



Board Report

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REVISED
EXECUTIVE MANAGEMENT COMMITTEE
FEBRUARY 15, 2018

SUBJECT: DISPARITY STUDY

ACTION: RECEIVE AND FILE

RECOMMENDATION

RECEIVE AND FILE the Final 2017 Disparity Study report.

ISSUE

Metro periodically conducts a Disparity Study (Study) to determine if evidence of discrimination exists in the local transportation marketplace to support the continuing use of Disadvantage Business Enterprise (DBE) race and gender conscious contract goals in the implementation of its DBE program. This is in accordance with direction received by the U.S. Department of Transportation requiring that federal recipients in our region conduct a study or other evidence gathering effort to determine if disparity exists in contracting. The prior Study was completed in 2013.

DISCUSSION

The Study conducted by BBC Research & Consulting (BBC) analyzed Metro contracting data over a five-year period from January 1, 2011 - December 31, 2015 to assess whether there were any disparities between utilization of minority and women owned businesses (M/WBEs), and the percentage of M/WBE contracting dollars that might be expected based on their availability to participate on transportation related contracts.

Findings

Utilization Analysis

The Study found that during the five-year Study period M/WBEs received 23.2 percent of the overall contracting dollars on over 12,000 construction, professional services, goods and other services contracts and subcontracts. Of these contracts, 14.7 percent was awarded to DBE firms.

Availability Analysis

The BBC Study team estimated the availability of M/WBEs for the same contracts analyzed in the utilization analysis and was dollar weighted by racial/ethnic and gender group for those contracts. The Study found overall availability of M/WBEs, on the contracts analyzed, is 31.3 percent. Hispanic American owned businesses (16.3%) and Black American owned businesses (6.8%) exhibited the highest availability percentages among all groups. Availability for remaining groups include Non-Hispanic white women owned (4.4%) businesses; Asian Pacific American owned (2.5%) businesses; Native American owned (0.7%) businesses, and Subcontinent Asian American owned (0.6%) businesses.

Disparity Analysis

The Study found that overall most groups experienced greater disparities on contracts awarded without goals than on those where DBE goals were applied. All groups with the exception of Subcontinent Asian American-owned businesses, exhibited disparity indices substantially below parity on contracts without DBE goals.

A disparity index of 100 indicates parity between participation and the availability for a particular group for a specific set of contracts. A disparity less than 80 has been deemed by several courts to be a “substantial” disparity between participation and availability and have accepted it as evidence of adverse conditions for M/WBEs. The Study shows disparity indices for groups on contracts with no goals as follows: Hispanic American (59), Black American (30), Non-Hispanic white women (37), Asian-Pacific American (73), Native American (52) and Subcontinent Asian American (161).

As such, the Study’s disparity analysis indicate that most racial/ethnic and gender groups showed disparities on contracts where race- and gender-conscious measures were not in place during the study period. As a result, the Study results support the continued use of DBE contract goals, narrowly tailored to those groups with substantial disparity.

Qualitative Information (Anecdotal Evidence)

Throughout the Disparity Study, the BBC Study team collected testimony and qualitative information from over 250 business owners and managers, trade association representatives, and other key stakeholders that shared their experiences working in the Los Angeles metropolitan area. Appendix D of the Study report summarizes the key themes that emerged from these responses.

Comparison with 2012 Study Results

When comparing the 2012 Disparity Study conducted by Mason Tillman and the 2017 Disparity Study conducted by BBC Research & Consulting, there are several important considerations.

- The two disparity studies were conducted using different methodologies:
- The 2012 study reviewed contracts within a two-year study period , whereas, the 2017 Disparity reviewed contracts within a five-year study period;
- Differences in marketplace conditions within Los Angeles county during the two Different study periods may contribute to differences in study results;
- The 2012 study only included federally-funded contracts, whereas, the 2017 study Included both federally and locally funded contracts; and
- There are substantial differences in the number of prime contracts studied between the 2012 study (182) and the 2017 study (10,189).

Between the 2012 study and the 2017 study, utilization of the all minority-owned businesses increased but utilization of woman-owned businesses stayed relatively stable. Utilization for federally-funded contracts in the 2012 study was 9.07% for MBEs and 2.69% for WBEs. Utilization in the 2017 study for Federally-funded contracts was 21.4% for MBEs and 2.5% for WBEs. It should be taken into consideration that different programs were in place during the two separate study periods and the number of Federally-funded contracts varied significantly between studies.

Overall, both studies showed significant disparities among woman-owned businesses and many minority-owned businesses in Federally-funded contracts. The 2012 study found disparities for all minority groups in Federally-funded contracts. The 2017 study found significant disparities among Black American-owned and Hispanic American-owned businesses in Federally-funded contracts. When reviewing locally-funded contracts in which DBE program goals do not apply, the 2017 study found disparities for non-Hispanic White woman-, Black American-, Hispanic-American, Asian Pacific -, and Native American-owned business.

Staff has provided follow-up actions to the Study recommendations to improve utilization with underutilized minority and women owned businesses in Metro contracting.

Study Recommendations

The Study identified the following key recommendations to further eliminate barriers in the implementation of the DBE program, the Metro Diversity & Economic Opportunity Department (DEOD) has reviewed the findings and have provided steps for follow-up action:

1. Expand efforts to network with minority- and woman-owned businesses (such as the monthly Transportation Business Advisory Council (TBAC) meetings).
 - Continue to engage and work with TBAC on DBE program initiatives and improvements to the program. To this end, DEOD has several outreach events planned in the 3rd and 4th quarter of FTY18 to include, Lunch and Learn Series presents After Winning the Contract, TBAC New Member Recruitment Event, Meet the Primes and How to Prepare for an Audit.
2. Make efforts to unbundle relatively large contracts (e.g. large construction or design/build contracts) into several smaller contracts.
 - Work with Metro Departments and Project Managers to find ways to unbundle large construction contracts and design/build contracts. DEOD has encouraged unbundling as part of the SBE Prime (set-aside) program.
3. Given the anticipated size and types of projects expected with Measure M, Metro should consider information presented in Appendix G of the Study report regarding best practices for encouraging participation by small businesses, and minority- and women-owned businesses on design/build, public private partnership (P3), and other “mega-projects.”
4. -Collaborate with the Program Management Office (PMO), Vendor Contract Management (VCM) and other departments as necessary to review and consider recommendations for implementation. Expand the set aside small prime contractor program for small business bidding to encourage the participation of minority and woman-owned businesses as prime contractors, by increasing the number of contracts included in the small prime contractor set aside program, as well, as the dollar limits around those contracts. Review SBE Prime (set-aside) thresholds and engage TBAC, VCM and Metro departments as required for recommended changes to existing policy.
5. Implement a program that requires prime contractors to include certain minimum levels of subcontracting as part of their bids and proposals. Prime contractors bidding on the contract would be required to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be responsive.
 - Engage VCM and TBAC for consideration and reach out to others agencies that may have similar requirement
6. Continue to review prompt payment programs and policies that help address small business difficulties experienced with cash flow due to delayed payment.
7. - Continue to collaborate with TBAC, VCM, and the contracting community on prompt payment issues. The recent Board approval to allow for CEO delegation and approval of contract change orders within the life of project budget, will significantly help to get payments to certified firms for cash flow. A large majority of anecdotal accounts were related to change

work on design/build contracts. In addition, Metro has implemented a voluntary advance payment option as bonus points in the evaluation criteria for mega design/build solicitations. This is an incentive for proposers to voluntarily pay all contractors and subcontractors before receiving payment from Metro. This option was first launched on the Westside Purple Line Section 2 project and will be active through the completion of the project.

Public Participation

The draft Study report was released on November 17, 2017, for a 45-day public comment period. The draft Study report was posted on the Metro Vendor Portal with opportunity to review a PowerPoint presentation summarizing the Study results.

Public comments were accepted by US mail, electronically through the disparity study website and direct email, as well as, orally or in writing by attending a public hearing(s). Public notices and dates of hearings were distributed via eblasts, published in minority and women-owned newspapers in various languages, and through the Transportation Business Advisory Council. Metro conducted three public hearings regarding the disparity study results. The hearings were held at the Metro Headquarters building on December 6, 2017, December 7, 2017 (in conjunction with the December Transportation Business Advisory Council meeting), and December 11, 2017.

During the hearings, businesses reported challenges breaking into existing business networks and the importance of networking. Some participants also encouraged Metro to continue to improve access to contracting opportunities. Many small businesses discussed the difficulties they experienced with cash flow due to delayed payment. Several respondents reported that the quantitative and qualitative results of the study were representative of their experiences in the marketplace. Several questions received were general clarification questions regarding how a disparity study is conducted.

Public comments from these meetings were incorporated into the final report. Some of the comments echoed the information found during the qualitative research component of the report (see Appendix D of the full Study report for all of the qualitative information collected as a part of the disparity study). In addition, opportunities to submit comments via email, U.S. mail and through the Metro website were made available through the closing of the public comment period on January 2, 2018.

NEXT STEPS

- Staff will use the Study data for the upcoming triennial overall DBE goal for Federal Fiscal Years (FFY) 2019- 2021 This will require the following activity in accordance with 49 Code of Federal Regulation Part 26.45:
 - Obtain through Grants Management and Metro Departments a list of Federal Transit Administration (FTA) funded contracts anticipated to be awarded during the upcoming triennial overall DBE goal period for FFY 2019-2021. Using Study data, determine availability for anticipated contracts if not similar to the mix of contracts analyzed in the Study.
 - Complete draft overall DBE goal methodology report, with base figure and analysis of

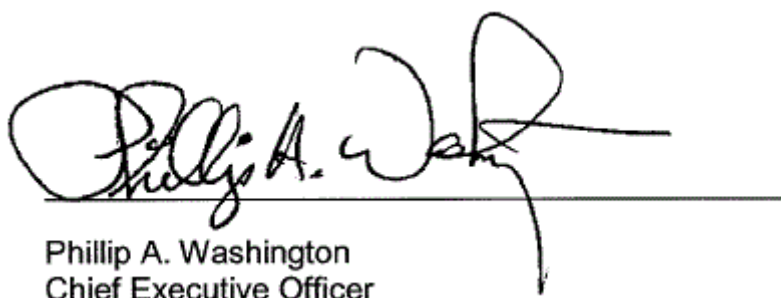
- required step 2 adjustment, inclusive of anticipated contracts.
- Prepare DBE program limited waiver letter requesting narrowly tailored use of remedial DBE contract goals for groups the Study found to have substantial disparities.
- Conduct consultation with minority and women-owned firms to discuss draft overall goal methodology to receive input.
- Post draft overall DBE goal and limited waiver letter on Metro website for 30-day public comment period.
- Return to the Board in May 2018 (tentative) with recommended triennial overall DBE goal for consideration and approval.
- Submit FFY 2019- 2021 overall DBE goal methodology and limited waiver letter to FTA by the August 1, 2018 deadline.
- Staff will review Study recommendations for implementation to increase effectiveness of the DBE program.

ATTACHMENTS

Attachment A - 2017 Final Disparity Study Executive Summary

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