Port of Seattle
Disparity Study 2019

Port of Seattle®

COLETTE HOLT & ASSOCIATES

PORT OF SEATTLE DISPARITY STUDY

2019

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About the Study Team

Colette Holt & Associates ("CHA") is a national law and consulting firm specializing in disparity studies, affirmative action contracting programs, expert witness services, compliance monitoring and strategic development related to inclusion, diversity and affirmative action. Founded in 1994, it is led by Colette Holt, J.D., a nationally recognized attorney and expert. In addition to Ms. Holt, the firm consists of Steven C. Pitts, Ph. D., who serves as the team's economist and statistician; Ilene Grossman, B.S., CHA Chief Operating Officer; Glenn Sullivan, B.S., CHA Director of Technology; Victoria Farrell, MBA, CHA Assistant Principal Researcher; and Joanne Lubert, J.D., Special Counsel. CHA is certified as a Disadvantaged Business Enterprise, Minority-Owned Business Enterprise and a Woman-Owned Business Enterprise by numerous agencies.

Blackstar Services, Inc. Daucey Brewington, owner of Blackstar Services, Inc. is an enrolled member of the Lumbee Tribe of North Carolina. Founded in 1998, Blackstar works directly with Native individuals and tribally owned businesses. Mr. Brewington works with public and private organizations to create business pathways into Indian Country, particularly by leveraging federal programs that offer advantages for tribally owned concerns.

Pacific Communications Consultants, Inc. Regina Glenn, MBA, President. PCC is an award-winning M/W/DBE-certified management consulting firm, specializing in diversity and inclusion compliance. The firm provides diversity and management training; community relations; public involvement; and M/WBE development. PCC specializes in enabling its clients to communicate in an effective manner with diverse communities and neighborhoods. For over 20 years PCC has provided a full range of communication-related services.

Acknowledgements

We wish to express special appreciation to Mian Rice and Karen Hovde for their assistance in conducting this study.

I. EXECUTIVE SUMMARY

As a related analysis to the Washington State Airports Disparity Study 2019, Colette Holt & Associates ("CHA") was retained by the Port of Seattle to examine its spending on non-FAA funded contracts to determine its utilization of Women and Minority-Owned Business Enterprises (collectively "WMBEs"); the availability of WMBEs in its market area; any disparities between its utilization and WMBE availability. We were also tasked with making recommendations for increasing the inclusion of WMBEs. We analyzed data for construction and construction-related services for fiscal years 2012 through 2016.

Our analyses and findings regarding the legal standards for contracting affirmative action programs; economy-wide disparities; and anecdotal data collection relevant to this report are contained in the Washington State Airports Disparity Study 2019. That Study also provides the analyses and findings for the Port's FAA funded contracts for the study period.

A. Study Findings

1. Port of Seattle's Diversity in Contracting Program

The Port of Seattle fully implemented a new Diversity in Contracting ("DCD") program in 2019 to address historical disparities in Women and Minority Business Enterprise ("WMBE") participation for its locally-funded contracts. The program is the result of the 2018 Diversity in Contracting Policy Resolution ("Directive"), which applies to all contracts and other activities at the Port, including construction, consulting contracts and purchased goods and services. The Directive sets forth a Port-wide goal of increasing the dollars spent on WMBE contracts within 5 years by 15 percent.

Prior to the Diversity in Contracting Policy Directive, the Port was utilizing the Small Contractor and Supplier (SCS) program, which focused primarily on small businesses and small businesses that were half the size standards of the federal SBA size limits. This program was in effect during the study's time period.

The DCD program includes implementation of policies, practices and processes across departments and divisions that can enhance Port procurement and contracting activities to provide a "more receptive" environment for utilization of WMBEs. The Directive requires a designated WMBE liaison for each division and the development of clear lines of responsibility and accountability. Aspirational goal setting and implementation of the program elements are part of

the annual performance evaluation for all Port division directors and their staff. The Directive also requires a proposer or bidder to provide an inclusion plan that documents its affirmative efforts to meet the aspirational goal and commitment to use WMBE firms.

The Port currently engages in a number of outreach initiatives to enhance bidding expertise. These efforts include the Port's Small Business Generator Program ("PortGen"), providing targeted communications through email blasts and its external Small Business Website about potential bid opportunities; workshops and "Meet and Greet" sessions; and advanced training sessions to help WMBEs with the post award process The Port also uses community organizations and government partnerships to disseminate information about WMBE opportunities. The OMWBE directory and the Port's Procurement Roster Management System Database (PRMS) are currently used to inform firms of events and contracting opportunities. A key part of the program is developing a supplier database to increase the visibility of WMBE firms, increase outreach capabilities and replace the current PRMS.

2. Utilization, Availability and Disparity Analyses of Port of Seattle Non-Federal Aviation Administration Funded Contracts

A central component of a legally defensible disparity study examines the contract data of an agency (its utilization) and compares that to the universe of firms that potentially could have received contracts (its availability). Strict constitutional scrutiny requires that a state government limit its race-based remedial program to firms doing business in its product and geographic markets. Put another way, the study looked at what the Port *achieved* relative to what it possibly *could have achieved*. This analysis involved several steps:

- The determination of the Port's "unconstrained product market" when its spending is financed by non-FAA dollars.
- The determination of the Port's "geographic market".
- The determination of the "constrained product market".
- The determination of the Port's utilization of firms in its constrained product market (i.e., how it spends its dollars across industries and the demographic profile of the ownership of firms that receive agency funds.)
- The determination of the set of firms that were available to receive contracts from the Port.
- The weighting of the resulting availability of WMBEs and non-WMBEs across industries that reflects how the Port spends its dollars.

- The determination of the disparity ratio of the utilization of a particular demographic group over that group's weighted availability.

We analyzed the Port's contract data for fiscal years 2012 through 2016. To conduct these analyses, we constructed all the fields necessary where they were missing in the Port's contract records for prime contractors and associated subcontractors (*e.g.*, industry type; zip codes; race and gender ownership, NAICS codes, and subcontractor information). The resulting Final Contract Data File for analysis contained 1,025 contracts, with a total paid amount of $1,086,167,588. Of these contracts, 173 were prime contracts and subcontractors received 852 contracts. Prime contractors received $354,092,332; subcontractors received $732,075,256. Prime contractors received 32.6 percent of all paid dollars; subcontractors received 67.4 percent of all paid dollars. The Final Contract Data File was used to determine the geographic and product markets for the analyses, utilization and to estimate the availability of WMBEs by contract type.

The following tables present the NAICS codes, the label for each NAICS code, and the industry percentage distribution of spending across NAICS codes, by type of contract. Chapter III provides tables disaggregated by dollars paid to prime contractors as well as dollars paid to subcontractors on contracts with subcontracting opportunities.

Table 1-1: Industry Percentage Distribution of Contracts by Dollars

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
541330	Engineering Services	20.7%	20.7%
236220	Commercial and Institutional Building Construction	15.0%	35.7%
238210	Electrical Contractors and Other Wiring Installation Contractors	9.4%	45.1%
238120	Structural Steel and Precast Concrete Contractors	8.1%	53.2%
238220	Plumbing, Heating, and Air-Conditioning Contractors	7.3%	60.5%
238150	Glass and Glazing Contractors	5.9%	66.4%
238290	Other Building Equipment Contractors	4.5%	70.9%
238310	Drywall and Insulation Contractors	4.2%	75.1%
237310	Highway, Street, and Bridge Construction	3.9%	78.9%
238910	Site Preparation Contractors	2.5%	81.5%
238110	Poured Concrete Foundation and Structure Contractors	2.5%	84.0%

NAICS	NAICS Code Description	Pct Total Contract Dollars	Cumulative Pct Total Contract Dollars
488119	Other Airport Operations	2.2%	86.1%
541611	Administrative Management and General Management Consulting Services	1.5%	87.6%
238390	Other Building Finishing Contractors	1.4%	89.0%
238350	Finish Carpentry Contractors	1.2%	90.2%
TOTAL			**100.0%[a]**

a. An additional 94 NAICS codes contained the balance of the Port's spending. The entire set of NAICS codes are presented in Appendix B.

Source: CHA analysis of Port of Seattle data

To determine the relevant geographic market area for each funding source, we applied the well accepted standard of identifying the locations of firms that account for at least 75 percent of contract and subcontract dollar payments in the contract data file.[1] Location was determined by ZIP code and aggregated into counties as the geographic unit. The State of Washington captured 87.4 percent of the unconstrained product market dollars and, therefore, the state of Washington constituted the geographic market.

When the unconstrained product market was limited to the state of Washington, that is, the contracts without regard to location, the result was the *constrained product market*. The next step was to develop the Final Utilization Data File for the constrained product market which contains the dollar value of the Port's utilization of WMBEs as measured by payments to prime firms and subcontractors and disaggregated by race and gender.

Table 1-2 presents the utilization data by all industry sectors. Chapter III provides detailed breakdowns of these results.

1. National Academies of Sciences, Engineering, and Medicine 2010, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, DC: The National Academies Press. https://doi.org/10.17226/14346, p.49, ("*National Disparity Study Guidelines*").

Table 1-2: Distribution of Contract Dollars by Race and Gender (share of total dollars)

NAICS	Black	Hispanic	Asian	Native American	White Women	WMBE	Non-WMBE	Total
236220	3.10%	0.10%	0.10%	0.40%	0.30%	4.00%	96.00%	100.00%
237310	0.00%	0.00%	0.00%	0.20%	4.60%	4.80%	95.20%	100.00%
237990	0.00%	0.00%	0.00%	0.00%	3.90%	3.90%	96.10%	100.00%
238110	0.00%	5.60%	0.00%	0.00%	0.30%	5.90%	94.10%	100.00%
238120	0.00%	0.00%	1.30%	0.30%	0.00%	1.60%	98.40%	100.00%
238150	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%
238210	5.60%	1.20%	0.00%	0.80%	3.30%	10.90%	89.10%	100.00%
238220	0.00%	0.00%	0.00%	0.00%	0.10%	0.10%	99.90%	100.00%
238290	0.00%	0.00%	0.00%	5.50%	0.10%	5.60%	94.40%	100.00%
238310	0.00%	0.00%	0.10%	0.00%	0.20%	0.30%	99.70%	100.00%
238350	0.00%	0.00%	0.00%	0.00%	0.80%	0.80%	99.20%	100.00%
238390	0.00%	0.00%	0.80%	0.00%	0.80%	1.60%	98.40%	100.00%
238910	0.30%	0.00%	0.00%	0.00%	0.80%	1.20%	98.80%	100.00%
332323	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%
541330	0.10%	0.00%	0.40%	0.10%	0.20%	0.80%	99.20%	100.00%
541611	0.30%	0.00%	2.30%	0.00%	1.90%	4.50%	95.50%	100.00%
561990	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%
562910	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%
Total	**1.20%**	**0.30%**	**0.20%**	**0.50%**	**0.80%**	**3.00%**	**97.00%**	**100.00%**

Source: CHA analysis of Port of Seattle data

Using the "custom census" approach to estimating availability (described in detail in Chapter III), and the further assignment of race and gender (using the Master Directory and other sources), we determined the aggregated availability of WMBEs when weighted by the Port's spending in its geographic and industry markets, to be 11.1 percent. Table 1-3 presents the weighted availability data for all product sectors combined for the racial and gender categories.

Table 1-3: Aggregated Weighted Availability

Black	Hispanic	Asian	Native American	White Women	WMBE	Non-WMBE	Total
0.8%	1.3%	1.6%	1.6%	5.8%	11.1%	88.9%	100.0%

Source: CHA analysis of Port of Seattle data; Hoovers; CHA Master Directory

To meet the constitutional test that all groups must have suffered discrimination in the Port of Seattle's market in order to be eligible for the benefits of the program, we next calculated disparity ratios comparing the Port's utilization of WMBEs as prime contractors and subcontractors measured in dollars paid to the availability of these firms in its market areas. The disparity ratio is calculated by dividing the weighted availability into the utilization rate. If the utilization rate (*i.e.*, the disparity ratio) for a group is less than the availability for that group, we would conclude that the group is underutilized. Table 1-4 presents these results.

The courts have held that disparity results must be analyzed to determine whether the results are "significant". There are two distinct methods to measure a result's significance. First, a "large" or "substantively significant" disparity is commonly defined by courts as utilization that is equal to or less than 80 percent of the availability measure. A substantively significant disparity supports the inference that the result may be caused by the disparate impacts of discrimination.[2] Second, a statistically significant disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it

2. *See* U.S. Equal Employment Opportunity Commission regulation, 29 C.F.R. § 1607.4(D) ("A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.").

resulted from random chance alone[3]. A more in-depth discussion of statistical significance is provided in Appendix A.

Substantive and Statistical Significance

‡ Connotes these values are substantively significant. Courts have ruled the disparity ratio less or equal to 80 percent represent disparities that are substantively significant. (See Footnote 2 for more information.)

* Connotes these values are statistically significant at the 0.05 level. (See Appendix A for more information.)

** Connotes these values are statistically significant at the 0.01 level. (See Appendix A for more information.)

*** Connotes these values are statistically significant at the 0.001. level (See Appendix A for more information.)

Table 1-4: Table 1-4 Disparity Ratios by Demographic Group, All Industries Combined

	Black	Hispanic	Asian	Native American	White Women	WMBE	Non-WMBE
Disparity Ratio	149.2%	24.1%‡	13.1%‡	29.3%‡	14.3%‡	27.3%‡***	109.1%***

Source: CHA analysis of Port of Seattle data
**** Indicates statistical significance at the 0.001 level*
‡ Indicates substantive significance

Our previous experience suggests that unusually high disparity ratios might be the result of a variety of factors unique to a set of firms in a particular group and a particular NAICS code. The result of this nexus of factors should not be taken to be representative of the experiences of most firms within that group. We therefore explored if some anomalies did exist and would explain the Black disparity ratio of 149.2 percent. What we found was that one firm received 84.6 percent of all contract dollars received by Black firms. This activity occurred in two NAICS codes: 236220 and 238210. This concentration of an ethnic group dollars in one firm is extremely unusual and we believe accounts for the disparity ratio for Blacks presented in Table 1-4.

3. A chi-square test – examining if the utilization rate was different from the weighted availability - was used to determine the statistical significance of the disparity ratio. A t-test was performed on the regression coefficients to examine the probability the coefficients were not equal to zero.

B. Recommendations

In addition to providing a review of the Port of Seattle's current contracting equity activities and a statistical analysis of the Port's utilization of Women and Minority Business Enterprises ("WMBEs"), the availability of such firms in the Port's market area, and whether there are any disparities between utilization and availability, Colette Holt & Associates ("CHA") was asked to provide recommendations for possible enhancements to the Port's current program for WMBEs. We also reviewed the results of our Washington State Airports Disparity Study 2019, which included additional economy-wide data on disparities on the basis of race and gender in the Port's market area, as well as qualitative evidence from minority and women business owners about barriers to obtaining contracts in the public and private sectors. Based upon these findings and national best practices for contracting equity programs, we make the following recommendations.

Increase Program Resources: Evaluate resources committed to new initiatives to determine whether additional funds and/or staff are required to ensure their success. The Port is embarking on several important initiatives to increase access to information and provide resources for WMBEs and other small firms. These include enhanced outreach capabilities, more attendance at vendor events, and increased accountability for program results by Port divisions. These worthy efforts will require adequate resources, both staffing and financial to be fully successful.

Implement an Electronic Contracting Data Collection and Monitoring System: Procure and implement an electronic data collection system for all of the Port's contracting diversity programs (i.e., the WMBE, Disadvantaged Business Enterprise and Airport Concessions Disadvantaged Business Enterprise programs). As is very common, the Port did not have all the information needed for the inclusion of subcontractor payments in the analysis. Functionality of the system should include full contact information for all firms, NAICS codes, race and gender ownership and small business certification status; contract/project-specific goal setting using the data from this study; utilization plan capture of the prime contractor's submission of subcontractor utilization plans; contract compliance for certified and non-certified prime contract and subcontract payments for all formally procured contracts for all tiers of all subcontractors and verification of prompt payments to subcontractors; spend analysis of informal expenditures; program report generation, including required FAA reports, that provide data on utilization by industries, race, gender, dollar amount, procurement method, agencies, etc.; an integrated email and fax notification and reminder engine to notify users of required actions; outreach tools for eBlasts and related communications and event management for tracking registration and attendance; import/export integration with existing systems to exchange contract, payment, and vendor data; access by authorized Port staff, prime contractors and subcontractors to perform all necessary activities.

Review Contract sizes and Scopes: Smaller contracts can provide longer lead times and simplify requirements to assist WMBE and small businesses to take on Port work. In conjunction with reduced insurance and bonding requirements, where possible, smaller contracts should permit smaller firms to move from quoting solely as subcontractors to bidding as prime contractors. It will also enhance their subcontracting opportunities. While the Port is aware of the benefits to the program in reduced contract size, user divisions should be made explicitly aware of the need to look at projects through this lens. Unbundling contracts must be conducted, however, within the constraints of the need, to ensure efficiency and limit the costs to taxpayers.

Adopt a Small Business Enterprise Mentor-Protégé Program for the Aviation Industry: Airport work can be complex, with regulatory standards and project implementation demands that are unfamiliar and thus daunting to firms without that specific experience. We therefore suggest pairing experienced aviation firms with small businesses to increase opportunities for the protégé to develop new skills and expand their markets. This initiative can include construction and design firms. An excellent national model is provided in the DBE program regulations at 49 C.F.R. § 26.35 and the Guidelines of Appendix D to Part 26. In addition to the standards provided in Part 26, the USDOT's General Counsel's Office has provided some additional guidance, and the USDOT's Office of Small Disadvantaged Business Utilization has created a pilot program and sample documents. Close monitoring of the program will be critical, but other entities have reported success with such an approved approach. The Washington State department of Transportation ("WSDOT") is currently implementing a new program, and the Port might be able to profit from WSDOT's experience.

Use the Study to Set the Aspirational WMBE Annual and Contract Goals: We suggest the Port use the weighted availability estimate in Chapter III as the basis for its overall, target. This will relieve the divisions of the burden of trying to estimate their own goals, since the goal will reflect the detailed data in this report. With respect to aspirational contract specific goal setting, the highly detailed unweighted availability estimates in Chapter II can serve as the starting point for narrowly tailored contract goal setting that reflects the percentage of available WMBEs as a percentage of the total pool of available firms. The Port should weigh the estimated scopes of the contract by the availability of WMBEs in those scopes, and then adjust the result based on current market conditions (for example, the volume of work currently underway in the market, the entrance of newly certified firms, specialized nature of the project, etc.). Written procedures detailing the contract goal setting methodology should be developed and disseminated so that all contracting actors understand the policy and procedures.

Develop Performance Measures for Success: The Port should develop quantitative performance measures for certified firms and the overall success of its program to evaluate their effectiveness in reducing the systemic barriers identified by this

study. The availability estimates in this study can serve as aspirational targets for overall Port contracting. Additional benchmarks might include: increased bidding by certified firms; increased prime contract awards to certified firms; increased diversity of the types of industries in which WMBEs receive dollars (i.e., reduced market segregation); increased utilization by individual contract awarding authorities; increased "capacity" of certified firms as measured by bonding limits, size of jobs, profitability, etc.; utilization of WMBEs.