

## **CHAPTER 10.**

# **Contracting Practices and Business Assistance Programs**

The disparity study shows evidence of potential barriers that minority- and women-owned firms (MBE/WBEs) face in doing work in the Portland area, including attempting to obtain work with the City of Portland (the “City”) (for a summary, see Chapter 9). Chapter 10 explores options for race- and gender-neutral measures and other programs that the City might consider to address some of the barriers that the study team observed for MBE/WBEs in various business areas. The City has already implemented a number of these programs.

The following program options include initiatives that address entry and advancement, business assistance, bonding and financing, and small business development:

- A. Efforts to remove barriers to entry and advancement into the local construction and construction-related professional services industries;<sup>1</sup>
- B. Business assistance efforts;
- C. Changes or additions to City contracting policies and procedures;
- D. Changes to the Sheltered Market Program;
- E. New joint-venture program for larger contracts;
- F. Changes to the Good Faith Efforts Program;
- G. Other City programs; and
- H. Other program options.

### **A. Efforts to Remove Barriers to Entry and Advancement**

Although the disparity study did not focus on employment practices within the local construction, professional services, and related industries, BBC identified barriers to entry and advancement of certain minority groups and women within those industries. Current availability of minority- and women-owned firms for City construction and construction-related professional services contracts is affected by barriers to entry and advancement within these local industries.

The City, other government agencies, local unions and other groups have implemented programs that focus on entry and advancement of minorities and women in the construction industry. For example, the City and Portland Development Commission’s (PDC’s) Workforce Training and Hiring Program

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<sup>1</sup> The City’s construction-related professional services contracts are awarded through the Professional, Expert and Technical Services contracting process.

works to increase the number of women and minorities in the construction trades through apprenticeship opportunities. This program requires firms receiving prime contracts worth more than \$200,000 and subcontracts worth more than \$100,000 to allocate 20 percent of labor hours per trade to state-registered apprentices. Many of those apprentices are minorities and women.

Information from the disparity study indicates that there is a continuing need for such efforts, although the City may wish to collaborate with others to better understand the effectiveness of existing initiatives and whether additional programs are needed.

## **B. Business Assistance Efforts**

The City works closely with local organizations and other public agencies to offer business assistance to Portland businesses. Appendix K provides a more comprehensive review of business assistance efforts in the Portland area.

**Technical assistance.** Technical assistance programs are readily available throughout the Portland area, and many involve the City. These programs primarily provide general information and assistance for business start-ups and growing businesses. Examples range from Small Business Development Centers (SBDC) that serve all groups to more targeted programs for minorities and women through minority chambers of commerce. The programs focus on business planning; marketing; training workshops and financial management; understanding the procurement process; and other business topics. Other technical assistance programs provide business advice and mentoring, including services offered by the Service Corps of Retired Executives (SCORE) and the Turner School of Construction. The City currently sponsors, attends and refers businesses to a number of these programs.

The City informs businesses about technical assistance opportunities through emails sent to MBE/WBE and Emerging Small Business (ESB) databases including the Sheltered Market Program (SMP) and Oregon Association of Minority Entrepreneurs (OAME) outreach databases. Technical assistance opportunities are also sent to a network of business assistance and trade associations.

The City also provides one-on-one counseling and assistance to small businesses, including MBE/WBEs. Counseling that the City and PDC provide covers various business topics such as M/W/ESB certification and understanding and navigating the procurement and contracting process. The City employs a pool of private consultants to assist with technical assistance efforts. MBEs, WBEs and ESBs are eligible to apply for assistance from private consultants related to specific business areas. Approval for use of a technical assistance consultant is at the discretion of City and PDC project managers.

In addition to sponsoring other organizations and associations to facilitate technical assistance, the City also sponsors M/W/ESB firms to enroll in business assistance classes at Portland Community College.

The City should consider continuing its support of technical assistance services for local business.

**Small business liaison.** The City’s Small Business Liaison program offers information and assistance to all Portland businesses including MBE/WBEs. Business information and assistance includes:

- How to operate a business from home;
- How to start food establishments and vending carts;
- Small business loan assistance; and
- Change of occupancy, exterior signs, development costs, permitting, inspections, and approval process.

Although this program does not directly relate to construction and construction-related professional services firms, it may be beneficial to those businesses. The City should consider continued support for this program.

**Mentor-protégé programs.** The Port of Portland (the “Port”) launched its mentor-protégé program in the mid-1990s to increase the number of MBE/WBEs and Disadvantaged Business Enterprises (DBEs) in the local construction industry and to help expand their capabilities. The Port’s mentor-protégé program is the only formal program of its kind in the Portland area at this time. Firms are selected based on their qualifications and are required to participate in the program for three years. The cost of each mentor-protégé relationship is \$15,000 and is sponsored by other agencies in the Portland area, including the City, Oregon Department of Transportation (Oregon DOT), the Association of General Contractors (AGC) and Multnomah County. The Port graduates about 15 participants each cycle.

The Oregon DOT, SCORE and several minority chambers offer less formal mentor-protégé programs to help develop emerging businesses, including MBE/WBEs. Those programs help emerging businesses increase their capabilities and competitiveness by providing business mentoring, peer advisement and technical assistance.

Some individuals interviewed as a part of the study were in support of the Port’s program whereas others reported that the Port’s mentor-protégé program had little positive impact on MBE/WBEs. The City might consider whether it should continue to support the Port’s program or whether a new mentor-protégé program might be beneficial.

**Small business finance and capital assistance.** Small business financing, counseling and related services are available through several local agencies in the Portland area. For example, the Albina Community Bank and Shorebank Pacific Bank provide low interest loans, matched savings accounts and microenterprise lending for the startup and expansion of small businesses ranging in amounts from \$500 to \$50,000. Other organizations such as Mercy Corps Northwest, Microenterprise of Oregon, TriMet and the OAME offer a variety of business lending programs using federal and private funds.

Examples of federally-funded and -managed finance programs include the U.S. Department of Transportation (USDOT) Office of Small and Disadvantaged Business Short Term Lending Program for certified DBE firms and the U.S. Small Business Administration (SBA) guaranteed loans programs.

Local organizations providing training on how to obtain financing include the Portland State University Business Outreach Program, Microenterprise of Oregon, SBDC and the Hispanic Chamber of Commerce. The City should be aware of current small business finance and capital assistance programs offered within the local marketplace and help refer firms to the appropriate organization for assistance.

**Networking, outreach and advocacy.** A number of agencies serve as advocates for small businesses, including MBE/WBEs, working to eliminate barriers to participation on public and private sector projects. These organizations sponsor focus sessions, seminars, training workshops and networking events to highlight small businesses and encourage their use for local projects. Active local organizations include:

- Portland Business Alliance;
- The Minority Chambers of Commerce;
- National Association of Minority Contractors Oregon (NAMCO);
- The Oregon Native American Business & Entrepreneurial Network (ONABEN);
- The Oregon Association of Minority Entrepreneurs (OAME);
- Women Entrepreneurs of Oregon (WEO)
- The Oregon Microenterprise Network (OEN); and
- The Metropolitan Contractor Improvement Partnership (MCIP).

The City supports many of these organizations by attending events, sponsoring programs and holding training sessions on how to do business with the City. The City should consider continued support for local organizations by attending events, referring businesses and sponsoring programs.

**Business incubators.** Several organizations throughout the Portland area administer business incubator programs offering entrepreneurial firms hands-on management assistance, shared office services, equipment and technology. Examples of local organizations that operate business incubators include the OAME, Avita & Associates, the City of Beaverton and the Metropolitan Contractor Improvement Partnership (MCIP). The City currently supports OAME by providing a procurement specialist once a week for small business support and guidance.

The City should be aware of programs provided by each of these incubators and be able to refer firms to these resources. The City might also consider financially supporting one or more business incubators.

### **C. Changes or Additions to City Contracting Policies and Procedures**

There are several other race- and gender-neutral program elements the City might consider, as discussed below. Potential neutral initiatives include:

- Subcontracting minimum;
- Segmentation of large contracts into smaller contracts;
- Alternative bid evaluation for construction contracts;
- Prompt payment of subcontractors;
- Comprehensive collection of subcontract information from prime consultants;
- Notification of bid opportunities and City resources;
- Training partnerships with other local agencies and private firms;
- On-line training;
- Changes to City prequalification system for construction contracts; and
- Increased flexibility in City bonding and insurance requirements and other bonding and insurance programs.

**Subcontracting minimum.** The City might consider a measure that would encourage more subcontracting on its contracts. The City's neutral efforts appear to be effective in encouraging subcontracting. About 27 percent of City-funded construction contract dollars went to subcontractors (see Figures L-4 and L-2 in Appendix L). Subcontracts represented 41 percent of the City's construction-related professional services contract dollars (see Figure M-4 and M-2 in Appendix M).

A subcontracting minimum program might increase the amount of subcontractor participation beyond the average for City construction contracts. The City might consider an initiative similar to the City of Los Angeles' Mandatory Subcontracting Minimum (MSM) program.

- For each contract above a certain dollar amount, the City would set a percentage to be subcontracted based on an analysis of the work to be performed and past experience with similar contracts (different types of projects would involve greater or smaller amounts of subcontracting). For some contracts, the City could set no MSM.
- Prime contractors bidding on the contract would need to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be deemed responsive.
- The program would need to be flexible, including the opportunity for the prime contractor to request a waiver (preferably before time of bid so that the waiver would apply to each prime).

The City would need to consider whether the program described here is permitted under local and state law.

**Segmentation of large contracts into smaller contracts.** Especially when the SMP or informal contracting procedures apply, utilization of MBE/WBEs as prime contractors on City construction contracts is relatively high. The City should continue to evaluate when contracts can be divided into multiple smaller contracts. The City may consider letting work in phases to support the implementation of this strategy.

**Alternative bid evaluation for construction contracts.** Alternative bid evaluation allows the City to consider factors other than price when awarding contracts. The City has used an alternative bid evaluation for several Bureau of Environmental Services projects including Balch Creek Conduit and East Side CSO. This alternative method of evaluation might encourage opportunities for small MBE/WBEs.

The City might track the projects to which this evaluation process is applied to better evaluate the impact of the alternative bid evaluation process on small businesses, including MBE/WBEs.

**Prompt payment of subcontractors.** Some small MBE/WBEs interviewed as a part of the study reported difficulty with receiving timely payments from prime contractors. The City has policies in place to address this issue:

- Oregon state law requires construction contractors to pay subcontractors within 10 days of receipt of payment from the agency.
- The City goes beyond state law to require prime construction contractors to make payments to their subcontractors twice per month.

The City should review the effectiveness and current enforcement efforts of prompt payments to subcontractors.

**Comprehensive collection of subcontract information from prime consultants.** BBC was able to collect subcontract data for the City's construction-related professional services contracts worth \$100,000 or more. For future studies and evaluation, and to ensure accountability of prime contractors and consultants, the City should consider improving its data collection and tracking for all construction-related professional services contracts. Efforts should be made to address the following:

- Collect and maintain subcontract utilization data for construction-related professional services contracts regardless of contract type and size; and
- Collect utilization data for all subconsultants, regardless of race, gender or certification status.

Although subcontractor data were available for most construction projects, the City may consider using the above recommendations to review its tracking and data collection processes for construction projects as well.

**Notification of bid opportunities and City resources.** The City participates in many outreach and advocacy events that include information about technical assistance, marketing, the MBE/WBE certification process, doing business with the City and available bid opportunities. Although firms interviewed as part of the disparity study did not report challenges with the City's notification or outreach efforts, the City might consider the following:

- Provide the opportunity for businesses to electronically register as a vendor when applying for business licenses through the City. This would better allow the City to populate vendor information and to notify firms of bid opportunities. The City might also ask for race and gender indicators at that time to better understand the demographic profile of the City's business community.
- Provide City-specific purchasing training to local service providers including chambers of commerce, advocacy groups and private consultants so that they can better educate local businesses on how to do business with the City.

**Training partnerships with other local agencies and private firms.** Similar to the Turner School of Construction Management, the City might consider partnering with other local government agencies and private firms to host a construction management or engineering institute. The multi-week course would be designed to improve the technical, administrative and managerial skills of small businesses. The course would be facilitated by City and other local government staff, industry professionals and private firms.

The institute would be open to all firms, regardless of race or gender. In addition, assistance opportunities would be tailored specifically to the needs of the construction and construction-related professional services industries and might include:

- Estimating;
- Project identification & matching;
- Bid preparation;
- Management assistance;
- Finance and accounting;
- Training in the use of computers and the Internet; and
- Training in industry software.

**Online training.** The City might consider launching an online training program for firms to access 24 hours a day, seven days a week. This would offer electronic step-by-step instructions on how to do business with the City. The training might include information on how to bid on City work, how to fill out required forms and how to meet the City's insurance and bonding requirements. The program could also provide links to other assistance providers. BBC has worked with the City of San José, California to develop a similar system.

**Changes to City prequalification system for construction contracts.** BBC identified the City's prequalification process as a barrier for small firms seeking City construction prime contracts. The City might consider the following options:

- Increase the contract dollar level at which firms are required to be prequalified. Small construction contracts are currently exempt from the prequalification requirements. The City could consider increasing this threshold to \$500,000 or \$1 million.
- Simplify the prequalification system to fewer work categories.
- Centralize the prequalification review within the City.
- Expand the dollar ranges, or eliminate them.
- Discontinue prequalification as standard practice and only apply it on a contract-by-contract basis, as needed.

There are advantages and disadvantages with these options that the City would need to explore. In general, however, many local governments in Oregon and other states procure construction services without a prequalification system. Other factors, including licensing and bonding as well as debarment or suspension of contractors for poor work on previous contracts, would still be considered.

**Increased flexibility in City bonding and insurance requirements, and other bonding and insurance programs.** BBC's marketplace analyses identified disparities in access to capital, bonding and insurance for certain MBE/WBE groups (see Chapter 4 for a summary). The AGC and OAME distributed a "whitepaper" in April 2001 also reporting the challenges of bonding for small contractors. The City might consider the following options:

- **Referrals.** The City refers businesses to local technical assistance programs and advocacy organizations, but the City might also consider exploring ways to better connect its contractors and consultants with available insurance and bonding programs.
- **Business insurance assistance.** Business insurance is required to work on most City construction and construction-related professional services contracts. Information from the study team's in-depth personal interviews indicated that small firms, including minority- and women-owned firms, may face barriers obtaining insurance. The City could explore more ways to explain how to obtain needed insurance and ensure that small contractors and consultants have access to business insurance experts.
- **Review insurance requirements on small contracts.** The City might consider relaxing insurance requirements for small businesses or eliminating blanket insurance requirements and conduct a contract-by-contract analysis of insurance needs for smaller contracts. This measure may help small MBE/WBEs successfully pursue work with the City.

- **Bonding programs.** Chapter 4 of the report summarizes barriers that MBE/WBEs face in obtaining bonding. The City might explore how it could better match small firms that require bonding assistance with local organizations that provide that assistance, such as the SBA and the AGC.

Some transportation agencies such as the San Diego County Regional Airport Authority have created programs to directly provide bonding to small companies bidding on agency contracts, whereas other agencies waive bonding requirements for smaller contracts. The City might consider one or a combination of these efforts.

The City could also review the extent to which it could waive bonding requirements on smaller contracts.

#### **D. Changes to the Sheltered Market Program**

The City implemented the SMP in 1998 to improve opportunities and build capacity for state-certified M/W/ESBs to compete as prime contractors in the local construction industry. The City facilitates the SMP, while other public agencies — including PDC — utilize SMP contacts and resources.

To be eligible to participate in the SMP, firms must:

- Be certified by the State of Oregon as an MBE, WBE or ESB firm;
- Have average annual gross receipts for the last three years of less than \$1 million;
- Perform a commercially useful function;
- Be in business at least two years;
- Commit to participating in technical assistance training provided by the City; and
- Have participated in the program for no longer than five years.<sup>2</sup>

The SMP allows up to one-half of all new formal construction projects ranging from \$100,000 to \$200,000 to be bid by program participants. In addition, SMP firms are the first source for City informal contracts with a dollar value ranging from \$5,000 to \$100,000.

The SMP has about 100 participants listed in multiple industries according to the City's database. Participants receive technical assistance and business development training at no cost. The SMP also offers construction and business courses at Portland Community College and other institutions at no cost.

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<sup>2</sup> At the end of three years in the SMP, firms are reviewed for early graduation. Early graduation occurs if a firm's gross receipts exceed \$3,000,000 during each year for a two-year period.

The SMP is marketed through the City's outreach to community organizations including trade associations and minority chambers of commerce. Opportunities to apply for the SMP are also advertised through local newspapers.

The City recently reviewed operational components and possible improvements to the SMP.<sup>3</sup> If the City chooses to retain the SMP, it may need to evaluate past criticisms of SMP operation and implement appropriate changes to the program.

Operational issues aside, the City will need to consider whether the SMP should be continued as is, should be substantially modified or should be discontinued. Options for consideration include:

- **Continue with current structure.** Based upon BBC's review of contracts from July 2004 through June 2009, the SMP was important in eliminating disparities in the overall utilization of WBEs as prime contractors on City construction contracts, and helped to reduce disparities in the utilization of MBEs as prime contractors. Although operation of the program might be improved, it has been effective in encouraging utilization of MBE/WBE prime contractors on small City construction contracts (i.e., those construction contracts worth less than \$200,000).
- **Increase the dollar limits for contracts that can be awarded through SMP.** The City currently limits the Sheltered Market Program to contracts of \$100,000 to \$200,000. The City might consider raising the dollar limit from \$200,000 to \$500,000 or \$1 million and including contracts of that size in the SMP when they appear suitable.
- **Require ESB certification for program eligibility.** Firms certified as MBEs and WBEs are eligible for the SMP if they meet other eligibility criteria, including revenue caps. A path for eligibility through MBE and WBE certification creates some confusion as to whether the program is completely race- and gender-neutral. If the City intends to operate the SMP as a race- and gender-neutral program, it might consider requiring ESB certification to be eligible. Certified MBEs and WBEs would only be eligible if they were also certified as ESBs (and met other SMP eligibility criteria).
- **Change the program to focus on MBE/WBEs, or just MBEs, and increase the revenue limits for eligibility.** There are reasons to limit the SMP to just certified MBEs and WBEs, or just certified MBEs. When examining utilization and availability of prime contractors for City construction contracts outside of SMP contracts and other small contracts, BBC identified substantial disparities in the utilization of MBEs. The SMP also appears to have had limited long-term impact on the overall availability of MBE and WBE prime contractors for larger City construction contracts.

There is evidence that inclusion of majority-owned ESBs (i.e., those not owned by minorities or women) in the program dilutes its effectiveness in addressing disparities in City utilization of MBEs as prime contractors and long-term development of MBE and WBE prime contractors. More than 40 percent of SMP prime contract dollars went to

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<sup>3</sup> See, for example, City of Portland Office of the City Auditor, Sheltered Market Program: Need for Clearer Focus and Stronger Management, January 2010.

majority-owned firms from July 2004 through June 2009. The City might also consider increasing the \$1 million annual revenue size limit for program entry to allow larger firms into the program. This measure might help the program cultivate MBE/WBE contractors that can eventually compete for larger City prime contracts.

### **E. New Joint-venture Program for Larger Contracts**

Joint ventures between majority-owned firms and MBE/WBE firms might be one avenue for smaller MBE/WBEs to gain experience working as prime contractors on larger construction projects. Such a program may provide MBE/WBEs access to prime contracts on which they could otherwise not bid due to bonding and prequalification constraints, or because of their lack of experience. The City does not currently employ a joint venture program.

**Program summary.** Joint ventures between DBEs and non-DBEs are one way to meet DBE contract goals under the Federal DBE Program; however, no such program exists at the City.

Starting in 2001, the OAME and the AGC explored different avenues to open larger prime contract opportunities to MBE/WBEs. One of the options that they considered was joint ventures with majority-owned contractors.<sup>4</sup> Although the efforts of OAME and AGC point out complexities and potential problems with joint ventures, it can be an effective strategy to open prime contract opportunities for MBE/WBEs and, over a number of years, build stronger prime contractors.

**Options for the City to consider.** The City of Atlanta has operated a joint venture program for a number of years. Based on the scope of work, value (only projects worth more than \$5 million are eligible) and market availability for a project, the City of Atlanta's Office of Contract Compliance determines whether to require a joint venture or good faith efforts to enter into a joint venture. A qualifying joint venture is comprised of member businesses with different race ownership, different gender ownership, or both different race and gender ownership. The joint venture agreement must include agreements pertaining to:

- The initial capital investment of each partner;
- Allocation of profits and losses to each partner;
- Sharing of the right to control the ownership and management of the joint venture;
- Participation of the partners on the project;
- Responsibility for accounting;
- Method for dispute resolution; and
- Any other information required in the bid documents.

Joint ventures must submit for pre-approval at least 14 calendar days prior to the bid submission date.

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<sup>4</sup> OAME/AGC. OAME/AGC Issue Collaboration #2. *Formal and Informal Methods to Grow M/W/ESB Capacity*. Accessed at [http://www.agc-oregon.org/public/board\\_councils/sbgo/jv\\_whitepaper\\_final.pdf](http://www.agc-oregon.org/public/board_councils/sbgo/jv_whitepaper_final.pdf)

A joint venture program such as the City of Atlanta's, if deemed feasible to implement and not prohibited by state or local statute, would assist the smaller partner in gaining project management experience for large projects that would typically be beyond their ability. The structure of such a program, with requirements for partners of different race or gender, may likely be considered a race- and gender-conscious program. The City might consider implementation of a joint venture program for firms certified as ESBs, including minority- and women-owned ESBs.

## **F. Good Faith Efforts Program**

The City should consider the future of its current Good Faith Efforts (GFE) program for certain City construction contracts. It appears that the program is effective in eliminating overall disparities in the utilization of MBE/WBEs on City construction contracts.

**Program summary.** The City initiated the GFE program in 1993. Although the City establishes an annual aspirational goal for participation of M/W/ESBs, it does not set contract goals.

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

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

- Contact a minimum of five M/W/ESB firms from the list of state-certified firms; and
- Contact each of the M/W/ESB firms that specialize in that work type and attend the pre-bid meeting for the project.

There is no requirement that prime contractors utilize MBE/WBE subcontractors or meet the City's overall annual aspirational goal for the percentage of subcontract dollars going to MBE/WBEs.

**Future of the GFE Program.** The 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. There is evidence of disparities in the use of MBE/WBEs as subcontractors on City construction contracts without the GFE Program. There is also evidence of disparities in prime contractors' use of MBE/WBEs as subcontractors for construction projects sponsored by PDC (i.e., PDC-sponsored projects), even with application of PDC's Business Equity Program.

The City might evaluate the following options:

- **Continue the program with current structure.** As described above, the current program appears to be effective. It does not appear that inclusion of majority-owned ESBs in the City's GFE Program substantially dilutes the effectiveness of the program at this time.
- **Continue the program, but require all firms to be certified as ESBs.** Certification criteria for ESBs include employment and revenue size restrictions. These limits do not apply for MBE and WBE certification. Because of the differences in eligibility for ESB and MBE/WBE certification, one might argue that the current GFE Program is race- and gender-based. The City could operate a program that is clearly race- and gender-neutral if it required all firms to be certified as ESBs.
- **Change the program to focus on MBE/WBEs.** If the City determined that inclusion of ESBs in the GFE Program diluted the effectiveness of the program in addressing potential disparities in the utilization of MBE/WBE subcontractors, or was an unnecessary burden on prime contractors, it could consider removing the requirements to contact ESBs from the program.
- **Change the program to become a contract goal program, with a good faith efforts compliance option.** Recipients of USDOT funds, such as the Oregon DOT, operate DBE contract goals programs. DBE goals are set for each USDOT-funded contract and prime contractors can meet the goals or show good faith efforts to do so. The City might consider changing its program to a traditional contract goals program (with individual or combined MBE/WBE contract goals, or with individual or combined M/W/ESB contract goals).

The City and County of Denver operates such a program, setting combined MBE/WBE contract goals on certain construction and professional design contracts. If the prime contractor is unable to meet an MBE/WBE contract goal on a Denver project, it can show good faith efforts to do so through means similar to the components of the City of Portland GFE Program.<sup>5</sup>

- **Add a subcontracting minimum to the current GFE Program.** The current GFE Program allows prime contractors to self-perform potentially subcontracted items. Only if it intends to subcontract a work item does the prime contractor need to show that it has contacted M/W/ESBs. The GFE Program does not explicitly encourage subcontracting of work items and has the potential to encourage self-performance of work.

The City might consider adding a program component that would encourage more subcontracting on City contracts. The City might consider an initiative similar to the City of Los Angeles' Mandatory Subcontracting Minimum (MSM) program. For each

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<sup>5</sup> <http://www.denvergov.org/web/candr/City-Ordinance/2006/20060760ord.pdf>

contract above a certain dollar amount, the City of Portland would set a percentage to be subcontracted based on an analysis of the work to be performed and past experience with similar contracts (different types of projects would involve greater or smaller amounts of subcontracting). For some contracts, the City could set no MSM. Prime contractors bidding on the contract would need to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be deemed responsive. The program would need to be flexible, including the opportunity for the prime contractor to request a waiver (preferably before time of bid so that the waiver would apply to each prime).<sup>6</sup> The City would need to consider whether the program described here is permitted under local and state law. The City might add this program element to any of the program options listed above.

## **G. Other City Programs**

The City operates other programs related to construction and construction-related professional services contracts as well. Several programs were created in 2009.

**Minority Evaluator Program.** Portland's City Council passed an ordinance in 2009 to include at least one person of color from the private sector and local community on RFP evaluation panels. This person must be vetted by the Alliance of Minority Chambers, a group with representatives from each of the minority chambers of commerce. Both the City and PDC have adopted the Minority Evaluator Program to encourage the inclusion of people of color in making recommendations regarding awards for professional services contracts.

BBC did not have sufficient information to assess the effect of the program, as the study period for the disparity analysis largely predated its implementation.

**Fair Contracting Practices Committee.** The City has coordinated a Fair Contracting Practices Committee at the advisement of the City's mayor. The committee was started in 2009 and has 20 participants. The committee meets quarterly and is comprised of community members, trade associations, small businesses and advocacy. The committee helps to identify issues and barriers to the success of MBE/WBEs and to serve as an advisory team to offer recommendations to encourage the utilization of those firms.

BBC did not have sufficient information to assess the effect of the program, as the study period for the disparity analysis largely predated its implementation.

**Professional services marketing and outreach efforts.** The City's professional services office conducts outreach activities targeted towards small businesses including MBE/WBE professional services firms. The professional services division hosts an annual workshop guiding local MBE and WBEs on how to develop a successful RFP. The workshop is available to all businesses including MBE, WBE and ESB professional service firms and attracts between 40 and 50 participants annually. The City's purchasing staff facilitates this effort.

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<sup>6</sup> A minimum subcontracting program corresponds to a neutral remedy listed in the Federal Disadvantaged Business Enterprise (DBE) Program, which suggests that agencies could promote participation of all small businesses, including MBE/WBEs, by "requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces." See 40 CFR Section 26.51 (b) (1).

Other professional service outreach efforts include:

- Presentations to various professional organizations and trade associations;
- Hosting exhibits at tradeshow, fairs and conventions;
- Providing one-on-one business orientations; and
- Advertising in media targeted to small businesses and MBE/WBEs.

These workshops and other outreach efforts are marketed through local newspapers, community organizations and partners and the email distribution list including SMP participants.

This program may have contributed to the high participation of MBEs in the City's construction-related professional services contracts. More might be done to encourage participation of WBEs in these contracts.

#### **H. Other Program Options**

The above options are not exhaustive, and the City should review the complete disparity study and other information to identify other possible ways to continue to remove barriers and encourage participation of MBE/WBEs in its construction and construction-related professional services contracts.

The City will need to ensure that any race- and gender-conscious programs it operates meet court requirements for such programs, including narrow-tailoring of those programs.