

Crash Course

Portland's African-American contractors collide with ODOT over agency's failure to include minority firms on Delta Park project

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Last month the Oregon Department of Transportation began construction on the largest highway project in Portland in nearly a decade: a single-lane expansion of the Interstate 5 bottleneck at Delta Park. Yet despite the fact that the project will cut through the heart of North Portland's black community, so far only a handful of minority firms hold contracts to work on the \$60 million project.

In fact, two subcontracts totaling less than 1 percent of the contract dollars awarded on the project have gone to African American businesses – not good enough, according to Faye Burch, a minority contracting consultant and vice president of the National Association of Minority Contractors of Oregon (NAMCO).

NAMCO, fed up with what it says is ODOT's dismal record on hiring black firms, is taking the agency to task on the Delta Park project. The small, but influential group of African-American contractors in Portland, has brought a crush of attention that not only threatens the agency's future funding, but its independence from state oversight.

Tension around the issue has mounted over the past three months, reaching its peak in recent weeks. And ODOT and its primary contractor on the project, Springfield-based Hamilton Construction Co., have rushed to appease the North Portland community, sitting down with NAMCO and holding ODOT's first recruitment fair targeted specifically to African Americans.

"The symbolic nature of this isn't lost on me," Matt Garrett, ODOT director, said. "We know we have some challenges here, which demands we be more aggressive with our outreach. ... I can't be passive anymore."

ODOT's efforts so far have not satisfied NAMCO. Emotions around the project run high in the minority contracting community thanks to its location in the historic Vanport neighborhood, an area marred by a long history of government neglect. The ongoing gentrification of North Portland neighborhoods has also led to a general distrust of projects originating from outside developers.

"The reality is our folk and our community aren't benefiting like other people in this community from our tax dollars," James Posey, president of NAMCO, said. "We look at our schools and our employment stats are all in the tank. So how can we afford to have that sort of resource be denied our community?"

The controversy comes after an ODOT disparity study published in November found that African American and Asian subcontractors received less than 1 percent of state highway contract dollars between 2000 and 2007. At the same time, other disadvantaged business groups, including Hispanic Americans and non-minority women, commanded over 30 percent of subcontractor dollars.

In the seven-year study period, African American firms won only one state-funded ODOT subcontract and two federally-funded contracts out of 2,098 subcontracts awarded to minority firms, according to the study. And in 2007, after ODOT suspended all of its race-conscious hiring goals, African American firms didn't win a single contract on ODOT projects.

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NAMCO says ODOT's minority contracting programs are inadequate and the agency is complacent. ODOT says there aren't enough African American firms qualified to do heavy highway work – less than 3 percent of subcontractors bidding on ODOT projects are African American – and its hands are tied until it can get federal approval to set goals for minority participation on projects.

“By and large, ODOT has not seen out-and-out discrimination against small businesses,” said Michael Cobb, director of ODOT's office of civil rights and an African-American. “Is there a good-old-boy network? Sure, it's like that in every state. (But) is it based on known ability of the people they keep using over and over again? Or is it an ethnic thing?”

Goals not allowed on the project

A federal circuit court ruling in 2005 prevents ODOT from setting hard goals for minority participation on its projects. But in January, ODOT applied for a waiver from the Federal Highway Administration that would allow the state agency to set goals for specific groups that have proven a large disparity in the amount of work they receive.

At the time, NAMCO asked ODOT to suspend the Delta Park project until the agency receives federal approval for the waiver and recruited Sen. Ron Wyden (D-Ore.) and U.S. reps. Earl Blumenauer (D-Ore.) and Peter DeFazio (D-Ore.) to support the cause. The Oregon delegation sent a letter on Feb. 8 requesting that the FHWA speed up the approval process to include the Delta Park project and others of its scope.

That month, ODOT went ahead and awarded the \$60 million contract to Hamilton Construction for the Delta Park project, which will widen a 1.2-mile section of I-5 between Victory Boulevard and Lombard Street in North Portland. The project is a precursor to the proposed \$4 billion Columbia River Crossing project to ease congestion on I-5 between Portland and Vancouver, Wash.

The federal process of approving a waiver that would allow ODOT to set hiring goals for African-American firms could take up to a year, ODOT says. Hamilton was scheduled to begin work this spring – too soon for the project to fall under a federal waiver.

The prospect of ODOT building such a large project through the heart of the African American community in North Portland, with little participation from black firms has outraged minority contractors.

“What drives our anger, in a sense, is the lack of willingness ... to say, ‘Let's involve the community in these projects,’” said Maurice Rahming, president of O'Neill Electric Inc., an African-American contractor and a NAMCO member. “What happens is these poor kids in high school or a little older, they're seeing their neighborhood being built up and them not being a part of it, not being invited to participate. You get people coming to do the work in the inner city (and) then leaving for the suburbs. (These kids) could flag or operate a shovel.”

Minority contractors back ODOT into a corner

So far, the battle has been limited to back rooms and the editorial pages of The Oregonian, where a scathing column and a rebuttal from ODOT Director Matt Garrett appeared in February. And actions have not gone much further than a steady exchange of emails, letters and meetings between ODOT, its contractors, and NAMCO.

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But the dispute has gained attention from state legislators who are threatening to pull the agency's funding on key transportation projects. Projects at risk include the proposed multi-billion dollar I-5 bridge over the Columbia River if more concrete results are not achieved. And the stakes are high as Gov. Ted Kulongoski attempts to pass a large transportation funding package in 2009.

"ODOT is at a critical juncture where both it and the prime contractors can show some good will, in that they're willing to help everybody in the community prosper through these public dollars," said Rep. Chip Shields, a Democrat representing North Portland in the Oregon House.

State and federal legislators are watching ODOT closely for signs of progress on Delta Park, the disparity study and minority contracting in general, according to ODOT. Garrett has also testified to three legislative panels on the issue and met with the two legislators whose districts include Delta Park: Shields and Rep. Jackie Dingfelder (D-Portland).

Shields is receiving reports of Garrett's meetings with NAMCO and Hamilton. He said he plans to assemble a coalition of legislators to address the agency's shortcomings in apprenticeship and minority contracting goals before the 2009 Oregon legislative session.

"This will be a very good test as to how myself and some of my colleagues will view the Columbia River Crossing project," Shields said. "If we can't get those numbers up and increase diversity, then why on earth would those of us who represent this area support that project?"

ODOT blindsided by group's political pull

The exclusion of African American firms from ODOT projects is deliberate, says Posey, the NAMCO president. The old-boy network runs deep and ODOT's prime contractors don't welcome bids from black firms, he claims, though the association has no hard proof of racial discrimination.

Many of its members have simply stopped submitting bids for ODOT projects, declaring it a waste of time and money. Posey's asphalt paving company, Workhorse Construction Metro Inc., hasn't submitted a bid to ODOT in eight years, he said. And some black firms have never bid on ODOT work because the agency hasn't made any effort to recruit them.

"Unfortunately, I've never had a contract with ODOT. I've never had an invitation to bid of any sort," said Jean-wildy Malarly, owner of Affordable Electric, a state-certified minority business enterprise and NAMCO member that's worked on other public transportation projects, including TriMet's I-205 MAX light rail line.

ODOT and its primary contractors readily admit a culture of exclusion among highway workers exists. To mitigate risk and accurately estimate project costs, contractors tend to hire the same suppliers and subcontractors they've depended on for years. But the agency has little sympathy for minority firms that don't even attempt to do business with the agency, Cobb said.

"If they don't bid they won't get work," he said.

Still, few public contracting agencies or private developers in Portland would attempt to undertake such a large project without first engaging the minority contracting community. The North Portland community in particular holds such sway that projects live or die there by community approval, says former City Commissioner Jim Francesconi, who's spent the last few years working to boost minority contractor participation on large projects throughout the city, including the South Waterfront District.

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In building its new seven-story patient tower, part of a \$200 million expansion in North Portland, Legacy Emanuel first hired Burch, NAMCO's vice president, as a consultant on the project to help select minority contractors. Burch "has a really strong tie" to the minority community in North Portland, Sylvia McDaniel, a spokeswoman for Legacy Emanuel Hospital, said.

"It makes good business sense for us," to hire Burch, McDaniel said. "We have a passionate North/Northeast Portland (neighborhood association). People take ownership of any project that happens here."

Led by Burch and Posey, NAMCO has also found success persuading local agencies, including TriMet, the Port of Portland, the Portland Development Commission and the city of Portland to encourage the use of minority firms on their projects.

Burch is now routinely hired as a consultant to recruit minority firms to public and private projects alike. And NAMCO is front-and-center in shaping public agencies' minority contracting policies.

"James and Faye hold us accountable. They're not shy in terms of letting their expectations (be) known and where we might be falling down," said Bruce Warner, executive director of the PDC. "That's why we brought them in."

The group has had little luck persuading ODOT to do the same, however. The state agency is, in some ways, the final frontier. NAMCO's appeals to ODOT are documented in a series of letters and emails going back over a year to last January, when the agency first hired a consultant to carry out the disparity study.

"We have offered to assist ODOT both in writing and verbally, we requested a seat on a committee addressing this issue and we were refused, we participated in the disparity study, we have met with them whenever they have asked, we've met with our Legislators (and) this Governor, and we still have no results," Burch wrote in an email to the DJC in March.

Hamilton to give small contracts to minority firms

The Delta Park project has become the center of the group's latest campaign to strong-arm ODOT into adopting policies similar to those put in place by Portland agencies. And the agency, unprepared for the assault, has stepped slowly to the task. Fully addressing the issue means challenging the traditional way the agency does business, a task that cannot be undertaken lightly, Garrett says.

"ODOT will not simply give away contracts; we can't do that. State procurement law forbids it. We can't just do set-asides," Cobb, ODOT's civil rights director, said. "I've heard the arguments, believe you me, and we've been held up to other agencies. (But) we're a different animal."

ODOT has asked NAMCO to help it identify barriers to entry for small businesses, such as large contract sizes and delayed payment, Garrett says. And the agency has initiated new recruiting efforts, including an apprenticeship fair held in North Portland last month to attract African Americans to the highway construction trades.

The agency is also working to make up for its initial lack of diplomacy. Over the last month ODOT has played mediator between NAMCO and Hamilton. ODOT has also held meetings with legislators, the construction trades council, and the Associated General Contractors to come up with a fast solution to the impending crisis.

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"ODOT contacted us and asked if there's any participation on this we can work out. With that, I got a hold of Faye Burch to start talking about the possibilities," Scott Williams, president of Hamilton Construction, said. "A lot of the stuff we've already subbed out. And a lot has been subbed to minorities, but not necessarily to the African American community."

The contractor has not pinned an exact dollar amount on the contracts it has awarded to minority firms, Williams said. But the company is planning to reach out to the local community and has pledged to set aside about \$300,000 in small contracts on the project for work including trucking and waste disposal, that the company had originally planned to do in-house, he said.

"This is a three-year job, and we're only a month into it," Williams said. "Our progress isn't as fast as Faye would like, but we are diligently working on it."

Hamilton has already awarded two contracts to NAMCO members for waste removal and janitorial work totaling about \$30,000. And the company will continue to award small contracts, including trucking, concrete work and erecting a temporary sound wall, throughout the course of the project, Williams said.

The general contractor has also asked some of its subcontractors on the project to look for opportunities to further subcontract some of their work, Williams said. As a concession, NAMCO members have also been promised contracts on a \$400,000 project to prepare Hamilton's new 4-acre Rivergate property and satellite office in Portland, he said.

"We're certainly further than we were, and I want to give Hamilton credit for that," Burch said. "But this is a contractor; it's not ODOT. They're still the 'Great Wall.'"

The African American community is working to overcome decades on the margins of public contract opportunities and ODOT managers still drag their feet, she said.

"We're just talking about people getting the same opportunity as everyone else: the ability to go to work and get paid for it," Burch said. "Does participating on one contract make it all up? No, but it's a start."

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