

CHAPTER 8.

Exploration of Possible Causes of Any Disparities in City Contracting

Four key questions emerge from the disparities observed in the utilization of minority- and women-owned firms (MBE/WBEs) on City of Portland (“City”) contracts discussed in Chapters 6 and 7. BBC further explored reasons why there were disparities for MBE/WBEs in the following sections:

- A. Prime contractors on certain City construction contracts;
- B. Subcontractors on certain City construction contracts;
- C. Prime consultants on certain City construction-related professional services contracts;
- D. Subconsultants on certain City construction-related professional services contracts; and
- E. A summary of these sections.

Answers to these questions may be relevant as the City considers future efforts to ensure that its construction and construction-related professional services contracting is open to MBE/WBEs.

A. Why are there disparities for MBEs on certain City construction prime contracts?

In Chapter 6, BBC examined MBE participation on City construction contracts awarded between July 2004 and June 2009 for which the Good Faith Efforts (GFE) Program applied. The GFE program encourages participation of MBEs, WBEs and Emerging Small Businesses (ESBs) as subcontractors — there is no advantage given specifically to MBE/WBEs seeking these prime contracts. MBEs obtained five of these 195 prime contracts, or \$1.8 million of the \$635 million going to prime contractors. This level of utilization represented 0.3 percent of prime contract dollars on these projects. The disparity index for MBE participation as prime contractors was 42 (see Figure L-6 in Appendix L).

Three out of six of the prime construction contracts that were obtained by MBEs were awarded to the same Native American-owned firm, representing more than half of the MBE prime contract dollars. Of the four MBE firms represented in the six prime contracts, two firms were graduates of the Sheltered Market Program (SMP).

BBC also examined utilization of MBEs on the 76 construction prime contracts worth more than \$100,000 from July 2004 through June 2009 for which the GFE program did not apply. MBEs obtained one prime contract for \$140,000, or 1 percent of the \$14 million going to prime contractors. The disparity index for MBE participation as prime contractors was 25 (see Figure L-15 in Appendix L).

Utilization of white women-owned firms as prime contractors on City construction contracts was in line with what might be expected based upon the availability analysis for these contracts (see Chapter 6).

During in-depth personal interviews, representatives of several MBEs expressed concern with the City's bid process for prime construction contracts. For example:

- The African American owner of a construction contracting firm reported that contract specifications and bidding procedures are a serious barrier to a contracting firm's success. She stated, "Oh my goodness. If [they] put in there that you need to have performed three projects, the same dollar amount, the same type of work, and you've only done maybe one? You're out right there."
- A different African American owner of a construction firm stated that contract restrictions are "a joke ... that's not needed, because all you're doing is weeding out people who can actually do ... the work. You're just screening out and making [it] more difficult" for them to get work.

The BBC study team explored several reasons why there were disparities for MBEs as prime contractors on City construction contracts, especially in light of past City efforts to open opportunities to City prime construction contracts through initiatives such as the SMP. The study team examined potential barriers regarding:

- Access to information on prime contract opportunities;
- Size of contracts; and
- The City's contracting process and prequalification process.

Access to information on prime contract opportunities. The City regularly advertises construction contracts with an estimated value of more than \$100,000. Procurement Services (formerly the Bureau of Purchases) advertises bids in the Portland edition of the Daily Journal of Commerce and on the Procurement Services Bid Web Page. Bidding resources such as Dodge Reports will also list City invitations to bid.

The City also sends notifications of bid opportunities to firms registered with the City. Once a firm registers as a vendor on the City website, it is notified when bids become available that may be of interest based on the firm's user profile.

Anecdotal information from in-depth personal interviews indicated that learning about City work is relatively easy. For example, one interviewee representing an MBE said, "it's pretty easy" to learn about work opportunities with the City and the Portland Development Commission (PDC). He said, "They (City and PDC) have it all. They have great websites. They come out in the community and ... pass the information along It's tough to not know what is going on."

BBC concludes that information concerning City construction prime contract opportunities is widely distributed and would not constitute a barrier to MBE/WBE participation as prime contractors on City construction contracts worth more than \$100,000.

The City is not required to publicly advertise construction contracts worth less than \$100,000. Most City prime construction contracts worth less than \$100,000 are awarded through:

- The SMP, which is limited to bids from MBEs, WBEs and ESBs; or
- Informal bidding procedures where the City actively solicits bids from MBEs and WBEs.

BBC did not identify disparities between the utilization and availability of MBEs or WBEs for either of the above sets of small construction contracts.

Size of prime contracts. BBC examined disparity results for different sizes of construction prime contracts. As explained below, contract size does not explain the observed disparities, but there is some evidence that MBE prime contractors may be more adversely affected by larger contract size than other firms.

Construction prime contracts under the GFE Program. City prime construction contracts under the GFE Program averaged \$3.3 million in size, so firms that only bid on smaller contracts might not be available for many of these construction contracts. However, BBC's availability analysis takes contract size into account — MBE availability was estimated to be 0.7 percent for these prime contract dollars. Even with the low MBE availability for these prime contracts, MBE utilization still fell below availability. It is clear, however, that MBE availability for larger contracts is limited, which indicates that past efforts by the City and others to develop MBE prime contractors that can perform larger construction contracts has had limited success. As discussed below, the prequalification requirements for construction contracts worth more than \$100,000 may also be contributing to the limited participation of MBE prime contractors on larger City projects.

Large prime construction contracts outside of the GFE Program. Chapter 6 also examined prime contractor participation in construction contracts worth more than \$100,000 for which the GFE Program did not apply. These contracts were typically emergency contracts or contracts for which the City did not identify substantial subcontracting opportunities. Even though they fit the definition of "large" contracts, the 76 contracts averaged \$185,000 — a size of contracts within the bid capacity of a greater number of prime contractors. BBC's availability analysis indicated that 4 percent of those prime contract dollars might be expected to go to MBEs, but MBE utilization was 1 percent (disparity index of 25 as shown in Figure L-15 in Appendix L). BBC's disparity analysis indicated that all MBE groups were substantially underutilized on relatively large prime contracts outside the GFE Program. WBE utilization (26%) exceeded availability.

Construction prime contracts worth less than \$1 million under the GFE Program. BBC examined utilization of MBE/WBE prime contractors on 124 contracts worth between \$100,000 and \$1 million for which the GFE Program applied (see Figure L-17 in Appendix L). Four contracts representing 3 percent of prime contract dollars went to MBE firms. WBE firms received 11 contracts accounting for 8 percent of dollars going to prime contractors.

The disparity analysis indicated that African American-, Hispanic American- and Asian-Pacific American-owned firms, as well as WBEs, were substantially underutilized on small contracts for which the GFE Program applied. In general, however, MBEs encountered more substantial disparities on larger prime construction projects, indicating that the size of prime contracts may be a greater barrier for MBEs than other firms attempting to contract with the City.

Prime contracts under the Sheltered Market Program and small informal contracts. The City encourages utilization of MBEs and WBEs as prime contractors for SMP contracts and its small, informally-bid contracts. BBC did not identify disparities between the utilization and availability of MBEs or WBEs as prime contractors for these contracts.

Potential barriers responding to a City request for bid. To obtain a large City construction contract (typically over \$100,000), a prime contractor must:

- Have a valid City business license or current exemption on file with the Revenue Bureau;
- Be registered as an Equal Employment Opportunity Firm with the City;
- Be licensed with the State of Oregon Construction Contractors Board or by the State Landscape Contractors Board;
- Have a bid bond and be able to obtain performance and payment bonds for the project;
- Meet minimum insurance levels set by the City;
- Be prequalified by the City (for the general type of work and the amount of the contract);
- In certain cases, meet additional City requirements for experience, expertise, or equipment; and
- For certain projects, attend a mandatory pre-offer conference held by the City.

A valid City business license and contractor's license is also required of subcontractors, but bonding, insurance and prequalification requirements do not apply.

As discussed in Chapter 4, there is quantitative and qualitative evidence that MBEs and WBEs face additional barriers to obtaining bonding and insurance. Bonding and insurance requirements, such as the City's, may affect opportunities for MBE/WBEs to work as prime contractors on City construction projects.

Bids submitted by MBE/WBE prime contractors. The City typically records and maintains information for all bids on construction projects worth \$100,000 or greater and some projects with values as low as \$25,000. BBC obtained the list of bidders and bid amounts for 287 contracts within the study period.

Was there any indication that the bid process presented barriers for MBE/WBE construction firms? As described in Chapter 6, BBC examined prime construction contracts by contract types, first looking at overall results and then differentiating between contracts awarded under certain programs. BBC found substantial disparities on large prime construction contracts (on contracts awarded under the GFE program and on contracts not awarded under the GFE program) but generally did not find substantial disparities on small prime construction contracts, including both informal and SMP contracts.

Large City prime construction contracts. BBC compared construction contract awards, bids received and availability for MBEs as prime contractors for large City construction contracts.

- MBEs won 2 percent of the large prime construction contracts examined (with or without GFE requirements).
- Of the 915 prime bids received for the 247 contracts (on contracts requiring GFE and on contracts not requiring GFE), 33 bids were from MBEs (4%).¹
- About 6 percent of the prime contractors BBC identified as available for City construction contracts worth more than \$100,000 were MBEs (based on the number of available firms determined through the availability data, but not dollar-weighted).

The above results indicate that MBEs are somewhat less likely to bid on the City's large construction contracts than what might be expected from the availability interviews, and that MBEs accounted for a small portion of contract awards given their number of bids.

Turning to WBEs, the share of bids from WBEs was less than what might be expected from the availability interviews, but the share of awards going to WBEs was in line with their share of total bids:

- WBEs were awarded 12 percent of large City construction contracts.
- WBEs submitted about 10 percent (94) of the 915 bids.
- WBEs accounted for 14 percent of the prime contractors identified as available for City prime contracts worth more than \$100,000.

The following analysis separately analyzes bids for City contracts awarded under the GFE program and large contracts not awarded under the GFE program.

¹ Of the 247 prime construction contracts considered, 32 contracts had MBE prime bidders and 62 had WBE prime bidders. Contracts were considered to have MBE or WBE prime bidders if the contract had at least one MBE or WBE prime bidder among all of the bidding firms.

City prime construction contracts requiring Good Faith Efforts. The BBC study team examined bids on 194 construction contracts requiring GFE. Of the 736 bids received for these contracts, 27 were from MBE firms (4%) and 56 were from WBE firms (8%).²

BBC calculated the “winning percentage” of bids from MBEs, WBEs and majority-owned firms (i.e., firms not owned by minorities or women). As illustrated in Figure 8-1, MBE firms won 19 percent of their bids on City construction contracts requiring GFE, whereas WBE and majority-owned firms won 27 percent of their bids.

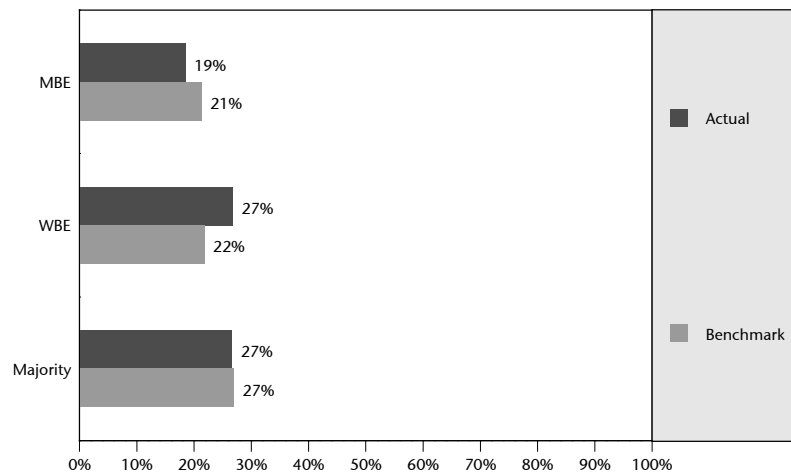
Part of the reason for the difference in win percentages between MBEs and other firms is that MBEs tended to bid on contracts that attracted more total bids. Therefore, each MBE bid was more likely to be competing with a large number of bids, thus lowering the chances of winning. To account for this factor, the study team calculated the overall chances of winning contracts for each group if there were any differences in the likelihood of success between these groups.³ The overall chances of an MBE bid being awarded a contract were 21 percent. Therefore, the percentage of bids from MBEs that were winning bids was only slightly below what might be expected through random chance in bid awards.

WBEs, on the other hand, won a higher percentage of their bids (27%) than expected based on the overall probability of a WBE being the winning bid (22%). Majority-owned firms won bids at a rate consistent with their expected rate of 27 percent.

Figure 8-1.
Win rate for bids on large
City construction contracts
requiring Good Faith
Efforts,
July 2004 – June 2009

Note:
 Based on a sample of 194 contracts and 736 total bids.

Source:
 BBC Research & Consulting from City of Portland data.



² Of the 194 contracts, 26 contracts had MBE bidders and 40 had WBE bidders.

³ BBC determined chances that a bid would be a winning bid for each contract. If there were 10 bids on a contract, for example, the probability of each bid winning the contract was 10 percent. If a contract had two bids, the chances for each bid were 50 percent. BBC calculated the overall probability of MBE bids being the winning bid by adding the probability of winning for each bid submitted by MBEs and dividing this total by the number of bids submitted by MBEs. Overall chances for WBEs and majority-owned firms were calculated in the same way. This methodology assumes no differences between groups in the likelihood of a successful bid.

Large City prime construction contracts not included in the Good Faith Efforts program or the Sheltered Market Program. BBC performed the same analysis for 53 large prime construction contracts not included in the GFE Program or the SMP. Of the 179 bids received for the 53 contracts, 6 were from MBE firms (3%) and 38 were from WBE firms (21%).⁴

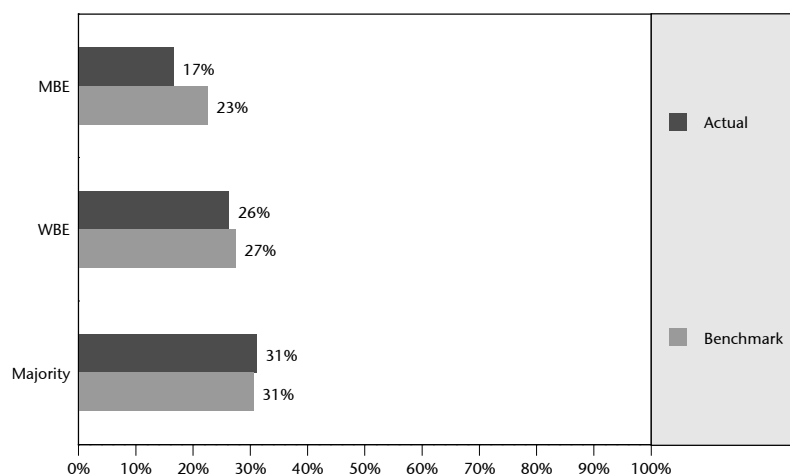
As shown in Figure 8-2, MBEs won 17 percent of their bids on these contracts, whereas WBEs won 26 percent of their bids and majority-owned firms won 31 percent of their bids. Again, analysis of the overall chances of winning bids explains some of the differences in winning percentages for MBEs. The number of bids from MBEs was also very small, making comparisons difficult.

WBEs and majority-owned firms won a percentage of their bids that might be expected from the number of bids submitted. In contrast, MBEs appeared to have won a smaller percentage of their bids compared to random chance in contract awards.

Figure 8-2.
Win rate for bids on large City construction contracts not requiring Good Faith Efforts, July 2004 – June 2009

Note:
 Based on a sample of 194 contracts and 736 total bids.

Source:
 BBC Research & Consulting from City of Portland data.



After examining prime construction contract bid data for large prime construction contracts (with and without GFE requirements), there is some evidence that MBEs are less successful in winning contracts than might be expected if bidders had equal chances of winning these contracts. WBEs fared better in the bid analysis than MBE firms, which is consistent with the disparity analysis presented in Chapter 6. Bids from MBEs and WBEs represent a smaller share of total bids than what might be expected based on the availability interviews. Finally, BBC’s analysis indicates that MBEs and WBEs less often bid on the largest of the “large contracts” considered above.

Analysis of low bids that were deemed non-responsive or not responsible. Generally, City construction contracts are awarded to the lowest responsive, responsible bidder. The “responsive, responsible” assessment of bids considers whether the bidder has bid the work specified in the bid documents; meets licensing, bonding, insurance and other requirements; complies with the GFE Program and other City programs; and meets other requirements for that bid. BBC examined whether MBE and WBE low bidders were more likely than majority-owned firms to not be awarded a contract because the firm or their bid was deemed non-responsive or not responsible.

⁴ Of the 53 contracts, six had MBE bidders and 23 had WBE bidders.

In the City construction contracts for which the BBC study team examined bid data, BBC identified 36 contract awards where the lowest bidder was not awarded the contract. One of these 36 low bidders was an MBE and three were WBEs. The number of bids and awards discussed above do not indicate that MBE and WBE low bidders were more likely than other firms to be deemed non-responsive or not responsible.

In addition, the City provided the study team 13 bid protest letters pertaining to 12 City construction projects within the study period. Of these 13 letters, nine protests related to whether the low bidder adequately complied with the GFE Program. One award was rescinded and subsequently awarded to the lowest bidder after reconsidering the GFE compliance of the firm. None of the protests originated from MBE or WBE firms. In the in-depth interviews with local business owners, however, an owner of a Native American firm stated that he did not protest City of Portland bid awards “because there’s always that fear that if you protest it, you’ll never get another job from that bureau again.”

Prequalification. The City requires prequalification of bidders on prime construction projects worth more than \$100,000 and bid through the formal bid process. Prequalified firms are eligible to bid on contracts that match the firm prequalification status in two aspects:

- Classes of work; and
- Contract size.

If the City’s bid prequalification limit for the firm is less than the City Engineer’s cost estimate for a project, the firm is not considered eligible to bid the project.

Staff within City bureaus set prequalification limits annually based on:

- Completed project history relevant to the class of work;
- Equipment owned or leased;
- Bonding capacity;
- Key personnel experience;
- Experience as prime contractor (on certain classes of work);
- Proof of licensing (on certain classes of work); and
- Length of time in business.

Prequalification does not necessarily carry over between City bureaus. Companies may be required to apply for prequalification in one bureau for similar work that the company is already prequalified to perform in another bureau of the City.

Why examine prequalification? Because City prequalification includes restrictions on the size of City contracts that a firm can perform, the prequalification process limits small firms’ access to large

City construction projects. To the extent that MBE/WBEs are smaller than majority-owned firms, prequalification affects more MBE and WBE firms.

During in-depth personal interviews with local construction firms, a number of firms expressed concern that the prequalification process impaired their ability to win work with the City.

- As summarized by a representative of an African-American-owned contracting firm, prequalification “in itself is a barrier, especially for a small business, especially for an underutilized business where you already lack the access, lack the opportunities to perform.”
- A representative of an African American-owned contracting firm said prequalification requirements “are a big barrier. I think it’s a joke, personally.” He asked, “How do they judge you to be prequalified? They want to see your financials. Big deal. That doesn’t make you qualified to do the work. To do the work, [agencies] should use past experience, and that should be good enough.”
- Another interviewee representing an apprentice preparation program reported that prequalification requirements are “definitely a barrier” for minority business owners. She said, “All of this is, ‘a policy is a policy,’ but the issue is that we are being [treated] differently in [the] requirements [minority business owners must meet].”
- One owner of a minority-owned construction firm reported that it can be difficult to retain prequalification for certain work classes. He reported, “Several times I have had issues with either not prequalifying or prequalifying with a significant reduction in the amount I am prequalified to bid because I have not done a job in a particular classification of work within the last 5 years. At the same time I may have done the same... work requirements in another category.”
- Some interviewees specifically mentioned that it is difficult to get experience without experience. For example, an interviewee representing an African American-owned specialty engineering firm stated, “Prequalification is a problem for minority companies, because in order to increase your prequalification to a specific number, like from \$400,000 to \$800,000, they want to see you perform at that upper level, and you can’t perform at that level until you get your qualifications increased; it’s a real Catch-22.”

Not all interviewees held these opinions, and some representatives of both MBE/WBEs and of majority-owned businesses reported that prequalification did not present a barrier to winning City work. However, the City’s prequalification process raises several issues concerning potential barriers for MBE/WBEs relative to majority-owned firms. The BBC study team examined whether MBE and WBE firms were disadvantaged by:

- Denial of prequalification;
- Limited number of work classes;
- Limited project sizes; and

- Inconsistencies between prequalification levels across work classes.

BBC obtained and analyzed City of Portland prequalification data as of November 2009. The City supplied the name and identifying characteristics of the firm as well as the work class and dollar amount of prequalification. Because of the confidentiality of firm financial information submitted as part of the prequalification process, the City did not provide additional prequalification data. BBC compared certain prequalification data for minority-, women-, and majority-owned firms with information collected as part of the BBC availability interviews with local contractors.

Were MBE/WBEs denied prequalification at different rates than majority-owned firms, and why?

Prequalification denial data from the City were not available to BBC. However, BBC did examine the representation of MBEs and WBEs among all prequalified firms:

- As of November 2009, there were 266 firms that had current prequalification for one or more types of City construction prime contracts.
- Sixty-one of those firms (23%) were MBEs or WBEs, only slightly less than would be expected given the representation of MBEs and WBEs among firms available for City prime construction contracts (25%).
 - Twenty-seven MBEs were prequalified for City prime construction contracts, representing 10 percent of the prequalified firms.⁵
 - The 34 WBEs that were prequalified accounted for 13 percent of prequalified firms.

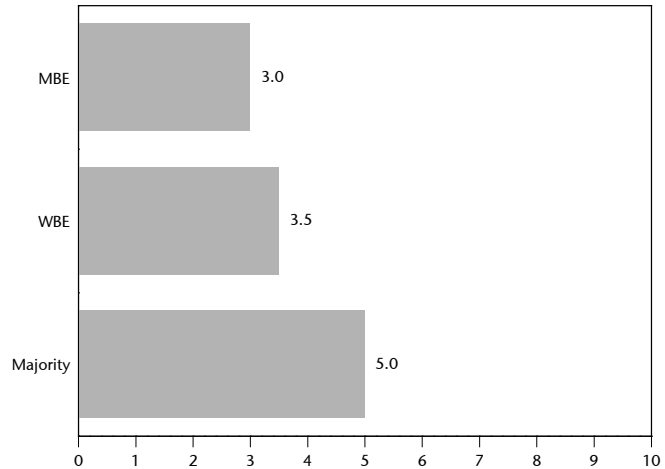
There is no indication that MBE/WBEs overall represent a substantially smaller number of prequalified firms than might be expected from the availability interviews.

Is there any indication that the prequalification process unduly limited the number of industries for which MBE and WBE firms were prequalified? To bid on a specific City construction contract, a firm must be prequalified in the specific class of work pertaining to the contract. The City prequalifies firms in 33 different classes of work. To be prequalified in a class, firms must show a certain level of experience and capacity to act as prime contractors based on the evaluation of City staff.

MBE/WBEs were prequalified for fewer work classes, on average, than majority firms. The mean number of work classes for which MBE firms were prequalified was 3.0; WBE firms averaged 3.5 prequalified work classes per firm. Majority-owned firms were prequalified, on average, for 5.0 work classes per firm. Figure 8-3 illustrates these results.

⁵ Rates for MBEs were consistent with what might be expected (10%), and rates for WBEs were slightly lower than might be expected (16%), according to the BBC availability interviews.

Figure 8-3.
Average number of
prequalified work classes
among firms prequalified for
City prime construction
contracts , November 2009



Note:

The City of Portland specifies 33 work classes in which companies may be prequalified. Number of firms examined in the prequalification analysis: MBE = 27, WBE = 34, Majority = 205.

Source:

BBC Research & Consulting from the City of Portland prequalification database, November 2009.

The smaller number of work classes in which MBEs and WBEs were prequalified might be explained by MBEs and WBEs performing fewer types of work. The study team compared the types of work that the City prequalified firms to perform with the types of work firms reported that they performed in the availability interviews. To make this comparison, BBC grouped the 33 City work classes into 13 broader subindustry categories used in the availability analysis.⁶

In the availability interviews, MBEs and WBEs reported performing work in fewer subindustries than majority-owned firms. However, the average number of subindustries in which MBE firms were prequalified (2.3) was slightly greater than the average number of subindustries in which the firms reported being available (2.0). Majority-owned firms exhibited similar prequalification figures (3.4 prequalified, 3.3 available).

On average, WBE firms were prequalified for slightly fewer subindustries (2.4) than the subindustries for which they reported being available (2.7), which might indicate that the work class aspect of the City's prequalification process affected WBEs more than MBEs. Figure 8-4 presents these results.

⁶ City work classes sometimes overlap, with one bureau using one work class and another bureau using a different definition of work class for similar work. Even without the overlap in work classes, BBC's analysis of prequalification required grouping certain work classes. BBC grouped City classes 19 and 20 into Building Construction; classes 9, 10, 12, 13, 14, 15 and 41 into Water and Sewer Facility Construction; classes 8, 11, 43, 44 and 45 into Water, Sewer and Utility Lines; classes 1, 2 and 42 into Asphalt Paving; class 5 into Bridge Construction and Repair; classes 3 and 4 into Concrete Work; classes 6 and 7 into Excavation; classes 16, 17 and 18 into Electrical Work; class 21 into Wrecking and Demolition; classes 23 and 24 into Plumbing and HVAC; class 22 into Painting; class 25 into Roofing; and classes 27, 29 and 30 into Landscaping.

Figure 8-4.
Average number of
subindustries for firms
prequalified for City prime
construction contracts,
November 2009

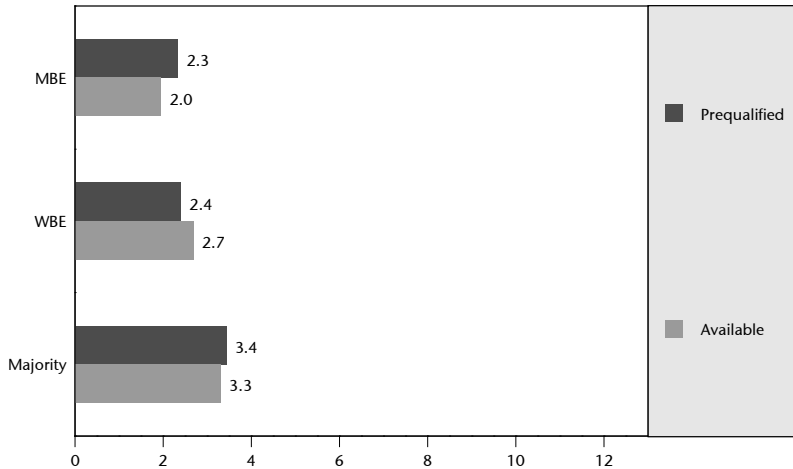
Notes:

City classes of work (33) were grouped into industry categories (13) used by BBC for the availability analysis.

Number of firms examined in the prequalification analysis: MBE = 27, WBE = 34, Majority = 205.

Source:

BBC Research & Consulting from City of Portland and 2010 survey data.



It appears that the smaller number of prequalified work classes for MBEs is largely explained by the fact that MBEs perform fewer types of work than majority-owned firms prequalified by the City. The smaller number of prequalified work classes for WBEs, however, is only partially explained by the number of work types performed.

Is there any indication that the prequalification size limits present greater barriers for MBEs and WBEs? BBC categorized each prequalified firm by the firm’s maximum prequalification limit, across all of its prequalified classes of work, according to ten dollar ranges of prequalification limits that correspond to the bid capacity categories used in BBC’s availability interviews.

Overall, the City was far more likely to prequalify MBE and WBE firms at lower prequalification limits when compared with majority-owned firms.

- Only 32 percent of MBEs were prequalified for contracts valued \$500,000 or more, while more than 82 percent of majority-owned firms were prequalified for contracts of \$500,000 or more.
- WBEs were also less likely than majority-owned firms to be prequalified for contracts of \$500,000 or more.
- When considering a higher prequalification level, MBEs and WBEs were considerably less likely than majority-owned firms to be prequalified for projects of \$2 million or more.

Figure 8-5 presents these results.

Figure 8-5.
Maximum prequalification
limits for firms prequalified
for City prime construction
contracts, November 2009

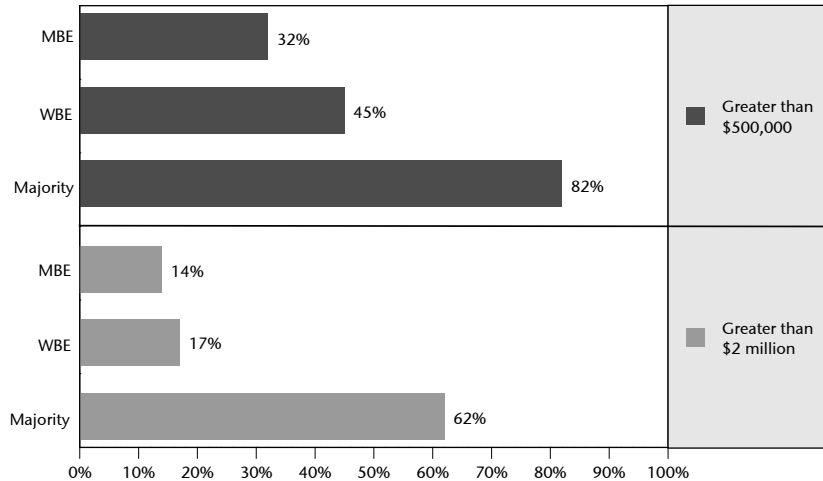
Notes:

Number of firms examined in the prequalification analysis: MBE = 27, WBE = 34, majority = 205.

Prequalification limits were categorized according to 10 dollar ranges that correspond to bid capacity categories used in the availability interviews.

Source:

BBC Research & Consulting from City of Portland data.



Differences in prequalification limits might be explained by MBE and WBE firms performing smaller contracts in general. In the availability interviews, the BBC study team asked firms the size of the largest contract or subcontract the company was awarded or bid on in the Portland area in the previous five years.⁷ BBC refers to the value, compiled in size ranges, as the firm’s “bid capacity.” The bid capacity results for MBE, WBE, and majority-owned firms are useful when analyzing differences in prequalification limits. Results are shown in Figure 8-6:

- The median City prequalification limit for MBE prime contractors was \$362,500, while MBE prime contractors reported a median bid capacity of \$500,000 in the availability interviews.
- WBE prime contractors were prequalified at median levels consistent with their bid capacity reported in the availability interviews.
- The median City prequalification level for majority-owned prime contractors was greater than their median bid capacity as reported in the availability interviews.

Therefore, only some of the difference in City prequalification limits between MBE/WBE firms and majority-owned firms can be explained by the bid capacity of firms as indicated in the availability interviews.

⁷ BBC asked firms to indicate the dollar range for the past project. The analysis of bid capacity uses the upper limit of each range as the bid capacity figure for each firm.

Figure 8-6.
Median prequalification limits and availability for firms prequalified for City prime construction contracts, November 2009

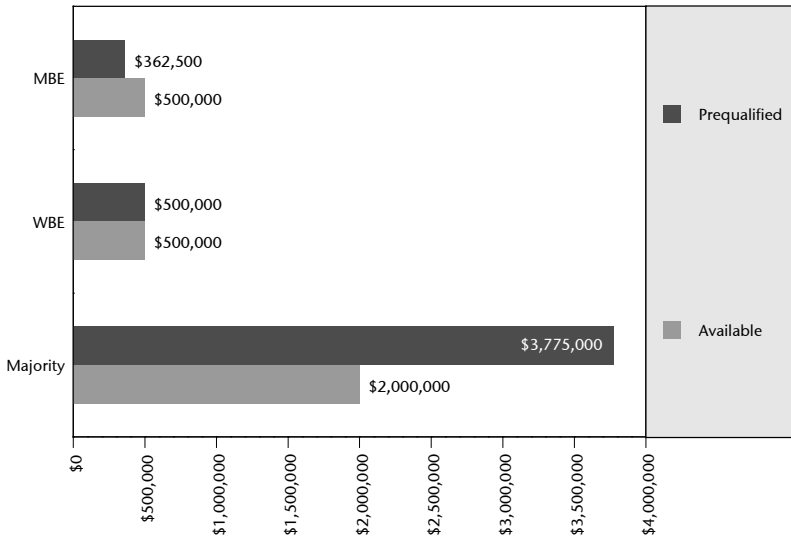
Notes:

Values are the medians of the greatest prequalification limit and the greatest availability value for each firm.

Number of firms examined in the prequalification analysis: MBE = 27, WBE = 34, Majority = 205.

Source:

BBC Research & Consulting from City of Portland and 2010 survey data.



Do firms experience inconsistencies in prequalification across related work classes? Individual City bureaus set prequalification limits, and there can be substantial differences in prequalification limits across work classes for a given firm. This variability can present a barrier for firms attempting to transfer experience gained in one work class to prime contract work in another class. Several examples are given below:

- One majority-owned firm with experience in concrete work was prequalified at \$1.5 million each for Street Improvements (Class 2), Bridge and Overcrossing Construction (Class 5), and Reinforced Concrete Construction (Class 4) but was limited to \$150,000 for Concrete Street Paving (Class 1) and \$500,000 for Concrete Flatwork (Class 3).
- A WBE with experience in electrical work was prequalified for \$440,000 in Electrical Wiring (Class 16), but was prequalified for only \$100,000 each in Traffic Signalization (Class 17) and Outdoor Illumination (Class 18).
- An MBE landscaping firm was prequalified for \$100,000 in Landscaping (Class 29), but was limited to \$25,000 for Park Improvements (Class 30) and \$60,000 for Irrigation & Sprinkling (Class 27).

These examples of differences in prequalification limits across work classes suggest that requirements to prequalify for work in different, but related, work classes could provide a barrier to any firm contracting with the City. The BBC study team identified examples of inconsistencies for minority-, women-, and majority-owned firms.

A minority-owned construction firm with experience in site development, excavation, sewer and water lines, and road construction stated in an availability survey, “The categories are narrow and prior jobs drop off a bidder’s list of prior jobs at the end of five years making small contractors who do not always do work in certain categories unable to count those jobs. For example, park construction requires the same equipment, people and experience as finishing slopes and road beds to

required plans and elevations. ... [A] bidder may be qualified to do the work but has not performed the work on a park job in several years.”

In summary, the City of Portland’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 majority-owned firms that were not explained by factors such as breadth of work and BBC’s information concerning firms’ bid capacity.

B. Why are there disparities for certain City construction subcontracts?

Through its GFE Program, the City encourages participation of MBEs and WBEs as subcontractors on its construction contracts. At times, the City awarded construction contracts outside of the GFE Program because they were emergency contracts or contracts on which the City did not identify substantial subcontracting opportunities. The City’s SMP is a different initiative that encourages utilization of MBE, WBE and ESB firms as prime contractors, and is also operated outside of the GFE program. The SMP does not have a component that specifically encourages MBE/WBE participation as subcontractors.

As discussed in Chapter 6, MBE/WBEs were underutilized overall on subcontracts awarded outside of the GFE Program. Some MBE/WBE subcontractors interviewed as part of the disparity study indicated that they do not have the same opportunities to participate in subcontracts outside of goals or GFE-type programs (see, for example, discussion on Appendix J, page 52).

Is there an indication that barriers exist for MBE/WBEs in obtaining subcontracts on City construction contracts outside of the GFE program? BBC analyzed the size distribution and types of work involved for 99 subcontracts on the 76 construction contracts worth more than \$100,000 for which the GFE Program did not apply (and were not awarded under the SMP).

City data indicated 99 subcontracts, totaling \$1.8 million, on these contracts. MBE/WBEs obtained 28 of the 99 subcontracts outside of the GFE Program. MBE/WBE utilization — \$230,000 — represented about 13 percent of subcontract dollars, which was substantially below what might be expected based on BBC’s availability analysis for those subcontracts (about 20%). The disparity index was 64, as shown in Figure L-16 in Appendix L. The level of MBE/WBE participation as subcontractors on construction contracts without the GFE Program was about one-half of MBE/WBE participation as subcontractors when the GFE Program applied (24% as indicated in Figure 6-4).

BBC’s analysis of subcontract types and sizes on City construction contracts outside the GFE Program did not indicate neutral reasons for the low level of MBE/WBE participation.

- Subcontract sizes for contracts outside of the GFE Program averaged \$18,000 per contract, much smaller than the average contract size for subcontracts for which the GFE Program applied (\$166,000).

- BBC also examined the most frequent types of subcontracting work for non-GFE and GFE subcontracts. A large portion of the subcontract dollars for non-GFE and GFE subcontracts related to electrical work; highway and street construction; water, sewer and utility line construction; and “other” construction. It did not appear that the types of work for non-GFE subcontracts substantially differed from contracts for which the GFE program applied.
- The amount of subcontract dollars for City contracts outside the GFE program was relatively small, so there would be no merit to an argument that MBE/WBE subcontractors were unable to perform both the subcontracts under the GFE program and the subcontracts outside the GFE program.

Is there an indication that barriers exist for MBE/WBEs on construction subcontracts awarded under the Sheltered Market Program? Minority-owned businesses were also underutilized as subcontractors on SMP contracts, although the small number of subcontracts limits the analysis. Of the 33 subcontracts analyzed, MBEs received five for a value of \$24,000, substantially below what might be expected based upon BBC’s analysis of availability for these subcontracts. Neither size nor type of work involved in the subcontracts explained the disparity for MBEs.

C. Why are there disparities for certain City construction-related professional services prime contracts?

In Chapter 7, BBC examined MBE and WBE participation on City construction-related professional services contracts awarded between July 2004 and June 2009. When considered together, City utilization of MBEs and WBEs as prime consultants exceeded what might be expected from the availability analysis. When analyzed separately, however, WBE firms received about three-quarters of the dollars that they might be expected to receive based on availability (disparity index of 77). Overall MBE utilization exceeded availability. However, two firms accounted for more than 80 percent of MBE utilization. In addition, Asian-Pacific American-owned firms showed a disparity index of 21.

BBC explored bid scoring and on-call contract usage to examine why there were disparities for WBEs and Asian-Pacific American-owned firms as prime consultants on City construction-related professional services contracts. There were also disparities for MBE prime contracts, overall, on City standard contracts.

Number of proposals. BBC examined the number of proposals for construction-related professional services submitted by MBEs and WBEs. The study team examined 535 proposals submitted for nearly 300 construction-related professional services contracts during the study period.

- MBEs submitted 56 proposals, 10 percent of the total, which is higher than what might be expected (6%) from the proportion of MBE prime consultants available for City contracts (determined through BBC’s availability interviews); and
- WBEs submitted 46 proposals (9% of the total), which is lower than what might be expected (11%) from the availability interviews.

It appears that a lower rate of proposal submission by WBEs may have contributed to underutilization of those firms.

Proposal scoring. The City typically uses qualification-based evaluations to select consultants to perform construction-related professional services contracts. Firms are selected on their qualifications, with price as a negotiating point after the selection is made. Common categories of selection requirements include:

- Team qualifications;
- Project approach;
- Diversity;
- Proposed cost; and
- Supporting information (such as letters of recommendation).

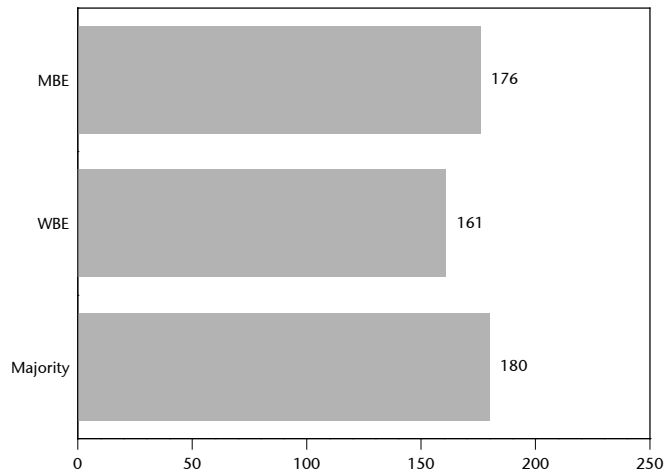
Does the proposal scoring process present a barrier for MBE/WBEs? The City provided documentation for the evaluation of proposals for nearly 300 contracts across the study period. BBC analyzed the scores the City gave to MBEs, WBEs and majority-owned firms to examine possible barriers for MBEs and WBEs.

Compared to majority-owned and MBEs, WBEs tended to score lower overall. Based on BBC's analysis of 535 proposals for construction-related professional services contracts, WBE firms received an average total score of 161 points compared with 176 points for MBEs and 180 points for majority-owned firms (see Figure 8-7).

Figure 8-7.
Average total scores of proposals submitted for City construction-related professional services contracts, July 2004 – June 2009

Note:
Number of diversity scores analyzed:
MBE = 56, WBE = 46, majority = 433.

Source:
BBC Research & Consulting from City of Portland data.



On average, WBE firms scored lower than majority-owned firms in team qualifications and project approach categories.

Scoring for diversity. In-depth personal interviews with construction-related professional services firms revealed some concerns regarding diversity points in the City's proposal scoring process. For example, an owner of a Native American-owned engineering firm stated that he was concerned that the process used to award diversity points as part of the City's bid selection process might be unfair. He recalled proposing as a prime for a contract and receiving fewer diversity points than those

awarded to the winning bidder. He stated, “Why wouldn’t [a minority prime contractor] get the same number of points? Something in the scoring process [contributes] to that unfairness.”

City evaluation guidelines address how evaluators should score firm diversity criteria. In general, MBE and WBE firms are not automatically given a high evaluation for diversity. Along with majority-owned firms, MBE and WBE firms are evaluated on:

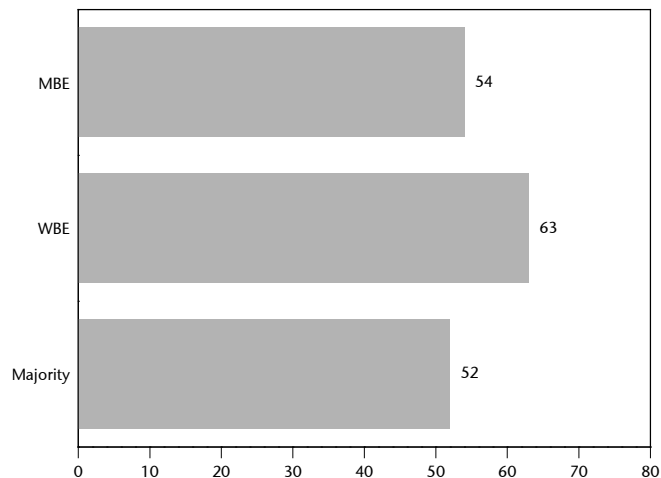
- Diversity in recruitment and employment opportunities; and
- Subcontracting and partnering efforts with State of Oregon-certified MBE, WBE and ESB businesses.

As shown in Figure 8-8, there was little difference in the average diversity scores awarded to minority-owned firms (54) and majority-owned firms (52). WBE firms tended to average the highest scores for diversity in employment and subcontracting, with an average diversity score of 63.

Figure 8-8.
Average diversity category scores for proposals submitted for City construction-related professional services contracts, July 2004 – June 2009

Note:
Number of diversity scores analyzed:
MBE = 41, WBE = 34, majority = 329.

Source:
BBC Research & Consulting from City of Portland data.



Task order (on-call) contract usage. The City periodically requests proposals from firms to receive task order, or “on-call,” contracts. Firms obtaining on-call contracts can be contacted by the City to perform small assignments during the contract period. The City can also request informal proposals for an assignment among firms that have on-call contracts. After the City selects a firm for an assignment under an on-call contract, it issues a task order to perform that work.

As reported in Chapter 7, BBC examined \$26 million of City on-call contracts during the study period. (BBC performed the disparity analysis based on invoices, not contract awards.) There were substantial disparities in the City’s use of WBEs as prime consultants on these contracts. No MBE group showed underutilization. In study team discussions with the Disparity Study Advisory Group, and during in-depth personal interviews, several individuals indicated that being awarded an on-call contract does not guarantee that the company will be utilized once a task order is issued.

- For example, an owner of an Hispanic-owned engineering firm reported, “Right now, the professional services are all qualifi[cation]-based. ... It is a big challenge. ... For instance, I have this contract [for which] we already got qualified ... we got selected. Well, we still have to be qualified in every task order we get, so, even though you’ve

been qualified, you still have to... submit proposals, so you may get nothing after... all the time spent writ[ing] proposals. It's very expensive... to prove that you're qualified."

- Additionally, an owner of an Asian-Pacific American engineering firm said, "The way on-call services are currently bid is a very big problem, as they should be reserved for smaller businesses, but the larger businesses compete against us and we don't get the opportunity to do what we do best." He stated that he wants to make sure that PDC and the City recognize that small businesses want to work with them, and that they need to do things that reach smaller companies.

Are MBEs and WBEs receiving on-call contracts less likely than majority-owned firms to receive work under these contracts? Each on-call contract specifies a dollar limit for assignments performed under that contract. BBC used City invoice data for a sample of 168 on-call contracts with award amounts under \$500,000 to determine the percentage of on-call contract awards that were actually paid out to firms.

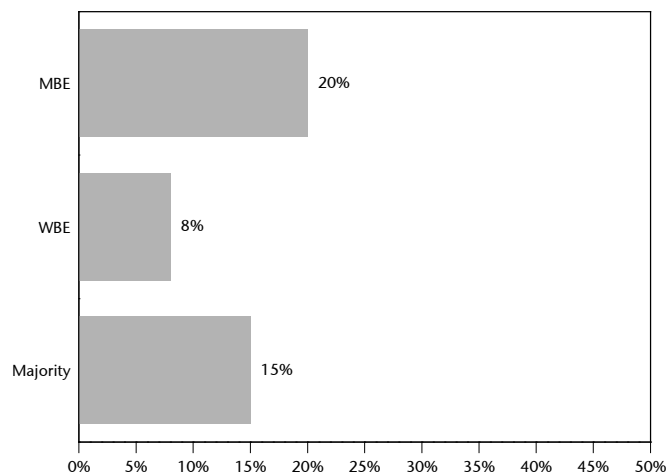
Of the \$19 million in on-call contracts examined (based on contract maximums), just \$3 million (or 15%) of the maximum value was actually paid out to the firms awarded these contracts. These data demonstrate that receiving an on-call contract does not mean that firms will receive task orders for a value close to the contract maximum.

The average on-call award to firms was \$100,000 for MBEs, \$100,000 for WBEs, and \$119,000 for majority firms. BBC's analysis of task order usage of firms indicated that MBEs averaged receipts of about \$20,000 per contract, or about 20 percent of the average contract value. WBE firms with on-call contracts experienced the lowest actual use, taking in under \$8,000 per project, or 8 percent of the average contract value. Majority-owned firms received an average of \$18,000 per project, or 15 percent of their average contract value.

Figure 8-9.
Task order payments as a percentage of contract maximum values for City on-call construction-related professional services contracts, July 2004 – June 2009

Note:
Number of on-call awards analyzed:
MBE = 20, WBE = 17, majority = 131.

Source:
BBC Research & Consulting from City of Portland invoice data.



BBC further explored the low rate of use under on-call contracts. More than three-quarters of WBEs appeared to receive no payments on their on-call contracts during the study period. In contrast, more than one-half of MBEs and majority-owned firms with on-call contracts received payments for task orders on those contracts. The low use of WBEs receiving on-call contracts is a key reason behind the disparities in the utilization of white women-owned firms on City on-call contracts for construction-

related professional services. It is possible that some City bureaus take credit for contract awards to WBEs but then use other firms for required work. The City should explore whether there is further evidence of discrimination against WBEs in its on-call system.

D. Use of MBE/WBEs as subconsultants on certain City construction-related professional services subcontracts

No disparities were found for any MBE/WBE group for construction-related professional services subcontracts. The study team found that two firms account for a substantial portion of MBE utilization on those subcontracts. However, even when excluding those subcontracts, utilization still exceeded availability. It appears that the system for awarding diversity points in evaluation of consultants' proposals for City work has been effective in encouraging utilization of MBE/WBE subconsultants on construction-related professional services contracts.

E. Summary

Chapters 6 and 7 identified disparities in the participation of MBE/WBEs in certain types of City construction and construction-related professional services work, especially when City programs to encourage MBE/WBE participation did not apply.

Further analysis in Chapter 8 found evidence that MBE prime contractors are less successful in winning construction contracts than might be expected if bidders had equal chances of winning these contracts. MBE and WBE firms bid more often on smaller contracts overall, even within the set of large contracts considered above (including contracts that required GFE and contracts that did not). The City's prequalification process for prime contractors on construction projects may adversely affect small business — especially WBE — opportunities to compete for this work.

MBE/WBEs experienced disparities in construction subcontracting when City programs to encourage MBE/WBE participation did not apply. BBC did not identify neutral explanations for these disparities.

City efforts to engage MBE/WBE participation as subconsultants on construction-related professional services contracts appear to be successful. This outcome was also true for MBE prime consultants but not for WBE prime consultants. Lower evaluation scores given for WBE proposals and low use of WBEs receiving on-call contracts are two of the reasons behind the disparities for WBE prime consultants on City construction-related professional services contracts. WBE prime consultants do not appear to have the same opportunities as MBEs and majority-owned firms on these contracts.