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# Final Report

For the project entitled:

**Alaska Disadvantaged Business Enterprise Study – Availability and Disparity**  
**Federal Project Number STP-000S(587) and 3-02-0000-005-2006**  
**AKSAS Project Number 76463/53191**



Prepared by:

**D. Wilson Consulting Group, LLC**  
Laurel Oaks Plaza  
309-1 Ponce Boulevard  
Jacksonville, Florida 32218

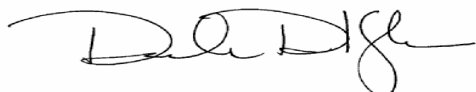
Prepared for:

**Alaska Department of Transportation and Public Facilities**  
Civil Rights Office  
2200 East 42<sup>nd</sup> Avenue  
Anchorage, Alaska 99508

**June 6, 2008**

## SIGNATURE PAGE

Name of Person Responsible for Report: Deirdre D. Kyle, Principal  
D. Wilson Consulting Group, LLC



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Signature: Deirdre D. Kyle

### **Deirdre D. Kyle, Principal, D. Wilson Consulting Group, LLC**

Ms. Deirdre Kyle is principal of D. Wilson Consulting Group, LLC, a management consulting firm that specializes in conducting disparity studies. Ms. Kyle has 20 years of experience providing consulting services to federal, state and local governments and the private sector; most of those years as a Partner with a national consulting firm. Her career history includes working with State Departments of Transportation and local transit and transportation agencies. Ms. Kyle's career has focused on organizational reviews, strategic planning and human resource management. Her consulting experience includes minority/women-owned business utilization (disparity) studies, diversity training, economic impact studies and development of public policy. These engagements required a multi-discipline approach including data analyses, legal research, anecdotal analyses and statistics. Ms. Kyle has significant experience in litigation support and is qualified as an expert witness for business and employment discrimination cases. She served as an expert witness in ***Gross Seed Company v. Nebraska Department of Road and United States Department of Transportation, Case No. 4:00CV3073***, Federal District Court 2001, and provided technical assistance to the Colorado Department of Transportation in ***Adarand Constructors, Inc. v. Colorado***.

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## EXECUTIVE SUMMARY



## EXECUTIVE SUMMARY

In December 2006, the Alaska Department of Transportation and Public Facilities in partnership with the Alaska Railroad Corporation and the Municipality of Anchorage engaged D. Wilson Consulting Group, LLC to conduct the Alaska Disadvantaged Business Enterprise Availability and Disparity Study. In addition to D. Wilson Consulting Group, the research team included Fields & Brown, LLC and Southeast Strategies. The Agencies that participated in the study included:

- Alaska Department of Transportation & Public Facilities (AKDOT & PF)
- Alaska Railroad Corporation (ARRC)
- Municipality of Anchorage (Municipality)

A five year study was conducted that included procurement activity from October 1, 2001 through September 30, 2006 (FY2002-FY2006).

### **Background**

The primary objectives of the study were to identify and characterize:

- The extent to which Disadvantaged Business Enterprises (DBEs), defined broadly as small, for profit business enterprises owned and operated by certain minorities and women, participate in the procurement of United States Department of Transportation (DOT) federally assisted highway/airports/transit contracts in general construction and professional services for the AKDOT & PF; general construction, professional services, supplies and manufactured items for the ARRC and the Municipality;
- If DBE participation is representative of the availability of DBEs that are ready, willing and able to participate in federally assisted DOT contracts. By DOT modal administration, Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA) and the Federal Transit Administration (FTA), calculate the percentage of ready, willing and able DBE firms by each of the presumed groups as defined in 49 CFR Part 26 to be the presumed disadvantaged;
- Whether discrimination exists and if found, identify by DOT modal group and individually, by race, ethnicity and gender of all groups affected;
- Identify presumed disadvantaged groups that are over or underutilized for federally assisted DOT contracts based on their availability;



- Quantify the magnitude of differences between DBE availability (based on capacity) and DBE participation on federally assisted DOT contracts.

### **Methodology**

#### **Legal Analysis**

Reviewed and analyzed relevant court decisions impact on Disadvantaged, Minority and Woman Owned Business programs; including *City of Richmond v. J.A. Croson Company*; *Adarand Constructor v. Pena*; and, *Western States Paving Co. v. Washington Department of Transportation*.

#### **Review of Contracting Policies, Procedures, and Practices**

- Reviewed each Agencies procurement policies, procedures and programs;
- Discussed with each Agencies Procurement and DBE Managers and staff what effects the contracting, purchasing and DBE policies, special provisions and manuals have on the DBE program;
- Interviewed each Agencies' key procurement and contracting personnel to determine how the policies and procedures have been implemented in the past and how they are currently being implemented;
- Reviewed federal and state statutes, regulations, policies and procedures that impact the DBE program or other areas of contracting and purchasing;
- Summarized each Agencies contracting, purchasing and DBE programs and how they affect the utilization of DBEs by each agency;

#### **Statistical Analysis**

##### **Data Collection**

- Collected and analyzed data for all Agencies prime and subcontractor contracts that were awarded from October 1, 2001 through September 30, 2006.
- The North American Industrial Classification System (NAICS) was utilized to define each business category. The business categories analyzed in the study are:
  - AKDOT&PF – Construction and Professional Services;
  - ARRC – Construction, Architectural & Engineering and Professional Services;

- Municipality – Construction, Architectural & Engineering and Professional Services.
- The following race and gender classifications are included in the study:
  - African Americans
  - Alaska Native Corporations
  - Alaska Tribal
  - American Indian/Alaska Natives
  - Asian Indian/Pacific Islanders
  - Hispanic Americans
  - Non-minority Women
  - Non-DBEs
- Developed a data collection plan that included the development of an assessment tool for fact finding about each Agencies data sources and formats and conducted interviews with key staff members. Electronic and hard copy data were provided from the Agencies.

### **Relevant Market Area**

For this study, the relevant market area was defined as those United States counties in which each participating Agency expended 75 percent or more of total expenditures during the study period. The following is the established relevant market area for each Agency:

- AKDOT & PF – State of Alaska
- ARRC – State of Alaska
- Municipality – Anchorage, Alaska

### **Utilization Analysis**

Contracts awarded within the relevant market area for the AKDOT&PF and the Municipality were analyzed to determine if firms utilized were DBEs or non-DBEs. This analysis was used to determine the utilization of DBE or non-DBE firms. For the five year study period, the percentage of dollars awarded to DBEs and non- DBEs within the relevant market were calculated for each business category.

The ARRC does not have a formal or informal recordkeeping process to collect subcontractor data; therefore, it required ARRC staff to review hard copy files to general a list of utilized subcontractors. After the five-month review, ARRC was able to identify 22 subcontracts awarded in the construction industry over the study period. Based on previous experience in

conducting disparity studies and the construction industry practices, the Wilson Group determined the data was insufficient to conduct any substantive analyses or draw any supportable conclusions.

### **Availability Analysis**

A master data base was created based on the following data sources:

- State of Alaska Department of Commerce Incorporation Database (2007)
- Dun and Bradstreet Alaska and Washington Firm Database (2007)
- Alaska Department of Transportation & Public Facilities Contract Data
- Alaska Unified Certification Program DBE Directory
- Alaska Department of Transportation & Public Facilities Purchasing Databases (central, northern, and southeast)
- Alaska Department of Transportation & Public Facilities Statewide Vendors list
- Alaska Railroad Corporation Vendor list
- Alaska 8a Certified companies
- Associated General Contractors of Alaska
- Alaska Outreach MWBEs
- Biztrak database vendors
- Central Contractor Registration
- CIRI Shareholders – ANC Research and Development
- Municipality of Anchorage Contract data
- Municipality of Anchorage Suppliers list

Based on these sources a master database was created that reflected a pool of over 23,000 firms that indicated an interest in performing work in Alaska by registering their firm with one or more of the participating Agencies listed above. In order to extract a subset of qualified, willing and able firms the following filtering criteria were utilized: the firms' reported revenue, the past procurement history of the contracting agency to provide thresholds for estimating the dollar size of future contract awards, an assumption that historical buying patterns present during the study period were indicative of future buying patterns and the business license status of firms in the master vendor database. Firms were classified into one of the business categories evaluated in this study. Excluded from consideration in this analysis based on the recommendation from the Commission briefing were firms that did not identify lines of business and firms that provided services other than those purchased by the Agencies. The number of

firms that domiciled in the relevant market area of the AKDOT&PF, the ARRC and the Municipality were further analyzed to evaluate their availability to perform work. This data was evaluated and weights were developed and applied based on responses to the telephone survey, firm capacity and willingness to perform work for public sector agencies. This process produced an adjusted list of qualified, willing and able prime contractors and subcontractors within the relevant market area of the participating Agencies.

### **Disparity Analysis**

The Wilson Group conducted a disparity analysis for the AKDOT&PF and the Municipality by business category to determine the differences between the utilization of DBEs and the availability of such firms within the relevant market area. The data presented in the Availability and Utilization Analyses were used as the basis to determine if DBEs received a fair and equitable share of the contracts awarded by the Agencies. This was determined through the disparity index calculation which was obtained by dividing the percent of utilization by the percent of availability and multiplying the result by 100. A disparity index of 100 indicates parity, a balance between utilization and availability. A disparity index of less than 100 may indicate that firms are underutilized or overutilized if greater than 100. An index of less than 80 may indicate significant underutilization and an index of 0.00 indicates no utilization.

### **Anecdotal Analysis**

Several methods were utilized to collect anecdotal data from individuals representing both DBE and non-DBE businesses. The anecdotal data collected were a result of:

- Personal Interviews – Sixty-nine (69) personal interviews were conducted with business owners who conducted business with or attempted to conduct business with one of the Agencies or they had to have acted as a subcontractor on a project that was awarded during the study period. An interview guide was developed that covered a range of questions concerning a firm's experiences in conducting or attempting to conduct business with the Agencies, experiences contracting with general contractors on the Agencies' projects, the firms business operations and instances of discrimination.

- Public Hearings – A total of four (4) public hearings were conducted; two (2) in Anchorage, one (1) in Fairbanks and one (1) in Juneau. The hearings provided DBE and non-DBE business owners the opportunity to present testimony regarding any incidents of discrimination experienced when conducting business with one of the participating Agencies.
- Telephone Surveys – A total of 5,314 calls were made which resulted in 499 completed surveys. The questions asked during the telephone survey were divided into three (3) categories:
  - General demographic questions
  - Questions that addressed possible barriers business owners may have encountered when attempting to do business with the participating Agencies.
  - Questions that addressed possible discriminatory practices of prime contractors.

### **Conclusion**

The results of the statistical analyses that were conducted in the study find that there is significant disparity between utilization and availability of DBEs by the Alaska Department of Transportation and Public Facilities and the Municipality of Anchorage. The anecdotal analysis supports the statistical analyses finding that available DBEs in the relevant market area of AKDOT&PF and the Municipality are significantly underutilized and have encountered significant levels of disparity and inference of discrimination.

Based on the data analyzed for the study period, the Wilson Group recommends the following:

#### **Alaska Department of Transportation and Public Facilities**

- A race-neutral and race-conscious DBE Program with an overall goal of 13 percent
  - 5.1 percent race-neutral
  - 7.9 percent race-conscious

#### **Municipality of Anchorage**

- A race-neutral and race-conscious DBE Program with an overall goal of 13.5 percent
  - 2.5 percent race-neutral
  - 11 percent race-conscious

### **Alaska Railroad Corporation**

- Implement a contract monitoring system that tracks all contract awards and payments to prime and subcontractors for all business categories.
- Implement a race-neutral DBE Program for the next two years. Once the two year period is completed, the ARRC should conduct a utilization analysis to determine if a race-conscious program is necessary.

### **Federal Highway Administration**

- A race-neutral and race-conscious DBE Program
  - 5.7 percent race-neutral
  - 7.3 percent race-conscious

### **Federal Aviation Administration**

- A race-neutral and race-conscious DBE Program
  - 4.3 percent race-neutral
  - 8.7 percent race-conscious

### **Federal Transit Administration**

- There was one Federal Transit Administration (FTA) contract issued during the study which precludes the Wilson Group from recommending a specific DBE goal for the FTA.
- The Wilson Group recommends that the AKDOT&PF adopt the overall goal for its FTA funded projects.