HB 2667 (2013): Task Force Report

Procuring Through Small and Local Business

September 2014

Prepared by
The House Bill 2667 Task Force

Prepared for
The Oregon State Legislature
Per House Bill 2667

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Taskforce Participants

As required by HB 2667 Section 1, the task force included representatives from the following:

The President of the Senate appoints three members as follows:

- Two members from among members of the Senate; and
- One member who is a minority individual or a woman, as those terms are defined in ORS 200.005, who owns or operates a small or local business.

Senator Chip Shields
Senator Herman Baertschiger
Dayna Jung, Owner, Project Design Group

The Speaker of the House of Representatives appoints three members as follows:

- Two members from among members of the House of Representatives; and
- One member who is a minority individual or a woman, as those terms are defined in ORS 200.005, who owns or operates a small or local business.

Representative David Gomberg (Chair)
Representative Kim Thatcher
Gale Castillo, President of the Hispanic Metropolitan Chamber

The Governor appoints three members as follows:

- One member who is a minority individual or a woman, as those terms are defined in ORS 200.005, who owns or operates a small or local business;
- An employee of the Oregon Department of Administrative Services; and
- An employee of the Department of Transportation.

Sam Brooks, OR Association of Minority Entrepreneurs
Dianne Lancaster, Department of Administrative Services
John Downing, Oregon Department of Transportation

Executive Summary

The Task Force on Procuring through Small and Local Business was created by House Bill 2667 (2013) with the directive of studying public contract awards to minority-owned, woman-owned or emerging small businesses (MWESB) in the state of Oregon.

Task Force Observations

The state of Oregon relies on certification to validate and track MWESB firms. There are a number of Oregon eligible MWESB firm's that have not gone through the certification process. These firms are, however, receiving state contracts. Because they are not certified, the state is unable to track these contracts, and therefore, understating progress of accomplishing MWESB goals.

There are many reasons eligible firms choose not to certify and/or even do business with the state:

- Long Onerous Application Process
- Application Requires Detailed Personal Information
- No Assurance of Benefit
- Many Businesses Get Contracts Without Certification
- Time Lag in Getting Paid
- Limited Access to Capital

At the same time, it appears that the number of firms that are certified, and the number of dollars going to those firms is declining. The exception is African American firms, where the number of contracts and dollars is increasing. Through this community, we have a positive example of how progress can be made.

It also seems that the state is awarding contracts to a narrow number of MWESB certified firms. Through the recommendations provided below, the goal should be to reach out to more companies, diversify the number of companies qualifying for state contracts, and broaden number of companies qualifying in this program.

Finally, it seems that while construction firms are being sufficiently supported (*although there is always room for improvement*), the non-construction goods/services firms need more attention. Currently, there is no formal way to involve, include, and reach out to non-construction firms.

With these observations and through multiple presentations and data review, it became clear there is great opportunity to increase certification with Oregon's eligible MWESB firms, and nurture the growth of firms already certified with the state.

Task Force Recommendations

The Task Force, along with many key contributors and interested parties, developed multiple recommendations to help overcome barriers and support the success of Oregon certified MWESB firms.

- **Follow-up to Businesses with Incomplete ORPIN Registrations**
  Implement suggested improvement actions provided by ORPIN administrators and OMWESB

- **Direct Referral System from Secretary of State's Central Business Registry**
  Add a direct referral system into the online registration

- **Bundling Smaller Procurements / Breaking Down Larger Procurements**
  Require mandatory initial review of large project procurements, to determine feasibility of breaking it down to smaller, more MWESB achievable smaller procurements

- **Update Agency Vendor Quote Requirement**
  Review and follow best practices from other public entities regarding inclusion of quotes from certified MWESB firms

- **Oregon Specific Contract Assistance Program**
  Create a program to serve as the dedicated, centralized resource to grow the number of Oregon certified businesses, build capacity, and assist in accessing state and local government opportunities.

- **Certification/Business and Agency Counselling**
  Creating a program with the primary purpose of connecting and counselling businesses and state agencies in MWESB certification and contracting

- **State Agency MWESB Program Auditing**
  Implement an auditing team to review agency programs, identify problems, address solutions, and ensure the goals of agencies are being met

- **Procurement Advisory Team Engagement**
  Engage and restructure this statewide team to serve as an advisory council to continue improvements for MWESB state contracting

- **Aggressive Dedicated Outreach by Agencies**
  Develop agency specific outreach and certification education to agency vendors, with the support and endorsement of the Governor's Office

- **SBDC/MWESB Collaboration Events**
  Source funding, and reestablish SBDC/MWESB quarterly meetings.

- **Improve Government Payment Lag Time**
  Audit and restructure accounting systems to improve efficiency and timeline of vendors getting paid

- **Bonding Support**
  Research strategies to implement potential options to breakdown bonding barriers

- **Insurance Threshold Requirements**
  Research on the feasibility of implementing an insurance vendor/contractor program for the state of Oregon

Background

The Task Force on Procuring through Small and Local Business was created by House Bill 2667 (2013).

Its directive was to:

A. Study the extent to which contracting agencies award public contract to minority-owned, woman-owned or emerging small businesses in this state and describe and categorize the types of public contracts that contracting agencies typically award to minority-owned, woman-owned or emerging small businesses in this state;
B. Evaluate the extent to which large procurements for goods and services, including construction services, could feasibly be broken into smaller procurements that would be within the capabilities and expertise of minority-owned, woman-owned and emerging small businesses in this state;
C. Investigate and recommend incentives that can help to induce contracting agencies to award public contracts to minority-owned, woman-owned or emerging small businesses; and
D. Report the results of the study the task force conducts in a manner that makes comprehensive data about public contracting awards to minority-owned, woman-owned or emerging small businesses in this state visible, understandable and useable and that illuminates the particular impact that contracting agencies' public contracting practices have on:
    A. Minority-owned businesses, woman-owned businesses and emerging small businesses, each as separate categories of businesses; and
    B. Specific groups of minority individuals who own small or local businesses, including but not limited to individuals who are:
        I. Asian American, as described in ORS 200.005 (4)(c), or Asian Pacific or Subcontinent Asian;
        II. Black, as described in ORS 200.005 (4)(a), or African American;
        III. Hispanic, as described in ORS 200.005 (4)(b), or Latino;
        IV. Native American or Alaskan Native, as described in ORS 200.005 (4)(e); and
        V. Any additional groups whose members are designated as socially disadvantaged by the Small Business Administration and/or as designated under 49 CFR Part 26 (2013 Edition).

The Task Force held six hearings from June 13, 2014 to July 24, 2014. Hearings included presentations from state and local government, non-profit assistance programs, and MWESB firms, all with pertinent information on state contracting with MWESB firms. Topics ranged from MWESB profile data, state certification process, support programs, outreach efforts, and types of contracts awarded. The following report details that information, and offers recommendations to increase the partnerships between MWESB firms and the state of Oregon.

Governance

The Office of Economic & Business Equity (Governor's Office)

The Office of Economic & Business Equity is created in statute. The Director is a cabinet level appointment by the Governor and serves as a senior policy advisor on issues related to minority-owned, woman-owned, disadvantaged and emerging small businesses. Working internally with agency leadership and staff, externally with the statewide stakeholder community, the Office assists in strategies to increase contracting with Oregon certified firms - from access to bidding information, resources or staff; upcoming procurement opportunities and opening doors or making key connections.

Governor's Executive Order No. 12-03

Governor's Executive Order No. 12-03 directs 21 state agencies to develop aspirational targets and implement other initiatives for promoting diversity and equal opportunity for minority-owned (MBE) and women-owned (WBE) businesses. Those state agencies develop targets for MBE/WBE procurement of contracts valued at $150,000 or less which may be performed by MBE/WBE.

Aspirational targets are set by agencies with consideration to size, location and scope of work required for typical contracts. Agencies are encouraged to use the Oregon Department of Transportation (ODOT) target setting process (*see appendices A*) as a model in establishing aspirational targets.

Agencies report MBE/WBE solicitations and MBE/WBE and Emerging Small Business (ESB) actual awards to the Office of Economic and Business Equity on a quarterly basis.

To further Oregon's efforts to create an inclusive business climate, the Governor's Executive order also directs agencies to ensure the following:

- Contract procurement staff and management personnel with contract procurement responsibilities are trained on the requirements of DAS Statewide Policy 107-009-030 (MWESB Procurement) and DAS Statewide Policy 125-09-020 (Oregon Procurement Information Networks [ORPIN])
- Collaborate with Oregon Business Development Department and the Office of Minority, Women, & Emerging Small Business certification as established by ORS 200.022 and increase the number of certified firms.
- Record MBE/WBE and ESB certification status in contract award information collected in ORPIN
- Record the MBE/WBE and ESB certification status of all businesses invited to submit a bid for a Small or Intermediate Procurement under ORS 279B.
- Evaluate and consider modification of restrictive definitions in the procurement process to facilitate participation of all businesses wishing to do business with the state, without regard to gender, race, ethnic origin, religion, social class, or other affiliation.
- Present Certificates of Excellence to contract procurement staff and/or management personnel who exhibit outstanding initiative in their outreach efforts to MBE's/WBE's and ESB's.
- Agencies not named in Executive Order 12-03 must continue to comply with requirements of ORS 200.035. Agencies outside the scope of this Executive Order, including but not limited to the Oregon State Lottery, Oregon Bureau of Labor and Industries, and the Public Employees Retirement System, are encouraged to develop, implement and participate in the policies and processes outlined in the Executive Order.

MWESB Profile

The following information is a snapshot profile of Oregon minority-owned, woman-owned or emerging small businesses (MWESB) as of June 2014.

Data provided by the US Census

Information pulled from the US Census Bureau in 2007 provided the following data on numbers of total MWESB firms located in the state of Oregon.

Ethnicity	Number of firms
African American (Black)	4,000
American Indian/Alaska Native	4,000
Asian	12,500
Hispanic	11,000
Native Hawaiian / Pacific Islander	700
Women owned	103,000
Total Number of Businesses	348,000

Data Provided by the State of Oregon

To compare federal data with local data, the Task Force requested information from the Office of Minority, Women, & Emerging Small Business (OMWESB). The table below illustrates Oregon's population of certified firms as of June 2014:

Certified MWESB Population by Ethnicity and Sex

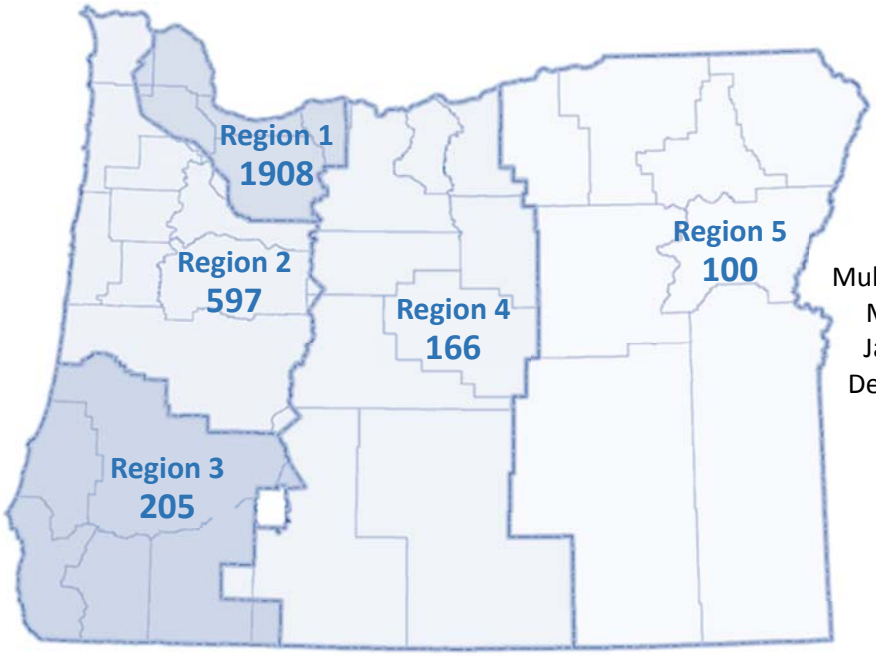
Ethnicity	%	Number of firms
African American (Black)	6.3%	210
Asian Pacific	5.2%	171
Caucasian (White)	70.9%	2347
Hispanic	8.7%	287
Native American (Indian)	3.4%	114
Other	0.5%	15
Subcontinent Asian	2.0%	66`
Unknown	3.0%	99
	TOTAL	**3309**

Gender	%	Number of firms
Female	46%	1515
Male	54%	1794
	TOTAL	**3309**

It is clear to see that there is a population of Oregon MWESBs that have chosen not to become certified with the state. Reasons for resistance is presented further in this report.

Another request of the Task Force was to look at the geographic data of certified firms using the Oregon Department of Transportation's regional structure, as of June 2014.

Certified Firms by ODOT Region



County with Largest Representation by Region

Multnomah 1003 firms = 53% of Region 1
Marion 209 firms = 35% of Region 2
Jackson 103 firms = 50% of Region 3
Deschutes 109 firms = 66% of Region 4
Baker 47 firms = 47% of Region 5

Multnomah County has been a forerunner in contracting with MWESB's for many years. In the past six years, payments to MWESBs have almost doubled, exceeding $7M in 2013. The Task Force documented and provided Multnomah best practices and improvement recommendations within this report.

MWESB State Certification

Department's Office of Minority, Women, Emerging Small Business

The Office of Minority, Women, & Emerging Small Business (OMWESB), located within the state agency Business Oregon, is the sole certification agency for the state of Oregon, managing four certification programs for the state.

Certification program	Certification is for	If the business is
Emerging Small Business (ESB) *Tier 1*	contracting opportunities with city, county, state and special jurisdictions	• 19 or fewer employees • 3-year gross annual receipts construction firms ≤$1,803,236.67 non-construction firms ≤$721,294.66
Emerging Small Business (ESB) *Tier 2*	contracting opportunities with city, county, state and special jurisdictions	• 29 or fewer employees • 3-year gross annual receipts construction firms ≤$3,606,473.36 non-construction firms ≤$1,202,157.78

Minority Business Enterprise (MBE)	contracting opportunities with city, county, state and special jurisdictions	• owned and controlled by a member of a recognized minority group** • minority has 51% + ownership
Women Business Enterprise (WBE)	contracting opportunities with city, county, state and special jurisdictions	• owned and controlled by woman • woman has 51% + ownership
Disadvantaged Business Enterprise (DBE)	contracting opportunities with recipients of *federal*ly-funded transportation-related projects	• owned and controlled by woman OR member of recognized minority group**

*****Recognized minority groups:*** *Black American, Hispanic American, Native American, Asian Pacific American, Subcontinent Asian American*

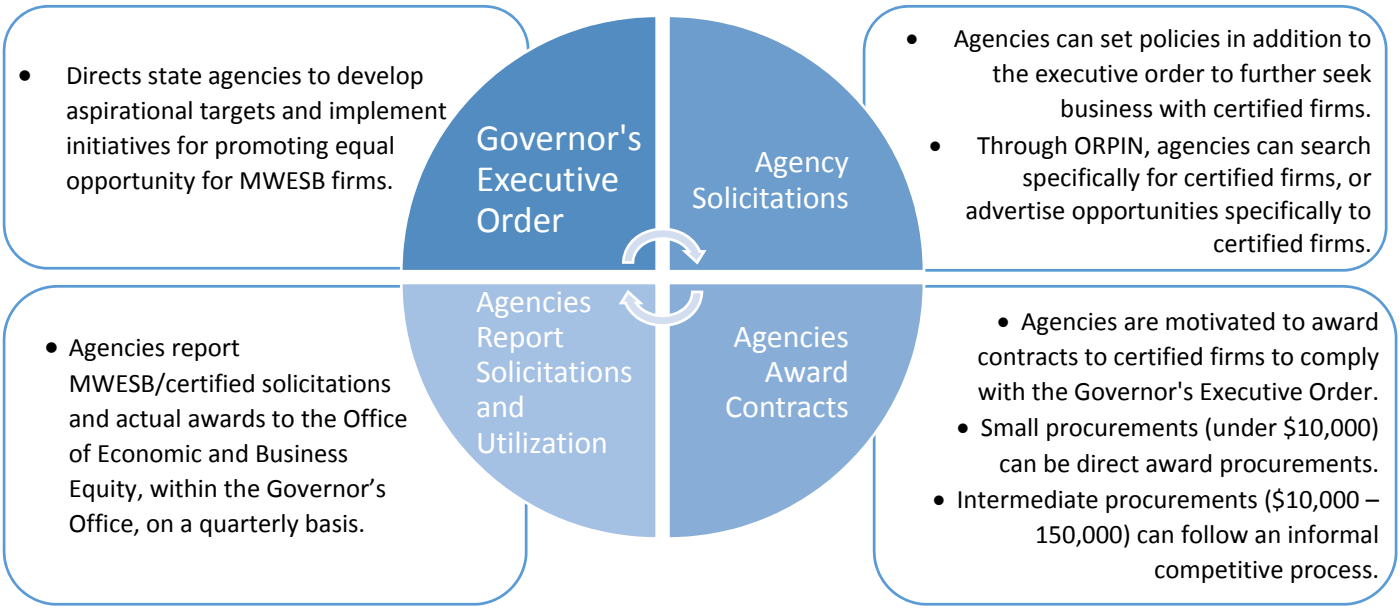
All four programs must meet the following basic eligibility requirements:

- Organized as a for-profit business
- U.S. citizen or a lawfully admitted, permanent resident
- Individual controls and manages the day-to-day operations
- Contribution of capital equal to ownership
- Located in Oregon (ESB) or certified in home state
- Professional licensing

Benefits of Certification

It is important to note that the state relies on certification to validate and track MWESB firms. With direction from the Governor's Executive Order, agencies set targets and initiatives to create opportunities for certified firms and report the progress of achieving those outcomes. Through this direction, agencies are driven to solicit and award to certified MWESB firms.

Agency data submitted for the 2013 Annual Report indicated that while contracting spend for the 21 state agencies was down $500 million from the previous year, money spent with minority-owned and women-owned firm more than doubled in calendar year 2013.



Certification also opens the door for MWESB firms targeting government contracting opportunities:

- Opportunity to bid on goal orientated federal, state, and local government contracts as well as special jurisdictions such as hospitals and universities
- Create opportunities with prime contractors
- Networking opportunities and events
- Exposure – marketing/advertising tool
- Education opportunities
- Mentorship programs

MWESB State Certification Process

OMWESB recently implemented an e-application system (B2GNow), where firms have the ability to apply for certification online. The new M/WBE and ESB certification Web-based software also offers a more efficient structure for tracking certification.

The automated system streamlines the application process and reporting requirements for all DBE, M/WBE and ESB programs within the state of Oregon. The system includes the following features:

- Enhanced online-certified directory with keyword search capabilities
- Electronic step-by-step submission of applications and supporting documentation necessary for certification
- Ability to view status of application
- Ability to update/renew certifications
- Improved communication with firms with automated alerts by email
- Improved file management and ability to share data with other agencies

The certification process from submittal to approval is on average 30-60 days depending on the complete submission of the application and supporting documentation.

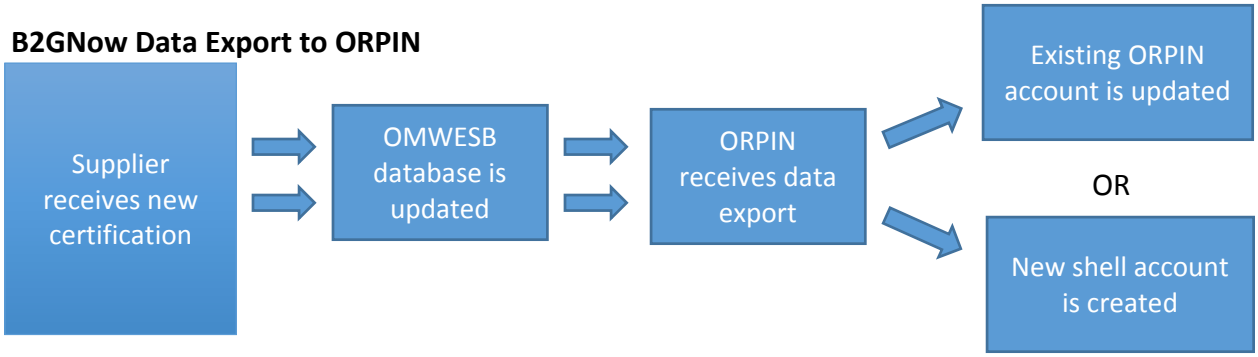
Enforcement and reporting requirements

State and federal programs have different reporting requirements. In general, once a firm is certified, there are annual reporting requirements in the form of a No Change Statement or Affidavit. The federal program requires the No Change Affidavit to be notarized. On a firm's third year anniversary, a formal review process is implemented to confirm that the applicant continues to meet the requirements of the program(s).

Information Transfer to the State E-Procurement System

When a firm is certified through the Business Oregon program, certification information is exported to the Oregon Procurement Information Network (ORPIN) e-procurement system on a nightly basis. Information is then either updated or a new account shell created. Newly certified firms, need to contact ORPIN and complete the vendor account registration. Any changes made by OMWESB to the certification information are transferred to ORPIN during the nightly upload.

B2GNow Data Export to ORPIN



Oregon Procurement Information Network (Department of Administrative Services)

The ORPIN system is the e-procurement system for the state of Oregon, and the number one repository of contracting opportunities across state and local government. Most state agencies and many local governments use ORPIN to reach suppliers in order to procure goods and services.

The system came online in 2005, and since then has been the primary e-procurement system for agencies that fall under the Department of Administrative Services' (DAS) authority. All agencies that are subject to the DAS authority are required to post all contract awards $5000 and over.

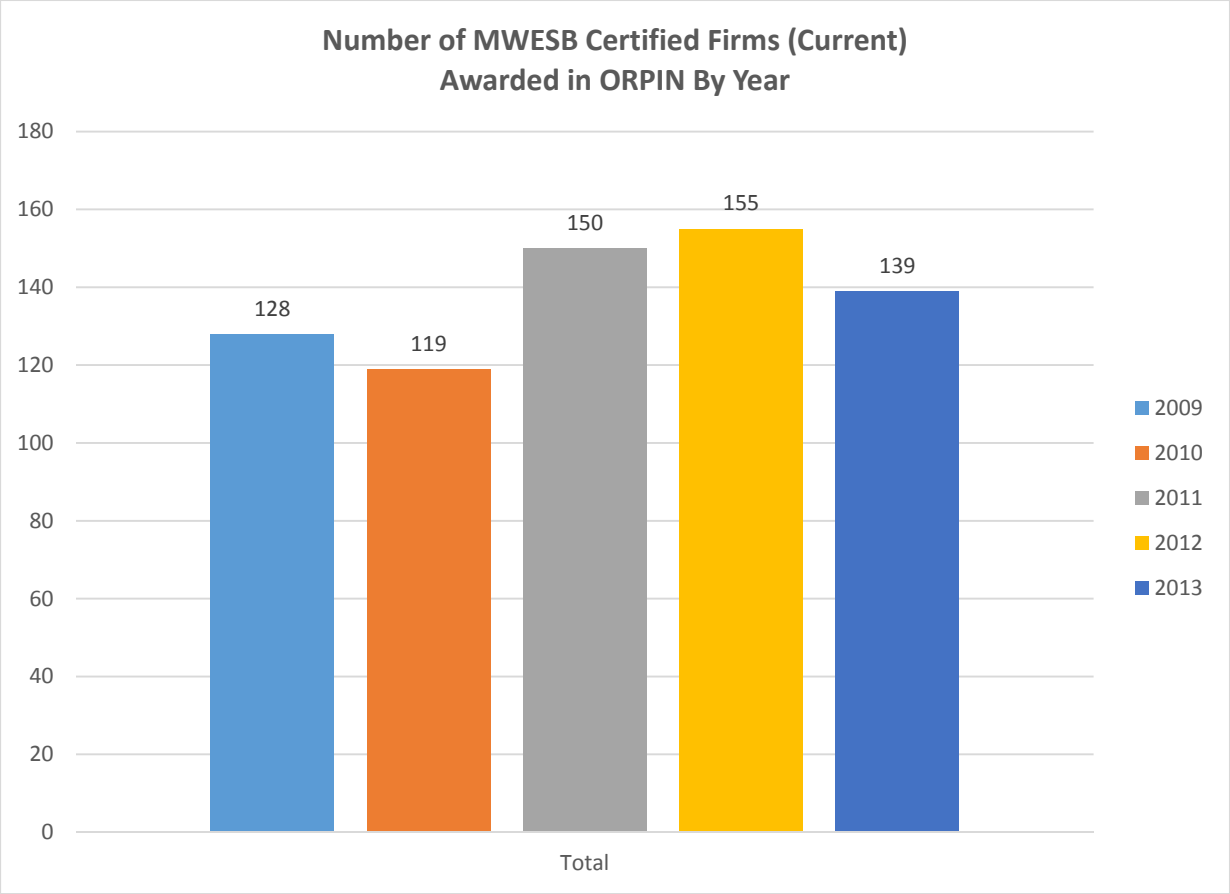
ORPIN allows for targeted opportunities to help state agencies and units of local government attain MWESB aspirational targets, and inclusionary opportunities for MWESB.

ORPIN Contract Award Data

Reviewing data extracted from ORPIN, from 2009 to 2013, 40+/- state agencies have reported awards to MWESB certified firms. Fifteen of those are Oregon Cooperative Purchasing Program (ORCPP) members, which include local governments, special districts, universities, community colleges, cities and counties.

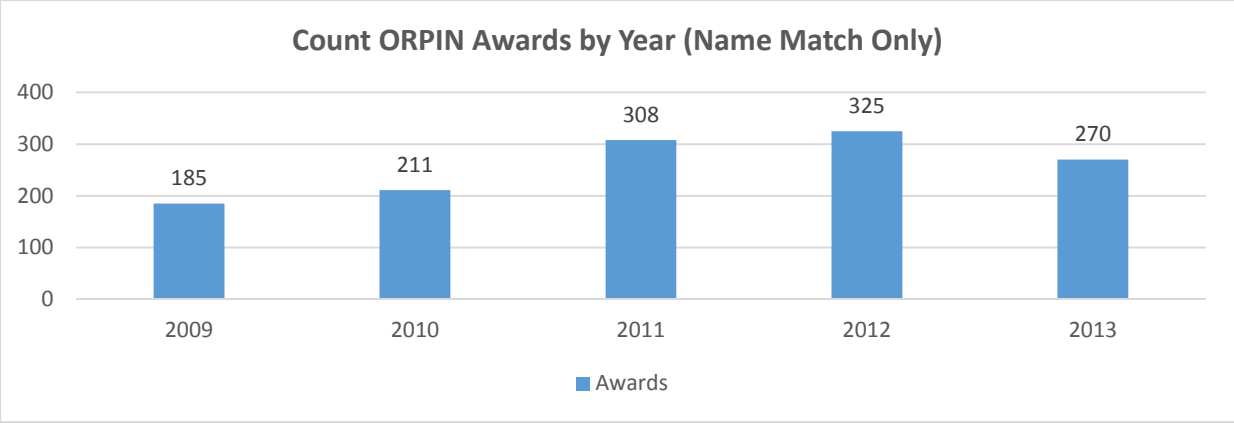
Currently there are 64,300 total businesses registered or have a profile set up in ORPIN. There are 3,300 certified firms registered that are unique, and not duplicated across certification.

The bar graph below, depicts the total number of certified MWESB firms that were awarded in ORPIN in the last five years. Note: this is the number of firms, the next chart depicts number of awards.

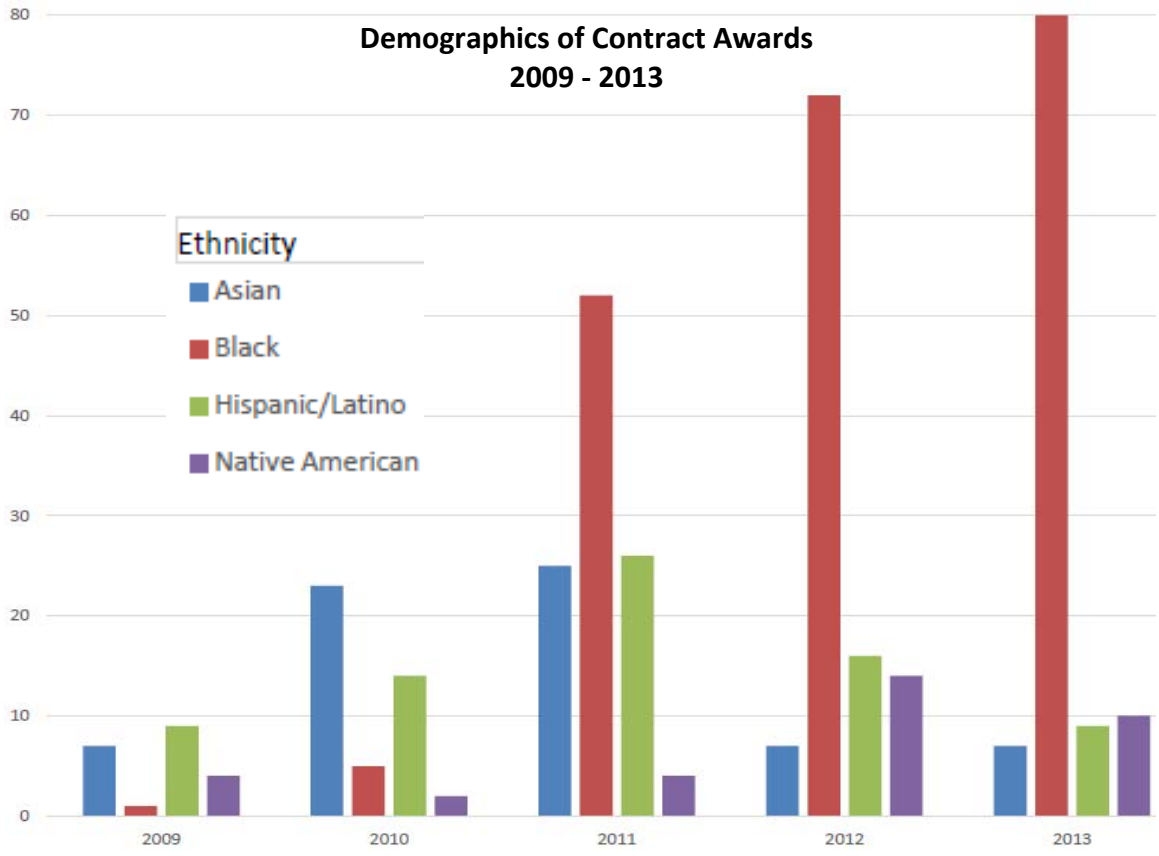


The next chart represents the number of awards that were given to currently certified MWESB Firms in ORPIN. Note: one firm can receive multiple awards.

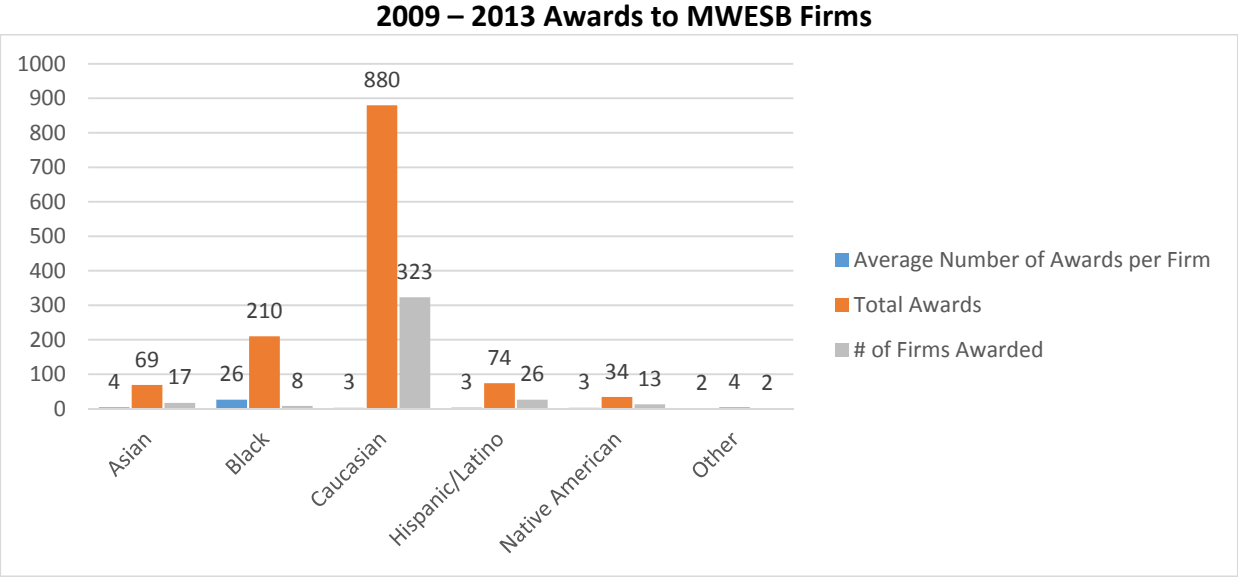
From 2009 into 2011, there has been growth in the amount of contracts awarded. From 2011 to 2013, awards have decreased slightly.



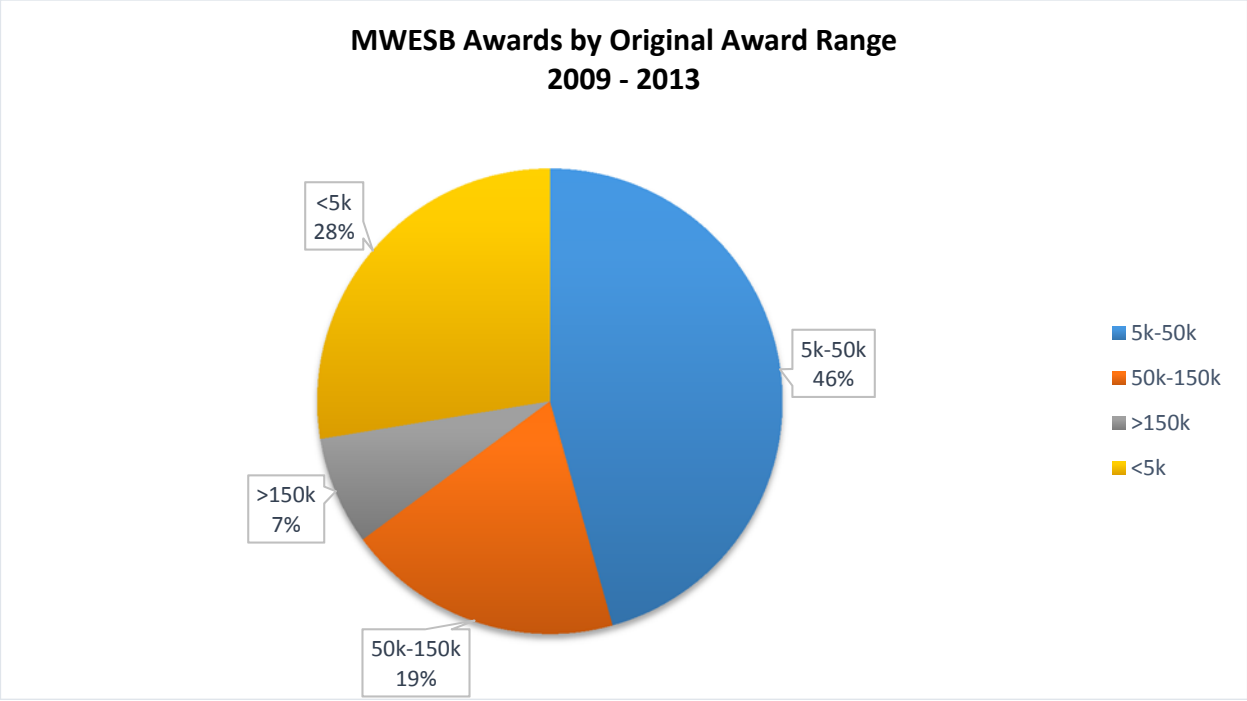
The bar chart below shows the number of awards received by MWESB certified firms by ethnicity and year. It is important to highlight that one firm can receive multiple awards.



A further breakdown of the total number of awards given by ethnicity, average number of awards per awarded firm, and number of firms that were awarded to certified MWESB firms from 2009-2013 is below:



For the Task Force to review the expected dollar values of awards at time of award to certified MWESB firms, the following award range information was compiled.



It is clear that the majority of awards fall into the $5,000 - $50,000 award range.

Agency Support Programs and Outreach

State Agencies currently provide programs and connect with MWESBs. The Task Force received multiple presentations from state agencies on these efforts.

Oregon Department of Transportation

The Oregon Department of Transportation (ODOT) provides multiple workforce and small business support programs through training, indirect support, outreach activities, special initiatives and unique contracting opportunities.

- Project-Specific Mentor-Protégé Program*
- Small Business Management classes*
- ODOT DBE Boot Camp Classes*
  *(*In partnership with the Oregon Small Business Development Center)*
- Bonding Education Program *(in partnership with the US Department of Transportation and Small Business Transportation Resource Center)*
- Vendor training classes by agency project managers
- ODOT Meet-the-Primes workshops

ODOT partners with state organizations such as the Oregon Small Business Development Center (SBDC), the Oregon Association of Minority Entrepreneurs (OAME), the National Association of Minority Contractors – Oregon (NAMCO), the Association of General Contractors (AGC), and state and local agencies, on outreach to connect and market these programs to Oregon's MWESB's.

Governor's Office

The Governor's Marketplace (GMP) directly targets MWESB firms. The conference brings together State, Federal and government entities along with private sector firms and non-profit organizations to help Oregon small businesses achieve greater contracting success.

Presentations from the 2014 GMP included:

- Certified Firm Panel
- Higher Education Contracting
- Utilities Contracting, Professional Services
- Access to Capital
- Diversity Practitioners
- Federal Contracting
- State Agency Contracting
- Local Government Contracting
- A & E
- Construction Subcontracting
- Certification workshop
- Small Business Legal Clinic

The Roadshow is designed as a mini version of the Governor's Marketplace Conference targeting specific cities throughout the state to provide opportunities for local small businesses to meet directly with procurement professionals from state, federal, private and non-profit organizations. Procurement staff and other supportive professionals from state, federal, private and non-profit organizations share tips, tools, resources and strategies to aid in business growth as well as how to better navigate the contracting process and effectively connect and nurture ongoing relationships.

ORS 200.035 requires state agencies to notify the Economic and Business Equity office of potential contracting opportunities when a contract award exceeds $10,000. This Opportunity Register & Clearinghouse operates as another resource for state-certified vendors seeking government contracts and for agencies and organizations who seek assistance finding certified vendors.

Connect 2 Oregon (Business Oregon)

The Connect 2 Oregon (C2O) is a collaborative effort by local, state, and federal government agencies to provide practical training on certification, contracting, as well as business finance programs. This one-day outreach effort is comprised of four events:

- Government to Government Purchasing Training
- Government Lending Programs
- Small Business (Vendor) Training
- After Hours Networking

In determining the location of each event, the Governor's Marketplace Roadshows are the initial contact where representatives from C2O are present, and can review the needs/issues of that specific county. A C2O roadshow will follow up in that county to help delve deeper into those needs/issues. The Governor's Office has representation at the C2O roadshows as well.

Community Support Programs

There are many community programs that support Oregon's MWESB's. The following organizations represent only a few of the valuable resources available.

Oregon Small Business Development Center Network

The Oregon Small Business Development Center Network (SBDC) is comprised of 19 SBDC's around the state - hosted in all 17 Oregon community colleges, and two regional universities. The Oregon SBDC is funded, in part, by the state of Oregon, the US Small Business Administration, and 19 hosts. The purpose of the SBDC is to provide advice, guidance, and instruction for current and perspective entrepreneurs.

SBDC has partnered with the Oregon Department of Transportation on three initiatives:

- Small Business Management (SBM) Program – a classroom style cohort, meeting over a 9 – 10 month period, firms also meet with an advisor in a one-on-one capacity.
- Mentor Protégé program – partner larger prime contractors (mentors) to provide guidance to earlier state OMWESB certified sub-contractors (protégé).
- Boot camp – Smaller, faster cohorts, with outcomes to help businesses be stronger in their business practices.

Oregon Association of Minority Entrepreneurs

The mission of the Oregon Association of Minority Entrepreneurs (OAME) is to promote and develop entrepreneurship and economic development for ethnic minorities in Oregon and SW Washington, thereby reducing racism and discrimination. The focus and support services include: technical assistance, access to capital, marketing, technology, networking, business incubation, participation and political awareness.

To emphasize membership, continued training and assistance, OAME holds multiple networking events - including monthly meetings and an annual tradeshow.

OAME is a Microlender for the US Small Business Administration (SBA) offering "accounts receivable" and "term" loans. For FY 2012, OAME Microlending was ranked #1 in the northwest and #7 in the nation by SBA.

Microenterprise Resources Initiatives & Training

Microenterprise Resources Initiatives & Training (MERIT) is a microenterprise development organization that empowers economically, socially, and physically challenged individuals to increase self-sufficiency and build personal assets. This non-profit organization serves businesses with five or fewer employees, and that typically take $50,000 or less to start. Programs and services include workshops, advising and development, and financial education.

Government Contract Assistance Program

Government Contract Assistance Program (GCAP) is part of the Procurement Technical Assistance Program (PTAP) created by congress with the purpose to help businesses seeking to compete successfully in federal state and local government contracting.

Through advise, assistance and training, GCAP helps businesses find their market and contracting opportunities. GCAP helps educate businesses on certifications, the importance of certification, and the process to certify.

GCAP services include:

- One-on-One Counseling
- Registration Assistance (Duns, SAM, DSBS, FBO)
- Bid-matching Services
- GSA Schedules
- Assistance with SBA Certifications
- Training & Conferences
- Interpreting Solicitations
- Proposal Review
- Subcontracting Assistance
- Product and Procurement Histories

The Hispanic Metropolitan Chamber

The Hispanic Metropolitan Chamber is a non-profit organization that provides one-on-one technical assistance services to assist small businesses to:

- Start or expand
- Become certified
- Access financing in public or private sector
- Access contracts in the public or private sector
- Market and manage their business
- Access other business resources

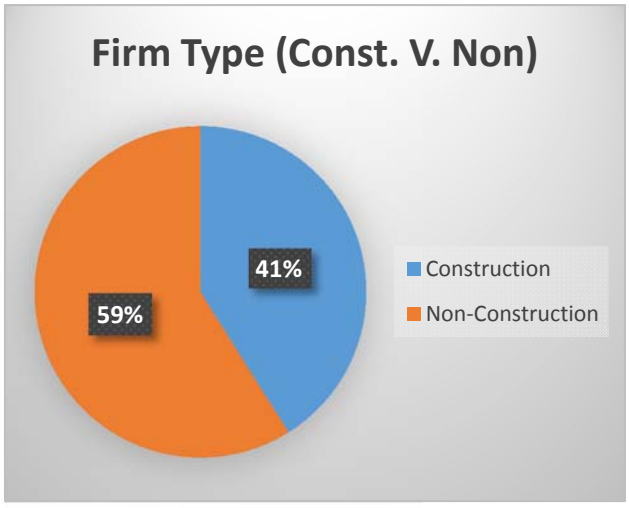
State Procurement – Types of Contracts Awarded

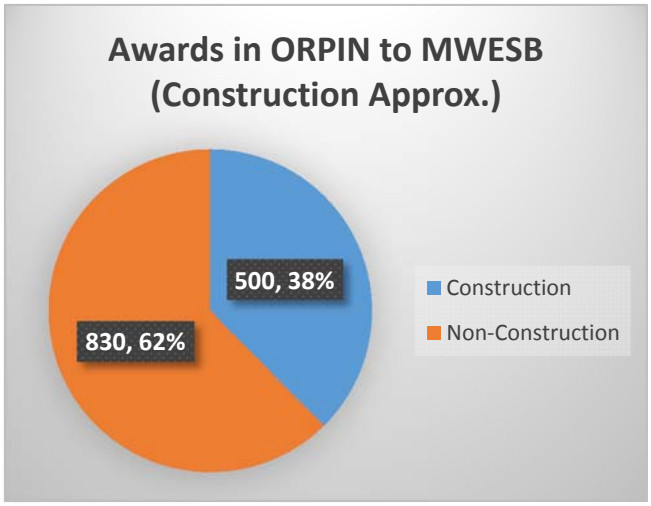
The National Institute of Governmental Purchasing (NIGP) commodity code is a system used primarily to classify products and services procured by state and local governments in the United States. A firm can be certified in multiple NIGP codes which expands procurement opportunities.

Below, is a graphical representation of the top 20 award types, in the last five years, pulled by NIGP code from the ORPIN system. This can include a large number of work order contracts (WOCs), in which one firm received multiple requests for work on a single contract (translation services is an example).

Top 20 Contracts Awarded by NIGP Code to MWESB Firms (2009 – 2013)

Looking at construction related MWESBs and contracts awarded, the Task Force found 41% of certified firms are construction related, coinciding with the 38% procurements awarded between 2009 – 2013. However, it's important to highlight, out of all opportunities in ORPIN, only 15% are for construction related projects.





Agency Specific Procurement Needs (examples)

Department of Transportation

See appendices B for the ODOT report on construction projects by calendar year.

Professional Services

- State-licensed architect
- Professional engineer
- Architectural Designs
- Engineering Services
- Environmental Land Surveying
- Land Inspections
- Material Testing
- Soil Testing
- Geo-Mapping
- Large Landscaping
- Professional Consulting and Training
- Public Outreach Consulting
- Architecture and Engineering Management Consulting
- Right of Way Consulting
- Other related services

Construction

- Asphalt
- Carpentry
- Concrete; Concrete pumping; Concrete structures
- Construction management
- Earthwork
- Electrical
- Erosion control
- Fencing
- Flagging
- Guardrail
- General construction
- Hazardous materials
- Heavy equipment
- Labor
- Landscaping
- Masonry
- Metal fabrication
- Nursery and trees
- Painting
- Paving
- Plumbing
- Rebar
- Saw cutting
- Sewer-drainage
- Signing
- Striping/ pavement markings
- Temporary traffic control
- Trucking
- Welding

Oregon State Police

- Custom fit equipment for vehicles
- Graphics for the sides of patrol cars
- Lab equipment for forensics labs
- Vehicles
- Leather goods for trooper uniforms
- Officer badges
- Plumbing repairs and electricians for offices around the state

Department of Forestry

- A&E
- Aviation
- Construction
- Janitorial
- Logging services
- IT
- Printing
- Tree planting
- Tree seedlings
- Tree treatments

Department of Human Services/Oregon Health Authority

- Administrative
- Advertising
- Application assistance
- Alcohol and drug
- Consultation
- Construction
- Facilitation
- In-home care
- IT programming
- Legal
- Media
- Mental health
- Quality Assurance
- Training

MWESB Challenges/Resistance

Through the presentations and data shared with the Task Force, it was clear there are many eligible firms in Oregon who have chosen to not become certified for one or many reasons.

Onerous Application Process

Many who choose to not become certified do so due to the demanding paperwork, and the length of time it takes to complete the application process. Although the online process is user friendly, with the capability to save and revisit prior to submission, the process is extremely long and requires hours of gathering information.

Requirement of Personal Information

Another main reason to not become certified is the concern of government requiring intimate financial detail. Some thoughts are that government already has access to business tax information, there shouldn't be a need/requirement of more.

Also, to compete for a large projects, smaller contractors must submit financials and meet many pre-qualifications. In a least cost policy (according to ORS 279), small contractors are expected to present exceptional qualifications otherwise they are not eligible to bid – thus vetting many small contractors out.

No Assurance of Benefit

A certification doesn't guarantee state contracting awards to certified firms.

Businesses Get Contracts Without Certification

In some cases, there isn't bid competition for the type of good/service needed, therefore certification isn't necessary to give a firm an advantage.

Time lag in getting paid

Many vendors experience 60 – 90 days of time lag in receiving payment for goods or services rendered. Lack of cash flow limits contractors in paying employees, and keeping up on business expenses.

Limited Access to Capital

Small businesses struggle to gain the financial support and structure to start and grow their business.

Task Force Recommendations

HB2667 is just a beginning in an effort to foster relationships and increase procurement with MWESB firms. The Task Force recommends each option below be explored in further detail, and believe these initial steps will begin to improve the State/MWESB partnership.

Follow-up to Businesses with Incomplete Registrations in ORPIN

Business Oregon's new online certification system (B2GNow) exports newly certified firms to the ORPIN system nightly. As of June 30, 2014, there were 3,210 Certified Firms in the MWESB database. 805 of them did not have an active login username in ORPIN. This means that 25% of certified firms are not completing their ORPIN registrations, and therefore means that they are not actively engaging in the government contracting process in ORPIN.

Outreach efforts are being developed to educate these firms on the process to complete registration in ORPIN, including help desk support, direct phone calls and email communication.

RECOMMENDED ACTION:
Implement improvement actions provided by ORPIN administrators and OMWESB

- ORPIN Administrators run the MWESB Login report once a month and send the results to OMWESB.
- OMWESB will send out a reminder email to firms, or letter to those firms that do not have email access, that have not completed their ORPIN accounts. The email will include contact information for the ORPIN Help Desk in case firms need technical assistance.
- Approximately 3 months after the initial contact, OMWESB will make an additional attempt to contact any remaining firms that continue to be inactive in the ORPIN system.
- Data from the reports will be logged and allow for benchmarking success in outreach activities.

Direct Referral System from Secretary of State's Central Business Registry

Secretary of State recently updated their central business registry portal to streamline licensing and applications for businesses – reducing time needed for business registrations and renewals from months to hours.

RECOMMENDED ACTION:
Add a direct referral system into the online registration. This would be a check-box, or text field, that businesses could specifically use to request information or to be contacted by these support programs who can assist in certification of MWESBs. This addition would be a key tool to certify new businesses.

Bundling Smaller Procurements / Breaking Down Larger Procurements

The Department of Transportation has been successful in bundling small procurements to meet large state procurements needs – specifically the OTIA Bridge Program. Early conversations with Department of Justice on options to bundle resulted in innovative options to break down large procurements. For example, not requiring formal proposals for smaller procurements – allowing agencies to set up meetings/interviews from small firms on a pre-qualified list.

Not only does bundling provide more opportunity to MWESBs, but they are also an introduction on how a new firm can learn to become a contractor with the state. These opportunities can be made available with risk of the main project removed. For example, finding work that is unassociated from the time and pressure of the main project (ripped up Main Street vs. landscaping, large impact vs. small public

impact.) This helps firms learn procedures and practices of the state, increases their ability to grow as contractors, and seek future opportunities with the state.

RECOMMENDED ACTION:
Require a mandatory initial review of large project procurements, to determine feasibility of breaking them down to smaller, more MWESB achievable smaller procurements. It is important to highlight that the goals/requirements of the procurement must equally weighted. They then become mandates to achieve, and allow agencies more flexibility to engage innovation in bundling projects.

At the same time, there needs to be controls in place to ensure agencies aren't breaking procurements into arbitrarily small packages (fragmenting) to negatively utilize the system (i.e. awarding business to a favored vendor) or positively (desire to do business locally to avoid regulations). Fragmenting is prohibited by the law.

Update Agency Vendor Quote Requirement

The University of Oregon and Multnomah County have created and been successful with inclusionary guidelines requiring quotes from certified MWESB firms.

For example, the University of Oregon requires the following:

- Non-construction procurements between $25K - 150K,use an informal procurement process that requires three quotes, and one of those quotes must be a MWESB certified or self-identified vendor.
- Construction contracting procurements $50K – 500K (informal procurements) and $500K - $1M (formal procurement) again require three quotes, including one from an MWESB or self-identified vendor.

Multnomah County has implemented the following guideline with much success:

- Changing requirements for $5K - $150K procurements; requiring that at least three of the minimum three contacted vendors be certified, if available.

RECOMMENDED ACTION:
Agencies review and follow best practices from public entities like the University of Oregon and Multnomah County regarding inclusion of quotes from certified MWESB firms.

Oregon Specific Contract Assistance Program

The state has historically operated in silos regarding MWESB outreach, training, and inclusion activities, although there is a growing trend toward agencies partnering to remove the silos. The gap between getting non-certified firms to be certified, and ensuring the use of those firms on government contracts is an ongoing concern that is without a dedicated, centralized resource to focus on (and track) the issues.

The federal government established the Government Contract Assistance Program (GCAP) to bridge a similar gap in federal contracting efforts, and has proven itself to be a worthy program for over 25 years. While many Oregon firms can benefit by GCAP, the program is specifically targeted toward federal contracts, and not state or local contracts, which have significant differences.

RECOMMENDED ACTION:
Create a program to serve as the dedicated, centralized resource to grow the number of Oregon certified businesses, build capacity, and assist in accessing state and local government opportunities. *(See appendices C)*

Certification/Business and Agency Counselling

MWESB firms need the state's help when starting and growing their business.

RECOMMENDED ACTION:
Create a program or restructure an existing program with the primary purpose of connecting and counselling businesses and state agencies in MWESB contracting:

- Increased active outreach to MWESB firms – tradeshows, electronic and direct communications plans, a single Web hub where businesses can find all MWESB contracting related information
- 1:1 guidance to walk businesses through the certification process
- Creating strategies for businesses to market/advertise their goods and services to state agencies
- Endorsing/connecting businesses with the various non-profit assistance programs available
- Assisting state agencies in setting MWESB procurement benchmarks and measure progress
- Advise state agencies of best practices (i.e. Multnomah County) within MWESB contracting
- This could also be a unit to house the auditing recommendation below.

State Agency MWESB Program Auditing

There is a need for auditing procurement programs to ensure accountability/compliance within MWESB aspirational targets and outcomes.

RECOMMENDED ACTION:
Implement a state or third-party auditing team to review agency programs, identify problems, address solutions, and ensure the goals of agencies are being met. Options could also include applying consequences when agency targets aren't met.

Procurement Advisory Team Engagement

In 2012, a Procurement Advisory Team was developed by the Diversity & Inclusion Agency Head Kitchen Cabinet. Their purpose is to develop consistent and best practices among the agencies represented regarding MWESB contracting, including DOJ advice.

RECOMMENDED ACTION:
Engage and restructure this statewide team to serve as an advisory council to continue improvements for MWESB state contracting.

Aggressive Dedicated Outreach by Agencies

In 2010-2011, the Department of Forestry, with support from the Governor's Office, sent dedicated outreach letters to agency specific non-certified firms explaining benefits of and urging certification, resulting in 20% of the recipients getting certified.

RECOMMENDED ACTION:
Agencies develop agency specific outreach and certification education to agency vendors, with the support and endorsement of the Governor's Office.

SBDC/MWESB Collaboration Events

During the early years of 2000, MWESBs and the Oregon SBDC met on a quarterly basis to evaluate and share information on the effectiveness of statewide technical assistance programs. This occurred through a funded program under the then Oregon Economic and Community Development Department (OECDD), now Business Oregon. This program was later cut and removed from the budget of OECDD/Business Oregon. Similar coordination of statewide programs has not been repeated or duplicated.

RECOMMENDED ACTION:
Source funding, and reestablish SBDC/MWESB quarterly meetings.

Improve Government Payment Lag Time

There is serious lag time in vendors receiving payment from services/goods rendered. Prompt payment and cash flow assists businesses with cash flow and supports business growth and success.

RECOMMENDED ACTION:
Audit and restructure accounting systems to improve efficiency and timeline of vendors getting paid.

Bonding Support

MWESB contractors have identified the ability to obtain performance and payment bonds as a significant barrier to their ability to participate in public agency projects.

In 2013, Multnomah County researched some potential options (*see appendices D)* to breakdown these barriers:

- Create a bonding assistance program to provide education, technical assistance and a collateral pool accessible to MWESB contractors bidding on agency projects.
- Eliminate bonding requirements for smaller dollar value projects and for larger projects with lower risk. This option is already practiced among some public agencies.

RECOMMENDED ACTION:
Research strategies and viability to implement the above options to breakdown bonding barriers.

Insurance Threshold Requirements

Some MWESB firms feel it cost prohibitive to invest in appropriate amounts of insurance coverage to procure with the state. Multnomah County has done research on what limits of insurance other out-of-state public entities require of vendors.

One finding was a vendor/contractor program where general liability and professional liability is available for vendors/contractors who do not carry their own insurance coverage. The premium is based on the contract value.

Benefits for the public entity include:

- Dedicated limits for each contract
- Satisfies contract minimum general liability requirements
- Pre-approved classes that expedite contract issuance
- Entire public entity is added as an additional insured
- No cross liability exclusion

Benefits for the vendor/contractor include:

- Pre-approved classes that expedite contract issuance
- Low premiums, low deductibles, and less paperwork
- No prior insurance required

If a large number of Oregon public entities got vendors to participate together with an expectation of a minimum amount of insurance, in line with Oregon Tort Claims Act limits, there may be ability to successfully help the vendors secure appropriate coverage with lower premiums as well as ensure that the participating public entities have vendors with appropriate levels of insurance coverage. The ultimate outcome could be facilitating more participation by certified MWESBs while mitigating risk and lowering insurance cost.

RECOMMENDED ACTION:
Conduct additional research on the feasibility of implementing an insurance vendor/contractor program for the state of Oregon.

Suggestions for Future Action

During Task Force meetings, Veterans' enterprises were mentioned repeatedly but fell outside the scope of HB2667 and the statute as written.

The State of Oregon does not currently have a Disabled Veterans certification, although OMWESB and the Department of Veterans' Affairs have had discussions surrounding possible implementation.

In an effort to provide immediate assistance, for firms currently certified through the Veterans Administration but not certified under ESB, which is a race and gender neutral program, it is the intention to, at a minimum, work with those firms to achieve ESB certification if they desire.

There is also a suggestion that this topic be considered in a future bill, with the similar purpose of the HB2667 Task Force.

Conclusion

After reviewing the data, and hearing from passionate MWESB vendors and partners of the state, the Task Force feels there is a need for increased focus and work to be done to nurture the state's relationships with these Oregon businesses. The Task Force has made several recommendations for next steps on the path to improved procurements with minority-owned, woman-owned or emerging small businesses in this state, and strongly encourages consideration and adoption of these recommendations.

All task force materials, including a copy of this report, meeting recordings, and supplemental data can be found online at http://www.oregon.gov/DAS/Pages/HB2667_TaskForce.aspx.

Appendices

A. Oregon Department of Transportation (ODOT) Target Setting Process
B. Oregon Department of Transportation Construction Report on Projects by Calendar Year
C. Oregon Specific Contract Assistance Program
D. Multnomah County Bonding Assistance Report
E. Oregon Department of Transportation Disparity Study Background and Process
F. The Public Procurement System of Oregon

Oregon Department of Transportation

Executive Order 12-03 Aspirational Target Setting

March 2012

Introduction

The methodology for setting aspirational targets on ODOT contracts up to $150,000, as required by the executive order, is outlined below.

It should be noted that in concept, aspirational target setting broadly resembles the federal DBE goal setting methodology. However, target setting is not limited to the utilization of NAICS codes and the complex availability calculations as required by the Code of Federal Regulations (CFR).

Additionally, while ODOT can provide an overview of the department's target setting process, a more prescriptive methodology for other state agencies cannot be recommended due to the diversity of business lines and contracting processes among the agencies which are unknown to ODOT. The intent of this document is to provide an overview of ODOT's approach to target setting, with the expectation that other agencies can use similar approaches in concept to set their respective targets.

ODOT Aspirational Target Setting

In order to set targets, ODOT gathers its statewide contracting data and M/WBE participation data from ORPIN and ODOT's Civil Rights Compliance Tracking database (CRCT). Taking into account the following factors:

(1) Size of typical ODOT Contracts – ODOT lets a significant number of large dollar amount projects that provide many bidding/contracting opportunities valued at under $150,000 for M/WBE firms.

(2) Consideration of geographical location of typical ODOT Contracts – ODOT lets contracts across the state, with a heavier concentration in ODOT Regions 1 and 2.

(3) Identification of typical Scopes of Work – Typical ODOT contracts include highway and road construction work, A&E and related professional services, and other personal services.

(4) Determining availability of M/WBE firms – ODOT consults the OMWESB database and ODOT Bidders List to determine availability of firms. There are a significant number of M/WBE firms available to perform in the scopes of

work ODOT regularly contracts for across the state, with greater availability in Regions 1 and 2.

Based on the availability of firms, and the conditions outlined in factors 1-3 above, a utilization target is determined to represent the percentage number of contracts anticipated to be awarded to M/WBE firms.

Last year ODOT set a 2% aspirational target for M/WBE participation. Based on last year's M/WBE actual participation achievement level, which exceeded the target, and that it is anticipated that ODOT will continue to let contracts across the state in the types of work that have significant numbers M/WBE certified firms, ODOT has increased its aspirational target to 5% for 2012 for M/WBE participation on ODOT-let contracts.

Performance levels are evaluated on a quarterly basis to determine if the yearly target will be achieved. Based on actual achievement levels and projected agency contracting ability, future aspirational targets are adjusted accordingly. This is a reiterative process that continues as contract funding levels are made available.

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Certified & Non-Certified Sub Contractors

Highway Construction Projects by Calendar Year

Report Parameters Selected:

- Contracts by Award Date
- Sub Contracts
- Contract Amounts

- Calendar Years: 2009, 2010, 2011, 2012, 2013
- FHWA & State funded projects

- Projects With DBE Goals & Without DBE Goals
- Committed & Non-Committed Contractors

MBE Sub Contract Amounts	CY 2009		CY 2010		CY 2011		CY 2012		CY 2013		Total
MBE	$17,566,515	6.15%	$15,391,252	9.21%	$8,247,758	7.40%	$22,983,936	13.80%	$25,042,799	8.60%	$89,232,261
Non-MBE	$268,114,927	93.85%	$151,708,529	90.79%	$103,190,371	92.60%	$143,517,266	86.20%	$266,233,479	91.40%	$932,764,572
Total	$285,681,442		$167,099,781		$111,438,129		$166,501,202		$291,276,279		$1,021,996,833

WBE Sub Contract Amounts	CY 2009		CY 2010		CY 2011		CY 2012		CY 2013		Total
WBE	$24,712,204	8.65%	$21,513,202	12.87%	$10,970,883	9.84%	$13,998,183	8.41%	$23,772,996	8.16%	$94,967,468
Non-WBE	$260,969,238	91.35%	$145,586,579	87.13%	$100,467,246	90.16%	$152,503,019	91.59%	$267,503,282	91.84%	$927,029,364
Total	$285,681,442		$167,099,781		$111,438,129		$166,501,202		$291,276,279		$1,021,996,833

ESB Sub Contract Amounts	CY 2009		CY 2010		CY 2011		CY 2012		CY 2013		Total
ESB	$28,907,060	10.12%	$24,045,502	14.39%	$16,333,999	14.66%	$22,261,658	13.37%	$34,613,265	11.88%	$126,161,484
Non-ESB	$256,774,382	89.88%	$143,054,280	85.61%	$95,104,130	85.34%	$144,239,543	86.63%	$256,663,013	88.12%	$895,835,349
Total	$285,681,442		$167,099,781		$111,438,129		$166,501,202		$291,276,279		$1,021,996,833

Oregon
John A. Kitzhaber, M.D., Governor

Department of Transportation
Director's Office
355 Capitol St. NE
Salem, OR 97301

DATE: August 12, 2014

TO: Task Force on Procuring through Small and Local Business

FROM: John Downing, Small Business Programs Manager, ODOT Office of Civil Rights

SUBJECT: Proposal for an Oregon Contract Assistance Program

The state has historically operated in silos regarding MWESB outreach, training, and inclusion activities, although there is a growing trend toward agencies partnering to remove the silos. The gap between getting non-certified firms to be certified, and ensuring the use of those firms on government contracts is an ongoing concern that is without a dedicated, centralized resource to focus on (and track) the issues.

The federal government established the Government Contract Assistance Program (GCAP[1]) to bridge a similar gap in federal contracting efforts, and has proven itself to be a worthy program for over 25 years. While many Oregon firms can benefit by GCAP, the program is specifically targeted toward federal contracts, and not state or local contracts, which have significant differences.

I propose that the HB 2667 task force consider making the recommendation to create an Oregon-specific contract assistance program. The program, housed temporarily within ODOT, would have immediate resources available through the programs ODOT currently administers and delivers to the MWESB community. This would serve as the dedicated, centralized resource to address the issues mentioned, and to effectively track and report progress as needed.

DRAFT

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[1] GCAP Mission Statement (www.gcap.org)

The Government Contract Assistance Program (GCAP) is part of a nationwide network of Procurement Technical Assistance Centers (PTAC) working to help small businesses compete successfully in the government marketplace.

GCAP's mission is to assist Oregon small businesses to succeed in obtaining Government Contracts, which stimulate the growth of Oregon's economy. For over 25 years GCAP has assisted Oregon small businesses in creating jobs, fostering economic diversity, and becoming successful government contractors.

GCAP services include:

- One-on-One Counseling
- Registration Assistance (Duns, SAM, DSBS, FBO)
- Bid-matching Services
- GSA Schedules
- Assistance with SBA Certifications
- Training & Conferences
- Interpreting Solicitations
- Proposal Review
- Subcontracting Assistance
- Product and Procurement Histories

The Oregon-specific program would comprise of appointed rotational staff from several state agencies to establish the full program portfolio over a two year period to 1) help grow the number of certified businesses in Oregon, 2) build capacity of those firms, and 3) assist them in accessing and competing for state and local government opportunities. Staffing and associated resources would require funding beyond ODOT's current capacity, which is not addressed specifically in this proposal at this time.

Additionally, the program would be instrumental in engaging state and local agencies to develop MWESB specific opportunities, and to help identify and pursue aggressive goals that can be tracked and reported through the uniform structure of a single state program.

The efforts of an Oregon-specific contract assistance program, once fully developed, would clearly demonstrate the advantages of certification, which would be supported by the public agencies that contract with certified firms. Once the full program portfolio is established, a permanent placement would be identified. Permanent placement may be within another state agency, or created as an independent state agency.

Bonding Support Programs for MWESB Contractors

Bonding Support Programs for MWESB Contractors

Background: This research paper is the result of a discussion which took place at the June 21, 2013 MWESB Summit sponsored by Multnomah County and the Governor's Office. Research was undertaken by John Classen, MWESB Program Specialist. The policy options identified are not necessarily the only ones available, and this paper is provided as an input to a larger discussion on ways in which public agencies might make it easier to support MWESB firms through bonding programs.

For more information about this report, or other Multnomah County MWESB activities, please contact:

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Issues: MWESB contractors have identified the ability to obtain performance and payment bonds as a significant barrier to their ability to win public sector construction contracts. For those contractors that are able to obtain bonds, being able to bond adequately has also often been cited as a barrier to working on pubic contracts.

Question: What can public agencies do to assist MWESB contractors obtain bonds and to increase their bonding capacity?

Potential Options:

1. Eliminate bonding requirements for smaller dollar value projects and for larger projects with lower risk. This option is already widely practiced among public agencies.
2. Create a bonding assistance program to provide education, technical assistance and a collateral pool accessible to MWESB contractors bidding on agency projects.

Bonding Assistance Program Models

Several public agencies in the State of California have implemented some form of a bonding assistance program to support specific segments of the contracting community. The insurance services provider Merriwether & Williams has successfully run nine different programs since 1997. Each of these programs is supported by a single entity but there may be some opportunity for multi-agency collaboration. Bonding Assistance programs are typically established through an RFQ or RFP process and they are tailored to the sponsor agencies needs. The programs typically share a number of elements including many, if not all of, the following:

1. Outreach to target groups to educate about the program requirements and benefits;
2. One on one business assessments of participating contractors;

3. Technical Assistance (business development plans, credit repair assistance, establishment of credit, etc.);
4. Assistance to public agencies in the drafting of bid specifications
5. Facilitate third party funds administration (sometimes a condition of bonding to ensure everyone gets paid);
6. Facilitate relations between the program administrator, the contractor, the broker, the lender and the project owner;
7. Assistance to public agencies with the establishment of a collateral pool;
8. Project close out

Another approach with similar elements was implemented approximately one year ago in the State of New York. The New York program was also established through an RFP whereby a single bank was selected to provide credit collateral. The New York program is available to all State agencies in New York. All of the same elements are included but the mechanism for how they are accessed and who administers the services differs from the Merriwether & Williams model. With the NY program, the work handled under the Merriwether & Williams model is internalized, handled at the department level or referred out to other government or none profit organizations that specialize in providing small business support. This approach would require a greater level of expertise internally and a more significant staffing commitment to pursue.

Collateral Pool Establishment

The establishment of a collateral pool was cited as the most important element to a bonding assistance program. Typically the public agency's Risk Department takes the lead in setting up a collateral pool. The public agency, with extensive assistance from the selected service provider, generally works with their existing bank to negotiate the terms of the collateral pool. The larger the pool, the greater the number contractors who can access the collateral. The size of the pool for programs Merriwether & Williams has administered range from $300,000 to $5,000,000.

The financial institution responsible for issuing "Letters of Credit" to participating contractors (on behalf of the public agency program sponsor) would be compensated through a negotiated structure. This may be transaction fee based (i.e. each time the pool is accessed a fee is charged) and/or there may be a fee charged for unused collateral or other fee structures depending on the negotiations between the public agency and the financial institution. The selected service provider would assist with these negotiations. Typically, this fee structure amounts to 1% of the value of the line of credit that is issued and the public agencies would carry that cost for the program to function most effectively. In addition to the per-use fee structure, a onetime setup fee would be negotiated between the selected bank and the public agency, or agencies, who sought to establish the collateral pool. The setup fees observed by Merriwether & Williams have ranged from $10,000 to $20,000 and are tied to the size of the collateral pool being established.

Two program sponsors, the City of Los Angeles and the City of San Francisco, stressed the importance of strong executive and legislative support to establish a program such as this.

While a financial institution in this case is issuing the Letters of Credit, the public agencies must have funds set aside to pay out default claims should the need arise. This fund would need to be restricted in its use to only pay for administrative costs associated with the bonding support program and to pay out any potential defaults. The selected service provider would again help, in partnership with the public agencies risk and legal departments, to establish the necessary fund and funding structure. The City of San Francisco is building their fund through a budget process that takes into account the annual capital expenditures of participating departments.

Under the New York model, their collateral pool was established through an RFP process as stated above. However, in New York the collateral pool is backed by the U.S. Treasury's State Small Business Credit Initiative dollars[1], through New York State's Empire State Development entity[2].

Third Party Funds Administration

To reduce public agency risk third party funds administration is an additional key element of the program requirements. This would cost an additional 1% (paid by the public agency) of each construction contract value but would protect the agency from default. Third party funds administration would be coordinated by the service provider but they would not be a subcontractor to the service provider.

Collateral Pool Access

To access the collateral pool a contractor would need to complete an application to enroll in the bonding assistance program. The service provider would then work with the contractor and their surety to establish the contractor's first bond or to increase their bonding capacity. Throughout this process the contractor would be assisted by the service provider. Eligible contractors are then allowed to obligate the collateral pool for up to 40% of the bond amount or $750,000, whichever is less. Once the project is complete and any contractor incurred warranties have expired the collateral pool is replenished for the value of the amount encumbered. Because lines of credit issued to encumber a portion of the collateral pool are tied to a specific contract, there may be an opportunity for multi-agency collaboration.

Tracking Success

The service provider's contract includes requirements for tracking and measuring the success of the program. Because the success of the contractors that participate in the program can be attributed, in part, to the technical assistance and related services provided by Merriwether & Williams strictly measuring success as contracts awarded to the contractors on the sponsor agencies projects would not accurately reflect the value of the program, as the contractors are applying the enhanced skills they have developed to all of the projects they bid on. Merriwether & Williams accomplishes this through their "Dimensions of Success" tracking process which looks beyond awards to the sponsor

[1] http://www.treasury.gov/resource-center/sb-programs/Pages/ssbci.aspx
[2] http://esd.ny.gov/businessprograms/ssbci.html

agency to include: (1) awards on private sector projects; (2) pre-approvals for bonding and; (3) increased bonding capacity are some of the metrics used.

Program Administration Cost

In addition to the one-time banking fee, the 1% of contract value fee for issuance of each contract specific line of credit and the 1% of contract value fee for third party funds administration the ongoing service provider program administration costs would be an annual cost to each agency that chose to participate. The actual cost would be determined through the contract negotiation process and would be tied to the level of support to be provided (possibly defined in terms the size of the collateral pool(s)/anticipated construction volume). Merriwhether & Williams typically recommend at least one dedicated individual per agency and estimated the cost to fall between $150K and $350K per agency per year.

Challenge to Public Agency Collaboration

As mentioned above, each of the nine programs administered by Merriwether & Williams was through the sponsorship of a single public agency. This eliminates the need to negotiate over program eligibility criteria, thresholds and process for accessing the collateral pool. If multiple agencies desired to collaborate on a bonding assistance program some key questions that would need to be answered include:

- What are the eligibility requirements for contractor participation (geographic, certification type, race/gender, gross receipts, personal net worth…)?
- Would there be a single set of eligibility requirements or would those be agency specific?
- What should be the not-to-exceed dollar threshold for collateral coverage (some agencies might want it to be high while others might want to keep it low)?
- What percentage of the bond amount will be covered (higher percentages may be more appealing to contractors and sureties but may result in higher defaults and more program scrutiny)?
- How much collateral would each agency make available for work on its projects?
- How will you select a financial institution to provide the guarantee?
- Which agency would take the lead on procuring the services and program administration?

Additional Considerations

- Fewer surety companies operate in the collateral market compared to the standard market, if agencies want to move forward with this program it would be important to engage the local (and national) surety market to ensure there were enough firms interested in participating;
- Merriwether & Williams has offered to come to Oregon to provide more detailed education on how their programs function and what might work best in Oregon
- Pilot program approach vs. permanent program: While it might be most feasible to establish a program on a pilot basis, it is likely more efficient to avoid a scenario

that involves a "sunset date" for the program after an early setup and trial phase. Programs that have sunset legislative restrictions lead to line of credit and bonding hassles as lines of credit and bonds will not be guaranteed beyond the sunset date. This also leads to increased administrative costs as the process of reauthorizing the program takes up additional staff time.

- Funding restrictions – The importance of understanding any funding restrictions based on the type of funding chosen to pay for program administrative costs and to cover the collateral pool (potential default payout) was stressed by multiple organizations. The fewer the restrictions, the easier to administer.
- While there may be a way to identify public agency cost savings a bonding support program can allow, the program justification should not be based on cost savings to the agency but on support of the local small business community and as an economic development tool.

Multi-Agency Collaboration & Recommendations

Based on the research performed to date it appears a bonding support program would be a benefit to the small contractor community and may provide some ancillary benefits to the sponsoring public agency(s), such as an expanding biding pool/competition (potentially resulting in lower bids/project costs) and good will from the vendor community.

For a multi-agency collaboration to work, the partnering agencies would need to agree on a number of issues and obtain high level buy-in.

1. The first step would be to determine if the necessary executive and legislative support exists to start up and maintain a bonding support program.
2. If executive and legislative support exists then funding to support program provider/vendor costs, the establishment of collateral pool and associated administrative costs.
    a. Funds should be formula driven, based on capital expenditures, and should be segregated such that they can only be spent on program costs. The sooner the funding stream is established and growing (this could take several years to fully develop) the better.
3. Additionally, it would be advisable to survey the target community of contractors to determine the level of interest in a program such as this, as well as local surety providers to determine their willingness to participate in a program such as this (will they support the agency's efforts to increase the number of bondable small businesses, accept the bank issued bond guarantees, be available to help provide technical assistance, etc.)
4. Assuming the adequate funding, small business and surety company interest is established, two process options are outlined below:

Option 1 – Lead Agency with MOU(s) (Recommended option)

1. Determine who will take the lead on procuring the service provider(s) and which agencies will participate initially. Lead agency should have significant annual capital expenditures to justify their lead status. Once the lead agency was determined the following tasks would be required;
2. Conduct public agency/risk department feasibility discussions with lead agency bank (or other potentially financial services institution) and legal department to solidify the program's feasibility and funding mechanisms;
3. Host of desired services to be provide are specified with partner agencies input through a collaborative RFP creation process and preliminary MOU negotiations for partner agency payments to support a fair amount of the lead agencies program administration costs (staffing costs);
4. Solicitation document is drafted with all partnering agencies identified;
5. MOU is finalized (includes formula for determining how much each agency pays, who can participate in the program, how payments are made, etc);
6. RFP released, selection made, contract negotiation takes place;
7. Lead agency begins to contract with selected service provider – collateral pool is established through negotiations with the selected financial services institution, lead agency and the service provider;
8. Partner agency funding support is made in accordance with MOU;
9. Program materials developed (technical assistance offerings, contract language, outreach, etc.);
10. Additional public agencies may be required to pay their own setup fee and would need to determine the dollar value of collateral credit they want to make available for contractors to encumber on their agency's projects.

Option 2 – Lead Agency with cooperative purchasing language

1. Determine who will take the lead on procuring the service provider(s) and which agencies will participate initially. Lead agency should have significant annual capital expenditures to justify their lead status. Once the lead agency was determined the following tasks would be required;
2. Conduct public agency/risk department feasibility discussions with lead agency bank (or other potentially other financial services institution) and legal department;
3. Host of desired services to be provide are specified with partner agencies input through a collaborative RFP creation process;
4. Solicitation document is drafted with cooperative purchasing language included (solicitation would need respondents to identify costs such that individual agencies could access the contract most efficiently)
5. RFP released, selection made, contract negotiation takes place;
6. Lead agency begins to contract with selected service provider – collateral pool is established through negotiations with the selected financial services institution, lead agency and the service provider;
    a. Any partnering agency wishing to buy off this contract would have to go through the same process with their financial service institution;
7. Program materials developed (technical assistance offerings, contract language, outreach, etc.)

a. Uncertain how contractor incurred costs (i.e. the vendor provided technical assistance) who were already part of the program but were bidding with more than one partnering agency would be handled.

Of the programs administered by Merriwether & Williams the average percentage of a contractor's bond amount that is covered by the collateral pool has equaled 20%. To date, over 750 contractors have participated in the program and accessed the collateral pool. Of those contractors only one has defaulted on their bond and that one default did not draw on the collateral pool. It is thought limiting the amount of a bond that can be covered to 40% or less helps ensure the low default rate as the contractors are responsible for the remaining 60% of the bond.

Comprehensive Safety Training Programs as Way to Reduce Bonding Rates

Contractors who maintain high quality safety programs that track and document worker trainings and demonstrate an exemplary safety record will receive lower workers compensation insurance rates.

There are also variety resources available to contractors on the web and through consultant services to help setup, maintain, track and report on safety program results.

ClickSafety[3] is one example of a company that offers online OSHA compliance courses (300) through a system that allows contractors to generate Excel based reports to document their employee's ongoing training for insurance agency submission.

In addition to private safety consultants who will create safety programs for a business for prices ranging from a few hundred dollars to several thousand dollars, eSafety Manual[4] is one example of an online company that provides twenty five trade specific safety manuals, as well as related documents (handbooks, inspection forms, etc.) for just under $60.

According to a McGraw Hill Construction Safety Program report[5] , construction companies report the following benefits due to the implementation of safety management practices:

- 51% report **increases in project ROI**; with a fifth of those reporting increases of greater than 5%
- 43% report **faster project schedules**, with half reporting schedule improvements of a week or more
- 39% report a **decrease in project budget** from a safety program, with a quarter reporting decreases of 5% or more. Only 15% reported that safety programs cost firms more—debunking the myth that safety has to negatively affect a firm's bottom line.
- 82% report an **improved reputation**
- 71% report **lower injury rates**

[3] http://www.clicksafety.com/
[4] http://www.esafetymanual.com/?gclid=CI6FzoTN4roCFe1aMgodSTwA7g
[5] http://www.construction.com/about-us/press/construction-safety-programs-are-yielding-business-benefits-for-firms.asp

- 66% report they have a **greater ability to contract new work**
- 66% report **better project quality**

Insurance brokerages such as Merriwhether & Williams provide varying levels of safety training program support for their clients as part of existing business practices. To provide the most benefit to targeted contractors, with the least amount of administrative burden (both for public agencies and targeted contractors), enhanced safety program training could be incorporated into a Bonding Support program solicitation as part of a host of services to be offered. The safety program training should include specific trainings to be provided for each of OSHA's recommended Construction Safety and Health Program elements (additional sub-elements could be included):

- Management Commitment to Safety and Health
- Hazard Identification and Determination
- Hazard Elimination and Control
- Emergency Response Planning
- First Aid and Medical
- Training
- Recordkeeping and Abatement Verification

An RFP for bonding support could detail specific safety program elements the selected provider would be responsible for implementing as part of their service (either directly or through partnership arrangements). Alternately, the RFP could ask respondents to detail the services they will provide to ensure each contractor who participates in the program is provided with the tools and training necessary to implement a high quality safety program.

Links

Alameda County Resolution adopting "Letter of Credit and Reimbursement Agreement" with Union Bank:
http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_03_03_09/GENERAL%20ADMINISTRATION/Regular%20Calendar/CAO_Union_Bank_of_California.pdf

Alameda County Contractor Bonding Assistance Program Overview:
http://www.acgov.org/cao/rmu/programs/bonding.htm

Alameda County Contractor Bonding Assistance Enrollment Form:
http://www.acgov.org/pdf/cbapform.pdf

San Diego County Regional Airport Authority Bonding Program:
http://www.san.org/sdcraa/business/sbd/resources/bonding.aspx

City of Los Angeles Bond Assistance Program:
http://www.imwis.com/services/bonding/assistance/downloads/la_bond_assist-world-air.pdf

Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation
Director's Office
355 Capitol St. NE
Salem, OR 97301

DATE: July 9, 2014

TO: Task Force on Procuring through Small and Local Business

FROM: Michael A. Cobb, Manager, ODOT Office of Civil Rights

SUBJECT: ODOT Disparity Study

Background

On May 9, 2005, as a result of the Western States Paving, Inc. v. Washington State Department of Transportation lawsuit, the U.S. Ninth Circuit Court ruled that a state department of transportation could not have a race-conscious Disadvantaged Business Enterprise (DBE) Program without compelling evidence, both statistical and anecdotal, showing that inequity in contracting opportunities had occurred. A disparity study is a source of compelling evidence, and any programs formed based on this evidence, had to be "narrowly tailored" to only those underutilized groups.

As a result of the ruling, ODOT suspended its "hard goals" requiring contractors to hire DBEs as subcontractors and replaced them with "aspirational targets" – in effect, asking contractors to voluntarily abide by the goals. ODOT also commissioned a comprehensive disparity study.

ODOT Disparity Study Process

Two disparity studies were conducted:

- 2007 study on Construction contracting only
- 2011 study update on Construction and A/E contracting

- ODOT Disparity Study 2007 (1999-2007)
  - RFP for a consultant
    - Statisticians
    - Legal Advisor
    - Clauses to hire small businesses as subcontractors as appropriate
  - Consultant conduct study
    - Statistical and Anecdotal Data collection
    - ODOT established a stakeholder committee
    - Public involvement
    - Draft and Final Reports Issued
    - Public Meetings held to convey findings
  - DBE Program is Race Neutral
    - Must apply for US Department of Transportation (USDOT) Waiver in order to set hard goals
    - Waiver approved – approximately 9 months

- Revise DBE Program to reflect disparity findings
  - Ensure goal calculation methodology complies with Code of Federal Regulation (CFR)
  - Submit for USDOT/FHWA approval
  - USDOT/FHWA attorneys involved
  - Revised DBE Program approved, agency allowed to set "hard goals"

- Implement DBE Program with hard goals
  - Conduct internal and external "awareness" training
  - Modify database, data collection, and forms as appropriate

- Monitor and report results
- After 3 years, request waiver extension, conduct updated study

- ODOT Disparity Study Update 2011 (2008-2010)
  - Same process as shown above for conducting study
  - Waiver request modified to reflect new underutilization findings

- ODOT Disparity Study Update 2015 (2010-2014)
  - RFP for consultant issued June 30, 2014
  - Anticipated completion November/December 2015

Appendix F

The Public Procurement System of Oregon

Who has the authority to procure? **How** is the procurement done? **What** is procured?

State and Local Agencies under the Public Contracting Code, ORS 279ABC

What: Services, Goods, Architectural, Engineering and Land Surveying Services and Related Services (A&E), and Public Improvements

State Agencies under DAS Procurement Authority, ORS 279A.140

Who: DAS and delegate State Agencies (not excepted under ORS 279A.050 or outside the Public Contracting Code)

How: DAS Rules, including some Model Rules, and statewide policies

Local Agencies with Authority Independent of DAS, ORS 279A.065

How: ORS 279A.065 (Model Rules)

Outside the Public Contracting Code

1. Who: e.g., Lottery, Legislature, Judicial Department, Oregon University System (ORS 279A.025)

2. What: e.g., ORS 190 agreements (IGAs, IAAs, tribal), grants, real property, textbooks, Oregon Corrections Enterprises (ORS 279A.025)

3. Other: e.g., Qualified Rehabilitation Facilities (ORS 279.835), Inmate Labor (Constitution), Surplus Property, Minorities, Women and Emerging Small Businesses (ORS 200.035 and Executive Order), Legal Sufficiency Review (ORS 291.047 and OAR 137-05), Sustainability (ORS 184.421-423 and EOs), Green Chemistry (EO 12-05)

State Agencies with Specific Authority Independent of DAS
ORS 279A.050

Who: e.g., Transportation, Secretary of State, State Treasurer, Human Services, Oregon Health Authority, Fish & Wildlife, Park & Recreation, Aviation, Economic & Community Development, Housing, Corrections, Veterans Affairs, Military, Education and other Agencies "specifically authorized" by any law outside of the Public Contracting Code to "enter into a contract."

What: Specific items described by the law, except DAS has exclusive authority under ORS 279A.050(7) for:

- DAS Statewide Price Agreements and
- Information technology contracts (except Oregon Health Authority may procure IT contracts).

How: Independent Agencies adopt their Rules under ORS 279A.065 (Model Rules, DAS Rules or their own). If independence is partial, Agencies may also be under DAS Rules (hybrid).