

Overcoming Obstacles

Best Practices for Subcontractors, General Contractors, and Public Agencies



9450 SW Commerce Circle #200 ♦ Wilsonville, OR 97070
503-682-3363 ♦ www.agc-oregon.org

March 13, 2013

Table of Contents

Background.....	4
List of Concerns for Small Contractors	4
SB-GO! Issues for Small Business.....	5
Communication	5
Cash Flow	5
Change Order Processing.....	5
Contract Negotiations	6
Scope of Work	6
Diversity Training.....	6
Specialty and General Contractor Interviews	7
Questions for Large Sub/Specialty Contractors	7
Questions for General/Prime Contractors	8
Individuals Involved in Discussions.....	10
Input and Suggestions	11
Communication.....	11
Cash Flow	14
Change Order Processing.....	15
Contract Negotiations	17
Scope of Work	19
Diversity Training.....	21
Suggestions for General Contractors.....	21
General Tips	23
Doing Business With Agencies	25
Small Business Administration.....	25
Oregon University System.....	27
State of Oregon (Department of Administrative Services and Department of Transportation)	28
Metro.....	31
Multnomah County.....	32
City of Portland	34
Suggestions for Agencies	36
Agency Contact Information.....	39

Background

In September 2011, a document was given to the AGC staff liaison for the SB-GO! council. That list of concerns was distributed to council members, with a plan to discuss at the next meeting. Once the council began discussing the issues outlined on the document, they realized that most of the issues were common to all contractors.

List of Concerns for Small Contractors

The following list of concerns has been provided to the SB-GO! for discussion. They all have been experienced by one of the council members. The plan for the council is to discuss how obstacles such as these can be overcome and how to create a solution where all involved benefit.

- 1) GC gets an itemized bid from a sub and sends out a contract for the bid price but that includes numerous extras.
- 2) A sub is required to engineer certain items. When the architect design fails the engineering test, the GC requires new items to be engineered by the sub at no extra cost.
- 3) Design changes that require extra work are considered “part of the bid,” but design changes that reduce the amount of work or reduce material must be credited back to the GC.
- 4) Schedule changes – the GC can demand adherence to a proposed schedule requiring the sub to free their crew to be dedicated to the key project. Then the GC pushes the schedule out, leaving the small shop with no work and lost income for weeks at a time.
- 5) Schedule changes – the GC can demand that the sub meet the schedule even though the schedule changes constantly. When a sub’s work depends on the completion of prerequisite work and the prerequisite work does not get done on schedule, the GC penalizes the sub who has no control over the schedule.
- 6) GC requires invoicing by the 20th of the month for work to be completed by the end of the month, but it doesn’t match what we are paid for (did the GC not send it through or did the owner not pay?).
- 7) Subs submit invoices per the specs but the GC disallows billing items and line-item vetoes.
- 8) GC says no extra work is to be done without an “Extra Work Authorization,” but then requests extra work and won’t pay for it because it wasn’t authorized.
- 9) GC uses the sub for quoting things they will never purchase.
- 10) GC claims credit for supporting small and minority business when in reality they may be having a negative impact on them.

Discussions on the issues lasted through five monthly meetings, and resulted in a list of six general topics. The council discussed next steps, and settled on a plan to invite larger specialty contractors and general contractors to meetings to address the outlined issues. Following those contractors, public agencies would be invited to the council meetings to field questions.

The following is the information compiled by the council and provided to the contractors invited to take part in the discussions.

SB-GO! Issues for Small Business

The Associated General Contractors Oregon-Columbia Chapter Small Business Opportunity Council (SB-GO!) assists in promoting and developing minority, women, and small businesses. Its goal is to facilitate building bridges to opportunities for its members. SB-GO! focuses on five key action areas associated with small business: relationships, education, partnerships, member recruitment/engagement, and advocacy.

In the fall of 2010, a list of 12 specific issues that a council member had been having with various general contractors was provided to the council for discussion. From that list of specific issues, which created months of discussion, came the following six main themes, and the general consensus that often general contractors' actions affect small/specialty contractors in ways that are often not known, or even ignored. It is the goal of the council to discover ways to overcome the issues and educate the general contractor on the best way to ensure that the general contractor, small/specialty contractor, and project are all successful at completion.

General contractors often commit to "supporting" small/specialty contractors, and hire them for projects, but at completion, for a variety of reasons, the small/specialty contractor can be in worse shape than at the beginning of the project. While it is the responsibility of the small/specialty contractor to run their business efficiently and well, the expectations and treatment from the general contractor on a project can make that especially difficult. The ultimate goal is success for all parties, and seemingly small issues can and do have a huge effect on that success.

Communication

Communication quickly became apparent as the number one issue in the relationship between a general and small/specialty contractor, from bid preparation to completion of the project. It is important, for the success of both the general and small/specialty, that communication lines be open and clear, that small/specialty contractors are regularly made aware of changes and delays, that both are aware of expectations, and processes are set out and clear from the very beginning.

- What is the best way to discover what meetings a small/specialty contractor is able, welcome, or encouraged to attend? Some GCs are open to attendance at all meetings; some do not want subcontractors to attend any larger project meetings.
- What is the best way to solve problems when a superintendent/project manager is uncooperative?

Cash Flow

Cash flow is an issue for small/specialty contractors, more particularly during difficult economic times. It is imperative that payment be expedited as much as possible, both for contract work and change orders. Delays in the process can be disastrous for a small business, more so than for large contractors. Billing and payment processes should be discussed and agreed upon in advance, and errors discussed immediately.

Change Order Processing

Change orders are a big stumbling block for small/specialty contractors. It takes longer to be paid for a change order, which causes cash flow difficulty for a small contractor. There is often confusion on jobsites when it comes to who has the authority to sign change orders, which leads to additional delays on their payment.

- What is the best way to deal with a project manager or general contractor who will not submit a change order?

Contract Negotiations

Small/specialty contractors are often hesitant to mark up contracts during negotiations. Communication plays a big role in this stage of the project, and the small/specialty contractor must be diligent in reviewing the contract and asking for clarification and changes when necessary. Hesitation plays a big part in this stage of a project, because small/specialty contractors are often pressured into signing contracts that they are not comfortable or happy with.

- Is there a downside to asking too many questions? For example, some contracts have a clause that there can be no changes made...if the specialty contractor asks to make changes to it, is that a mark against them?
- How do you know what can be negotiated? Is every aspect up for discussion? How do you know when you should not sign a contract?

Scope of Work

Every good contractor should be held accountable for the work that they are contracted to perform, but sometimes there is additional work that is expected but not included in the contract (errors or omissions). Small/specialty contractors are often asked to do this additional work without being paid for it. They agree to this to build their reputation and keep the relationship with the GC intact, but it often leads to being taken advantage of. If the sub refuses to do the additional work, future projects are in jeopardy. Again, for the project to be successful, both the general and the specialty contractor need to be successful.

- What is the best way to avoid this? At what point do you stop doing the extra, unpaid work, and how do you maintain the relationship with the GC?

Diversity Training

Often employees of large general contractors don't understand what it means to be a small business, and the affect their decisions can have. Sometimes the owner/leaders of a GC have made the decision to support MWESB contractors, and truly believe in the effort, but their project managers and superintendents have not. Often younger employees don't even know there is a problem (when you get a weekly paycheck, it's sometimes difficult to imagine not getting one because a payment is delayed). Often MWESB firms are treated differently than others, regardless of whether quality of work warrants it.

- How do you know what the definition of "supports" diversity is? Sometimes projects are broken down into smaller pieces that small contractors can handle, but sometimes even those "smaller" projects are still too large. Does their "support" include extra time to sit down and review policies and procedures for the project before it begins? Sometimes asking for extra support such as this can be misunderstood as incompetence or ignorance, when in reality it is simply preparing ahead of time to avoid future problems.
- When a GC is required to fill out paperwork for their MWESB requirements, they often pass this on to the specialty contractors they hire. This can be a big burden for a small contractor to do on top of the project work. Diversity/outreach coordinators are common now, and they help a GC fulfill their requirements, but do they measure the success of their effort? Do they keep track of the

status of their specialty contractors after the projects are completed? Are they better off than they were at the beginning of the project, or are they practically out of business?

Specialty and General Contractor Interviews

When the specialty and general contractor guests were invited to attend the council meetings, an list of sample questions were provided to help them know what information and suggestions council members were looking for.

Questions for Large Sub/Specialty Contractors

- What should the subcontractor do if they receive a contract from a general contractor that does not allow any changes? Do they make changes anyway?
- What is negotiable...is everything negotiable?
- What should *not* be signed?
- Subcontractors often end up being asked to do a lot of additional work and are not compensated for it. They want to please the general contractor, and want to have a good working relationship, so don't mind doing a bit of extra, but end up being taken advantage of. How can this be avoided?

Meeting with the General Contractor

- Do you ask for regular (weekly) meetings with the general and/or the owner? Do you attend the regular/weekly internal meetings that the GC holds? Do you ask to attend them?
- A sub needs authorization for a change order. They are told to do the extra work, but in the thick of the action no paperwork is completed. How do you handle a superintendent who won't sign a change order because he says it isn't authorized?
- Do you ever call a general contractor to find out why you were not awarded a bid?
- The proper procedure was followed to submit a change order request. The GC's procedure is to send the request to the owner for approval. The change order is being held up by the PM and they won't return phone calls or emails. The sub can't complete the project without the change order approval. What do you do?
- A subcontractor's work depends on the completion of prerequisite work, but that prerequisite work doesn't get completed on time. The sub is still expected to complete their portion on time, regardless, and is penalized. How do you handle this?
- The final contract process has taken a long time, and now it's time to start working on the project. The contract is still not signed.

Questions for General/Prime Contractors

- Who do we ask for payment problems...the accounting department or the project manager? One of our committee members carbon copies everyone, but is that the most effective way?
- In the contract, what is negotiable and what isn't?
- What is your policy to make sure that the guys working in the field know what you want? Who holds people (like project managers) accountable? They are just trying to get their job done in the best, most economical way possible and don't always know that management is trying to support small business.
- What challenges do YOU have working with small sub-contractors? If we know what you see as challenges, we may be able to fix them.

Change Orders

How do we establish a method of accountability? Timing is an issue...generals often prefer to not have a lot of change orders, so they save them until they have a qualified amount and write one huge CO that covers a lot of items. The sub does the work on the first of the month but there aren't enough change orders have enough to write one big CO for 60 days, then there's a 30 day turnaround, so it can be 90 days before payment is made. Do project managers actually understand what the sub is financing in their effort to reduce paperwork? Is there any way to make this process less onerous?

Situation: A sub is in the middle of a project and there is a change order. There are no drawings or anything to support it, the superintendent simply tells you they want it done. You do it, and a month later they say there was a mistake and you weren't supposed to do the work/change. They try to pinpoint if it was a communication problem and whose fault it is.

What is the best way to resolve the problem? The sub even followed up on the conversation with an email to confirm the change order, but still had a problem later on. It's really easy for the sub to take all the blame on a job, so how can a small sub protect itself?

Clarification on Sub Involvement in Meetings/Conversations

Is it good to show initiative and want to be at meetings (safety meetings, production meetings, etc.), or is it a pain for the GC to have a sub attend?

Are you willing to sit with a small contractor before the project starts, to work through all processes and answer questions? What is the optimum time or way to do that? If the process is understood from the beginning a lot of errors can be eliminated.

Are you willing to talk to a sub who doesn't get the bid? When should they call you (how much time afterward you are awarded the project bid)?

When you close out a sub, would you be willing to have an exit interview or a survey, or even a discussion? To be effective it would need to be focused on solutions. It would help build awareness on both sides of problems that come up during the project that can be eliminated or mitigated.

- How were you treated, were you respected? (both parties)

- How was the response to issues or questions? (both parties)
- Where could we have been of more help? (both parties)
- Was paperwork onerous?
- Did you know the deadlines?
- Did you feel you needed support in different areas?
- Final comment on survey: outcomes of goals. Did you meet the goal by the numbers only? Was the sub better off at the end of the job or would they have done better without taking the job in the first place?

Individuals Involved in Discussions

Council Members

Nancy Bebek, Prestige Tile & Stone
Judy Betts, Hamilton Construction Company
Sam Brooks, Oregon Association of Minority
Entrepreneurs
Art Cortez, Art Cortez Construction
Katie Daniels, Don Burke Excavation &
Construction
Suzanne Donaldson-Stephens, Donaldson
Enterprises
Zion Elmanov, Pioneer Women Construction
Company
Jen Erickson, Slayden Construction Group
Linda Everett Hill, Accurate Land Surveys
James Faison, Faison Construction
Brandon Flint, In Line Commercial Construction
Elizabeth Gibson, Denali Stoneworks
Vicqui Guevara, Valley Growers Nursery &
Landscape
Natasha Hendricks, American Steel Products
Judith Huck, Classique Floors
Saundra Jameson, James W Fowler Company
Sara Martin, Slayden Construction Group
Rosa Martinez, PMG, Inc. Abatement Contractor
Deb Matthews, Pacificmark Construction
Katy McCarthy, Great Kate! Construction
Company
Kathryn Merritt, Great Kate! Construction
Company
Alan Oates, Diverse Works
Juli Parrish, Parrish Excavating
Rhonda Parsons Edmiston, Howard S Wright
Constructors
Kevin Pham, Howard S Wright Constructors
Bev Ray, P&C Construction Company
Gale Schmidt, A2 Fabrication

Alando Simpson, City of Roses Disposal &
Recycling
Val Solorzano, Chick of All Trades
Jill Spencer, Pacificmark Construction
Linda Spieth, Classique Floors
Heather Watkins, Green Man Construction
Evan Williams, Portland Flagging
Tayna Wylder, Star Construction Services

AGC Staff

Karla Holland

Invited Guests

Derrick Beneville, Hoffman Construction
Hillary Bounds, Oregon University System
Sophia Cavalli, Multnomah County
Gordon Childress, Howard S Wright Constructors
John Downing, Oregon Department of
Transportation
Randy Gartner, Kodiak Pacific Construction
Don Geddes, Walsh Construction Company
Miguel Lopez, Skanska USA
Mary Mattison, State Procurement Office,
Department of Administrative Services, State of
Oregon
Eric Peterson, McKinstry Company
Maurice Rahming, O'Neill Electric
Dave Ruby, Progressive Mechanical
Brian Shoemaker, P&C Construction Company
Kelly Stevens-Malnar, State Procurement Office,
Department of Administrative Services, State of
Oregon
Bruce Van Hine, JE Dunn Construction
Gary Williams, Western Partitions
Loretta Young, City of Portland

Input and Suggestions

Communication

Communication quickly became apparent as the number one issue in the relationship between a general and small/specialty contractor, from bid preparation to completion of the project. It is important, for the success of both the general and small/specialty, that communication lines be open and clear, that small/specialties are regularly made aware of changes and delays, that both are aware of expectations, and processes are set out and clear from the very beginning.

- As a small contractor, the best thing for an MWESB to do is to select the general contractors you want to work with and develop relationships with those selected generals. And don't worry about all the rest of them. Pick three and contact them; meet them face to face, introduce yourself to the head estimator. It goes both ways...they want to build strong relationships with their subs as well. You may hesitate to call because you think they will say no. Give them the opportunity to say no. We want them to hear our point of view and they need to tell us their point of view.
- Once you decide who you want to work with, find out what they are working on. If they are working on a huge proposal, you won't be able to get in to meet with them. Have good timing! Know a little something about what's going on with them. Tuesdays or Thursdays ODOT bids are due, so don't go in on those days. If you've bid on something, don't call the day the award is given, or even the following day; they are still doing paperwork for the owner. Wait at least two weeks, and then call. General contractors often discuss unsuccessful bids with owners, and will discuss your bid with you.
- Avoid contractors you don't work well with, but don't rule them out because of one bad person. The rest of their people may be good to work with; you may get a better pick on the next go.
- It's a lot harder to work with people you don't know. It's easier (even if it's just a conversation now and again) to start building the relationship, and then get the work. The GC will want to send info to you because they know you. But you still have to be the lowest bidder to get the job. If you aren't low, they aren't low, and no one gets the work.
- For us as a GC, we're only as successful as our subs. We're smaller, so we need the relationship with our subs. We like to know who we are working with and that we can rely on them.
- If I know about you, I will gladly talk to you. I've had project engineers searching the Internet trying to find subcontractors. It's surprising how difficult they can be to find.
- If you are working with a general, ask your project manager if he could introduce you to the estimating department (at his convenience, of course). Get to know the estimators. Poke your head in and ask "What can I do to help you?" If they are a good general they will return the favor. Sometimes you will get used, but most good ones will go both ways.
- Who did I do business with in the past, and who was I successful with? I limit my bidding to projects that I can be successful on.

- It's important that you read Division 1 before you even think about a bid, because it tells you all about the project. Some contractors include Division 1 with every bid that they do. Look at it ahead of time. Don't submit a bid and then come back and say "I can't do that, I don't like this, or I won't do that." Read it ahead of time. There are some things that you won't have to do for insurance, for instance. It depends on what you're doing.
- Talk to other contractors to see if you should bid. You should know the project and know if they have some work for you.
- If the general contractor gets a high bid or a very low bid, and they don't know the sub who submitted the bid, it goes to the bottom of the pile.
- When bidding, if you need to get paid more than once a month, discuss it before you submit the bid. If you need multiple payments per month, discuss that early. It's very difficult if someone bids with no clarifications, and they come in and want their check two weeks early. Communicate special needs ahead of time. But if you are asking for something special, and another contractor isn't, and your numbers are the same, they will probably choose the other bid. Be sure you don't ask for what you don't need.
- If the small contractor requests someone from the GC to come in, sit down, and show them what needs to be done, it makes a big difference. They are not looking for special treatment, just clear direction and communication so the project is successful. Clear communication at the beginning eliminates problems later in the project.

What does not work is to wait until you are in the middle of something and then start talking about your problem.

- The GC often encourages small contractors to attend their meetings so they know what is going on. You'll meet other small contractors, build rapport, make the connections, hear what's happening, learn about upcoming problems that may delay or speed up the schedule, etc. Three week schedules should be discussed. Ask the superintendent what meetings you can attend. Find out when the prime is holding their safety committee meeting; they may want you there, too. Meeting notes should be distributed for those unable to attend.
- Weekly meetings are production/construction oriented, and then additional meetings (like safety) make you look like you are invested and involved. How can we do a better job of working together to keep each other in the loop?
- If you know someone else in the company you can deal with, do that rather than going to owner if a problem arises. That will alienate the general, and you want the situation remedied, not cause additional problems.
- If we are not keeping up our end of the bargain, if it's not talked about, how am I going to know how to help, correct, or mentor? When it gets to me, it's usually too late. If you have an issue, bring it up right away.
- The general contractor needs to know what's happening on a project because they are paying the first tier sub. If you are having a problem, they need to know.

- **Subcontractors often end up being asked to do a lot of additional work and are not compensated for it. You want to please the general contractor, and you want to have a good working relationship, so you don't mind doing a bit of extra work, but you end up being taken advantage of. How do you avoid this?** Pleasing the GC doesn't involve doing everything they want to do. Go into it to establish reality: there's a cost not in the contract, and we're both going to put it on the table, we're going to talk about it together. You are doing a disservice if you are hiding cost or time; he needs to see and feel that reality. You may think you are pleasing him, but you are really creating a bad relationship.
- You don't want to be a change-order-driven company. Let them know the cost. Put everything on the table.
- The playing field of the market is treacherous as it is. The first person to get cut by a GC when things aren't going well is the sub the general doesn't know. Go in and talk about your contract language after the project, and find out what's coming in the future.

Summary

Communication, by far, was the most mentioned issue by all contractors involved. The basic takeaway is to have clear communication about everything...before the bid, after the bid, during contract negotiation, the project, and after the project is completed. Be selective of the GCs you work with, and while you should avoid contractors you don't work well with, don't rule out an entire company because of a bad relationship with one person.

The second most-mentioned suggestion was to develop relationships with general contractors you want to work with. Meet with them before you bid on a project, and keep up the relationship in between projects. Meet the accounting staff to learn correct processes ahead of time, or to clear up any issues that came up on a previous project. Also get to know the estimators; if you have a problem on a bid in the future, they will be more likely to give you a call for clarification if they are familiar with you.

Limit your bids to projects you can be successful on, and know the project. When negotiating contracts, be clear from the beginning. If you have a problem during the contract review, bring it up immediately rather than waiting until later.

At the beginning of a project, find out what meetings you can or should attend: weekly project meetings, safety, scheduling, etc. This keeps you up to date and aware of issues on the site.

When dealing with changes, don't hide any costs. If you are asked to do anything extra, let them know the cost; by simply doing the work, you may feel you are making a good impression, but you are in reality creating a bad relationship. Be open for discussion and expect the same. You are not winning any points in the long run if you work for free.

If you are unsuccessful, follow up on bids you did not get. Give the GC a couple of weeks and then give them a call.

Cash Flow

Cash flow is an issue for small/specialty contractors, more particularly during difficult economic times. It is imperative that payment be expedited as much as possible, both for contract work and change orders. Delays in the process can be disastrous for a small business, more so than for large contractors. Billing and payment processes should be discussed and agreed upon in advance, and errors discussed immediately.

- General contractors can have 50 small contractors that they are trying to manage at the same time. They have to rely on the small contractors to get paperwork in on time so they can get paid, and in turn pay the small contractors. They have to submit pay applications too.
- At the time you turn in the paperwork, follow up with a call...“Do you have it, did I miss anything?” Let a little time go by and then call back again to make sure.
- When you begin a project, sit down with the office staff and figure out the payment system. That eliminates a lot of problems later in the project.

Summary

Be deliberate in paperwork. Find out at the beginning of a project the proper procedures, introduce yourself to the individuals who process the paperwork, and check in often to make sure you are on track. If your paperwork is not correct, other subs could be held up, and the general contractor will not receive their own payment on time.

Change Order Processing

Change orders are a big stumbling block for small/specialty contractors. It takes longer to be paid for a change order, which causes cash flow difficulty for a small contractor. There is often confusion on jobsites when it comes to who has the authority to sign change orders, which leads to additional delays on their payment.

- General contractors need to know the cost factor and how things affect small contractors. Unfortunately for small contractors, the burden falls on them; if you're busy and can't keep track, you just have to take the hit.
- Track the field orders every day, even if you don't get paid for it. Then when asked to do more, you can show all the things you have done for free and ask to be paid for the additional work.
- Always get signatures regardless of whether or not you stop all work on the project. If you have the signature, you have something. "Per our telephone conversation" should be used to document in writing what happened on the phone or in person, so you have a paper trail.

"Unless I hear back from you by _____, this is my understanding and we are going to move forward" can be included in the email/correspondence. That prevents the sub from being at a standstill until approval.

- **Notice to Lien:** risk and reward. You let the GC know you have to file, and unfortunately it could be a relationship ender. Try to keep the relationship through the process. It's not personal, it's business; step through carefully and don't get hurt feelings or cause hurt feelings...it's a difference of opinion.
- The contract has requirements both ways. If they are ordering you to proceed, you have a right to make sure it's approved work before you proceed. The general wants to keep things moving forward, and the owner comes in later and gets mad. It's not your job to make sure the general keeps his contract with the owner. If you send the appropriate paperwork to the general, you help them do it but keep yourself out of trouble.
- Sometimes the GC gives a one-sided change order: completion of work, this is the payment. There's no place to sign it. It says "Full and complete compensation." 1) Notify the GC that you don't accept it; they assume that unless you let them know that you *don't* accept it, that you accept it. 2) Price it and don't worry about where it falls in the schedule or how often you work on it. The GC won't tell you that when you get it. If you see that language, you can forward the price, and give them a breakout. Indicate that "because of your language I've had to take some of these risks" and price them. You may be able to negotiate it away or get some compensation. That language never fails; you can sign tons of change orders and the general can come back and have you doing that work 180 degrees from the way you bid it for whatever reason. You are on the hook for that money regardless of the documentation. That's nasty language.
- At the beginning of the project, establish the process for change orders. If they have a specific form they want you to use, use it. Ask the questions up front; find out how to expedite the change orders and how the approval process works. Find out who is authorized to sign.

Summary

Track field/change orders every day, even if you don't get paid for them. Be clear in all communications. Find out who has authority to sign, and establish the process at the beginning of the project. Use the correct paperwork. Always get signatures on change orders, and reference them in writing after signed on the site.

Contract Negotiations

Small/specialty contractors are often hesitant to mark up contracts during negotiations.

Communication plays a big role in this stage of the project, and the small/specialty contractor must be diligent in reviewing the contract and asking for clarification and changes when necessary.

Hesitation plays a big part in this stage of a project, because small/specialty contractors are often pressured into signing contracts that they are not comfortable or happy with.

- There is not a single contract that doesn't need a change. Usually it's a change in language or something small. If the general's contract refers to the contract they have with the owner, ask for a copy of that for your records.
- When you have unexpected conditions, what do you do? You dig and then find something in the hole you didn't expect? Include a blanket statement in your contract that says if you hit something different than you plan for, then it goes to a time and material. Excavators are digging in the unknown all the time, and it is never what the reports say it is. Think of what possibly could go wrong and include it into the proposal.
- Some contractors charge a mobilization and demobilization fee.
- It never hurts to try to make changes on a contract. Most generals have "golden clauses" that just aren't going to change, but otherwise, just about everything else is up for question. You won't tick them off by asking...they realize it's a legal issue. Get a copy of a fair contract and use it as a guideline as far as what's fair vs. what they are asking for. Use the AIA format or the ConsensusDOCS contracts.
- If you develop a good relationship, you may be able to ask for a master subcontract and then they write sub jobs under the master; that way you don't have to re-negotiate every contract. McKinstry, Fortis, Walsh...they do it sometimes, but never on the first job. Start your first project with the idea of developing the relationship.
- Some contractors will agree to attaching subcontractor proposals to the contract. Often the generals will take out and negotiate each line and put it in the contract, but not attach. It's OK to ask.
- In the contract process, a notice to lien on every job is a good business practice. The GC doesn't want to damage their relationship with the owner, just like you don't want to damage your relationship with the GC. Use a lien service. All it takes is a \$15 notice to lien; you'll purchase a lot you never have to use, but it's the one you do that saves you.
- Decide the procedure to deal with problems that come up along the way. Get it written into the contract.
- You can't be timid in buy-out meetings (they happen right before the sub contract is issued). If there is something in there you had not planned to do, you need to speak up. They will make adjustments. If it's not in your bid, say so. General contractors are not successful if the subs are not successful; they don't know you are not successful unless you let them know.

- Everything is negotiable. Do not sign any contract until you are totally happy. Time/duration of project...make sure you're covered on it. You may get the schedule and you see there's not enough time. Make a note and put it on the contract that you need X number of days.
- The worst contract with the best person is better than the best contract with the worst person. Work with people you trust and respect. You can have a great contract, but if you are fighting with lawyers, the only one making money is the lawyer.

Summary

With all the questions and discussions about contract negotiations, one of the large specialty contractors put it succinctly: there is not a single contract that doesn't need a change.

It doesn't hurt to try to make changes to a contract; most generals have "golden clauses" that they won't change, but almost everything else is up for discussion. And most generals realize it's a legal issue, not personal, so ask the questions you need to. Get a copy of a fair contract and use it as a guideline through the process.

If you have a strong and long-standing relationship with a general, you may be able to set up a master subcontract with sub-jobs written under it. This helps limit re-negotiating every contract.

A Notice to Lien on every project is a good business practice, because it helps protect your relationship with the general contractor. You'll purchase a lot you never use, but it only takes one use to make it worthwhile. The general wants to protect their relationship with the owner, and should understand that you are protecting your relationship with them.

Keep a copy of the general contractor's contract with the owner.

The worst contract with the best person is better than the best contract with the worst person. Work with people you trust and respect. You can have a great contract, but if you are fighting with lawyers, at the end of the day, the only one making money is the lawyer.

Scope of Work

Every good contractor should be held accountable for the work that they are contracted to perform, but sometimes there is additional work that is expected but not included in the contract (errors or omissions). Small/specialty contractors are often asked to do this additional work without being paid for it. They agree to this to build their reputation and keep the relationship with the GC intact, but it often leads to being taken advantage of. If the sub refuses to do the additional work, future projects are in jeopardy. Again, for the project to be successful, both the general and the specialty contractor need to be successful.

- Extra work authorizations: the super might not always know what's in the subcontract. He has a copy, but he doesn't always read through them...he's out to manage our workers and build the building. It's really the project manager that knows what's in the subcontracts. If you have extra work authorizations, the super signs them but doesn't always know what is in your scope. He's going to sign because he wants to get the work done. If he signs it, they should pay for it, but it can be difficult. It may be in your scope and not a separate item.
- It's a petty excuse if someone signs something and then tells you they don't have authority. If you get directed to do something and then get asked for the backup, we are probably trying to fulfill our contract. We have to check for labor, materials, and then markup. We have to make sure that you are not trying to have too much markup. The owner is going to get down to the screws sometimes, so we have to do that too. Give us what you can, as clean as you can.
- Know who is authorized to sign; know who everyone's boss is. You have the right to complain.
- In order to push you, we have to put it in writing. You could say something like, "We are happy to proceed, are you going to provide it in writing or would you like me to do it? It's not in our scope, so I'd like it documented." Supers are having a hard time getting documentation.
- Subs often end up being asked to do extra work...don't get into that! It's hard to keep track of it. I'll do something for you off the books, then you do, then they do. Someone won't keep track and someone always loses.
- You sit with your cost proposals, you agree on your markups and hourly rates. Get that resolved at the beginning. Then if it comes up, it's about agreeing on scope and not the hourly rate or markup because that's been decided on already. Then we are not talking about anyone gouging anyone.
- If they aren't willing to tell you where you were, or give you a follow up phone call to tell you that you didn't get the job, then more than likely you don't want to be bidding to them. If they won't tell you how high you were, or if they ask you to include a scope of work that you don't do, that's a bad sign. They are asking you to take additional risk and you don't know what it covers because it's outside your scope. Sometimes they do this so your bid goes above the contractor they really want to use.

You don't want to work for someone who is going to set you up to fail. If you sign a spec that includes work you don't do, you are setting yourself up to fail.

Summary

The superintendent doesn't always know what's in a contract. His job is to manage the workers and build the building. Verify that the superintendent has authorization to sign extra work authorizations, and investigate if they should be signed by the project manager instead.

Agree on markups and hourly rates at the beginning, during contract negotiation. Then you are agreeing only on scope when work comes up.

Subs are often asked to do extra work. When dealing with paperwork, keep track of everything. Document everything, whether required to or not. Avoid doing work off the books as a favor, expecting the same from the general contractor; someone always gets burned.

Diversity Training

Often employees of large general contractors don't understand what it means to be a small business, and the affect their decisions can have. Sometimes the owner/leaders of a GC have made the decision to support MWESB contractors, and truly believe in the effort, but their project managers and superintendents have not. Often younger employees don't even know there is a problem (when you get a weekly paycheck, it's sometimes difficult to imagine not getting one because a payment is delayed). Often MWESB firms are treated differently than others, regardless of whether quality of work warrants it.

Suggestions for General Contractors

- How do you know what the definition of “supports” diversity is? Sometimes projects are broken down into smaller pieces that small contractors can handle, but sometimes even those “smaller” projects are still too large. Does their “support” include extra time to sit down and review policies and procedures for the project before it begins? Sometimes asking for extra support such as this can be misunderstood as incompetence or ignorance, when in reality it is simply preparing ahead of time to avoid future problems.
- When a GC is required to fill out paperwork for their MWESB requirements, they often pass this on to the specialty contractors they hire. This can be a big burden for a small contractor to do on top of the project work.
- Diversity/outreach coordinators are common now, and they help a GC fulfill their requirements. Do they have experience or knowledge of small business? Do they measure the success of their effort? Do they keep track of the status of their specialty contractors after the projects are completed? Are they better off than they were at the beginning of the project, or are they practically out of business?
- How to Help Small Businesses and Encourage More Small Business Participation
 - Be willing to break out sections of work that are manageable.
 - Assist the subs with the administrative components (explain what a JSA is).
 - If they have to have bonding, tell them what it is and give them some direction.
 - Offer assistance with the scope determination, especially if it is a big or new type of project.
 - Have a point of contact for small business owners. The contact needs to be reachable.
 - Have meetings small business can be involved in.
 - Pay as soon as possible.
 - Have a team attitude that welcomes and is cooperative.
- Meet with the outreach coordinator, and find out what you can expect from them. Find out their role, what they can do for you, what they want to do for you. *Here are the rules you set out, but I'm not big enough to follow your \$1,000 safety program, all the extra costs, etc. What do you have for very small businesses?*
- Bring forward the opportunities for small businesses, not the ones we can't do. We like the “in and out” jobs that can help us build capacity. Small contractors don't always want to partner up with a competitor to get the work. Small contractors can partner up with other companies (like electricians) and bid together as one project.

- Superintendents don't know anything about small businesses and what it takes to run their businesses. They don't understand the barriers. Sometimes when they have subcontractors with different colored faces, they treat them differently. The super will ask you to have your portion sparkling clean, while they don't care with other subs.
- Diversity training is needed. MWESB is a percent goal, and the people working for the general are not on board. It's a way to win contracts, not a way of doing business.
- The minority needs to be able to say "that offended me," and the others need to understand that they need to stop saying that because it is offensive.
- Companies may have started with the idea to support diversity, but the current staff has not bought off in the same way. People in their 30s don't know there's a problem, or they think it's fixed.
- Large companies say they want to help small business and do it in a way like being a sponsor for an event. An hour of their time would be better help.
- If an organization of any kind is not just putting job opportunities in front of us, but committing to help, we want definition of that help. I think there should be a burden on the companies that are saying they want to help small business. If they are saying it, we deserve to be able to see what that means. There's a lot of help out there that is not help. We want to help you put together programs that help. It drifts too easily to all the things we need to learn and putting the burden on us.

Summary

Many large contractors have diversity/outreach coordinators, but do they have adequate experience and training to work with small/minority contractors? Do they understand the needs of the subs they work with? While the top levels of a general contractor understand the importance of working with a minority/small contractor, sometimes those working on the jobsite don't understand or do not understand what it may take to have a successful working relationship. Clear communication is important from the beginning, and the goal for all involved is to have a successfully completed project, and small subs that are better off at the end of the project than they were at the beginning.

General Tips

Bidding

- If you are going to bid a bid section, you should have it all covered. You should send the bid in early, a day at least, so it can be scrutinized and taken for its face value. Each bid in that section includes something different, and the GC needs extra time to piece it together with all the other bids.
- If you have a problem, don't walk back into the same fire. Make some adjustments—if you bid and get the job and work with a certain general contractor, and they have a lot of bad changes, the next time you put in provisions to cover that in your contract.
- Sometimes you have to step out and ask...to fix something, to build a relationship, etc. You can get swallowed up and disappear. You have to take the step. The responsibility is always on the sub. You have to make the effort.
- We have a list of inclusions, a list of subs, and their numbers in spreadsheets. You plug in some numbers and view across the bottom. You don't always get the breakdown of what each element is worth, and you have to do some hocus pocus. The trouble with that is that a lot of subs use templates with a standard bunch of exclusions, and they don't remove them from the exclusions even though it's up in the number. They never attach your proposal onto the contract. If you have that on your contract, we won't do it.
- ***Do you base all winning of bids on low bid?*** *Low responsible bid.* Sometimes we receive a low bid that's really low, and many times we'll make a follow-up phone call. If we have five or six in the same ballpark, and someone way low, we have some obligation to contact that subcontractor and let them know something's not right. We don't want to see anyone go out of business, and that's a good way to go out. They may have missed something, and once the contract is signed, we expect them to fulfill it.
- **What makes a really good subcontractor? What attributes do they have, and what do they bring to the table?** Someone that partners up with us from the get-go. Communication: read the contract, we talk, you show up prepared, are not asking for anything. They know what they are doing, they are safe, do the job safely, and go home. Everyone is happy.
- Someone who is not a whiner. Think of someone *you'd* want to work with. Someone you enjoy working with. We spend a lot of our lives working these jobs. Someone who is professional, someone not afraid to say, "I missed this." Maybe I can do something about it. Honesty goes a long way. I don't like people making excuses for not being on the job when you need them. If you get a conflict, don't just not show up. Make the phone call. Maybe we can be flexible, some more than others, but try to figure out as a team how to deal with it. For every problem there's a solution; let's figure it out together. That's why the owner hired all of us.

Miscellaneous

- You're doing the work in the field, you're trying to get more work, and at the same time you are trying to get your books done...but it's very important!
- Small subs can't send out people to the field who are not briefed and expect the GC to brief them. Carry through with your execution, management, time, etc.
- I really enjoy working with subs that send out a crew to the site that is familiar with the job. Often people will come to the site and go straight to the super and don't have plans, don't know what they are doing, and our super has to take time to get them going. That's frustrating.
- If a PM doesn't have a kick off meeting or a checklist to go over, you tell them you would like to do it.
- Certified payroll is difficult. Unfortunately, the slowest guy controls the process. Often the owner holds the money because it's the only way to get your certified payroll in. Sometimes they are patient, but everyone is affected.
- We graduated from the Mentor Protégé program; had we not we would have put ourselves out of business at least four times. We highly recommend the program, and are still in contact with the GCs we got to know through the program.
- Run your companies lean and efficiently...no extraneous office personnel or people you can't support. The importance of knowing costs, overhead, and the breakeven point was the most important thing learned from the MP program.
- What you are suggesting is interesting because I don't bid as a sub, but others here do; you are suggesting that people act like GCs when they are bidding work. The AGC should perhaps focus attention/training on members who are subs getting insight into behaving like a general. Finding the owner, approaching the owner. If you can bypass the GC you don't even have the problem with the GC.
- You have to break up your work diversity and spread it out. Some state, city, some federal, some private. Back in the 90s there weren't enough contractors...if you took care of people then, when times got tough, they know they can count on you since you helped them. You have to have the basket broken up and not have all your eggs in one place in case that market falls off and gets slow. If you work with one or two contractors, you can have a problem.
- There are issues that come up on every project, and you will bring them to us. If you can piggy back a solution to the issue, it's a big benefit to all of us because we'll take the solution and suggest it to the owner. We can help them make the decision, and the solutions are often better than if they go back to the architect or engineer. If you can provide a solution, that's an asset.

Doing Business With Agencies

Small Business Administration

Rule #1: Keep yourself sharp. Meet the requirements and be competitive.

Classification: NAICS codes, the North American Industry Classification System, are six-digit identifiers of the type of work you do. The Census Bureau has decided that it's not determined by size, it has to do with revenue or number of employees according to the industry code.

Business size standard: Size is averaged over three years, check revenue and employees depending on your industry code. Architects and Engineers size requirement has been increased.

Set asides: It's mandated that the US government must set aside at least 23% of contracts for small business. Categories:

- Women owned business (51%, operates business, in her name, etc.)
- Veteran owned
- Service disabled veteran owned business
- Minority owned or socially disadvantaged (African American, Hispanic, Asian, Asian Pacific)
- HUB Zone (historically underutilized business)
- 8A program (this is a nine-year program and a lot of work)

Doing Business With the Government

- Central Contracting Registry (CCR): this is where the competition is, so keep your profile stellar. States, competitors, and large businesses look here for subcontractors. Anyone can register in the CCR.

During procurement planning, agencies check an industry for how many contractors are in a specific industry. Make sure your product or service is in multiple categories if possible. Make sure your profile tells people what you do and shows your strengths. Use keywords, because that is what pulls up in the search.

The CCR also asks for non-federal government certifications. Be sure to list affiliations, certifications, training, schooling, list of partners' credentials, etc. Show knowledge, skills, and abilities to do what you do.

Include a link to your website.

By accepting the federal government credit card you will get paid faster. It's not an actual credit card, it's an EFT. This may give you an edge.

- Procurements over \$25,000 go in FedBizOps. Announcements last 15 days, and sometimes there will be a pre-solicitation (for example, if there is a solicitation for an area that will be covered with snow when it's time for bidding, they let you know early so you can get in before it's covered).

After you view a solicitation, click on “Add me to interested vendors list.”

ORCA: When you go into CCR to work on your profile, on the homepage, you see ORCA...fill it out! It is imperative that you have your ORCA updated. If you are not in both ORCA and CCR you may not be eligible for a bid. Don't risk it! It is state sensitive and must be renewed every year.

Procurement forecasts can be checked...every single agency has a forecast. If you can't find it on their website, call them and ask for it. It's according to NAICS.

Oregon University System

- **How the Oregon University System Works**

Seven campuses are organized in the same system, and there is a wide range of sized schools. The OUS covers the entire state. Each school has different needs and different levels of sophistication, different ways of doing business. The decision-making process, when it comes to goods and services and construction, is made on each campus. Each campus builds its own buildings. Decision making is done by the campus itself. A project manager or the capital construction office decides how to bid, how to structure the project, where it's advertised, how long it's open, etc.

The project managers and capital construction office is who you need to build relationships with.

- **The Mechanisms to Get Work**

The retainer program for construction related services is a two-year contract where everyone signs a uniform contract, and if it's under \$1 million, they use the contract as a basis, and then a separate addendum with scope and cost, which can be later amended. That's the best way for people who are not GCs doing big projects. There are not a lot of projects between \$3 and 5 million, but under \$3 M is common.

Once you sign, you are in the database that can be sorted by what you do and where you are willing to work. Once on the list, they can just choose someone off the list, who they meet at events, have done work previously, etc. If it's something quick or specialized, they will go with who they know, but some use this as a mechanism to get new people on campus.

Three bids are taken for projects up to \$500,000. Eighty percent of the time projects are posted, but not always. For projects under \$500,000 they have to contact MWESB firms (two of them). Between \$500K and a million, they have to publicly post to everyone.

- Someone has to either have been working for five years or the company has had to be in business for five years, either one. References from public projects, sometimes significant private projects, will work. Project managers will evaluate them. Other than that, no judgment calls. If you submit online, you get into the program. It's a good idea to meet the people on the campus who are making the decisions; we encourage them from the system level to do what they can.
- Requirements for minority participation: Internally the campuses have goals that they don't put out in to the public. They have to improve their numbers, which they report annually, and it has to be dollar-wise and not by contract. They also try to get different contractors on campus. If you can get on campus, you often get more work in the future. No number system-wide.

State of Oregon (Department of Administrative Services and Department of Transportation)

ORPIN

- The current ORPIN system has a certain dollar threshold: \$5–150K, and can be used for a variety of methods for contracting. It's very important that if we're doing market research on a particular project, we go to the ORPIN system and take a look first. If you are certified, you have a star by your name. Our policy states that we must be inclusive of using MWESB contractors, so it makes it nice to be able to identify you easily through the system. At the same time, all bidding opportunities that the Department of Administrative Services (DAS) puts out are on ORPIN.
- **How Many Agencies are Involved in ORPIN?**
There are currently 106 agencies that fall underneath DAS' authority. We are the administrative arm for the executive branch of state government; we push things out for the taxpayer. All agencies can use or are required to use ORPIN for anything over \$5K. We can't forget counties, cities, special districts, commissions...those are Oregon Cooperative Procurement. They also use ORPIN, and we've seen a dramatic increase in usage. They *can*, but are not mandated to, use ORPIN. Example: City of Beaverton, school districts, Department of Forestry; ODOT, for procurement of services and goods, uses their own system.
- Use ORPIN as a lead generation tool. Don't only look at it to find bids...go in and look at some of the really big projects and express interest. View the details, and it will show you all the primes that have expressed interest in the project; it also provides all the contact info for them. Ask if they are accepting subcontractor bids. Don't just have the goal of "What can I bid on today?"
- Information on awarded contracts can be looked up as well. All contracts over \$5K are required to be posted, so all the thousands of contracts in a year can be accessed if you are registered in the system. You can actually do a public records request. That is one of the most leveraged learning processes that you can do. Say there is going to be a project and you can't bid right now, but you are thinking about it. Follow that project or contract on ORPIN, wait for the contract to be awarded, and then do a public records request for the contract or winning bid. Those bids are not exempt. Pricing is not trade secret. If you are looking to do a side by side, go out there and do a public records request and learn from it. See how they were doing it and how close you would have come in. They show the original price and contract, but you can see the original bid.
- When we put out bids on ORPIN, there is a place for you to register as an interested party both at sub and prime level. Utilize that to its fullest extent.
- ORPIN is the largest repository for bidding info, but Cheryl Myers [State of Oregon director of Economic & Business Equity] has great links for cities/counties on her website. Try Googling "City of Central Point Contracting." There is no one place to do that. Cheryl has compiled an extensive list that goes straight to solicitation websites for counties and cities, and she adds to it almost daily.

- Watch ORPIN and use it as a lead generator. You'll get a contracting officer name from the bid, and that's a good place to start making a relationship. Ask if they have a letting schedule or if there is any other website where they advertise their bids. ORPIN is one of many ways they can advertise a project. Be consistent and concise in your questions. "You may not be the person I need to talk to, so can you tell me who is?" Buyers protect the process to make sure it's fair for everyone. They work closely with state agencies and project managers. It's very important that we are open, competitive, fair, ethical, etc.

Retainage

- Have a conversation with the prime when you are entering the contract. You may be able to get some concessions in your contract.
- There is a committee that meets to resolve the issue. The general theme seems to be there are things ODOT can do internally to help promote the release of retainage. The whole idea of having to request it...how do you know you can do that? There is an acknowledgement that we can help. There is a form you can download on the ODOT website. It's one thing to get the form in your hands; the agency/owner has to do something about it. We're looking at different options to release segments quarterly or monthly. Cash flow is a huge issue.
- One thing may have changed since January: there has been a 9% interest applied to retainage from House Bill 4034. It used to be .7% interest on retainage...that's nothing. AGC was a major force in getting it passed, so there is real money associated to late pay. That's something that you want to look into.
- Even with ODOT there is not a standard ODOT contract. Even within the requirements for apprentices, there are I think five different types of projects. It depends on the source of funding, different requirements on minority or women. Look at the specific contract rather than the contract for your last project.
- As a small contractor it's easy to let the documentation slide. Keeping the documentation alive at the sight where the action is actually happening is critical. Make sure that proactive communication is happening. Make sure the inspector knows; document everything.
- If you have a prime or inspector that assures you, "Go ahead and do it and we'll settle up," don't do it. Make sure the person on the job has authority to sign.
- On contractor's advice from their attorney: when you are having people sign things in the field, have someone sign as a witness and not as an authorization.
- Make the outreach and build the relationships before you start working on the projects. You might meet someone, get some background information from them, and you might walk away knowing it might not be a good fit. Or you have some knowledge that will help you be successful bidding and working with them in the future. Do some outreach before you start actively going after their work.
- When I was a contractor, I needed to understand prevailing wage. I was involved with it across the board. I went to the contractor down the street and talked to the office ladies, gave them treats, they talked me through everything. I met what they needed and learned how to do it all.

Training at the cost of treats. They needed me to know the information, and I needed to know it.

- Willingness to learn gives you big political/relationship capital. If your field work is a little off, it can help you get better. The back office piece is critical across the board. Find out how to make your back office better and more timely.
- There are feedback forms available on ORPIN. If you have a problem with something on a project, or kudos on a project, fill that out and send it in.
- On ORPIN, for current ODOT Small Contracting Program there are three pots: construction, A&E, and professional services/other. Review each of them to find out where to register. You may need to register for two. Email the contact named on ORPIN posting. They can tell you if you are currently registered and what you are registered for. Seventy percent of the program is developed and spent in the Portland region. Get registered; they will contact you by email, so make sure your email and phone is current. They are intentional in picking a certified firm. Because of your size and mobility, you may be able to underbid a large contractor.
- ODOT lists all ESB exclusive opportunities on ORPIN. ESB projects are limited to \$100k, and the ESB must perform at least 51% of the labor according to statute.
- We also have e-BIDS, which has our major projects. Six month bid letting schedule. Go to Oregon.gov/odot, look under contracts on left-hand bar, six month bid schedule, access to EBIDS. That's for major projects. Who bidders are, plans, etc. Bridges and highways are on there as well. Who the planholders are, who is bidding, etc.
- Some plan centers only have portions of projects. Go to ORPIN for the full deal.

Metro

- Metro has a project management office, five or six people who work on different projects. They often do the sheltered market, and a lot of what they do is informal. It's often who you know.
- The construction or public improvements between \$5,000 and \$50,000 is what they consider is their sheltered market.
- Metro is a special district...there are a lot of planning folks, originally started about transportation planning for Clackamas, Washington, and Multnomah counties. Metro oversees parts of that, including the urban growth boundary, and they also run the waste transfer stations (dumps), a couple of parks (Oxbow and Bluelake), the convention center, PCPA, expo center, and the zoo.
- **Determining Who to Hire**
As a government agency it's a bit different for small work. There are some contractors that PMs like working with, and they are MWESB or ESB and they keep using them. They do good work and keep them working. They are asked to rotate some other businesses in.
- There are four or five in the office, and they talk about the contractors they use and give each other references on who to use.

Multnomah County

- Unlike the city of Portland, the county does significantly less construction. That said, we maximize what we do in construction. We have similar programs as the city, like workforce training and hiring, but our good faith effort program is different than the City. If you are an MWESB and you attend the meeting, you are the priority for the good faith contact. That distinguishes our program.
- On smaller projects, we have established, under the umbrella of our sustainable purchase policy, social equity. Small business participation is very important under that policy. Small business purchases are going to small/minority contractors first. That was important for us to do, since our construction opportunities are limited. We are including certified small businesses.
- Multcopurch.org has a section for small businesses. We cover all programs and resources for sustainability. We have quite a few resources available.
- For smaller projects, we have taken ownership for MWESB. John Classen does a vetting process and makes contact with MWESB contractors. Those names are provided to the departments. We always do the scrubbing process so someone can't claim they couldn't find anyone. John is coming up with a tutorial and working with small businesses and their descriptions in the database. He is teaching them how to write their descriptions so they pop up more often and better; wordsmithing and such to help pick up on searches. With NAICS codes they don't have enough description.
- Even if your type of work doesn't appear in the state database, put it in your keywords, because it's a good marketing point.
- We use the state database because it's one big place for everyone. When John finds errors, we tell the state and it's updated. If there are multiple places, the info isn't as good. We partner with the state to keep the info up to date. John's training will be with word search terms. We wouldn't look for equipment, but we would look for excavation. We would find your additional info in your description. We don't want you to miss out, so we want to make sure you have certain key words.
- There are some places across the state that have two people doing all the buying. I can guarantee they are not doing more than a quick look. We want that quick look to count.
- **Mentoring**
We have conversations with the GC, but don't tell them who they are going to mentor. We tell them our expectations, how it would be meaningful, and how we would quantify success. It's a risk for the GC in both time and commitment, there's a relationship involved, and there is chemistry. It's not something we want to mandate. We believe that we want to be one step removed so they can do it on their own. It's a conversation and collaboration on what it should look like, but we purposefully don't mandate who it should be with. They need their own vetting process and specifics on how they run the relationship. We do tell them, whoever you commit to mentor, you *will* mentor them; it's contractually binding then.

- Strategically start thinking about the big partners, ask them to coffee...they will eventually land a significant project, so ask and start building the relationship now. You will be mentored, and also have a better chance at getting a subcontract. Not everyone is willing to be mentored. It requires a certain amount of vulnerability and uncertainty. It's a complex relationship.

City of Portland

- **In Oregon we have a great certification system, within the MWESB community there is a lot of discussion about excluding certain groups, like women-owned businesses because they are just “fronts,” or another type because they aren’t excluded as much as another group. What do you think about that? Even the community benefit agreement had exclusive language that people didn’t feel good about.** The City of Portland recently did a disparity study. The study found that minorities and women were underutilized in prime contracting with the city. To address this, we came up with a new program called the Prime Contractor Development Program (PCDP), which we hope will increase the number of minorities and women bidding with the City of Portland. We also included emerging small businesses in this program. *All* contractors are eligible to receive contracts from the city. We are inclusive.

The Community Benefits Agreement (CBA) was recently made part of two projects here at the city. Various unions and community groups advocated at city council for its adoption. The CBA was adopted by city council and included on two Water Bureau projects—Kelly Butte Reservoir and the Interstate Maintenance Facility. Originally the CBA included minorities and women businesses only, but was later revised to include emerging small businesses.

- Historically, minority and women businesses have been left out says the city’s disparity study. Procurement Services came up with the Prime Contractor Development Program to address this disparity.
- If you want to business with the city, you have to be registered on the city’s website. Companies should visit (www.portlandoregon.gov/bibs/26522?) and sign up to receive bid notices. The city does a lot of construction—sewer, water, street improvements, parks, and facilities.
- **Types of Contracts**
We have projects coming out constantly. Our smaller projects from \$5,000 to \$350,000 are bid first to prime contractors in the Prime Contractor Development Program. All other projects \$350,001 and over are bid to the open market where any qualified contractor could bid. Most of the city contracts use the low bid method.
- We do some Construction Manager General Contractor (CM/GC), maybe three or four per year.
- Community Benefit Agreement contracts, a new method negotiated by the unions and various community groups, are being done on the Interstate Maintenance Facility and Kelley Butte Reservoir projects. This agreement ensures that the public served by the owner receives the fullest benefits of the public works construction projects undertaken by the owner, to ensure that the owner does not indirectly perpetuate the under-inclusion of racial and ethnic minorities and women in the construction industry and trades.
 - We have three programs:
 - **Good Faith Effort Program** provides an opportunity for certified minority, women, and emerging small businesses to bid to large primes on projects.

- **Workforce and Training Program:** the goal of this program is to increase the numbers of women and minorities in the construction trades through apprenticeship opportunities on City of Portland projects.
- **Prime Contractor Development Program:** the goal of this program is to increase the number of minority, women, and emerging small business prime contractors bidding on City of Portland projects.

The contractors in Tier 1 will be bidding on projects up to \$150,000. Contractors in Tier 2 will be bidding on projects \$150,001 to \$350,000. Tiers 3 and 4 will be implemented in one or two years.

- **What are the revenue tiers for the new program?** Contractors in Tier 1 cannot make over 1.7 million dollars in any one year. For Tier 2, contractors are required to make over \$1.7 million. The contractors in Tier 1 will be bidding on projects from \$5,000 to \$150,000. Contractors in Tier 2 will be bidding on projects \$150,001 to \$350,000. Tiers 3 and 4 will be implemented in one or two years.

Prime contractors in Tier 2 will be attending the Interise Street Wise ‘MBA’ program. Interise is a program run out of Boston, where contractors go to class, maybe twice a month, and they discuss, go through the company’s financials, where they want to be and how they will get there. The program lasts for 10 months. We have heard companies are saying that because of the program their company have grown and profited more. We are looking forward to contractors being in that program. It’s gotten rave reviews across the country.

- **If a subcontractor like me has a problem on a project. Who do we go to?** You can come to Procurement Services for assistance. We have a track record of successfully helping contractors on projects. We will work with the project manager, the bureau, etc. to help you resolve the issues. Some issues we cannot get involved in, but most likely we can be of assistance.

Suggestions for Agencies

- Meeting goals, as long as it's a reasonable goal and it's been set based on the availability of the contractor subset, GCs can meet them. What I found at the Port, one of the keys was for the owner to set the expectations and monitor the performance to those expectations, but also to get out of the way. We had one disaster project where the Port PM would not let the GC, who knew how to find the subs, do his work and award it so they could get it done well and achieve the goal. We didn't get out of the way and didn't meet the goal. GCs know how to meet the goals as long as they are reasonable.
- ***Do you ever not meet the goals because you can't find contractors?***
Sometimes, like with mechanical, it's really tough to meet because there are not a lot of MWESBs big enough to do the work.

I've been critical for years, coming up with a goal on a project...25% period. On some projects that's a slam dunk, on others it could be almost impossible. Owners need to look at the work and the availability, and give some thought on the goals rather than slap one number on a project. Every project had its own goal, as low as 2% and sometimes as high as 25%.

Challenge managers to meet the businesses. It would really open their eyes. Hold outreach events at the end of a workday. It's a good idea to attend meetings others are already attending.

- **When Metro has a project that is ongoing and MWESBs are on the project, do you monitor how successful those businesses are? Was the project healthy for them?** We find that some projects are detrimental to our business. We find that no one knows about problems and we lose money (or in some cases, go out of business altogether). There can be things that happen on the project that effect the work that we do, how we're treated, etc. If it ends up costing us, for no fault of ours, no one knows about it.
- With the city, if there's a problem with the GC, and the GC doesn't follow the contract but tries to hold the subs to the contract, no one cares. Sometimes the attitude of the GC is "we're going to take as much from you as we can get and we don't care what it does to you. We are giving you the opportunity to be on this project so you should be grateful." It would be nice to be able to have issues brought to the attention of the owners so they know how the project is going and what's happening. It doesn't help a small business to be on a project if they are not successful.
- I would say small businesses go above and beyond to try to prove themselves, and GCs are getting much more for their dollar when working with smaller companies. And their treatment of smaller businesses is not helpful. There is no reason for it. They should have enough people, if they are a big GC, and have DBE coordinators, that they should be coordinating. They need to help the process work.
- When you hire a GC, you hire them to get subs and manage the project. The owner needs to set the expectation and monitor results. But get out of the way.

- Agencies should use incentives and quarterly meetings, and MWESB participation should be part of the criteria for the general to get their incentive. If they don't get any MWESB participation by the meetings, they don't get their incentive, and they step up their game. There are things you can do to incentivize them. But the owner has to hold them accountable.
- PCC is requiring generals (Rock Creek and Cascade) to partner with minority businesses...there is a concern that some businesses aren't ready to be partners at that level. The RH/Colas partnership is a real partnership, but some of the others are not. I wonder if the owners should be dictating partnerships. I think they are creating artificial relationships. Small businesses get in over their heads and the GC becomes a babysitter. Bad for both parties. And sometimes the minority business goes out of business afterwards.
- **How does a public agency help build capacity that isn't too much of a budget problem? How do you build capacity? Is building capacity upping your bonding limit? Is it other than financial? Is it skills?** It's both: skills, bonding capacity, working capital. More revenue, you're successful, you have more working capital and bonding. More experience, administration, paperwork, management skills.
- **Do you think that a good PM should be able to know from a bid or looking at references or the info submitted with the price, should be able to figure out whether or not the job is a little bit of a stretch for a contractor? Not over their head, but a little bit of a stretch. Getting the same jobs over and over again, does that build capacity, or is it the stretch?** It can be both. If a small business has a niche of doing jobs around \$25K, and they do them well, make a profit on every job, building their balance and working capital. Maybe they are trying to inch it up one or two percent on every job. For your PMs to know, it's back to getting out into the MWESB community and getting to know the businesses. They may get a bid and hope, but they can't evaluate unless they know people.
- **In Oregon we have a great certification system, within the MWESB community there is a lot of discussion about excluding certain groups, like women-owned businesses because they are just "fronts," or another type because they aren't excluded as much as another group. What do you think about that? Even the community benefit agreement had exclusive language that people didn't feel good about.** All of our programs are for the broader DMWESB community, and we are all about inclusion. We do not do hard goals or aspirational goals as an agency. It works very well for us. It builds economic and community development long term. Our intent for Sellwood was that people would be in a better position in their business and be well positioned to bid on other projects. We want them to be better when they are done with the project. We are a broad audience, all about inclusion and not exclusion. We have heard that some people aren't happy about that, but it's our overall policy and we will continue. Our overall number last year was 34.4 % for all goods and services, everything we bought. We average 30% and above for the past three years. We hope to maintain that.
- Multnomah County has been working on for 2.5 years, convening MWESB summits. Pulling together agencies—16 at first, now 25—from across the state to look at small business efforts and looking for continuity, dialogues, and looking for inclusion. Sharing contract language, innovations, lessons learned. The county has taken leadership on that, and meetings are scheduled through June of 2014. That's a new initiative. How do we do this, how do we work

together? Various groups are included: legal, MWESB, and other areas are represented. Legal especially. The ownership of the group is of the group.

Agency Contact Information

Oregon University System

www.ous.edu

Doing Business With OUS: www.ous.edu/about/bid

MWESB Policies: www.ous.edu/about/bid/mwesh

Contracts and Purchasing: www.ous.edu/dept/contracts

Oregon Department of Transportation Office of Civil Rights

www.oregon.gov/odot/cs/civilrights/pages/index.aspx

State of Oregon Department of Administrative Services

www.oregon.gov/das/pages/index.aspx

Procurement Services and Policy: www.oregon.gov/das/egs/ps/pages/index.aspx

Metro

www.oregonmetro.gov

MWESB Program: www.oregonmetro.gov/index.cfm/go/by.web/id=24904

Doing Business With Metro: www.oregonmetro.gov/index.cfm/go/by.web/id=24881

Requests for Bids and Proposals: www.oregonmetro.gov/index.cfm/go/by.web/id=24894

Multnomah County

Purchasing: www.multcopurch.org

Minority, Women and Emerging Small Business: web.multco.us/purchasing/minority-women-and-emerging-small-business

How to Do Business With the County: web.multco.us/purchasing/how-do-business-county

Bid & Proposal Opportunities: web.multco.us/purchasing/bids-proposal-opportunities

City of Portland

Procurement Services: www.portlandoregon.gov/purchasing

Contractor Resources: www.portlandonline.com/omf/index.cfm?c=45660

Social Equity Contracting: www.portlandonline.com/omf/index.cfm?c=27355

About Procurement Services: www.portlandonline.com/omf/index.cfm?c=45662

Overcoming Obstacles

Best Practices for Subcontractors, General Contractors, and Public Agencies



Attachments and Handouts



9450 SW Commerce Circle #200 ♦ Wilsonville, OR 97070
503-682-3363 ♦ www.agc-oregon.org