

## AGENDA REPORT

**Resolution:** Authorize the Executive Director to Enter into Contract with Mason Tillman Associates, Ltd. to Conduct a Race and Gender Disparity Study for an Amount Not to Exceed \$350,000, and Authorize an Increase in FY 2017-18 Budget of \$175,000.  
**(SRD)**

**MEETING DATE:** 12/14/2017

**AMOUNT:** Not to exceed \$350,000  
Operating Expense

**PARTIES INVOLVED:** **Mason Tillman, Associates, Limited (Oakland, CA)**  
**Dr. Eleanor Mason Ramsey, President**

**SUBMITTED BY:** Amy Tharpe, Director of Social Responsibility

**APPROVED BY:** J. Christopher Lytle, Executive Director

**ACTION TYPE:** Resolution

### **EXECUTIVE SUMMARY**

The Social Responsibility Division (SRD) requests that the Board authorize the Executive Director to enter into contract with Mason Tillman Associates, Ltd. to conduct a Race and Gender Disparity Study for an amount not to exceed \$350,000 and increase SRD's operating budget for FY 2018 by \$175,000. This authorization would allow the Port of Oakland to collaborate closely with the City of Oakland, build upon their on-going work with the consultant, and realize cost savings from any duplicative consulting efforts.

### **BACKGROUND**

A disparity study is a public agency's survey and analysis of contractor availability and utilization (by racial, ethnic and gender groups) in its contracting marketing area. Prior to the passage of Proposition 209, government agencies in California conducted such studies (originally called "Croson Studies") to gather evidence of discrimination in contracting, if any, to support the adoption of race-based contracting goals or programs to remedy any such discrimination, pursuant to the strict evidentiary requirements outlined in the Supreme Court case, *City of Richmond v. J.A. Croson Co.* (1989) 488 U.S. 469.

At the July 27, 2017 Board meeting, staff requested that the Board authorize the Executive Director to 1) collaborate with the City of Oakland (City) to conduct a race and gender disparity study and 2) negotiate, and piggyback on, a professional services contract with Mason Tillman Associates, Ltd. (MTA), the City's selected disparity study consultant. This collaboration would allow the Port of Oakland (Port) to build on the City's efforts, which are focused on analyzing Oakland-based businesses, and include businesses that are in the Port's Local Impact Area (LIA) and Local Business (LBA) and realize cost savings associated with the project. The LIA includes the cities of Oakland, Alameda, Emeryville, and San Leandro, and the LBA includes the counties of Alameda and Contra Costa.

At the July 27<sup>th</sup> meeting, the Board approved this authorization and requested that staff return to the Board for contract and budget authorization after negotiating the terms of the Port's engagement with MTA.

Subsequently, staff has negotiated the terms of the joint engagement between the Port and MTA, and is now requesting authorization to contract with MTA for an amount not to exceed \$350,000.

## **ANALYSIS**

The City's disparity study will focus on the City and some parts of Alameda County. Although the Port's geographic area of focus would be larger, extending throughout all of Alameda and Contra Costa counties, partnering with the City is beneficial because it would allow the Port to leverage the work from the City's study, thereby:

- Lower the cost of the Port's study by roughly 20-30%;
- Remove duplication of consultant time necessary to conduct the same outreach, survey, and analysis of businesses in the Port's and City's overlapping geographic area;
- Offer systemic recommendations that increase contracting opportunities relevant to both organizations and the region, given the City and the Port's similar small, local business programmatic commitments and policies.

If undertaken, the disparity study would analyze contracting activity over the past five fiscal years.

The City engaged in a competitive process to seek a consultant to conduct a race and gender disparity study. A Request for Proposals (RFP) was issued on August 12, 2016 with proposals due on September 30, 2016. The City engaged an independent consultant to evaluate the proposals. The City received two proposals, and ultimately chose the highest scorer, MTA. Since the City conducted a competitive RFP to select the supplier, the Port would like to piggyback on their competitive process and award the contract to the City's selected consultant, MTA.

The major components of a disparity study will provide the Port with the following information:

- A geographic market determination which outlines the agency's relevant markets from which "interested" and "capable" firms are located;
- An in-depth overview on the firms utilized by the agency during a specific time frame (usually five years);
- An analysis of the firms deemed "interested" and "capable" and their ability to access the agencies' business opportunities as prime contractors, subcontractors, consultants, vendors, and suppliers, and their "capacity" to perform such opportunities;
- An analysis which compares the utilization of minority and women-owned businesses who have contracted with the Port during the study period to the number of businesses that might be expected to receive contracts based upon their availability for that work;
- An analysis of anecdotal evidence and market best practices derived from engaging key stakeholders;
- A defensible case used to address any legal challenges, including but not limited to, explaining methodology and testifying in litigation.

The Port's collaboration with the City offers the Port the opportunity to combine outreach activities, benefit from the combined research on Alameda County businesses, and leverage analysis and recommendations.

The report will take 9-12 months to complete, with work beginning in the first quarter of 2018. The City's work with MTA began in October 2017.

### **BUDGET & STAFFING**

By collaborating with the City, the disparity study is estimated to cost 20-30% less. It is anticipated that approximately \$175,000 of the not to exceed \$350,000 will be spent in FY 2017-18, with the remaining to be expended in FY 2018-19. No funds were included in the FY 2017-18 budget. As a result, staff is requesting an increase in budget authorization for FY 2017-18 of \$175,000 in order to begin this study in the first quarter of 2018. The remaining contract amount will be included in the FY 2018-19 budget.

This action complies with Section 902(e) of the Charter of the City of Oakland because the proposed use of MTA constitutes professional and technical services that are temporary in nature and will not result in the loss of employment or salary by any person having permanent status in the competitive service.

## **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The work performed under this contract is not within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply to this work.

## **STRATEGIC PLAN**

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

- Goal C: Objective 2: Conduct comprehensive communication and outreach to stakeholders and strategic partners to improve workforce and small business opportunities.

## **LIVING WAGE**

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to this agreement as the service provider does not employ 21 or more employees working on Port-related work. However, the service provider will be required to certify that should living wage obligations become applicable, the service provider shall comply with the Living Wage Regulations.

## **ENVIRONMENTAL**

CEQA Determination: This action was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the Port CEQA Guidelines. The CEQA Guidelines, Section 15061(b)(3) ("the general rule") states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Completing a Port race and gender disparity study will not have a significant effect on the environment and therefore is not a project under CEQA. No further environmental review is required.

## **GENERAL PLAN**

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

## **OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)**

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report, as they are not capital improvement construction projects.

## **OPTIONS**

Staff has identified the following options for the Board's consideration:

- 1) Authorize the Executive Director to enter into contract with Mason Tillman Associates, Ltd. to conduct a Race and Gender Disparity Study for an amount not to exceed \$350,000, and authorize an increase in FY 2017-18 Budget of \$175,000. This is the recommended option.
- 2) Do not authorize the Executive Director to enter into contract with Mason Tillman Associates, Ltd. to conduct a Race and Gender Disparity Study for an amount not to exceed \$350,000, and do not authorize an increase in FY 2017-18 Budget of \$175,000.

## **RECOMMENDATION**

Staff recommends that the Board adopt a resolution authorizing the Executive Director to enter into contract with Mason Tillman Associates, Ltd. to conduct a Race and Gender Disparity Study for an amount not to exceed \$350,000, and authorize an increase in FY 2017-18 Budget of \$175,000.