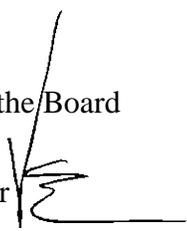


Leon County Board of County Commissioners

Budget Workshop Item #9

June 23, 2015

To: Honorable Chairman and Members of the Board

From: Vincent S. Long, County Administrator 

Title: Consideration of Conducting a Disparity Study Update for the Minority, Women, and Small Business Enterprise (MWSBE) Program

County Administrator Review and Approval:	Vincent S. Long, County Administrator
Department/ Division Review:	Alan Rosenzweig, Deputy County Administrator Ken Morris, Assistant County Administrator Scott Ross, Director, Office of Financial Stewardship
Lead Staff/ Project Team:	Cristina Paredes, Director of the Office of Economic Vitality Shanea Wilks, Director, Minority, Women, and Small Business Enterprise Division

Fiscal Impact:

This item has been budgeted within the FY 2016 Tentative Budget in the amount of \$250,000.

Staff Recommendation:

Option #1: Approve \$250,000 for a quantitative disparity study for the MWSBE Program.

Option #2: Direct staff to issue a Request for Proposals to conduct the quantitative disparity study.

Report and Discussion

Background:

The 2009 Disparity Study Update, prepared by MGT of America (the “MGT Study”), was accepted by the Board during its October 27, 2009 meeting, subsequent to its October 13, 2009 workshop regarding the draft report (Attachment #1). Disparities studies are performed to serve as the evidentiary basis for continued race/gender based programs. The overall objective for the disparity study update in 2009 was to determine if data supported a “compelling interest” for the County to maintain a program to provide minority- and woman-owned business enterprises greater opportunities to participate in County procurement activities as goods and services providers.

To meet the requirements of the U.S. Supreme Court’s ruling in *City of Richmond v. J.A. Croson Co.*; narrow tailoring under the *Croson* standard requires that remedial goals be in line with measure availability. The Supreme Court in *Croson* recognized statistical measures of disparity that compared the number of qualified and available MWBEs with the rate of municipal construction dollars actually awarded to MWBEs in order to demonstrate disparity. MWBE programs must be limited in their geographical scope to the boundaries of the enacting government’s market place. In order for the County to comply with the U.S. Supreme Court’s ruling, the County must demonstrate a compelling governmental interest for minority and gender-based goals, which would include evidence of prior discrimination in the field/industry, and the goals must be narrowly tailored to remedy the effects of the prior discrimination.

The MGT Study states that, generally, utilization ratios of “80 percent or higher – indicating close to full participation – are not significant”, noting the court referenced the Equal Employment Opportunity Commission’s (EEOC) “80 percent rule”, which establishes this rule as the threshold for determining a prima facie (at first look) case of discrimination. The MGT Study further noted there is no standard measurement to evaluate levels of utilization within a procurement context; however, in the context of employment discrimination, an employment disparity ratio below 80 percent indicates a “substantial disparity.”

The 2009 MGT Disparity Study Update identified the number of available MWBEs within the market area, and categorized these firms by business category, race, and gender. Businesses classified as MWBEs were firms that were at least 51% owned and controlled by members of one of the following race/gender groups, whether or not they were county-certified MWBEs (African Americans, Hispanic Americans, Asian Americans, Native Americans, and Nonminority Women).

Based on statistical disparities between the percentage of funds expended with MWBEs in the market area and the number of available MWBEs, the MGT Study provided evidence to support a narrowly tailored program to promote the County’s utilization of MWBEs. The 2009 Disparity Study Update included proposed MWBE aspirational targets, which the Board incorporated in Policy No. 96-1, “Purchasing and Minority/Women Business Enterprise Policy” (Attachment #2).

This budget discussion item is essential to the Strategic Initiatives that the Board approved during its January 27, 2015 meeting, as a part of 2012 – 2016 Strategic Plan:

- **(EC2)** - Support business expansion and job creation, including: the implementation of the Leon County 2012 Job Creation Action Plan, to include evaluating the small business credit program. (2012)
- **(EC7)** - Promote the local economy by protecting jobs and identifying local purchasing, contracting and hiring opportunities. (2013)
- **(G1)** - Sustain a culture of transparency, accessibility, accountability, civility, and the highest standards of public service. (rev. 2013)
- **(G2)** – Sustain a culture of performance, and deliver effective efficient services that exceed expectations and demonstrate value.
- **(G3)** – Sustain a culture that respects, engages, and empowers citizens in important decisions facing the community. (2012)
- **(G5)** – Exercise responsible stewardship of County resources, sound financial management, and ensure that the provision of services and community enhancements are done in a fair and equitable manner.

Analysis:

This budget discussion item seeks Board direction on the future of the Minority, Women, and Small Business Enterprise Programs. During the March 10, 2015 meeting, staff presented the Board with a status report of Minority and Women-Owned Business Enterprise Expenditures. Within the report, staff indicated a budget discussion item would be brought forth during the development of the FY 2016 budget. In addition, the Board would be provided with options relative to a new disparity study update to the one presented in 2009 by MGT of America and County staff.

The remainder of the analysis section addresses the following:

- An overview of the County's MWSBE Program
- Disparity Studies
- Small Business Enterprise Program

Leon County's Minority, Women, and Small Business Enterprise Program

Currently, Leon County operates the Minority and Women-Owned Business Enterprise (MWBE) and Small Business Enterprise (SBE) Programs through the MWSBE Division. Both programs have certification processes which, if successfully completed, allow for certified vendors to participate within the County's procurement opportunities. Both are currently administered based upon the 2009 MGT Disparity Study, which is the latest study to review the MWSBE Program.

Minority/Women Business Enterprise (MWBE) Program

The County adopted an MWBE policy in 1987. The program has been successful in providing opportunities for minority/women owned businesses to secure business with the County that may not have occurred without the program. Through certification, training and outreach, the program continues to have a positive impact on the targeted community.

Leon County's MWBE Program is a race/gender specific program whereby utilization of certified minority and women owned businesses is achieved through the identification of procurement opportunities for MWBEs within Leon County projects. The MWBE Program's

overall objective is to promote parity of MWBE firms in Leon County procurement activities through the utilization of aspirational targets and other means.

While co-located with the Purchasing Division, the MWSBE Division operates separately based upon the recommendation of the 2000 Disparity Study, an earlier study conducted by MGT of America. The Study also commended the County for elevating the MWBE Program to division level to improve the internal and external perception of the County's commitment to the Program's success; and for the co-location of the Divisions facilitating greater interaction and creating synergies of operations. The MWSBE Program is composed of two, separate program areas:

1. The MWBE component focuses on firms owned and operated by minorities and women; and,
2. The SBE component focuses on businesses that meet the small business criteria in terms of their size and net worth, regardless of the owner's gender or ethnicity.

In addition, the County and the City of Tallahassee share an Interlocal Agreement which encourages full participation by local MWBE's in the County's procurement processes and fosters more economic development throughout the community. The Agreement enables the County and the City to streamline the certification process for the MWBE applicants in the local market area, which consists of: Leon, Gadsden, Jefferson, and Wakulla counties. Leon County and the City MWBE Offices act as a one-stop shop, thus eliminating the need for multiple certifications. In addition, both jurisdictions mutually recognize the certifications of the other for the purposes of procurement opportunities. The current Agreement was approved by the Board on February 9, 2010.

Leon County's Small Business Enterprise (SBE) Program

During June 2006, the Board approved the establishment of the Small Business Enterprise (SBE) Program. The County currently operates a limited SBE Program. The purpose of the SBE Program is foster growth in Leon County's economy by affording small businesses an opportunity to gain experience, knowledge, and training to compete and secure contracts with Leon County. Unlike the MWBE Program, the SBE Program is race and gender neutral. The SBE Program is structured to reserve procurement opportunities for exclusive competition among SBE's when at least three SBE's are certified in the relevant procurement category and are available to compete for the procurement opportunity. According to County policy, the projects that are released through the SBE program have an estimated contract cost of less than \$100,000 (which varies across the business categories). Attachment #3 lists the criteria for procurement opportunities for SBE projects. A project cannot be recommended for the SBE Program if these criteria are not met. These requirements allow local certified businesses an opportunity to compete with companies of similar size, capacity, and net worth.

Policy Coordination with the City of Tallahassee's SBE Policy

County MWSBE staff and City of Tallahassee staff meet periodically to discuss policy changes and potential impacts to programs administered by both jurisdictions based upon the current executed Interlocal Agreement. The City of Tallahassee made several policy changes in January 2014; however, not all changes have been implemented to date, including a new City SBE Program. County and City staff continue to meet to ensure, as much as possible, continuity and

consistency exists between the two programs. These meetings will include discussion relative to the City's SBE Program, its implementation, and inclusion within the Interlocal Agreement.

Disparity Study Update for the MWSBE Program

As previously stated, the County must demonstrate a compelling governmental interest for minority and gender-based goals in order to comply with the U.S. Supreme Court's ruling in *City of Richmond v. J.A. Croson*. Disparities studies are performed to serve as the evidentiary basis for continued race/gender based programs and the goals must be narrowly tailored to remedy the effects of the prior discrimination. Currently, the County MWSBE program operates under the recommendations made in the MGT October 15, 2009 Disparity Study Update, which includes statistical analysis of the differences between expenditures with MWBEs (utilization) and the proportionate share of qualified contractors within the market area which are qualified, willing and able to perform a particular service for the County and provides the legal basis for the program. Following *Richmond v. Croson* and a similar Supreme Court ruling that applied to federal agencies in *Adarand v. Peña*, **the U.S. Commission on Civil Rights issued a report in May 2006 (Disparity Studies as Evidence of Discrimination) recommending that localities discard disparity studies conducted using data that is more than five years old, as the "results are too outdated to justify preferential awards given today." This guidance is utilized to withstand the legal challenges that may arise due to race/gender based programs that must satisfy strict scrutiny tests by showing a compelling governmental interest for maintaining such programs.**

The findings and recommendations by the U.S. Commission on Civil Rights does not legally compel the County to perform a disparity study update but it will ensure that the County's MWBE program is based on timely and legally sufficient market information. An updated study may also serve as a deterrent to unnecessary procurement litigation. In order to continue the MWBE program and minimize the threat of litigation, the Board may wish to conduct a quantitative disparity study that focuses on the factual data analysis associated with the program which is the basis for determining the aspirational targets by industry. The following narrative details the components of a quantitative disparity study recommended for the continuance of the MWBE Program.

Quantitative Disparity Study

A quantitative disparity study is statistically focused in nature and designed to establish or maintain the legal validity of an MWBE program. In September 2008, the Board directed staff to engage MGT of America to prepare an update to the County's aspirational targets related to minority and women-owned businesses. The overall objective of the disparity study was to determine if data supports a "compelling interest" for the County to maintain a program to provide minority and women-owned business enterprises greater opportunities to participate in

County procurement activities as goods and services providers. The study was based upon MGT's review of the County's contractual and procurement data for the period of October 1, 2004 through September 30, 2008. The final report was completed and presented to the Board on October 15, 2009 and is referred to as the 2009 Disparity Study Update.

The 2009 Disparity Study Update focused primarily on statistical analysis (utilization and availability, disparity, and private sector utilization and disparity analyses); and, included a legal and programmatic review. It was conducted for a total cost of \$110,000. The current estimated costs associated with a quantitative disparity study ranges from \$250,000 to \$300,000.

Considerations for Next Steps:

As mentioned previously, a 2006 U.S. Commission on Civil Rights report recommends that localities discard disparity studies conducted using data that is more than five years old. Based upon this recommendation and the concern for unnecessary litigation, the Board may wish to consider moving forward with funding of a quantitative disparity study update. The tentative FY 2016 budget includes \$250,000 toward conducting a disparity study. A quantitative disparity study update is estimated to cost between \$250,000 and \$300,000.

Small Business Enterprise (SBE) Program

Another option for the Board's consideration is transitioning from the MWSBE program to an SBE program. As mentioned previously, the purpose of the County's SBE program is to foster growth in Leon County's economy by affording small businesses an opportunity to gain experience, knowledge, and training to compete and secure contracts. Unlike the MWBE Program, the SBE Program is race and gender neutral so it is not required to be supported by a disparity study. SBE programs offered by state and local governments focus on small businesses interested in maximizing their procurement opportunities with those governmental entities.

Previously, the Board contemplated transitioning to an SBE Program during the development of the FY 2012 budget (Attachment #4). The Board was presented with a report that contained information relative to the MWSBE Program, the differences between MWSBE goals and SBE goals, a listing of the few jurisdictions in the state that continue to use race and gender specific goals, and recommended policy revisions if the Board wished to transition to an SBE Program. While most urbanized Florida counties and cities offer race and gender neutral small business programs, very few jurisdictions have continued to utilize gender specific programs like the County's MWBE Program. Below is a listing of Florida local governments that still have race and gender specific programs similar to Leon County:

- Hillsborough County
- City of Hollywood
- City of Tallahassee
- City of Tampa
- Orange County
- Osceola County
- City of Orlando
- Polk County
- City of Jacksonville

Ultimately, the Board accepted staff's report as presented; and, directed staff to continue to review the SBE Program and its policies to increase small business participation. Should the Board choose to consider transitioning to an SBE-only program; staff will bring forth an agenda item analyzing components and best practices of SBE programs across the state as well as revisions to the SBE policy. In addition, the Board may wish to consider hiring a consultant to ensure the program functionality is consistent with SBE trends; and, to address the revisions to Policy 96-1, Purchasing and Minority, Women, and Small Business Enterprise Policy that will be necessary.

Conclusion

In summary, the County continues to demonstrate its support of the local business community, including the minority, women-owned, and small business owners interested in participating in the organization's procurement opportunities, through the MWSBE Division. Due to the importance that the Board places on supporting small business, organizational support is demonstrated throughout the County's 2015 Strategic Plan. If the Board chooses to proceed with an update to the 2009 Disparity Study, staff would then recommend engaging in a quantitative disparity study, estimated to cost \$250,000 to \$300,000. Historically, MGT of America has conducted disparity studies for the County. The Board has the option to issue a Request for Proposals (RFP) to conduct the disparity study or to waive the formal bid process and direct staff come back with an Agreement with MGT of America for a disparity study update as it has done in the past. Should the Board wish to continue the MWBE program and ensure its legal validity, staff recommends issuing an RFP for a quantitative disparity study update (Options #1 & #2).

Should the Board choose to consider transitioning to an SBE-only program, the Board may wish to consider hiring a consultant to ensure the program functionality is consistent with SBE trends by examining best practices; and, to address the revisions to Policy 96-1, Purchasing and Minority, Women, and Small Business Enterprise Policy that will be necessary.

Options:

1. Approve \$250,000 for a quantitative disparity study for the MWSBE Program.
2. Direct staff to issue a Request for Proposals to conduct the quantitative disparity study.
3. Waive the formal bid process and bring back to the Board an agreement with MGT of America for the recommended disparity study.
4. Approve the transition to an SBE-only program and direct staff to bring back an agenda item to consider hiring a consultant to recommend SBE best practices, policy revisions, and to ensure that the program is consistent with current SBE trends.
5. Board Direction.

Recommendation:

Options #1 and #2 are included in the tentative FY2016 budget.

Attachments:

1. 2009 Disparity Study Update
2. Purchasing and Minority, Women and Small Business Enterprise Policy (Policy 96-1)
3. SBE Program Overview
4. Budget Discussion Item #4, March 17, 2011 Budget Hearings