Contracting for Equity

Government Alliance on Race & Equity, racialequityalliance.org
Bay Area Regional Health Inequities Initiative, barhii.org

Krystal Robinson Justice, BARHII
Nancy Locke, Seattle, WA
Velma J Korbel, Minneapolis, MN
Wanda Kirkpatrick, St. Paul, MN
Webinar Goals:

The goals for the webinar are to:

• Gain an understanding of what racial equity looks like in contracting & procurement and how contracting can be used to move racial equity goals forward.

• Review how realities for MWBE interact with standard contracting processes to create structural barriers and strategies to address these.

• Begin a discussion of the influence of Prop 209 and moving forward with racial equity goals within its restrictions.

• Share examples of contracting/procurement policies, practices & strategies with a racial equity lens.
Contracting Equity Goal

Local and Regional government dollars used for contracting, consulting & procurement should benefit the communities we serve, proportionate to the demographics in our communities.
• Fewer connections/established relationships with prime contractors
• Less knowledge about the contracting process

• Less likely to own
• Smaller businesses on average
• Fewer assets & more debts
• Finance business
• Reduced cash flow

• In private marketplace
• Hard to diversify markets
• Problematic if there are time or size restrictions to program

• Less social capital (knowledge & experience) about running a business & the governmental contracting process

Differences → Structural Barriers

Capital Access

Experience Growing Up in Family Business

Overt discrimination or racism

Social Networks

Growing Up in Family Business

Social Networks
## Using Critical Moments to Address Barriers

<table>
<thead>
<tr>
<th>Key Moment</th>
<th>Structural Factor</th>
<th>Strategies</th>
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<tbody>
<tr>
<td>Getting a contract</td>
<td>Capital access, social networks</td>
<td>Required SBE subcontracting; required diversity plans; aspirational sub-contracting programs, bid discounts, grading primes. Networking. Loan programs.</td>
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<tr>
<td>Getting utilized, getting paid</td>
<td>Social networks, overt discrimination</td>
<td>Contract compliance staff, transparent accessible online sub contracting system, quick pay policies; prime-sub networking</td>
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<tr>
<td>Building bonding capacity</td>
<td>Capital access, education, family experience</td>
<td>Training, coaching. Loan programs. Requiring graduated levels of bonding for subcontractors</td>
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<tr>
<td>Obtaining a (larger) prime contract</td>
<td>Capital access, family experience, social networks</td>
<td>Small business set-asides or bid discounts. Loan programs. Mentor-protégé or coaching. Social Networking</td>
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<tr>
<td>Transitioning out of MWBE or SBE program</td>
<td>Social networks, family experience, overt discrimination</td>
<td>Social networking. Mentor-protégé. Bid discounts</td>
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Prop 209

(a) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(b) For the purposes of this section, “state” shall include, but not necessarily be limited to, to state itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.
What to do??

Lawyers will tell you what you **cannot** do.
- Fear of litigation/being sued
Equity Plan Attitude:

- Creativity within challenge and with multiple constraints
- Careful structuring of goals
- Race & gender neutral strategies
  - Geography; local
  - Small Business Strategies
  - Targeted marketing, outreach, education
Equity Plans should be:

| Comprehensive                                      | • Multiple Strategies  
|                                                   | • Continual Improvement  
|                                                   | • Within larger Racial Equity Plan/Policy |
| Culture Change in Local Government                | • Training  
|                                                   | • Larger Racial Equity Plan/Policy |
| Capacity Building                                 | • Small Business Development  
|                                                   | • Bonding, Insurance, Finance  
|                                                   | • Certification & Doing Business Assistance  
|                                                   | • Vendor Outreach & Networking |
| Expansion, Collaboration & Replication            |
Seattle City Council policy ordinance: “The purpose & intent . . . are to provide the maximum practicable opportunity for increased participation by minority & women owned and controlled businesses, as long as such businesses are underrepresented, and to ensure that City contracting practices do not support discrimination in employment and services when the City procures public works, goods and service from the private sector.”

Executive Order “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 & consulting contracts.”

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<th>Policy</th>
<th>Strategy</th>
<th>Practice &amp; Regulation</th>
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<td>Seattle City Council policy ordinance</td>
<td>Required inclusion plan, binding upon contract signed</td>
<td>Multi-jurisdictional certifications</td>
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<td>Required SBE subcontracting, with embedded aspirational MWBE goals</td>
<td>Clarity &amp; Collaboration on goal setting (with other departments)</td>
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<td>Committing to sub contractors at bid time</td>
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<td>Monitoring a contract as long as it is active</td>
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<td>SB bid discounts</td>
<td>Prompt payment to subcontractors</td>
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WMBE Contracting:
City of Seattle

Nancy Locke, Director
City Purchasing and Contracting Services (CPCS)
City of Seattle
## City of Seattle’s Results

<table>
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<th>Procurement Category</th>
<th>2015 Totals</th>
<th>2015 WMBE</th>
<th>Year to date 2016</th>
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<td>Goods and Services</td>
<td>$366 million (58% of total)</td>
<td>$50 million 14%</td>
<td>$23 million 12%</td>
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<tr>
<td>Consulting (prime data only)</td>
<td>$158 million (25% of total)</td>
<td>$24 million 15%</td>
<td>$15 million 20%</td>
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<tr>
<td>Public Works (includes subs)</td>
<td>$101 million (16% of total)</td>
<td>$19 million 19%</td>
<td>$16 million 14%</td>
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Includes self-identified and state certified.

*Public Works data is for projects completed in that year.*
Long term data: Policy and Program Impacts

Percentage of total spend to WMBEs

- Purchasing
- Construction
- Consultants

Minority population compared to City 2015 utilization.

Census data, 2010
Note: City includes self-identified firms, 50% of those are also state-certified. Other agencies count only state-certified or small businesses. FAS audit verified a 99% accuracy of self-identification.
Seattle Inclusion Plan: What it’s accomplished.

• Created accountability and increase utilization.
• Prevented “swap-outs.”
• Encouraged beneficial support options.
• Quantified good faith efforts and created contract enforcement capability.
• Stabilized WMBE utilization.
Seattle Inclusion Plan  
How it works.

• A two-page promise of good-faith commitment
• Primes select and balance their good-faith effort guarantee between:
  • higher goals,
  • guarantee of use, or
  • faster pay
• Required for most projects.
• Completed by prime as a condition of responsiveness.
• Guaranteed by contract, subject to breach
• Enforcement
  • Goals must meet 80% of that promised, or it is a breach
  • Withhold invoices if reporting doesn’t show them on-track, until they subject a reasonable plan to catch-up
  • Breach of contract; debarment
Business Strategies: 
Cash Flow – use our power to the good

- Smallest companies were the last-paid. Trickle-down payment traditions

- New contractual mandate - primes must pay subs in 30 days (regardless of owner payment).
  - Still at front end of learning best ways to track and enforce
  - Awareness campaign
  - Flow-down provision

- Early retainage release. Prime must release retainage after sub finishes
  - Also a flow-down provision

- Pre-mobilization
  - Must pay 10% of bid value as a pre-mobilization pay
  - Also a flow-down

- Dispute resolution mandatory flow-down.
  - Flow down provision
  - We won’t close contract (final payment held) until all disputes resolved
Questions?

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206-684-8903
CITY OF MINNEAPOLIS

Contracting & Procurement with a Racial Equity Lens

Presented by: Velma Korbel

October 12, 2016
Contracting & Procurement with a Racial Equity Lens

Progressive Projects

• Best Practices Roundtable
• Target Market Program
Best Practices Roundtable


Goals

- Broad
  - Address effects of past discrimination
  - Create vibrancy in communities
- Specific
  - Document inclusive contracting practices currently effective and successful
  - Proffer initiatives and ideas that show promise
  - Equip regional contracting practitioners and procurement staff
Best Practices Roundtable

Outcomes

• Regional Collaborative
  • Agency Leaders, Contract Compliance Staff, Procurement Staff
    • Minnesota Department of Administration, Minnesota Department of Human Rights, Minnesota Department of Transportation, Minnesota Management and Budget, Minnesota Sports Facilities Authority, Metropolitan Airports Commission, The Metropolitan Council, Hennepin County, Ramsey County, The Minneapolis Park and Recreation Board, Minneapolis Public Housing Authority, The City of Saint Paul, The City of Minneapolis, The University of Minnesota

• Process Improvement Workgroups
  • Agency representatives joined together to form sub workgroups. These workgroups developed process improvement solutions in the following areas: Business and Workforce Certification, Technical Solutions and Reporting Options, Best Value Procurement, Business Development, and Regional Workforce Collaborations.
Best Practices Roundtable

Outcomes

• Best Practices in Contract Compliance Report

• Business Resource Matrix
  - Web based tool that gives small businesses access to information on available resources in participant governmental entities.

“one stop shop”
Target Market Program

The Target Market Program provides qualified small-businesses an opportunity to respond alongside other similarly situated small-businesses for City contracts.

Goals

• Broad
  • Provide more opportunities for supplier diversity in procurement activities

• Specific
  • Increase competition
  • Expand opportunities for historically underutilized small-businesses
  • Stimulate local economy by boosting increased economic opportunities in the City’s marketplace.
Target Market Program

• Outcomes
  Under the Target Market Program (TMP), qualified small-businesses will have the ability to respond alongside other similarly situated small-businesses for City contracts up to $100,000 instead of competing against larger, more established companies.

• Lessons Learned
  • Projects/policies/initiatives should be informed by the business community
    • Targeted outreach during the project development stages is key
Other Efforts

- Certification Web Portal
- Disparities Study
- Amendments to Statutes and Ordinances

For More Information

Contact Me:
- Velma Korbel - Director City of Minneapolis, Department of Civil Rights
  velma.korbel@minneapolismn.gov

Will share resources and happy to answer questions!
Metropolitan Council Underutilized Business (MCUB) Program
Metropolitan Council Underutilized Business (MCUB)

• In 2012 the Metropolitan Council expanded its Small Business Inclusion programs with the development of the Metropolitan Council Underutilized Business (MCUB) Program

• New MCUB policy was triggered by Minnesota Governor Mark Dayton re-emphasizing local government’s responsibility to increase contracting opportunities with minority, women and veteran owned businesses

• The MCUB program assigns narrowly tailored subcontracting goals on Council design and construction contracts wholly funded by local funding sources
What is a MCUB?

• The MCUB program recognized multiple certifications, avoiding the need to create a separate certification program and process.

• As MCUB projects are defined as locally funded, all MCUBs are Minnesota-based businesses that are certified as:
  – DBE: Federal USDOT certification for small minority, female or socially disadvantaged businesses.
  – TGB: Minnesota certification for small minority, female or disabled businesses.
MCUB Eligibility Pool

- Total Firms: 1700
  - ED
    - State of MN – TG & Veteran Owned (1066)
  - MN DBEs (634)
  - Non-MN DBEs

State of MN – TG & Veteran Owned (1066)

ED

MN DBEs (634)

Non-MN DBEs
MCUB Contracts 2012-2016

- 2012: 3
- 2013: 19
- 2014: 32
- 2015: 39
- 2016: 53
MCUB Payments 2013-2015

2013: $963,771.29
2014: $1,848,417.84
2015: $5,526,080.59
For More Information:

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390 North Robert Street | St. Paul, MN | 55101 | metrocouncil.org
Roundtable reflections

• If I knew then, what I know now, I would have . . .

• Working with (including developing commitment & managing expectations) of leadership, staff, community.

• Race Neutral concerns, strategies creative adaptations

• Your questions (please write them in the comment box)
Questions

• Please write your question in the comment box.
You will receive a quick 3 minute survey for feedback. Please complete to get links for recording and slide presentation.

Interested in opportunities for support &/or follow-up? Didn’t register?

Email: krobinsonjustice@Barhii.org

Upcoming Webinars:
• Applying the Racial Equity Tool
  October 25, 2016; 2:00pm - 4:00pm