

Disparity Study Narrative

City of Portland – Portland Development Commission

Introduction

The City of Portland and the Portland Development Commission (PDC) are committed to equal opportunity through policies that promote diversity and equity in contracting. As part of that commitment, they engaged a nationally recognized consultant firm to conduct a disparity study on our current efforts to promote a “level playing field” for minority-and women-owned firms in contracting. The working assumption of this 18 month project is that the City can always improve its inclusive programs and services.

Need for a Disparity Study

- Through their business equity programs and small business support programs, the City of Portland and PDC encourage fair and equitable contracting for women and people of color.
- In 1995, the City and PDC took part in the Oregon Regional Consortium Disparity Study that examined public construction contracting methods. The 1995 Study concluded that minority and women-owned businesses were underutilized at the prime-contracting level.
- The 1995 Study also made a series of recommendations that resulted in the City's adoption of a Fair Contracting and Employment Strategy.
- Programs currently in place: Sheltered Market Program, Good Faith Efforts, Workforce Training & Hiring, Professional Services Marketing & Outreach.
- Data from the previous study is now stale and may not provide a sufficient legal basis to support the City and PDC's current Minority Business Enterprises (MBE) and Woman Business Enterprises (WBE) programs.
- This new Study evaluated the effectiveness of race and gender-neutral practices in public construction and construction-related professional services contracting as well as relevant City policies and practices.

Consultant and Team Selection

- In April 2009, a Request For Proposals (RFP) for a new Disparity Study was issued. The evaluation committee, which included community representatives, chose BBC Research & Consulting to perform the Disparity Study for the City and PDC. The selection panel included:

Carmen Rubio, Jaime Lim, Loretta Young, Linda Andrews and Tracy Reeve.

- For the City and PDC studies, BBC worked with 4 minority or women-owned firms, 3 of which have offices in the Portland area:

FM Burch & Associates (interviews)

Group AGB (data collection, procurement review)

Montesi & Associates (interviews)

Holland & Knight (legal counsel)

Customer Research International (telephone surveys & interviews).

- In September 2009 a contract was awarded to BBC in the amount of \$831,000 (City \$540,330 & PDC \$290,670).
- Commissioner Fish convened a Commissioner's Advisory Group which met five times during the process. Members included:

Marcela Alcantar: Alcantar and Associates – Small Business

Jason Lim: Asian Reporter

Nate McCoy: Portland Housing Bureau

Penny Painter: Native American Chamber

Maurice Rahming: National Association of Minority Contractors

Carmen Rubio: Latino Network

Andrew Beyer: Associated General Contractors

Rudy Martinez: Pacific Northwest Regional Council of Carpenters - Labor

Mel Sears: Parsons Brinckerhoff - Corporation/Large Business

- In April 2010, as a result of feedback from the Commissioner's Advisory Group, the study added construction related professional services contracts to the study. This added an additional \$75,000 to the City's portion of the study and the overall

contract value of \$906,000. The entire team agreed that extending the schedule to complete this added research was critical to the work product.

BBC Experience

- BBC is a 41 year old market, economic and policy research firm based in Denver, Colorado. They became involved in disparity studies shortly after the Supreme Court struck down the City of Richmond, Virginia minority-owned business program. Clients include large cities such as Phoenix, Fort Worth, Las Vegas and Columbus Ohio.
- BBC conducted the 1990 Denver disparity study and provided support to the City of Denver when it was sued by a local firm over the constitutionality of the program. The Denver minority and women-owned business program was upheld by the 10th Circuit Court in 2003.
- More recently, BBC conducted a disparity analysis for the California Department of Transportation (Caltrans). The Associated General Contractors of San Diego and the Pacific Legal Foundation challenged Caltrans in court. The United States District Court, Eastern District of California, ruled in favor of Caltrans in a summary judgment and found that the disparity study was comprehensive, included extensive statistical evidence as well as anecdotal evidence, provided substantial statistical and anecdotal evidence of discrimination in the California contract industry, and supported Caltrans' implementation of the Federal DBE program.
- Over the past 20 years, BBC has conducted disparity and availability analyses for over 80 state and local governments across the United States.

Timeline and Methodology

- BBC began the assignment in the fall of 2009 and presented a draft report to the City and PDC in January 2011.
- The study examined a five year contracting period from July 1, 2004 – June 30, 2009. Best practice dictates a 5 year study period. Since the City and PDC started the project in September 2009, the 2004 - 2009 period had the most current data.
- Research was conducted on procurement and contracting procedures and Minority, Women and Emerging Small Business programs, utilization, availability and disparities.

- The study team also evaluated the legal framework governing race and gender-neutral practices in public construction, analyzed marketplace conditions and explored possible explanations for any disparities.
- BBC developed a statistical model using US Census data and other information on the local marketplace. By compiling and analyzing many hundreds of bids and proposals on City contracts; performing telephone interviews with thousands of local businesses and conducting in-depth personal interviews with 60 business owners, trade associations and other individuals knowledgeable about local marketplace conditions.

Report Elements

- BBC's study stands as a three-legged stool. The courts have ruled that for a disparity analysis to have legal standing it needs to blend together 3 essential components:

1) Statistical results of utilization and disparity.

- For the statistical part of the study, BBC conducted a complex quantitative and qualitative analysis of MBE and WBE firms in a seven-county Metropolitan Statistical Area of Portland/Southwest Washington.
- BBC designed the availability analysis to be independent of any list (state certification, vendor list) as such lists might be too limiting. It requires data about MBE's, WBE's and majority-owned firms on an apples to apples basis. All firms were identified from a consistent source. (e.g., the state certification list could not be used as a standalone because no such list exists for non-certified or majority-owned firms.)
- The study team contacted thousands of firms by telephone to give them an opportunity to provide their experiences attempting to perform work with the City, PDC and in the local marketplace. Extensive efforts were made to contact local firms for specific types of City construction and construction-related professional services work.
- Firms were telephone surveyed and asked whether they were qualified and interested in City work, the types of work they conduct, sizes of contracts they perform and other firm characteristics.
- Not all contacted firms reported qualifications and interest in City or PDC work.
- Businesses that did express qualifications and interest were typically only available for certain types and sizes of prime or sub-contracts. (E.g., a

business might have only been in operation for a portion of the study period and thus only would have been available for certain years of contracts).

- Overall availability was determined by examining the number of MBEs and WBEs available for each prime and sub-contract in proportion to the total number of firms available for that prime or sub-contract.
- Contract-by-contract availability results were then aggregated on a dollar-weighted basis to determine the overall percentage of City contract dollars that might be expected to go to MBEs and WBEs.
- The accuracy of availability benchmarks (dollar –weighted percentage availability), not the size of the availability database is most important to the study.

The study took a comprehensive look at thousands of contracts issued or sponsored by the City and PDC. The study team examined the types of work involved, size of the contract or sub-contract, year of the contract and what if any City or PDC programs applied.

- Utilization of MBEs and WBEs on City and PDC contracts was compared to their availability for those types and sizes of prime and sub-contracts.
- BBC designed the availability analysis to be independent of any list (state certification, vendor list) as such lists might be too limiting. The consultants required data about MBEs, WBEs and majority-owned firms on an apples to apples basis.
- All firms must be identified from a consistent source. (e.g., the state certification list could not be used as a standalone because no such list exists for non-certified or majority-owned firms).

2) The catalogue of anecdotal evidence.

- The second part of the study consists of anecdotal evidence and in-depth interviews. BBC analyzed City and PDC contracting processes, local marketplace conditions and potential business assistance programs.
- There is evidence of disparities within the local marketplace. The anecdotal findings and interviews illustrated racism and discrimination in contracting, in addition to significant barriers for minority- and women-owned firms to do business in Portland.

- Annual revenue of certain MBE groups and WBEs is lower than other firms.
- MBEs and WBEs face greater disadvantages than other firm owners when seeking capital, bonding and insurance do.
- MEBs and WBEs face barriers to working as prime and sub-contractors on local public sector contracts.
- Current availability of MBEs and WBEs to perform City construction and construction related professional services contracts is less than what might be expected if minorities and women had the same opportunities to enter and advance within these industries.

3) The public comment in response to the report draft.

- The study team analyzed the comments and questions received during the public comment period following the release of the draft report. Public comment focused primarily on the level of availability.
- Input was solicited via a website, letters, Email and in a public forum.

The final report reflects the public comments in the following areas:

- Statements regarding experiences or program recommendations were added to the anecdotal and qualitative material within the report.
- A number of groups provided additional data or other quantitative information that was considered by the study team. Some areas of the report and appendixes were revised based upon what was learned.
- Questions/concerns about the study approach and alternative methods of analysis brought forward the need to expand and improve the discussion of the approach method.

Disparity in City of Portland Contracts

- The results of BBC's study were mixed, generally finding some disparity on City and PDC-owned contracts while discovering clear disparity on projects that received PDC funds without direct project management.
- There is evidence of disparities in the utilization of MBEs and WBEs when City Fair Contracting programs did not apply (e.g., disparities in the use of MBEs without the Good Faith Effort (GFE) Program).

- There are substantial disparities for prime-contracts for each MBE group and WBEs.
- Even with the City's program to encourage MBE/WBE utilization as prime consultants on construction-related professional services contracts there were disparities for WBEs. Example: Women receiving on-call contracts were not utilized as much as other firms receiving such contracts, and many received no work under those contracts at all.
- Some issues identified in the 1996 study were identified in BBC's study as well. Example: Disparities in prime-contracting with MBEs & WBEs, segmentation of large contracts to encourage opportunities, the need for business assistance and access to capital for MBEs and WBEs, relaxing or reducing bonding and insurance requirements.

Disparity in PDC Contracts

- The study found some disparity on PDC-owned construction contracts and construction and design service professional contracts. By "owned" we mean that PDC was the contract holder. The more control PDC had over contracts and projects, the greater the participation there was of minority and women contractors.
- The study found significant disparities existed on construction and professional services contracts that were not owned by PDC but to which PDC had sponsored through resources or funding. For example: public and public-private construction projects in the Portland region can typically have multiple partners and funding sources. These sponsored contracts represent 90% of all PDC contract dollars.
- The greatest disparities were in prime-contracting and personal services such as engineering and architecture. The disparities for women-owned firms were substantial on both construction and personal services contracts.
- During most of the study period, PDC's policy set a 20% Minority/Women/Emerging Small Business (M/W/ESB) goal that only applied to the amount of PDC resources given to the project.
- PDC's policy has changed considerably, most recently in spring 2010, and now has a 20% goal based on the total cost of construction, not just based on PDC's contribution.
- The disparity considered study business capacity, access, and equity on every project where we invest PDC resources are invested. It also points out that the

greatest disparities were found in an area where no PDC policy or program applies, such as on the professional services side of sponsored projects.

Process and Future Policy Making

- During the month-long public comment period, PDC and City leaders and the project team met with the community, the media, and key stakeholders to discuss the findings and the draft report.
- The project team is currently working with the Mayor's office, various City bureaus, and the MBE and WBE community to develop strategies to close the disparity gaps identified in the study.
- BBC found that the City and PDC should continue to enhance efforts to help all small businesses, regardless of race and gender and that the agencies may want to further research whether certain barriers to MBEs and WBEs can be minimized or removed.
- From the statistical results, the anecdotal evidence, and public comments we have legal grounds to continue and enhance current equity programs.
- Identified gaps in utilization provide the basis to change current PDC and City equity programs.
- Additionally, the study provides direction on issues such as bonding, insurance, prequalification, capacity building, access to capital, and other systemic obstacles to the success of minority- and women-owned businesses in Portland.

Immediate Actions

While developing the long-term, more detailed programmatic responses to the Disparity Study findings, the team has recommended that the following actions begin immediately:

- Outreach: Conduct quarterly outreach events, issue electronic notifications of solicitations, assist general contractors with outreach for sub-contracting opportunities.
- Forecasting: Initiate bureau representative meetings and look for alternative contracting opportunities as appropriate to encourage maximum opportunities for minority- and women-owned firms.

- Graduate all current Sheltered Market contractors (October 2011). Cease the Sheltered Market Program as it currently exists and create an improved and strengthened program to replace it.
- Review and revise the Contractor Prequalification Program. Require all requests for project specific special prequalification to be evaluated and approved by the Chief Procurement Officer before being applied. Approval of all prequalification requests \$250,000 and under will be based upon bonding capacity (as provided by a surety). Applications \$250,000 and under will not be forwarded to the bureaus for evaluation of additional prequalification criteria.