

Obstacles to Boston Residents Jobs Policy compliance - no baselines and the public bid law

The Boston Residents Jobs Policy (BRJP) was established in 1983 to set employment standards for construction projects in Boston. Several articles have been published about the challenges of meeting policy goals. (See: *City wrestles with policing its jobs policy, Dorchester Reporter 3/1/12*, *Construction hiring goals not met in Boston, Boston Globe, 5/18/15*, *Builders in Boston missing diversity targets for jobs, Boston Globe, 8/28/15*, *Council Probes Boston jobs policy, Bay State Banner, 10/31/18*.) People are missing the two most significant factors contributing to non-compliance: the lack of a baseline for the total number of residents, people of color and women employed in construction in Boston, and Massachusetts public bid law.

Challenge One – The Lack of a Baseline for Residents, People of Color, and Women in Construction.

The unknown total number of residents, people of color, and women currently employed as construction workers in Boston poses one of the biggest challenges to compliance with the BRJP.

When construction projects in Boston fail to meet the BRJP goals, it is, at times, due to a lack of available Boston residents, people of color, and women. To check, we need to divide the total number of residents, people of color, and women working by the total number of residents, people of color, and women currently employed in construction. We need a baseline.

We judge construction project compliance in two ways: assessing the process by which a project tries to reach the BRJP employment goals and analyzing actual results versus the goals. Judging the process is straightforward; a project either did or didn't follow the best-practices provided to them by the city. Judging actual results versus the goals is nearly impossible without a baseline.

For example, if a project is achieving 25% resident participation versus the 51% goal, then one of two things is happening: either the project isn't hiring residents as it should, or there aren't enough residents available to work to reach the goal. Without a baseline, we can't confidently determine what that 25% truly represents.

Creating a baseline is challenging, though. First, there are two forms of construction in Boston – union and open-shop. Union construction doesn't collect residency, ethnicity, or gender information from their members and if non-union firms do, it's firm-specific and sporadic, at best. Second, that information is private, and companies are not obligated to provide it. Additionally, construction workforces are fluid. Each company has a 'core crew,' or permanent employees, but the total number of employees on a given project varies depending on its size and need for additional, temporary labor.

Recommendation One - Collect baseline data on the total number of residents, people of color, and women employed as 'core crew' employees with construction companies working in Boston.

Challenge Two – The Public Bid Law.

Public bid law states that public construction project contracts must be awarded to the 'lowest responsible and eligible bidder', with 'responsible' meaning 'possessing the skill, ability, and integrity'

necessary to perform the work, and 'eligible' meaning a bidder 'who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.' (Julianne Fitzpatrick, *Massachusetts public bidding laws: What contractors need to know before & after they bid.*)

In 2018, 44 of the 239 BRJP projects were Public Facilities Department (PFD) projects which are subject to the public bid system. When bidding for one of these jobs, contractors are made aware of the BRJP employment goals. However, their past compliance with the goals is not taken into consideration when contracts are awarded. Much like history, workforce compliance often repeats itself.

Past performance with BRJP goals needs to become a part of the public bid selection process. The system is broken and poses a real challenge to projects that are trying their best to adhere to the BRJP goals.

Recommendation Two – update the definition of 'responsible' to include a history of BRJP compliance. Let's weigh a contractor's ability to provide residents, people of color, and women with employment as equal to their skill, ability, and integrity.

A Dysfunctional System?

Between the lack of a workforce baseline and the public bid law, one might argue that the BRJP operates in a dysfunctional system. Mark Erlich, however, argues that 'If there's a dysfunctional system and it keeps staying in place, at some point it's not dysfunctional because it's functional for somebody. This current purgatory that we have has served many people extremely well.' (*The Epidemic of Wage Theft in Residential Construction in Massachusetts.*)

While I am not addressing wage theft, Mark's words resonate with the system in which the BRJP operates. As it stands today, the construction system is functioning exceptionally well for contractors that have no intention of hiring residents, people of color, and women under the BRJP. Moreover, these same contractors continue to win contracts to work in Boston, often via public bid.

To truly determine compliance with the BRJP, we need to have baseline data. The data will help inform whether compliance or lack thereof, is due to a shortage of available workers or a failure to hire them. We also need a public bid law that incorporates BRJP compliance into the award process. These two recommendations will create a system that can both accurately determine compliance efforts and award firms that hire residents, people of color, and women with future contracts.

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