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ACA Newsletter

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City of Austin to Begin Disparity Study # 6 Early Next Year Search Underway for Qualified Consultants

City of Austin is set to begin its' sixth Disparity Study early next year budgeted for \$1 million to be completed within 12 months. The city is currently searching for one qualified consulting firm to pore over a five-year-period market data to investigate if any disparities existed for minority and women businesses in city contract awards.

The city's disparity study conducted every few years since 1992 became legally necessary to continue the city's Minority and Women (MWBE) Procurement Program after 1989 when the Supreme Court ruled a similar program unconstitutional in response to a lawsuit brought by a construction company challenging the program.

The lawsuit *Richmond vs. Croson* involved the city of Richmond, Virginia, with a black population of just over 50 percent. In 1983, the Richmond City Council, in the state of Virginia, adopted the minority Business Utilization Plan (the Plan), which required government supported construction contractors to set-aside 30% of its subcontracts to one or more Minority Business Enterprises (MBEs). MBEs were defined as "a business at least fifty-one (51) percent of which is owned and controlled by minority group members." Under the Plan, "minority group members" were defined as "citizens of the United States who are Black, Spanish-speaking, Orientals, Indians, Eskimos, or Aleuts."

The purpose of the Plan was to "promote wider participation by minority business enterprises in the construction of public projects."

J.A. Croson Company challenged the Plan on the grounds that it violated the United States Constitution because there had been no specific finding that the Plan's purpose was supported by past discriminatory practices in the construction industry of Richmond, Virginia. The District Court upheld the Plan, but the Court of Appeals reversed the decision holding that the set-aside program "violated both prongs of strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment"

1989, the Supreme Court in a 6-to-3 decision (see photos of the six judges in the top row and the three in the bottom row), affirmed the ruling by the Court of Appeals. Justice O'Connor's opinion noted that the 30 percent quota could not be tied to "any injury suffered by anyone," and was an imper-

missible employment of a suspect classification. O'Connor further held that allowing claims of past discrimination to serve as the basis for racial quotas would actually subvert constitutional values: "The dream of a Nation of equal citizens in a society where race is irrelevant to personal opportunity and achievement would be lost in a mosaic of shifting preferences based on inherently unmeasurable claims of past wrongs."

In other words, all classifications based on race must be supported by a compelling government interest and withstand strict-scrutiny.

The Supreme Court of the United States finds that the Plan failed to consider race-neutral measures that would encourage more minority participation in the construction program. Also, the 30% quota allowed by the Plan was not "narrowly tailored to any goal, except perhaps outright racial balancing."

The city's disparity study therefore is to put the city's program to the litmus test of "*compelling government interest, strict scrutiny, and narrowly tailored*" to justify the city's program, which began in 1987 and has a current sunset date of March 30, 2020. "The city will extend the sunset date to allow sufficient time to complete and implement recommendations from the study as appropriate," stated in a city document.

Proposals for the study will be evaluated between October and November, and results will be presented to MWBE Advisory Committee before sending them to Council for final approval in January 2020 to officially commission and commence the study.



White Rehnquist Stevens O'Connor Scalia Kennedy

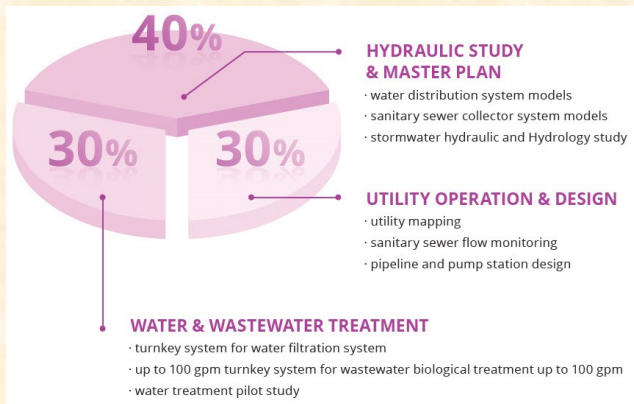


Marshall Brennan Blackmun



Bai Engineers – Introduction

Bai Engineers, LLC (Bai) was established in 2014 by Mr. Xuehua Bai, PE, BCEE, PMP. Bai specializes in water-related engineering services within the areas listed in the figure below:



Bai Engineers – Unique Tools

Bai utilizes its own equipment for water treatment design and operation trouble shooting. Key equipments include:

8" Diameter Clear Plastic Filtration Columns (6) for Water Treatment Pilot Testing:



These filtration columns are used to simulate the organic and inorganic element removal and filtration automation control. The automation control unit includes a touch-screen control panel and electrical-actuated butterfly valves.

- ◆ Most-commonly used filter media includes:
 - ◆ Special media for manganese and radionuclide elements removal.
 - ◆ Greensand for manganese removal.
 - ◆ Activated alumina for selenium removal.
 - ◆ Granular activated carbon

for either water or wastewater treatment applications.

RO and NF Skid-mounted Unit for Water Treatment Pilot Testing (2):

This is a "Plug-and-Play" membrane unit powered by portable electrical generator. The design capacity is 5 and 10 gallons per minute. The pilot test unit is built on wheels, allowing for full mobility. The membrane encasement is designed to house 6-inch modules of various membrane products. Bai also use the RO/NF unit for public science fair and educational demo to school kids.



Trailer-mounted Multi-unit Cartridge Filters for Emergency Drinking Water Treatment:

During emergency events, trailer-mounted cartridge filters are employed to meet drinking water requirements. The primary application for cartridge filters in water treatment is to remove Cryptosporidium oocysts and Giardia cysts from a surface water source. Bai possesses the following cartridge units:

- ◆ Single fabric filters with 0.35, 1, 3, and 5 micros
- ◆ Multiple filter housing units

Bai Engineers – Successful Project in Austin

Bai completed a customized design/build water treatment facility project for local construction contractor, who installed sewer pipeline/microtunneling for Austin Water. The key water treatment components included coagulation/flocculation, chain-of-flight sedimentation, and filtration.



DSD New Director and Other News



Assistant City Manager Rodney Gonzales has named Denise Lucas the new Director of the Development Services Department (DSD).

In this role, Denise will oversee the department, supporting cross-departmental projects and issues involving external stakeholders. She also will continue building relationships and teams, working across City departments and diverse communities to help negotiate and resolve sensitive, significant and controversial development-related issues.

Denise has served in multiple roles within the City of Austin, including Deputy Director of DSD, Deputy Chief Information Officer over the Communications and Technology Management Department, Enterprise Application and Business Transformation Services, and Deputy Purchasing Officer.

Denise holds a Master of Business Administration degree in Business Management from St. Edward's University and a Bachelor of Science degree in Human Resources Management from Friends University in Wichita, Kansas. She is a mentor for the International City/County Management Association (ICMA) and a member of the National Forum for Black Public Administrators (NFBPA).

REVISED FEE SCHEDULE FOR FISCAL YEAR (FY) 2019-20

On September 10, 2019, the Austin City Council approved the Development Services Department (DSD) budget for FY 2019-20. The approved budget includes updates to the FY 2019-20 Fee Schedule.

Development fees are based on a formula developed by a third-party consulting firm in 2018. The inputs used to determine the fee schedule are refined annually and reflect the cost of providing DSD services. Fluctuations represent forecasted changes in development activity, along with citywide cost drivers and organizational requirements. DSD remains committed to identifying opportunities to stabilize costs.

The updated fees go into effect **October 1, 2019**.

Visit austintexas.gov/DSDfees for a list of current fee schedules.

View a [comparative fee analysis \(PDF\)](#) between fees for FY 2019 and FY 2020. Please call 3-1-1 for more information.

SHOT CLOCK BILL - HB 3167

House Bill 3167 went into effect September 1, 2019, following passage by the 86th Texas Legislative Session earlier this year. The new law mandates a 30-calendar-day initial review period for subdivision development applications and a 15-day review period for subsequent submittals. The new law also includes language that triggers automatic approval if a review period is not met and prohibits new review comments following the initial review.

Compliance with HB 3167 requires a number of changes to the development review and approval process.

The City of Austin and Travis County recently hosted two joint stakeholder meetings to discuss the implementation process.

[Watch a recording of the meeting.](#)

[PDF Presentation](#)

Travis County Better Builder® Program



Left to Right: Jackie, Drew, Kim, Tenley, Dennis, Eddie

Austin—The Travis County Purchasing Office established the Contract Compliance Program in the summer of 2017 for the purpose of monitoring day-to-day compliance with the terms and conditions of all County contracts across all contracting categories—professional services, non-professional services, IT, commodities, and construction.

Under the leadership of Director Tenley Aldredge, who assumed the role after nearly 20 years as an Assistant County Attorney in the Transactions Division specializing in construction, the Program added Andrew (“Drew”) Artzt and Jacqueline (“Jackie”) Childress as Contract Compliance Officers in 2017. Together, the three worked to create and implement the Travis County Better Builder® Program on County-managed or County-funded construction projects.

With the addition of Kimberly Effinger as a Contract Compliance Officer, and two new Contract Compliance Monitors, Dennis Reyna and Patrick (“Eddie”) Tuohy, the Contract Compliance Program has been able to accomplish even more, particularly with its Better Builder® Program.

The Travis County Better Builder® Program is a comprehensive construction contract compliance program whose primary goal is to ensure that construction workers building Travis County courthouses, facilities, roads, parks, bridges and other public improvements are safe and are paid what they are supposed to be paid. The Travis County Better Builder® Program monitors construction contractors’ compliance with their contractual and other legal obligations, and assists contractors when issues arise.

The Better Builder® Program uses a variety of strategies to carry out these functions, including wage and safety documentation requirements, onsite monitoring and labor interviews, systematic review of payroll records, and compliance assistance. Collectively, these activities ensure that the contractors and subcontractors engaged in County-managed or County-funded construction projects operate safe jobsites, compensate workers properly, and deliver high-quality public works for the benefit of all Travis County taxpayers.

The Better Builder® Program is focused on:

Correct wages- Through monitoring and worker interview processes, the Better Builder® Program makes sure that the workers employed by Travis County contractors are paid what they are supposed to be paid. Travis County encourages their contractors and subcontractors to pay the Travis County living wage (at a minimum) to all workers.

Safety- The Better Builder® Program confirms that workers on County-managed or County-funded projects receive OSHA-10 training and all supervisors receive OSHA-30 training. This ensures that our workers and our jobsites are safe.

Training and education- The Better Builder® Program requires contractors to make efforts to use subcontractors who regularly hire workers enrolled in (or who have completed) Department of Labor-registered apprenticeship programs. These programs provide training in specialized trades so construction workers develop skills enabling them to build good quality products safely.