

EXPANDING ECONOMIC OPPORTUNITY: Minority & Women-Owned Business Enterprise (MWBE) Programs

PROBLEM OVERVIEW

Minority and/or women-owned (MWBE) businesses serve a critical role in strengthening the U.S. economy and nurturing them should serve as a key component of any local effort to promote economic growth. At least 36% of all businesses in the U.S. are women-owned, employing 15% of the workforce.¹ Minority-owned businesses employed nearly eight million people in 2015.² Despite making up such a large portion of our economy, minority/women-owned businesses are more likely to face outsized economic challenges compared to other businesses.³ While the number of MWBE businesses continues to grow, these businesses, especially those owned by members of minority groups, have overall comparatively slower revenue growth, smaller shares of both private and government markets, fewer employees, and lower capitalization rates.⁴ Despite decades of effort, minority-owned businesses continue to “secure a lower number and dollar amount of [government] contracts in proportion to the number of available MBEs.”⁵ In some cities, government purchases from these businesses have even shrunk in recent years.⁶

By targeting certified businesses for local government purchasing and contracts, MWBE programs aim to address these discrepancies and strengthen local economies by directly investing in and helping grow local minority/women-owned businesses. Minority/Women-owned Business Enterprise (MWBE) programs alter traditional government procurement rules or procedures in an effort to increase visibility and government contracting opportunities available to MWBE certified businesses. Businesses certified by these programs are usually those at least 51% owned and controlled by people of color or women, groups historically underrepresented in the award of government contracts.

POLICY ISSUES: ESTABLISHING AN MWBE PROGRAM

RECOGNIZING CERTIFIED BUSINESSES

In order to purchase from minority/women-owned businesses, government purchasing agents must have a

method of identifying them. Local governments can create and operate their own certification system, recognize a private certification,⁷ or recognize the certification of a parallel state or federal procurement program.⁸ For example, **Atlanta** operates its own certification program. **Philadelphia**, on the other hand, only accepts third party certifications.⁹ Some local governments, like a few in Texas, can accept certification provided by an appropriate statewide program.¹⁰ “At least 38 states, Washington D.C. and Puerto Rico have state-level [minority business] development programs involving certification for participation in state government procurement.”¹¹ Those certifications can be reciprocally recognized at the local level if state and local law allow. For example, in addition to offering its own certification, **Suffolk County, NY**, recognizes New York State certification.¹² Other localities¹³ simply incorporate the US Department of Transportation Disadvantaged Business Enterprise (“DBE”) program.¹⁴

SET CERTIFIED BUSINESS PARAMETERS

Many local MWBE programs set geographic and income limits. Geographic limits might require that certified businesses have physical offices within a locality, have demonstrable business history for a minimum number of years there, or derive a certain percent of their business receipts within the locality. Some programs also set net worth or income limits for owners of certified businesses. For example, **Cook County, IL** requires that certified business owners meet an annually indexed Consumer Price Index adjusted net worth limit, currently set at \$2.35 million.¹⁵

CERTIFICATION DIRECTORY & OUTREACH

Localities should create a regularly updated searchable database¹⁶ containing certified business descriptions and contact information where agency procurement officers can identify appropriate MWBE businesses to solicit. Local governments should make contracting opportunities publicly available and easy for MWBE businesses to identify and should develop mechanisms for certified businesses to engage and network with agency procurement officers.

PROGRAM DESIGN & ENFORCEMENT

MWBE programs can take many forms.¹⁷ Some operate by setting aside certain contracts for award to MWBE businesses. Many of these programs can be found at the local, state, and federal level. For example, **Chicago's** Target Market program reserves certain contracts for MWBE businesses.¹⁸ Programs may also provide “bid discounts” for the purpose of awarding contracts. For example, an agency might reduce the price of a bid made by MWBE registered businesses by a certain percentage for the purpose of comparison to other bids when making a purchase based on price. If the MWBE business receives the contract under this approach, they would still receive their original bid price. **Cleveland, OH**, utilizes one such program by allowing a 5% discount on registered business bids.¹⁹ Many programs require that prime contractors utilize a certain percentage of MWBE sub-contractors. **Albany, NY**, has a 7.5% MWBE subcontract requirement for all construction contracts.²⁰ Other programs aim to increase MWBE participation without granting any preferential treatment. These approaches often require that purchasing officers solicit and receive a minimum number of MWBE bids on certain purchases.²¹ Many local governments have varying procurement rules depending on the type of good or service and the dollar amount of the purchase in question.²² For this reason, MWBE-related procurement rules for a particular locality may similarly vary by procurement type and purchase amount.

Regardless of the structure, program administrators should set procurement goals, which generally range from 5% to 30% of yearly purchases, and should require agencies to submit plans for achieving them. Goals can be set by time period (ex: yearly or quarterly) and may be set by agency, product category (construction, goods, services, etc.), or both. Goals should be appropriately set for contracts and subcontracts, as well as by race/gender/class category.

Program administrators should develop appropriate reporting and enforcement mechanisms, such as those utilized in Philadelphia, which track the amount of spending by city agencies with MWBE businesses.²³ Procurement programs falling short of procurement goals persist as a regular source of contention and concern among MWBE program administrators and participants.²⁴ Procurement rules should require the development of responsive action plans when MWBE procurement activity falls short of agency goals.²⁵ The goal setting process and the extent to which goals may be enforced vary greatly depending on the design of the program, relevant state law, and local procurement rules.

LEGALITY

MWBE programs generally grant government contracts using a process that involves taking the race of a business owner into consideration. Federal courts have held that government

programs taking race into consideration—including MWBE programs—must demonstrate adequate justification and proper program design.²⁶ In order to satisfy the courts, MWBE administrators must show, in part, evidence of a history of local government contracting disparities negatively affecting qualified minority business owners within the locality. Statistical and anecdotal data are valuable in defending these programs. To meet these legal requirements, many local governments hire consulting firms to conduct and report on contracting disparity studies.²⁷

Under certain circumstances, local governments may need to demonstrate authority to develop MWBE purchasing programs under state law or state home rule authority. In addition to demonstrating authority, MWBE program administrators should ensure that programs operate consistently with state law and local rules related to procurement.²⁸

IMPROVING MWBE PROGRAMS

In addition to certification and procurement programs, many localities provide MWBE businesses with other forms of business assistance.

Peripheral MWBE programs include:

- Workshops and personalized assistance for navigating and marketing to local, state, and federal agency procurement processes.
- Procurement Technical Assistance or “PTAC” to help craft and submit bid responses to government solicitations. **Los Angeles County** runs its own PTAC.²⁹
- Access to networking events, mentor-protege programs, and individualized introductions to agency contracting officers. **Denver** operates one such program.³⁰
- Unbundling of contracts into opportunities more manageable for smaller businesses.
- Providing access to contract-based or general financing, loan enhancements, loan brokering services, or loan guarantees. **New York City** offers financing programming.³¹
- Assistance with or waiver of bonding or insurance requirements which might otherwise provide hurdles to government contracting. **Austin, TX**, offers bonding assistance.³²
- Access to business planning and legal assistance.
- Workforce development assistance and incentives. **Multnomah County, OR**, offers one variety of workforce-centered programming.³³

LANDSCAPE & RESOURCES

The U.S. Department of Commerce’s Minority Business Development agency maintains a list of select state and local certifying agencies nationwide.³⁴ The Association of Procurement and Technical Assistance Centers provides resources and information on assistance centers nationwide.³⁵

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NOTES

EXPANDING ECONOMIC OPPORTUNITY: MINORITY & WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) PROGRAMS

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13. See for example, City of Santa Fe, NM, “Disadvantaged Business Enterprise (DBE) information,” www.santafenm.gov/disadvantaged_business_enterprise_dbe_information
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17. Insight Center for Community Economic Development, State Policies and Programs for Minority- and Women-Business Development, ww1.insightcced.org/uploads/publications/assets/50%20state%20inclusive%20business%20policy%20scan.pdf
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