

SOLID WASTE AUTHORITY

OF

PALM BEACH COUNTY

- - -

SMALL/LOCAL/MINORITY/WOMEN BUSINESS ENTERPRISE

STAKEHOLDER GROUP MEETING

DATE TAKEN: APRIL 30, 2018
TIME: 5:00 P.M. - 7:52 P.M.
PLACE: EMBASSY SUITES WEST PALM BEACH
1601 BELVEDERE ROAD
WEST PALM BEACH, FL 33406

This cause came to be heard at the time and place aforesaid, when and where the following proceedings were reported by:

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1 MR. JOHNSON: Good evening, everyone. Let me
2 just state it is 5:05 and we recognize that the
3 meeting is now five minutes late and we don't want to
4 punish the punctual. But there's at least one more
5 member we need to have before we have a quorum. So
6 we'll just wait five more minutes, if they don't walk
7 in, we'll start anyway, just in honor of your time.
8 We will take five more minutes.

9 (Brief recess.)

10 MR. JOHNSON: Good evening, everyone. Thank
11 you for taking time out of your busy schedules to
12 participate in, I think, meeting number four of
13 probably five of the Solid Waste Authority Stakeholder
14 Work Group. This group is narrowly focused on
15 identifying ways in which the Authority can establish
16 a race and gender conscious program with a race and
17 gender neutral component to it to ensure that the
18 issues of active or passive discrimination found in
19 the disparity study can be, once and for all, removed.

20 We have gone through administrative
21 construction and professional services. Today we will
22 review commodities and other services as well as trade
23 services. So, hopefully, we have members of the
24 audience who have expertise in those areas that can
25 provide valuable input for our consideration. So we

1 will officially call the meeting to order at 5:10 p.m.
2 Roll call, please. I forgot to mention, Brian
3 Johnson, Chair.

4 MS. ROBBS: Kumar Allady. He's out of town.
5 Maria Antuna. Carol Bowen. Michelle Depotter.

6 MS. DEPOTTER: Present.

7 MS. ROBBS: Lia Gaines.

8 MS. GAINES: Present.

9 MS. ROBBS: Brian Johnson.

10 MR. JOHNSON: Here.

11 MS. ROBBS: Bruce Lewis. Marie Sanches.

12 MS. SANCHES: Present.

13 MS. ROBBS: Selena Smith.

14 MS. SMITH: Present.

15 MS. ROBBS: Nifretta Thomas.

16 MS. THOMAS: Present.

17 MR. JOHNSON: So let the record reflect we do
18 have a quorum. So that we can go right into the
19 adoption of the agenda. Does the Chair entertain a
20 motion?

21 MS. GAINES: So moved.

22 MS. DEPOTTER: Second.

23 MR. JOHNSON: Okay. Moved by group member
24 Gaines and seconded by group member Depotter. All
25 those in favor?

1 GROUP ANSWER: Ay.

2 MR. JOHNSON: Anybody opposed? All right,
3 same thing for the minutes. You have received the
4 minutes through e-mail and they are posted on the
5 website. Care to entertain a motion?

6 MS. DEPOTTER. Chair Johnson, I request some
7 minor amendments to the minutes to reflect the
8 accurate AGC testimony as it was recorded. And that's
9 on page 108 line number 23. I stated that: The Court
10 ruled that officials who implement unconstitutional
11 race-conscious -- line 24 -- procurement policies.
12 And then on page 110, it should be AGC instead of
13 agency.

14 MR. JOHNSON: So we're correcting language on
15 line 23 of page 108 to read implement?

16 MS. DEPOTTER: Yes, that's correct.

17 MR. JOHNSON: And line 24 of 108 to read
18 procurement?

19 MS. DEPOTTER: I've written it down, if that's
20 easier.

21 MR. JOHNSON: Okay. And then the third one,
22 just state it for the record. What was the third
23 correction?

24 MS. DEPOTTER: The third one was page 110 and
25 it was line 4. And the prior sentence was: Would

1 suggest that it would be appropriate for the "agency"
2 to withdraw themselves. The word is AGC.

3 MR. JOHNSON: Got it. Thank you, ma'am.

4 MS. DEPOTTER: Thank you.

5 MR. JOHNSON: So we've heard the corrections.

6 The chair will entertain a motion to approve the
7 minutes with said corrections.

8 MS. SMITH: So moved.

9 MR. JOHNSON: So moved. Is there a second?

10 MS. SANCHES: Second.

11 MR. JOHNSON: Thank you. Moved by group
12 member Smith and seconded by group member Sanches.

13 All those in favor?

14 GROUP ANSWER: Ay.

15 MR. JOHNSON: Anybody opposed? Thank you.

16 All right. Now, we will follow the same process
17 today. First of all, Ms. Robbs, do you want to do the
18 introductions?

19 MS ROBBS: Okay. Are there any public
20 officials present? Seeing none. I'll move forward.

21 Executive Staff: We have Dan Pellowitz, Managing
22 Director; Mark Eyeington, Chief Operating Officer;
23 Paul Dumars, Chief Financial Officer; Ramana Kari,
24 Chief Engineer. And we also have our SWA general
25 counsel, Howard Falcon.

1 MR. JOHNSON: Okay. All right. So for the
2 benefit of those members of the public who may be your
3 first time, the way we're going to do this is Franklin
4 Lee, our national consultant, will go through the
5 policy options for the three industries that we
6 identified earlier. Again, commodities, other
7 services and trade services. After he's concluded
8 introduction of each of the options, we will then call
9 for public comment. And for those of you who have any
10 question for clarity or any input, we will ask that
11 you step up to the mic, state your name and firm so
12 that we may consider your input. Then after the
13 public has spoken, then the work group will then
14 deliberate on our recommendations. Okay? All right.
15 Mr. Lee...

16 MR. LEE: Good evening and welcome. We're
17 going to go over part three, which is the final of
18 three parts in this policy option matrix that we
19 developed. And this draft was prepared by myself in
20 review of the Mason Tillman disparity study findings
21 and recommendations. And it includes a combination of
22 race and gender neutral and race and gender conscious
23 policy options, fourteen in all.

24 So the policy option matrix is designed to
25 try to assist the Authority in coming up with a menu

1 of legally defensible options that should be somewhat
2 effective in helping to ameliorate or remove
3 impediments and barriers to small minority and women
4 business enterprise participation in Authority
5 contracts.

6 We've grouped the final three industry
7 segments, commodities and goods, other services and
8 trade services into one category for purposes of
9 discussions, because they're pretty much the same in
10 terms of the types of remedies that might make sense
11 in those three industry categories. There's not a
12 whole lot of subcontracting opportunities.

13 So you'll notice, as we go through this
14 process, the couple of policy options that we have
15 outlined for subcontracting purposes are really
16 designed to try to enhance capacity for purposes of
17 firms being able to bid as prime contractors,
18 eventually, or prime vendors.

19 A couple of generic types of examples of
20 APIs or what we refer to as affirmative procurement
21 initiatives, these are the tools, the types of
22 remedies or medicine, as it were, that we are
23 suggesting for consideration, are annual aspirational
24 goals, prime contract direct contracting program,
25 where the Authority purchases certain types of

1 services and/or goods directly, rather than through a
2 large prime contract. Evaluation preferences that are
3 for best value type contracts, that is contracts where
4 a low bid is not the only consideration in the
5 awarding of the contracts, but other factors are under
6 consideration. Joint venture incentives, where there
7 is, there are incentives to promote diverse joint
8 ventures to come together to bid on projects.
9 Mandatory subcontracting goals where there's a
10 numerical percentage of the overall value of the
11 contract that bidders are required to seek to try to
12 achieve with some rate of provisions. MWB segmented
13 subcontracting goals is a subset of the mandatory
14 subcontracting goal. It's designed to make sure that
15 a meaningful portion of the remedy gets to those
16 segments of the M/WBE community that are most
17 significantly underutilized.

18 Mentor-protégé programs, there's a variety
19 of different models for that under consideration, that
20 are designed to assist less-experienced firms in
21 gaining information and knowledge on how to be more
22 competitive and to also assist them in seeking to bid
23 as prime consultants or prime contractors at some
24 point.

25 Competitive business development

1 demonstration projects. Particularly in contract
2 areas where there's very low availability. Consider
3 low levels of concentration, high market concentration
4 of much larger firms bidding on certain types of
5 contracts. The competitive business development
6 demonstration projects are designed to try to enlist
7 more established firms in teaching younger, less
8 experienced firms that are seeking to diversify into
9 that market segment, how to bid, how to manage all the
10 ins and outs of what it takes to perform contracts in
11 that industry segment.

12 And then bid preferences, which we have not
13 recommended in this instance because of the factual
14 predicates, scarcity of evidence regarding cross
15 differentials for M/WBEs versus other firms. But a
16 bid preference would be an instance where certain
17 firms are allowed to meet the price of a low bidder
18 and to win a contract in the event that they're within
19 five percent or maybe ten percent of the low bid
20 price.

21 We've gone through a number of these already
22 as the Chair has pointed out. I'm just going to
23 scroll through these pretty quickly. We've talked
24 about administrative reforms, both race and gender
25 neutral remedies that would apply to all industries,

1 such as the Centralized Bidder Registration System,
2 data extraction, management enhancements. R/N-2,
3 Administrative Strategies, de-bundling of large
4 contracts into smaller contracts.

5 Subcontract remedies such as mobilization fees
6 being passed down to subcontractors and having working
7 capital payments provided for. Contract monitoring
8 and reporting of contracts for multi-year contracts
9 and change orders. Website enhancement strategies.
10 Uniform lead times for bid submittals, where uniformly
11 now the Authority will be providing thirty-day windows
12 from the time solicitations are issued to the time
13 bids are due.

14 Debriefing for unsuccessful bidders.
15 Establish position for a person referred to as the
16 Equal Business Opportunity ombudsman to assist with
17 mediation of disputes. An expedited payment program.
18 Disputed invoice, five-day notice requirement. If an
19 invoice is not properly submitted or is missing
20 certain things, the Authority has a five-day window in
21 which to provide notice of the deficiency of that
22 invoice.

23 Commercial nondiscrimination policy, that
24 has been integrated into the purchasing manual for the
25 Authority. Direct periodic reporting of the EBO

1 office to the executive board, director and board.

2 EBO office representation on evaluation panels.

3 And then a number of race and gender
4 conscious remedies under administrative reforms which
5 would include penalties and sanctions for
6 noncompliance with small minority women business
7 requirements. Penalties and sanctions for fraud,
8 whether or not you have certain certification for
9 small minority women business compliance.

10 Equal business opportunity office prior
11 approval of any S/M/WBE subcontractor substitutions.
12 SWA staff training, which would include program
13 procedures and responsibilities.

14 And then in the construction industry, we
15 went through a number of remedies, race and gender
16 neutral. Bond waivers and assistance programs.
17 Direct contracting programs for small contracts.
18 Small business enterprise prime contract program. SBE
19 subcontracting program. SBE mentor-protege program.

20 And on the race-conscious side, a number of
21 policy elements, including annual aspirational goals
22 which serve as a benchmark with which to evaluate the
23 successfulness of the program to adjust specific
24 individual remedies on an ongoing basis.

25 The M/WBE subcontracting goals, M/WBE

1 segmented subcontracting goals, again, is a subset of
2 the larger subcontracting goals to ensure that the
3 most significantly underutilized segments of that
4 population receive a measure of remedy. The M/WBE
5 joint venture incentive. The M/WBE mentor protege
6 program again. And the evaluation preferences for
7 best value RFPs.

8 Then we got to the professional services
9 industry segment. And we reviewed a number of
10 race-neutral remedies there again. SBE vendor
11 rotation, it's got two options to it that we
12 discussed. Evaluation preferences for new SBE prime
13 bidders, that is evaluation points and best value
14 contracts that would only be awarded to those small
15 businesses that have not previously been awarded a
16 contract by the Authority.

17 SBE reserve for contracts up to five
18 thousand dollars and required of at least two or three
19 bidders who were small businesses for those informal
20 solicitations up to fifty thousand dollars. An SBE
21 evaluation preference for prime bidders. Again,
22 that's involving best value contracts where a low bid
23 is not the sole determining factor of a contract
24 award. SBE subcontracting goals for professional
25 services.

1 And then on the race and gender conscious
2 side, again, annual aspirational goals to serve as a
3 benchmark for the effectiveness of the program to make
4 adjustments going forward. An M/WBE evaluation
5 preference for professional services. M/WBE
6 subcontracting goals for professional services. An
7 M/WBE vendor rotation provision. And required M/WBE
8 quotations for informal solicitations up to fifty
9 thousand dollars.

10 So that brings us today to our third and
11 final segment of this policy option matrix, which is
12 combining commodities, other services and trade
13 services. Those of you who are not familiar with how
14 we characterize these various APIs or Affirmative
15 Procurement Initiatives in our policy option matrix,
16 the first column refers to industry-specific policy
17 option name. We assign a name to the affirmative
18 procurement initiative, such as SBE vendor rotation,
19 and a number. And our shorthand for these, for the
20 sequential numbers of these is R/N refers to race and
21 gender neutral remedies. R/C refers to race and
22 gender conscious remedies. And they're numbered
23 sequentially, one through whatever number of remedies
24 there are in that category.

25 So the first one that we're going to discuss

1 this evening is going to be SBE vendor rotation. The
2 SBE vendor rotation for commodities and other services
3 and trade services would operate in a similar fashion
4 to the other industries in that you have a
5 pre-qualified panel of SBE small business firms for a
6 particular type of service or commodity. And those
7 contracts would be awarded for those valued at less
8 than fifty thousand dollars. You would have an
9 assignment of work task for services that would be
10 rotated among the pre-qualified panel of SBE firms.

11 Alternatively, under this policy option,
12 purchase orders for certain commodities could be
13 issued to small business firms on the vendor rotation.
14 And periodically, the SBE vendor rotation, that list
15 would be re-ordered from the least dollars received to
16 the most dollars received based upon the cumulative
17 dollars in work tasks that have been assigned to each
18 firm within the past year. And that way, it is
19 intended that the work would be spread pretty fairly
20 amongst all the pre-qualified SBE vendors in that
21 rotation.

22 The next policy option that we will discuss
23 will be R/N-25, which is named SBE Reserve for
24 Contracts Up to Fifty Thousand Dollars.

25 This is, essentially, a set-aside wherein for those

1 contracts that are valued at fifty thousand dollars or
2 less, only SBE firms would be eligible to bid on those
3 contracts. These are informal contracts, and if
4 they're less than five thousand for competition among
5 SBE vendors only. For larger informal commodities,
6 other services, and trade services contracts valued at
7 up to fifty thousand, we would require quotations from
8 at least two or three SBE firms to ensure that there's
9 competition for those smaller contracts.

10 The next API is R/N-26 and it's titled
11 Direct Contracting for Other Services and Trade
12 Services. Under this API, the Authority would be
13 using direct contract awards with SBEs for certain
14 kinds of nonprofessional services that are typically
15 subcontracted items in very large bundled contracts.
16 For example, we would break out things like trucking
17 or landscaping or janitorial services or site
18 clean-up.

19 MTA made this recommendation in the study at
20 page 12-25. This policy option would facilitate prime
21 contract participation by qualified S/M/WBE firms and
22 tends to accelerate firm growth and competitive
23 viability.

24 There was significant underutilization of
25 African-American, Hispanic and M/WBE firms for

1 commodities and other services prime contracts. The
2 study page is sited in the fourth column of the policy
3 option matrix. There was also significant
4 underutilization of African-American and women-owned
5 firms in trade services prime contracts.

6 And as those disparities persisted across a
7 range of large and small contract dollar thresholds,
8 the lack of M/WBE capacity is not considered a likely
9 explanation for those disparities.

10 There was also something called Public Use
11 Microdata Sample or PUMS regression analysis that
12 reflected significant disparity adversely affecting
13 firm earnings and loan access for M/WBE commodities,
14 other services and trade services firms. Again,
15 there's citations to the specific pages in the study
16 where those findings can be reviewed.

17 The next policy option is R/N-27. This is
18 referred to as the SBE evaluation preference. This is
19 an API that would apply only to contracts that are
20 best value contracts. Meaning that there are factors
21 other than low bid that are taken into consideration
22 in awarding of those contracts.

23 The evaluation preferences that we're
24 proposing would award up to fifteen percent of the
25 total available valuation points, so if you had a

1 hundred evaluation points, and an evaluation panel is
2 scoring proposals, up to fifteen of those could be
3 used for SBE participation. We're proposing that this
4 is for contracts valued at less than five hundred
5 thousand dollars.

6 One alternative for consideration would be
7 to restrict this API to other services and trade
8 services SBE bidders that have not previously won any
9 other services or trade services prime contract with
10 the SWA. There was some evidence presented in the
11 study and also in testimony before the board that
12 there was a real preference, or there wasn't a whole
13 lot of competition for certain contracts or it seemed
14 as if the Authority was hiring the same couple of
15 firms over and over and over again. It was very
16 difficult for new entrants to break into the market.

17 So this particular API is designed to try to
18 enhance the opportunities for those nonincumbent firms
19 that have never been able to get work at the Authority
20 so that they can build a successful track record or
21 have an opportunity to build a successful track record
22 with the Authority.

23 The second alternative under this API is to
24 have a sliding scale for award of up to fifteen SBE
25 Evaluation Preference Points awarded based upon the

1 relative dollar value from ten percent up to a hundred
2 percent of the total SBE participation on the bidder's
3 team. So in this instance, we're saying that if you
4 have a diverse team where the lead bidder has brought
5 along other firms as part of its proposal, you can
6 look at the total SBE participation on that team and
7 determine how many of those points, what percentage of
8 those fifteen evaluation preference points would be
9 eligible to that firm.

10 The next API is R/N-28. Which is named SBE
11 Joint Venture Incentive for Other Services and Trade
12 Services. Under this API for joint ventures between
13 larger established firms and local SBE firms on
14 contracts that are greater than five million dollars,
15 which would be much larger contracts, you could
16 establish joint venture incentives, such as additional
17 option years to contracts, waivers of certain SWA fees
18 and/or access to mobilization funds.

19 Also up for consideration are evaluation
20 preferences for joint ventures between two or more
21 certified SBE firms or joint venture teams that
22 include a minimum percentage of SBE participation, for
23 example, twenty percent.

24 Such incentive should be used by SWA when it
25 has the priority for promoting growth and the

1 availability of new, small minority women business
2 capacity in a given industry segment.

3 One of the things that we observed in the
4 disparity study was that there was wide variances
5 relative to the availability of small and minority
6 firms in certain discreet industries within these
7 industry categories, which tends to indicate that
8 there's some, there may be some additional barriers
9 that need to be overcome in terms of business
10 formation.

11 On average, for example, the availability
12 for these three industries range between eighteen and
13 nineteen percent for minority women business
14 enterprises. In certain subindustry categories it was
15 as low as one or two percent. So this is one policy
16 option that's designed to try to boost and to grow
17 capacity and to stimulate business formation in those
18 areas where there's little competition or little
19 availability of small, minority women owned
20 businesses.

21 The next policy option is R/N-29 which is
22 SBE Subcontracting Goal for Other Services and Trade
23 Services and Contracts that are Greater Than Five
24 Million Dollars. Although this is a subcontracting
25 goal API, it's really designed to try to help SBE subs

1 become more competitive so that they can ultimately
2 bid as primes. So for these larger other services and
3 trade services contracts that are valued greater than
4 five million, you'd have an adequate number of
5 commercially useful functions available for
6 subcontracting. You would apply a mandatory
7 subcontracting goal for the participation of SBE
8 subcontractors that is equal to twenty percent of the
9 total value of the contract. This is up from fifteen
10 percent under the previous small business program
11 policy that the Authority has. So we're increasing it
12 from fifteen to twenty percent.

13 We would permit waivers or reductions of the
14 standard twenty percent subcontracting goal in those
15 instances where there's a lack of availability of
16 qualified SBEs to perform subcontracted services as
17 demonstrated by adequate good faith efforts
18 documentation.

19 I will point out, when we use the term
20 commercially useful functions available for
21 subcontracting, we're talking about looking at the
22 industry norms, what types of things on very large
23 contracts would typically be sub'd out or shared by
24 more than one firm, obviously. And in those
25 instances, that's what we would try to set the goals

1 on, in terms of twenty percent participation. With,
2 again, the opportunity for waivers if it's not
3 feasible, given the relative availability of qualified
4 small businesses.

5 The next API, we now move to the race and
6 gender conscious remedies. Under this segment R/C-16
7 is the Annual Aspirational M/WBE goals. What we're
8 proposing is to establish an annual aspirational goal
9 for M/WBE participation in SWA commodities, other
10 services and trade service contracts with the base
11 goal starting at seventeen percent MBE and eighteen
12 percent WBE for commodities and other services
13 contract dollars. And sixteen percent MBE and twenty
14 percent WBE for trade services contract dollars, with
15 some adjustments on an annual basis as warranted based
16 upon the Centralized Bidder Registration System that
17 we've proposed as an administrative reform. Refer to
18 study pages 8-9 and 8-10, 8-12 to 8-13. Those goals
19 that we set as aspirational annual goals are not to be
20 necessarily applied to individual contracts. But they
21 rather serve as a guide post to evaluate the
22 effectiveness of the SBE and M/WBE affirmative
23 procurement initiatives on an overall annual basis so
24 as to identify and direct adjustments if necessary to
25 the mix and aggressiveness of applied policy options

1 in the future.

2 The next API is R/C-17, which is M/WBE
3 Vendor Rotation, it's similar to the SBE vendor
4 rotation. Under option one you would selectively use
5 a vendor rotation of pre-qualified panel of M/WBE
6 commodities, other services and trade services firms
7 for smaller Authority contracts valued at less than
8 fifty thousand dollars. The assignment of work tasks
9 would then be rotated among the pre-qualified panel of
10 M/WBE other services and trade services firms.

11 Alternatively, you could issue purchase
12 orders for certain commodities valued at five thousand
13 dollars or less that can be issued to M/WBE firms on
14 this vendor rotation basis. Periodically, there would
15 be an adjustment on that M/WBE vendor rotation list.
16 It would be reordered from the least dollars received,
17 firms with the least dollars received to firms who had
18 the most dollars received based upon the cumulative
19 dollar award that they've received in the previous
20 year.

21 Option two under the M/WBE vendor rotation
22 would be to ensure that, in order to ensure that
23 there's price competition, for those commodities,
24 other services and trade services contracts that are
25 valued at fifty thousand dollars or less where price

1 may be a factor in selection, those price quotations
2 must be solicited from the next three pre-qualified
3 M/WBE vendors in the rotation. That's assuring that
4 everyone gets a bite at the apple, eventually, and
5 that you're spreading the work around in a fair and
6 equitable basis. Again, for pre-qualified firms
7 providing those commodities or services.

8 The next policy option is R/C-18. This is
9 the Voluntary M/WBE Distributorship Development
10 Program. This is a somewhat novel, innovative
11 approach to trying to deal with the age old barrier of
12 not having enough availability of minority women owned
13 firms in the commodities field. And one of the
14 biggest barriers that have been identified there is
15 relationships between manufacturers and authorized
16 dealers and distributorships.

17 R/C-18 is intended to address this problem
18 of low availability of M/WBE authorized
19 distributorships by providing incentives to
20 manufacturers of those commodities to voluntarily
21 establish authorized dealership or distributorships
22 with at least one new M/WBE supplier on a
23 non-discriminatory basis.

24 By that we mean the terms of the
25 distributorship agreements or dealership agreements

1 would be the same as those of other distributors or
2 other dealers in terms of territory allocation,
3 product line, marketing support and any volume
4 discounts that might be provided to distributors.
5 Incentives that would be provided to the manufacturers
6 may include accelerated payment and extended option
7 years on supply contracts where they have been found
8 to follow through in their commitment to develop
9 minority distributors or dealers in this manner.

10 The next affirmative procurement initiative
11 is a variation on this theme, but it's, R/C-19 is a
12 Mandatory M/WBE Distributorship Development Program.
13 This API is designed to be applied in instances where
14 a manufacturer has been determined to have violated
15 the commercial nondiscrimination policy in the
16 Authority's purchasing manual through passive
17 exclusion where they've denied minority firms the
18 ability to participate as distributors or dealers on a
19 non-discriminatory basis.

20 And under this API, the Authority would
21 require those manufacturers that have violated
22 commercial nondiscrimination policies by excluding or
23 discriminating against M/WBE suppliers, that in order
24 to become suppliers for the Authority they would have
25 to participate in this distributorship development

1 program. And that will become a condition for being
2 eligible to sell commodities to the Solid Waste
3 Authority.

4 The genesis for this comes out of language
5 in the Supreme Court decision on Croson, that says
6 that local governments are not powerless to act to
7 ensure that the tax dollars collected from all the
8 citizens do not serve to finance the evil of private
9 prejudice. So this is a way to make sure that
10 manufacturers that are not treating minority suppliers
11 in a fair fashion in terms of their ability to obtain
12 dealerships or distributorships are precluded from
13 doing business with the Authority unless they remedy
14 that problem.

15 The next policy option is R/C-20, which is
16 M/WBE Evaluation Preferences. Probably mostly in the
17 services categories, other services and trade services
18 where low price may not be the sole factor in awarding
19 of contracts, you may apply an evaluation point
20 preference, we are proposing an award up to fifty
21 percent of the total available evaluation points, to
22 any M/WBE firms bidding as other services and trade
23 services prime vendors on such best value contracts
24 that are valued at less than five hundred thousand
25 dollars.

1 One alternative for consideration would be
2 to restrict this particular API to those other
3 services and trade services SBE or M/WBE prime bidders
4 that have not previously won any other services or
5 trade services prime contract with the SWA. So this
6 is very similar to the race-neutral version of
7 evaluation preferences, SBE evaluation preferences and
8 that can be found in R/N-20.

9 The second alternative under this policy
10 option would be to have a sliding scale for award of
11 up to fifteen M/WBE evaluation preference points for
12 teams based upon the relative dollar value of M/WBE
13 participation in bidder's team. So they would have
14 the subcontract participation, plus the prime contract
15 participation, rank the bidders according to which one
16 as has the most, which one has the least, and give
17 them a sliding scale awarding of those fifteen points
18 from ten percent of those fifteen points up to a
19 hundred percent, based on where they are in that
20 ranking.

21 The next policy option is R/C-21, this is
22 another innovative proposed affirmative procurement
23 initiative. It has its genesis in an old historical
24 program, actually, that came about in 1918 with the
25 Washington Suburban Sanitary Commission. The

1 Washington Suburban Sanitary Commission at its
2 inception had a problem of very few if no private pipe
3 contractors that were capable of laying duct pipe to
4 replace all the wooden boxes that reigned the district
5 of Columbia for water and sewer purposes. So they
6 wanted to develop that capacity. And what they did
7 was they had a demonstration project, called a Day
8 Labor Program, where they invited local area
9 contractors to come get their work forces trained in
10 how to use new equipment to dig trenches and to lay
11 heavy sections of duct pipe. At the end of the
12 project, the Commission actually donated that
13 construction equipment to those participating
14 contractors. And many of them became dominant
15 pipeline contractors in the market for the next fifty,
16 sixty years.

17 The problem was there was no minority
18 contractors at that point in time in history in 1918.
19 But under this provision, R/C-21, the Competitive
20 Business Development Demonstration Project would
21 provide an avenue for the Authority to do something
22 similar in some of its major contracts. With the
23 approval of the Executive Director, the Director of
24 Purchasing and the Equal Business Opportunity Office
25 Coordinator, on large multiyear contracts that are

1 valued in excess of ten million dollars, the Authority
2 may set aside a portion of one of its service areas as
3 a competitive business development demonstration
4 project. That demonstration project would be
5 established within an industry segment, for example,
6 waste hauling and disposal, that routinely has a
7 scarcity of locally-trained bidders to provide
8 meaningful or sufficient competition for such SWA
9 contracts.

10 The purpose of that API would include
11 placement of a contract into that demonstration
12 project to encourage development of new capacity
13 within an industry to competitively bid on the future
14 supply of specialized goods or services to the
15 Authority. The contracts that are reserved for that
16 CBD demonstration project shall be subject to a
17 request for proposal process whereby the selected firm
18 will be required to be a joint venture between an
19 established firm or experts in that relevant industry
20 and an M/WBE firm.

21 The M/WBE joint venture partner will be
22 responsible for recruiting organizing and managing the
23 participation of other small, minority women owned
24 firms that enroll in the CBD demonstration project.
25 The scope of work for the selected joint venture shall

1 include teaching a hands-on curriculum for small
2 minority women owned firms that have expressed an
3 interest in diversifying into the relevant industry
4 segment, in addition to performing the customary
5 functions of the contract. The curriculum shall
6 include both administrative skills, such as cost
7 estimating, bidding, staffing, licensing and
8 permitting requirements, fee collection and
9 reimbursement requirements, equipment sourcing and
10 operation, project management. And technical skills
11 such as hands-on demonstration of how to perform
12 necessary tasks in the field required to qualify for
13 future SWA contracts and to successfully compete in
14 the industry.

15 Selection criteria for the award of the
16 competitive business development demonstration project
17 would include but not be limited to an assessment of
18 each bidder's current capabilities and performance
19 qualifications for the demonstration project, the
20 strength of the joint venture team's track record in
21 achieving economic inclusion policy objectives, and
22 demonstrated commitment and ability to recruit, manage
23 and successfully diversify qualified local Small
24 Minority Women Business Enterprise firms into
25 performing tasks within the relevant industry segment,

1 once given technical assistance, training and an
2 opportunity to develop a performance track record.

3 And the next API is R/C-22, which is M/WBE
4 Joint Venture Incentives. For joint ventures between
5 larger established firms and local M/WBE firms on
6 contracts greater than five million dollars, to
7 establish joint venture incentives such as additional
8 option years for awarded contracts, waivers of certain
9 SWA fees, and/or access to mobilization funds. Also
10 consider evaluation preferences for joint ventures
11 between two or more certified M/WBE and SBE firms or
12 joint venture teams that include a minimum percentage
13 of M/WBE participation, for example, twenty percent,
14 to make them eligible for such incentives.

15 Such incentives should be used by SWA when
16 it has a priority for promoting new S/M/WBE capacity
17 and growth in a given industry segment. So the
18 incentives are kind of similar under these last two
19 APIs, R/C-21 and R/C-22. One is focussing on joint
20 venture participation and the other is more elaborate
21 of actually creating a field laboratory, as it were,
22 to serve as a training ground for future firms in that
23 industry or that industry segment.

24 And the next, and I think it's the final API
25 that we will discuss this evening, R/C-23, which is

1 the M/WBE Subcontracting Goals for Other Services,
2 trade services contracts that are greater than five
3 million dollars.

4 For larger other services and trade services
5 contracts that are valued at greater than five million
6 where there's an adequate number of commercially
7 useful functions available for subcontracting, we
8 would apply a mandatory subcontracting goal for
9 participation of M/WBE subcontractors that is based
10 upon the relative availability of qualified M/WBE
11 subcontractors for the commercially useful functions
12 that are available for subcontracting.

13 We would permit waivers or reductions of the
14 established subcontracting goal in those instances
15 where there's a lack of availability of qualified
16 M/WBEs to perform subcontracted services as
17 demonstrated by adequate good faith efforts
18 documentation submitted by the prime or documentation
19 submitted by an originating department at the
20 Authority that reflects insufficient availability of
21 commercially useful functions for subcontracting
22 purposes. Subcontracting goals shall routinely also
23 be applied contract extensions and change orders
24 whenever that's feasible.

25 And so that takes us all the way through our

1 outline list under part three for the policy option
2 matrix. And we're going to try to get through all of
3 these in terms of substantive discussion. But before
4 we do, I'm going to turn it back over to the Chair who
5 will, I think, solicit public comments and questions.

6 MR. JOHNSON: So, first of all, thank you
7 Mr. Lee. For this part of the meeting we want the
8 public to please step up to the microphone. If you
9 have any questions regarding anything you've heard so
10 far, please feel free to offer to ask those questions,
11 or if you have any input, please feel free to provide
12 that input.

13 I would want to, just as a matter of
14 housekeeping, acknowledge that at about six thirty we
15 know group member Smith has to leave, so we're going
16 to lose quorum. So we'll try to pay attention to
17 anything that we need to vote on before she leaves and
18 Bruce Lewis comes in at about seven. So we'll try to
19 keep track of that to make sure we're managing the
20 group number and the group discussion so if there's
21 anything that requires a vote, we sort of prioritize
22 that.

23 But the break isn't until 6:30. I did get a
24 note that the Authority has decided to feed us for
25 being here, so there will be dinner available. It

1 won't be ready till 6:30.

2 So does any member of the public have
3 anything they want to ask for clarification on before
4 we deliberate as a work group? We would love to hear
5 your ideas. Anyone? Seeing none. Any member of the
6 work group? Let's do what we did last time. Identify
7 the items you want to have substantive discussion for.
8 That way when we go into that part of the discussion,
9 we will only focus on those items.

10 So I will go ahead and take the items now.
11 You can just acknowledge and then give me the numbers
12 that you want to call out. Anyone?

13 MS. GAINES: I'll start with R/N-29.

14 MR. JOHNSON: Okay. Anyone else? While she's
15 looking, I guess I can go ahead and start mine. I
16 don't see anyone else, I would like to pull R/N-24
17 with R/C-17, since they're similar. R/N-26, R/N-27
18 with R/C-20, since they're similar. And I would like
19 to discuss R/C-18 and R/C-19 in tandem. So, so far
20 that gives us six.

21 MS. GAINES: Did you call R/C-23?

22 MR. JOHNSON: No, ma'am.

23 MS. GAINES: That's the comparable one to the
24 one that I called.

25 MR. JOHNSON: So R/N-29 and R/C-23 can go

1 together?

2 MS. GAINES: Yes.

3 MR. JOHNSON: Ms. Depotter?

4 MS. DEPOTTER: No.

5 MR. JOHNSON: Ms. Sanches?

6 MS. SANCHES: No.

7 MR. JOHNSON: Ms. Smith?

8 MS. SMITH: No.

9 MR. JOHNSON: Ms. Thomas?

10 MS. THOMAS: No.

11 MR. JOHNSON: All right. I guess for me, and
12 this is one of the open items from the last discussion
13 on professional services in terms of which of the
14 options for the vendor rotation we prefer. I am
15 partial to option number two. I'm sorry, let me get
16 my story together. I am partial to option number one.
17 That's the one with the library of firms, right,
18 Mr. Lee? And then we just take the one at the top and
19 rotate the projects down through them. One is a
20 library and two is we're accepting bids from the three
21 next qualified firms.

22 MR. LEE. Right. Basically, there's some
23 contracts where you'll have to get multiple quotes.
24 And there are others where you may be able to just
25 simply assign a task to a single firm. And sometimes

1 it's based on the dollar threshold that's involved or
2 the type of contract it is. But when you have to get
3 at least three quotes or you're required to get three
4 quotes, option two allows you to rotate the vendor
5 list by groups of three to make sure you're getting,
6 you're changing the firms that you're soliciting
7 quotes from. And with the Centralized Bidder
8 Registration System, that becomes feasible. Where
9 your buyers would automatically be pulling up the next
10 three firms in that rotation when they are seeking
11 quotes.

12 Alternatively, under the option one for the
13 vendor rotation, whether it's a race and gender
14 conscious or race and gender neutral vendor rotation,
15 you would have a pre-qualified panel of firms, but
16 you're awarding task orders or purchase orders
17 directly to the next firm in that rotation, whatever
18 firm is at the top of the list for that rotation.

19 MR. JOHNSON: So just for user scenario,
20 hypothetically, if there are ten firms who would be
21 pre-qualified for participation, if not designation,
22 on the vendor rotation, if there are ten firms in
23 option one, we will assign the contracts fifty
24 thousand or less to each firm by some rank and order
25 of qualification, and we keep going down and everybody

1 gets their chance to get a
2 fifty-thousand-dollar-or-less contract.

3 MR. LEE: Yes, every firm in the rotation
4 should be minimally qualified to provide work of that
5 quantity and quality. If there's a
6 fifty-thousand-dollar cap on it, then every firm that
7 is pre-qualified should be capable of performing fifty
8 thousand dollar contracts.

9 MR. JOHNSON: Right. So we just assign those
10 projects under that threshold to that library
11 according to whatever rank in order, so when the next
12 firm gets it, then they come out. Then the next firm
13 gets it and they come out. Right? So, eventually,
14 everybody gets a shot.

15 MR. LEE: Right, and periodically you reorder
16 that list based on the dollar volume that they've
17 actually received. Because there's no way you can
18 predict when a fifty-thousand-dollar contract versus a
19 five-thousand-dollar contract may come out.

20 MR. JOHNSON: Right. So just to pose that for
21 option number two, where if the Authority will be
22 selecting three firms to receive a quote for and
23 there's ten of us. So let's assume they choose firms
24 one, two and three, ask for a quote, firm one wins,
25 two and three are out. The next time, what happens?

1 Do they go back to two and three and then go to four?
2 Like how do you make sure that you're getting quotes
3 that gives everybody, not only a chance to quote, but
4 also a chance to win? So if they've given a quote and
5 they lose, when do they have a chance to give another
6 quote and potentially win?

7 Well, the way it would work as proposed, and
8 we can certainly discuss whether you want to change
9 it. The rotation changes by groups of three. So
10 those two losing bidders from that first quotation are
11 out until they come back up again in the rotation.
12 The winning firm is out as well. So you get, if you
13 had firms one through ten, the first quotation, one
14 through three would be out, one of those three firms
15 would have won the contract. The next bid that comes
16 up, firms four through six, yes, four through six
17 would be allowed a quote. And the winning firm there
18 would come out as well as the other two firms.
19 And then the next quotation firms, seven through nine.
20 And then it will be ten, one and two after that.

21 MR. JOHNSON: So, again, I'm partial to option
22 number one, because here's a problem I see with option
23 number two. So let's just say one two and three gave
24 a quote from the first group and one wins, one is out,
25 all right? Under the presumption that they've already

1 won, we're going to give somebody else a chance.
2 Let's just assume, hypothetically, that the size of
3 that job was ten thousand dollars. So when the next
4 group comes and quotes it's fifty. But one never gets
5 a chance to come back, at least not for, or not at
6 all, right, to get more work than the ten thousand
7 they won?

8 MR. LEE: All they get is an opportunity to
9 get work. If they are consistently high, they're
10 never going to get any work.

11 MR. JOHNSON: No, this is the one that's
12 winning, but they're winning the smaller contracts.

13 MR. LEE: Yeah, but we would reorder that list
14 periodically, perhaps you want to do it on an annual
15 basis or a six-month basis based on dollar value won.
16 So whoever won the most would be at the bottom of the
17 list when you start the rotation over again.

18 MR. JOHNSON: Yeah, I think I like option one
19 better where you have a library of firms, a library of
20 firms according to how they are selected through the
21 process, and you just assign work orders in that
22 order. And then everybody gets theirs when their turn
23 comes.

24 MR. LEE: Yes, that will work in some
25 circumstances. But keep in mind, sometimes under the

1 regulations or the purchasing guidelines you have to
2 get three competitive quotes to make an award.
3 Contracts of certain size usually, about five thousand
4 dollars. But if they're less than five thousand, then
5 you can just direct the contract to the next firm in
6 the list.

7 MR. JOHNSON: Okay. So how would you get
8 three bids in option number one all together? How
9 would you get three prices? So if you have a rotation
10 and number one says you have a library where purchase
11 orders are assigned to the next firm, how do you get
12 two other firms to bid knowing they may not win?

13 MR. LEE: There may be some instances where
14 you have something like a job order contract where
15 firms have already bid and they've been pre-qualified
16 and selected, and you have discretion as to assignment
17 of task orders as opposed to awarding a new contract.
18 There's a technical difference between the two things.

19 If it is just a technical, if it's a task
20 order, just a task order that's being assigned and you
21 can do it directly, you don't have to get any more
22 quotations because the firms have already gone through
23 some form of competition to get on that vendor
24 rotation, then that's when you would apply that
25 version of the API. If, however, you have to have

1 competition each and every time you're awarding a
2 small contract of about fifty thousand dollars, then
3 you would have to use the three quotation option,
4 which is option two.

5 MR. JOHNSON: Okay. Any other questions on
6 R/N-24 with R/C-17? One is race neutral and the other
7 is race conscious.

8 MS. GAINES: Mr. Chair.

9 MR. JOHNSON: Ms. Gaines.

10 MS. GAINES: Attorney Lee, I remember reading
11 something in an appendix of variation tools that was
12 compiled by, I think it was Greensboro. And there was
13 something referred to as a bidder box, are you
14 familiar with that?

15 MR. LEE: A bidder box?

16 MS. GAINES: A bidder box, where it's almost
17 like a lottery, but those firms that are selected are
18 taken out of the lottery and then there's another,
19 like, lottery in terms of how they select the bidders
20 or how they select the firms. And it was referred to
21 as a bidder box.

22 MR. LEE: That's interesting, I did some work
23 for Greensboro and I don't remember anything like
24 that.

25 MS. GAINES: Well, it was in an appendix of

1 various vendor nominations, it might not have been
2 something in Greensboro, it might be somewhere else.

3 MR. LEE: I've heard something like that with
4 respect to subcontractor bids. It's called a bid
5 depository. Does that sound familiar?

6 MS. GAINES: I don't know.

7 MR. LEE: Historically, there have been
8 complaints from a number of subcontractors across the
9 country that they were being bid shopped by primes.
10 And one approach that was taken by some jurisdictions
11 to deal with that issue was they allowed the subs, at
12 the same time they submitted a quote to a prime, they
13 could submit the same quote in the bid depository box
14 to make sure that there wasn't any bid shopping. And
15 that was designed to keep everybody honest that they
16 wouldn't try to take, once a prime was awarded or
17 apparent low bidder, sometimes they would beat up the
18 subs and try to make them come down in price in order
19 to get the work.

20 And so, that was a way that they designed to
21 try to make sure that that didn't happen. Because
22 other subs could then say, well, you know, this prime
23 is, this sub must have bid a higher price initially,
24 but they were allowed to bring their price down after
25 the contract award.

1 MS. GAINES: No, that's interesting, but
2 that's different. This was, I thought, was a way that
3 they were using to rotate like a vendor rotation.

4 MR. LEE: Why would they call it a bid box?

5 MS. GAINES: I don't know why that's in my
6 head. But it seemed as though it was almost like,
7 because you mentioned these companies were all
8 pre-qualified and then they would do a rotation based
9 on like a lottery. So maybe it was under maybe
10 something similar to a job order contracting scenario
11 or something, possibly. I don't know.

12 MR. JOHNSON: So, I guess, unless there are
13 other preferences here, because one of the points that
14 we did make as a catch-up item from last meeting is we
15 were going to try to provide some direction as to
16 which one of these options we preferred. So we have
17 this one that's a library, and I keep using that word
18 because I can't come up with another term, but similar
19 to a job contractor where you rotate work from a list
20 of pre-qualified vendors.

21 But then you have option number two, as I've
22 heard, where you're taking three quotes from small
23 groups of vendors and you're rotating them in groups
24 in terms of when they can bid. And making sure,
25 eventually, that everybody bids and wins at least one

1 contract.

2 Just for basis of comparison, so far,
3 you-all received this in the e-mail and it is sitting
4 outside. The Authority is reporting there is about
5 sixty contracts just to give you some idea of the
6 inventory that we're talking about going through a
7 library. I didn't get a chance to count how many
8 unique firms that are named here, but at the very
9 least we could count, so far for this year 2018, sixty
10 contracts that are between a thousand and fifty
11 thousand dollars. So, ideally, these would be the
12 type of contracts that we would circulate through the
13 vendor rotation. And so you could see how, without
14 the vendor rotation, how some of those contracts have
15 fallen. You will see some names more than once, maybe
16 three times, some only once. So you get an idea of
17 how with that program, the projects have sort of
18 fallen. And, hopefully, at some point this could
19 inform us as to which one we thought would be the
20 better one. But, again, I'm partial to option one but
21 I'm absolutely open. And maybe we'll have a vote on
22 that before Ms. Smith leaves.

23 MR. LEE: Let me just suggest, there's a third
24 option, which is to keep both. Keep flexibility with
25 the Equal Business Opportunity office. Because

1 there's some circumstances where every firm on that
2 pre-qualified vendor's rotation list may actually have
3 a contract, they just don't have any quantity that's
4 attached to it. And so you're just assigning orders.
5 For example, office supplies, maybe you have ten
6 office supply firms that are all qualified and capable
7 and have contracts open, but in the past, maybe all
8 the office supplies got ordered through one or two
9 firms. And this way you would be forced to spread
10 those orders out among all ten firms. But in other
11 instances where they don't have contracts, they have
12 to come up with the lowest bid, but in limited
13 competition, it's not open competition. They have to
14 just compete against two other small firms or two
15 other minority women-owned firms. And by doing so
16 you're enhancing the opportunity that they'll win, but
17 you're not guaranteeing anyone that they'll win a
18 particular contract. They're going to have to be
19 competitive.

20 MR. JOHNSON: So let me just do this, just so
21 we can put that particular thing to bed. Is there any
22 unreadiness in taking a vote now on option one versus
23 option two versus option three? Seems like option
24 three being keeping both available makes the most
25 sense to provide the Authority staff with as many

1 tools as possible. But I think I'm ready to call for
2 a vote, so at least we can resolve that part of the
3 open items. Any unreadiness? So all those in favor
4 of keeping option -- let's start from the back --
5 three, as the preferred vendor rotation methodology,
6 option three is keeping option one and two available.
7 So we have, Gaines Sanches, Smith, Thomas, so that's
8 the majority. Option one, you'd have --

9 MS. GAINES: Do you need a motion, Mr. Chair
10 for that?

11 MR. JOHNSON: I'm sorry?

12 MS. GAINES: Do you need a motion for that, or
13 are you just doing a consent first?

14 MR. JOHNSON: Yes, I'm just doing a consent;
15 yes, ma'am.

16 MS. GAINES: Okay.

17 MR. JOHNSON: Ms. Depotter, did you have a
18 preference?

19 MS. DEPOTTER: I don't at this time. So I did
20 want to refrain from voting. Thank you.

21 MR. JOHNSON: Okay. So by consent, so I
22 guess, if we can just do it by motion again. I'll
23 entertain a motion for option three.

24 MS. GAINES: So moved.

25 MS. SANCHES: Second.

1 MR. JOHNSON: So it's been moved and seconded.
2 All those in favor?

3 GROUP ANSWER: Ay.

4 MR. JOHNSON: Anybody opposed? Okay. Let the
5 record reflect that Ms. Depotter refrained.

6 All right. Next on my list is R/N-26. I
7 pulled that one too. I just want to make the point
8 that in the direct contracting or other services or
9 trade services tool, and Mr. Lee did list some
10 examples of where we would unbundle very large
11 contracts so that certain trades and scopes can direct
12 contract, i.e., trucking, landscaping, janitorial
13 services and site clean up, in previous discussions
14 when we went through this with Broward schools, there
15 was a question as to whether or not there are certain
16 scopes that are critical that were germane in the
17 critical path that will compromise the project control
18 if the general contractor is not involved in that
19 particular scope.

20 So I'm not exactly sure if that's applicable
21 here where you may have a scope where if the general
22 contractor does not have that under their Authority,
23 then that's being directly contracted with the
24 Authority, then would you be putting the general
25 contractor in the project in any disadvantageous

1 position if that particular trade is on the critical
2 path, and how are we going to control for that?

3 MR. LEE: Well, my initial reaction to your
4 comment is that's a valid consideration as to whether
5 to apply this particular API in a given contract. And
6 it's a question of how well the services that are
7 being pulled out for direct contracting, how well you
8 can do that without interfering with the critical path
9 of the rest of the project.

10 For example, obviously, if it's cleaning up
11 the site, that's at the end of the project, that's not
12 going to cause any problems with the rest of the
13 project going forward. Landscaping may be similar.
14 Those things that happen towards the end of a project
15 would tend to be less problematic in terms of the
16 critical path and the performance of the project. But
17 we're thinking in terms of construction here --

18 MR. JOHNSON: Trucking.

19 MR. LEE: But in terms of trucking and
20 hauling, there's an area where if you've got multiple
21 trucks out there collecting waste, for example, and
22 they all have their own separate routes, the failure
23 of one truck to perform in a timely fashion shouldn't
24 affect the others, I would think. So you have to look
25 at each contract, try to figure out what happens if we

1 don't perform in a timely fashion when we pull this
2 particular scope of work out and have direct
3 contracting with it, how does it affect anything else
4 under the prime contract.

5 MR. JOHNSON: And just to be clear, we are
6 advocating, strongly advocating for the Authority to
7 utilize this as many places as they can. But I
8 certainly want to bring some sensitivity to that
9 particular issue, that it may create a hardship for
10 the contract and the project manager if we're not
11 paying attention to that.

12 Anybody else have anything else on that
13 particular one? Okay. Next one, R/N-27 with R/C-20.
14 I pulled that one too. This is another one where we
15 were provided with two alternatives, and this is the
16 one where I was preferential to alternative number
17 two. And that was the one that provides a sliding
18 scale for the award of up to fifteen evaluation
19 preference points. And this one I prefer because the
20 awarding of those points will be based upon the amount
21 in an R/N-27 case, the amount of the SBE
22 participation. So that if you stratify it by prime,
23 subconsultants and then subcontractors, in a fifteen
24 point distribution, just as an example, the first five
25 go to the prime, the second four go to the

1 subconsultant and the last six go, based upon your
2 percentage of SBE participation as a subcontractor.
3 And then you go six points for twenty-five or more,
4 five points for twenty or more, four points for
5 fifteen or more. So that typically works better and
6 maximizes participation at all levels for the prime
7 subconsultant and trade level. So I would recommend
8 that particular option, that we have a sliding scale
9 for how the fifteen points are awarded. Anybody else?
10 And that would be for both the race and gender neutral
11 one, SBE, and for the race and gender conscious one in
12 R/C-20. Any other feedback? Okay.

13 All right. Now, Ms. Gaines, R/N-29.

14 MS. GAINES: Okay. Yes, I guess, my question
15 here refers to the twenty percent SBE goal. When you
16 look at the hauling contracts, we're talking about
17 twenty percent, but as they currently stand, as you
18 know, there is an exemption for, it is not based on
19 the total value of the contract, as you're stating
20 here. So you're recommending for all categories,
21 including hauling, which is the core service of the
22 Solid Waste Authority, that that twenty percent be
23 based on the total contract?

24 MR. LEE: That is correct. And that's the way
25 it's routinely done across the board for all

1 industries in the nation, really. Every contract,
2 it's assumed that every single contract that's awarded
3 there's going to be a certain portion of it that the
4 prime has to keep. They're going to have to have some
5 overhead, some expenses that they're going to have,
6 it's built into the contract. It's not going to
7 contribute to their profit for the bottom line. So we
8 came up with this twenty percent because it's
9 reasonable given what's been achieved in other places
10 across the country with other jurisdictions that are
11 on the par with SWA in terms of size.

12 We've looked at water sewer districts, we've
13 looked at a variety of airport authorities and quasi
14 governmental entities around the country that have
15 been able to achieve twenty percent fairly easily.
16 That being said, we're also building into this API
17 waiver provision, understanding that there are
18 occasions when there is just not adequate availability
19 of either SBE or M/WBE to perform certain services
20 that would be subcontracted.

21 So with that in place, we're pretty
22 comfortable that twenty percent is reasonable. We
23 didn't want to continue doing fifteen percent, because
24 we've done fifteen percent for a number of years and
25 we have significant disparity that's resulted in

1 minority women business participation, even with the
2 fifteen percent SBE goals.

3 Again, the goal is set upon, is based upon
4 relative availability of firms out there that can
5 perform subcontracting that serves a commercially
6 useful function. And it's based upon the total dollar
7 value of the contract. So if 20 percent of the total
8 value of the contract is going to subs, keep in mind
9 part of that 20 percent is also not going to be
10 retained by the sub, they too have overhead and
11 expenses that they're going to have to pay.

12 So, the fairest thing to do is apply the
13 same yardstick to their participation as you apply to
14 the prime's participation. And if after you take into
15 account all of the overhead, all of the fees, all the
16 expenses that the prime has to pay, there's just not
17 even twenty percent of what's left that could be sub'd
18 out without the prime not even wanting to be able to
19 bid because there's not enough profit in what's left
20 for them to retain, then you wouldn't apply a
21 subcontract goal, period, to that particular kind of
22 contract.

23 And there are some contracts like that.
24 There are certain contracts where it just doesn't make
25 sense to have a subcontracting goal because there's

1 nothing to subcontract. That was the case in the
2 Croson, J.A. Croson case, where the contract involved
3 installing toilets in a prison. There happened to be
4 no minority suppliers of toilets and it just didn't
5 make sense to be subbing out thirty percent of the
6 work in that situation. It was just one type of
7 commodity that had to be installed. And there was no
8 commercial use of subcontracting opportunity there.

9 MS. GAINES: Thank you. Mr. Chair, same
10 question would be for R/C-23, so it would be the same
11 clarification on that. Thank you.

12 MR. LEE: Okay.

13 MR. JOHNSON: Thank you. I do want to go
14 back, because we're going to lose group member Smith
15 in about three minutes. What I should have done on
16 R/N-27 and R/C-20, it's the same thing. There's two
17 options. I've stated my reasons for preferring option
18 number two, providing for the sliding scale for how
19 fifteen points were given.

20 The other is to restrict the preferences
21 only to those who are new and haven't won before. So,
22 unless I'm misstating those, I think we should
23 probably take a motion and formalize our preference of
24 that particular option, alternative number two over
25 alternative number one, when we're talking about SBE

1 Evaluation Preferences for R/N-27, as well as the
2 M/WBE Evaluation Preferences for Prime Bidders in
3 R/C-20. Does the Chair entertain a motion to go with
4 option two or option one?

5 MS. GAINES: Motion to go with option two, as
6 you mentioned.

7 MR. JOHNSON: Is there a second?

8 MS. THOMAS: Second.

9 MR. JOHNSON: All those in favor?

10 GROUP ANSWER: Ay.

11 MR. JOHNSON: Anybody opposed? Recognizing
12 that Ms. Depotter did abstain.

13 So the last thing is, Ms. Smith, thank you. I
14 know you have to leave.

15 So R/C-18 and R/C-19. That I pulled because
16 I want to ask a question of clarification. Obviously,
17 I'm a big fan. If I'm a small business commodity
18 provider in this community, I would want this
19 mandatory distributorship program. If I'm a minority
20 distributor in this community, I would definitely want
21 those as well. But I would like some clarification on
22 when does it become voluntary and when does it become
23 mandatory? I'll give you this example, let's just
24 say, for example, the Authority purchases X number of
25 dollars in HVAC equipment every year. And the

1 Authority has, traditionally, purchased a particular
2 skew from a particular manufacturer, and that
3 manufacturer only has one or two distributors in this
4 area. None of them are small. None of them minority.
5 So in that particular case, you would be looking to
6 either incentivize them to include a minority so that
7 they can have a minority distributor, or are we asking
8 the Authority to consider advancing or including
9 expanding, I'm sorry, the skews of like products so
10 that you can have products that an existing
11 distributor might be able to offer in this particular
12 market.

13 But we know that there are some
14 manufacturers, like most of them, that are very, very
15 strict as to who they chose for their local
16 distributors and only give the local market to those
17 distributors. So how do you reconcile a scenario
18 where the Authority is purchasing a commodity on a
19 certain level on an annual basis, where it's known
20 that they don't have a minority and they're just not
21 interested in adding a new one? Do you allow their
22 bid next time to go voluntary, or do you make it
23 mandatory?

24 MR. LEE: The general default is for a
25 voluntary distributorship program. It gives

1 incentives for manufacturers to intentionally go about
2 establishing relationships with minority suppliers as
3 distributors or dealers. However, there may be
4 instances, there's a number of jurisdictions
5 increasingly around the country that have commercial
6 nondiscrimination policies and procedures for
7 investigating complaints where minority suppliers have
8 said "I've attempted to become a dealer and
9 distributor with this company, and they have flat out
10 refused to tell me what I have to do to become one, or
11 what the standards or guidelines are", or there's a
12 clear pattern of exclusion of those suppliers, even
13 though they've been quite capable and competent of
14 selling similar like quality commodities elsewhere.

15 And so if there's either a determination, an
16 administrative determination that a manufacturer has
17 violated the policy or a supplier files a complaint
18 against the firm through the administrative process,
19 the due process, to determine that that manufacturer
20 has violated the commercial nondiscrimination policy
21 because A, they didn't solicit distributorships or
22 award distributorships from minority firms the same
23 way they did with others, they would treat them
24 similarly, then in that case the sanction that might
25 be imposed is that they can't do business with the

1 Authority if they violated that policy, unless they
2 agree to participate in this M/WBE distributorship
3 development program.

4 MR. JOHNSON: And the last question before we
5 take a take a break, so as we've learned in our last
6 dance like this in Broward, one threat to the
7 utilization of these is the tendency of entities to
8 piggy back. And so, I guess, there are certain
9 agreements, and there are certain tendencies to just
10 go ahead and buy based upon some state large contract,
11 and those are not available solicitations of
12 procurement to the local market. Is there any way
13 that this policy can be used to strongly encourage
14 local solicitation and perhaps even discourage piggy
15 backing as much as possible?

16 MR. LEE: Well, that suggestion may be
17 something that the stakeholders may decide they want
18 to add as an additional API, that before the Authority
19 agrees to make purchases off of some, piggy back on
20 another entity's contract, they make sure that that
21 contract, that the competition for that contract was
22 conducted in an inclusive fashion so that small,
23 minority women owned firms had every opportunity to
24 participate in them.

25 MR. JOHNSON: Yeah, but if there's a piggy

1 back, let's say with a major hardware firm that a
2 small, local tool shop just can't compete with, would
3 that be a fair competition?

4 MR. LEE: And that's something to be
5 considered. We've seen examples around the country
6 where some entities, some government entities would
7 rely heavily on those large state or statewide
8 contracts. And there's very, very, little minority or
9 small business participation in them as a result. And
10 that was a way to circumvent, actually, the small and
11 minority business programs that they had. They would
12 actually circumvent.

13 If you do that too many times, obviously,
14 it's going to affect the effectiveness of your program
15 in terms of overcoming the disparity. So you have a
16 couple of checks and balances against that sort of
17 thing. We've also built into this particular program,
18 through the amendments to the purchasing manual of the
19 Authority, that bid specifications are going to be
20 reviewed by, every bid specification is going to be
21 reviewed by the Equal Business Opportunity Office
22 before it goes out. So if there is a recommendation
23 to go to some kind of large state contract, for
24 example, bite off of that, the EBO office is there to
25 kind of put that in check and make sure you consider

1 alternatives to doing that, that would be more
2 inclusive, if that's the situation.

3 MR. JOHNSON: Thank you, sir. Any other
4 comments?

5 MS. GAINES: Just a point of clarification, on
6 the mandatory distributorship development program, you
7 mentioned that if there's a violation of the
8 commercial nondiscrimination policy -- because most of
9 these are national manufacturers and national
10 suppliers, how do you determine a violation of that
11 policy? Does the complaint have to be made
12 specifically here, or must the finding of
13 discrimination be here, or is it in the national
14 marketplace?

15 MR. LEE: Well, there's a provision in the
16 commercial nondiscrimination policy that we've
17 inserted in the purchasing manual that the bidders
18 have an obligation to disclose any such findings that
19 they have had against the company, wherever they are.
20 So that there is then the ability that you have at
21 least to do some due diligence to find out whether
22 they've changed their way or whether they've put any
23 remedy in place. And if they haven't, then you could
24 invoke this mandatory version of this API for their
25 participation.

1 MS. GAINES: Okay. Excellent. And on the
2 voluntary component, are you going to be recommending
3 some more affirmative steps that Solid Waste Authority
4 would take to ensure that this program is available
5 and that they're seeking manufacturers to comply
6 with -- I mean, is there going to be any affirmative
7 programatic component besides just saying we have a
8 voluntary -- because I don't see the voluntary program
9 being effective. I can see the mandatory one having
10 more of an effect than the voluntary one at this point
11 in time.

12 MR. LEE: Yes, this is a fairly new tool among
13 these programs. The City of San Antonio had attempted
14 to apply it to a contract involving defibrillators.
15 They were purchasing millions of dollars worth of
16 defibrillators for their public safety emergency,
17 schools all sorts of things. And there was a minority
18 supplier that they had that sold the defibrillator.
19 There was a dealer of those. But this particular
20 manufacturer that they specified for this contract,
21 they didn't have a relationship with that
22 manufacturer. And the manufacturer insisted that they
23 wouldn't sub it out. They wouldn't share it with any
24 distributor.

25 The problem was that the, I think it was the

1 Police Department, Fire Department, insisted on only
2 this one name brand, although there were six or seven
3 other defibrillator manufacturers out there that
4 handled similar functions. And because that one
5 manufacturer wasn't willing to play ball in terms of
6 the distributorship development program, they weren't
7 able to get any movement on it.

8 So the answer in that situation was if they
9 had had open competition and they had like quality
10 language built into their specifications, where
11 defibrillators that just perform certain functions
12 were all eligible to bid, I think there would have
13 been enough competition where one or two or three of
14 those manufacturers probably would have taken
15 advantage of those incentives. But, again, this has
16 only happened within the last couple of years that
17 they've actually tried applying that.

18 MS. GAINES: So those affirmative steps, you
19 would be saying, this is what you would have to do to
20 come into the program?

21 MR. LEE: Yes, you educate the manufacturer
22 long before the bid comes out. "Listen, we're
23 thinking of applying this particular remedy or API to
24 this contract." And you can kind of do a survey to
25 see whether any of them would be interested in

1 participating in it. And you can identify all the
2 minority suppliers to say they're out there looking
3 for opportunities to become authorized distributors
4 and dealers.

5 And if you get, you know, one or two firms
6 saying "Yes, this does look like something we would be
7 willing to do", then you can go ahead, you will
8 probably go ahead and apply it in that instance. I
9 think as it becomes more well known, one of the great
10 advantages, I think, that this kind of incentive,
11 where you're adding additional option years, is it
12 doesn't cost the government any more money. In fact,
13 they don't have to do as much work in bidding a
14 project and printing a contract over and over again if
15 it's a supply contract. The contract becomes a little
16 bit longer and you've got compliance built into it,
17 because if they don't comply, they don't follow
18 through in really being non-discriminatory in the way
19 that they award those distributorships, they don't get
20 the extra option years. So they're losing money by
21 not complying. But you're making the marketplace
22 more, you're creating competition for efforts to be
23 inclusive in the realm of commodities. And I think
24 that's a good thing.

25 MR. JOHNSON: Thank you. So this seems like a

1 really good place to pause for a break. It looks like
2 we will be probably finishing a little bit early. I
3 would ask that we go ahead and take a break. Take the
4 time to give us something to eat. Come back at 7:15,
5 that way we will finish deliberations starting with
6 catching up from the items identified previously. So
7 let's get back to resume at 7:15 P.M. Thank you.

8 (Brief recess.)

9 MR. JOHNSON: All right. So we will reconvene
10 as we wait for Ms. Depotter to rejoin us and staff
11 to rejoin us. I do want to go back to R/C-16. I just
12 want to make sure that we're clear on the record that
13 in our aspirational goals for Small, Minority Women
14 Business projects for primes and subs that we're
15 intending for those goals to apply to the total value
16 of the contract, not partial value of the contract.
17 So, is there any confusion that that's exactly what
18 we're intending, that these goals will apply to one
19 hundred percent of the contract? Because I do
20 understand that in some cases that has not been the
21 case. But in this particular case, we're looking for
22 those goals on an annual program basis and on a
23 by-project basis, to look at the total amount of
24 contract. Yes, ma'am.

25 MS. GAINES: Mr. Chair, I know we're lacking a

1 quorum right now. So I would recommend that when we
2 reconvene at our next meeting that we not only make
3 sure we make a formal motion on that item but that on
4 all the items that were not pulled, that we actually
5 make a formal motion that we support those
6 recommendations, as well.

7 MR. JOHNSON: Okay. Any other unreadiness or
8 comments? All right. So we were done with the policy
9 option matrix. We now will call for the public
10 comments. Any last public comments? Any new
11 thoughts? Any members of the public? We really
12 appreciate you being here as part of this nocturnal
13 democracy this evening. Any other members of the
14 public have any comments? Okay. Ms. Tina white.

15 MS. WHITE: Good afternoon, good evening, Tina
16 White. I agree with what Ms. Gaines said that it's
17 very important that there is a motion and that it is
18 passed or not passed, but a motion is made that one
19 hundred percent of the total award is applied for the
20 SBE as well with the M/WBE program. Subcontractors,
21 everyone has a say in operating cost as primes. And
22 in the garbage bid that we are currently in now, we
23 were fooled because we thought it was fifteen percent,
24 and in actuality it's only nine percent of the award
25 because it was only a five to sixty percent of the

1 total award. And that should not happen again.

2 The other thing that's very important to me
3 is that there is, in the policies, that it's very
4 clearly written how subcontractors protest as well as
5 file complaints in terms of commercial
6 discrimination.

7 I have filed a complaint for commercial
8 discrimination. The Solid Waste Authority has never
9 responded to it. I have written letters since 2013
10 saying that contractors Southern Waste Systems and
11 Waste Management have won forty-five million dollar
12 contracts using me as one of their pre-qualifying
13 SBEs, but my company and James Junior Enterprises, was
14 never utilized. The Authority has never responded.

15 The policies within the franchise agreement
16 give them enforcement. They have failed to do any of
17 the enforcement. And so, it's very important that
18 subcontractors have a clear written path as to how
19 these policies will be addressed in a timely manner.
20 Because to not respond from 2013 to 2018 truly is not
21 a timely manner. And so I hope that when Mr. Franklin
22 is drafting the policies, that time lines are spelled
23 out so that the subcontractor knows what the policy is
24 and how it must followed.

25 If you have a policy, and staff and your

1 governing board does not enforce the policy, you just
2 have something written on paper. And thus far, that
3 is what has happened at Solid Waste Authority with my
4 contract as a sub pre-qualifying as well as for
5 Mr. James Junior Enterprises.

6 Solid waste has been putting out the garbage
7 contract since 1993, twenty-five years. And this
8 award was the first time any blacks were ever
9 included, and still we received none of the
10 subcontracting we were supposed to receive. We just
11 want to work. We want to grow our companies for
12 capacity. We want to employ people in our community,
13 Riviera Beach, where I live. We're not interested in
14 getting the companies disbarred. We just simply want
15 to work and grow our businesses.

16 And I'm hoping that Mr. Pellowitz, under his
17 new leadership as the executive director, will respond
18 to my complaint of commercial discrimination. Thank
19 you.

20 MR. JOHNSON: Thank you, Ms. White. Okay. So
21 I did have some observations on that particular issue.
22 I will save them to the end. Any other public
23 comment? Any other public comment?

24 All right. So now we're back to the
25 Stakeholder group discussion. We did have some items

1 that were provided to us as additional materials. And
2 Mr. Lee, do you want to sort of summarize what we
3 should be learning from the additional materials and
4 how they relate to the previous conversations?

5 MR. LEE: Yes, I've sent to the stakeholders a
6 couple of, what I refer to as lovingly, care packages.
7 They have a number of examples of best practices from
8 around the country. The first care package I sent out
9 was primarily a copy of the City of San Antonio's
10 SBEDA ordinance. That's an acronym for Small Business
11 Economic Development Advocacy ordinance.

12 It too is a hybrid policy that includes a
13 number of race and gender neutral remedies and race
14 and gender conscious remedies. I've highlighted in
15 the document that I distributed key definitions
16 contained in that ordinance. Key sanctions and
17 compliance provisions, roles and responsibilities of
18 all of the players, including the vendors and
19 contractors and subcontractors, and staff persons that
20 have some role in implementation of that policy. The
21 definition and composition of the small business
22 advisory committee. We'll be proposing a similar
23 function here at the Authority. And you can see the
24 language, the level of detail that will be included in
25 the final policy that we develop here, based upon that

1 model.

2 I've also included a number of other program
3 models that are hybrid models that include race and
4 gender neutral, race and gender conscious program
5 elements, The Washington Sanitary Commission among
6 them. They have something called a Small Local
7 Business Enterprise Program in addition to the M/WBE
8 program.

9 And I've also submitted and distributed a
10 number of program reports, annual reports from these
11 various programs, State of Maryland, City of San
12 Antonio, Washington Sanitary Commission, for example,
13 that tell you a lot more than just the dollars that
14 have been utilized by various segments of the business
15 population, but they also analyze things such as
16 number of first-time bidders, success stories, firms
17 that have been able to grow successfully to be
18 competitively viable in those programs, economic
19 input. We talked about cost benefit analysis being
20 done in some of these programs. So there are some
21 examples of the jobs that have been created and
22 sustained through the mainstream participation of
23 those small, minority women-owned businesses, tax
24 revenues that have been generated and so forth.

25 I received a total of just about ten or

1 eleven different requests from stakeholders about
2 various forms of information. I've got a few more
3 that I have to distribute to you. And I didn't want
4 to choke you with giving you too much, bearing you
5 with too much information all at once, 'cause it was a
6 lot. There's some financing programs, bonding
7 programs, OCIP, which is Owner Controlled Insurance
8 Program models, that I'm also sharing with you.

9 And I think one other area that we talked
10 about getting some feed back on had to do with the
11 competitive business demonstration program.

12 I think that's also highlighted in the City of San
13 Antonio's ordinance, as well as the distributorship
14 development program is also in that ordinance.

15 In Southern Florida, we also have some
16 programs that may be worth looking at from Miami-Dade
17 County Public Schools to Broward County Public
18 Schools. And some of those annual reports may also be
19 instructive as to what works and what doesn't work as
20 well, where there has been problems.

21 So if you have any further thirst or hunger
22 for knowledge, just let me know. I have a very
23 extensive library. And I always feel great when
24 people bother to ask to read it. So I have been
25 saving all this stuff for some reason, so hopefully,

1 you will take advantage of this opportunity. I've
2 got, you know, lots more to share that I've collected
3 over the last thirty years. I'm happy to do so.

4 MR. JOHNSON: As you-all recall, as work group
5 members, there were several policy options that enured
6 discussions that sort of reflected our desire to
7 ensure that those particular ones had enough teeth,
8 that they were likely to yield the desire of
9 participation. Some we wanted to avoid what could be
10 a convolution of the intent of the policy option.
11 Some that we thought should be clear enough to provide
12 staff with a clear path of how they apply to sort of
13 reduce their ability. And then there are some that
14 were kind of complicated in terms of things like size
15 standards for professional services, that we wanted
16 more examples of what was happening out there in the
17 market, recognizing that there are some complex
18 considerations regarding those.

19 So I would encourage you-all to take a look
20 at the information that Mr. Lee just identified,
21 because there are a couple of ways in which, if we
22 have any new ideas, we have two more chances left to
23 interject those. Because it is our intent to have
24 this process closed and have the policies in this
25 program adopted by the Authority as a soon as

1 possible. So we do have a May 8th meeting. We will
2 be ranking and providing any additional input. After
3 that, Mr. Lee will provide a draft of the new program
4 and policies before it goes to the Authority board as
5 we agreed. And that will be one of our last times to
6 sort of interject anything of substance we think
7 before it goes to deliberations. So I just want to,
8 you know, prep us in advance. Just go ahead and
9 identify anything you think should be prioritized in
10 language or approach in the way in which Mr. Lee
11 writes the policy here. Because, again, we want to
12 make sure that they are both effective and strong
13 enough to have teeth, for both staff and for the
14 market. Okay.

15 Now, Mr. Lee wanted to solicit -- first of
16 all, let me do some housekeeping, I do want to
17 recognize a good leader in this community on this
18 particular issue of minority participation, our vice
19 mayor of the great District 7, Mack Bernard has joined
20 us. Mr. Bernard, vice mayor Bernard, thank you so
21 much for your presence and participation.

22 So before we close out, Mr. Lee did want to
23 offer the opportunity, if there are any APIs that were
24 not included, Colleen will provide a table, a summary
25 table of all of the APIs that we've discussed.

1 Because I want to make sure that before Mr. Lee starts
2 his actual writing, that if there's anything that
3 we're obviously missing, that we want to bring to his
4 attention, please let's do so at this time while we
5 have a few more minutes.

6 Now, that's going to require some young
7 eyes. But there you see the progress that we have
8 made. And we've reviewed every last one of those
9 affirmative procurement initiatives. And so before we
10 finalize or memorialize them into written policy
11 recommendations, we want to take the opportunity to
12 identify any that are obviously missing.

13 The one that I would like to explore, so
14 under race and gender conscious construction industry,
15 there is an M/WBE Segmented, there is an M/WBE
16 Subcontractor Segmentation Strategy. And that is
17 number R/C-7. Under construction, R/C-7, M/WBE
18 Segmented Subcontracting Goals. And as you-all may
19 recall, in this particular industry, construction,
20 with subcontracting exclusively, we recognized in this
21 particular API, R/C-7, we recognized in this
22 particular API that not all minorities were harmed the
23 same. There were, amongst the minority groups, there
24 were some who were harmed a little more than others
25 and so we can set goals to remedy those groups, or

1 sort of customize our amendment to those groups.

2 I am asking if we can consider segmenting
3 goals in the other industries. And I know there may
4 be some consideration for doing it for primes. But is
5 there a way that we can carry the approach to making
6 sure that if it's, for example, black contractors, who
7 have been the most underutilized, that it's not just
8 in construction subcontracting that we address that,
9 that we can also address it in professional services
10 and also address it in commodities and also address it
11 in trade services, and we may even address it in
12 primes, so that we make sure that we have an ample
13 amount of the most underutilized groups in each of
14 those industries?

15 MR. LEE: I would say the factual predicate
16 shows, for the most part, that some segments were more
17 significantly underutilized than others, that's true.
18 So you probably can fashion a segment of
19 subcontracting goal, wherever you have a
20 subcontracting goal, either SBE or M/WBE, you can
21 probably use a segmented M/WBE subcontracting goal
22 underneath that.

23 MR. JOHNSON: And that can be all industries,
24 right? Because the other concern is that if we're
25 only segmenting for construction subcontracting and

1 Mr. Pellowitz has said a few meetings back that the
2 majority of the spending won't necessarily be in
3 construction. So we want to make sure that we have
4 that particular approach available where the money is
5 being spent.

6 MR. LEE: Right. The only problem is you also
7 have to keep in mind, for commodities, other services
8 and trade services, those areas generally don't have a
9 lot of subcontracting activity. So we've limited the
10 subcontracting goals or proposed subcontracting goals
11 for this last segment to very large contracts of five
12 million dollars or more.

13 MR. JOHNSON: So, again, my question is:
14 Could we consider applying a segmentation strategy to
15 the other industries, maybe without the
16 subcontracting. So, for example, I know on the
17 disparity study with the county, there were some
18 industries where black women firms were shut out all
19 together. And the question becomes, are we able to
20 segment out that particular group in those places
21 where they were shut out that are not just limited to
22 subcontracts in construction? Can we include also
23 segmented goals in professional services? Can we
24 target the inclusion of the most underutilized groups
25 differentially based upon their underutilization in

1 commodities?

2 MR. LEE: Not so much in commodities, because
3 there's not a whole lot of subcontracting opportunity
4 there. What I'm suggesting is --

5 MR. JOHNSON: Then primes, then if it's not
6 subcontracting, whatever business we're doing can be
7 segmented.

8 MR. LEE: I don't understand how that works as
9 a prime contractor.

10 MR. JOHNSON: If you are having, let's say,
11 for example, in our annual aspirational M/WBE goals
12 for commodities other services and trade services,
13 right --

14 MR. LEE: That's annual aspirational goals.
15 It doesn't have any impact on individual contracts.

16 MR. JOHNSON: But within those annual goals
17 for commodities, other services and trade services,
18 are we prohibited from at least conceiving of a level
19 of participation that's tailored towards the groups
20 that will be most underutilized? So let's say for
21 example we have an annual goal of --

22 MR. LEE: You have an annual aspiration goal
23 at the prime level and an annual aspirational goal at
24 the sub level.

25 MR. JOHNSON: Okay. And if you have an annual

1 goal, can we say that within that twenty-five
2 percent --

3 MR. LEE: My question is: What's the point?

4 MR. JOHNSON: Well, because what typically
5 happens in this process is, let's be real, you have
6 policies and procedures that seek M/WBE, minority
7 women business enterprise, and usually if it's not the
8 white women who benefits more, you have, at least in
9 Broward or Miami-Dade, the Hispanics that benefit
10 more. And you normally never get adequate
11 participation for black contractors or black
12 businesses.

13 MR. LEE: But the annual aspirational goal
14 doesn't help you get there. It's the segmented goals
15 that help you get there. That's at the subcontract
16 level. It's not at the aspirational level.

17 MR. JOHNSON: So how can we apply segmentation
18 to areas outside of construction? Because right now
19 we only have segmentation on the construction.

20 MR. LEE: Segmentation only makes sense in the
21 context of a subcontracting goal.

22 MR. JOHNSON: So let's say professional
23 services.

24 MR. LEE: If you have a professional service
25 where its commercially useful function can be

1 subcontracted, you could have a segmented
2 subcontracting goal to make sure that those most
3 significantly underutilized segments of the M/WBE
4 population get utilized first. In other words, let's
5 say your availability for M/WBEs in that professional
6 service category was fifteen percent, and you had one
7 or two ethnic groups that were statistically very
8 significantly underutilized, you could have a
9 segmented goal that their availability out of that
10 fifteen percent would have to be met. So maybe, if
11 it's combined five percent availability, you have a
12 segmented goal of five percent for maybe
13 African-American and Asian, if that's the case, out of
14 that, fifteen percent would go to African-Americans
15 and Asians.

16 MR. JOHNSON: So then, could we, and I know we
17 don't have a quorum to vote on it, but at least
18 consider it, since we have in R/C-11 through R/C-15 on
19 the professional services, could with we add an R/C-16
20 that would be M/WBE Segmented Contracting Goals.
21 Because there's currently no API for segmenting for
22 anything outside of construction.

23 MR. LEE: Here's the problem with doing that
24 right now. Under the disparity study, we have no
25 analysis of subcontracting for those industry segments

1 outside of professional services and construction. So
2 if you apply it to the other groups, we can't tell
3 which groups were significantly underutilized at the
4 subcontract level because Mason Tillman declined or
5 for whatever reason didn't undertake an analysis of
6 that due to the low availability of subcontracting
7 opportunities.

8 MR. JOHNSON: Okay. And I was just thinking
9 that if we had, for example, R/C-13 under the
10 professional services, M/WBE Subcontracting Goals for
11 Professional Services, could we not do what we did
12 under M/WBE subcontracting goals under construction by
13 having a parallel API for M/WBE segmented
14 subcontracting. So it seems like everywhere we have a
15 subcontracting goal, we should give our subs the
16 option of segmenting it.

17 MR. LEE: The rationale is a little different.
18 Because we had strong evidence of significant
19 underutilization at the prime contract level for other
20 services, trade services and commodities, in those few
21 instances where there were subcontracting
22 opportunities, we're using those as a means of
23 remedying the discrimination at the prime contract
24 level.

25 That's somewhat different than what you have

1 in the other two industry categories of construction
2 and professional services. Because there, you've got
3 in-depth analysis, not just at the prime contract
4 level, of disparities, but also at the subcontract
5 level. And you can see that even when subcontracting
6 goals are used under the SBE program, there's certain
7 ethnic groups that have very strong statistically
8 significant underutilization for subcontracting. You
9 don't have that same evidence in those other three
10 industries of the services commodities and trade
11 services.

12 MR. JOHNSON: So if professional services does
13 fit, can we considered adding an API for segmented
14 contracting goals in professional services?

15 MR. LEE: In professional services, yes.

16 MR. JOHNSON: Okay. So we'll come back when
17 we have a quorum, but that will probably be --

18 MS. SMITH: We have a quorum.

19 MR. JOHNSON: Oh, so let the record reflect
20 that member Bruce Lewis has arrived. So we're looking
21 at adding a race conscious remedy under professional
22 services, which will now make it R/C-16, M/WBE
23 Segmented Subcontracting Goals.

24 MR. LEE: I would just suggest you call it 16A
25 so that each one of these numbers is unique. We

1 already have R/C-16 somewhere.

2 MR. JOHNSON: No, you have an R/C-15 is the
3 last one I have.

4 MR. LEE: Check again.

5 MR. JOHNSON: Oh, I see what you're saying.
6 There's R/C-16 in commodities, right. So we probably
7 have to call it 13A. So R/C-13 is subcontracting
8 goals, so 13A. Thank you, Mr. Pellowitz.

9 So the discussion is to potentially add an
10 additional race conscious remedy which will be
11 numbered R/C-13A entitled M/WBE Segmented
12 Subcontracting Goals. The chair will entertain a
13 motion.

14 MS. GAINES: So moved.

15 MR. JOHNSON: Is there a second?

16 MR. LEWIS: Second.

17 MR. JOHNSON: Seconded by Mr. Lewis. Now, any
18 other discussion?

19 MS. DEPOTTER: Let the record reflect that AGC
20 dissents from the vote.

21 MR. JOHNSON: Thank you. Any other comments
22 or questions? All those in favor?

23 GROUP ANSWER: Ay.

24 MR. JOHNSON: Anybody opposed. And the record
25 will reflect that Ms. Depotter abstained.

1 MS. GAINES: No, she objects.

2 MS. DEPOTTER: I've dissented from the AGC
3 voting, period.

4 MR. JOHNSON: All right. So then that motion
5 will carry to add R/C-13A under professional services,
6 M/WBE Segmented Subcontracting goals. Any other APIs
7 that we think we need to add that are missing from
8 what we've discussed so far?

9 All right. Hearing none, a couple of
10 housekeeping items before we shut down, Ms. Depotter,
11 one thing I did not do, when you offered the
12 modifications to the minutes, we were actually
13 approving two different meeting minutes. So if you
14 don't mind specifying which of the meetings.

15 MS. DEPOTTER: I had modifications to both
16 meetings and I gave them to the court reporter.

17 MR. JOHNSON: Okay. So the record will
18 reflect that you submitted the modifications relevant
19 to each meeting.

20 MS. DEPOTTER: Yes. Did you get the one for
21 the 24th, where the figure was seven hundred million
22 instead of one hundred million?

23 MR. JOHNSON: Okay. I just wanted to make
24 sure that we covered that.

25 MS. DEPOTTER: Thank you.

1 MR. JOHNSON: Now we're looking at our future
2 meeting schedule. We agreed at the last meeting to
3 hold a meeting on May 8th at 5:00 P.M., in this very
4 same location. There we expect to, as you see, to
5 rank these APIs, the assumption being that they are
6 all important to include, but we want to sort of
7 communicate to staff that if there had to be some
8 decisions based upon timing or resources as to which
9 order in which to implement, we will provide some of
10 that direction as a stakeholder group based upon our
11 ranking. So again, we're not taking any out. We're
12 going to keep them all in. But we will just rank
13 which ones we think, in case that has to be an issue,
14 should be implemented first. And then --

15 MS. ROBBS: Mr. Chair, would you please
16 explain to the members of the Stakeholder group the
17 process, so that they have their thoughts wound up
18 when we come on May 8th?

19 MR. JOHNSON: Okay. So the way it's going to
20 work is we will have an announcement of each number,
21 so on this case R/N-1, Centralized Bidder Registration
22 System. We're going to then ask for: "All of those
23 who consider that a high priority, raise your hand".
24 And we will take a tally, and staff will put the votes
25 in. "Anybody consider it a moderate priority?",

1 meaning it's not the highest, and it is still
2 important, but it's moderate. And then we will do the
3 same thing for low priority. And then there's a box
4 at the end to identify those that are unanimous. And
5 that's important because it does provide staff some
6 communication of the will of this particular group
7 that if all of us agree upon it, that's probably
8 something you may want to find a way to implement
9 right away.

10 MS. ROBBS: Mr. Chair, we also want to stress
11 that you would only vote one time. One time if you
12 feel it's high priority.

13 MR. JOHNSON: That's correct. So the total
14 votes will reflect the total number of people here.
15 And, of course it works better, in fact, it only works
16 if we have a quorum. Okay. Anything else for
17 housekeeping? Anything for the good of the order as
18 we're wrapping up?

19 MS. ROBBS: Mr. Chair, I would like to thank
20 the executive staff, our executive director, managing
21 director and chief along with the staff, most of them
22 are still here, that helped us to put on a successful
23 vendor opportunity power-net where we had nearly
24 ninety businesses in attendance. I think we're going
25 to post a picture so you can see who was there. It

1 was great networking. A lot of procurement
2 contracting opportunities that were mentioned. We
3 also talked about the existing contracts that are
4 there. And our goal is to inform the public, each and
5 every time, that we have an opportunity. And we
6 really appreciate your engagement through this
7 process. So I just want to thank staff, our bosses,
8 you know, the public, for really coming out and
9 engaging with SWA. Thank you.

10 MS. DEPOTTER: Through the Chair, Ms. Robbs,
11 is there a sign-in sheet available for that, that we
12 can request a copy of?

13 MS. ROBBS: Through the Chair, yes. It should
14 be, we will have it posted if it's not already.

15 MS. DEPOTTER: Okay. I'll check it. Thank
16 you.

17 MR. JOHNSON: Ms. Gaines.

18 MS. GAINES: Yes, before we close, I'd just
19 like to follow up on a question that came from one
20 member of the audience, Ms. Tina White, regarding she
21 has filed a complaint under the commercial
22 nondiscrimination policy, and what is the status in
23 terms of how that's moving forward? I understand that
24 is a policy that has currently been adopted at the
25 last Solid Waste Authority meeting. So how will it

1 proceed going from here?

2 MR. JOHNSON: So before staff answers, let me
3 go ahead and do my little speech, right, because I
4 wanted to sort of reiterate the value of us all being
5 here, those of you as stakeholder work group members,
6 members of this community who have a thousand places
7 to be. And we're now at hour fourteen that we've
8 spent here together doing this. And so we know that
9 all of our time is valuable. So each of you-all
10 who've done this and have been at every meeting, thank
11 you so much.

12 For the members of the public who have come
13 here to learn about what we've deliberated and how
14 this new program may benefit you -- and we've tried to
15 benefit everybody in this program. That's why we have
16 it race gender conscious and race gender neutral -- we
17 thank you for coming. And those of you who have been
18 at the meetings, we really appreciate your curiosity.
19 And for those who provided input, we thank you for
20 your ideas. And we want to make sure we thoroughly
21 consider those.

22 But I want to remind us all, though, that
23 we're here under the pretense that the Authority is
24 serious about fixing passive and active
25 discrimination. I don't think it requires us to

1 debate it much longer because we've spent a lot of
2 money on the disparity study that makes it pretty
3 clear with how it was and how it looked. But then
4 again, we recognize that none of this really is going
5 to impact the outcome unless, in terms of increasing
6 availability and opportunities for minority and
7 women-owned firms, unless and until the new policies
8 and the new program are accompanied by new attitudes,
9 new values and new behaviors by staff.

10 And so the staff, and Mr. Pellowitz and I
11 did have a pow wow a few meetings back. And
12 Mr. Pellowitz made it very clear that this is serious
13 to him. I just want to make sure, though, that for
14 all of the issues that may come up now and in the
15 future, we have to communicate to the public that this
16 is not just an elaborate exercise of vote trafficking.
17 That this is something that we're really serious about
18 accomplishing. And so that we don't go through
19 spending all this money on a disparity study, and all
20 this time coming up with a program, and spending all
21 these many months, and asking to procure, and find
22 ourselves five years later in a situation where the
23 operation was a success, but the patient still died.
24 And the goal here is to save the patient.

25 We want to increase the capacity and the

1 growth potential of our local minority women owned
2 firms. Any other outcome is not acceptable for the
3 amount of time and money that we put into this thing.
4 So I just wanted to state that on the record, using my
5 executive privilege as a chair, that this is a big
6 waste if we're not serious about changing our behavior
7 and attitude amongst staff. Mr. Lewis...

8 MR. LEWIS: I'd like to apologize first,
9 again, for being a little late. I had a double booked
10 meeting with the black chamber. But I wanted to
11 express my appreciation of staff and for Mr. Lee for
12 providing -- first of all, Mr. Lee, for navigating us
13 through this process in a very nice way. I think it's
14 allowed us to have a voice.

15 Number two, the staff support that we have
16 gotten and the support of the documentation and
17 information, giving us the tools to be very educated
18 about the decisions that we're going to make in the
19 future was very timely. So I wanted to appreciate
20 both Mr. Lee and SWA staff for their efforts, as well.

21 MR. JOHNSON: Okay. Any other last-minute
22 comments for the good of the order? May 8th, 5:00
23 o'clock in this building. We will see you-all then.
24 Meeting stands adjourned. Thank you.

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2 COUNTY OF PALM BEACH)

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I, Raquel Robinson, RPR, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 7th day of May, 2018.


Raquel Robinson, RPR

