



Tacoma Community Workforce Advisory Committee

Meeting 1

December 21, 2018



Agenda

- Working Group Organization
- Disparity Study Overview
- Community Workforce Agreements and Initiative 200
- Contracting with the City of Tacoma
- Introduction to LEAP and SBE



Mission Statement



To review hiring of (1) residents who live in economically distressed areas of the City and (2) Women and Minority Business Enterprises (WMBE) in City public works projects and provide a recommendation as whether a Community Workforce Agreement (CWA) and/or Priority Hiring Ordinance (PHO) would promote hiring from these two groups.

The Advisory Committee will review a draft CWA and PHO developed by staff and offer recommendations on these draft documents. The Advisory Committee may consider and recommend other potential City actions as well.

The Advisory Committee will provide its report and recommendations to the Mayor and City Council no later than March 31, 2019.



• • • Questions to be answered:

- Will adoption of a Community Workforce Agreement and/or Priority Hiring Ordinance promote hiring of residents living in economically distressed areas and WMBEs? Why or why not?
- If the City elects to adopt a CWA and PHO, what terms and conditions should it include?
- What other actions, if any, should the City pursue?



• • • Today's Agenda:

- Task Force Mission and Process
- Grounding information:
 - What are “economically distressed areas of the City”? WMBEs?
 - The 2018 study by Griffin & Strong commissioned to examine utilization of WMBEs in city public works: what did it tell us?
 - What is a CWA? What is a PHO? What is Initiative 200?
 - What’s a public works project? How many does the City typically have each year? How big are they?
 - What programs does the City have in place now to promote hiring of residents of economically distressed areas and WMBEs? How are they working? → LEAP & SBE
- Roundtable: *Your initial thoughts/questions about this project, and what you hear today.*



Draft Work Plan

- 6 meetings – dates/times TBD
- First three meetings: learning
 - Today—basics
 - Meeting 2 – Griffin & Strong
 - Meeting 3 – Panel / survey of others' experiences with CWAs
- Last three meetings: deliberating
- Deliverable: Report to Council & Mayor
- Due: March 31



Defining Terms



- Economically Distressed Areas of the City
 - “Economically Distressed ZIP Codes” shall mean ZIP codes in the Tacoma Public Utilities Service Area that meet two out of three (2/3) of the thresholds of:
 1. “...residents living under 200% of the federal poverty line in terms of persons per acre (69th percentile)
 2. “...unemployed people in terms of persons per acre (45th percentile)
 3. “...people 25 years or older without a college degree in terms of persons per acre (75th percentile)
 - Total Population: 370,893



Defining Terms (cont)



- **Women and Minority Business Enterprises (WMBE)**
 - Woman and/or minority must own at least 51% of the business
 - Control the management of day-to-day operations
 - Be a U.S. citizen or permanent U.S. Resident
- **Relationship to terms like Disadvantaged Business Enterprise (DBE):**
 - Socially and economically disadvantaged individuals own at least 51% of the business
 - WMBE can also be a DBE
 - Control the management of day-to-day operations
 - Must not have a net worth above \$1.32 million



Disparity Study Overview

Tacoma Community Workforce Advisory Committee

December 21, 2018

Daniel Murillo



• • • Presentation Overview

- Disparity Study (What and Why)
- What the Disparity Study did not evaluate
- Study Objectives
- Technical Approach
- Findings
- Recommendations



● ● ● Disparity Study (What and Why)

- What: Disparity Studies help determine if there is a need to develop race and gender-based programs that address the underutilization of women and minority owned businesses (WMBE)
- Why: Requested by the City Council and focused on City's contracting policies and impacts on WMBEs
- Based on federal court case, methodology dictated by case law, must have narrowly-tailored remedies (to avoid over- or under-inclusion)



Disparity Study Consultant: Griffin & Strong

Specializes in
disparity research,
contract compliance,
program
development, training
& supplier diversity
consulting



Qualified team of
individuals

- 4 Juris Doctors
- 2 PhD Economists
- PhD Statistician
- PhD Candidate in Anthropology
- All have expertise in disparity research.



No study conducted
nationally by Griffin &
Strong, P.C. has ever
been challenged or
overturned in court.



• • • What The Disparity Study Did Not Evaluate

- The Disparity Study DID NOT evaluate disparities in workforce utilization
- The consultant has offered a follow-up opinion that a Community Workforce Agreement may in fact have a negative impact on the recommendations of the Disparity Study

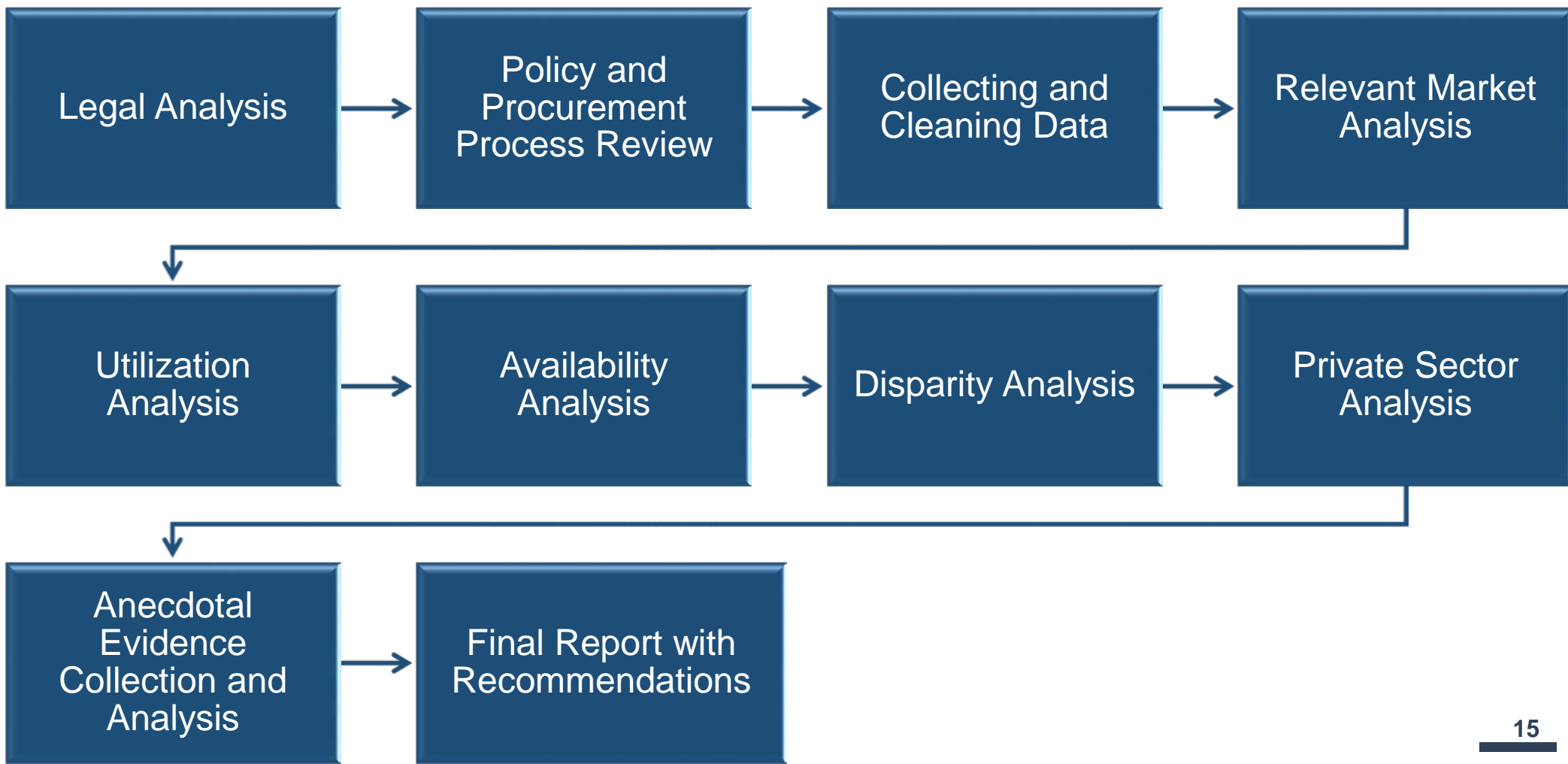
Disparity Study Objectives



1. Is there a statistically significant disparity in the relevant geographic and product markets between the percentage of qualified WMBE firms willing and able to provide goods or services to the City in each of the category of contracts and the percentage of dollars awarded to such firms (whether as prime contractors/consultants or subcontractors/consultants)?
2. If a statistically significant disparity exists, have factors, other than race and gender been ruled out as the cause of that disparity, such that there can be an inference of discrimination?
3. Can the discrimination be adequately remedied with race and gender-neutral remedies?
4. If race and gender-neutral remedies are not sufficient, does the evidence from the Study legally support a race and/or gender conscious remedial program?
5. Are the proposed remedies narrowly tailored to the strong basis in evidence from the disparity study?



Disparity Study Technical Approach



Disparity Study Legal Findings



- The overlap between the federal framework (under Croson, et. al.) and Initiative 200 remains unclear as there have been no reported opinions in Washington applying I-200 in the context of WMBE programming.
- The 2017 opinion by the state Attorney General on Initiative 200, specific to government contracting, provides some guidance, but did not fully clarify this potential window.



Disparity Study Policy Findings: SBE Program



Disparity Study Statistical Findings



WMBE Groups with Significant Underutilization in Prime Contracts Based on Awards from FY2012-FY2016

	Construction	A&E	Services	Goods
African American	X	X	X	X
Asian American	X	X	X	X
Hispanic American	*	X	X	X
Native American	X	X	X	X
Nonminority Female	X	X	X	X

NOTE: Hispanic American owned firms were underutilized in Construction as prime contractors but not statistically significantly so.

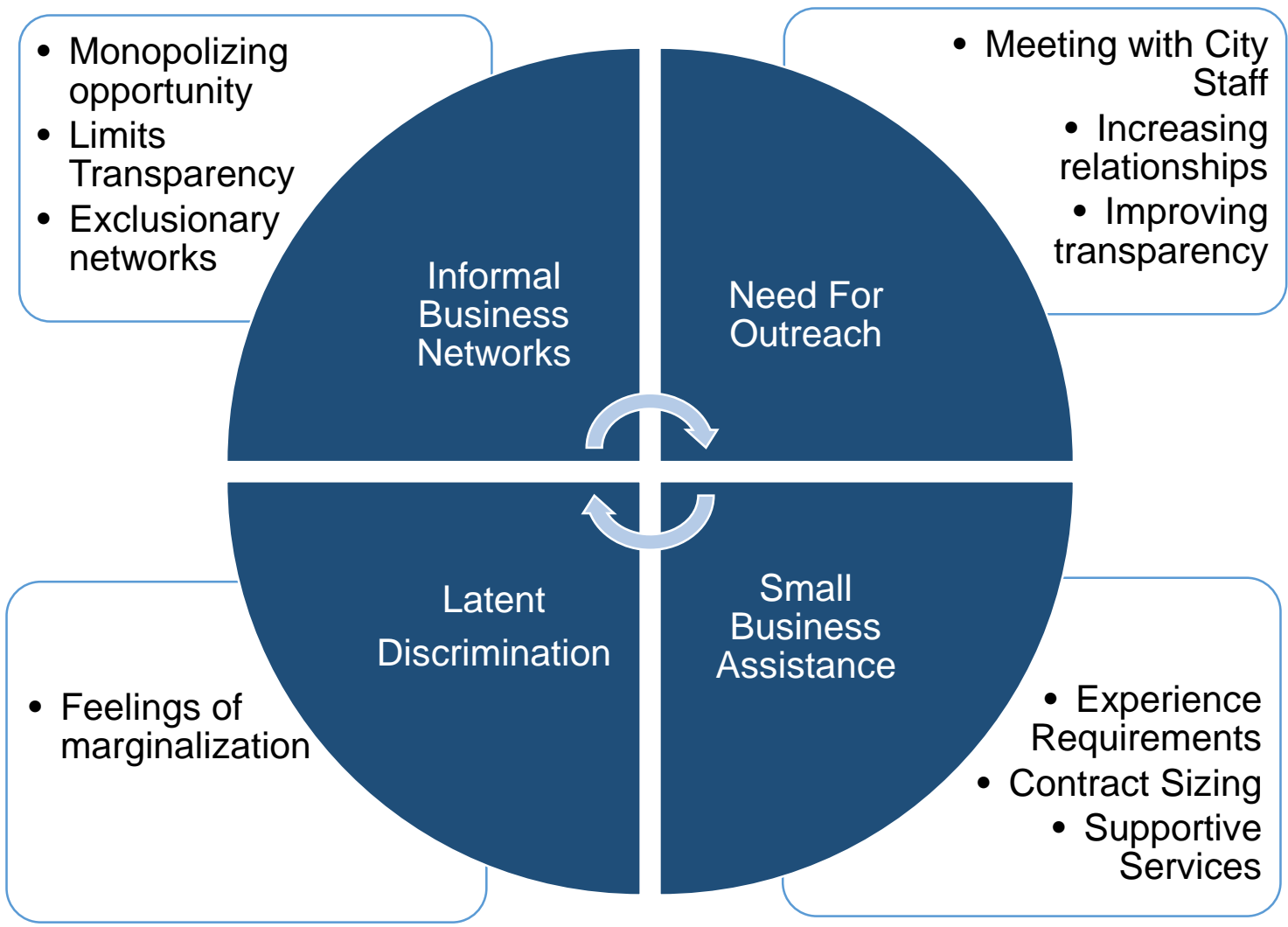
Disparity Study Statistical Findings, Cont.

Summary of Subcontractor Utilization in Construction
Based upon Awards FY2012-FY2016

Firm Ownership	Construction	
African American	\$ 70,757	0.10%
Asian American	\$ 346,619	0.47%
Hispanic American	\$ 1,010,450	1.37%
Native American	\$ 109,159	0.15%
TOTAL MINORITY	\$ 1,536,985	2.08%
Nonminority Female	\$ 1,910,270	2.58%
TOTAL M/WBE	\$ 3,447,255	4.66%
NON-M/WBE	\$ 70,573,752	95.34%
TOTAL FIRMS	\$ 74,021,007	100.00%



Disparity Study Anecdotal Findings





Disparity Study Conclusion Of Findings

1.

- The City of Tacoma's current race neutral SBE program has not been sufficient in promoting equity in public contracting, demonstrated by statistically significant underutilization for nearly all WMBE groups for both prime contract opportunities and subcontract opportunities.

2.

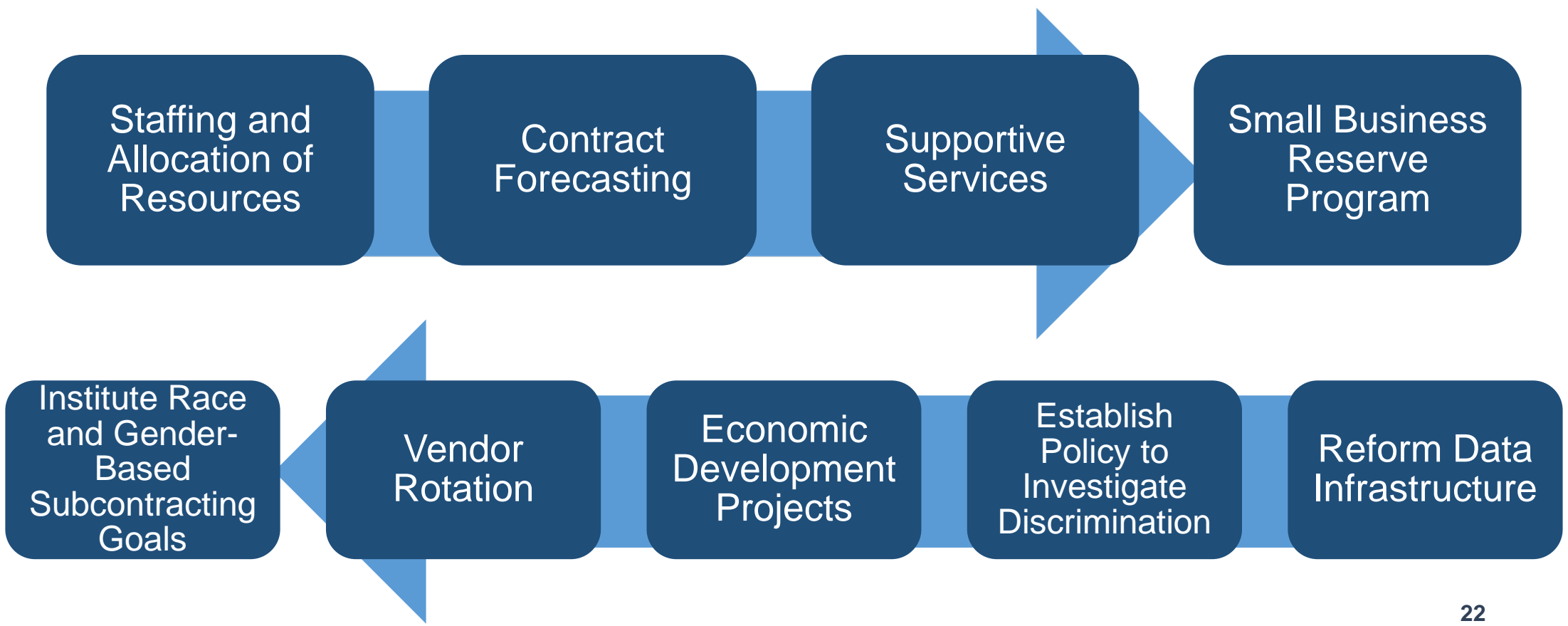
- Existing City race neutral programs can be more effectively administered. Race and gender conscious programs that do not run afoul of Initiative 200 are supported by the findings of the Study and should also be utilized.

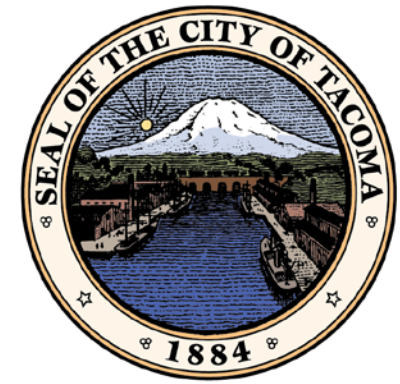
3.

- If Initiative 200 is abolished, the findings of this Study also support race and gender conscious preference programs.



Disparity Study Recommendations





Community Workforce Agreements and Initiative 200

Tacoma Community Workforce Advisory Committee

December 21, 2018

Steve Victor



Overview

- CWA Variations
- CWA's and Women and Minority Business Enterprise
- Washington State Initiative 200



CWA Variations



- Project Labor Agreements (PLA)
 - Project specific agreement between project owner and trades council
 - Common on both private and public projects
 - Set working conditions in exchange for labor peace
- Project Specific CWA
 - Like PLA's
 - Union representation for all trade workers on project
 - Union dues and trust fund contributions for all trade workers
 - Set grievance and dispute resolution procedures
 - Include training or recruitment goals targeted towards specific populations
- Citywide CWA
 - Not project specific, cover all projects that meet certain criteria



● ● ● CWA's and Women and Minority Business Enterprise

- CWA's primarily focused on labor not firms
- CWA's may include provisions to accommodate small contractors, including Women and Minority Businesses but generally are not a central emphasis for typical CWA's

Washington State I-200



- Codified in RCW 49.60
- Passed in 1998
- Prohibits race or gender conscious decision making in public contracting
 - Cannot give preference to a “less qualified applicant” over a “more qualified applicant”
- Does not apply to projects receiving federal funding



Questions....



Contracting with the City of Tacoma

Tacoma Community Workforce Advisory Committee

December 21, 2018

Patsy Best



Agenda

- Procurement Policy Overview
- What is Public Work
- Contracting Overview, History, Funding



Procurement Policies Overview



- Governed by Tacoma Municipal Code (TMC), Revised Code of Washington (RCW).
- Additional governance for Federal and Grant funded projects.
- Competitive bidding required in most cases.
- Awards made to lowest and best responsible bidder.
- City Council/Public Utility Board has final award approval of contracts and purchases > \$200K.



Public Works and Improvements



- Public Works and Improvements Contracts: All work, labor, construction, alteration, repair or improvement other than ordinary maintenance that are executed at the cost of the City per 39.04.010 RCW.
- Contracts for Services and Supplies are not included.



Contracting Overview



- City of Tacoma Public Works Construction Contracting Entities:
 - General Government
 - Public Works (Streets, Bridges, Facilities)
 - Environmental Services (Storm Water, Wastewater, Solid Waste)
 - Tacoma Venues and Events (Tacoma Convention and Trade Center, Cheney Stadium, Tacoma Dome)
 - Tacoma Public Utilities:
 - Tacoma Power (Dams, Transmission and Distribution, Recreational facilities)
 - Tacoma Water
 - Tacoma Rail, Click! Network



State and Federal Funding

- Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color or national origin and affords disadvantaged business enterprises the full opportunity to participate in competitive solicitations.
 - Disadvantaged Business Enterprises (DBE)
 - Minority and Women's Businesses (MBE and WBE)



Public Works Contracts

City Only Funding

- CWA's can apply
- LEAP applies
 - Over \$250k employment goals.
 - Over \$1M apprenticeship goals.
- Small Business Enterprise (SBE) program applies
 - All contracts over \$25k

Federal Funding

- CWA's may conflict with federal regulations.
- Title 6 applies
 - DBE
 - MBE
 - WBE



Public Works Contract History

- Initiated between 2014-2017:
 - Average 80 PW construction contracts per year
 - 3 contracts/year over \$5M
 - 7 contracts/year over \$2M
 - 16 contracts/year over \$1M

*At least 30% of these projects receive grant funding, analysis of project funding is not complete



Questions?



Introduction to LEAP and SBE

Tacoma Community Workforce Advisory Committee

December 21, 2018

Clifford Armstrong III



Introduction to LEAP and SBE

LEAP	SBE
Target Population: <ul style="list-style-type: none">- CoT Residents- Economically Distressed Areas of TPU Service Area- Apprentices of TPU Service Area	Target Population: <ul style="list-style-type: none">- Small Businesses within Pierce or Adjacent Counties
Focused on employment similar to priority hire	Focused on firms
Only applies to City-funded construction projects over \$250k	City-funded contracts over \$25k
	If funded with state or federal resources, use their respective programs.
Both programs are race and gender neutral	



LEAP Program Overview

- History
- Scope
- Who Qualifies?
- LEAP Goals
- Enforcement
- Limitations
- LEAP v PHO
- LEAP in Disparity Study



History



- LEAP was created in March, 1997.
 - “...to level the playing field with training, resources, and employment opportunities so that more citizens can earn better wages.”
- LEAP Advisory Committee



- All Public Works or Improvements under following conditions:
 - Only applies to projects funded solely with City dollars
 - Local Employment Goal
 - Civil Projects more than \$250k
 - Building Projects more than \$750k
 - Apprentice Utilization Goal on Civil or Building project above \$1million
 - Prime contractors are held accountable to goals
 - Race and Gender neutral



LEAP Goals

- Local Employment Goal
 - “...15 percent of the total Labor Hours actually worked on the Project...”
- Apprenticeship Utilization Goal (RCW 49.04)
 - “...15 percent of the total Labor Hours actually worked on the Project...”
 - May use a local Apprentice to satisfy Local Employment Goal
 - Strongly incentivizes using local Apprentices



LEAP Eligibility

- All City of Tacoma Residents or
- All Residents of ZIP codes within Tacoma Public Utilities Infrastructure and Service Area that are “Economically Distressed” as defined in LEAP code.
- All Apprentices from any ZIP code that Tacoma Public Utilities serves or has infrastructure within.



“Failure to Meet Utilization Goal”

<u>% Completed</u>	<u>Fee per Hour</u>
100%	\$0.00
90 - 99%	\$2.00
75 - 89%	\$3.50
50 - 74%	\$5.00
1 - 49%	\$7.50
0%	\$10.00



Limitations

- Staffing
 - .75 dedicated employees
 - No investigations or wage verifications.
- Programming
 - No direct programming that is directly accessible to Tacoma residents.
 - Funding of programs has historically been tied to penalty funds.
 - No mandatory tracking of demographic data other than residency.
 - No “Preferred Entry” policy for pre-apprenticeship graduates.



● ● ● LEAP v Priority Hire Ordinances (similarities)

- Both seek to increase utilization of specific types of prevailing wage employees (labor).
- Both are not contract-specific (goals do not significantly change by projects that are eligible).
- Both rely heavily on geographic distinctions, typically ZIP codes.



LEAP v Priority Hire Ordinances (differences)

- LEAP has historically been race/gender neutral while PHO's typically have "aspirational" race/gender conscious goals.
- LEAP has been City-lead/mandated while PHO's are typically agreed upon by stakeholders on given project including the project owner and local labor.
- LEAP has historically been neutral on Union v Open-Shop labor while PHO's typically demonstrate strong preference for Union labor.



LEAP in Disparity Study

- Limited study
- Support for LEAP code changes made in July '18.
- Recommended to further clarify “Labor Hours”



SBE Program Overview

- History
- Purpose
- Goals/ Applicability
- Who Qualifies?
- SBE Goals on Contracts
- Enforcement
- Limitations



History



- SBE was “rebranded” from Historically Underutilized Business (HUB) program around December 2009 as a result of I-200.
 - SBE continued administering Title VI compliance
 - SBE no longer administers Disadvantaged Business Enterprise (DBE) OR Women and Minority Business Enterprise (W/MBE) programs
 - Race and gender neutral



● ● ● Purpose

- “It is the goal of this chapter to facilitate a substantial procurement, education, and mentorship program designed to promote equitable participation by historically underutilized businesses in the provision of supplies, services, and public works to the City.”
- TMC 1.07.010



Goals

- Increase number of small businesses on City-funded goods, services, and construction contracts.
- Focus on prime contractors, subcontractors, and business. Not labor or employees.



• • • Applicability

- All City contracts over \$25,000 in value, not limited to public works.
- Where there is a certified SBE qualified to perform work under the contract.
- City certifies and maintains a SBE roster.
- City assigns SBE use goals to each contract not to exceed 22% of the contract amount.



Who Qualifies as an SBE?

- All owners personal net worth of less than \$1,320,000 with two exclusions.
- Company gross receipts for consecutive three year period within last six years not more than \$36,500,000 for public works companies and not more than \$15,000,000 for non-public works.
- Owner(s) execute an Affidavit of SBE Certification and files it with the City.

Who Qualifies as an SBE? (Cont'd)



- One of the following additional requirements:
 - Business offices or personal residence of owner is within City of Tacoma Renewal community/Community Empowerment Zone.
 - Business offices or personal residence of owner is located within city of Tacoma for at least six months prior to designation as a SBE.
 - Business offices located in a federally designated HUBZONE in Pierce or any adjacent county for at least 12 months...
 - Business offices located in a federally designated HUBZONE in county wherein the work shall be performed, or any adjacent county, for at least 12 months.



• • • Enforcement

- Upon determination of contractor violation:
 - Forfeit the contractor's bid bond and/or performance bond.
 - Publish notice of the contractor's noncompliance.
 - Cancel, terminate, or suspend the contractor's contract, or portion thereof.
 - Withhold funds due contractor until compliance is achieved.
 - ...disqualification of eligibility for future contract awards by the City (debarment).



• • • Limitations

- Staffing/ resources
 - 0.6 dedicated employees.
 - Staffing insufficient for full utilization by City departments.
 - No active recruitment of SBE's.
 - No investigations or wage verifications.
 - Limited outreach to small business-related working groups.
- Gap in code further limits enforcement.
- Current SBE data does not track race or gender.



Introduction to LEAP and SBE

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