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COMMISSION

AGENDA MEMORANDUM Item No. 10e

ACTION ITEM Date of Meeting November 8, 2022

DATE : October 25, 2022

TO: Stephen P. Metruck, Executive Director

FROM: David McFadden, Managing Director Economic Development

Mian Rice, Director Diversity in Contracting

Lisa Phair, Disadvantaged Business Enterprise Program Manager

SUBJECT: Disparity Study

Amount of this request: \$300,000

Total estimated project cost: \$300,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to authorize staff to advertise, procure, and execute a \$300,000 Port of Seattle Disparity Study contract. This study complies to the U.S. Department of Transportation's (DOT) rules and regulations under the Federal Ninth Circuit court of appeals directive for all entities receiving federal grant funds to have, in order to use race-conscious goals on DOT's federal Disadvantaged Business Enterprise (DBE) Program.

EXECUTIVE SUMMARY

In 2018, the Port of Seattle established the Diversity in Contracting Policy Directive which included resolution (3737) directing the Port to make affirmative efforts towards the utilization of Woman and Minority Business Enterprises (WMBE).

This policy set a five-year WMBE utilization goal benchmark which involved the setting of a Portwide WMBE aspirational goal of 15%, along with the goal of tripling of the number (#) of WMBE businesses utilized to 354. On an annual basis, each department/division strives to attain each goal.

The end of 2023 will be the final full year of the five-year benchmark leading into 2024, which will be the anticipated start of the new five-year WMBE goals. The conducting of a disparity study will help inform the Port of its WMBE contracting utilization and will be utilized to assist in setting the next Portwide five-year WMBE goals. The study will also inform the Port's Diversity in Contracting (DC) department's WMBE Program efforts related towards the targeting of its outreach, trainings and workshop efforts to the underutilized women and minority businesses.

Template revised January 10, 2019.

COMMISSION AGENDA – Action Item No. 10e Page 2 of 8

Meeting Date: November 8, 2022

Additionally, the disparity study will support the Port's efforts related to the federal Disadvantage Business Enterprises (DBE) program requirements for federally assisted contracts. This would include justification or modification of the federal DBE program's race-conscious or race-neutral activities.

The proposed Port study will analyze several years of the Port's contracts in public works and consulting services to determine whether there is disparity between availability of able and willing minority and women owned firms and the historic levels of participation by such firms in Port contracts, either as prime contractors or subcontractors.

The last Disparity Study was conducted in 2019, with the study years surveyed between 2012 – 2016 which was prior to the Port's Diversity in Contracting Policy Directive and Resolution 3737. The Port currently utilizes race-conscious goals/requirements on its Airport Improvement Program (AIP) grant contracts.

JUSTIFICATION

Background

Diversity in Contracting

In 2018, the establishment of the Diversity in Contracting policy directive was created due to the Port finding that minority and women-owned businesses are under-represented and have been under-utilized on Port contracts. The policy directive is to provide the maximum practicable opportunity for increased participation by minority and women owned and controlled businesses in Port contracting for public works, consulting services, supplies, material, equipment, and other services to create the opportunity to leverage Port spend to

increase WMBE utilization. This policy had two main goals, with five-year benchmarks:

1. Achieve 15% WMBE utilization by 2023; and
 2. Triple the amount of WMBE firms doing business with the Port – goal of 354
- Dating back to 2016, WMBE utilization was around 5%. Since that time the Port started to identify ways to improve upon its contracting and outreach efforts showing a definite improvement towards increased participation.

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COMMISSION AGENDA – Action Item No. 10e Page 3 of 8

Meeting Date: November 8, 2022

WMBE 2016 2017 2018* 2019 2020 2021

Utilization (Start of

DC

Program)

Percent 5.30% 8.80% 8.9% 10% 10.90 12.1

Utilization

Number of 118 200 258 296 318 344

Firms

In solidifying the Port's efforts, the Diversity in Contracting program was established that provided the baseline of conducting affirmative efforts to improve upon its contacting to WMBE firms, while staying within the State and federal contracting laws.

Those some of the improvements were:

? Make its contracting opportunities more accessible to women- and minority-owned businesses, including a review of business processes and insurance and bonding requirements.

? Ensure prompt payment to subcontractors.

? Establishing Annual Port Wide WMBE Goals per each division

? Leverage new and continue to build existing strategic stakeholder partnerships and programs to provide effective outreach, training, and access to financial and business resources.

? Collaborating with the Port's Central Procurement Office to re-review its contracting policies

? Communicating better with Central Procurement Office and Project Managers to better forecast upcoming projects

? Refined our PortGen program to better educate WMBE businesses on how do with the Port

? Implementing a targeted industry project specific related workshop

? Establish a Mentor Protégé program

A new study will continue to assist in identifying disparities within the WMBE contracting community and may advise as to the available firms per the contracts the Port procures. This will be very helpful in identifying future Port goals via Diversity in Contracting program efforts post 2023, and its next five-year benchmark goals.

The study will also provide compliance with federal regulations. The federal government requires all 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.

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

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COMMISSION AGENDA – Action Item No. 10e Page 4 of 8

Meeting Date: November 8, 2022

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. 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 third disparity study, giving the Port a point of comparison from which to determine utilization progress and identify further areas of need.

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.

Previous Port of Seattle Disparity Study:

The Port of Seattle, working with consultants Colette Holt & Associates, conducted a disparity study in 2019 which sought to identify race and gender disparities in the awards of construction and construction-related contracts between January 2012 and 2016. It compared the amount of money for contracts related to construction projects that actually went to minority- and womenowned 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 1,025 prime and subcontracts. The market area was limited to the geographical borders of the State of Washington.

Findings:

The 2019 Disparity report indicated all "ethnic groups" have experienced contracting disparity within either construction and/or construction-related professional services categories.

A disparity ratio of 100 percent is considered parity, or in other words, each firm is receiving the amount of business you would anticipate given their availability in the relevant market. A

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COMMISSION AGENDA – Action Item No. 10e Page 5 of 8

Meeting Date: November 8, 2022

Disparity ratio under 80 percent signifies significant disparity. However, less than 100 may still be evidence of exclusion.

Native White Non-

Black Hispanic Asian WMBE

American Women WMBE

Disparity

Ratio 149.2%* 24.1% 13.1% 29.3% 14.3% 27.3% 109.1%

*The study noted that one African-American firm received 84% of the minority contracts, which is an anomaly.

Study Recommendations

? Increase Program Resources

o Response: The Port has added an additional FTE to support the WMBE program

? Implement an Electronic Contracting Data Collection and Monitoring System

o Response: The Port upgraded its Procurement Roster Management System to

VendorConnect to better monitor contracting efforts

? Review Contract Sizes and Scopes

o Response: Continuing to unbundle where appropriate

? Adopt a Small Business Enterprise Mentor-Protégé Program

o Response: Port Developed a WMBE Business Accelerator Program

? Develop Performance Measures for Success

o Response: Port established through its Diversity in Contracting policy directive and

Resolution (3737) a five year WMBE percent and number of firms utilized goals;

and on an annual basis each division has WMBE aspirational goals per budget.

Diversity in Contracting

The Diversity in Contracting Department is setting a 45% WMBE aspirational goal associated with contract.

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COMMISSION AGENDA – Action Item No. 10e Page 6 of 8

Meeting Date: November 8, 2022

DETAILS

Scope of Work

The following scope of work is listed below

Task Deliverable

Identify individuals responsible for supplying all contract

CONDUCT STUDY INITIATION MEETING

data; communicate study data requirements.

STUDYWEBSITE DEVELOPMENT Go live with Study website; update website as need arises.

Describe the legal and regulatory standards. Legal analysis

CONDUCT LEGAL ANALYSIS

will be part of final report.

Develop a contract data file to be incorporated into the

PERFORMUTILIZATION ANALYSIS

final study report.

Disparity findings will be incorporated into the final study

PERFORMDISPARITY ANALYSES

report.

PERFORM ECONOMY-WIDE DISPARITY Economy-wide disparity findings will be incorporated in the

ANALYSIS final study report.

Collect qualitative evidence of discrimination through

COLLECT QUALITATIVE EVIDENCE OF public meetings, business owner/stakeholder interviews.

DISCRIMINATION The anecdotal findings will be incorporated in the final

study report.

Evaluate the Port's DBE programs through review of

relevant documents and interviews with agency staff,

REVIEW DBE PROGRAM ADMINISTRATION stakeholders and business owners. DBE program

administration findings will be incorporated in the final

study report.

Draft study report for edits by the Port and a final report

PREPARE DRAFT AND FINAL STUDYREPORT; based on edits. Presentation of findings. Information on

PRESENTATION OF STUDY AND FINDINGS potential certified firms as identified throughout the study

process will be provided.

SCHEDULE

Advertise: Q4 of 2022

Consultant Selection: Q1 of 2023

Consultant Execution of Contract: Q2 of 2023 Through Q1 2024

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COMMISSION AGENDA – Action Item No. 10e Page 7 of 8

Meeting Date: November 8, 2022

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 (2019) disparity study through next year

Cons:

(1) Limits applicability of current disparity study to next year

(2) Unresponsive to community concerns and Port equity initiatives

This is not the recommended alternative.

Alternative 2 – Conduct another combined Disparity Study with outside government entities who

receive FAA Federal AIP grant dollars

Cost Implications: \$ TBD

Pros:

(1) Study could cost less

(2) Study still supports Port equity initiatives

Cons:

- (1) It would not be a Port only study
 - (2) Lose ability to conduct and control the competitive process
 - (3) Additional bureaucracy with other government agencies processes to partner.
- This is not the recommended alternative.

Alternative 3 – Port only disparity study for approximately \$300,000

Cost Implications: \$300,000

Pros:

- (1) Port only study
- (2) Ability to conduct our own competitive process
- (3) Allow for race-conscious goal setting on specific projects
- (4) Supports Port equity initiatives
- (5) Keeps the Port in compliance with U.S. DOT's DBE program rules and regulations
- (6) Informs Diversity in Contracting program effectiveness

Cons:

- (1) Study could cost more due to available qualified consultants
- (2) Under risk if applying any project specific race-conscious DBE goals
- (3) Unresponsive to community concerns and Port equity initiatives

Template revised June 27, 2019 (Diversity in Contracting).

COMMISSION AGENDA – Action Item No. 10e Page 8 of 8

Meeting Date: November 8, 2022

This is the recommended alternative.

Annual Budget Status and Source of Funds

Funds for the Disparity Study will be made available through the 2023 Economic Development Division budget.

ATTACHMENTS TO THIS REQUEST

- (1) Presentation

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

November 28, 2017 – Commission authorized a \$90,000 joint Disparity Study

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

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