



DIVISION OF
CAPITAL ASSET
MANAGEMENT &
MAINTENANCE



Holyoke Soldiers' Home
Access, Inclusion & Diversity Committee
MBE, WBE & VBE Participation Program Overview
November 19, 2021

AGENDA

- Introduction
- Affirmative Marketing & Procurement Background
 - Affirmative Marketing Program
 - Disparity Studies and Goal Setting
 - Construction Procurement Overview
- DCAMM MBE, WBE & VBE Participation Program
 - Access & Opportunity Compliance & Certification
 - Compliance Annual Reports
 - Compliance Obligations & Oversight
 - Outreach, Education & Support
 - Holyoke Soldiers' Home



McCormack & Saltonstall Bldgs.

Valuable Resources:

- DCAMM Affirmative Marketing Program Annual Reports (DCAMM's website)
- DCAMM 2017 Disparity Study (DCAMM's website)
- Inspector General's "Designing and Constructing Public Facilities" Handbook (Updated Sept 2021 – IG's website)



Affirmative Marketing Program & Disparity Study



Mass Information Technology Center Chelsea

Affirmative Marketing Program Background

- 1984 - Executive Order - Minority Business Participation
- 1986 - Minority & Women Business Participation DCPO (now DCAMM)
- 1989 & 1995 - US Supreme Court issues City of Richmond & Adarand decisions establishing constitutional test and parameters for permissible race-based public contracting programs
- 1996 - DCPO/DCAMM's first Disparity Study
- 2005 - Construction Reform Law added CM at Risk procurement process, prequalification, filed-sub bidder DCAMM Certification & applies AMP to state funded municipal projects
- 2010 - DCAMM's second Disparity Study
- 2013 - Broadened reporting requirements
- 2014-2015 - Service Disabled Veteran & Veteran Owned Business benchmark established
- 2017 - DCAMM's current Disparity Study



Affirmative Marketing Program G.L c.7C, §6

Massachusetts Law Chapter 7C, §6 excerpts

(a) "Affirmative marketing program", a program of race and gender conscious goals to promote equality in, and to encourage the participation of, minority-owned businesses and women-owned businesses in contracts for capital facility projects and state assisted building projects

(c) The commissioner, in consultation with the director of the supplier diversity office, may establish an affirmative marketing program to ensure the fair participation of minority-owned and women-owned businesses on capital facility projects and state assisted building projects. ...The participation goals for minority-owned business and women-owned business shall be based upon the broadest and most inclusive pool of available minority-owned businesses and women-owned businesses interested in and capable of performing construction work and design services ...

Affirmative Marketing Program G.L c.7C, §6

Chapter 7C, §6 excerpts continued

(d) The participation goals shall be expressed as overall annual program goals which shall be applicable to the total dollar amount of contracts awarded for construction work and design services on capital facility projects and state assisted building projects for the calendar year.

(e) The commissioner, in consultation with the director of the supplier diversity office, shall develop a written procedure by which a public agency may, for an individual capital facility project, adjust the participation goals for minority-owned business and women-owned business based upon the actual availability of minority-owned businesses and women-owned businesses, the geographic location of the project, the scope of work of the capital facility project, or other relevant factors.

Affirmative Marketing Program & Role of Disparity Study

Chapter 7C, §6 excerpts continued

(f) The commissioner shall develop a written, good faith efforts waiver procedure by which public agencies may determine, at any time before the award of a contract, that compliance with the goals is not feasible and by which public agencies may reduce or waive the goals for an individual contract.

A Disparity Study is a critical element necessary to support the Affirmative Marketing Program (“AMP”)

Disparity Studies provide the evidentiary record necessary for a governmental entity’s consideration of whether to implement renewed M/WBE policies that comply with the requirements of the courts and to assess the extent to which previous efforts have assisted MBE &WBEs to compete on a fair basis in the governmental entity’s construction and design contracting activity.

Disparity Studies & Goal Setting

Legal Standards for Government Affirmative Action Contracting Programs

To be legally defensible, a race-based program must meet the judicial test of constitutional strict scrutiny, the highest level of judicial review and consists of two elements:

I. The government must establish its **“compelling interest”** in remedying race discrimination by showing **“a strong basis in evidence” of the persistence of discrimination**. Established through **Statistical Evidence & Anecdotal Evidence**.

II. Any **remedies adopted must be narrowly tailored to that discrimination**; that is, “the means chosen to accomplish the government’s asserted purpose are specifically and narrowly framed to accomplish that purpose.”

Includes: Consideration of alternative, **race-neutral means** to increase M/WBE participation; flexibility of the program requirements, including the **availability of waiver provisions**; and **the relationship of numerical participation goals to the availability of M/WBEs in the relevant market...**

(Source: DCAMM 2017 Disparity Study)

Construction Procurement Overview



Construction Procurement Overview

Relevant Laws – Construction, Renovation, Repair Buildings

- M.G.L. c.149, §44A
Public Buildings with an estimated construction cost < \$10,000 & \$10,000-\$50,000.
- M.G.L. c. 30, §39M
 - Public Buildings >\$50,000 to \$150,000.
 - Public Works – Horizontal/site work only,
All: < \$10,000, \$10,000-\$50,000 & >\$50,000
 - Materials only purchases (no labor.)
- M.G.L. c. 149, §44A-J (Design-Bid-Build)
Public Buildings (ECC) >\$150,000.
Filed sub-bid >\$25,000 & Par. E >\$25,000
- **M.G.L. c. 149A (CM at Risk)**
**Optional for Public Buildings with
ECC \$5 million or more.**



Design & Study Contracts

M.G.L. c. 7C, §§44-59

Public Construction Procurement - How it Works

G.L. c. 149A – Construction Manager at Risk (“CM at Risk”)

- Optional Procurement Process for projects with Estimated Construction Cost (“ECC”) of \$5,000,000 or more.
- DCAMM Certification required of prime/construction manager (“CM”) in one of the 28 categories, usually General Building Construction.
- DCAMM Certification required of filed sub-bidders in any of 18 filed sub-bid trades.
- Filed sub-bid applies to 18 trades when the ECC of work is **>\$25,000**.
- Paragraph E threshold, subcontractors to filed sub-bidders for work not customarily performed by filed sub-bidders with ECC > **\$25,000**.



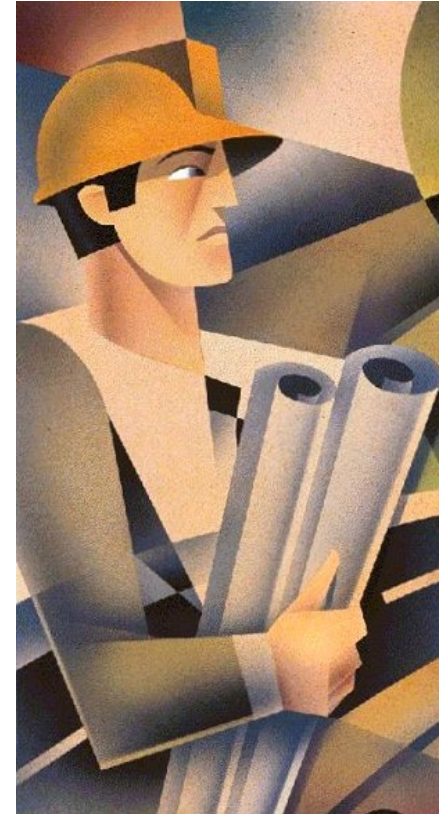
John Adams Courthouse

Public Bidding - How it Works

G.L. c.149, §44A-J & c.149A - Public Buildings

Filed Sub-bid Categories M.G.L. c 149, §44F (18 trades)

- (a) roofing and flashing;
- (b) metal windows;
- (c) waterproofing, damp-proofing and caulking;
- (d) miscellaneous and ornamental iron;
- (e) lathing and plastering;
- (f) acoustical tile;
- (g) marble; (h) tile; (i) terrazzo;
- (j) resilient floors; (k) glass and glazing;
- (l) painting; (m) plumbing;
- (n) heating, ventilating and air-conditioning;
- (o) electrical work;
- (p) elevators;
- (q) masonry work;
- (r) fire protection sprinkler systems: and
- (s) any other class of work that awarding authority deems necessary.



DCAMM Contractor Certification



Massachusetts College of Art and Design -
Center for Design+Media

DCAMM Certification

A DCAMM issued **Prime/General Certificate** is required on projects bid under M.G.L. c.149, §44A-J, **c.149A (CM at Risk)** or c.25A-Energy.

A DCAMM issued **Sub-bidder Certificate** is required on projects bid under M.G.L. c. 149, §44A-J or **c.149A (CM at Risk)**.

A **Prime/General Certificate of Eligibility** is required when a Prime/General Contractor/**Construction Manager responds to an RFQ or submits a bid or proposal** to an awarding authority.

A **Filed Sub-bidder Certificate of Eligibility** is required when a **subcontractor responds to an RFQ or bids** as a Filed Sub-bidder on a M.G.L. c 149, §44A-J (ECC over \$150,000) or as a **Trade Contractor under a Construction Manager at Risk (CM at Risk) project under M.G.L. c.149A**, in any of the 18 trades outlined in M.G.L. c.149, §44F if ECC of the sub-bid work is **over \$25,000**.



Construction Manager at Risk (CM at Risk)



CM at Risk Services – M.G.L. c. 149A

A construction management firm provides a range of pre-construction services and construction management services including:

- Cost estimation
- Consultation regarding the design
- Preparation & coordination of bid packages
- Scheduling
- Cost control - value engineering
- Assist with pre-qualification and evaluation of trade contractors and other subcontractors
- Act as the general contractor during the construction
- Provide management and construction services.



CM at Risk Procurement Overview

- Delivery method is optional for Awarding Authorities on building projects with an ECC of \$5 million or greater.
- CM at Risk firm and Trade subcontractors in 18 filed sub-bid trades must be DCAMM Certified.
- Prequalification of CMs and Trade Subcontractors in 18 filed sub-bid trades required.
- Laws governing prevailing wages, direct payment, prompt payment, unforeseen conditions, delays and contractor record keeping are all applicable.



Worcester Recovery Center and Hospital

Prequalification on CM at Risk Projects

Prequalification is Mandated for CM and all Trade Filed Sub-bid categories valued at over \$25,000

Prequalification is part of a two-phased procurement process which enables public awarding authorities to ensure the “bidding pool” contains Prime Bidders and Trade filed sub-bidders that are qualified to do the work of the project.

The Two-Phase Process:

RFQ Phase – the awarding authority issues a RFQ and prequalification committee reviews statutorily required information submitted to determine qualified proposers/bidders.

RFP/Bid Phase – only “prequalified” firms are invited to submit proposals or bids.

See c.149A for Prequalification requirements for CM and 18 Trade filed sub-bid categories for c.149A projects.



CM at Risk Procurement Overview

CM Procurement

RFQ and RFP are typically issued during study phase or early in design phase. CM firms deemed qualified are invited to submit CM Proposals consisting of both a technical and price component as outlined in c. 149A §6. Selection committee reviews and ranks proposals.



Trade Filed Sub-bidder Procurements

Typically, RFQs issued and prequalified shortly before design progresses enough to bid the fully developed scopes of work. Often early work packages are prequalified and bid for certain classes of work with the primary work packages to follow.

CM at Risk Procurement Overview

Trade Filed Sub-bidder Procurements – continued

- Trade filed sub-bidder prequalification evaluation criteria and scoring process contained in c. 149A, §8. Score of 70 points or greater to be prequalified.
- MBE/WBE firms may receive an additional 5 points in scoring process.
- Must submit commitment letter evidencing can provide payment and performance bonds at 110% of estimated cost of trade contract.
- Prequalified Trade filed sub-bidders are invited to submit bids which are opened publicly with lowest price as factor for award.

Prevailing Wage Law & Bonding



Prevailing Wage M.G.L. c. 149, §§26-27D

- Project specific wage rates set by Department of Labor Standards (DLS) on a project-by-project basis.
- Must be Included in bid and contract documents by awarding authority.
- Required to be paid on all public construction projects of any dollar value to all workers working on site.
- All contractors and subcontractors are required to prepare, retain and submit to awarding authority Weekly Payroll Reports on the form required by the awarding authority evidencing that all workers were paid the prevailing wage or more for work on the project.



Payment Bonding Thresholds

The Prime Contractor on projects of \$25,000 and above must provide a payment bond. On larger projects also a performance bond.

All filed sub-bidders on projects over \$150,000 should be prepared to provide payment and performance bonds if prime contractor requests in bid form.

All filed sub-bidders on projects that require prequalification (\$10 million and up) and **Trade filed sub-bidders on all CM at Risk projects are required to provide payment and performance bonds.**



ACCESS AND OPPORTUNITY

Certification, Compliance

MBE,WBE & VBE Participation Program



Holyoke Soldiers Home

Affirmative Marketing MBE and WBE Overview



Affirmative Marketing Program Background

- Minority Business Enterprise (“MBE”) & Women Business Enterprise (“WBE”) participation goals on public building Design and Construction Projects mandated by statute when warranted – implemented through Massachusetts’ Affirmative Marketing Program (AMP).
- “Disparity Study” provides **legal foundation for the AMP; documents availability and utilization of M/WBE firms**; statistical data and anecdotal evidence.
- DCAMM Disparity Study on vertical construction published in Dec 2017.

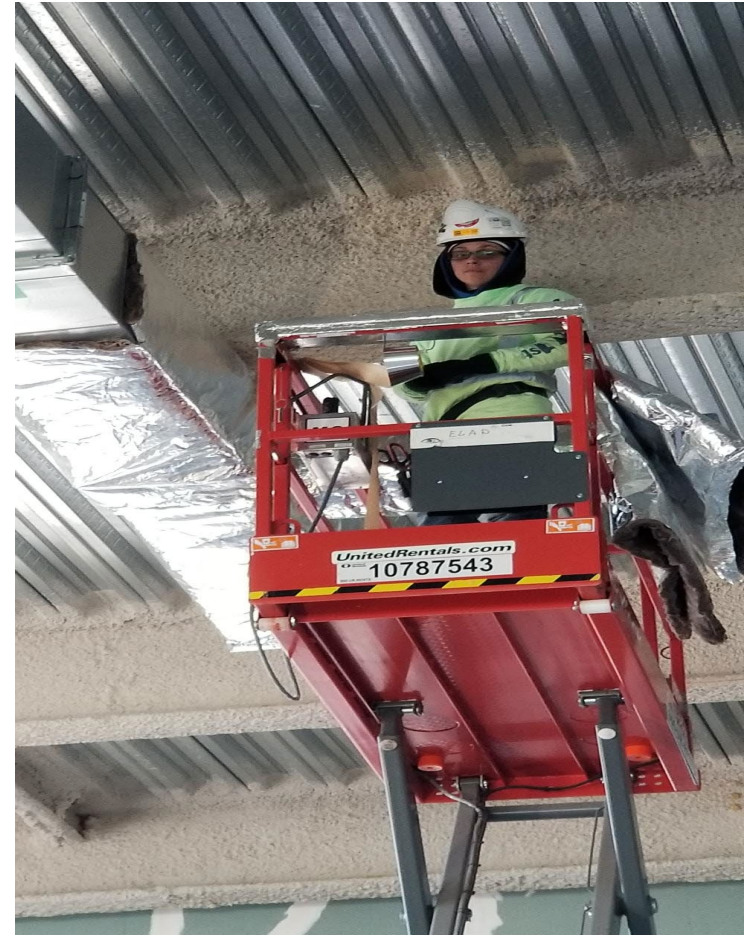


LEVEL
THE PLAYING FIELD



Commonwealth's Affirmative Marketing Program

- Affirmative Marketing Program has been in place in various forms for 30 plus years.
- Provides additional opportunities for MBE & WBE firms and their workers to participate in construction and design projects across the Commonwealth.
- For a firm's participation to count towards the Commonwealth's Affirmative Marketing Program, MBE and WBE firms must be certified with the Supplier Diversity Office ("SDO")
- DCAMM's goal is to continue to ensure that MBE and WBE firms are active participants in building the Commonwealth.



Construction Outcomes - Fiscal Year 2020



Division of Capital Asset Management & Maintenance (DCAMM)

FY 2020 Annual Report **Supplier Diversity – Affirmative Marketing** **Program for Design & Construction**

March 2021

CHARLES D. BAKER
GOVERNOR
KARYN E. POLITO
LIEUTENANT GOVERNOR

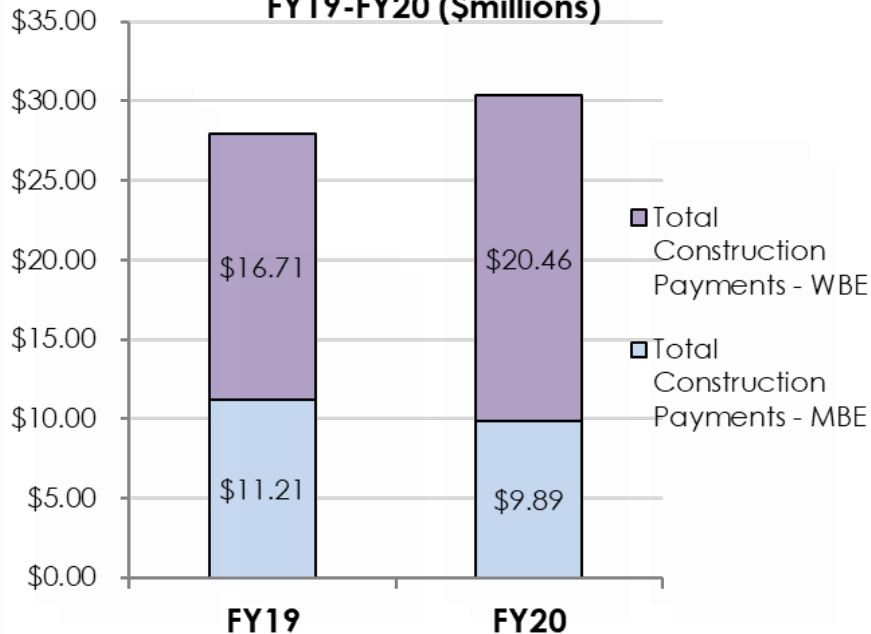


MICHAEL J. HEFFERNAN
SECRETARY
ADMINISTRATION & FINANCE
CAROL W. GLADSTONE
COMMISSIONER

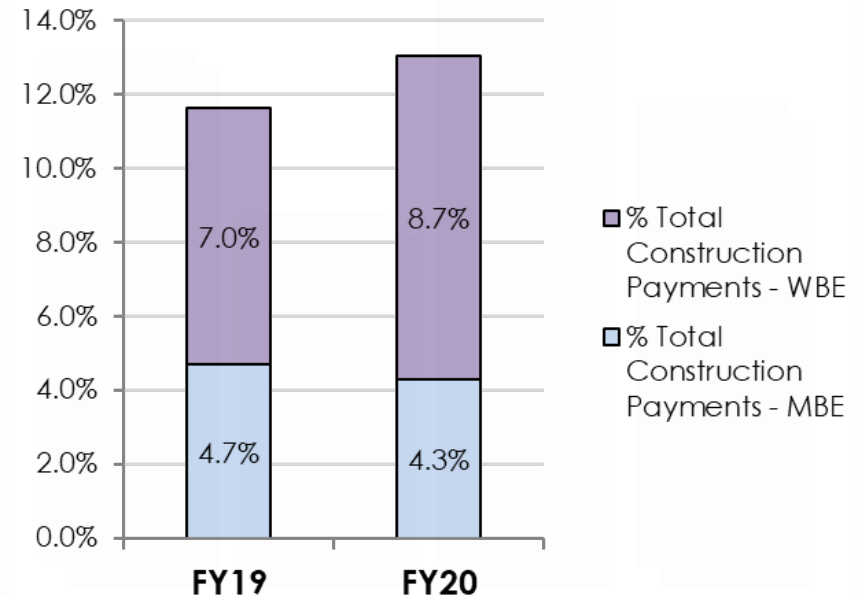


DCAMM Construction Outcomes – FY2020

**PAYMENTS to MBE/WBE Construction Firms
FY19-FY20 (\$millions)**



**Percentage Paid to MBE/WBE
Contractors FY19-FY20**



- Total construction payments to all firms in FY20 was \$234.M
- The FY20 aggregate annual goal was 10.4%

MBE & WBE Construction & Design Participation

DCAMM Projects - Fiscal Year 2020

Construction

Overall Construction Payments	\$234.6 million	
MBE Firms Received	\$9.9 million	(4.3%)
WBE Firms Received	\$20.4 million	(8.7%)
Total Paid to MBE/WBE Firms	\$30.3 million	(13.0%)

Design

Overall Design Payments	\$33.1 million	
MBE Firms Received	\$1.8 million	(5.5%)
WBE Firms Received	\$8.3 million	(25.1%)
Total paid to MBE/WBE Firms	\$10.1 million	(30.6%)

Affirmative Marketing Program Current Participation Goals

- **Current MBE/WBE Participation Program applies to projects advertised after July 1, 2020.**
- **DCAMM's Overall Annual Program Goals**
 - Construction – MBE Annual Goal **4.2%** WBE Annual Goal **8.8%**
 - Design - MBE Annual Goal **6.6%** WBE Annual Goal **15.0%**
- **Project Specific Goals are the custom goals set for each individual Construction and Design project** and are based on project specific factors.
- Apply to DCAMM, certain state agency projects and “state assisted building projects” (includes projects by municipalities and political subdivisions when costs paid in whole or in part by Commonwealth.)
- State agencies track and monitor their projects and report participation to ANF Office of Access and Opportunity. State Assisted Projects track and monitor their own projects and report to the Supplier Diversity Office.

Holyoke Soldiers' Home MBE/WBE/VBE & Workforce Goals

MBE, WBE and VBE Goals

- MBE - 4.7%
- WBE - 7.7%
- VBE - 3% Benchmark



Workforce Goals

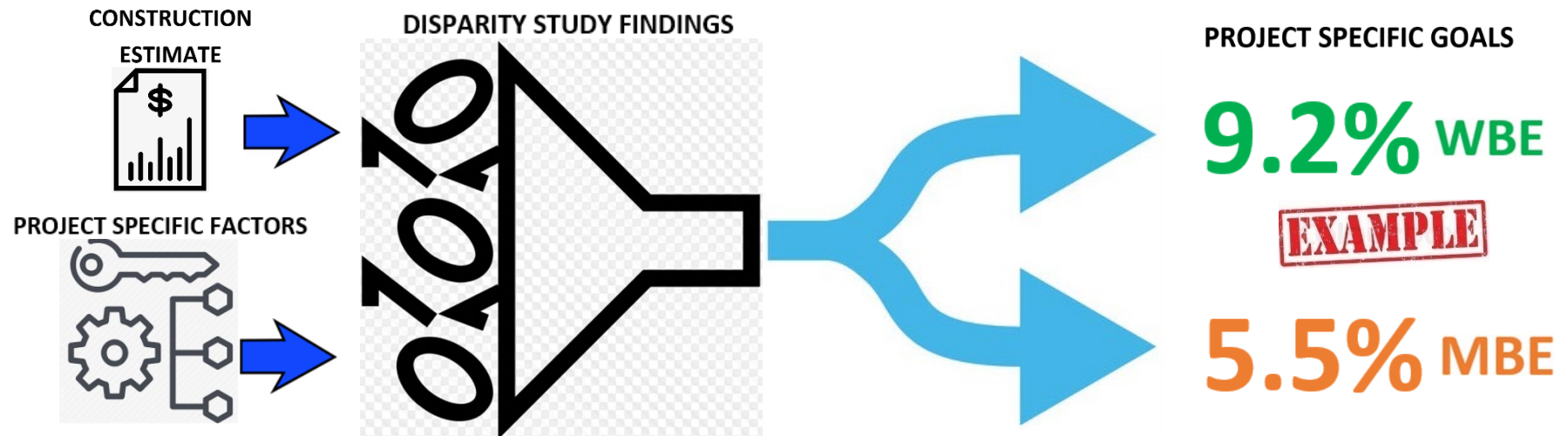
- Minority 15.3%
- Woman 6.9%
- Veteran TBD

FY 2021 AFFIRMATIVE MARKETING PROGRAM

AMP Program Changes

Generate Project Specific Goals for projects advertised after July 1, 2020

- **Information from Disparity Study** enhances project specific goal setting.
- Allows project specific goals based on **availability of trades** to be factored in.
- **Supports higher or lower project specific goals** when warranted.



WHAT IS FILED SUB-BID? CATEGORIES

PROJECT COST ESTIMATE

\$7,044,200.00

Project Scope Item	Dollar Value	Percent of Total Project Cost	CSI Division
Drywall	\$475,000.00	6.74%	092116 (Gypsum Board Assemblies)
Signage	\$35,600.00	0.51%	101400 (Signage)
Cast-in Place Concrete	\$28,000.00	0.40%	033000 (Cast-in-place Concrete)
Selective Demo	\$7,200.00	0.10%	024100 (Demolition)
General/Demo Temp. Fac	\$252,900.00		024100 (Demolition)
Rough Carpentry	\$125,000.00		024100 (Demolition)
Thermal & Moisture Protection	\$29,800.00		024100 (Demolition)
HMD/ Door Hardware	\$19,700.00	0.28%	081113 (Hollow Metal Doors and Frames)
Metal Fabrications	\$57,300.00	0.81%	055000 (Metal Fabrication)
Polymer Modified Cement WP	\$37,300.00	0.53%	071613 (Polymer Modified Cement Waterproofing)
Roofing & Flashing	\$23,400.00	0.33%	078100 (Applied Fireproofing)
Penetration Fire Stopping	\$700.00	0.01%	078413 (Penetration Firestopping)
Joint Sealants	\$300.00	0.00%	079200 (Joint Sealants)
Suspended Ceiling	\$27,600.00	0.39%	095113 (Acoustical Panel Ceiling)
Painting	\$49,800.00	0.71%	099000 (Painting)
Fire Protection	\$319,800.00	4.54%	210001 (Fire Protection)
Pre Action Sprinkler System	\$94,200.00	1.34%	210001 (Fire Protection)
HVAC	\$1,263,100.00	17.93%	230001 (Heating , Ventilating and Air Conditioning)
Electrical	\$2,682,000.00	38.07%	260001 (Electrical)
Telecommunications	\$1,515,500.00	21.51%	270000 (Communications)

✓ CURRENT AFFAIRS

EXAMPLE

NO

MBE or WBE

PARTICIPATION

REQUIRED

FILED SUB-BIDS

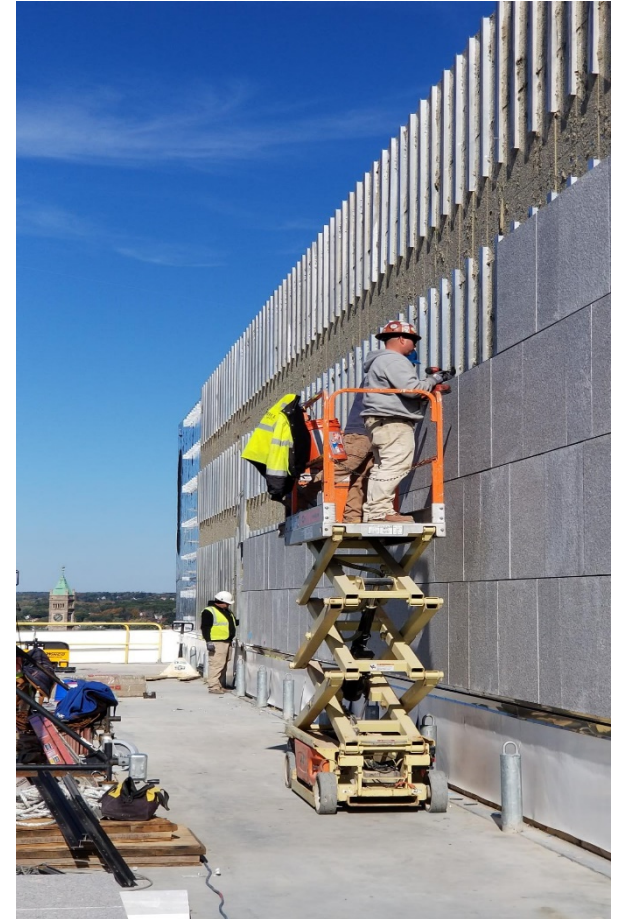


Initiatives to Expand Access and Opportunity

Compliance Obligations & Oversight

Real, Meaningful & Enforced MBE/WBE Participation Program

- Project MBE/WBE goals with approved Schedule for Participation required prior to contract award and potential sanctions for non-compliance.
- Monitor contractor, subcontractors, designer and subconsultants participation throughout the life of the project, provide technical assistance when needed.
- Review MBE, WBE, VBE payments and Workforce reporting via DCMS electronic reporting system (B2GNow & LCPTracker)



OUTREACH, EDUCATION AND SUPPORT

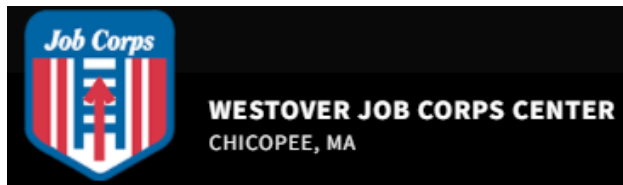
Planning Extensive Outreach with Governmental Industry Partners & Others



MASSACHUSETTS BLACK
AND LATINO LEGISLATIVE
CAUCUS



NORTH ATLANTIC STATES
Regional Council of Carpenters



IMPORTANT RESOURCES

DCAMM'S Website www.mass.gov/dcamm

Information on Contractor Certification
Information on the Affirmative Marketing Program
Sample Procurement and Contract Documents

Inspector General's Website www.mass.gov/ig

Publication "Designing and Constructing Public Facilities (2021).
Information on CM at Risk and Numerous Guidance Documents and Reports.
MCPPO Training Program for Public Procurement Officials, Owner Project Managers and others.

Attorney General's Website www.mass.gov/ag

Information on:
Prevailing Wage
Public Bidding
OSHA 10 Act



QUESTIONS?

CHARLES.KELSEY@MASS.GOV

