

Current Best Practices Supporting Equal Opportunity in Construction

August 2014

Across the country, cities and states have successfully implemented policies that support women, minorities and residents’ entry and retention to jobs on publicly funded high-wage construction sites. History suggests that when equal opportunity laws targeting women construction workers are passed and enforced, women and minorities work hours increase far above the national average. These best practices clearly show that if efforts were sustained over time, far more than the current 2.6% of construction workers would be women. The successful policies have at least four out of five key strategy points in common – oversight, transparency of results, clear affirmative action goals and implementation plans, specific funding provisions, and a “best efforts” or “good faith” clause.

City/State	Oversight	Transparency	Clear goals/plans	Funding	"Best efforts clause"
Boston	X	X	X		X
Massachusetts	X	X	X	X	X
Minnesota	X	X	X		X
New Haven	X	X	X	X	X
Portland	X	X	X		X
Oregon	X	X	X	X	X
San Francisco	X	X	X		X
Seattle	X	X	X	X	X

These key strategies are embedded in legislation, executive orders, contracts and/or in Project Labor Agreements (PLA) and Community Workforce or Benefit Agreements (CBA) and are crucial to the success of the following best practices.

Boston: The Boston Residents Job Policy (BRJP)¹ sets workforce goals for city construction projects; 50% of total construction work hours in each trade are designated for Boston residents, 25% for minorities, and 10% for women. The ordinance includes an annual review of workforce goal provisions and requires contractors to submit a pre-contract Boston Residents Construction Employment Plan that details the contractor’s plan to enforce the original BRJP employee work hour requirements. The ordinance includes a “best-efforts” clause that lays out affirmative action steps for the entire duration of a project for contractors and developers. BRJP identifies the Boston Contract Compliance Office as responsible for the enforcement and monitoring (oversight) of its provisions. In 2010, the Boston City Council amended the BRJP to require the Boston Redevelopment Authority to post contractors’ equal opportunity numbers online.² While the results vary widely, it is easy to see the contractors who consistently ensure women’s workforce hours and those that don’t.³

Massachusetts: The University of Massachusetts has a Project Labor Agreement (PLA), developed with the governor’s office, that includes goals, oversight, and an action plan. The Division of Capital Asset Management and Maintenance (DCAMM) is charged with enforcing the goals set in the PLA. Those goals are for 10% of hours to be worked by women, 25% to be worked by minorities, 50% to be worked by residents, 4.0% to be worked by WBEs and 7.4% by MBES.⁴ As of April 30th, 2014, DCAMM had met its goal for the percentage of work hours completed by women (10%), and exceeded

its goal for a percentage of work hours completed by minorities, at the Integrated Sciences Building Project at UMASS Boston. The minority goal was 25%; that figure is currently at 33%.⁵ In addition, all of the numbers are posted online, which allows for transparency and accountability.⁶

In January 2013, Governor Patrick signed a Workforce Transparency Act.⁷ The Act creates economic incentives to increase workforce diversity, and increases accountability and transparency. The law requires the State to develop a website and post quarterly construction performance numbers, contract by contract of the hours worked on each project by women, minorities, and residents no later than 60 days after the end of the previous quarter on a public website.⁸

Minnesota Multi-Purpose Stadium Project: The Minnesota Sports Facilities Authority as per state law has goals for women and minority workforce participation. This led the Authority to institute and implement an Equity Plan and Project Labor Agreement (PLA). The PLA establishes an oversight committee and recognizes the importance of hiring targets, setting them at 32% for minorities and 6% for women. The Project also has a manager equity review panel and monitors every stage of construction from pre-construction to the final product, by way of site visits that occur no less than twice per month. Workforce utilization data gathered must be reported and made public.⁹ The May 2014 statistics show that the hiring goals have been exceeded, with 36% minority and 9% women.¹⁰

New Haven: The Equal Opportunities Ordinance of the City of New Haven authorizes and empowers the New Haven Commission on Equal Opportunities to remedy discrimination complaints, and actively pursue and promote affirmative action and contract compliance within the City of New Haven.¹¹ The Commission requires contractors and sub contractors to attend pre-contract affirmative action meetings to outline goals for hiring practices. Contractors are fined if they do not make “good faith” attempts to meet their affirmative action goals. These “good faith” efforts are monitored by visits to the job site at least twice a month. The Commission also runs a pre-apprenticeship program with the local building trades to ensure that contractors can meet their obligations. New Haven has achieved a 38-40% minority, 25% resident, and 8% female workforce participation on all construction sites citywide.¹²

Portland: Portland’s new Model Community Benefits Agreement (MCBA), approved in 2012, creates a Labor-Management-Community Oversight Committee (LMCOC), with a subcommittee that is responsible for monitoring contractors’ and subcontractors’ compliance with, apprenticeship, workforce and local hire goals or programs established in each agreement for the city of Portland. The agreement “dedicates 1.5% of City construction budgets to help women and minority workers and contractors get ready for the job and 0.25% to monitor and enforce the MCBA with a committee composed of representatives from labor, management, and community groups. In addition, 0.75 % will go to pre-apprenticeship training programs that focus on training women and minorities; and 0.50% will pay for “technical assistance and business support” for women and minority-owned contractors.”¹³ The agreement also sets goals: 20% of all covered hours must be worked by Bureau of Labor Industries (BOLI) or federally-registered apprentices on prime contracts greater than \$200,000 or subcontracts greater than \$100,000, 18% of apprenticeship hours should be worked by minorities, 9% of apprenticeship hours should be worked by women and not less than 30% of the workforce should be hired from a Historically Underutilized Business Zone (“HUB Zone”).¹⁴ Employers are also tasked with maintaining records of diversity on their worksite and of their “good faith” efforts to meet the project hour goals, which are then reported to the LMCOC on a quarterly basis.¹⁵

Oregon: Oregon law (ORS 184.866) requires the Oregon Department of Transportation (ODOT) to expend one-half of 1% up to an amount of \$1.5 million of the federal funds received every two years on affirmative

action initiatives, including preparation programs. While all State Departments of Transportation have the ability to pull down this money from their federal funding, most do not. The aforementioned law ensures that ODOT not only uses the money, but also applies it in a specific way. The ODOT workforce development plan aims to increase participation rates statewide to 14% for women and 14% for minorities.¹⁶

San Francisco: San Francisco’s 50 UN Plaza federal building was designated a federal “Mega Project” according to the Memorandum of Understanding¹⁷ between the General Services Administration and the Department of Labor’s Office of Federal Contract Compliance. Accordingly, federal representatives met regularly with the contractors, unions and community based organizations (CBO) to oversee and facilitate the hiring and retention of women and minorities and shared the workforce reports. Equal Rights Advocates and Tradeswomen Inc. in California were the lead CBOs working to ensure that contractors could find and retain women and minorities. Over the course of the project, 50 UN Plaza exceeded federal requirements for equal employment opportunity regulations (women 8% and minorities 61%) and serves as a primary example of the importance of community partnerships in the implementation of affirmative action plans.

Seattle: The \$330 million dollar Seattle Seawall Project has a Community Work Force Agreement (CWA) in place that applies to the construction contract.¹⁸ The Seawall CWA, which is overseen by the city of Seattle’s Labor Equity Program, provides for “unprecedented”¹⁹ agreement to promote worker diversity on the construction site. Targets for the project are as follows: economically distressed zip codes 15%, apprentices 15%, women 12%, and people of color 21%. Seattle contractors must put forth “good-faith” efforts to meet their affirmative action plans, are monitored, and data collected is made public.²⁰ In addition, per Seattle regulations,²¹ Seattle requires 15% apprentice labor on construction projects estimated to cost \$1 million or greater.²² Per Seattle Resolution 31485, the city also has an oversight committee, the Construction Careers Advisory Committee that is tasked with of “reviewing the City’s current contracting program and outcomes, studying best practices from other jurisdictions, and making policy and program recommendations based on that work.”²³ As of July 2014, the total percentage of women and minority hours worked had exceeded the goals: women’s hours were at 14.9% and minority hours were at 29.4%, both above the city’s past equal opportunity performance.²⁴

BEST PRACTICE RECOMMENDATIONS

These best practices use strategies that were developed over years of work by tradeswomen’s organizations and others, often supported by the 1992 Women in Apprentice and Non Traditional Occupations (WANTO) Act.^{25, 26} Based on both current and past best practices, it is evident that to achieve results, initiatives should have a majority of the five strategies benchmarked here and the assistance and support of local community and advocacy groups. Clear goals and on-site oversight ensure that targeted recruitment and “good-faith” efforts are implemented and that contractors, subcontractors, government agencies and developers are complying with equal opportunity laws. The increasing movement towards total transparency in posting workforce numbers not only helps ensure that equal opportunity is being measured and enforced, but also ensures that interested community groups and targeted construction workers can monitor the sites and apply for work. Oversight committees ensure that meeting hiring goals is a priority and can be addressed before problems occur. Designated funding for equal opportunity training and oversight, especially as part of an overall construction budget, ensures that equal opportunity workforce development programs on construction sites are a priority and becomes a tangible reality. “Good-faith” clauses make sure that developers understand the steps that must be taken in order to achieve the goals, facilitate oversight, and

demonstrate an understanding of the goals and standards set for them by the relevant pieces of legislation or CBA agreements.

Research continues to demonstrate that only with sustained effort will we be able to reverse years of institutionalized discrimination and stereotyping to close the equity gap for women, minorities and local residents' entry and retention in high-wage construction occupations. This important pathway to the middle class has long been an American promise, a promise that should be renewed for our increasingly diverse workforce and communities. These best practices from around the country demonstrate that creating and implementing equal opportunity policies make a real difference and can and should be replicated.

¹ http://www.cityofboston.gov/images_documents/Esta_brjp_tcm3-3206.pdf.

² http://www.cityofboston.gov/images_documents/brjp_for_the_web_rep_by_trade_proj_cont_6.6_tcm3-42106.pdf.

³ http://www.cityofboston.gov/images_documents/brjp_for_the_web_rep_by_trade_proj_cont_6.6_tcm3-42106.pdf.

⁴ <http://www.mass.gov/anf/property-mgmt-and-construction/oversight-agencies/dcam/community-access-and-outreach-for-the-university-/access-and-opportunity-goals-for-umass-boston-dcam-isc-project.html>

⁵ *Id.*

⁶ *Id.*

⁷ <http://lindadorcenaforry.com/achievements/jobs-access-bill-signed-by-governor-patrick-will-increase-transparency-in-local-hiring/>

⁸ <https://malegislature.gov/Bills/187/Senate/S2386>.

⁹ <http://www.msfa.com/content/EQUITY%20PLAN/MMPS%20Executed%20Project%20Labor%20Agreement.pdf>.

¹⁰ <http://www.msfa.com/content/EQUITY%20PLAN/EQUITY%20PLAN%20WEBSITE/EQUITY%20REPORTS%20&%20PRESENTATIONS/MMPS%20Workforce%20Utilization%20Report%20-%20April20%202014-Ethnic%20Breakout.pdf>.

¹¹ <http://cityofnewhaven.com/EqualOpportunities/CityOrdinance.asp>.

¹² <http://cityofnewhaven.com/EqualOpportunities/ContractCompliance.asp>.

¹³ "Breakthrough: City of Portland commits to build union, and use minority workers and contractors," available at <http://nwlaborpress.org/2012/09/cba-2/>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ <http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/docs/eo/oregonplanofactionfinal.pdf>

¹⁷ http://www.dol.gov/ofccp/regs/compliance/directives/mou_ofccp_gsa_mcp.htm.

¹⁸ http://seattletimes.com/html/localnews/2022571040_seawallcostsxml.html.

¹⁹ <http://www.seattle.gov/Documents/Departments/FAS/PurchasingAndContracting/Labor/SeawallCommWorkforce.pdf>

²⁰ http://www.seattle.gov/contracting/docs/labor/SeawallCWA_Guidelines.pdf

²¹ Chapter 49.04 RCW, Chapter 296.05 WAC and SMC 20.38.005.

²² <http://www.seattle.gov/city-purchasing-and-contracting/social-equity/apprenticeships>

²³ <http://www.seattle.gov/city-purchasing-and-contracting/social-equity/labor-equity/construction-careers-advisory-committee>.

²⁴ <http://www.seattle.gov/Documents/Departments/FAS/PurchasingAndContracting/Labor/SeawallReports2014-07.pdf>

²⁵ <http://www.wowonline.org/documents/WANTOFactSheet.pdf>.

²⁶ http://www.chicagowomenintrades.org/artman/publish/article_171.shtml.

The National Task Force on Tradeswomen's Issues unites local, regional and national expertise and action to support tradeswomen and women who want access to these occupations. The Task Force has been co-chaired by Legal Momentum (now replaced by Equal Rights Advocates) and Wider Opportunities for Women since 2011. Participating members include national and regional organizations as well as individual tradeswomen and supporters around the country. For more information, please contact fjacobs@equalrights.org.

This Best Practices Fact Sheet was developed with the support of Legal Momentum.