

# PDC

## PORTLAND DEVELOPMENT COMMISSION

**DATE:** June 22, 2011  
**TO:** Board of Commissioners  
**FROM:** Patrick Quinton, Executive Director  
**SUBJECT:** Report Number 11-57  
Disparity Study Update

### EXECUTIVE SUMMARY

#### BOARD ACTION REQUESTED

None – information only.

#### SUMMARY

The City of Portland and the Portland Development Commission (PDC) are committed to equal opportunity through policies that promote diversity and equity in contracting. As part of that commitment, they engaged a nationally recognized consultant firm to conduct a disparity study on our current efforts to promote a “level playing field” for minority- and women-owned firms in contracting. This agenda item will provide an informational briefing on the study’s background, process, methodology and results, as well as anticipated next steps based on Board discussion and direction.

### BACKGROUND

#### Need for a Disparity Study

Through their business equity programs and small business support programs, the City of Portland and PDC encourage fair and equitable contracting for women and people of color. In 1995, the City and PDC took part in the Oregon Regional Consortium Disparity Study that examined public construction contracting methods. The 1995 Study concluded that minority and women-owned businesses were underutilized at the prime contracting level.

The 1995 Study also made a series of recommendations that resulted in the City's adoption of a Fair Contracting and Employment Strategy and the PDC's Business and Workforce Equity Policy.

Data from the previous study is now stale and may not provide a sufficient legal basis to support the City and PDC's current Minority Business Enterprises (MBE) and Woman Business Enterprises (WBE) programs.

This new Study evaluated the effectiveness of race and gender-neutral practices in public construction and construction-related professional services contracting as well as relevant City and PDC policies and practices.

### Consultant and Team Selection

In April 2009, a Request for Proposals (RFP) for a new Disparity Study was issued. The evaluation committee, which included community representatives, chose BBC Research & Consulting to perform the Disparity Study for the City and PDC. The selection panel included Carmen Rubio, Jaime Lim, Loretta Young, Linda Andrews and Tracy Reeve.

For the City and PDC studies, BBC worked with five subcontractors, four of which were minority or women-owned firms, all with offices in the Portland area:

- FM Burch & Associates (interviews)
- Group AGB (data collection, procurement review)
- Montesi & Associates (interviews)
- Holland & Knight (legal counsel)
- Customer Research International (telephone surveys & interviews).

In September 2009 a contract was awarded to BBC in the amount of \$831,000. (The City contributed \$540,330 and PDC contributed \$290,670.)

Commissioner Fish convened a Commissioner's Advisory Committee which met five times during the process. Members included:

- Marcela Alcantar: Alcantar and Associates (small business)
- Jason Lim: Asian Reporter
- Nate McCoy: Portland Housing Bureau
- Penny Painter: Oregon Native American Chamber
- Maurice Rahming: National Association of Minority Contractors of Oregon
- Carmen Rubio: Latino Network
- Andrew Beyer: Associated General Contractors
- Rudy Martinez: Pacific Northwest Regional Council of Carpenters
- Mel Sears: Parsons Brinckerhoff (corporation/large business)

In April 2010, as a result of feedback from the Commissioner's Advisory Group, the study added construction-related professional services contracts to the study. This change added an additional \$75,000 to the City's portion of the study and brought the overall contract value to \$906,000. The team agreed that extending the schedule to complete this added research was critical to the work product.

### BBC Experience

BBC is a forty-one year old market, economic and policy research firm based in Denver, Colorado. They became involved in disparity studies shortly after the Supreme Court struck down the City of Richmond, Virginia minority-owned business program. Clients include large cities such as Phoenix, Fort Worth, Las Vegas and Columbus, Ohio.

BBC conducted the 1990 Denver disparity study and provided support to the City of Denver when it was sued by a local firm over the constitutionality of the program. The Denver minority and women-owned business program was upheld by the 10<sup>th</sup> Circuit Court in 2003.

More recently, BBC conducted a disparity analysis for the California Department of Transportation (Caltrans). The Associated General Contractors of San Diego and the Pacific Legal Foundation challenged Caltrans in court. The United States District Court, Eastern District of California, ruled in favor of Caltrans in a summary judgment and found that the disparity study was comprehensive, included extensive statistical evidence as well as anecdotal evidence, provided substantial statistical and anecdotal evidence of discrimination in the California contract industry and supported Caltrans' implementation of the Federal DBE program.

Over the past 20 years, BBC has conducted disparity and availability analyses for over 80 state and local governments across the United States.

### Timeline and Methodology

BBC began the assignment in the fall of 2009 and presented a draft report to the City and PDC in January 2011.

The study examined a five year contracting period from July 1, 2004 – June 30, 2009. Research was conducted on procurement and contracting procedures and Minority, Women and Emerging Small Business programs, utilization, availability and disparities.

The study team also evaluated the legal framework governing race and gender-neutral practices in public construction, analyzed marketplace conditions and explored possible explanations for any disparities.

BBC developed a statistical model using US Census data and other information on the local marketplace. They compiled and analyzed hundreds of bids and proposals on City contracts; performed telephone interviews with thousands of local businesses; and conducted in-depth personal interviews with sixty business owners, trade associations and other individuals knowledgeable about local marketplace conditions.

### Draft Report Elements

BBC's study stands as a three-legged stool. The courts have ruled that for a disparity study to have legal standing, it needs to blend together three essential components:

#### 1. Statistical results of utilization and disparity:

For the statistical part of the study, BBC conducted a complex quantitative and qualitative analysis of MBE and WBE firms in a seven-county Metropolitan Statistical Area of Portland/Southwest Washington.

BBC designed the availability analysis to be independent of any list (state certification, vendor list) as such lists might be too limiting. It requires data about MBE's, WBE's and majority-owned firms on an "apples to apples" basis. All firms were identified from a consistent source. (e.g., the state certification list could not be used as a stand-alone source because no such list exists for non-certified or majority-owned firms.)

The study team contacted thousands of firms by telephone to give them an opportunity to discuss their experiences when attempting to perform work with the City, PDC and in the local marketplace. Extensive efforts were made to contact local firms for specific types of City construction and construction-related professional services work.

Firms were telephone surveyed and asked whether they were qualified and interested in City work, the types of work they conduct, sizes of contracts they perform and other firm characteristics. Not all contacted firms reported qualifications and interest in City or PDC work.

Businesses that did express qualifications and interest were typically only available for certain types and sizes of prime or subcontracts. (e.g., a business might have only been in operation for a portion of the study period and thus only would have been available for certain years of contracts).

Overall availability was determined by examining the number of MBEs and WBEs available for each prime and subcontract in proportion to the total number of firms available for that prime or subcontract.

Contract-by-contract availability results were then aggregated on a dollar-weighted basis to determine the overall percentage of City contract dollars that might be expected to go to MBEs and WBEs.

The accuracy of availability benchmarks (dollar-weighted percentage availability), not the size of the availability database is most important to the study.

## 2) The catalogue of anecdotal evidence:

The second part of the study consists of anecdotal evidence and in-depth interviews. BBC analyzed City and PDC contracting processes, local marketplace conditions and potential business assistance programs.

There is evidence of disparities within the local marketplace. The anecdotal findings and interviews illustrated racism and discrimination in contracting, in addition to significant barriers for minority- and women-owned firms to do business in Portland. Some of the findings are summarized below:

- Annual revenue of certain MBE groups and WBE's is lower than other firms.
- MBEs and WBEs face greater disadvantages than other firm owners when seeking capital, bonding and insurance.
- MBEs and WBEs face barriers to working as prime and subcontractors on local public sector contracts.
- Current availability of MBEs and WBEs to perform City construction and construction-related professional services contracts is less than what might be expected if minorities and women had the same opportunities to enter and advance within these industries.

## 3) The public comment in response to the report draft:

The study team analyzed the comments and questions received during the public comment period following the release of the draft report.

Input was solicited via the PDC and City websites, letters, email and in a public forum. Based on this information, the final report reflects the public comments in the following areas:

- Statements regarding experiences or program recommendations were added to the anecdotal and qualitative material within the report.
- A number of groups provided additional data or other quantitative information that was considered by the study team. Some areas of the report and appendices were revised based upon what was learned.
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- Questions/concerns about the study approach and alternative methods of analysis brought forward the need to expand and improve the discussion of the approach method.
- Public comment focused primarily on the level of availability.

### Disparity in City of Portland Contracts

The results of BBC's study were mixed, generally finding some disparity on City and PDC-owned contracts while discovering clear disparity on projects that received PDC funds without direct project management.

There is evidence of disparities in the utilization of MBEs and WBEs when City Fair Contracting programs did not apply (e.g., disparities in the use of MBEs without the Good Faith Effort (GFE) Program).

There are substantial disparities for prime contracts for each MBE group and WBE's. Even with the City's program to encourage MBE/WBE utilization as prime consultants on construction-related professional services contracts there were disparities for WBEs (e.g., women receiving on-call contracts were not utilized as much as other firms receiving such contracts, and many received no work under those contracts at all).

Some issues and suggestions identified in the 1996 study are identified in BBC's study as well (e.g., disparities in prime contracting with MBEs & WBEs, segmentation of large contracts to encourage opportunities, the need for business assistance and access to capital for MBEs and WBEs, relaxing or reducing bonding and insurance requirements).

### Disparity in PDC Contracts

The study found some disparity on PDC-owned construction contracts and construction and design service professional contracts, although the overall finding was one of little or no disparity. By "owned" we mean that PDC was the contract holder. The more control PDC had over contracts and projects, the greater the participation there was of minority and women contractors.

In contrast, the study found significant disparities existed on construction and professional services contracts that were not owned by PDC but to which PDC had sponsored through resources or funding. For example, public and public-private construction projects in the Portland region can typically have multiple partners and funding sources. These sponsored contracts represent approximately 90% of all PDC contract dollars.

The greatest disparities were in prime contracting and personal services such as engineering and architecture. The disparities for women-owned firms were substantial on both construction and personal services contracts.

During most of the study period, PDC's policy set a 20% Minority/Women/Emerging Small Business (M/W/ESB) goal that only applied to the amount of PDC resources given to the project.

PDC's policy has changed considerably, most recently in spring 2010, and now has a 20% goal based on the total hard cost of construction and factored by availability on an individual project-by-project basis, not just on PDC's contribution.

The disparity study considered business capacity, access, and equity on every project where PDC resources are invested. It also pointed out that the greatest disparities were found in an area where no PDC policy or program applies, such as on the professional services side of sponsored projects.

### Process and Future Policy Making

During the month-long public comment period, PDC and City leaders and the project team met with the community, the media, and key stakeholders to discuss the findings and the draft report.

The project team is currently working with the Mayor's office, various City bureaus, and the MBE and WBE community to develop strategies to close the disparity gaps identified in the study.

BBC found that the City and PDC should continue to enhance efforts to help all small businesses, regardless of race and gender and that the agencies may want to conduct further research whether certain barriers to MBEs and WBEs can be minimized or removed.

What we learned from the statistical results, the anecdotal evidence, and public comments is that we have legal grounds to continue current equity programs and make appropriate enhancements.

We also have the guidance necessary to close identified gaps in utilization, which means some changes need to be made to PDC and the City's current equity programs.

Additionally, the study provides direction on issues such as bonding, insurance, prequalification, capacity building, access to capital, and other systemic obstacles to the success of minority- and women-owned businesses in Portland.

## **ATTACHMENTS**

- A. PDC Disparity Study – Executive Summary

## **CHAPTER ES.**

### **Executive Summary**

The Portland Development Commission (PDC) and The City of Portland (City) engaged a team led by BBC Research & Consulting (BBC) to study whether their current efforts to promote a “level playing field” for minority- and women-owned firms (MBE/WBEs) in City and PDC contracting were effective and whether other programs are needed. The BBC study team examined the construction and construction-related professional services industries in the Portland metropolitan area.

Throughout the country, a number of groups have filed lawsuits challenging the legality of MBE/WBE programs. Disparity studies are a court-approved method that helps public agencies determine whether there is a need for programs to assist MBEs and WBEs and whether those programs comply with relevant court decisions.

The BBC disparity study follows court guidelines for the collection and analysis of quantitative and qualitative information regarding opportunities for MBEs and WBEs in public contracts and in the local marketplace as a whole. BBC’s methodology was recently reviewed and approved by a court within the Ninth Circuit.<sup>1</sup>

#### **What are PDC’s current efforts?**

PDC has operated some version of Diversity Programs since 1997. It revised the program in spring 2010. The current Business Equity Program encourages utilization of minority- and women-owned firms on PDC contracts. Although PDC establishes annual aspirational goals for participation of M/W/ESBs, it does not set contract-specific goals.

PDC’s Business Equity Program is similar to the City’s Good Faith Efforts (GFE) Program, which encourages outreach to MBEs, WBEs and other small businesses.

#### **What were the key results of the study?**

Courts have held that public agencies operating a program that specifically assist minority- and women-owned firms must demonstrate:

1. A strong basis in evidence that discrimination affects minority- and women-owned firms; and
2. That any program adopted is *narrowly tailored* to achieve the goal of remedying the specific identified discrimination. A number of elements determine whether a program is narrowly tailored.

**1. Evidence.** PDC’s current programs have a positive effect on the overall utilization of minority- and women-owned firms on contracts held directly by PDC — a small portion of the total dollars spent by PDC each year. In contrast, utilization of MBE/WBEs on PDC-sponsored contracts was

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<sup>1</sup> *Associated General Contractors of America, San Diego Chapter v. California Department of Transportation, et al.*

below what might be expected based on the availability analysis, even where programs applied. There were also disparities in the utilization of MBEs and WBEs on PDC contracts when MBE/WBE programs did not apply.

There is also evidence of disparities within the local marketplace.

- Annual revenue of certain MBE groups and WBEs is lower than other firms in the Portland area construction and construction-related professional services industries.
- There is evidence that minorities and women face greater disadvantages than other firm owners when seeking capital, bonding and insurance.
- There is also quantitative and qualitative evidence that MBE/WBEs face barriers to working as prime contractors and as subcontractors on local public sector contracts.
- There is evidence that the current availability of MBEs and WBEs to perform PDC construction and construction-related professional services contracts is less than what might be expected if minorities and women had the same opportunities as non-minorities and men to enter and advance within these industries, and form and grow their businesses.

The disparity study included in-depth personal interviews with local trade associations and business owners, thousands of telephone interviews with business representatives, and oral and written statements from the public. In this research, a number of individuals reported that discrimination affects MBEs and WBEs in the Portland metropolitan area. Some have urged PDC to strengthen its programs that assist minority- and women-owned firms.

PDC will need to assess the results of this disparity study and other information it has to determine an appropriate course of action. Its independent assessment of whether this combined information meets the requirements for MBE/WBE programs is a necessary first step in planning the future of any PDC efforts.

**2. Narrow-tailoring of PDC programs.** Any MBE/WBE program operated by PDC must also be narrowly tailored. Court review of narrow tailoring includes:

- Whether the government agency seriously considered workable race-neutral means to increase minority business participation in contracting (e.g., simplification of bidding procedures, relaxation of bonding requirements and training);
- Limitation of the remedy to only those minority groups for which there is evidence of discrimination in the local area;
- The flexibility and duration of the relief, including the availability of waiver provisions;
- The relationship of numerical goals to the relevant labor market; and
- The impact of race-, ethnicity-, or gender-conscious remedies on the rights of third parties.

In sum, PDC should only implement those programs to assist minority- and women-owned firms that are necessary to remedy any effects of identified discrimination. If neutral measures like small business assistance efforts alone would be an adequate remedy, courts would not consider race- and gender-based programs to be narrowly-tailored.

The BBC study team reviewed PDC's current efforts to assist small businesses in general ("neutral programs") plus a wide range of changes to PDC policies and potential new PDC programs to assist all small businesses. In addition, the study team examined ways to strengthen or add to programs that assist minority- and women-owned firms.

Individuals participating in the public forum and providing other comments have given considerable input as part of the disparity study process. Many urged stronger actions to open more PDC contracting opportunities to minority- and women-owned businesses. Some individuals indicated that past PDC programs have not been successful in building a strong core of minority- and women-owned firms that can compete for PDC and other work without assistance. Some individuals said that the PDC should not have MBE/WBE programs. (Appendix J of the report includes this information.)

The information collected in this study supports stronger PDC action to remove barriers to MBE/WBE participation in its contracts, foster more contract opportunities for MBE/WBEs, and help to build a strong minority- and women-owned business community in the Portland area. Although past PDC initiatives have had a positive effect on MBEs and WBEs, there are substantial opportunities for improvement and expansion of such efforts. PDC will need to determine whether this is solely done through neutral programs or whether continued or stronger programs that specifically assist MBE/WBEs are also needed.

**Continuation and expansion of neutral efforts.** The BBC study team suggests PDC consider the following continued or new efforts (alone or in combination with MBE/WBE programs):

- Continued support for workforce and hiring programs that help to open doors for groups underrepresented in the construction industry (see Chapter 10, page 1);
- Continued support of technical assistance services (Chapter 10, page 2);
- Either support for the Port of Portland's mentor-protégé program or a new program (Chapter 10, page 3);
- Serving as a referral source for existing small business finance and capital assistance programs (Chapter 10, page 3);
- Continued outreach and other support for local organizations by attending events, referring businesses and sponsoring programs (Chapter 10, page 3);
- Serving as a referral source for local business incubators and possibly financially supporting one or more business incubators (Chapter 10, page 4);
- Encouraging more subcontracting on PDC contracts (minimum subcontracting program similar to a City of Los Angeles program as discussed on page 4 of Chapter 10);
- A requirement to evaluate when contracts can be divided into multiple smaller contracts (Chapter 10, page 5);

- Consider implementing an alternative contracting method similar to the method used on some City construction contracts (Chapter 10, page 5);
- Strong enforcement of prime contractor prompt payment to subcontractors (Chapter 10, page 5);
- Comprehensive collection of prime contract and subcontract information on sponsored project (Chapter 10, page 6);
- Notification of bid opportunities and PDC resources (Chapter 10, page 6);
- Possible implementation of a Minority Evaluator Program (Chapter 10, page 6);
- Partnering with other local government agencies and private firms to host a construction management or engineering institute (Chapter 10, page 7); and
- Launching an online training program for firms (Chapter 10, page 7).

Each of the above initiatives can be designed to be race- and gender-neutral, and many are in place at PDC.

**Initiatives to minimize or remove barriers created by bonding and insurance requirements.**

Bonding and insurance requirements on PDC contracts present barriers for all small businesses, particularly minority- and women-owned firms. Chapter 10 of the report examines a number of ways PDC could lessen the negative impact of bonding and insurance requirements, including relaxing or waiving bonding and insurance requirements when possible.

**Changes to the Business Equity Program.** The City GFE Program, which is very similar to the PDC Business Equity Program, appears to effectively address potential disparities in the use of MBE and WBE subcontractors on City construction contracts. The PDC Business Equity Program appears to be less effective in addressing potential disparities in the utilization of MBE subcontractors on owned construction contracts. There is also evidence of disparities in prime contractors' use of MBE/WBE subcontractors for PDC-sponsored construction projects. Chapter 10 explores future program options.

**New programs for prime contractors.** PDC might consider other programs to strengthen MBE/WBE prime contractors. Chapter 10 reviews the City of Atlanta's joint venture program as one example of such a program.

**Who performed the disparity study?**

BBC is a Denver-based economic research firm that is one of the leading disparity study consultants in the United States, having conducted nearly 80 disparity studies since 1989. In addition to BBC, the study team included:

- **Holland & Knight LLP (H&K)**, a national law firm with offices in Portland;
- **Group AGB, Ltd.**, a Portland-based consulting firm.
- **F.M. Burch & Associates, Inc. (FMBA)**, a Portland-based consulting firm.
- **Montesi & Associates**, a Portland-based consulting firm.
- **Customer Research International (CRI)**, a Texas-based survey research firm.

Group AGB, FMBA, Montesi & Associates and CRI are all MBEs or WBEs. Chapter 1 of the report provides more information about the study team.

### **Did interested groups and the general public have an opportunity to provide input?**

BBC began the assignment in fall 2009 and presented a draft report to the PDC in January 2011. In 2010, the BBC study team interviewed 60 representatives of trade associations, business owners and managers, and other groups. The study team also contracted thousands of firms by telephone to give them an opportunity to provide their experiences attempting to perform work with the City, PDC and in the local marketplace.

- During the course of the study, BBC, the City and PDC regularly met with an advisory group comprised of representatives of minority-, women- and majority-owned contractors and consultants and local trade associations.<sup>2</sup>
- In April 2011, the City and PDC provided a draft report to the public for review and held a public forum where interested individuals provided input. The agencies also provided an online venue for written comments from the public.

The BBC study team reviewed the testimony from the public forum, written comments and other input received by the City and PDC prior to preparing the final report in June 2011. A number of the comments appear in Appendix J of the full report. The study team made a number of other additions and clarifications based on review of the comments, including substantial modifications to this Executive Summary.

### **What does a disparity study include?**

Because these types of studies include analyses of whether there is a *disparity* between the utilization and availability of MBEs and WBEs, they are often referred to as *disparity studies*. For this study, minority-owned and women-owned firms will be referred to as MBEs and WBEs respectively regardless of certification status. It will be noted in the text when discussing certified firms specifically.

- “Utilization” refers to the percentage of contract dollars that went to MBE/WBEs during the study period.
- “Availability” refers to the percentage of contract dollars that one might expect to go to MBE/WBEs given the number of MBE/WBEs available for specific types and sizes of prime contracts and subcontracts.

BBC included both certified and non-certified MBE/WBEs in the utilization and availability results so that the disparity analysis would pertain to any potential barriers related to race, ethnicity or gender of the business owner.<sup>3</sup> To further isolate the possible effects of race/ethnicity versus gender, “WBEs” refers to white women-owned firms in this disparity study. Firms owned by minority women are included in the utilization and availability results for MBEs (see Chapter 5 of this report for more detail about why BBC classifies WBEs in this way).

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<sup>2</sup> The term “majority-owned firms” refers to firms not owned by minorities or women.

<sup>3</sup> If the disparity analysis were conducted based only on currently certified MBEs and WBEs, conclusions could not be drawn about the effectiveness or need for programs to assist all MBE/WBEs.

- To perform the utilization analysis, the BBC study team compiled and analyzed data on more than 5,000 prime contracts and subcontracts on PDC-owned or -sponsored contracts between July 2004 through June 2009. The study team examined the types of work involved, size of the contract or subcontract, year of the contract and what PDC programs applied.
- In the availability analysis, the study team successfully contacted more than 3,700 local firms doing business in relevant subindustries to discuss whether they were qualified and interested in PDC-related work, the types of work they conduct, sizes of contracts they perform and other firm characteristics.
- BBC compared utilization of MBE/WBEs on PDC contracts with the dollars those firms might be expected to receive based on their availability for those types and sizes of prime contracts and subcontracts.

BBC also analyzed PDC contracting processes, local marketplace conditions and potential business assistance programs. As part of those analyses, the study team developed statistical models using U.S. Census data and other information on the local marketplace; compiled and analyzed bids and proposals on PDC contracts; performed telephone interviews with thousands of local businesses; and conducted in-depth personal interviews with 60 business owners, trade associations and other individuals knowledgeable about local marketplace conditions.

#### **How was the availability analysis performed?**

The BBC study team made extensive efforts to contact local firms for specific types of PDC construction and personal services work. The study team contacted firms using a telephone survey and discussed whether they were qualified and interested in PDC work, the types of work they conduct, sizes of contracts they perform and other firm characteristics.

- Not all firms reported qualifications and interest in PDC work.
- A business that did express qualifications and interest in PDC work was typically only available for certain types and sizes of PDC-owned or -sponsored prime contracts and subcontracts. For example, a business might have only been in operation for a portion of the July 2004 through June 2009 study period and thus only would have been available for certain years of contracts.
- BBC determined overall availability by examining the number of MBEs and WBEs available for each prime contract and subcontract in proportion to the total number of firms available for that prime contract or subcontract.<sup>4</sup>

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<sup>4</sup> For example, if BBC examined a \$50,000 electrical subcontract in 2009, only firms indicating that they were qualified and interested in PDC work as a subcontractor, had performed or bid on similar work in the past in the Portland area, had bid on or performed work of that size, and were in business in 2009 were counted as available for that work. (All of this information was collected from each firm by telephone in the availability interviews.) If 100 firms in the BBC availability database met those criteria, and 10 were minority-owned, MBE availability for that subcontract would be 10 percent. These results were weighted by the size of subcontract and combined with all of the other results for each PDC prime contract and subcontract to determine overall availability.

- Contract-by-contract availability results were then aggregated on a dollar-weighted basis to determine the overall percentage of PDC-owned and PDC-sponsored contract dollars that might be expected to go to MBE/WBEs.

For a number of reasons, the availability analysis did not capture every firm potentially available for PDC construction and personal services prime contracts and subcontracts. The availability analysis produced a statistically reliable availability benchmark for use in determining whether there were disparities in PDC's utilization of MBEs and WBEs.

The accuracy of availability benchmarks (dollar-weighted percentage availability) — not the size of the availability database developed as part of this study — was most important in the disparity study. The availability data allowed BBC to develop a representative depiction of firms qualified and interested in PDC work, but it should not be considered an exhaustive list of every minority-, woman- and majority-owned firm that could participate on a PDC project. Reasons for this include the following:

- BBC designed the availability analysis to be independent of any PDC, City or other agency list of companies that perform construction and personal services work. Such lists might be too limiting because certain firms that are qualified and interested in City or PDC contracts might have been discouraged from such public sector work in the past. It was important to include those firms in the availability database. Because BBC did not use PDC and City lists to develop the availability database, there might be some firms that have worked on PDC contracts that were not included in the availability analysis.
- The availability analysis requires data about MBE/WBEs and majority-owned firms on an apples-to-apples basis. Therefore, all firms, regardless of race/ethnicity/gender ownership, must be identified from a consistent source. For example, certification lists for MBEs, WBEs and ESBs could not be used as the source of the availability database when no similar lists exist for non-certified or majority-owned firms.
- BBC purchased names and contact information of certain types of construction and personal services firms located in the Portland area from Dun & Bradstreet (D&B) Marketplace. The study team then contacted those firms to collect information about those firms for the availability analysis. D&B Marketplace represents the most consistent, comprehensive database of firms that can be used in disparity study research, and its application in availability analysis has been accepted in court decisions. Even though D&B strives to include every firm doing business in the United States in its Marketplace database, it does not capture every company.
- In terms of dollars, most PDC construction and personal services prime contracts and subcontracts go to firms located in the Portland Metropolitan Area. Only firms within this area were included in the availability analysis, consistent with guidance from relevant case law. In addition, BBC only conducted availability interviews with firms performing the types of construction or personal services work that comprised most PDC prime contract and subcontracts. Therefore, only local businesses and firms that perform work within the core areas of PDC projects are included in the availability database.

- BBC’s availability methodology required information from firms that could only be received through interviews. Only businesses that agreed to participate in an interview are included in the availability database.
- The BBC study team was unable to reach every firm in the D&B Marketplace list, even after repeated attempts to contact an individual at the business who could complete an interview. Only firms that had working phone numbers, answered their phone and made individuals available for an interview are included in the availability database.
- BBC researched whether firms that were not reached were disproportionately MBE/WBEs. Using D&B data and using State MBE/WBE certification data, relatively few of these firms appeared to be minority-or women-owned. This was also true for firms declining to participate in interviews.

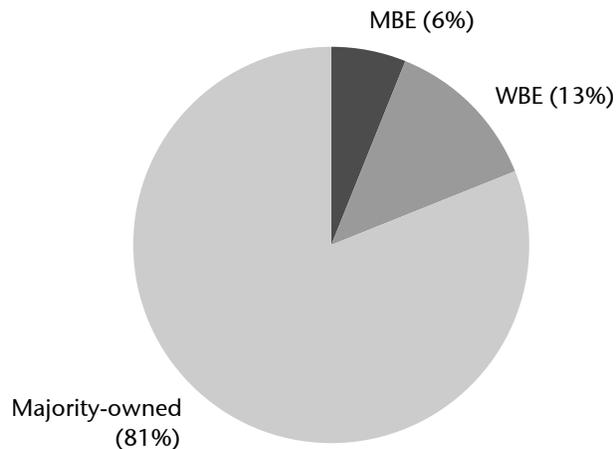
BBC developed valid availability benchmarks for use in the PDC disparity study based upon review of court decisions that have reviewed such analyses. However, the above points are important to remember when considering other uses of the availability database developed as part of the disparity study.

**Of the firms available for PDC construction and personal services work, what share are minority- or women-owned?**

Of the firms successfully interviewed that reported qualifications, interest and other characteristics indicating that they were available for certain PDC construction and personal services contracts, 6 percent were MBEs<sup>5</sup> and 13 percent were WBEs. In total, nearly one in five firms available for PDC construction and personal services prime contracts or subcontracts were MBE or WBE firms.

**Figure ES-1.**  
**Available firms by**  
**ownership classification**

Source:  
BBC Research & Consulting from 2010  
Availability Survey.



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<sup>5</sup> For purposes of this study, “minority” follows the definitions from the State of Oregon’s MWESB Program: African Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Hispanic Americans and Native Americans.

These results are based on research with firms in the Portland metropolitan area available for PDC construction and personal services contracts, including identification of the race/ethnicity/gender of ownership of those firms.<sup>6</sup>

BBC's study went beyond lists of firms certified by the State of Oregon or others when counting firms as MBEs or WBEs. To determine race/ethnicity/gender of ownership, the BBC study team contacted firms potentially available to perform relevant PDC work and conducted detailed phone interviews with business owners and managers.

Availability interviews focused on the subindustries of construction and personal services most related to PDC construction and personal services contracts. More than 3,700 firms were successfully contacted, about 1,500 of which reported qualifications, interest and other characteristics that indicated availability for PDC prime contracts and subcontracts.

Chapter 5 and Appendix D of this report provide additional results and documentation of the availability analysis.

### **What percentage of PDC construction and personal services contract dollars might be expected to go to MBE/WBEs?**

Based on the information collected in telephone interviews with local firms, and a review of PDC-owned and PDC-sponsored construction prime contracts and subcontracts from July 2004 through June 2009, the percentage of PDC construction contract dollars expected to go to MBE/WBEs is as follows:

- For MBEs, 4.6 percent of sponsored contracts and 5.7 percent of owned contracts; and
- For WBEs, 7.3 percent of sponsored contracts and 7.4 percent of owned contracts.<sup>7</sup>

Similar analyses of PDC personal services contracts, including review of more PDC-owned and -sponsored contracts and subcontracts, indicated availability as follows:

- For MBEs, 4.9 percent of sponsored contracts and 5.1 percent of owned contracts; and
- For WBEs, 4.8 percent of sponsored contracts and 11.2 percent of owned contracts.<sup>8</sup>

These dollar-weighted availability figures are lower than what is indicated from a simple "headcount" of MBEs, WBEs and majority-owned firms because relatively fewer MBEs and WBEs are available for the largest prime contracts.

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<sup>6</sup> Among the subindustries included in the utilization analysis, 97 percent of contract dollars went to vendors with locations in the Portland Metropolitan Statistical Area. Defined by the Census Bureau, the Portland Metropolitan Statistical Area includes the Oregon counties Clackamas, Columbia, Multnomah, Washington and Yamhill and the Washington counties Clark and Skamania.

<sup>7</sup> Additional detail on construction utilization (including information about subcontractor and prime contractor utilization) can be found in Chapter 6.

<sup>8</sup> Additional detail on personal services utilization (including information about subcontractor and prime contractor utilization) can be found in Chapter 7.

BBC also developed availability estimates for specific MBE groups and for specific subsets of PDC-owned and -sponsored prime contracts and subcontracts. These values serve as benchmarks to evaluate the actual percentage of contract dollars going to those firms.

**Was there a disparity between utilization and availability of MBEs and WBEs on PDC construction and personal services contracts?**

PDC's Business Equity Program applied to certain owned and sponsored contracts. PDC utilization of MBE/WBEs on owned contracts was close to or exceeded what might be expected based on the availability of MBEs and WBEs for those prime contracts and subcontracts. In contrast, utilization of MBE/WBEs on sponsored contracts was below what might be expected based on the availability analysis.

**Owned contracts.** Overall utilization of MBE/WBEs on PDC-owned contracts was close to or exceeded availability for those contracts. However, PDC's utilization of MBEs fell short of availability on owned construction contracts. As shown in Figure ES-2, MBEs received 4.0 percent of the dollars on PDC-owned construction contracts, which is less than the 6.0 percent that might be expected based on MBE availability for that work. There were substantial disparities for each MBE group except for Asian-Pacific American-owned firms.<sup>9</sup>

The PDC Business Equity Program that applied to these construction contracts requires prime contractor outreach to subcontractors that are certified MBEs, WBEs or ESBs, which include firms owned by non-minority men. It appears that the Business Equity Program primarily benefited majority-owned ESB and WBE subcontractors on these contracts:

- Majority-owned ESBs received 21 percent of subcontract dollars;
- WBEs received 21 percent of subcontract dollars;
- MBEs received 3 percent of subcontract dollars; and
- The balance of subcontract dollars went to majority-owned firms that were not ESB-certified.

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<sup>9</sup> Based upon a number of court decisions (see Chapter 2 and Appendix B), a "substantial disparity" is one where utilization is less than 80 percent of what might be expected based on availability.

**Figure ES-2.**  
**Utilization and availability**  
**of MBE/WBEs on PDC-**  
**owned and -sponsored**  
**contracts, July 2004–June**  
**2009**

Note:  
“WBE” refers to white women-owned firms.

Source:  
BBC Research & Consulting.

	Utilization	Availability	Disparity?
<b>PDC-owned contracts</b>			
<b>Construction</b>			
MBE	4.0 %	6.0 %	Yes
WBE	17.0	10.1	No
<b>Personal services</b>			
MBE	9.8 %	5.1 %	No
WBE	11.1	11.2	No
<b>PDC-sponsored contracts</b>			
<b>Construction</b>			
MBE	3.2 %	4.8 %	Yes
WBE	5.9	7.5	Yes
<b>Personal services</b>			
MBE	1.3 %	4.9 %	Yes
WBE	0.1	4.8	Yes

**Sponsored contracts.** Unlike PDC-owned contracts, there were large disparities between the utilization and availability of MBE/WBEs on PDC-sponsored construction and personal services contracts.

As Figure ES-2 illustrates, MBEs received 3.2 percent of PDC-owned construction contract dollars during the study period, which is less than the 4.8 percent MBE availability figure for those contracts. Utilization of WBEs (5.9%) was also less than availability (7.5%).

About 1 percent of PDC-sponsored personal services contract dollars went to MBEs, less than what might be expected based on availability. Only one-tenth of 1 percent of sponsored personal services contract dollars went to WBEs, also below availability for those contracts.

Chapter 6 of the disparity study report provides detailed results of the utilization and disparity analyses for PDC construction contracts. Chapter 7 examines utilization and disparity results for PDC personal services contracts. Chapter 8 further explores potential explanations for identified disparities. The study team explains methods for compiling and analyzing PDC contract data in Chapter 3 and Appendix C.

**Was utilization below availability for each MBE group on PDC-sponsored contracts?**

For PDC-sponsored construction contracts (including prime contracts and subcontracts), utilization of African American- and Asian-Pacific American-owned firms exceeded availability, as discussed in Chapter 6. Utilization of Subcontinent Asian American-, Hispanic American- and Native American-owned firms was below availability for those firms.

Utilization of African American-owned firms exceeded availability for PDC-sponsored personal services contracts (when considering both prime contract and subcontracts). For all other MBE groups, utilization on PDC-sponsored personal services contracts was below what might be expected based on availability (see Chapter 7).

### **How could PDC's Business Equity Program influence PDC sponsored projects?**

Certain evidence of disparities includes:

- PDC contributes funding or land to many major construction contracts in Portland. Prime contractors for those projects are selected by the developer or other project owner — not PDC. When examining prime construction contract dollars for PDC-sponsored contracts, BBC found MBE/WBE utilization of less than one-half of 1 percent. There were substantial disparities between MBE/WBE utilization and availability (see Chapters 6).
- Although PDC applies a Business Equity Program to contracts on PDC-sponsored construction projects, there were substantial disparities for WBEs and certain MBE groups as subcontractors on those contracts (see Chapters 6).

PDC's Business Equity Program did not apply to construction-related professional services contracts on PDC-sponsored projects. The study team's analysis of PDC-sponsored construction-related professional services contracts identified disparities in the use of MBEs and WBEs:

- Only 1.5 percent of prime consultant dollars on PDC-sponsored projects went to MBE/WBEs, substantially below what might be expected based on availability of those firms for that work. There were substantial disparities for WBEs and each MBE group except for African American-owned firms (see Chapter 7).
- MBE/WBEs received 1 percent of subcontract dollars on PDC-sponsored personal services contracts. There were substantial disparities between utilization and availability for every MBE/WBE group (see Chapter 7).

### **Does the utilization reported in the disparity study match the utilization reported in PDC's annual reports?**

During the study period, PDC released yearly reports on utilization of M/W/ESBs in PDC contracting. The results reported in the disparity study may differ from the data presented in PDC's utilization reports. There are several reasons for these differences:

- **MBE/WBE certified firms.** To calculate MBE/WBE utilization for annual utilization reports, PDC considered only those firms that are certified as such through the State of Oregon. To calculate MBE/WBE utilization for the disparity study, BBC considered certified and non-certified MBE/WBEs.
- **Contract amount.** The study team calculated participation of minority- and women-owned firms as a percentage of the entire contract amount, not just the PDC contribution. Some of the PDC annual reports calculated utilization as a percentage of the PDC contribution to projects, attributing all MBE/WBE participation to the PDC portion of the project.
- **Time period.** The disparity study aggregates results across a five year time period (July 2004 through June 2009).

- **Subcontractor data.** During the study period, PDC tracked subcontractor participation on construction contracts. BBC collected subcontractor participation on personal services contracts.
- **Excluded subindustries.** BBC excluded certain PDC contracts based on subindustry, including those that are not typically included in a disparity study (e.g., contracts going to not-for-profit organizations) and those that reflect national markets (e.g., software).
- **South Waterfront projects.** Projects related to the South Waterfront were included in the study and the annual report. In the annual report, however, these projects were reported separately from other PDC projects.

**How do results for PDC contracts compare with disparity results for the City?**

About 2.9 percent of City construction contract dollars went to MBEs from July 2004 through June 2009. Utilization of WBEs on City construction contracts was 5.4 percent during the study period. For City construction-related professional services contracts, utilization of MBEs was 28 percent and utilization of WBEs was 6.8 percent.<sup>10</sup> Utilization of MBE/WBEs on City construction and construction-related professional services contracts was close to or exceeded what might be expected based on availability for those contracts. Figure ES-3 provides an overview of disparity indices for PDC and City contracts. A disparity index of 100 indicates parity between utilization and availability. Disparity indices less than 100 indicate that utilization was less than what might be expected based upon availability for those contracts (indices under 80 indicate “substantial disparity” according to some court decisions).

**Figure ES-3.**  
**Summary of disparity indices for City and PDC contracts (disparity index of 100 means parity).**

Note:  
Individual disparity indices for MBE groups may differ from the aggregate MBE index. See Chapter 6 & 7 of the City and PDC reports.

A disparity index of “100” indicates an exact match between actual utilization and the availability for that group (also referred to as “parity”).

Source:  
BBC Research & Consulting.

	MBE	WBE
<b>City</b>		
Construction	150	152
Personal/professional services	200 +	93
<b>PDC-owned</b>		
Construction	74	200 +
Personal/professional services	190	98
<b>PDC-sponsored</b>		
Construction	69	76
Personal/professional services	27	2

**Overview of City of Portland disparity results.** The BBC study team was able to compile and – analyze data for certain groups of City of Portland contracts and subcontracts for which programs to encourage MBE/WBE utilization did not apply. There is strong evidence that, without City programs, there would be disparities in the utilization of MBE/WBEs on City construction and construction-related professional services contracts.

<sup>10</sup> The City of Portland Disparity Study examined City professional, technical and expert services (PTE) contracts.

- There were substantial disparities in the utilization of MBEs as prime contractors on City construction contracts (see Chapter 6).
- Considering subcontracts on formal construction contracts not awarded under the Fair Contracting Programs (including the City's Good Faith Efforts Program and Sheltered Market Program), MBE/WBE utilization was 12.8 percent, substantially below the 19.8 percent MBE/WBE availability for those subcontracts (see Chapter 6).

Even with the City's program to encourage MBE/WBE utilization as prime consultants on construction-related professional services contracts, there were disparities for WBEs.

#### **How do results for PDC contracts compare with results for the Portland area marketplace?**

BBC also examined quantitative and qualitative information about the success of MBE/WBEs in the local construction and personal services industries.

- Annual revenue of certain MBE groups and WBEs is lower than other firms in the Portland area.
- There is evidence that minorities and women face greater disadvantages than other firm owners when seeking capital, bonding and insurance.
- There is also quantitative and qualitative evidence that MBE/WBEs face barriers to working as prime contractors and as subcontractors on local public sector contracts.

Chapter 4 and Appendices G, H, I and J present these analyses.

#### **Is there any evidence that availability of MBE/WBEs in the local marketplace has been affected by race or gender discrimination?**

BBC also examined quantitative and qualitative information about any barriers that could affect minorities and women entering the local construction and personal services industries.

- There is quantitative and qualitative evidence that availability of MBE/WBEs to perform PDC construction and personal services contracts is less than what might be expected if minorities and women had the same opportunities as non-minorities and men to enter and advance within these industries, and form and grow their businesses.
- Perhaps contributing to the disparities in business ownership, there is evidence that minorities and women have greater disadvantages than other firm owners when seeking capital.

Chapter 4 and Appendices E, F, G, H, I and J present these analyses.

**How should PDC use this information?**

PDC should review the results from the disparity study when considering its future operation of any small business and MBE/WBE programs. In addition to the disparity study and its own internal research, PDC has access to other relevant information, including results of disparity studies for other agencies in Oregon.

Some of the information included as part of the disparity study may prompt PDC to further research how programs might be more strongly implemented for its sponsored contracts. Efforts to help all small businesses (“race- and gender-neutral” measures) should continue to be an important component of PDC’s programs. Chapter 10 explores several initiatives for PDC to consider.

As PDC considers the future of its MBE/WBE/ESB assistance programs, it should not only review whether there is a need for such programs but also the legal requirements for “narrow-tailoring” those programs (see Chapter 2 and Appendix B).