



INTERNAL AUDIT REPORT

OPERATIONAL AUDIT

DIVERSITY IN CONTRACTING

JANUARY 2018 – MARCH 2019

ISSUE DATE: June 18, 2019

REPORT NO. 2019-06

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
BACKGROUND	4
AUDIT SCOPE AND METHODOLOGY	6
SCHEDULE OF FINDINGS AND RECOMMENDATIONS.....	7
APPENDIX A: RISK RATINGS.....	9
APPENDIX B: DIVERSITY IN CONTRACTING POLICY.....	10

EXECUTIVE SUMMARY

Internal Audit (IA) completed an audit of the Diversity in Contracting Program for the period January 2018 through March 2019. The audit was performed to assess adherence to key requirements specified in the Policy Directive on Diversity in Contracting (Policy) and to determine if the Port's diversity program aligns to regulatory guidance including the Revised Code of Washington (RCW) 49.60.400 and the Washington State Attorney General's opinion on Initiative 200 (I-200).

I-200 was approved by voters in 1998 and codified in the RCW under 49.60.400, which states in part, "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

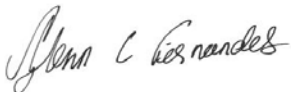
The Policy was adopted by Port Commission on January 9, 2018 and states that minority and women owned and controlled businesses (WMBE) have been under-utilized on Port contracts. The Policy aims to provide the maximum practicable opportunity for increased participation by WMBE businesses in Port contracting for public works, consulting services, supplies, material, equipment, and other services.

As a relatively new program, establishing clearly defined and agreed-upon goals is foundational to measuring success and the effectiveness of the diversity program. We identified the following medium rated issue.

1. (Medium) The Port established a five-year goal to increase to 15% the amount spent on WMBE contracts and to triple the number of WMBE firms doing business with the Port. However, the starting point or baseline that management was using to measure the goal was not consistent with the date within the Policy Directive. Additionally, Port wide 2018 WMBE utilization was overstated by 14 firms in the Diversity in Contracting 2019 Annual Plan.

This issue is discussed in more detail beginning on page seven.

We extend our appreciation to Port staff and management for their assistance and cooperation during the audit.



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Responsible Management Team

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Mian Rice, Director, Diversity and Contracting

BACKGROUND

State Legal Requirement and Opinions

Washington State Initiative 200 (I-200) was approved by voters in 1998 and codified in the Revised Code of Washington (RCW) under 49.60.400. RCW 49.60.400 in part states, “The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”

In March 2017, the Washington State Attorney General published an opinion on I-200. That opinion states “I-200 prohibits only situations in which a government uses race or gender to select a less qualified contractor over a more qualified contractor.” The opinion goes on to explain that measures that are not prohibited are open to innovation, and could include aspirational goals, outreach, training, use of race or gender as a tiebreaker between equally qualified contractors, and similar measures that do not cause a less qualified contractor to be selected over a more qualified contractor.

On April 28, 2019, the Washington State Legislature approved Initiative Measure 1000 (I-1000). The Measure will amend and add new sections to RCW 49.60.400. The Measure broadens the definition to include “age, sexual orientation, the presence of any sensory, mental, or physical disability, or honorably discharged veteran or military status.” It defines “preferential treatment” as “the act of using race, sex, color, ethnicity... as the sole qualifying factor to select a lesser qualified candidate over a more qualified candidate...”

Washington Referendum Measure 88, however, seeks to require a statewide vote on I-1000 as a veto referendum. The referendum would be placed on the November 5, 2019 ballot for voters’ approval or rejection of I-1000.

Port of Seattle Initiatives

On January 9, 2018, the Port Commission adopted the Policy Directive on Diversity in Contracting (Policy). The Policy states that minority and women owned and controlled businesses (WMBE) have been under-utilized on Port contracts. The purpose of the Policy is to provide the maximum practicable opportunity for increased participation by WMBE businesses in Port contracting for public works, consulting services, supplies, material, equipment, and other services.

The Policy establishes a goal to triple the number of WMBE firms that contract with the Port and increase to 15% the percentage of dollars spent on WMBE contracts, within five years of the Diversity in Contracting Program implementation. Table 1 reflects Port wide WMBE Utilization since 2016. Table 2 lists three contracts that were executed as pilot projects under the diversity program.

Table 1

WMBE Utilization	2016	2017	2018
Percent of Total Spend	5.3%	8.8%	11.8%
Number of Firms	118	200	244*

Source: Diversity in Contracting 2019 Annual Plan - *Adjusted

Diversity in Contracting
January 2018 – March 2019

Table 2

Contract	Amount	Agreement Date
Vertical Conveyance Design Services	\$5,000,000	April 3, 2019
Graphic Design Services IDIQ	\$600,000	March 7, 2019
Aviation Restroom Phase 2	\$4,244,000	January 31, 2019

Source: Central Procurement Office Contracts

AUDIT SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards and the International Standards for the Professional Practice of Internal Auditing. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The period audited was January 2018 to March 2019 and included the following procedures:

Alignment of Contractor Selection Processes with Applicable State Laws and Guidance

- Evaluated the contractor selection process to determine whether it aligns to RCW 49.60.400, the Washington State Attorney General’s Opinion, and Initiative Measure 1000.
- Reviewed solicitations, inclusion plans, and summary scores for two service agreements and one construction project.
- Determined whether WMBE training was provided for individuals who evaluate and score proposers.

Program Adherence to Key Policy Requirements

- Inquired with Port management/staff and reviewed documentation to gain an understanding of the Diversity in Contracting Program.
- Assessed whether requirements in the Port of Seattle Commission Policy Directive on Diversity in Contracting had been developed, including:
 - A Diversity in Contracting Annual Plan
 - Port wide goals
 - Roles and responsibilities for accountability and implementation
 - Internal and external training/outreach/technical assistance
 - Contracting methods and procurement tools
 - Program evaluation/monitoring/reporting

SCHEDULE OF FINDINGS AND RECOMMENDATIONS

1) RATING: MEDIUM

The Port established a five-year goal to increase to 15% the amount spent on WMBE contracts and to triple the number of WMBE firms doing business with the Port. However, the starting point or baseline that management was using to measure the goal was not consistent with the date within the Policy Directive. Additionally, Port wide 2018 WMBE utilization was overstated by 14 firms in the Diversity in Contracting 2019 Annual Plan.

Five-year goal

The Policy Directive on Diversity in Contracting (Policy Directive) adopted by Port Commission in January 2018 through Resolution No. 3737, states “Program Implementation” as the starting point. Strategy three in the Century Agenda reflects a similar date and references tripling the number of WMBE firms and increasing the number of firms using a starting date of 2018 and an ending date of 2023. The Century Agenda strategy was approved by a commission motion in December 2017.

Policy directives provide direction from Port Commission to the executive director and Port staff. They generally govern long-term processes and ongoing decision making. Policy directives govern any related policy statements or procedures developed by staff. Resolutions are the documents the commission uses to take important and long-lasting actions. Resolutions are like ordinances enacted by towns and cities. Motions are used to express views or take specific actions.

However, the Diversity in Contracting 2019 Annual Plan that was presented to the commission on March 26, 2019 (Item No. 7a) states 2016 as the baseline. However, this presentation also includes a slide titled “Path to Implementation,” reflecting a commission briefing that occurred on June 2018 and referencing a final implementation date of February 2019 when the annual plan was finalized (see Appendix B).

Tables 1 reflects what the goals would be based on using 2018 as the baseline as required in the Policy Directive. The Policy Directive is much more aggressive, requiring 732 WMBE firms by the end of 2022.

Table 2 reflects using 2016 as the baseline. By using an earlier starting point and accordingly, a lower base, requires 354 WMBE firms by the end of a five-year period. A significantly smaller number than the 732.

Table 1

2018 Baseline WMBE Goals	2018	2022
Percent of Total Spend	11.8%	15.0%
Number of Firms	244*	732

* Adjusted to correct for overstatement of 14 firms

Table 2

2016 Baseline - WMBE Goals	2016	2020
Percent of Total Spend	5.3%	15.0%
Number of Firms	118	354

Firm utilization

The 2019 Diversity in Contracting Annual Plan reflects utilization of 258 WMBE firms. During the audit, Management was forthcoming and identified that the number was overstated by 14 firms and should have been reported as 244.

Recommendations:

1. Determine through communication with Port Commission whether 2016 or 2018 is the correct baseline and amend documents as necessary.
2. Implement a process to validate that data used to measure WMBE utilization is accurate.

Management Response/Action Plan:

Five Year Goal

The five-year goal was formed under good faith efforts based upon the information we had at the time. Work began in 2017, where we had a full year of 2016 data to review; however, full Diversity in Contracting program implementation was not complete until 2019. Staff recommends maintaining the 2016 baseline for the 5-year measurements to 2020. If 2018 is determined to be the starting point, staff recommends Commission re-evaluates the Diversity in Contracting utilization goals.

Firm Utilization

During the audit process, the Planning and Analytics team discovered the problem, reported the issue to the audit team, and have developed standard reports that remove duplicate records. This will prevent double counting in the future.

APPENDIX A: RISK RATINGS

Findings identified during the course of the audit are assigned a risk rating, as outlined in the table below. The risk rating is based on the financial, operational, compliance or reputational impact the issue identified has on the Port. The finding and corresponding rating is not required to meet all five categories listed below. Items deemed “Low Risk” will be considered “Exit Items” and will not be brought to the final report.

Rating	Financial	Internal Controls	Compliance	Public	Port Commission/ Management
HIGH	Large financial impact Remiss in responsibilities of being a custodian of public trust	Missing, or inadequate key internal controls	Noncompliance with applicable Federal, State, and Local Laws, or Port Policies	High probability for external audit issues and/or negative public perception	Important Requires immediate attention
MEDIUM	Moderate financial impact	Partial controls Not adequate to identify noncompliance or misappropriation timely	Inconsistent compliance with Federal, State, and Local Laws, or Port Policies	Potential for external audit issues and/or negative public perception	Relatively important May or may not require immediate attention
LOW/ Exit Items	Low financial impact	Internal controls in place but not consistently efficient or effective Implementing/enhancing controls could prevent future problems	Generally complies with Federal, State and Local Laws or Port Policies, but some minor discrepancies exist	Low probability for external audit issues and/or negative public perception	Lower significance May not require immediate attention
Efficiency Opportunity	An efficiency opportunity is where controls are functioning as intended; however, a modification would make the process more efficient				

APPENDIX B: DIVERSITY IN CONTRACTING POLICY

Item No. 7a

Date of Meeting – March 26, 2019

Diversity in Contracting (DC) Policy

Advance equity and address contracting disparities by increasing the utilization of Women Minority Business Enterprises and other disadvantaged firms

Goals - 5 year Benchmarks:

- ❑ Triple the number of WMBE firms doing business with the Port (2016 Baseline: **118**)
- ❑ Increase to 15% the amount of spend on WMBE contracts within 5 years (2016 Baseline: **5.3%**)

2

Path to Implementation

June 2018
Commission briefing on proposed program parameters

October – February
Pilot WMBE Contracting and Procurement

November – December 2018
Divisions/ Departments establish goals

December 2018
Internal Education and External Engagement strategies developed

February 2019
Annual Plan Finalized

3