

CHAPTER 5.

Availability of MBE/WBEs for City of Portland Contracts

BBC analyzed the availability of minority- and women-owned firms (MBE/WBEs) that are ready, willing and able to perform City construction and construction-related professional services prime contracts and subcontracts.¹

Chapter 5 describes BBC's availability analysis in seven parts:

- A. Purpose of the availability analysis;
- B. Collecting information on potentially available firms;
- C. Number of firms included in the availability database;
- D. Definitions of MBE/WBEs;
- E. Calculation of MBE/WBE availability as inputs to the disparity analysis;
- F. Implications for any MBE/WBE contract goals; and
- G. Other approaches to measuring availability.

Appendix B provides supporting information.

A. Purpose of the Availability Analysis

BBC developed information on the number of available MBE/WBEs relative to the total number of firms available for specific types and sizes of City prime contracts and subcontracts. This analysis of the availability of MBE/WBEs for City work provides benchmarks for use in the disparity analysis. In the disparity analysis, the study team compared the percentage of the City's contract dollars that actually went to each racial/ethnic/gender group to the percentage of dollars that each group might be expected to receive given its availability for specific types and sizes of the prime contracts and subcontracts that the City awarded during the study period.

B. Collecting Information on Potentially Available Firms

BBC's availability analysis focused on specific areas of work specialization ("subindustries") related to the types of construction and construction-related professional services that the City procured during the study period (both prime contracts and subcontracts). BBC identified specific subindustries for inclusion in the availability analysis and identified the relevant geographic market area for the study. Then, the study team developed a database of available firms through interviews with local business

¹ The City's construction-related professional services contracts are awarded through the Professional, Expert and Technical Services contracting process.

establishments within the relevant subindustries. This method of examining availability is sometimes referred to as a “custom census.”

Chapter 3 discusses the specific subindustries that the study team identified for inclusion in the availability analysis, and the rationale behind BBC’s selection of the Portland Metropolitan Statistical Area (MSA) as the relevant geographic market area for the study.

Overview of the availability interviews. BBC first obtained information from Dun & Bradstreet (D&B) on all business establishments listed under the 8-digit industry codes that were most related to City construction and construction-related professional services contracts and subcontracts.² D&B provided 8,130 listings related to those industry codes of businesses that were located within the Portland MSA. BBC then contacted businesses on this list to collect information from firm owners and managers that identified their firms as potentially available for City work

BBC worked with Customer Research International (CRI) to conduct telephone interviews with the owners or managers of the identified business establishments. About 5,900 D&B listings had accurate, working phone numbers, and CRI was able to successfully contact 3,726 (63%) of those business establishments.³ About 1,700 establishments that were successfully contacted indicated they were not interested in participating in an interview about their availability for City and PDC contracts. Nearly 2,000 firms completed interviews about their firm characteristics and about their interest and qualifications for work with the City.

Interview topics included:

- Whether the organization was a subsidiary or branch of another company;
- Whether the organization was a private business (and not a public agency or not-for-profit organization);
- Qualifications and interest in work for state and local government agencies in the Portland MSA;
- Qualifications and interest in work as a prime contractor and as a subcontractor;
- Firm specializations and primary line of work;
- The largest contract or subcontract bid on or performed in the past five years;
- How long the firm has been in business; and
- Race/ethnicity/gender of firm ownership.

² D&B uses many different sources of information, including government filings and listings, to compile its D & B Marketplace, which is the most consistent, comprehensive database of firms that can be used in disparity study research.

³ Other establishments could not be reached after multiple attempts or could not make a responsible staff member available to complete the interview (see Appendix D).

Firm representatives were offered the option of answering questions that were e-mailed or faxed if they preferred not to complete an interview over the phone. Less than 1 percent of interviews were completed through e-mail or fax.

Consolidating responses from multi-location firms. In total, 1,972 individual organizations completed an availability interview. Before analyzing responses, BBC identified 16 instances in which multiple local offices of the same firm completed interviews. The study team combined responses for those multi-location firms.⁴

Qualifications and interest, and firm specialization. Firms that CRI successfully contacted were asked a number of questions concerning types of work performed, past bidding, and qualifications and interest in City contracts. Appendix D includes the interview instruments used in collecting those data.

BBC considered firms to be available for City prime contracts or subcontracts if they reported the following characteristics:

- a. Perform types of work relevant to City contracts;
- b. Private business (as opposed to a not-for-profit organization);
- c. Performed or bid on government (state or local) or private sector contracts or subcontracts in Portland in the past five years;⁵ and
- d. Qualifications for and interest in work for the City.⁶

In addition, firms were asked about (e) the largest contract bid on or performed in the past; and (f) the year the firm was established (so that BBC could avoid counting firms as available for contracts that predated a firm's establishment date).

Figure 5-1 shows that, based on the above criteria, 1,536 firms were considered potentially available for City work. Figure 5-1 also presents the number of firms that were excluded from the availability database for various reasons (e.g., the firm's primary line of work was outside of the study's scope).

⁴ BBC's methodology for combining responses, and following up with respondents when necessary, is described in Appendix D.

⁵ An interview question asked whether the firm had submitted bid[s], qualifications, a proposal or a price quote for any part of a construction or construction-related professional services contract or subcontract.

⁶ That information was gathered separately for prime contract and subcontract work.

**Figure 5-1.
Screening of completed
business telephone
interviews for possible
inclusion in the availability
analysis**

Note:

*One hundred and seventy-nine of these firms were not included in the availability marketplace analysis (Appendix H), because they did not respond to question D2 or D4 on the availability survey.

Source:

BBC Research & Consulting from
2009-2010 Availability Interviews.

	Number of firms
Establishments successfully contacted	3,726
Less establishments not interested in discussing availability for public work	1,754
Establishments that completed interviews about firm characteristics	1,972
Less:	
Multiple establishments	16
No City-related work	148
Line of work outside scope	5
Not a business	16
No past bid/award	244
No qualifications and interest in future City or PDC work	7
Firms available for City of Portland work*	1,536

a. Perform types of work relevant to City contracts. During the interviews, the study team confirmed with the business owner or manager that the firm's work was related to City contracting. As shown in Figure 5-1, 148 interviews were discontinued because the firm owner or manager indicated that the firm was not involved in that type work or was uninterested in it.

As an additional step, construction firms were asked to identify the different types of work that they perform. BBC coded specific answers into one of the subindustries shown below. These firms were then deemed available for the types of contracting that corresponded to the coded answers.

- Building construction;
- Water and sewer facility construction;
- Water, sewer and utility lines (underground utility lines);
- Highway and street construction;
- Bridge construction and repair (include elevated highway);
- Concrete work;
- Excavation;
- Electrical work;
- Wrecking and demolition;
- Plumbing and HVAC;
- Painting;
- Roofing;
- Landscaping;

- Construction management;
- Concrete supply;
- Structural steel supply;
- Other construction materials; or
- Trucking.

Firms could respond that they perform only one type of work or multiple types of work. The interviewer also identified the firm's main line of business. For five firms, the primary line of business was outside the scope of the disparity study, even though the firm indicated that they did perform work related to City contracting. These firms were still included in the availability analysis for the secondary types of work they perform.

b. Private business. Most of the organizations contacted confirmed that they were a private business. However, 16 establishments indicated that they were a public sector or not-for-profit organization and were therefore excluded from the availability analysis.

c. Performed or bid on work in the past. The interviewer asked each firm owner or manager if the firm had bid on or submitted a price quote for any part of a government (state or local) or private sector construction contract in the Portland area in the past five years, or had been awarded any part of such a contract. The interviewer followed up each question by asking whether the firm had bid as a prime contractor, a subcontractor or both.

Based on responses to those questions, 244 firms were excluded from the availability analysis because they reported that they had not bid on such types of contracts in any capacity.

d. Qualified and interested in work for the City. Business owners and managers were asked whether they were qualified and interested in doing work for the City.⁷ Separate questions probed qualifications and interest in working as a prime contractor (or prime consultant) and as a subcontractor (or subconsultant).

There were an additional 7 firms that indicated that they were not qualified and interested in doing work for the City and were screened out of the availability analysis.⁸ After screening for the above characteristics, there were 1,536 firms remaining for the availability analysis out of 3,726 business establishments that the study team successfully contacted.

e. Largest contract bid on or performed in the past. Firms were counted as available for City work up to the size range of the largest contract or subcontract on which they had bid or performed in the Portland area within the prior five years (regardless of private or public sector).

⁷ The wording of this question was modified for construction and construction-related professional services work, as presented in Appendix B.

⁸ Fifty five firms were included in the availability database that expressed qualifications and interest in working only as a prime contractor and not as a subcontractor, and 348 firms were included that expressed qualifications and interest in working only as a subcontractor/supplier and not as a prime contractor.

f. **Year the firm was established.** Interviewers also confirmed when the firm was established. Firms were only counted as available for City contracts and subcontracts that were awarded after they were in business. Some firms (148) were operating for only a portion of the study period (July 1, 2004 through June 30, 2009).⁹

C. Number of Firms Included in the Availability Database

Figure 5-2 provides race/ethnicity/gender information for the firms counted as possibly available for specific types of City contracts and subcontracts. Of the 1,536 firms counted as potentially available, 285 (18.6%) were minority- or women-owned. A smaller portion of those firms were certified as MBEs or WBEs with the State of Oregon.

Figure 5-2.
MBE/WBEs as a percentage of firms available for City contracts and subcontracts,
by race, ethnicity and gender

Race, ethnicity and gender	Total MBE/WBE (percent of all firms)	Certified MBE/WBE (percent of all firms)
African American-owned	0.8 %	0.7 %
Asian-Pacific American-owned	1.5	0.7
Subcontinent Asian American-owned	0.3	0.1
Hispanic American-owned	1.7	0.7
Native American-owned	1.4	0.5
Total MBE	5.7 %	2.6 %
WBE (white women-owned)	12.9	5.1
Total MBE/WBE	18.6 %	7.7 %
Total other firms	81.4	
Total firms	100.0 %	

Source: BBC Research & Consulting from 2010 Availability Survey.

The data in Figure 5-2 solely reflect a simple count of firms, with no analysis of availability for specific contract types. Thus, it represents only a first step toward analyzing availability of MBEs and WBEs to perform City work. To develop measures of availability for the City’s disparity analysis, BBC conducted a sophisticated analysis of the relative number of MBEs and WBEs available for each contract and subcontract. Parts E and F of Chapter 5 provide those results.

D. Definitions of MBE/WBEs and ESBs

In interpreting the utilization, availability and disparity analyses in this study, one must keep in mind the difference between minority- and women-owned firms and firms certified as MBE/WBEs. In addition, it is important to understand how BBC classified firms owned by minority women. BBC’s availability analysis uses the following definitions.

⁹ Companies for which no establishment date was identified were counted as available for the full study period.

Minority- and women-owned firms (MBE/WBEs). In the disparity study, MBE/WBEs are firms that are owned and controlled by minorities or women, regardless of whether they are certified as MBE/WBEs with the State of Oregon. BBC follows the definitions of specific minority groups contained in 49 CFR Part 26.¹⁰ Some MBE/WBEs are certified as such, but most MBE/WBEs doing business in the Portland area are not currently MBE- or WBE-certified.¹¹

Certified minority- and women-owned firms (certified MBE/WBEs). Certified MBE/WBEs are minority- and women-owned firms that are certified as such by the State of Oregon or have certifications that the State of Oregon recognizes. In addition to reporting utilization for minority- and women-owned firms overall, BBC provides utilization results for MBE/WBE-certified firms.

Certified emerging small businesses (Certified ESBs). ESBs are firms that are certified as such by the State of Oregon Office of Minority, Women and Emerging Small Businesses. Minority-, women- and majority-owned firms can be certified as ESBs.¹² BBC provides utilization results for minority- and women-owned certified ESBs and majority-owned certified ESBs.

E. Calculation of MBE/WBE Availability as Inputs to the Disparity Analysis

The primary use of MBE/WBE availability information is as an input to disparity analyses. Availability of MBEs and WBEs is expressed in terms of the percentage of contract dollars that might be expected to go to those firms given their relative availability for the specific types, sizes and locations of particular sets of City contracts and subcontracts. In a disparity analysis, an availability figure represents a “benchmark” against which one can compare the actual share of contract and subcontract dollars that went to MBE/WBEs.

Steps to calculating availability. The availability database for the City’s disparity study included 1,536 businesses, but only a subset of those firms were included as potentially available for any given City prime contract or subcontract. Whether a firm was considered available for a particular contract depended on the match between certain characteristics of the contract element and characteristics of the firm.

When calculating MBE/WBE availability for the City, for example, BBC examined more than 3,200 prime contracts and subcontracts and considered both majority and MBE/WBE firms that were potentially available for each contract element.

¹⁰ Those definitions were also the basis for definitions the State of Oregon OMWESB uses for its MBE/WBE Program.

¹¹ Of the 285 MBE/WBE firms included in the availability database, 118 firms were certified as MBE/WBEs with the State of Oregon.

¹² “Majority-owned firms” in this report refers to all firms that are not minority- or women-owned.

To determine which firms were available for a particular contract element, BBC took the following steps:

1. For each contract element, BBC determined:
 - Type of work;
 - Contract role (prime contract or subcontract);
 - Contract size; and
 - Contract date.
2. BBC then identified firms in the availability database that reported that they:
 - Perform the type of work associated with the contract element;
 - Bid on or performed work in the contract role (prime contractor or subcontractor) associated with the contract element;
 - Have bid on or performed work that matched or exceeded the size of the contract element;
 - Qualifications and interest in doing work for the City; and
 - Were in business in the year the contract was awarded.
3. BBC counted the number of MBE/WBEs among all firms available for that specific type of work. For example, there may have been three white women-owned firms, one African American-owned firm and 16 majority-owned firms out of 20 firms available to perform a particular contract element.
4. The study team then translated the numeric availability of firms for a contract element into percentage availability for the contract element. Continuing the above example, if there were three white women-owned firms out of 20 available firms, WBE availability for that contract element would have been 15 percent.
5. BBC weighted the availability for each prime contract and subcontract by the dollars of work corresponding to the contract element. To determine availability for MBE/WBEs overall and for each MBE/WBE group across all City contract elements in a particular set of contracts, BBC:
 - Multiplied percentage availability for each group by the dollars associated with a particular contract element, and then repeated that process for all contract elements included in the set;
 - Added the results across contract elements in the set; and

- Divided that sum by the total dollars of all contract elements included in the set to produce dollar-weighted estimates of availability.

BBC used the above contract-by-contract process to determine MBE/WBE availability for each set of contracts and subcontracts examined in the disparity analysis. More than 3,200 contracts and subcontracts were examined when calculating availability for the City.

Figure 5-3 presents dollar-weighted availability by MBE/WBE group for City contracts and subcontracts from July 1, 2004 through June 30, 2009. As shown for construction, 5.5 percent of combined construction prime and subcontract dollars would be expected to go to MBE/WBEs. For construction-related professional services, 14.6 percent of combined prime and subcontract dollars would be expected to go to MBE/WBEs.

MBE/WBE availability differed between industries because of the number of MBE/WBEs among all firms available to perform work within an industry and because of the specific types, sizes, locations and contract roles (i.e., prime contractor or subcontractor) of the contract elements in an industry.

Figure 5-3.
Availability of firms for
City procurements,
July 2004–June 2009, by
race, ethnicity and gender

Note:
 See Figures L-2 and M-3 in Appendices L and M, respectively.
 Numbers may not sum perfectly due to rounding.

Source:
 BBC Research & Consulting from
 2010 Availability Survey.

Race, ethnicity and gender	Utilization benchmark (availability %)	
	Construction	Professional Services
MBE		
African American-owned	0.5 %	1.3 %
Asian-Pacific American-owned	0.2	4.0
Subcontinent Asian American-owned	0.0	0.1
Hispanic American-owned	0.5	1.1
Native American-owned	0.7	0.8
Total MBE	1.9 %	7.2 %
WBE (white women-owned)	3.5	7.4
Total MBE/WBE	5.5 %	14.6 %

Unique availability benchmark for each set of contracts. BBC separately determined dollar-weighted availability by racial/ethnic/gender group for each set of City contracts and subcontracts examined in the disparity analysis (detailed results can be found in Appendices L and M). A number of tables in the supporting appendices report MBE/WBE availability and disparity analysis results for subsets of contracts and subcontracts. In general:

- Dollar-weighted MBE/WBE availability is greater for small prime contracts than for large prime contracts; and
- MBE/WBE availability is greater for subcontracts than prime contracts.

Disparity analyses for MBE/WBEs, not just certified MBE/WBEs/ESBs. Utilization and availability analyses of minority- and women-owned firms allow one to analyze whether there are disparities affecting certain racial/ethnic/gender groups, independent of certification status. Firms may be discriminated against because of the race or gender of the business owner regardless of whether the owner has applied for MBE/WBE or ESB certification.

By not limiting its disparity analyses to certified firms, BBC's examination of whether firms face disadvantages based on race/ethnicity/gender includes a broad set of MBE/WBEs in the Portland area. A disparity analysis focusing on certified firms would improperly compare outcomes for certified firms (by definition, "emerging and small" if ESBs) with all other firms (combining majority-owned firms with very successful firms owned by minorities and women).

Coding of minority women-owned firms. In the disparity study, BBC combines firms owned by minority women and firms owned by minority men into "minority-owned firms." "WBEs" are firms owned by white women. Figure 5-4 discusses BBC rationale for that classification.

**Figure 5-4.
Coding of firms owned by minority women**

Firms owned by minority women present a data coding challenge in both the availability analysis and the utilization analysis. BBC considered four options for coding firms owned by minority women:

- a. Coding these firms as both minority- and women-owned;
- b. Creating a unique group of minority female-owned firms;
- c. Grouping minority female-owned firms with all women-owned firms; and
- d. Grouping minority female-owned firms with the relevant racial/ethnic group.

BBC chose not to code the firms as both women-owned and minority-owned to avoid potential double-counting when reporting total MBE/WBE utilization and availability. Dividing each racial/ethnic group into firms owned by men versus women (e.g., African American male-owned firms, African American female-owned firms, etc.) was also unworkable for purposes of the disparity analysis because some minority groups had utilization and availability so low that further disaggregation made it more difficult to interpret results.

After rejecting the first two options, BBC then considered whether to group minority female-owned firms with the relevant minority group or with all women-owned firms. BBC chose the former — to group African American women-owned firms with all African American-owned firms, etc. "WBE" in this report refers to white women-owned firms. Any evidence of discrimination against white women-owned firms should, in general, be considered evidence of discrimination against women of any race or gender. This definition of WBEs also gives the City information to answer questions that often arise pertaining to utilization of white women-owned firms, such as whether a disproportionate share of work goes to firms owned by white women compared with firms owned by minorities.

F. Implications for any MBE/WBE Contract Goals

If the City chooses to use MBE/WBE contract goals in the future, it should:

- Set goals on a contract-by-contract basis given the unique attributes of the contract.
- Set contract goals only on contracts that have subcontracting opportunities.
- Use information in the availability database developed through this study and in the City's own databases when establishing contract goals.

G. Other Approaches to Measuring Availability

BBC explored other approaches to developing a database of available firms for City contracts and subcontracts before deciding to use information collected through interviews of local businesses.

Other approaches. The City maintains lists of bidders and, for construction, a set of firms pre-qualified for City work. However, this information misses certain available firms and does not include complete information on the types, sizes and contract roles for contracts for which a firm is available. For example, firms do not need to be pre-qualified to bid or work as a subcontractor on City projects. As a result, the City's list of prequalified firms may be missing many of these firms. In addition, there may be barriers in the prequalification process that would make that list unrepresentative of all firms qualified and interested in City prime contracts.

Strengths of BBC's enhanced "custom census"

approach. Some of the strengths of the "custom census" approach that BBC used in the City's disparity study are summarized in Figure 5-5. It is worthwhile to summarize certain strengths in how BBC examined specific factors for determining whether a firm was available for a particular contract element.

- **Specialization of work.** BBC examined 26 different subindustries in the City's disparity study.
- **Qualifications and interest in prime contractor and subcontractor work.** BBC collected information on whether firms reported qualifications and interest in working as a *prime contractor* or as a *subcontractor*. In BBC's availability analysis, only firms qualified and interested in prime contracts are counted as available for prime contracts. Firms reporting qualifications and interest in subcontracts are counted as available for subcontracts. Some firms reported qualifications and interest in both contract roles, and are counted as available for either role.
- **Size of contract or subcontract element.** In counting available firms, BBC also considered whether a firm had previously worked or bid on a project of equivalent size (in dollars) to the specified contract or subcontract element. BBC's approach is consistent with guidance from the U.S. Court of Appeals for the Federal Circuit regarding capacity of firms to perform different sizes of contracts (see *Rothe Development Corp. v. Department of Defense*).¹³

Appendix B provides an in-depth discussion of court cases that have considered strengths and weaknesses of different approaches to calculating availability.

Figure 5-5. Summary of the strengths of a "custom census" approach

Federal courts have reviewed and upheld "custom census" approaches to availability that begin with D&B data. The study team's methodology for analyzing MBE/WBE availability took the previous court-reviewed custom census approach as a starting point and added several layers of additional screening when determining firms available for transportation contracting work.

For example, the BBC analysis includes discussions with individual firms about interest in City and Portland Development Commission (PDC) work, contract role and geographic location of their work, items not included in the court-reviewed availability analyses. BBC also analyzes the sizes of contracts and subcontracts that firms have performed or bid on in the past.

¹³ *Rothe Development Corp. v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).