

Work Opportunities For Minority-Group Contractors

In the Construction and Maintenance Programs Of the New York City Parks, Recreation, and Cultural Affairs Administration

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ABSTRACT

Public construction is potentially a good source of employment for small minority-group construction firms. However, obstacles must be overcome such as contractors' lack of experience in estimating and contract management, the requirement that a contractor be bonded, delays in payment to the contractor and difficulties with the building trades unions. This paper examines these problems in one New York City agency and proposes some solutions.

Introduction

This paper proposes that work opportunities for Black and Puerto Rican contractors can and should be expanded in the construction and maintenance of the facilities of the New York City Parks, Recreation, and Cultural Affairs Administration.

Minority-group members are sparsely represented within the construction industry and the amount they earn is slight compared to total construction outlay.¹ According to U.S. Department of Commerce projections, total construction outlay in 1971 will reach \$100 billion. Minority-group-owned and operated firms are expected to earn less than \$500 million of the total estimate or one-half of one per cent.²

A study of minority contractors done by the National Association for the Advancement of Colored People for the Federal Department of Housing and Urban Development reports that "more than half the firms surveyed in the Negro and Mexican-American communities expected to have a gross dollar volume of business of under \$50,000 in 1969. By contrast, a 1959 study of builders throughout the nation showed that less than 20% of all business done in construction was done in the dollar category of below \$50,000."³

Confined to doing small jobs primarily in their own communities, minority-owned firms have been trapped in a vicious circle. Since they have not been able to obtain credit to expand because they lack the capacity to do large jobs, they have been effectively blocked from developing the capacity to do large jobs and to join the mainstream of the construction business.

During the 1960's, minority-group construction firms began to organize to attack the obstacles which had been blocking them. A few efforts are now being made by private and government agencies to deal with the problems of minority-group members in the construction industry and to expand opportunities for construction contractors.

Minority-group members are looking to construction in the public sector as a way out of their trap. Government agencies, Federal, state, and local, do a large and steady volume of construction every year and they are susceptible to pressure to provide job opportunities for minority-group citizens. Therefore, the City of New York is potentially an important source of jobs for minority-group contractors in the New York area.

This paper is looking at opportunities for increasing work for minority-group contractors and impediments to opening up jobs within one New York City agency, the Parks, Recreation, and Cultural Affairs Administration. In that one agency, most of the situations facing any official who wants to contract with minority-group firms or any minority firm which wishes to work for a public agency as a contractor or subcontractor can be seen in microcosm.

The PRCA was chosen for several reasons:

1. It contracts for a substantial yearly volume of work. In the fiscal year 1969-70, the PRCA let 264 contracts worth \$33.75 million for construction and maintenance. The contracts break down as follows:

Construction	171 contracts	\$26.6 million ⁴
Maintenance	93 contracts	7.15 million ⁵
	264 contracts	\$33.75 million

These figures represent a rather large number of relatively small contracts. The average size of a construction contract was \$108,772 and the average size of a maintenance contract was \$76,235. This is a favorable situation for hiring small minority firms, which might not have the capacity to do large jobs.

2. The PRCA also provides a variety of work for firms with different capabilities. In addition to park construction and maintenance, PRCA is responsible for zoos, museums, libraries, swimming pools, stadiums, and other facilities.

3. PRCA tried several years ago, partly as a result of community pressure and partly because of good will on the part of some of its staff members, to develop work opportunities for minority-group construction contractors. This effort, which was started before many other city agencies were dealing with the problems of minority-group contractors, resulted in very little work for minority-group firms. A look at the reasons for the failure is instructive.

4. Parks are neighborhood facilities and are highly visible to the people living there. Community pressure frequently centers on parks. When PRCA is planning to build or remodel a park, it invites community groups to provide input on what facilities they want in the park. In some instances, community pressure has also focused on jobs for minority-group contractors.

When a minority-group firm contracts to do construction or maintenance, there are three general areas where crucial problems can arise both for the contractor and the government agency hiring him.

CONTRACTOR CAPACITY

The contractor must be able to estimate accurately, in advance, how much it is going to cost to do the job, how much manpower and equipment he will need, and how he will deploy his manpower and equipment to finish the job in the shortest possible time. He must have the professional or trade skill necessary to do the job and he must have adequate financial resources to carry his work crew while waiting for payments from the city. In addition, a construction contractor must maintain satisfactory relationships with the building trades unions in order to hire workers and avoid labor disputes. A contractor must also develop a relationship with residents of the community where construction is taking

place since community dissatisfaction can result in picketing, vandalism, and other problems at the construction site.

GOVERNMENT REQUIREMENTS AND PROCEDURES

Since most government construction work requires competitive bidding, relatively inexperienced minority firms must compete with companies which have been dealing with public agencies for years and which are completely familiar with government specifications. Government agencies also require inspection of construction at various stages and there are often long delays before inspection takes place. These delays are costly for contractors. Another problem facing a firm contracting with government agencies is the slowness of the agency to pay for work performed. For small firms with no financial backlog, the delay may well mean that the contractor is not even able to meet his payroll.

AVAILABLE WORK

Government agencies, in dealing with minority-group contractors who have never worked for the city before, must decide what kind of jobs these firms can perform successfully. This requires matching the project with the skills and experience of a contractor. Another consideration is the size of a contract which a firm is capable of working on. Since the PRCA has a number of relatively small contracts, it could offer work to small contractors without having to break large contracts into smaller components. It is also important for an agency to think about followup after a minority contractor has done one job. Unless there is continuity of work, the benefit to minority firms will not be significant.

PRCA Construction Procedures and Problems Which They Create For Minority Contractors

The city's procedures for construction contracting create hardships for small and minority-group contractors. The areas where difficulties occur include: estimating and contract management, bonding, delays in payment, and the requirements that a contractor pay union rates to his workers and that there be no labor dispute on the job.

ESTIMATING AND CONTRACT MANAGEMENT

The bid system requires a contractor to calculate the cost of his finished product before he has begun to work on it. In addition, the price is for a unique piece of work so that he cannot rely on past cost experience. He must project into the future all the factors which may have bearing

on the job to be done—inflation, labor, material and equipment costs, availability of credit, interest rates, weather conditions. Furthermore, during the course of the contract, the contractor must meet the PRCA's requirements that he fill out certain forms, make up construction and payment schedules, and do shop drawings showing fine details of the architect's blueprints.

BONDING

The city normally requires a contractor to submit a bid bond with his bid and performance and payment bonds when he is awarded a contract. The bid bond is to certify that if the contractor is the low bidder on a job, he will be able to get a performance bond. The performance bond guarantees that the surety bonding company which bonds the contractor will finish the work if the contractor defaults. The payment bond guarantees payment to employees and suppliers if the contractor defaults and does not have sufficient assets to pay them.

A bonding company's criteria for granting a bond are known in the construction business as the three C's—character, capacity, and cash. Character is the contractor's reputation for honesty and dependability. Capacity is the size of the company and the resources it has available to do a job. Cash is required to pay for the bond and meet other financial obligations before the contractor is paid for his work. Many minority contractors have character but few have the capacity to do large jobs or the cash to put up for a bond. A registry of minority construction contractors published by the U.S. Department of Housing and Urban Development lists 95 general contractors in the New York area. Of these, only nine have ever been bonded.⁶

The city's requirement that a contractor be bonded for any contract over \$2,500, awarded to the lowest responsible bidder, was modified by a resolution of the New York City Board of Estimate on February 11, 1971. The resolution, which "will permit the head of an agency, in his discretion, to dispense with the use of performance and payment bonds on construction contracts of less than \$50,000,"⁷ was specifically designed to help small and minority-group contractors.

The resolution will not *ipso facto* improve the situation for minority-group contractors. If a contractor is known to an agency and is considered reliable, then the agency is likely to award him a contract without a bond and without an elaborate screening procedure. But if a contractor who has never worked for the city before bids for a contract, the agency will want to know what kind of work he has done and whether he is reliable. When a contractor is bonded, the agency accepts the bonding company's findings as

to his reliability. Without bonding a city agency may set up an equally selective screening procedure.

DELAYS IN PAYMENT

The contractor is paid every 30 days based on work completed. He receives only 10 per cent of the total payment until half the work is done and 5 per cent is held back until the job is completely finished. On this payment schedule, he must meet a weekly payroll and other expenses for material and supplies—a difficult problem unless he has resources in addition to what he is receiving under the contract.

To be paid, the contractor makes out a voucher itemizing the cost of the work done. The supervising architect or engineer inspects the work and then the voucher must go to two different PRCA offices and the Comptroller's office before the contractor is issued a check. This procedure takes at least a month and often longer. A contractor must continually keep checking on his vouchers to make sure that they are moving through the bureaucracy.

UNION PAY RATES AND NO LABOR DISPUTES

New York City requires a contractor working for the city to pay his work crew at the union rate, including fringe benefits. Because of this requirement, a contractor will probably try to hire a union crew since he must pay the union rate. He will have to go to a union hiring hall where it is likely that he will be dealing with a union whose leadership has not been receptive to the admission of Black and Puerto Rican members. If there is plenty of work available for union members, the union may not cooperate with him.

According to New York City law, a contractor is financially liable for any delay in work caused by a labor dispute. This situation gives the unions a club to hold over the head of a contractor who uses non-union labor or who is unwilling to deal with all-white union hiring halls.

PRCA Equal Opportunity Program

On December 18, 1967, the PRCA launched an ambitious equal opportunity program to increase construction and concession contracts for Black and Puerto Rican businessmen. A year and a half later only two contracts had been awarded. Major impediments were bonding and payment schedules. To avoid these problems, the possibility of urging prime contractors to award subcontracts to minority contractors was explored. One former PRCA official who was involved in these discussions

thought that if the Administration insisted that prime contractors hire minority subcontractors, the PRCA could be accused of giving payoffs. The subcontracting avenue was not explored further.

It became clear that any sustained and serious effort to increase opportunities for minority-group members would require more staff time than the top management within the PRCA was willing to give. Making minority contractors a priority would have meant shortchanging other programs and creating additional delays in the construction process which is already very slow. The problems of minority contractors were also more complicated than anyone in the PRCA had realized when the program was conceived and required leadership at the citywide level as well as within PRCA.

PRCA Maintenance and Operations

PRCA's regular maintenance work is done by in-house employees who are members of the American Federation of State, County, and Municipal Employees. Because of the power of the union, it seems unlikely that contracting will replace the work done by permanent staff.

Some park maintenance work is contracted out, however, without opposition from the union. This work is mainly substantial rehabilitation—jobs which require specialized manpower and equipment. There are opportunities in this kind of work for minority contractors. Most minority contractors have had some experience in doing rehabilitation work and many of the maintenance jobs are under \$50,000 so that bonding could be waived.

The Mayor's Jamaica Office of Planning and Development

The PRCA abandoned its inquiries into the possibility of using subcontracting as an opportunity to provide work for minority contractors. Another city agency has had considerable success in using this approach, however, and its experience is instructive. The Mayor's Jamaica Office of Planning and Development is concerned with the redevelopment of the area around York College in downtown Jamaica, Queens. The prime contractor for the renovation of an old building which is being made into York College was introduced to four minority subcontractors who were taken on for jobs worth \$500,000 each. The Jamaica Office staff had compiled a list of contractors from which the prime contractor was able to choose.

The Jamaica Office thinks that the subcontracting approach bypasses many of the problems which otherwise face a minority contractor who is starting to work for the city. The subcontractor does not have to be

bonded or go through the red tape of signing a contract with the city. He does not have to wait for payment from the city or spend time trying to track down his vouchers. The prime contractor can advance him money, if he needs it. If the subcontractor is working on a large job, suppliers will give him 60-day billing, whereas on smaller jobs he would have to pay cash. The supplier knows that he can throw a lien on the prime contractor if the subcontractor does not pay his bill on time. The subcontractor can also work on his specialty, while the prime contractor bears the major responsibility for administration.

The Association of United Contractors of America

Minority contractors are not waiting for the city to take the initiative to offer them work. They have formed their own self-help organization, the Association of United Contractors of America (AUCOA), to deal with some of the problems which they are facing. AUCOA was founded in Harlem, in 1965, initially for Black contractors who wanted to work on urban renewal projects. It includes two sections: AUCOA, Inc., a membership organization of contractors, providing services to its members, and AUCOA Trust, a tax-exempt organization administering a special bonding program.

AUCOA, Inc., has 120 members. Its operations are supported by dues—\$60 per member—and an annual grant of \$70,000 from the Economic Development Administration, part of the U.S. Department of Commerce. AUCOA Trust administers a \$50,000 revolving fund for bonding. Both the revolving fund and AUCOA Trust's annual operating expenses of \$129,000 come from a Ford Foundation grant.

AUCOA is engaged in trying to increase the number and size of jobs for its members, to provide its members with training in estimating, accounting, blueprint reading, and other technical skills, to train workers so that member contractors will have access to a supply of skilled labor, and to obtain additional funds for expanding programs and making loans to members.

Conclusions

This paper has set forth areas where problems arise for minority contractors working for a city agency and ways in which these problems have manifested themselves in specific situations. The conclusions show how some of the problems can be dealt with.

CONTRACTOR CAPACITY

1. *Estimating and Contract Management.* These are areas in which many minority contractors are weak. Some help can come from government agencies but much will have to come from other sources.

AUCOA provides services to contractors in these areas, both through its staff and a training program which it started with the help of Columbia University. Additional technical assistance from private sources can be provided in this area, however. For example, large contractors can contribute their expertise to teach courses to minority-group contractors in estimating, bookkeeping, construction law, and other subjects. The Turner Construction Company has done this in Cleveland and Cincinnati and then offered subcontracts to some of the graduates of the program. One graduate of the Cleveland program signed a one million dollar subcontract with Turner.⁸ Individuals can also volunteer their services to individual contractors through AUCOA, New York City's Executive Volunteer Corps, or the Interracial Council for Business Opportunity.

2. *Financial Resources.* AUCOA is trying to deal with the financial problems of contractors by setting up a revolving fund to advance them money until they are paid for their work. This is a good approach but AUCOA has limited resources.

One way out of the financial bind, which is being explored by AUCOA, is a profit-making stock company linked to a nonprofit service corporation. This model has two advantages:

- a. The two organizations form a self-sufficient whole which is not dependent on foundations or government. This is an important consideration if minority-group businesses are to develop beyond the start-up stage where capital comes from government and corporations.
- b. It is cooperative, not competitive. It does not pit small minority contractors against each other to fight over a small share of the total construction pie, but it provides a structure in which small contractors are able to cooperate with each other as part of a larger organization. It would operate somewhat as a general contractor and subcontractors. The umbrella organization would submit bids and then parcel out jobs to the member contractors. At the same time, the tax-exempt nonprofit arm would be able to continue technical assistance for members.

Such a corporation would need some financial assistance to get started, but it would not be permanently dependent on grants or obligated to other corporations.

3. *Labor Relations.* Minority contractors have been completely ignored by the city in its negotiations with the unions on minority hiring. Ideally, the city's weak New York Plan for minority participation in the building trades unions should be abandoned and a much stronger effort should be made to push the unions to hire minority workers. There should be much stronger representation from minority contractors and civil rights organizations.

Failing a new plan, however, representatives from minority contractors' associations should be included on the administrative committee of the New York Plan and they should be given Federal contracts to train workers for entrance into the building trades unions. These two steps would begin to give minority contractors some status and power so that they could gain some respect from the unions.

The problem of paying union rates is basically a financial one and would require initially that money be advanced to contractors to meet their payrolls and fringe benefits.

The threat of being fined for labor disputes on a city job will cease only when the preceding steps have been taken and minority contractors are respected by the unions and are able to hire and pay union labor.

4. *Community Relations.* City officials and white contractors tend to think that minority workers on a construction site, especially in a minority community, will solve all their community relations problems. They respond to community pressure to hire more Black and Puerto Rican workers or a minority subcontractor because they do not want work slowed up by disturbances at the construction site. The presence of minority-group people on the construction site, either as contractors or workers, is no guarantee that community relations problems are solved, however. The groups who picket to increase the number of Black workers on a site are not the same ones who will object to demolition of an apartment building. Nor are they the same people who will steal equipment, fire shotguns at the workers, or scatter debris over a freshly-graded area.

There are no simple solutions to these community relations problems and minority contractors are just as subject to difficulties in minority communities as white contractors are. The problems are simply reflections of tensions and difficulties in society.

GOVERNMENT REQUIREMENTS AND PROCEDURES

The main problems for contractors posed by government procedures are bonding and slowness of the city to pay. There are several ways of dealing with these problems:

1. *Subcontracting.* Subcontracting is the simplest way for minority contractors to be introduced to working for the city. A subcontractor does not need to be bonded; he does not have to wait for payment by the city, since he is paid by the prime contractor; he can usually get credit from his suppliers on the basis of the subcontract; and he can work at his specialty instead of having to perform the management functions required of a prime contractor.

There are also problems to overcome. Contractors prefer to hire their own subcontractors who have worked with them over a period of time. They may argue that having to investigate and train new subcontractors will cause them to lose money; they may insist on requiring bonding and be wary of advancing money when they are not familiar with a subcontractor's work.

To set up a procedure for subcontracting, the PRCA would first have to make a list of contractors who could do certain kinds of work and look into their background and experience. Then the contractors would have to be asked if they would be willing to subcontract on PRCA jobs. The PRCA would then have to ask the low bidder on a contract to choose his subcontractors from the PRCA's list and to deal with them as he ordinarily does with subcontractors. It might be best to start this procedure on jobs in minority-group neighborhoods where there is community pressure to hire Black and Puerto Rican contractors and workers and where the prime contractor would consider it an advantage to have minority-group members working on the job.

2. *Bonding.* The PRCA should begin to waive bonding on contracts of \$50,000 or less and look for minority contractors to work on such contracts. The PRCA and other city agencies should also become familiar with the Small Business Administration guidelines for bond guarantees so that they can tell minority contractors to go to the Small Business Administration (SBA) if they are refused bonds and so that they know what steps a city agency needs to follow to participate in the SBA's bonding guarantee program.

The Federal Government guarantee, administered by the Small Business Administration in the U.S. Department of Commerce, means that a surety

bonding company is indemnified for 90 per cent of its loss if a contractor defaults on a job. The SBA is required to determine that there is reasonable expectation that the contractor will be able to complete the job. Since the program is still in its formative stages, it is not clear whether the SBA will be as stringent in its screening procedures as a bonding company would be. Even so, the approach is one which should offer some opportunities for minority contractors.

3. *Administrative Red Tape.* Contractors who are new to working for the city are overwhelmed by the amount of paperwork required—starting with obtaining plans and specifications and going all the way through the filling out of vouchers. The PRCA should be prepared for the problems which minority contractors will have and should make a staff member available to help new contractors with blueprint-reading and filling out forms. Consideration should also be given to simplifying some forms such as the experience questionnaire and the financial statement. If a contractor is awarded a contract, his next obstacle is likely to be drawing up construction and payment schedules and making shop drawings. He would probably need help from a staff member in learning how to do this work.

The PRCA is limited in the amount of staff time it can devote to such efforts. It must decide that helping minority contractors is a priority and, ideally, be given a mandate to hire staff to do this work.

Payment schedules and the need to pay for supplies at the beginning of a contract are other problems. It seems unlikely that city agencies could persuade the Comptroller to advance money to contractors. It would also be difficult to persuade the Comptroller to change payment schedules.

What would be more likely to succeed than one department trying to battle with the Comptroller over changes is a pilot program for small and minority contractors set up in one agency with all the problems hammered out in advance. The Municipal Services Administration would be the most likely place for such a project, since it monitors most of the city's construction.

The project could be set up to handle contracts of \$50,000 or less to avoid the need for bonding and demonstrate the workability of the Board of Estimate resolution. It could also experiment with changing payment schedules and reimbursing a contractor directly and promptly for supplies and materials. It would probably not be realistic to expect that the city could advance funds to a contractor for supplies. However, the payment schedule could be changed so that when a contractor made an outlay for supplies, he could present a voucher for the whole amount and be reimbursed promptly. The payment schedule could be revised so that he would receive 50 per cent of the payment by the time the job was 50 per cent completed.

Hopefully, the result of such a project would be that a number of small contractors would be introduced to working for the city and after going through the process of working under the pilot project several times, would have city jobs on their records and would be able to begin working on their own for other city agencies.

AVAILABLE WORK

One of the reasons why the officials who started the PRCA's equal opportunity program felt that it would succeed was that the PRCA had many small contracts which minority contractors could perform successfully. This is still the case, both in construction and maintenance. It might be advantageous for the PRCA to make an initial effort to hire minority contractors for contract maintenance because there are many small rehabilitation jobs which most minority contractors have had experience in doing. On larger contracts, the PRCA should propose that prime contractors subcontract to minority firms.

The question of followup is essential if efforts to employ minority contractors are going to be more than token. If a few contractors do one job each and are then dropped, it would be better not to have made any effort at all. If the contractor has performed satisfactorily, he should be contacted again by the PRCA and told that there are other contracts for which he should submit bids. It is not sufficient to assume that after one job, minority contractors will be familiar enough with the city's procedures to want to take on a second one without any assistance.

Any efforts made to introduce minority construction contractors to work for the city will require thought and staff time. This means that other considerations such as speed of construction will have to be temporarily sacrificed. The reason for making this sacrifice is to provide work for minority-group members who have been denied access to the mainstream of the construction industry. This is a desirable social goal which benefits minority communities and ultimately the city as a whole. The PRCA should be willing to do its part in opening up opportunities for minority-group members in its construction and maintenance programs. But ultimately the entire city government must be committed to this goal, if it is to succeed.

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