



ISSUE BRIEF

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LOCAL AND REGIONAL
GOVERNMENT ALLIANCE ON
RACE & EQUITY

Contracting for Equity

Best Local Government Practices that
Advance Racial Equity in Government
Contracting and Procurement

by Tim Lohrentz, Insight Center for Community Economic Development



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LOCAL AND REGIONAL
**GOVERNMENT ALLIANCE ON
RACE & EQUITY**

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INTRODUCTION

INCLUSIVE CONTRACTING REFERS to the process of creating the environment for businesses owned by people of color and/or women to participate in a governmental procurement and contracting process.¹ Inclusive business participation in local government procurement and contracting is an important source of income and jobs in communities of color and helps to strengthen community and business partnerships. It strengthens communities within the jurisdiction both economically and socially. It also allows governments to express their values with the dollars that they spend. Procurement is one of the more important local government functions – valued at \$23.4 billion annually, for instance, in the case of New York City.² Although procurement and contracting has become more formalized and codified over time, it is not necessarily more equitable.

Local governments procure and contract for a variety of things – from complex construction or architectural services to supplies to keep the government running. Before the Civil Rights movement, government contracting and procurement policies and practices generally excluded people of color and women. Although discrimination is now illegal, government procurement and contracting is generally not equitably distributed. Contracting inequities are both internal to the government – how the government does business – and also external – driven by the larger economy and how prime vendors and prime contractors to the government do their business.

Within governmental jurisdictions that are working to advance racial equity a common area of interest is the spending of government dollars.

Our goal: local and regional government dollars used for contracting, consulting and procurement should benefit the communities we serve, proportionate to the demographics in our communities.

This issue brief from the **Government Alliance on Race and Equity (GARE)** provides a common approach to furthering the field of practice of contracting equity within government. We have assessed current successes and challenges of jurisdictions that are a part of GARE, as well as identified additional jurisdictions that are furthering the field of practice.

Over the last 15 years a growing number of local governments are addressing institutional and structural barriers and seeking sustainable change – change that is mandated through policy but also begins to happen naturally through comprehensive cultural change. Many jurisdictions proactively working to advance racial equity take a comprehensive approach, utilizing a myriad of strategies depending on their own local context. They often draw upon a variety of specific race-neutral (non-mandated) strategies, or in some cases race-conscious approaches.

This brief begins by providing an overview of the status of contracting equity within the public sector and barriers to contracting equity. We then offer policy and practice strategies that are designed to advance greater contracting equity within the public sector. Our recommendations include:

- **Past Discrimination:** Policies should state the intent to overcome past discrimination and to create contracting equity. Policy and programs should impact behaviors and practices of the jurisdiction as much or more than the behaviors of prime contractors and prime vendors.

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- **Flexibility:** A strategy should match the conditions and laws of the local jurisdiction and should be flexible – if a strategy is not working, a different approach should be tried.
- **Unintended Consequences:** Regulations and practices should be examined in a careful and detailed way to ensure that unnecessary barriers are eliminated for small and diverse firms.
- **Multi-faceted:** Programs should be comprehensive and multi-faceted to match the complex systemic barriers.
- **Cultural Change:** Strategies should create a framework for cultural change in addition to change stemming from regulations. A cultural change permeates all structures related to the procurement and contracting process so that all people involved are thinking equity and non-discrimination. Over time, this cultural change begins to be embraced by the prime contractor and prime vendor communities.
- **Capacity Building:** Contracting equity programs should contain or should connect to capacity building programs. In this way the jurisdiction is dealing with availability (expanding the vendor pool) not just utilization.
- **Expand and Replicate:** Contracting equity programs should collaborate with other jurisdictions, expand their principles into other areas of the jurisdiction, and when they have arrived at a successful strategy, replicate it with other jurisdictions.

OVERVIEW OF CONTRACTING EQUITY

A TRADITIONAL STRATEGY to address contracting equity has come through the establishment of mandated sub-contracting goals, beginning with the federal government in the early 1970s. In 1989, the Supreme Court ruled in the Croson case that the City of Richmond, Virginia, could continue its MWBE sub-contracting program if it was more narrowly tailored – based on availability rather than population – and based on a disparity study. The ruling resulted in the use of disparity studies as a staple of local government race-conscious programs, which usually have mandatory sub-contracting goals. Disparity studies compare the availability of MWBEs for specific types of work to the utilization of MWBEs for that type of work. When disparities exist, a race-conscious approach is appropriate and allowable.

Voters or legislators in six states have made it (almost) impossible for states or local jurisdictions to operate race- and gender-conscious programs, like mandatory sub-contracting goals: California, Washington, Michigan, Nebraska, Arizona, and Oklahoma. State governments and local jurisdictions in these six states are limited to race- and gender-neutral measures, meaning no overt preferences based on race or gender. The anti-affirmative action measures passed in these states also impact public employment and higher education.

Minority business enterprises are often less available³ and have lower rates of utilization when it comes to government contracting and procurement due to five primary factors⁴:

ON TERMINOLOGY

Contracting equity language differs from jurisdiction to jurisdiction, with common terminology including Minority and Women Business Enterprises (MWBE), Historically Underutilized Businesses (HUBs) and Small Business Enterprises (SBEs). In this paper, we generally use MWBE unless referring to a specific program that uses other terminology.

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- Differences in capital for business start-up or expansion
- Differences in education level
- Differences in experience growing up in a family business
- Differences in social networks
- Overt discrimination or racism (being denied a contract or business relationship due to one's race)

These factors impact minority business enterprises at many points over their life course. These points become key opportunities for the local government to be proactive and address the underlying barriers to success. Structural barriers enter the governmental procurement and contracting process in many ways:

- On average, people of color are less likely to grow up in a household where someone owned a business, resulting in less intuitive knowledge about how to run a business and how the government contracting process works.
- Generally, people of color are less likely to own a business and, if they do, their businesses are smaller on average. This means a lower rate of availability for government contracts, per population compared to white-owned businesses.
- People of color tend to have fewer assets and more debt than whites, meaning that minority business owners generally have less in savings and other assets that can be used to finance the business, especially when cash-flow is needed for a government project.
- Minority business owners tend to have fewer connections to and established relationships with prime contractors, making it less likely they will be asked to become a sub-contractor.
- Depending on the place, minority businesses may find high levels of discrimination in the private market place, making it hard to diversify their markets outside the governmental realm and making it especially difficult to expand beyond government contracting programs, especially important for jurisdictions that have time or size restrictions to their programs.

STRATEGIES TO ADDRESS STRUCTURAL BARRIERS TO PROCUREMENT

THERE ARE A NUMBER OF POTENTIAL government procurement strategies that can be leveraged to address structural barriers. The chart below highlights how jurisdictions can use critical moments over the life course of a minority owned business to address these barriers. Local governments are especially well-positioned to deal with issues of structural barriers in business development because it is an issue not only of utilization (within the procurement process) but also availability (whether the businesses exist in the first place and are able to do the work). Local governments, especially cities, are the typical level of government dealing with small business development in the context of both neighborhoods and economic development. Cities balance attracting large businesses through

large financial incentives – smokestack chasing – and developing small businesses, including in low-income neighborhoods. Local governments that tackle small business development in low-income neighborhoods and equity in contracting policy are reaping benefits from two different angles.

Key Moment	Structural Factor	Strategies
Getting a contract	Social networks, capital access, overt discrimination	Mandatory or aspirational sub-contracting programs; required diversity plan; bid discount; grading primes. Networking activities. Loan programs.
Getting utilized, getting paid	Social networks, overt discrimination	Contract compliance staff; transparent, accessible, online sub-contracting system. Prime-sub networking
Building bonding capacity	Capital access, education level, growing up in a business family	Training, coaching. Loan programs. Requiring graduated levels of bonding for sub-contractors (depending on their experience)
Obtaining a (larger) prime contract	Capital access, growing up in a business family, social networks	Small business set-aside or bid discounts. Loan programs. Mentor-protégé or coaching. Social networking.
Transitioning out of MWBE or SBE program	Social networks, growing up in a business family, overt discrimination	Social networking. Mentor-protégé. Bid discounts.

In light of this analysis of the structural barriers present in business development, this brief includes a review the inclusive procurement strategies and activities of seven members of the Government Alliance on Race and Equity: the Metropolitan Council of the Twin Cities (METC), Minneapolis, Multnomah County, Saint Paul, Seattle and Tacoma. We also examine four other cities: Grand Rapids, Houston, New York, and San Diego. Our review explores three levels within the contracting and procurement process:

1. Policy – establishing an overall policy that advances equity within the localized context
2. Strategy – developing and implementing specific strategies that are implemented and tracked to ensure meaningful results
3. Practice and Regulation

Then we will look at four other critical issues:

1. Comprehensiveness
2. Cultural Change in Local Government,
3. Capacity Building, and
4. Collaboration, Expansion, and Replication.

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1. POLICY

Inclusive contracting and procurement policy is an expression of the elected body to commit themselves to addressing past and present institutional barriers in business development and the governmental procurement process. At the same time, local governments may also choose to address the processes that inherently favor large businesses, especially corporations, over small businesses (or small and local businesses) with a small business enterprise contracting program.

Some elected bodies also prefer to pass ordinances that stipulate and describe the strategies that will be utilized to achieve the policy. In other cases, the executive office formulates a series of executive orders that detail the strategies that will be undertaken. One main advantage of the elected body (i.e. city or county council) passing the details of the strategy is that it has more permanence and is not subject to the decision of an “unfriendly” executive that may change more quickly over time. The main advantage of an Executive passing an executive order is there is greater ownership and investment in the process and might be more likely to administrate in a way that makes the program succeed. There are more than a few examples of policies passed by councils where an executive is not on board, where the program languishes ineffective, staff become burned out, MWBE firms become resentful, and the general public becomes skeptical of diversity programs. It can take many years to repair this type of situation.

Seattle (see sidebar) utilizes a city council ordinance for a broad statement⁵ and specific executive orders⁶ for program strategies and details.

2. STRATEGY

There are four broad strategies that local and regional governments can undertake to promote fairness in the procurement and contracting process:

- **Race and gender-conscious strategies.** These strategies mandate action in favor of businesses that have generally been discriminated against – minority and women business enterprises (MWBE). These strategies must deal with jurisprudence, such as required (expensive) disparity studies.
- **Race and gender neutral strategies.** These strategies have actions that aim to remove barriers for MWBEs without any type of mandated preference or required favoring action. It’s a tricky distinction – jurisdictions like Seattle, King County, and the State of Washington have been pushing the envelope toward the edge of the race and gender-conscious strategies. (right)
- **Small business enterprise (SBE) strategies.** These strategies favor small businesses to counter the advantages of large businesses especially corporations. In some cases they provide an advantage to emerging (new and very small) or micro (very, very small) businesses through bid discounts, mandated sub-contracting, set-asides, or similar strategies. MWBE procurement might be tracked within the SBE program but there are not any specific strategies to level the playing field for MWBEs, other than MWBE firms being somewhat more likely to be small businesses.
- **Local business enterprise strategies.** These strategies favor local businesses (usually within a county) over non-local businesses. Although they can be effective for isolated places like Hawaii and Appalachia, if not combined with an SBE component, these

SEATTLE'S ORDINANCE AND EXECUTIVE ORDERS

Seattle City Council passed a broad policy ordinance in 2005:

“The purpose and intent ... are to provide the maximum practicable opportunity for increased participation by minority and women owned and controlled businesses, as long as such businesses are under-represented, and to ensure that City contracting practices do not support discrimination in employment and services when the City procures public works, goods, and services from the private sector.” (partial)

As an example of the Executive Orders, in April 2014, Mayor Ed Murray passed an Executive Order that “requires departments promptly pay invoices, support businesses by providing technical assistance, and increase accountability and coordination to ensure fair and equitable treatment among all businesses competing for public works, purchasing and consulting contracts.” The Executive Order also directed departments to unbundle tasks.

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strategies tend to be based on a false us versus them view of the local economy and increases the likelihood that neighboring jurisdictions will pass similar laws, putting local businesses at a net disadvantage. A few cities have passed neighborhood-specific local business contracting.

We will look in more detail at the first three of these strategies.

RACE AND GENDER-CONSCIOUS BEST PRACTICES

Among the interviewed members of GARE, the City of Minneapolis and Metropolitan Council of the Twin Cities have chosen this strategy and their approach includes the following best practices:

- **A large scope, with a relatively low threshold.** In Minneapolis's case, sub-contracting goals apply to professional and technical services over \$100,000 and to commodities and services over \$50,000. In the case of the Metropolitan Council, there are required MCUB sub-contracting goals on projects over \$50,000.⁷
- **Sets separate MBE and WBE goals for each contract.** While only the overall MWBE goal is mandatory, separate aspirational goals encourage prime contractors and vendors to find multiple sub-contractors to fill the goals. New York City takes this concept even further, with specific aspirational sub-goals for each race/ethnicity by gender for each type of city spending.
- **Sets an aggressive overall MWBE goal.** Minneapolis' overall goal was set at 22% from its last disparity study. As a result of its high goal, Minneapolis attained between 21% and 22% MWBE contracting in the last year. Choosing the right disparity study firm makes a big difference in how aggressive a local government can be with its goals.
- **Updating disparity studies.** A disparity study has about a five-year shelf life. Minneapolis will soon be receiving bids for a new disparity study, jointly with Saint Paul and other jurisdictions.

RACE AND GENDER-NEUTRAL MWBE STRATEGIES

These strategies attempt to specifically address race and gender without mandating participation. The specific methods vary, but generally involve attempts to influence contracting behavior (prime and sub) without mandating it, in relation to race and gender. Among GARE members, Seattle, Saint Paul, and Multnomah County all have some type of race and gender-neutral MWBE strategy. Race and gender-neutral MWBE strategies include:

- **Seattle:** A required inclusion plan on the part of prime contractors. The content of the inclusion plan is voluntary. Upon signing a contract, the implementation of the inclusion plan becomes mandatory.
- **Saint Paul:** A required SBE plan with a required overall SBE sub-contracting goal. Within the overall SBE goal are aspirational SBE (non-MWBE), MBE, and WBE sub-goals. Sub-contractors have to be identified at the bid stage. This is a similar strategy to King County, Washington. When King County implemented the aspirational MBE and WBE sub-goals embedded in SBE goals, MWBE sub-contracting dollars tripled in one year on construction projects.
- **Multnomah County:** Similar to Seattle, bidders on larger projects must make a good faith effort to include MBE, WBE, and/or ESBs (Emerging Small Businesses) for an invitation to bid, with no specific goal stipulated. The county can find the good faith efforts of the low bid to be non-responsive. For Requests for Proposals or alternate

procurements, proposers are required to indicate the level of MBE, WBE and/or ESB utilization in their proposal, which is evaluated. The winning contractor must also submit a diversity plan as part of the contract for approval.

- **Metropolitan Council of the Twin Cities:** Requires three MCUB bids or quotes on supply purchases.

The first three strategies listed here are similar in that they incorporate an inclusion plan or good faith effort (without expected goal). Saint Paul and Multnomah both include all Small Businesses (Emerging in the case of Multnomah), while Seattle does not.

SMALL BUSINESS ENTERPRISE (SBE) STRATEGIES

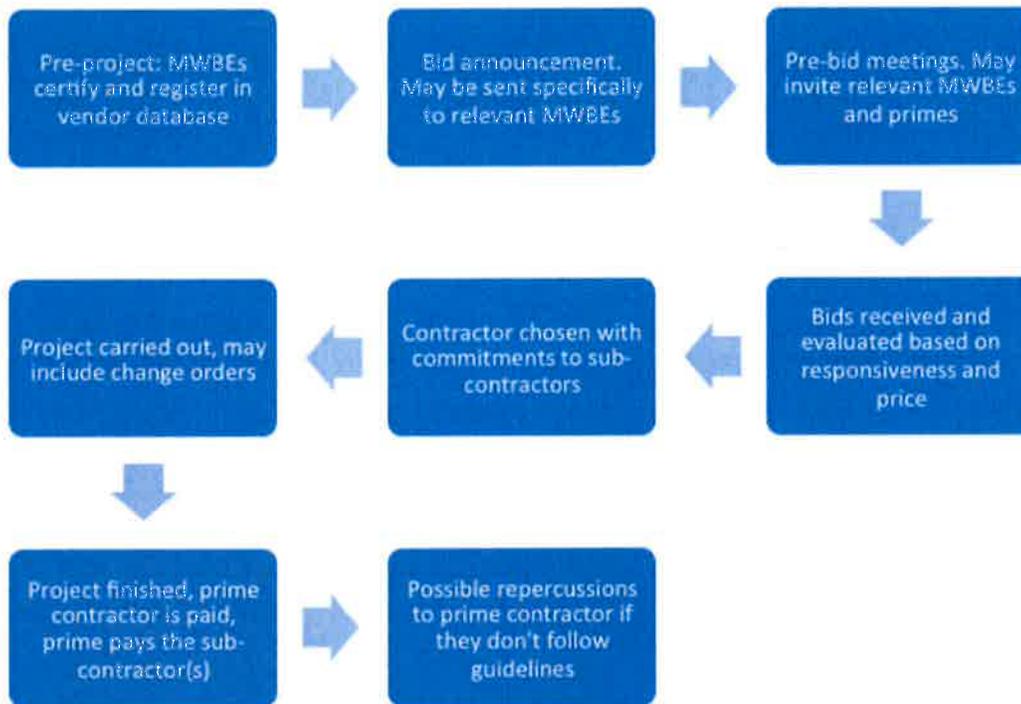
SBE strategies provide a preference for small businesses in the procurement and contracting process. They are sometimes called Micro Business Enterprise, Emerging Business Enterprise, Community Business Enterprise, and Local Business Enterprise (if they also include an SBE component). Unlike race-conscious and race-neutral MWBE strategies, SBE strategies do not have specific strategies to address racial or gender disparities, although they may track MWBE contracting amounts. This section will look at GARE members Tacoma and Multnomah County (another of its strategies), as well as Grand Rapids and San Diego.

- **Tacoma.** Tacoma utilizes a SBE bid discount. Projects have an SBE sub-contract goal, although it is not required. If a bid meets the SBE goal then a 5% bid discount is applied, which might help it to attain low bid status. Attainment of 50% of the SBE goal provides a 2.5% bid discount.
- **Grand Rapids.** Grand Rapids also employs an SBE bid discount in the context of many values-based bid discounts (sustainability, etc.). Prime contractors receive a bid discount if they sub-contract with a Micro Local Business Enterprise (MLBE) (1/4 of the SBA standard). The MLBEs can gain the bid discount themselves if they bid on Goods and Services.
- **Multnomah County.** Multnomah requires at least three MWESB bidders on intermediate projects between \$10,000 and \$150,000, increasing the possibility for small and diverse firms to win prime contracts.
- **San Diego.** San Diego has two appealing SBE strategies. First, it utilizes a SBE sub-contracting program that applies on construction projects larger than \$500,000. San Diego has another SBE strategy that is complementary to any of the other strategies, including race-conscious and race-neutral: an SBE set aside on small-to-medium sized projects. Only SBE firms are allowed to bid on construction projects below \$500,000 and in some cases on professional services. Jurisdictions considering such a program should recognize that the parameters can change, but a cut-off at \$500,000 like San Diego or higher is generally desired. This type of set-aside, also called reserve or sheltered market, is one of the only contractual vehicles to assist MWBE firms to bid as primes.

3. PRACTICE AND REGULATION

The practices and regulations which direct the contracting process happen within the process of contracts. Often contracts go through a process that includes at least eight key steps, illustrated in the graphic below.

Equally important as good policy are the practices of the contracting process that allow for a well implemented inclusive contracting and procurement strategy. At times those practices are codified in regulations. This section highlights some promising practices of the GARE members and other jurisdictions. Using a Racial Equity Tool to analyze specific



practices and regulations allows jurisdictions to ensure that there are not unintended consequences of facially race neutral practices and regulations and to proactively integrate racial equity into practices and regulations. This list is only a small sample of good inclusive contracting and procurement practices:

- **Multi-jurisdictional certifications.** Certification is the process of documentation of the eligibility of a business for a program and is a good practice if there is any benefit or perceived benefit of a program. Even in an SBE program, the size of a business should be certified by staff, rather than just a self-registration. When various jurisdictions share a certification process it eases the burden on the businesses and increases the diverse vendor pool for all the participating jurisdictions. Saint Paul is leading efforts like this in Minnesota.
- **Clarity and collaboration on goal setting.** Gaining buy-in from all city agencies down to the project manager and engineer level is key when it comes to setting goals on individual projects or proposals. Minneapolis has been building this type of collaboration with city agencies.
- **Committing to sub-contractors at bid time.** The METC requires primes to make specific commitments to sub-contractors at the time that a bid is submitted.
- **Monitoring a contract to the end.** New York City follows goal commitments and participation level through the life of a contract, including change orders and payments, noting that it takes extra staffing. Online contract monitoring tools can make this easier.
- **Extra prompt payment to subs.** Sub-contractors can often be the last ones paid and are least able to afford the wait. Seattle requires primes to pay subs before the primes can invoice and get paid themselves.
- **Repercussions.** In Seattle, if the prime does not implement its inclusion plan, payment can be withheld and the City could decide to not use them again indefinitely, or could debar them from doing business with the City for ten years.

- **Capacity-building requirement.** Multnomah County requires primes to state in their proposals how they will build the capacity of sub-contractors. On large projects the prime is required to mentor at least two MWESB business enterprises.
- **Assisting departments with solicitation requirements.** Multnomah County conducts significant training and coaching for county agencies to ensure that its requirement for at least three MWESB bidders on intermediate projects/procurements and the County's social equity requirements on larger projects/procurements are followed.
- **Assisting all departments to participate.** Houston encourages all city departments to participate in its program by codifying their participation and interfacing with them through individual coaching as well as trainings. They hold quarterly meetings with each department to review outcomes and discuss how they could make improvements. The Director of Houston's Office of Business Opportunity also interfaces with each contracting department's Director and staff. As a result, departments have become more engaged and are enthusiastic about the program.
- **Redefining master contracts.** The METC worked to redefine master contracts to have smaller scopes, allowing several MWBE/DBE firms to win master contracts.
- **Proactively helping the teaming process.** The METC also worked with MWBE and DBE firms to form a team, with one being lead on a large project outside of their jurisdiction. The team successfully won a large design contract.

4. COMPREHENSIVENESS

Successful inclusive procurement systems are characterized by a comprehensive approach, including multiple strategies (among those listed above) and by having a process for continual program improvement through consistent opportunities for program analysis as well as feedback from multiple users, including MWBEs. Among GARE members, Seattle provides a good example.

Seattle starts from a broad Race and Social Justice policy that was passed by the City Council and later re-affirmed by subsequent councils. Paraphrasing, it says, "We won't discriminate and we will repair institutionalized discrimination." Institutionally, Seattle's Race and Social Justice Initiative (RSJI) has included contracting equity as a key component of each department's annual work plans for nearly a decade. Each city department has an embedded RSJI Change Team and point people for contracting equity. Having a representative, advocate, or staff person in each department is a best practice.

Primes are required to have an inclusion plan. There is a minimum of what is accepted – if the minimum threshold is not met, the entire bid can be thrown out as non-responsive. The primes have to state what they can do at or above the minimum threshold. Once a prime wins the bid their inclusion plan becomes part of the bid and its usage is required.

Structurally, in addition to the centrally led Race and Social Justice Initiative, a Social Equity office in the Administrative Services Department operates on the concepts of accountability, visibility, and cultural change. The program is accountable to the public and advocates – they schedule meetings with the advocates to discuss and critique what is happening with the program. Staff members attend meetings of the business chambers and associations. The Social Equity office also creates visibility and accountability with the Mayor's office. The Social Equity Office reports MWBE outcomes to the Mayor and City Council and the results are placed in department director performance reviews. There is accountability down the chain with staff in the departments as well.

Seattle's cultural environment reflects openness to risk rather than an aversion to it. With city staff, such as engineers, there is frequent coaching to emphasize the desire to have

MWBE participation. RSJI and Contracting Social Equity staff members educate other city staff about institutional and structural racism.

Outreach events can build trust, create social capital, and share information. Seattle conducts extensive outreach that includes trade shows, bid announcement events, advertising, and after-hours business parties.

5. CULTURE CHANGE IN LOCAL GOVERNMENT

A culture of change strategy looks to change attitudes and awareness which will lead to changes in habit and behavior. Its primary focus is cultural change within the local government, which will then extend out to business relationships, like prime contractors, instead of solely relying on mandating prime contractors to have sub-contracting goals.

GARE jurisdictions Metropolitan Council of the Twin Cities (METC) and Seattle, as well as New York City, provide examples:

- Through many years of coaching and training, the METC has changed the culture so that technical project managers now come to inclusion staff with ideas of how there could be more inclusion on a contract.
- Seattle has several examples already mentioned in the above section, including coaching of city engineers, building trust with business associations with the presence of the Director at (some of) their meetings, and creating accountability with the community, the Mayor, and City Council.
- The New York City Comptroller also created accountability by giving each city agency a grade for its procurement inclusion efforts and results along with a narrative explanation.* They only graded efforts from B's through F, since every department had room for improvement.

6. CAPACITY BUILDING

Best practice inclusive procurement programs have a fluid and sometimes strategic relationship with the jurisdiction's economic development department to ensure that business development resources are shared with low-income and racially diverse neighborhoods, and that MWBE firms receiving business services are directed, as appropriate, to the jurisdiction's procurement process. Conversely, the inclusive procurement office needs to know that MWBE firms doing business with the jurisdiction have appropriate business development services at the economic development office, preferably with a counter-referral set-up.

We briefly look at four aspects of capacity building that inclusive procurement offices can initiate themselves including: small business development; bonding, insurance, and finance; certification and doing-business assistance; and vendor outreach and networking.

FOCUSED SMALL BUSINESS DEVELOPMENT

A typical strategy for small business development services, especially for counties is to partner with outside agencies. Tacoma partners with several agencies to provide various trainings that are geared towards development of businesses in expanding sectors of the economy. Similarly, Minneapolis has technical business development provided by culturally appropriate community providers. The METC has very focused small business services with the goal of helping MCUB sub-contractors to become primes over a long period of time, a best practice.

Similar to the METC, Houston has an intensive 7-month training to prepare sub-contractors to become prime-contractors entitled Build Up Houston. Houston targets construction companies, focusing on capacity building and bonding education. The City partners with the University of Houston and uses the Interise curriculum.⁹ While in the program, companies have a 360 degree view of themselves. The first class of 10 MWBE firms graduated in late May 2015 and there are already several concrete gains. Houston has also created a mentor-protégé program along with three other local jurisdictions, with 20 companies enrolled as protégés and a dedicated group of mentors.

BONDING, INSURANCE AND FINANCE

Minneapolis is innovating in its bonding requirements by putting in place a group policy bonding, where a group of contractors (i.e. primes and subs), can be bonded together. Generally, bonding programs that have an outcome of increasing the bonding capacity of MWBEs are desired. Minneapolis has put in place a working capital loan program where sub-contractors can collateralize city sub-contracts. Similarly, New York City has a capital access loan program for sub-contractors funded by fines levied on primes for not meeting goals.

CERTIFICATION AND DOING-BUSINESS ASSISTANCE

Saint Paul may be the most innovative of the jurisdictions in this brief when it comes to certification assistance and how-to-do-business with the city. It provides trainings on bidding and on certification as well as other topics. In addition, Saint Paul trained Americorps workers at city libraries to use the city online vendor system, including online certification, so they can assist MWBE and other business owners at the libraries. In another example, Seattle has trainings on how to prepare a competitive bid.

VENDOR OUTREACH AND NETWORKING

Several jurisdictions, including Multnomah County, the METC and Tacoma, host pre-bid events prior to large projects, inviting firms based on industry codes.¹⁰ METC conducts outreach events at the project sites so that potential bidders and sub-contractors can ask technical questions while touring the site. Multnomah's outreach includes partnering with a broad range of organizations. Saint Paul hosts vendor fairs that include many city departments with engineers and technical people, primes, and MWSBEs.

7. EXPANSION, COLLABORATION, AND REPLICATION

Two city procurement programs have found ways to expand the scope of their program to other operational areas of the city. New York City encourages investment firms that handle the city's retirement fund to have board diversity and to have a supplier diversity program. Saint Paul applies its inclusive contracting requirements to economic deals that receive funding from the city.

Minneapolis collaborates with other jurisdictions with the intent of sharing best practices by initiating a discussion group with many other jurisdictions in the region. Multnomah County has also forged collaboration among public agencies in the Portland area.

Seattle is working with other jurisdictions in Washington to utilize their strategy of requiring an inclusion plan, the contents of which are voluntary, but the implementation of which is required. This is an excellent proactive and preferred way to deal with Washington's Initiative 200 which forbids preferences. Saint Paul is replicating use of its online vendor tool and through that encouraging replication of its contracting strategy. The online vendor tool includes a database of certified MWSBE firms. There are eight community sub-

scribers to its online vendor tool which are utilizing it to diversify their own purchasing, including the Minnesota Council of Foundations (which shares the tool with its member foundations), the Minnesota Sports Authority, the Port Authority, the University of Minnesota, and District Energy. Saint Paul doesn't just share the tool, it follows up with subscriber round-tables, helps answer questions, and organizes outreach events with the subscribers and MWSBE vendors.

CONCLUSION

CONTRACTING EQUITY PROGRAMS help spread economic development to all areas of a jurisdiction and allow it to express its values of inclusion. Contracting equity policies and programs should be based on an analysis of the particular barriers faced by minority and women business enterprises in a specific place.

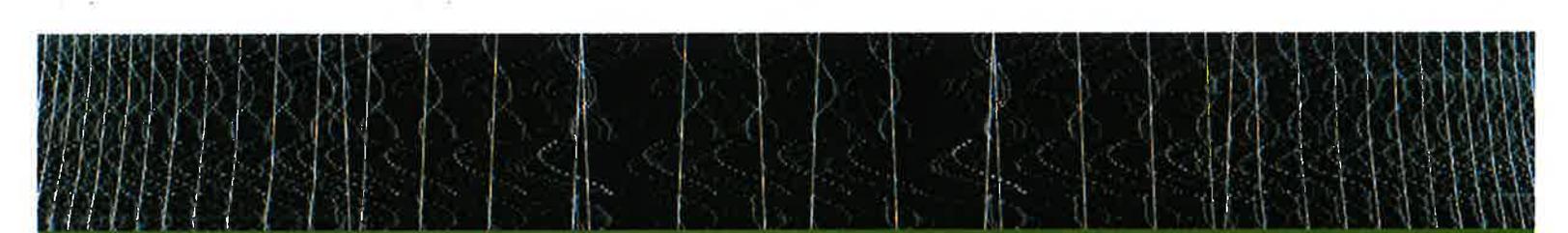
The key building blocks of a contracting equity program are a clear policy that demonstrates the buy-in of the jurisdiction's elected officials, a multi-faceted strategy that is tested by outcomes and community feedback, executive office support, and a continuous process of enhancing the program. All components of the program should have the goal of building trust with the community and key-stakeholders.

Six states have restrictive laws for contracting equity programs. In spite of these laws, some jurisdictions – Seattle is one example – have found ways to create innovative programs. Some of these jurisdictions have focused on changing the culture both within and outside of the jurisdiction so that inclusion becomes the norm and second nature.

Several GARE members employ best practices in contracting equity and have examples and resources to share. These best practices cover the range of strategies that any jurisdiction might wish to employ. Working together and learning from each other, GARE jurisdictions can eliminate structural barriers and create an inclusive procurement and contracting environment.

ENDNOTES

1. Language relating to contracting equity varies across the country. Common terminology includes Minority-Women Business Enterprises (MWBE), Historically Under-Utilized Businesses (HUB), and Disadvantaged Business Enterprises (DBE). The common goal across these programs is contracting equity. For ease of access, we will use MWBE throughout this issue paper.
2. New York City Comptroller. "Annual Summary Contracts Report for the City of New York," Fiscal Year 2014. Page 8. Accessed: http://comptroller.nyc.gov/wp-content/uploads/documents/Annual_Report.pdf.
3. Compared to what one would expect given a population percentage.
4. See, for example, Bates, Timothy M. Race, Upward Mobility and Self-Employment. John Hopkins University Press, Baltimore, 1997, and Boston, Thomas D. and Catherine L. Ross, ed. The Inner City: Urban Poverty and Economic Development in the Next Century. Transaction Publishers, New Brunswick, 2002.
5. See <http://clerk.seattle.gov/~scripts/nph-brs.exe?s3=&s4=121717&s5=&s1=&s2=&S6=&Sect4=AND&l=0&Sect2=THE-SON&Sect3=PLURON&Sect5=CBORY&Sect6=HITOFF&d=ORDF&p=1&u=%2F~public%2Fcbor1.htm&r=1&f=G>
6. <http://www.seattle.gov/news/detail.asp?ID=14323&Dept=56>
7. In the Metropolitan Council Underutilized Business (MCUB) program, firms must be certified as either a Disadvantaged Business Enterprise (DBE), a state Targeted Business (MWBE or disabled BE), or a Veteran's BE. They track MBE and WBE within the MCUB program.
8. See http://comptroller.nyc.gov/wp-content/uploads/documents/Making_the_Grade.pdf
9. See <https://www.interise.org/>.
10. NAICS or North American Industry Classification System



**Across the country,
governmental jurisdictions are:**

Making a
commitment
to achieving
racial equity

Focusing on
the power
and influence
of their own
institutions

Working in
partnership
with others

**When this occurs, significant leverage
and expansion opportunities emerge,
setting the stage for the achievement of
racial equity in our communities.**

Inclusive Procurement and Contracting: Building a Field of Policy and Practice



PolicyLink

Executive Summary

Denise Fairchild and Kalima Rose
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- State and local governments are the most important venues for advancing inclusive procurement and contracting policies in the infrastructure sector. Federal infrastructure investments are blended with local public funds, and a great deal of infrastructure investment is exclusively derived from state and local revenue.
- Political and legal context matters more than geography. Many progressive states and legislatures—such as California and Washington—have race-averse (aka “race-neutral”) procurement policies. While many southern and mid-western cities have effective inclusive procurement policies despite conservative state-level politics; example cities include Atlanta, Dallas-Fort Worth, Memphis, Minneapolis, and New Orleans. The threat of state preemptions by conservative state legislators, however, can undermine the ability of local governments to implement inclusive policies.
- The growth of race-averse policies has clearly benefitted women over racial minorities. The move to race-averse policies, however, does not necessarily mean that MWDBE procurement practices will become ineffective. Many metropolitan areas within states with race-averse policies are developing innovative, flexible ways to implement inclusive procurement standards. The key strategies include, for example, engaging prime contractors at the bidding phase to identify their inclusive procurement plans and then locking them in at the award stage. It is easier to influence MWDBE policies at the local level than at the state level, particularly in urban areas with large ethnically diverse populations; however, scrutiny and advocacy can similarly influence equity inclusion in state infrastructure investments of more racially diverse states.
- There is no “one-size-fits-all” inclusion policy. The policy levers, revenue streams, business motives, historical precedents, and strategies to strengthen inclusive procurement differ for transportation, water, energy, public housing, health, educational institutions, and other sectors.
- Significant new investments in the water and energy sectors lack a commensurate history of equitable inclusion, but a new generation of these primarily ratepayer-funded investments offer important leverage for community advocates to realize goals of equitable inclusion.
- Political will and MWDBE advocacy are key ingredients to creating effective public policies. The advocacy and constituency for MWDBE policies and programs, however, have waned significantly. An increasing number of large private-sector employers are committed to, and demanding that prime contractors increase, contractor diversity and support the inclusion of people-of-color firms and workers in their construction projects.

Best Practices/Recommendations

- 1. Strengthen the community constituency for and advocacy efforts around MWDBEs**, with a special focus on defending existing federal programs, preventing and fighting state preemption efforts, and strengthening accountability around the use of public funds for proactive economic inclusion.
- 2. Increase the capacity of local elected officials and agency staff to implement legal (race-averse and race-conscious) and effective inclusive procurement policies.** Strengthen the political will at the local level by training and engaging local politicians on the legal and economic issues to support inclusive procurement policies.
- 3. Develop inclusive procurement policy toolkits by sector** (water, energy, public housing, transportation, health, and education) that account for different business cases, regulatory environments, and sources of revenue (federal, local bonds, ratepayer, self-funded, and privately funded). Align cross-sector policy environments as much as possible to reduce duplicative qualifications, diminish systems hurdles, lessen bureaucracy, and achieve and expand goals.
- 4. Proactively engage the private sector**, including project sponsors and developers, financial institutions, and large prime contractors in an initiative to increase and showcase effective inclusive procurement strategies.
- 5. Use triggers in tax credits and Community Reinvestment Act requirements** to build regional capital pools that can provide lines of credit and bonding capacity to help grow participating MWDBEs.
- 6. Strengthen accountability mechanisms to ensure policy goals are met, including assigning 1 percent of project costs to support capacity building of MWDBEs.** This fee would represent a dedicated revenue stream to support data collection and reporting, proactive compliance, contractor training and coaching, etc.

Best Practices/Recommendations

Systems Reform

1. Establish MWDBE regional ecosystems through networked and/or “multijurisdictional” planning bodies.

- Connect and leverage infrastructure contracting opportunities, knowledge, and assets across public, private, and nonprofit sectors, including small business development, contracting, finance, insurance, workforce, and economic development organizations.
- Coordinate and align disparity studies across agencies and jurisdictions to lower costs and to improve assessment of contractor availability.
- Share contractor databases.
- Identify and mitigate gaps in the local contractor community.
- Align/coordinate certification protocols and processes to reduce burdens on small firms and to streamline costs.
- Streamline contractor access to project opportunities and support services.

2. Scale large public infrastructure projects to meet inclusive procurement/contracting goals.

- Provide more granular data on projects with long-term horizons including the timing and range of opportunities over the arc of the development.
- Assess and adopt project delivery methods that provide the best access for small contractors in all phases/stages of project planning, design, and implementation.
- Structure and match right-size projects with right-size contractors so that MWDBEs compete with other contractors with the same level of capacity instead of competing with larger contractors.

3. Develop real-time reporting and proactive compliance protocols and systems to improve MWDBE participation rates.

- Adequately fund and staff monitoring and compliance programs.
- Use online data-reporting systems to ensure progress against goals in real time.
- Train contractors on the use of online data-reporting systems.

- Establish enforcement policies with consequences for non-compliance.
- Engage community organizations to align community and business networks and resources to assist contractors in reaching their MWDBE goals.

4. Establish a 1 percent project fee to fund local MWDBE support services infrastructure.

- Include contractor support services, monitoring and compliance, workforce support services, and financing pools in the infrastructure created.

Contractor Capacity Development

1. Increase and enhance capital access to undertake large-scale infrastructure projects.

- Pool sources of capital, such as community development financial institution funds, to underwrite larger projects.
- Establish contractor collateral pool(s) to ease access to working capital, bonding, and insurance.

2. Expand and strengthen the pipeline of tier 2 contractors to compete.

- Create a succession strategy for first-generation MWDBE contractors and practitioners to provide the following:
 - Mentoring incentives and support between tier 1 and tier 2 contractors.
 - Partnership arrangements between first- and second-generation MWDBEs; for example, target the capacity of tier 1 contractors to bid on large infrastructure projects, while also building in requirements and capacity to operate as feeders for smaller tier 2 and tier 3 contractors
 - Bidding priority (points) given to new generation contractors.
- Facilitate joint venture projects between large and small firms to create a performance record of increasing size and complexity. A third-party facilitator or best-practices guide might assist in ensuring non-exploitative practices.
- Increase the capacity of MWDBEs to build relationships to drive business development.
- Use community economic development financing tools—Low-Income Housing Tax Credit, New Markets Tax Credits, Community Reinvestment Act resources—and projects to build the capacity and track record of MWDBE contractors.