



Port of Seattle Disparity Study

FINAL REPORT

Final Report

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Prepared for

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CHAPTER ES.

Executive Summary

The Port of Seattle (the Port) retained BBC Research & Consulting (BBC) to conduct a *disparity study* that would provide information to help the agency implement the Federal Disadvantaged Business Enterprise (DBE) Program and its small business programs—the Small Contractor and Suppliers (SCS) Program and the Small Business Enterprise (SBE) Program. The disparity study examined whether there were any disparities between:

- The percentage of construction and construction-related professional services contracting dollars (including subcontract dollars) that the Port awarded to minority- and women-owned business enterprises (MBE/WBEs) between January 1, 2010 and September 30, 2013 (i.e., utilization);¹ and
- The percentage of construction and construction-related professional services contracting dollars that MBE/WBEs might be expected to receive based on their availability to perform specific types and sizes of the Port’s prime contracts and subcontracts (i.e., availability).

The Port could use information from the study to help refine its implementation of the Federal DBE Program, the SCS Program, and the SBE Program. Information from the study could inform the Port setting its overall DBE goal; determining the portion of the goal that can be met through race- and gender-neutral measures and, if necessary, race- and gender-conscious measures; and, if appropriate, determining which groups would be eligible for race- and gender-conscious measures.² The study also provides information about program measures that the Port could consider using to encourage the participation of small businesses—including many MBE/WBEs—in its contracting.

Analyses in the 2014 Disparity Study

Along with measuring potential disparities between MBE/WBE utilization and availability on Port construction contracts and construction-related professional services contracts, the disparity study also examined other quantitative and qualitative information related to the legal framework surrounding the Port’s implementation of the Federal DBE Program, the SCS Program, and the SBE Program; local marketplace conditions for MBE/WBEs and for other small businesses; and contracting practices and business assistance programs that the Port currently has in place.

¹ The study team considered businesses as MBE/WBEs if they were owned and operated by minorities or women, regardless of whether they were certified as DBEs or as MBE/WBEs through the Washington State Office of Minority and Women’s Business Enterprises (OMWBE). In the study, “certified DBEs” refers to those businesses that are specifically certified as such through OMWBE.

² Race- and gender-neutral measures are measures that are designed to remove potential barriers for all businesses attempting to do work with the agency or measures specifically designed to increase the participation of small or emerging businesses. Race- and gender-conscious measures are measures that are specifically designed to increase the participation of DBEs and MBE/WBEs.

- The study team conducted an analysis of federal regulations, case law, and other information to guide the methodology for the disparity study. The analysis included a review of federal, state, and local requirements related to the Federal DBE Program, the SCS Program, and the SBE Program.
- BBC conducted quantitative analyses of the success of minorities, women, and MBE/WBEs throughout the Port’s relevant geographic market area. In addition, the study team collected qualitative information through in-depth anecdotal interviews and public meetings about potential barriers that small businesses and MBE/WBEs face in the local construction and construction-related professional services contracting industries.
- BBC analyzed the percentage of MBE/WBEs that are “ready, willing, and able” to perform on Port construction and construction-related professional services prime contracts and subcontracts. That analysis was based on telephone surveys that the study team completed with more than 3,000 Washington businesses that work in industries related to the types of construction and construction-related professional services contracts that the Port awards. (The study team attempted telephone surveys with every business establishment that it identified as doing work that is relevant to Port construction and construction-related professional services contracting.)
- BBC analyzed the dollars that the Port awarded to MBE/WBEs on more than 1,000 construction and construction-related professional services prime contracts and subcontracts executed between January 1, 2010 and September 30, 2013 (i.e., the study period). BBC analyzed contracts that were funded by the Federal Aviation Administration (FAA) and contracts that were solely locally-funded.
- BBC examined whether there were any disparities between the utilization and availability of MBE/WBEs on construction and construction-related professional services contracts that the Port awarded during the study period. The study team also assessed whether any observed disparities were statistically significant.
- BBC reviewed the Port’s current contracting practices and SBE/MBE/WBE/DBE program measures and provided guidance related to additional program options and refinements to those practices and measures.

Utilization and Disparity Analysis Results for Individual Groups

According to federal regulations and relevant case law, agencies that use race- or gender-based measures to encourage the participation of DBE/MBE/WBEs in their contracting must limit the use of those measures “to those specific groups that have actually suffered discrimination or its effects.”³ If the Port determines that the use of race- and gender-conscious measures on FAA-funded contracts is appropriate, then it should evaluate which groups should be considered eligible to participate in those programs.

Utilization and disparity analysis results for Port construction and construction-related professional services contracts—along with other pertinent information—are relevant to the

³ United States Department of Transportation *Official Western States Paving Company Case Q&A*, <https://www.civilrights.dot.gov/sites/default/files/DBE/Guidance/Western%20States%20Paving%20Company%20Case%20Q%26A%2020140725%20508.pdf>.

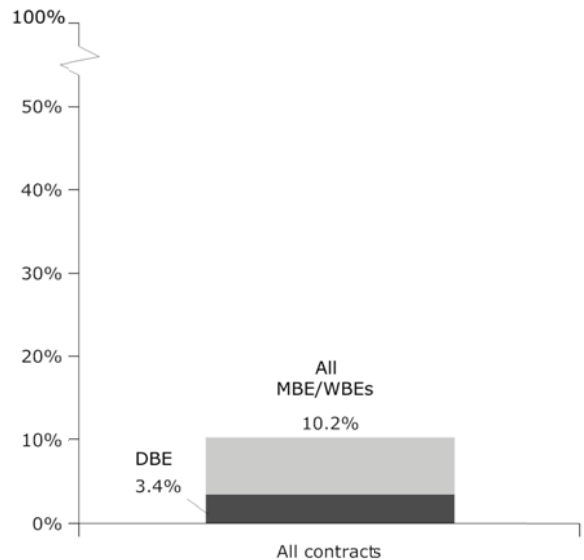
agency’s determination of which groups could be eligible for any race- or gender-conscious measures. Courts have considered the existence of substantial disparities between the utilization and availability for particular groups as inferences of discrimination in the local marketplace. That information is also useful for the Port to examine the performance of its current programs. BBC examined whether there were any disparities between the Port’s utilization of individual MBE/WBE groups on its construction and construction-related professional services contracts and the availability of those businesses to perform that work.

Utilization results. The study team measured MBE/WBE participation in terms of *utilization*—the percentage of prime contract and subcontract dollars that the Port awarded to MBE/WBEs during the study period. Figure ES-1 presents overall MBE/WBE utilization on Port construction and construction-related professional services contracts during the study period. The darker portion of the bar presents the Port’s utilization of MBE/WBEs that were DBE-certified during the study period. As shown in Figure ES-1, MBE/WBEs received 10.2 percent of the Port’s prime contract and subcontract dollars during the study period. MBE/WBEs that were DBE-certified received 3.4 percent of the Port’s prime contract and subcontract dollars.

Figure ES-1.
Overall MBE/WBE utilization on Port construction and construction-related professional services prime contracts and subcontracts

Note:
 Includes FAA- and locally-funded Port contracts.
 Darker portion of bar presents certified DBE utilization.
 The study team analyzed 1,048 prime contracts/subcontracts.
 For more detail and results by group, see Figure K-2 in Appendix K.

Source:
 BBC Research & Consulting from the Port’s contracting data.



Disparity analysis results. Although information about MBE/WBE utilization is instructive on its own, it is even more instructive when it is compared with the utilization that might be expected based on the availability of MBE/WBEs for agency work. As part of the disparity study, BBC compared the utilization of MBE/WBEs on Port construction and construction-related professional services prime contracts and subcontracts with the percentage of contract dollars that MBE/WBEs might be expected to receive based on their availability for that work.

BBC expressed both utilization and availability as percentages of the total dollars that a particular group received for a particular set of contracts (e.g., 2% utilization compared with 10% availability). BBC then calculated a “disparity index” by dividing utilization by availability

and multiplying by 100.⁴ A disparity index of 100 indicates an exact match between utilization and availability for a particular group for a specific set of contracts (often referred to as “parity”). A disparity index of less than 100 may indicate a disparity between utilization and availability, and disparities of less than 80 are described in this report as “substantial.” Disparity analysis results for key contract sets are described below.

All construction and construction-related professional services contracts. Figure ES-2 presents disparity analysis results for all Port construction and construction-related professional services contracts executed during the study period. Note that the Port did not use any race- or gender-conscious program measures to encourage the participation of DBE/MBE/WBEs in its contracting during the study period. The line down the center of the graph shows a disparity index level of 100, which indicates parity between utilization and availability. Disparity indices of less than 100 indicate disparities between utilization and availability (i.e., underutilization). For reference, a line is also drawn at a disparity index level of 80, because some courts use 80 as a threshold for what indicates a substantial disparity.⁵

Figure ES-2.
Disparity indices for
Port construction and
construction-related
professional services
prime contracts and
subcontracts

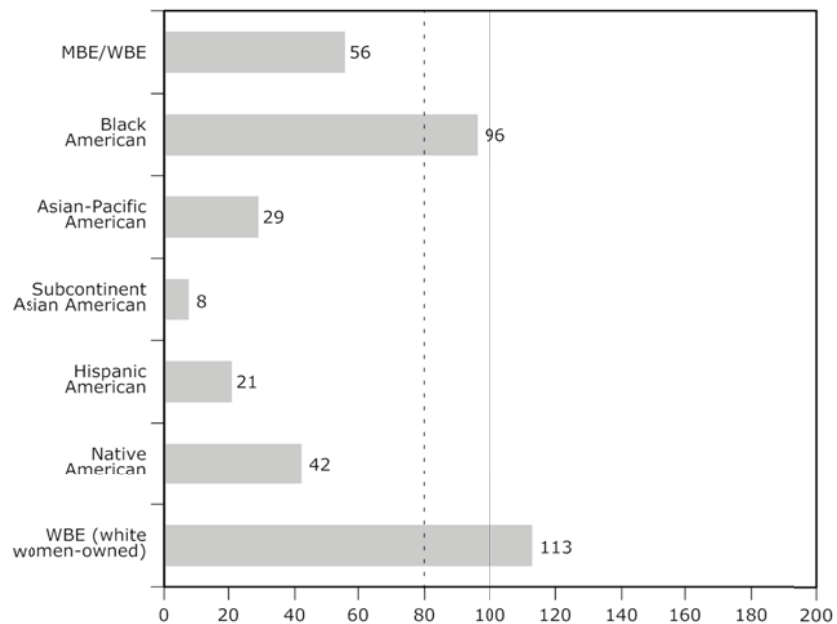
Note:

Number of prime contracts/subcontracts analyzed was 1,048.

For more detail, see Figure K-2 in Appendix K.

Source:

BBC Research & Consulting availability and utilization analyses.



As shown in Figure ES-2, overall, utilization of MBE/WBEs considered together on Port construction and construction-related professional services contracts during the study period was substantially below what might be expected based on their availability for those contracts. The disparity index of 56 indicates that all MBE/WBEs considered together received approximately \$0.56 for every dollar that they might be expected to receive based on their

⁴ For example, if actual utilization of WBEs on a set of contracts was 2 percent and the availability of WBEs for those contracts was 10 percent, then the disparity index would be 2 percent divided by 10 percent, which would then be multiplied by 100 to equal 20.

⁵ Several courts deem a disparity index below 80 as being “substantial” and have accepted it as evidence of adverse conditions for MBE/WBEs. For example, see *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1041; *Eng’g Contractors Ass’n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d at 914, 923 (11th Circuit 1997); *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994). See Appendix B for additional discussion of those and other cases.

availability for construction and construction-related professional services prime contracts and subcontracts that the Port awarded during the study period.

- All MBE groups exhibited disparity indices below parity—Black American-owned businesses (disparity index of 96), Asian-Pacific American-owned businesses (disparity index of 29), Subcontinent Asian American-owned businesses (disparity index of 8), Hispanic American-owned businesses (disparity index of 21), and Native American-owned businesses (disparity index of 42). Of the groups exhibiting disparities, only Black American-owned businesses did not exhibit a substantial disparity.
- WBEs (disparity index of 113) were the only MBE/WBE group that did not exhibit a disparity.

Although Black American-owned businesses did not show substantial disparities on Port construction and construction-related professional services contracts, most of the dollars that went to Black American-owned businesses during the study period (approximately \$4.5 million of \$5.6 million) went to a single Black American-owned electrical contracting firm that was not DBE-certified. In some cases, other individual MBE/WBEs also accounted for relatively large proportions of their respective groups' utilization but not nearly to the same extent. For details, see Chapters 6 and 7.

Construction and construction-related professional services. Figure ES-3 presents disparity analysis results separately for construction and construction-related professional services contracts to assess whether MBE/WBEs exhibited different outcomes based on industry. Note that the dollars associated with construction contracts accounted for the majority of contracting dollars that the Port awarded during the study period (78% of the contracting dollars that BBC analyzed as part of the study). As shown in Figure ES-3, MBE/WBEs considered together exhibited substantial disparities between utilization and availability on both construction (disparity index of 63) and construction-related professional services contracts (disparity index of 28).

- Asian-Pacific American-owned businesses (disparity index of 25), Subcontinent Asian American-owned businesses (disparity index of 11), Hispanic American-owned businesses (disparity index of 22), and Native American-owned businesses (disparity index of 38) exhibited substantial disparities on construction contracts.
- Black American-owned businesses (disparity index of 6), Asian-Pacific American-owned businesses (disparity index of 39), Subcontinent Asian American-owned businesses (disparity index of 6), and Hispanic American-owned businesses (disparity index of 11) exhibited substantial disparities on construction-related professional services contracts.⁶
- WBEs did not exhibit a disparity on construction contracts (disparity index of 134) but exhibited a substantial disparity on construction-related professional services contracts (disparity index of 47).

⁶ Most of the dollars that went to Black American-owned businesses on construction contracts during the study period (approximately \$4.5 million of \$5.5 million) went to a single Black American-owned electrical contracting firm that was not DBE certified.

Figure ES-3.
Disparity indices for
Port construction and
construction-related
professional services
contracts

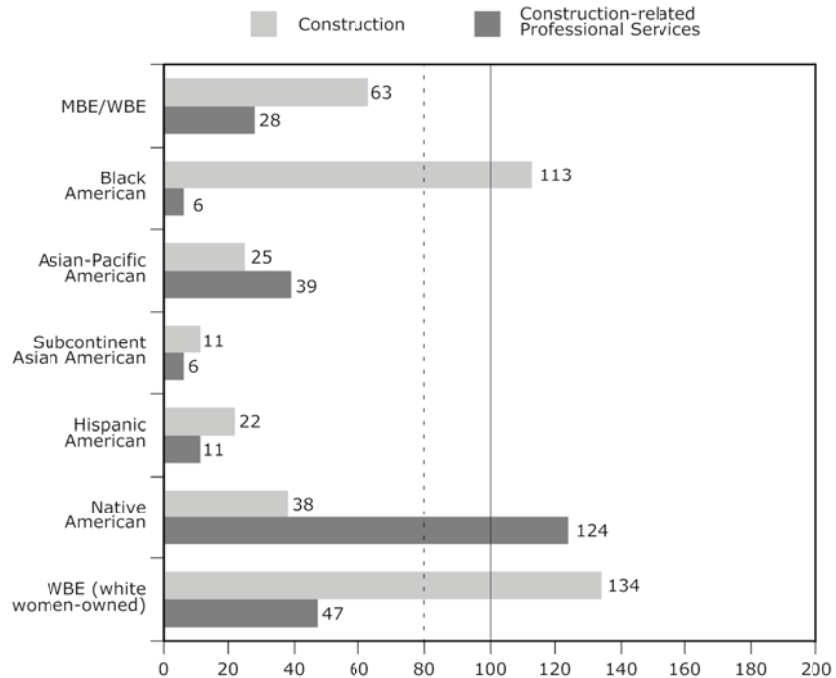
Note:

The study team analyzed 681 construction prime contracts/subcontracts and 367 construction-related professional services prime contracts/subcontracts.

For more detail, see Figures K-3 and K-4 in Appendix K.

Source:

BBC Research & Consulting availability and utilization analyses.



Other information. The study team also examined information concerning the local marketplace, including results by MBE/WBE group, as part of the disparity study. The Port should review the full disparity study report, as well as other information it may have, in determining whether it needs to use any race- or gender-conscious measures, and if so, in determining what actions it might take based on the findings of this study.

Implementing the Federal DBE Program and the SCS and SBE Programs

Chapter 10 reviews information relevant to the Port’s implementation of the Federal DBE Program, the SCS Program, and the SBE Program. Key areas of potential refinement are discussed below.

- The Port should continue to keep track of the participation of SBE/DBE/MBE/WBEs in its contracting. Doing so can help the agency assess the effectiveness of certain measures that are designed to encourage the participation of those businesses. In addition, to ensure accurate tracking, the Port should continue to make efforts to collect that information for subcontracts, particularly on construction-related professional services contracts.
- The Port should make efforts to ensure that its prompt payment policies are well enforced. In-depth anecdotal interviews with business owners and managers revealed the importance of prompt payment to small businesses as well as some dissatisfaction with how promptly businesses are paid on public agency projects.
- The Port should make efforts to ensure that its mechanisms for monitoring the performance of DBEs are enforced. In-depth anecdotal interviews with business owners and managers revealed the importance of such mechanisms and indicated discrepancies between the work that prime contractors commit to DBE subcontractors at contract award and the work actually performed by DBEs.

- The Port should explore partnerships to develop and implement Business Development Programs such as mentor-protégé and joint venture programs. Such programs could help further encourage the participation of small businesses in Port contracting.

Next Steps

The disparity study represents an independent analysis of information related to the participation of MBE/WBEs in the Port's construction and construction-related professional services contracting. The Port should review study results and other relevant information in connection with making decisions concerning its implementation of the Federal DBE Program, the SCS Program, and the SBE Program. USDOT periodically revises elements of (and regulations related to) the Federal DBE Program and issues guidance concerning implementation of the program. In addition, new court decisions provide insights related to the proper implementation of SBE/DBE/MBE/WBE programs. The Port should closely follow such developments.