

Contracting Equity Committee Report

Presented to

Commissioner Dick Bogle
Department of Public Safety
Portland, Oregon

Prepared by

Committee on
Contracting Equity

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Introduction

On January 27, 1992, Commissioner Bogle appointed a Contracting Equity Committee. The committee consisted of: Ms. Audrey Castile, President, S & L Landscaping; Mr. Sam Brook, Executive Director, Oregon Association of Minority Entrepreneurs (OAME); Ms. Shirley Minor, President, SG Minor and Associates; Mr. Bill Supak, Executive Director, Association of General Contractors; Mr. Robert Walsh, President, Walsh Construction, Company; Mr. Carlton Chayer, Director, Bureau of Purchases & Stores; and Mr. James Posey, President, Workhorse Construction. Sam Brooks was asked to chair the Committee.

Mr. Clifford Freeman, Advocate for Minority, Women & Emerging Small Business, Governor Robert's Office and Lily Walker, Purchasing Manager for Multnomah County were invited to participate in the Committee's discussions.

Issues for Study by Committee

The Committee's purpose was to review current City purchasing policies and practices to identify ways to increase the use of M/FBE firms by City bureaus and agencies. Focus was to be on short-term administrative or procedural changes that could show results immediately. Issues identified for committee review included the following:

- a) Certification - role of formal State of Oregon process and options for a local, informal process to identify and track M/FBE usage.
- b) Identify ways to improve information going to firms interested in City business.
- c) Assess ways to improve utilization in the "informal" purchasing process (under ~~\$36,139~~ ^{37,982}). This includes both construction and goods and services from vendors.
- d) Assess the value of holding periodic training and technical assistance sessions on how to get business from the City.
- e) Assess value of City serving as a clearinghouse for business opportunity information with major public agencies within the region, e.g. Port, School District, Portland Community College, METRO, Portland Development Commission, etc.
- f) Assess effectiveness of current general contracting process. Are there changes which would foster a higher use of M/FBEs?
- g) City bonding requirements: problems, issues, solutions.
- h) City insurance requirements: problems, issues, solutions.

Committee Process

The committee met on five occasions to examine issues from M/FBE constituents, non-M/FBE constituents, and to review Purchasing data and background reports. The committee's work included reviewing several innovative programs from major cities including San Francisco, Chicago, Los Angeles and Seattle. Several sessions were spent discussing priority issues identified by members. The focus of the final two meetings was to develop and reach consensus on the final recommendations.

Numerous times during the deliberations of the committee members emphasized that only through a program with mandatory requirements for M/FBE subcontracting can consistent results be achieved. This was borne out when the committee reviewed the performance of the City's program since the January 1989 Supreme Court's decision in *Richmond v. Croson* (see attachment A). Performance has dropped off sharply since the Croson decision made mandatory programs illegal if the percentages for set-aside were not based on detailed documentation of past discrimination.

The following demographic and business ownership information was developed by the committee based on the recent business census. The figures for the percentages of M/FBEs getting City contracts were extracted from City records ^{and} are for State registered firms only, i.e., minority or female firms not registered with the State who have secured City contracts are not included.

Women comprise 51% of the Portland population, 20% of the business population, and were awarded City contracts in 1991 for the following percentages:

* Construction	4.81 %
* Professional Services	5.02 %
* Personal Services	.65 %

Minorities comprise 18% of the Portland population, 12% of the business population, and were awarded City contracts in 1991 for the following percentages:

* Construction	5.61 %
* Professional Services	6.84 %
* Personal Services	1.81 %

Recommendations

After due consideration the committee jointly submits the following recommendations. The recommendations have been grouped into two categories, the first are administrative changes which could be implemented very quickly, and the second set of recommendations will take additional time for study and development.

Administrative Changes

1. Pre-bid Conferences
The City should expand the use of pre-bid conferences on a selective basis depending on the size, complexity, and opportunity for subcontracting. Attendance for general contractors interested in bidding would be mandatory. Pre-bids will provide more opportunity for minority and female subcontractors to make contacts and develop working relationships with the general contracting community.
2. Informal Contracting
The City should use the flexibility of contract/purchases below \$2,500.00 to increase minority and female participation. Contracts between \$2,500.00 and \$37,982.00 which require three quotes should be rotated among capable M/FBE firms to fully utilize capable M/FBE firms.
3. Early Identification of M/FBE Subcontractors
Currently the City allows the low bidder on a construction project five days to identify the minority and female owned firms to receive subcontracts. The committee recommends reducing the time allowed to 24 hours. This change will reduce the opportunity for firms to "bid shop".
4. Account for non-Certified M/FBE Utilization
Currently, only contracts with State certified firms are used in compiling City M/FBE statistics. For various reasons, many M/FBE firms choose not to become certified, but still are awarded contracts by the City and are used by general contractors on City projects. Accounting for non-certified utilization will result in a more complete report of M/FBE useage.
5. Emphasize Non-Construction Contracting
Place more emphasis on non-construction areas in City procurement. Significant dollars are spent each year for equipment, supplies and services which should provide opportunities to increase the use of M/FBE firms.
6. Use M/FBE Organizations as Clearinghouses
The City should use additional M/FBE business organizations and associations such as ? on solicitation mailing lists and coordinate with them, based on their capacity to disseminate information to members.
7. M/FBE Advisory Committee
The City should establish a M/FBE advisory committee to evaluate program components, advise on ways to improve outreach and performance, and to report to Council on a semi-annual basis.

Recommendations Requiring Additional Development

1. Incentives
The City should develop rewards and incentives for City managers who achieve success in awarding contracts to M/FBE firms. Contracting performance should be a factor in a manager's performance evaluation.
2. Credit to General Contractor
The City should develop a program to give credit to general contractors in the following areas:
 - * Residency or a record of economic development performance in depressed areas.
 - * A record of employing residents from depressed areas.
 - * A record of participating in mentorship or training programs for disadvantaged populations.
3. Reduce the Size of Contracts
The City should bid contracts by specialty area or combination of specialties, where feasible, thereby enabling the down-sizing of contract totals making it easier for M/FBE firms to successfully bid.
4. Compliance
The City should designate sufficient staff to monitor and audit M/FBE compliance level of City bureaus and City contract awards and report to the City Council on a quarterly basis. Sanctions should exist to withdraw contracts and/or withhold payments for failure to comply with M/FBE requirements.
5. Insurance and Bonding
The City should develop in conjunction with other jurisdictions and public agencies a funding pool to assist M/FBE firms to meet bonding, insurance and other fee-related requirements.
6. Increased Contracting
The City should look for more opportunities to contract out work. Vending small construction projects currently done by City crews would increase the pool of work M/FBE firms could bid on.
7. Disparity Study
In cooperation with the State and other public agencies within the metro area, the City should take a leadership role in funding and participating in a disparity study. The initial step involves the funding of a feasibility study to hone in

on the issues and costs associated with undertaking the disparity study. A properly conducted disparity study would determine and document the extent of past discrimination and provide the means to establish specific goals and methods to remedy the past discrimination.