

**REMEDIAL POLICY OPTIONS FOR PALM BEACH COUNTY'S
EQUAL BUSINESS OPPORTUNITY PROGRAM (PART I –ADMINISTRATIVE REFORMS AND CONSTRUCTION)**

(Submitted by Franklin M. Lee, Esquire 8-5-18)

Introduction

The following policy option matrices and recommendations related to Non-Industry-Specific Administrative Reforms and Construction Industry-related remedies were initially based upon our legal review of the November 2017, Final Report entitled “Disparity Study Final Report” (“Study”) performed for 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 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 (i.e., non-professional) services segments. Within this Part I of the Policy Option Matrix, Table I summarizes proposed miscellaneous procurement policy and administrative reforms that are not industry-specific small / minority / women business enterprise program elements, but that are worthy of consideration by the County based upon a review of the full factual predicate evidence gathered from this Study effort. Such evidence

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.

includes, but is not limited to, testimony from stakeholders and public comment during this policy deliberation phase. 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 Tables I and II-A, and only resort to the race- and gender-conscious remedial options reflected in Tables I and II-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

Tables II-A and II-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 Construction Industry that may be legally defensible and somewhat effective in addressing identified barriers to M/WBE participation in Palm Beach County (“County”) contracts. Table II-A reflects those recommendations for industry-specific remedial policy options that are race- and gender-neutral. Table II-B reflects those recommendations for industry-specific remedial policy options that are race- and gender-conscious (i.e., they do not include the use of racial or gender classifications).

² This “Part I” of the draft Policy Option Matrix includes a total of 27 various policy recommendations, of which 17 are race- and gender-neutral and 10 are race- and gender-conscious in nature. Twelve of the sixteen non-industry-specific administrative reforms and other policy options described in Table I are race- and gender-neutral. Four of the sixteen non-industry-specific reforms and policy options are race- and gender-conscious. Those four of the non-industry-specific race- and gender-conscious policy options either address administrative problems that undermined the effectiveness of the SBE program, or address identified barriers to the business formation and growth of M/WBE firms that are influenced by race or gender regardless of industry (e.g., unequal access to bonding and capital). **“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 I: NON-INDUSTRY-SPECIFIC POLICY OPTIONS AND ADMINISTRATIVE REFORMS
FOR THE COUNTY’S EQUAL BUSINESS OPPORTUNITY PROGRAM**

(Submitted by Franklin M. Lee, Esquire 8-5-18)

<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p align="center">All Industries (R/N-1)</p> <p align="center"><i>Centralized Bidder Registration System/ Data Extraction / and Data Management Enhancements</i></p>	<p>Implement a centralized automated web-based accounting system capable of tracking availability of all prime and subcontractors by industry and by spend dollars. (Study p. 12-23 to 12-27)</p>	<p>FML concurs. Registration on the Centralized Bidder Registration system (“CBR”) should be mandatory for every prime contractor and subcontractor that is ready and able to sell some good or service that the County purchases, and that wishes to be solicited to bid on County contracts or subcontracts, that desires to submit a bid with the County, or have an invoice paid for goods</p>	<p>Enables narrow tailoring of project-specific goals based on best available current measure of firms that are ready, willing, and able to bid on County contracts; also provides transparency in contract awards and actual payments at prime contract and subcontract levels for all firms, not just M/WBEs.</p>	<p><i>Pro: Strengthens defensibility of disparity study and program goal-setting; reduces administrative burden in setting goals and tracking payments; facilitates enforcement of prompt payment provisions on behalf of subcontractors; facilitates focused outreach efforts; enhances competition; levels playing field for</i></p>

<p>All Industries (R/N-1)</p> <p><i>Centralized Bidder Registration System/ Data Extraction / and Data Management Enhancements (continued)</i></p>		<p>or services sold to, or on behalf of, Palm Beach County. Due diligence on a number of off-the-shelf software products designed for this purpose should be undertaken. System should have the capability of providing data in real time on relative availability of S/M/WBE firms by commodity code and ethnicity / gender ownership status, prime contract dollar payments made by County, and subcontractor payments made by prime contractors. Data should be sortable by firm name, firm size, firm location, commodity codes in bidder profiles, certification status, cumulative dollars paid, contract utilization data, etc.</p>		<p><i>smaller firms' marketing efforts; and reduces time and expense for next disparity study.</i></p> <p><i>Cons: None.</i></p>
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<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/N-2)</p> <p><i>Administrative Strategies / De-bundling / Re-packaging of Contracts</i></p>	<p>The County should adopt criteria for determining in advance of bid solicitations whether individual contracts should be de-bundled or subdivided into smaller contracts, and conversely, whether smaller informal contracts and numerous decentralized purchase orders should be bundled into larger annual contracts, in order to enhance competition and to enhance opportunities for S/M/WBE participation. (Study p. 12-21 to 12-30).</p>	<p>FML concurs.</p>	<p>Many small and M/WBE firms have difficulty in competing for larger contracts due to lack of access to capital and capacity issues. (Study pp. 6-7 to 6-18; 6-11, Table 6.7; and 7-1 to 7-27) Regression analysis based upon PUMS data indicates disparities are not likely explained by differences in capacity. (Study pp. 9-1 to 9-20, 6-7 to 6-18; 10-22 to 10-25; and pp. 8-1 to 8-9). As M/WBEs tend to be smaller on average with relatively lower sales volume, they probably are less cost-competitive</p>	<p><i>Pro: Smaller contracts enhance competition and give smaller firms and M/WBE firms a better opportunity to win contracts.</i></p> <p><i>Con: De-Bundling contracts increases the number of contracts that have to be advertised, issued, and monitored by County staff. It is easier to administer and manage a single large contract versus several smaller ones. Sometimes, costs are adversely affected by</i></p>

<p>All Industries (R/N-2)</p> <p><i>Administrative Strategies / De-bundling / Re- packaging of Contracts (Continued)</i></p>			<p>because they are not eligible for the same volume discounts from their suppliers that larger competitors receive. Moreover, M/WBE financing costs and bonding costs have often been demonstrated to be higher even after controlling for creditworthiness and other relevant factors.</p>	<p><i>de-bundling.</i></p>
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<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/N-3)</p> <p><i>Subcontract Remedies (Mobilization and Revolving Working Capital Fund)</i></p>		<p>Under circumstances where mobilization fees are paid to prime contractors, include flow-down contractual provisions to insure that subcontractors also are extended a proportional amount of mobilization fees by the primes. The County should notify all subs when such mobilization fees have been paid to the prime, and web site postings and emails should provide transparency regarding the availability and payment of such advance fees.</p> <p>Providing a revolving working capital fund administered by a third-party non-profit or credit union for benefit of</p>	<p>Smaller subcontractors and younger subcontractors are in greater need of mobilization fees due to unequal access to capital. M/WBEs have lower earnings than similarly situated non-minority firms, and therefore likely have less retained earnings to assist in obtaining financing for upcoming projects. (Study at pp. 9-1 to 9-20.)</p>	<p><i>Pros: Minimizes potential for default due to slow payment and inability to finance projects. Places subcontractors in same position as primes for purposes of mobilization.</i></p> <p><i>Cons: Requires County to issue payments in advance of delivery of goods or services. Undermines ability to hold subcontractors and prime contractors accountable for performance (at least on first phase of contract). A revolving working</i></p>

<p>All Industries (R/N-3)</p> <p><i>Subcontract Remedies (Mobilization and Revolving Working Capital Fund)</i> (continued)</p>		<p>S/M/WBE firms working on County contracts should be a focus of the County's Banking Consortium to better serve S/M/WBE financing needs.</p>		<p><i>capital fund administered by third-party non-profit may be less problematic.</i></p>
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<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/N-4)</p> <p><i>Contract Monitoring & Reporting (Multi-year Contracts and Change Orders)</i></p>	<p>Monthly contract compliance monitoring should be conducted by EBO Office Staff to insure integrity of S/M/WBE program. This helps to minimize hardships on subcontractors and avoids situations where prime has self-performed all of the work promised to the subcontractors. (Study at pp. 12-21 to 12-30)</p>	<p>FML concurs, and advocates continual monitoring of contract compliance with S/M/WBE inclusion commitments through CBR system. Advance identification of potential non-compliance enables corrective action to be taken before all project funds have been drawn down and spent. This is especially important on change orders and multi-year contracts. All substitutions for S/M/WBE subcontractors should be for cause and should be subject to prior approval by EBO Office.</p>	<p>Slow payment and false reporting of S/M/WBE utilization is fairly commonplace. Online monitoring and verification of purported subcontractor performance and payment is crucial to integrity of EBO Program. Economic inclusion requirements are a material deliverable under the terms of the contracts, and breach of this term must be dealt with appropriately. Ongoing monitoring is essential in identifying such non-compliance.</p>	<p><i>Pros: Monitoring and reporting is essential to contract compliance effort. Tracking goals against utilization on prime contracts with multi-year terms, and unexpected change orders.</i></p> <p><i>Cons: None.</i></p>

<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/N-5)</p> <p><i>Website Enhancement Strategies</i></p>	<p>MTA recommends a number of enhancements to County’s website to make it more user-friendly and to enhance transparency regarding upcoming, ongoing, and past contract awards, and to integrate EBO Program’s objectives and mission into that website and to make key features accessible to all contractors and vendors. These recommendations are summarized at Study pp. 12-21 to 12-30.</p>	<p>FML concurs. These website recommendations should also be carefully reviewed to assure that they also accommodate all recommendations for establishment of a Centralized Bidder Registration system as summarized above in R/N-1.</p>	<p>Study at pp. 12-21 to 12-30.</p>	<p><i>Pros: Enhances transparency and access to bidding process for S/M/WBE contractors and vendors; also enhances outreach and compliance monitoring capabilities for EBO Program.</i></p> <p><i>Cons: Short term costs to County of a couple hundred thousand dollars, but these costs will be far outweighed by gained efficiencies through increased staff productivity and enhanced competition for contracts.</i></p>

<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/N-6)</p> <p><i>Uniform Lead Times for Bid Submittals</i></p>		<p>Establish standard lead time for prospective bidders to submit bids to at least thirty (30) days after issuance of bid solicitations by County.</p>	<p>Small contractors sometimes complain that the bidding process sometimes did not allow enough time to be able to put a bid together and submit it. Smaller contractors often cannot afford to hire additional staff members that are solely dedicated to marketing and bid preparation.</p>	<p><i>Pros: Maximizes competition for County contracts and better enables smaller S/M/WBE firms to compete.</i></p> <p><i>Cons: None. County may be doing this already on many contracts, but for some, the advertising period for invitations to bid is only two weeks (e.g., informal contracts, decentralized purchase order requests for quotations, and single trade annual contract requests for quotations.</i></p>

<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/N-7)</p> <p><i>Debriefings for Unsuccessful Bidders</i></p>	<p>Notify unsuccessful bidders that they are entitled to a de-briefing with County to learn why their bids or proposals were not successful and things they might do in the future to strengthen such bids and proposals. (Study at p. 12-27)</p>	<p>FML concurs. County currently provides such debriefings upon request. This practice may lead to better bids in the future, and may well result in subsequent contract awards to S/M/WBE firms that previously had had unsuccessful bids. County should encourage such debriefings by including offer for debriefings in bid solicitations and through outreach events to S/M/WBE firms.</p>	<p>There is a strong perception among some M/WBEs that the bidding process is rigged and that same good old boys always win. De-briefing for unsuccessful bidders could help to make the contract award process more transparent and remove some of the distrust, thereby enhancing competition for future bids. (See Study at pp. 10-1 to 10-25)</p>	<p><i>Pros: Enhances transparency and bidder trust in fairness in the contract award process; also helps keep bid evaluators honest in knowing they will have to defend their contract award decisions.</i></p> <p><i>Cons: May require some additional man hours from County staff in meeting with, or providing written critiques to, unsuccessful bidders.</i></p>

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<p>All Industries (R/N-8)</p> <p><i>Establish Position for Equal Business Opportunity Ombudsman (Mediation of Disputes)</i></p>		<p>Establish position for Equal Business Opportunity Ombudsman with mediation processes available to resolve disputes. Review City of Baltimore’s M/WBE Program for requirements relating to mediation of disputes between M/WBE firms and prime contractors. It has been effective in resolving payment disputes, boosting M/WBE participation on change orders, and preventing breaches of M/WBE participation clauses in contracts by non-compliant primes before the defects become incurable. EBO Office could also use</p>	<p>See Study at pp. 10-5 to 10-7; and 10-10.</p>	<p><i>Pros: Enhances perceptions of fairness in procurement process; avoids severe financial stress for smaller contractors and vendors in resolving many disputes without exorbitant legal expenses.</i></p> <p><i>Cons: It is sometimes difficult for EBO Office or other County officials to stay neutral or to be able to lean heavily on both parties to come to a successful resolution.</i></p>

<p>All Industries (R/N-8)</p> <p><i>Establish Position for Equal Business Opportunity Ombudsman (Mediation of Disputes)</i></p> <p>(continued)</p>		<p>such procedures to resolve disputes between County and contractors.</p>		
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<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/N-9)</p> <p><i>Expedited Payment Program</i></p>	<p>Establish Subcontractor Prompt Payment Policy for expedited payments for undisputed portions of invoices within five days;</p>	<p>FML concurs. Establish a requirement that primes are paid by County for undisputed invoices within fifteen days, and that primes give notice to subcontractors of disputed portions of sub's invoice within five days of receipt, and pay undisputed subcontractor invoices within five days of receipt of payment from County. Montgomery County Public Schools was able to accelerate electronic payment of undisputed invoices to within 48 hours of receipt of invoice. This resulted in reduction in school</p>	<p>Small contractors are particularly susceptible to slow payment. Accelerated payments will disproportionately benefit S/M/WBE firms that have unequal access to working capital. (See Study at pp. 10-13 to 10-14; and 12-27)</p>	<p><i>Pros: Streamlined payment process benefits, contractors, small and large, improves local economy, and ultimately leads to lower prices for goods and services purchased by County.</i></p> <p><i>Cons: None. Either way, the taxpayer money will be spent, but by spending it more quickly, costs to taxpayers and vendor community alike will ultimately be reduced. (Does not include retainage for latent defects.)</i></p>

<p>All Industries (R/N-9)</p> <p><i>Expedited Payment Program</i> (continued)</p>		<p>construction costs of 20% as primes and subs no longer had to finance payroll, material, and supplies purchases.</p>		
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<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/N-10)</p> <p><i>Disputed Invoice Five Day Notice Requirement</i></p>	<p>Invoice disputes are a source of slow payment problems. Establish a requirement that County must notify a prime of a disputed invoice within five days of receipt. Require that primes similarly notify subcontractors of disputes with invoices within five days. Failure to comply with prompt payment provisions may result in withholding of funds by County. (Study at p. 12-27)</p>	<p>FML concurs, and suggests requirement that contract flow-down provisions be inserted in subcontractor contracts by primes. One sanction for unjustified slow payment by prime is that prime authorizes County in its contract to pay subcontractor directly where there is no legitimate dispute, and to deduct those subcontractor payments from future invoice total for prime.</p>	<p>Small contractors are particularly susceptible to slow payment. Accelerated payments will disproportionately benefit S/M/WBE firms that have unequal access to working capital. (See Study at pp. 10-12 to 10-14; and 12-27)</p>	<p><i>Pros: Streamlined payment process benefits, contractors, small and large, improves local economy, and ultimately leads to lower prices for goods and services purchased by County.</i></p> <p><i>Cons: None. Either way, the taxpayer money will be spent, but by spending it more quickly, costs to taxpayers and vendor community alike will ultimately be reduced. (Does not include retainage for latent defects.)</i></p>

<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/N-11)</p> <p><i>Commercial Non-Discrimination Policy</i></p>		<p>County should improve its commercial nondiscrimination policy that states it will not engage in business with firms that discriminate in their solicitation, selection, or commercial treatment of subcontractors, suppliers, vendors, or commercial customers on the basis of race, gender, sexual identity or sexual orientation. This policy should require clauses be incorporated into all IFBs, RFPs, bid documents and contracts enforcing this policy as a material term of County contracts. In addition, County should adopt</p>	<p>The Supreme Court cited such commercial nondiscrimination policies in the <i>Croson</i> case as a basic right, foundation, and prerequisite for local governments that seek to ensure they are not passive participants in private sector discrimination. Such policies also set the tone for all else that follows in the EBO Program and similar economic inclusion programs.</p>	<p><i>Pros: Strengthens legal defensibility of program and simultaneously provides County with a broader platform to change behavior in the marketplace by causing its vendors and contractors to be consciously inclusive in the way they conduct business.</i></p> <p><i>Cons: None.</i></p>

<p>All Industries (R/N-11)</p> <p><i>Commercial Non-Discrimination Policy</i> (continued)</p>		<p>procedures for accepting and investigating complaints for violations of this policy, and establishing due process for institution of sanctions against firms that have violated this policy including, but not limited to, suspension or termination of existing contracts, debarment, mediation, and negotiated consent agreements to remedy effects of discrimination and prevent its reoccurrence in the future. (See similar policies for Palm Beach County School District, City of Baltimore, and State of Maryland)</p>		
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<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/N-12)</p> <p><i>EBO Office Representation on Evaluation Panels</i></p>		<p>The Director or designee of the EBO Office shall serve as a voting member on each Evaluation Panel used by County to score and select Respondents to RFPs for contract awards. (**Note: the County is already doing this, however, the evaluation and scoring process for these panels currently does not allow for any discussion among panel members before final tallies, which undermines effectiveness of panel diversity.) Study results reflecting that CCNA prequalified MBE professional services</p>	<p>M/WBE vendors and professional services firms perceive Good Old Boy network is a barrier to entry at County. (Study at p. 10-1 to 10-25). Moreover, significant disparity in the utilization of CCNA pre-qualified MBE firms that have been previously evaluated for capacity and competence strongly suggests bias in the evaluation panel process. There is also significant disparity in award of informal professional services contracts that are negotiated with County in absence of evaluation panels. (See Study at pp.</p>	<p><i>Pros: There often is natural bias to score incumbent firms that have a long track record of successful performance disproportionately higher than non-incumbent S/M/WBE firms that may have similar successful track records elsewhere. Smaller firms and unknown firms are perceived as greater risks. This built-in bias can best be counteracted through a deliberative process where each panel member is challenged to justify</i></p>

<p>All Industries (R/N-12)</p> <p><i>EBO Office Representation on Evaluation Panels (continued)</i></p>		<p>firms are significantly underutilized as a result of current evaluation panel process strongly suggests internal bias against S/M/WBE firms. The presence of an advocate for economic inclusion on such evaluation panels may help to counteract natural biases favoring incumbent firms and to keep scoring of other panel members fair.</p>	<p>7-19 to 7-21; Tables 7.12 and 8.3; and 7-1 to 7-27) During internal stakeholder meetings with County staff, a few incidents were identified where undue influence from department heads may have biased evaluation panel process.</p>	<p><i>their scores,</i></p> <p><i>Cons: Some evaluation panel members may resent an “outside” presence that interferes with, or challenges, their view of the preferred firm, and may not be open to reconsideration of the fairness of their scoring practices and selection process.</i></p>
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<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/C-1)</p> <p><i>Penalties and Sanctions for Non-compliance with S/M/WBE Requirements</i></p>	<p>Include contractual provisions authorizing EBO Office to investigate allegations of non-compliance with M/WBE participation requirements. Sanctions for violation of S/M/WBE program requirements should include withholding of payments, termination of suspension of contracts, contract breach damages equal to dollar value of shortage under S/M/WBE participation commitment, rejection of bids as a non-responsible bidder, and debarment. (Study at p. 12-12)</p>	<p>FML concurs. Also establish an S/M/WBE hotline to EBO Office for reporting of alleged fraud and non-compliance; however, there must also be provisions for sanctions to discourage frivolous claims of fraud and non-compliance being filed by competitors.</p>	<p>Penalties and sanctions for such violations are absolutely essential for maintaining integrity of EBO Program. If participation requirements are not treated as a material deliverable under the terms of the contract, program will become meaningless. (See Study at p. 10-10)</p>	<p><i>Pros: Establishes accountability and means for independent investigation of false reporting of S/M/WBE participation and non-compliance with contractual commitments;</i></p> <p><i>Cons: Requires increased vigilance to avoid and discourage filing of frivolous claims of non-compliance by competitors and non-performing subcontractors.</i></p>

<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/C-2)</p> <p><i>Penalties and Sanctions for Fraud (Certification and S/M/WBE Compliance)</i></p>	<p>To safeguard the interests of bona fide S/M/WBE firms, certification applications should require executed sworn statements as to truth and veracity of information provided in application under penalty of perjury. EBO Office should be granted authority to investigate and impose penalties for fraud. (Study at p. 12-12)</p>	<p>FML concurs. There also needs to be an administrative hearing process and appeals process to ensure fairness in imposition of sanctions. Consider also routine audits by EBO Office or other department of documentation submitted in support of certification to identify and discourage fraud. If certification reciprocity is permitted, care must be taken to ensure rigorous standards and integrity in process. Otherwise, the integrity of County’s certification</p>	<p>Penalties and sanctions for such violations are absolutely essential for maintaining integrity of EBO Program. If certification eligibility standards are not enforced, program will become meaningless and may lose its legal defensibility as a tool to remedy legitimate marketplace discrimination.</p>	<p><i>Pros: Reinforces importance of eligibility standards and integrity of program as a tool to remedy the effects of marketplace discrimination on M/WBE firms.</i></p> <p><i>Cons: County prefers to outsource certification function. Expense of review and enforcement of eligibility standards is essential cost for satisfying the “narrow tailoring” requirements under the U.S. Constitution</i></p>

<p>All Industries (R/C-2)</p> <p><i>Penalties and Sanctions for Fraud (Certification and S/M/WBE Compliance)</i> (continued)</p>		<p>is only as strong as the weakest link that reciprocity has been provided to.</p>		<p><i>for race- and gender- conscious remedies.</i></p>
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<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/C-3)</p> <p><i>EBO Office Prior Approval of S/M/WBE Subcontractor Substitutions</i></p>		<p>Continue practice of requiring EBO Office's prior approval of any substitution of S/M/WBE subcontractors by a prime contractor.</p>	<p>Unchecked substitutions of S/M/WBE subcontractors following contract award are a significant vulnerability in achievement of meaningful M/WBE participation. Without such checks and balances, good old boy networks will operate to get rid of disfavored S/M/WBE subcontractors for other favored subcontractors without any legitimate business justification. (Study at pp. 10-1 to 10-25; 9-1 to 9-20; and 11-1 to 11-20)</p>	<p><i>Pros: Establishes accountability and means for independent investigation of false reporting of S/M/WBE participation and non-compliance with contractual commitments;</i></p> <p><i>Cons: Requires increased vigilance to avoid and discourage filing of frivolous claims of non-compliance by competitors and non-performing subcontractors.</i></p>

<u>Administrative Reforms & Non-Industry-Specific Policy Options</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>All Industries (R/C-4)</p> <p><i>County Staff Training (S/M/WBE Program Procedures and Responsibilities)</i></p>	<p>County staff will need extensive training in operation of new EBO Program that will apply SBE and M/WBE program features on a contract-specific basis. (Study at pp. 12-20 and 12-23; see also pp. 11-1 to 11-20 re: best practices for area SBE programs).</p>	<p>The EBO Program should be incorporated into the County procurement procedures manual, and should be developed and distributed to all affected County staff; moreover, training should be conducted for all County personnel that have some functions or responsibilities under the S/M/WBE program.</p>	<p>The most effective M/WBE programs are those wherein each department that is involved in the bidding, procurement, and contract compliance processes takes ownership of the program and willingly and effectively fulfills its responsibilities under the program.</p>	<p><i>Pros: The EBO Office can be far more effective in implementing the program if the S/M/WBE program is embraced by all departments within the County; it would be prohibitively expensive to hire redundant personnel within the EBO Office to monitor contract compliance. Economic inclusion requirements must be viewed as an equal deliverable under all contracts.</i></p> <p><i>Cons: None.</i></p>

**TABLE II-A: RACE / GENDER-NEUTRAL CONSTRUCTION INDUSTRY
POLICY OPTIONS FOR COUNTY'S EQUAL BUSINESS OPPORTUNITY PROGRAM**

(Submitted by Franklin M. Lee, Esquire 8-5-18)

<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">Construction (R/N-14)</p> <p align="center"><i>Bond Waivers and Assistance Programs</i></p>		<p>Establish a work group (e.g., similar to Banking Consortium) for purposes of improving Minor Construction Annual Contracts program. Examine best practices around the country for various types of bonding assistance and Owner Controlled Insurance Programs (OCIP), and making a recommendation to EBO Office, County Administrator, and the Board for adoption of a model that may enhance availability of bonded S/M/WBE prime contract bidders.</p>	<p>Significant disparity and underutilization in County M/WBE construction prime contract participation for African American and Hispanic-American firms (Study at pp. 7-1 to 7-27; Table 7.11); regression analysis based upon PUMS data indicates disparities are not likely explained by differences in capacity, especially at the subcontracting level. (Study at pp. 9-1 to 9-20) Bonding requirements are likely hindering ability of M/WBE contractors to bid successfully due to</p>	<p><i>Pro: Provides enhanced access to prime contracts for SBE and M/WBE firms; strengthens ability to obtain bonds for SBE firms, while reducing risk of loss through technical assistance and financial management support.</i></p> <p><i>Con: Initial monetary investment in program may be problematic due to budgetary concerns.</i></p>

<p>Construction (R/N-14)</p> <p><i>Bond Waivers and Assistance Programs</i> (continued)</p>		<p>Continue to waive bonds where feasible on contracts below \$200,000. For larger contracts, consider bond premium cost reimbursement models with a dollar cap to help level playing field in cost competitiveness of S/M/WBE bidders as compared to larger firms that traditionally have lower premiums; Consider also bond guarantee models to enhance availability of bonds for S/M/WBE firms, and technical assistance models to strengthen bidding capability and management of funds to mitigate risk of loss.</p>	<p>unequal access to capital and bonding. (Study pp. 6-7 to 6-18; Tables 6-7 10-1 to 10-25)</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>Construction (R/N-15)</p> <p><i>Revised Single Trade Contracting Program for Small Contracts</i></p>	<p>Revise the program for County’s direct purchases of single trade services in smaller construction contracts by County to include informal contracts that are less than or equal to \$100,000, thereby enhancing opportunities for S/M/WBE firms to bid and work as prime contractors. Limit contract renewals to two years, and rotate assignments among no less than five awardees for each single trade contract (Study p. 12-26)</p>	<p>FML concurs. County should also consider eliminating multi-step bid process and expanding the number of S/M/WBE prequalified firms to place in rotation for such contracts beyond five firms when practicable based upon the annual volume of such work that is available. The order of the small contractor rotation should be periodically adjusted from the firm with the least dollars received to firm with most dollars received. County could use time and materials price negotiation formula similar to JOC for arriving a price for each contract task order or purchase order award. Levels the playing field</p>	<p>Significant disparity and underutilization in County M/WBE construction prime contract participation for African American and Hispanic-American firms (Study at pp. 7-1 to 7-27; Table 7.11); regression analysis based upon PUMS data indicates disparities are not likely explained by differences in capacity, especially at the subcontracting level. (Study pp. 9-1 to 9-20) Bonding requirements are likely hindering ability of M/WBE contractors to bid successfully due to unequal access to capital and bonding. (Study pp. 6-7 to 6-18; Tables 6-7 10-1 to 10-25)</p>	<p><i>Pro: Provides enhanced access to prime contracts for SBE and M/WBE firms; strengthens ability to obtain bonds for SBE firms through development of successful track record at entry level.</i></p> <p><i>Con: Requires more administrative resources by County to manage multiple small projects instead of one larger bundled contract.</i></p>

<p>Construction (R/N-15)</p> <p><i>Revised Single Trade Contracting Program for Small Contracts (continued)</i></p>		<p>for M/WBE bidders that tend to be small and unable to get volume discounts on supplies that larger contractors get. This approach enhances opportunities for small non-incumbent firms to develop a successful track record with County.</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>Construction (R/N-16)</p> <p><i>Revised Minor Construction Annual Prime Contract Program</i></p>		<p>Revised Minor Construction program for small prime contractors to compete for prime construction contracts valued at \$2.5 million or less, contract terms of one year, with no more than two one-year options based upon satisfactory performance, with size standard categories based upon industry for small business firms:</p> <p>SBE – size standard equal to 25% (or 50%) of SBA small business size standard for construction, or \$9 million in gross annual revenues (one-half of</p>	<p>Significant disparity and underutilization in County M/WBE construction prime contract participation for African American and Hispanic-American firms (Study at pp. 7-1 to 7-27; Table 7.11); regression analysis based upon PUMS data indicates disparities are not likely explained by differences in capacity, especially at the subcontracting level. (Study pp. 9-1 to 9-20) Bonding requirements are likely hindering ability of M/WBE contractors to bid successfully due to unequal access to capital and bonding. (Study pp. 6-7 to 6-18; Tables 6-7 10-1 to 10-25)</p>	<p><i>Pro: Provides enhanced access to prime contracts for SBE and M/WBE firms; strengthens ability to obtain bonds for SBE firms through development of successful track record at entry level.</i></p> <p><i>Con: Requires more administrative resources by COUNTY to manage multiple small projects instead of one larger bundled contract.</i></p>

<p>Construction (R/N-16)</p> <p><i>Revised Minor Construction Annual Prime Contract Program (continued)</i></p>		<p>M/WBE size standard for construction (provide evaluation preference up to 15% for SBE primes bidding on alternative delivery method construction contracts (e.g., CM at Risk); permit waiver of bonding requirements for prime contracts below \$200,000 per State law.)</p> <p>(Reserve subset of small prime contracts valued at or below \$100,000 for competition solely among SBEs.)</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>Construction (R/N-17)</p> <p><i>SBE Subcontracting Program</i></p>		<p>Mandatory subcontracting outreach program with SBE subcontract goals of 20% unless waiver or reduction is granted by EBO Office / Goal Setting Committee. Mandatory good faith outreach by primes to satisfy contract-specific SBE subcontracting goal of 20%; centralized bidder registration system can significantly improve outreach and facilitate documentation of availability by specific trade. Such data will further provide objective means for processing SBE goal waiver requests or goal reductions on a contract-specific basis to be considered by Goal</p>	<p>Significant disparity and underutilization in County MBE construction subcontract participation for African American and Hispanic American categories of M/WBEs; also statistically non-significant disparity for Asian American, Native American, and WBE subcontractors. (Study at pp. 8-1 to 8-9; Table 8.2)</p>	<p><i>Pro: Enhances capacity development and competition in subcontracting overall; provides assistance for emerging firms, as well as for more established small firms;</i></p> <p><i>Con: Short term reduction of competition on subcontracts; possible adverse cost impact; requires careful consideration of selection of remedy on project-by-project basis.</i></p>

Construction (R/N-17) <i>SBE Subcontracting Program</i> (continued)		Setting Committee or EBO Office.		
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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>Construction (R/N-18)</p> <p><i>SBE Mentor – Protégé Program</i></p>		<p>Team up more established and successful construction firm mentors with less established SBE firms to provide management guidance and training. May provide additional incentive to potential mentors by reserving some contracts for pre-approved mentor-protégé teams. (See City of Columbia, SC mentor-protégé program; see also Port of Portland Emerging Small Business Program). Also consider other incentives such as accelerated payment, access to working capital fund, and direct purchasing of supplies by County on behalf of mentor-protégé teams.</p>	<p>Relationship-building is a key component to opening up subcontract opportunities for emerging SBE firms that are not known to prime contractor community. Helps break down barriers inherent in good old boy networks. (Study at pp. 10-10 to 10-12), Also, training in such matters as safety programs, payroll, estimating and bidding, management of funds and project management is extraordinarily valuable to newer firms. Mentors benefit from expanded pool of competent subs that are dependable and work well with prime.</p>	<p><i>.Pro: This approach to building capacity is favored by the AGC and may provide a win-win scenario if a long-term prime – sub relationship evolves; mentor will have greater confidence in SBE subs that they have mentored.</i></p> <p><i>Con: There may not be enough mentors to meet needs of SBE subs; incentive for participation as mentor may not be sufficient as some primes perceive protégés to be potential competitors. There is also a need to have</i></p>

<p>Construction (R/N-18)</p> <p><i>SBE Mentor – Protégé Program</i> (continued)</p>				<p><i>safeguards to ensure that protégé is not becoming a captive, but is gaining intended benefit from mentor-protégé relationship.</i></p>
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**TABLE II-B: RACE / GENDER-CONSCIOUS CONSTRUCTION INDUSTRY
POLICY OPTIONS FOR COUNTY'S EQUAL BUSINESS OPPORTUNITY PROGRAM**

(Submitted by Franklin M. Lee, Esquire 8-5-18)

<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">Construction (R/C-5)</p> <p align="center"><i>Annual Aspirational Goals</i></p>		<p>Establishment of annual aspirational goals for M/WBE participation in County construction contracts (base goals starting at 28% MBE and 13% WBE for construction prime contract dollars, and 24% MBE and 14% WBE for subcontract dollars awarded, with some adjustment as warranted based upon CBR registration). (See Study at pp. 6-5 to 6-20; Table 6.15; and pp. 6-28 to 6-29.) These goals</p>	<p>Flexible benchmarks are important to managing the S/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. Should be updated on a regular basis (at least upon conclusion</i></p>

<p>Construction (R/C-5)</p> <p><i>Annual Aspirational Goals</i> (continued)</p>		<p>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 make adjustments as necessary to the mix and aggressiveness of applied policy options.</p>		<p><i>of each disparity study update, and preferably on an annual basis).</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>Construction (R/C-6)</p> <p><i>M/WBE Subcontracting Goals</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, Asian Americans, Hispanic Americans, Native Americans, and WBEs. Subcontracting goals should also contain waiver provisions for those instances where sufficient ready, willing, and able M/WBE subcontractors are not available. (Study p. 12-12)</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. EBO Office and Goal Setting Committee should undertake</p>	<p>MTA Study concludes there is disparity in subcontract utilization of M/WBEs in County contracts and very low M/WBE utilization in private sector construction contracts, even after controlling for capacity and other race-neutral variables. Moreover, threshold analysis showed significant disparities persisted even regardless of contract size. (Study pp. 8-1 to 8-9; Table 8.2; pp. 6-7 to 6-18; Table 6.7; pp. 9-11 to 9-20; and 12-2 to 12-5.)</p>	<p><i>Pro: Provides narrowly tailored approach to setting realistic M/WBE subcontract goals; built-in flexibility with consideration of good faith efforts documentation; follows federal government model for DBE program which greatly enhances legal defensibility.</i></p> <p><i>Con: Is more administratively burdensome to implement than single uniform subcontracting goal; requires careful consideration in goal-setting stage for</i></p>

<p>Construction (R/C-6)</p> <p><i>M/WBE</i> <i>Subcontracting</i> <i>Goals</i> (continued)</p>		<p>analysis to set subcontracting goals on a project-specific basis.</p>		<p><i>each and every project.</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>Construction (R/C-7)</p> <p><i>M/WBE Segmented Subcontracting Goals</i></p>		<p>In those instances wherein a particular ethnic segment of M/WBE subcontractors (e.g., African American, and Hispanic American firms) has been consistently and significantly underutilized as compared to relative availability even after the use of aggregate M/WBE subcontracting goals, then subsequent overall M/WBE subcontracting goals may be segmented such that a prime bidder must subcontract no less than a certain percentage of the overall M/WBE subcontracting goal to M/WBE firms that are within that significantly underutilized ethnic segment. (For example,</p>	<p>MTA Study concludes there is disparity in subcontract utilization of M/WBEs in County contracts and very low M/WBE utilization in private sector construction contracts, even after controlling for capacity and other race-neutral variables. Moreover, threshold analysis showed significant disparities persisted even regardless of contract size. (Study pp. 8-1 to 8-9; Table 8.2; pp. 6-7 to 6-18; Table 6.7; pp. 9-11 to 9-20; and 12-2 to 12-5.)</p>	<p><i>Pro: Provides narrowly tailored approach to setting realistic M/WBE subcontract goals; built-in flexibility with consideration of good faith efforts documentation; follows federal government model for DBE program which greatly enhances legal defensibility.</i></p> <p><i>Con: Is more administratively burdensome to implement than single uniform subcontracting goal; requires careful consideration in goal-setting stage for</i></p>

<p>Construction (R/C-7)</p> <p><i>M/WBE Segmented Subcontracting Goals (continued)</i></p>		<p>wherein African American subcontractor utilization reflects patterns of near exclusion, out of an overall 41% M/WBE subcontracting goal, the prime bidders may be required to obtain no less than 11% out of that 41% from subcontractors that are certified as African-American firms and/or 11% from Hispanic American firms.) Segmented contract-specific subcontracting goals should also be weighted to the relative availability of M/WBE firms and the identified segments of M/WBE firms that are qualified to provide goods or services within the 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</p>		<p><i>each and every project.</i></p>
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<p>Construction (R/C-7)</p> <p><i>M/WBE Segmented Subcontracting Goals</i> (continued)</p>		<p>and be based upon realistic measurement of ready, willing, and able M/WBE firms that are available for the particular project. Documented excessive unjustified prices or poor performance by M/WBE subcontractors should be recognized as a basis for exclusion from bid and subcontracting goals analysis.</p> <p>The EBO Office should undertake analysis to set subcontracting goals and segmented subcontract goals on a project-specific basis.</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>Construction (R/C-8)</p> <p><i>M/WBE Joint Venture / Partnership / Teaming Incentive</i></p>	<p>Establish joint venture, partnership / teaming agreement incentives for prime contract IFBs and RFPs for alternative delivery method construction contracts. (Study at p. 12-24)</p>	<p>For contracts greater than \$2.5 Million, establish joint venture policy similar to City of Atlanta's which promotes establishment of joint ventures between diverse partners on projects. As relatively few construction projects may exceed \$2.5 million, reserve some larger prime contracts valued at \$1 million or greater for competition by joint ventures or teams between non-M/WBE firms and M/WBE firms. Also consider evaluation preferences for joint ventures or bidding teams between two or more certified M/WBE firms. Consideration of this option should be limited to occasions when the</p>	<p>MTA Study concludes there is significant disparity in prime contract and subcontract utilization of M/WBEs in County contracts and very low M/WBE utilization in private sector construction contracts, even after controlling for capacity and other race-neutral variables. Moreover, threshold analysis showed significant disparities persisted even regardless of contract size. (Study pp. 8-1 to 8-9; Table 8.2; pp. 6-7 to 6-18; Table 6.7; pp. 9-11 to 9-20; and 12-2 to 12-5.)</p>	<p><i>Pro: Provides a strong incentive for collaboration across lines of race and gender in bidding on larger construction contracts; enhances opportunities for M/WBEs to gain project management and prime contract experience on larger projects.</i></p> <p><i>Con: Requires careful monitoring of role of M/WBE in contract to insure legitimate share of project management and contribution to joint venture or the team's scope of work; not certain if there are sufficient numbers of M/WBE primes of significant</i></p>

<p>Construction (R/C-8)</p> <p><i>M/WBE Joint Venture Incentive</i> (continued)</p>		<p>County has several M/WBE prime contractors of sufficient size and capacity to meaningfully joint venture or team on contracts of this magnitude. Alternatively, dollar threshold for contracts for application of this remedy may need to be adjusted. Also consider providing incentives for larger M/WBEs to joint venture or team with smaller local M/WBEs to build local capacity. For example, on best value construction contracts wherein price is not the only factor, provide a sliding scale of evaluation preference points based upon the percentage ownership in the joint venture or the percentage of the prime contract dollar value that the M/WBE JV partner team member has in the project.</p>		<p><i>size and capacity to match up with other non-M/WBE bidders. (However, CBR system may provide better info on availability of potential JV partners or teams.) Florida prequalification requirements in construction contracts may be an impediment to this API as Joint Ventures will have no track record for prequalification purposes.</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>Construction (R/C-9)</p> <p><i>M/WBE Mentor-Protégé Program</i></p>		<p>Team up more established and successful construction firm mentors with less established M/WBE firms to provide management guidance and training. May provide additional incentive to potential mentors by reserving some contracts for pre-approved mentor-protégé teams. (See City of Columbia, SC mentor-protégé program; see also Port of Portland Emerging Small Business Program). Also consider other incentives such as accelerated payment, access to working capital fund, and direct purchasing of supplies by County on behalf of</p>	<p>In the event the SBE program version of the mentor-protégé program (see R/N-18) is unable to recruit enough mentors, then this M/WBE Mentor Protégé Program should be implemented. It is presumed that there will be more certified SBE construction firms than M/WBE firms. MTA Study concludes there is significant disparity in prime and subcontract utilization of M/WBEs in County contracts and very low M/WBE utilization in private sector construction contracts, even after controlling for capacity and other race-neutral variables. There was also testimony indicating that M/WBE</p>	<p><i>Pro: This approach to building capacity is favored by the AGC and may provide a win-win scenario if a long-term prime – sub relationship evolves; mentor will have greater confidence in M/WBE subs that they have mentored.</i></p> <p><i>Con: Incentive for participation as mentor may not be sufficient as some primes perceive protégés to be potential competitors. There is also a need to have safeguards to ensure that protégé is not becoming a captive, and maintains</i></p>

<p style="text-align: center;">Construction (R/C-9)</p> <p style="text-align: center;"><i>M/WBE Mentor-Protégé Program</i> (continued)</p>		<p>mentor-protégé teams. Consider providing more evaluation preference points to teams where both the mentor and protégé are M/WBE firms. It is important to build capacity within the M/WBE community by strongly incentivizing collaborative behavior and generational transfer of intellectual know-how on the part of larger M/WBE graduates of the program.</p>	<p>firms have been not had an equal opportunity to bid and receive construction subcontracts in absence of MBE program and in private sector. (Study pp. 8-1 to 8-9; Table 8.2; pp. 6-7 to 6-18; Table 6.7; pp. 9-11 to 9-20; 10-10 to 10-12; and 12-2 to 12-5.)</p>	<p><i>management and control of its firm.</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>Construction (R/C-10)</p> <p><i>M/WBE Evaluation Preference for “Best Value” RFPs</i></p>		<p>In construction projects that are “best value” contracts such as with construction manager or design-build delivery methods 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 15% of total available evaluation points on a sliding scale basis based upon the level of M/WBE participation) to any firms bidding on construction management or prime construction design-build contracts. Evaluation preference points are</p>	<p>MTA Study concludes there is significant disparity in prime and subcontract utilization of M/WBEs in County contracts and very low M/WBE utilization in private sector construction contracts, even after controlling for capacity and other race-neutral variables. There was also testimony indicating that M/WBE firms have not had an equal opportunity to bid and receive construction subcontracts in absence of MBE program and in private sector. (Study pp. 8-1 to 8-9; Table 8.2; pp. 6-7 to 6-18; Table 6.7; pp. 9-11 to 9-20; 10-1 to 10-25.) Good old boy networks provide a built-in advantage for incumbent firms in County</p>	<p><i>Pro: Provides a strong incentive for collaboration across lines of race and gender in bidding on larger construction “best value” contracts where price is not the only consideration; the greater the level of M/WBE participation, the greater the evaluation preference for the bidder.</i></p> <p><i>Con: Requires careful monitoring of role of M/WBE in contract to insure legitimate share of project management and contribution to team’s scope of work.</i></p>

<p>Construction (R/C-10)</p> <p><i>M/WBE Evaluation Preference for "Best Value" RFPs (continued)</i></p>		<p>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>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. 10-10 to 10-12).</p>	
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