



**COMMISSION
AGENDA MEMORANDUM**

Item No.

6f

ACTION ITEM

Date of Meeting

November 28, 2017

DATE: November 15, 2017

TO: Dave Soike, Interim Executive Director

FROM: David McFadden, Managing Director Economic Development
Teresa Delicino, Director of Small Business Development
Mian Rice, Small Business Policy Manager
Jeffrey Brown, Director Aviation Facilities and Capital Programs

SUBJECT: Statewide Disparity Study Participation

Amount of this request: \$90,000

Total estimated project cost: \$90,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to execute an interlocal agreement with the Washington Department of Transportation to complete a statewide disparity study on FAA funded projects. The Port would put \$90,000 into this effort and also complete additional disparity studies to cover other contracts and enterprises across the agency (ex. Airport Dining and Retail).

EXECUTIVE SUMMARY

The Federal Aviation Administration (FAA) has granted funds to the Washington State Department of Transportation to conduct a statewide disparity study. This effort covers FAA funded projects at 64 Washington state airports. The roughly \$2 million grant requires matching funds which, based on an activity (capital spending) formula; the Port's portion is just under \$90,000. An Inter-Agency Agreement (IAA) has been crafted to facilitate the agreements between WSDOT and all the participating airports within the State of Washington.

The timing of the FAA/WSDOT joint Disparity Study coincides with the need to refresh the Port's 2014 study. This aviation only study keeps the Port in compliance with FAA rules and regulations (CFR 49 Part 26) for a race conscious Disadvantaged Business Enterprise (DBE) program. This statewide airport study is anticipated to begin in 2018 and will take approximately 18 months to complete. The study's evaluation period for federally funded construction and construction-related contracts is from 2012-2016.

To further understand Port-wide disparity, staff has also negotiated a separate contract with the FAA/WSDOT study consultants, Collette Holt and Associates, to evaluate the Port's non-

Meeting Date: November 28, 2017

federally funded projects for construction and consulting services awarded at \$200,000 and above. The period of performance to be evaluated in these studies is 2012-2016. A disparity study for ACDBE is being planned as well.

JUSTIFICATION

Background

The federal government requires transportation agencies to implement a federal Disadvantaged Business Enterprise (DBE) Program if they receive U.S. Department of Transportation funds. The DBE program is outlined within the Code of Federal Regulation (CFR) 49 Part 26.

The objective of the DBE program is to:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
- (g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

What is a DBE?

DBEs are a for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations. The DBE program focuses on minority or woman businesses. "Minority" is defined as African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged.

What is a DBE Disparity Study and why is it necessary?

A Disparity Study determines whether a government entity, either in the past or currently, has been fair in the solicitation and award of contracts to minority, and women-owned, and disadvantaged business enterprises (MWDDBEs). To be in compliance with federal regulations,

Meeting Date: November 28, 2017

the Port (SeaTac Airport) must conduct a disparity study which analyzes whether a disparity (differences) exist between the number of specified individuals or groups that are available to participate in contracting opportunities, and those that actually do participate.

The study provides the Port with the authority to have the option of utilizing “race-conscious” measures to help achieve parity (or level the playing field) within our contracting efforts.

DETAILS

What is the purpose of a Disparity Study? Why is it necessary?

The study is necessitated in part by the 1989 U.S. Supreme Court’s decision in the case of *City of Richmond v. J.A. Croson*. The court decision imposed legal requirements on jurisdictions to establish a “compelling interest” to support the establishment of a minority and women business program – ability to go to race and gender conscious contracting. Results of a study will determine if a compelling interest exists for the implementation and/or continuation of a M/WBE program.

What factors are considered in determining whether disparity exists?

Disparity is calculated in the form of an index. The disparity index is a ratio of the percentage of utilization and the percentage of availability of M/WBE firms. If the disparity index is 100, the utilization of M/WBE is leveled with the availability of M/WBEs in the market area. If the index is less than 80, it indicates that M/WBEs are significantly underutilized by an entity based on availability. Indices between 80 and 100 - which is close to full participation indicates underutilization though not significant. Port of Seattle Disparity Study(s)

Previous Port of Seattle Disparity Study:

The Port of Seattle, working with consultants BBC Research & Consulting, conducted a disparity study in 2014 which sought to identify race and gender disparities in the awards of construction and construction-related contracts between January 2010 and September 2013. It compared the amount of money for contracts related to construction projects that actually went to minority- and women-owned business with the amount that would have been expected if such businesses were included at the same rate as they were available in the overall pool of qualified companies. Construction and construction-related contracts includes contracts both in direct building activities and contracts for services such as Engineering and Architectural (A&E) consulting. This examination included a combined review of 1,048 prime and sub contracts on federally assisted projects.

Findings:

The 2014 Disparity report indicated all “ethnic groups” have experienced contracting disparity within either construction and/or construction-related professional services categories. Overall, the study found that qualified minority- and women-owned businesses are available to complete about 18 percent of port contracts for construction and construction-related consulting services but that only about 10 percent of women- and minority-owned businesses actually participated in construction and construction-related contracts over the period cover

Meeting Date: November 28, 2017

The gap between the availability estimate and the port's actual usage is the disparity. Women fared better by winning more contracts than required to achieve parity overall. Although, women tended to be better represented in construction contracts, there still was disparity in construction-related consulting contracts.

Period of effectiveness:

Typically, it's recommended to conduct studies every 3-5 years due to the statistical data and analysis becoming stale. The Port's current study covers the period Federal Fiscal Years 2014 – 2019 and will require a new study to refresh the utilization and availability data.

New Disparity Study efforts:

FAA/WSDOT/POS: The Federal Aviation Administration (FAA) has granted funds to the Washington State Department of Transportation to conduct a statewide disparity study. This effort covers FAA funded projects at 64 Washington state airports. The roughly \$2 million grant requires matching funds which, based on an activity formula, the Port's portion is just under \$90,000. An Inter-Agency Agreement (IAA) has recently been crafted to facilitate the effort and is awaiting formal process.

The timing of the FAA/WSDOT joint Disparity Study is on-par with the timing of the need to refresh the Ports 2014 study. This aviation only study keeps the Port in compliance with FAA rules and regulations (CFR 49 Part 26) for DBE program efforts. The statewide airport study is anticipated to begin in 2018 and may take a year and a half to complete.

Expanded Scope: To better understand Port-wide disparity, we have negotiated a scope and price from the FAA/WSDOT study consultants, Collette Holt and Associates. This would be a separate study that looks at Port-wide non-federally funded projects for construction and consulting services awarded at \$200,000 and above. This separate scope leverages the work the consultants will already be performing in analyzing our contracts. Due to this, we will be initiating a Category 1 contract (under \$50,000) to broaden our study efforts.

The period of performance to be evaluated in these studies is 2012-2016.

A disparity study for ACDBE may best be conducted under separate contract given the differences in the type of transactional activities. See below.

Differences between DBE and ACDBE:

DBE: The Airport Authority's Disadvantaged Business Enterprise (DBE) program is covered by the U.S. Department of Transportation. DBE falls under USDOT regulations, 49 CFR Part 26, which provides guidance to the Airports authority on DBE certification, DBE goal setting, program management and reporting requirements. Examples of DBE opportunities are: construction, architecture, engineering, manufacturing, and supplier/distributor.

Meeting Date: November 28, 2017

ACDBE: The Airport Authority's Concessions Disadvantaged Business Enterprise (ACDBE) program is covered by the U.S. Department of Transportation's requirements under 49 CFR Part 23. The ACDBE program requirements define specific types of business activities as concessions, and provide guidance to the Airports Authority and other airports on ACDBE certification, ACDBE goal setting, program management and reporting requirements. Examples of ACDBE concession opportunities are: food and beverage, retail operations, parking management, taxi services, etc.

Can you combine Disparity Studies for both ACDBE & DBE?

No, the approach to conducting Disparity Studies for either ACDBE or DBE is conversely different between the two. The types of relationships between airports and businesses, and the substantive differences in regulatory statutes (Part 23 versus Part 26) provide challenges in combining the two. Even more to the point, ACDBE/DBE industry types are greatly different, which impacts how a disparity study would identify and calculate availability versus utilization.

ADR Disparity Study:

The Airport Dining and Retail (ADR) Program includes a mix of prime operators (companies operating 4 or more units) as well as local, small, and Airport Disadvantaged Business Enterprises (ACDBE).

During the past several years, questions have been posed about the involvement of ACDBEs and small businesses in general within the ADR Program. An ACDBE Disparity Study is an important tool to better understand not only the differences between the composition of minority-owned firms operating food, retail and service businesses in the State of Washington and those within the ADR Program but also to identify areas for improving ACDBE participation and success within the ADR Program. An ACDBE disparity study will assist Port staff in outreach to minority-owned firms statewide as well as provide data to guide future development of the ADR Program.

The development of and implementation of an ACDBE Disparity Study is not an area of expertise currently available within existing Port staff. As such, the Port would need to procure contract for these services. If the Port decides not to conduct the disparity study, the ADR team will not have a mechanism to understand whether the ADR Program fully represents the communities we serve. Disparity studies normally cost on average of \$300,000.00 and can take up to 1 year or more to complete depending upon scope. If approved, the goal is to begin this study in Q1 2018.

Once completed, how does the Disparity Study impact the Port?

These studies, depending on findings, allow us to conduct race-conscious contracting practices and set minority and woman-owned business utilization goals. Study findings, based on industries utilized on past Port projects, will include research on the availability of firms in those industries. This research will help us to set utilization goals for future projects based on availability of WMBE firms. This allows us to align contracting efforts with our equity interests.

Meeting Date: November 28, 2017

Further, a disparity study allows us to remain in compliance with FAA in terms of contracting with disadvantaged business enterprise. To maintain this compliance, a new disparity study would need to be conducted every 3-5 years in order to refresh utilization findings.

This would be the Port’s second disparity study, giving the Port a point of comparison from which to determine utilization progress and identify further areas of need. Both the IAA effort, looking at FAA federally funded contracts, and the expanded effort, looking at all non-federal construction and consulting projects, will give us a comprehensive view into our contracting practices and disparities Port wide. This then fully informs policy, practice and goals as well as outreach, training, and other activities to reduce disparity.

Scope of Work

The following IAA scope of work provided by FAA/WSDOT is listed below which the consultant will be following throughout its process.

Task	Deliverable
CONDUCT STUDY INITIATION MEETING	Identify individuals responsible for supplying all contract data; communicate study data requirements.
STUDY WEBSITE DEVELOPMENT	Go live with Study website; update website as need arises.
CONDUCT LEGAL ANALYSIS	Describe the legal and regulatory standards. Legal analysis will be part of final report.
PERFORM UTILIZATION ANALYSIS	Develop a contract data file to be incorporated into the final study report.
PERFORM DISPARITY ANALYSES	Disparity findings will be incorporated into the final study report.
PERFORM ECONOMY-WIDE DISPARITY ANALYSIS	Economy-wide disparity findings will be incorporated in the final study report.
COLLECT QUALITATIVE EVIDENCE OF DISCRIMINATION	Collect qualitative evidence of discrimination through public meetings, business owner/stakeholder interviews. The anecdotal findings will be incorporated in the final study report.
REVIEW DBE PROGRAM ADMINISTRATION	Evaluate the airports' DBE programs through review of relevant documents and interviews with agency staff, stakeholders and business owners. DBE program administration findings will be incorporated in the final study report.
PREPARE DRAFT AND FINAL STUDY REPORT; PRESENTATION OF STUDY AND FINDINGS	Draft study report for edits by the agencies and a final report based on edits. Presentation of findings as directed by WSDOT/FAA. Information on potentially certified firms as identified throughout the study process will be provided to all airport participants.

Meeting Date: November 28, 2017

A similar but separate scope has been negotiated for a Port of Seattle only non-federal analysis that will cover all construction and consulting contracts at \$200,000 and above. It is anticipated that some of the elements within this IAA will be leveraged resulting in reduced cost to the Port for an expanded scope.

Per FAA, combining both the statewide disparity study effort and the Port’s expanded scope is not allowable within the IAA.

Schedule

The IAA disparity study is scheduled to start within the first (1) quarter of 2018, and conclude sometime within second (2) quarter of 2019. Actual completion dates within the scope of work per task will be forthcoming by FAA/WSDOT.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do nothing, remain status quo

Cost Implications: \$0

Pros:

- (1) Save time and money
- (2) Can still use current disparity study through next year

Cons:

- (1) Limits applicability of current disparity study to next year
- (2) Under risk if applying any project specific race-conscious goals
- (3) Unresponsive to community concerns and Port equity initiatives

This is not the recommended alternative.

Alternative 2 –Conduct our own disparity study for approximately \$300,000 next year

Cost Implications: \$300,000

Pros:

- (3) It would be a Port only study and we will have direct control over scope and schedule
- (4) Ability to conduct our own competitive process
- (5) Allow for race-conscious goal setting on specific projects
- (6) Supports Port equity initiatives

Cons:

- (4) The cost of the study would be significantly higher
- (5) The Port would not be in partnership with the FAA’s grant assisted study amongst the other Washington airports

This is not the recommended alternative.

Meeting Date: November 28, 2017

Alternative 3 – Proceed with IAA agreement with FAA/WSDOT

Cost Implications: \$90,000

Pros:

- (1) FAA grant funded, and shared cost amongst other airports
- (2) Will comply with FAA requirements for setting project specific DBE goals
- (3) Port would be in partnership amongst other Washington airports, with the potential of future FAA grant funds going towards future disparity studies.
- (4) Statewide availability data may be expanded for our use.
- (5) Supports Port equity initiatives

Cons:

- (1) Not in control of scope or schedule
- (2) May not produce information specific to SeaTac Airport only such as data, recommendations, and improvements but rather more general statewide data and recommendations on statewide DBE efforts.

This is the recommended alternative.

Annual Budget Status and Source of Funds

Funds for the IAA Disparity Study agreement will be made available through Aviation Division.

ATTACHMENTS TO THIS REQUEST

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

December 2, 2014 – Commission briefing on disparity study findings

July 9, 2013 – Commission authorized a \$300,000 contract to conduct a disparity study for period 2010 - 2013