

**REMEDIAL POLICY OPTIONS FOR
SOLID WASTE AUTHORITY OF PALM BEACH COUNTY'S
EQUAL BUSINESS OPPORTUNITY PROGRAM**

(PART III –COMMODITIES, OTHER SERVICES, AND TRADE SERVICES)

(Prepared by Franklin M. Lee, Esquire 4-30-18)

Introduction

The following policy option matrix and recommendations related to Commodities, Other Services, and Trade Services Industry-related remedies are based upon our legal review of the March 2017, Final Report entitled “Solid Waste Authority of Palm Beach County, Florida, Disparity Study Final Report” (“Study”) performed for the Solid Waste Authority of Palm Beach County (“SWA”) by Mason Tillman Associates, LTD. (“MTA”).

Tables IV-A and IV-B below summarize respectively the remedial industry-specific race- and gender-neutral Small Business Enterprise (“SBE”) policy options and the race- and gender-conscious minority/women business enterprise (“M/WBE”) policy options for the Commodities, Other Services, and Trade Services Industry segments that may be legally defensible and somewhat effective in addressing identified barriers to M/WBE participation in Solid Waste Authority (“SWA”) contracts. These three industry segments have been grouped together in Part III of this Policy Option Matrix because they share the common characteristics of generating few commercially useful subcontracting opportunities, while simultaneously presenting somewhat unique opportunities for enhancing competition and expanding the availability and capacity of small local firms to become mainstream suppliers of certain goods and services routinely purchased by SWA. Table IV-A reflects those recommendations for industry-specific remedial policy options that are race- and gender-neutral. 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 for ongoing effects of marketplace discrimination under the “strict scrutiny” standard, the SWA 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.¹

¹ This “Part III” of the draft Policy Option Matrix includes a total of 14 various policy recommendations, of which 6 are race-and gender-neutral, and 8 are race- and gender-conscious in nature. A “R/C” reference within the numerical label of a policy option means that the proposed policy is a “race- and gender-conscious” remedy. A “R/N” reference within the numerical label of a policy option means that the proposed policy is a “race- and gender-neutral” remedy.

**TABLE IV-A: RACE / GENDER-NEUTRAL
COMMODITIES, OTHER SERVICES, AND TRADE SERVICES INDUSTRY
POLICY OPTIONS FOR SWA'S EQUAL BUSINESS OPPORTUNITY PROGRAM**

(Prepared by Franklin M. Lee, Esquire 4-30-18)

<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Commodities, Other Services, & Trade 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 Commodities, Other Services, & Trade Services firms for smaller Authority contracts valued at less than \$50,000.</p> <p>Assignment of work tasks is rotated among this pre-qualified panel of SBE Other Services and Trade Services firms. (Alternatively, purchase orders for certain commodities can</p>	<p>Significant underutilization of African American, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5)</p> <p>Also significant underutilization of African American and WBE firms in Trade Services prime contracts. (See Study at pp. 8-12 to 8-14; 8-24 to 8-26; 8-27; and 12-3 to 12-5) As</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 SWA experience</i></p>

<p>Commodities, Other Services, & Trade Services (R/N-24)</p> <p><i>SBE Vendor Rotation</i> (continued)</p>		<p>be issued to SBE firms on vendor rotation. Periodically, SBE 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 Commodities, Other Services, & Trade Services contracts valued at \$50,000 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>these disparities persist across range of large and small contract dollar thresholds, lack of M/WBE capacity is not a likely explanation for disparities. PUMS regression analysis reflecting significant disparities adversely affecting firm earnings, and loan access for M/WBE Commodities, Other Services, & Trade Services firms. (Study pp. 10-20 to 10-22; and 10-28).</p>	<p><i>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>
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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>Commodities, Other Services, & Trade Services (R/N-25)</p> <p><i>SBE Reserve for Contracts Up to \$5,000 and Required SBE Quotations or Informal Solicitations up to \$50,000</i></p>		<p>Reserve some smaller Commodities, Other Services, and Trade Services contracts valued at less than \$5,000 for competition among SBE vendors only. For larger informal Commodities, Other Services, and Trade Services contracts valued at up to \$50,000, require quotations from at least two or three SBE firms.</p>	<p>Significant underutilization of African American, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5) Also significant underutilization of African American and WBE firms in Trade Services prime contracts. (See Study at pp. 8-12 to 8-14; 8-24 to 8-26; 8-27; and 12-3 to 12-5) 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. PUMS regression analysis reflecting significant disparities adversely affecting firm earnings,</p>	<p><i>Pro: Encourages more natural evolution of successful S/M/WBE Commodities, Other Services, & Trade 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 SWA.</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>Commodities, Other Services, & Trade Services (R/N-25)</p> <p><i>SBE Reserve for Contracts Up to \$5,000 and Required SBE Quotations or Informal Solicitations up to \$50,000</i></p> <p>(continued)</p>			<p>and loan access for M/WBE Commodities, Other Services, & Trade Services firms. (Study pp. 10-20 to 10-22; and 10-28).</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>Commodities, Other Services, & Trade Services (R/N-26)</p> <p><i>Direct Contracting for Other Services & Trade Services</i></p>	<p>MTA recommends use of direct contracting awards with SBEs by SWA for certain kinds of non-professional services that are typically subcontracted items in very large bundled contracts (e.g., trucking, landscaping, janitorial services, and site clean-up). (Study at p. 12-25)</p>	<p>FML concurs. This policy option facilitates prime contract participation by qualified S/M/WBE firms and tends to accelerate firm growth and competitive viability.</p>	<p>Significant underutilization of African American, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5) Also significant underutilization of African American and WBE firms in Trade Services prime contracts. (See Study at pp. 8-12 to 8-14; 8-24 to 8-26; 8-27; and 12-3 to 12-5) 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. PUMS regression analysis reflecting significant</p>	<p><i>Pro: Encourages more natural evolution of successful S/M/WBE Commodities, Other Services, and Trade Services subcontractor firms into firms that bid as primes. Helps provide an alternative avenue outside of traditional prime-sub good old boy networks for S/M/WBE firms to establish track record directly with SWA.</i></p> <p><i>Con: Increases administrative burden on SWA to manage multiple contracts instead of one</i></p>

<p>Commodities, Other Services, & Trade Services (R/N-26)</p> <p><i>Direct Contracting for Other Services & Trade Services (continued)</i></p>			<p>disparities adversely affecting firm earnings, and loan access for M/WBE Commodities, Other Services, & Trade Services firms. (Study pp. 10-20 to 10-22; and 10-28).</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>Commodities, Other Services, & Trade Services (R/N-27)</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 & Trade Services prime vendors on “best value” contracts valued at less than \$500,000. **One alternative is to restrict this API to Other Services, & Trade Services SBE prime bidders that have not previously won an Other Services & Trade Services prime contract with the SWA. (Compare with R/N- 20 above.)</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, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5) Also significant underutilization of African American and WBE firms in Trade Services prime contracts. (See Study at pp. 8-12 to 8-14; 8-24 to 8-26; 8-27; and 12-3 to 12-5) 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. PUMS regression analysis reflecting significant disparities adversely</p>	<p><i>Pro: Encourages more natural evolution of successful S/M/WBE Other Services and Trade Services sub-consultant firms into primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform services prime contracts for SWA.</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>Commodities, Other Services, & Trade 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>affecting firm earnings, and loan access for M/WBE Commodities, Other Services, & Trade Services firms. (Study pp. 10-20 to 10-22; and 10-28).</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>Commodities, Other Services, & Trade Services (R/N-28)</p> <p><i>SBE Joint Venture Incentives for Other Services & Trade 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; (2) waivers of certain SWA fees; and/or (3) 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 SWA 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, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5) Also significant underutilization of African American and WBE firms in Trade Services prime contracts. (See Study at pp. 8-12 to 8-14; 8-24 to 8-26; 8-27; and 12-3 to 12-5) 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. PUMS regression analysis reflecting significant disparities adversely</p>	<p><i>Pro: Encourages more natural evolution of successful S/M/WBE Other Services and Trade 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 SWA.</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>Commodities, Other Services, & Trade Services (R/N-28)</p> <p><i>SBE Joint Venture Incentives for Other Services & Trade Services</i> (continued)</p>			<p>affecting firm earnings, and loan access for M/WBE Commodities, Other Services, & Trade Services firms. (Study pp. 10-20 to 10-22; and 10-28).</p>	<p><i>incentives such as added option years to contracts, waiver or reduction of certain SWA 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>Commodities, Other Services, & Trade Services (R/N-29)</p> <p><i>SBE Subcontracting Goals for Other Services and Trade Services Contracts Valued at Greater Than \$5 Million</i></p>		<p>For larger Other Services and Trade 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</p>	<p>Significant underutilization of African American, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5) Also significant underutilization of African American and WBE firms in Trade Services prime contracts. See also Study at pp. 9-6 to 9-7, and 9-11, and PUMS regression analysis reflecting significant disparities adversely affecting business ownership rates, firm earnings, and loan access for M/WBE commodities, other services, & trade services firms. (Study pp. 10-15 to 10-16; 10-</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>Commodities, Other Services, & Trade Services (R/C-29)</p> <p><i>SBE Subcontracting Goals for Other Services and Trade Services Contracts Values at Greater Than \$5 Million (continued)</i></p>		<p>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>18 to 10-20; and 10-28). Although Study contained no analysis of subcontracting disparities for Other Services and Trade Services contracts, prime contract disparities of M/WBE utilization were significant. Moreover, there was anecdotal evidence contained in public testimony before the Board reflecting little or no availability of local indigenous businesses in Palm Beach County that could successfully compete at the prime contract level for waste hauling contracts. The SBE subcontracting goals that had been used by SWA under such circumstances had been intended to provide an entry point for smaller local firms into the waste hauling industry. However, there were written complaints from MBE subcontractors to SWA about adverse</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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<p>Commodities, Other Services, & Trade Services (R/C-29)</p> <p><i>SBE Subcontracting Goals for Other Services Contracts Valued at Greater Than \$5 Million</i> (continued)</p>			<p>disparate treatment by primes on waste hauling contracts. Those complaints alleged discriminatory treatment wherein the only SBE subcontractors listed in the winning waste hauling bid that were not actually used by the prime as represented in its bid were two pre-qualified African American SBE subcontractors.</p>	
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**TABLE IV-B: RACE / GENDER-CONSCIOUS
COMMODITIES, OTHER SERVICES, AND TRADE SERVICES INDUSTRY
POLICY OPTIONS FOR SWA'S EQUAL BUSINESS OPPORTUNITY PROGRAM**

(Prepared by Franklin M. Lee, Esquire 4-30-18)

<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Commodities, Other Services, & Trade 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 SWA Commodities, Other Services, & Trade Services contracts (base goals starting at 17% MBE and 18% WBE for Commodities and Other Services contract dollars, and 16% MBE and 20% WBE for Trade Services contract dollars, with some adjustment on an annual basis as warranted based upon</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</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 SWA contracts that are data-driven based upon bona fide measures of</i></p>

<p>Commodities, Other Services, & Trade Services (R/C-16)</p> <p><i>Annual Aspirational M/WBE Goals (continued)</i></p>		<p>CBR registration). See Study pp.8-9 to 8-10 and 8-12 to 8-13. These goals are not to be necessarily applied to individual contracts, but rather serve as a guidepost to evaluate the effectiveness of the SBE and M/WBE 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>threshold analysis greatly diminish smaller M/WBE capacity as a plausible explanation for significant disparities observed at prime contract and subcontract levels. (Study at pp. 8-2 to 8-27; see also pp. 10-4 to 10-28, and 12-3 to 12-5.)</p>	<p><i>availability.</i></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>Commodities, Other Services, & Trade 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 Commodities, Other Services, & Trade Services firms for smaller Authority contracts valued at less than \$50,000. Assignment of work tasks is rotated among this pre-qualified panel of M/WBE Other Services and Trade Services firms. (Alternatively, purchase orders for certain commodities 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</p>	<p>Significant underutilization of African American, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5) Also significant underutilization of African American and WBE firms in Trade Services prime contracts. (See Study at pp. 8-12 to 8-14; 8-24 to 8-26; 8-27; and 12-3 to 12-5) 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. PUMS regression analysis reflecting significant</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 SWA experience barrier.</i></p> <p><i>Con: Reduces competition in the short-run and may adversely affect cost. However, this risk is mitigated under</i></p>

<p>Commodities, Other Services, & Trade Services (R/C-17)</p> <p><i>M/WBE Vendor Rotation</i> (continued)</p>		<p>upon cumulative dollars in work tasks or purchase orders each firm has received within past year.</p> <p><u>Option 2:</u> To ensure there is price competition, for those Commodities, Other Services, & Trade Services contracts valued at \$50,000 or less 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>disparities adversely affecting firm earnings, and loan access for M/WBE Commodities, Other Services, & Trade Services firms. (Study pp. 10-20 to 10-22; and 10-28).</p>	<p><i>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>Commodities, Other Services, & Trade 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, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5)</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. PUMS regression analysis reflecting significant disparities adversely affecting firm earnings, and loan access for M/WBE Commodities and Other Services. (Study pp. 10-20 to 10-22; and 10-28).</p>	<p><i>Pro: Addresses relatively low availability of M/WBE suppliers and permits them to compete on an equal basis with other non-M/WBE suppliers.</i></p> <p><i>Con: Requires resources to carefully review M/WBE distributorship agreements to ensure M/WBE distributorships are treated equally as other distributorships issued by manufacturer in terms of advertising support, line of credit, geographic market, non-government</i></p>

<p>Commodities, Other Services, & Trade Services (R/C-18)</p> <p><i>M/WBE Voluntary Distributorship Development Program (continued)</i></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>	<p><i>accounts, etc.</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>Commodities, Other Services, & Trade Services (R/C-19)</p> <p><i>Mandatory M/WBE Distributorship Development Program</i></p>		<p>Where manufacturers have violated SWA'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 SWA.</p>	<p>Significant underutilization of African American, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5)</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. PUMS regression analysis reflecting significant disparities adversely affecting firm earnings, and loan access for M/WBE Commodities and Other Services. (Study pp. 10-20 to 10-22; and 10-28).</p>	<p><i>Pro: Addresses relatively low availability of M/WBE suppliers and permits them to compete on an equal basis with other non-M/WBE suppliers.</i></p> <p><i>Con: Requires resources to carefully review M/WBE distributorship agreements to ensure M/WBE distributorships are treated equally as other distributorships issued by manufacturer in terms of advertising support, line of credit, geographic market, non-government accounts, etc.</i></p>

<u>Industry Specific Policy Option</u>	<u>MTA Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros & Cons</u>
<p>Commodities, Other Services, & Trade 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 & Trade Services prime vendors on “best value” contracts valued at less than \$500,000. **One alternative is to restrict this API to Other Services, & Trade Services SBE prime bidders that have not previously won an Other Services & Trade Services prime contract with the SWA. (Compare with R/N- 20 above.)</p> <p>** 2nd Alternative is to have a sliding scale for award of up to 15 M/WBE Evaluation Preference Points</p>	<p>Significant underutilization of African American, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5) Also significant underutilization of African American and WBE firms in Trade Services prime contracts. (See Study at pp. 8-12 to 8-14; 8-24 to 8-26; 8-27; and 12-3 to 12-5) 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. PUMS regression analysis reflecting significant</p>	<p><i>Pro: Encourages more natural evolution of successful S/M/WBE Other Services and Trade Services subcontractor firms into primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform services prime contracts for SWA.</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</i></p>

<p>Commodities, Other Services, & Trade Services (R/C-20)</p> <p><i>M/WBE Evaluation Preferences (continued)</i></p>		<p>awarded based upon relative dollar value (from 10% up to 100%) of total M/WBE participation on bidder's team.</p>	<p>disparities adversely affecting firm earnings, and loan access for M/WBE Commodities, Other Services, & Trade Services firms. (Study pp. 10-20 to 10-22; and 10-28).</p> <p>.</p>	<p><i>points can be 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>Commodities, Other Services, & Trade Services (R/C-21)</p> <p><i>Competitive Business Development Demonstration Project</i></p>		<p>With the approval of the Executive Director, the Director of Purchasing Services, and the EBO Office Coordinator, on large multi-year contracts valued in excess of \$10 million, SWA may set aside a portion of one of its service areas as a Competitive Business Development Demonstration Project. The Demonstration Project shall be established within an industry segment (e.g., waste hauling and disposal) that routinely has a scarcity of locally-based bidders to provide meaningful or sufficient competition for such SWA contracts. The purpose for the</p>	<p>Significant underutilization of African American, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5) Also significant underutilization of African American and WBE firms in Trade Services prime contracts. (See Study at pp. 8-12 to 8-14; 8-24 to 8-26; 8-27; and 12-3 to 12-5) see also Study pp. 9-6 to 9-7, and 9-11, and PUMS regression analysis reflecting significant disparities adversely affecting business ownership rates, firm earnings, and loan access for M/WBE</p>	<p><i>Pro: Encourages more natural evolution of successful S/M/WBE Other Services and Trade Services subcontractor firms in related industry segments to diversify into full-service competitive firms that may ultimately bid as primes on larger contracts, such as waste hauling. Helps expand the supply chain and enhance competition against incumbent firms that repeatedly perform such prime contracts for SWA. (See WSSC successful Day Labor Program model that developed new cadre of ductile iron pipe</i></p>

<p>Commodities, Other Services, & Trade Services (R/C-21)</p> <p><i>Competitive Business Development Demonstration Project (continued)</i></p>		<p>placement of a contract into the “CBD” Demonstration Project shall be to encourage the development of new capacity within an industry to competitively bid on the future supply of specialized goods or services to the Authority. Contracts reserved for CBD Demonstration Projects shall be subject to a Request for Proposals process whereby the selected firm will be required to be a joint venture between an established firm or experts in that relevant industry and an M/WBE firm. The M/WBE joint venture partner shall be responsible for recruiting, organizing, and managing the participation of other S/M/WBE firms that enroll in the CBD Demonstration Project. The scope of work for the selected joint venture</p>	<p>Commodities, Other Services, & Trade Services firms. (Study pp. 10-15 to 10-16; 10-18 to 10-20; and 10-28). Although Study contained no analysis of subcontracting disparities for Other Services and Trade Services contracts, prime contract disparities of M/WBE utilization were significant. Moreover, there was anecdotal evidence contained in public testimony before the Board reflecting little or no availability of local indigenous businesses in Palm Beach County that could successfully compete at the prime contract level for waste hauling contracts. The SBE subcontracting goals that had been used by SWA under such circumstances had been intended to provide an entry point for smaller local firms into the waste hauling industry.</p>	<p><i>contractors in 1918). Con: Increases cost of delivery of services on small demonstration project. However, long-term benefits from enhanced competition from expanded supply chain that includes local S/M/WBE firms may far exceed initial costs, particularly in industry segments that exhibit high market concentrations and high barriers to entry.</i></p>
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<p>Commodities, Other Services, & Trade Services (R/C-21)</p> <p><i>Competitive Business Development Demonstration Project</i> (continued)</p>		<p>shall include teaching a hands-on curriculum to S/M/WBE firms that have expressed an interest in diversifying into the relevant industry, in addition to performing the customary functions of the contract. This curriculum shall include both administrative skills (e.g. cost estimating, bidding, staffing, licensing & permitting requirements, fee collection and reimbursement requirements, equipment sourcing and operation, project management) and technical skills (e.g., hands-on demonstration of how to perform necessary tasks in the field) required to qualify for future SWA contracts and to successfully compete in the industry. Selection criteria for the award of the CBD Demonstration Project contract shall include,</p>	<p>However, there were written complaints from MBE subcontractors to SWA about adverse disparate treatment by primes on waste hauling contracts. Those complaints alleged discriminatory treatment wherein the only SBE subcontractors listed in the winning waste hauling bid that were not actually used by the prime as represented in its bid were two pre-qualified African American SBE subcontractors.</p>	
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		<p>but not be limited to, an assessment of each bidder's current capabilities and performance qualifications for the Demonstration Project, the strength of the joint venture team's track record in achieving economic inclusion policy objectives, and demonstrated commitment and ability to recruit, manage, and successfully diversify qualified local S/M/WBE firms into performing tasks within the relevant industry segment once given technical assistance, training, and an opportunity to develop a performance track record.</p>		
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<p>Commodities, Other Services, & Trade Services (R/C-22)</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 SWA 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 SWA when it has a priority for</p>	<p>Significant underutilization of African American, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5) Also significant underutilization of African American and WBE firms in Trade Services prime contracts. (See Study at pp. 8-12 to 8-14; 8-24 to 8-26; 8-27; and 12-3 to 12-5) 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. PUMS regression analysis</p>	<p><i>Pro: Encourages more natural evolution of successful S/M/WBE Other Services and Trade 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 SWA.</i></p> <p><i>Con: Although many such contracts are low bid and do not provide opportunity for application of</i></p>

<p>Commodities, Other Services, & Trade Services (R/C-22)</p> <p><i>M/WBE Joint Venture Incentives (continued)</i></p>		<p>promoting new S/M/WBE capacity and growth in a given industry segment.</p>	<p>reflecting significant disparities adversely affecting firm earnings, and loan access for M/WBE Commodities, Other Services, & Trade Services firms. (Study pp. 10-20 to 10-22; and 10-28).</p>	<p><i>evaluation preferences, other incentives such as added option years to contracts, waiver or reduction of certain SWA 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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<p>Commodities, Other Services, & Trade Services (R/C-23)</p> <p><i>M/WBE Subcontracting Goals for Other Services Contracts Values at Greater Than \$5 Million</i></p>		<p>For larger Other Services and Trade 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</p>	<p>Significant underutilization of African American, Hispanic, and WBE firms in Commodities and Other Services prime contracts. (Study at pp. 8-9 to 8-11; 8-21 to 8-23; 8-27; and 12-3 to 12-5) Also significant underutilization of African American and WBE firms in Trade Services prime contracts. See also Study at pp. 9-6 to 9-7, and 9-11, and PUMS regression analysis reflecting significant disparities adversely affecting business ownership rates, firm earnings, and loan access for M/WBE Commodities, Other</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>Commodities, Other Services, & Trade Services (R/C-23)</p> <p><i>M/WBE Subcontracting Goals for Other Services Contracts Values at Greater Than \$5 Million (continued)</i></p>		<p>those instances where there is a lack of availability of qualified 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>Services, & Trade Services firms. (Study pp. 10-15 to 10-16; 10-18 to 10-20; and 10-28). Although Study contained no analysis of subcontracting disparities for Other Services and Trade Services contracts, prime contract disparities in M/WBE utilization were significant. Moreover, there was anecdotal evidence contained in public testimony before the Board reflecting little or no availability of local indigenous businesses in Palm Beach County that could successfully compete at the prime contract level for waste hauling contracts. The SBE subcontracting goals that had been used by SWA under such circumstances had been intended to provide an entry point for smaller local firms into the waste hauling industry. However, there were</p>	<p><i>Con: Requires due diligence to ensure 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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<p>Commodities, Other Services, & Trade Services (R/C-23)</p> <p><i>M/WBE Subcontracting Goals for Other Services Contracts Values at Greater Than \$5 Million (continued)</i></p>			<p>written complaints from MBE subcontractors to SWA about adverse disparate treatment by primes on waste hauling contracts. Those complaints alleged discriminatory treatment wherein the only SBE subcontractors listed in the winning waste hauling bid that were not actually used by the prime as represented in its bid were two pre-qualified African American SBE subcontractors.</p>	
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