



Policy recommendations for successful inclusion
of BIPOC-owned General Contractors and Construction Managers in the
Office of Economic Opportunity's reporting for the City of Philadelphia

In 2021 the City of Philadelphia updated the City Code to allow the Commerce Department to better combat fraudulent enterprises designed to subvert minority subcontractor participation requirements, sometimes known as “pass-through” entities. Unfortunately, this legislative update did not clarify the role of a certified diverse general contractor or construction manager. Because general contractors and construction managers do not self-perform their assigned duties, but instead hire and direct a team of subcontractors, their business structure often has been erroneously considered a pass-through organization by those outside of the industry.

This industry comprises establishments primarily responsible for the construction (including new work, additions, alterations, maintenance, and repairs) of commercial and institutional buildings and related structures, such as stadiums, grain elevators, and indoor swimming facilities. This industry includes establishments responsible for the on-site assembly of modular or prefabricated commercial and institutional buildings. Included in this industry are commercial and institutional building general contractors, commercial and institutional building for-sale builders, commercial and institutional building design-build firms, and commercial and institutional building project construction management firms.¹

This industry comprises establishments primarily responsible for the construction (including new work, additions, alterations, maintenance, and repairs) of industrial buildings (except warehouses). The construction of selected additional structures, whose production processes are similar to those for industrial buildings (e.g., incinerators, cement plants, blast furnaces, and similar nonbuilding structures), is included in this industry. Included in this industry are industrial building general contractors, industrial building for-sale builders, industrial building design-build firms, and industrial building construction management firms.²

Even within the industry, there is no clear methodology for calculating the participation of minority and women general contractors and construction managers, nor are there clearly defined supplier diversity requirements to hold vendors accountable when hiring subcontractors.

The recommendations included offer a complete overview of the most common partnership arrangements as well as best practices for each type of agreement. Examples of the human resources and other capacities required to effectively perform the required responsibilities in each partnership structure are also briefly summarized. The recommendations included in this document have been vetted by a diverse array of industry leaders and are aligned with industry norms and existing legislation.

¹ NAICS Code: 236220 Commercial and Institutional Building Construction

² NAICS Code: 2236210 Industrial Building Construction



To achieve maximum diversity, equity, and inclusion, the construction industry must organize practice around five key imperatives:

1. Support the growth and development of minority owned professional services companies.
2. Increase the diversity of the construction workforce such that participant demographics are representative of the city's population
3. Increase the number and capacity of the minority owned general contractors and construction management firms in the city
4. Improve the number, scope, and significance of opportunities for minority owned construction supply companies
5. Increase the amount and size of the minority owned construction trade specialists in the city

Use Case – Minority or Woman-Owned Prime Contractor

The following recommendation seeks to clarify the way spend with diverse prime contractors is measured. In the case of a minority or woman-owned general contractor or construction manager serving as a prime contractor, we recommend that 100% of the contract value be categorized as diverse spend. The control of the diverse spend will be determined by the contractual risk of loss assumed by the minority contractor. Categorizing contract dollars in this way would demonstrate consistency across the way diverse participation metrics are applied to primary, secondary, and tertiary contractors.

We further recommend that minority or woman-owned prime general contractors or construction managers also be held accountable to industry standard participation goals on the project, ie. 35% minority-owned and 10% woman-owned participation. We also expect institutions and developers to set their own diversity inclusion goals for trade contractors and suppliers that will deviate from industry standards. In addition, we posit that work self-performed by minority general contractors and construction managers, as well as their fees and profits, should be counted towards their supplier diversity goals in their respective categories as woman or minority owned businesses.

Use Case – Minority or Woman Owned Joint Venture Partner or Teaming Agreement

In the case of a joint venture partnership between a minority or woman-owned GC or CM and a non-diverse (white owned or publicly traded) firm of the same type, spend is only categorized as diverse when the venture is structured such at least 51% of the contract value is controlled by the diverse firm. While there is general agreement in the value of joint ventures led by diverse firms, many of these partnerships are structured such that the diverse firm is a junior partner. In the case of a joint venture where the minority partner controls less than 50% of the project, we suggest that 100% of the share of the project allocated to the minority partner be counted as diverse spend. The control of the diverse spend will be determined by the contractual risk of loss assumed by the minority contractor. In this case, the joint venture would still be responsible for reaching the balance of the project's diversity goals for trade contractors and suppliers. Minority and woman-owned GCs and CMs would also be able to count their fees, profits, and any self-performed work towards the diversity goal for their respective diversity categories.



Use Case – Minority or Woman Owned Second Tier General Contractor or Construction Manager

In the case of a minority or woman-owned firm serving as a subcontractor or second-tier GC or CM, there is also a lack of clarity on reporting practices. The Tier One/Tier Two approach is common practice in the federal procurement system, called a Teaming Agreement. When this agreement follows best practices, two organizations form a strategic alliance and conduct business on a prime contractor and subcontractor basis, but it is a true partnership. The distinction is that the diverse GC or CM is assigned a specific scope of work that is performed *at risk* with contractual privity over their assigned trade contractors. In this partnership model, the diverse-owned GC or CM manages the entire budget for the work within their scope. Here again, the recommendation is for 100% of the budget managed by the diverse general contractor or construction manager subcontractor to be categorized as diverse spend. The control of the diverse spend will be determined by the contractual risk of loss assumed by the minority contractor. The non-diverse prime GC or CM would also be accountable for reaching the diverse trade contractor and supplier goals for the rest of the work under their scope.

Why these three formats?

As we consider the factors necessary to grow a competitive and diverse construction industry in Philadelphia, it is important to create a clear pathway for minority general contractors and construction managers to grow. The cases above not only offer solutions for the most common situations, but also create a clear framework for the partnerships necessary to grow a minority owned firm.