

ENSURING RACIAL EQUITY IN PUBLIC CONTRACTING

“We have to build a city that creates opportunity in a way that reflects the diversity of our city.”

—Cincinnati mayor **John Cranley**, on supporting a Department of Economic Inclusion.

“For Memphis to grow, we have to place some level of priority on the inclusion and growth of minority- and women-owned businesses”

—**Darrell Cobbins**, president and CEO of Universal Commercial, a Black-owned business in Memphis.

THE PROBLEM

Businesses owned by people of color create jobs and build wealth in communities of color. Yet despite rapid growth of entrepreneurship among people of color – and women of color in particular – these businesses face significant barriers to growth and success. Government spending on construction, goods, and services is a potential opportunity to advance economic inclusion, but municipalities often under-contract with businesses owned by people of color. In **Shelby County**, TN, for example, only 6 percent of county contracts went to Black-owned companies¹, despite the fact that the county itself is 53 percent Black, and **Memphis**, the largest city in the county, has the second highest rate in the country of Black-owned businesses, at 56 percent.²

There are many reasons local governments have so often failed to provide fair contracting opportunities to businesses owned by people of color. They range from outright corruption and nepotism, to banal bureaucratic processes that smaller, understaffed, and overworked businesses do not have the time or ability to navigate which is especially pertinent because the vast majority of businesses owned by people of color are small businesses. These issues are compounded by legal hurdles that make race-conscious laws and ordinances, even though aimed to benefit minority business interests, subject to constitutional challenges.

THE SOLUTION

Municipalities can leverage their contracting and procurement power to increase racial equity within their local business community. This brief focuses specifically on public contracting with businesses owned by people of color, recognizing the unique historic, structural, and legal considerations that affect these communities.

POLICY ISSUES

Key strategies that elected officials can support to advance racial equity in public contracting are:

BUILD UP THE NUMBER AND CAPACITY OF ELIGIBLE MBES & DBES: Minority Business Enterprises (MBEs) are businesses that are certified to be at least 51 percent owned, operated, and controlled by people who are Asian, Black, Latino, and/or Native American.³ While most businesses owned by people of color are eligible to become certified MBEs, many are not certified because they don't know about it or the process is too onerous. Based on a recommendation from Mayor John Cranley's Economic Inclusion Advisory Council, the City of **Cincinnati** created the Department of Economic Inclusion in 2015 to support more businesses owned by people of color and women becoming certified and winning contracts with the city.⁴

The U.S. Department of Transportation requires all transportation agencies to operate a program for Disad-

vantaged Business Enterprises (DBEs), which includes people of color, women, and others who are considered economically disadvantaged.⁵ In **New Orleans**, the Regional Transit Authority commissioners, after determining they were underutilizing companies owned by people of color in their contracts, revamped their bidding and provided increased support for businesses to navigate the process to be certified as DBEs and build up their capacity to pursue contracting opportunities. DBE participation in contracts increased from an average of 11 percent to 31 percent within a year, resulting in over \$17 million of additional capital going to these businesses.⁶

INCREASE ACCESS TO CAPITAL: Undercapitalization is a major problem for businesses owned by people of color, which impedes a firm's capacity for contract mobilization, equipment purchase, making payroll, and timely payment of taxes. Lack of access to mainstream capital is a challenge disproportionately experienced among business owners of color.⁷ Procurement strategies that provide at least some payment to small businesses up-front and city programs to help with bonding and insurance for construction contractors can help increase access to capital and support these businesses. In **Rhode Island**, the Department of Transportation implemented a low-interest loan program exclusively for firms owned by people of color to increase their ability to bid on highway infrastructure contracts. This program not only increased the total investment going to DBEs, but also promoted activity by minority owned firms in business areas in which the state had previously not had any certified DBEs.⁸

LEGAL CONSIDERATIONS: Goals for inclusion have been a part of government contracting practices since the early 1960's. However, powerful business interests have argued in federal courts across the nation that racial equity in government contracting does not serve a compelling government interest, and the courts have applied strict scrutiny and narrow-tailoring legal notions to programs and policies that increase government contracting with businesses owned by people of color. To overcome these legal challenges, municipalities must be able to prove their ordinances are remedying the effects of discrimination that result in real economic or physical harm to minorities.⁹ Tools such as disparity studies—which measure the level of utilization of MBEs and Women's Business Enterprises on public contracts and compares these rates to the number and capacity of these firms in related industries—can help municipalities meet their legal burden of proof. **Shelby County, Cincinnati**, and many other municipalities have used disparity studies to document where race- and gender-conscious programs are needed to address inequities in contracting.

Some cities and states are required to operate race-neutral

programs to achieve racial and gender inclusion in contracting.¹⁰ Race-neutral strategies include practices such as matchmaker sessions to connect prime contractors to subcontractors from disadvantaged backgrounds and advisory committees to provide programmatic recommendations. While these programs can help increase business opportunities for firms owned by people of color, they are likely to have less strong outcomes than racially-targeted policies and programs.

LANDSCAPE AND RESOURCES

The **National Minority Supplier Development Council** advances opportunities for businesses owned by people of color and is the primary certifier of MBEs, with 24 regional council nationwide. The **U.S. Department of Commerce Minority Business Development Agency** provides helpful resources and research on businesses owned by people of color. The **Local & Regional Government Alliance on Race & Equity** offers online resources on equity in contracting.¹¹ The **Emerald Cities Collaborative** has affiliates around the country that are advancing equitable contracting and hiring practices, particularly in green infrastructure projects.

NOTES

- 1 National Minority Supplier Development Council, <http://www.nmsdc.org/mbes/mbe-certification/>.
- 2 Oscar Perry Abello, "Cincinnati Hopes More Minority-Owned Businesses Will Get a Piece of City Projects," Next City, <https://nextcity.org/daily/entry/cincinnati-small-business-minority-owned-business>.
- 3 U.S. Department of Transportation, <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/definition-disadvantaged-business-enterprise>
- 4 PolicyLink, "New Orleans Fast-Tracks Equitable Transit Investment," *America's Tomorrow*, June 6, 2013, <https://www.policylink.org/sites/default/files/americas-tomorrow-june62013.pdf>.
- 5 Fairlie, Robert W. and Alicia M. Robb, *Disparities in Capital Access between Minority and Non-Minority-Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs*, Minority Business Development Agency, <http://www.mbda.gov/sites/default/files/DisparitiesinCapitalAccessReport.pdf>.
- 6 This includes states under the jurisdiction of the Ninth Circuit Court of Appeals (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington).
- 7 See: <http://racialequityalliance.org/category/contracting-equity/>.

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