

**10.0 FINDINGS AND
RECOMMENDATIONS**

10.0 FINDINGS AND RECOMMENDATIONS

In November 2007, MGT of America, Inc. (MGT), was retained to conduct a Disadvantaged Business Enterprise Disparity Study for the Port of Portland (Port) to determine whether there was a compelling interest to justify race- and gender-conscious elements of the disadvantaged business enterprise (DBE) program for the Port. The study consisted of fact-finding to determine whether existing Port efforts had eliminated active and passive discrimination; to analyze Port procurement trends and practices for concessions for the study period from fiscal year 2002, through 2007; and to evaluate various options for future program development.

The purpose of this study was to determine if there were disparities in procurement related to the race, ethnicity, or gender of businesses utilized by the Port—and if any disparities were found, to present evidence on various factors that might account for them.

The results of this study and conclusions drawn are presented in detail in chapters 2.0 through 9.0 of this report. MGT found that minority, women and disadvantaged business enterprises (M/W/DBEs) were underutilized, with some exceptions of some groups in some procurement/concessions categories

The following sections summarize each of the study's findings, which are followed by related major recommendations. Commendations are also noted in those instances in which the Port already has procedures, programs, and policies in place that respond to findings. Selected best practices are discussed at the end of this chapter. These best practices expand on recommendations indicated with an asterisk (*).

10.1 Findings Prime Contracting

FINDING 10.1: M/W/DBE Prime Utilization

The dollar value and percentages of M/W/DBE prime utilization in the relevant market by the Port are shown in **Exhibits 10-1 and 10-2**. Over the current study period in the relevant market the following took place:

- Eighteen M/W/DBEs won prime construction contracts for \$34.8 million on Port projects (13.22 percent of the total).
- Eight M/W/DBEs won prime architecture and engineering (A&E) contracts for \$1.2 million on Port projects (9.64 percent of the total).
- Seven M/W/DBEs won prime professional services contracts for \$207,351 on Port projects (2.43 percent of the total).
- Ten M/W/DBEs won other services contracts for \$736,669 on Port projects (17.90 percent of the total).
- Three M/W/DBEs won goods and supplies contracts for \$337,016 on Port projects (9.37 percent of the total).

**EXHIBIT 10-1
PORT OF PORTLAND
SUMMARY OF PRIME UTILIZATION
BY BUSINESS CATEGORY
FY 2002-FY 2007**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/W/DBEs
Construction Prime Contractors	\$149,957	\$434,830	\$250,000	\$79,812	\$33,967,827	\$34,882,426
Architecture and Engineering Prime Consultants	\$250,000	\$0	\$120,000	\$0	\$880,589	\$1,250,589
Professional Services	\$0	\$111,455	\$40,000	\$16,400	\$39,496	\$207,351
Other Services	\$25,000	\$261,685	\$149,500	\$196,555	\$103,929	\$736,669
Goods and Supplies	\$127,600	\$0	\$65,416	\$0	\$144,000	\$337,016

Source: **Chapter 4.0**, Analysis Results.

**EXHIBIT 10-2
PORT OF PORTLAND
PERCENTAGE PRIME UTILIZATION
BY BUSINESS CATEGORY
JULY 1, 2002, THROUGH JUNE 30, 2007**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/W/DBEs
Construction Prime Contractors	0.06%	0.16%	0.09%	0.03%	12.88%	13.22%
Architecture and Engineering Prime Consultants	1.93%	0.00%	0.92%	0.00%	6.78%	9.64%
Professional Services	0.00%	1.30%	0.47%	0.19%	0.46%	2.43%
Other Services	0.61%	6.36%	3.63%	4.78%	2.52%	17.90%
Goods and Supplies	3.55%	0.00%	1.82%	0.00%	4.00%	9.37%

Source: **Chapter 4.0**, Analysis Results.

FINDING 10.2: M/W/DBE Prime Availability

M/W/DBEs constituted between 12 and 30 percent of prime bidders and vendors, depending on the procurement category. M/W/DBE prime bidder and vendor availability is shown in **Exhibit 10-3** below.

**EXHIBIT 10-3
PORT OF PORTLAND
SUMMARY OF PRIME AVAILABILITY
BY BUSINESS CATEGORY**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/W/DBEs
Construction Prime Contractors	1.03%	1.44%	2.67%	0.62%	7.60%	13.36
Architecture and Engineering Prime Consultants	1.43%	1.43%	8.59%	0.72%	15.27%	27.44
Professional Services	2.80%	1.17%	2.45%	0.70%	22.03%	29.14%
Other Services	3.73%	2.24%	1.74%	0.81%	12.73%	21.25%
Goods and Supplies	1.00%	1.00%	1.93%	0.08%	7.96%	11.97%

Source: **Chapter 4.0**, Analysis Results.

FINDING 10.3: Disparity in M/W/DBE Prime Utilization

As shown in **Exhibit 10-4**, substantial disparity for prime contracting existed for the following underutilized M/W/DBE groups:

**EXHIBIT 10-4
PORT OF PORTLAND
SUMMARY OF M/W/DBE UNDERUTILIZATION
JULY 1, 2002, THROUGH JUNE 30, 2007**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women
Construction Prime Contractors	Yes	Yes	Yes	Yes	No
Architecture and Engineering Prime Consultants	No	Yes	Yes	Yes	Yes
Professional Services	Yes	No	Yes	Yes	Yes
Other Services	Yes	No	No	Yes	Yes
Goods and Supplies	No	Yes	Yes	Yes	Yes

Source: **Chapter 4.0**, Analysis Results.

10.2 Findings for Subcontracting

FINDING 10.4: M/W/DBE Subcontractor Availability and Utilization

The dollar value of M/W/DBE subcontractor utilization in the relevant market by the Port is shown in **Exhibit 10-5**. Over the current study period in the relevant market, the following took place:

- Seventy-three M/W/DBE construction subcontractors won \$14.1 million in construction subcontracts on Port projects (15.85 percent of total construction subcontracts).
- Six M/W/DBEs won 12 A&E subcontracts for \$39,425 on Port projects (14.98 percent of total A&E subcontracts).

**EXHIBIT 10-5
PORT OF PORTLAND
SUMMARY OF SUBCONTRACTOR UTILIZATION AND AVAILABILITY
BY BUSINESS CATEGORY
JULY 1, 2002, THROUGH JUNE 30, 2007
FY 2002-FY 2007**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/W/DBEs
Dollar Utilization						
Construction	\$341,487	\$778,912	\$91,791	\$233,187	\$12,703,857	\$14,194,923
Architecture and Engineering	\$0	\$28,984	\$10,441	\$0	\$0	\$39,425
Percentage Utilization						
Construction	0.38%	0.87%	0.10%	0.26%	14.23%	15.85%
Architecture and Engineering	0.00%	11.01%	3.97%	0.00%	0.00%	14.99%
Percentage Availability						
Construction	1.85%	2.27%	0.37%	1.13%	9.37%	14.99%
Architecture and Engineering	1.85%	2.35%	8.56%	0.84%	17.62%	31.22%

Source: **Chapter 4.0**, Analysis Results.

FINDING 10.5: Disparity in M/W/DBEs Subcontractor Utilization

As shown in **Exhibit 10-6**, substantial disparity for subcontracting existed for the following underutilized M/W/DBEs groups:

**EXHIBIT 10-6
PORT OF PORTLAND
SUMMARY OF M/W/DBE UNDERUTILIZATION**

JULY 1, 2002, THROUGH JUNE 30, 2007 Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women
Construction Subcontractors	Yes	Yes	Yes	Yes	No
Architecture and Engineering Subconsultants	Yes	No	Yes	Yes	Yes

Source: **Chapter 5.0**, Analysis Results.

FINDING 10.6: Utilization of DBEs on Federally-Funded Non-Goal Contracts

The Port stopped placing DBE goals on construction contracts in 2006. Minority DBE construction subcontractor utilization stopped entirely at that point (**Exhibit 10-7**). The implementation of the ESB program in 2007 did not halt this pattern. There was, however evidence of use of women-owned DBEs in the absence of goals. There was also evidence of the use of M/WBEs that were not certified DBEs on projects without goals, such as: (1) on nonfederally funded projects, and (2) in 2007 when there were no DBE goals.

**EXHIBIT 10-7
PORT OF PORTLAND
SUMMARY OF DBE CONSTRUCTION SUBCONTRACTOR UTILIZATION
FEDERALLY FUNDED PROJECTS
JULY 1, 2002, THROUGH JUNE 30, 2007**

FY	African American	Hispanic American	Asian American	Native American	Nonminority Woman	Total DBE \$
2003	\$0	\$69,159.31	\$0	\$95,671.50	\$47,086.25	\$211,917.06
2004	\$3,180.00	\$0	\$0	\$0	\$280,000.00	\$283,180.00
2005	\$133,875.00	\$1,800.00	\$59,024.00	\$34,143.00	\$525,695.00	\$754,537.00
2006	\$0	\$0	\$0	\$0	\$376,505.00	\$376,505.00
2007	\$0	\$0	\$0	\$0	\$238,751.00	\$238,751.00

Source: **Chapter 4.0**, Analysis Results

10.3 Findings for Concessions

FINDING 10-7: M/W/DBE Utilization

The dollar value and percent of M/W/DBE airport concession (AC) utilization at the Port is shown in **Exhibit 10-8**. Over the current study period the following took place:

- M/W/ACDBEs received \$36.5 million in food and beverage concession revenue (26.09 percent of the total); certified ACDBEs received \$26.6 in food and beverage concession revenue (18.28 percent of the total).

- M/W/ACDBEs received \$30.6 million in retail concession revenue (23.06 percent of the total); certified ACDBEs received \$7.0 in retail concession revenue (5.34 percent of the total).
- M/W/ACDBEs received \$5.4 million in services concession revenue (21.64 percent of the total); certified ACDBEs received \$4.5 million in service concession revenue (18.07 percent of the total).
- M/W/ACDBEs received no direct car rental concession revenue (0 percent of the car rental concession revenue). Nine car rental companies reported \$13,919,761 in spending with DBE suppliers (14.7 percent of their spending with suppliers) and \$13,291,836 with other small business suppliers (14.0 percent of their spending with suppliers).

**EXHIBIT 10-8
M/W/ACDBE CONCESSION UTILIZATION
PORT OF PORTLAND
JULY 1, 2002, THROUGH JUNE 30, 2006**

	African American		Hispanic American		Asian American		Native American		Nonminority Female		M/W/DBE	
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Food & Beverage	\$26,159,758	17.94	\$4,175,901	2.82	\$0	0.00	\$10,333,897	7.09	\$12,146,090	8.33	\$52,815,648	36.23
Rental Car	\$0	0.00	\$0	0.00	\$0	0.00	\$0	0.00	\$0	0.00	\$0	0.00
Retail	\$2,121,367	1.60	\$0	0.00	\$21,064,980	15.88	\$0	0.00	\$7,403,771	5.58	\$30,590,119	23.04
Service	\$0	0.00	\$0	0.00	\$0	0.00	\$0	0.00	\$5,447,284	21.64	\$5,447,284	3.27

Source: Chapter 9.0, Analysis Results

FINDING 10-8: M/W/ACDBE Concession Availability

M/W/DBEs constituted between 7 and 10 percent of bidders and vendors, depending on the procurement category. M/W/DBEs constituted between 29 and 45 percent of firms in the census data, depending on the procurement category. M/W/DBE bidder/vendor and census availability is shown in **Exhibit 10-9** below.

**EXHIBIT 10-9
PORT OF PORTLAND
SUMMARY OF MINORITY AND WOMEN OWNED FIRM AVAILABILITY FOR
AIRPORT CONCESSIONS
BY BUSINESS CATEGORY**

Business Category	African American		Hispanic American		Asian American		Native American		Nonminority Female		M/W/DBE	
	#	%	#	%	#	%	#	%	#	%	#	%
Vendor Availability												
Food & Beverage	1	1.08%	2	2.15%	5	5.38%	1	1.08%	3	3.23%	11	12.90%
Retail	1	1.15%	1	1.15%	1	1.15%	0	0.00%	3	3.45%	6	6.90%
Service	1	1.89%	0	0.00%	1	1.12%	0	0.00%	3	5.66%	5	9.43%
Census Availability												
Food & Beverage	23	0.68%	85	2.50%	627	18.43%	NA	NA	798	23.46%	1,533	45.06%
Retail	NA	NA	76	1.54%	306	6.20%	NA	NA	1,062	21.51%	1,444	29.24%
Service	5	0.19%	51	1.92%	266	9.99%	NA	NA	517	19.42%	839	31.52%

Source: Port concessions vendor and bidder data, 2002 Survey of Business Owners

FINDING 10-9: Disparity in M/W/ACDBEs Concessions Utilization

As shown in **Exhibit 10-10**, observable disparity for concessions existed for the following underutilized M/W/ACDBEs groups:

**EXHIBIT 10-10
PORT OF PORTLAND
SUMMARY OF M/W/ACDBE UNDERUTILIZATION
FY 2002 TO FY 2006**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women
Vendor Availability					
Food & Beverage	No	No	Yes	No	No
Retail	No	Yes	No	No	No
Service	Yes	Yes	Yes	Yes	Yes
Census Availability					
Food & Beverage	No	No	Yes	No	Yes
Retail	No	Yes	No	No	Yes
Service	Yes	Yes	Yes	No	No

Source: **Chapter 9.0** Analyses

FINDING 10-10: Anecdotal Comments

Individual interviews focus groups and a public hearing were conducted for this report. The following are significant themes from the anecdotal testimony:

- There were no claims of discrimination against the Port itself by M/W/DBE participants in the anecdotal research.
- There was a claim that inspectors held M/W/DBEs to a higher standard.
- There was a more widespread view that the Port preferred to contract with larger firms with established relationships with the Port.
- There were some claims that primes would not use M/W/DBEs as subcontractors in absence of a program.
- A few M/W/ACDBEs were skeptical of their abilities to secure concessions opportunities in absence of federal regulatory provisions requiring affirmative efforts by the Port.
- In general, the participants indicated the need for more small contract opportunities, prompt payments, clarity in specifications and contract compliance to ensure that the intent and goals of the programs are being met across the board at the Port of Portland.

10.4 Findings for Private Sector Analysis

FINDING 10-11: Disparities in Census Measures of Firm Sales and Availability

Using data from the 2002 *Survey of Business Owners*, substantial disparities in revenue and sales per firm were found between the availability of construction, retail and professional services firms owned by women and minorities with paid employees and their sales.

FINDING 10-12: Disparities in Self-Employment and Revenue Earnings

In general, findings from the U.S. Bureau of the Census Public Use Micro Sample (PUMS) 2000 data indicate that there were statistically significant disparities in entry into and earnings from self-employment by women and minorities after controlling for education, age, wealth, and other variables.

FINDING 10-13: M/W/DBE Utilization in Building Permit Data

M/W/DBE utilization in private sector commercial construction in Portland as evidenced by building permit data was very low. Permits issued to M/W/DBEs were valued at \$7.7 million, representing less than 1 percent (0.20 percent) of construction values. M/W/DBE firms were issued permits for projects totaling \$1.5 million (0.68 percent of all subcontracting projects). Among M/WBE firms, nonminority women-owned firms received \$1.39 million,

FINDING 10-14: Disparities in Loan Denials and Interest Rates

Approval and denial rates on commercial loans in the survey sample between non-minority males and women and minorities were similar, but the number of respondents was very small. An econometric analysis of data in the 2003 National Survey of Small Business Finance (NSSBF) found a statistically significant positive relationship between the probability of loan denial and African American ownership. The data also found that African American-owned businesses pay approximately 30 percent to 150 percent (the average interest rate charged on approved loan is about 4.5 percent) more in interest than non-African American-owned firms. However, that data also showed that African American-owned firms in the Pacific Division, where the State of Oregon is located, are marginally better off than African American-owned firms in other Divisions in the NSSBF data set.

The anecdotal evidence on access to capital was mixed. While a number of M/W/DBE vendors did report access to capital as a barrier to securing contracts with the Port, there were no reports of direct discrimination in lending. Moreover, a similar percentage of non-M/W/DBE vendors did report issues with access to capital. ACDBE Concessionaires reported even fewer problems with access to capital, although concessionaires were not immune to credit issues facing new and smaller companies.

10.5 Findings for Race-Neutral Alternatives

FINDING 10-15: Emerging Small Business (ESB) Program

The Port small business goal for FY 2009 is 10 percent of contract dollars and 25 percent of the number of contract awards. The strategies set forth to achieve the Port's small business goal include the use of the Port's Supplier Catalogue, breaking up larger projects, the use of small business development language and small business participation evaluation criteria in RFPs. For small construction projects (\$5,000-100,000), the Port solicits quotes from at least three firms. The Port has an accelerated quotation procedure for small projects with tight timeframes for completion. The Port also has on-call contractors who perform simple projects at preset rates (what other agencies sometimes call job order contracting). The study found \$1.86 million in spending with ESB construction subcontractors, of which 23.9 percent went to minority and female ESBs.

FINDING 10-16: Commercial Antidiscrimination Rules

Oregon state law forbids discrimination in subcontracting. The Port has adopted a nondiscrimination policy that covers commercial relations in addition to employment relations.

FINDING 10-17: Business Development Assistance

The Port has sponsored a mentor-protégé program since 1995. Most Port management and technical assistance is run through the Mentor Protégé Program, which focuses on finances, marketing, and operations. The Port contracts with firms to provide bonding advice through the Mentor Protégé Program. The Port has evaluated the effectiveness

of its race-neutral efforts. The Port has also provided business development assistance for concessionaires in general and ACDBE in particular.

FINDING 10-18: Access to Capital, Bonding, and Insurance

The Port does not currently have any initiatives covering access to capital or bonding outside of the mentor protégé program. However, the Port has made noteworthy efforts to address barriers to small firms posed by insurance requirements. There are several financing assistance programs in the Portland area. In addition, the Port Concessions Management Team has decided not to increase the line of credit deposit requirement for airport ACDBEs for calendar year 2009.

FINDING 10-19: Prompt Payment

The Port is required under state law to require contractors on its public improvement contracts to include in their first-tier subcontracts a clause that obligates the contractor to pay their first-tier subcontractors for satisfactory performance of their subcontracts within ten days of payment by the Port.¹

10.6 Recommendations

10.6.1 Recommendations for Race-Neutral Alternatives

COMMENDATION AND RECOMMENDATION 10-1: ESB Program*

The Port should be commended for establishing an ESB program. A strong small business program is central to maintaining a narrowly tailored program to promote DBE utilization. Generally the same incentives are provided for SBEs that have been provided for DBEs, except in many instances SBE programs are more aggressive because they do not face constitutional limitations.

The Port should consider expanding its ESB program. First, broadening the definition of a small business to include other certified small businesses, such as DBEs, HUBZone firms and small, disadvantaged business enterprises (SDBs). Second, other initiatives on small business programs can be found in features of other small business programs around the United States, including:

- Modifying prequalification requirements for small contracts.
- Lowering bid bonds to a specific amount, rather than a percentage.
- Setting department goals for small businesses.
- Access to low cost insurance on small contracts.
- Making small businesses utilization a part of department performance review.

¹ ORS § 279C.580(3)(a).

RECOMMENDATION 10-2: Bidder Rotation*

Some political jurisdictions use bidder rotation schemes to limit habit purchases from majority firms and to ensure that M/W/DBEs have an opportunity to bid along with majority firms. A number of agencies, including the (City of Indianapolis, Fairfax County, Virginia, the Port Authority of New York and New Jersey and Miami-Dade County), use bid rotation to encourage M/WBE utilization, particularly in A&E.

COMMENDATION 10-2: Commercial Antidiscrimination Rules*

The state of Oregon should be commended for having a commercial non-discrimination statute, which covers the Port. Some courts have noted that establishing anti-discrimination rules is an important component of race-neutral alternatives.²

COMMENDATION AND RECOMMENDATION 10-3: Mentor Protégé Program*

The Port should be commended for its mentor-protégé program and for its evaluation of the program. The Port should consider a DBE mentor-protégé program where DBE serve as mentors for other DBE subcontractors. Such an approach has been tried with some success in Florida. The Port should also consider the use of a supportive services contract, which is common amongst departments of transportation and some airports, whose scope of work would include advising and informing certified firms of the opportunities, follow-up with these firms when they are listed on bids, and working with primes to ensure they utilize a broader base of certified DBEs.

COMMENDATION AND RECOMMENDATION 10-4: Bonding and Insurance*

The Port should be commended for its bonding assistance provided through the mentor protégé program as well as its review of Port insurance requirements for their impact on small business. There are financial and bonding assistance programs in the Portland area. The Port should consider owner controlled insurance programs where feasible.

10.6.2 Recommendations for DBE Program

RECOMMENDATION 10-5: DBE Goal Setting for Subcontracting

There is evidence supporting the reestablishment of race- and gender conscious DBE goals in construction subcontracting and A&E. This evidence is based on disparities in subcontracting, and the collapse in use of DBEs in the absence of goals on federal contracts, considerable statistical and anecdotal evidence of barriers in the private sector markets associated with race and gender after controlling for capacity variables. At the same time there was some evidence of the use of non-certified M/WBEs in the absence of goals. The strongest case for the restoration of DBE goals can be made for minority DBEs.

Port DBE goals should be linked to certified DBE availability. Port DBE goals should not be a rigid quota placed on every project. The limited use of DBE goals means that the Port should continue to let out some opportunities without specific DBE goals and

² *Engineering Contractors v. Dade County*, 943 F.Supp. 1546 (SD Fla 1996).

closely monitor DBE utilization on these projects. The objective should be to steadily increase the number of DBE dollars achieved without using race and gender conscious DBE goals.

COMMENDATION AND RECOMMENDATION 10-6: ACDBE Goal Setting for Concessions

There were not clear disparities on Port concessions for all M/W/ACDBE ethnic/gender groups in all concession categories. The study also found significant dollar utilization of M/WBE concessionaires that were not certified ACDBEs. In addition, this study found a wide range of estimates for M/W/DBE availability depending on whether bidder/vendor availability measures or census availability estimates were used. There was at least some evidence of private sector disparities for all M/W/ACDBE ethnic gender groups (African American, Hispanic American, Asian American, Native American and women) in addition to the limited evidence of disparities for Port concessions. This evidence provides a factual predicate for some use of DBE goals for concessions for all DBE ethnic/gender groups. While the Port has been able to achieve M/W/ACDBE concession utilization through its commendable outreach efforts in direct contracting for Port concessions, certified DBE participation were sometimes lower than overall women and minority utilization. In some cases, for some groups, certified DBE utilization was zero. The Port should continue to seek opportunities for under-utilized ACDBE groups through direct contracting, or where feasible, as sub concessionaires.

RECOMMENDATION 10-7: Staffing and Reporting

Commitment from the top leadership is a core element of most summaries of best practices in DBE programs. The federal DBE regulations requirement that the DBE Liaison Officer “have direct, independent access to [the Port’s] Chief Executive Officer concerning DBE program matters.”³ The Port must insure that this is the case.

COMMENDATION 10-8: Outreach*

The Port should be commended for the level of DBE outreach and program satisfaction given the limited staff for the program. The Port should also be commended for its partnerships with Oregon Association of Minority Entrepreneurs (OAME), the Portland State University Business Outreach Program, the Oregon Tradeswoman, and other management and technical assistance providers in the Portland area.

10.7 Selected Best Practices

10.7.1 Insurance and Bonding Programs

Los Angeles World Airport. The Los Angeles World Airport Bond Assistance program, provides bid, performance and payment bond guarantees to surety companies, provides a cost subsidy for financial statements preparation up to \$3,200, payment of funds control fees and individual counseling and group workshops on bonding, finance and

³ 49 CFR Section 26.25.

business management. The program is open to small local contractors working on Los Angeles World Airport contracts and subcontracts.

San Francisco International Airport. The San Francisco Airport has assisted DBEs with obtaining surety bonds.

Port Authority. The Port Authority of New York and New Jersey uses a Contractor Insurance Program (CIP), a form of wrap-up insurance under which the Port Authority provides various insurance coverages to approved on-site contractors and subcontractors for construction contracts. In particular, the Port Authority buys and pays the premiums on public liability insurance (\$25 million per occurrence), builders' risk insurance, and workers' compensation and employers' liability insurance. In general, the CIP can reduce an owner's project costs by an average of 1 to 2 percent compared to traditional contractor procured insurance programs. The Port Authority CIP does help alleviate barriers from insurance costs to M/WBE participation in Port Authority construction projects.

10.7.2 Mentor Protégé Programs

Dallas Fort Worth (DFW) International Airport. The DFW Small Contractor Development Program in partnership with the local Associated General Contractors (AGC) has sponsored 10 week courses. The program has consistently resulted in prime and subcontract awards to program graduates over the last fifteen years. The program is sponsored by DFW airport, the city of Dallas, Dallas Area Rapid Transit, Dallas Independent School District, Dallas County Community College District and the local AGC. In its \$2.7 billion Capital Development Program the DFW reports that it awarded 32 percent of the construction projects and 28 percents of the design projects to M/WBE firms.

Florida Business Round Table. An interesting variant of mentor-protégé program is the Business Roundtable. The Florida African American Business Investment Fund (BBIF) Roundtable Technical and Financial Assistance Program helps build management capacity within firms through an interactive management group that allows for firms to benefit from consulting with qualified advisors and to interface with their peers. The BBIF Roundtable is funded by governmental and quasi-governmental entities.

The Roundtable is a management development tool that utilizes the results of a gap assessment and recommendations from the plan established with the business to develop the management capacity of business owners and the growth capacity of their businesses. In the Roundtable, business owners meet once a month and function as resources to one another. They develop creative solutions by collaborating on common obstacles. The Roundtable is an interactive management development tool, not a training course. In Roundtable sessions, principals present the real issues that they are dealing with in their businesses and work with a paid consultant advisors and their peers to develop action plans to resolve those issues.

An additional sub-group of the program is the Construction Roundtable. Construction specialists provide technical and operations guidance to construction firms. Members of the construction industry participate in Roundtable sessions, as mentors, with clients. The purpose of this group is to expose Roundtable participants to business techniques, business opportunities and professional relationships in the construction industry

Business challenges are then monitored on a month-to-month basis by advisors. Accountability that is encouraged by developing work plans; and tracking and sharing progress toward established goals. Financial ratios are used as baseline measures of business performance. Firms are graduated from the Roundtable when their ratio performance has met pre-determined standards and the firms have become “bankable.”

10.7.3 Outreach

Bexar County, Texas Small, Minority, and Women Business Owners Conference. Bexar County in conjunction with the city of San Antonio has sponsored annual Small, Minority, and Women Business Owners conferences since 2001. The conferences have been co-sponsored by the Central and South Texas Minority Business Council in conjunction with a number of major corporations, including Dell, Toyota, and AT&T. Typically conference workshops have addressed the following:

- Doing business with federal, state, and local agencies, and the private sector.
- Access to capital.
- Human resources.
- Franchising.
- Management.
- Veterans.
- Responding to bids and RFPs.

Registered attendees grew from 1,200 in 2001 to 2,400 in 2006; estimated total attendance grew from 1,800 in 2001 to 5,000 in 2006. The number of exhibitors grew from 75 in 2001 to 180 in 2006.⁴ Virtually all the major local agencies, loan providers, business development providers, and chambers of commerce participate in the conference along with a number of major corporations. The conference budget for 2007 was \$250,000.

10.7.4 SBE Set Asides

A number of agencies set aside contracts for SBEs. The federal government aims to set aside every acquisition of goods and services anticipated to be between \$2,500 and \$100,000 for small businesses. In response to litigation and state constitution amendments limiting affirmative action, such as Proposition 209, many agencies have adopted small business enterprise programs. Some examples of SBE set-asides are as follows:

Denver Airport. The Denver Airport Small Business Defined Pool Defined Pool On-Call Construction Services program covers a broad range of construction project task orders. The maximum task order amount is \$500,000.00 and the maximum contract amount is \$3 million. The performance period for the contracts is two years, or until the maximum contract amount is reached (whichever occurs first). Bidders are limited to pre-qualified SBEs or joint ventures with SBEs.

North Carolina Port of Transportation (NCDOT). In the NCDOT program small contractors are defined as firms with less than \$1.5 million in revenue. There is a small contractor goal of \$2 million for each of the fourteen NCDOT divisions. The current cap

⁴ Small, Minority, and Women Business Owners (S/M/WBO) Conference, Frequently Asked Questions, at 6.

on project size for small contractors is \$500,000. For contracts less than \$500,000 NCDOT can solicit three informal bids from small business enterprises.⁵ North Carolina law permits the waiving of bonds and licensing requirements for these small contracts let to SBEs.⁶ In 2002 M/WBEs won over 35 percent of SBE contract awards.⁷

Phoenix. The City of Phoenix, which uses the U.S. SBA small business size standards, has a modest SBE set-aside program. The SBE program only accounted for 0.5 percent of total M/WBE utilization in construction subcontracting, and 0.2 percent of total M/WBE utilization in Goods and Supplies. However, there was strong M/WBE utilization in the City SBE program. Over 92.9 percent of dollars in the SBE program went to M/WBEs in construction subcontracting and over 89.1 percent of dollars in the SBE program went to M/WBEs in Goods and Supplies. Firms that were certified as both M/WBEs and SBEs certified were awarded \$98.1 million in contract dollars.

Other SBE set asides include:

- The City of Tampa SBE program is a set-aside program for firms with less than 25 employees and less than \$2 million in revenue.⁸
- San Diego: set aside all construction contracts up to \$250,000
- Sacramento Municipal Utility District: set aside contracts < \$50,000
- Hillsborough County, FL: set aside construction contracts up to \$200,000

10.7.5 SBE Program for Subcontracts

Charlotte. The City of Charlotte sets SBE projects goals for contracts;⁹ The City has a waiver provisions for bidders, but has rejected bids for bidder noncompliance with the SBE program. Other SBE subcontractor goal programs include:

- Oakland – 50 percent local SBE
- New Jersey—25 percent (up from 15 percent)
- Connecticut —25 percent SBE
- Sacramento County– 25 percent SBE

10.7.6 Mandatory Subcontracting

As part of their SBE subcontracting program some agencies impose mandatory subcontracting clauses which would promote SBE utilization and be consistent with industry practice

⁵ NCGS § 136-28.10(a).

⁶ NCGS § 136-28.10(b).

⁷ NCDOT, Small Business Enterprise Program (April 1, 2002).

⁸ Small Business Enterprise (SBE) Program Executive Order No. 2002-48 (December 18, 2002).

⁹ A description of the Charlotte SBE program can be found at www.charmeck.org/Departments/Economic+Development/Small+Business/Home.htm.

City of Columbia. The City of Columbia Subcontractor Outreach Program established in 2003 applies to City contracts of \$200,000 or more. A prime must subcontract a minimum percentage of its bid. The minimums are set out in **Exhibit 10-11** below:

**EXHIBIT 10-11
MINIMUM SUBCONTRACTING REQUIREMENTS FOR
COLUMBIA SUBCONTRACTOR OUTREACH PROGRAM**

Projects	Minimum Subcontracting
Parks	20%
Pipelines (water & sewer)	20%
Pump Stations	20%
Street Improvements	20%
Traffic Signals/Street Lighting	20%
Buildings Project by Project	Not to exceed 49%
Miscellaneous projects	20%

Source: City of Columbia, Subcontracting Outreach Program (March 2003)

Bidders must make affirmative efforts in outreach to Disadvantaged Business Enterprises (DBEs), Disabled Veteran Business Enterprises (DVBEs) and Other Business Enterprises (OBEs) (defined as a business that does not qualify as either a DBE or a DVBE). A bidder will be deemed non-responsive for failure to meet the subcontractor goal, failure to document their outreach efforts, or failure to meet 80 out of 100 points for good faith efforts. Points are granted on a pass/fail basis, i.e., either zero or full points.

San Diego. As part of its Subcontractor Outreach Program (SCOPE) San Diego has required mandatory outreach, mandatory use of subcontractors, and mandatory submission of an outreach document. Whether a contract has mandatory subcontracting is determined by the engineer on the project.

Contra Costa. The Contra Costa County (California) Outreach Program has set mandatory subcontracting minimums on a contract by contract basis.¹⁰ The Contra Costa Outreach Program requires that MBEs and WBEs be considered by contractors as possible sources of supply and subcontracting opportunities.

10.7.7 Other Transportation Small Business Initiatives

Florida Department of Transportation (Florida DOT) Business Development Initiative. The Florida DOT has just undertaken a stepped-up small business initiative with the following principle components:

- Reserving certain construction, maintenance, and professional services contracts for small businesses.
- Providing bid preference points to small businesses and to firms offering subcontracts to small businesses on professional services contracts.

¹⁰ Contra Costa County, Outreach Program, Ordinance Section 3-2 et seq.

- Waiving performance and bid bond requirements for contracts under \$250,000.
- Using a modified pre-qualification process for certain construction and maintenance projects.

10.7.8 Bidder Rotation

Some examples of bidder rotation from other agencies include:

Port Authority of New York and New Jersey. The Port Authority of New York and New Jersey, which is the authority of the three major New York City area airports, has a Quick Bid rotation system for small contracts less than \$500,000. In this program, the agency solicits bids via telephone and fax from a minimum of six contractors on a rotating basis. The period between bid, award, and contract start is generally not more than six weeks. Bidders are provided free construction documents with which to prepare their bids.¹¹

Miami. Miami-Dade County has used small purchase orders for the Community Business Enterprise program and rotates on that basis. In addition, Miami-Dade County has utilized an Equitable Distribution Program, whereby a pool of qualified architecture and engineering (A&E) professionals are rotated awards of county miscellaneous A&E services as prime contractors and subcontractors.

DeKalb. DeKalb County, Georgia has used a form of bidder rotation called a bidder box system to promote M/WBE utilization. This system selects a group of bidders from the list of county registered vendors to participate in open market procurements. Under the bidder rotation system, the buyer identifies the commodity or service by entering an item box number. Using this item box, the computer selects five or six firms. The lowest responsible bidder is awarded the contract. M/WBEs were afforded an increased number of bid opportunities than would ordinarily be the case with a sequential selection process.

10.7.9 Construction Management, Request for Proposals, and Design-Build

One method of debundling in construction is through the use of multi-prime construction contracts in which a construction project is divided into several prime contracts that are then managed by a construction manager at risk. For example, this approach has been used on projects where each prime contractor is responsible for installation and repair in particular areas. The construction manager is responsible for obtaining materials at volume discounts based upon total agency purchases. If one contractor defaults, a change order is issued to another prime contractor working in an adjacent area. The construction manager at risk is responsible for cost overruns that result from prime contractor default.

Construction management also facilitates the rotation of contracts within an area of work. For example, if several subcontractors have the capacity of bidding on an

¹¹ Port Authority of NY & NJ, Engineering Department, *2002 Construction Program*, at 8.

extended work activity (e.g., concrete flat work, traffic control, hauling), the construction manager can rotate contracting opportunities over the duration of the activity.

Using a request for proposal process can provide the flexibility for including M/WBE participation in prime contractor requirements and selection. One of the nonfinancial criteria can be the proposer's approach and past history with M/WBE subcontractor utilization as well as women and minority workforce participation.

A number of universities around the country, the Charlotte-Mecklenburg School System, and the Tri-County Metropolitan Transportation District of Oregon and the City of Columbia have had some success with this approach.¹²

10.7.10 Purchasing Cards

A number of agencies promote the utilization of M/WBEs on purchasing cards. The State of Virginia and the City of Hampton, for example, require the purchasing card vendor to report on M/WBE utilization by agency staff. A number of universities, including the University of Wisconsin at Madison, target M/WBE vendors for purchasing card transactions for travel.

10.7.11 Access To Capital

Orlando Airport. The Greater Orlando Airport Authority also has a Designated Mobilization Program (DMP), a loan mobilization program. The Authority makes available certain retainers and/or designated mobilization payments to LDB professional services, construction and procurement firms up to 5 percent of contract price. This percentage may be increased to 10 percent, subject to the approval of the Executive Director. The LDB Program is race and gender-neutral.

10.7.12 Race Neutral Joint Ventures

The city of Atlanta requires establishment of joint ventures on large projects of over \$10 million.¹³ Primes are required to joint venture with a firm from a different ethnic/gender group in order to ensure prime contracting opportunities for all businesses. This rule applies to female and minority firms as well as non-minority firms. This rule has resulted in tens of millions of dollars in contract awards to female and minority firms.

10.7.13.1 Commercial Anti-Discrimination Rules

Features of antidiscrimination policy selected from other entities include:

- Submission of a business utilization report on DBE subcontractor utilization.
- Review of the business utilization report for evidence of discrimination.
- A mechanism whereby complaints may be filed against firms that have discriminated in the marketplace.

¹² Federal Transit Administration, *Lessons Learned #45* (May 2002).
www.fta.dot.gov/library/program/ll/man/ll45.html

¹³ City of Atlanta Ordinance Sec. 2-1450 and Sec. 2-1451.

- Due process, in terms of an investigation by agency staff.
- A hearing process before an independent hearing examiner.
- An appeals process to the agency manager and ultimately to a court.
- imposition of sanctions, including:
 - Disqualification from bidding with the agency for up to five years.
 - Termination of all existing contracts.
 - Referral for prosecution for fraud.