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A HAND A UP HAND DOWN

SET-ASIDES FOR WOMEN-OWNED FIRMS ARE A PARADOX. SOME CAN MOVE YOU AHEAD. OTHERS ARE JUST A HEADACHE.

BY FRED A. BERNSTEIN

Andrea Cochran, FASLA, the San Francisco-based landscape architect, has received the Cooper Hewitt's National Design Award, the ASLA Design Medal, and many other honors. But despite her prominence, she says, she still sees sexism affecting the profession. "It's not overt, but it's there," says Cochran, explaining that it is precisely her success that makes her aware of the problem. "If you asked me when I was in my 20s if I had ever experienced sexism, I would have laughed at you," she says. "But then you get to a certain point in your career and you realize there is a glass ceiling." In her experience, "It's still hard to get certain types of jobs, some of the bigger jobs, if you're a woman."

So Cochran supports programs that require prime contractors on public projects to award a percentage of the work to "women business enterprises," or WBEs. "If being a WBE helps me get a job, that's fine," says Cochran, her voice rising, "because there are lots of other jobs I would have gotten if I were a guy."

Not all women landscape architects are as enthusiastic as Cochran is about the so-called set-asides, which have been proliferating since the 1980s. The rules differ, significantly, from place to place, but generally require prime contractors to subcontract a certain amount of work to WBEs. The New York City School Construction Authority, for instance, requires primes to show a good-faith effort to subcontract 20 percent of the work to certified minority- or woman-owned business enterprises. (In some jurisdictions, goals for women and minorities are separated so that one group doesn't gain at the expense of the other.)

Susannah Drake, FASLA, the owner of dlandstudio, an eight-person New York-based firm, says her WBE status may be doing her more harm than good.

Too often, Drake says, she joins teams responding to RFPs, only to find herself shunted aside as soon as the proposal is submitted. Large architecture/engineering firms, in particular, she says, “will put us on the team because they need a WBE, not because they want us to contribute.”

Sometimes, she says, even being on the winning team results in little or no work. “You're told the scope of the job has changed, and your services are no longer required,” says Drake. In such cases, it's hard to know the truth. “All I know is the original \$100,000 I was supposed to get dissolved into \$30,000,” she

says. “How do you run a business when you have an expectation that you're going to make a certain amount of money and it goes away in the middle of a job?”

Even if she does get the fee she was promised, it may bear little relationship to the effort involved: Primes sometimes limit fees to the precise amount they are required to pay under the MBE/WBE rules. Overall, in nine years, Drake says, her gross revenue from the jobs she has qualified for as a WBE has totaled about \$60,000. From that she has to deduct not only the costs of becoming a WBE—the paperwork “was about a foot thick,” she says—but also the costs of responding to the individual RFPs (which includes deciding which jobs to present and how best to present them). “You're spending a lot of time chasing a lot of projects,” she says. “And generally, your compensation doesn't equal the effort that went into getting the job.” Projects are worthwhile “if they're profitable or at least help advance our thinking,” she says. “And when I look at the projects that are WBE projects, they are really not fulfilling either goal.”

Jan Saltiel Rafel, ASLA, the owner of Edgewater Design in Millburn, New Jersey, has had good and bad experiences. Last year, she joined a team, assembled by an engineering firm, to bid on a large job for a public agency. Among her qualifications: her WBE status, which she has maintained—despite the daunting paperwork—for more than 20 years.

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Rafel’s team won the job. But soon after work began, the engineering firm that had recruited Rafel began handling landscape design itself. Rafel was told the scope of the job had changed—an assertion she had little choice, she says, but to accept.

On the plus side: Soon after founding her firm in the 1990s, she bid on a job for a public university, for which her WBE status qualified her. Not only did she win that contract, but 20 years later the university is still giving her work. In a state where the large engineering firms were once considered “an old boy’s network,” she says, her WBE status “has helped me get in the door.” More recently, she

was hired by the New York City School Construction Authority, which was seeking WBEs as prime contractors. Far from complaining about the system, Rafel says, “the pendulum has swung; if you’re a white male going after work as a landscape architect sub in New York City, you may be at a disadvantage.”

The WBE system is really a patchwork of laws that vary from state to state, city to city, and even agency to agency. The U.S. Department of Transportation’s Disadvantaged Business Enterprise Program has included women

since 1987, according to Jon Wainwright, the senior vice president of NERA Economic Consulting and a leading expert on the set-aside rules. By contrast, he notes, the Small Business Administration’s Women-Owned Small Business federal contract program didn’t take effect until 2011.

Targets, too, are constantly shifting, as governments conduct disparity studies, which measure the gap between the amount of work awarded to WBEs and the amount of work expected to go to WBEs based on their availability. (Such studies are required if the programs are to pass constitutional muster.) The city of Austin, Texas, for instance, currently has a goal of 13.8 percent WBE participation in construction contracts, but that percentage could change as a result of a disparity study now under way.

Set-aside programs are also subject to fraud, cheating legitimate WBEs out of work. In Manhattan, a grand jury investigating contracts awarded by the Empire State Development Corporation and New York City’s Office of Contract Services found that some contractors had created shell corporations, headed by female relatives, to avoid working with actual WBEs; the schemes stretched back at least 10 years.

One thing all the programs have in common is that firms qualify only by demonstrating that more than half their ownership

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is in the hands of women—and then demonstrating it again at regular intervals. As Drake says, wryly, “I’m always re-proving that I’m a woman.” Annette P. Wilkus, FASLA, of New York, who registered her firm as a WBE about eight years ago, remembers the paperwork as “incredibly laborious, even ridiculous—they look for reasons to bounce things back to you.” (Some programs require proof of female management as well as female ownership.)

Responses to the WBE system are as varied as the firms that bear that designation.

Donna Walcavage, FASLA, ran her own Manhattan firm for 30 years before it became part of the global giant Stantec. During her years as an entrepreneur, she witnessed occasional abuses of the WBE system (similar to those described by Drake). Engineering firms might say, “We need 5.6 percent of our fee going to a WBE. So you’ll do 5.6 percent of the work and we’ll have our people take over.” And in other cases, she says, “I did a hell of a lot of paperwork but then the real work never materialized—I was told the scope of the project had changed. So I understand that that does happen.” But, she says, such instances were rare. “If the only reason they’re asking you to join the team is that you’re a WBE, it’s better to say no. I think you have to be very clear about why you’re on a project, and build relationships with people who understand your value to the team.” And

when there is abuse, she says, “If you’re a WBE you’ve got a bit of protection. You can go to the agency and say, ‘They’re not giving me my whole fee.’”

As someone who was working in the field before WBE programs were invented, Walcavage says, she believes the system has helped landscape architects, precisely because the profession was marginalized for so long. Twenty-five years ago, she says, “the big engineering firms might have been leery of working with women.” At the same time, “they might not have thought landscape architecture was important,” she says. “So they figured, ‘We can give women the planting,’” Walcavage says. “And then they found over the years that landscape architects can add a great deal to the project.”

In many jurisdictions, bidding rules require prime contractors to team with WBE subcontractors, in any relevant field. But women are better represented in landscape architecture than in some other building professions, so it is often landscape architects who are brought in to meet the WBE quota. That’s good for the profession overall. On the flip side, says Drake, the addition of so many professions to the teams—these days, there are everything from economists to archaeologists on major public contracts—means that the pie has to be divided into many pieces, with less money for each.

Then, too, there may not be as many WBE landscape architects as the number of women in the profession suggests. Cochran has an opinion about the reason. “My class at Harvard was 50 percent women. But a lot of women end up dropping out for family reasons. Not many,” she says, “end up having their own firms.” And women who work for male-owned firms don’t benefit from WBE programs.

In Colorado, Susan Brown, ASLA, the founding principal of Valerian LLC of Denver, says the WBE system got her “some big jobs that kept us afloat during the recession.” In 2007, she got a call from CH2M HILL, a huge engineering firm that needed a WBE to bid on a contract to provide project-management services to the city’s Parks and Recreation Department.

The team won the bid, and Brown says, “Of course we had to do a really good job—if you come in as a WBE you’re under additional scrutiny.” In the process, she built a relationship with a city official who later moved to the Denver Airport Authority and helped Brown win a \$350,000 job (this time as prime contractor) to landscape the new south terminal of Denver International Airport. “We had never been a prime before,” she says. Her view of the WBE system now? “For 20 years I would have said it doesn’t work, but what I found is that if you’re persistent and eventually get on a team, you get to know people. And now that we have the experience,

we’re getting work just like a male firm. We’ve finally figured it out.”

True, some women have chosen not to register as WBEs, on principle. Jamie Csizmadia of Oklahoma City started her own firm, Olthia Urban Prairie Garden Design, four years ago. At the time, she says, she looked into registering as a WBE but, she says, didn’t relish “rounding up the numerous necessary documents to prove I’m a woman-owned business.” But more important, she says, was that she prefers to “openly engage the world” with the belief that “there’s enough room for all of us. It’s not that I’m not absolutely aware of gender discrimination in our world. But I’d prefer to be selected for projects because someone wants what I have to offer, not because I fit a category.”

Diana Balmori, FASLA, one of the deans of the profession, is torn about WBEs. She says, “I don’t like the feeling that we’re filling a slot.” Still, she says, she has registered as a WBE and “gotten some minor work out of it—not enough to justify the really complicated paperwork.”

Wilkus has been involved in some of New York’s best-known park projects, including all three phases of the High Line. As the founding

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principal of SiteWorks Landscape Architecture, a 10-person firm based in Manhattan, she performs construction-management services, working alongside well-known landscape architects like James Corner Field Operations and Michael Van Valkenburgh Associates. (It has sometimes been an uphill battle, she says, not because she's a woman but "because most construction managers are 'vertical' builders who don't understand the complexities of landscape.") But the WBE status has helped, especially after large construction-management firms began adding landscape architects to their payrolls. That could have put her out of business, but her WBE status has helped her remain in demand. One thing that bugs her, though, is that in many cities, if she wants to bid on a job as a prime, she can't count herself as a WBE—a gripe shared by Susannah Drake. "I think they think the WBE can't handle the job," Drake says, "which is very problematic. I should be able to lead the project and have the guys on my team if I want to. Because some of the guys"—she names two Manhattan economics and engineering firms—"are not just good at what they do but are also incredibly politically connected."

Meanwhile, San Francisco's Cochran spent years helping to design a 14-acre campus for Salesforce, the technology company, in San Francisco's Mission Bay, with the architects Legorreta and Legorreta. Because the project fell under the purview of the city's Redevelopment Agency, portions of it had to be allocated to WBEs—which gave Cochran a leg up. Even though the client ultimately abandoned the plan, she says, "It was great work to have during the recession."

Her bottom line? Cochran avoids joining teams if they're "just trying to fill a quota. But if they like our work, and they also want us because we're a WBE, I don't feel diminished at all. I'm happy to have the work, and I'm happy to have the opportunity to bring something to the table." ●

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