

# CHAPTER ES.

## Executive Summary

The City of Portland and the Portland Development Commission (PDC) engaged a team led by BBC Research & Consulting (BBC) to study whether their current efforts to promote a “level playing field” for minority- and women-owned firms (MBE/WBEs) in City and PDC contracting were effective and whether other programs are needed. The BBC study team examined the construction and construction-related professional services industries in the Portland metropolitan area.

Throughout the country, a number of groups have filed lawsuits challenging the legality of MBE/WBE programs. Disparity studies are a court-approved method that helps public agencies determine whether there is a need for programs to assist MBEs and WBEs and whether those programs comply with relevant court decisions.

The BBC disparity study follows court guidelines for the collection and analysis of quantitative and qualitative information regarding opportunities for MBEs and WBEs in public contracts and in the local marketplace as a whole. BBC’s methodology was recently reviewed and approved by a court within the Ninth Circuit.<sup>1</sup>

### What are the City’s current efforts?

The City encourages utilization of minority- and women-owned firms on City contracts as part of its fair contracting and small business support programs. These programs include:

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

### What were the key results of the study?

Courts have held that public agencies operating a program that specifically assist minority- and women-owned firms must demonstrate:

1. A strong basis in evidence that discrimination affects minority- and women-owned firms; and
2. That any program adopted is *narrowly tailored* to achieve the goal of remedying the specific identified discrimination. A number of elements determine whether a program is narrowly tailored.

**1. Evidence.** The City’s current programs have a positive effect on the overall utilization of minority- and women-owned firms in City construction and construction-related professional services contracts. However, as explained in this Executive Summary and the body of the disparity study report, BBC identified evidence of disparities in the utilization of MBEs and WBEs on City and PDC contracts *when City and PDC programs did not apply*. For example, there are disparities in the use of

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<sup>1</sup> *Associated General Contractors of America, San Diego Chapter v. California Department of Transportation, et al.*

MBEs as subcontractors on City construction contracts without the GFE Program. There is also evidence of disparities in the utilization of MBE/WBEs as prime contractors on City construction contracts outside the Sheltered Market Program. There were also disparities in the utilization of MBEs and WBEs on PDC contracts when MBE/WBE programs did not apply.

But for City programs, there is evidence that there would be disparities in the City's overall utilization of MBEs and WBEs.

Even with City efforts, there was evidence of disparities for certain MBE groups and WBEs. For example, WBEs received about 5 percent of construction-related professional services prime contract dollars, which is lower than what those firms might be expected to receive based on availability. As discussed in Chapter 8, one reason behind the disparities for WBEs on City construction-related professional services contracts may be low actual use of WBEs once they were awarded on-call contracts.

There is also evidence of disparities within the local marketplace.

- Annual revenue of certain MBE groups and WBEs is lower than other firms in the Portland area construction and construction-related professional services industries.
- There is evidence that minorities and women face greater disadvantages than other firm owners when seeking capital, bonding and insurance.
- There is also quantitative and qualitative evidence that MBE/WBEs face barriers to working as prime contractors and as subcontractors on local public sector contracts.
- There is evidence that the current availability of MBEs and WBEs to perform City construction and construction-related professional services contracts is less than what might be expected if minorities and women had the same opportunities as non-minorities and men to enter and advance within these industries, and form and grow their businesses.

The disparity study included in-depth personal interviews with local trade associations and business owners, thousands of telephone interviews with business representatives, and oral and written statements from the public. In this research, a number of individuals reported that discrimination affects MBEs and WBEs in the Portland metropolitan area. Some have urged the City to strengthen its programs that assist minority- and women-owned firms.

The City will need to assess the results of this disparity study and other information it has to determine an appropriate course of action. Its independent assessment of whether this combined information meets the requirements for MBE/WBE programs is a necessary first step in planning the future of any City efforts.

**2. Narrow-tailoring of City programs.** Any MBE/WBE program operated by the City must also be narrowly tailored. Court review of narrow tailoring includes:

- Whether the government agency seriously considered workable race-neutral means to increase minority business participation in contracting (e.g., simplification of bidding procedures, relaxation of bonding requirements and training);

- Limitation of the remedy to only those minority groups for which there is evidence of discrimination in the local area;
- The flexibility and duration of the relief, including the availability of waiver provisions;
- The relationship of numerical goals to the relevant labor market; and
- The impact of race-, ethnicity-, or gender-conscious remedies on the rights of third parties.

In sum, the City should only implement those programs to assist minority- and women-owned firms that are necessary to remedy any effects of identified discrimination. If neutral measures like small business assistance efforts alone would be an adequate remedy, courts would not consider race- and gender-based programs to be narrowly-tailored.

The BBC study team reviewed the City’s current efforts to assist small businesses in general (“neutral programs”) plus a wide range of changes to City policies and potential new City programs to assist all small businesses. In addition, the study team examined ways to strengthen or add to programs that assist minority- and women-owned firms.

Individuals participating in the public forum and providing other comments have given considerable input as part of the disparity study process. Many urged stronger actions to open more City contracting opportunities to minority- and women-owned businesses. Some individuals indicated that past City programs have not been successful in building a strong core of minority- and women-owned firms that can compete for City and other work without assistance. Some individuals said that the City should not have MBE/WBE programs. (Appendix J of the report includes this information.)

The information collected in this study supports stronger City action to remove barriers to MBE/WBE participation in its contracts, foster more contract opportunities for MBE/WBEs, and help to build a strong minority- and women-owned business community in the Portland area. Although many past City initiatives have had a positive effect on MBEs and WBEs, there are substantial opportunities for improvement and expansion of such efforts. The City will need to determine whether this is solely done through neutral programs or whether continued or stronger programs that specifically assist MBE/WBEs are also needed.

**Continuation and expansion of neutral efforts.** The BBC study team suggests the City consider the following continued or new efforts (alone or in combination with MBE/WBE programs):

- Continued support for workforce and hiring programs that help to open doors for groups underrepresented in the construction industry (see Chapter 10, page 1);
- Continued support of technical assistance services (Chapter 10, page 2);
- Continuation of the City’s Small Business Liaison program (Chapter 10, page 3);
- Either support for the Port of Portland’s mentor-protégé program or a new program (Chapter 10, page 3);
- Serving as a referral source for existing small business finance and capital assistance programs (Chapter 10, page 3);

- Continued outreach and other support for local organizations by attending events, referring businesses and sponsoring programs (Chapter 10, page 4);
- Serving as a referral source for local business incubators and possibly financially supporting one or more business incubators (Chapter 10, page 4);
- Encouraging more subcontracting on City contracts (minimum subcontracting program similar to a City of Los Angeles program as discussed on page 5 of Chapter 10);
- A requirement to evaluate when contracts can be divided into multiple smaller contracts (Chapter 10, page 6);
- More use of alternative contracting method for City construction contracts (Chapter 10, page 6);
- Strong enforcement of prime contractor prompt payment to subcontractors (Chapter 10, page 6);
- Providing a means for businesses to electronically register as a vendor when applying for business licenses through the City (Chapter 10, page 7);
- Providing City-specific contracting training to local service providers so that they can better educate local businesses on how to do business with the City (Chapter 10, page 7);
- Partnering with other local government agencies and private firms to host a construction management or engineering institute (Chapter 10, page 7); and
- Launching an online training program for firms (Chapter 10, page 7).

Each of the above initiatives can be designed to be race- and gender-neutral, and many are in place at the City.

**Changes to City prequalification process.** The BBC study team found that the City’s current prequalification process limits opportunities for City prime construction contracts for small firms, including MBE/WBEs. Because MBEs and WBEs tend to be smaller firms, the prequalification process may present a more substantial barrier to City construction prime contracts for those firms. There is also some indication that outcomes of the prequalification process differ for MBEs and WBEs compared with similar majority-owned firms. Chapter 10 of the report presents detailed options for the City to consider that would minimize the negative impact of prequalification on MBE/WBEs. Alternatively, the City could consider eliminating prequalification as a City standard practice.

**Initiatives to minimize or remove barriers created by bonding and insurance requirements.**

Bonding and insurance requirements on City contracts present barriers for all small businesses, particularly minority- and women-owned firms. Chapter 10 of the report examines a number of ways the City could lessen the negative impact of bonding and insurance requirements, including relaxing or waiving bonding and insurance requirements when possible.

**Changes to the Sheltered Market Program.** The City might strengthen its current Sheltered Market Program through actions by including larger City contracts in the program, changing eligibility requirements for the program and adding a second tier to the program for somewhat larger

contractors. Based on its review of the evidence and past program performance, City might also decide to focus assistance toward minority- and women-owned firms rather than small firms in general. Chapter 10 of the report discusses different opportunities to improve the Sheltered Market Program.

**New programs for prime contractors.** The City might consider other programs to strengthen MBE/WBE prime contractors. Chapter 10 reviews the City of Atlanta’s joint venture program as one example of such a program.

**Changes to the Good Faith Efforts Program.** The City’s GFE Program appears to effectively address potential disparities in the use of MBEs and WBEs as subcontractors on City construction contracts, and eliminates overall disparities in the use of MBE/WBEs in City construction contracts. On contracts without the GFE Program, there is evidence of disparities in the use of MBE/WBEs as subcontractors. Chapter 10 explores future program options.

### **Who performed the disparity study?**

BBC is a Denver-based economic research firm that is one of the leading disparity study consultants in the United States, having conducted nearly 80 disparity studies since 1989. In addition to BBC, the study team included:

- **Holland & Knight LLP (H&K)**, a national law firm with offices in Portland;
- **Group AGB, Ltd.**, a Portland-based consulting firm.
- **F.M. Burch & Associates, Inc. (FMBA)**, a Portland-based consulting firm.
- **Montesi & Associates**, a Portland-based consulting firm.
- **Customer Research International (CRI)**, a Texas-based survey research firm.

Group AGB, FMBA, Montesi & Associates and CRI are all minority- or women-owned firms. Chapter 1 of the report provides more information about the study team.

### **Did interested groups and the general public have an opportunity to provide input?**

BBC began the assignment in fall 2009 and presented a draft report to the City in January 2011. In 2010, the BBC study team interviewed 60 representatives of trade associations, business owners and managers, and other groups. The study team also contacted thousands of firms by telephone to give them an opportunity to provide their experiences attempting to perform work with the City, PDC and in the local marketplace.

- During the course of the study, BBC, the City and PDC regularly met with an advisory group comprised of representatives of minority-, women- and majority-owned contractors and consultants and local trade associations.<sup>2</sup>

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<sup>2</sup> The term “majority-owned firms” refers to firms not owned by minorities or women.

- In April 2011, the City and PDC provided a draft report to the public for review and held a public forum where interested individuals provided input. The agencies also provided an online venue for written comments from the public.

The BBC study team reviewed the testimony from the public forum, written comments and other input received by the City and PDC prior to preparing the final report in June 2011. A number of the comments made appear in Appendix J of the full report. The study team made a number of other additions and clarifications based on review of the comments, including substantial modifications to this Executive Summary.

### **What does a disparity study include?**

Disparity studies typically include analyses of whether there is a *disparity* between the utilization and availability of MBEs and WBEs.

- “Utilization” refers to the percentage of contract dollars that went to MBEs and WBEs during the study period.
- “Availability” refers to the percentage of contract dollars that one might expect to go to MBEs and WBEs given the relative number of MBEs and WBEs available for specific types and sizes of prime contracts and subcontracts.

Based upon relevant court decisions, BBC included both certified and non-certified MBEs and WBEs in the utilization and availability results so that the disparity analysis would pertain to any potential barriers related to race, ethnicity or gender of the business owner.<sup>3</sup>

To further isolate the possible effects of race/ethnicity versus gender, “WBEs” refers to white women-owned firms in this disparity study. Firms owned by minority women are included in the utilization and availability results for minority-owned firms (see Chapter 5 of this report for more detail about why BBC classifies WBEs in this way).

- To perform the utilization analysis, the BBC study team compiled and analyzed data on nearly 4,000 prime contracts and subcontracts that the City awarded between July 2004 and June 2009. The study team examined the types of work involved, size of the contract or subcontract, year of the contract and what City programs applied.
- In the availability analysis, the study team successfully contacted more than 3,700 local firms doing business in relevant subindustries to discuss whether they were qualified and interested in City work, the types of work they conduct, sizes of contracts they perform and other firm characteristics.
- BBC compared utilization of MBEs and WBEs on City contracts with the dollars those firms might be expected to receive based on their availability for those types and sizes of prime contracts and subcontracts.

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<sup>3</sup> If the disparity analysis were conducted based only on currently certified MBEs and WBEs, conclusions could not be drawn about the effectiveness or need for programs to assist minority- and women-owned firms. Inclusion of certified and non-certified MBEs and WBEs in both the utilization and availability results has been accepted by the courts.

The BBC study team also analyzed City contracting processes, local marketplace conditions and potential business assistance programs. As part of those analyses, the study team developed statistical models using U.S. Census data and other information on the local marketplace; compiled and analyzed many hundreds of bids and proposals on City contracts; performed telephone interviews with thousands of local businesses; and conducted in-depth personal interviews with 60 business owners, trade associations and other individuals knowledgeable about local marketplace conditions.

### **How was the availability analysis performed?**

The BBC study team made extensive efforts to contact local firms for specific types of City construction and construction-related professional services work. The study team contacted firms using a telephone survey and discussed whether they were qualified and interested in City work, the types of work they conduct, sizes of contracts they perform and other firm characteristics.

- Not all firms reported qualifications and interest in City work.
- A business that did express qualifications and interest in City work was typically only available for certain types and sizes of City prime contracts and subcontracts. For example, a business might have only been in operation for a portion of the July 2004 through June 2009 study period and thus only would have been available for certain years of contracts.
- BBC determined overall availability by examining the number of MBEs and WBEs available for each prime contract and subcontract in proportion to the total number of firms available for that prime contract or subcontract.<sup>4</sup>
- Contract-by-contract availability results were then aggregated on a dollar-weighted basis to determine the overall percentage of City contract dollars that might be expected to go to MBEs and WBEs.

For a number of reasons, the availability analysis did not capture every firm potentially available for City construction and construction-related professional services prime contracts and subcontracts. The availability analysis produced a statistically reliable availability benchmark for use in determining whether there were disparities in City's utilization of MBEs and WBEs. This methodology has been accepted in federal court, including the favorable review of a BBC disparity study by the Federal District Court in Sacramento, which is in the Ninth Circuit Court of Appeals.

The accuracy of availability benchmarks (dollar-weighted percentage availability) — not the size of the availability database developed as part of this study — was most important in the disparity study. The availability data allowed BBC to develop a representative depiction of firms qualified and interested in City work, but it should not be considered an exhaustive list of every minority-, woman-

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<sup>4</sup> For example, if BBC examined a \$50,000 electrical subcontract in 2009, only firms indicating that they were qualified and interested in City work as a subcontractor, had performed or bid on similar work in the past in the Portland area, had bid on or performed work of that size, and were in business in 2009 were counted as available for that work. (All of this information was collected from each firm by telephone in the availability interviews.) If 100 firms in the BBC availability database met those criteria, and 10 were minority-owned, MBE availability for that subcontract would be 10 percent. These results were weighted by the size of subcontract and combined with all of the other results for each City prime contract and subcontract to determine overall availability.

and majority-owned firm that could participate on a City project. Reasons for this include the following:

- BBC designed the availability analysis to be independent of any City, PDC or other agency list of companies that perform construction and personal services work. Such lists might be too limiting because certain firms that are qualified and interested in City or PDC contracts might have been discouraged from such public sector work in the past. It was important to include those firms in the availability database. Because BBC did not use PDC and City lists to develop the availability database, there might be some firms that have worked on City contracts that were not included in the availability analysis.
- The availability analysis requires data about MBE/WBEs and majority-owned firms on an apples-to-apples basis. Therefore, all firms, regardless of race/ethnicity/gender ownership, must be identified from a consistent source. For example, certification lists for MBEs, WBEs and ESBs could not be used as the source of the availability database when no similar lists exist for non-certified or majority-owned firms.
- BBC purchased names and contact information of certain types of construction and personal services firms located in the Portland area from Dun & Bradstreet (D&B) Marketplace. The study team then contacted those firms to collect information about those firms for the availability analysis. D&B Marketplace represents the most consistent, comprehensive database of firms that can be used in disparity study research, and its application in availability analysis has been accepted in court decisions. Even though D&B strives to include every firm doing business in the United States in its Marketplace database, it does not capture every company.
- In terms of dollars, most City construction and construction-related professional services prime contracts and subcontracts go to firms located in the Portland Metropolitan Area. Only firms within this area were included in the availability analysis, consistent with guidance from relevant case law. In addition, BBC only conducted availability interviews with firms performing the types of construction or personal services work that comprised most City prime contract and subcontracts. Therefore, only local businesses and firms that perform work within the core areas of City projects are included in the availability database.
- BBC's availability methodology required information from firms that could only be received through interviews. Only businesses that agreed to participate in an interview are included in the availability database.
- The BBC study team was unable to reach every firm in the D&B Marketplace list, even after repeated attempts to contact an individual at the business who could complete an interview. Only firms that had working phone numbers, answered their phone and made individuals available for an interview are included in the availability database.
- BBC researched whether firms that were not reached were disproportionately MBE/WBEs. Using D&B data and using State MBE/WBE certification data, relatively few of these firms appeared to be minority-or women-owned. This was also true for firms declining to participate in interviews.

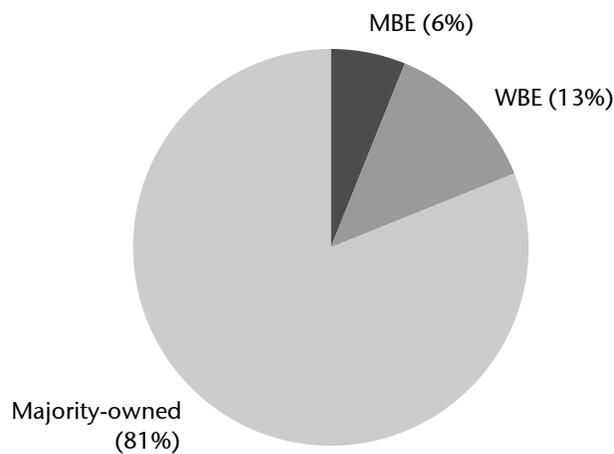
BBC developed availability benchmarks for use in the City disparity study using an approach that has been favorably considered by courts. However, the above points are important to remember when considering other uses of the availability database developed as part of the disparity study.

**Of the firms available for City construction and construction-related professional services work, what share are MBEs and WBEs?**

Of the firms successfully interviewed that reported qualifications, interest and other characteristics indicating that they were available for certain City construction and construction-related professional services contracts, 6 percent were MBEs<sup>5</sup> and 13 percent were WBEs. In total, nearly one in five firms available for City construction and construction-related professional services prime contracts or subcontracts were MBE or WBE firms.

**Figure ES-1.**  
**Available firms by ownership classification**

Source:  
BBC Research & Consulting from 2010  
Availability Survey.



These results are based on research with firms in the Portland metropolitan area available for City construction and construction-related professional services contracts, including identification of the race/ethnicity/gender of ownership of those firms.<sup>6</sup>

BBC’s study went beyond lists of firms certified by the State of Oregon or others when counting firms as MBE or WBE. To determine race/ethnicity/gender of ownership, the BBC study team contacted firms potentially available to perform relevant City work and conducted detailed phone interviews with business owners and managers.

Availability interviews focused on the subindustries of construction and construction-related professional services most related to City contracts. More than 3,700 firms were successfully contacted, about 1,500 of which reported qualifications, interest and other characteristics that indicated availability for City prime contracts and subcontracts.

Chapter 5 and Appendix D of this report provide additional results and documentation of the availability analysis.

<sup>5</sup> For purposes of this study, “minority” follows the definitions from the State of Oregon’s MWESB Program: African Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Hispanic Americans and Native Americans.

<sup>6</sup> Among the subindustries included in the utilization analysis, 97 percent of contract dollars went to vendors with locations in the Portland Metropolitan Statistical Area. Defined by the Census Bureau, the Portland Metropolitan Statistical Area includes the Oregon counties Clackamas, Columbia, Multnomah, Washington and Yamhill and the Washington counties Clark and Skamania.

## **What percentage of City construction and construction-related professional services contract dollars might be expected to go to MBEs and WBEs?**

The following example shows how BBC calculated availability for a specific City subcontract.

On a City contract issued in 2006, the prime contractor issued a subcontract for electrical work for \$19,166. In order to determine the overall availability of minority- and women-owned firms for this subcontract, the study team indentified firms in the availability database that:

- Were in business in 2006;
- Indicated that they performed electrical work;
- Reported bidding on work of similar size or greater in the past; and
- Reported qualifications and interest in working as a subcontractor on City of Portland projects.

The study team found 140 firms in the availability database that met these criteria. Of those firms, 33 were women or minority owned. The MBE/WBE availability for this contract piece was 23.6 percent.

This process was completed for all prime contract and subcontract pieces. In order to determine the overall availability for a certain set of contracts, the study team took an average of the availability for each contract and subcontract, weighting the availability of each contract element by its dollar value.

Based on the information collected in telephone interviews with local firms, and a review of more than 2,000 construction prime contracts and subcontracts, the percentage of City construction contract dollars expected to go to MBEs and WBEs is:

- 1.9 percent for MBEs on City construction contracts; and
- 3.5 percent for WBEs on City construction contracts.

These dollar-weighted availability figures are lower than what is indicated from a simple “headcount” of minority-, women- and majority-owned firms because relatively few of the firms available for the City’s largest prime contracts are MBE or WBE firms.

Similar analyses of City construction-related professional services contracts, including review of more than 1,000 prime contracts and subcontracts, indicated dollar-weighted availability of:

- 7.2 percent for MBEs on City construction-related professional services contracts; and
- 7.4 percent for WBEs on City construction-related professional services contracts.

BBC also developed availability estimates for specific groups of MBEs, and for specific subsets of City prime contracts and subcontracts. These values serve as benchmarks to evaluate the actual percentage of contract dollars going to MBEs and WBEs.

**Was there a disparity between utilization and availability of MBEs and WBEs on City construction and construction-related professional services contracts?**

Overall, there were no disparities in the City’s utilization of MBEs on either construction contracts or construction-related professional services contracts.

- MBEs received 2.9 percent of City construction contract dollars, which exceeded what might be expected based upon availability for those prime contracts and subcontracts (1.9%).
- MBEs received 28.4 percent of City construction-related professional services contract dollars, which also exceeded what might be expected based on their availability for those prime contracts and subcontracts (7.2%).

There were no disparities in the overall utilization of WBEs on City construction contracts, and utilization of WBEs on City construction-related professional services contracts was roughly in line with availability:

- WBEs received 5.3 percent of City construction contract dollars, more than what might be expected given their availability for those prime contracts and subcontracts (3.5%).
- WBEs received 6.7 percent of City construction-related professional services contract dollars, close to what would be expected given their availability to perform those prime contracts and subcontracts (7.4%).

City utilization of MBEs and WBEs is detailed in Figure ES-2. Note that the overall results shown below reflect the positive effect of the City’s existing programs to assist minority- and women-owned firms. *BBC also examined subsets of City prime contracts and subcontracts where no such programs applied — in general, MBE/WBE utilization fell below what would be expected based on availability for those contracts.*

**Figure ES-2.**  
**Utilization and availability of MBE/WBEs on City construction and construction-related professional services contracts, July 2004–June 2009**

	Utilization	Availability	Disparity?
<b>Construction</b>			
MBE	2.9 %	1.9 %	No
WBE	5.4	3.5	No
<b>Construction-related professional services</b>			
MBE	28.2 %	7.2 %	No
WBE	6.8	7.4	No

Note: “WBE” refers to white women-owned firms.  
 Source: BBC Research & Consulting.

Chapter 6 provides detailed results of the utilization and disparity analyses for City construction contracts. Chapter 7 examines utilization and disparity results for City construction-related professional services contracts. Chapter 3 and Appendix C document study team methods for compiling and analyzing City contract data.

### **Did utilization exceed availability for each MBE group?**

For City construction and construction-related professional services contracts, overall, utilization of African American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms was either close to or exceeded what might be expected based on their availability for those prime contracts and subcontracts.

Utilization of Asian-Pacific American-owned firms was below what might be expected based on their availability for City construction and construction-related professional services contracts.

However, when City programs to assist MBE/WBEs did not apply, utilization of MBEs by specific racial/ethnic group was often below what might be expected based on their availability for that work. For example, BBC examined utilization of MBEs and WBEs on the 76 construction prime contracts over \$100,000 from July 2004 through June 2009 on which the GFE Program did not apply. MBEs obtained only one of those prime contracts. There were substantial disparities for prime contracts for each MBE group.

Chapters 6 and 7 examine these results.

### **Does the utilization reported in the disparity study match the utilization reported in the City's annual reports?**

During the study period, the City released reports on utilization of M/W/ESBs in City contracting. The results reported in the disparity study may differ from the data presented in City's utilization reports. There are several reasons for these differences:

- **MBE/WBE certified firms.** To calculate MBE/WBE utilization for reporting purposes, The City considered only those firms that are certified as such through the State of Oregon. To calculate MBE/WBE utilization for the disparity study, BBC considered certified and non-certified MBE/WBEs.
- **Time period.** The disparity study aggregates results across a five year time period (July 2004 through June 2009). The City reported annually or biannually during this time period.
- **Professional services subindustries.** During the study period, the City tracked participation on all professional services contracts. BBC only analyzed information on construction-related professional services contracts.

## **What role do City programs play in addressing potential disparities in City construction and construction-related professional services contracts?**

The City's efforts to encourage participation of MBEs and WBEs on construction and construction-related professional services contracts have effectively produced the following results:

- About 24 percent of City construction subcontract dollars went to MBE/WBEs, above what might be expected based on availability for those subcontracts (see Chapter 6). The City's GFE Program was successful in eliminating any overall disparities in the use of MBEs in City construction contracts.
- MBE/WBEs received 45 percent of the subcontract dollars on City construction-related professional services contracts, also above what might be expected based on availability for those subcontracts (see Chapter 7).
- The City's Professional Services Marketing and Outreach Program appears to be successful in encouraging utilization of MBEs as prime consultants on City construction-related professional services contracts. MBE firms received about one-quarter of the prime consultant dollars on City construction-related professional services contracts. The program may have been less successful for WBEs (see Chapter 7).
- The City's SMP is effective in encouraging MBE/WBE utilization as prime contractors in small construction contracts. However, because contracts included in the SMP are small (less than \$200,000), the program did not eliminate disparities between the overall utilization and availability of MBEs as prime contractors on City construction contracts.<sup>7</sup> (See Chapter 9 for additional information.) In addition, a number of the MBE/WBE firms participating in the SMP reported receiving very few contracts or no contracts at all.

## **But for the City's programs to encourage utilization of MBEs and WBEs, would there have been disparities in the utilization of those firms?**

The BBC study team was able to compile and analyze data for certain groups of contracts and subcontracts for which programs to encourage MBE/WBE utilization did not apply, or were less comprehensively applied. There is evidence that, without City programs, there would be disparities in the utilization of MBEs and WBEs on City construction and construction-related professional services contracts.

**Results for construction contracts.** Results for City construction contracts include the following:

- There were substantial disparities in the utilization of MBEs as prime contractors on City construction contracts (see Chapter 6).
- Further analysis indicated that the City's prequalification adversely affects MBE/WBE prime contractors. On average, MBE/WBEs are smaller and have less experience with

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<sup>7</sup> Combined, contracts awarded through the SMP and the City's informal contracting methods accounted for less than 2 percent of total City construction prime contract dollars during the study period.

larger projects than majority-owned firms. There is also evidence that MBE/WBEs fare differently in the prequalification process than similarly-situated majority-owned firms. Chapter 8 analyzes the impact of the City’s prequalification process.

- Considering subcontracts on formal construction contracts not awarded under the Fair Contracting Programs (including the GFE Program and the SMP), MBE/WBE utilization was 12.8 percent, substantially below the 20.2 percent MBE/WBE availability for those subcontracts (see Chapter 6).

Certain evidence of disparities comes from the concurrent disparity study that BBC completed for PDC:

- PDC contributes funding or land to many major construction contracts in Portland. Prime contractors for those projects are selected by the developer or other project owner — not PDC — and no PDC programs to encourage utilization of MBE/WBEs as prime contractors apply. When examining prime contract dollars for these “PDC-sponsored” contracts, BBC found MBE/WBE utilization of less than one-half of 1 percent. There were substantial disparities between MBE/WBE utilization and availability (see Chapter 9).
- Although PDC applies a Business Equity Program to contracts on PDC-sponsored construction projects, there were substantial disparities for WBEs and certain MBE groups as subcontractors on those contracts (see Chapter 9).

**Results for construction-related professional services.** Even with the City’s program to encourage MBE/WBE utilization as prime consultants on construction-related professional services contracts, there were disparities for WBEs:

- WBEs were substantially underutilized as prime consultants on City construction-related professional services contracts (see Chapter 7).
- Further analyses indicated that WBEs receiving on-call contracts were not utilized as much as other firms receiving such contracts, and many received no work under those contracts (see Chapter 8). In addition, WBEs competing for City construction-related professional services contracts received lower evaluation scores than other proposers (see Chapter 8).

PDC’s Business Equity Program did not apply to construction-related professional services contracts on PDC-sponsored projects. The study team’s analysis of PDC-sponsored construction-related professional services contracts identified disparities in the use of MBEs and WBEs:

- Only 1.5 percent of prime consultant dollars on PDC-sponsored projects went to MBE/WBEs, substantially below what might be expected based on availability of those firms for that work. There were substantial disparities for WBEs and each MBE group except for African American-owned firms (see Chapter 9).

- MBE/WBEs received 1 percent of subcontract dollars on PDC-sponsored construction-related professional services contracts. There were substantial disparities between utilization and availability for every MBE/WBE group (see Chapter 9).

**Results for the Portland area marketplace.** BBC also examined quantitative and qualitative information about the success of MBEs and WBEs in the local construction and construction-related professional services industries.

- Annual revenue of certain MBE groups and WBEs is lower than other firms in the Portland area construction and construction-related professional services industries.
- There is evidence that minorities and women face greater disadvantages than other firm owners when seeking capital, bonding and insurance.
- There is also quantitative and qualitative evidence that MBE/WBEs face barriers to working as prime contractors and as subcontractors on local public sector contracts.

Chapter 4 and Appendices G, H, I and J present these analyses.

**Is there any evidence that availability of MBEs/WBEs in the local marketplace has been affected by race or gender discrimination?**

BBC also examined quantitative and qualitative information about any barriers that could affect minorities and women entering the local construction and construction-related professional services industries.

- There is quantitative and qualitative evidence that availability of MBEs and WBEs to perform City construction and construction-related professional services contracts is less than what might be expected if minorities and women had the same opportunities as non-minorities and men to enter and advance within these industries, and form and grow their businesses.
- Perhaps contributing to the disparities in business ownership, there is evidence that minorities and women have greater disadvantages than other firm owners when seeking capital.

Chapter 4 and Appendices E, F, G, H, I and J present these analyses.

**How should the City use this information?**

The City should review the results from the disparity study when considering its future operation of any small business and MBE/WBE programs. In addition to the disparity study and its own internal research, the City has access to other relevant information, including results of disparity studies for other agencies in Oregon.

Some of the information included as part of the disparity study may prompt the City to further research whether certain barriers to MBEs and WBEs can be minimized or removed. For example, the City may decide to further review its prequalification process for construction prime contractors; bonding and insurance requirements; process for scoring professional services qualifications

statements or proposals; and procedures to ensure equitable use of firms receiving on-call contracts. Efforts to help all small businesses (i.e., “race- and gender-neutral” measures) should continue to be an important component of the City’s fair contracting and small business assistance programs. Chapter 10 explores several initiatives for the City to consider.

As the City considers the future of its M/W/ESB assistance programs, it should not only review whether there is a need for such programs but also the legal requirements for “narrow-tailoring” those programs (see Chapter 2 and Appendix B).