

Memorandum



Date: August 27, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

R.A. Cuevas, Jr.
County Attorney 

Subject: Miami-Dade County DRAFT Disparity Study Response

For the Board of County Commissioners' (Board) information, attached is a copy of the letter being sent to Mason Tillman Associates, Ltd. (MTA) outlining the County's request for additional information regarding the DRAFT Disparity Study. A copy of the DRAFT Disparity Study was provided to the Board on July 2, 2014.

After consultation with the County Attorney's office, it has been determined that additional information, as outlined in the letter, is needed to address the Court's prior concerns with the County's race conscious programs. MTA is being asked to respond as to its ability to provide the additional information, the time necessary to provide the requested information, and the associated compensation beyond the current contract scope of services. Although the final report is due within 30 days of receipt of the County's response letter, the additional information may result in a request for time extension and/or additional funding for the contract.

We will provide information to the Board as it becomes available.

c: Honorable Harvey Ruvlin, Clerk, Circuit and County Courts
Office of the Mayor Senior Staff
Lester Sola, Director, Internal Services Department
Gary Hartfield, Director of Small Business Development, Internal Services Department

Attachment



Carlos A. Gimenez, Mayor

**Internal Services Department
Small Business Development**

111 NW 1 Street, 19th Floor
Miami, Florida 33128
T 305-375-3111 F 305-375-3160

August 25, 2014

Eleanor Ramsey, Ph.D.
Mason Tillman Associates, Ltd.
1999 Harrison Street, Suite 140
Oakland, CA 94612

Dear Dr. Ramsey,

Miami-Dade County's Small Business Development Division ("SBD") has reviewed the draft Disparity Study Report, dated June 2014 (the "Draft Report") submitted by Mason Tillman Associates, Ltd ("MTA"). The contract outlines eleven (11) criteria to be included in the report or incorporated in the findings analysis of the report. SBD requested further clarification in two (2) criteria areas, and MTA has responded and submitted additional tables to supplement the findings, which will be included in the final report.

As a result of the consultation with the County Attorney's office, it was determined that there are additional questions to be answered, additional tabulation of existing information, and additional analysis needed to be performed by MTA to: (i) support the Draft Report's recommendation to enact a new minority program; and (ii) support the County in any attempt to vacate the existing federal court permanent injunction of its race-based programs, and withstand constitutional muster of a new race-based program.

Please review the attached table and provide responses as to your ability to provide said additional information/analysis to support the findings and recommendations, the timetable to complete the additional data and documentation (whether completion will be within the allotted schedule in the contract or additional time is needed), and whether MTA contends that such requests require additional compensation as outside of the contract scope of services. In the event that MTA asserts that the additional information/analysis requires additional compensation, MTA shall: (i) provide a written justification of why MTA believes the services to be out of scope of the contract and (ii) an estimate of the additional cost to the County and (iii) the assumptions that MTA makes to provide the estimated time and dollar amount, including without limitation, the assumptions MTA makes with respect to the County's obligations to provide additional support services, or to furnish data or other information.

Please contact Veronica Clark, SBD Section Chief, should you have any questions or concerns at 305-375-4770.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary Hartfield". The signature is stylized and fluid.

Gary Hartfield, Director
Small Business Development Division

Delivering Excellence Every Day

**DISPARITY STUDY DRAFT REPORT
COUNTY ATTORNEY OBSERVATIONS/QUESTIONS**

Insufficiency of subcontracting data. Although research was conducted with respect to the number of subcontracts, data was lacking with respect to subcontracting award or payment amount. MTA stated that the various County project managers were relied upon, and should be used to estimate the percentage of dollars spent on the underlying contracts in the Draft Report from experience. Even if this can be done, how would such "additional information" impact/affect the validity of the study?

The Draft Report does not clearly eliminate size of firms and contract awards as determining factor. Although the Draft Report states that the contracts awarded to the top firms covered a range, the Draft Report is unclear as to the distribution of value among those contracts awarded to the top firms. Most significantly, the amount of the contracts in the higher dollar category (representing 93 instances) is missing, making it difficult to discount the possibility that it is the size of firms or contracts that accounts for disparity. How has the study accounted for the size of the firm or contract as a contributing factor to contract award as required by the federal courts previously reviewing County minority business practices?

The Draft Report does not clearly account for existing small business programs. MTA agreed that this was not done. Any final report must account for any effect the same may have on the identified disparity (i.e., stripping out awards based on CSBE, CBE, and SBE goals). In addition, the Draft Report fails to identify how the County's three (3) existing programs would work together with the recommended race conscious programs. Any final report should have specific race-based programmatic recommendations that incorporate or otherwise address the County's existing race-neutral programs.

Regression analysis does not clearly address other identified race neutral problems. It is unclear whether the regression analysis performed is sufficient to discount any or all of the potentially race neutral factors which may be the cause of the identified disparity. In addition, the Draft Report does not clearly identify why a narrowly tailored race neutral program addressing one or more of these factors would be inefficient to remedy the identified disparity.

Prime contractor and subcontractor availability analysis is unclear. MTA stated that it can also depict the tables and graphs in Chapter 6 by race/gender groups, instead of solely by Non-Minority and Minority females and males.¹ Please provide same and incorporate the corresponding analysis.

The Draft Report aggregates the data across County departments. MTA stated that the data can be disaggregated, and shown by department. Please provide same and incorporate the corresponding analysis if this yields different results.

The Draft Report does not address any impact to that analysis that may be caused by Hispanics being the majority population in Miami-Dade County. Although the *Croson* test never considered same, the County must be able to explain and defend any recommendation of a race-based program that benefits the local majority population.

¹ Footnote 8 (p. 1-12) states there are nine (9) dollar ranges, but only eight (8) dollar ranges appear. Please provide the figures for the missing \$500,000-\$749,999, and \$750,000-\$999,999 dollar ranges, which have been combined into the \$500,000-\$999,999 dollar range.