

CHAPTER 5.

Conclusions and Actions for City Consideration

The study team concludes that the SBE Program has encouraged MBE and WBE utilization to the point that there were no disparities between the utilization and dollar-weighted availability of minority- and women-owned firms on City-funded contracts. However, this is not because of a high MBE and WBE participation in City-funded public works contracts — it is because of low current availability of minority- and women-owned firms for this work after considering the types and sizes of prime contracts and subcontracts.

Therefore, it appears that the SBE Program alone does not create a level playing field for minority- and women-owned firms in City public works contracting. The study identified barriers for minorities and women in the local construction industry that go beyond what an SBE contracting goals program can effectively address.

This chapter outlines eight areas of potential action for City consideration:

1. Further improving the SBE contract goals program;
2. Further building an SBE prime contracting part of the Program;
3. Creating a business development component to the SBE Program, including mentorship and a City SBE coach;
4. Minimizing barriers in public works prequalification;
5. Expanding communication of City bid opportunities;
6. Improving prime contractor payment of subcontractors and relaxing retainage policies;
7. Supporting local technical assistance, bonding and financing programs, and creating new programs when necessary; and
8. Supporting local efforts to encourage minorities and women to enter, receive training and obtain jobs in the construction industry.

We begin this chapter by presenting steps the City might consider to improve the SBE Program and other aspects of City contracting.

A. Assisting MBE/WBEs and other Small Business in City Public Works Contracting

The City has many opportunities to further improve its SBE Program and promote inclusion of minority- and women-owned firms in its public works contracting.

1. Further improving the SBE contract goals program. Although the SBE Program appears to somewhat increase participation of minority- and women-owned firms, the City might consider ways to further strengthen the program.

a. **Respond to industry and community concerns regarding program operation.** Some business owners and trade association representatives interviewed in the study were supportive of the City's SBE Program, but others were critical of the Program.

- Some prime contractors reported being opposed to having to subcontract work out that they might have performed themselves.
- Some prime contractors said that the City sets SBE goals on certain projects that were unrealistically high, and that in industries such as road work, available SBE subcontractors were often limited to fields such as trucking and landscaping.
- One interviewee said that prime contractors are having problems getting bids from subcontractors "because there is just not the capacity out there." He explained that some subcontractors have not fully recovered after the Great Recession. Another prime contractor complained about the difficulty meeting SBE goals on City projects, reporting that the SBE directory was not well-maintained and that the SBEs he calls on the list either do not answer the phone or say that they do not work in Madison.
- Other interviewees were skeptical that the SBE Program would help minority-owned firms, and anticipated that the benefits would go to other types of businesses. "Probably good for white guys with assets" was a typical comment. One minority business owner observed that keeping minority-owned firms in business was the key issue, and that firms might be out of business before they could benefit from the Program.

These are valid perspectives that the City should consider as it continues to improve its operation of the SBE Program. Design and operation of the Program must be flexible and consider market realities.

And, although the Program did assist minority-owned companies in recent years, whether it continues to have that positive impact must be closely monitored. Study team experience cautions that the benefit of small business programs for minority-owned companies can erode over time. The SBE Program alone does not create a level playing field for minority- and women-owned firms in City public works contracting. The City can do more to promote equity in the contracting marketplace in which it spends its tax dollars.

Once the City reviews the results of the disparity study, receives public input and considers other relevant information, it should clearly state its overall plan to promote equity in contracting to different stakeholder groups and individual businesses. It needs to reinforce in the community that strong efforts are needed to promote equity within the industry, and that the City is a partner in this effort with its contractors and many other groups.

b. Monitor concentration of SBE participation in only a few firms. Keen Independent analyzed utilization of individual companies on City-funded public works contracts that were certified as SBEs during at least some years of the 2008 through 2013 study period.

- A total of 72 SBE-certified firms received work.
- 14 different SBE-certified MBEs received work and two firms — Astle Trucking (\$2.7 million) and JR's Construction and Landscaping (\$1.9 million) — accounted for most of the \$5.9 million in total work going to minority-owned firms that are SBE-certified.
- 16 different SBE-certified WBEs received work and two firms — Bullet Transit Company (\$1.3 million) and Economy Cement (\$0.8 million) — received most of the \$3.6 million going to those companies.
- The 42 majority-owned SBE-certified firms were awarded contracts in a greater number of industries than SBE-certified minority- and women-owned firms. Dane County Contracting (\$4.5 million) and Neil Schlough Trucking (\$1 million) were the majority-owned SBEs that obtained the most work on City-funded public works contracts.

In total, the study team identified 543 firms that participated in City-funded public works contracts from 2008 through 2013. Although the SBE contractors identified above received the most public works dollars of any SBE-certified firms, their utilization was still small compared with non-SBEs. Overall, from 2008 through 2013, 47 different businesses received at least \$1 million in work as part of City-funded public works contracts and only four were SBEs.

The City should monitor the concentration of SBE participation in a few firms and work to encourage utilization of newly-certified SBEs and other firms that may not have had opportunities to develop relationships with prime contractors as part of the Program. Many of the potential initiatives below might accomplish this objective.

c. Encourage small businesses to become SBE-certified and participate in public works contracting. The City might further promote SBE certification to local contractors. It should review whether firms that appear to meet the certain SBE certification requirements (including firms already certified as DBEs) have also applied for City SBE certification.

Many interviewees commented that the SBE certification process is time consuming or difficult. Some prime contractors said that they have small businesses as subcontractors that are unwilling to seek certification because of the paperwork involved. Although they are using small businesses as subcontractors, those prime contractors receive no credit for doing so.

Although it should retain a gross receipts limit and the personal net worth limit (and thus must require documentation to ensure that the firm qualifies), the City should review the certification application to see if it could be streamlined in other ways. It might provide more staff resources to explain the certification process. The City might also identify resources in the community that could assist firms with SBE certification at no or low cost. Finally, a new “SBE coach” position, discussed below, might help remove barriers to certification.

d. Improve data collection and reporting of SBE participation on City-funded contracts. In the course of completing the study, Keen Independent worked closely with Madison Department of Civil Rights staff to improve existing data on City-funded public works contracts and the firms participating in those contracts. As a result, study team analysis of SBE participation found it to be higher than previously reported by the City.

As it goes forward, Public Works and Civil Rights staff should build procedures to be able to more consistently identify City-funded contracts and record SBE participation, including SBEs beyond those used to meet contract goals by tracking this data electronically.

e. Monitor SBE participation, by race, ethnicity and gender. Keen Independent’s research found that most SBE participation among minority-owned firms was by African American- and Native American-owned firms, and that there was minimal utilization of other minority-owned SBEs (Hispanic American-, Subcontinent Asian American- and Asian-Pacific American-owned firms).

As the SBE Program continues to grow, the City should monitor and report overall SBE participation by race, ethnicity and gender ownership of the SBE-certified firm and for all firms (SBEs and non-SBEs). The City should build capabilities to report that information for all minority- and women-owned firms, not just those that are certified as MBE/WBEs or DBEs. This will require the City to collect race/ethnicity and gender ownership information for all companies participating in its public works contracts, and to regularly update these data.

The City might also report MBE, WBE and SBE participation by subindustry. Keen Independent examined the concentration of MBE and WBE participation among different types of work on City-funded public works contracts. As shown in Figure 5-1 on the following page, much of the utilization of MBEs and WBEs that were certified as SBEs was in landscaping and trucking.

The subindustry distribution of work also reflects the SBEs that receive the most public works contract dollars, so the issue may be high use of individual firms as well as concentration in specific fields.

If participation of SBE-certified minority- and women-owned firms continues to be concentrated in fields such as trucking and materials supply, the City might need to consider program changes so that the program benefits MBEs and WBEs across the construction industry.

The City might also track success of individual SBE businesses over time, including minority- and women-owned firms. One person interviewed in this study suggested that the measure of success of City efforts is whether businesses that become SBE-certified are still around in five years.

Figure 5-1.

MBE and WBE City public works contract dollars, by subindustry, 2008-2013

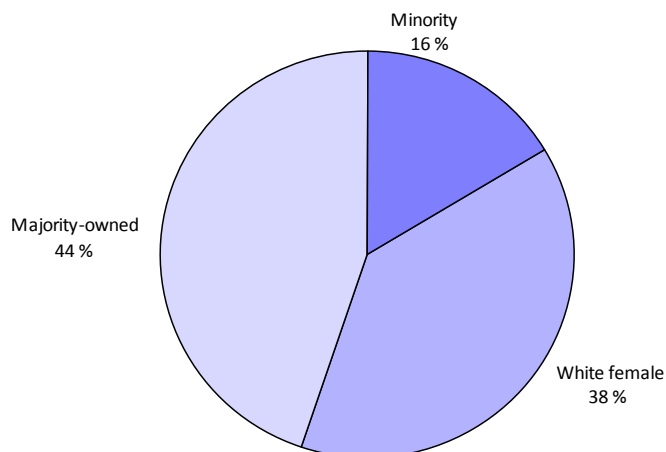
Type of work	SBE dollars (millions)			Total dollars
	MBE	WBE	Majority	(millions)
General road construction	\$ 0.0	\$ 0.0	\$ 2.3	\$ 95.9
Asphalt paving	0.0	0.0	0.0	54.9
Water and sewer lines	0.0	0.0	1.5	23.2
General public building construction	0.1	0.0	0.0	19.1
Concrete flatwork (sidewalk, curb, gutter and paths)	0.0	0.7	0.2	18.3
Electrical work	0.1	0.1	1.5	15.8
Plumbing and HVAC	0.0	0.0	0.0	12.7
Other concrete work	0.0	0.1	0.1	11.4
Landscaping and related work	1.9	0.4	1.9	10.9
Trucking and hauling	2.7	2.0	4.2	9.8
Culverts, drainage and water retention	0.0	0.0	0.1	8.7
Excavation, demolition and other site prep	0.1	0.0	0.5	7.1
Other building construction related	0.0	0.1	0.0	6.7
Roofing, siding and sheet metal work	0.0	0.2	0.0	5.3
Water and sewer plants	0.0	0.0	0.3	5.2
Construction materials supply	0.2	0.0	0.0	2.9
Waterways and dams	0.0	0.0	0.1	2.9
Drywall and insulation	0.1	0.0	0.0	2.9
Carpentry and floor work	0.0	0.0	0.0	2.8
Masonry, stonework, tile setting and plastering	0.3	0.1	0.4	2.2
Temporary traffic control	0.0	0.0	0.0	1.9
Windows and doors	0.0	0.0	0.0	1.6
Bridge construction	0.0	0.0	0.0	1.4
Structural steel work	0.0	0.0	0.4	1.3
Drilling and foundations	0.0	0.0	0.0	1.2
Office furniture and equipment installation	0.0	0.0	0.0	1.0
Bridge and other structure painting	0.0	0.0	0.0	1.0
Concrete cutting	0.0	0.0	0.4	1.0
Fencing and gates	0.3	0.0	0.0	0.8
Pavement marking	0.0	0.0	0.0	0.8
Other roadway work	0.0	0.0	0.0	0.4
Other construction (not otherwise specified)	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.2</u>
Total	\$ 5.9	\$ 3.6	\$ 13.9	\$ 331.1

f. **Monitor representation of MBEs and WBEs among certified SBEs.** The study team identified the race, ethnicity and gender ownership of certified SBEs that perform construction-related work. As of fall 2014, there were 110 minority-owned firms out of 286 total construction-related SBEs, or 38 percent of the total. There were 46 white women-owned firms among the SBE-certified firms prequalified for construction work (16% of the total). Figure 5-2 shows these results.

Figure 5-2.
Minority- and women-owned firms
among all construction-related SBEs

Source:

Keen Independent Research study team from
City of Madison SBE and prequalification lists.



MBE and WBE representation among construction-related SBEs should be a key program metric the City monitors and reports going forward. If representation of minority- and women-owned firms among SBE-certified construction companies falls, the Program’s effectiveness in encouraging MBE/WBE participation may diminish.

g. Monitor local versus non-local SBE participation. Keen Independent examined whether the SBE Program benefits small businesses in the Madison area. From 2008 through 2013, 81 percent of the contract dollars going to SBEs went to firms in Dane County. Going forward, the City should monitor whether the Program continues to primarily benefit local companies. If participation in the Program changes so that local companies are not benefiting, the City should consider whether it can, under applicable law, restrict the program to Dane County companies (or another definition of “local” companies).

h. Better connect new SBEs with prime contractors. Many of the individuals interviewed in the study said that it was difficult for subcontractors to obtain business with prime contracts without past experience with those firms. Many prime contractors say they use the subcontractors they already know. Successful MBE/WBE firms often cited good relationships with prime contractors who contact them directly for work as a factor for their success.

Their strong relationships make it difficult for newer firms, or firms not in established networks, to obtain work with prime contractors. “People do not find work by looking in the papers; it’s by knowing someone, networking,” according to one interviewee.

A potential benefit of the SBE Program is that it can encourage prime contractors to consider new subcontractors (which was confirmed in the interviews with local businesses).

The City might work with prime contractors to further develop incentives to use new SBEs as well as established SBEs they have not worked with in the past.

i. Consider refinement of revenue limits by specialization. The City of Madison currently has a \$4 million size limit for SBE certification. Many small business programs and similar programs operated by federal, state and local governments use size standards that vary by subindustry. The City should continue to monitor whether a single size standard is best for the program. (It also might consider future increases to the size standard to reflect inflation.)

For example, U.S. Small Business Administration defines a specialty trade contractor as a small business if it has annual revenue under \$15 million, but increases that ceiling to \$36.5 million for highway contractors (SBE currently applies just those two size standards for all the different types of construction firms). The U.S. SBA regularly updates these size standards to reflect current market conditions. Agencies certifying DBEs under the Federal DBE Program use these SBA size standards, with an overall cap of an average of \$23.98 million annual gross receipts over three years.

Many local and state governments with small business programs use much lower size limits for defining a small business compared with the U.S. SBA size standards. Those size standards can vary based on types of work performed. In a contracting market such as Madison, a landscape contractor with \$4 million in annual gross receipts may be a large firm for its field, but a highway contractor with the same annual revenue may be small and at a disadvantage relative to its competition.

If the City were to consider any changes to the size standards for its SBE Program for different construction industries, it might use the same ratios within construction as found in the SBA size standards (e.g., size limit for general contractors is 2.43 times the limit for specialty trade contractors). In this example, if the size limit for specialty trade contractors were kept at \$4 million, the limit for general contractors for the SBE Program would be \$9.7 million in annual gross receipts. The City might conduct its own assessment of the size break between “small” and large general contractors in the local market.

j. Consider time limits for SBE certification, possibly with flexibility for exceeding the size limit.

Another approach to an SBE Program is to allow firms to grow under the program past the revenue ceiling, but to limit the participation to a certain number of years. The Federal 8(a) Business Development Program works in this way.

The City might consider this alternative approach if it found that participation of SBEs was consistently concentrated in just a few firms. Those firms could grow under the program and eventually graduate based on time in the program rather than revenue. This would make it more difficult for prime contractors to consistently use the same SBEs to meet goals and would open opportunities for other SBEs.

k. Consider prime contractor scorecards for cumulative SBE (and MBE/WBE) participation. The City might consider creating individual reports on its largest prime contractors concerning participation of SBEs and minority- and women-owned firms in City-funded public works projects and possibly other City-supported projects. These reports should consider cumulative SBE participation (and potentially MBE/WBE utilization) over several years, and compare SBE participation with what would be achieved if the firm had just met the goals for those projects. The City might then publicly

recognize contractors that have consistently met or exceeded those goals. If some contractors fall far below the norm for SBE and MBE/WBE participation, the City might look into potential explanations and assist the company in improving future participation.

The City might consider incorporating this information into assessment of good faith efforts of those firms if they report that they cannot meet a goal on a future City-funded public works project. One of the frequent complaints of prime contractors around the country is that they do not receive consideration of past success in meeting goals when a government agency evaluates their good faith efforts when they cannot meet a goal.

I. Consider extending the Program to other City-supported construction such as TIF projects. The City currently encourages SBE participation in tax increment financing (TIF) projects. The City might more formally extend the SBE Program to these and other projects that receive City financial support, with adjustments as necessary. (Utilization of businesses on TIF projects was not a part of this study.)

2. Further building an SBE prime contracting part of the Program. Many local contractors available for public works contracts reported working as both a prime contractor and a subcontractor. Some of the firm owners interviewed said that they primarily work as subcontractors on City public works contracts even though they are prime contractors on other projects. Therefore, City encouragement of SBE participation as prime contractors is important to breaking down barriers to winning prime contracts at the City.

The City is not required to publicly advertise City-funded public works contracts under \$25,000. This gives the City an opportunity to directly solicit bids from SBE-certified prime contractors.

Of the 162 small contracts the study team identified for 2008 through 2013, 30 contracts went to SBEs (see Figure 5-3). None of those SBEs were minority- or women-owned. Based on these data, City efforts to promote SBE utilization as prime contractors on small public works contracts have not benefited minority- and women-owned firms.

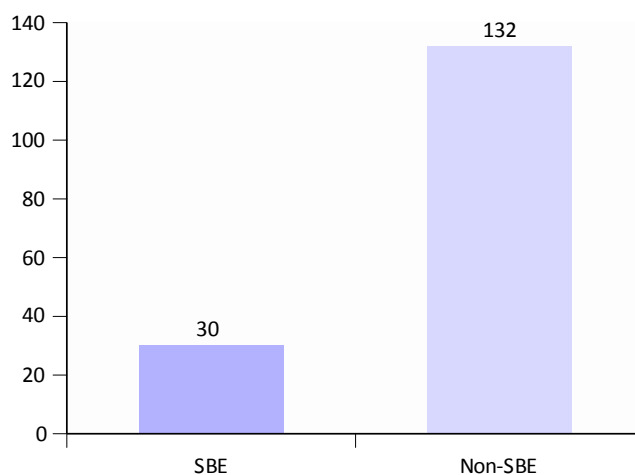
Figure 5-3.
Number of small City-funded public works contracts going to SBE and non-SBE prime contractors, 2008-2013

Note:

Contracts under \$100,000.

Source:

Keen Independent from data on City of Madison public works contracts 2008-2013.



Keen Independent did identify one of the 162 small public works contracts that went to a minority-owned firm and five that went to WBEs (none of which were SBE-certified).

The City might consider:

- a. Making greater efforts to identify small contracts for SBE participation and encouraging use of SBE prime contractors on these contracts.
- b. Reviewing whether the City could accelerate payment of SBE prime contractors.
- c. Further reviewing why there was no participation of minority- and women-owned SBEs on these contracts (including whether MBEs and WBEs certified as SBEs requested to bid and whether there were any MBE/WBE firms among the SBEs that performed that work).
- d. Monitoring and reporting future SBE participation as prime contractors on small contracts and on larger contracts, including participation of minority- and women-owned SBEs.
- e. Evaluating whether the City could have a separate pre-qualification for companies to bid on small “set-aside” contracts with SBE certification being one requirement considered for that prequalification. (The City might explore the legal constraints related to State of Wisconsin public works bidding requirements for this type of program.)

3. Creating a business development component to the SBE Program, including mentorship and a City SBE coach. The City might partner with its largest contractors (or companies performing the largest contracts) to further identify and develop SBEs. One opportunity is to encourage or require the City's largest contractors to enter long-term mentorship programs with emerging SBEs.

The City might also consider designating a staff person as an "SBE coach" that can assist and advocate for SBEs within public contracting at the City. Each initiative is discussed below.

a. Explore partnerships with large contractors to provide SBE mentoring. There are a number of models for mentor-protégé programs throughout the country that the City might consider. The goal would be for each of the larger contractors that work with the City to enter at least one meaningful mentoring relationship with an SBE that is not one of their regular subcontractors (perhaps an "emerging SBE").

Because of the small size of the local contracting community, the City might be able to accomplish this through partnerships with the largest contractors and trade associations. Large City-funded public works contracts might include mentoring as a contract element that would be reimbursed by the City. The City would need to coordinate with other mentoring programs such as the Wisconsin Department of Transportation program to avoid overlap in mentor-protégé relationships.

The City could also evaluate whether the largest, most established SBEs might be asked to provide mentoring to emerging SBEs.

If such partnering is not possible, the City might consider mentoring as a mandatory component of the prequalification of contractors for certain sizes of City public works projects and for continuation as a certified SBE after a certain number of years in the program.

b. Consider an "SBE coach" position at the City. Many contractors interviewed in the study, including minority and female business owners, expressed frustration with the City about the difficulty of attempting to get work through the City. Public Works and Civil Rights staff at the City are primarily tasked with ensuring compliance with City programs and policies and not assisting potential City contractors. Although they answer questions and provide other help to SBEs and other firms, no one at the City has small contractor support as their primary duty, and sometimes such assistance is in conflict with the regulatory culture of these departments.

The City might consider appointing a staff person to serve as an SBE coach who could recruit MBEs, WBEs and other small companies into the City public works contracting process and navigate them through the complexities of prequalification, workforce requirements, SBE certification, prevailing wage requirements and other issues. This individual might also help introduce SBEs to prime contractors and steer firms toward technical assistance and other resources in the community. A single point of contact who can advocate for a firm (i.e., a "coach") can help to change the view that the City is unhelpful and a firm will be burdened with red tape if it seeks to participate in public works contracts.

4. Minimizing barriers in public works prequalification. State statute¹ and City municipal code require that contractors and many subcontractors on City public works contracts be prequalified before bidding on or performing work. Bidders provide information on the following:

- Maintain licenses, registrations or certificates for types of work a company seeks to perform;
- Meet bonding and insurance requirements of applicable law or contract specifications;
- Maintain a substance abuse policy for public works contract employees compliant with state statute;
- Pay craft employees on public works contracts wages and benefits required under applicable prevailing wage law; and
- Disclose additional company information as required by City ordinance.

In addition, general contracting companies bidding on Best Value Contracting (BVC) contracts must participate in a Class A Apprenticeship Program for each trade in which it employs craft employees (and continue to participate for the duration of the project) or have an apprenticeship program that is pre-certified by the Wisconsin Bureau of Apprenticeship Standards on the date of bid award. Subcontractors bidding on BVC contracts must submit the BVC Contracting Compliance form for prequalification. The BVC contract dollar benchmark is based on the Construction Cost Index (CCI) and is computed yearly. For 2015, the single-trade minimum is \$55,500 and the multi-trade minimum is \$271,500.

The City Engineer reviews each prequalification application for approval or denial. If approved, a firm's prequalification with the City is valid for two years. All contractors have the right to appeal any denial to the City of Madison Board of Public Works.

If a contractor has been certified as a DBE, MBE, SBE or WBE, and the City determines that the contractor fails to meet the prequalification requirements under this ordinance, the City Engineer will notify and discuss the determination with the Affirmative Action Division prior to issuing any notice of non-qualification.

Industry comments about City prequalification process. As discussed in Appendix J, the “paperwork” involved in doing business with the City was a barrier cited by many trade associations and business owners, especially for small businesses. One interviewee said that “red tape” and other issues with public sector contracts made him stay away from that work. Others said that prevailing wage requirements and preference for union contractors made small businesses shy away from public sector work.

Many interviewees specifically pointed to City prequalification as overly burdensome. Interviewees indicated that general prequalification and the workforce requirements are difficult, especially for small companies. One owner of a WBE construction company said that it was atypical of other cities and even the state's prequalification process.

¹ Wisconsin State Statute Section 66.0901.

Even supporters of the City’s prequalification process acknowledged that it creates a barrier to working with the City. One interviewee said, “It’s a necessary evil in a way.” He said that “it’s kind of a catch 22” in that prequalification requires prior experience with the type of jobs which would require prequalification, but added, “At the same time, we don’t want to have somebody that doesn’t know what they’re doing when they’re out there.”

Results of telephone interviews with local contractors. When asked if Madison prequalification requirements present a barrier to obtaining work, almost one-half of the MBE/WBE respondents said “yes” compared with only 14 percent of majority-owned firms (see Appendix H).

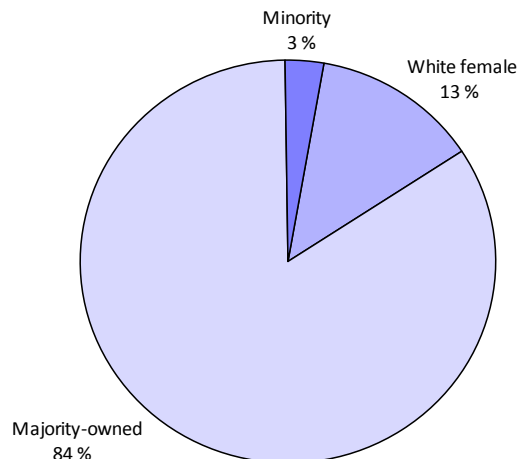
MBE/WBE representation among prequalified firms. Because these requirements restrict the pool of firms that can participate on City public works contracts and may be most burdensome for small contractors and MBE/WBEs, Keen Independent examined whether prequalification negatively affected representation of minority- and women-owned firms on the list of contractors prequalified by the City.

There were 234 firms on the City’s prequalification list at the time of this study, including firms located within and outside Dane County. Keen Independent determined the ownership status of those firms based on certification records, study team interviews with those firms and other data. As shown in Figure 5-4, about 3 percent of prequalified firms were minority-owned and 13 percent were white women-owned.

Figure 5-4.
Ownership of firms prequalified by the City for public works contracts

Source:

Keen Independent Research study team from City of Madison prequalification list.



Representation of MBEs and WBEs on the City’s prequalification list is above what might be expected from the availability surveys that identified public works contractors qualified and interested in City work (2% MBE and 7% WBE). Although prequalification is a barrier for individual companies, it does not appear to disproportionately affect minority- and women-owned firms as a group.

Based on the information summarized here, the City might consider the following initiatives.

a. Perform review of prequalification requirements and thresholds. The City might work with industry and community representatives to perform a complete review of all prequalification requirements and thresholds for public works contracts. It might explore potential changes to the prequalification requirements to make it less of a barrier to new businesses working with the City, and to preclude that prequalification will have a disproportionate negative effect on minority- and women-owned firms.

For example, to encourage more contractors to prequalify for at least the City's small public works contracts, it might consider increasing the size threshold for applying workforce requirements.

According to the current Madison General Ordinances, the following contractors are exempt from the Active Apprenticeship Requirements:

- Contractors with fewer than five employees;
- Contractors performing work not considered to be an apprenticeable trade;
- Contractors performing work with no available trade training program within 90 miles, or the contractor has been rejected by the only available trade training program;
- Contractors not using an apprentice due to having a journeyworker on layoff status (provided the journeyworker was employed for the Contractor in the past six months); and/or
- Contractors in business less than one year;

First-time contractors may request a onetime exemption if they take steps typical of a good faith effort and intend to comply on all future contracts. An exemption may also be granted in accordance with a time period of a "documented depression" as defined by the State of Wisconsin.

b. Phase in prequalification requirements for SBEs over their first two years in the Program. The City might consider relaxing prequalification and apprenticeship requirements for SBEs that are new to City public works contracts. Requirements for SBEs might be phased in for those firms over the first few years after they are SBE certified.

5. Expanding communication of City bid opportunities. The City published public works bid notices in *The Wisconsin State Journal* and on its webpage.² Email notification of bid opportunities is also available, which generated a positive comment from at least one contractor interviewed in the study. The City also makes planholders lists available.

Private bid notice service companies further disseminate this information to their subscribers. Some contractors interviewed mentioned Bid+ (managed by Associated General Contractors of Wisconsin) and Bid Express as relatively inexpensive sources of where to learn of public and private sector

² <http://www.cityofmadison.com/business/pw/contracts/openforBid.cfm>.

projects, including the City of Madison. Others mentioned iSqFt. (Both prime contractors and subcontractors mentioned these sources.)

Even with these multiple resources, some minority- and women-owned firms said that they had difficulty learning about City of Madison bid opportunities.

- The telephone interviews with public works contractors asked firms whether they had difficulties learning about bid opportunities with the City of Madison. About one-quarter of MBE/WBEs said that they had difficulty, more than majority-owned firms.
- Several WBE contractors interviewed said that they do not hear about bidding opportunities from the City or, more generally, from public sector agencies.
- A representative of a minority chamber perceived that small businesses had difficulty seeking public sector work because government agencies have lists they go off of, and if a firm is not on the list, then it does not have an opportunity to compete.

In sum, the research identified contractors and trade association representatives who are not familiar with City processes or other ways to learn about City bid opportunities.

Interviewees who were somewhat familiar with the City's processes did not appear to know of the upcoming projects listed on the City's website.

- One interviewee recommended that the City communicate information about contract opportunities as project progress through the design process. In addition, he recommended advance notification of when the bid documents might be released.
- A minority business owner said that the City sends him notices of bid opportunities, but that they are too late to act on. He also recommended that the City provide a more comprehensive report on upcoming projects.

The City appears to provide this information on the Upcoming Project page of the Public Works website.

a. Conduct further outreach and education about how to identify City bid opportunities. Although it was a small number of respondents and interviewees who indicated that learning of bid opportunities was a barrier, the research indicates that City efforts to communicate current and upcoming bid opportunities are not fully successful. The City might do more to educate potential contractors about how they can easily learn of City public works contracts that are out for bid.

b. Further promote City quarterly meetings with contractors. The City currently holds quarterly meetings with contractors, which may be an ideal venue to educate newer contractors about ways to identify public works bid opportunities and to meet prime contractors. The City might research the ideal number and timing of meetings each year to achieve maximum participation from prime contractors and subcontractors.

6. Improving prime contractor payment of subcontractors and relaxing retainage policies. Both timely payment and release of retainage concern local contractors.

a. Better enforce prompt payment policy. Many minority- and women-owned businesses interviewed in the study said that receiving timely payment from public agencies and prime contractors is an issue. This particularly affects small businesses and those with limited working capital.

The City of Madison requires prime contractors on public works contracts to pay subcontractors within seven days of receiving payment from the City. It currently does not track whether those payments are made within that time frame.

Subcontractors can and do contact the City with complaints about slow payment, and the City has investigated and acted on these complaints. Based on study team review of three formal complaints from SBEs during the 2008 through 2013 study period regarding non-payment, the City took strong action to resolve each of those complaints. One resulted in barring the prime contractor from future City work.

Although the City has taken action upon receiving subcontractor complaints about payment, it might strengthen its prompt pay policy by better tracking prime contractor information about payment to its subcontractors. One business owner interviewed in the study recommended that the City implement a process similar to WisDOT where it verifies online that subs are being paid by the prime contractor. The City might also consider a system whereby subcontractors are notified of when the City has made a payment to the prime contractor.

b. Review ways to more quickly release City retainage. Some businesses interviewed reported that the amount of retainage the City of Madison withholds until closeout is excessive. Businesses reported that this problem is particularly difficult for subcontractors that may have completed their work long before the project is complete. The City might consider changes to allow for mid-contract release of retainage for portions of work that are satisfactorily completed, and ensuring corresponding payments to those subcontractors involved in the work.

B. Developing Local MBE/WBE Contractors

Many of the disadvantages for minority- and women-owned contractors as well as individuals who might start construction businesses occur in the local marketplace outside the City's public works contracting process.

- Utilization of minority- and women-owned firms on City-funded public works contracts is impacted by the relatively low number of MBEs and WBEs in the construction industry and by the types of work and sizes of contracts those firms bid.
- There are public works requirements such as bonding for contracts that may negatively affect minority- and women-owned firms because of disadvantages accessing capital and other barriers. Some of those requirements are state-wide and cannot be changed by the City.
- City tax dollars flow into this broader system, and to the extent discrimination affects the marketplace, those tax dollars may be reinforcing a discriminatory system.

- Business owners and residents of the City are affected by those barriers.
- The City has a broad policy of promoting equity in the local community.

These are some of the reasons that the City might take a broader role in addressing those disadvantages in the local marketplace.

7. Supporting local technical assistance, bonding, financing and mentor-protégé programs and creating new programs when necessary. Businesses, trade associations and other small business service providers interviewed as part of this disparity study identified barriers faced by minority- and women-owned businesses and other small businesses in the City of Madison. The most commonly mentioned needs include:

- Basic business know-how and training;
- Bonding assistance; and
- Assistance with financing.

Many interviewees reported that construction business owners start their companies with experience in the trades, but not necessarily in operating a company. Skills deficiencies range from a lack of basic business management and recordkeeping skills to limitations in bidding and navigating public procurement processes. MBE/WBEs and other small businesses need easy access to basic business training. Some may benefit from business training in their preferred language.

There are many business assistance organizations already operating in the Madison area. As part of this disparity study, the City of Madison assembled a list of targeted business assistance programs available to local businesses. More than 40 area service providers offer basic business to specialized business assistance services for businesses in all stages of development (startup and business development through growth planning). Some of these business service providers specifically target needs of MBE/WBEs through one-on-one consulting and business counseling.

However, knowledge of available business assistance programs appears to be limited among MBE/WBEs and other small businesses conducting contracting in the City of Madison.

A complete listing of Targeted Business Assistant Programs in the Madison area can be found at: <http://www.cityofmadison.com/dcr/documents/TargetedBusAssistProg.pdf>.

a. Consider assembling and marketing an integrated network of local business assistance. Because local assistance providers are not integrated into a network and relatively few interviewees knew of the extent of local resources, the City of Madison might consider ways to better link local service providers with MBE/WBEs and other small businesses.

- One model is the City of San José, California’s “BusinessOwnerSpace.com” (BOS).³ This integrated source of information links startups and existing businesses with assistance providers (“BOS partners”). Rather than duplicate existing small business services, the City of San José invested in integrating partners into a network that could more seamlessly be marketed to and help entrepreneurs in the region.
- Another model is KCSOURCELINK, a network of more than 200 nonprofit resource organizations that provide business-building services for small companies in the Kansas City region.⁴

The City can help promote this network and review whether there are gaps in assistance resources. For example, a representative of a non-profit financing agency reported that local business assistance programs do help startups but more can be done to help businesses stay successful once they start.

b. Support specialized business training for construction owners. Many of the existing business assistance providers and business chambers in Madison have relatively few construction companies as clients or members. The City could help existing organizations expand their reach to the local construction community, and develop specialized assistance. There might be large gaps in local assistance for growing construction businesses.

One possible aspect of this specialized assistance is to help construction companies that lack computer technology to acquire and be trained in needed technology (see Appendix J).

c. Support financing and bonding assistance for SBE construction businesses. Overwhelmingly, MBE/WBEs and other small businesses interviewed as part of this disparity study reported access to financing as a major barrier to starting, sustaining and growing a business. Some business owners reported multiple or even failed attempts to secure financing with at least one business identified as having gone out of business after not being able to secure a loan. One business owner said that limited financing impeded her growth. One minority business owner said that he does not have the capital to work for the City of Madison, and therefore does not pursue this work. Information in Appendix G indicates that minority-owned firms may face additional barriers to financing.

³ <http://www.businessownerspace.com/>.

⁴ <http://www.kcsourcelink.com/home>.

The City might work with other partners to strengthen access to capital through:

- Providing small businesses more information about SBA loans and other financing avenues, including information about the financial institutions and other organizations active in these programs;
- Educating and training business owners about how to choose a type of financing and how to apply for that financing (including loan application prep); and
- Providing additional financial resources that can expand existing programs or capitalize on a new revolving loan fund specifically for equipment and working capital needed by SBEs involved in public works contracting.

Improving access to low interest business loans could lessen barriers for MBE/WBEs and other small businesses needing capital to launch, sustain or grow operations.

Access to bonding is a related issue. There were a number of small companies in the in-depth interviews that reported that they do not bid on City public works in part because of bonding. Training and assistance to obtain needed bonding may be necessary for more SBEs to compete for small City public works contracts.

8. Supporting local efforts to encourage minorities and women to enter, receive training and obtain jobs in the construction industry. Many business owners and trade association representatives interviewed in the study commented on the workforce shortages they see in many local trades. Interviewees also reported that the pipeline of minority and female construction workers is very limited. The City currently has a number of regulatory efforts in place, including affirmative action plan requirements for its contractors, but it might also consider assisting local partners in efforts to encourage minorities and women to enter, receive training and obtain jobs in the industry.

a. Review the effectiveness of current City programs regarding affirmative action for contractors. Madison General Ordinance Section 39.02 requires companies doing business with the City to submit an Affirmative Action Plan. The model Affirmative Action Plan utilized by contractors is designed to ensure that the contractor provides equal employment opportunity to all and takes affirmative action in its utilization of applicants and employees who are women, individuals who fall within the racial/ethnic category and persons with disabilities. The City's Department of Civil Rights reviews a contractor's practices and policies in the following areas:

- EEO/AA Policy Statements and Plans;
- Recruitment;
- Selection criteria;
- Payroll practices;
- Staff development;
- Harassment-free work environment; and
- Complaint procedures.

The Affirmative Action Plan must be submitted on an annual basis. Contracts with contractors who employ fewer than 15 employees or whose aggregate annual business with the City for the calendar year in which the contract takes effect is less than \$25,000 are not required to submit an Affirmative Action Plan.

Contractors had a number of negative comments about these requirements and their effectiveness, as explained in Appendix J. Some reported that contractors will falsely report the number of employees they have in order to avoid the affirmative action requirements. Others reported that the City requirements are inflexible and disruptive to a business. One interviewee said that when a worker completes a segment of work and is later brought back for another component, that the City counts this as a termination and a new hire. The firm is penalized for not bringing in a new employee for that work (see Appendix J). Another interviewee recommended modifying City apprenticeship requirements to be more flexible. One interviewee summed up the City's efforts as "It's a hoop you have to jump through; they don't care if we discriminate or not, they just want the numbers."

Given the substantial negative feedback about its current efforts, the City might undertake a review of existing requirements. There may be avenues for greater success with less burden on small to medium-sized contractors.

b. Support other organizations' efforts to build a pipeline of minority and female workers. Chapter 3 of this report discussed the relatively low overall representation of minorities and women in the Madison construction marketplace, especially in certain trades. The City already supports other organizations' programs to develop the local construction workforce, but might consider investing more in these efforts. Long-term, there will continue to be relatively few minority- and women-owned firms in the local marketplace without building a stronger pipeline of minorities and women entering and advancing within construction trades.

For example, the author of Public Written Comment (PWC) #1 discussed the Madison College Construction & Remodeling (C&R) Program. The Program produces quality graduates with broad and current carpentry skills, and reflects the diversity of the community;

The program recently received a grant enabling it to expand its delivery options, and will offer a Construction Essentials pathway designed to allow participants to take the classes in smaller, more accessible segments. The coursework is offered at night to accommodate the schedules of working adults. A shorter certificate program option provides coursework designed to lead directly into entry level employment within the skilled trades. Subsequent coursework will be offered in Fall of 2015 so that students might work toward completion of the one-year Construction and Remodeling Diploma while earning credentialed certificates along the way.

The 2015 graduating class includes 15 percent women and 26 percent minority students, all of whom can enter the trade as beginning residential carpenters or apprentice carpenters in commercial work. The City might consider offering scholarship funding for low income, minority, and women students interested in the program.

Figure 5-5 summarizes the discussion of action items for consideration described in this Chapter.

Figure 5-5. Actions for City consideration based on disparity study results

Potential actions for City review and exploration
<p>1. Further improving the SBE contract goals program</p> <ul style="list-style-type: none"> a. Respond to industry and community concerns about program operation b. Monitor concentration of SBE participation in only a few firms c. Encourage small businesses to become SBE-certified and participate in City contracting d. Improve data collection and reporting of SBE participation on City-funded contracts e. Monitor SBE participation, by race, ethnicity and gender f. Monitor representation of MBEs and WBEs among certified SBEs g. Monitor local versus non-local SBE participation h. Better connect new SBEs with prime contractors i. Consider refinement of revenue limits by specialization j. Consider time limits for SBE certification, with flexibility for exceeding size limit k. Consider prime contractor scorecards for cumulative SBE (and MBE/WBE) participation l. Consider extending the Program to other City-supported construction such as TIF projects <p>2. Further building an SBE prime contracting part of the Program</p> <ul style="list-style-type: none"> a. Make greater efforts to identify small contracts for SBE participation b. Review accelerating City payment of SBE prime contractors c. Review opportunities for minority- and women-owned SBEs to bid on small contracts d. Monitor and report SBE participation as prime contractors <p>3. Creating a business development component to the SBE Program, including mentorship and a City SBE coach</p> <ul style="list-style-type: none"> a. Explore partnerships with large contractors to provide SBE mentoring b. Consider an SBE coach position at the City <p>4. Minimizing barriers in public works prequalification</p> <ul style="list-style-type: none"> a. Perform review of prequalification requirements and thresholds b. Phase in prequalification requirements for SBEs over their first two years in the Program <p>5. Expanding communication of City bid opportunities</p> <ul style="list-style-type: none"> a. Conduct further outreach and education about how to identify City bid opportunities b. Further promote City quarterly meetings with contractors <p>6. Improving prime contractor payment of subcontractors and relaxing retainage policies</p> <ul style="list-style-type: none"> a. Better enforce prompt payment policy b. Review ways to more quickly release City retainage <p>7. Supporting local technical assistance, bonding and financing programs, and creating new programs when necessary</p> <ul style="list-style-type: none"> a. Consider assembling and marketing an integrated network of local business assistance b. Support specialized business training for small construction businesses <p>8. Supporting local efforts to encourage minorities and women to enter, receive training and obtain jobs in the construction industry</p> <ul style="list-style-type: none"> a. Review the effectiveness of current City programs regarding affirmative action for contractors b. Support other organizations' efforts to build a pipeline of minority and female workers