

MOTION NO. M2012-51
Sole Source Contract for Disadvantaged Business Enterprise Program Disparity Study

MEETING:	DATE:	TYPE OF ACTION:	STAFF CONTACT:	PHONE:
Operations and Administration Committee	8/2/12	Recommendation to Board	Leslie Jones, Diversity Program Director	206-398-5047
Board	8/23/12	Final Action	James Evans, Diversity Program Specialist	206-398-5196

PROPOSED ACTION

Authorizes the chief executive officer to execute a sole source contract with Browne, Bortz & Coddington, Inc., to conduct a disparity study for the Sound Transit, for a total authorized contract amount not to exceed \$225,000.

KEY FEATURES

- Sound Transit is required to establish and administer a Disadvantaged Business Enterprise (DBE) Program as a Federal Transit Administration (FTA) funding recipient that awards prime contracts in excess of \$250,000.
- A disparity study is necessary to provide Sound Transit with the analysis needed to determine the nature of and the extent to which remedial actions are necessary to achieve the purposes of the DBE Program in accordance with FTA regulations.
- The study scope of work includes:
 - Reviewing Sound Transit's current DBE goals and methodology
 - Developing a legal framework and producing an analysis of federal requirements and state laws related to a Federal DBE Program
 - Analyzing the use of minority and women-owned firms and the contract amounts those firms would be expected to receive based on their type and size
 - Summarizing disparities between minority/ women-owned firms and firms that are neither minority nor women-owned
 - Producing a final report that includes recommendations for the Agency's DBE Program
- A sole source contract is necessary for this contract because Browne, Bortz & Coddington, Inc., (BBC) owns proprietary data relating to contracting and minority- and women-owned firm availability in the state of Washington.

PROJECT DESCRIPTION

The DBE Program assures that all procurements and contracts are administered without discrimination on the basis of race, color, sex or national origin and that DBE firms have an equal opportunity to compete for and participate in all agreements, contracts and subcontracts awarded by Sound Transit or its contractors. In 2009, Sound Transit submitted a three-year DBE utilization goal of 18.39% to the FTA based on detailed engineer's cost estimates for upcoming construction and construction-related work. Sound Transit has petitioned the FTA for an extension of that goal, pending completion of a comprehensive disparity study that will enable the Agency to establish factually-based, narrowly-tailored, legally defensible utilization goals based upon current data.

FISCAL INFORMATION

Summary for Board Action (\$000s)

Action Item: Browne, Bortz & Coddington, Inc.

Current Year Budget	Adopted 2012 Budget	Spent to date in 2012	Contract Expenditures 2012	Remaining 2012 Budget
Executive Dept Consultant/Management Svcs	775	180	100	595

Contract Spending Plan	Prior Year(s) Spending	2012 Spending	Future Expenditures	Total
BBC Research & Consulting	-	100	125	225

Contract Budget	Current Approved Contract Value	Spent to Date	Proposed Action	Proposed Total Contract Value
BBC Research & Consulting	-	-	225	225
Contingency	-	-	-	-
Total Contract	-	-	225	225
Percent Contingency	-	-	0%	0%

Notes:

- 1) Budget for this item is in the Executive Department staff budget within the services category, and is located on page 97 of the Adopted 2012 Budget book. Budget for future expenses will be requested in future annual budgets.
- 2) 2012 expenses are thru 5/31/12.

SMALL BUSINESS PARTICIPATION

Brown, Bortz & Coddington, Inc. is a small business and will self-perform 100% of the work.

EQUAL EMPLOYMENT WORKFORCE PROFILE

19 employees; 58% women; 21% minorities.

BACKGROUND

The statistical documentation upon which Sound Transit determined its 2009 DBE utilization goal of 18.39% was derived from a state-wide 2005 Washington State Department of Transportation (WSDOT) availability/disparity study conducted by the National Economic Research Associates (NERA) for WSDOT. Sound Transit subsequently engaged NERA to disaggregate those data to establish the statistical basis for Sound Transit's DBE utilization goals. Recent advice letters from the FTA as well as federal case law strongly indicate that both statistical and anecdotal data must be documented to measure the existence and extent of discrimination in the specific marketplace; that DBE utilization goals must be narrowly tailored to the evidence of discrimination in the specific marketplace; and those data must be timely and "current" (generally interpreted to mean no more than 5 – 6 years old).

A current disparity study is necessary to support the Sound Transit DBE Program. The disparity study from which Sound Transit disaggregated data to support its current DBE Program was conducted more than seven years ago and the “shelf life” for disparity studies is generally considered to be five to six years. Consistent with the United States Department of Transportation regulations and guidelines, Sound Transit will submit to the FTA its goals for DBE utilization based upon the analysis, documentation and recommendations that will be provided by BBC. The anticipated completion date is June 2013.

This action will allow Sound Transit to:

- Obtain a reasonably current and high-quality disparity/availability study to support its DBE Program goals
- Obtain a disparity/availability study that will be tailored to Sound Transit’s specific contracting activities
- Determine whether, and to what extent, there is a need for race-conscious (DBE) goals to achieve equitable participation on the part of women and people of color in transit related construction and construction-related contracting opportunities.
- Provide additional credibility to the goal-setting process for DBE and non-DBE firms who contract with Sound Transit

Sound Transit wishes to procure BBC on a sole source basis to conduct Sound Transit’s DBE Program Disparity Study. BBC was selected through a competitive process to conduct a similar disparity for WSDOT. In conducting the WSDOT study, BBC has collected data that includes the Sound Transit market area, and BBC is the sole and exclusive resource for this data.

A sole source procurement that allows the use of data already obtained by BBC is consistent with the U.S. Department of Transportation guidance which encourages cooperation between state and local transit agencies in the undertaking of disparity studies to reduce the prohibitive costs of such studies to individual agencies. If another consultant was used for the Sound Transit study, that consultant would be required to duplicate the efforts of BBC to acquire a similar data set, resulting in substantially greater costs to Sound Transit. The estimate cost of hiring a separate consultant would range between \$600,000 - \$1million.

ENVIRONMENTAL COMPLIANCE

JI 7/10/2012

TIME CONSTRAINTS

A delay in voting on this action may affect the schedule of the disparity/availability study and subsequent submittal of the agency’s DBE utilization goal to the FTA.

PUBLIC INVOLVEMENT

Not applicable to this action.

LEGAL REVIEW

BN 7/26/12

MOTION NO. M2012-51

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to execute a sole source contract with Browne, Bortz & Coddington, Inc., to conduct a disparity study for the Sound Transit, for a total authorized contract amount not to exceed \$225,000.

BACKGROUND:

The statistical documentation upon which Sound Transit determined its 2009 DBE utilization goal of 18.39% was derived from a state-wide 2005 Washington State Department of Transportation (WSDOT) availability/disparity study conducted by the National Economic Research Associates (NERA) for WSDOT. Sound Transit subsequently engaged NERA to disaggregate those data to establish the statistical basis for Sound Transit's DBE utilization goals. Recent advice letters from the FTA as well as federal case law strongly indicate that both statistical and anecdotal data must be documented to measure the existence and extent of discrimination in the specific marketplace; that DBE utilization goals must be narrowly tailored to the evidence of discrimination in the specific marketplace; and those data must be timely and "current" (generally interpreted to mean no more than 5 – 6 years old).

A current disparity study is necessary to support the Sound Transit DBE Program. The disparity study from which Sound Transit disaggregated data to support its current DBE Program was conducted more than seven years ago and the "shelf life" for disparity studies is generally considered to be five to six years. Consistent with the United States Department of Transportation regulations and guidelines, Sound Transit will submit to the FTA its goals for DBE utilization based upon the analysis, documentation and recommendations that will be provided by BBC. The anticipated completion date is June 2013.

This action will allow Sound Transit to:

- Obtain a reasonably current and high-quality disparity/availability study to support its DBE Program goals
- Obtain a disparity/availability study that will be tailored to Sound Transit's specific contracting activities
- Determine whether, and to what extent, there is a need for race-conscious (DBE) goals to achieve equitable participation on the part of women and people of color in transit related construction and construction-related contracting opportunities.
- Provide additional credibility to the goal-setting process for DBE and non-DBE firms who contract with Sound Transit

Sound Transit wishes to procure BBC on a sole source basis to conduct Sound Transit's DBE Program Disparity Study. BBC was selected through a competitive process to conduct a similar disparity for WSDOT. In conducting the WSDOT study, BBC has collected data that includes the Sound Transit market area, and BBC is the sole and exclusive resource for this data.

A sole source procurement that allows the use of data already obtained by BBC is consistent with the U.S. Department of Transportation guidance which encourages cooperation between state and local transit agencies in the undertaking of disparity studies to reduce the prohibitive costs of such studies to individual agencies. If another consultant was used for the Sound Transit study, that consultant would be required to duplicate the efforts of BBC to acquire a similar data set, resulting

in substantially greater costs to Sound Transit. The estimate cost of hiring a separate consultant would range between \$600,000 - \$1million.

MOTION:

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to execute a sole source contract with Browne, Bortz & Coddington, Inc., to conduct a disparity study for the Sound Transit, for a total authorized contract amount not to exceed \$225,000.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on August 23, 2012.



Julia Patterson
Board Vice Chair

ATTEST:



Marcia Walker
Board Administrator