

# OFFICE OF ATTORNEY GENERAL

## FAIR LABOR DIVISION

### **Why and How: Workforce diversity requirements in the Massachusetts public construction workforce**

*A training presented by:*

*Office of the Attorney General's Fair Labor Division Bid Unit  
and the University of Massachusetts Building Authority*





## Workforce Participation Goal Requirements under M.G.L. c. 149, § 44A(2)(G)

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All contracts by a state agency or state-assisted contracts for design, construction, reconstruction, installation, demolition, maintenance or repair **must** contain workforce participation goals for minorities and women.



# What qualifies as a “state-assisted” contract?

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A construction project undertaken by a political subdivision of the commonwealth or 2 or more subdivisions thereof for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of a capital facility or public work and whose costs are paid for, reimbursed, grant funded, or otherwise supported, in whole or in part, by the commonwealth.



# History of Workforce Participation Goals Law

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- Chapter 280 of the Acts of 1998: state agencies were directed to establish goals for women's participation. Remedies for non-compliance included (1) suspension of payments; (2) termination of contract; (3) recovery by the commonwealth of the contract award price as liquidated damages; or (4) denial of the right to participate in future projects for a maximum of three years.
- A&F 14 (2009) established the goal of 6.9% for women and 15.3% for minorities.
- Chapter 462 of the Acts of 2012 enacted c. 149, § 44A(2)(G).



# Examples of State-Assisted Contracts

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- MSBA
- Board of Library Commissioners
- DOT
- Regional 911



# MSBA Requirements

See [Project Advisory 66, January 2021](#):

- Project Funding Contract:
  - § 4.21: The District will work with its local counsel to ensure contracts meet the requirements of the statute and contain the goals and the processes and procedures to ensure compliance with the workforce participation goals, including reporting and enforcement provisions.
- Project Scope and Funding Contract
  - § 5.10 The District will work with local counsel ensure that any contracts related to the Project, to which the District is a party, meet the applicable requirements of M.G.L. c. 149, § 44A (2)(g), and contain workforce participation goals for minorities and women, and include the processes and procedures to ensure compliance with the workforce participation goals, including reporting and enforcement provisions.
- Design Contract:
  - § 17.10: The Designer shall be required to provide regular reports of the gender and race/ethnicity of employees engaged in work under this contract, for both prime and subconsultants, in the form and format required by the District, including but not limited to, by electronic reporting through the requested means and with the frequency required by the District.
- OPM Contract:
  - § 8.13 The OPM shall provide monthly progress reports describing, *inter alia*, the Designer and Contractor or CM at Risk's M.G.L. c. 149 Workforce Participation activities.
  - § 8.15(b) The OPM shall monitor and report on the Designer's and Contractor's or CM at Risk's compliance with the Workforce Participation Goals Law.



# Aren't these the same? Workforce Participation Goals and W/MBE Goals?

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M/WBE goals refer to participation by **businesses** owned by minorities and women.

Workforce participation goals refer to the makeup of the contractors' **workforce**.

They are two separate requirements independent of one another.



# State-Mandated Workforce Participation Goals

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- 6.9% for women
- 15.3% for minorities/persons of color

See Administration & Finance Administrative Orders:

<https://www.mass.gov/administrative-bulletin/equal-opportunity-and-non-discrimination-on-state-and-state-assisted>





# Bid and Contract Requirements for Workforce Participation Goals

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- The bid documents should include a reference to the goals that will be contained in the contract.
- What must these contracts include in addition to the goals?
  - The contract must include the processes and procedures to ensure compliance with the workforce participation goals, including reporting and enforcement provisions.
- See M.G.L. c. 149, § 44A(2)(G).



# What Happens if a Bid or Contract Does Not Contain these Requirements?

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- The bid documents and contract should be revised to include the required goals and processes.
- Any contract that is included in the bid documents that does not comply with the requirements is subject to a Bid Protest and a re-bid, if necessary.



# Compliance Assistance and Best Practices

*How can an awarding authority make sure it complies with these legal requirements?*

An examination of how the University of Massachusetts Building Authority (UMBA) has ensured that all of their projects comply with these legal requirements and in doing so have been creating opportunities for women and people of color in construction.



University of Massachusetts  
Building Authority



# Why is workforce diversity important? What is the state of the industry?

- Work hours approach vs. people
- In 2018, 1.5% of construction workhours in the US were performed by **women** (women were 2% in WM, 3% in CM – recent *workforce* disparity studies)
- **African-Americans** are under-represented
- **Latinx** workers are represented but often exploited and in the lowest rungs of construction



# Workforce Need

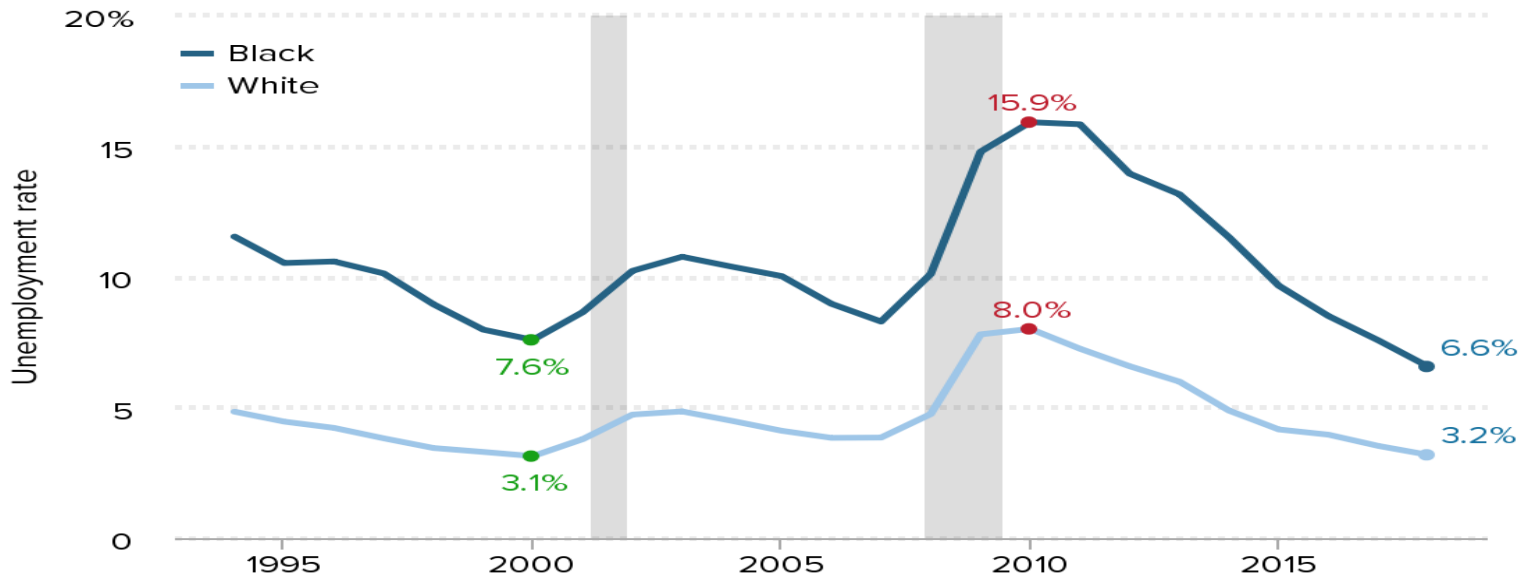
- Tradespeople are aging out of the workforce
- Women and people of color are under-represented - there is an opportunity for growth
- Bringing in more women and people of color creates opportunity down the road for growth of MBE and WBEs (most M/WBE owners come from working in the fields)
- State agencies focusing on compliance can help create the demand needed to transform the industry, opening it up to women and people of color





# Disparities - African Americans unemployment higher than average

**Unemployment rate of workers age 16 and older by race, 1995–2018**



Source: EPI analysis of BLS Current Population Survey microdata

Economic Policy Institute



# UMBA – Approach to Compliance

Implements ALL of the state's diversity goals

- **Company ownership goals**

Design goals - 6.6% MBE - 15.0 % WBE

Construction goals - 4.2% MBE - 8.8% WBE

- **Workforce Utilization goals**

15.3% Minority (People of Color)

6.9% Women



# UMBA Capital Projects

FY 2016-2020

\$1,304,304,233 Billion of Activity Initiated

Amherst Campus - \$512,132,225

Boston Campus - \$423,839,889

Dartmouth Campus - \$80,857,475

Lowell Campus - \$284,001,834

Worcester Campus – \$3,472,810

**Average workforce diversity achieved:**

7% women work hours

26% people of color work hours







# Best Practices

## Pre-Bid

- Commit to enforcing the state's workforce diversity goals.
- Communicate the importance of the diversity goals in ALL bid documents, contracts and pre-bid documents.
- Designate a compliance point person within your agency to ensure the diversity goals are prioritized and met.
- Ask for a diversity history from each bidder.
- Establish in interviews and ALL pre-construction meetings that core crews **MUST** be diverse and being a M/WBE still requires workforce diversity.





# Best Practices

## Post-Bid, Pre-Active Construction

- Establish a compliance working group and report results to all stakeholders at least monthly. Collaboration with representatives from unions, pre-apprentice programs, vocational schools, and community organizations can help achieve project diversity goals and some of these representatives will be interested in engaging in the monthly working group. **Ongoing during active construction.**
- At least 3 weeks before work starts, hold pre-construction meetings with contractors (if union, include the union Business Agent) to emphasize the importance of the diversity goals and to review their plans for ensuring diversity on day one. **Ongoing during active construction.**
- Require 6-month workforce projections from each contractor to hold it accountable once construction starts and to ensure diversity is on the core crew since day one. **Ongoing during active construction.**
- Provide the contractors with the workforce report templates to use to track their workforce diversity.



# Best Practices

## During Active Construction

- Include diversity and inclusion in every construction meeting agenda. **Monitoring compliance needs to be a team approach and include the OPM, Construction PMs and the Super working on the issue together with the Compliance Officer.**
- Hold on-going pre-construction meetings when new subcontractors are awarded contracts.
- When needed, hold in person, corrective action meetings with subs who are not meeting diversity goals.
- Require weekly workforce reports from subcontractors and monthly workforce report from the CM/GC.
- Union, non-union, and file sub-bid contractors need to all be held to the same diversity compliance standards.
- The Construction Manager (CM) or General Contractor (GC) needs to lead by example with their own diversity.



# Utilization of Simple Tools

## Workforce Projections, Reporting by Trade & Subcontractor



Project:

Date:

**GOAL - 15.3%**

**GOAL - 6.9%**

**MINORITY**

**FEMALE**

PROJECT-TO-DATE:

FTD	Hires	SUBCONTRACTOR	Total Hours	GOAL - 15.3%		GOAL - 6.9%		
				MINORITY		FEMALE		
			FTD	Hours	FTD Percentage	FTD	Hours	FTD Percentage

**Workforce Table**

<b>SUBCONTRACTOR:</b>						
<b>MONTH:</b>						
<b>TRADE:</b>	<b>Hours Worked</b>	<b>Week:</b>	<b>Week:</b>	<b>Week:</b>	<b>Week:</b>	<b>Week:</b>
Total Employees:						
# of Minorities						
# of Females						
<b>TRADE:</b>	<b>Hours Worked</b>	<b>Week:</b>	<b>Week:</b>	<b>Week:</b>	<b>Week:</b>	<b>Week:</b>
Total Employees:						
# of Minorities						
# of Females						
<b>TRADE:</b>	<b>Hours Worked</b>	<b>Week:</b>	<b>Week:</b>	<b>Week:</b>	<b>Week:</b>	<b>Week:</b>
Total Employees:						
# of Minorities						
# of Females						



# Collaborative Model Working Group





# Creating Demand

- When we ensure diversity is a part of our construction projects, we are creating the demand for diversity in the construction workforce. More women and people of color become needed in the industry.
- Demand results in creating opportunities for women and people of color in an industry that has lagged behind most industries in gender and racial diversity.



# Creating Supply

There are multiple resources on this front:

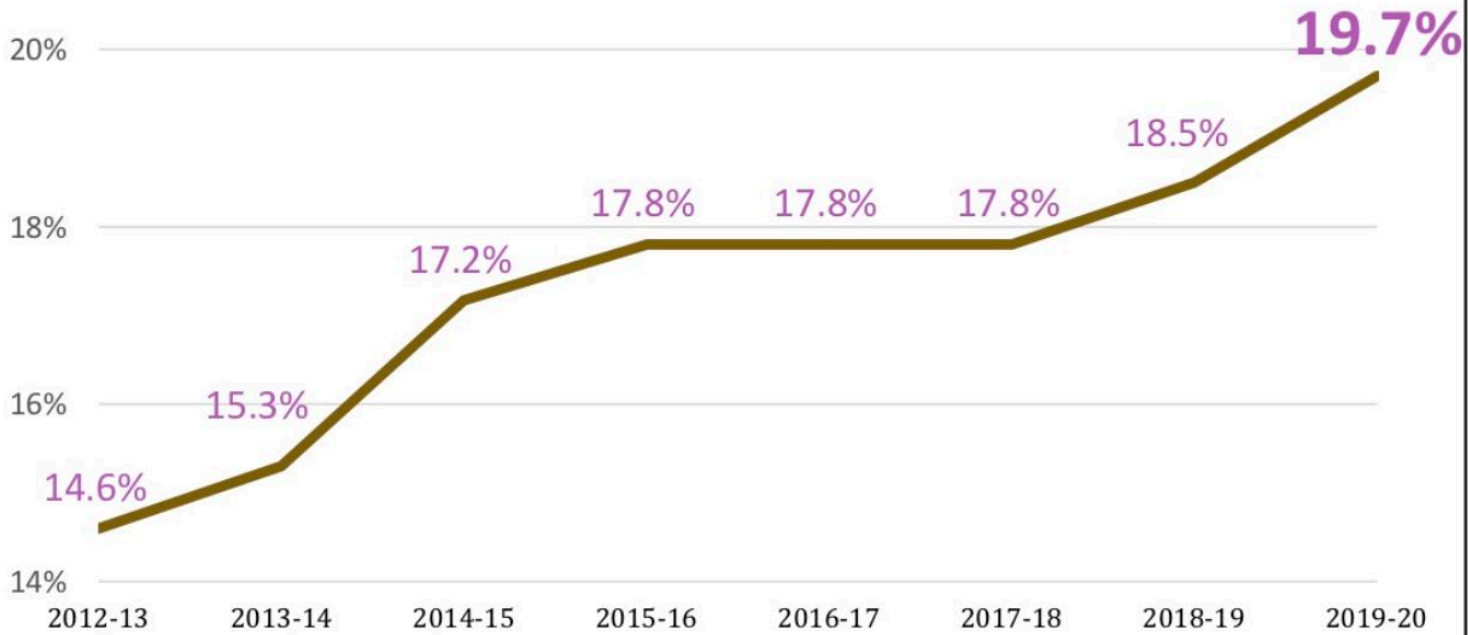
- **Vocational Technical High Schools** (20% of trades programs are young women).
- **Pre-apprentice and Apprenticeship Programs** – have been aggressively recruiting more women and people of color.
- **The Policy Group for Tradeswomen Issue's (PGTI)** has created multiple resources that support increased diversity:
  - \*PGTI website ([www.policygroupontradeswomen.org](http://www.policygroupontradeswomen.org)) has best practices and check lists for people working to increase their diversity – separate suggestions for GCs, sub-contractors, unions, etc.
  - \*Website (<http://www.buildalifema.org/>) & pipeline navigator for women considering the trades and to learn more about each trade and how to access apprenticeship and pre-apprenticeship programs.
  - \*Tradeswomen Tuesdays – regular gatherings online and in person with existing tradeswomen in different regions sharing their experiences and encouraging new women to enter the trades.





# Creating Supply

## Female students in MA Voc Tech construction-related programs 2012-2020



Data source: [MA Dept of Elementary and Secondary Education.](#)





# Build A Life That Works

- Over 1,000 interested and eligible women in the database – 68% are women of color
- *Virtual Tradeswomen Tuesdays* continue to recruit women
- Stakeholders are invited
- Contractors can connect directly with potential tradeswomen
- [BuildALifeMA.org](http://BuildALifeMA.org)





# Challenges

- Contractor leadership teams often lack diversity
- Sub-contractors still struggle to have diverse core crews particularly when it comes to women
- Retention
- Certain trades, particularly the mechanical trades (electrical, plumbing, pipefitter, elevator constructors, sheet metal) continue to struggle with diversity
- Outreach to ensure women and people of color understand there are opportunities in this industry





# Successes

- Over the last few years, UMBA construction projects have been meeting or exceeding the workforce diversity goals.
- These jobs are transforming many peoples' lives as women and people of color have worked, and in many cases, started their careers on UMBA construction projects.
- UMBA has developed a collaborative model to this approach, creating positive and productive working relationships with contractors, other government agencies, and community organizations.
- Municipalities and private employers have been turning to UMBA for advice and replicating UMBA's model and best practices. Among others, these include the Cities of Springfield and Worcester, Smith College, Amherst College, the YWCA of Central MA, Worcester Polytechnical Institute and the national organization - Women Build Nations.





# Wrapping Up

- Enforcing diversity is achievable
- It is the right thing to do & creates opportunities for people who traditionally have not accessed this work
- There is a road-map on how to do it already (UBMA's best practices & PGTI's *Finishing the Job* document)
- Diversity requires intentionality – it can be achieved but you have to measure and track it and need to focus on it
- Construction jobs provides families with sustaining wages, career opportunities, and changes people's lives – women and people of color should have access to this work
- A focus on workforce diversity can attract future generations to the construction trades
- Workforce diversity compliance can seed an increase in M/WBE growth down the road

