



EXECUTIVE MANAGEMENT & AUDIT COMMITTEE
NOVEMBER 15, 2007

SUBJECT: SOUTHERN CALIFORNIA REGIONAL DISPARITY STUDY

ACTION: CONTRACT AWARD

RECOMMENDATION

- A. Authorize the Chief Executive Officer to award Contract No. PS08213002, an 18-month, firm-fixed-price contract, in the amount of \$729,290, to BBC Research & Consulting (BBC) for the Southern California Regional Disparity Study; and
- B. Amend the FY08 budget to add \$275,000 of expenses funded from the Southern California Regional Disparity Study Consortium (Consortium).

RATIONALE

Staff reported to the Board in June 2006 that the U.S. Court of Appeals for the Ninth Circuit (Court) on May 9, 2005, issued its decision in the *Western States Paving v. Washington State Department of Transportation* case. The Court found that the U.S. Department of Transportation (DOT) Disadvantaged Business Enterprise (DBE) Program is constitutional on its face. However, the Court also determined that in order for a Federal recipient (such as Metro) to establish DBE race-conscious goals (contract goals) it must be able to demonstrate evidence of discrimination or its effects in its transportation contracting industry. In addition, if evidence is found to support the use contract goals, the Court rendered that goals can only be used to remedy those groups that have suffered discrimination or its effects.

In September 2006, and in response to the *Western States* decision the Federal Transit Administration (FTA) issued guidance to FTA recipients within the Court's jurisdiction, instructing recipients who lack sufficient evidence of discrimination or its effects to immediately begin to conduct a rigorous and valid study to determine whether there is evidence of discrimination or its effects in their transportation contracting industry.

Staff completed an examination of the evidence it has on hand concerning discrimination and its effects and determined that Metro lacks the evidence to support the use of contract goals and that it would need to conduct a disparity study. Metro has undertaken the steps to conduct this study by forming the Southern California Regional Disparity Study Consortium.

Metro is one of four members of the Consortium which was formed to conduct a regional study, as recommended by FTA to reduce cost. The other three members are: the Southern California Regional Rail Authority (SCRRA or Metrolink), the Orange County Transportation Authority (OCTA), and the San Diego Association of Governments (SANDAG). In addition to the participating agencies above, Metro approached the City of Los Angeles' Department of Engineering, Department of Transportation, and Office of Contract Compliance. In response to a motion by Councilmember Parks in May 2007, the City's Chief Legislative Office conducted a survey of City Departments potentially impacted by the Ninth Circuit Decision. The survey cited that participating in Consortium would not directly benefit the City as its current subcontractor program is currently race-neutral and that other Federal-funded programs are not subject to DBE requirements set forth in the Ninth Circuit decision.

Other agencies approached include, Omni Trans, Riverside Transit, San Diego Regional Airport Authority, and SCAG. These agencies decided to not participate in the Consortium for various reasons such as lack of available funding, minimal Federal grant monies to support a study, will continue to implement existing race-neutral programs, and difference in demographic market.

Metro is designated as the lead member agency regarding the scope and direction of the study. However, Consortium members will receive regular updates on the progress of the study. In conducting this study, the Consortium seeks to address whether discrimination or its effects exists within each respective transportation contracting industry.

BBC Research & Consulting will conduct 14 major tasks to complete the study. In assessing whether there is evidence that supports a future race-conscious DBE program we expect the consultant will address the DBE regulations (49 CFR part 26), and the issues raised in the *Western States* opinion and other relevant court cases. The consultant will also address any recommendations issued by the US Commission on Civil Rights on best practices in conducting disparity studies. BBC recently completed the California Department of Transportation (Caltrans) disparity study, whose demographic market area is different from the Consortium's market area.

The Board previously approved the amount of \$500,000 for the disparity study in FY07 and re-budgeted that amount in FY08. Staff is requesting Board authorization to amend the budgeted amount to include the additional Consortium members contribution of \$275,000; increasing the FY08 budget amount from \$500,000 to \$775,000.

DISCUSSION

In September 2006, US DOT instructed Metro and the other recipients who did not currently have sufficient evidence of discrimination or its effects to submit an all race-neutral overall goal for FY06. Accordingly, on October 2, 2006, Metro ceased incorporating race-conscious goals and has relied exclusively on race-neutral means to achieve the overall DBE participation goal for its DBE program. Also consistent with DOT guidance, Metro contracts that were in effect on October 1, 2006, and that carried DBE goals and obligations

are unaffected by this change. These contracts continue to be monitored and tracked and the DBE participation obligations of the contracting parties remain in full force and effect.

Upon completion of the disparity study, the consultant will report its findings to the Consortium members on whether discrimination exists in the transportation contracting industry of the Consortium members. The Consortium members will evaluate the findings and will make an informed determination whether to reinstate race, ethnicity or gender conscious goals in their respective DBE programs consistent with the standards announced by the U.S. Court of Appeals for the Ninth Circuit in *Western States*. If the evidence does not support the use of contract goals for a Consortium agency, the consultant will assess how the Consortium agency can improve its solely race-neutral implementation of the Federal DBE program. Whether or not race-conscious measures are suggested, the consultant will analyze information to assist each agency in setting an overall annual DBE goal and group specific goals if appropriate.

FINANCIAL IMPACT

The funding of \$500,000 for the Metro portion of this study is included in the FY08 budget in cost center number 2130, Diversity and Economic Opportunity (DEOD), project number 402130, DBE Disparity Study, account number 50316 under professional services. Funds have not been expended on this project to date.

Approval of this action will add \$275,000 to cost center 2130, project number 402130 to perform the complete scope of work identified in the request for proposal. The total expenditure will be funded as follows:

Consortium Members	Contribution Amount
Metro	\$500,000
OCTA	\$100,000
SANDAG	\$100,000
SCRRA	\$75,000
TOTAL	\$775,000

ALTERNATIVES CONSIDERED

1. The first alternative considered was to not undertake a disparity study and keep Metro’s DBE program an exclusively race-neutral endeavor. This alternative was rejected as historically both race-neutral and race-conscious measures are necessary to meet Metro’s overall DBE goal. As such, recipients are required to conduct a study to determine if discrimination or its effects is present within Metro’s contracting market.
2. A second alternative considered was to engage in a disparity study alone without joining together with the other three transit agencies. This alternative was rejected. The availability and willingness of other recipients in the Southern California region to undertake a regional disparity study is more cost effective.

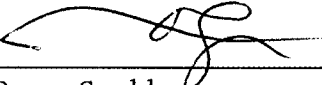
ATTACHMENT(S)

- A Procurement Summary
- A-1 Procurement History
- A-2 List of Subcontractors

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Jay Figus, Senior DEOD Representative



Lonnie Mitchell
Chief Administrative Services Officer



Roger Snoble
Chief Executive Officer

**BOARD REPORT ATTACHMENT A
PROCUREMENT SUMMARY**

SOUTHERN CALIFORNIA REGIONAL DISPARITY STUDY

1.	Contract Number: PS08213002		
2.	Recommended Vendor: BBC Research & Consulting		
3.	Cost/Price Analysis Information:		
	A. Bid/Proposed Price: \$729,290	Recommended Price: \$729,290	
	B. Details of Significant Variances are in Attachment A-1.D		
4.	Contract Type: Firm Fixed Price		
5.	Procurement Dates:		
	A. Issued: July 23, 2007		
	B. Advertised: July 28, 2007		
	C. Pre-proposal Conference: August 8, 2007		
	D. Proposals Due: August 28, 2007		
	E. Pre-Qualification Completed: September 2007		
	F. Conflict of Interest Form Submitted to Ethics: September 12, 2007		
6.	Small Business Participation:		
	Disadvantaged Business Enterprise Anticipated Level of Participation (DALP): 30%	Date Small Business Evaluation Completed: October 11, 2007	
	Small Business Commitment: Details are in Attachment A-2		
7.	Request for Proposal Data:		
	Notifications Sent: 46	Bids/Proposals Downloaded or Picked up: 40	Proposals Received: 3
8.	Evaluation Information:		
	A. Bidders/Proposers Names: BBC Research & Consulting Mason Tillman and Associates National Economic Research Assoc.	Bid/Proposal Amount: \$ 729,290 \$ 774,474 \$ 774,895	Best and Final Offer Amount: N/A
	B. Evaluation Methodology: Details are in Attachment A-1.C		
9.	Protest Information:		
	A. Protest Period End Date: November 20, 2007		
	B. Protest Receipt Date: TBD		
	C. Disposition of Protest Date: TBD		
10.	Contract Administrator: Tommye Williams	Telephone Number: (213) 922-1051	
11.	Project Manager: Tashai Smith	Telephone Number: (213) 922-2128	

**BOARD REPORT ATTACHMENT A-1
PROCUREMENT HISTORY**

SOUTHERN CALIFORNIA REGIONAL DISPARITY STUDY

A. Background on Contractor

BBC Research and Consulting (BBC), located in Denver, Colorado, was founded in 1970 as Bickert, Browne & Coddington, Inc. The current legal name of the firm is Browne, Bortz & Coddington, Inc. doing business as BBC Research & Consulting. BBC has conducted more than 40 disparity studies including disparity studies for various transportation-related agencies including, California Department of Transportation, Nevada Department of Transportation, New Mexico Department of Transportation, Washington Metropolitan Area Transit Authority, Fort Worth Transportation Authority, and Clark County Airport in Nevada.

BBC is currently completing a study for the Idaho Transportation Department and for transportation-related functions of the City of Albany, Georgia and Dougherty County, Georgia. Several of their other past disparity study clients included transportation and transit functions as part of larger studies for the cities of Phoenix, Denver, Minneapolis, Columbus, Tucson and Albuquerque.

References contacted provided excellent feedback regarding services provided by BBC and its proposed subcontractors.

B. Procurement Background

Metro issued a Request for Proposals (RFP) on behalf of the Consortium to secure the services of a consultant to design, perform and deliver a legally defensible availability/disparity study to fulfill the court-directed standards and procedures for DBE programs specified by the May 9, 2005, Ninth Circuit Court of Appeals opinion in *Western States vs. Washington State Department of Transportation*. As part of its study, the consultant is also required to consider and address the findings and recommendation from the U.S. Commission on Civil Rights as presented in a May 2006 briefing report entitled, "Disparity Studies as Evidence of Discrimination in Federal Contracting." The source selection methodology used for this procurement was a competitive RFP process using explicit factors/weighted guidelines.

The Diversity and Economic Opportunity Department recommended a Disadvantaged Business Enterprise Anticipated Level of Participation (DALP) of 30%.

C. Evaluation of Proposals

The source selection process was conducted in accordance with Metro's Procurement Policies and Procedures. The source selection committee, which was comprised of representatives from DEOD, County Counsel, and San Diego Airport, conducted a comprehensive technical evaluation including clarification interviews and detailed reference

checks. Each proposer was determined to be well-qualified to perform the work based on the skills, experience and expertise of proposed staff; however, BBC received the highest overall rating of the three proposers in accordance with the stipulated evaluation criteria. The evaluation criteria published in the RFP is as follows:

Understanding of Work, Appropriateness of Approach for Implementation, Effectiveness of Management Plan (50%)

Degree of Prime's Skills/Experience and Capabilities of the Firms on the Prime's Team (25%)

Cost (25%)

D. Cost/Price Analysis Explanation of Variances

BBC's price proposal was determined to be fair and reasonable. Their proposed cost was approximately \$45,000 less than the budget for this study and was the lowest price submitted.

**BOARD REPORT ATTACHMENT A-2
LIST OF SUBCONTRACTORS**

SOUTHERN CALIFORNIA REGIONAL DISPARITY STUDY

PRIME CONTRACTOR – BBC Research & Consulting

Subcontractors:

Holland + Knight, LLC
Law Offices of John W. Harris & Associates
GCAP Services
Customer Research International, Inc.

Small Business Commitment

Law Offices of John W. Harris & Associates 14.4%
GCAP Services 15.6%

Total DALP Commitment 30%

Other Subcontractors

Holland + Knight, LLC.
Customer Research
International, Inc.

