

Making the Grade: Contracting with Minority- and Women-Owned Businesses

An East Bay Agency Report Card
San Francisco Bay Area



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Introduction

Government agencies in the East Bay of the San Francisco Bay Area spend millions of dollars in public contracting on an annual basis, for everything from construction contracts to architecture and engineering services to supplies. Historically, minority- and women-owned business enterprises (MBEs and WBEs) have received a very small slice of this very lucrative pie. Many factors contribute to this trend, including: closed business networks, restrictive bidding criteria, and discrimination in bonding and lending.

Over the years, many governmental agencies have attempted to remedy this exclusion, through policies that are designed to promote inclusion and ensure that all businesses are afforded an equal opportunity to compete for public contracts.

How are East Bay governmental entities faring on this front?

The Bay Area Business Roundtable set out to answer this question. The Bay Area Business Roundtable is a coalition of organizations and individuals dedicated to developing strategies and pathways leading to sustainable economic improvement for unprivileged communities. We asked five of the largest East Bay public entities to provide information on their public contracting and then analyzed the data provided.

This “report card” grades each of these governmental entities on two scores: one measuring the transparency and accessibility of its data on MBE/WBE participation, and the second measuring its success (or lack thereof) at actually contracting with the MBE/WBE community.

This report card is based upon the data provided by each agency. It is not intended to be an exhaustive study, but rather, an initial window into the policies and practices of a sampling of some of the largest public agencies in the East Bay and their efforts to engage with the small business community and provide opportunities for minority, women, and local entrepreneurs.

The Bay Area Business Roundtable looks forward to partnering with each of the agencies and with interested members of the public, to work towards the day when this report card will indicate A+ grades for all.



EAST BAY AGENCY REPORT CARD: ENGAGING MINORITY- AND WOMEN-OWNED BUSINESSES



Agency	Category	Grade
Alameda County	<i>Data Quality</i>	A-
	<i>Participation Results</i>	B-
Bay Area Rapid Transit (BART)	<i>Data Quality</i>	D
	<i>Participation Results</i>	C-
City of Oakland	<i>Data Quality</i>	B
	<i>Participation Results</i>	B-
East Bay Municipal Utility District (EBMUD)	<i>Data Quality</i>	B+
	<i>Participation Results</i>	B+
Port of Oakland	<i>Data Quality</i>	C
	<i>Participation Results</i>	D+

Methodology

In March 2013, the Bay Area Business Roundtable sent Public Records Act Requests to five of the largest East Bay governmental entities: Alameda County, Bay Area Rapid Transit (BART), the City of Oakland, East Bay Municipal Utility District (EBMUD), and the Port of Oakland. The requests sought essentially identical information from each agency, including:

- Policies, procedures, rules, and regulations that the agency follows to ensure businesses are afforded equal opportunity in public contracting;
- Records reflecting the number of contracts and dollar amounts received by minority-owned and women-owned businesses in the agency from January 1, 2010 to the present;
- Records reflecting the percentage participation by minority-owned and women-owned businesses in the agency's contracting from January 1, 2010 to the present;
- Records reflecting the number of contracts and dollar amounts received by local and small local business enterprises in that agency from January 1, 2010 to the present;
- Records reflecting the percentage participation by local and small local business enterprises in the agency's contracting from January 1, 2010 to the present;
- Records reflecting the number of contracts and dollar amounts received by Disadvantaged Business Enterprises (DBEs) in the agency's contracting from January 1, 2010 to the present; and finally,
- Records reflecting the percentage participation by DBEs in the agency's contracting from January 1, 2010 to the present

All five agencies responded, providing varying degrees of information. As we reviewed the responses, it became clear that there should be two separate "grades" given to each agency:

- **Data Quality** – the Data Quality grade indicates the transparency and accessibility of the data provided. As California courts have stated, monitoring and public reporting of data on minority business participation is a critical means of furthering equal opportunity: "[a]ccurate and up-to-date information is the

DEFINITIONS

The following terms are used throughout this Report Card:

Minority Business Enterprise (MBE)

– a business that is owned and operated by members of minority groups (generally defined as African-American, Hispanic, Asian, or Native American).

Women Business Enterprise (WBE)

– a business that is owned and operated by women.

Disadvantaged Business Enterprise (DBE)

– a business that is certified by the federal government as a DBE. Under federal regulations, businesses owned by minorities or women are presumptively disadvantaged.

Small Local Business – a business that is small and local, according to the particular agency's definition. A small local business may be minority- or women-owned, but need not be.

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With the exception of DBE (which is defined by federal law), agencies vary in how they employ the above terms. For example, most agency programs have "size standards," meaning that only businesses with gross annual receipts under a certain amount will be considered MBEs or WBEs or small local businesses. These standards differ from agency to agency. Appendix A provides links to the websites of each agency analyzed in this Report Card, for further information on each agency's particular definitions.

sine qua non of intelligent, appropriate legislative and administrative action....” *Connerly v. State Personnel Board*, 92 Cal.App.4th 16, 46-47 (2001). In other words, data that is readily available and easy to understand is essential. Policy-makers must have such data in order to be able to enforce written policies and to modify them as needed. MBEs and WBEs must be able to easily and accurately see how well (or poorly) public agencies do at engaging the small business community and to flag where more aggressive efforts are needed. The media and members of the public must also have this data readily available, to better understand how taxpayer dollars are used.

The Public Records Act requires agencies to produce existing documents. Therefore, analyzing responses to a Public Records Act request reveals how agencies currently keep and disseminate information about MBE/WBE participation.

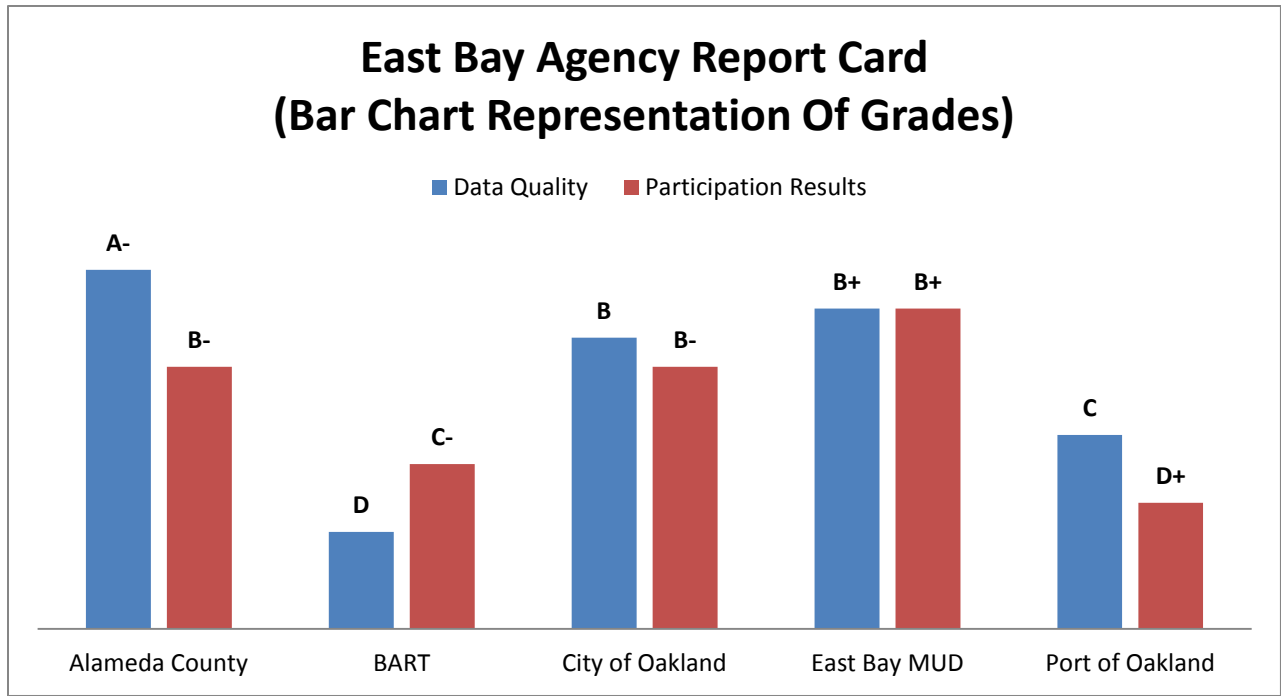
“Data Quality” grades were derived from considering such factors as: how easy was it to obtain the requested data? When it was provided, was it in a form that was readable and easy to comprehend? Was data presented only cumulatively, or was it broken down in helpful ways (*e.g.*, by industry, by size of contract, by race/ethnicity)?

- **Participation Results** – while accessibility of data is critical, ultimately the key question is whether or not agencies are obtaining levels of MBE/WBE participation in line with what would be expected in the absence of discriminatory barriers.

“Participation Results” grades for this category were derived from considering factors such as: is the agency engaging substantial numbers of MBEs/WBEs? Are significant contract dollars going to MBEs/WBEs? Are certain categories doing better than others (*e.g.*, certain industries, or certain race/ethnicity categories)? Do trends indicate positive movement over time?

This report card is not intended to be an exhaustive study of any agency’s practices. In particular, to assess whether MBEs/WBEs are being under-utilized, it is generally necessary to determine MBE/WBE availability in the marketplace, which is beyond the scope of this effort. In addition, because agency definitions can vary (see Definitions sidebar) and because many agencies have multiple programs depending on how projects are funded, it can be challenging to compare agencies’ participation results. We have noted relevant information where available, however, and have assessed agencies’ performance against their stated goals, and looked for trends that are either positive or troubling.

Analysis



Alameda County

Data Quality. Alameda County received an [A-] in transparency, data collection, and ease of public use. The data is available to the public online, and is broken down in simple charts based on contract amount, industry, race, and gender. The County was the first agency to reply to the Roundtable’s data request and did so within a matter of days. Other municipalities and government agencies should look to Alameda’s example in this regard. While the quality of the data provided by Alameda County is high, some areas for improvement exist. For example, no overall data on WBEs or data on minority WBEs is reported.

Participation Results. Alameda County received a [B-] in minority- and women-owned business engagement. While the County has had some success at engaging the category of businesses it calls “Small Local and Emerging Businesses” (SLEB), analysis indicates that minority- and women-owned firms are not generally the ones reaping the benefit of this success. For example, while the County reports that 35.47% of all contracts from July 2009-December 2012 went to MBE/SLEB firms, only a relatively small percentage (approximately 16%) went to MBEs; approximately 8% went to white women-owned firms, and the rest went to majority-owned SLEBs. Further break-down of the data highlights areas where low participation rates are even more alarming (*e.g.*, African-American male MBEs received less than 1% of construction contracts).

Bay Area Rapid Transit (BART)

Data Quality. BART received a [D] in transparency, data collection, and ease of public use. Its data was sparse and did not separate MBEs from WBEs, did not break down MBEs by ethnicity, did not break down MBE/WBE awards by industry, and listed a cumulative total for awards from 2010-2013 rather than separating out by year. This lack of transparency obscures any hypothetical areas of progress, and frustrates the public's ability to diagnose the agency's shortcomings. If the agency refuses to keep and/or provide detailed records of its progress (or lack thereof), the public is likely to surmise that the increased participation of MBEs and WBEs is not a priority, a perception BART would do well to avoid.

Participation Results. BART received a [C-] in minority- and women-owned business engagement. 16.57% of contracting dollars were reported to have been awarded to MBEs and WBEs combined. However, as noted above, it is impossible to tell from this data how much of that dollar amount went to MBEs versus WBEs; whether certain industries or types of contracts fared better, etc.... Moreover, no overall goal is stated (though other publicly available information indicates BART's DBE goal over the past several years has been in the 22-23% range). Recent publications from the Federal Transit Administration indicate that BART achieved only approximately 11% DBE participation in Fiscal Years 2011 and 2012. http://www.fta.dot.gov/documents/Top_50_FTA_grantees_DBE_goals_9-30-13.pdf Without disaggregated information from BART itself, it is not possible to tell whether the overall numbers being reported by BART are consistent with this information or not.

City of Oakland

Data Quality. The City of Oakland received a [B] in transparency, data collection, and ease of public use. Some of the city's data is detailed and organized and is accompanied by notes providing further context. For example, the City Council voted to increase the goal for local and small business participation from 20% to 50%, so the data separates contracts awarded before from those signed after date the policy went into effect (Jan. 1, 2012). Moreover, the notes state the specific goal for disadvantaged business enterprises ("DBEs") as 11.17%. Points were deducted, however, because the data is not always organized in readable, cumulative fashion. In addition, data on professional services is not compiled as usefully as data on construction.

Participation Results. The City of Oakland received a [B-] in minority- and women-owned business engagement. Between Jan. 1, 2012 and March 2013, the city had achieved MBE participation of 47.38% in construction, the highest of any of the municipality or agency studied. It appears that this level of participation may be due to goals for L/SLBE that increased in 2012 from 20% to 50%. However, this large percentage includes woefully few African American-owned businesses, to which a paltry 0.4% of these contracting dollars were awarded. The data for WBEs are similarly uninspiring. From 2010-2012, the WBE participation was 2.92%, which dropped to 0.55% in 2012. Without detailed statistics about MBE/WBE availability, these numbers are difficult to put into context. However, the infinitesimal percentage of African American participation and the downward trend of WBE participation suggest that the City of Oakland has room to improve its practices for contracting with WBEs and MBEs, particularly so with African American-owned companies. The City is also falling short of its DBE goal for federally-funded contracts (6.99% achieved for most recent fiscal years, with 11.17% overall goal). In addition, MBE participation for professional services appears to lag that of construction, by a wide margin.

East Bay Municipal Utility District (EBMUD)

Data Quality. EBMUD received an [B+] in transparency, data collection, and ease of public use. The data it provided is well-organized and provides context for interpretation. At the individual contract/subcontract level, most data is broken down by each ethnic group as a percentage of all contracts awarded. There are also clearly stated goals for MBE and WBE participation (25% and 6.3%, respectively), which inspires confidence that the agency will attempt to meet such goals going forward. EBMUD further organized its data by category which aids in analysis. However, more cumulatively-reported data that shows percentage participation by each racial/ethnic group and progress towards stated goals would be helpful.

Participation Results. EBMUD received a [B+] in minority- and women-owned business engagement. For the most recent fiscal year reported, the agency appeared to be exceeding its MBE goal of 25% for construction and approaching that goal for other contracting such as professional services. The agency may want to consider setting different goals for these types of contracts, particularly if attainment is significantly disparate across types. While EBMUD came very close to meeting its goal for WBE attainment (6.3%) during the same time period, it achieved only 6%. The agency should be commended for setting a higher goal for WBEs than any other agency or municipality, but is fairly the object of criticism for failing to meet it. Its goals for MBEs and WBEs were very close to its results in FY 2013. If EBMUD's goals are predictive of its results, then the goals should be increased to ensure continuing progress. Nevertheless, EBMUD should be commended for its defensible attainment percentages for MBEs and WBEs, its clear benchmarks, and its ability to approach them.

Port of Oakland

Data Quality. The Port of Oakland received a [C] in transparency, data collection, and ease of public use. Though the Port provided plenty of data, very little of it was broken down in helpful formats. For example, DBE data is reported cumulatively, with no disaggregated data for specific ethnic groups. The data is broken down along types of purchases, similar to some of the others, but this categorization is non-standard and fails to provide the context that direct comparisons with others' data would. Like MBEs, WBEs are lumped into the port's DBE numbers, so evaluation of WBEs as a separate and differently disadvantaged group is impossible. Finer break-down is preferable when examining the pervasive and often discreet effects of discrimination.

Participation Results. The Port of Oakland received a [D+] in minority- and women-owned business engagement. While the agency appears to strive to increase DBE participation, there have been some downward trends in percentage dollar value awarded to DBEs. One series showed a mostly flat trend of DBE participation from 7.3% to 8.4% to 6.9% over the past three fiscal years, despite DBE goals ranging from 13% to 18% to the current goal of over 20%. The Port's reliance on race-neutral methods is likely preventing progress in this area; moreover, the consistent failure of the Port to meet its DBE goals through race-neutral methods strongly suggests that race-conscious measures are necessary. The agency would serve the community better if it maintained more detailed data on its contractors, and used that data to target the most disadvantaged groups. For example, the discrimination faced by WBEs

may be different than MBEs. Sufficient data gathering and organization would illuminate the weak areas which may give rise to creative solutions from within the agency.

Conclusion

Small minority- and women-owned businesses are the economic backbone of the East Bay. When these businesses thrive, the ripple effects are astounding, with these businesses bringing dollars into local communities and often hiring local workers. Given the critical importance of public contracting to the success of many MBEs and WBEs, it is essential that public agencies take aggressive steps to engage such businesses. This includes having policies and practices in place that aim to increase MBE/WBE participation; it also means consistently and transparently reporting to the public on the results of these efforts, so that further progress can be made according to each agency's strategic plan for engagement.

We wish to emphasize that in our view responsibility for these "grades" lies primarily with the top-level leadership of the agencies in question. Sustained leadership from the top is necessary to ensure that staff at all levels within an agency are working to further diversity goals – and that they are provided incentives to succeed and disincentives to maintain a "business as usual" attitude. In particular, we know that there are many extremely talented and passionate staff within equal opportunity divisions who are working hard to ensure inclusion, often with limited budgets and with limited support from the top. This report card is in no way intended to reflect upon their work, but rather is intended to encourage decision-makers at all levels to reinvigorate their efforts.

This "report card" is above all meant to remind public agencies of their duties in this regard, and to stimulate discussion about how best to accomplish these goals. We look forward to the day when all agencies in the East Bay – and beyond – are truly "making the grade" in this regard.

APPENDIX A

Further information about each agency's written policies and about the particular definitions used by each agency can be found at the following websites:

Alameda County – <https://www.acgov.org/auditor/sleb/>

BART – <http://www.bart.gov/about/business/ocr>

City Of Oakland – <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/index.htm>

EBMUD – <https://www.ebmud.com/business/contract-equity-program>

Port Of Oakland – <http://www.portofoakland.com/responsibility/>



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