

**REMEDIAL POLICY OPTIONS FOR SCHOOL BOARD OF BROWARD COUNTY
SUPPLIER DIVERSITY OUTREACH PROGRAM (PART IV – OTHER CONTRACTUAL SERVICES)**

(Prepared by Franklin M. Lee, Esquire 4-29-16)

Introduction

The following policy option matrices and recommendations related to the Other Contractual Services Industry are based upon our legal review of the October 4, 2015, Final Report entitled “Broward County Public Schools Disparity Study” (“Study”) performed for the School Board for Broward County (“SBBC”) by Mason Tillman Associates, LTD. (“MTA”). Tables 4-A and 4-B below summarize respectively the remedial industry-specific race-neutral Small Business Enterprise (“SBE”) policy options and the race- and gender-conscious minority/women business enterprise (“M/WBE”) policy options for the Professional Services Industry that may be legally defensible and somewhat effective in addressing identified barriers to M/WBE participation in School Board of Broward County (“SBBC”) contracts. (“R/N” references within the numerical label of a policy option mean that the proposed policy is a “race- and gender-neutral” remedy. “R/C” references within the numerical label of a policy option mean that the proposed policy is a “race- and gender-conscious” remedy.)¹

¹ This “Part IV” of the draft Policy Option Matrix includes a total of 6 various policy recommendations, 3 of which are race-and gender-neutral and 3 of which are race-and gender-conscious in nature.

**TABLE 4-A: RACE / GENDER-NEUTRAL OTHER CONTRACTUAL SERVICES INDUSTRY
POLICY OPTIONS FOR SBBC'S SUPPLIER DIVERSITY OUTREACH PROGRAM**

(Prepared by Franklin M. Lee, Esquire 4-29-16)

<u>Industry Specific Programs</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Other Contractual Services (R/N-32)</p> <p><i>Direct Contracting for Other Contractual Services</i></p>	<p>Separate out and directly award contracts for specialty or non-license services (e.g., trucking, hauling, surveying, demolition, environmental consulting, testing, and landscaping) that normally would be bundled within much larger construction contracts or A&E design contracts. This increases opportunities for S/M/WBE contractual services firms to gain experience as prime contractors. (Study p. 12-44)</p>	<p>FML concurs.</p>	<p>Significant underutilization of M/WBE firms (with exception of Subcontinent Asian-American and Native American M/WBEs) in Other Contractual Services prime contracts of various sizes; (Study p. 9-78; see also Study p. 12-44.)</p>	<p><i>Pro: This revised procurement method enhances opportunities for S/M/WBEs to get prime contracting experience. Also helps overcome the effects of good old boy networks.</i></p> <p><i>Con: Increases SBBC's administrative burden for contract management.</i></p>

<u>Industry Specific Programs</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Other Contractual Services (R/N-33)</p> <p><i>SBE Vendor Rotation</i></p>		<p>Selective use of vendor rotation of pre-qualified panel of SBE Other Contractual Services firms for smaller SBBC contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of SBE Other Contractual Services firms.</p>	<p>Significant underutilization of M/WBE firms (with exception of Subcontinent Asian-American and Native-American firms) in Other Contractual Services prime contracts of various sizes; (Study p. 9-78)</p>	<p><i>Pro: Automated centralized bidder registration system combined with pre-qualification process will enable rotation of SBE firms to get a fair chance to prove capabilities on smaller projects and overcome bias against unknown firms. Facilitates building a track record with SBBC and overcoming lack of experience barrier.</i></p> <p><i>Con: Reduces competition in the short-run and may adversely affect cost.</i></p>

<u>Industry Specific Programs</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Other Contractual Services (R/N-34)</p> <p><i>SBE Evaluation Preference for Prime Bidders</i></p>		<p>Evaluation point preferences (award up to 20% of available evaluation points) to any SBE firms submitting proposals as Other Contractual Services prime firms on contracts valued at less than \$500,000. Possible alternative is to restrict this program to Other Contractual Services SBE prime bidders that have not previously won an Other Contractual Services prime contract with the SBBC.</p>	<p>Significant underutilization of M/WBE firms (with exception of Subcontinent Asian-American and Native-American firms) in Other Contractual Services prime contracts of various sizes; (Study at p. 9-78)</p>	<p><i>Pro: Encourages more natural evolution of successful M/WBE Other Contractual Services subcontracting firms into full-service Other Contractual Services firms that bid as primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform Other Contractual Services prime contracts for SBBC.</i></p> <p><i>Con: SBA size standards for SBEs may not be workable for Other Professional Services firms that may have fewer employees.</i></p>

**TABLE 4-B: RACE / GENDER-CONSCIOUS OTHER CONTRACTUAL SERVICES INDUSTRY
POLICY OPTIONS FOR SBBC'S SUPPLIER DIVERSITY OUTREACH PROGRAM**

(Prepared by Franklin M. Lee, Esquire 4-29-16)

<u>Industry Specific Programs</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Other Contractual Services (R/C-22)</p> <p><i>Annual Aspirational M/WBE Goals</i></p>		<p>Establishment of annual aspirational goals for M/WBE participation in SSBC Other Contractual Services contracts (base goals starting at 41% MBE and 23% WBE for Other Contractual Services prime contract dollars, with some adjustment as warranted based upon CBR registration). See Study pp.7-34 and 7-35. These goals are not to be necessarily applied to individual contracts, but rather serve as a guidepost to evaluate the effectiveness of the SBE and M/WBE programs on an annual basis and to</p>	<p>Flexible benchmarks are important to managing the M/WBE program and finding the appropriate mix of race- and gender-neutral and race- and gender-conscious policies. Annual goals also provide an up-to-date measure of availability by overall industry categories, and can be useful for outreach purposes.</p>	<p><i>Pro: Provides a useful tool for evaluating success of program and making necessary adjustments to aggressiveness of remedies and outreach efforts.</i></p> <p><i>Con: Must guard against reflex to apply annual goals to specific projects without justification. If not updated periodically, can also provide another avenue of legal attack against the program on narrow tailoring grounds.</i></p>

<p>Other Contractual Services (R/C-22)</p> <p><i>Annual Aspirational M/WBE Goals (continued)</i></p>		<p>make adjustments as necessary to the mix and aggressiveness of applied policy options.</p> <p>(See Study pp. 7-29 to 7-45)</p>		
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<u>Industry Specific Programs</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Other Contractual Services (R/C-23)</p> <p><i>M/WBE Vendor Rotation</i></p>		<p>Selective use of vendor rotation of pre-qualified panel of M/WBE Other Contractual Services firms for smaller SBBC contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of M/WBE Other Contractual Services firms.</p>	<p>Significant underutilization of M/WBE firms (with exception of Subcontinent Asian-American and Native-American firms) in Other Contractual Services prime contracts of various sizes; (Study p. 9-78)</p>	<p><i>Pro: Automated centralized bidder registration system combined with pre-qualification process will enable rotation of M/WBE firms to get a fair chance to prove capabilities on smaller projects and overcome bias against unknown firms. Facilitates building a track record with SBBC and overcoming lack of experience barrier.</i></p> <p><i>Con: Reduces competition in the short-run and may adversely affect cost.</i></p>

<u>Industry Specific Programs</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Other Contractual Services (R/C-24)</p> <p><i>M/WBE Evaluation Preference for Prime Bidders</i></p>		<p>Evaluation point preferences (award up to 20% of available evaluation points) to any M/WBE firms submitting proposals as Other Contractual Services prime firms on contracts valued at less than \$500,000. Possible alternative is to restrict this program to Other Contractual Services M/WBE prime bidders that have not previously won an Other Contractual Services prime contract with the SBBC.</p>	<p>Significant underutilization of M/WBE firms (with exception of Subcontinent Asian-American and Native-American firms) in Other Contractual Services prime contracts of various sizes; (Study at p. 9-78)</p>	<p><i>Pro: Encourages more natural evolution of successful M/WBE Other Contractual Services subcontracting firms into full-service Other Contractual Services firms that bid as primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform Other Contractual Services prime contracts for SBBC.</i></p> <p><i>Con: SBA size standards for M/WBEs may not be workable for Other Contractual Services firms that may have fewer employees.</i></p>

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