



Record of Meeting | May 11, 2023

The Illinois State Toll Highway Authority (“Tollway”) held the Diversity & Inclusion Committee meeting on Thursday, May 11, 2023. The meeting was held pursuant to the By-Laws of the Tollway upon call and notice of the meeting executed by Chairman Arnaldo Rivera and posted in accordance with the requirements of the Open Meetings Act, 5 ILCS 120/1, *et seq.*

Due to necessary precautions relating to COVID-19, in accordance with the Gubernatorial Disaster Proclamation, it was determined by Chairman Rivera that an in-person meeting of the body was neither practical nor prudent. In compliance with all conditions of Section 7(e) of the Open Meetings Act, 5 ILCS 120/7(e), the Committee meeting was conducted by audio conference. A telephone access number was provided for members of the public to monitor and/or participate in the meeting.

[Bolded entries indicate issues which may require follow-up to present or report to Directors.]

Call to Order / Roll Call

Committee Chair Gomez called the Meeting to order at approximately 1:00 p.m. She then asked the Board Secretary to call the roll, those Directors present and absent being as follows:

Committee Members Present:
Director Karen McConnaughay
Director James Sweeney
Committee Chair Jacqueline Gomez

Committee Members Not Present:
Director James Connolly

The Board Secretary declared a quorum present.

Public Comment

Committee Chair Gomez opened the floor for public comment. No public comment was offered.

Committee Chair’s Items

Committee Chair Gomez entertained a motion to approve **Committee Chair’s Item 1**, the Minutes of the regular Diversity & Inclusion Committee meeting held on March 30, 2023, as presented. Director Sweeney made a motion to approve the Minutes, seconded by Director McConnaughay.



Committee Chair Gomez asked that the roll be called on the motion, the vote of yeas and nays being as follows:

Yeas: Director Sweeney, Director McConnaughay, Committee Chair Gomez (3)

Nays: (0)

The motion PASSED.

Having no further items, Committee Chair Gomez called on Executive Director Cassandra Rouse.

Executive Director's Items

Executive Director Rouse noted that the agenda contains for Committee consideration the Tollway's 2023 Disadvantaged Program Disparity Study. Ms. Rouse stated that the Tollway is committed to delivering its \$14 billion capital program while advancing equity in its contracting opportunities. She highlighted that to date, more than \$2.7 billion in contracts have been awarded to small, diverse and veteran-owned firms. Ms. Rouse stated that much of the Tollway's success in advancing equity is due to its continuing commitment to study agency contracting practices with the goal of improving its Disadvantaged Business Enterprise Program.

Ms. Rouse noted that while most agencies aspire to a 22% participation goal, the Tollway supports a 29.8% participation goal. She highlighted Tollway programs that assist businesses in growing capacity and experience, including the Technical Assistance Program, Partnering For Growth, Small Business Initiative and Rolling Owner-Controlled Insurance Program, as well as the priority placed by the Tollway on the unbundling of large contracts to create more opportunities for small businesses.

Executive Director Rouse stated that the recommendations being presented will enhance the Tollway's efforts to promote equity in contracting opportunities among diverse firms, ensure an abundant pipeline of heavy highway construction industry firms, and grow opportunities for small and diverse firms to participate as subcontractors as well as primes.

Terry Miller, Chief of Diversity & Strategic Development, introduced Colette Holt, of Colette Holt & Associates, to provide for the Committee an overview of the 2023 Disadvantaged Program Disparity Study. [See attached presentation.](#)

At the conclusion of the presentation and discussion, Committee Chair Gomez thanked Ms. Holt for her work.



Items for Consideration

Diversity & Strategic Development

Executive Director Rouse called on Mr. Miller to present to the Committee the following item:

Item 1: Authorization of the Tollway's Business Diversity Program of 2023, effective July 1, 2023.

Mr. Miller stated that in an ongoing effort to reduce barriers to minority and female participation in Tollway contracts and ensure the Tollway is not a passive participant in ongoing discrimination, the Committee's recommendation is being sought to retire the Disadvantaged Business Enterprise program passed by the Board in 2015 and authorize the Business Diversity Program of 2023.

Mr. Miller further stated that the Business Diversity Program of 2023 is based on findings of Colette Holt & Associates, the firm engaged by the Tollway to conduct a disparity study, new evidence demonstrating the continuing need for such a program and the compelling interest in continuing to support aspirational national goals. Mr. Miller continued by stating that utilizing appropriate contract provisions and other means, including race and gender-neutral, and race and gender-conscious remedies, the Business Diversity Program of 2023 will help ensure that the Tollway continues to remedy the effects of discrimination in its contracting.

Upon conclusion of the presentation and discussion of this item, Director Gomez entertained a motion to approve placement of **Diversity & Strategic Development Item 1** on the full Board agenda with the Committee's recommendation. Director Sweeney made a motion to approve this item, seconded by Director McConnaughay. Director Gomez asked that the roll be called on the motion, the vote of yeas and nays being as follows:

Yeas: Director Sweeney, Director McConnaughay, Director Gomez (3)

Nays: (0)

The motion PASSED.

Adjournment

There being no further business before the Committee, Committee Chair Gomez entertained a motion to adjourn. Director Sweeney made a motion to adjourn, seconded by Director McConnaughay. Committee Chair Gomez asked that the roll be called on the motion, the vote of yeas and nays being as follows:


Yeas: Director Sweeney, Director McConnaughay, Committee Chair Gomez (3)



Nays: (0)

The motion PASSED.

The Meeting was adjourned at approximately 1:50 p.m.

Minutes taken by: _____

Christi Regnery
Board Secretary
Illinois State Toll Highway Authority

The Illinois Tollway Disadvantaged Program Disparity Study 2023

**Colette Holt & Associates
Sandi Llano & Associates**

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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