



Position Paper on Disparity Study Recommendations

Below are the recommendations made by the Women Contractors Association, along with our explanation, in italics, of why each of these recommendations should be implemented. Also attached is the Letter previously sent to the Office of Business Opportunity with the original recommendations. Some of our ideas for particular actions to be taken by the City are in bold font.

Reinstate WBEs as a contracting goal in the percentage of 11%, which is in line with the percentage of ready, willing and able WBEs.

This is a vital recommendation. From our experience of the last five years we know that if the City does not have a WBE goal, the general contractors will use few WBE subcontractors. The Disparity Study showed that eleven percent of contractors in the greater Houston area are women-owned. If the City sets the goal at eight percent, and the City achieves nine percent usage of WBE's, the City could again claim that WBE's are being overutilized, even though the nine percent usage is lower than the actual percentage of eleven percent. Due to the City eliminating the WBE goal in 2007, WBE's have fallen behind. If the City wants WBEs to catch up in utilization, it will establish the goal at eleven percent.

Un-bundle contracts, where possible, to reduce the dollar amounts of contracts. We understand that un-bundling of contracts is not always feasible and cost effective but we would want the City to consider that option often and the extent that it makes good business sense.

The City needs to actively and purposefully examine work to be performed to see if the work can be divided into separate contracts. The City has a policy to encourage the growth and success of MWBEs. Emerging contractors usually do not have a lot of capital and a large credit limit. If the City truly wants to implement its policy and do more business with MWBEs, it will establish contracts at a dollar amount that will allow MWBEs to bid contracts and obtain the bonds required by law. City departments are asked to forecast timely to encourage identification and growth of direct prime contract opportunities for MWBEs.

Equalize the compliance and certification for SBEs.

SBEs must be certified with the same due diligence and effort as MWDBEs. The process is burdensome, and in and of itself restrictive due to financial and other confidential information which must be submitted. Their Owners must submit a personal net worth and financials statements and comply to a maximum personal net worth limit and to a limited number of affiliated businesses, that MWDBEs are required to fulfill.

Adjust MWSBE goals according to the requirements of each project and the availability of WBEs, SBEs, and MBEs for the particular type of work.

As a practical matter, each contract should be evaluated and the goals for each contract set according to the availability of contractors that can perform the particular work required.

Monitor general contractors post-award to insure that they are complying with the MWSBE plans submitted to the City to win the work.

*This is one of the most important tasks that the City must accomplish if it wants a valid, reliable MSWBE goal program. Probably every MSWBE subcontractor has experienced situations where a general contractor uses the subcontractors name to show it is complying with the goals, only to have the general contractor actually use a different, non-MWSBE contractor for the work. One way that other governmental entities have to insure that the general contractor will actually use the MWSBE subcontractors is to require that the general contractor name the MWBEs with the bid and require that the general contractor promise to use the named subcontractors. The City should also obtain documentary evidence from general contractors about their good faith efforts to meet the goal. Many MWBEs report that some general contractors call and ask them to bid on the project on the day the bid is due, which is not enough time for the subcontractor to bid the project. **The City should require that general contractors document their solicitations of bids from MWBEs by:***

- **Contacting them by email or fax;**
- **Delivery of Notice to the City and the Subcontractor the same day and time the bids are due, “Participation Plans”**
- **Saving the documentary evidence of such contacts.**

Pay promptly on City contracts and monitor general contractors to be certain they pay their subcontractors and lower tiers promptly as well.

It is a well-known fact that the biggest problem facing small businesses is lack of capital. In the construction industry, the subcontractors finance the projects, by paying the laborers, for materials and equipment, and have to wait until the owner pays the general contractor, before they are paid. The vast majority of subcontracts contain “pay if paid:” clauses – the subcontractor is not entitled to be paid until after the owner has paid the general contractor. Often subcontractor defaults occur when a subcontractor runs out of money while waiting to be paid for work performed. Prompt pay by the City to the general contractor will help the subcontractors.



In cases where a small business has a contract directly with the City, the same logic applies – a small business has less of a capital cushion to see it through a period where an owner is delaying payment.

The WCA strongly recommends that the City do the following to help the MWBEs be paid:

Require in its contracts that general contractors pay subcontractors within seven days of the general contractor receiving the funds for the subcontractor's work.

Indicate when it pays a general contractor what work, including percentage of work, on the Schedule of Values is being paid.

Have a place on the City of Houston website showing:

- **The name and address of the general contractor's bonding company**
- **Payments made to general contractors, including date of payment, amount, and what work, including percentage of work, on the schedule of values is being paid**

Respond quickly and effectively to claims by WMSBEs regarding unfair or unethical treatment by general contractors.

The City has a vested interest in seeing MWBEs succeed. That is the goal of the Office of Business Opportunity. Although the City has no legal duty to insure that subcontractors are paid, the City's policy of encouraging the growth and success of these entities mandates that the City take immediate action when a subcontractor claims it is not being paid or has encountered other unethical or unfair treatment from a general contractor. In line with this, the City should avoid contracting with general contractors who regularly receive claims of unfair treatment from their subcontractors. Some of the reasons why the City should avoid such general contractors are :

- *the City should not have to spend its manpower dealing with these complaints*
- *Projects should move faster where everyone is being paid timely*
- *The general contractors are breaching their contracts with the City, and violating City Code § by not paying their subcontractors timely.*

Do everything possible to assist MWBEs to obtain bonding and capital to finance their projects.



Every MWSBE would prefer to have a contract directly with the City. In many cases the only thing keeping them from bidding on City projects is their inability to obtain the payment and performance bonds required by state law. The City should do the following to help MWBEs to obtain bonding:

Continue education programs to help MWBEs to obtain bonds
Offer incentives to banks and bonding companies to extend credit to MWBEs.

Increase certification outreach and make certification an efficient, reliable, and timely process.

There are many minority, women-owned, and small businesses that are not certified. Most of these businesses are excellent contractors which could be making a great contribution on City projects. If the City could increase the number of certifies businesses in every category, every goal could be met on every project. The City should get the list of contractors discovered by NERA, and contact the various contractors associations to get contact information to identify these businesses in order to try to certify them.

Be vigilant in exposing MWSBE certification applications by “pass-through”, fronts, or other fraudulent business entities.

The members of the Women Contractors Association want to conduct business in a fair and ethical manner. We also want the City certification process to be fair and ethical. We support the City’s efforts to only certify those businesses that are truly small businesses, or women-owned or minority-owned.

Effectively manage the database of certified MWBEs to eliminate those companies that are not ready, willing, and able to perform work.

The members of the Women Contractors Association want an honest and reliable MWSBE program. We have heard general contractors complain that the list of certifies MWBEs is unreliable – that it contains companies that are out of business or cannot be reached.

Continually review the performance of the program to ensure and maintain a high quality program.

There are a lot of available MWBEs available that need work. If the City can implement an effective, quality MWSBE program there is no reason why the local MWBEs cannot have work to perform and no reason why the City and its general contractors cannot have qualified, competent MWBEs to perform their work.