

**REMEDIAL POLICY OPTIONS FOR SCHOOL BOARD OF BROWARD COUNTY
SUPPLIER DIVERSITY OUTREACH PROGRAM (PART II – PROFESSIONAL SERVICES)**

(Prepared by Franklin M. Lee, Esquire 4-22-16)

Introduction

The following policy option matrices and recommendations related to the Professional 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 2-A and 2-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. Table 2-A reflects those recommendations for industry-specific remedial policy options that are race- and gender-neutral. Table 2-B reflects those recommendations for industry-specific remedial policy options that are race- and gender-conscious. (“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 II” of the draft Policy Option Matrix includes a total of 10 various policy recommendations, of which 6 are race- and gender-neutral and 4 are race- and gender-conscious in nature.

**TABLE 2-A: RACE / GENDER-NEUTRAL PROFESSIONAL SERVICES INDUSTRY
POLICY OPTIONS FOR SBBC'S SUPPLIER DIVERSITY OUTREACH PROGRAM**

(Prepared by Franklin M. Lee, Esquire 4-22-16)

<u>Industry Specific Programs</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Professional Services (R/N-23)</p> <p><i>SBE Vendor Rotation</i></p>		<p>Selective use of vendor rotation of pre-qualified panel of SBE Professional Services firms for smaller City contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of SBE Professional Services firms.</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian-Pacific American, Native American, and Caucasian WBEs) in Professional 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 and overcoming lack of SBBC experience barrier.</i></p>

<p>Professional Services (R/N-23)</p> <p><i>SBE Vendor Rotation</i></p> <p>(continued)</p>				<p><i>Con: Reduces competition in the short-run and may adversely affect cost</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>Professional Services (R/N-24)</p> <p><i>Evaluation Preferences for <u>New SBE</u> Prime Bidders</i></p>		<p>Provide preferences only for first time entrants seeking professional services contracts. Evaluation point preferences (award up to 20% of available evaluation points) to SBE firms bidding as first-time Professional Services prime consultants. Once SBE Professional Services firm is awarded a contract on this basis, they are no longer eligible for such evaluation preferences in the future.</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian-Pacific American, Native American, and Caucasian WBEs) in Professional Services prime contracts of various sizes; (Study p. 9-78)</p>	<p><i>Pro: Encourages more natural evolution of successful SBE M/WBE Professional Services sub-consultant firms into full-service Professional Services firms that bid as primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform Professional Services prime contracts for SBBC</i></p> <p><i>. Con: SBA size standards for SBEs may not be workable for Professional Services firms, which typically may have fewer employees.</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>Professional Services (R/N-25)</p> <p><i>Evaluation Panel Diversity</i></p>		<p>Assign a voting representative of the SDOP Office to each evaluation panel for Professional Services contracts.</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian-Pacific American, Native American, and Caucasian WBEs) in Professional Services prime contracts of various sizes; (Study p. 9-78)</p>	<p><i>Pro: Greater utilization of M/WBE subcontractors with disparity as prime consultants suggests bias against SBE and / or M/WBE primes that might be ameliorated with addition of diverse point of view.</i></p> <p><i>Con: A single evaluation panel representative with sensitivity towards the capabilities of SBE firms might not be sufficient to make a difference in overcoming advantages of incumbent firms; other panel members might resent new panel representatives with no experience.</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>Professional Services (R/N-26)</p> <p><i>SBE Reserve for Contracts Up to \$50,000</i></p>		<p>Reserve some smaller professional services contracts valued at less than \$50,000 for competition among SBE professional services firms.</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian-Pacific American, Native American, and Caucasian WBEs) in Professional Services prime contracts of various sizes; (Study p. 9-78)</p>	<p><i>Pro: Encourages more natural evolution of successful SBE M/WBE Professional Services sub-consultant firms into full-service Professional Services firms that bid as primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform Professional Services prime contracts for SBBC</i></p> <p><i>. Con: SBA size standards for SBEs may not be workable for Professional Services firms, which typically may have fewer employees.</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>Professional Services (R/N-27)</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 bidding as professional services prime consultants on contracts valued at less than \$500,000. Possible alternative is to restrict this program to professional services SBE prime consultant bidders that have not previously won a professional services prime contract with the SBBC. (Compare with R/N- 24 above.)</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian-Pacific American, Native American, and Caucasian WBEs) in Professional Services prime contracts of various sizes; (Study p. 9-78)</p>	<p><i>Pro: Encourages more natural evolution of successful M/WBE Professional Services sub-consultant firms into full-service Professional Services firms that bid as primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform Professional Services prime contracts for SBBC.</i></p> <p><i>Con: SBA size standards for SBEs may not be workable for Professional Services firms, which typically may have fewer employees.</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>Professional Services (R/N-28)</p> <p><i>SBE Subcontracting Goals for Professional Services</i></p>		<p>Establish mandatory SBE subcontracting goals for subcontract participation. Contract-specific subcontracting goals should be weighted to availability of SBE firms in required sub-specialties; this provision should apply to both M/WBE prime bidders and non-M/WBE bidders. Project-specific goals should vary by project and be based upon realistic measurement of available SBE firms for the particular project. Documented excessive prices or poor performance by SBE</p>	<p>MTA Study concludes there is significant disparity in subcontract utilization of M/WBEs in SBBC contracts for African American and Hispanic American subcontractors. (See Study at pp. 10-6 to 10-9). Good old boy networks provide a built-in advantage for incumbent firms in SBBC contracts. (See also Study pp. 8-4 to 8-7)</p>	<p><i>Pro: Enhances ability of S/M/WBE professional services firms to gain experience on larger contracts and establish a track record with SBBC. May also develop referral source with prime consultant.</i></p> <p><i>Con: Not all professional services contracts have commercially useful subcontract opportunities, so Goal Selection Committee will need to carefully evaluate each prime contract opportunity. Also, SBA size standards</i></p>

<p>Professional Services (R/N-28)</p> <p><i>SBE Subcontracting Goals for Professional Services (continued)</i></p>		<p>recognized as a basis for exclusion from bid. A Goal Setting Committee should be formed to undertake analysis to set subcontracting goals on a project-specific basis where there is a commercially useful to be subcontracted.</p> <p>**Alternatively, consider limiting availability of this policy option to larger professional services contracts greater than \$250,000.</p>		<p><i>may not effectively benefit M/WBE firms since professional services firms typically have relatively small numbers of employees and gross revenues.</i></p>
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**TABLE 2-B: RACE / GENDER-CONSCIOUS PROFESSIONAL SERVICES INDUSTRY
POLICY OPTIONS FOR SBBC'S SUPPLIER DIVERSITY OUTREACH PROGRAM**

(Prepared by Franklin M. Lee, Esquire 4-22-16)

<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">Professional Services (R/C-13)</p> <p align="center"><i>Annual Aspirational M/WBE Goals</i></p>		<p>Establishment of annual aspirational goals for M/WBE participation in SSBC professional services contracts (base goals starting at 62% MBE and 8% WBE for professional services prime contract dollars, and 58% MBE and 9% WBE for subcontract dollars awarded, with some adjustment as warranted based upon CBR registration). See Study pp.7-33 and 7-43. These goals are not to be necessarily applied 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</i></p>

<p>Professional Services (R/C-13)</p> <p><i>Annual Aspirational M/WBE Goals (continued)</i></p>		<p>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 make adjustments as necessary to the mix and aggressiveness of applied policy options.</p> <p>(See Study pp. 7-29 to 7-45)</p>		<p><i>avenue of legal attack against the 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>Professional Services (R/C-14)</p> <p><i>M/WBE Evaluation Preferences for Professional Services</i></p>	<p>In professional services contracts that are “best value” contracts where selection is through an RFP process instead of lowest responsible bidder IFBs, include language in RFP to encourage M/WBE participation on bidder’s team as one element in selection criteria. This option assigns evaluation point preferences (awarding up to 20% of total available evaluation points on a sliding scale basis based upon the level of M/WBE participation) to any firms bidding on professional services contracts. (See Study at p. 12-23)</p>	<p>FML concurs. (Currently, SDOP maximizes evaluation preference points at 10% of total available points.) Evaluation preference points are assigned to team based upon the percentage dollar value of the contract that will be performed by team members that are M/WBE firms.</p>	<p>MTA Study concludes there is significant disparity in prime and subcontract utilization of M/WBEs in SBBC professional services contracts (with exception of Subcontinent Asian-American firms) (See Study at pp. 9-78, and 10-6 to 10-9). Good old boy networks provide a built-in advantage for incumbent firms in SBBC evaluations of proposals to the detriment of locked out M/WBE firms. Evaluation preference points may help to counteract this incumbent advantage for non-M/WBE firms. (See Study pp. 8-4 to 8-7).</p>	<p><i>Pro: Encourages more natural evolution of successful M/WBE Professional Services sub-consultant firms into full-service Professional Services firms that bid as primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform Professional Services prime contracts for SBBC.</i></p> <p><i>Con: Requires careful compliance monitoring by SBBC to ensure that M/WBE team</i></p>

<p>Professional Services (R/C-14)</p> <p><i>M/WBE Evaluation Preferences for Professional Services (continued)</i></p>				<p><i>members get to perform agreed upon scope of work at agreed upon dollar value.</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>Professional Services (R/C-15)</p> <p><i>M/WBE Subcontracting Goals for Professional Services</i></p>	<p>Require prime bidders to exercise good faith efforts to meet an M/WBE subcontract participation goal with firms owned by African Americans and Hispanic American firms. Subcontracting goals should also contain waiver provisions for those instances where sufficient ready, willing, and able M/WBE subcontractors are not available. (Study p. 12-25 to 12-30)</p>	<p>FML concurs. Contract-specific subcontracting goals should be weighted to availability of M/WBE firms in required sub-specialties; this provision should apply to both M/WBE prime bidders and non-M/WBE bidders. Project-specific goals should vary by project and be based upon realistic measurement of available M/WBE firms for the particular project. Documented excessive prices or poor performance by M/WBE subcontractors should be recognized as a basis for exclusion from bid. A Goal Setting Committee should be</p>	<p>MTA Study concludes there is significant disparity in subcontract utilization of M/WBEs in SBBC contracts for African American and Hispanic American subcontractors. (See Study at pp. 10-6 to 10-9). Good old boy networks provide a built-in advantage for incumbent firms in SBBC contracts. (See also Study pp. 8-4 to 8-7)</p>	<p><i>Pro: Enhances ability of M/WBE professional services firms to gain experience on larger contracts and establish a track record with SBBC. May also develop referral source with prime consultant.</i></p> <p><i>Con: Not all professional services contracts have commercially useful subcontract opportunities, so Goal Selection Committee will need to carefully evaluate each prime contract opportunity.</i></p>

<p>Professional Services (R/C-15)</p> <p><i>M/WBE Subcontracting Goals for Professional Services (continued)</i></p>		<p>formed to undertake analysis to set subcontracting goals on a project-specific basis where there is a commercially useful function to subcontract. **Alternatively, consider limiting this policy option to larger professional services contracts valued at greater than \$250,000.</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>Professional Services (R/C-16)</p> <p><i>M/WBE Vendor Rotation</i></p>		<p>Selective use of vendor rotation of pre-qualified panel of M/WBE Professional Services firms (including African American, Subcontinent Asian American, Hispanic American, firms) for smaller SBBC Professional Services contracts valued at less than \$50,000. Two out of three quotes or proposals for these small contracts shall be solicited from M/WBEs. (See Study at pp. 10-6 to 10-9)</p>	<p>Significant underutilization of M/WBE firms in Professional Services prime contracts (with the exception of Asian Pacific-American, Native American, and Caucasian WBE firms), which were not underutilized); (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 to overcome SBBC experience barrier.</i></p> <p><i>Con: Reduces competition in the short-run and may adversely affect cost</i></p>