

The Illinois Tollway Disadvantaged Program Disparity Study 2023

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Disparity Study Legal Standards

- In 1989, US Supreme Court held race- and gender-conscious programs are subject to “strict scrutiny,” the highest level of judicial review
- DBE programs must meet two tests
 - The Tollway must prove it has a “compelling interest” based on “strong” statistical and anecdotal evidence of current discrimination or the effects of past discrimination in using race or gender in decision-making
 - Any remedies must be “narrowly tailored” to the evidence relied upon and regularly reviewed

Disparity Study Legal Standards

■ Recent cases

- USDA “socially and economically disadvantaged” farmers program under American Rescue Plan struck down by three trial courts and class status granted
- Priority for grants to small restaurants owned by “socially and economically disadvantaged” persons, women and veterans struck down
- Oregon’s COVID relief fund for Blacks and Colorado’s fund for MBEs challenged and enjoined
- USDOT DBE program has been challenged in Florida as part of the Bipartisan Infrastructure Law

Disparity Study Objectives

- Meet federal constitutional legal requirements
- Provide new data for goal setting
- Solicit contractors' input
 - Experiences in the Tollway's marketplace
 - Experiences with Tollway's program
 - Suggestions for improvements
- Develop program recommendations

Disparity Study Data and Methods

- Quantitative Data Sources
 - Tollway contract and vendor records for FY 2015-2019, \$50,000 and above
 - Contract information from prime vendors
 - M/W/DBE Directories
 - Hoovers/Dun & Bradstreet
 - U.S. Census Bureau
 - Scholarly research
- Qualitative Data Sources
 - Business owner/stakeholder interviews
 - Electronic survey
 - Tollway staff
 - Illinois disparity studies

Disparity Study Elements

- Legal Review and Analysis
- Tollway DBE Program Review
- Utilization, Availability and Disparity Analysis of Tollway Prime Contracts and Subcontracts
- Economy-Wide Disparity Analysis
- Anecdotal Evidence
- Recommendations

Disparity Study Findings

- Program administration feedback
 - Program works well and was widely supported
 - Increased access to information about DBE program elements and to staff with decision-making responsibilities would benefit DBEs
 - Cost and effort to obtain bid information and documents were seen as frustrating and unnecessary
 - Task order contracts are difficult to manage

Disparity Study Findings

- New policy of encouraging new and as many DBEs to work on a contract was seen as counterproductive
- Small Business Initiative (“SBI”) has been instrumental in helping DBEs to obtain prime contracts
 - However, contracts are still too large for many DBEs and small firms
- In general, unbundling contracts into smaller or less complex jobs was recommended to increase prime participation
- Another suggestion was to pay mobilization money to subcontractors

Disparity Study Findings

- Meeting DBE requirements
 - Most prime vendors reported they have been able to meet contract goals.
 - However, several prime firms stated they did not believe documentation of their GFE would be accepted
 - A disincentive to increasing DBE participation was not reducing the contract goal when the scope of work is decreased
 - Contract compliance was reported to work smoothly
 - Additional training of Tollway staff on the B2Gnow compliance system was suggested

Disparity Study Findings

- Changes in the program's structure and personnel have led to missed deadlines, unanswered questions and confusion for many

Disparity Study Findings

- Final Contract Data File
 - \$3,417,100,990, total contract dollars
 - 1,092 prime contracts, totaling \$1,848,766,122
 - 3,894 subcontracts, totaling \$1,568,334,868
- Geographic Market
 - Cook, Du Page, Kane, Lake, McHenry, Will, and Winnebago counties captured 91.0% of the Final Contract Data File
- Product Market constrained by geographic market
 - 33 NAICS codes totaling \$3,108,760,268

Disparity Study Findings

- Utilization*
 - DBEs: 31.6% (\$983,167,337)
 - Blacks: 4.1% (\$128,715,633)
 - Hispanics: 11.9% (\$369,374,310)
 - Asians: 5.9% (\$182,497,767)
 - Native Americans: 0.4% (\$12,925,543)
 - White women: 9.3% (\$289,654,083)
 - Non-DBEs: 68.4% (\$2,125,592,917)
 - All figures have been rounded.

Disparity Study Findings

- Unweighted availability means the headcount of firms in the agency's geographic and industry markets
 - Sources
 - Public agency and private entity certification lists
 - Agency contract and vendor records
 - Hoovers/Dun & Bradstreet
- “Weighted” availability means unweighted availability adjusted by the agency's spending patterns as established by its industry market

Disparity Study Findings

- Weighted Availability
 - DBEs: 29.8%
 - Blacks: 6.0%
 - Hispanics: 10.4%
 - Asians: 4.4%
 - Native Americans: 0.1%
 - White women: 8.9%
 - Non-DBEs: 70.2%

Disparity Study Findings

- The overall DBE weighted availability of 29.8% can be used by the Tollway to determine its overall DBE aspirational goal
- Program has been effective in increasing opportunities for DBEs
- Although the Tollway's DBE program has been quite successful, these benefits have not been spread evenly across all groups
- Tollway utilization is well below availability for Black firms
- For Hispanics, Asian, Native American and White women, utilization somewhat exceeds their availability

Disparity Study Findings

- With the exception of Hispanic firms, contract dollars received by DBEs in comparison to non-DBEs are highly concentrated in a few codes and a different subset of industries
- These results support the conclusion that narrowly tailored race- and gender-conscious measures may still be supportable to ensure that all minority and woman firms have equal opportunities to compete for all types of Tollway contracts

Disparity Study Findings

- Economy-Wide Disparity Analysis
 - American Community Survey
 - Minorities and women form businesses at a lower rate and earn less compared to White males
 - Annual Business Survey
 - Disparities in sales receipts compared to similar non-DBEs
 - Results are statistically significant for most groups
 - Government and scholarly research and literature on credit discrimination
 - Credit discrimination barriers remain high
 - Human capital constraints continue to impede success

Disparity Study Findings

■ Anecdotal Evidence

- Interviewed 79 individuals and collected 129 electronic survey responses
- Biased perceptions and negative assumptions about DBEs' qualifications and capabilities remain barriers
- There is a stigma to being certified as an DBE
- Sexist attitudes and behaviors, hostile work environments and outright harassment of women still occur in the construction industry

Disparity Study Findings

- Goals remain necessary to ensure equal opportunities to compete.
- Many new or small firms found it difficult to break into the market
- Relationships with prime firms were hard to establish
- Prime contracts are especially difficult to obtain despite the Tollway's initiatives

Disparity Study Recommendations

- Enhance race- and gender-neutral measures
 - Enhance the SBI
 - Conduct regular introductory workshops
 - Raise the size standards for program eligibility
 - Consider additional types of contracts for inclusion in SBI
 - Add a “quick pay” component for small contractors
 - Don’t set DBE contract goals on SBI solicitations
 - Expand technical assistance offerings
 - Enhance contract data collection and reporting
 - Integrate all DBE Program aspects into one department

Disparity Study Recommendations

- Continue to implement a narrowly tailored DBE Program
 - Use the Study to set DBE contract goals
 - Enhance DBE Program policies and procedures
 - More transparency about how DBE contract goals are set
 - Reduce emphasis on the number of DBEs submitted on engineering contracts
 - Clarify that bids or proposals will be accepted based on submission of good faith efforts
 - Drop the policy of allowing the low bidder to supplement its DBE participation

Disparity Study Recommendations

- Streamline the DBE substitution process
- Increase monitoring of DBE program compliance
- Develop performance measures for program success
 - Increased participation by Black-owned businesses
 - Increased prime contract awards to certified firms
 - Increased variety in industries in which M/WBE firms are awarded prime and subcontracts
- Conduct regular program reviews



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