

SUMMARY REPORT — Conclusions and remedial actions for City of Tacoma consideration

1. Refine Overall Aspirational MBE/WBE Goal

The City of Tacoma currently has an overall annual goal of 20 percent for combined participation of MBEs, WBEs and SBEs through its EIC Program.⁴⁸ Success in meeting this goal is calculated based on MBE/WBE/SBE utilization on City public works contracts.

The City might consider refining its annual aspirational goal to focus on MBE/WBEs using the availability results in this study. (The overall MBE/WBE goal should be for all MBE/WBEs, including MBE/WBEs that have not been certified as such.)

Approach to determining an overall aspirational MBE/WBE goal. As discussed previously in this report, the MBE/WBE availability benchmark for City contracts was about 21 percent. This availability metric was based on the availability of firms to perform the types and sizes of City prime contracts and subcontracts during the 2017–2022 study period (based on dollar-weighted availability analysis). The metric includes MBEs and WBEs that are certified and non-certified. (This benchmark pertains to contracts included in the study after exclusions, including national market purchases.)

The above discussion of an overall aspirational goal includes both certified and non-certified minority- and woman-owned companies. The City would track progress toward achieving the overall aspirational MBE/WBE goal by counting OMBE certified as well as self-identified minority- and woman-owned firms (those identifying themselves to the City as minority- or woman-owned in their vendor registration).

⁴⁸ City of Tacoma Equity in Contracting (EIC) Program Regulations. https://www.cityoftacoma.org/UserFiles/Servers/Server_6/File/cms/CBCFiles/EIC/Equity%20in%20Contracting%20Program%20Regulations%20-%202002.2024.pdf

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2. Continue Contract Goals and Expand to Professional Services

The City should review the results of this disparity study and other information it may have available to consider renewing authorization of its EIC Program and extending that program to professional services contracts and any other contracts that might have meaningful subcontract opportunities. Keen Independent recommends certain refinements to the program, as discussed below.

Terminology. Keen Independent recommends that the City utilized the term “contract goals” rather than “requirements” in its program language to avoid any misinterpretation that the program is a “quota.”

Program focus. For City construction contracts and for City contracts without EIC goal requirements, there were substantial disparities for African American-, Asian American-, Hispanic American- and white woman-owned firms but not for Native American-owned companies.

There is also evidence for extending the contract goals component of the EIC Program goals program to professional services contracts. For City professional services contracts there were substantial disparities for African American-, Asian American-, Hispanic American-, Native American- and white woman-owned firms. The past SBE Program did not appear to be effective in opening opportunities for MBEs in City professional services contracts.

Good faith efforts evaluation. Prime contractors bidding on City-awarded contracts meet the requirements of a contract goals program by documenting that they made efforts to reach out to certified MBE/WBE firms for subcontract opportunities. Documentation that the bidder has met the aspirational MBE/WBE goal might qualify as satisfying the documentation requirements, with no other information needed.

A bidder might have made good faith efforts to reach out to certified MBE/WBEs and did not meet the aspirational goal for the contract. (The program should require outreach to MBEs and WBEs but not a specific outcome from that outreach.) Therefore, the City needs a strong process for evaluating whether a bidder has made sufficient good faith efforts to comply with the program. This would include written guidelines for evaluating good faith efforts.

Federal regulations in Appendix A to 49 CFR Part 26 describe how good faith efforts can be used to comply with goals set for USDOT-funded contracts under the Federal DBE Program. The City might consider adopting a set of criteria for appropriate good faith efforts based on these regulations, as well as a standard process if a bidder wishes to appeal any decision that it has failed to meet or show good faith efforts to meet a goal. Other public agencies in Washington state have also established methods for evaluating good faith efforts that could be instructive to the City of Tacoma.

Contract compliance. The City of Tacoma currently uses its B2Gnow system to track subcontract awards and payments made for those construction contracts with EIC Program requirements. This allows the City to ensure compliance with MBE/WBE commitments.

The City might consider enforcing the existing mechanism and expanding data tracking requirements to cover subcontractors in professional service contracts as well (should the EIC Program be expanded to include this industry).

For contracts for which the City might set no MBE/WBE goals, the City should still request information about the use of subcontractors from the prime contractors on those projects (including identifying MBE/WBE status of those subcontractors).

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MBE/WBE program eligibility. There is evidence supporting continued eligibility for participation in a City construction contract goals program for African American-, Asian American-, Hispanic American- and white woman-owned businesses.

For professional services contracts, there is evidence that supports the inclusion of all MBE/WBE groups in a City professional services contract goals program. Disparity study results show substantial disparities for African American-, Asian American-, Hispanic American-, Native American- and white woman-owned businesses (overall).

There was evidence of disparities in the marketplace and qualitative evidence of discrimination that the City should consider as well.

The City should review all results of this report and other information available to the City when determining future program eligibility. The City currently only considers a firm as eligible if it has a DBE/WBE/MBE certification from the Washington State Office of Minority and Women's Business Enterprise. Many in-depth interview participants reported issues or difficulties with the current certification process with the City of Tacoma.

As OMWBE is a primary certifying agency in Washington state, the City should continue to rely on it to determine MBE/WBE and SBE eligibility. To expand the pool of firms eligible for EIC Program goal participation, the City might provide technical assistance to local MBE/WBEs regarding certification from OMWBE.

Potential expansion of geographic area of eligibility. Keen Independent identified the geographic market area for construction and professional services contracts as the seven-county area shown in Figure 7, which slightly differs from the current "contiguous county" eligibility for participation in the EIC Program.

- Most City spending is with firms in the counties in Figure 7.
- Disparities for construction and professional services contracts were based on availability of MBE/WBEs in that area.
- Much of the other evidence of discrimination identified in this report also is for this geographic area.

Therefore, the City might consider expanding program eligibility to firms or firm owners in any of following counties:

- Snohomish County;
- King County;
- Pierce County;
- Lewis County;
- Thurston County;
- Mason County; and
- Kitsap County.

Program sunset. With the results of this disparity study, the City should consider updating its program sunset date. It should retain language that requires periodic review of results from a new disparity study. A typical sunset date could be about five years after program authorization or reauthorization.

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3. Implement SBE evaluation and price preferences

The City might consider evaluation and price preferences for certified small businesses to the extent allowable under state and local law.

Evaluation preferences. For all contracts that are awarded on evaluation criteria other than price alone, the City may consider implementing evaluation preferences to small business bidders and proposers.

The City might assign a preference for a specific number of percentage points (perhaps 10 percentage points) to prime consultants with SBE-certification status. A single value preference would be consistent across bids and proposals for certified firms. Disparities between the utilization and availability of certain MBE/WBE groups in City professional services contracts, particularly for professional services prime contracts, and anecdotal information from in-depth interviews, indicates that there may not be a level playing field for MBE/WBE prime consultants competing for City professional services contracts. Implementing this initiative could help to alleviate that disparity.

An SBE Program might better respond to legal constraints in Washington state than providing preferences to MBE/WBEs.

The City might consider stronger measures once it can evaluate the success of an SBE evaluation preference.

Price preference. Again, to the extent allowable under state and local law, the City might consider an SBE price preference program. This might be most successful for goods and other services contracts often awarded based solely on lowest price.

The City might consider the following methods to implement the price preference.

Cost discount. The City might consider structuring the price preference as a bid discount, where certified bidders' bid price is discounted by a specified percentage when calculating this evaluation score (5–10%).

Preference cap. The larger the contract, the more expensive the preference program may be to operate. Thus, to prevent extensive discounts on prices for the largest procurements, the City might set a cap on the amount of preference.

For example, the City might apply the evaluation preference program to contracts with expected values up to \$1 million, placing an effective cap on the program of \$100,000 (if the City applies a cost discount of 10 percent for certified firms).

Eligibility. Firms located in the market area that are certified as SBEs by OMBE or another public certifying agency would be eligible for the evaluation or price preference. The City might consider restricting the preference to firms within the counties in Figure 7, or not geographically limit the preference.

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4. Further Develop a Small Contracts Program

As part of the EIC Program, City staff may purchase directly from firms listed in the OMWBE directory for goods and other services contracts under \$50,000.⁴⁹ The City increased this to \$200,000 shortly before publication of this report (Keen Independent was unable to gauge impacts of this recent increase).

Keen Independent reviewed City purchases for goods and services under \$50,000 from 2017 through 2022 and found that MBE/WBES received 21 percent of small purchase contracts. However, analysis of small procurements before and after the 2021 EIC Purchasing policy was enacted and found that MBE/WBE participation declined from 23 percent before the change to 13 percent after that change.

The City might consider creating a full Small Contracts Program that would better utilize the direct contracting tool.

Unbundling contracts. Some businesses reported that large contract sizes presented a barrier to doing business with the City. To the extent possible, the City might attempt to unbundle contracts to a size that would promote bidding by small and disadvantaged businesses.

Expanding the list to self-reported small MBE/WBES and other small businesses. The City might consider changing the policy to allow firms to self-report small or minority- or woman-status for participation in the small contracts program to avoid the burden on the firm from requiring formal SBE or MBE/WBE certification.

Creating a bench of MBE/WBES and other small firms available for small City procurements. Each year, Purchasing might create or update a list of MBE/WBE firms and other small businesses available for the types of small procurements it plans to make in the following year. This might take the form of a user-friendly subset of its bidders list.

As part of this effort, the City would need market this opportunity and directly reach out to minority- and women-owned businesses and other small business that have not traditionally been involved in City procurement. Purchasing could identify those MBE/WBES and other small businesses that might be best aligned to projected needs, possibly including some initial screening of those firms. This Small Contracts Program “bench” of firms would be readily available to departments making small purchases (as well as for Purchasing’s use).

Introduction of MBE/WBE/SBES to end-user departments.

Purchasing could hold annual vendor fairs where representatives of firms on the Small Contracts roster would be introduced to representatives of City departments who routinely make small purchases.

Requesting quotes from MBE/WBES and small vendors.

The City might consider continuing and further promoting its policy of allowing direct purchase from an MBE/WBE/SBE for procurements less than \$200,000. To strengthen its current program, Purchasing might require departments to verify that they have reviewed the list of firms available for the Program if they decline to use this option and provide a reason why. Purchasing could also prepare annual reports detailing MBE, WBE and SBE utilization for procurements under \$200,000 by department.

⁴⁹ https://cms.cityoftacoma.org/Purchasing/COT_Purchasing_Policy_FIN_2.0-2021.pdf

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5. Perform Additional Outreach and Relationship-Building

The City currently engages in outreach efforts and provides some business education materials on its procurement website. The City might take additional steps to assist prime contractors and subcontractors in bidding and performing City contracts.

Training materials. Some of the interviewees in this study recommended that City additional training materials and opportunities for firms new to bidding on City contracts.

- The City currently has some training materials on its Purchasing website but might devote additional resources producing online materials that more comprehensively cover how businesses can navigate the City bidding process.
- Prime contractors in the region might benefit from materials on how to reach MBE/WBEs for contracts with MBE/WBE goals (if continued) and small businesses could benefit from training on how to formulate a bid or proposal meeting City standards of quality.

Additional outreach. The City might engage in additional outreach efforts for MBE/WBEs and other small businesses to inform firms about upcoming large projects that might have MBE/WBE contract goals and encourage them to participate in City bids and subcontract opportunities. Outreach for the largest City design and construction projects can be effective.

Partnership with the Washington Department of Labor and Industries. The Washington Department of L&I is responsible for regulating and enforcing labor standards in the State of Washington. To do this, the Department tracks information related to construction procurements awarded throughout Washington. This includes those awarded by municipalities like the City of Tacoma. The types of data tracked within the Department's systems for construction projects includes, but is not limited to:

- Prime contractor name and contract award;
- Subcontractor names and contract awards;
- Prime and subcontractor payment amounts;
- Vendor general background information; and
- Vendor certifications (if any).

Developing a closer relationship with the Department may help the City to gain easier access to this information for its own records, facilitate the data compilation process for future disparity studies and reach out to MBE/WBE and SBE prime contractors and subcontractors that have not done work with the City of Tacoma.

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6. Participate in MBE/WBE/SBE Capacity-Building

Information about the local marketplace indicates that access to capital is a barrier to small businesses in the region, especially MBE/WBEs. The City might also consider directing MBE/WBEs and other small businesses to financial resources that can compete for City contracts.

The City might consider promoting, participating in or helping to create regional programs related to:

- Working capital and other loans for small firms working on City projects; and
- A bond guarantee program for small construction firms seeking public sector work.

Examples of working capital and other loan programs. There are several examples of regional or statewide working capital programs across the country that focus on capital needs for business development or construction contractors.

For example, StartUp Washington provides microloans and other loans to small local businesses that might otherwise have difficulty applying for conventional loans in the state.

The Washington State Office of Minority and Women's Business Enterprise (OMWBE) operates the Linked Deposit Program, which allows certified MBE/WBEs to receive an interest rate reduction of up to 2 percentage points when obtaining a loan from a participating lender. The program is not a loan guarantee program, and MBE/WBEs still need to meet the lenders' requirements.

Examples of bonding programs. Bonding is often a significant hurdle for small contractors to compete for public agency work, even relatively small projects. There may be a need for assistance in obtaining bonds for City construction projects. A partnership that includes the City and other regional agencies might be the best way to approach this barrier for some small contractors.

As an example of a bond guarantee program, the Colorado Department of Transportation partnered with Lockton Companies to launch the Bond Assistance Program in July 2019, for construction contracts of \$3 million or less. CDOT provides a guarantee of 50 percent.

Firms certified as emerging small businesses, including DBEs, are eligible to participate. A potential participant starts the process by undergoing an assessment of whether it is bondable. A firm can participate in the program on one contract only. The surety fee is 2 percent of the contract, and the ESB must participate in a funds control program with the management company (0.75% fee).

Obtaining bonding through the program also helps a contractor meet CDOT's prequalification requirements to bid on a construction contract. For firms not yet prequalified, it provides proof of bonding. For firms that are prequalified, it can be used to increase the size of contracts on which the firm can bid as a prime. Florida DOT has a similar Bond Guarantee Program. There are other examples around the country as well.

7. Consider Other Steps to Encourage Small Business Utilization

The City might consider other initiatives to assist MBE/WBEs and other small businesses in its contracts, such as removing bonding requirements on certain contracts or increasing the time available to respond to bid opportunities

Bonding requirements. Many businesses that participated in the availability survey and in-depth interviews indicated that getting bonded for City projects was a challenge. MBE/WBEs were more likely than majority-owned firms to report this type of issue. the City might consider waiving bonding requirements for smaller, more straightforward construction contracts to the extent possible, as long as doing so does not present a significant risk to the City.

Bidding timeframe. The City of Tacoma currently requires contracts being placed out for bid to be advertised for at least five business days before the submittal date. Typical City practice is to advertise for longer. Because several businesses reported in in-depth interviews that they have had difficulties finding City bid opportunities, including on the City's website, the City should examine whether it can further increase the amount of time a contract is advertised for bids.

Prompt payment requirements. The City verifies that subcontractors are paid no later than 10 days after prime contractors receive payment.⁵⁰ The City should perform this verification for all subcontractors on City construction and professional services contracts.

⁵⁰ City of Tacoma Equity in Contracting (EIC) Program Regulations. https://www.cityoftacoma.org/UserFiles/Server/Server_6/File/cms/CBCFiles/EIC/Equity%20in%20Contracting%20Program%20Regulations%20-%202002.2024.pdf

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8. Allocate Sufficient Resources for Program Success

The remedial actions for City consideration outlined here will require time, resources and staff training to implement and operate. The City will need to make those resources available and plan a multi-year effort for successful implementation. Some of the needs for additional resources are reviewed below.

Program elements development. Keen Independent has provided a list of recommendations that the City might consider. Refining and enacting authorizing policy may require several months, as will development of new program components (including staff training, modification of existing contract tracking systems and preparing bidders and proposers for updated procedures).

Communications and outreach. To ensure the success of the current EIC Program and other proposed program elements, the City should devote additional resources to marketing, communications, direct business outreach and training materials. Some of the business lists Keen Independent developed in this study can help marketing and communications efforts.

Contract compliance. If the City extends the EIC Program contract goals to professional services contracts, there will be a need for more staff time to operate that program, including for contract compliance.

Comprehensive reporting of utilization. The City should annually report (overall and by industry) the utilization of (a) certified firms and (b) minority- and woman-owned firms regardless of certification.

This should include disaggregating results by the specific contracting program, if any, applied to contracts and then monitoring the success of each program. The reporting should be for MBE/WBEs overall and by specific racial, ethnic and gender group (as well as for small contracts).

Formal evaluation prior to program sunset/reauthorization. About every five years, the City should review the effectiveness of the EIC Program and whether it continues to be needed or should be improved.