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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(16)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: October 6, 2015

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution directing the County Mayor to adopt certain race- and gender-neutral recommendations of the Mason Tillman Associates, Ltd. disparity study; directing County Mayor to consider changes to Small Business Development Office; directing County Mayor to prepare necessary budgeting amendments

Resolution No. R-888-15

The accompanying resolution was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Audrey M. Edmonson, Commissioner Barbara J. Jordan and Commissioner Dennis C. Moss.

R. A. Cuevas, Jr.
County Attorney

RAC/smm

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MEMORANDUM

(Revised)

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Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(16)
10-6-15

RESOLUTION NO. R-888-15

RESOLUTION DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO ADOPT CERTAIN RACE- AND GENDER-NEUTRAL RECOMMENDATIONS OF THE MASON TILLMAN ASSOCIATES, LTD. DISPARITY STUDY; DIRECTING COUNTY MAYOR TO CONSIDER CHANGES TO SMALL BUSINESS DEVELOPMENT OFFICE; DIRECTING COUNTY MAYOR TO PREPARE NECESSARY BUDGETING AMENDMENTS; AND PROVIDE CERTAIN REPORTS TO THE BOARD REGARDING THE ADOPTION OR INABILITY TO ADOPT SUCH RECOMMENDATIONS

WHEREAS, Miami-Dade County is a multi-ethnic community; and

WHEREAS, Miami-Dade County is committed to ensuring that all members of the community have an equal opportunity in being awarded County contracts; and

WHEREAS, in furtherance of that goal, the Board of County Commissioners adopted Resolutions No. R-751-12 and R-456-13 authorizing the execution of an agreement with the firm of Mason Tillman Associates, Ltd. to perform a disparity study to determine if racial, ethnic, or gender disparities exist in County contracting; and

WHEREAS, that study found a disparity, based on the data that Mason Tillman Associates, Ltd. reviewed, in (1) the award of construction, architecture and engineering, professional services, and goods and services prime contracts to African-Americans and Hispanic-Americans, (2) the award of construction, and goods and services prime contracts to Asian-Americans, and (3) the award of construction, architecture and engineering, and professional services prime contracts to Women Business Enterprises; and

WHEREAS, the study also provided race- and gender-neutral recommendations to enhance the County's procurement practices, improve data collection, and increase the participation of small businesses and minority or women business enterprises in County contracting; and

WHEREAS, the County Attorney has opined that this Board may initially proceed to adopt some or all of the race- and gender-neutral recommendations of the study, including those recommended to address deficiencies in the County's data, prior to and as a condition of any future consideration of race- and gender-conscious measures; and

WHEREAS, the study has recommended that the adoption of additional and enhanced race- and gender-neutral policies will aid in addressing the disparity found by the study; and

WHEREAS, the study recommended that Miami-Dade County could improve the effectiveness of its Small Business Program by: (1) requiring prime contractors to include in their bids and proposals the Schedule of Intent Affidavit; (2) publishing a quarterly Countywide Progress Report for key contracting officers and Small Business liaisons for all departments that would detail each department's performance in meeting Small Business Program goals and any necessary recommendations to improve a department's efforts; (3) providing mandatory annual training for staff involved with the procurement process to ensure that procedures are applied uniformly across all departments; (4) including compliance with Small Business Program requirements as a factor when conducting performance reviews of managers and staff members; and (5) increasing the funding and staff overseeing the Small Business Programs; and

WHEREAS, placing the Small Business Development ("SBD") Office within the Internal Services Department may create conflicting incentives between ensuring compliance with the Small Business Program and the ease of awarding County contracts; and

WHEREAS, the study recommended that the effectiveness of the SBD Office would be improved by providing it with autonomy from the County's purchasing function by having it report directly to the Mayor rather than to the Internal Services Department; and

WHEREAS, the study also recommended that the County's pre-award procedures can be improved by: (1) unbundling large procurements into smaller contracts; (2) waiving the County's bonding requirements when the engineer's estimate is less than $25,000.00; (3) having the County's Equitable Distribution Program managed by the SBD Office rather than the Internal Services Department and training key procurement staff on the requirements of the Equitable Distribution Program; (4) purchasing software that would allow bidders to obtain digital plans and specifications from the County's website and having plan rooms established at both the County and trade and business associations' headquarters; (5) revising insurance requirements on smaller contracts; (6) requiring selection panel members to sign their evaluation form and releasing the evaluation score, proposal, statement of qualifications, and bid of the business(es) selected for award when the Intent to Award is issued; (7) training County department managers with procurement responsibilities on bid protest procedures; and (8) enhancing the County's outreach efforts by hosting forums to assist businesses in becoming more familiar with the County's procurement procedures and keeping business owners apprised of important announcements and upcoming projects; and

WHEREAS, as to post-award improvements, the study recommended: (1) having debriefing sessions for unsuccessful bidders; (2) establishing a payment verification system; (3) publishing prime contractor payments online and notifying subcontractors when prime contractors have received mobilization payments; (4) conducting routine contract compliance monitoring that tracks subcontractor utilization in a database, verifies actual subcontractor participation, and verifies that only certified firms are being used to meet the Small Business

Enterprise goals; (5) publishing a 12-to-24 month contract opportunities forecast; and (6) establishing procedures for resolution of payment disputes; and

WHEREAS, it was also recommended that the County's website be optimized for mobile devices and provide greater accessibility for persons with disabilities; and

WHEREAS, as to improvements in the County's data collection and management, the study recommended: (1) adopting a single, unified contract numbering scheme for all County contracts and purchases; (2) verifying the subcontractor data reported by the prime contractor; and (3) requiring the prime contractor to submit the executed subcontracts related to Small Business Program goals prior to the County issuing any payments; and

WHEREAS, adoption of these race- and gender-neutral recommendations is essential to ensuring that the County can properly assess whether all members of the community have an equal opportunity in being awarded County contracts,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The County Mayor or County Mayor's designee is directed to adopt the recommendations in the study regarding the Small Business Program by: (1) requiring prime contractors to include in their bids and proposals the Schedule of Intent Affidavit; (2) publishing a quarterly Countywide Progress Report, once applicable technology is implemented, for key contracting officers and Small Business liaisons for all departments that would detail each department's performance in meeting Small Business Program goals and any necessary recommendations to improve a department's efforts; (3) providing mandatory annual training for key staff involved with the procurement process to ensure that procedures are applied uniformly across all departments; (4) including compliance with Small Business Program requirements as a

factor when conducting performance reviews of managers and staff members; and (5) increasing the funding and staff overseeing the Small Business Programs as set forth in the study.

Section 2. The County Mayor or County Mayor's designee is further directed to ensure that all final decisions related to the Small Business Program are made by a single department head who is responsible for the final decisions on all aspects of the Program, including but not limited to certification of firms, establishing goals and measures for County contracts, monitoring of contracts for compliance, and enforcement. The County Mayor shall also consider the recommendation of the study to create an independent Small Business Department outside of the Internal Services Department and whose director reports directly to the County Mayor. In the event the County Mayor does not establish, within 90 days of the effective date of this Resolution, an independent Small Business Department as set forth in the study, the County Mayor or County Mayor's designee shall provide a report to this Board detailing the County Mayor's reasons for not following this recommendation and identifying which, if any, policies the County Mayor has adopted to address the concerns identified in the study. Such report shall be placed on an agenda of the Board pursuant to Ordinance No. 14-65.

Section 3. The County Mayor or County Mayor's designee is further directed to adopt the recommendations in the study regarding the County's pre-award procedures by: (1) unbundling large procurements into smaller contracts wherever practicable; (2) waiving the County's bonding requirements when the engineer's estimate is less than $25,000.00; (3) having the County's Equitable Distribution Program managed by the SBD Office rather than the Internal Services Department and training key procurement staff on the requirements of the Equitable Distribution Program; (4) purchasing software that would allow bidders to obtain digital plans and specifications from the County's website and having plan rooms established at both the County and trade and business associations' headquarters; (5) revising insurance requirements on

smaller contracts and developing criteria for obtaining insurance waivers on smaller contracts; (6) requiring selection panel members to sign their evaluation form(s) and releasing the evaluation score, proposal, statement of qualifications, and bid of the business(es) selected for award when the Intent to Award is issued; (7) training key County procurement staff on bid protest procedures; and (8) enhancing the County's outreach efforts by hosting forums to assist businesses in becoming more familiar with the County's procurement procedures and maintaining a website to keep business owners apprised of important announcements and upcoming projects.

Section 4. The County Mayor or County Mayor's designee is further directed to adopt the recommendations in the study regarding post-award improvements by: (1) having debriefing sessions for unsuccessful bidders; (2) establishing a payment verification system; (3) publishing prime contractor payments online and notifying subcontractors when prime contractors have received mobilization payments; (4) conducting routine contract compliance monitoring that tracks subcontractor utilization in an online database, verifies actual subcontractor participation, and certifies that only eligible firms are being used to meet the Small Business Enterprise goals; (5) publishing a 12-to-24 month contract opportunities forecast; (6) establishing procedures for resolution of payment disputes; and (7) optimizing the County's website for mobile devices and to provide greater accessibility for persons with disabilities.

Section 5. The County Mayor or County Mayor's designee is further directed to adopt the recommendations in the study regarding the County's data collection and management by: (1) adopting a single, unified contract numbering scheme for all County contracts and purchases; (2) verifying the subcontractor data reported on the Schedule of Intent by the prime contractor; and (3) requiring the prime contractor to submit the executed subcontracts related to Small Business Program goals prior to the County issuing any payments.

Section 6. The County Mayor or County Mayor's designee is further directed to prepare an appropriate budget amendment to the fiscal year 2015-16 County budget to effectuate the foregoing and to bring such amendment back to the Board as part of the mid-year or end-of-year budget amendment process.

Section 7. The County Mayor or County Mayor's designee is directed to begin implementation of the provisions of Sections 1, 3, 4, and 5 no later than 60 days after the effective date of this Resolution. However, if the County Mayor or County Mayor's designee does not move forward with the implementation of any of the recommendations listed in Sections 1, 3, 4, or 5, then the County Mayor or County Mayor's designee shall prepare a report to the Board within 60 days after the effective date of this resolution, providing a detailed explanation as to why any such recommendation(s) were not implemented and shall place such report on the Board's agenda pursuant to Ordinance No. 14-65. In addition, for a three year period following the effective date of this Resolution, the County Mayor or County Mayor's designee shall prepare a biannual report to the Board identifying the steps taken to accomplish the foregoing directions and the current state of the County's procurement data collection and management and shall place such report on the Board's agenda pursuant to Ordinance No. 14-65.

The Co-Prime Sponsors of the foregoing resolution are Commissioner Audrey M. Edmonson, Commissioner Barbara J. Jordan and Commissioner Dennis C. Moss. It was offered by Commissioner **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman	**aye**		
Esteban L. Bovo, Jr., Vice Chairman	**aye**		
Bruno A. Barreiro	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**absent**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**aye**
Juan C. Zapata	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of October, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MBV

Oren Rosenthal
Michael B. Valdes