

Door open for MWESB fraud

by Reed Jackson

Published: October 19th, 2012

Anyone in Oregon can have a firm certified as minority-owned, woman-owned or an emerging small business without fear of being exposed as a fraud.

Since 1987, the state has certified more than 8,000 businesses as MWESBs. However, no one is monitoring whether they are following state regulations after they qualify for that status, which gives them preference for government contracts. That's because neither the state nor public project owners such as the city of Portland believe they are responsible for that task.

In 25 years, the state has never investigated whether a firm has broken a regulation, according to **Raleigh Lewis**, manager of the Oregon Office of Minority, Women and Emerging Small Business, the state's [certification](#) agency.

"We make sure, as best we can, that only those eligible for certification get certified," he said. "But we have no knowledge of when (fraud) happens, why that happens and how often that happens – that's determined by the project owner."

Peter Parisot, economic development director for Portland Mayor Sam Adams' office, believes few MWESB firms are committing fraud. He also said it's the state's responsibility to identify the ones that are.

"Let's not overstate the problem; I don't know there is much evidence out there that people are acting as fronts for other companies," he said. "The city's hands are sort of tied under statute – it's really the state's job to investigate."

As a result, the Oregon MWESB program has become a hole-filled system that firms can exploit.

State certification process

For firms to become certified, owners must go through an [application](#) process with the Oregon OMWESB.

Nine standards – or regulations – must be met. For example, firms must exist for profit and owners must have training or experience in their primary operating fields. Owners also must prove that their firms are independent ventures, although they are allowed to lease employees from other firms or agencies as long as an arrangement is a "normal industry practice."

Applicants fill out a thick stack of paperwork and go through a "rigorous" interview process in order to become certified, Lewis said.

However, although applicants must complete a test on building codes, they're allowed to fill it out at home. And although applicants are required to provide information about their work history, the OMWESB does not verify it with their former employees, Lewis said.

Once a firm obtains certification, the agency relies on owners of public projects – such as the city of Portland – to file complaints regarding a company not adhering to MWESB regulations.

"If someone is hell-bent on (committing fraud), then we won't know until there is an incident or hopefully there is a complaint," Lewis said.

The city of Portland doesn't police certified firms on its job sites to make sure they're following state regulations, and it shouldn't be expected to, Parisot said.

"I'm sure they would like us to be more proactive, but it's not our job," he said.

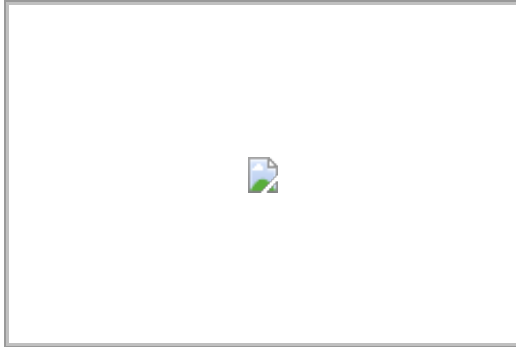
As a result, the city of Portland has never filed a complaint against a certified firm on one of its projects. In fact, since the [certification program](#) started, the OMWESB has received only one

complaint – in 1994. However, that company forfeited its certification before the state could launch an investigation, Lewis said.

A lack of complaints doesn't mean that all certified companies are following regulations, said **Melvin Oden-Orr**, general counsel of the National Association of Minority Contractors' Oregon chapter. When job sites aren't being monitored, it's easy for firms to break the rules.

Jeffrey Jones, who teaches ethics law at Lewis and Clark Law School, agrees.

"As a general matter, it would be safe to say that compliance is going to go down under any legal regime where there aren't clear enforcement mechanisms or actual enforcement – that's just a fact," he said.



City officials are investigating whether a certified MWESB firm broke state rules when it worked on the Blanchet House of Hospitality project. (Photo by Sam Tenney/DJC)

Blanchet House project

The city was the owner of the recent Blanchet House of Hospitality construction project, which Oden-Orr's group said included a prime example of a certified MWESB firm breaking state rules.

Elkins Masonry, owned by **Nichole Elkins**, was hired to help meet a Portland Housing Bureau goal that 20 percent of hard construction expenditures go to certified MWESB firms.

Payroll documents show that Elkins leased employees and equipment for her firm's project work from [D&R Masonry](#), a non-certified firm that is owned by her husband, **Ray Elkins**. According to the documents, one employee worked on the East Salem elementary school – a D&R project – the

week of July 10, 2011, the Blanchet House the week of Sept. 12, 2011 and the school project again the week of Nov. 7, 2011. Another employee worked on the Blanchet House the week of Oct. 10, 2011 and the school project the following week.

Elkins works in D&R's accounting office, despite now owning her own firm, according to D&R's website. According to their addresses, the firms are in buildings next to each other on East Burnside Street (D&R also has a building on Southeast McLoughlin Boulevard).

The question, Lewis said, is whether Nichole Elkins' use of employees and equipment from her husband's firm falls outside what is considered "normal industry practice."

At the minimum, the two companies are bending state regulations, according to NAMC – Oregon.

"If a firm is not trying to say they are a minority firm with the purposes of gaining credit, then it doesn't matter," Oden-Orr said. "But if the basis for them is getting work to count toward utilization (goals) and they are not completing the work, then that is fraudulent."

And the group doesn't think the Blanchet House project is an isolated case.

"You talk to some of our members and they say they see it; they believe it is happening all around," Oden-Orr said.

Nichole Elkins said she has used her husband's firm's resources multiple times. She believes she did so legally.

"I'm very familiar with the rules – I've been around construction my whole life," she said. "We have people running around our office from other firms all the time. What does it matter if it's my husband's firm?"

Identification of violations

The city of Portland has begun to look into whether Elkins Masonry violated MWESB rules during the Blanchet House project, Parisot said. But he stressed that it's not the city's responsibility to identify such violations.

The city's role, according to Procurement Services, is to monitor whether state-certified firms

are working on its projects. It does that by documenting four pieces of information: what the project entails, how much it costs, how much the business has been paid and whether it is certified.

No employee records, payroll documents or equipment lists are examined. The information does not pertain to compliance with state regulations, said **Loretta Young**, contractor development supervisor for Procurement Services.

"(The city asks) us to provide (these four pieces of) information," she said. "We can't go out to the sites; therefore, it is not our duty."

The city does not have authority to remove a firm's certification, Parisot noted.

"Even if we find something wrong, we can't really do anything about it besides submit it to the state," he said.

Frequency of fraud

Although city officials are looking into the Blanchet House project, Parisot does not believe violations are common.

"I just don't think it's as widespread of a problem as some people might want to make it out to be," he said.

In Washington, a Seattle TV station discovered earlier this year that multiple firms abused the state's MWESB office, including one that should not have been allowed in the program but nevertheless made millions of dollars via transportation projects. The state's OMWESB manager stepped down in May.

Washington's MWESB regulations are similar to Oregon's; for instance, firms must act independently and be organized for profit.

But Washington is not Portland, Parisot said. After all, a multimillion-dollar disparity study last year found that Portland's use of MWESB firms was adequate.

"The city is working extremely hard to make sure that we provide contracting opportunities for MWESB firms," Parisot said. "And we've had really good results. I would hate for the program to be tainted by a few bad apples."

However, disparity study results were based on whether firms were state-certified and not whether those firms were performing within state rules.

Lewis knows that certified firms can commit fraud.

"Whether they actually get away with it is different," he said. "We encourage the industry to help us and others that are certified to help us police the program and maintain its integrity."

Caryn Brooks, communications director in Adams' office, said the city is looking to possibly create a website to help educate industry professionals interested in filing complaints to the state. But neither the city nor the state plans to establish a system to monitor firms after they're certified.

Oden-Orr doesn't think that will help solve what his group thinks could be a widespread problem.

"The problem is unless you are on the ground looking at how work is happening or unless you actually trip upon (fraud) by asking the right questions, then we'll never know exactly how widespread it is," he said.