

# CHAPTER 1.

## Introduction

The City of Portland (the “City”) periodically evaluates the degree to which it encourages utilization of minority- and women-owned firms (MBE/WBEs) in City contracts as part of its implementation of its fair contracting and small business support programs. These programs include:

- Professional Services Marketing and Outreach Program;
- Sheltered Market Program; and
- Good Faith Efforts (GFE) Program.

The most recent independent review of MBE/WBE participation in City contracting was performed in 1996.<sup>1</sup>

The City partnered with the Portland Development Commission (PDC) to engage a team led by BBC Research & Consulting (BBC) to conduct the current review. BBC began the assignment in fall 2009 and presented a draft report to the City in January 2011. The BBC study includes a comprehensive analysis of:

- Utilization of MBE/WBEs as prime contractors and subcontractors on City construction and construction-related professional services contracts, by race, ethnicity and gender, between July 1, 2004 and June 30, 2009;<sup>2</sup>
- Availability of MBE/WBEs to perform different types and sizes of City construction and construction-related professional services prime contracts and subcontracts;
- Whether there are disparities between the City’s utilization of MBE/WBEs and the availability of MBEs and WBEs to perform the work;
- Whether there are disparities in the City’s utilization of MBE/WBEs but for the City’s current fair contracting and small business support programs;
- Whether marketplace conditions, City procurement policies and procedures, or other factors present barriers to creation, growth and success of MBEs and WBEs; and
- Initiatives for the City to consider to maintain or to improve opportunities for MBE/WBE participation in City contracting.

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<sup>1</sup> Mason Tillman Associates, Ltd., Oregon Regional Disparity Study, Prepared for the Oregon Regional Consortium, 1996.

<sup>2</sup> The City’s construction-related professional services contracts are awarded through the Professional, Expert and Technical Services contracting process.

Because these types of MBE/WBE studies include analysis of whether there is a *disparity* between the utilization and availability of MBEs and WBEs, they are often referred to as *disparity studies*. The City can use the BBC disparity study to help it make decisions about future implementation of its business programs and consider whether changes to policies and procedures are needed to enhance contracting opportunities for MBE/WBEs and emerging small businesses (ESBs).

Chapter 1 introduces the study in three parts:

- A. The City's M/W/ESB-related Fair Contracting Programs;
- B. Study team; and
- C. Study scope.

### **A. The City's M/W/ESB-related Fair Contracting Programs**

The City operates three business programs specifically related to MBE/WBE participation in the types of contracts included in the study:

- Professional Services Marketing and Outreach program;
- Sheltered Market Program; and
- GFE Program.

Note that Appendix A also provides useful background information including definitions of key terms used in the City's business programs and explanations of concepts used in the disparity study analysis.

**Professional Services Marketing and Outreach Program.** The City maintains an active outreach program to assist M/W/ESB firms in professional services. Key components of this program include:

- Outreach events;
- Networking groups;
- One-on-one consultations with business owners;
- Advertising small business opportunities and services; and
- Presentations to organizations that represent M/W/ESB firms.

The program coordinator also helps facilitate meetings between firm owners and the City project managers who hire professional services in order to familiarize owners with the procurement process.

Additionally, the City has implemented an aspirational goal for utilization of ESBs. The current goal is 20 percent.

**Sheltered Market Program.** The Sheltered Market Program (SMP) was established in 1997 to provide opportunities for state-certified M/W/ESBs in the regional market area. The program allows the City to limit bidders on certain construction contracts to SMP program participants. The City can designate to the SMP program up to one-half of its construction contracts between \$100,000 and \$200,000. Additionally, SMP participants are the first source for the City's informal contracts ranging from \$5,000 to \$100,000.

**SMP participation requirements.** The City of Portland has established the following requirements for participation in the Sheltered Market Program:

- Firms must be certified by the State of Oregon Office of Minority, Women and Emerging Small Business (OMWESB) as an MBE, WBE or ESB.
- At time of application, a firm's average annual gross receipts must not exceed \$1 million dollars per year for the three prior years.
- The firm must agree to an assessment of technical assistance needs by a consultant provided by the City and to participate in training opportunities.
- Firms applying for the SMP must have the ability to perform a commercially useful function — typically at least 50 percent of the construction involved on any contract they are awarded, or approval of a lesser percentage by the Chief Procurement Officer (CPO).
- At time of application, the firm must have been in business for at least two years and must have experience bidding and performing projects in their specific areas of work. These areas of work are identified in the firm's Contractor Prequalification Application.
- The firm must complete the application process.

**Graduation from the SMP.** Firms graduate from the program in one of two ways:

- All firms are reviewed at the end of three years in the program. Firms with gross receipts exceeding \$1 million during each year for a two-year period in the program may be considered for early graduation. A firm meeting this criterion can avoid early graduation if it can identify projects and invoices where its purchases of materials and equipment was the reason it exceeded the \$1 million revenue ceiling.
- All firms participating in the program for five years will graduate or leave the program.

**GFE Program.** The City operates a GFE Program that applies to construction contracts worth more than \$200,000, and some contracts between \$100,000 and \$200,000 if the City determines there are substantial subcontracting opportunities.

**Bidder requirements.** For each contract under the GFE Program, the City identifies types of work that will provide the greatest opportunity for subcontracting. The City then provides potential bidders a list of state-certified M/W/ESB firms for those types of work. If a prime contractor decides against self-performance for a particular type of work required for the contract, the contractor must

contact a minimum of five state-certified M/W/ESB firms that attended the pre-bid meeting and specialize in the type of work required, according to state certification work areas.

Upon submission of the bid, a prime contractor must provide a completed “Form 1,” which lists types of work that the prime contractor will self-perform plus all subcontractors to be used on the project and whether they are certified as an MBE, WBE or ESB. If the contractor is chosen as the low bidder, it must submit a “Form 2” on the day after the bid opening detailing contact with M/W/ESB firms and listing bids received from those firms.

Throughout the project, the prime contractor must submit monthly subcontractor payment and utilization reports.

## **B. Disparity Study Team**

The City commissioned BBC to provide information to help it review implementation of its M/W/ESB Program, SMP and GFE Program. The disparity study team is comprised of:

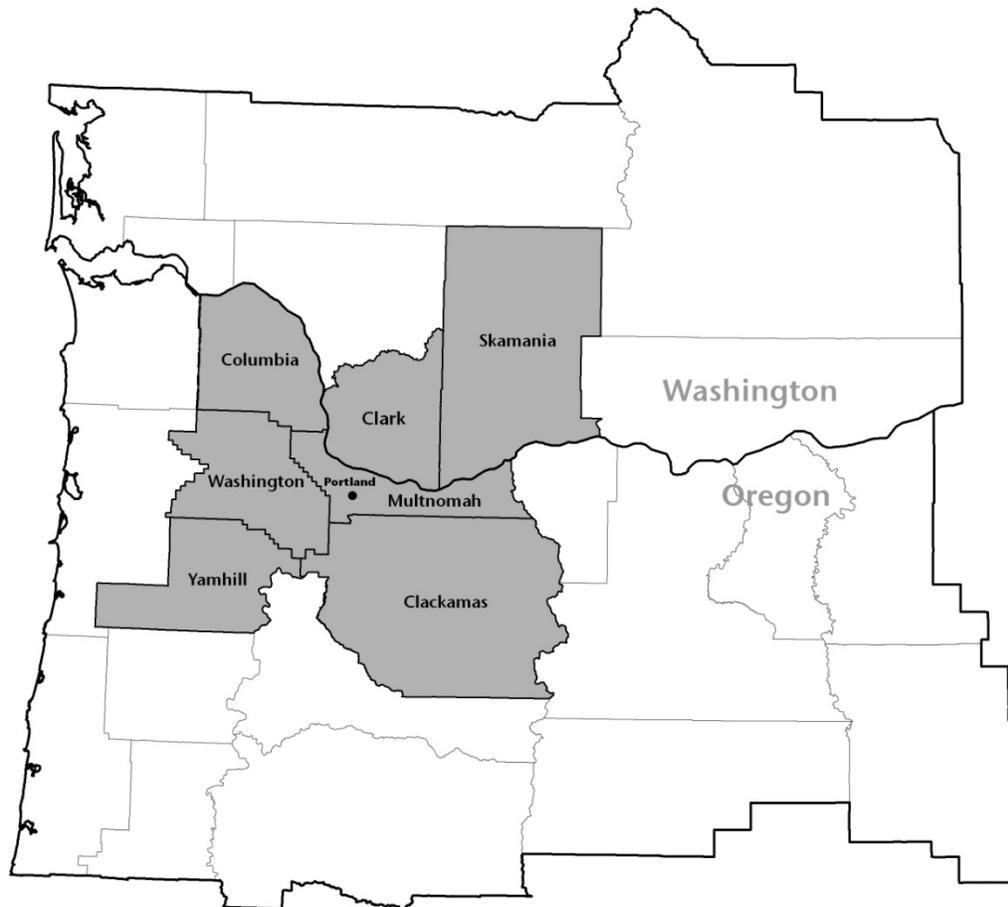
- **BBC Research & Consulting (BBC)**, a Denver-based economic and policy research firm (prime consultant). BBC has overall responsibility for this study and performed most of the required quantitative analyses. BBC is one of the leading disparity study consultants in the United States, having conducted nearly 80 disparity studies since 1989, including studies for states and large cities throughout the country.
- **Holland & Knight LLP (H&K)**, a national law firm. H&K conducted the legal analysis that provides the basis for this study and also analyzed anecdotal information collected through in-depth personal interviews of business owners and trade associations. H&K has worked with BBC on disparity studies throughout the country and has 29 years of experience relating to MBE/WBE programs, including defending programs in court.
- **Group AGB, Ltd.**, a Portland-based consulting firm that specializes in diversity management and business development assistance to MBE/WBEs. Group AGB assisted in electronic and hardcopy data collection for the study, as well as aspects of data analysis. The firm is federally-certified as a Disadvantaged Business Enterprise (DBE) and state-certified as an MBE.
- **F.M. Burch & Associates, Inc. (FMBA)**, a Portland-based consulting firm that specializes in public involvement and community and business development projects, including support programs for M/W/ESBs. FMBA conducted in-depth interviews with business owners and other groups throughout the Portland area. The firm is a DBE/WBE/ESB.
- **Montesi & Associates**, a Portland-based consulting firm that specializes in vendor diversity programs and subcontracting services outreach. Montesi & Associates conducted in-depth interviews with business owners and other groups throughout the Portland area. The firm is a MBE/ESB.

- **Customer Research International (CRI)**, a Texas-based survey research center. Under the direction of BBC, CRI conducted telephone interviews with thousands of business owners and managers throughout the state. CRI is one of the premier telephone survey research organizations in the nation and has supported BBC with survey research for many disparity studies and other assignments during the past five years.

### C. Study Scope

The study team examined quantitative and qualitative information concerning public contracting and marketplace conditions in the local marketplace. BBC defined the local marketplace, in part, through examining the location of firms obtaining Portland construction and construction-related professional services contracts. Figure 1-1 shows the local marketplace considered in the disparity study — Multnomah County and four other counties in Oregon plus Columbia, Clark and Skamania counties in Washington.

**Figure 1-1.**  
Relevant geographic market area for City of Portland construction and professional services contracting



**Information reviewed to develop disparity study framework.** BBC’s methodology for this disparity study reflects a review of information related to MBE/WBE programs, including:

- Oregon state law;
- Relevant court decisions (see Appendix B);
- Suggestions made by critics of disparity studies, including recommendations for disparity studies by the U.S. Commission on Civil Rights;<sup>3</sup> and
- Other disparity studies conducted throughout the country.

**Types of public contracting examined.** In total, BBC analyzed approximately \$1 billion of City contracts as part of the disparity study. BBC examined two general areas of contracting: construction and construction-related professional services. As described in Chapter 3, the study focused on the specific types of construction and construction-related professional services contracts predominately made from firms with locations within the local market area. The study team did not examine types of purchases primarily made from a national market. Related case law requires disparity analyses to focus on the “relevant geographic market area” (see Appendix B).

The study included data from prime contracts as well as from subcontracts.

**Racial/ethnic/gender groups examined in the study.** The racial/ethnic/gender groups that are the focus of this study are based on definitions from the State of Oregon’s M/W/ESB Program. An MBE under the State of Oregon’s M/W/ESB Program is a business that is at least 51 percent owned and controlled by a member of one of the following minority groups:

- Black Americans (or “African Americans” in this study);
- Hispanic Americans;
- Native Americans;
- Asian-Pacific Americans; or
- Subcontinent Asian Americans.

A WBE under the M/W/ESB Program is a business that is at least 51 percent owned and controlled by a woman of any race or ethnicity. Certified MBE and WBE firms must meet size standards as defined by the Small Business Administration North American Industry Classification Systems (NAICS) Code.<sup>4</sup>

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<sup>3</sup> U.S. Commission on Civil Rights. May 2006. *Disparity Studies as Evidence of Discrimination in Federal Contracting: A Briefing Before The United States Commission on Civil Rights Held in Washington, D.C., December 16, 2005.* <http://www.usccr.gov/pubs/DisparityStudies5-2006.pdf>.

<sup>4</sup> See <http://www.naics.com/SizeStandards.htm> for the Small Business Administration NAICS Size Standards.

In this study:

- “Certified MBE” and “Certified WBE” are firms that have been certified as such according to the criteria in the State of Oregon’s M/W/ESB Program.
- “MBEs” and “WBEs” are firms owned and controlled by minorities or women, according to the race/ethnicity/gender definitions listed above, regardless of whether they are certified as such by the State of Oregon or any other agency.

Appendix A provides additional definitions important to this study.

**Quantitative, qualitative and other information examined in the study.** The disparity study collected and analyzed information on a comprehensive set of topics.

- **Chapter 2** analyzes court cases relating to state and local MBE/WBE programs and the Federal DBE Program.
- **Chapter 3** describes how the BBC study team compiled City contract data to prepare the utilization analysis. The chapter discusses how the study team defined the geographic area and study industries that are the focus of the study, as well as differences in approach from past utilization reports.
- **Chapter 4** presents information on local marketplace conditions. The study team examined whether there is any evidence of barriers for minorities and women to enter, advance within and start businesses in Portland. BBC also analyzed access to business credit, insurance and bonding; different measures of business success; access to prime contract and subcontract opportunities; and other issues potentially affecting minorities and women in the local marketplace. Quantitative and qualitative information was included in this assessment, including results of interviews with business owners and managers throughout the state.
- **Chapter 5** presents the availability of MBE/WBEs for City construction and construction-related professional services contracts. BBC estimated availability based on analysis of contract and subcontract opportunities and information collected through telephone interviews on the availability of businesses to perform work for the City.
- **Chapter 6** presents the utilization of MBE/WBEs and disparity results for City construction contracts. The study team analyzed utilization of MBE/WBEs on City prime contracts and subcontracts. BBC then compared utilization of MBE/WBEs with the availability of those firms to perform that work and detailed any disparities between availability and utilization.
- **Chapter 7** presents utilization and disparity results for City construction-related professional services contracts.
- **Chapter 8** explores possible explanations for why any disparities occurred on City construction and construction-related professional services contracts.

- **Chapter 9** presents a summary of key disparity study results.
- **Chapter 10** explores options for race- and gender-neutral measures and other programs that the City might consider implementing to address some of the barriers that the study team observed for MBE/WBEs in various business areas.

In addition to these chapters, a number of appendices provide supporting information concerning study methodology and results, including detailed disparity analyses for the City.