PROFESSIONAL SERVICES

A. Consultant shall, at the request of the Metro Government, provide services under the terms of this Agreement. The Consultant’s work product may be reviewed from time to time by the Metro Government for purposes of determining that the services provided are within the scope of this Agreement.

B. The services of Consultant shall include but not be limited to those described on Attachment A attached hereto and fully incorporated herein.

II. FEES AND COMPENSATION

A. Consultant shall be reimbursed for professional services rendered according to the terms of this Agreement as described on Attachment A. Total compensation payable to Consultant for services rendered pursuant to this Agreement shall not exceed **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)**.

B. Unless otherwise agreed to in writing by the Metro Government, services shall be rendered and payment therefor shall be made at monthly intervals throughout the duration of this Agreement. Payment shall only be made pursuant to a detailed invoice presented monthly, which invoice shall indicate a descriptive daily accounting of the hours expended in service under this Agreement and the particular nature of such service. Copies of invoices or receipts for third party charges must be included with the Consultant's invoice when payment is requested. In the event payment is made in lump sum at the end of the service period, Consultant's final invoice shall indicate a descriptive daily accounting of hours expended as described heretofore.

C. The Metro Government shall not reimburse out-of-pocket expenses under this Agreement.

D. Consultant, to the extent that it provides the same or related services to other parties agrees to pro-rate its billings to the Metro Government which are of benefit to the other parties and to provide documentation to all parties to verify the pro-ration of such billings. In no event will the Metro Government pay bills which are considered to be double billing (i.e. billing two different parties for the same work).

III. DURATION

A. This Agreement shall begin April 15, 2022 and shall continue through and including June 30, 2025.

B. This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

C. In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement. In the event that, during the term of this Agreement, the Metro Council fails to appropriate funds for the payment of the Metro Government's obligations under this Agreement, the Metro Government's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Metro Government shall deliver notice to Consultant of any such non-appropriation not later than 30 days after the Metro Government has knowledge that the appropriation has not been made.

IV. EMPLOYER/EMPLOYEE RELATIONSHIP

It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause Consultant to be an officer or official of the Metro Government. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

V. RECORDS-AUDIT

Consultant shall maintain during the course of the work, and retain not less than five years from the date of final payment on this Agreement, complete and accurate records of all of Consultant's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Consultant shall include (without limitation): (a) payroll records accounting for total time distribution of Consultant's employees working full or part time

on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Consultant's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

VI. HOLD HARMLESS AND INDEMNIFICATION CLAUSE AND INSURANCE REQUIREMENTS

Consultant shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Consultant's (or Consultant's subcontractors if any) performance or breach of the contract provided that such claim, damage, loss, or expense is (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or from negligent acts, errors or omissions and (2) not caused by the negligent act or omission of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

Consultant shall comply with the insurance requirements attached hereto and fully incorporated herein as Attachment B.

VII. REPORTING OF INCOME

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro

Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Consultant agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Consultant further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

VIII. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

IX. AUTHORITY

The Consultant, by execution of this Agreement, does hereby warrant and represent that it is qualified to do business in the State of Kentucky, and has full right, power and authority to enter into this Agreement.

X. CONFLICTS OF INTEREST

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefore, in which to his knowledge:

(a) He, or any member of his immediate family, has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefore.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefore.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

XI. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that are not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

XII. OCCUPATIONAL HEALTH AND SAFETY

Consultant agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, *29 U.S.C. 650 et. seq.*, as amended, and KRS Chapter 338. Consultant also agrees to notify the Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Consultant performs work under this Agreement. Consultant agrees to indemnify, defend and hold the Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

XIII. SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

XIV. SEVERABILITY

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

XV. COUNTERPARTS

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original, and all executed counterparts shall constitute one and the same instrument.

XVI. CALCULATION OF TIME

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Consultant is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

XVII. CAPTIONS

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

XVIII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS

The Consultant shall reveal any final determination of a violation by the Consultant or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor. The Consultant shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor for the duration of this Agreement.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

**APPROVED AS TO FORM AND
LEGALITY CONTINGENT UPON
METRO COUNCIL APPROVAL
OF THE APPROPRIATION FOR
THIS AGREEMENT:**

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

**MICHAEL J. O'CONNELL
Jefferson County Attorney**

By: DocuSigned by:
Paul Rutherford
2C1B8ED9DF1BB454...

DocuSigned by:
Jeff O'Brien
3A145C9A77EE47D...

**JEFF O'BRIEN, DIRECTOR, ECONOMIC
DEVELOPMENT**

Date: 3/14/2022

Date: 3/14/2022

TYDINGS AND ROSENBERG LLP

DocuSigned by:
By: Franklin Lee
E9F87E8B5671410

Title: Partner

Printed name: Franklin Lee

Date: 3/14/2022

Taxpayer Identification No.
(TIN): _____

**Louisville/Jefferson County
Revenue Commission Account
No.:** _____

ATTACHMENT A



**Equity in Contracting & Procurement Task Force
Louisville, Kentucky
("Company")
RFP – Expert Consulting Services**

PROPOSAL RESPONSE

Submitted by Tydings & Rosenberg LLP
(1-22-22)



Response to (“Company”) RFP – Expert Consulting Services

Overview

This Proposal Response is submitted on behalf of the law firm of Tydings & Rosenberg LLP to the Company. (For purposes of this Proposal, the term “Company” refers to the Louisville Kentucky Task Force for Equity in Contracting and Procurement and each of its participating entities (i.e., the Louisville Metropolitan Sewer District, the Louisville Water Company, the Louisville Regional Airport Authority, Jefferson County Public Schools, Louisville Metro Housing Authority, Louisville Metro Government, Jefferson County Public Schools, the University of Louisville, and the Kentucky Transportation Cabinet).

Unless stated otherwise, this Response to the RFP, and its detailed scope of work elements, workplan, timeline, and Itemized Cost Proposal are directed to the Company entities collectively. There may be certain elements in the scope of work, work plan, timeline, and itemized costs that may need to be negotiated further and contracted for in a different manner when performed solely on behalf of a single participating entity separate and apart from the Company as a whole. However, unless stated to the contrary, this Proposal is intended to accurately reflect the scope of work elements and itemized costs associated with Respondent’s delivery of services through the Company for the collective benefit of all its participating entities.

Section 1.0 General

Tydings has read, understands, and agrees to the provisions outlined in Section 1.0 of the RFP.

Section 2.0 Bidder Information

2.1 Company Name: Tydings & Rosenberg LLP (“Tydings” or “Bidder”)

Entity: Maryland Partnership

Primary Contact Information:

Franklin M. Lee, Esq.

410.752.9734

410.340.2021

flee@tydings.com

Dun & Bradstreet Number: [REDACTED]

Tax ID Number: [REDACTED]

Age of Company: 91 years

Recent or Pending Mergers, Acquisitions or IPO’s: None

Parent Company: None.

Business Status: n/a

Business Size Classification: small business

Business Classification Descriptions: n/a



2.2 Small and Diverse Subcontractors

Tydings will collaborate with and, in part, rely upon the performance of its diverse subcontractor, Armand Resource Group, Inc. (“ARG”) for performance of the following Scope of Work elements:

- 4.2.1. Capacity Development Initiatives
- 4.2.3. Effective Data Reporting Content and Processes
- 4.2.6. Evaluate Current Workforce Challenges and Barriers
- 4.2.7. Other Recommended Actions, Programs, and Initiatives

As reflected in the Itemized Cost Proposal in Attachment 3.5.(b)., ARG will be performing no less than 23% of the dollar value of this engagement with its own labor force. ARG is certified as a Disadvantaged Business Enterprise by the Kentucky Transportation Cabinet.

ARG is also available to further negotiate pricing for individual participating entities regarding its delivery of certain recommended workforce development services, and for administrative oversight, staff training, and/or implementation of other recommended actions, programs, and initiatives as described in Attachment 3.5.(a).7. of this Proposal.

Although Tydings itself does not qualify as a diverse classification-owned business as designated by the SBA, it should be noted that the partners at Tydings who are members of minority, women, and other protected classes represent 44.4% of all partners. In addition, minorities, women, and other protected classes represent 46.7% of its compliment of attorneys.

Section 3.0 Bidder Submission and Attachments

3.1 Work Implementation/Project Execution Plan

See Attachment 3.1 to this response.

3.2 Resumes of Key People

See Attachment 3.2 to this response.

3.3 Proposed Timeline

See Attachment 3.3 to this response.

3.4 Company Resources

See Attachment 3.4 to this response, and also Attachment 3.5 (b) which is an Itemized Cost Proposal for performance of each Scope of Work element outlined in Section 4.2 of the RFP.

¹ This participation percentage may be significantly higher in the event one or more Company entities decide to engage ARG for some of the optional tasks outlined in Phase V related to program implementation and administration.



3.5 Proposed Solution

See Attachment 3.5.(a) to this response, which is a narrative of how Respondent will meet the Company's objectives and satisfy the requirements for each Scope of Work element outlined in Section 4.2 of the RFP. In accordance with Company's direction, a separate Itemized Cost Proposal for each of these Scope of Work elements is submitted as Attachment 3.5 (b) to this Response.

Section 4.0 Scope of Work (SOW)

4.1 Bid Proposals, or any alternate bid proposal

Proposed Recommendations.

See Attachment 3.5.(a). to this response, which is a narrative of how Respondent will meet the Company's objectives and satisfy the requirements for each Scope of Work element outlined in Section 4.2 of the RFP. Optional Alternative Scope of Work Proposal Items are described and included under Attachment 3.5.(a).7.

Pricing.

In accordance with Company's direction, a separate Itemized Cost Proposal for each of these six mandatory Scope of Work elements (i.e., SOW 4.2.1. through 4.2.6.) is submitted in Attachment 3.5. (b). to this response. In one or two instances wherein final pricing for certain Optional Alternative Scope of Work Proposal Items as reflected in Attachment 3.5.(a).7. cannot be determined prior to further discussions with each individual participating Company entity, hourly rates are provided and prior examples of cost ranges may be offered upon request. for budgeting purposes in lieu of a fixed itemized cost at this time.

4.2 Scope of Work (SOW) Proposal Items

1. Capacity Development Initiatives.

Proposed Recommendations.

See Attachment 3.5.(a).1.

Pricing.

See Attachment 3.5.(b).1.



2. Capital Access Programs.

Proposed Recommendations.

See Attachment 3.5.(a).2.

Pricing.

See Attachment 3.5.(b).2.

3. Effective Data Reporting Content and Processes.

Proposed Recommendations.

See Attachment 3.5.(a).3.

Pricing.

See Attachment 3.5.(b).3

4. Multi-Jurisdictional Disparity Studies.

Proposed Recommendations.

See Attachment 3.5.(a).4.

Pricing.

See Attachment 3.5.(b).4.

5. Drafting of MBE/WBE/DBE Programs and Policies.

Proposed Recommendations.

See Attachment 3.5.(a).5.

Pricing.

See Attachment 3.5.(b).5.

6. Evaluate Current Workforce Challenges and Barriers.

Proposed Recommendations.

See Attachment 3.5.(a).6.

Pricing.

See Attachment 3.5.(b).6.



7. Other Recommended Actions, Programs, and Initiatives.

Proposed Recommendations.

See Attachment 3.5.(a).7.

Pricing.

See Attachment 3.5.(b).7.

Section 5.0 Bid Clarifications and/or Exceptions.

The Bidder confirms that this response conforms in all respects with the specifications, terms, and conditions referred to in the RFP.

Section 6.0 Alternate Proposals/Additional Scope.

6.1 Attachments

The Bidder's proposal conforms with all of the requirements of the RFP. All alternative and additional scopes of work beyond the first six outlined in Section 4.2 of this RFP have been addressed and described in detail in Attachments 3.5.(a).7. and 3.5.(b).7. to this Proposal.

Other Optional Services

The other optional services proposed by Tydings are listed below:

- **Drafting of Commercial Nondiscrimination Policy & Procedures** *(See Attachment 3.5.7.(a). for details.)*
- **Procurement Policy and Procedures Review** *(See Attachment 3.5.7.(b). for details.)*
- **Review, Assessment, and Enhancement of Existing Race- and Gender-Neutral Economic Inclusion Policies** *(See Attachment 3.5.7.(c). for details.)*
- **Independent Peer Review of Draft Disparity Study** *(See Attachment 3.5.7.(d). for details.)*
- **Technical Assistance in Program Implementation** *(See Attachment 3.5.7.(e). for details.)*



Attachment 3.1. Work Implementation or Project Execution Plan

Phases and Tasks

The following is a summary of the Respondent's proposed discrete tasks for this engagement, and the order in which they will be performed over the course of five discrete phases.² Those five phases for this project are as follows:

- Phase I: Initial Assessment / Foundational Support (Months 1 through 3)
- Phase II: Procurement Reforms and Race-Neutral Policy Enhancements (Months 1 through 6)
- Phase III: Disparity Study Preparations and Performance (Months 4 through 24)
- Phase IV: Policy Deliberation (Months 24 through 30)
- Phase V: Economic Inclusion Policy / Strategy Implementation (Months 30 through 36)

Phase I will begin with a kick-off meeting preferably scheduled within two weeks of the Notice to Proceed. The kick-off meeting will be between Respondent's team and key Company representatives beginning with introductions, and then sharing the communications plan and overall Work Plan and performance timeline for various tasks. The initial presentation will also address the upcoming tasks in Phases I and II in some detail.

Consistent with the Scope of Work described in Section 4.2 of the RFP, Respondent's team will perform the following tasks³ within the five Phases identified above:

Phase I: Initial Assessment / Foundational Support

- Effective Data Reporting Content and Processes (SOW 4.2.3.)
- Evaluate Current Workforce Challenges (SOW 4.2.6.)
- Commercial Nondiscrimination Policy Development (*Optional Task 4.2.7.(a).)
- Procurement Policy Review and Barrier Assessment (*Optional Task 4.2.7.(b).)

Phase II: Procurement Reforms and Race-Neutral Policy Enhancements

- Capacity Development Initiatives (SOW 4.2.1.)
- Capital Access Programs (SOW 4.2.2.)
- Workforce Development Initiative Recommendations (SOW 4.2.6.)
- Review, Assessment, and Modification of Race-Neutral Policies and Practices (*Optional Task 4.2.7.(c).)

Phase III: Disparity Study Preparations and Performance (SOW 4.2.4.)

² Note that there is some overlap in the timing for these five phases because certain tasks begin in one phase and conclude in another. When feasible, portions of a phase have been designed to run concurrently with another phase of longer duration in the interest of efficiency.

³ For more detailed narrative descriptions of these tasks, see Attachment 3.5.(a), Sections 1 through 7.



- Multi-jurisdictional Disparity Study (SOW 4.2.4.)
- Independent Peer-Review of Disparity Study (*Optional Task 4.2.7.(d).)

Phase IV: Post-Study Policy Deliberation

- Drafting MBE/WBE/DBE Programs and Policy Model (SOW 4.2.5.)

Phase V: Economic Inclusion Policy / Strategy Implementation

- Other Recommended Actions, Programs, and Initiatives (*Optional Task 4.2.7.(e).)

(Optional tasks proposed in Phase V include ongoing technical assistance, advice, and counsel on an *ad hoc* basis for a six-month period following policy adoption to facilitate program implementation, staff training, outsourcing of administrative services such as certification, compliance monitoring, reporting, and enforcement; goal setting; outreach; and hands-on implementation of recommended workforce development strategies.)

Communications Plan

At the initial kick-off meeting, Respondent's team will deliver and explain document requests with Company representatives and identify those Company resources that will be required for the success of this effort going forward (i.e., designations for Project Management Liaisons for each participating entity, meeting space for interviews of staff and meetings with key stakeholders, schedule of report dissemination, scheduling protocols for meetings and conference calls).

Each month following the kick-off meeting, Tydings will schedule and convene monthly virtual project status meetings with Company representatives to discuss the tasks completed or initiated the month before, to resolve any problems that have arisen, to report the status of any outstanding requests, and to identify anticipated tasks for the upcoming month. Alternatively, a written summary status report will be prepared and disseminated to Company representatives with similar content. Monthly invoices submitted by Respondent to Company will also provide a considerably detailed record of tasks performed within the previous month. Finally, this Work Plan allows for one 'in-person' status report presentation from the Respondent's Project Manager to the Task Force and designated policymakers at the conclusion of each of the five phases.

Assigned Personnel and Responsibilities

Tydings law partner, Franklin M. Lee, will serve as Respondent's Project Manager for this project. He is responsible for the overall project management for this engagement, including, but not limited to, implementation of the Work Plan, the Communications Plan, and oversight of the work of subcontractor Armand Resource Group, Inc. He is also the lead lawyer and primary consultant for most of the substantive tasks to be undertaken by Tydings. He will be assisted in research tasks regarding the legal frameworks for the disparity study methodology, economic inclusion policy development, and workforce development initiatives by two associate attorneys at Tydings, Cori Schreider and Alisa Fornwald. Resumes for these professionals are provided in Attachment 3.2. Tydings reserves the right to assign other professionals to this project as necessary.

Attachment 3.2. Resumes of Key People



Performance History and Qualifications

The Project Manager and principal responsible for performing and managing most, if not all, tasks on behalf of Tydings for this engagement will be law partner Franklin M. Lee. Mr. Lee is a partner in the Baltimore-based law firm of Tydings & Rosenberg LLP. Prior to entering private practice in 2002, he served sixteen years as Chief Counsel for the Minority Business Enterprise Legal Defense & Education Fund, Inc. ("MBELDEF"), a national non-profit public interest law firm founded by Maryland Congressman Parren J. Mitchell to defend the class interests of the minority business community. As Chief Counsel of MBELDEF, Mr. Lee was directly involved in the preparation of pleadings and briefs in opposition to constitutional challenges to minority business programs before the U.S. Supreme Court. These high-profile court cases included J.A.

Croson v. City of Richmond, Adarand Constructors, Inc. v. Pena, and Adarand Constructors, Inc. v. Mineta.

More recently, his duties have included providing state and local governments with MBE program litigation defense, policy review, and policy development services (e.g., pre-disparity study data assessments, drafting scopes of work and evaluation criteria for disparity study RFPs, oversight and independent peer review critiques of draft disparity studies, and policy deliberation phase guidance) to bring minority business programs into compliance with the law, and to implement innovative strategies for enhancing the growth trajectory and competitive viability of minority-owned businesses. Frequently, local government clients have subsequently retained Mr. Lee's services for drafting policy option matrices to identify narrowly tailored remedies to address barriers to M/WBE participation identified in disparity studies, and for facilitating the post-disparity study policy deliberation phase, which typically culminates in his drafting of economic inclusion ordinances, policies, and procedures.

Mr. Lee is a national authority on the development of commercial nondiscrimination policies and Small, Local, and Minority / Women Business Enterprise programs, and he has authored such legislation for several local governments including, but not limited to, Palm Beach County, the Palm Beach County School District, the Miami-Dade County Public Schools, and the cities of Baltimore; San Diego; San Antonio; Columbia, SC; and Charlotte, NC. Most recently, his legislation was enacted by the State of Maryland making it the first state in the nation to adopt a commercial nondiscrimination policy.



In addition, from 1980 through 1986, Mr. Lee served as a general antitrust litigation attorney for the Federal Trade Commission. In that capacity, he collaborated extensively with economists from the FTC's Bureau of Economics in conducting industry investigations and utilizing a variety of methodologies such as regression analysis, industry surveys, and interviews and investigational hearings that have become fundamental marketplace research tools in the disparity study industry. He has also served on the Governor's Commission for MBE Reform and three other Maryland Legislative Task Forces on Centralized Bidder Registration, Lending Equity, and MBE Program and Investment Equity Capital. Mr. Lee holds an undergraduate degree from the University of Chicago and a Juris Doctorate from the University of Maryland School of Law.

Within his current law practice, Mr. Lee primarily counsels an extensive local government clientele regarding the following areas:

- Minority Women Business Enterprise ("M/WBE") programs;
- Small Business Enterprise ("SBE"), Small Local Business Enterprise ("SLBE"), and Disadvantaged Business Enterprise ("DBE") programs;
- Linked deposit policies for financial institutions;
- Airport Concessions Disadvantaged Business Enterprise programs;
- Capacity building initiatives;
- Centralized Bidder Registration system design;
- Formation and oversight of multi-jurisdictional disparity study consortiums;
- Disparity study design, initiation, oversight, and review, and protocols for economic inclusion policy deliberation;
- Working capital lending programs;
- Bonding assistance programs;
- Supplier development programs; and
- Various public private partnership initiatives that serve "economic inclusion" and economic development objectives.

Mr. Lee has assisted numerous governments in reforming their procurement practices and policies to make them more accessible and fairer to smaller non-incumbent firms. Several of these reforms have involved the deployment of technologies that automate the government vendor registration and contracting processes. He has provided detailed guidance to government clients regarding such systems and procedures including the Metropolitan District Commission in Hartford, CT, San Diego, CA, Columbia, SC, and San Antonio, TX.

Mr. Lee has performed similar scopes of work to that outlined in this RFP for the following jurisdictions:

- a) City of San Antonio, TX (Contact: Alex Lopez, Assistant City Manager (210) 207-5093 and Michael Sindon, former director of SBEDA, (210) 207-3957)
- b) Palm Beach County, FL (Contact: Verdenia Baker, County Administrator, (561) 355-6726, and Tonya Davis Johnson, Director of Equal Business Opportunity, (561) 616-6840)
- c) City of Baltimore, MD (Contact: Thomas Corey, Esq., former Director of Minority Women Business Opportunity Office, (443) 540-4930)



Litigation Report

As Chief Counsel of MBELDEF, Mr. Lee was directly involved in the preparation of pleadings and briefs in Supreme Court cases in opposition to constitutional challenges to minority business programs. These high-profile court cases included *J.A. Croson v. City of Richmond*, *Adarand Constructors, Inc. v. Peña*, and *Adarand Constructors, Inc. v. Mineta*.

In addition to the preparation of numerous appellate briefs filed in defense of M/WBE and DBE programs against 14th Amendment Equal Protection Clause constitutional challenges, Mr. Lee served as part of the legal defense team in the City of Denver's successful defense of its M/WBE Program that relied heavily upon disparity studies and other factual predicate evidence in the case of *Concrete Works v. City and County of Denver* (See ABA article below):

STATE & LOCAL LAW NEWS

The Section serves as a collegial forum for its members, the profession and the public to provide leadership and educational resources in urban, state and local government law and policy.

Concrete Works v. Denver: A Mile High Reversal in Affirmative Action Trends

By Franklin M. Lee

Higher education admission policies have galvanized the national debate over affirmative action in recent years. In particular, the University of Michigan cases decided by the Supreme Court last June stirred up a blizzard of argument, attracting over ninety *amici curiae*. Even the president weighed in forcefully, condemning the use of race as a factor in admissions.

Important as they are, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003), and *Gratz v. Bollinger*, 123 S. Ct. 2411 (2003), have not resolved the legality of the remedial use of race in all areas of public life in the United States. In particular, affirmative action practiced by academia is different from that employed by state and local governments in the dispensing of public contracts. Michigan's central argument—that the measured use of race as one factor in the admission of students is justified by the social and educational benefits of a diverse student body—cannot be persuasively applied to the building of sewers. The wrongs government seeks to redress in contracting are somewhat different from those the admissions office struggles to remedy, and so, too, are the remedial approaches. Despite the Supreme Court's ruling in *Bollinger*, the question of how to defeat discrimination and disparity in public contracting without tripping over the Equal Protection Clause remains largely unanswered.

Fortunately, an historic appellate court ruling last February provided city and state governments with a detailed road map for solving this dilemma. The decision by the Tenth Circuit

Court of Appeals in *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950 (10th Cir. 2003), illustrates how a government may comply with the Fourteenth Amendment and offer tailored preferences to groups that, according to credible data, have been or are discriminated against in the private sector of the marketplace. *Concrete Works* is the first appellate court decision to uphold the constitutionality of a local government minority business enterprise program based upon the merits of trial record evidence. On November 17, 2003, the U.S. Supreme Court declined to disturb this Tenth Circuit decision by denying appellant *Concrete Works*' petition for certiorari.¹

The Justices' refusal to take the case may stem from the decision's strong answer to the challenges put forth in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), in which the Supreme Court nearly closed the door on race-based preferences in public contracting. *Croson* reviewed the constitutionality of a minority business enterprise ordinance adopted by the City of Richmond, Virginia City Council to overcome past and present discrimination in the construction industry. The law required that 30 percent of a given city contract be subcontracted to minority-owned businesses. Predictably, the

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Franklin M. Lee is a partner with Shapiro Sber Guinot & Sandler in Baltimore, Maryland. Mr. Lee advised the City of Denver in *Concrete Works*.

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The court found that the voter pamphlets prescribed by law are limited public fora. It found that Seattle's limiting the pamphlet to discussion of one's own qualifications fit the purpose of the candidate statement that was only to introduce candidates to the voters and provide brief biographical information. The court further held that the limitation of content did not amount to censorship because there were substantial alternative forums for wide open campaigning. *Cogswell v. Seattle*, 347 F.3d 809 (9th Cir. 2003). The case sustaining the touch-screen voting system, despite the fact that it lacked the paper trail to allow for voter verification, is *Weber v. Shelley*, 347 F.3d 1101 (9th Cir. 2003).

Res Judicata—Collateral Estoppel—Takings Claims. This is a case in which a takings plaintiff won a battle but lost the war. Evandro Santini's plans for development of homes in Connecticut were, allegedly, effectively thwarted when the Connecticut Hazardous Waste Management Service announced that his site was one of three under consideration for location of a low-level radioactive waste disposal facility. Although the court found that the claim was cognizable in federal court, it nonetheless dismissed the suit on the merits. Santini had alleged, in a parallel state court action, that his property had been taken without compensation. When he sued seeking compensation under the federal constitution, he was met with arguments that under the Rooker-Feldman Doctrine, and under principles of collateral estoppel, he could not raise issues in federal court whose facts had essentially been litigated in the state court action.

In response, the Second Circuit stated that Santini had only raised a state law takings claim initially in state court because under *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985), his federal takings claim did not ripen until he had been denied just compensation in a state court. The panel then held that a takings plaintiff who involuntarily litigates a takings claim in state court under *Williamson* may reserve the federal claims for later determination by a federal court. In allowing this reservation procedure, the Second Circuit departed from the holdings of other circuits that have not allowed relitigation of the facts regarding a federal takings claim when those facts essentially are identical to the facts concerning a state takings claim.

Santini lost on the merits, however. The Second Circuit found that the mere announcement of potential use of the site for radioactive waste did not take the property, even if it substantially interfered with Santini's efforts to market his development. Accordingly, while the plaintiff won his day in court, he lost his case. *Santini v. Connecticut Hazardous Waste Management Service*, 342 F.3d 118 (2d Cir. 2003).

And that's it for this quarter.

Editors' Note: David G. Tucker, the author of the *News'* lead article in its fall issue, "The SEC Sends a Message to Miami," can be reached at Miller, Canfield, Paddock and Stone's Pensacola office, and not its Miami office as printed.

Concrete Works

(continued from page 1)

set-aside provision attracted a lawsuit from a company that had lost a city contract for failing to comply. Croson's lawyers contested the ordinance on the basis that it violated the majority-owned company's rights under the Equal Protection Clause, and the Court agreed.

For the first time, the Court imposed the "strict scrutiny" standard for reviewing state and local government race-based preferences in public contract awards. The problem, Justice O'Connor wrote in her decision, was that Richmond had not adequately defined the wrong itself, as it failed to provide a "strong basis" in evidence to establish that beneficiaries of the preference were experiencing ongoing effects of present or past discrimination in the award of public contracts. Moreover, the law was not "narrowly tailored" to remedy the identified discrimination.

At the end of her decision, however, O'Connor offered affirmative action proponents an opening:

Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise. . . . Under such circumstances, the city could act to dismantle the closed business system by taking appropriate measures against those who discriminate on the basis of race or other illegitimate criteria. . . . In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion.

Croson, 488 U.S. at 509 (citations omitted).

Thus, even as the court struck down Richmond's ordinance, it suggested that other governments might succeed where Richmond had failed. Yet, a thicket of lower court decisions following *Croson* had utterly failed to provide clarity on how state and local governments might successfully satisfy the Supreme Court's "strict scrutiny" standard in the context of minority business programs. Not a single appellate court decision in the nation based upon a full trial record had held that a state or local government had satisfied this "strict scrutiny" standard for implementing a race- and gender-conscious MBE program. But after a decade-long legal battle, Denver has done just that. Upholding Denver's minority business enterprise program, the Tenth Circuit's February decision provides detailed guidance on how to craft an efficacious and constitutional affirmative action public contracting policy.

In 1992, Concrete Works, a white-owned Denver construction company, sued in federal district court, claiming that Denver's minority business enterprise (MBE) subcontracting goals ordinance violated its rights under the Equal Protection Clause. Denver's MBE program had been established in 1990 and set an annual goal of 16 percent for construction dollars to be spent with MBE subcontractors, and 12 percent to be spent with women business enterprise (WBE) subcontractors.² Specific contract spending goals varied according to the availability of MBEs and WBEs of-

fering the relevant commodities and services. Concrete Works allegedly lost three contracts with Denver because, as a prime contractor, it had failed to comply with spending goals enforced under the ordinance. After the city's motion for summary judgment was first granted and then, on appeal, rejected, the case went to trial in 1999. At issue were the constitutionality of the 1990 ordinance and the revisions of the law passed by Denver in 1996 and 1998. The district court sided with Concrete Works and enjoined the city from enforcing the three affirmative action laws, leading to the appeal before the Tenth Circuit.

In its 99-page decision last February, the Tenth Circuit held that "[t]o withstand [Concrete Works'] challenge, the race based measures in the challenged ordinances must serve a compelling governmental interest and must be narrowly tailored to further that interest." *Concrete Works*, 321 F.3d at 957. To demonstrate its interest is compelling, the court insisted, Denver must meet two criteria: "First, it must identify the past or present discrimination 'with some specificity.' . . . Second, it must also demonstrate that a 'strong basis in evidence' supports its conclusion that remedial action is necessary." *Id.* at 958 (citations omitted). Citing *Croson*, the Court stated that Denver need not *prove* discrimination, but may rely on empirical and anecdotal evidence of disparity to *infer* it. Moreover, the city did not need to show that it directly discriminated against minority- or women owned firms; even if it played a passive role in an industry plagued with racial and gender discrimination, it could take tailored, remedial action.

The City of Denver met this burden by investing enormous resources in developing the factual predicate upon which it based its contracting policy. Moreover, the city spared no expense in vigorously defending its MBE program through eleven years of litigation. The end result was a stout trial record over 10,000 pages long that thoroughly convinced the Tenth Circuit that the City of Denver had established a compelling interest to remedy the effects of marketplace discrimination, and that its MBE program was narrowly tailored to remedy ongoing effects of that discrimination upon city contracting. In building its defense, the city relied upon three progressively sophisticated disparity studies, as well as an abundance of innovative and credible expert testimony at trial that provided particularized quantitative and qualitative evidence of various forms of discrimination affecting the Denver construction industry.

One of these studies, conducted in 1990, analyzed the availability and use of minority and women owned construction and design firms for Denver bond projects from the 1970s and 1980s. This analysis employed "disparity indices," a statistical tool that measured participation of minority- and women-owned firms against their availability and other factors. A disparity index of one indicated "full" participation (proportionally), whereas indices below one indicated varying degrees of underutilization. The report found disparity indices of less than .63 for MBEs and less than .29 for WBEs for bond projects undertaken between 1972 and 1976. For 1985 housing bond projects, disparity indices were .43 for MBEs and .09 for WBEs. Based on such data, the city deter-

mined that its affirmative action efforts before 1990 had failed and that a stronger ordinance was necessary.

The city conducted similar studies in 1991, 1995, and 1997, all of which found substantial disparities between the availability of MBEs and WBEs and the city's use of them. The reports also found that minorities in the construction industry were less likely to be self employed in Denver, and, when they were self employed, made less money than whites. Unlike the City of Richmond in *Croson*, Denver was able to back up its claims of discrimination with credible, detailed studies of the public contracting industry.

Moreover, the city's lawyers presented to the court anecdotal evidence, such as the testimony of an executive at a white owned construction firm who claimed that he received "credible complaints" from minority and women owned firms that they were subject to different standards than their majority owned counterparts. This executive also spoke of observing racially charged graffiti and of his personal belief that many white firms refused to hire minority or women-owned subcontractors due to perceived incompetence. In its decision, the Tenth Circuit also cited harassment of minorities and women at construction sites:

Women were called "bitches" and Blacks were called "nigger" or "dumb nigger." One seventy three year old truck driver was called a "dumb, f ing Mexican." Even more disturbing was the testimony that minority and female employees working on construction projects were physically assaulted and fondled, spat upon with chewing tobacco, and pelted with two-inch bolts thrown by males from a height of eighty feet.

Id. at 969 70.

Despite Concrete Works' objections, the Tenth Circuit found that evidence of general "marketplace" discrimination was relevant to the government's effort to meet strict scrutiny. For example, evidence that minorities could not form businesses or obtain capital from lenders as readily as whites supported Denver's position that affirmative action was needed and justified. Although Concrete Works argued that minority owned firms are often smaller and less qualified than those owned by whites—that they are underused because of race-neutral reasons—the Court sided with Denver's contention that size and ability are not at all race neutral variables. If minority owned firms are smaller and less skilled, it is in part because of the racial discrimination pervading the industry.

Furthermore, while Concrete Works argued that the government itself had not directly discriminated against anyone and therefore had no standing to enforce remedial measures, the appellate court held that no such criteria needs to be met. It was enough that Denver had "indirectly" contributed to a discriminatory marketplace by regularly giving work to contractors who, in turn, refused to hire minority and women-owned firms. Following language from the Supreme Court's decision in the *Croson* case, the Tenth Circuit held that the government had a compelling interest to ensure that it was not a "passive participant" in such private sector discrimination, and that its tax dollars did not serve to finance "the evil of private prejudice." In support of its "passive participant" basis for remedying the discrimination, the city meticulously



introduced evidence at trial showing that specific prime contractors that had discriminated against MBEs in private sector contracts also had received city contract dollars.

The lesson for state, city, and county governments is that detailed analysis of public spending in a given sector, broken down according to race or gender and supplemented with anecdotal evidence of discriminatory practices, can justify race-conscious remedial measures. As the Court noted: “The record contains extensive evidence supporting Denver’s position that it had a strong basis in evidence for concluding that the 1990 Ordinance and the 1998 Ordinance were necessary to remediate discrimination against both MBEs and WBEs.” *Id.* at 990. The studies provided by the city demonstrated clear disparities between the use of minority- and women-owned firms and their availability in Denver. Such data, along with strong anecdotal evidence, convinced the Tenth Circuit that a race-based measure was justified. Concluding also that Denver’s ordinances were “narrowly tailored” to the past and present discrimination, the appellate court found in favor of the city.

After *Croson*, many state and local governments scaled back or scrapped their minority business enterprise programs. *Concrete Works* now clarifies how a government may justify new affirmative action policy and promote racial justice without failing the Constitution. The Tenth Circuit’s forceful ruling offers considerable encouragement to many state and local governments across the country that have sought to enhance market access for minority businesses through public contracting affirmative action. For other jurisdictions, however, the initial enthusiasm for use of such race-conscious remedies will undoubtedly be tempered by the enormous time and expense of compiling a record of the quality and depth produced by the City of Denver in this case. (The city has reported its total tab for disparities and litigation expenses at approximately \$2.5 million.) The fate of billions of dollars in local government contracts will apparently continue to hang in the very delicate balance of the Fourteenth Amendment Equal Protection Clause for many years to come.

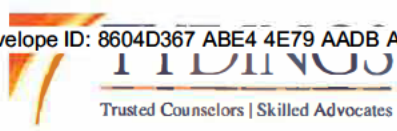
Endnotes

1. *Concrete Works of Colorado, Inc. v. City and County of Denver*, No. 02-1673, 72 U.S.L.W. 3343 (Nov. 17, 2003). This is the second consecutive time the Supreme Court has declined to hear an appeal of a Tenth Circuit decision upholding the constitutionality of an affirmative action contracting program. The Supreme Court previously granted and then dismissed *certiorari* as improvidently granted, in a case upholding a federal disadvantaged business enterprise program, *Adarand Constructors, Inc. v. Mineta*, 532 U. S. 967 (2001), *certiorari granted*; 534 U.S. 103 (2001), *dismissed*.

2. Under the terms of the 1990 ordinance, Denver required prime contractors to make good faith efforts to attain the subcontracting goals. However, prime contractors were not required to use unqualified MBEs, WBEs, or, in the event that good faith efforts failed, to attain the goals. During the course of this litigation, this ordinance was repealed and revised in 1996 and 1998 based upon additional evidence of racial and gender discrimination in Denver’s construction industry.



Mr. Lee also was part of the legal team that reviewed the disparity study and advised the North Carolina Department of Transportation in its successful defense of the NCDOT's disparity study and DBE program in the case of *H.B. Rowe v. Tippett*, 615 F3d 233 (4th Cir. 2010).



Resume of Cori B. Schreider, Esq.



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Ms. Schreider, an associate in the firm's litigation department, advises clients in commercial litigation cases, employment law claims, and medical malpractice. She has experience in insurance defense including health care liability, premises liability, employment law, and general liability litigation.

Ms. Schreider graduated from the University of Maryland Francis King Carey School of Law with a certificate in health care law, where she was the managing editor of the *Journal of Healthcare Law and Policy* and served as a teaching fellow to first-year law students. During law school, she represented clients in the Consumer Protection Clinic, and was awarded the CALI Award for Excellence in Written and Oral Advocacy.

Prior to entering private practice, Ms. Schreider served as a law clerk to The Honorable Edward R. K. Hargadon (Ret.) of the Baltimore City Circuit Court.

Practice Areas

- Commercial and Business Litigation
- Employment and Labor Law
- Litigation
- Medical Malpractice and Health Care Litigation
- Products Liability, Toxic Tort, and Environmental

Industries

- Health Care
- Manufacturing
- Professional Services

Education

- J.D. University of Maryland Francis King Carey School of Law, 2017
- B.A. University of Delaware, 2014

Bar Admissions

- Maryland

Court Admissions

- U.S. District Court for the District of Maryland
- U.S. District Court for the District of Columbia

Affiliations

- Maryland State Bar Association

Publications

- Author, "UPDATE: D.C. Ban on Non-Compete Agreements Amendment Act," Employment Client Alert, September 2021.
- Author, "Maryland Employment Laws Taking Effect," Employment Client Alert, August 2021.
- Author, "D.C. Employment Leave Updates," Employment Client Alert, April 2021.
- Author, "Non-Compete Laws Round-Up," Employment Client Alert, April 2021.
- *Cryopreserved Embryo Disputes: Weighing Interests Regarding Genetic Parenthood*, 20 J. Health Care L. & Pol'y 75 (2017).



Resume of Alisa Fornwald, Esq.



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Ms. Fornwald is an associate in the business department. Her experience includes general business transactions and real estate matters.

Ms. Fornwald's work in these areas, includes:

- Reviewing and negotiating commercial leases;
- Assisting with the preparation of liquor license applications and filing with appropriate agencies;
- Preparing USPTO filings; and
- Counseling client on 501(c)(3) and 501(c)(4) tax-exempt organizations.

Ms. Fornwald is a graduate of the American University Washington College of Law, where she served as a research assistant.

Practice Areas

- Business, Corporate, and Tax
- Intellectual Property
- Real Estate

Education

- J.D. American University Washington College of Law, 2020
- B.A. University of Maryland, Eastern Shore, *summa cum laude*, 2017

Bar Admissions

- Maryland

Affiliations

- Women's Bar Association



**Capability Statement of Armand Resource Group, Inc.
(DBE Subcontractor to Tydings)**

Firm Capability Statement

Armand Resource Group, Inc. (ARG) specializes in the comprehensive design, redesign and implementation of Civil Rights, Diversity, and Inclusion Programs. ARG's core operations have been in the areas of providing comprehensive Disadvantaged, Minority, Women, Local, Veteran, and Historically Underutilized Business Enterprises compliance monitoring and reporting services. ARG also specializes in the development and implementation of creative technical assistance, supportive services, and customized workforce programs. The services include targeted outreach, public engagement, overall agency and contract specific goal setting, bid evaluations, shortfall analysis and agency corrective action planning, review and modification of contract language to accomplish agency diversity and inclusion objectives, assessment of good faith efforts, all aspects of certification services, comprehensive contract compliance monitoring and reporting, administrative desk and field monitoring, development of customized forms and templates, develop standard operating and performance metric evaluation procedures, oversight systems, performing vetting services, customized non-traditional supportive services, technical assistance, team building, mentoring, EEO, OJT, workforce/labor compliance monitoring/verification, Title VI, Environmental Justice, ADA, civil rights programmatic oversight, conducting and assisting agencies with audits and reviews, establishing initiatives to prevent fraud, waste and abuse, and conducting forensic investigations focused in the area of civil rights program administration assessing best practices. ARG is certified as a DBE and/or MBE firm in several states nationwide, including the Kentucky Transportation Cabinet. ARG meets your requirements to participate in your Historically Underutilized Business Program. ARG staff also conducts civil rights trainings and workshop initiatives on a variety of topics for industry compliance professionals, agency executives, user departments, stakeholders, and staff technical development sessions as well as provides other affirmative action/diversity services. The collective experience of ARG's resources is brought to bear on every project to ensure success!

Principal Officer

Gregory Jenifer. Mr. Jenifer has over thirty-five (35) years of experience in Civil Rights Program development and Compliance Consulting.

Examples of innovative strategies that have produced demonstrable results

ARG has an established track record of assessing existing Civil Rights, Diversity and Inclusion Programs and initiatives in the local community; and, enhancing as well as expanding those programs through ARG's consultative support. ARG has provided guidance on proven innovative workforce programs than can "move the needle" in underserved communities. ARG provides strategic direction for implementation plans to increase the efficiency and effectiveness of the programs reviewed. The participation of historically underutilized vendors (M/WBE, DBE, HUB, SBE, LBE, DVBE, ACDBE, etc.) and employment opportunities for historically underutilized minorities and women have been measurably increased by creating a toolkit of customized solutions, national and local best practices. ARG also has extensive experience in researching, selecting, and monitoring Minority Vendors. Listed below are several examples of recent projects where ARG has provided services that are the subject of this proposal.

Denver Regional Transportation District (RTD).

ARG conducted a comprehensive review of RTD's M/WBE policies, procedures, reports, systems, standard operating procedures, forms, templates, reports, certification, outreach and technical assistance strategies, objectives and results, redesigned procurement/solicitation requirements/language, developed supportive services and technical assistance initiatives, and an Owner Controlled Self Insurance "Bonding" Program which issued over 100 bonds to small businesses between \$500,000 and \$1,000,000 without any claims! ARG was also responsible for comprehensive implementation services, including providing technical assistance with performance and compliance audits/reviews conducted by federal, state, local and internal auditors, and reviewers.

ARG was instrumental in the development and implementation of the Workforce Initiative Now (WIN) Program currently in use on the FasTracks Eagle P3 Project. The WIN Program is currently being implemented in Utah, Massachusetts, New York, North Carolina, Nevada, California, Maryland and the state of Washington. The WIN Program received accolades and an award from the USDOT's Secretary of Transportation.

It is worth noting that the WIN Program has served over 1,400 unique individuals through general career outreach and planning activities. On average, WIN enrolls 90 to 120 individuals annually for intensive services including training and placement. The program maintains a placement rate of at least 83% and an average starting wage of \$17.60 per hour or \$36,500 annually. 56% of WIN participants have completed post-employment training, which is one factor that supports the strong program retention rate. On average, 90% of WIN participants are employed 90 days later.

Current program demographics indicate that nearly 65% of WIN participants represent people of color; 31% are female and 68% are male. WIN has enrolled participants ages 18 to 69, with the largest percentage of applicants between the ages of 25 to 35 (30%), or 36 to 46 (22%). At time of application, 90% are unemployed or underemployed in a low-wage job and self-identify in intake interviews as needing to upgrade skills in order to qualify for better paying positions.

WIN targets two critical workforce challenges facing the national and local economy a skills gap leading to skilled worker shortages and a wage gap causing declining wages for lower-skilled workers. Through its training and placement services, as well as demand-driven employer partnerships, WIN addresses these challenges by increasing workers skills to meet employer expectations, developing positions with living wages, and providing resources to empower workers to advance along a "career" based pathway versus merely a job! The WIN Program was developed well after the Eagle P3 Project was under construction

New York City's Mayor's Office of Minority and Women-Owned Business Enterprise (NYC OM/WBE) Procurement Review & Diversity Best Practices Report.

ARG has recently completed a comprehensive review of New York City's (NYC) M/WBE Program. The research methodology utilized a five-part process to support qualitative and quantitative data collection with over one hundred (100) Agency Directors, M/WBE Program and

procurement staff. For the research process, ARG provided research design, research logistics management and scheduling, research execution, data analysis and reporting.

All three (3) Oversight Agencies, thirty-three (33) Mayoral City Agencies, nine (9) Non-Mayoral City Agencies, and a sampling of M/WBE vendors were surveyed using a combination of qualitative and quantitative research. Qualitative research is a narrative approach that gathers anecdotal experiences and opinions. The advantage of this approach is the ability to get in-depth information and follow procedures in detail. Quantitative research involves the use of surveys and objective measures that can be administered by a variety of means including phone, email, mail, etc. The benefit of this approach could be a broader sample including objective data and numbers that can be graphed, charted, and analyzed statistically if the sample is of sufficient size.

The subjects of the research included Agency procurement staff, Agency administrators and leadership, M/WBE program staff, as well as a cross-section of M/WBE vendors that had received work with the City or were seeking work with the City. Franklin Lee of Tydings & Rosenberg LLP was a subconsultant instrumental to the success of the project. ARG used both qualitative and quantitative research techniques.

As an outcome of the research, a 700+ page summary report was created with over 100 recommendations and key research observations (referred to as “The Toolbox”) inclusive of the Oversight Agencies, forty-two (42) City Agencies, State and Local legislation, as well as M/WBE Vendor training and programs.

ARG created and assisted in the deployment of a ***detailed implementation plan to demonstrably enhance and expand the NYC M/WBE Program.*** ARG partnered with the City to identify a comprehensive deployment strategy which started with the City’s top spend Agencies.

Los Angeles County Metropolitan Transportation Authority (LA Metro).

ARG has responsibility for review and ongoing, oversight compliance monitoring, training for the LA Metro Capital Improvement DBE/SBE Program. ARG staff actively researches and interprets laws, codes and regulations affecting the enforcement of contractor DBE compliance and advises Metro of any changes to U.S. Department of Transportation DBE Program requirements and best practices, as applicable. ARG is also responsible for conducting onsite interviews with DBE firms and truckers to determine commercially useful function. ARG makes presentations to management staff on the status of DBE commitment, monitors participation, advises on complex attainment issues and facilitates the resolution of complaints/disputes and other compliance related activity; responds to technical questions regarding DBE compliance requirements for Metro projects; performs DBE compliance monitoring services at all tier levels for both Design and Construction, provides technical assistance with internal/external audits/reviews; and performs compliance tasks in adherence to Metro’s DBE Program policies and procedures.

Ohio Department of Transportation (DOT) I-90 Bridge Project.

ARG was contracted by the Ohio DOT to assist with DBE and small business goal attainment on the Ohio River Bridge Projects in Cleveland Ohio, develop a comprehensive community outreach

and public engagement strategy, and to assist the State of Ohio in developing and implementing a targeted OJT initiative. Against this objective, ARG developed and implemented a comprehensive DBE/Civil Rights Survey/Evaluation Instrument to complete a program review that resulted in measurable success for the Ohio DOT against their small/disadvantaged business contract and workforce participation goals for minorities and women.

New York State (NYS) Metropolitan Transit Authority (MTA), Long Island Railroad/Metro-North Railroad (LIRR/MNR).

As a subcontractor to AECOM, ARG reviewed MTA LIRR/MNR documents to determine their compliance with FTA Circular 4701.1B, relative to implementation of their third-party Title VI requirements. Upon completion of the document review, ARG reported on the compliance status of the documents and provided recommendations.

Intercounty Connector Project (ICC) - Maryland State Highway Administration

ARG was responsible for the overall design and administration of the DBE/MBE, OJT, workforce, wage (Davis Bacon), EEO, Limited English Proficiency (LEP), environmental justice (EJ), compliance monitoring services as well as outreach, and technical assistance/supportive services. The most critical component of services provided included the development and implementation of a comprehensive contract compliance monitoring and reporting system with new procedures, systems, contract language and revised forms necessary for both desk and field monitoring, conducting commercially useful function reviews, administrative and comprehensive compliance reviews as well as safeguards and systems to report progress, identify and deter fraud and DBE/EEO Program abuse. Responsibilities required ARG staff to develop reporting systems for FHWA and the State Highway Administration of Maryland. ARG was also responsible for facilitating the development of an on-site employment center with the Maryland Department of Licensing and Labor.

ARG also drafted a new OJT Program for the project that was approved by FHWA. ARG worked with the Maryland SHA to expand its OJT Program and successfully worked to increase the number of trades from 26 to more than 85 which were accomplished with the Federal Highway Administration's approval. The revised trades have also been used as a national model to achieve participation in both skilled, and semi-professional trades and non-traditional construction related trades such as inspectors, CADD operators, heavy equipment operators and mechanics, etc.

ARG staff routinely investigated discrepancies in payments allegedly made by primes and major non-DBE subcontractors. Work performed by non-M/W/DBEs that was originally contracted to be performed by DBEs was also meticulously examined. ARG generated comprehensive progress reports, conducted contractor training workshops on compliance requirements and issued interim report cards on DBE and workforce compliance project goals. Finally, ARG was required to coordinate activities with the general design and project management consultant as well as the construction management team members.

Disparity, Availability & Utilization Studies. ARG has provided both technical and implementation support services for disparity, availability and utilization studies. Services include

data collection, M/W/DBE and stakeholder list development, focus group and public hearings facilitation, conducting in-depth interviews. ARG has also provided these services for the following studies:

- City of Houston Availability and Utilization Study
- Maryland Department of Transportation Availability and Utilization Study
- Missouri Department of Transportation Availability and Utilization Study
- New York City Small Business Services Availability and Utilization Study
- Newark Public Schools Availability and Utilization Study
- Prince George's County Availability and Utilization Study

DBE Development Program Management Plan

The New York State Department of Transportation (NYSDOT) as a recipient of FHWA DBE Supportive Service funds is required to provide training, assistance and supportive services to DBE firms certified in the DBE NYS Program to facilitate the firms' development into viable, self-sufficient organizations capable of competing for and performing on federally assisted highway projects.

ARG was contracted to develop a DBE Development Program Management Plan (DPMP) and to assist NYSDOT in developing a cost effective and measurable implementation plan to effectuate the DBE Supportive Services provided by its consultants.

ARG's responsibilities included:

- Identify and develop a detailed Management Plan to direct or cause the direction of the DBE Development Program and its participant selection process.
- Establish detailed programmatic and policy-related infrastructure (including roles/responsibilities, expectations for the participating DBEs, contractors, consultant service provider(s) and the Office of Civil Rights).
- Develop a monitoring, tracking and evaluation/assessment process/criteria/survey, which is cost effective and auditable, to determine the success/effectiveness of the DBE Development Program.
- Ensure that the DBE DPMP is compliant with the requirements of Title VI of the Civil Rights Act of 1964 and other applicable federal and state non-discrimination provisions.
- Set forth Policy and Purpose of the Program.
- Establish definitions, guidelines and a detailed work statement to be used to effectuate the Program:
 - Develop Schedule of Activities
 - Eligibility for Program
 - Pre-qualification Requirements
 - Training and Technical Assistance
 - Program Controls, Monitoring and Reporting



Resume of Gregory Jenifer
(Principal Officer of Armand Resource Group, Inc.)

GREGORY A. JENIFER

Years of Experience

Gregory A. Jenifer has over 30 years of experience in DBE Program Management and related areas.

Employment Summary

President-Chief Executive Officer | Armand Resource Group, Inc, Hackensack, NJ | 2001 - Present
Chief Technical Officer | Contract Compliance, Inc., Wayne, PA | 1994 - 2001
Contract Compliance Officer | New York State Metropolitan Transit Authority, New York, NY | 1990 - 1994
DBE Administrator | New York City Transit Authority, Brooklyn, NY | 1988 - 1990
Consultant-Business Development Specialist | Bell Span, Inc., Baltimore, MD | 1986 - 1988
Attorney | Private Practice, Baltimore, MD | 1982 - 1986
Hearing Examiner | Baltimore City Board of School Commissioners, Baltimore, MD | 1984 - 1986
Professor, Business Law | Coppin State College, Baltimore, MD | 1983 - 1985
Tax Law Specialist, Employee Plans & Exempt Organizations | Internal Revenue Service, Washington, DC | 1980 - 1982

Relevant Experience & Skills

President-Chief Executive Officer | Armand Resource Group, Inc, Hackensack, NJ | 2001 - Present

- Gregory Jenifer is the founder, President and CEO of Armand Resource Group, Inc. (ARG). He is responsible for implementing the company's vision/mission to: "assist in the design, innovation and implementation of programs to promote diversity and economic equality through the identification, utilization and development of disadvantaged businesses and human resources".
- ARG specializes in providing consulting services in the area of Civil Rights DBE/SBE/MBE/WBE Program administration, EEO/Title VI, LEP, ADA requirements and best practices. Mr. Jenifer's specialty is the proper implementation of federal regulations codified at 49 CFR Parts 23 & 26.
- Mr. Jenifer is recognized as an industry leader in implementing diversity/inclusion initiatives such as DBE/SBE/MBE/WBE, EEO/Title VI and workforce best practices on mega capital projects where alternative project delivery methods such as design build/construction management general contractor/turnkey and public private partnership strategies are utilized.
- Mr. Jenifer is a national expert and leader in the area of effective best practice DBE Program implementation and program redesign initiatives focusing on the comprehensive implementation of alternative project delivery initiatives. He has developed comprehensive contract compliance monitoring/reporting systems/procedures, supported agencies in the overall and contract specific goal setting and addressing short fall analysis, reviewing subcontract language for compliance with DBE Program requirements, conducting good faith effort evaluations/assessments, evaluating removals, replacements, substitutions of DBEs, conducting effective commercially useful function reviews, administrative and field audits, and incorporating determinations from workforce and labor compliance reviews into the overall compliance monitoring and reporting process, oversight of trucking consortiums, reviewing and assessing Subcontracting and DBE Plans, conducted fraud waste and abuse investigations, and performing prompt payments analysis/reviews.
- Mr. Jenifer has supported numerous agencies to successfully navigate USDOT/FHWA/FTA/FAA and internal agency audits. Mr. Jenifer has been the subject matter expert for several quality audits in the DBE Program administration. He is also experienced in designing effective outreach/community relations and public participation initiatives.
- Mr. Jenifer is an experienced D/S/M/W/LBE certification specialist where he has also responded to several appeals/remands on behalf of agencies in addition to processing applications. Processing applications included reviewing applications, requesting additional information, conducting site visits, presiding over appeals/conducting appeals, assessing NAICS Code expansions, and investigating third party challenge determinations.

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- Mr. Jenifer has also designed and implemented customized/effective practical technical assistance/supportive services/business development and mentoring programs and training initiatives for D/S/M/WBEs.
- Mr. Jenifer has facilitated team building, networking and partnering sessions for prime and subcontractors as well as evaluated contractor DBE/supportive service and workforce programs/curriculums.
- Mr. Jenifer is also experienced working in an oversight capacity with both construction and program management support teams. Mr. Jenifer also developed and implemented a forensic investigation services division of ARG which provides independent private sector inspector general (IPSIG) oversight services in the area of D/S/M/WBE and Workforce program administration services focusing on fraud, waste and abuse.
- Mr. Jenifer provides comprehensive Civil Rights compliance trainings, at industry conferences, workshops, and seminars, including: AASHTO, ACCA, APTA, COMTO, the NY/NJ Minority Purchasing Council, and the American Association for Affirmative Action (AAAA).
- As principal of Armand Resource Group, Inc., he performs the services of Engagement Supervisor, Project Manager and QA/QC Oversight to ensure successful implementation of both contract performance and technical support initiatives. He also oversees/is responsible for all financial decisions, estimating, proposal preparation, negotiating insurance, marketing and sales, hiring and firing personnel, supervising field operations, purchasing equipment/materials/supplies, managing payroll, negotiating contracts and ensuring the proper/successful implementation of services provided by the company.
- A sampling of relevant clients includes:
 - Denver Regional Transportation District – Comprehensive DBE/SBE/Workforce Program design/redesign, compliance monitoring/reporting outreach, technical assistance/training, community/public participation and EEO/Diversity procedures/systems development. Relevant projects included West Corridor (CMGC), Denver Union Station (D-B), I-225, Eagle P3, Southeast Rail Extension, and North Metro Projects;
 - MDTA Nice Bridge Replacement Project - DBE/EEO and Civil Rights Oversight Compliance Monitoring Services;
 - Maryland State Highway Administration/Inter-County Connector Project (ICC) - DBE, Technical Assistance, Compliance Monitoring and Reporting Services;
 - New York State Thruway Authority - The New NY Bridge (Tappan Zee Bridge) - DBE vetting and compliance reviews;
 - New York City Department of Transportation – DBE/EEO and Civil Rights Oversight Compliance Monitoring Services for the Brooklyn, Manhattan and City Island Bridge Projects, Battery Park Underpass, Roosevelt Avenue Bridge Deck Replacement Project, Shore (Belt) Parkway over Mill Basin Bridge Project, the Replacement of the Upper Roadways Ed Koch Queensboro Bridge Project and on the Broadway Bridge Project;
 - NYS MTA New York City Transit Authority, Second Avenue Subway Project - Phase 2 - DBE Compliance Monitoring and Reporting;
 - Metropolitan Washington Airports Authority – staff extension services to provide comprehensive L/DBE Program administration services, Overall Agency Goal Setting, Silver Line (D-B), comprehensive compliance monitoring and reporting services as well as providing certification processing, appeals and third-party challenges;
 - Maryland DOT & MTA Purple Line P3 Project - DBE/EEO/Workforce/Labor/ Outreach Oversight Compliance Monitoring and Reporting Services;
 - MBTA, MassDOT Commuter Rail Project - Technical assistance for the development and evaluation of diversity language/compliance for the Commuter Rail Service Provider Request for Proposal;
 - Los Angeles County Metropolitan Transportation Authority (METRO) – Comprehensive DBE compliance monitoring and reporting services for the Purple Line Phases 1, 2, and 3 (all D-B), Regional Connector (D-B), Crenshaw/LAX Line, and the Southwest Yard and Division 20 Projects;
 - Tren Urbano (D-B) – Puerto Rico Highway & Transportation Authority. Responsible for the full implementation of the DBE/EEO Program, comprehensive compliance monitoring/reporting, conducting compliance audits and responding to FTA/DOL compliance audit findings, providing certification

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assistance, documenting and evaluating good faith efforts, providing technical assistance on 49 CFR Part 26 DBE Program requirements;

- NYS MTA Capital Construction - Independent Oversight Compliance Monitoring Services for Mega Projects (East Side Access, Second Avenue Subway, Fulton Street Transit Center, #7 Line Extension). Responsible for DBE/MBE/WBE Buy America requirements and workforce compliance and fraud protection and prevention services;
- Hampton Roads Transit – DBE Program review and re-design, staff training, triennial/annual goal revision, procedures/systems development including the new reporting systems and compliance monitoring forms;
- Charlotte Area Transit System – Comprehensive oversight compliance monitoring and reporting for both the DBE and Workforce Program requirements;
- Dallas Area Rapid Transit (D-B) – Comprehensive compliance monitoring and reporting focusing on commercially useful function reviews and trucking consortium administration;
- Greater Cleveland Regional Transit Authority – Re-designed certification processing procedures and systems, cleared backlog/updated certification files of approximately 200 certification applications;
- Bi-State Development Agency - St. Louis Metro. Responsible for re-design and overall implementation of the Supplier & Workforce Diversity Program as well as training Agency Staff, responsible for workforce/contract compliance monitoring and reporting, including CUF reviews, field investigations, assessing/monitoring trucking consortiums, drafting goal determinations, conducting bid evaluations, assessing good faith efforts/performing reconsideration determinations, developed standard operating procedures and new forms;
- NJ Transit – Southern NJ Light Rail Transit System (D-B) – performed comprehensive compliance monitoring and shortfall assessment and overall DBE/SBE technical support for NJ Transit;
- Maryland DOT, The Secretary’s Diversity & Equity Training Conference – provided training sessions on Determining Commercially Useful Function & Conducting DBE Compliance Reviews.

Chief Technical Officer | Contract Compliance, Inc., Wayne, PA | 1994 - 2001

- In March 1994, Mr. Jenifer joined Contract Compliance Inc. (CCI) and continued until the start of Armand Resource Group, Inc. in 2001. He performed the duties of Project Director for the Disadvantaged Business Enterprise (DBE) Program implemented on the Hudson-Bergen Light Rail Transit System (HBLRTS) for New Jersey Transit (NJT). CCI was a subcontractor to Parsons Brinckerhoff, the general design consultant for the HBLRTS Project. As the DBE Program’s Project Director, he was responsible for overseeing the implementation of the DBE Program’s technology transfer initiatives and 30% DBE goal attainment.
- Responsibilities included:
 - Assisting NJT with certification determinations; review of third party subcontracting scope of services to identify DBE opportunities and preparation of DBE participation goal analysis;
 - Conducting research to determine availability and capabilities of DBE firms; interpretation of 49 CFR Part 23 & 26 regulations;
 - Evaluating bids/proposals for compliance with DBE Program requirements;
 - Reviewing contract documents for appropriate language concerning DBE participation;
 - Design and coordination of DBE outreach and technical assistance seminars for the HBLRTS Project.
 - Developing and implementing an aggressive technical assistance and outreach plan;
 - Developing opportunity alerts;
 - Developing DBE informational newsletters;
 - Providing technical support to NJT’s Engineering/SDB Program Departments and Project/Contract Management staff concerning DBE Program issues and challenges.
 - Developed and implemented teambuilding and partnering workshops for prime contractors/subcontractors and agency personnel. The value of this general design and management assistance effort was in excess of \$250 million dollars and the team achieved a 30% DBE participation goal.
- After successfully completing the work on the general design phase of the HBLRTS, CCI was awarded the prime contract to provide Disadvantaged Business Enterprise (DBE) Supportive Services and compliance

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monitoring services for NJT for firms interested in the Design, Build, Operate and Maintain (DBOM) phase of the HBLRTS. Mr. Jenifer was the Project Manager/Director for this contract with NJT and provided technical support to implement a DBE Program under a then new construction delivery system (DBOM). Under his leadership and technical oversight, nine project personnel were performing certification reviews (including site visits), DBE compliance monitoring/reviews, reporting/auditing, oversight and dispute resolution services, mentoring, outreach, EEO and affirmative action workforce compliance reviews.

- He was also responsible for providing technical assistance to NJT on the interpretation and implementation of the then new Federal Regulations codified at 49 CFR Parts 23 and 26. He also supported NJT with the training of staff on the practical implementation of the new federal regulations. Further, he was responsible for managing and implementing the utilization of technical assistance sub-consultants (including De Leuw Cather and Marsh), to successfully complete required supportive services and comprehensive technical assistance services. The DBOM value of the HBLRTS Project was approximately \$2.3 billion dollars.
- As the Northeastern Projects Manager, Deputy/Chief Technical Officer, he was responsible for marketing, developing proposals, strategy/approach, providing technical assistance, QA/QC management and oversight responsibility for CCI staff (over 50 civil rights employees) as well as subconsultants (to provide DBE/MBE/WBE Program design/re-design services, compliance monitoring, technical assistance, certification processing, outreach, reporting support) on the following projects:
 - (1) Southern New Jersey Light Rail Transit System (valued at \$700 million),
 - (2) Tren Urbano Project (valued at \$2 billion),
 - (3) Pittsburgh Port Authority Heavy Rail System Extension (valued at \$800 million),
 - (4) WMATA Capital Rehabilitation/Extension Program (valued in excess of \$3 billion),
 - (5) SEPTA Market Street Elevated Project (valued in excess of \$600 million), Logan Modernization Project (valued in excess of \$1 billion),
 - (6) The City of Charlotte's Certification Program,
 - (7) Baltimore County Public Schools Rehabilitation Program (valued at \$750 million),
 - (8) Harrisburg School District Capital Improvement Program (valued at \$467 million),
 - (9) NJ DOT DBE Supportive Services,
 - (10) NYS DOT DBE Supportive Services Assessments and Implementation Services,
 - (11) NJ DOT Motor Vehicle Inspection Services DBOM Project,
 - (12) Several other highway, transit, airport and private sector projects.

Contract Compliance Officer | New York State Metropolitan Transit Authority, New York, NY | 1990 - 1994

- Prior to March 1994, Mr. Jenifer served as a Contract Compliance Officer for the **Metropolitan Transportation Authority (MTA)** in New York City for five years and a DBE Administrator with the **New York City Transit Authority** for approximately two years, between 1988 -1994.
- Responsibilities included review, research, development and implementation of the MTA's policies, procedures and reporting for a multi-billion-dollar annual D/M/WBE Program for five constituent agencies (including the Metro North Commuter Rail Road, Long Island Rail Road, Triborough Bright and Tunnel Authority, Metropolitan Suburban Bus Authority of Long Island, and New York City Transit).
- Performed outreach, technical assistance and DBE certification processing services. Conducted DBE certification investigations of size, ownership, control, independence and expertise, conducted eligibility review meetings, site visits and drafted eligibility evaluations.
- Additionally, Mr. Jenifer was responsible for developing goal determinations, performing bid evaluations, evaluating good faith effort documentation, attending pre-bid/proposal meetings, contract compliance monitoring including workforce compliance, reporting and participating in dispute resolutions of DBE issues.
- He encouraged partnering and mentoring relationships in an effort to maximize participation of D/M/WBE's on professional service, construction, equipment, material, and supply contracts.
- Developed and administered special projects in an effort to maximize procurement opportunities for D/M/WBE's.

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- Developed and implemented training programs for contract compliance officers, contract managers, project managers/resident engineers on the MTA's Agency-Wide D/M/WBE Program requirements; and conducted customized outreach initiatives/programs, developed diagnostic and growth plans for DBEs, conducted training seminars and technical assistance workshops for D/M/WBE's.
- Researched and published articles for the award winning "ACTION" Newsletter. He was also responsible for compiling and drafting quarterly and annual federal and state D/M/WBE Reports and assisted in developing the MTA Agency wide D/M/WBE Plan.

Education

JURIS DOCTORATE | 1981 | UNIVERSITY OF MARYLAND

BACHELOR OF SCIENCE | 1978 | UNIVERSITY OF CONNECTICUT

Special Education & Business Law

Continuing Education & Training

- American Contract Compliance Association National Training Institute, 2009 - Present
- 2019 AASHTO Agency Administration Conference, May 5 - 8, 2019, Baltimore, MD
- Texas Unified Certification Program Training Workshop, April 2015
- 10th Fraud Seminar – NJ Chapter of the Association of Certified Fraud Examiners/Rutgers Business School, January 2015
- APTA-COMTO DBE Assembly: Good News about Good Faith Efforts Training, October 2014
- American Contract Compliance Association, Master Compliance Administrator, 2011
- American Association of State Highway & Transportation Officials, Civil Rights Five Day Training Course, August 2006
- Southern Transportation Civil Rights Training Symposium – August 1-5, 2005, Orlando, FL
- NTI DBE Program Training Seminar for Federal Transit Administration Grantees - February 8-10, 2005, Denver, CO, Regional Transit District
- American Association of State Highway & Transportation Officials Civil Rights Five Day Training Course, September 3-8, 2004, San Diego, CA
- NTI DBE Program Training Seminar for Federal Transit Administration Grantees – November 18-20, 2003, NYS MTA
- DBE Program & Legal Challenges – AASHTO National Civil Rights Conference, Atlantic City, NJ, May 4-8, 2002
- Disadvantaged Business Enterprise (DBE) Program – Three day Training Seminar for Federal Transit Administration Grantees – Rutgers National Transit Institute, April, 3-5, 2002
- US DOT Unified Certification Program Workshop/Conference, Atlanta, GA, 2001
- AASHTO Regional Transportation Civil Rights Conferences, Atlanta, Georgia and Louisville, KY, 1999/2000
- AASHTO National Transportation Civil Rights Conference, – Five Day Intensive Training - two days of intensive certification processing/new regulations and three days of supportive services and new program development/compliance training, 1998/2000
- COMTO DBE Training Program, Baltimore, MD, 1998
- Airport Minority Advisory Council USDOT DBE Certification Training Program, Washington, DC, 1998
- USDOT Industry Briefing Workshop – Proposed Federal Regulations Codified at 49 CFR Part 26, NYC, 1998
- Sexual Harassment/Title VI Training (NYSMTA)
- Business Development and Corporate Law courses
- Lifespring Personal Growth and Leadership Development Training Program, NY
- Total Quality Management Training Program, New Brunswick, NJ, 1995

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- American Contract Compliance Association, Certified Compliance Administrator, 1995
- AASHTO National Transportation Civil Rights Conference, Newport, RI, 1994
- NYS MTA USDOT 49 CFR Part 23 Certification/Contract Compliance Workshop, NY, 1988 Region 1 Civil Rights Training Program for USDOT, Rhode Island, 1994

Industry-Related Memberships:

- Conference of Minority Transportation Officials (COMTO)
- Airport Minority Advisory Council (AMAC)
- American Public Transportation Association (APTA)
- American Contract Compliance Association (ACCA) – MCA Membership # 4217

Presentations & Speeches

- Presenter: Determining Commercially Useful Function, American Contract Compliance Association (ACCA), San Antonio, TX – August 2021
- Moderator: Nuts & Bolts of Contractor Compliance Reviews; Presenter: Disparity Studies: How They Support DBE/Diversity Programs; Accurate Data Collection Using Advanced Technology; Design Build Goal Setting, NCDOT Southern Transportation Civil Rights Executive Council Training Symposium, Charlotte, NC – August 2019
- Presenter: Determining Commercially Useful Function & Diversity & Inclusion: Contracting 101, American Contract Compliance Association (ACCA), San Diego, CA – August 2019
- Supplier Diversity Outreach Program Training, Broward County Public Schools, Sunrise, FL – August 2019
- Presenter: Effective Good Faith Efforts, American Contract Compliance Association (ACCA), Cleveland, OH – August 2018
- Presenter: The DBE Program: A DBE Perspective, AASHTO Civil Rights Symposium, Oklahoma City, OK – May 2018
- Presenter: Effective Good Faith Efforts, American Contract Compliance Association (ACCA), Kansas City, MO – August 2017
- Presenter: Determining Commercially Useful Function, American Contract Compliance Association (ACCA), Kansas City, MO – August 2017
- Presenter: Effective Good Faith Efforts, American Contract Compliance Association (ACCA), Chicago, IL – August 2016
- Presenter: Conducting Compliance Reviews, Maryland Department of Transportation, The Secretary's Diversity & Equity Training Conference, Hanover, MD - October 2013 & October 2016
- Presenter: Determining Commercially Useful Function & DBE Compliance Reviews, American Contract Compliance Association (ACCA), West Palm Beach, FL – August 2015
- Presenter: Managing DBE Programs in a Design Build Environment, American Contract Compliance Association (ACCA), West Palm Beach, FL – August 2015
- Presenter: Determining Commercially Useful Function & DBE Compliance Reviews, American Contract Compliance Association (ACCA), San Jose, CA – September 2014
- Presenter: Managing DBE Programs in a Design Build Environment, American Contract Compliance Association (ACCA), San Jose, CA – September 2014
- Moderator: APTA Revenue Management Summit; Public Engagement – March 2014
- Presenter: APTA Transit CEOs Seminar; Successful DBE Programs: The CEO's Role – February 2014
- Presenter: Effective Good Faith Efforts, American Contract Compliance Association (ACCA), Baltimore, MD - August 2013
- Presenter: Managing DBE Programs in a Design Build Environment, American Contract Compliance Association (ACCA), Baltimore, MD - August 2013

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- Presenter: Managing DBE Programs in a Design Build Environment, American Contract Compliance Association (ACCA), Philadelphia, PA - August 2012
- Presenter: Effective Good Faith Efforts (Agency vs. Contractor Perspective), American Contract Compliance Association (ACCA), Bloomington, MN - August, 2011
- Presenter: Managing DBE Programs in a Design Build Environment, American Contract Compliance Association (ACCA), Bloomington, MN - August 2011
- Presenter: Managing DBE/EEO Programs in an Environment Utilizing Alternative Project Delivery Methods, American Contract Compliance Association (ACCA), Indianapolis, IN - September, 2010
- Presenter: DBE Compliance in a Design Build Public Private Partnership (P3) World, American Contract Compliance Association (ACCA), Fort Worth, TX – September, 2009
- Presenter: Best Practices: Contract Compliance and Workforce Monitoring, Reporting, Procedures and Systems Development, American Association for Affirmative Action (AAAA) Region III, Philadelphia, PA – September 2005
- Moderator: Effective Techniques in Fraud Prevention: Certification and Contract Admin. August 2005
- Three Day DBE/MBE/WBE Program Administration Training Course – Co-Trainer – July 2003 Metro St. Louis
- Managing DBE Programs in a Design Build Environment – Challenges/Issues – 2002 Alabama DOT Supportive Services Annual Workshop, Montgomery, AL – December 2002
- Managing Civil Rights Programs in a Design Build Environment – 2002 AASHTO National Civil Rights Conference, Atlantic City, NJ – May 2002
- The Various Certification Processes and Issues with Qualifying – NYS MTA PREP Program – April 2002
- Certification Processing under the New Regulations – Significant Changes for NJ TRANSIT DBEs –2000
- Practical Application of the New DBE Program Regulations codified at 49 CFR Part 26 – three times for NJ TRANSIT and SEPTA – 2000
- DBE Participation and Compliance on the HBLRTS Project, Senator Wynona Lipman, Saturday Seminars & Small Business Development Workshops, Essex County College, Newark, NJ 1997- 2000
- Business Development Programs Under the New Regulations Eight Hour Training Program for all Ohio DOT, FTA and FAA State Agencies – 1999
- Pulling Opportunities Out of a Hard Hat; NY/NJ Minority Purchasing Council Annual Conference, 1998.
- Facilitator for Technical Assistance Workshop on the Federal Acquisition Regulations Title 48 Part 31, Overhead Rates and Proper Computation, NJ TRANSIT - 1998
- 49 CFR Part 26 and U.S. DOT's Model for Change, COMTO Conference, Chicago, IL, 1997
- Affirmative Action Contract Compliance on Mega Projects, Buildings Future Council Conference, San Francisco, CA - 1997
- Affirmative Action Compliance on Design, Build, Operate and Maintain Projects (HBLRTS-Model) APTA Construction/Engineering Joint Committee Meeting, Houston, TX 1997
- Contract Compliance Process/Procedures for Mega & Design Build Projects, National Contract Compliance Association Conference, Boston, MA, 1997

Related Civil Rights/DBE/EEO/Title VI/

Workforce Compliance Projects and Disparity Studies

- Massachusetts Bay Transportation Authority – Program Management Services (2020 – Present)
- City of Denver – Supportive/Consulting Services (2020 – Present)
- City of Philadelphia Rebuild Program (2019 – Present)
- Los Angeles County Community College District (LACCD) Bond Program Monitor (2019 – Present)
- NYCDOT Broadway Street Bridge Project (2018 – Present)
- NYCDOT Queensboro Bridge Project (2018 – Present)
- MDTA Nice/Middleton Bridge Replacement Design Build Project (2018 – Present)

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- NYC Mayor’s Office of M/WBE –MWBE Program Compliance (2017 – 2019)
- The Port Authority of NY & NJ – Certification/CUF Reviews/Oversight (2017 – Present)
- NYS MTA NYCTA, Second Avenue Subway Project (2017 – Present)
- NYCDOT Comprehensive Ferry Transit Resilience Project (2017 – Present)
- Los Angeles County Metropolitan Transportation Authority (METRO) (2017 – Present)
- NYSDOT – DBE Development Program Management Plan (2017)
- The Purple Line (Maryland Transit Administration) (2016 – Present)
- Charlotte Douglas Int’l Airport (DBE/ACDBE Consulting Services) (2016 – Present)
- New York City – Disparity Study (2015 – 2016)
- Charlotte Area Transit System (Civil Rights Compliance Support Services) (2015 – 2019)
- NYCDOT Battery Park Underpass Project (2015 – 2018)
- NYCDOT Roosevelt Avenue Bridge Deck Replacement Project (2015 – Present)
- NYCDOT Shore (Belt) Parkway over Mill Basin Bridge Project (2015 – 2019)
- NYS Thruway Authority – Tappan Zee Hudson River Crossing Project (2014 – 2018)
- Newark Public Schools Disparity Study (2014 – 2015)
- NCTRCA (Texas) –DBE/ACDBE/MBE/SBE Program Administration (2014 – 2019)
- Prince George’s County Availability & Utilization Studies (2014)
- NYS DOT DBE Supportive Services Program Management Plan Development (2014)
- NYC HPD/HDC – Common Ground Project (2013 – 2015)
- NYC HPD/HDC – Sugar Hill Project (2013 – 2014)
- NYC DOT City Island Bridge Rehabilitation Project (Civil Rights/DBE) (2013 – 2019)
- NYCT Sandy Related Repair/Resiliency Project (DBE Program Oversight) (2013)
- The Port Authority of NY & NJ – OIG/IPSIG (2012 – Present)
- NYS MTA Capital Construction (Oversight Compliance Monitoring Services) (2012 – 2017)
- NYC DOT Manhattan Bridge Rehabilitation Project (Civil Rights/DBE) (2010 – Present)
- NYCDOT Brooklyn Bridge Rehabilitation Project (Civil Rights/DBE) (2010 – Present)
- DART Orange Line Extension Projects (2010 – 2015)
- OHIO Department of Transportation (Cleveland Innerbelt Bridge Project) (2010 – 2013)
- City of Houston Disparity Study (2010)
- Missouri Department of Transportation Disparity Study (2010)
- Maryland Department of Transportation Disparity Study (2009-2010)
- NJ Transit – Portal Bridge Project (2008-Present)
- MTA Metro North Croton Harmon Yard Rehabilitation Phase III (2008-2010)
- MTA/NYCT Vendor Relations – On-Call IPSIG Services (2007-Present)
- Texas DOT & FHWA – Independent Inspector General Services (2007-2009)
- Maryland State Highway Administration – Intercounty Connector Project (2006-2014)
- New Jersey Transit – The ARC Tunnel Project (2006-2010)
- Denver Regional Transportation District – FasTracks Project (2005-2020)
 - Denver Union Station Redevelopment Design & Construction
 - Eagle P3 Design, Construction, Operation, & Maintenance
 - I225 Design & Construction
 - North West Area Mobility Study
 - Bolder Transit Village
 - North Metro Rail Line Design & Construction
 - West Corridor Design & CMGC
 - Golden Triangle Plan
 - I-25 Urban Corridor Study
 - Olde Town Transit Hub

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- Gold Line Basic Engineering Environmental Impact Study
- Several Eminent Domain Contracts
- US36 & 116 Pedestrian Bridge Projects
- North West Rail Line
- Southeast/Southwest Rail Line extension
- Elaiti North Yard Expansion
- I-70 East Corridor
- C470/Lucent Station Area Masterplan
- Fitz Simmons Parkway Station Area Plan
- Englewood Next Steps Study
- Civic Center Master Plan
- Several Property Acquisitions
- On-Call Systems Construction Services
- FasTracks Public Information Consultant Services
- Denver Union Station Hotel Design & Construction
- Central Rail Mobility Study
- Northeast Downtown Next Steps Plan
- Several Light Rail Maintenance Facilities Design & Construction
- Workforce Initiative Now (WIN) Program Development & Implementation
- RTD Owner Controlled Bonding Assistance Program Design & Implementation
- Staff Extension – DBE/SBE, EEO, Title VI, ADA, LEP, and General Civil Rights
- FTA/FHWA/USDOL Civil Rights, DBE, EEO, Title VI, Labor Compliance Reviews & Audits
- Minneapolis Public Schools (2005-2008)
- Greater Cleveland Regional Transit Authority (2005)
- Hampton Roads Transit (Staff Extension Services & TIDE Project) (2004-2014)
- Jersey City Public Schools – NJ School Construction Commission (2004-2006)
- Metropolitan Washington Airports Authority (2003-2015)
- Alabama A & M and Stillman College (Alabama DOT) (2003)
- Puerto Rico Highway & Transportation Authority – Tren Urbano Project (2002-2008)
- St. Louis Metro – Cross County Metro-Link Project (2002-2004)
- Washington D.C. Department of Transportation (2002-2003)



Resume of Marilyn Figueroa
(Project Manager for Armand Resource Group. Inc.)

MARILYN RICHARD FIGUEROA

PROFILE

Strategic thinker and business partner with an ownership and continuous-improvement mindset, a history of consistent delivery on commitments, and a relationship-based approach to working across organizations. 25+ years of progressive organizational development, project management and market research experience

- Experience with utilizing and training a broad organizational development toolkit, including SWOT/Gap analysis, Agile Work Process, Design Thinking, Situational Leadership, Verus Global Pathways to Leadership and Berkshire Hathaway 80/20 Model.
- Global team leadership background that spans North America, Europe, and Asia across research and development, marketing and human resources work product.
- More than two decades of experience designing and leading the execution of qualitative and quantitative research projects in both the private and public sector. Versed in agile research and online tools, as well as conventional survey and data analysis methods.
- Master at delivering 6-12-month projects above objective and ahead of schedule. Record of developing and executing three-to-five-year master plans representing hundreds of millions of dollars in revenue.
- Proven ability to identify innovative solutions to facilitate continued growth. Patented inventor.

EXPERIENCE

Armand Resource Group, Inc.

2018 – Present

Senior Project Manager

As Senior Project Manager, Ms. Figueroa provides Organizational Development, Project Management and Diversity and Inclusion strategic consulting services. She provides Organizational Development leadership and develops overall project strategy to ensure the successful execution of project details as part of a cross-functional team. Ms. Figueroa reviews and revises client policies, procedures and operational manuals to ensure compliance with existing and revised laws, rules, regulations, and policies governing the Title VI and Equal Employment Opportunity (EEO) programs to ensure compliance. She translates large and complex data sets into actionable project insights and discernible comprehensive reports. She provides design, support and technical assistance with developing survey methodologies that meet Title VI guidelines. Provides administrative and technical support and expertise in analyzing and addressing Transportation Equity and Environmental Justice issues as they relate to infrastructure planning and transit-oriented development projects. She develops internal and external documentation and communication, including re-writes of existing documentation and new content based on data analysis; completes literature reviews, survey design and analysis, and insight development; and rigorously adheres to project timelines and provides weekly, monthly and quarterly updates of performance versus objectives. She tracks and monitors project status and provides comprehensive, detailed reports to management. She is experienced with the assessment, development and implementation of comprehensive contract compliance monitoring and reporting systems and the development of procedures, contract language and reporting formats. Ms. Figueroa is also responsible for performing community relations/liason and public outreach/engagement services.

MARILYN RICHARD FIGUEROA

Ms. Figueroa's responsibilities also include the implementation of Title VI, DBE/MBE/EEO/Workforce and Civil Rights Program requirements on major capital projects. Assists with the administration and implementation of comprehensive contract compliance monitoring, reporting and documentation programs (including Davis Bacon Wage compliance interviews) to ensure compliance with federal, state, and local requirements. Also responsible for verifying good faith efforts documentation, conducting desk audits, performing compliance reviews, verifying DBE/MBE/SBE/WBE payments and promptness, conducting field investigations and documenting DBE/MBE/SBE/WBE performance/compliance with commercially useful function/crediting requirements. Review, investigate, and render determination on requests for removal, replacement, substitution of DBE/SBEs. Ms. Figueroa's project experience includes:

New Nice Middleton Bridge Civil Rights Compliance Policy and Manual Development. As a Senior Project Manager for the New Nice-Middleton Bridge project, helped to develop policy and the Civil Rights Compliance Manual. The scope of the manual included, but was not limited to, forms and processes the Title VI requirements (including standard assurances and complaint forms/processes), EEO/AA requirements (including bulletin boards, meetings and reporting), DBE Monitoring and Reporting, Recruiting, Wage and Payroll requirements.

City of Denver, Division of Small Business Opportunity (DSBO) Supportive/Consulting Services As a Senior Project Manager for the City of Denver project, Ms. Figueroa is responsible for developing the Triennial DBE goal methodology for the FY 2020-2022 in accordance with the US DOT Regulations under 49 CFR Part 26 and other FAA guidance documents for Denver International Airport (DEN). The ACDBE goal has already been completed for DEN. Additionally, Ms. Figueroa is also responsible for developing the DBE Program Plan and works with DSBO to develop the DBE Program Plan Goal for the applicable Triennial period. Also responsible for conducting compliance reviews, commercially useful function reviews and on-call forensic investigations.

MBTA – DBE Performance Management Services

Ms. Figueroa provides DBE Performance Management support and advises Massachusetts Bay Transportation Authority (MBTA) management on all matters of DBE concern which may impact federally funded MBTA Programs and Projects. She supports the MBTA's Capital Delivery Program by identifying and evaluating DBE related activities/issues that impact professional services or construction projects (including design build and task order contracts). Additionally, she reviews Consultant and Contractor schedules for DBE utilization and compliance. Ms. Figueroa provides general project management services which include participating in project status meetings, Agency meeting coordination, and Stakeholder and DBE Outreach. She utilizes E-Builder Enterprise, a comprehensive project and program management system, to manage DBE documentation, communication and costs among the Contractor, Consultant, and the MBTA, as well as Contract Management System (CMS), Financial Management Information System (FMIS) and Equitable Business Opportunity software (EBO).

MARILYN RICHARD FIGUEROA

Ms. Figueroa's responsibilities also include the following:

- Provide training to MBTA staff - PMs, Management, Upper Leadership
- Assist with the development of the Triennial Goal
- Assist in monitoring and tracking DBE participation on all federally assisted contracts.
- Provide support to Capital Divisions and collect data for reports with FTA to report on DBE commitments and achievement.
- Assist in the evaluation and oversight of DBE participation credit on all federal contracts.
- Review specifications and meet with assigned Office of Diversity & Civil Rights (ODCR) staff and Project Manager to discuss appropriate DBE participation.
- Assist in the review and approval of all DBE Commitment forms.
- Conduct on site contract compliance monitoring inspections where warranted and/or as directed by ODCR.
- Review DBE Utilization Reports submitted by primes to verify that they are complying with agreed level of participation.
- Review applications for payments submitted by primes to verify that they are identifying all commercially useful functions undertaken by DBEs.
- Respond to and/or investigate prompt payment complaints from DBE firms, as directed by ODCR.
- Prepare and submit monthly and quarterly DBE compliance reports
- Assist the ODCR in outreach and networking activities with DBEs and other business organizations.

NYC Mayor's Office of Minority & Women Business Enterprise. As Senior Project Manager, conducted a comprehensive review of the New York City M/WBE and EEO Programs relative to the mayoral goals, awarding at least 30% of the dollar amount of City contracts to M/WBEs and doubling the number of certified and re-certified M/WBEs, and translated the research observations into a detailed agency-level implementation plan. Scope of research included 45 city agencies and a multi-billion dollar procurement program. Worked with the Mayor's Office of M/WBEs and New York City Oversight Agencies Mayor's Office of Contract Services (MOCS) and the Department of Small Business Services (DSBS) to analyze the existing state of M/WBE contracting and identify challenges and best practices from the field. The scope of the project included a review and assessment of previous studies and reviews, an examination of current M/WBE engagement and initiatives, developing recommendations for improvement and detailed implementation plans, and the development of an external communications plan and related tools. Services provided included: project management; organizational/economic development consulting; literature review; best practice assessment/program comparison; internal/external communications; and, design, execution and data analysis of qualitative and quantitative research including focus groups, surveys, and on-on-one interviews. The project started March 2017 and was completed October 2019 with an overall project value of \$1M.

RTD Triennial Goal-Setting Project. Ms. Figueroa has recently led the process to assist the Denver RTD in updating the Overall DBE Triennial Goal for fiscal years 2020 – 2022 based on a comprehensive analysis of DBE firms in the Denver UCP directory, 2016 Census County Business Patterns, Denver Disparity Study, and historical DBE program performance data.

MARILYN RICHARD FIGUEROA

Los Angeles County Community College District (LACCD) – Bond Program Monitor. As a sub-consultant to the Bond Program Monitor for the Los Angeles Community College District's capital program, leading a review of the objectives, policies, procedures, operational components, and participation results of the Build- LACCD Local, Small, Emerging, Disabled Veteran Owned (LSEVD) Program as currently implemented. Generating report with recommendations focused on improving the efficiency and effectiveness of the program, as well as increasing the breadth and scope of vendor participation.

Berkshire Hathaway/Procter & Gamble

1991 - 2017

Organizational Development R&D Director (2012 –2017)

After acquisition of Duracell by Berkshire Hathaway in 2016, was promoted to Director and given additional accountability for \$2+ billion global alkaline battery sector including organizational development and external technical communications. Managed \$1 million department and staffing budget and played a key strategic role in global organizational design.

Successfully aligned organization with Berkshire Hathaway, ensured Duracell remained competitive in the marketplace, and served as project leader for new launches.

- **Organizational Design and Culture Change:** Drove the culture, design, and process changes necessary to align Duracell with new company ownership. Developed and executed training on the Berkshire Hathaway 80/20 toolkit for organizational design and project execution.
- **Talent Management:** Evaluated resource capacity and anticipated future staffing needs to drive product innovation and execute product improvement initiatives; recruit and develop engineers, scientists, market researchers, and contractors across North America and Europe.
- **Research Design and Analysis:** Drove a comprehensive learning plan across market, consumer, product, and package for quantitative and qualitative research with Nielsen, Ipsos, IRI, and a varied digital toolkit.
- **Project Management:** Every product launch delivered on schedule. Drove the alignment of new product launches between the technical and commercial organizations, using research insights, product performance, device analysis, and market and societal trends.
- **Internal and External Communications:** Represented Duracell to Disney, Wal-Mart, Costco, and other global partners; created and personally presented data analysis content to close contracts generating tens of millions of dollars.
- **Regulatory Compliance:** Oversight and coordination of the legal and regulatory defense and development of new digital systems for consumer and retail customer claims.

Procter & Gamble R&D Department Head (1998 – 2012)

Progressed through a series of increasingly responsible global program leadership positions. Drove both short- and long-range innovation strategy and development program for new formulas and platforms. Administered a half million-dollar department and staffing budget.

Delivered annual initiatives valued at tens of millions of dollars as well as millions in annual cost savings.

MARILYN RICHARD FIGUEROA

- **Diversity Strategy Initiative:** Successfully led the design and execution of a program to re-design the diversity program for Beauty Care R&D ahead of objective and on schedule. Designed and led the execution and analysis of organization surveys across geographies, functions and departments. Recommendations adopted by leaders.
- **Organizational Restructuring:** Helped facilitate improved performance and millions of dollars in cost savings by leading R&D activity system and organizational development. Identified, recruited, evaluated, hired, and developed dozens of engineers, scientists, product market researchers, and contractors across North America, Europe, and Asia.
- **Research and Data Analysis:** Created a competitive market advantage by developing an innovation strategy based on market research, study results, competitive analysis, and beauty market trends.
- **Regulatory Compliance:** Led a multifunctional team that included legal, regulatory, and clinical organizations in the development and support of new claims/visuals for appearance, longevity, sensory, and skin/lip improvement; presented claims, demonstrations/visuals to retail partners and licensing partners including Wal-Mart and QVC.
- **Project Management:** Ensured success of new product launches as R&D Innovation Leader by integrating product design, intellectual property, process development, and commercial-facing technical deliverables. Coordinated work of technical and commercial organizations.

Senior Scientist (1993 – 1998)

Technical Staff (1991 – 1993)

EDUCATION

Yale University, 1991

Bachelor of Science: Pre-Medicine, Biology & Psychology

CERTIFICATION

American Contract Compliance Association (ACCA), Certified Compliance Administrator (CCA), 2019

RELEVANT TRAINING

Survey & Market Research Training

Moving Beyond In-Person Research: How to Use Online Video Insights for In-Context Learning (Digsite, June 5, 2019)

6 Ways to Halve Your Analysis and Reporting Time (Quirk's Webinars, April 20, 2019)

Unlock the Secrets to Conducting Agile Research (Digsite, February 5, 2019)

The Future of Insights – Trends, Innovations and Changes (Quirk's, December 12, 2018)

Diversity Program & Compliance Training

American Contract Compliance Association, National Training Institute, August 2018 & August 2019

Shaping Work of the Future (Massachusetts Institute of Technology (MITx), Certificate May 23,

MARILYN RICHARD FIGUEROA

2019)

2019 AASHTO Agency Administration Conference, May 5 - 8, 2019

Understanding Disadvantaged Business Enterprise Interstate Certification (Transportation Research Board, May 1, 2019)

Building Airports 101 (AMAC Academy, April 11, 2019)

New Hire On-Boarding: Advice Small Business Owners Should Know to Increase Employee Retention (AMAC Academy, February 28, 2019)

Association Health Plans Improving Your Healthcare Benefits Budget (AMAC Academy, January 30, 2019)

Airport Concessions 101 (AMAC Academy, January 24, 2019)

Legal Updates on Contracting Affirmative Action Programs (American Contract Compliance Association, August 28, 2018)

Effective Good Faith Efforts (American Contract Compliance Association, August 29, 2018)

Fundamental Project Specific Goal Setting (American Contract Compliance Association, August 29, 2018)

Bonds, Surety Bonds... Making a Difference as Bonds Protect and Empower (American Contract Compliance Association, August 29, 2018)

Presidential Executive Order 11246: The Guide for Affirmative Action (American Contract Compliance Association, August 29, 2018)

New Reality in Diversity Program Management: Beyond the Alphabet Soup (American Contract Compliance Association, August 30, 2018)

Best Practices to Attract and Retain a Diversity & Inclusive Construction Workforce (American Contract Compliance Association, August 30, 2018)

Successful Mentor-Protégé Programs (American Contract Compliance Association, August 30, 2018)

Everything You Need to Know About Disparity Studies: Conducting & Implementing a Disparity Study: Legal Issues, Data Challenges & Program Development (American Contract Compliance Association, August 30, 2018)

The Neuroscience of Civil Rights: Equity and Contract Compliance. Part 1, Defining the Challenges (American Contract Compliance Association, August 31, 2018)

The Neuroscience of Civil Rights: Equity and Contract Compliance. Part 2, The Solutions Session (American Contract Compliance Association, August 31, 2018)

Legal Fundamentals (American Contract Compliance Association, August 31, 2018)

DBE-ACDBE Certification Training (National Highway Institute, Federal Highway Administration, December 2018)

Certifying As A DBE: Disadvantaged Business Enterprise (United States Department of Transportation, November 14, 2018)

Yes! You Can Get Bonded, Too. (United States Department of Transportation, November 21, 2018)



**DBE Certification Letter for Armand Resource Group, Inc.
(Kentucky Transportation Cabinet)**



**COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET**

transportation.ky.gov

Andy Beshear
GOVERNOR

Jim Gray
SECRETARY

March 16, 2021

Gregory A. Jenifer, President
ARMAND RESOURCE GROUP, INC.
One University Plaza, Suite 314
Hackensack, NJ 07601

Subject: Annual DBE Certification Review - 2021

Dear Mr. Jenifer:

Thank you for submitting your Disadvantaged Business Enterprise annual review paperwork.

We have received most of the documents necessary, and after a thorough review, do not have any questions or concerns at this time.

Therefore, ARMAND RESOURCE GROUP, INC. continues to meet the eligibility criteria for DBE Certification pursuant to U.S. Department of Transportation, 49 C.F.R. Part 26.

I will follow-up with you in April 2021 to inquire about your 2020 Federal Business Tax Information and your 2020 Balance Sheet.

You must submit a signed and notarized Annual "No Change Affidavit" on your review date each year, along with the required supporting documents in your notice. Failure to do so may result in removal of your firm from our DBE program.

Should you have any questions, please feel free to contact the Small Business Development Branch at 502-564-3601 or 1-800-928-3079.

Sincerely,

A handwritten signature in blue ink that reads "Megan Tillman".

Megan Tillman
Program Coordinator
Office for Civil Rights & Small Business Development

cc: DBE File

Certified Mail #7017 1070 0000 4117 8206

Attachment 3.3. Proposed Timeline

The end of the proposed timeline for completion of all tasks associated with this engagement is thirty-six months after project initiation. This timeline assumes and includes a twelve-month performance period for completion of a disparity study following the selection of a disparity study consultant during Phase III of the Work Plan. However, although performance of the disparity study itself will follow issuance of a disparity study RFP that is to be prepared as part of this proposed Scope of Work, the actual performance of that study is not a part of this and will be undertaken by a different consultant that will be selected by the Company pursuant to that disparity study RFP. See Attachments 3.2. and 3.5.(a). for details regarding the time frames for performance of the specific scopes of work that are included in this Proposal.



Attachment 3.4. Company Resources

For details regarding Company resources required by Consultant for performance of this scope of work, see also Attachment 3.1 Work Plan, Attachment 3.5.(a). Proposed Solution, and Attachment 3.5.(b) Itemized Cost Proposal. Such Company resources include funding, designated liaisons / project managers from each participating Company entity, and access to conference room and other physical space from time to time for meetings with Company staff, policymakers, and business community stakeholders during the Phase IV. Policy Deliberation. Tydings also requires access to in-house local Company counsel for consultations regarding State, statutes, local ordinances, and agency rules and regulations that affect the procurement and contracting processes that are subject to our scope of work. Similarly, we request access to IT managers and data sources for each of Company's participating entities to facilitate our data assessments for disparity study purposes and for purposes of making recommendations regarding the design, structure, and establishment of an automated, web-based centralized bidder registration system.



Attachment 3.5.(a). Proposed Solution

Scope of Work Narrative

This detailed narrative describes all tasks that Tydings & Rosenberg LLP (“Tydings”) proposes to perform, in association with its diverse subcontractor, Armand Resource Group, Inc. (“ARG”) on behalf of the Company and its participating entities. The mandatory tasks outlined in the RFP and described in this narrative are included under the headings 3.5.(a).1. through 3.5.(a).6. The corresponding RFP Scope of Work element number follows the name of each work element (e.g., Capacity Development Initiatives “(SOW 4.2.1.)” The optional tasks included in this narrative are described below under the heading 3.5.(a).7. “Other Recommended Actions, Programs and Initiatives.” The label for each optional proposed scope of work that follows includes a corresponding and unique Scope of Work element number that that has been assigned to each of these tasks as “(SOW 4.2.7.) (a). through (e)),” and is also reflected in the sub-heading for the specific optional task (e.g., (a) Commercial Nondiscrimination Policy and Procedures (SOW 4.2.7.(a)).

Altogether, these scopes of work represent our best recommendations for a course of action to satisfy the Company’s policy objectives to address the significant wealth gap that exists between Black families and White families in the Louisville MSA. The extensive process outlined in this proposal is designed to result in legally defensible policies, programs, and strategies that simultaneously represent national “best practices” for effective economic inclusion of African Americans and other under-represented groups in opportunities that will soon be presented by massive multi-billion-dollar infrastructure investments and related regional public sector and private sector expansions in procurement activity.

Proposed Scopes of Work (Mandatory)

3.5.(a).1. Capacity Development Initiatives. (SOW 4.2.1.)

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 and trade associations 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. This work item shall include an assessment of existing programs and initiatives in the local community and how those may be enhanced or expanded through consultative support from Tydings and its sub-consultant Armand Resources Group, Inc. (“ARG”). Other models for Capacity Development Initiatives that have achieved a level of success will be explored, including, but not limited to, Atlanta, GA; Columbia, SC; San Diego, CA; San Antonio, TX; Baltimore, MD; and the State of Maryland. ARG will also assist Tydings in identifying examples of successful private sector workforce development initiatives, and from its



involvement with major contractors on large-scale infrastructure projects that have successfully enhanced the capacity of local disadvantaged firms.

3.5.(a).2. Capital Access Programs (SOW 4.2.2)

We will provide recommendations for programs and strategies designed to greatly enhance access to equity and debt capital for small, local, minority, and women-owned businesses. This work element shall include an assessment of existing programs and initiatives in the local community and how those may be enhanced or expanded through consultative support from Tydings. National models for such programs and initiatives will be identified and shared with the Company for its consideration, including, but not limited to, City of Charlotte's Revolving Working Capital Fund. The Black Business Investment Fund of Florida, the National Minority Supplier Development Council's Growth Initiative, the State of Maryland Lending and Equity Task Force Report on Minority Business Enterprise; the Washington Suburban Sanitary Commission Linked Deposit Policy, and the Maryland Small Business Development Financing Authority.

3.5.(a).3. Effective Data Reporting Content and Processes (SOW 4.2.3.)

Data Assessment.

The data assessment will be focused on the availability of reliable electronic data that is critical to basic disparity analysis. That analysis compares relative availability of M/WBE firms in a given industry as compared to the relative utilization in contract dollars paid to those same firms, and the inferences of systemic discrimination that may arise out of significant disparities between those two numbers. Ideally, such data availability will permit separate disparities to be calculated at the prime contract level vs. the subcontract level. The summary of that data assessment will be inserted into the background section of the disparity study RFP. Transparency in data quality and availability helps prospective bidders to more accurately tailor their cost proposals to actual manhours required for data gathering and statistical analysis (areas that typically account for two-thirds of total disparity study costs).

Centralized Bidder Registration System Guidance.

Centralized Bidder Registration ("CBR") is an automated web-based system that government uses to capture the full universe of ready, willing, and able suppliers, contractors and vendors that seek to sell goods and/or services to the government. Other functionalities may include the ability for online bidding, targeted solicitations of bidders with certain capability profiles based upon commodity codes, and sorting of registered firms by location, industry segment, size, and ownership status for purposes of goal setting and tracking of contract awards and payment dollars. This CBR system should be designed in a fashion that is user friendly for prospective businesses to register their interest in bidding online for specific types of contracting opportunities, and also for bidders to find and solicit bids from prospective subcontractors. It should also be designed in a manner that facilitates sharing of the resultant database of registered firms by each participating



entity for purposes of outreach, certification, bid solicitation, and utilization tracking at both prime contract and subcontract levels. The Respondent will provide detailed guidance on relevant fields of information to be captured in the profiles of the registered prospective bidders, and also suggest options in the form of available CBR consultants and off-the-shelf software products that may assist government in its establishment and integration of the CBR system with the existing legacy financial software and procurement software systems used by Company entities. In addition, examples of existing government CBR systems and contract compliance management systems with similar functionalities will be provided as models for internal development of such a system for use by the Company and its entities. Once established, a mandatory CBR system can significantly enhance the legal defensibility of disparity study availability and utilization data because, by definition, it will capture the entire universe of firms that are ready, willing, and able to sell those goods and services that the government purchases. It will also enable more precise narrowly tailored contract-by-contract goal setting. Moreover, the CBR system will significantly reduce the cost of future disparity studies and study updates wherein 60% of the cost is typically attributable to the lack of reliable electronic data on availability and utilization at the subcontract level by industry segment and ownership status. The initial data assessment and subsequent development of the CBR system will therefore serve as a firm foundation for efficient and effective administration of subsequent economic inclusion policies and strategies.

3.5.(a).4. Multi-Jurisdictional Disparity Studies (SOW 4.2.4.)

Review of any Prior Disparity Studies.

If the Company or any of its participating entities previously performed disparity studies after 1989, it is especially important to determine whether those previous studies contained all of the requisite data sources and methodologies to form an adequate strong basis in evidence to support the Company's race- and gender-conscious procurement programs. If not, then this next disparity study should do more than simply update the last disparity study. Instead, it will need to be a "first generation" disparity study that forms the basis for an entirely new program for each participating entity that is narrowly tailored based upon the study findings. First generation studies may have shorter study periods (i.e., two to three years) which may be an important cost consideration. Assuming any prior studies were older than ten years, the data and findings from such studies would be so stale at this point that it would be dubious that they might provide an adequate factual foundation regarding previously identified barriers to M/WBE formation, development, and utilization. The scope of work for the upcoming disparity study would then need to re-examine the existence of such barriers in light of more contemporaneous data and findings.

Legal Framework for Study Methodology.

Much of the disparity study methodology has evolved since the Supreme Court's *Croson* decision in 1989 because of numerous lawsuits throughout the nation that challenged the adequacy of data sources and methodologies. Under this task, we will specifically research and review current controlling legal precedents in the federal district and state courts of Kentucky, and also the Sixth Circuit Court of Appeals, that might provide further guidance regarding the "best practices" in

data sources and methodologies (e.g., regression analysis, statistical significance, custom census measures of availability vs. US Census data, treatment of qualitative or anecdotal evidence, etc.) that should be included in the Company's Disparity Study. This relevant case law that undergirds disparity study methodology will be summarized in a report and will help form the basis of certain elements of the scope of work for the disparity study RFP.

Evaluation of the Efficacy of a Multi-jurisdictional Disparity Study.

Under this task, we will provide technical assistance, legal, and practical advice regarding the efficacy of engaging in a multi-jurisdictional disparity study with more than one of the Company's participating entities. 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 disparity study consultant; responsibility and authority for governance / oversight of 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, methodology, and findings.

Drafting of Disparity Study Update RFP.

Under this task, we will provide technical assistance and legal advice in the development of a scope of work for a study RFP that is consistent with the standards and methodologies enunciated in the most recent court decisions (including any controlling legal precedents from the 6th Circuit, the State of Kentucky, as well as 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 Company'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 Company 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 Company's policy-making decisions regarding public contracting and procurement.

3.5.(a).5. Drafting of MBE / WBE / DBE Programs and Policy (SOW 4.2.5.)

Develop Policy Option Matrix and Conduct Public Forum for Stakeholders.

Under this Task, Tydings will prepare a Policy Option Matrix document that identifies specific program elements and administrative reforms that are legally defensible based upon study findings, and that are narrowly tailored to address specific barriers to M/WBE participation identified in the study. The matrix summarizes and cites to specific findings in the study that provide a rationale for each proposed remedial policy element. It also summarizes key arguments in favor of, and opposed to, adoption of the proposed program element. The Policy Option Matrix then serves as a discussion guide during the Policy Deliberation Phase for careful consideration by internal and external stakeholders and policymakers. This maximizes the probability that resultant remedies



are not only legally defensible but will be effective to the extent they are embraced by the business community as adequately addressing identified marketplace barriers in either a race-neutral fashion and/or a race-conscious fashion. Tydings will guide community forums and conduct public hearings to facilitate community education and input regarding the factual predicate and recommendations for SBE / SLBE / MBE / WBE / DBE policy features. At these forums and public hearings, Tydings will provide a full presentation outlining relevant findings from the study, pertinent legal issues, and the pros and cons of various policy options.

Draft Legally Defensible and Effective Policies to Address Study Findings

To the extent supported by the final study findings and evidence, Respondent will draft “hybrid” race- and gender-neutral and race- and gender-conscious programs and policies to remedy the specific barriers to small and minority business formation, growth, and participation, including any identified forms of discrimination that cannot likely be overcome through neutral efforts alone. Based upon internal and external stakeholder feedback on /study findings and legally defensible policy options, programs and policies will be drafted that best serve the needs and resource constraints for Company entities that has participated in the disparity study. 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. The end product from completion of this task will be one model set of programs and policies designed specifically for the Company’s factual predicate that each participating entity may then modify and adapt to fit their procurement code, administrative procedures, staffing structure, and resource constraints. Alternatively, each participating entity may negotiate directly with Tydings for a stand-alone contract to more narrowly tailor these modifications to the model draft program and policies to fit their specific needs and existing procurement codes or policy structures.

3.5.(a).6. Evaluate Current Workforce Challenges and Barriers (SOW 4.2.6.)

Tydings will research and provide a legal review of the current workforce landscape regionally and in the Metro Louisville area. This review will examine relevant controlling legal precedents in the 6th Circuit and the State of Kentucky that establish the legal framework for lawful efforts to enhance workforce and career opportunities for African Americans and other underutilized populations in the Louisville MSA. Existing literature and public reports on transportation barriers and pipeline impediments that may be contributing to workforce disparities in certain trades will also be reviewed and summarized. Certified DBE subcontractor ARG will also assess existing workforce development initiatives in the region and make detailed recommendations for improvements based upon its experiences with similar efforts in the private sector and with large-scale public infrastructure projects. ARG and Tydings will also issue a report to the Company that recommends comprehensive workforce development strategies that are consistent with the current legal framework but are also more likely to significantly “move the needle” in addressing



identified pipeline issues, hiring disparities, and wage disparities that currently afflict Black workers in the Louisville labor market.

3.5.(a).7. Other Recommended Actions, Programs and Initiatives. (SOW 4.2.7.)

The following optional scopes of work are also offered for consideration by the Company and each of its participating entities. In our view, these optional tasks, programs, and initiatives will significantly enhance prospects for the success of the Company's multi-faceted approach to closing the racial wealth gap in employment and business in Louisville's marketplace. As some entities undoubtedly have greater resources and staffing capabilities than others for the administration of newly proposed programs and initiatives, we think it prudent to offer ongoing hands-on support in the final implementation phase of this project.

In the case of Tydings, this support will take the form of ongoing ad hoc consultation as questions arise inevitably regarding the finer details of administrative structure and policy interpretation. We will also facilitate direct communication between the Company entities and our former clients that have practical experience to share in how best to go about implementing various aspects of these proposed policies and initiatives.

In the case of our sub-consultant, ARG, we are offering the Company and each participating entity the opportunity to: (a) obtain staff training in the administration of the certification process, contract compliance monitoring and enforcement, and goal-setting functions; and/or (b) outsource such administrative functions entirely to an experienced and highly qualified firm such as ARG.

As for pricing for each of the five additional Scope of Work items described below, refer to Attachment 3.5.(b).7. However, as for ARG's staff training and hands-on program administrative services for certification, contract compliance monitoring, and goal setting, there are too many variables to provide a fixed price prior to determining the particular needs of the participating entity. Accordingly, for budget purposes, it is only feasible to provide ARG's hourly rates at this time for such hands-on administrative functions.

The Work Plan phases and narrative description for each of the five additional optional scopes of work are described below:

(a) Commercial Non-Discrimination Policy and Procedures (*Optional SOW 4.2.7.(a).)

Under this optional scope of work, Tydings will draft a prototype Commercial Non-Discrimination Policy and related administrative procedures for the Company and its entities. The basic purpose of this commercial non-discrimination policy is to cause all businesses that seek to do business with the government to give serious consideration to the manner in which they conduct business, and where appropriate, to change their corporate behavior to eliminate the effects of discrimination from their business decisions. This legislation is intended to fulfill this basic purpose through achievement of three broad objectives:

- Establish a clear policy for the government not to enter into contracts with business firms that discriminate in their solicitation, selection, or treatment of vendors, suppliers, subcontractors, or commercial customers (whether in public sector *or* private sector business contexts).
- Establish a formal complaint process and investigation process for alleged violations of this policy.
- Provide a fair process for hearing evidence, rendering findings, and imposing sanctions for violations of the commercial non-discrimination policy. Available sanctions for violation of the policy include termination or suspension of existing contracts, debarment, referral for criminal prosecution for fraud, voluntary agreements among the parties to remedy the effects of the discrimination and to prevent future discrimination, and liquidated damages.

The value-added benefits from adoption of such a policy are as follows:

- Effective enforcement will send a strong message to both the minority business and the majority business communities that government is serious about doing all that it can to provide equal business opportunity in its marketplace.
- It will set the tone and standard in both private sector and public sector business dealings that discrimination in the solicitation, selection, and treatment of other business firms is unacceptable.
- The self-evaluation that will result from enforcement of this new law will go a long way to changing behavior for every business firm in breaking down those barriers (both formal and informal) that have resulted in patterns of exclusion of M/WBE firms from mainstream participation in certain sectors of the marketplace.
- A marketplace that is free from the effects of discrimination is a marketplace that will provide the maximum opportunity for new business creation, new job creation, greater competition and lower prices, and new tax revenues for the region.
- Courts have signaled that such race-neutral policies are the minimum that local governments should enact to avoid becoming passive participants in private sector marketplace discrimination; some judges have even suggested that adoption of such policies should be a prerequisite to consideration of any race- and gender-conscious M/WBE programs.

(b) Procurement Policy Review and Barrier Assessment (*Optional SOW 4.2.7. (b).)



This Phase II optional scope of work is a critically important assessment of barriers that the courts have universally agreed must be considered and addressed prior to consideration of more burdensome race-conscious remedies such as M/WBE Programs. Moreover, such analysis often reveals barriers and impediments to M/WBE availability and contract participation that can be easily removed or ameliorated through reforms to procurement policy and practices (e.g., unnecessarily restrictive contract specifications, unduly onerous experience requirements, slow payment of vendors and contractors, excessive bonding, insurance, and prequalification requirements, inadequate time for bid submittals). In our experience, enhanced outreach coupled with procurement policy reforms have been successful in significantly enhancing the participation of M/WBE firms in the bidding process in government contracts.

(c) Review, Assessment, and Modification of Race-Neutral Policy and Practices
(*Optional SOW 4.2.7.(c))

Similar to procurement policy reform, this Optional Phase II scope of work is an essential legal prerequisite to consideration of more burdensome race-conscious M/WBE program remedies. To the extent entities have considered in good faith or attempted race- and gender-neutral remedies such as small business reserve, or small local business enterprise programs as a means to remedy any identified discrimination, those government entities will be in a far more defensible position under the strict scrutiny standard if, and when, they resort to race-conscious M/WBE programs in an effort to eliminate disparities in contract participation. Moreover, programs that in no way rely upon racial classifications do not require the strong evidentiary justification that is derived from undertaking a lengthy and expensive disparity study process.

While largely viewed as somewhat less targeted and effective than M/WBE programs in reducing or eliminating significant disparities in M/WBE participation, there is no harm (and considerable benefit) in attempting to maximize the participation of M/WBE firms through neutral means if possible. If a disparity study is subsequently performed, the comparison of M/WBE participation, first under SBE or SLBE programs to the level of participation achieved through M/WBE programs. The results often establish a more factually compelling argument why race-conscious M/WBE programs are necessary. So, under this task, Tydings will review any existing race-neutral programs and propose modifications to such programs that, based upon national “best practices,” are likely to enhance their effectiveness prior to undertaking the disparity study in Phase III,

(d) Independent Peer Review of Disparity Study (Optional SOW 4.2.7.(d).)

Under this optional task, Tydings will provide an independent and detailed critical review of the draft study as submitted by the selected disparity study consultant. This optional task will be added at the conclusion of the Multi-Jurisdictional Disparity Study in Phase III of the Work Plan. The 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 to the factual predicate. This review is



intended to help the Company 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.

Such independent assessment and recommendations by an attorney well-versed in the legal framework and the methodological strengths and weaknesses of disparity studies will give policymakers a credible objective basis for determining whether to formally accept the disparity study findings and to rely upon its findings and recommendations as a foundation in the post study Policy Deliberation Phase IV of this process.

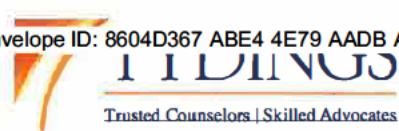
(e) Technical Assistance in Program Implementation (SOW 4.2.7.(e))

Under this optional task in the fifth and final phase of this engagement, Tydings proposes a number of services to facilitate a transition from theoretical policy into effective implementation of the programs, strategies, and initiatives that have been recommended. Our very experienced Project Manager will be available for up to 40 hours of consultations with the Company and its participating entities to answer questions regarding policy interpretation, and to provide practical advice about program implementation. He will also facilitate direct communication between Company entity staff with their counterparts in other jurisdictions that have successfully implemented similar economic inclusion policies, strategies, and initiatives.

In addition, our very capable DBE sub-consultant partner, Armand Resource Group, Inc., has agreed to make itself available to contract directly for a wide array of administrative support services for the effective administration of adopted small, minority, and disadvantaged business programs. Such administrative services include, but are not limited to, training of entity staff responsible for S/M/WBE certification, contract compliance functions, goal setting, outreach, and tracking and reporting of utilization of M/WBE participation. For those entities that lack the staff capacity required to adequately administer all program elements, ARG is available to handle many of these functions on an outsourced basis.



Attachment 3.5.(b).
Itemized Cost Proposal



Hourly Rates

Tydings & Rosenberg LLP

<u>Name</u>	<u>Title</u>	<u>Standard Rate</u>	<u>Discounted Rate⁴</u>
Franklin Lee, Esq.	Project Manager	\$450 / Hr.	\$350 / Hr.
Alisa Fornwald, Esq.	Associate	\$315 / Hr.	\$280 / Hr.
Cori Schreider, Esq.	Associate	\$315 / Hr.	\$280 / Hr.

Armand Resource Group, Inc. (DBE Sub-consultant)

<u>Name</u>	<u>Title</u>	<u>Blended Rate⁵</u>	<u>Discounted Rate⁶</u>
Gregory Jenifer	Principal	\$205 / Hr.	\$200 / Hr.
Marilyn Figueroa	Sr. Project Mgr.	\$205 / Hr.	\$200 / Hr.

⁴ For purposes of this engagement, Tydings agrees to bill all hours at its discounted hourly rate for government clients reflected here.

⁵ Standard Hourly rates for Armand Resource Group, Inc. ("ARG") are \$250 / Hr. for Gregory Jenifer, and \$175 / Hr. for Marilyn Figueroa. These are government rates that are fully loaded with actual overhead and G&A expenses. However, based upon the weighted average of projected hours for each ARG staff member, a blended hourly rate has been calculated as reflected here, and will serve as the hourly rate for billing purposes.

⁶ ARG is a certified Disadvantaged Business Enterprise, and as such, its blended hourly rate has only been discounted slightly as reflected here for billing purposes for this engagement. ARG is projected to perform no less than 23% of the work for this project with its own labor force.

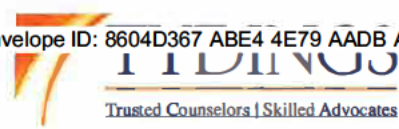
Attachment 3.5.(b).**Itemized Cost Proposal**

<u>Phase</u>	<u>Tasks</u>	<u>Hours</u>	<u>Standard Rate Cost</u>	<u>Discounted Rate Cost</u>
Phase I Initial Assessment / Foundational Support (Mos. 1-3)	SOW 4.2.3. Effective Dating Reporting Content & Processes			
	• Tydings (FML)	40	\$18,000	\$14,000
	• ARG	20	\$4,100	\$4,000
	SOW 4.2.6. – Evaluate Current Workforce Challenges			
	• Tydings (Assoc.)	12	\$3,780	\$3,360
	• ARG	140	\$28,700	\$28,000
	Optional SOW 4.2.7.(a). Commercial Nondiscrimination Policy Development			
• Tydings (FML)	[20]	[\$9,000]	[\$7,000]	
Optional SOW 4.2.7.(b). Procurement Policy Review and Barrier Assessment				
• Tydings (FML)	[40]	[\$18,000]	[\$14,000]	

Attachment 3.5.(b).

Itemized Cost Proposal (continued)

<u>Phase</u>	<u>Tasks</u>	<u>Hours</u>	<u>Standard Rate Cost</u>	<u>Discounted Rate Cost</u>
Phase II Procurement Reforms & Race-Neutral Policy Enhancements (Mos. 1 - 6)	SOW 4.2.1. Capacity Development Initiatives			
	• Tydings (Assoc.)	20	\$6,300	\$5,600
	• ARG	20	\$4,100	\$4,000
	SOW 4.2.2. – Capital Access Programs			
	• Tydings (FML)	20	\$9,000	\$7,000
	SOW 4.2.6. Workforce Initiative Recommendations			
• Tydings (Assoc.)	28	\$2,520	\$2,240	
• ARG	110	\$22,550	\$22,000	
	Optional SOW 4.2.7.(c). Review, Assessment, and Modification of Race-Neutral Policy and Practices			
	• Tydings (FML)	[40]	[\$18,000]	[\$14,000]



Attachment 3.5.(b).

Itemized Cost Proposal (continued)

<u>Phase</u>	<u>Tasks</u>	<u>Hours</u>	<u>Standard Rate Cost</u>	<u>Discounted Rate Cost</u>
Phase III Disparity Study (Mos. 4 - 24)	SOW 4.2.4. – Multi-Jurisdictional Disparity Study (advice, counsel / legal framework analysis)			
	• Tydings (FML)	28	\$12,600	\$9,800
	• Tydings (Assoc.)	20	\$6,300	\$5,600
	Optional SOW 4.2.7.(d). Independent Peer Review of Disparity Study			
	• Tydings (FML)	[80]	[\$36,000]	[\$28,000]



Attachment 3.5.(b).

Itemized Cost Proposal (continued)

<u>Phase</u>	<u>Tasks</u>	<u>Hours</u>	<u>Standard Rate Cost</u>	<u>Discounted Rate Cost</u>
<p>Phase IV</p> <p>Post-Study Policy Deliberation</p> <p>(Mos. 24 - 30)</p>	<p>SOW 4.2.5. Drafting MBE/WBE/DBE Programs and Model Policy</p> <ul style="list-style-type: none"> • Tydings (FML) <p>[*additional hours to be negotiated for drafting multiple customized single entity programs]</p>	<p>192*</p>	<p>\$86,400</p>	<p>\$67,200</p>



Attachment 3.5.(b).

Itemized Cost Proposal (continued)

<u>Phase</u>	<u>Tasks</u>	<u>Hours</u>	<u>Standard Rate Cost</u>	<u>Discounted Rate Cost</u>
<p>Phase V</p> <p>Economic Inclusion Policy / Strategy Implementation</p> <p>(Mos. 30 - 36)</p>	<p>Optional SOW 4.2.7.(e).</p> <p>Other Recommended Actions, Programs, and Initiatives (Technical Assistance in Program Implementation, advice & counsel)</p> <ul style="list-style-type: none"> Tydings (FML) <p>Outsourced services, staff training, etc. subject to negotiations</p> <ul style="list-style-type: none"> ARG 	<p>[40]</p> <p>[?TBD]</p>	<p>[\$18,000]</p> <p>[\$200 / Hr. blended rate]</p>	<p>[\$14,000]</p> <p>[??]</p>



Attachment 3.5.(b).

ITEMIZED COST SUMMARY

Mandatory Task Costs

Total Fee Costs Standard Rate (Mandatory Tasks Only)

Tydings -- \$144,900

ARG -- \$ 59,450

Combined Standard Rate Fee: \$204,350

Total Fee Costs – Discounted Rate (Mandatory Tasks Only)

Tydings -- \$114,800

ARG -- \$ 58,000

Combined Discounted Rate Fee: \$172,800

[Discounted rate savings for mandatory tasks = \$31,500]**

Mandatory & All Optional Tasks- Combined Costs

Total Fee Costs – Standard Rate (All Tasks Combined)

Tydings -- \$243,900

ARG -- \$ 59,450

Combined Standard Rate Fee: \$303,350

Total Fee Costs – Discounted Rate (All Tasks Combined)

Tydings -- \$191,800

ARG -- \$ 58,000

Combined Discounted Rate Fee: \$249,800

[Discounted rate savings for all tasks combined = \$53,550]**

***** Note reimbursable travel and out-of-pocket expense budget = \$15,000.**

ATTACHMENT B

A. Prior to commencing work, Contractor shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. The Contractor shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to Metro Government and approved by the Metro Government's Risk Management Division. The Contractor shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by Contractor evidencing proof of coverages.

Without limiting Contractor's indemnification requirements, it is agreed that Contractor shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Metro Government. Metro Government may require Contractor to supply proof of subcontractor's insurance via Certificates of Insurance, or at Metro Government's option, actual copies of policies.

B. The following clause shall be added to the Contractor's (and approved subcontractors) Commercial General Liability Policies:

1. "The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."

C. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on the contractors or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. **COMMERCIAL GENERAL LIABILITY:** via the Occurrence Form, primary and non-contributory, with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage and Products/Completed Operations, including:
 - a. Premises - Operations Coverage
 - b. Products and Completed Operations
 - c. Contractual Liability
 - d. Broad Form Property Damage
 - e. Independent Contractors Protective Liability
 - f. Personal Injury
2. **PROFESSIONAL LIABILITY (Errors and Omissions Liability):** insurance policy, which includes a minimum limit of liability of \$1,000,000 for each Wrongful Act,

and \$2,000,000 aggregate limit. In the event that the Consultant's policy is written on a "Claims Made" Form, the Consultant shall, after work has been completed, furnish evidence that the liability coverage has been maintained for at least one year after completion of work, either by submitting renewal policies with a Retroactive Date of not later than the date work commenced under this contract, or by evidence that the Consultant has purchased an Extended Reporting Period Endorsement that will apply to any and all claims arising from work performed under this contract.

D. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro Government's Risk Management Division.

E. MISCELLANEOUS

1. The Contractor shall procure and maintain insurance policies and shall furnish Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro Government at least fifteen (15) days prior to the expiration of any policy(s).
2. Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202

3. Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202

4. CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Contractor shall notify Metro Government's Risk Management Division of any policy cancellation within two business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Contractor shall notify Metro Government's Risk Management Division within two business days. If Contractor fails to notify Metro Government as required by this Agreement, Contractor agrees that such failure shall be a breach of this Agreement. Metro Government reserves the right to require the

insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro Government's Risk Management Division.

5. Approval of the insurance by Metro Government shall not in any way relieve or decrease the liability of the Contractor hereunder. It is expressly understood that Metro Government does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Contractor.