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## Audit Update: Procurement Services made limited progress to improve construction contracting equity

News Article



This is a two-year follow-up to our 2020 report, Equity in Construction Contracting: Some goals achieved despite mismanagement, waste, and gamesmanship.

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#### Translate this Page

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Contracting opportunities for private firms are one of Portland's fundamental tools to achieve its goal of ending racial disparities in City government. Our 2020 audit found that Portland's contracting initiatives reduced disparities, but also suffered from design flaws and mismanagement, and were vulnerable to gamesmanship. We made 16 recommendations to improve program design, oversight, transparency, and accountability.

Procurement Services has begun implementing some recommendations but not others, notably two intended to shore up the integrity of the initiatives. It

### Contact

KC Jones

Audit Services Director

✉ [kenneth.c.jones@portlandoregon.g](mailto:kenneth.c.jones@portlandoregon.g)

☎ [503-823-3544](tel:503-823-3544)

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also continued using the Prime Contractor Development Program, which we found disorganized, wasteful, and beneficial to few contractors.

(Chinese)

Procurement is implementing ten recommendations, including developing and reporting on program goals and conducting a disparity study to gather baseline data on the number of construction firms owned by women and people of color in Portland. Procurement implemented recommendations to confirm that programs could use ratepayer funds, centralize communications with contractors, and post project forecasts online.

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## Recommendations not implemented



- **Problematic technical assistance program still in place**

We recommended that Procurement eliminate the Prime Contractor Development Program's technical assistance offerings, which we found to be disorganized, wasteful, and in conflict with Procurement's role. These were long-standing problems, some of which were addressed in a [2010 audit](#). Procurement continued to offer technical assistance by contracting the work out to trade organizations. That may have addressed the conflict involved with Procurement both enforcing contract compliance and providing technical assistance, but a Procurement project manager continued to oversee and support the participating firms.

- **No data collection to monitor for bid-rigging**

We recommended that Procurement collect data on prices submitted for bid items to protect against collusion and bid-rigging. This risk is higher when equity programs limit the eligible pool of potential contractors. Instead of collecting data and monitoring for collusion, Procurement said it provides a list of prices to bureaus after project bids are submitted. This method does not allow for analysis to identify collusion across projects or bureaus, so the risk remains unaddressed.

- **No staff assigned to monitor the integrity of equity programs**

We recommended that Procurement appoint a procurement inspector to monitor, investigate, report on, and make recommendations about (a) the sufficiency of procurement regulations, (b) project-specific or citywide compliance with procurement regulations, (c) bid collusion, (d) questionable certifications, and (e) other procurement matters as appropriate, based on self-initiation or complaint. We made this recommendation because we observed potential issues, such as

problematic certifications, that Procurement staff said it did not have the authority to investigate. Procurement said it instead works with the City Attorney's Office and contracting bureaus to monitor and investigate non-compliant activity.

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## Recommendations in process



### Goal Setting and Reporting

- **Still working to develop goals for contractor and workforce grant programs**

We recommended that the City implement oversight steps for the workforce and contractor diversity grant program. These were outlined in its agreement with Prosper Portland and included obtaining all required performance evaluations and progress reports. During our 2021 progress report, we noted that Prosper was reporting data, such as the businesses and workers who received technical assistance, including demographics, success stories, and challenges. These reports continued into the following year, but the reports did not include goals to define success. The initial agreement outlining the program required Prosper to report on the achievement of measurable outcomes. According to the most recent update to the agreement, August 2022, Prosper and the City were still working to identify performance goals and a plan to track and measure them.

- **Procurement still struggling to report progress on equity goals**

We recommended that Procurement produce reports on the City's progress toward contracting equity goals. Procurement included the goals in its 2020 annual report but not its 2021 report. Staff said the omission was an oversight and Procurement plans to include the goals in next year's document.

- **Dashboard to recognize contractors and bureaus meeting equity goals in the works**

We recommended that Procurement recognize firms and bureaus that were successful at meeting goals. Procurement said it was working with stakeholders to create an online dashboard that would highlight bureau and contractor success.

### Disparity Study Needed

- **Planning to study whether overhead costs are justified**

We recommended that Procurement evaluate the results of grant awards on growth in the construction market and whether the City's costs to administer them were justified. Procurement collected anecdotal information about successful businesses from Prosper Portland's progress reports but did not understand the effect of the grants on the overall construction market. Procurement said it planned to conduct a disparity study to measure baseline participation by certified contractors in the market.

- **Baseline data needed to set goal for using certified prime contractors**

We recommended that Procurement set a goal for the use of certified prime contractors on construction projects. Procurement said that it could not set a goal until it commissioned a study to measure the number of available contractors in the construction market and whether there were demographic disparities present. Procurement's 2021 annual report included data on prime contractors participation but did not include a goal.

## **Prime Contractor Development Program**

- **Reporting on waivers may be part of revamped Prime Contractor Development Program**

We recommended that Procurement follow rules for documenting exemptions to the Prime Contractor Development Program. Procurement began requiring bureau directors to sign exemption forms but did not report how many there were. We recommended disclosure because our 2020 report found that more than half of eligible contracts were exempted from the program. Procurement said it was in the process of redesigning the program and would consider reporting the number of waivers as a part of the redesign.

- **Debate over future of the Prime Contractor Development Program continues**

We recommended that Procurement eliminate barriers by awarding all small contracts to certified firms without requiring participation in the Prime Contractor Development Program. As was the case last year, Procurement staff said it continued to engage with the contracting community to develop plans for the future of the program.

- **Continuing discussion about preventing project bundling**

We recommended that Procurement create criteria to prevent project bundling, which can negatively affect minority- and women-owned firms if it is used to group projects to exceed the threshold that qualifies projects for the Prime Contractor Development Program. As was the case at the last update, Procurement said that it continues to discuss this issue with stakeholders.

## **Other New Initiatives**

- **New position will be responsible for making sure communications about projects are fair**

We recommended that Procurement formalize tracking of communication between staff and vendors. Procurement said that the new Inclusive Contracting Manager would develop an outreach strategy to ensure fairness, increase awareness of opportunities, and remove barriers.

- **Intent to use post-project reports for program planning**

We recommended that Procurement use post-project reports to identify trends and lessons learned. Procurement said it plans to use post-project reports to inform future decisions, such as which resources to devote to workforce development, technical assistance, and a new contractor bonding program.

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## Recommendations implemented in year two



- **Confirmed funds from utility ratepayers can be used for workforce and contractor diversity grant programs**

We recommended that Procurement confirm funding sources for its workforce and contractor diversity grant programs. A Multnomah County judge ruled in March 2022 that the City could use utility ratepayer funds for the initiatives in accordance with criteria that links them to water or sewer services.

- **New Procurement position responsible for supplier diversity and inclusion**

We recommended that Procurement centralize and formalize outreach to contractors, certified firms, and suppliers to ensure consistency and fairness. Procurement created a new position, the Inclusive Contracting Manager, to build relationships with vendors and identify sourcing opportunities for equitable contracting.

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## Recommendations implemented in year one



- **Construction project forecasts are posted online**

We recommended that Procurement post upcoming projects on its website. Procurement has since posted quarterly construction project forecasts for Transportation, Environmental Services, Parks, and Water on the Fair Contracting Forum section of its website.

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[View the original 2020 report and recommendations.](#)

Visit our online dashboard to track the status of recommendations from other reports

**Audit Team: Elizabeth Pape, Performance Auditor II**