

Public Procurement and Contracting in Milwaukee's Water Sector



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The report was authored by CNT Urban Resilience Manager, **Ryan Scherzinger, AICP**.

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Executive Summary

There is a growing demand for workers in the infrastructure field, including the water sector, spurred by the record-level federal infrastructure bill signed in 2021 and the steady retirement of an older workforce. Many of those new and vacant job openings will offer quality career opportunities to new prospective workers. Increased infrastructure investment also presents the potential for greater business development. However, despite the growing opportunity, uneven access to water-related jobs and contracts remains an ongoing challenge in Milwaukee. The water workforce does not come close to reflecting the city's diversity. And since water work largely derives from the public sector through contracts with private companies, the policies and procedures that govern public procurement and contracting is a key part of understanding the industry, particularly where barriers and other challenges may exist for small businesses and underrepresented minority contractors and workers.

In partnership with Milwaukee Water Commons (MWC), the Center for Neighborhood Technology (CNT) conducted a study on procurement and its relationship to developing a more equitable water industry in Milwaukee. This study builds on the work of the Milwaukee Water Equity Task Force, which seeks to understand and promote inclusive and equitable pathways to jobs in the water sector. CNT conducted interviews with representatives from local utilities, city staff members, workforce development organizations, water industry contractors, procurement specialists, advocates, and others to gain a fuller understanding of procurement from various perspectives and experiences. The contents of this report highlight the features of public procurement and contracting in Milwaukee along with an analysis of the findings from the interviews. The report also presents additional procurement policies and strategies from other U.S. cities aimed at supporting small and minority contractors.

The City of Milwaukee maintains a race/gender-neutral process for procurement and contracting, but operates other programs intended to eliminate potential barriers businesses may face, such as the Small Business Enterprise (SBE) program. Minority businesses on the average are smaller, so SBE serves

as a resource to them. However, representation within the water sector remains largely unchanged despite the current resources. The City of Milwaukee recently contracted a firm to conduct a disparity study and the findings, released at the end of 2023, highlight the city's significant underutilization of minority and women-owned business enterprises (MWBES).

The other major public entity in the water sector, the Milwaukee Metropolitan Sewerage District (MMSD) administers its own SBE program, but recognizes other third-party certifications, including those that use race and gender as criteria. MMSD sets an annual 20% participation goal for small, women-owned, minority-owned and veteran-owned business enterprises (SWMBEs) and typically meets or comes close to meeting it. MMSD also offers support services for contractors through its Business Capacity Development Program (BCDP). However, MMSD contract work is often highly specialized and high risk, which tends to limit the pool of contractors.

While public entities have small business programs such as SBE, the terms and conditions associated with contracts often still favor big businesses. Economies of scale favor larger firms when state law requires that the lowest bid on public works projects automatically wins. Beyond that, navigating public procurement and contracting systems is difficult. Understanding the requirements, how to bid on projects, the range of certifications, how to acquire the needed levels of bonding and insurance, the amount of administrative burden, and other fine print contained in a given contract is a challenging, often intimidating, endeavor. Larger companies often have specialized administrative capacity to handle those often complicated and time-consuming tasks while small businesses must carefully weigh the risk and reward associated with pursuing public contracts, i.e., the amount of unpaid time spent on the additional administrative burden.

Participants interviewed for the study expressed a range of frustrations. They shared both success stories and hard lessons learned. They provided information on, and their experiences with, the existing policies, programs, and procedures of public entities. They also offered a glimpse into how those policies and programs play out in the field, including

the dynamics between different actors, some of the norms established in response, and the types of decision-making processes in that environment. This study does not claim to have captured the full spectrum of experiences, perspectives, and types of expertise that are out there, but the collected data shows commonalities of experience and reoccurring themes. It points to similar challenges and barriers. And it suggests areas in need of closer examination and for more collaborative solutions.

Milwaukee is not alone among U.S. cities that have significant disparities in the water sector, or other industries for that matter. In fact, the Milwaukee Metropolitan Sewerage District (MMSD) has been cited as a leader in procurement practices by others in the field. There are many examples of laudable work. The city is fortunate to have so many people and organizations committed to generating opportunities for the most vulnerable communities. However, the underrepresentation of minorities in the sector is a complex problem rooted in history. Explicitly racist policies such as redlining continue to have compounding effects on Milwaukee's marginalized communities through disproportionate social, environmental, and economic barriers. Inversely, the accumulated wealth and business connections within the water sector built up over many generations; and the resulting economic advantage maintains a durable hold. Enabling greater access requires intervention and support that helps open doors for a more diverse workforce as well as the contractors striving to develop their businesses in the public sector.

1. Understanding the Dimensions of Public Procurement

A. The Importance of Public Procurement and Contracting

Local governments hold a tremendous amount of economic power and responsibility to the public through the procurement and contracting they do with private firms and nonprofits that provide a wide range of goods and services. State and local governments spend \$1.3 trillion annually through public procurement, accounting for between a third and half of their budgets.¹ Recent federal investment in infrastructure under the Biden administration, including the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL), the Inflation Reduction Act (IRA), and the CHIPS and Science Act, will add \$2 trillion into the system – although how the Trump administration may affect that funding is still in flux. With or without federal investment, public procurement remains a key function of government and a critical component in how they implement policies and deliver important public services.

Water infrastructure is critical and requires financial assistance from multiple sources, including the federal government, to continue operating safely and serving communities effectively.² The federal share of capital costs on water infrastructure, however, dropped from around 60% in 1977 to under 10% in 2020.³ Decades of underfunding and underinvestment have impacted the condition, reliability, and resilience of water infrastructure around the country. The IIJA/BIL funding will provide more than \$50 billion for water infrastructure, which is the most in history.

The record amount of federal investment in the nation's infrastructure now underway carries the opportunity to not only deliver much-needed improvement projects to communities around the country, particularly those that have been historically underserved and underinvested in, but also to open doors to employment and entrepreneurship in the growing water industry and other skilled trades. The recent infrastructure funding laws will generate an average of 2.9 million new jobs annually and

DEFINING TERMS

Vulnerable communities:

Vulnerable communities face historical and/or contemporary barriers to economic and social opportunities and a healthy environment, with some key factors being income, race or ethnicity, age, language ability, and geographic location. Vulnerable communities may include low-income persons, certain communities of color, immigrants, seniors, children, persons with disabilities, persons living in public housing, and currently or formerly incarcerated persons.

Source: The Milwaukee Equity Task Force's Roadmap document, *An Equitable Water Future: Milwaukee*.

19 million job-years over their lifetime. Notably, 70% of the jobs created won't require four-year college degrees, which presents an important opportunity for many low-income and blue-collar workers to gain access to these jobs, among them historically underrepresented groups in the water sector.⁴

The current federal administration under President Trump introduces new uncertainty, including potential effects on infrastructure funding. Individuals and communities across the country experienced significant impacts from the federal funding freezes, changes to departments and budgets, and executive orders including the elimination of diversity, equity, and inclusion (DEI) programs. It is unclear at the time of writing this report what may transpire over the course of the current administration, including any legal challenges in response. The administration's stance on disallowing any race or gender-based criteria within federally funded (and private) programs is clear and may have significant ramifications on addressing equity within the water sector.

Not only does government contracting represent a significant source of revenue for businesses, but it also plays a key role in shaping the diversity of many industries and fostering equitable economic development. The Milwaukee Water Equity Task Force was formed to examine and expand workforce opportunities specifically to the city's water sector. The Task Force "is dedicated to building the organizational, policy, and partnership capacity of community organizations, utilities, governmental agencies, philanthropy, policymakers, environmental groups, industry partners, and other stakeholders to chart a new course toward an equitable future," as their mission states in their Roadmap document, *An Equitable Water Future: Milwaukee*.⁵

The Roadmap demonstrates how Milwaukee's history shaped current challenges in the water sector and disproportionately affects the city's vulnerable communities. Deindustrialization, white flight, redlining, and disinvestment, among other factors, produced a range of interdependent and compounding effects that intensify the challenges that Milwaukee's vulnerable communities face. The most vulnerable communities are concentrated on

the city's north and south sides in neighborhoods including Lindsay Heights, Amani, Silver City, Harambee, Metcalfe Park, Muskego Way, Sherman Park East, Franklin Heights, Clarke Square, North Division, Silver Spring, Halyard Park and others.

Since the 1970s, Milwaukee has been one of the most segregated metropolitan areas in the country.⁶ Milwaukee is a majority-minority city and 90% of the region's Black population lives in the central city, which is extreme even in comparison to other strongly segregated cities in the U.S.⁷

The persistence of Milwaukee's hyper-segregated environment actively perpetuates the range of racial disparities in income, poverty, employment, access to food, environmental pollution, exposure to crime, and schooling.

The civil rights movement brought new laws prohibiting redlining and other practices in the 1960s, which were important and hard-fought victories. However, at a time in U.S. history when millions were already achieving home ownership and establishing the foundations of generational wealth, those who weren't considered white were systematically kept from sharing the same gains. Redlining maps of the 1930s codified the residential segregation still present in Milwaukee and across U.S. cities today.⁸ The state-sanctioned discriminatory practice of redlining solidified the durable pattern of segregation whereby black and brown communities remain more likely to have environmental hazards nearby, to be further away from adequate shopping, medical and other social services, and disproportionately suffer from a range of urban issues. Issues such as crime, policing,

housing quality, taxes and education opportunities took on distinct racialized contexts. The historically compounding effects of redlining still have profound impacts today.

A University of Wisconsin-Milwaukee study from 2020 highlights the stark realities of today's racial and ethnic disparities in the Milwaukee region. Unemployment among Black residents is three times, and almost two times for Latino residents, that of whites.⁹ Poverty rates for Black residents are nearly five times, and nearly three-and-half times for Latino residents, those of whites across the metropolitan area. Household income for Black residents is less than half of whites in the metropolitan area. Household income for Latino residents, while slightly better, is also significantly below that of whites. Furthermore, education levels do not help explain the income disparity in that minorities with a bachelor's degree earn little more than whites with a high school diploma.¹⁰

The influx of federal infrastructure money coupled with significant labor demand presents an important opportunity for more inclusive economic development. There is currently a major shortage of people in many infrastructure-related occupations.¹¹ In Milwaukee, and across the country, there are not enough younger workers entering the skilled trades at a rate fast enough to replace the older generation and keep pace with projected industry growth. With critical water-related and other infrastructure needs across the country, attracting, training, and retaining a new workforce is a paramount concern.

Many jobs in the skilled trades have higher-than-average median wages and other economic benefits. Stable, well-paying jobs are the type of economic opportunity residents of Milwaukee's vulnerable communities need.¹² There is limited diversity in Milwaukee's water sector that contributes to the highly racialized unemployment rates of the city and metropolitan area. Finding ways to successfully connect people to quality jobs in not only the water workforce but other growing industries is central to any work focused on eliminating the significant disparities that persist in Milwaukee.

Water-related occupations spread across many industries including planning, facility operations and maintenance, construction, green infrastructure,

engineering, laboratory science, education, landscaping, information technology, advocacy, and recreation. Employers include utilities and a wide range of private companies such as contractors, consultants, service companies, equipment manufacturers and suppliers. Employers also include non-governmental organizations and community-based organizations.¹³

Water-related jobs represent somewhere between 1.6 and 2.1 percent of total employment in metropolitan Milwaukee according to a 2020 study.¹⁴ Of that percentage range, utilities account for seven to nine percent of jobs. Despite their relatively low number of water-related jobs, the utilities are responsible for nearly all public spending on water operations and capital improvements. Most water-related jobs come from engineering firms, contractors, and other businesses that perform the work associated with specific projects. Therefore, the utilities hold tremendous influence over the overall water sector through their procurement and contracting.¹⁵

The uptick in workforce development associated with the current federal infrastructure funding to meet the growing labor demand will serve as an important driver in helping develop more worker diversity in infrastructure-related trades. However, evidence from a recent disparity study commissioned by Milwaukee, which is discussed in more detail below, shows that much more work is needed to create a supportive environment in public contracting. The study demonstrates disparity for all MWBs (minority and women owned business enterprises) in almost every category.¹⁶

Public procurement and contracting suffers from the systemic inequities that also persist out of the U.S. legacy of discrimination, including the compounding effects set in motion during the 20th century by redlining. A review of disparity studies across the country verifies these effects on minority businesses in public contracting whereby the median value for the observed disparities was just 19%. In other words, on average, minority businesses were being utilized at less than one-fifth of their availability in a given marketplace.¹⁷ There are significant differences in capital for business start-ups or for expansion among minority businesses. Their businesses are smaller on

BUSINESS CERTIFICATION PROGRAMS

average, which means a lower rate of availability for government contracts per population compared to white-owned businesses. Discriminatory practices in lending, contracting, and business ownership generated a wealth gap that impacts minority firms' competitiveness when it comes to track record, credit scores, business networks, accumulated wealth, and other qualities needed to be competitive.¹⁸

Acknowledging the sustained privilege that created generational wealth and, with it, historical access to the capital and experience needed to win government contracts, is integral to understanding the ongoing disparities. Identifying the barriers that continue to make it difficult for underrepresented businesses in public procurement and contracting is essential to understanding what kinds of support and changes may be needed in Milwaukee.

B. Disparity Study

The history of seeking ways to create more diversity through government procurement and contracting is not new and can be traced back many decades, including many court decisions involving the legality of race-based preferences and other institute requirements. The 1989 Supreme Court case, *City of Richmond v. J.A. Croson Co.*, is still one of the most significant cases related to MBEs (minority business enterprises).¹⁹ Governments must produce a "strong basis of evidence" for discrimination before they establish any programs that provide preferences to MBEs. Beyond that, programs must also pass a "strict scrutiny test" and be "narrowly tailored" whereby it can only address the specific disparity identified. Furthermore, it must be shown that race-neutral approaches were already attempted and proven ineffective. Out of that ruling, "disparity studies" became the common methodology and legal basis for race-based preferences in procurement.²⁰

In 2021, Milwaukee contracted a firm to conduct a disparity study. The findings and recommendations of the final report were officially adopted by the Common Council in December 2023 and revealed substantial under-participation of MWBEs.²¹ During the five-year period analyzed (2015-2019), the City of Milwaukee paid \$500.3 million in prime construction spending within the four-county metro area. Only

Minority Business Enterprise

MBE

A for-profit business that is at least 51% owned, managed, and controlled by one or more members of a qualified minority group – Native American, Black, Hispanic, Asian Indian, Asian-Pacific, Aleut, Eskimo, or Native Hawaiian. The Wisconsin Supplier Diversity Program certifies MBEs. They receive a permissive 5% bid preference when they bid on state contracts.

Service-Disabled Veteran-Owned Business Enterprise

DVB

A for-profit business that is at least 51% owned and controlled by a United States veteran who served in the active military, naval, or air service, was discharged or released under conditions other than dishonorable, and whose disability was incurred or aggravated in line of duty. Must have at least a 0% disability rating, meaning the condition is related to military service, but it's not considered disabling enough to warrant monthly compensation. The Wisconsin Supplier Diversity Program certifies DVBs. They receive a permissive 5% bid preference when they bid on state contracts.

8.55% was awarded to MWBEs as prime contractors. Total utilization (prime plus subcontracting) of MWBEs was 16% in construction, 13% in architecture and engineering, 7% in other services, and 8% in goods. The study also analyzed the data by eliminating larger prime projects (under \$1 million and under \$500,000) and still found statistically significant underutilization of MWBEs in most categories.²²

Milwaukee conducted a previous disparity study in 2010 that also found statistically significant underutilization of MWBEs. In 2012, the city introduced racial targets in its hiring requirements, but the Hispanic Chamber of Commerce of Wisconsin and American Indian Chamber of Commerce of Wisconsin argued the study was flawed and

RELATED TO SOCIAL AND ECONOMIC DISADVANTAGE

WBE

Woman-Owned Business Enterprise

A for-profit business that is at least 51% owned, controlled, and actively managed by one or more women. The Wisconsin Supplier Diversity Program certifies WBEs. They receive a permissive 5% bid preference when they bid on state contracts.

SW MBE

Small/Woman-Owned/Minority Business Enterprise

Generally used as shorthand to describe the range of business certification programs related to social and economic disadvantage.

DBE

Disadvantaged Business Enterprise

A for-profit small business (of a size determined eligible by SBA, which varies by industry) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged. Persons who own and control the business must establish their social and economic disadvantage and have a personal net worth that is below the applicable limit. DBE is a U.S. Department of Transportation program (enacted by Congress in 1983 and most recently reauthorized by the IIJA/BIL). The DBE program recently moved away from using race or gender as the basis for DBE certification. Firms owned by nonminority males can become certified if they can show, on a case-by-case basis, they are socially and economically disadvantaged.

challenged the city's new programs/ordinances in federal court. The city ultimately settled the case and repealed the ordinance in 2013. With some lessons learned from the previous study, the city engaged the minority-focused chambers of commerce and other stakeholders to gain their input ahead of finalizing the request for proposal and selection of the firm hired to conduct the most recent study.²³

The city plans to explore the implementation of the new study's recommendations over the next few years. The 2023 report provides evidence that

SBE

Small Business Enterprise

A for-profit, independently owned and operated business that meets specific size standards defined by the U.S. Small Business Administration (SBA). Other broad categories of disadvantage are also considered. Both the City of Milwaukee and MMSD have SBE programs. MMSD accepts any third-party SBE certification, including the federal SBA program. The SBA's 8(a) Business Development program certification program previously used an established list of minority groups presumed to be disadvantaged. However, a 2023 court case barred SBA from using the presumption of social disadvantage to administer the program. Under DOJ guidance regarding the Court's order, SBA is requiring all 8(a) participants who originally relied upon the presumption of social disadvantage in their application to re-establish their 8(a) program eligibility by completing a social disadvantage narrative.

LBE

Local Business Enterprise

City of Milwaukee program that provides a preference for local businesses, including SBEs, in city contracts (but not for public works projects). LBEs are awarded contracts provided its bid does not exceed the lowest bid by more than 5% and the difference does not exceed \$25,000. If the LBE is certified as a SBE with the City of Milwaukee, the LBE shall be awarded the contract provided its bid does not exceed the lowest bid by more than 10% and the difference does not exceed \$30,000.

the current race/gender-neutral strategies were not effective in reducing disparities, which provides a legal basis for the city to introduce race/gender-conscious measures.

However, Wisconsin state statutes restrict race-conscious policies on public works contracts.²⁴ For those contracts, the study recommends that the city add "aspirational goals" for subcontracting and request documentation of the efforts. Additional recommendations include the introduction of MBE and WBE goals (versus small business enterprise, or SBE, goals) where possible, but also better compliance monitoring, bonding and insurance waivers, increased resources and staffing, and others.

C. Federal, State, and Local Levels of Procurement and Contracting

Becoming a government contractor is complicated. Procurement and contracting standards and requirements differ by agency, level of government, and the local and state political environment. The policies and procedures of individual federal agencies vary. Changes in federal administrations can shift programs. The integration of federal infrastructure funding with state and local dollars can also further complicate requirements.²⁵ The federal funding context at the state level down through the other local levels of government also creates its own dynamic environment.

At the start of his second term in 2025, President Trump issued a series of executive orders aimed at eliminating the DEI priorities of the federal government and legally challenging those within the private sector. However, an onslaught of new legal challenges against diversity initiatives were already underway ahead of the 47th President taking office. The U.S. Supreme Court overturned race-conscious college admissions in June 2023, which opened the door to many new court cases.²⁶ Federal programs like the Small Business Administration's (SBA) 8(a) program and the Department of Transportation's (DOT) Disadvantaged Business Enterprise (DBE) program already faced recent legal challenges.

In an ongoing lawsuit, *Mid-America Milling Company, LLC, et al. v. United States Department of Transportation*, the plaintiffs challenged DOT's use of rebuttable presumption to determine "socially disadvantaged" applicants. The "rebuttable presumption" refers to DOT regulations that provide that automatically presume members of specific groups are socioeconomically disadvantaged. Those groups include African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women. A U.S. district court in the *Mid-America* case ruled the rebuttable presumption of social disadvantage in the DBE program is unconstitutional.

The SBA faced similar legal challenges in 2023. In *Ultima Servs. Corp. v. U.S. Department of*

Agriculture, the "rebuttable presumption of social disadvantage" was also successfully challenged in SBA's 8(a) Business Development program. The Department of Justice provided guidance regarding the Court's order, which requires all 8(a) program participants who originally relied upon the presumption of social disadvantage in their application to re-establish their eligibility by completing a social disadvantage narrative. Both the DBE and SBA programs now require the narrative as proof of social disadvantage. Some argue the programs no longer fall under the DEI umbrella since removal of the rebuttable presumption of socioeconomic discrimination eliminates decisions based solely on race or gender. The new requirements force applicants to provide specific instances of discrimination.

How the above-mentioned cases and many others may ultimately play out in the court system over time is unknown. However, given the Trump administration's undeniably negative stance on DEI, they will undoubtedly work to dismantle and/or weaken related policies and practices when and where possible. That said, states administer their own M/WBE programs and those won't necessarily disappear. But new restrictions on federal funding to states may put new limitations on how they are able to utilize those dollars, including, for example, the elimination of DBE goals from projects.

Understanding procurement and contracting with each governmental (and private) entity comes with policies, procedures, and other processes that make it difficult to navigate. Each requires a close examination to fully understand the important details and how they may or may not affect a particular contract. Provided below is not an exhaustive examination of every feature, but rather some key information on policies and practices at the federal, state, and city level as well as for the Metropolitan Milwaukee Sewerage District (MMSD) to help understand how each operates and the interconnections between entities.

Federal and State Requirements

Federal assistance, currently from the IJJA/BIL, goes through State Revolving Funds (SRFs) that provide low-cost financing to communities for their

<div> - items in red text apply to ALL municipalities and projects. - items in blue text apply to each project designated as Federal Equivalency </div>			
	CWFP and SDWLP Non-Federal Equivalency Projects	CWFP and SDWLP Federal Equivalency w/Project Cost @ or Below \$250,000	CWFP and SDWLP Federal Equivalency w/Project Cost Over \$250,000
Specific DBE Requirements			
Solicit for DBEs	X	X	X
Submit Good Faith Certification Form	X	X	X
Establish and Keep a Bidders List			X
Include Extra Conditions in Contracts		X	X
Meet Contract Administration Requirements		X	X

water infrastructure projects.²⁷ SRFs would continue to exist without federal funding, but federal dollars add to the impact SRFs can have in communities around the state.

The U.S. Environmental Protection Agency (EPA) allocates the funding through two separate SRFs – the Clean Water SRF (created in 1987 through the Clean Water Act) and the Drinking Water SRF (created in 1997 through the Safe Drinking Water Act). They are federal-state partnerships whereby states match federal capitalization grants and hold the responsibility of managing and administering their respective SRFs. Wisconsin’s loan program, the Environmental Improvement Fund (EIF) is managed and administered jointly by the Environmental Loans Section of the Department of Natural Resources (DNR) and the Department of Administration’s (DOA) Capital Finance Office. The two Wisconsin SRFs are the Safe Drinking Water Loan Program (SDWLP) and the Clean Water Funding Program (CWFP).

As an annual federal requirement, states prepare Intended Use Plans (IUP) for their SRF programs. The IUP accounts for usage of the funds during that fiscal year and are subject to public comment and review.²⁸ Because SRFs are a mix of federal funds, state match, loan repayments, and in Wisconsin’s case (because it’s a leveraged program), revenue bond proceeds, states have

Table 1: The DNR table above shows the DBE requirements depending on a CWFP/SDWLP project’s status as federal equivalency and cost threshold. Source: Wisconsin DNR’s Contract Packet for Disadvantaged Business Enterprise Compliance.

what is called “federal equivalency” to differentiate which projects receive the federal funding portion and are therefore required to meet the additional federal requirements.²⁹ States must designate equivalency projects, as the name suggests, totaling an amount equal to each year’s federal capitalization grants. As of 2024, Wisconsin’s equivalency criteria are population based, i.e., less than or equal to 15,000 for SDWLP and 20,000 for CWFP. The exception is for all Emerging Contaminants and Lead Service Line projects receiving BIL/IIJA funding whereby all projects must meet federal requirements regardless of population size.

EPA adopted a Disadvantaged Business Enterprise (DBE) rule that’s been in effect since 2008. The rule applies to all CWFP and SDWLP projects in Wisconsin, but with some slight differences depending on whether it is a federal equivalency project and if costs are at or below \$250,000 (see Table 1).³⁰ Wisconsin DNR’s document, Contract Packet for Disadvantaged Business Enterprise Compliance, provides the full details for all requirements.³¹

DBE compliance at both the federal and state level rely on what are referred to as “Good Faith Efforts.” Recipients of Wisconsin’s CWFP and SDWLP must follow, at a minimum, the “Six Good Faith Efforts” which are the following.

1. Include qualified DBEs on solicitation lists.
2. Assure that potential DBEs are solicited whenever they are potential sources.
3. Divide scope of work (total requirements), when economically feasible, into smaller tasks or quantities to permit maximum participation of DBEs.
4. Establish delivery schedules (for projects where the requirements of the work allow) that will encourage participation by DBEs.
5. Use the services and assistance of the following, as appropriate:
 - a. Small Business Administration
 - b. Minority Business Development Agency
 - c. U.S. Department of Commerce
 - d. See list of Unified Certification Programs (UCPs) in Wisconsin and bordering states that certify DBEs and provide similar services and assistance.
6. If the prime contractor awards contracts/ procurements, require the prime contractor to take the affirmative steps 1-5 above.

Municipalities and prime contractors must provide documentation as proof of doing at least one of the three specific solicitation requirements required by the state, which are: (1) including language in bid advertisements that encourages DBEs to submit bid proposals; (2) contacting DBEs on a UCP list; and (3) utilizing DBEs registered with the UCP.³² Every U.S. state has a Unified Certification Program (UCP) that certifies businesses as disadvantaged under the same requirements as the EPA DBE requirements. The UCP directory of businesses in Wisconsin and neighboring states serve as the primary sources of certified DBEs that meet EPA requirements. In addition to firms certified by state DOT UCPs, EPA also recognizes DBEs certified by the Small Business Administration’s Section 8(a) Program as well as any independent private organizations that

have authorization from EPA to certify DBEs.³³ It is important to note that, technically, more DBEs may, and likely do, exist since the generated lists only include businesses that are currently certified.

In a scenario where both the municipality and prime contractor do not meet the state’s DBE solicitation requirements, 8% of the construction costs in the project budget become ineligible for SDWLP funding, and for CWFP, the funding reverts to the market interest rate. If a municipality fails to meet the solicitation requirements, but the contractor complies, 1% of the construction costs in the budget will be ineligible for SDWLP funding and are only eligible at the market interest rate in the CWFP. In cases where the municipality meets compliance, but the contractor does not, 7% of the construction costs become ineligible for SDWLP and returns to market interest rate in the CWFP.

Every three years, Wisconsin DNR negotiates with EPA to establish an agency-wide “fair share” objective for DBE utilization, which is based on the capacity and availability of certified minority-owned business enterprises (MBEs) and women-owned business enterprises (WBEs) in the relevant geographic market.³⁴ The objectives are goals, not quotas, and the Wisconsin DNR rarely meets them.³⁵ The policy applies to all contracts, subcontractors, and procurements for supplies, construction, equipment, and services under EPA grants and loans. Municipalities must report their DBE utilization data to DNR at the end of their project and DNR reports their utilization of DBEs to EPA one to two times per year.³⁶

With very few exceptions, state law in Wisconsin requires that municipalities award “public construction” contracts estimated above \$25,000 to the lowest responsible bidder.³⁷ The competitive (low) bidding policy aims to protect public money by minimizing project costs, and to prevent corruption, inefficiency, and mismanagement by government officials.

There is an understandable logic to the cost minimization approach. However, there are arguable drawbacks to the low bid policy. Quality of work is one possible concern whereby contractors may choose to cut corners by reducing standards and performance.

They may opt for poorer quality materials and/or neglect safety measures to cut costs with the aim of increasing their chances of winning projects.

Low-bid mandates also leave little room for innovations that may create longer-term benefits, the loss of which sacrifices the overall quality, value, and durability of a project's deliverables. The low bid policy, in many cases, also provides an economy of scale advantage to larger firms that effectively locks out small and mid-size businesses. Few companies, for example, can competitively bid on multi-million-dollar projects. Despite well-laid arguments that distinguish price and value, government statutes requiring competitive awards to the "lowest responsible bidder" are an enduring concept in government contracting across the country.

City of Milwaukee Procurement and Contracting

The City of Milwaukee maintains a race/gender-neutral process for procurement and contracting. Milwaukee, however, does have other programs intended to eliminate potential barriers businesses may face, such as the Small Business Enterprise (SBE) program with a broad set of certification criteria that the Office of Equity and Inclusion (OEI) administers.³⁸ They also have the Local Business Enterprise (LBE) contracting program that gives preference to local businesses but, notably, does not apply to public works contracts.³⁹ Additionally, OEI oversees the Residents Preference Program (RPP) intended to help underemployed and unemployed residents access employment opportunities with contractors and developers on projects financed with public money.

Milwaukee's Purchasing Division administers the procurement process for all city departments except for any construction and infrastructure-related projects, which are largely handled by the Department of Public Works and at times, the Department of Neighborhood Services. The Purchasing Division handles a wide range of goods and services from paper and pens to city vehicles, and, as a water-related example, the chemicals needed for the water treatment plant. All requisitions over \$5,000 go through the Purchasing Division. (See Appendix A for a high level overview of the city's process.)

The Purchasing Division also releases a five-year buying plan that provides a forecast of potential contracting opportunities with all city departments. The plan provides a brief description of the work, an estimate of the specific quarter in which the contract is expected, the estimated term or length of the contract, and a contact name within that department with their email address. The buying plan also specifies the contract type, including whether it is a professional service, non-professional service, commodity, or a contract or purchase order that is less than \$5,000. The plan is continually revised as departments have more information.⁴⁰

City departments are required to include SBE participation requirements in solicitations when they are funded with tax-levy-supported operating funds. A city ordinance requires that certified SBEs be utilized for 25% of the total dollars annually expended through prime contracts or subcontracts for construction and the purchase of goods and services; and 18% for the purchase of professional services. OEI assists departments with finding SBEs. However, when necessary, OEI recommends adjustments to SBE participation rates when the known number of certified businesses that provide a particular good or service is low or nonexistent.

DPW's Bid and Contract Administration oversees bidding opportunities and administers DPW contracts related to facilities maintenance, street and sidewalk paving, sewer construction, water service work (for Milwaukee Water Works), and the Operations Division.⁴¹ As mentioned above, state law requires that awards go to the lowest responsible bidder for public construction projects, though they must still meet SBE utilization requirements. In scenarios where a prime contractor cannot meet the SBE or other requirements, the DPW Commissioner has discretion on how to handle those instances on a case by case basis.

When the project type isn't restricted to the lowest bid, i.e., not public construction, DPW can issue a request for proposal (RFP) for a particular scope of services. An RFP will include specific requirements but carries flexibility in how DPW can select awardees based on a set of valued criteria

CITY OF MILWAUKEE SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

SBE Requirements:

1. The business shall be a U.S.-based business which is independently owned, operated and controlled and is not dominant in its field of operation, or an affiliate or subsidiary of a business dominant in its field of operation.
2. The business shall meet the size standards of the United States Small Business Administration (SBA).
3. The business shall have demonstrated capacity to perform independently or as a subcontractor relative to its field of operation.
4. The business shall not be owned, operated and controlled by individuals or groups of individuals, who own, operate and control a large business involved in the same category of work as the business for which SBE certification status is sought.
5. The business shall be operational for at least one year prior to certification.
6. The owner shall control the day-to-day critical operations of the firm.
7. The owner or owners shall be citizens or permanent, legal residents of the United States.

In addition, detailed below are specific certification requirements that assist in determining SBE certification eligibility:

The business shall be at least 51% owned, operated and controlled by one or more persons who are at an economic disadvantage and who is experiencing substantial difficulty in achieving business-related success as a result of at least 3 of the following:

1. At a disadvantage with respect to business location. (To determine whether your business location meets this criterion, enter your business address on My Milwaukee Home and click on the "Special Interest" tab. Scroll to the bottom of the page to determine whether your business is in a Renewal Community.)
2. At a disadvantage with respect to education.
3. At a disadvantage with respect to employment.
4. At a social disadvantage.

Categories of disadvantages include economic, business location, education, employment, and social. Definitions for each category are available on the city's website.

listed in the RFP that go beyond the bid's dollar amount.⁴² For contracts that go out for bid, the city holds pre-bid meetings, announced through its eNotify system and the Daily Reporter, for potential bidders to learn more about the project and its requirements.

Milwaukee's Residents Preference Program (RPP) was established in 1991 and, at the time, required that at least 14% of the hours worked on DPW contracts were to be worked by RPP-certified workers. In 1997, that number increased to 25% and again in 2009 to 40%. In 2009, the program also opened to residents living anywhere in the city. And in 2016, the city created the Workforce Organizational Reform Committee (WORC) that introduced additional revisions to Milwaukee's RPP,

including that 25% of all RPP must be attributable to residents living in Special Impact Area (SIA) zip codes, which have higher poverty rates. Updates to the city's RPP ordinance also implemented apprentice requirements based on the amount of the contract award. Those requirements state that for contracts between \$100,000 and \$499,000, the number of apprentices employed must align with the maximum ratio of apprentices to journey person as established by the Wisconsin Department of Workforce Development. For contracts over \$500,000, RPP participants must account for 25% of all apprentice labor hours, 40% of which must live in SIA zip codes.⁴³ Two external agencies, W RTP/BIG STEP and Mindful Staffing Solutions LLC, currently certify workers for RPP.⁴⁴

A 2016 policy study on RPP and targeted hiring programs by the Milwaukee-based Public Policy Forum helped inform needed revisions to the program.⁴⁵ A key finding from successful programs around the country was that targeted hiring programs that have hiring requirements or goals are more effective than those that do not. The SIA zip codes approach, for example, allowed RPP to target the city's most distressed communities while remaining race and gender neutral to avoid legal challenges. The study also points out that better results are achieved when targeted hiring programs work in concert with other parts of the workforce development system. Compliance and continued evaluation that respond to the dynamics of workforce and industry needs as well as how well different elements translate through implementation are also key components to creating and sustaining an effective program.

OEI is responsible for the oversight and monitoring of the RPP. A city ordinance requires an audit of RPP for Development Agreements every three years. In July 2023, the city's comptroller completed an audit for projects completed over a three-year period (2019–2021). The audit was “unable to determine the compliance of developers, contractors, and subcontractors because information in the development agreement tracking system, LCP tracker, was unreliable.”⁴⁶ The report also found no process in place to track and monitor apprenticeship and on-the-job training requirements. With no reliable data, the effective implementation of, and therefore, the intended outcomes of the RPP, are in question.

A few months later, in November 2023, the city comptroller also completed an audit of RPP for DPW contracts that covered the three-year period from 2020 to 2022. The audit found that DPW has “adequate internal controls to comply with RPP requirements...and certifying qualified RPP workers.”⁴⁷ The audit also determined that DPW monitored progress throughout contracts and communicated with contractors when they failed to meet requirements. The primary shortcoming uncovered by the audit included the lack of a formal documentation process to verify whether DPW's contractors and subcontractors used a

local workforce development agency as a first source option for recruiting applicants. The audit also pointed out that DPW's annual reports did not differentiate between construction and non-construction contracts, which is required by a city ordinance (MCO 309-41).

Metropolitan Milwaukee Sewerage District Procurement

MMSD is a regional government agency charged with serving over 1 million people in the Greater Milwaukee Area with water reclamation and flood management services. MMSD's contracting authority, their Procurement and Supplier Development Office, awarded around \$280 million to external businesses in 2024. Around \$65 million, or 24 percent, of that was awarded to Small/Veteran/Women/Minority Business Enterprises (SWMBEs).

MMSD has an annual SWMBE participation goal of 20 percent. Unlike the city, which only recognizes SBEs certified by the city, MMSD accepts many third-party SWMBE certifications and administers their own SBE certification program.⁴⁸ MMSD includes the 20 percent SWMBE participation goal with all projects that go out for bid (or proposal) on all construction and professional services contracts. As a policy, the minimum SWMBE involvement goals break down as follows: 13 percent for MBEs, two percent for WBEs, and two percent for SBE and/or Veteran/Disabled Veteran business enterprises. According to the policy, MMSD's executive director maintains the authority to adjust participation goals upward on a contract-by-contract basis prior to bid. Bids and proposals that meet or exceed the goals receive preference over others if all else is equal.⁴⁹

MMSD's procurement thresholds change at the \$20,000 level. For awards under \$20,000, the procurement method is a request for quotes. For awards \$20,000 and over, MMSD issues a request for bid for construction, commodities and general services, and a request for proposals for professional services. Bidders and proposers must follow good faith efforts to demonstrate the quality of their attempts to secure the participation of SWMBEs. They require documentation of those efforts through submission of federal forms.

For construction projects, MMSD provides a pre-bid recording that explains project details and requirements and is made available on their software platform (B2Gnow). They also present the same information during live virtual meetings and conduct in-person site visits so potential bidders can learn more about the project site and ask questions in real time about the project. Those live interactions also present opportunities for vendors to share contact information with one another and carry the potential for prime and subcontractor relationships to form.

All businesses register as a vendor through MMSD's B2Gnow platform. Vendors input the categories of work they are interested in potentially bidding. They also register as a certified SWMBE, if applicable. The platform sends notifications out to registered businesses when opportunities match their interests and expertise. MMSD also releases upcoming contracting opportunities and the expected quarter they will be advertised. The platform also generates a SWMBE list for prime contractors to search for potential subcontractors while conducting their good faith efforts.

MMSD has a Business Capacity Development Program (BCDP) aimed at helping SWMBEs to better compete and participate in MMSD projects. The program offers a variety of training, seminars, mentoring services, and networking events. They also have workforce development opportunities such as internships, pre-apprentice training, and youth programs to build interest in water-related jobs. Construction bids also typically have local workforce requirements. Local workers reportedly perform 50 percent of the labor on MMSD construction projects annually. MMSD's local workforce and apprentice requirements are similar to the city's RPP, but extend to their entire service area.

D. Bonding and Insurance

Public works projects come with bonding and insurance requirements because they provide an important safety net for governments and taxpayer money. If a contractor fails to finish a project, to meet quality standards, or they never pay subcontractors, for example, a surety (third-

party financial institution) is obligated to cover the costs associated with those issues. Despite the importance of that safety net, it unfortunately acts as a significant barrier since the requirements for obtaining bonding and insurance coverage are often out of reach for smaller, under-capitalized businesses. Undercapitalization refers to when a business doesn't have enough capital (money) to cover its day-to-day operations, pay debts, or invest in growth.

Bonding requirements vary depending on the work and other details associated with a contract. For contractors, there are generally four types of bonds they will encounter. One is a license and permit bond, which is a relatively small bond (often \$5,000 to \$10,000) filed with a municipality that guarantees a contractor complies with all applicable rules and regulations. The second type is a bid bond (or bid security), which anyone bidding to a public works entity will need to provide. Bid bonds are typically five to ten percent of the bid amount. They serve as a prequalification tool to ensure that, if selected as the low bidder, the contractor can and will honor the bid and enter into the contract. If not, the contractor and/or bonding company would be required to pay the defined (usually five or ten) percent of the value of the contract.

A payment bond and a performance bond are the two other bond types often required of contractors upon winning public contracts. Payment and performance bonds are both based on the total contract amount. Performance bonds protect the project owner (i.e., the municipality or other entity) by ensuring the contractor completes the project according to the terms and specifications of the contract. Payment bonds guarantee payment on anything related to the project. They protect the subcontractors and suppliers by ensuring they are paid for their services and materials and indirectly protect the owner from mechanic's liens and disputes.⁵⁰

The Miller Act, enacted in 1935, requires payment and performance bonds on federal projects over \$100,000. States developed what many refer to as "Little Miller Acts" that work similarly but carry unique specifics and vary on the threshold

at which they require the bonds. The Little Miller Act is codified in Chapter 779 of the Wisconsin Statutes. On contracts with the state, the two bonds are required for contracts above \$148,000. Local Wisconsin governments may not require a bond on contracts below \$74,000 (at the time of writing this document).⁵¹

Bonding is not an insurance product. It is unsecured credit, meaning it requires no collateral and, instead, relies on an assessment of a contractor's creditworthiness. If a contractor defaults, bonding companies do not have first rights to assets that may help recover any losses, so there is significant underwriting to evaluate contractors. Underwriters look for a proven track record in business and whether there is enough liquidity to indemnify the surety.

New or small contractors with little to no business track record or liquid assets typically need to go into some kind of entry-level or express bond program that's based almost solely on one's personal credit score. Many express bond programs cover \$500,000, while some may go as high as \$750,000. Express bond rates are higher because of the risk, but rates vary depending on the contractor's credit score and terms of the contract, which are usually small projects with a short timeline.

To move beyond the express bond program, contractors must eventually produce annual CPA-reviewed financial statements. A CPA statement provides the bonding company with more confidence in the financial information and good numbers can generate lower bond rates and better program sizes. Bonding companies commonly look at a contractor's debt to equity ratio on their balance sheets. Three to one debt to equity is generally the maximum limit. In other words, they don't want the bank or debtors to own three times more than the owner. A contractor's working capital, i.e., their current assets minus current liabilities on the balance sheet, is another major consideration of bonding companies whereby they typically want to see at least ten percent. Every contractor's financial situation will look a little different. Actuarial data helps determine how a bonding company extends, or doesn't extend, a program to a contractor.

Insurance is another safety net for all parties involved on a project. Insurance is undoubtedly important but is another major expense for contractors and a requirement on all public projects (and most private projects). The City of Milwaukee's DPW, for example, requires bidders carry and maintain general liability of \$1 million, worker's compensation of \$500,000, automobile liability of \$1 million, and umbrella liability of \$5 million. Minimum amounts are generally standard across public agencies, and specific contract requirements may include higher amounts or additional types of insurance. Insurance agents don't generally sell insurance in amounts lower than industry standards since they face potential litigation for any negligence, errors or omissions, which, as a risk in their business, is a type of insurance they must carry.

E. Workforce Development Programs and Resources for Contractors

Operating a contracting business and navigating the public (and private) market comes with many challenges. Contractors often seek help from mentors, programs and organizations that provide various resources and support to start and grow their businesses, and to gain knowledge in particular areas. Workforce development programs, where many start their career, is also an important source of training and support. Foundational skills and knowledge along with building a professional network are key components to advancing one's career over time, including entrepreneurship.

A University of Wisconsin-Milwaukee study provides employment data from available sources in the water sector and found that minorities and women are under-represented in most water-related occupations. In a majority-minority city, the study found that minorities represent only 27% of employees working at the city's three utilities – Milwaukee Water Works, MMSD and Veolia. Among the trades, plumbing achieved the greatest gains in diversity in water-related apprenticeships, but largely due to the increasing share of Latinos in the trade.⁵² Of course, the number of apprenticeships doesn't speak to the length of individuals'

careers, whether they advanced, or were able to eventually start their own business. Workforce development is critical in opening opportunities to underrepresented groups in the water sector. It could also play a part in ensuring that newcomers' experience in the field allows for them to thrive and advance.

Workforce Development

The skilled trades such as construction, plumbing, and pipefitting are one pathway into the water sector. Those entering the trades often enroll in a trade school or community/technical college.⁵³ They receive classroom instruction and hands-on training to prepare them for entry-level jobs in the field. Through job fairs and other career resource programs, and by word-of-mouth and social connections, trained workers seek employment as a union-registered apprentice where they continue to learn alongside other more experienced and skilled tradespeople.⁵⁴ In that model, a committed apprentice who puts in the time and receives effective mentorship has the potential to reach the level of journeyman, and possibly the level of master further in their career. When reaching the journeyman stage, one is considered a competent practitioner and can start their own business in the trade with the appropriate licensure through the state.⁵⁵

With a worker shortage in the trades, there is increased focus on outreach and recruitment among unions, municipalities, and other organizations. There are currently nine pre-apprenticeship programs certified (by the Wisconsin Department of Workforce Development) that allow high school students and adults to gain skills for entry level positions.⁵⁶ Some outreach programs also focus on justice-involved individuals to generate interest, with some including testing for apprenticeship programs when they are three to six months within release.

The City of Milwaukee took proactive measures to ensure it attracts and retains new workers amid a growing shortage. Milwaukee's vacancy rate for field positions within DPW was as high as 40% at one point.⁵⁷ They increased compensation for utility positions, eliminated the experience

requirement, and created a hands-on training program. DPW also created youth apprentice positions and partnered with the School-to-Work Transition Program through Milwaukee Public Schools.⁵⁸ Additionally in April 2024, the EPA, with support from the Department of Transportation, designated Milwaukee as a "Workforce Hub" to assist the city with developing the number of skilled workers they need to replace lead pipes and to continue investing in clean water infrastructure.⁵⁹

The Workforce Innovation and Opportunity Act (WIOA), signed into federal law in 2014, requires that each state designate Workforce Development Areas (WDAs). WIOA is designed to help those with significant barriers to employment into high-quality jobs and careers and to help connect employers to skilled workers. Employ Milwaukee is the state-certified Workforce Development Board for Milwaukee County, or WDA 2, which is one of eleven designated areas in the state. They have two four-year plans – a local plan that addresses WDA 2 and a shared regional plan developed by WDAs 1, 2, and 3.⁶⁰ They work with a wide range of partners to train and connect workers with the needs of regional employers. Employ Milwaukee convenes and collaborates with a "Coordinating Council" representing the labor supply side, which consists primarily of organizations that provide workforce development and related services and funding. And on the other side, they work with "Industry Advisory Boards" representing various sectors on the labor demand side.⁶¹

Employ Milwaukee offers many programs for both adults and youth. They also provide reentry employment services to justice-involved individuals, pre- and post-release. "Earn and Learn" is their flagship program that provides work experience and career exposure to youth aged 14 to 24. In partnership with MWW, they work on the MWW Community Project that offers four different tracks aimed at filling current and future job vacancies at MWW. The four tracks include: (1) youth internships and apprenticeships; (2) occupational skills training and/or paid work experience; (3) incumbent worker upskilling; and

(4) post-secondary education with internship. Eligibility requirements include that individuals must be unemployed, underemployed, or incumbent workers with a high school diploma or equivalent.

The organization, WRTP/BIG STEP, which operates in Milwaukee and across the state, acts as a workforce intermediary.⁶² They create partnerships with employers, unions, participant workers, and community-based organizations. Their programs include training courses and pre-apprenticeships, as well as other supportive services including high school equivalency degree programs, childcare assistance, transportation, tools and work boots. WRTP/BIG STEP works with the unions and employers to funnel workers to industrial sectors where there is growing demand. WRTP/BIG STEP also has staff dedicated to certifying workers for the City of Milwaukee Residency Preference Program (RPP) as well as for other certifications workers may need on a given project.

WRTP/BIG STEP does often assist with fulfilling diversity requirements on projects. They are often written into project labor agreements or community benefits plans for projects receiving public funds. They have served as the community benefits plan provider on federally funded projects. In that role, they assist owners and managers of projects with meeting the various needs and requirements of the project. For example, if a utility were looking to meet their goals for solicitation of small, women, or minority owned businesses, on a specialized project, WRTP may help put together an updated list of certified SWMBE businesses. They may organize and invite DBE businesses to an orientation session with the project owner to introduce them to the project and provide insights into what they're seeking with bids. They may organize a job fair to recruit more local workers. The most successful project examples occur when there is a strategy session at the front end of the project so there is ample time to conduct the outreach, collect the data, play matchmaker, or whatever else may be needed to meet, or possibly exceed, the requirements. Some projects also include monitors from companies such as Prism

and Cross Management that track the data needed to demonstrate compliance among the various businesses involved.

Contractor Resources

Workforce development programs are much more abundant than those directed specifically toward aspiring or newer business owners. Contractor support services that offer general information on how to run a business are more common than tailored approaches. Public agencies generally offer some level of assistance in understanding how to bid using their systems. However, help with navigating and understanding public procurement and contracting through the unique lens of one's own business is more difficult to find. Organized networking events are another resource that can help contractors gain insights and connect to more business. Some contractors are fortunate to find good mentors. Access to capital to expand business opportunities is also an important resource for both new and seasoned contractors, which is often provided to minority businesses by Community Development Financial Institutions (CDFIs).

MMSD's BCDP focuses on building the capacity and capabilities of SWMBEs, primarily to those who are new to doing business with MMSD. The program offers training seminars, online training curriculum, one-on-one business mentoring, and networking events. Much of the curriculum focuses on the administrative, or "back office," work associated with running a business. Former or current SWMBE owners sometimes lead seminars. Other topics include estimating scopes of work and project management. Some instructors are more focused on engineering and the unique challenges of an MMSD design project. MMSD also offers networking opportunities as an attempt to connect new contractors to those that have more experience working with MMSD. Primes and subcontractors have the potential to meet and form relationships at those events.

While the city does organize workforce recruitment and development programs, they do not offer any significant contractor support beyond providing information about how to do business with the city. The city's website serves as the primary source

of information. Unions are also focused on the growing shortage of workers. Union representatives may informally connect inquiring business owners with information, people and organizations that may help new contractors, but that does not appear to be a current priority.

CDFIs offer, in many cases, more personalized assistance, and, of course, much needed financial help for businesses. CDFIs operate to expand economic opportunity in low-income areas, so they are willing to work with individuals who don't have access to a traditional bank's financial products and services. CDFIs often work with small business owners that don't have the collateral to qualify for a traditional bank loan or perhaps have a less-than-ideal credit score. CDFIs are based in the communities they serve, so the assistance they offer is more relationship-based versus merely transactional. They hold the capacity to get to know the person and their business, and to check in along the way and help owners grow their business at every step.

2. Findings and Analysis from Interviews

A. Who We Talked to

The preceding section provides an overview of the procurement and contracting systems at the state and local levels as they pertain to Milwaukee's water sector that includes documented policies and procedures that guide each authority and largely consolidates information that is available through their respective official channels. Also included is some general information on bonding and insurance which affects all contractors, as well as types of support available to them. The following section combines that background with the unique local knowledge of various individuals who have a professional link to and personal experience with public procurement and contracting.

CNT worked with MWC to develop a list of interviewees that represent a diversity of experiences and areas of expertise among local stakeholders. Interviewees included small and minority business owners, government and utilities staff, advocates, and workforce development professionals. This study makes no claim to include the full range of potential perspectives and experiences. The contributing voices, no less, offer different viewpoints into the world of procurement and contracting in the Milwaukee region and highlight important areas of concern, emerging themes, and other key insights.

B. What We Heard

The following provides some of the themes and commonalities between statements and ideas expressed by interviewees.

Project scaling and phasing

- **Requirements should match the scale of a project**
The lack of administrative infrastructure, or back-office support, is a huge challenge for many new and small businesses. Small business owners must do it all. That means they perform the work of the project, whether that be landscaping, plumbing, lead service line replacements, or some other water-related labor; they hire other

crew members; do all the bookkeeping, etc.; and they must, at the same time, continue to line up and secure other revenue-generating work. The need to do it all, of course, comes with the territory of starting and operating a small business. However, the amount of time and effort needed to complete paperwork for a bid, to secure the levels of bonding and insurance required, and to maintain all the documentation and compliance reporting associated with public sector work is often not in balance with the contract award amount. Those are considerations small business owners must weigh in terms of time management and their ability to support the overhead involved with the potential risk and reward of pursuing a contract. That consideration is coupled with navigating requirement differences across city departments and other public entities, not to mention the variation between individual contracts.

- **A range of bid package sizes can help more businesses**

Not all projects allow for smaller-scale bids, but those that do can help develop more businesses. Companies don't start off bidding on six and seven-figure dollar-amount projects. \$10,000 may even be too much when starting out. Contractors struggle to find a pathway for manageable business growth and development. As an example, city contracts under \$5,000 don't carry the same administrative requirements and offer small businesses bite-size opportunities to acquire public sector work. Lead service line contracts with a more manageable number of replacements in a defined geography might increase the chances of smaller firms to participate, but that assumes they can scale other aspects of their business, particularly the necessary equipment. Scaling a business takes time and maintaining stability at each stage of growth is important. Fluctuations can have significant impacts on workforce and business capital. Having the ability to create a plan for growth and keep experienced staff is vital to success. Also, some businesses prefer not to grow beyond a certain size.

- **Bonding is easier in smaller increments**

The only bonding option for newer businesses is an express bond program. Notably, the underwriting for express bond programs is based solely on the owner's personal credit score which can present significant challenges and pose a barrier of entry for many people. If one can gain access to an entry-level bonding program, it will typically extend them bonding around \$500,000. Multiple smaller projects (or phases of a larger project) have a greater chance of getting bonded than a single larger one. Bonding companies look at bonded backlog, which refers to how much money a business has left on a contract and therefore how much bonding exposure remains. So, when a contractor is close to finishing one project, they could then more easily acquire bonding for the next phase of (or a new) project.

- **Enabling nonprofits to certify as SBE**

Smaller projects and phasing may also help workforce development nonprofits. Milwaukee's SBE certification is not available to nonprofit organizations, which may be a missed opportunity. Some nonprofits focus on workforce development in vulnerable communities and offer opportunities for training and on-the-job experience. They need contract work to generate those experiences. The SBE certification could help them gain contracts where SBE is required. Finding more ways to support organizations that provide entryways to work opportunities in target communities is important.

Pass-throughs and the limitations of participation rates

- **Pass-through and front company fraud**

Minority contractors reported, in both the city's recent disparity study and this study, the use of pass-through and front companies in the industry. The pass-through company scheme can operate in different ways, but, in general, a legitimate SWMBE acts as an intermediary, passing most, or all, of the work on to a non-SWMBE firm while invoicing the general contractor for the non-SWMBE's work. That pass-through owner will typically get a percentage fee. In one example given, prime contractors simply

put people on a willing SWMBE's payroll, and they perform the work. The SWMBE in this business arrangement serves as the 25% participation goal on the project even though it did nothing to change who worked on the project nor did it help develop another SWMBE that is genuinely working to grow their business.

- **Participation goals are not business development**

Participation goals can and do serve to get more minority workers on job sites. However, they typically don't help SWMBE contractors grow and develop their businesses in a meaningful way. On large projects, prime contractors will generally subcontract to those they have established relationships with and pass the burden of achieving participation goals on to them. In other words, primes don't seek a SWMBE to manage all the work associated with a particular trade or specialty on a project. Instead, the subcontracted firm will further subcontract 25% of their work to a SWMBE to meet the participation goal, which, as noted above, may sometimes be a pass-through company. While participation goals do help SWMBEs get work, the participation goal can keep their involvement on projects to the established minimum. Gatekeeping within the industry limits access to higher-dollar contracts and the higher-level relationships that come with them that are vital to business development as well as exposure to new work experience. Noteworthy here is that MMSD policy guards against this practice stating that, "unless specified otherwise in the contract, second tier subcontractors will not be counted towards SWMBE participation."⁶³

Pros and cons of the City of Milwaukee Residents Preference Program (RPP)

- **RPP forms relationships and helps small businesses get their foot in the door**

Larger, more established firms would likely keep most business to themselves, but RPP requirements force them to share it, which helps forge new relationships. Businesses, particularly ones based in target communities that hire a high number of RPP-certified workers, can

attract prime contractors looking to fulfill RPP requirements. In that way, there are ways in which RPP opens doors and helps form positive business relationships. Establishing good relationships with other businesses is a vital component to SWMBE development because it leads to other work in both the public and private sectors.

- **Apprenticeships for RPP participants often don't progress**

There are DPW requirements for the number of RPP-certified apprentices depending on the contract.⁶⁴ An apprentice gains experience through on-the-job training and classroom instruction to build their careers. That said, many Black and other minority apprentices gain employment on City of Milwaukee projects through RPP, because of requirements for contractors to employ RPP workers. However, most don't advance past the apprentice stage. Apprentices on RPP jobs often don't get the on-the-job experience and training they should because they get stuck doing lower-skilled, general labor jobs.⁶⁵ Since there are subsidies for RPP labor, RPP-certified apprentices often only get placed on jobs with RPP requirements. Consistent work that builds knowledge and experience during an apprenticeship is the only way one can reach journeyman status. A journeyman is the level one must reach to start their own business in the skilled trades.⁶⁶

- **View of RPP workers as undeserving**

Many contractors view RPP as another burdensome administrative requirement, so it stokes resentment. Social-political attitudes that characterize RPP as a problematic welfare system view those workers as undeserving. Those kinds of attitudes create a self-fulfilling environment that stifles the spirit of RPP and its intentions of creating industry relationships and sustainable pathways to quality careers.

Prime and subcontractor dynamics

- **Knowledge exchange and mentoring**

Working with larger firms is an important learning opportunity for small businesses. It presents chances to learn more about the bidding process, to observe how they approach

work on job sites, and other valuable information that comes from experience and access to resources. Formalized mentorship is not always available but creating interactions between large and small businesses is important in fostering knowledge exchanges that can help smaller businesses grow and develop.

- **Subcontracting out what they don't want**
Prime contractors will often subcontract the least desirable parts of a contract's work. In some cases, the subcontracted work package may pose difficulties for a smaller business to achieve a profit. As an example, geographically scattered sites may create logistical problems for a company with relatively few vehicles; or the travel times to more distant sites consume more labor hours. Primes also sometimes subcontract for project sites with known problems that pose higher risks to equipment or necessitate a smaller firm to buy or rent additional equipment.
- **SBEs don't get hired to do core work**
Prime contractors don't generally hire small businesses to do the core work on a project. On a lead service line project, for example, they hire them to do support work, often the least-skilled, least-paying types of work like pavement restoration, trucking, or traffic control. Notably, for sewer and water projects, it doesn't generally make sense to have a different firm come in to install one length of pipe, for example. There are limitations to how some projects can be divided. On lead service line projects, however, where projects are clearly divided by individual properties, there's more opportunity to provide bid packages for SBEs. As it stands, the city doesn't have a policy lever that requires prime contractors to use a subcontractor for the core work on a project.
- **Timely payment to subcontractors**
Working capital is everything as a business, so expedited payments to SBE subcontractors are critical. City policy states all invoices should be paid within 30 days and subcontractors should be paid 7 days from the prime's payment. MMSD tracks compliance, including the promptness of payments to subcontractors, via its vendor management

system. Contractors reported that wait times are often long and can affect their ability to move forward with other bids and projects.

Compliance monitoring

- **City data collection and tracking are inadequate**
Both the most recent City of Milwaukee Disparity Study, and a recent audit of the city's RPP program name that data collection and real-time tracking to measure what's working or not on contracts are missing. Monitoring and outreach take resources city staff report they do not currently have in place. Without data, it is difficult to evaluate where changes may be needed, or whether city policies are being enforced.
- **Passive acceptance of fraud**
Reports from contractors and others in this study and the most recent disparity study strongly suggest the existence of pass-through and front companies that commit fraud and undermine the spirit and intent of procurement policies. Some alleged examples describe elaborate schemes that would require significant investigative resources to confirm. Other provided examples suggest a degree of passive acceptance in the industry such that "everyone knows what's going on, but no one does anything about it."
- **Strategic planning at the outset of projects is key**
Convening all stakeholders at the beginning of a project to discuss all the goals and needs, including SWMBE involvement, RPP, and other goals and requirements helps address challenges. On project labor agreements or community benefits plans for larger projects that receive public funding, organizations like WRTP-BIG STEP help project owners meet diversity requirements. And contracted monitors collect the data necessary to ensure businesses are meeting the goals as stated.

Hard to break into DPW contracts

- **Large firms dominate**
A small number of firms dominate elements of DPW work. For decades, the same primary core contractors have bid on water main installation

and sewer installation. A large firm that works in multiple states recently came to dominate lead service line replacements, but there is some, albeit limited, diversity in that area of work. DPW sees many overbids from firms. The margins of larger firms provide a huge advantage in what's possible for them to bid, and their experience informs them of the right price threshold. Many contractors struggle to meet the three bonds required, have difficulty finding the RPP and SBE required and meeting the apprenticeship requirements. They also lack the administrative infrastructure to fulfill documentation requirements.

Structural barriers and the shortcomings of workforce training

- **Seamless transition from training to jobs**
Workforce training doesn't always end with job placement. In addition, certification tests sometimes are not built into the process, so it can become a disjointed experience for prospective workers. Time between training and real income-earning jobs puts economically vulnerable people at more risk. Gaps in timing and coordination among the various stakeholders also cause mistrust, especially when program communications explicitly or implicitly promise immediate job placement.
- **Common workforce barriers**
Common barriers for the workforce include lack of pay during training, the need for childcare, driver's license remediation, and transportation, among others. People need support during training to meet their and their families' needs to concentrate on work. Much in the way that it is more standard practice nowadays for college students to get internships with pay, those entering the water workforce (and other sectors) need similar support. In what's too often viewed as a solely female issue, both men and women need childcare support. Many youths do not leave high school with a driver's license because drivers' education is no longer a part of public-school education. The cost of car ownership is ever higher, and public transportation routes are frequently insufficient to get to training and/or scattered job sites. Many of these structural problems combine to prevent many workers from participating.

Visibility of work and connection to jobs

- **Expanding outreach beyond word of mouth**
People typically find out about working in the trades, including the water sector, from somebody they know such as family, friends, and others they encounter through their established social networks. In that way, the demographics in the water sector (and others) became further entrenched over time. Despite existing efforts, there's a need for more outreach to increase opportunities among underrepresented groups. Word of mouth is a major tool that goes missing in many communities, so there's a need to develop different ways of reaching young people about opportunities in the water sector.
- **Seeing is believing**
Seeing others from your community conducting the broad range of water sector work is important. The visibility helps one understand the existence of that work, what it looks like up close, and the outcomes of that work. Visibility helps build interest and curiosity, and, in turn, confidence in pursuing that kind of employment. Seeing quality examples of work in other communities such as green infrastructure installations that are well-designed, well-built, and properly maintained, installations that may not exist in one's own community, helps people see what's possible. Demonstration projects in communities that provide education and visible examples of water work are missing in many communities. Providing more training and points of visible reference in the areas that need them is seen as a critical part of expanding opportunities. As an example, Employee Milwaukee's flagship program, Earn and Learn, allows youth to explore career opportunities and get paid. Additionally, small businesses sometimes utilize the program to supplement their need for employees while also exposing youth to their industry.⁶⁷

C. Key Takeaways

Some of the findings echo those of other studies conducted locally in Milwaukee and in other U.S. cities. Milwaukee's recent disparity study clearly demonstrates the underutilization of minority businesses and documents qualitative data akin to what minority contractors and other interviewees shared in this study. Numerous factors contribute to the disparity. However, underpinning much of it is the long history of racist policies and embedded cultural beliefs that the country continues to grapple with on many fronts. That history established disproportionate generational wealth and privilege that built and sustained business and labor connections to the public sector market, including those related to the water industry.

It's difficult to talk about procurement without workforce development since they are so closely linked. Increasing representation among business owners requires more representation at the workforce roots of the industry. Therefore, workforce development is a vital part of any sustainable strategy that works to address inequitable outcomes in procurement and contracting. The current shortage of workers, not only in the growing water sector, but across the trades, is a serious challenge the industry must address. The industry's need to meet that challenge presents strong opportunities for a diverse new generation of skilled workers. With additional focused outreach and assistance to aspiring entrepreneurs, a diverse new generation of business owners is also possible.

EXTREME INEQUITIES IN MILWAUKEE'S WATER SECTOR PERSIST

There's a clear need for more effective policies and practices that address the underutilization of minority businesses in Milwaukee's public procurement and contracting.

Many organizations have programs to build up and diversify the next generation of workers. However, many barriers still stand in the way of potential workers in vulnerable communities where economic development is paramount. Workforce development programs with paid training, affordable childcare, transportation, and other kinds of practical assistance provide broader access.

Economically vulnerable individuals and their families need viable options to transition to a new career path. The decision to pursue a career in the water (or another) sector hangs on the promise of employment at the other end after fulfilling the training requirements. Therefore, careful coordination between training programs and employers that enables immediate job placement is critical, especially for those coming from vulnerable communities.

The invisibility of many water sector jobs is another barrier of entry. The industry currently holds little diversity, so relying on existing social networks in a

city as staunchly segregated as Milwaukee won't be enough to create a wider, more inclusive pool of workers, let alone businesses. Youth programs, demonstration projects, and other interactive educational projects that introduce water-related careers in Milwaukee's low-income communities of color have strong outreach potential. Finding and exploring more ways to support organizations with ties to the community is an effective way to build relationships that support workforce goals. Organizations that have the trust of the community will have the local knowledge needed to attract

QUALITY WORKFORCE DEVELOPMENT

Workforce development that creates a seamless path from training to career is critical, especially for socially and economically vulnerable individuals. There's a need for more creative programs and activities that introduce and engage youth about opportunities in the water sector. Increasing access to career pathways as well as early career guidance on understanding entrepreneurship is foundational to building a more inclusive and representative workforce and growing pool of businesses.

and train workers. Seeing examples of work within the community performed by other members of the community is possibly one of the strongest recruiting tools available. It opens more opportunities for naturally forming social connections that pull newly interested people into the work. It also helps

throughs and front companies can be prosecutable acts of fraud. However, the existing power relations generate a culture of inaction, even to the extent that interviewees suggested in some cases other stakeholders have been aware of and shown passive support of pass-throughs. Given the lack

of monitoring and tracking resources, it is not surprising that various acts of fraud go undetected or persist amid the absence of data-backed evidence. However, since participation goals are often just that, “goals,” many find ways around them. There’s a need to think through how any new

CONTRACTOR SUPPORT SERVICES

Small and minority businesses need more and better resources that help them develop their businesses, including how to navigate public contracts. Tailored assistance that works to understand the unique challenges and opportunities of individual business works better than generalized information on how to bid on public contracts.

keep them in the field. As others with similar life experiences join, it helps foster a deeper sense of belonging and community.

Like workforce development, contractor support and development need more focused efforts. As an example, MMSD’s BCDP program is helpful, but there’s a need for better programs with more outreach and established connections to resources and capital. CDFIs already play an important role in business development. Low-interest business loans and tailored assistance to individual business owners are important resources offered by CDFIs. Their assistance focuses on the specifics of an individual’s business goals within the local and regional context of their industry. It differs from generalized business education or technical

assistance that can be difficult to translate and put into action through the prism of one’s own business. As trusted community-based organizations, CDFIs are often key organizations in Milwaukee’s current constellation of support for small and minority contractors.

One of the most concerning practices voiced in interviews was reports of how some of the larger contractors cheat the current policies and programs. To be clear, pass-

policy or program plays out on the ground, within the reality of how business decisions get made. Some mentioned introducing an incentivization program for prime contractors that achieve (or overachieve) participation goals and other efforts to develop SWMBE utilization and capacity on their projects.

Effective compliance monitoring and other data collection is frequently missing, particularly with the city. As the phrase goes, what gets measured gets managed. Policies, practices, and procedures, as well as individual contracts, need data and evidence to demonstrate their level of effectiveness and what kind of response may be needed to correct any issues. However, as the recent audit of the RPP and the disparity study both point out, the city needs

to put better resources in place and commit more staff capacity to implement the level of monitoring and other focused efforts required. Data systems that provide end-to-end monitoring through the lifespan of a contract could increase transparency and accountability. Notably, technology is only a tool and not a panacea. Therefore, it cannot fix other surrounding practices and systemic issues that require investment in people and culture.

DATA AND TRACKING

More and better data, including real time tracking with projects, is critical to determine the effectiveness of policies and programs. Data is needed to figure out what areas may need improvements, where area partners could help fill gaps, and when requirements are not fulfilled. Data is critical to keeping policies and programs responsive and relevant to unforeseen dynamics when put in practice.

Almost every interviewee mentioned the lack of back-office support as a huge hurdle for small contractors. Trying to understand everything in the procurement and contracting world gets complicated quickly. The difficulty in navigating the procedures, requirements, and other hoop-jumping one experiences in pursuit of public sector contracts is plain for most to see. Offering small business programs, but maintaining big business terms and conditions, is a mismatch. Anything public entities can do to limit the confusion and administrative burden would be a significant and welcome change. Documents could be simplified and written in a more accessible manner. Requirements, such as bonding and insurance that far exceed the size of a contract, need reconsideration and possible alternatives. Several interviewees mentioned exploring the potential of an entity that could offer administrative support for small contractors.

The water sector is broad. However, some water industry work is unique and/or highly specialized, which is also a significant barrier for new or smaller firms. The risks associated with some contract work, like treatment plants, can also be very high. The demands and high risks associated with those kinds of projects present real challenges for most contractors, so the available pool in those cases is very limited.

Breaking up large contracts into smaller ones or into phases of work, when possible, is a strategy that potentially allows smaller firms to bid on more projects. Unbundling contracts, however, isn't always possible due to the nature of some projects. Furthermore, dividing contracts can also create inefficiencies in project management and increase mobilization costs, and therefore lead to an inefficient use of public funds. A healthy

INNOVATIONS IN CONTRACTOR SUPPORT SERVICES

More creative and collaborative thinking could help find innovative new ways that support small minority businesses overcome the often-overwhelming confusion and burden of the public sector's administrative requirements.

industry expands opportunities for businesses of different sizes and promotes ways to develop their capacity. Businesses need a pathway for sustainable growth. A wider range of contract sizes could allow more accessible entry and manageable growth trajectories. Setting aside contracts under a specific dollar amount and allowing only SWMBE contractors to bid on them is one suggestion from the disparity study.

However, dividing up contracts isn't always possible or efficient. Therefore, another potential solution worthy of exploration is the idea of pooling sources of capital to underwrite larger projects. CDFIs could play a significant role in the feasibility and design of collateral pools. In short, collateral pools allow for a group of assets to back multiple loans. The pooling of resources can enhance liquidity and risk distribution

for the lender while also providing contractors with greater access to capital that could help with bidding requirements and other resources needed to be competitive on large public contracts.

Wisconsin's current state statutes restrict possibilities public entities could implement to eliminate barriers of entry for small and minority businesses. Strict adherence to selecting the "lowest responsible bidder" doesn't allow for the use of any other criteria when evaluating public works proposals. The threshold at which the city must select the lowest bidder is \$25,000. \$20,000 is the threshold for MMSD contracts. The last increase to the

threshold, from \$15,000 to \$25,000, happened nearly 20 years ago in 2006. Inflation in that time span alone puts the current threshold amount in question. The U.S. Bureau of Labor Statistics Consumer Price Index (CPI) Inflation Calculator estimates the buying power of \$25,000 in April 2006, when the last change was

INNOVATIONS IN ACCESS TO CAPITAL

Ideas on the forefront of innovative lending practices such as collateral pools need further exploration to expand opportunities for small and minority contractors that often lack the capital resources, including bonding and insurance, needed to bid on large public contracts in the water sector.

made, is now \$40,000.⁶⁸ Considering that a contract amount includes the cost of all materials, let alone the estimated labor costs, the number of projects that fall under the threshold is increasingly limited. Therefore, options such as a sheltered bidding process whereby a reserved set of contracts (under the threshold amount) could be set aside for a competitive bidding process open only to SWMBEs, are extremely limited or not possible at all.

The new disparity study clearly demonstrates the ineffectiveness of current programs and provides recommendations that the city reportedly plans to explore. It would take legislative approval from the Council to move toward any race-conscious policy or program changes. State law prevents public construction projects from preferential treatment on the basis of race, color, ancestry, national origin, or sexual orientation unless required to secure federal aid. Therefore, good faith efforts will continue to be an important tool. Aspirational goals within contracts could also be included with stricter requirements for documenting good faith efforts.

DEI, however, is a prime target for the current Trump administration, so many local governments may avoid the potential of any legal battles. New legal challenges are on the rise again following the 2023 Supreme Court decision on affirmative action. Many of those challenges have been successful and already forced changes to federal programs like DBE and the SBA's 8(a) business development program. Despite the legal landscape, there are still ways to address the inequities that continue. Milwaukee already operates with race-neutral policies and programs and despite ongoing challenges, many of them have solid foundations to build upon. Special Impact Areas (SIAs), for example, target specific zip codes in the city where multiple indicators of disadvantage are most present. The Residents Preference Program (RPP) delivers some positive results but desperately needs reliable data collection and compliance tracking to make adjustments that create better, more sustained career outcomes for its participants.

MMSD is a leader in developing procurement policies that help make a difference. Their Business Capacity Development (BCDP) program generates valuable resources for small and

minority contractors. BCDP also works to build up a more diverse water workforce through trainings, apprenticeships, and internships. And MMSD has an effective online monitoring system with streamlined communications regarding contract goals and participation. Efforts at MMSD are considered at the forefront of inclusive procurement.⁶⁹

Despite good intentions and laudable efforts, the disparities across the water sector unfortunately persist and there's a need to continue to refine and adapt. There is more explorative work ahead to break down barriers, finetune resources, explore new innovative ideas and partnerships, and address root causes that allow disparities to remain the status quo. There may always be bad actors, but their noncompliance must not go undetected and become the accepted norm.

Milwaukee is fortunate to have a great community of organizations committed to working on a variety of issues that lend themselves to tackling the challenges ahead. New unexplored partnerships and collaboration might help strengthen efforts around building up more contractor support services. Access to capital is a major barrier, so CDFIs should be at the table of collaborators in helping to address that challenge. Workforce development organizations, unions, and technical schools all remain critically important in building the pipeline of workers, but also in new ways that may help strengthen pathways for new entrepreneurs. Investments from the city and MMSD that contribute to these new ideas aimed at developing small minority businesses are needed. Expanding and strengthening the water sector is in those institutions' best interest, and in everyone's best interest as the needs to sustain water infrastructure are only projected to grow.

3. A Look Around the Country

A. Introduction

Each of the examples below introduces various methods other cities currently use to improve SWMBE access to public procurement and contracting. San Diego implemented a sheltered bidding environment for their small and emerging local business enterprises. North Carolina codified its Good Faith practices. Cleveland started a Small Contractor Rotation Program that ensures small businesses can have a chance to bid on small-sized projects and not be continually outbid by larger businesses. Finally, San Antonio established a Central Vendor Portal system through which each city department posts their upcoming projects and provides a prospective contractor list.

B. San Diego

San Diego implemented multiple procurement policies aimed at improving contractor representation. Like Milwaukee, San Diego maintains race-neutral policies. San Diego divides its small businesses into two categories, Small Local Business Enterprises (SLBE) and Emerging Local Business Enterprises (ELBE). While there are different cut-off points based on industry, most SLBEs are companies with less than \$4.5 million in revenue in the past three years, and most ELBEs are companies with less than \$2.25 million in the past three years.⁷⁰

To improve SLBE and ELBE capacity, San Diego introduced Joint Venture Agreements. SLBEs and ELBEs can enter into a Joint Venture (JV) Agreement with a larger prime contractor. A Joint Venture Agreement allows the JV duo to receive a 5% discount on their total bid. While the JV policy may create additional incentives for larger prime contractors, the vulnerability to pass-through and front companies is notably still present.

San Diego also established a sheltered bidding environment. Contracts get split between Major contracts (typically contracts over \$500,000; over

\$1 million for public works contracts) and Minor contracts (any contracts not meeting the Major contract threshold). For Major contracts, primes must meet mandatory SLBE/ELBE participation goals or demonstrate good faith efforts. Minor contracts are sheltered to give SLBEs and ELBEs the first chance at submitting a bid. Typically for contracts between \$250,000 and \$500,000 only SLBE and ELBE bids are accepted. If no reasonable bid is received, then the contract opens up to all other companies to bid on it. For contracts under \$250,000 it is first open to only ELBEs to bid on. If no reasonable bid is received from an ELBE, then it is opened to SLBEs as well. Again, if no reasonable bid is received from either SLBEs or ELBEs, then the contract will be open to any other company to bid on.

The sheltered bidding system offers smaller businesses a better chance against larger businesses. As the company grows, it continues to allow for opportunities to grow and gain a foothold in the market.

C. Cleveland

Unlike Milwaukee presently, Cleveland can implement race-conscious policies. One of their policies is the Vendor Self-Service portal. The portal shows all bids that are currently open and ready to bid on. The portal is especially helpful for contracts under \$50,000, which are all received and handled through email (similar to Milwaukee's eNotification system). Cleveland simplified their process further by only requiring four things for a complete bid: (a) document ID number and buyers name in email subject; (b) PDF file of request for bid forms; (c) terms and conditions; and (d) Northern Ireland affidavit. The process for smaller contracts eliminates unnecessary time and paperwork from the process.

To further improve access and participation from smaller contractors, Cleveland also implemented a Small Contractor Rotation Program (SCRCP). The city compiles a list of MBEs and WBEs that are statistically underrepresented in a particular category. When a contract under \$50,000

becomes available within one of those categories, bidding opens to those MBEs and WBEs. Every second contract that qualifies is only open to the MBE and WBEs on the rotating list. A similarly compiled list and program also exist for very small businesses that have earned less than \$3 million in revenue in the past three years. The SCRPP allows smaller companies to become the primes on smaller projects, which has a focus on business development versus participation on a project.

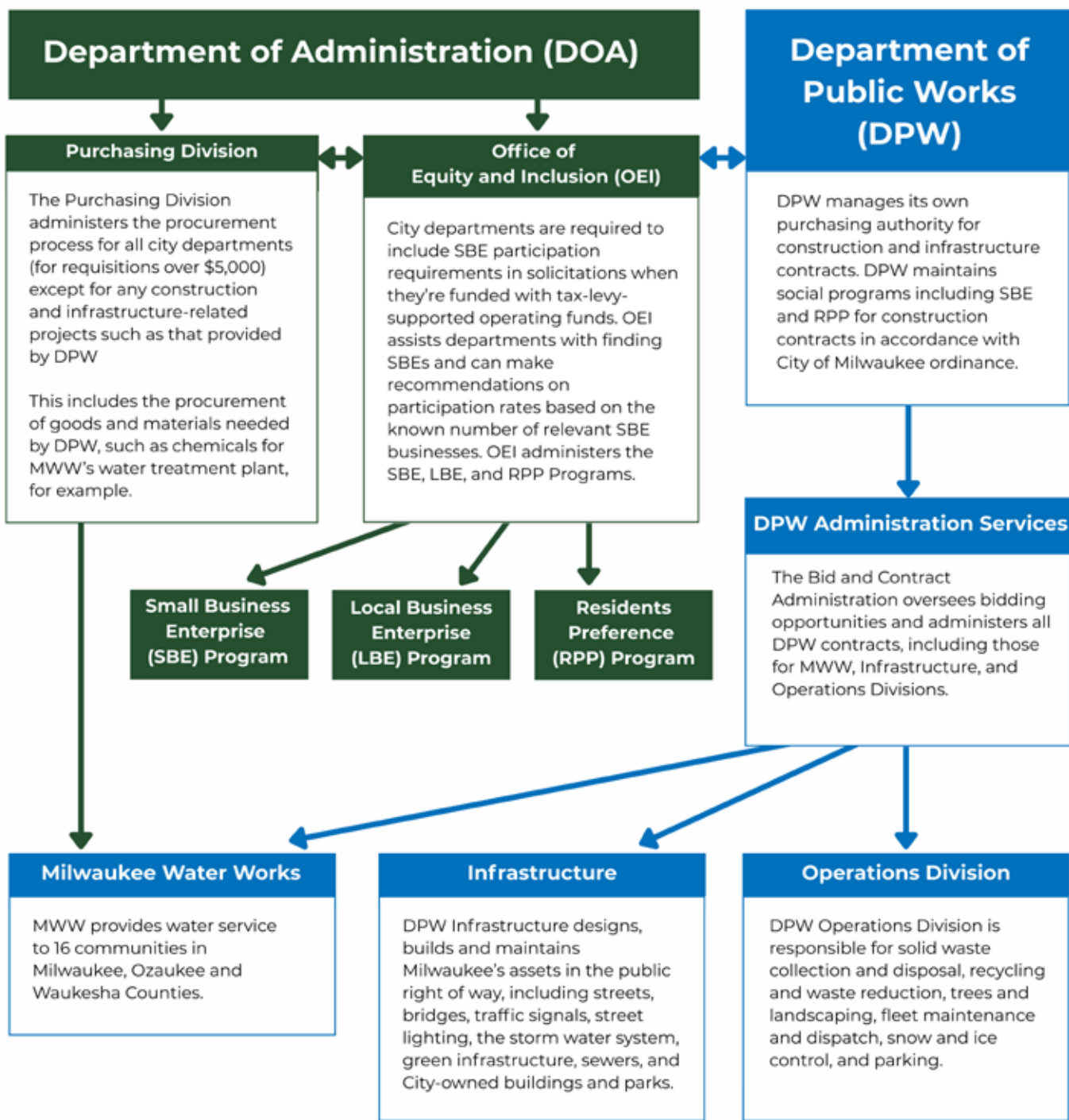
D. North Carolina

North Carolina also has a Good Faith Effort system to ensure firms strive to meet participation goals. However, North Carolina's policy is enforceable. North Carolina maintains a list of specific actions that earn firms a determined number of points. If a firm is unable to meet the participation goal, it must document 50 Good Faith Effort points. Otherwise, the bid is incomplete and therefore not qualified for consideration.⁷¹ Milwaukee's most recent disparity study also points to the North Carolina system in its recommendations to the city.

E. San Antonio

San Antonio created the San Antonio e-Procurement System (SAePS) for city officials and contractors to have a shared portal for all contracting needs. Each of San Antonio's municipal departments is registered within SAePS and offers contracts through the system. All potential bidders also register in the portal as contractors. Contractors are able to see open bids from every different San Antonio department in one central place. This system also gives a list of all potential contractors to the city, allowing them to better understand their contracting and procurement landscape.⁷²

City of Milwaukee Procurement and Contracting: Water Sector



Note: The name of the Office of Equity and Inclusion (OEI) will reportedly change. Other changes to OEI that may or may not affect the accuracy of this diagram are unknown at the time of releasing this report.

NOTES

- ¹ Baldus, Brian J., and Lindle Hatton. 2020. "US Chief Procurement Officers Perspective on Public Procurement." *Journal of Purchasing and Supply Management* 26 (1), 100538, ISSN 1478–4092. Also see: Harvard Kennedy School Government Performance Lab. April 2022. "Using Government Procurement to Advance Racial Equity."
- ² EPA, U.S. Department of Agriculture, and U.S. Department of Housing and Urban Development are the main sources of federal funding for drinking water, wastewater, and stormwater infrastructure. See the following EPA webpage for more on funding frameworks for water infrastructure: www.epa.gov/waterfinancecenter/effective-funding-frameworks-water-infrastructure
- ³ August 2023. "Preparing United States Critical Infrastructure for Today's Evolving Water Crises." The President's National Infrastructure Advisory Council. Accessed here: www.cisa.gov/sites/default/files/2023-10/NIAC_Preparing_United_States_Critical_Infrastructure_for_Today%27s_Evolving_Water_Crises_Report.pdf
- ⁴ See the two PERI reports for more details. Also see the Executive Summary of the PERI report, *Employment Impacts* (September 2023), released by National Skills Coalition and Blue Green Alliance. Accessed here: www.bluegreenalliance.org/resources/executive-summary-of-peri-report-employment-impacts-of-new-u-s-clean-energy-manufacturing-and-infrastructure-laws
- ⁵ U.S. Water Alliance. "An Equitable Water Future: Milwaukee." Accessed here: https://uswateralliance.org/wp-content/uploads/2023/09/USWA_Milwaukee20Equity20Roadmap1.pdf
- ⁶ The Othering and Belonging Institute at UC-Berkeley's list of "Most to Least Segregated Cities in 2020" according to 2020 Census data places Milwaukee as the fifth most segregated city in the U.S. Accessed here: <https://belonging.berkeley.edu/most-least-segregated-cities-in-2020>
- ⁷ See Levine, Marc V., "The State of Black Milwaukee in National Perspective: Racial Inequality in the Nation's 50 Largest Metropolitan Areas. In 65 Charts and Tables" (2020). Center for Economic Development Publications. 12. Accessed here: https://dc.uwm.edu/ced_pubs/56
- ⁸ Foltman, Leah and Jones, Malia. Feb. 28, 2019. "How Redlining Continues to Shape Racial Segregation in Milwaukee: 1930s Lending Map Reveals The Policy Roots Of Housing Discrimination." UW Applied Population Lab. Accessed here: <https://apl.wisc.edu/shared/tad/redlining-milwaukee>
- ⁹ Williams, Lisa H., "Water Needs Assessment: Pathways to Employment in a Water Centric City" (2020). Center for Economic Development Publications. 53. Accessed here: https://dc.uwm.edu/ced_pubs/53
- ¹⁰ Ibid. Williams, Lisa H. (2020). Pp. 15-16.
- ¹¹ Hovnanian, Garo; Kumar, Adi; and Luby, Ryan. October 17, 2022. "Will a labor crunch derail plans to upgrade US infrastructure?" McKinsey and Company. Accessed here: www.mckinsey.com/industries/public-sector/our-insights/will-a-labor-crunch-derail-plans-to-upgrade-us-infrastructure#/
- ¹² See the September 2023 report, "Employment Impacts of New U.S. Clean Energy, Manufacturing, and Infrastructure Laws," and the companion February 2024 report, "Labor Supply, Labor Demand, and Potential Labor Shortages Through New U.S. Clean Energy, Manufacturing, and Infrastructure Laws," both conducted by the Political Economy Research Institute (PERI) and supported by the National Skills Coalition and Blue Green Alliance, for more information on workforce projections in connection with the recent federal infrastructure investments.
- ¹³ MWC engaged the University of Wisconsin-Milwaukee's Center for Economic Development to conduct a water needs assessment that includes information on how the water sector is defined, an analysis on constraints to local employment, best practices for connecting low-income and BIPOC residents to jobs, and related policy recommendations. Williams, Lisa H., "Water Needs Assessment: Pathways to Employment in a Water Centric City" (2020). Center for Economic Development Publications. 53. Accessed here: https://dc.uwm.edu/ced_pubs/53
- ¹⁴ Ibid. Williams, Lisa H. (2020). According to the study, water-related jobs represent 1-2 percent of total employment in most of the country's metro areas.
- ¹⁵ In Milwaukee, the four-county metropolitan area includes 37 utilities, including Milwaukee Water Works (MWW) and the City of Milwaukee's Department of Public Works (DPW). Milwaukee Metropolitan Sewerage District (MMSD) provides water reclamation and flood management services for about 1.1 million people in 29 communities in the Greater Milwaukee Area. A private company, Veolia Water, manages MMSD's water reclamation plant and maintains the largest contract in the region.
- ¹⁶ The disparity study states, "For Total Utilization (prime plus subcontracting) there was disparity for all MWBE groups except Black Americans in Goods and Native Americans in Construction Services." City of Milwaukee Office of Equity and Inclusion 2023 Disparity Study; page 18.
- ¹⁷ U.S. Department of Commerce Minority Business Development Agency. December 2016. "Contracting Barriers and Factors Affecting Minority Business Enterprises: A Review of Existing Disparity Studies."

¹⁸ Fairchild, Denise; and Rose, Kalima. February 2018. "Inclusive Procurement and Contracting: Building a Field of Policy and Practice." PolicyLink and Emerald Cities Collaborative. Accessed here: www.policylink.org/resources-tools/inclusive-procurement-and-contracting

¹⁹ Becoming certified as one the range of options, MBE (minority owned business enterprise), WBE (woman-owned business enterprise), DBE (disadvantaged business enterprise), LBE (local business enterprise), SBE (small business enterprise), or VBE (veteran-owned business enterprise) can be a challenging and burdensome process. Many that may be eligible choose not to pursue the certification(s).

²⁰ See: Theodos, Brett; McManus, Sophie; and Rajninger, Tommy. May 2024. "Removing Barriers to Participation in Local and State Government Procurement and Contracting for Entrepreneurs of Color." Urban Institute. Accessed here: www.urban.org/research/publication/removing-barriers-participation-local-and-state-government-procurement. See also: Fairchild, Denise; and Rose, Kalima. February 2018. "Inclusive Procurement and Contracting: Building a Field of Policy and Practice." PolicyLink and Emerald Cities Collaborative. Accessed here: www.policylink.org/resources-tools/inclusive-procurement-and-contracting

²¹ The recent disparity study was conducted by the Atlanta-based firm, Griffin and Strong. The recommendations and findings of the report were first presented to the Council's Community and Economic Development Committee in November 2023, then formally adopted by the Milwaukee Common Council in December 2023 with a 13-1 vote.

²² The 2023 Disparity Study states, "For prime payments less than \$1 million, MWBEs were underutilized in all procurement categories except Native Americans in Construction for projects less than \$1,000,000 (Asian Americans were underutilized but it was not substantial). For prime payments less than \$500,000, MWBEs were underutilized in all procurement categories, except Native Americans and Asian Americans in Construction and Black Americans in A&E."

²³ Jannene, Jeremy. November 27, 2023. "Milwaukee Could Add Race, Gender to Contracting Requirements." Urban Milwaukee. Accessed here: <https://urbanmilwaukee.com/2023/11/27/milwaukee-could-add-race-gender-to-contracting-requirements/>

²⁴ Legal challenges to race/gender-conscious policies may come from Wisconsin state statute Act 12, part of which reads, "Unless required to secure federal aid, no political subdivision may discriminate against, or grant preferential treatment on the basis of, race, color, ancestry, national origin, or sexual orientation in making employment decisions regarding employees of a political subdivision or contracting for public works." Accessed here: <https://docs.legis.wisconsin.gov/2023/related/acts/12/47>

²⁵ Ibid. Fairchild, Denise and Rose, Kalima (February 2018). Among federal agencies, the U.S. Department of Transportation performs the best regarding inclusive procurement and contracting and has withstood many legal challenges. Little consistency exists across federal agencies as some have relatively weak programs and others don't have any in place.

²⁶ Mark, Julian and Duncan, Ian. September 24, 2024. "Judge partially blocks Transportation Dept. program for minorities and women." The Washington Post. Accessed here: www.washingtonpost.com/business/2024/09/24/dbe-transportation-dei-affirmative-action

²⁷ For more on EPA's grants through SRF, see this webpage: www.epa.gov/fedfunds/epa-state-revolving-funds-and-grants-available-water-and-wastewater-utilities

²⁸ Wisconsin's current IUPs as well as project priority lists (PPLs) can be found here: <https://dnr.wisconsin.gov/aid/projectListsIUPs.html#y2025>. The most up-to-date Disadvantaged Communities (DAC) definition, which affects eligibility for principal forgiveness is always in the current annual IUP, and accessed here: <https://dnr.wisconsin.gov/aid/documents/EIF/Guide/PF.html>

²⁹ For a full list of the requirements federal equivalency projects must comply with see: <https://dnr.wisconsin.gov/aid/federalEquivalency>

³⁰ The Wisconsin DNR's "DBE Fact Sheet" outlines information on DBE compliance and links to more information. Accessed here: <https://dnr.wisconsin.gov/sites/default/files/topic/Aid/loans/pubs/CF0068.pdf>

³¹ Wisconsin DNR's "Contract Packet for Disadvantaged Business Enterprise Compliance" can be accessed here: <https://dnr.wisconsin.gov/sites/default/files/topic/Aid/loans/pubs/CF0029.pdf>

³² A "prime contractor" is a company that manages a project or contract and is responsible for its execution, budget, and timeline. They hold responsibility for hiring and managing any subcontractors charged with completing other project components. Prime contractors is the term most often used in government contracting, but they may also be referred to as general contractors in the field.

³³ Wisconsin DNR's list of certified DBEs are found on their website here: <https://dnr.wisconsin.gov/aid/documents/EIF/Guide/MBElist.html>

³⁴ The “fair share objective” is defined in the Code of Federal Regulations under 40 CFR 33.403, and the steps for establishing the fair share objectives are provided in 40 CFR 33.405. Accessed here: www.ecfr.gov/current/title-40/chapter-I/subchapter-B/part-33/subpart-D/section-33.405

³⁵ Communicated via interview with DNR staff.

³⁶ Wisconsin DNT DBE Fact Sheet. Accessed here: <https://dnr.wisconsin.gov/sites/default/files/topic/Aid/loans/pubs/CF0068.pdf>

³⁷ See Sec. 66.0901, Wis. Stats. Accessed here: <https://docs.legis.wisconsin.gov/statutes/statutes/66/ix/0901>.

³⁸ For more details on Milwaukee’s SBE program, visit: <https://city.milwaukee.gov/Equity-and-Inclusion/Certification>

³⁹ See the full provisions of Milwaukee’s Local Business Enterprise (LBE) program here: <https://city.milwaukee.gov/Purchasing/Programs/LBE/Provisions>

⁴⁰ The current City of Milwaukee Buying Plan forecasts the five-year period starting from Q1 2025 to Q4 2029. The plan is available on the Purchasing Division page of the city’s website. Accessed here: <https://city.milwaukee.gov/ImageLibrary/Groups/boaPurchasing/Documents/2025-City-of-Milwaukee-Buying-Plan-v7-2025-2029-final-4.22.25.pdf>

⁴¹ Some other city departments also contract construction projects such as the Department of Neighborhood Services.

⁴² Milwaukee’s Purchasing Division created standard guidelines for RFPs. Accessed here: <https://city.milwaukee.gov/ImageLibrary/Groups/boaPurchasing/RFPStandardTermsConditions2.04.2020.pdf>

⁴³ See the following city document that outlines the revisions to RPP for all DPW contracts that went into effect on January 1, 2017: <https://city.milwaukee.gov/ImageLibrary/Groups/cityDPW/divisions/administrative/docs/bids/2023RPPChanges-QuickReference.pdf>. Also, see the complete document of DPW apprentice provisions here: <https://mpw.milwaukee.gov/bids/docs/Apprenticeship%20Provisions%202017.pdf>

⁴⁴ W RTP/BIGSTEP and Mindful Staffing Solutions, LLC are listed on the city’s RPP webpage as certifying agencies. Accessed here: <https://city.milwaukee.gov/Equity-and-Inclusion/RPP>

⁴⁵ Peterangelo, Joe; Day, Doug; and Henken, Rob. May 2016. “Locally Sourced: Milwaukee’s Residents Preference Program and Best Practices for Targeted Hiring.” Public Policy Forum. Accessed here: <https://wispolicyforum.org/wp-content/uploads/2018/10/Locally-Sourced-Full-Report-Final.pdf>

⁴⁶ Sawa, Aycha. City of Milwaukee Comptroller. July 2023. Audit of the Residents Preference Program for Development Agreements. City of Milwaukee Comptroller.

⁴⁷ Sawa, Aycha and Molina, Adriana. November 2023. Audit of the Residents Preference Program for DPW Contracts. City of Milwaukee Comptroller.

⁴⁸ See MMSD’s Supplier Development webpage for more information on other recognized certifications. Accessed here: <https://www.mmsd.com/procurement/supplier-development>

⁴⁹ MMSD Contract Documents, Special Attachment No. 2 S/W/MBE Policies for Construction and Professional Services Contracts Administrative Policy 2-78.01. Accessed here: www.mmsd.com/application/files/9815/1553/2904/SpecAtt2.pdf

⁵⁰ Mechanic’s liens, also known as artisan’s liens or a materialmen’s liens, include laws that differ from state to state, but, in general, can be used to address both unpaid labor and material costs. For more on performance and payment bonds, see: Germano, Esq., James. “What is a Performance Bond? Understanding Payment and Performance Bonds.” AIA Contract Documents. Accessed here: <https://learn.aiacontracts.com/articles/6484313-so-what-are-payment-and-performance-bonds-anyway>

⁵¹ Read the full and most current details of Chapter 779 in the Wisconsin Statutes. Accessed here: <https://docs.legis.wisconsin.gov/statutes/statutes/779/i/14/1m/c/2/b>

⁵² Williams, Lisa H., “Water Needs Assessment: Pathways to Employment in a Water Centric City” (2020). Center for Economic Development Publications. 53. Accessed here: https://dc.uwm.edu/ced_pubs/53

⁵³ It is possible for one to enter an apprenticeship without formal training or experience, but, in most cases, employers seek to hire workers with some combination of training and/or experience.

⁵⁴ The apprenticeship model is built on the idea of shared knowledge from skilled practitioners experienced in the range of scenarios one encounters in the field. Unfortunately, many apprentices haven’t reported a good experience. There may be a variety of reasons for those reports. However, one idea, that’s been acted on, is the notion that many people may not have the additional skill of coaching and teaching others effectively. For all trades in the state of Wisconsin, there is a requirement to complete a “Transition to Trainer” (T2T) course. The required T2T course provides guidance on becoming an effective job site trainer.

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- ⁵⁵ An A-to-Z list of professions with links to licensure information is available on the Wisconsin Department of Safety and Professional Services website. Accessed here: <https://dsps.wi.gov/Pages/Professions>
- ⁵⁶ You can search the Wisconsin Department of Workforce Development (DWD) by county for Certified Pre-Apprenticeship (CPA) programs. Nine programs appear when searching Milwaukee County. The search page is accessed here: <https://dwd.wisconsin.gov/apprenticeship/cpa/>
- ⁵⁷ Personal communication with DPW staff.
- ⁵⁸ More on the MPS School-to-Work Transition Program is available here: <https://mps.milwaukee.k12.wi.us/en/Programs/School-To-Work-Transition-Program.htm>
- ⁵⁹ Jannene, Jeramey. April 25, 2024. "Biden Announces Milwaukee as New 'Workforce Hub' for Lead Pipe Removal." Urban Milwaukee. Accessed here: <https://urbanmilwaukee.com/2024/04/25/biden-announces-milwaukee-as-new-workforce-hub-for-lead-pipe-removal/>
- ⁶⁰ Both the local and regional WIOA four-year plans (2024-2027) are available on the Employ Milwaukee website here: www.employmilwaukee.org/Employ-Milwaukee/About/WIOA-Local-and-Regional-Plan.htm
- ⁶¹ The full list of current members of the Coordinating Council can be found here: www.employmilwaukee.org/CoordinatingCouncil.htm. And the full list of current Industry Advisory Board Chairs can be found here: www.employmilwaukee.org/Industry-Advisory-Boards-.htm
- ⁶² In WRTP/BIG STEP's own words (from their website), they are "a 501©3 nonprofit workforce intermediary dedicated to connecting people to family-sustaining jobs." WRTP stands for Wisconsin Regional Training Partnership and was created in the 1990s. They later combined with BIG STEP, which stands for the Building Industry Group Skilled Trades Employment Program. Learn more about WRTP/BIG STEP here: <https://wrtp.org/>
- ⁶³ MMSD Contract Documents, Special Attachment No. 2 S/W/MBE Policies for Construction and Professional Services Contracts Administrative Policy 2-78.01. Accessed here: www.mmsd.com/application/files/9815/1553/2904/SpecAtt2.pdf
- ⁶⁴ See the complete list of DPW's apprentice provisions here: <https://mpw.milwaukee.gov/bids/docs/Apprenticeship%20Provisions%202017.pdf>
- ⁶⁵ A 2021 article in the Milwaukee Journal Sentinel discussed similar findings. See: Shelbourne, Talis. April 12, 2021. "'A good notion gone bad': Are participation programs hurting Milwaukee's minority contractors long-term.?" Milwaukee Journal Sentinel. Accessed here: www.jsonline.com/story/news/local/milwaukee/2021/04/12/how-mkes-participation-programs-help-and-hurt-minority-contractors/4542469001/
- ⁶⁶ Criticism of RPP is not new and some of the same criticisms heard in this study were also documented in a 2016 report. Faraj, Jabril. October 4, 2016. "Special Report: Residents Preference Program a promise unfulfilled." Milwaukee Neighborhood News Service. Accessed here: <https://milwaukeeenns.org/2016/10/24/special-report-residents-preference-program-a-promise-unfulfilled/>
- ⁶⁷ More information on Employee Milwaukee's Earn and Learn program here: www.employmilwaukee.org/Earn-and-Learn.htm
- ⁶⁸ The Consumer Price Index (CPI) Inflation Calculator generated the number based on the latest data at the time of using the tool, which was April 2025. The exact amount generated was \$39,800.87, which was rounded to \$40,000. The U.S. Bureau of Labor Statistics hosts the CPI Inflation Calculator on its website here: https://www.bls.gov/data/inflation_calculator.htm
- ⁶⁹ Ibid. Fairchild, Denise and Rose, Kalima (February 2018). Page 24.
- ⁷⁰ Learn more about San Diego's SLBE program here: www.sandiego.gov/sites/default/files/legacy/eoc/pdf/slbe.pdf
- ⁷¹ The State of North Carolina's "MBE Affidavit A: Good Faith Effort Examples" can be accessed here: www.doa.nc.gov/gfe-example/open
- ⁷² For more on San Antonio's procurement system, including their portal, see their "Supply SA Procurement Playbook." Accessed here: https://drexel.edu/~media/Files/nowak-lab/Procurement%20Economy%20January%202024/Supply_SA_Procurement_Playbook_Short.ashx?la=en

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