

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA,
Plaintiff**

CIVIL ACTION

VERSUS

No. 12-1924

**CITY OF NEW ORLEANS,
Defendant**

SECTION "E"

ORDER

The City of New Orleans (the "City") and the United States of America (the "United States") (collectively, the "Parties") have filed a joint motion requesting that the Court enter the proposed Consent Decree Regarding the New Orleans Police Department as an Order of the Court.¹ The proposed Consent Decree requires a Consent Decree Monitor ("Monitor") to oversee and report on its implementation. The proposed Consent Decree further requires the Parties to select a mutually acceptable Monitor, subject to Court approval.

Before the Court is the United States' motion for leave to distribute a Request for Proposals, with attachments A-D ("RFP"), requesting proposals from those wishing to serve as Monitor.²

The City and the United States agree that an RFP should be distributed and that it should contain a Disadvantaged Business Enterprise ("DBE") contract goal of thirty-five percent, meaning that thirty-five percent of contract or subcontract dollars should be

¹R. Doc. 2.

²R. Docs. 44 and 107. The United States filed an amended version of the RFP on September 5, 2012. R. Doc. 107. The amended RFP contains extended deadlines, but there are no other substantive changes from the original version filed as R. Doc. 44-3.

allocated to one or more certified DBEs during the Monitor's contract term.³ However, the Parties disagree about the manner in which entities seeking to serve as Monitor, or their subcontractors, will be certified as DBEs. The City maintains that only DBEs certified pursuant to the City's DBE program should be counted.⁴ The United States argues that "all DBEs should be given the opportunity to participate, whether they are certified pursuant to the City's system, or another DBE system."⁵

The United States contends that it should be able to solicit proposals from a nationwide pool of applicants because of the nature of the Monitor's work and the level of specialization required.⁶ Consequently, the United States' proposed RFP permits a business certified as a DBE by any local, state or national DBE certification process to be considered DBE-certified for the purposes of meeting the contract goal.⁷ The United States maintains that the Court has the authority to approve such a proposal, and it urges the Court to do so in order for the Parties to receive the most qualified applicants for the Monitor's position. In response, the City acknowledges that the majority of current City-certified DBEs are from southern Louisiana, but argues that this is not a reason to allow DBE certification by local, state or national governmental bodies other than those already accepted by the City

³R. Docs. 44-1 at p. 2 and 107.

⁴R. Doc. 49.

⁵R. Doc. 44-1 at p. 2.

⁶R. Doc. 44-1 at p. 2.

⁷ Businesses that are not currently DBE-certified will be permitted to seek certification, but only from the City through an expedited process.

under Exec. Order No. MJL 10-02 (June 3, 2010).⁸

“Consent decrees are judgments despite their contractual nature, and district courts may fashion remedies to ‘enforce prior judgments.’” *United States v. Alcoa, Inc.*, 533 F.3d 278, 288 (5th 2008) (quoting *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 577 (5th Cir. 2005)). Consequently, pursuant to its equity jurisdiction, a district court has “wide discretion to enforce [consent] decrees” and may issue orders as necessary to effectuate compliance with such decrees over which it has jurisdiction. *Id.* at 286. The Court observes that other district courts have invoked their equitable power to order parties to bypass local procurement rules or other similar regulations to ensure compliance with their orders. *See, e.g., United States v. City of Detroit*, No. 77-71100, 2011 WL 4014409, at *24 (“The Court further concludes that an effective equitable remedy to achieve sustained compliance will require this Court to order structural changes regarding the [Detroit Water and Sewerage Department] that will likely override the City of Detroit’s Charter, its local ordinances, and/or some existing contracts.”). The Court further observes that in other cases involving consent decrees negotiated to resolve claims brought pursuant to the Violent Crime Law Enforcement Act of 1994 (42 U.S.C. § 14141), the United States participated in selecting monitors outside of a jurisdiction’s standard procurement procedure. *See, e.g., United States v. Los Angeles*, No. 00-11769 (C.D. Cal.); *United States v. Detroit*, No. 77-71100 (E.D. Mich.).⁹

⁸ R. Doc. 49 at p. 1. Harrah’s Jazz Casino also certifies businesses as DBEs and this certification is accorded reciprocity with the City’s State & Local Disadvantage Business Enterprise Certification Program. *See* <<http://www.nola.gov/BUSINESSES/Office-of-Supplier-Diversity/Certification-Programs-and-Applications/>>.

⁹ The United States also submits that it has “jointly selected, outside of the [relevant jurisdictions’] procurement process[es], monitors to oversee the reform of State systems for the delivery of services to people with mental illness and developmental disabilities in Georgia, Delaware, and Virginia, and in many

In New Orleans, the City's DBE certification process is not found in the City Code or the City's Home Rule Charter. Rather, it is set out by Executive Order of the Mayor as a *policy* to be followed "until the DBE program is reformed and a centralized Diversity and Inclusion program and office and adequately staffed as determined by the Mayor of New Orleans."¹⁰ As a result, the Court notes that the RFP proposed by the United States does not conflict with the City Code or the Home Rule Charter.

Exercising its equity jurisdiction, the Court finds that the United States' proposed RFP sets forth the better procedure for selecting the Monitor to oversee the proposed Consent Decree. The United States' RFP recognizes DBE certification by the City and even provides a method for expedited processing of applications for DBE certification by, and only by, the City. At the same time, the United States' proposal ensures the nationwide pool of applicants necessary to find the expertise needed. While the Court is authorizing issuance of the RFP at this time, a professional services contract will be executed with the Monitor if, and only if, the Consent Decree is approved by the Court. If the Consent Decree is approved, the DBE provisions set forth herein will be incorporated into the professional services contract with the Monitor. Accordingly,

IT IS ORDERED that the United States' motion as amended for leave to distribute the proposed RFP attached hereto as Exhibit A be and is hereby **GRANTED**.¹¹

IT IS FURTHER ORDERED that this Order and the attached RFP must be posted

prison and jail cases." R. Doc. 44-1 at p. 3 (citing *United States v. Georgia*, No. 09-119 (N.D. Ga.); *United States v. Delaware*, No. 11-591 (D. De); *United States v. Virginia*, No. 12-59 (E.D. Va.)).

¹⁰ City of New Orleans, Exec. Order No. MJL 10-02 (June 3, 2010).

¹¹ R. Docs. 44 and 107.

on the United States and City's websites and distributed to the list of potential respondents attached hereto as Exhibit B.¹²

IT IS FURTHER ORDERED that the pre-proposal conference referenced in Section V ("Pre-Proposal Conference; Questions Regarding RFP") of the RFP will be held **September 20, 2012, at 2:00 p.m. CST** in Room C-467, Fourth Floor, U.S. District Court for the Eastern District of Louisiana, 500 Poydras Street, New Orleans, Louisiana 70130.

IT IS FURTHER ORDERED that any addendums to the RFP, including the form of the professional services contract to be entered into with the Monitor, subject to Court approval of the Consent Decree and the selection of the Monitor, must be submitted to the Court for approval prior to the addendum's publication.

IT IS FURTHER ORDERED that the Evaluation Committee's selected "short list" of candidates for Monitor, referenced in Section VI ("Selection Process") of the RFP, must be filed with the Court at least five working days before interviews are scheduled to be held and must include the names of the candidates for Monitor and the dates, times and locations of the interviews. The interviews are to be conducted in a public forum.

New Orleans, Louisiana, this _____ day of September, 2012.


SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

¹² The Court observes that, as Exhibit B states, this list is not exclusive and is no way intended to limit or discourage application by any interested individual or entity. The Parties will provide a copy of the RFP to any potential respondent who requests it.