



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Deborah Barnes
Director Workplace and
Employment Standards

SUBJECT: Release of the Draft Disparity Study
and Next Steps

DATE: December 9, 2020

City Administrator Approval 

Date: Dec 11, 2020

RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report On The Draft Race And Gender Disparity Study Prepared by Mason Tillman.

The City Administrator will bring a report with recommendations to the City Council in the future to approve a contract to supplement and update the draft study.

EXECUTIVE SUMMARY

The purpose of this informational report is to provide the Council and the public a copy of the draft disparity study and to advise the Council of the next steps the City Administrator plans to take regarding the draft study. Staff will return to Council with a report and resolution authorizing the City Administrator to execute a contract to supplement and update the study.

The City of Oakland retained Mason Tillman Associates as a consultant to conduct and draft a Race and Gender Disparity Study. The purpose of the study is to (1) comply with City Charter Section 808 (b)'s, requirement that the City conduct such a disparity study; (2) determine whether there were disparities between the availability and utilization of minority and women owned businesses in four industries: construction, architecture and engineering, professional services, and goods and other services; (3) make recommendations regarding the City's options based on an analysis of market and utilization data and the applicable legal standards under federal and state law to address such disparities.

The study covered procurement activities between July 1, 2011 to June 30, 2017. As noted previously, the City Administrator's next steps are to supplement and update the draft study and analysis.

The African American business community asked the Mayor and Council to release the draft study especially considering concerns for re-prioritizing policies.

BACKGROUND / LEGISLATIVE HISTORY

The City of Oakland has taken strategic steps to operationalize race-based strategies across all departments in all aspects of the Oakland governmental structure including but not limited to procurement and contracting. Additionally, as a strong addition to this effort, Council approved the creation of the Department of Race and Equity.

On November 5, 1996, Proposition 209 amended the California Constitution to prohibit public institutions from discriminating based on race, sex, or ethnicity. The Proposition prohibited California public entities from continuing or implementing any race or gender-based preferential contracting programs with certain very limited exceptions. Subsequent rulings have further clarified the reach of Proposition 209 and further defined flexibilities for local government entities. The City wished to access those flexibilities in the application of public policies designed to ensure a level playing field for the entire Oakland market, including race and gender conscious goals. In addition, the City is committed to enhancing existing race and gender-neutral policies and programs to increase the level of participation of underutilized businesses.

In response to Proposition 209, 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 authorized officer shall require all awardees and bidders to comply with the established program,"

Prior to 2016 when the City retained Mason Tillman Associates to prepare the current draft study, the Council and Redevelopment Agency commissioned Mason Tillman Associates, Ltd. to conduct the "Fairness in Purchasing and Contracting Disparity Study" in September 2005.

ANALYSIS AND POLICY ALTERNATIVES

A disparity study must document the City's utilization of available minority and woman-owned businesses as prime contractors and subcontractors, with the primary objective to present the utilization by race, gender, and industry. The draft study reviewed the prime contracts and subcontracts awarded by the City of Oakland during the study period July 1, 2011, to June 30, 2017 study period.

The consultant's draft study has recommended both a) Race and Gender-Conscious Recommendations; and b) Race and Gender-Neutral Recommendations.

As staff explained earlier in this report, the Administration is seeking additional work to supplement and update the draft study. In light of the failure of Proposition 16 on the recent November ballot, technology improvements in the City's ability to collect contracting data and

other issues, staff believes the additional work is warranted. The Administration will soon be entering into a contract for this additional work, for which it will seek City Council approval in the new year.

FISCAL IMPACT

Fiscal impacts will be determined based on which of those recommendations the City chooses for implementation.

PUBLIC OUTREACH / INTEREST

The consultant conducted and included the collection of anecdotal evidence for the draft study, including multiple outreach workshops and multiple confidential interviews with firms across the city.

COORDINATION

The following city departments and agencies participated in the process of providing data and information for the draft study, and input for the next steps including: Department of Finance (Purchasing Services); Community & Economic Development; Public Works Agency; Office of the City Attorney.

SUSTAINABLE OPPORTUNITIES

Economic: The study is necessary to provide a basis under federal and state law to implement race and gender conscious programs or initiatives to address disparities. Such programs and initiatives will increase financial stability of minority and women owned businesses.

Environmental: The draft Disparity Study has no direct impact on environmental concerns.

Race & Equity: Implementation of race and gender conscious programs and initiatives will serve to bring parity and equity to the City's contracting processes, allowing greater participation by minority owned and women owned businesses.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Receive An Informational Report On The Draft Race And Gender Disparity Study Prepared by Mason Tillman.

The City Administrator will return to Council with an action item approving the contract to update and supplement the draft study.

Should you have questions, please feel to contact Deborah Barnes, Director for the Department of Workplace and Employment Standards at 510-238-6270.

Respectfully submitted,

Deborah Luak-Barnes

DEBORAH BARNES
Director, Department of Workplace and
Employment Standards

Reviewed by:
Jason Mitchell, Assistant City Administrator

Attachment A, Draft Race and Gender Disparity Study, Dated September 2020 and Executive Study

