

**REMEDIAL POLICY OPTIONS FOR PALM BEACH COUNTY'S
EQUAL BUSINESS OPPORTUNITY PROGRAM (PART III –GOODS AND OTHER SERVICES)**

(Submitted by Franklin M. Lee, Esquire 8-13-18)

Introduction

The following policy option matrix and recommendations related to Goods and Other Services (i.e., non-professional services) industry-related remedies are based upon our legal review of the November 2017, Final Report entitled “Disparity Study Final Report” (“Study”) performed on behalf of Palm Beach County (“the County”) by Mason Tillman Associates, LTD. (“MTA”). Beginning in July 2018, the County convened a group of internal County staff stakeholders, as well as a group of Small, Local, Minority, and Women Business Enterprise stakeholders and trade association representatives from Palm Beach County for purposes of extensively reviewing and debating the key findings and recommendations of the Study to facilitate development of this Policy Option Matrix.¹ This first draft of the Policy Option Matrix now reflects many of the predominant views from this stakeholder deliberation process regarding the efficacy and justifications for various legally defensible policy elements. This document is now intended to facilitate similar consideration and further discussion between the business community stakeholders and the Board of Commissioners in furtherance of the Board’s deliberations regarding the merit of various proposed components of a new Equal Business Opportunity (“EBO”) Program. The EBO Program will ultimately take the form of draft amendments to the County Purchasing Code, the SBE Ordinance, and the Purchasing Procedures Manual and shall reflect features similar to many of those outlined herein.

In all, there are three distinct parts to this Policy Option Matrix. Part I focuses on administrative reforms and construction industry-related remedies. Part II focuses on professional services industry-related remedies (including CCNA design contracts) and other professional services. Finally, Part III focuses on remedies related to goods and other services (i.e., non-professional services) industry segments. Within this Part III of the Policy Option Matrix, Tables IV-A and IV-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 Goods and Other Services industry segments that may be legally defensible and somewhat effective in addressing identified barriers to M/WBE participation in Palm Beach County (“County”) contracts. Table IV-A reflects those recommendations for industry-specific remedial policy options that are race- and gender-neutral.

¹ Altogether, two internal County staff stakeholder meetings and three such Business Stakeholder meetings were held within the month of July 2018 in advance of preparation of this document. These internal and external stakeholder sessions were facilitated by Franklin Lee, Esq.

Table IV-B reflects those recommendations for industry-specific remedial policy options that are race- and gender-conscious (i.e., they include the use of racial or gender classifications). As a result of U.S. Supreme Court precedents requiring narrow tailoring of remedies under the “strict scrutiny” standard, the County should first consider the use of race- and gender-neutral remedial options as reflected in Table IV-A, and only resort to the race- and gender-conscious remedial options reflected in Table IV-B when it has reason to believe that neutral remedies, in and of themselves, will be insufficient to fully eliminate disparities resulting from discrimination.²

² This “Part III” of the draft Policy Option Matrix for goods and other services contracts includes a total of thirteen various policy recommendations, of which 6 are race-and gender-neutral, and 7 are race-and gender-conscious in nature. **“R/C” references within the numerical label of a policy option mean that the proposed policy is a “race- and gender-conscious” remedy. “R/N” references within the numerical label of a policy option mean that the proposed policy is a “race- and gender-neutral” remedy.**

**TABLE IV-A: RACE / GENDER-NEUTRAL
GOODS AND OTHER SERVICES INDUSTRY POLICY OPTIONS FOR
PALM BEACH COUNTY'S EQUAL BUSINESS OPPORTUNITY PROGRAM**

(Submitted by Franklin M. Lee, Esquire 8-13-18)

<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Goods and Other Services (R/N-24)</p> <p><i>SBE Vendor Rotation</i></p>		<p><u>Option 1:</u> Selective use of vendor rotation of pre-qualified panel of SBE Goods and Other Services firms for smaller Authority contracts valued at less than \$100,000. Assignment of work tasks is rotated among this pre-qualified panel of SBE Goods and Other Services firms. (Alternatively, purchase orders for certain commodities can be issued to SBE firms on vendor rotation. Periodically, SBE</p>	<p>Significant underutilization of African American, Asian American, Hispanic American, and WBE firms in Goods and Other Services prime contracts. (Study at pp. 7-1 to 7-27; Table 7.13) As these disparities persist across range of large and small contract dollar thresholds, lack of M/WBE capacity is not a likely explanation for disparities. (Study at pp. 6-7 to 6-18; Table 6.7; and Study at pp. 6-25 to 6-26 and Table 6.18)</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 County experience barrier.</i></p>

<p>Goods and Other Services (R/N-24)</p> <p><i>SBE Vendor Rotation</i></p> <p>(continued)</p>		<p>Vendor Rotation list is re-ordered from least dollars received to most dollars received based upon cumulative dollars in work tasks each firm has received within past year.</p> <p><u>Option 2:</u> To ensure there is price competition, for those Goods and Other Services contracts valued at \$100,000 or less where price may be a factor in selection, price quotations must be solicited from the next three prequalified SBE vendors in rotation.</p>	<p>PUMS regression analysis reflecting significant disparities adversely affecting firm earnings for M/WBE Goods and Other Services firms in private sector un-remediated markets. (Study pp. 9-1 to 9-20).</p>	<p><i>Con: Reduces competition in the short-run and may adversely affect cost. However, this risk is mitigated under Option 2.</i></p>
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<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Goods and Other Services (R/N-25)</p> <p><i>SBE Reserve for Contracts Below \$5,000 and Required SBE Quotations on Informal Solicitations below \$100,000</i></p>		<p>Reserve some smaller Goods and Other Services contracts valued at less than \$5,000 for competition among SBE vendors only. For larger informal Goods and Other Services contracts valued at less than \$100,000, require quotations from at least two or three SBE firms.</p>	<p>Significant underutilization of African American, Asian American, Hispanic American, and WBE firms in Goods and Other Services prime contracts. (Study at pp. 7-1 to 7-27; Table 7.13) As these disparities persist across range of large and small contract dollar thresholds, lack of M/WBE capacity is not a likely explanation for disparities. (Study at pp. 6-7 to 6-18; Table 6.7; and Study at pp. 6-25 to 6-26 and Table 6.18)</p> <p>PUMS regression analysis reflecting significant disparities adversely affecting firm earnings for M/WBE Goods and Other Services firms in private sector un-remediated</p>	<p><i>Pro: Encourages more natural evolution of successful S/M/WBE Goods and Other Services subcontractor firms into full-service firms that bid as primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform commodities and services prime contracts for County.</i></p> <p><i>Con: Somewhat limits competition and may slightly increase costs. However the second option for eliciting multiple quotes from competing SBEs mitigates this risk.</i></p>

<p>Goods and Other Services (R/N-25)</p> <p><i>SBE Reserve for Contracts Below \$5,000 and Required SBE Quotations on Informal Solicitations below \$100,000</i></p> <p>(continued)</p>			<p>markets. (Study pp. 9-1 to 9-20).</p>	
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<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Goods and Other Services (R/N-26)</p> <p><i>SBE Evaluation Preference for Prime Bidders</i></p>		<p>Evaluation point preferences (award up to 15% of total available evaluation points) to any SBE firms bidding as Other Services prime vendors on “best value” contracts valued at less than \$500,000. **One alternative is to restrict this API to Other Services SBE prime bidders that have not previously won an Other Services prime contract with the County. (Compare with R/N- 20 in Part II.)</p> <p>** 2nd Alternative is to have a sliding scale for award of up to 15 SBE Evaluation Preference Points awarded based upon relative dollar</p>	<p>Significant underutilization of African American, Asian American, Hispanic American, and WBE firms in Goods and Other Services prime contracts. (Study at pp. 7-1 to 7-27; Table 7.13) As these disparities persist across range of large and small contract dollar thresholds, lack of M/WBE capacity is not a likely explanation for disparities. (Study at pp. 6-7 to 6-18; Table 6.7; and Study at pp. 6-25 to 6-26 and Table 6.18) PUMS regression analysis reflecting significant disparities adversely affecting firm earnings for M/WBE Goods and Other Services firms in private</p>	<p><i>Pro: Encourages more natural evolution of successful S/M/WBE Other Services sub-consultant firms into primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform services prime contracts for County.</i></p> <p><i>Con: Many such services contracts are awarded on a low bid basis and accordingly there may be no proposals or qualifications submitted, and no opportunity for “best value” evaluations where preference points can be</i></p>

<p>Goods and Other Services (R/N-27)</p> <p><i>SBE Evaluation Preference for Prime Bidders (continued)</i></p>		<p>value (from 10% up to 100%) of total SBE participation on bidder's team.</p>	<p>sector un-remediated markets. (Study pp. 9-1 to 9-20).</p>	<p><i>awarded.</i></p>
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<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Goods and Other Services (R/N-28)</p> <p><i>SBE Joint Venture Incentives for Other Services</i></p>		<p>For joint ventures between larger established firms and local SBE firms on contracts greater than \$5 million, establish joint venture incentives such as: (1) additional option years to contracts; and/or (2) access to mobilization funds. Also consider evaluation preferences for joint ventures between two or more certified SBE firms or Joint Venture teams that include a minimum percentage of SBE participation (e.g., 20%). Such incentives should be used by County when it has a priority for promoting growth in the availability of new S/M/WBE capacity in a given industry segment.</p>	<p>Significant underutilization of African American, Asian American, Hispanic American, and WBE firms in Goods and Other Services prime contracts. (Study at pp. 7-1 to 7-27; Table 7.13) As these disparities persist across range of large and small contract dollar thresholds, lack of M/WBE capacity is not a likely explanation for disparities. (Study at pp. 6-7 to 6-18; Table 6.7; and Study at pp. 6-25 to 6-26 and Table 6.18) PUMS regression analysis reflecting significant disparities adversely affecting firm earnings for M/WBE Goods and Other Services firms in private sector un-remediated</p>	<p><i>Pro: Encourages more natural evolution of successful S/M/WBE Other Services subcontractor firms into full-service competitive firms that may ultimately bid as primes on larger contracts, such as waste hauling. Helps overcome natural bias in favor of incumbent firms that repeatedly perform such prime contracts for County.</i></p> <p><i>Con: Although many such contracts are low bid and do not provide opportunity for application of evaluation preferences, other incentives such as</i></p>

<p>Goods and Other Services (R/N-28)</p> <p><i>SBE Joint Venture Incentives for Other Services</i></p> <p>(continued)</p>			<p>markets. (Study pp. 9-1 to 9-20).</p>	<p><i>added option years to contracts, waiver or reduction of certain County franchise fees, and access to certain mobilization funds for purchase of equipment can be effective incentives for joint venturing in low bid contracts.</i></p>
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<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Goods and Other Services (R/N-29)</p> <p><i>SBE Subcontracting Goals for Other Services Contracts Valued at Greater Than \$5 Million</i></p>		<p>For larger Other Services contracts valued at greater than \$5 million where an adequate number of commercially useful functions is available for subcontracting, apply a mandatory subcontracting goal for the participation of SBE subcontractors that is equal to 20% of the total value of the contract. Permit waivers or reductions of the standard 20% subcontracting goal in those instances where there is a lack of availability of qualified SBEs to perform subcontracted services as demonstrated by adequate good faith efforts documentation submitted by the prime,</p>	<p>Significant underutilization of African American, Asian American, Hispanic American, and WBE firms in Goods and Other Services prime contracts. (Study at pp. 7-1 to 7-27; Table 7.13) As these disparities persist across range of large and small contract dollar thresholds, lack of M/WBE capacity is not a likely explanation for disparities. (Study at pp. 6-7 to 6-18; Table 6.7; and Study at pp. 6-25 to 6-26 and Table 6.18) PUMS regression analysis reflecting significant disparities adversely affecting firm earnings for M/WBE Goods and Other Services firms in private sector un-remediated</p>	<p><i>Pro: This API provides an entry point for smaller local firms to get into the industry, to grow, and become competitive for bidding on future prime contracts. With strengthened procurement manual language and vigilant policy enforcement to preclude bid shopping and improper substitution of SBE and M/WBE subcontractors, this can be an effective tool for meaningful S/M/WBE participation.</i></p> <p><i>Con: Requires due diligence to ensure commercially useful</i></p>

<p>Goods and Other Services (R/N-29)</p> <p><i>SBE Subcontracting Goals for Other Services Contracts Values at Greater Than \$5 Million (continued)</i></p>		<p>or documentation submitted by Originating Department reflecting insufficient availability of commercially useful functions for subcontracting purposes. Subcontracting goals shall routinely also be applied to contract extensions and change orders whenever feasible.</p>	<p>markets. (Study pp. 9-1 to 9-20).</p>	<p><i>functions exist for subcontracting purposes. Care must be taken that the size of the contract is significant enough to avoid discouraging primes from bidding in those instances where considerably less than 80% of the value of the overall contract will be retained by the prime.</i></p>
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**TABLE IV-B: RACE / GENDER-CONSCIOUS
GOODS AND OTHER SERVICES INDUSTRY POLICY OPTIONS FOR
PALM BEACH COUNTY’S EQUAL BUSINESS OPPORTUNITY PROGRAM**

(Submitted by Franklin M. Lee, Esquire 8-13-18)

<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Goods and Other Services (R/C-16)</p> <p><i>Annual Aspirational M/WBE Goals</i></p>		<p>Establishment of annual aspirational goals for M/WBE participation in County Goods and Other Services contracts (base goals starting at 16% MBE and 17% WBE of annual County dollars spent for Goods and Other Services purchases) with some adjustment on an annual basis as warranted based upon CBR registration. See Study pp.6-25 to 6-26; Table 6.18. These goals are not to be applied to individual</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 remedies. Annual goals also provide an up-to-date measure of availability by overall industry categories, and can be useful for outreach purposes. Disparity Study findings obtained with benefit of threshold analysis greatly diminish smaller</p>	<p><i>Pro: Provides a useful tool for evaluating success of program and making necessary adjustments to aggressiveness of remedies and outreach efforts. Provides realistic targets for M/WBE participation in County contracts that are data-driven based upon bona fide measures of availability.</i></p>

<p>Goods and Other Services (R/C-16)</p> <p><i>Annual Aspirational M/WBE Goals (continued)</i></p>		<p>contracts, but rather serve as a guidepost to evaluate the effectiveness of the SBE and M/WBE Affirmative Procurement Initiatives (“APIs”) on an annual basis, and to identify and direct adjustments as necessary to the mix and aggressiveness of applied policy options.</p>	<p>M/WBE capacity as a plausible explanation for significant disparities observed at prime contract levels. (Study at pp. 7-1 to 7-27; Table 7.13)</p>	<p><i>Con: Must guard against reflex to apply annual goals to specific projects without justification. If not updated periodically, can also undermine ability to narrowly tailor program’s application in the future.</i></p>
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<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Goods and Other Services (R/C-17)</p> <p><i>M/WBE Vendor Rotation</i></p>		<p><u>Option 1:</u> Selective use of vendor rotation of pre-qualified panel of M/WBE Goods and Other Services firms for smaller Authority contracts valued at less than \$100,000. Assignment of work tasks is rotated among this pre-qualified panel of M/WBE Other Services firms. (Alternatively, purchase orders for certain goods valued at \$5,000 or less can be issued to M/WBE firms on vendor rotation. Periodically, M/WBE Vendor Rotation list is re-ordered from least dollars received to most dollars received based upon cumulative dollars in work tasks or purchase orders each firm has received within</p>	<p>Significant underutilization of African American, Asian American, Hispanic American, and WBE firms in Goods and Other Services prime contracts. (Study at pp. 7-1 to 7-27; Table 7.13) As these disparities persist across range of large and small contract dollar thresholds, lack of M/WBE capacity is not a likely explanation for disparities. (Study at pp. 6-7 to 6-18; Table 6.7; and Study at pp. 6-25 to 6-26 and Table 6.18; Table 7.13) PUMS regression analysis reflecting significant disparities adversely affecting firm earnings, and loan access for M/WBE Goods and Other Services firms.</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 and overcoming lack of County experience barrier.</i></p> <p><i>Con: Reduces competition in the short-run and may adversely affect cost. However, this risk is mitigated under Option 2.</i></p>

<p>Goods and Other Services (R/C-17)</p> <p><i>M/WBE Vendor Rotation</i></p> <p>(continued)</p>		<p>past year.</p> <p><u>Option 2:</u> To ensure there is price competition, for those Goods and Other Services contracts valued below \$100,000 where price may be a factor in selection, price quotations must be solicited from the next three prequalified M/WBE vendors in rotation.</p>	<p>(Study pp. 9-1 to 9-20).</p>	
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<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Goods and Other Services (R/C-18)</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 African American, Asian American, Hispanic American, and WBE firms in Goods and Other Services prime contracts. (Study at pp. 7-1 to 7-27; Table 7.13) As these disparities persist across range of large and small contract dollar thresholds, lack of M/WBE capacity is not a likely explanation for disparities. (Study at pp. 6-7 to 6-18; Table 6.7; and Study at pp. 6-25 to 6-26 and Table 6.18) PUMS regression analysis reflecting significant disparities adversely affecting firm earnings for M/WBE Goods and Other Services firms in private</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 allocation, non-government accounts, etc.</i></p>

<p>Goods and Other Services (R/C-18)</p> <p><i>M/WBE Voluntary Distributorship Development Program</i> (continued)</p>			<p>sector un-remediated markets. (Study pp. 9-1 to 9-20).</p> <p>As M/WBEs tend to be smaller on average with relatively lower sales volume, they probably are less cost-competitive because they are not eligible for the same volume discounts from their suppliers that larger competitors receive as the manufacturer's authorized dealer or distributor.</p>	
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<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Goods and Other Services (R/C-19)</p> <p><i>Mandatory M/WBE Distributorship Development Program</i></p>		<p>Where manufacturers have violated County's Commercial Non-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 County.</p>	<p>Significant underutilization of African American, Asian American, Hispanic American, and WBE firms in Goods and Other Services prime contracts. (Study at pp. 7-1 to 7-27; Table 7.13)</p> <p>As these disparities persist across range of large and small contract dollar thresholds, lack of M/WBE capacity is not a likely explanation for disparities. (Study at pp. 6-7 to 6-18; Table 6.7; and Study at pp. 6-25 to 6-26 and Table 6.18)</p> <p>PUMS regression analysis reflecting significant disparities adversely affecting firm earnings for M/WBE Goods and Other Services firms in private sector un-remediated</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 allocation, non-government accounts, etc.</i></p>

<p>Goods and Other Services (R/C-19)</p> <p><i>Mandatory M/WBE Distributorship Development Program (continued)</i></p>			<p>markets. (Study pp. 9-1 to 9-20).</p>	
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<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Goods and Other Services (R/C-20)</p> <p><i>M/WBE Evaluation Preferences</i></p>		<p>Evaluation point preferences (award up to 15% of total available evaluation points) to any M/WBE firms bidding as Other Services prime vendors on “best value” contracts valued at less than \$500,000. **One alternative is to restrict this API to Other Services SBE prime bidders that have not previously won an Other Services prime contract with the County. (Compare with R/N- 20 in Part II.)</p> <p>** 2nd Alternative is to have a sliding scale for award of up to 15 M/WBE Evaluation Preference Points awarded based upon relative dollar value (from 10% up to 100%)</p>	<p>Significant underutilization of African American, Asian American, Hispanic American, and WBE firms in Goods and Other Services prime contracts. (Study at pp. 7-1 to 7-27; Table 7.13) As these disparities persist across range of large and small contract dollar thresholds, lack of M/WBE capacity is not a likely explanation for disparities. (Study at pp. 6-7 to 6-18; Table 6.7; and Study at pp. 6-25 to 6-26 and Table 6.18) PUMS regression analysis reflecting significant disparities adversely affecting firm earnings for M/WBE Goods and Other Services firms in private</p>	<p><i>Pro: Encourages more natural evolution of successful S/M/WBE Other Services subcontractor firms into primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform services prime contracts for County.</i></p> <p><i>Con: Many such services contracts are awarded on a low bid basis and accordingly there may be no proposals or qualifications submitted, and no opportunity for “best value” evaluations where preference points can be</i></p>

<p>Goods and Other Services (R/C-20)</p> <p><i>M/WBE Evaluation Preferences (continued)</i></p>		<p>of total M/WBE participation on bidder's team.</p>	<p>sector un-remediated markets. (Study pp. 9-1 to 9-20).</p>	<p><i>awarded.</i></p>
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<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Goods and Other Services (R/C-21)</p> <p><i>M/WBE Joint Venture Incentives</i></p>		<p>For joint ventures between larger established firms and local M/WBE firms on contracts greater than \$5 million, establish joint venture incentives such as: (1) additional option years for awarded contracts; (2) waivers of certain County fees; and/or (3) access to mobilization funds. Also consider evaluation preferences for joint ventures between two or more certified M/WBE and SBE firms or Joint Venture teams that include a minimum percentage of M/WBE participation (e.g., 20%). Such incentives should be used by County when it has a priority for promoting new</p>	<p>Significant underutilization of African American, Asian American, Hispanic American, and WBE firms in Goods and Other Services prime contracts. (Study at pp. 7-1 to 7-27; Table 7.13) As these disparities persist across range of large and small contract dollar thresholds, lack of M/WBE capacity is not a likely explanation for disparities. (Study at pp. 6-7 to 6-18; Table 6.7; and Study at pp. 6-25 to 6-26 and Table 6.18) PUMS regression analysis reflecting significant disparities adversely affecting firm earnings for M/WBE Goods and Other Services firms in private</p>	<p><i>Pro: Encourages more natural evolution of successful S/M/WBE Other Services subcontractor firms into full-service competitive firms that may ultimately bid as primes on larger contracts, such as waste hauling. Helps overcome natural bias in favor of incumbent firms that repeatedly perform such prime contracts for County.</i></p> <p><i>Con: Although many such contracts are low bid and do not provide opportunity for application of evaluation preferences, other</i></p>

<p>Goods and Other Services (R/C-21)</p> <p><i>M/WBE Joint Venture Incentives (continued)</i></p>		<p>S/M/WBE capacity and growth in a given industry segment.</p>	<p>sector un-remediated markets. (Study pp. 9-1 to 9-20).</p>	<p><i>incentives such as added option years to contracts, waiver or reduction of certain County franchise fees, and access to certain mobilization funds for purchase of equipment can be effective incentives for joint venturing in low bid contracts.</i></p>
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<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Goods and Other Services (R/C-22)</p> <p><i>M/WBE Subcontracting Goals for Other Services Contracts Valued at Greater Than \$5 Million</i></p>		<p>For larger Other Services contracts valued at greater than \$5 million where an adequate number of commercially useful functions is available for subcontracting, apply a mandatory subcontracting goal for the participation of M/WBE subcontractors that is based upon the relative availability of qualified M/WBE subcontractors for the commercially useful functions that are available for subcontracting. Permit waivers or reductions of the established subcontracting goal in those instances where there is a lack of availability of qualified</p>	<p>Significant underutilization of African American, Asian American, Hispanic American, and WBE firms in Goods and Other Services prime contracts. (Study at pp. 7-1 to 7-27; Table 7.13) As these disparities persist across range of large and small contract dollar thresholds, lack of M/WBE capacity is not a likely explanation for disparities. (Study at pp. 6-7 to 6-18; Table 6.7; and Study at pp. 6-25 to 6-26 and Table 6.18) PUMS regression analysis reflecting significant disparities adversely affecting firm earnings for M/WBE Goods and Other Services firms in private</p>	<p><i>Pro: This API provides an entry point for smaller local firms to get into the industry, to grow, and become competitive for bidding on future prime contracts. With strengthened procurement manual language and vigilant policy enforcement to preclude bid shopping and improper substitution of SBE and M/WBE subcontractors, this can be an effective tool for meaningful S/M/WBE participation.</i></p> <p><i>Con: Requires due diligence to ensure</i></p>

<p>Goods and Other Services (R/C-22)</p> <p><i>M/WBE Subcontracting Goals for Other Services Contracts Valued at Greater Than \$5 Million (continued)</i></p>		<p>M/WBEs to perform subcontracted services as demonstrated by adequate good faith efforts documentation submitted by the prime, or documentation submitted by Originating Department reflecting insufficient availability of commercially useful functions for subcontracting purposes. Subcontracting goals shall routinely also be applied to contract extensions and change orders whenever feasible.</p>	<p>sector un-remediated markets. (Study pp. 9-1 to 9-20).</p>	<p><i>commercially useful functions exist for subcontracting purposes. Care must be taken that the size of the contract is significant enough to avoid discouraging primes from bidding in those instances where considerably less than 80% of the value of the overall contract will be retained by the prime.</i></p>
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