

**Washington State
Department of Transportation
Disparity Study
Public Information Webinar**

Colette Holt & Associates

Yates Consulting

WindGypsy Consulting

18 October 2022

25 October 2022

Disparity Study Team

■ Colette Holt & Associates

- Colette Holt, J.D. - Project Manager
 - Nationally recognized expert, educator and author on DBE issues
- Steven Pitts, Ph.D. - Economist and Statistician
 - Nationally recognized expert, educator and author on market issues regarding minorities for over 30 years
- Joanne Lubart, J.D. - Associate Counsel
 - National expert on DBE programs
- Glenn Sullivan - Director of Technology
 - Experienced data collection and website manager

Disparity Study Team, cont.

- Ilene Grossman, B.A. - Assistant Project Manager/COO
 - Experienced manager of disparity studies
- Victoria Farrell, M.B.A. – Anecdotal Team Manager
 - Experienced researcher and data manager
- Carol Borst - Contract Data Collection Team Manager
 - Experienced coordinator of all contract data collection activities
- **DBE Subconsultants**
 - Yates Consulting
 - Experienced community engagement expert
 - WindGypsy Consulting
 - Experienced contract data collection researcher

Disparity Study Objectives

- Comply with the constitutional mandate and the DBE Program regulations to ensure WSDOT's DBE program is narrowly tailored
- Provide a defense if WSDOT's implementation of 49 C.F.R. Part 26 is challenged
- Develop accurate data for annual and contract goal setting
- Gather feedback for program improvements
- Educate elected officials, DOT staff, assist agencies and business owners on these issues

Dedicated Study Website

- Develop and maintain the dedicated study website that will be updated throughout the process
 - WSDOT approved photos
 - Elements of the study
 - FAQ sheet
 - Team member bios
 - Information about how to participate
 - Contact and comment information
- Develop materials to increase public understanding of, and participation in, the study process
- Answer inquiries and provide updates

Legal Analysis

- Review current case law, other relevant legal documents, with emphasis on 9th Circuit decisions
- Review 49 C.F.R. Part 26 and USDOT Guidance
- Describe the legal standards and how the research methodology conforms to the case law
- Explain how the legal principles apply to each study element
- Objectives
 - Educate the reader about the legal standards
 - Provide a framework for a court in litigation

Determination of WSDOT's Market Areas

- Study period is 10/1/2017 through 9/30/2021
- Analyze all formally procured construction and engineering contracts \$50,000 or greater
- Three funding sources
 - FHWA
 - FTA
 - State

Determination of WSDOT's Market Areas

- Develop Initial Contract Data Files
 - Step 1: Gather WSDOT's prime contracts to create the Initial Contract Data Files
 - Step 2: Develop samples from Initial Contract Data Files
 - Step 3: Gather additional data for contracts in the Sample Contract Data Files

Determination of WSDOT's Market Areas

- Develop Final Contract Data Files
 - Step 1: Contact primes for missing subcontractor data
 - Collect at least 80% of the contract dollars
 - Step 2: Assign missing race and gender status and NAICS codes
 - Based on actual scope of work of specific contracts, as firms may provide multiple services
 - Step 3: Research Washington location of any firm with out-of-state address

Determination of WSDOT's Market Areas

- Determine WSDOT's geographic market area
 - Determine the geographic market, disaggregated by funding source, by contiguous counties for at least 75% of the contracts
 - Limit further analysis to firms in the designated counties
 - This results in the Contract Data Utilization Files

Determination of WSDOT's DBE Utilization

- Produce the contract data utilization analysis
 - Disaggregate results by funding source
 - Provide utilization by race and gender aggregated across all industry codes
 - Provide utilization by race and gender disaggregated by six-digit NAICS codes

Estimation of DBE Availability

- Availability sources
 - Master D/M/WBE Directory
 - UCP directories; other Washington government directories; private sector listings
 - Master Business List and Bidders List of WSDOT prime and subcontractors from Contract Data Utilization Files
 - Hoovers for business universe of firms in the market area sorted by NAICS codes and location
- Availability determination
 - Assign missing race or gender status and six-digit NAICS codes in Master Directory and Master Business List
 - Merge sources

Estimation of DBE Availability

- Produce unweighted availability disaggregated by race, gender and industry codes
 - Unweighted six-digit results can be used for narrowly tailored contract goal setting
- Produce weighted availability by race and gender aggregated across all industry codes
 - Weighted result can be used for Step 1 baseline estimate for USDOT DBE Triennial Goal submissions
- Capacity analysis
 - Survey and interview interested firms about variables impacting capacity, such as largest contract performed, number of employees, bonding limits, ability to take on more work, etc.

Analysis of Disparities in DBE Utilization

- Disparity ratio = DBE utilization ÷ weighted availability
- Calculate disparity indices for all race and sex groups aggregated across all industry groups by funding source
 - Calculate statistical significance
 - Calculate substantive significance
- Examine whether disparities are the result of discrimination or some other factors
 - Are DBE contract goals needed to ensure a level playing field?

Analysis of Overconcentration of DBEs

- Examine specific codes with ratios over 100% to look for patterns
 - Do the results reflect the success of a few DBEs?
 - Step 1
 - Identify codes over 100%
 - Identify codes where DBEs received a large share of dollars
 - Step 2
 - Compare outcomes by group
 - Compare outcomes by codes
- Gather anecdotal data on firm and industry concentration

Economy-Wide Disparity Analyses

- Census Bureau data sources
 - Compare M/WBEs' formation rates & business earnings to non-M/WBEs' rates using the American Community Survey
 - Possible basis for step 2 adjustment under §26.45(d)
 - Compare M/WBEs' revenues to non-M/WBEs' revenues using the Annual Business Survey
- Extensive government and academic reports on discrimination in market for commercial credit
- Critical for evaluation of effectiveness of race-neutral measures

Anecdotal Data Analyses

- Develop invitation and outreach lists for extensive follow-up by subconsultants
- Utilize study website, invitations, meeting attendance, traditional and social media, etc.
- Gather evidence and input through:
 - Public informational webinar
 - Electronic survey of business owners
 - Stakeholder organization group interviews
 - Small group business owner interviews grouped by industry and DBE status
 - Written comments
- Review judicial or administrative opinions or data

Anecdotal Data Analyses

- Possible topics
 - Equal access to networks and information
 - Biased perceptions and stereotypes
 - Workplace harassment or hostile work environments
 - Experiences with barriers to equal access to prime and subcontracting opportunities
 - Barriers to obtaining business credit, surety bonds insurance coverage, etc.
 - Impact of experience and specification requirements
 - Unequal payments or performance standards

Review of WSDOT's DBE Program

- Review and evaluate program elements
 - Certification process
 - Outreach and access to information
 - DBE compliance
 - Small business elements
 - Supportive services offerings
- Process
 - Review documents
 - Interview stakeholder groups, business owners and WSDOT staff
 - Surveys

USDOT DBE Goal Submissions

- CHA will be responsible for defining, researching, compiling and analyzing all required data by mode
 - Determination of step I base figures using study results
 - Recommend any adjustments under step 2
 - Past DBE participation
 - Other information
 - Estimate race-neutral vs. race-conscious attainment
 - Propose triennial goals for FHWA and FTA programs
- Draft goal submission documents
- Work with WSDOT to address any USDOT concerns

Findings and Recommendations

- Provide recommendations for race-neutral measures based on study results
- Provide recommendations for race-conscious remedies if supported by the study findings, including a goal setting methodology

Study Participation Information

- Stakeholder/ Business Owner Interviews
 - Q1 2023
- Electronic survey of business owners
 - Q2 2023
- Study information
 - <http://wsdot.disparity-study.com>
 - wsdot-study@mwbelaw.com
 - 855-692-3529 (855-MWBELAW)
- WSDOT Study Manager
 - Michael Carpenter, carpenm@wsdot.wa.gov
360-705-6864



16 Carriage Hills • San Antonio, Texas 78257

773.255.6844 • colette.holt@mwbelaw.com

www.mwbelaw.com • Twitter: [@mwbelaw](https://twitter.com/mwbelaw)