

REMEDIAL POLICY OPTIONS FOR SCHOOL BOARD OF BROWARD COUNTY
SUPPLIER DIVERSITY OUTREACH PROGRAM (PART III - COMMODITIES)

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

Introduction

The following policy option matrices and recommendations related to the Commodities 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 3-A and 3-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 Commodities 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 III” of the draft Policy Option Matrix includes a total of 8 various policy recommendations, of which 3 are race-and gender-neutral and 5 are race- and gender-conscious in nature.

**TABLE 3-A: RACE / GENDER-NEUTRAL COMMODITIES 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>Commodities (R/N-29)</p> <p><i>SBE Price Preferences for Commodities Contracts</i></p>		<p>SBBC should apply a five (5) percent discount on bids submitted by SBE firms for evaluation purposes in awarding prime contracts for Commodities purchases.</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian-Pacific American and Native American MBEs) in Commodities prime contracts of various sizes. (Study p. 9-80; see also Study pp. 8-12 to 8-14)</p>	<p><i>Pro: Enhances ability of smaller suppliers to compete against larger vendors and suppliers that may have cost advantages due to volume of commodities sold. Expansion of supplier base may ultimately increase competition and reduce prices.</i></p> <p><i>Con: May increase costs of SBBC for commodities purchases by up to 5%.</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>Commodities (R/N-30)</p> <p><i>SBE Vendor Rotation</i></p>		<p>Selective use of vendor rotation of pre-qualified panel of SBE Commodities firms for smaller City contracts valued at less than \$50,000. Quote solicitations are rotated among this pre-qualified panel of SBE Commodities firms.</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian-Pacific American and Native American MBEs) in Commodities prime contracts of various sizes. (Study p. 9-80; see also Study pp. 8-12 to 8-14)</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 contracts and overcome bias against unknown firms. Facilitates building a track record and overcoming lack of SBBC 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>Commodities (R/N-31)</p> <p><i>SBE Reserve for Contracts Up to \$50,000</i></p>		<p>Reserve some smaller Commodities contracts valued at less than \$50,000 for competition among SBE Commodities firms.</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian-Pacific American and Native American MBEs) in Commodities prime contracts of various sizes. (Study p. 9-80; see also Study pp. 8-12 to 8-14)</p>	<p><i>Pro: Helps overcome natural bias in favor of larger incumbent firms that repeatedly are awarded Commodities contracts for SBBC. Expansion of supplier base may ultimately enhance competition and lead to cost reductions for SBBC.</i></p> <p><i>Con: Reduces competition in the short-run and may adversely affect cost</i></p>

**TABLE 3-B: RACE / GENDER-CONSCIOUS COMMODITIES 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 align="center">Commodities (R/C-17)</p> <p><i>Annual Aspirational M/WBE Goals</i></p>		<p>Establishment of annual aspirational goals for M/WBE participation in SSBC Commodities contracts (base goals starting at 34% MBE and 16% WBE for Commodities contract dollars, with some adjustment as warranted based upon CBR registration). See Study pp.7-36 to 7-37. 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</i></p>

<p>Commodities (R/C-17)</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><i>program on narrow tailoring grounds.</i></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>Commodities (R/C-18)</p> <p><i>M/WBE Price Preferences for Commodities Contracts</i></p>	<p>SBBC should apply a five (5) percent discount on bids submitted by M/WBE firms for evaluation purposes in awarding prime contracts for Commodities purchases. (Study p. 12-24)</p>	<p>FML concurs.</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian-Pacific American and Native American MBEs) in Commodities prime contracts of various sizes. (Study p. 9-80; see also Study pp. 8-12 to 8-14)</p>	<p><i>Pro: Enhances ability of M/WBE suppliers to compete against larger vendors and suppliers that may have cost advantages due to volume of commodities sold. Expansion of supplier base may ultimately increase competition and reduce prices.</i></p> <p><i>Con: May increase costs of SBBC for commodities purchases by up to 5%.</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>Commodities (R/C-19)</p> <p><i>M/WBE Vendor Rotation</i></p>		<p>Selective use of vendor rotation of pre-qualified panel of M/WBE Commodities firms for smaller City contracts valued at less than \$50,000. Quote solicitations are rotated among this pre-qualified panel of M/WBE Commodities firms.</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian-Pacific American and Native American MBEs) in Commodities prime contracts of various sizes. (Study p. 9-80; see also Study pp. 8-12 to 8-14)</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 contracts and overcome bias against unknown firms. Facilitates building a track record and overcoming lack of SBBC 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>Commodities (R/C-20)</p> <p><i>Voluntary M/WBE Distributorship Development Program</i></p>		<p>Where there is low availability of M/WBE authorized distributorships or dealerships for certain Commodities, provide incentives to manufacturers of those Commodities to voluntarily establish an authorized dealership or distributorship with at least one new M/WBE supplier on a non-discriminatory basis. Such incentives may include accelerated payment and extended option years on supply contracts..</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian-Pacific American and Native American MBEs) in Commodities prime contracts of various sizes. (Study p. 9-80; see also Study pp. 8-12 to 8-14) Availability of M/WBE suppliers in this industry category is among the lowest in the marketplace. This may well be a consequence of discriminatory unequal access to capital. Slow payment by SBBC has also been identified as a barrier by M/WBE suppliers. This policy option helps to address both of these barriers. (See Study pp. 8-9 to 8-10)</p>	<p><i>Pro: Addresses relatively low availability of M/WBE suppliers and permits them to compete on an equal basis with other non-M/WBE suppliers.</i></p> <p><i>Con: Requires resources to carefully review M/WBE distributorship agreements to ensure M/WBE distributorships are treated equally as other distributorships issued by manufacturer in terms of advertising support, line of credit, geographic market, non-government accounts, etc.</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>Commodities (R/C-21)</p> <p><i>Mandatory M/WBE Distributorship Development Program</i></p>		<p>Where manufacturers have violated SBBC's Commercial Discrimination Policy by excluding or discriminating against M/WBE suppliers seeking to become authorized dealers / distributors, this policy option would require the manufacturer to establish such an authorized dealership or distributorship with an M/WBE supplier as a condition for being eligible to sell commodities to SBBC.</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian-Pacific American and Native American MBEs) in Commodities prime contracts of various sizes. (Study p. 9-80; see also Study pp. 8-12 to 8-14) Availability of M/WBE suppliers in this industry category is among the lowest in the marketplace. This may well be a consequence of discriminatory unequal access to capital. Slow payment by SBBC has also been identified as a barrier by M/WBE suppliers. This policy option helps to address both of these barriers. (See Study pp. 8-9 to 8-10)</p>	<p><i>Pro: Addresses relatively low availability of M/WBE suppliers and permits them to compete on an equal basis with other non-M/WBE suppliers.</i></p> <p><i>Con: Requires resources to carefully review M/WBE distributorship agreements to ensure M/WBE distributorships are treated equally as other distributorships issued by manufacturer in terms of advertising support, line of credit, geographic market, non-government accounts, etc.</i></p>

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