

CITY OF OAKLAND

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2019 JUN 13 PM 2:31

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Deborah Lusk-Barnes  
Director, Contracts and  
Compliance

**SUBJECT:** Oakland's Race and Gender Disparity  
Study Update and Request for  
Additional Funds.

**DATE:** June 4, 2019

City Administrator Approval

Date:

6/13/19

## RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution To Amend Resolution Number 86754 C.M.S. Authorizing The City Administrator To Increase The Original Contract Amount For Mason Tillman Associates (MTA) By Ninety-Nine Thousand One Hundred Sixty-One Dollars And Twenty-Five Cents (\$99,161.25) For A Total Contract Amount Not -To-Exceed Five Hundred Ninety Thousand Thirty-Six Dollars And Twenty-Five Cents (\$590,036.25) To Complete The Remainder Of Oakland's Race And Gender Disparity Study.

## EXECUTIVE SUMMARY

Adoption of the proposed resolution will authorize the City Administrator to increase the original contract amount for Mason Tillman Associates (MTA) by ninety-nine thousand one hundred sixty-one dollars and twenty-five cents (\$99,161.25) for a total not to exceed contract amount of five hundred ninety thousand thirty-six dollars and twenty-five cents (\$590,036.25) to complete the remainder of Oakland's Race and Gender Disparity Study. In reviewing the contractor's analysis of the data collected as a part of the Study, staff noted that the data set was incomplete, necessitating additional data collection and further analysis. The additional funding will allow the contractor to complete all outstanding tasks and provide deliverables per the agreement.

Item: \_\_\_\_\_  
Finance & Management Committee  
June 25, 2019

**BACKGROUND / LEGISLATIVE HISTORY**

On November 5, 1996, Proposition 209 amended the California Constitution to prohibit public institutions from discriminating based on race, sex, or ethnicity. The Proposition prohibits California public entities from continuing or implementing any race or gender-based preferential contracting programs. Subsequent rulings have further clarified the reach of Proposition 209 and further defined flexibilities for local government entities. The City wishes to access those flexibilities in the application of public policies designed to ensure a level playing field for the entire Oakland market including race specific goals if the City has a compelling governmental interest to do so, and if not, the City will seek strategies to enhance existing race neutral policies and programs to increase the level of participation of underutilized businesses.

In response to Proposition 209, in 1996, Oakland voters added Section 808(b) to the City Charter, obligating the City to conduct a "race and gender disparity evaluation to determine if the City has been an active or passive participant in actual, identifiable discrimination within its relevant market place." Moreover, "if such disparity evaluation evidences such discrimination the City Council, to remedy the discrimination, shall establish a narrowly tailored race and/or gender business participation program, as substantiated by the disparity evaluation for the bidding and awarding of purchases and contracts. Any such program shall continue only until the discrimination has been remedied. The City Administrator or an officer authorized by her shall require all awardees and bidders to comply with the established program."

In September 2005, the City of Oakland and Redevelopment Agency ("City") commissioned the Fairness in Purchasing and Contracting Disparity Study. Authorized by Resolution No. 79385 C.M.S., Mason Tillman Associates, Ltd., of Oakland, California was selected by the City Council to perform the study. The purpose of the City's Fairness in Purchasing and Contracting Disparity Study was to determine if the City was actively or passively discriminating against minority and woman owned business enterprises (M/WBEs). The study was mandated by Section 808 (b) of the City Charter, which required the City to conduct such a disparity study. The prime utilization analysis included four industries: construction, architecture and engineering, professional services, and goods and other services. The study covered procurement activities between July 1, 2002 and June 30, 2005.

**ANALYSIS AND POLICY ALTERNATIVES**

The City of Oakland actively promotes local Oakland business participation by applying several local business enhancement strategies including but not limited to (a) up to 12 additional preference points for professional services, (b) up to 5% bid discounts in construction contract bidding, (c) defining size of small business by taking 30% of the Small Business Administration (SBA) size standards, (d) creating a very small certification category to stimulate very small business participation, and most significantly, (e) City Council substantially increased the 20% Local/Small Business participation requirement to a 50% Local and Small Local Business

Enterprise (L/SLBE) requirement. The Division of Contracts & Compliance is regulated by federal, state and local legislative mandates as shown in Table 1.

**Table 1: SOCIAL EQUITY POLICIES/PROGRAMS**

<b>POLICIES/PROGRAMS</b>	<b>LEGISLATIVE AUTHORITY</b>
50% Local and Small Local Business Enterprise Program	Local (Ordinance #12389)
Disadvantaged Business Enterprise Program	Federal (49 CFR Part 23)
Prevailing Wage	State (Public Bid Law 1771-1776)
Equal Benefits	Local (Ordinance #12394)
Living Wage	Local (Ordinance #184318)
50% Local Employment Program	Local (Ordinance #12389)
15% Oakland Apprenticeship Program	Local (Ordinance #12389)
Purchasing Ordinance	Local (OMC Title 2 Chapter 2.04)
Community Jobs Oversight Commission (Oakland Army Base project)	Local (Ordinance # 13140)

The City's Disparity Study process is divided into six phases:

1. Study Kickoff;
2. Community Engagement;
3. Prime & Subcontractor data collection of all disbursements;
4. Data Cleaning (duplications, multi-year spending, multiple sources of data, etc.);
5. Data Analysis
6. Reporting of findings and recommendations.

Phases 3, 4, and 5, are the most critically important, the most time intensive, and detailed oriented.

During phase 3 of the study, Oakland Public Works (OPW) staff discovered that the original list of projects used as the basis for the utilization analysis did not include all OPW projects awarded within the 5-year study period. In response to the discovery, on January 3, 2019, the Finance Department extracted another list of projects from the City's financial system which included projects not previously provided. That data was provided to the contractor, Mason Tillman Associates (MTA).

On January 6, 2019, MTA submitted the following chart (Table 2), showing the comparison of the September/October 2017 and January 2019 sets of data:

**Table 2: COMPARISON OF ORIGINAL DATASET WITH JANUARY 2019 DATASET**

Contents of Data Set	September/October 2017	January 2019	Difference
Total Records	153,259	219,923	66,664
Unique PO Numbers	39,484	69,915	30,431
Unique Prime Names	2,208	3,196	988
Total Encumbrances	\$694,521,927	\$1,223,013,411	\$528,491,484

As shown in Table 2, the total number of records to be included in the analysis for the Disparity Study increased by 30%. The additional work to make corrective adjustments to include the new data in the analysis was estimated to cost approximately \$99,161.25. This estimated additional cost is based upon hourly rates provided in the original proposal. **Attachment A** reflects the breakdown of Tasks, Deliverables, Amended End Date, Original Cost, and Additional Cost.

The reasons for additional funding are outlined in Table 3, which represents each remaining task and associated deliverables where re-evaluations, revisions or updates are necessary.

- Task and Deliverables #1 – Utilization Analysis;
- Task and Deliverables #2 – Geographic Market Area;
- Task and Deliverables #3 – Disparity Analysis, required cleaning, verifying and analysis using the new additional data summarized in Table 1.

Tasks and Deliverables 4,6, & 7 do not require additional costs or changes, as they are final elements of the study that are pending.

**Table 3: Outstanding Tasks and Deliverables**

	Tasks	Deliverable	Amended End Date	COST	
				Original	Additional Work
1	<b>Utilization Analysis</b>	Data Verification Report	3/22/2019	\$ 13,575.00	\$ 9,502.50
		Prime Utilization Tables	5/21/2019	\$ 13,575.00	\$ 9,502.50
		Prime Utilization Chapter	5/26/2019	\$ 14,625.00	\$ 5,850.00
		Coordinate Subcontract Data Collection	6/30/2019	\$ 22,625.00	\$ 10,181.25
		Subcontract Utilization Tables	7/15/2019	\$ 9,050.00	\$ 6,335.00
		Subcontract Utilization Chapter	7/22/2019	\$ 9,050.00	\$ 3,620.00
2	<b>Geographic Market Area</b>	Market Area Chapter	5/28/2019	\$ 26,450.00	\$ 7,935.00
3	<b>Disparity Analysis</b>	Prime Contractor Disparity Tables	6/27/2019	\$ 17,962.50	\$ 12,573.75
		Prime Contractor Disparity Chapter	7/3/2019	\$ 17,962.50	\$ 12,573.75
		Subcontractor Disparity Tables	7/18/2019	\$ 17,962.50	\$ 12,573.75
		Subcontractor Disparity Chapter	7/24/2019	\$ 10,962.50	\$ 7,673.75
4	<b>Recommendations</b>	Race and Gender-Neutral	9/7/2019	\$ 27,050.00	No additional Cost
		Race and Gender-Specific	9/18/2019	\$ 27,050.00	No additional Cost
5	<b>Client Meetings</b>	To Be Determined	6/5/2019	\$ 2,800.00	\$ 840.00
6	<b>Draft Report</b>	Draft Report	9/23/2019	\$ 8,300.00	No additional Cost
7	<b>Final Report</b>	Final Report & Oral Presentations	9/28/2019	\$ 12,350.00	No additional Cost
			<b>Total Amended Cost</b>		<b>\$99,165.25</b>

Item: \_\_\_\_\_

Finance and Management Committee

June 25, 2019

Approval of the resolution will provide funds needed to permit the contractor to move forward in performing the additional tasks required to complete the study as outlined in Table 3. If the resolution is not approved the contractor will stop work on the project. Moreover; the City would not be in compliance with the City Charter's mandate for a Disparity Study.

### **FISCAL IMPACT**

Staff is requesting additional funds in the amount of \$99,161.25 for the amendment to the original contract. The existing contract was paid for out of the General-Purpose Fund (1010), Contract Compliance Organization (02611), Disparity Study Project (1001207), Disparity Study Task (A468576), Disparity Study Award (21407). The task(s) and deliverable(s) for the analysis using the January 2019 data as noted are outlined above in detail.

Funds to cover the cost of the amendment would come from operating and maintenance (O&M) funds in the FY2019-20 budget.

### **PUBLIC OUTREACH / INTEREST**

As a part of the project, the contractor has conducted business outreach, market analyses and surveys to collect anecdotal data.

### **COORDINATION**

Staff and the contractor worked with City departments that engage in procurement, especially large purchasers such as the Department of Public Works, Finance and Management, and the City Clerk.

**SUSTAINABLE OPPORTUNITIES**

**Economic:** The completion of this Disparity Study will increase contracting and procurement opportunities for underutilized Minority and Women owned Business Enterprises.

**Environmental:** There are no environmental impacts.


**Social Equity:** The completion of this Disparity Study will serve to adjust any disparities and address implicit and explicit biases identified in the City's contracting and procurement process.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council adopt a Resolution to Amend Resolution Number 86754 C.M.S. Authorizing The City Administrator To Increase The Original Contract Amount For Mason Tillman Associates (MTA) By Ninety-Nine Thousand One Hundred Sixty-One Dollars And Twenty-Five Cents (\$99,161.25) For A Total Contract Amount Not -To-Exceed Five Hundred Ninety Thousand Thirty-Six Dollars And Twenty-Five Cents (\$590,036.25) To Complete The Remainder Of Oakland's Race And Gender Disparity Study.

For questions regarding this report, please contact Deborah Lusk-Barnes, Director, Contracts and Compliance at (510) 238-6270, or [dbarnes@oaklandca.gov](mailto:dbarnes@oaklandca.gov).

Respectfully submitted,

  
Deborah Lusk-Barnes, Director  
Contracts and Compliance Division  
City Administrator's Office

Reviewed by:

M. Mayberry, Administrative Services Manager

Prepared by:

R. San Miguel, Sr. Contract Compliance Officer

Attachments (1): A – Amendment Cost Analysis

**CITY OF OAKLAND DISPARITY STUDY**  
**Remaining Disparity Study Tasks**

<b>Number</b>	<b>Task</b>	<b>Deliverable</b>	<b>Amended End Date</b>	<b>Original Cost</b>	<b>Additional Cost</b>
4	<b>Utilization Analysis</b>	Data Verification Report	3/22/2019	\$ 13,575.00	\$ 9,502.50
		Prime Utilization Tables	5/21/2019	\$ 13,575.00	\$ 9,502.50
		Prime Utilization Chapter	5/26/2019	\$ 14,625.00	\$ 5,850.00
		Coordinate Subcontract Data Collection	6/30/2019	\$ 22,625.00	\$ 10,181.25
		Subcontract Utilization Tables	7/15/2019	\$ 9,050.00	\$ 6,335.00
		Subcontract Utilization Chapter	7/22/2019	\$ 9,050.00	\$ 3,620.00
5	<b>Geographic Market Area</b>	Market Area Chapter	5/28/2019	\$ 26,450.00	\$ 7,935.00
7	<b>Disparity Analysis</b>	Prime Contractor Disparity Tables	6/27/2019	\$ 17,962.50	\$ 12,573.75
		Prime Contractor Disparity Chapter	7/3/2019	\$ 17,962.50	\$ 12,573.75
		Subcontractor Disparity Tables	7/18/2019	\$ 17,962.50	\$ 12,573.75
		Subcontractor Disparity Chapter	7/24/2019	\$ 10,962.50	\$ 7,673.75
9	<b>Recommendations</b>	Race and Gender-Neutral	9/7/2019	\$ 27,050.00	\$ -
		Race and Gender-Specific	9/18/2019	\$ 27,050.00	\$ -
12	<b>Client Meetings</b>	To Be Determined	6/5/2019	\$ 2,800.00	\$ 840.00
13	<b>Draft Report</b>	Draft Report	9/23/2019	\$ 8,300.00	\$ -
14	<b>Final Report</b>	Final Report and Oral Presentations	9/28/2019	\$ 12,350.00	\$ -
<b>TOTAL</b>					<b>\$ 99,161.25</b>



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2019 JUN 13 PM 2:31

# OAKLAND CITY COUNCIL

Approved as to Form and Legality

**DRAFT**

City Attorney

RESOLUTION No ----- C.M.S.  
Introduced by Councilmember \_\_\_\_\_

**A RESOLUTION TO AMEND RESOLUTION NUMBER 86754 C.M.S. AUTHORIZING THE CITY ADMINISTRATOR TO INCREASE THE ORIGINAL CONTRACT AMOUNT FOR MASON TILLMAN ASSOCIATES (MTA) BY NINETY-NINE THOUSAND ONE HUNDRED SIXTY-ONE DOLLARS AND TWENTY-FIVE CENTS (\$99,161.25) FOR A TOTAL CONTRACT AMOUNT NOT -TO-EXCEED FIVE HUNDRED NINETY THOUSAND THIRTY-SIX DOLLARS AND TWENTY-FIVE CENTS (\$590,036.25) TO COMPLETE THE REMAINDER OF OAKLAND'S RACE AND GENDER DISPARITY STUDY**

**WHEREAS**, the City of Oakland Charter was amended in 1996 adding Section 808(b) which requires the City to conduct "a race and gender disparity evaluation to determine if the City has been an active or passive participant in actual, identifiable discrimination within ... " Oakland's marketplace; and

**WHEREAS**, the City seeks to ensure equal opportunity in the marketplace and to ensure that as market participants, the City and Agency are not actively or passively discriminating against minority-owned business enterprises (MBE) or women-owned business enterprises (WBE) which is consistent with the mandate of City Charter Section 808(b); and

**WHEREAS**, a detailed request for proposals (RFP) was prepared and mailed to firms across the country and a solicitation advertisement was also placed in the East Bay Times/Oakland Tribune, El Mondo, San Francisco Chronicle, Oakland Post; and the City of Oakland's iSupplier.

**WHEREAS**, interested firms were invited to participate in a voluntary pre-proposal conference the purpose of which was to explain the City's and Agency's social equity policies and answer technical questions the consultants had about the proposal; and

**WHEREAS**, two firms submitted proposals and one of those firms (Mason Tillman Associates, LTD) met or exceeded the City's minimum 50% local and small local business participation requirement and the other (Miller3 Consulting, Inc.) did not; and

**WHEREAS**, Mason Tillman & Associates was ranked as number one by the independent consultant (J. Rita McNeil Danish), and Miller3 Consulting, Inc. was ranked second; and

**WHEREAS**, During phase 3 of the study, Oakland Public Works (OPW) staff discovered that the initial dataset did not include all OPW projects awarded within the 5-year study period. In response to the discovery, the Finance Department extracted another dataset from Oracle for the missing projects. On January 3, 2019, the Finance Department provided Mason Tillman Associates with a comprehensive final dataset that included all prime contracts that were not previously provided, and

**WHEREAS**, it was necessary to make corrective adjustments and extend the study timelines. The time delay does not minimize the importance of the anticipated findings that are sure to impact Oakland's race and gender equity procurement policies and inform policy developments such as Community Workforce Agreements for construction. The findings and recommendations presented will assist Council in the effort to correct past inequities and to level the playing field moving forward. Moreover, the study may support race-based policies that improve the lives of populations that are unemployed, underrepresented, marginalized and excluded from opportunities to generate income, and

**WHEREAS**, Additional funds in the amount of \$99,161.25 is needed to cover the cost of the amendment to the original contract. The existing contract was paid for out of the General-Purpose Fund (1010), Contract Compliance Organization (02611), Disparity Study Project (1001207), Disparity Study Task (A468576), Disparity Study Award (21407). The additional funds will be paid for out of budgeted operations and maintenance in the FY 2019 – 20 found in the General-Purpose Fund (1010), Contract Compliance Organization (02611), General Project (1000002) Contract Compliance Administration Task (IP70); and

**WHEREAS**, the City Council finds and determines that the services provided under the agreement authorized hereunder are of a professional and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive civil service; now, therefore, be it

**RESOLVED**, the City Council hereby authorizes the City Administrator to increase the dollar amount of the contract with Mason Tillman Ltd. by ninety-nine thousand one hundred sixty-one dollars and twenty-five cents (\$99,161.25) in an amount not-to-exceed five hundred ninety thousand thirty-six dollars and twenty-five cents (\$590,036.25) to complete the Race and Gender Disparity Study for the City of Oakland; and, be it

**FURTHER RESOLVED**, That the contract shall be reviewed and approved by the City Attorney's Office for form and legality and a copy placed on file in the office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES – FORTUNATO BAS, GALLO, GIBSON MCELHANEY, REID, TAYLOR, THAO, KALB, AND PRESIDENT KAPLAN

NOES-

ABSEN

T-

ABSTENTION -

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the  
Council of the City of  
Oakland, California