



AGENDA REPORT

TO: The Honorable Members of the
Oakland City Council

FROM: Edward D. Reiskin
City Administrator

SUBJECT: Disparity Study

DATE: February 15, 2022

RECOMMENDATION

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator To Award A Professional Services Contract To Mason Tillman Associates An Amount Not To Exceed Six Hundred Thousand Dollars (\$600,000) To Study The City's Professional Services, Procurement and Construction Contracting Activities For The Period Of July 1, 2016 Through June 30, 2021 In And Waiving The Competitive Request For Proposal/Qualifications (RFP/Q) Process And Local And Small Local Business Enterprise (L/SLBE) Program Requirements.

EXECUTIVE SUMMARY

The City Administrator recommends that retaining Mason Tillman Associates (MTA) to update the City's disparity study is the most effective and efficient means to complete the City's disparity study. MTA has significant expertise in the field of disparity studies and is familiar with Oakland's contracting programs and procedures and Oakland's business market. In order to support policies to address race and gender disparities that exist in the City's procurement processes and outcomes, the City wishes to undertake a formal disparity study, as required by Section 808(b) of the City Charter. The disparity study would form the basis for future City of Oakland professional services, procurement and construction contracting policies, programs and procedures. Upon conclusion of the study, staff will present the findings and recommendations to the City Council to inform the consideration of neutral and/or race and gender-based contracting policy, program and procedural changes the study indicates are in order.

BACKGROUND / LEGISLATIVE HISTORY

As stated in the Oakland Municipal Code Chapter 2.29, "the City of Oakland will intentionally integrate, on a Citywide basis, the principle of "fair and just" in all the City does in order to achieve equitable opportunities for all people and communities." Funds that the City expends via contracts and other mechanisms represent a significant opportunity for implantation of this direction.=.

On November 5, 1996, Proposition 209 passed amending the California Constitution to prohibit governmental entities from discriminating based on race, sex, or ethnicity. Although the

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Proposition did not affect federal race and gender-based contracting policies and programs, it effectively made it extremely difficult for California public agencies to continue or implement race or gender-based preferential contracting programs.

In response, Oakland voters added Section 808(b) to the City Charter, 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 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."

Disparity studies require extensive collection and detailed review of agency contracting data, in-depth review of agency procedures and practices and interviews with multiple stakeholders and market-area businesses, among other things. On December 15, 2020, the City Administrator provided an [informational report](#) to the City Council, along with a draft disparity study completed by Mason Tillman Associates (MTA). The purpose of the informational report was to provide the Council and the public a copy of the draft disparity study and to advise the Council of preliminary data on the City's contracting impacts on minority and women-owned businesses and recommendations for neutral (i.e., non-race/gender based) program changes that could be made in the short term. The report indicated staff would return to Council with recommendations to bolster and complete the study, which is the purpose of the item before the Council now.

ANALYSIS AND POLICY ALTERNATIVES

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 this new scope of work to be performed under this agreement will best position the City to strengthen its policies, programs and procedures to address any contracting disparities indicated in the study.

The scope of the disparity study includes a review and analysis of the City's social justice policies and programs, City ordinances, contracting procedures and procurement practices of all City departments, within the following contracting/purchasing areas:

1. Construction Services (i.e., renovation of existing or building of new public structures, repair of streets and roads);
2. Commodities (i.e., unit priced items, products, equipment and supplies);
3. Professional Services (i.e., consulting, architecture, engineering); and

FISCAL IMPACT

Funding for this contract in the amount of \$350,000 is available in Fund 5671 Project 1004290 from penalties collected by the City from contractors who failed to comply with the City's

Construction Jobs Policy for the Oakland Army Base Project, which was appropriated by the City Council in 2020. Additional funding needs are expected to be identified via external grants.

PUBLIC OUTREACH / INTEREST

Elements of the scope of work will require engagement with various stakeholders, including those who do business with the City, those who have been unsuccessful in doing business with the City, and those who have chosen not to. Stakeholder input is an essential element of a complete disparity study process.

COORDINATION

This study will require extensive coordination with numerous City departments, including Workplace & Employment Standards, Finance, Public Works, Transportation, Housing & Community Development, Economic & Workforce Development, and Human Services, with support and advice from the Office of the City Attorney and the Department of Race and Equity.

PAST PERFORMANCE, EVALUATION AND FOLLOW-UP

MTA has conducted similar work for the City of Oakland and numerous other public agencies nationwide and is considered a national leader and expert in this field.

SUSTAINABLE OPPORTUNITIES

Economic: The City's volume of procurement activity provides significant opportunity for advancing City goals and supporting local and small businesses, particularly from communities that have been historically disadvantaged.

Environmental: There are no specific environmental opportunities associated with this work.

Race & Equity: Equity is the main driver of this effort. The City Charter requires this work "to determine if the City has been an active or passive participant in actual, identifiable discrimination within its relevant market place." The Charter goes on to say that should such discrimination be found, the City should take action to address it. This study will allow for the analysis that will support any such action.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator To Execute A Professional Services Agreement With Mason Tillman Associates To Conduct A Disparity Study For The Period Of July 1, 2016 Through June 30, 2021 In An Amount Not To Exceed Six Hundred Thousand Dollars (\$600,000) And Waive The Competitive

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Request For Proposal/Qualifications (RFP/Q) Process, The Advertising And Bidding Requirements, And Local And Small Local Business Enterprise (L/SLBE) Program Provisions.

For questions regarding this report, please contact Ed Reiskin, City Administrator.

Respectfully submitted,



Edward D. Reiskin
City Administrator

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