

**SUSQUEHANNA TOWNSHIP
DAUPHIN COUNTY, PENNSYLVANIA**



**PROCUREMENT AND CONTRACTING STUDY:
CONSTRUCTION
SOLID WASTE COLLECTION, DISPOSAL & RECYCLING**

Executive Summary

Submitted by:

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ACKNOWLEDGMENT

The Board of Commissioners of Susquehanna Township commissioned the firm of Powell Law, PC to conduct the Township's first disparity study focused on determining the utilization of minority-owned business enterprises and women-owned business enterprises by the Township in the service areas of building construction, solid waste collection, disposal and recycling. Powell Law, PC assessed whether requisite factual conditions exist, pursuant to the *Croson* guidelines, to justify a Minority and Women Business Enterprise Program.

The Study was assisted by the efforts of DeShawn Lewis and Cassandra Nevel of DGS, and Jocelyn Harper and Keyla Evans of PennDOT.

The authority of the Study was greatly enhanced by the assistance of the nationally recognized procurement and contracting review firm of Mason Tillman Associates, Ltd and previous disparity studies conducted by Mason Tillman Associates, Ltd for the Commonwealth of Pennsylvania and the City of Pittsburgh.

The Study could not have been conducted without the support of Sala Udin, former Chair of the Pittsburgh Disparity Study Implementation Commission, and the cooperation of many Dauphin County business owners and interested residents who demonstrated their commitment to the Study by participating in interviews.

Township administrators and staff members played a critical role in making available documents needed to perform the Study, in particular, former Township Manager Gary Myers, Township Manager David Kratzer and Township Health and Codes Officer Cornelius Johnson.

The Disparity Study is a commitment by the Susquehanna Township Board of Commissioners to be cognizant of constituent concerns. In particular, President Frank Lynch and Vice President Mona Johnson are responsible for supporting the Disparity Study and helping to keep the study process focused.

The assistance of Thomas K. Edinger of the Tri-County Regional Planning Commission and Michael Texter, Pennsylvania Department of Environmental Protection Waste Management Director, as well as my assistant Rhonda Mays, is sincerely appreciated.

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EXECUTIVE SUMMARY

I. DISPARITY STUDY OVERVIEW

The Board of Commissioners of Susquehanna Township commissioned the firm of Powell Law, PC to conduct a disparity study (“Disparity Study”) focused on determining the utilization of minority-owned business enterprises (“MBE”) and women-owned business enterprises (“WBE”) by the Township in the service areas of building construction (NAICS 236210/236220), waste hauling (NAICS 562111) and recycling (NAICS 92411).¹ The Disparity Study: 1) identifies and analyzes the laws and regulations that govern Township procurement; 2) examines the process for obtaining products and services involved in the identified service areas; 3) analyzes the subcontracting practices of prime contractors/service providers that hold contracts or do business with the Township in the identified service areas; 4) documents anecdotal evidence collected from MBE and WBE firms, some within and outside of the jurisdiction of Susquehanna, all within the relevant market area; and 5) makes commendations and recommendations.

Powell Law, PC and its subconsultants performed the contracting and procurement study to assess whether requisite factual conditions exist, pursuant to the *Croson* guidelines, to justify a Minority and Women Business Enterprise Program.

The Disparity Study is the Township’s maiden disparity study.

The relevant focus period was determined to be January 1, 2010 to December 31, 2015, and the broader focus period was January 1, 2005 to December 31, 2015.

The Study findings are reported in ten chapters. Chapter 1 offers some background with respect to the Disparity Study. Chapter 2 contains the legal framework of

¹ NAICS is an abbreviation for the *North American Industry Classification System*.

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minority business enterprise and women business enterprise programs. Chapter 3 contains historical and demographic information applicable to the Township. Chapter 4 discusses the market analysis, explaining how the relevant market area was determined. Chapter 5 is divided into two sections. The first section presents anecdotal evidence with respect to trash collection, disposal and recycling. In the second section, interviewees discuss their experiences around construction projects in the Township. Chapter 6 addresses MBE/WBE utilization and availability as to trash collection, disposal and recycling. Similarly, Chapter 7 addresses MBE/WBE utilization and availability as to construction. Chapter 8 discusses the parameters of MBE/WBE availability, followed by commendations and recommendations in Chapter 9. This executive summary Chapter 10 provides an overview of the Study's findings, analysis and recommendations.

II. RESEARCH CHALLENGES

There were the expected challenges associated with a disparity study and some unforeseeable challenges. The budget impasse of the Commonwealth of Pennsylvania was unexpected. The Commonwealth's budget impasse and the substantial reduced staffing in the Pennsylvania Department of General Services ("DGS") and Pennsylvania Department of Transportation ("PennDOT") protracted the time period for receiving MBE and WBE availability data. There was the retirement of Township Manager Gary Myers and the resignation of his able assistant, Township Health and Codes Officer Cornelius Johnson.

III. NOTABLE FINDINGS

A. Solid Waste Collection, Disposal, Recycling, and Marketing

The market area related to solid waste collection, disposal, recycling and marketing thereof, for Susquehanna Township extends beyond the jurisdiction of Susquehanna Township and consists of the Counties of Dauphin, Lebanon, Lancaster, York, Cumberland and Montgomery. For purposes of subcontracting, a rational argument can be made for the inclusion of Mercer County in the Township's solid waste market area since two of Penn Waste's subcontractors are located in Mercer County

and the largest dollar amount subcontractor of Penn Waste on the Township contract is headquartered in Mercer County.

In the year 2015, the Township issued an invitation to bid that contained language that encouraged small business participation. The successful bidder is the Township's solid waste prime contractor from the year 2006 through 2015. The 2015 contract, which commences on January 1, 2016, was awarded for five years with a five year optional extension period. The invitation to bid sought 3% small business participation subcontracting. Township records indicate that the prime contractor's bid documents failed to contain any documentation of small business status for any of the asserted small businesses listed by the prime contractor. The dollar value of the prime contract is \$15,706,043.75 over a five year period. The total dollar value of the two self-certified small businesses and the one DGS certified MBE for the five year period is \$35,000.00.

The owner of the certified MBE company reported for this Disparity Study that the prime contractor has not entered into a subcontract with his company and has not provided work for his company as represented in the prime contractor's bid documents. The MBE further reported that since the Township awarded the prime contract, the prime contractor has not been in contact with the MBE subcontractor.

The Township reported that it conducts neither monitoring nor enforcement of prime contractor small business utilization.

B. Construction and Related Professional Services

The market area for construction services extends beyond the jurisdiction of Susquehanna Township and consists of the Counties of Dauphin, Lebanon, Lancaster, York, Adams and Cumberland.

During the focus period of January 1, 2005 through December 31, 2015, the Township reported that it awarded 21 contracts. The contracts can be placed in three categories: street paving (10 contracts) for an average value of \$197,070.01 annually; sewer and drainage construction (7 contracts) that varied from \$20,833.00 to \$1,379,113.95; and construction professional services (3 contracts). The

professional services lobbyist contract with Delta Development Group was for the amount of \$278,152.66. The dollar value of the contract with HRG Engineering Services is undisclosed. The dollar value of the contract with the law firm of Foreman & Caraciolo, PC is undisclosed.

The Township reported that it did not track subcontracting by any of its construction prime contractors, there was no reporting requirement, MBE/WBE utilization had not been voluntarily reported to the Township, and that the Township has no knowledge of any MBEs or WBEs being utilized on any construction contract.

IV. RECOMMENDATIONS: SOLID WASTE COLLECTION, DISPOSAL, RECYCLING, AND MARKETING

The limited number of Township contracts during the focus period does not permit a finding of racial or gender discrimination based on statistical evidence. Rather, the data permits an inference of underutilization of WBEs and MBEs.

The Township is to be commended for taking initial steps in the direction of good faith effort to achieve the participation of minority and women-owned business enterprises in the Township's solid waste contracting.

Based on the findings of the Disparity Study, there are several recommendations to address underutilization of MBEs and WBEs in the Township's procurement and contracting of solid waste collection, disposal, recycling and marketing services.

- 1. Unbundle services.**
- 2. Monitor and enforce.**
- 3. Extension term review.**
- 4. Limit the extension term.**

5. Aspirational minimum participation levels.

Solid Waste Collection and Disposal:

| | |
|-------------------------|------|
| Black/African American: | 5.0% |
| Hispanic: | 0.0% |
| Women: | 0.0% |

Recycling:

| | |
|-------------------------|-------|
| Black/African American: | 15.0% |
| Hispanic: | 2.0% |
| Women: | 0.0% |

Marketing:

| | |
|-------------------------|-------|
| Black/African American: | 10.0% |
| Hispanic: | 2.0% |
| Women: | 10.0% |

V. RECOMMENDATIONS: CONSTRUCTION

The limited number of Township contracts during the focus period does not permit a finding of racial or gender discrimination based on statistical evidence. Rather, the data permits an inference of underutilization of WBEs and MBEs.

Based on the findings of the Disparity Study, there are several recommendations to address underutilization of MBEs and WBEs in the Township's procurement and contracting of construction services.

- 1. Unbundle services.**
- 2. Create a contractor database.**
- 3. Schedule pre-bid meetings.**
- 4. Increase targeted advertisement.**
- 5. Expand notice pool to include community stakeholders.**
- 6. Review bonding requirements.**
- 7. Aspirational minimum participation levels.**

Construction:

| | |
|-------------------------|-------|
| Black/African American: | 12.0% |
| Hispanic: | 3.0% |
| Women: | 3.0% |

Construction Professional Services:

| | |
|-------------------------|------|
| Black/African American: | 5.0% |
| Hispanic: | 0.5% |
| Women: | 3.0% |

- 8. Utilize certified MBEs and WBEs.**
- 9. Engage inclusion consultant.**

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