



May 10, 2007

Ms. Deborah Lusk-Barnes
Manager, Contract Compliance and Employment Services
Office of the City Administrator
Contract Compliance and Employment Services Division
250 Frank Ogawa Plaza, Suite 3341
Oakland, CA 94612

Subject: City of Oakland and Redevelopment Agency, Fairness in Purchasing and Contracting Disparity Study - Volume I

Dear Ms. Barnes:

Enclosed please find Volume I of the Fairness in Purchasing and Contracting Disparity Study Report and an Executive Summary dated May 2007. The Volume I report contains the following 10 chapters: Legal Analysis Chapter, Contracting and Procurement Chapter, M/WBE Legislative History Chapter, Prime Contractor Utilization Chapter, Subcontractor Utilization Chapter, Market Area Analysis Chapter, Availability Analysis Chapter, Prime Contractor Disparity Analysis Chapter, Subcontractor Disparity Analysis Chapter, and Anecdotal Analysis Chapter.

Please contact me if you have any questions.

Sincerely,

Eleanor Ramsey

Eleanor Mason Ramsey, Ph.D.
President

cc: Lynn Reddrick, Senior Project Manager

City of Oakland and Redevelopment Agency

Fairness in Purchasing and Contracting Disparity Study

Volume I

Executive Summary

**Submitted to:
City of Oakland and
Redevelopment Agency**

**Submitted by:
Mason Tillman Associates, Ltd.**



MASON TILLMAN
ASSOCIATES, LTD

May 2007

ACKNOWLEDGMENT

In September 2005, the City of Oakland and Redevelopment Agency (City) commissioned a Fairness in Purchasing and Contracting Disparity Study. Mason Tillman Associates, Ltd., of Oakland, California was selected by the City Council to perform the Study.

The purpose of the City's Fairness in Purchasing and Contracting Disparity Study was to determine if the City was actively or passively discriminating against minority and woman-owned business enterprises (M/WBEs). The Study was mandated by Section 808 (b) of the City Charter, which required the City to conduct such a disparity study. The prime utilization analysis included four industries: construction, architecture and engineering, professional services, and goods and other services. Contracts awarded between July 1, 2002 and June 30, 2005 were studied.

Morrison and Foerster, LLP, Watson Enterprises, Carl Chan, Melano and Associates, Jungle Communications, Law Offices of Paul Elizondo, and Christopher Edley, Jr. Esq., Dean of Boalt Hall School of Law, University of California assisted Mason Tillman in the performance of the Study. The subcontractor team performed legal analysis, data collection activities, design and translation services, and outreach to the business community.

The Study could not have been conducted without the cooperation of the local chambers of commerce and business organizations, and the many Oakland business owners who demonstrated their commitment to the Study by participating in interviews and community meetings. In addition, the City's staff played a critical role in assisting with the data collection by making available City personnel, contract records, and documents needed to perform the Study. The extraordinary effort of the City and the business community should be applauded.

Deborah Lusk-Barnes, Manager, Contract Compliance and Employment Services provided overall leadership and guidance for the Study. Ms. Barnes' staff facilitated Mason Tillman's effort to secure the needed resources to complete the Study.

Table of Contents


CHAPTER 1: EXECUTIVE SUMMARY	1-1
I. OVERVIEW	1-1
A. Study Purpose	1-1
B. Legal Requirements	1-1
C. Study Team	1-2
D. Overview of Current L/SLBE Program	1-2
E. Industries Studied	1-2
F. Contract Data Sources	1-3
G. Contract Thresholds	1-4
II. METHODOLOGY AND STRUCTURE	1-5
A. Methodology	1-5
B. Organization of the Report	1-6
III. NOTABLE FINDINGS	1-7
A. Prime Contractor Utilization Analysis	1-7
B. Disparity Analysis Methodology	1-7
C. Contract Size Analysis	1-8
D. Statistical Findings	1-9
IV. ANECDOTAL FINDINGS	1-11



List of Tables

Table 1.01	Contract Thresholds for the City	1-5
Table 1.02	Summary of Disparity Findings for Formal Contracts	1-9
Table 1.03	Summary of Disparity Findings for Informal Contracts	1-10
Table 1.04	Summary of Subcontract Disparity Findings	1-11
Table 1.05	Summary of Findings Concerning Current Barriers Against Ethnic/Gender Groups	1-13





1

EXECUTIVE SUMMARY

I. OVERVIEW

A. Study Purpose

The purpose of the City of Oakland and Redevelopment Agency (City) Fairness in Purchasing and Contracting Disparity Study was to determine if the City was actively or passively discriminating against minority and woman-owned business enterprises (M/WBEs). The Study was mandated by Section 808 (b) of the City Charter, which required the City to conduct such a disparity study. The prime utilization analysis included four industries: construction, architecture and engineering, professional services, and goods and other services. Prime contracts awarded between July 1, 2002 and June 30, 2005 were studied.

B. Legal Requirements

Since the U.S. Supreme Court's 1989 ruling in *City of Richmond v. J. A. Croson Co.* (*Croson*),¹ local governments have been concerned about the legal validity of minority and woman-owned business enterprise programs. The *Croson* decision and subsequent lower court rulings imposed new standards on how local governments can utilize contracting programs to increase the participation of M/WBEs. The new standards provide that a factual basis must be established before enacting race and gender-based remedies to promote business with M/WBEs. A disparity study is the method to establish the required factual predicate.

¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).



C. Study Team

Mason Tillman Associates, Ltd., a public policy consulting firm based in Oakland, California, was selected to perform the Disparity Study. Morrison and Foerster, LLP, Watson Enterprises, Carl Chan, Melano and Associates, Jungle Communications, Law Offices of Paul Elizondo, and Christopher Edley, Jr. Esq., Dean of Boalt Hall School of Law, University of California assisted Mason Tillman in the performance of the Study. The subcontractor team performed legal analysis, data collection activities, design and translation services, and outreach to the business community.

D. Overview of Current L/SLBE Program

The City has a Local and Small Local Business Enterprise (L/SLBE) program governing the procurement of goods and services. The City has had a Program since 1979. The L/SLBE Program has served as a proxy to continue to address the underutilization of certain ethnic and gender groups. The L/SLBE Program was enacted to increase Oakland-based business participation in City contracting and development projects, strengthen Oakland's economic base, and develop Oakland-based businesses through joint ventures and mentor-protégé relationships.

E. Industries Studied

The Disparity Study included a statistical analysis and evaluation of construction, architecture and engineering, professional services, and goods and other services prime contracts and subcontracts awarded in the four industries.

Construction is defined as public work for new construction, remodeling, renovation, maintenance, demolition and repair of any public structure or building, and other public improvements. **Architecture and Engineering** is defined as architecture, engineering, research planning, development, design, alteration or repair of real property, surveying and mapping, comprehensive planning, and other professional services of an architectural and engineering nature. **Professional Services** are defined as consulting, personnel, professional, and technical services. **Goods and Other Services** are defined as supplies, equipment, and non-professional services.



F. Contract Data Sources

1. Prime Contracts

The prime utilization analysis included contracts, purchase orders, and direct purchases awarded by the City during the study period. Contracts, purchase orders, and direct purchases will hereafter be referred to as contracts.

The prime contractor data for the City of Oakland and for the Community and Economic Development Agency (CEDA) was extracted by the City's Purchasing Division from their Oracle-based centralized financial system. The data included the list of purchase orders and a list of payments. There were a large number of payments that did not refer to any purchase order. Some of these payments were direct purchases and others were actually issued against a contract or a purchase order. To avoid over-counting the number of awards made to each vendor, these payments were aggregated by vendor and by fiscal year.

The data for Oakland Base Reuse Authority (OBRA) is not tracked in the City's centralized financial system. This data was manually compiled by OBRA's staff from hard-copy documents.

Payments made to housing developers by CEDA were excluded from the present analysis. CEDA provides loans to not-for-profit developers that cover only a portion of each affordable housing construction project. Although the dollars paid to developers were excluded from the prime contractor analysis, these projects are included in the subcontractor utilization analysis portion of the report.

Mason Tillman cleaned and compiled the provided data and requested corrections for what appeared to be missing or incorrect information. The contracts were then classified into four industry categories defined earlier in this chapter: Construction, Architecture and Engineering, Professional Services, and Goods and Other Services using the object codes provided with the payment data. However, the object codes did not accurately describe the type of work performed by each particular contractor. For example, vendors that were paid in relation to a heavy construction project may include construction suppliers, equipment maintenance contractors, professional engineers, and government agencies. Mason Tillman had to review most of the records one by one to determine the correct industry category for each vendor. Mason Tillman excluded from this analysis expenditures to not-for-profit organizations, government agencies, and banks, as well as expenditures for rental space, subscriptions, and seminars.



2. Subcontracts

Extensive efforts were undertaken to obtain subcontractor records for the City's construction, architecture and engineering, and professional services contracts. Goods and other services contracts traditionally do not include significant subcontracting activity and they were not included in the analysis.

Two sources, City project files and prime contractor and subcontractor expenditure surveys, were used to reconstruct all construction, architecture and engineering, and professional services prime contracts valued at \$100,000 or more. Mason Tillman visited the City's Contract Compliance Division, Public Works Department, Community and Economic Development Agency, and Oakland Base Reuse Authority to reconstruct subcontractor data from various documents found in the project files. The documents include but are not limited to contract documents, contract compliance status reports, subcontractor affidavit for final payment, contractor utilization plan, and prevailing wage documents. The second source was prime contractors who were surveyed by Mason Tillman to determine their subcontractors. The prime contractors were asked to provide the name, award, and payment amounts for each subcontractor. Subcontractors were then surveyed to verify the payments that were received from the prime contractors.

City staff from all agencies described above provided indispensable assistance throughout this process. In addition to providing access to their records, they encouraged the prime contractors and subcontractors to respond to each survey. City staff also assisted in locating subcontractor contact information and payment data which Mason Tillman was not able to locate.

G. Contract Thresholds

The procurement of construction, architecture and engineering, professional services, and goods and other services are subject to different solicitation requirements, depending on the value of the purchase. Informal contracts are small purchases that did not require advertising. There was a maximum threshold of \$50,000 for construction and goods and other services contracts and a maximum threshold of \$15,000 for architecture and engineering and professional services contracts.

Formal contracts are the advertised solicitations above the informal threshold for each industry. Formal contracts have no maximum size threshold. However, the analysis of formal contracts was capped at \$500,000 to ensure that the contracts examined in the disparity analysis were within the capacity level of available M/WBEs.



The following table describes the thresholds used in the analysis of City contracts.

Table 1.01 Contract Thresholds for the City

Industry	Type of Contract		
	Informal Prime Contract	Formal Prime Contract	Subcontract
Construction	Contracts valued \$50,000 and under	Contracts valued between \$50,000 and \$500,000	Prime contracts valued at \$50,000 or more
Architecture and Engineering	Contracts valued \$15,000 and under	Contracts valued between \$15,000 and \$500,000	Prime contracts valued at \$50,000 or more
Professional Services	Contracts valued \$15,000 and under	Contracts valued between \$15,000 and \$500,000	Prime contracts valued at \$50,000 or more
Goods and Other Services	Contracts valued \$50,000 and under	Contracts valued between \$50,000 and \$500,000	Not included

II. METHODOLOGY AND STRUCTURE

A. Methodology

The review of *Croson* and related case law provided the legal framework for conducting the disparity study. A legal review was the **first step** in the disparity study. Case law sets the standard for the methodology employed in a disparity study. **Step two** was to collect utilization records and determine the extent to which the City had used minority, woman-owned, and other businesses to secure its needed goods and services. Utilization records were also used to determine the geographical area in which companies that had received City contracts were located. In **step three**, the City’s market area was identified. Once the market area was defined, the **fourth step**, the availability analysis, identified businesses willing and able to provide services needed by the City. In the **fifth step**, the utilization and availability analyses were used to determine whether there was a statistically significant underutilization within the five industries. In **step six**, the anecdotal analysis, the contemporary experiences of business

**Disparity Study:
Critical Components**

- 1. Legal Framework**
- 2. Utilization Analysis**
- 3. Market Area Analysis**
- 4. Availability Analysis**
- 5. Disparity Analysis**
- 6. Anecdotal Analysis**
- 7. Race Neutral Assessment**
- 8. Recommendations**



owners in the City's market area were collected. In **step seven**, the City's race-neutral efforts were reviewed to determine their scope and effectiveness in including M/WBEs in its contracting. Finally, in **step eight**, the statistical and anecdotal analyses were reviewed and recommendations were written to enhance the City's efforts in contracting with M/WBEs in its market area.

B. Organization of the Report

The Disparity Study findings are issued in two volumes, comprising 12 chapters. The contents of the two volumes are briefly described below:

Volume One: Disparity Study Report

- Chapter 1: Legal Analysis presents the legal cases applicable to business affirmative action programs and the methodology based on those cases required for the Disparity Study
- Chapter 2: Contracting and Procurement Analysis provides an overview of the City's procurement and contracting policies and procedures
- Chapter 3: History of M/W/L/SLBE Legislation and DBE Regulations presents a legislative history of the City's M/WBE Program, the legislative history governing the introduction of the City's L/SLBE Program, and the City's implementation of the DBE Program
- Chapter 4: Prime Contractor Utilization Analysis presents the distribution of prime contracts by industry, ethnicity, and gender
- Chapter 5: Subcontractor Utilization Analysis presents the distribution of subcontracts by industry, ethnicity, and gender
- Chapter 6: Market Area Analysis presents the legal basis for geographical market area determination and defines the City's market area
- Chapter 7: Availability Analysis presents the distribution of available businesses in the City's market area
- Chapter 8: Prime Contractor Disparity Analysis presents prime contractor utilization compared to prime contractor availability by industry, ethnicity, and gender and determines whether the comparison is statistically significant



- Chapter 9: Subcontractor Disparity Analysis presents subcontractor utilization compared to subcontractor availability by industry, ethnicity and gender and determines whether the comparison is statistically significant
- Chapter 10: Anecdotal Analysis presents the business community's experiences and perceptions of barriers encountered in contracting or attempting to contract with the Authority and the City

Volume Two: Recommendations and Not-For-Profit Analysis

- Chapter 1: Recommendations presents the City's L/SLBE Program and provides strategies to enhance its effectiveness.
- Chapter 2: Not-For-Profit Analysis presents an analysis of the City's use of not-for-profit organizations.

III. NOTABLE FINDINGS

A. Prime Contractor Utilization Analysis

The City's prime contractor utilization analysis examined the \$244,205,430 expended on the 24,956 contracts awarded between July 1, 2002 to June 30, 2005. The \$244,205,430 expended included \$77,252,468 for construction, \$21,976,119 for architecture and engineering, \$37,112,084 for professional services, and \$107,864,759 for goods and other services. A total of 24,956 contracts were analyzed, which included 608 for construction, 424 for architecture and engineering, 1,101 for professional services, and 22,823 for goods and other services.

The 24,956 contracts were awarded disproportionately to the 5,018 utilized vendors. The City awarded 60 percent of the contract dollars to less than 2 percent of the 5,018 utilized vendors. Of the 5,018 utilized vendors, 88 vendors received 60 percent or \$146,953,160 of the total expenditures while the remaining 4,930 vendors received 40 percent or \$97,252,270 of the total expenditures.

B. Disparity Analysis Methodology

The objective of the disparity analysis is to determine if M/WBEs were underutilized at a statistically significant level on City contracts. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs should be



approximate to the proportion of available M/WBEs in the relevant market area.² If a disparity exists between these proportions, a statistical test can determine the probability that the disparity is due to chance. If there is a very low probability that the disparity is due to chance,³ the finding is considered statistically significant, and according to *Croson*, an inference of discrimination can be made. This analysis should be applied to M/WBEs by both race and gender.

To determine if the underutilization of M/WBEs can be explained by their possible lack of capacity, the Study has restricted the analysis to contract sizes that are within reach of companies in the availability pool. An analysis of contracts restricted to two dollar thresholds provided in the report illustrated that capacity was not a major factor that produced disparity.

C. Contract Size Analysis

A prime contract disparity analysis was performed on construction, architecture and engineering, professional services, and goods and other services contracts awarded between July 1, 2002 and June 30, 2005.

The majority of the City's contracts were small with 95.63 percent less than \$25,000 and 98.56 percent less than \$100,000. The fact that the majority of the City's contracts were small suggests that the capacity needed to perform most of the contracts awarded during the study period was minimal. Furthermore, there is evidence that certain willing firms also had the capacity to perform contracts in excess of \$500,000.

A threshold of \$500,000 was set for the prime contract disparity analysis to ensure that willing firms had the capacity to perform contracts included in the analysis. The prime contract disparity findings in the four industries under consideration are summarized in the sections below.

² Availability is defined as willing and able firms. The methodology for determining willing and able firms is detailed in Chapter 7 of Volume One.

³ When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level, or a level of absolute certainty, can never be obtained in statistics. A 95 percent confidence level is considered by the courts to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analyzed here was done within the 95 percent confidence level.



D. Statistical Findings

Formal Prime Contract Disparity: There was a statistically significant underutilization of M/WBEs in formal prime contracts in construction and professional services.

Table 1.02 Summary of Disparity Findings for Formal Contracts

Ethnicity and Gender	Construction	Architecture and Engineering	Professional Services	Goods and Other Services
African Americans	Yes	No	Yes	No
Asian Americans	No	No	Yes	No
Hispanic Americans	No	No	No	Yes
Native Americans	---	---	---	---
Minority Business Enterprises	Yes	Yes	Yes	No
Women Business Enterprises	Yes	No	Yes	No
Minority and Women Business Enterprises	Yes	No	Yes	No

Yes = Statistically significant disparity was found
 No = Statistically significant disparity was not found
 --- = There were insufficient records to determine statistical disparity



Informal Contract Disparity: A summary of the disparity identified in the award of informal contracts is presented in Table 1.03. The dollar threshold for informal contracts varies by industry. There was a statistically significant underutilization of M/WBEs in informal prime contracts in each industry.

Table 1.03 Summary of Disparity Findings for Informal Contracts

Ethnicity and Gender	Construction	Architecture and Engineering	Professional Services	Goods and Other Services
African Americans	Yes	No	Yes	No
Asian Americans	No	Yes	Yes	No
Hispanic Americans	Yes	Yes	No	Yes
Native Americans	---	---	---	---
Minority Business Enterprises	Yes	Yes	Yes	Yes
Women Business Enterprises	No	No	No	No
Minority and Women Business Enterprises	Yes	No	Yes	No

Yes = Statistically significant disparity was found
 No = Statistically significant disparity was not found
 --- = There were insufficient records to determine statistical disparity



Subcontract Disparity: A summary of the disparity findings at the subcontractor level is presented below in Table 1.04. Disparity was analyzed for construction, architecture and engineering, and professional services subcontracts. Goods and other services contracts traditionally do not include significant subcontracting activity; therefore, they were not included in the analysis.

As shown in Table 1.04 below, there was a statistically significant underutilization of African Americans, Asian Americans, Hispanic Americans, Minority Business Enterprises, and Minority and Women Business Enterprises in construction subcontracts.

Table 1.04 Summary of Subcontract Disparity Findings

Ethnicity and Gender	Construction	Architecture and Engineering	Professional Services
African Americans	Yes	No	No
Asian Americans	Yes	No	No
Hispanic Americans	Yes	No	No
Native Americans	---	---	---
Minority Business Enterprises	Yes	No	No
Women Business Enterprises	No	No	No
Minority and Women Business Enterprises	Yes	No	No

Yes = Statistically significant disparity was found

No = Statistically significant disparity was not found

--- = There were insufficient records to determine statistical disparity

IV. ANECDOTAL FINDINGS

In *Croson*, the United States Supreme Court specified the use of anecdotal testimony as a means to determine whether remedial race and gender-conscious relief may be justified in a particular market area.⁴ The Court stated that “evidence of a pattern of individual

⁴ *Croson*, 488 U.S. at 509.



discriminatory acts can, if supported by appropriate statistical proofs, lend support to a [local entity's] determination that broader remedial relief [be] justified.”⁵

Fifty business owners in the City of Oakland were interviewed about their experiences during the July 1, 2002 to June 30, 2005 study period. Included were businesses in all four industries included in the Disparity Study. Members of all ethnic groups, except for Native Americans, were interviewed. The anecdotes provide accounts of both active and passive forms of discrimination, as well as businesses' experience with barriers from City officials and the business community.

It should also be noted that many business owners described the City's L/SLBE Program as valuable and a major factor in keeping their businesses solvent. Additionally, the City staff received commendations from interviewees concerning their assistance to M/WBEs.

The following is a brief summary of the anecdotal findings:

- The interviewees reported incidences of racial prejudice encountered when working for the City and within the City.
- Sexist and unfair treatment toward woman-owned business owners were reported by several interviewees. Some female business owners believed that they have to overcome hurdles that their male counterparts are not subjected to because of their gender.
- Many minorities and women find it challenging to crack the closed social and professional “good old boys” network, which they believe deliver a disproportionate number of contracts to a select few Caucasian Male contractors.
- In order to be placed on the public and private bidding lists, contractors must constantly follow up with inquiries, and even then, they often do not receive notice of bid opportunities. Several interviewees reported that there is a problem getting bid information from the City.
- Many interviewees reported that the City failed to pay them in a timely manner.
- A majority of the interviewees believed the City's L/SLBE program is valuable and is needed for small, female and minority businesses.

Table 1.05 below presents a summary of the barriers reported by minority and women-owned businesses in contracting with the City.

⁵ *Id.*



Table 1.05 Summary of Findings Concerning Current Barriers Against Ethnic/Gender Groups

Type of Evidence	Minority Business Enterprises	Caucasian Female Business Enterprises
BUSINESS BARRIERS		
Discrimination Based on Race	X	
Discrimination Based on Gender	X	X
BARRIERS CREATED BY THE CONTRACTOR COMMUNITY		
Difficulty Breaking into Contracting Networks	X	X
Good Old Boys Network	X	X
DIFFICULTIES IN BID PROCESS		
Difficulty Obtaining Bid Information	X	X
Inadequate Lead Time	X	X
Supplier Problems	X	X
FINANCIAL BARRIERS		
Difficulty Obtaining Financing or Credit	X	X
Late Payment by the City	X	



Table 1.05 Summary of Findings Concerning Current Barriers Against Ethnic/Gender Groups

Type of Evidence	Minority Business Enterprises	Caucasian Female Business Enterprises
Late Payment by Prime Contractors	X	X
CERTIFICATION ISSUES		
Paperwork Issues or Problems with Certification Procedures	X	X





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Eleanor Ramsey

Eleanor Mason Ramsey, Ph.D.
President

cc: Lynn Reddrick, Senior Project Manager

City of Oakland and Redevelopment Agency

Fairness in Purchasing and Contracting Disparity Study

Volume I

**Submitted to:
City of Oakland and
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Table of Contents

CHAPTER 1: LEGAL ANALYSIS	1-1
I. INTRODUCTION	1-1
II. STANDARDS OF REVIEW	1-2
A. Race-Conscious Programs	1-2
B. Woman-Owned Business Enterprise Programs	1-3
C. Disadvantaged Business Enterprise Programs	1-5
D. Local Business Enterprise	1-6
III. BURDEN OF PROOF	1-8
A. Strong Basis in Evidence	1-8
B. Ultimate Burden of Proof	1-9
IV. CROSON EVIDENTIARY FRAMEWORK	1-11
A. Active or Passive Participation	1-11
B. Systemic Discriminatory Exclusion	1-14
C. Anecdotal Evidence	1-26
V. CALIFORNIA'S PROPOSITION 209	1-32
VI. CONSIDERATION OF RACE-NEUTRAL OPTIONS	1-36
VII. CONCLUSION	1-37
VIII. LIST OF CASES	1-38
Statutes	1-40



Table of Contents Continued

CHAPTER 2: CONTRACTING AND PROCUREMENT ANALYSIS	2-1
I. INTRODUCTION	2-1
II. DEFINITIONS	2-2
III. OVERVIEW OF THE PROCUREMENT PROCESS	2-2
IV. STANDARDS FOR PROCURING CITY OF OAKLAND CONTRACTS	2-12
A. Informal Contracts	2-12
B. Formal Contracts	2-13
V. EXEMPTIONS FROM THE CITY'S PROCUREMENT PROCESS	2-14
A. Emergency Purchases	2-14
B. Exceptions to Competitive Bidding	2-14
C. Cooperative Agreements	2-15
CHAPTER 3: HISTORY OF M/W/L/SLBE LEGISLATION AND DBE REGULATIONS	3-1
I. INTRODUCTION	3-1
A. Minority and Woman-Owned Business Enterprise Program	3-1
B. Local and Small Local Business Enterprise Program	3-2
C. Disadvantaged Business Enterprise Program	3-3
D. References	3-4



Table of Contents Continued

CHAPTER 4: PRIME CONTRACTOR UTILIZATION ANALYSIS	4-1
I. INTRODUCTION	4-1
II. PRIME CONTRACT DATA SOURCES	4-2
III. PRIME CONTRACTOR UTILIZATION THRESHOLDS	4-3
IV. PRIME CONTRACTOR UTILIZATION	4-3
A. All Prime Contracts, by Industry	4-5
B. Prime Contracts under \$500,000, by Industry	4-13
C. Informal Prime Contracts under \$50,000 or \$15,000, by Industry	4-21
V. HIGHLY USED PRIME CONTRACTORS	4-29
A. Highly Used Prime Contractors, All Industries	4-29
B. Highly Used Prime Contractors By Ethnicity and Gender	4-31
VI. SUMMARY	4-32
 CHAPTER 5: SUBCONTRACTOR UTILIZATION ANALYSIS	 5-1
I. INTRODUCTION	5-1
II. SUBCONTRACTOR UTILIZATION DATA SOURCES	5-1



Table of Contents Continued

III.	SUBCONTRACTOR UTILIZATION ANALYSIS	5-2	
	A.	Construction Utilization: All Subcontracts	5-3
	B.	Architecture and Engineering Utilization: All Subcontracts	5-5
	C.	Professional Services Utilization: All Subcontracts	5-7
CHAPTER 6:	MARKET AREA ANALYSIS	6-1	
I.	MARKET AREA DEFINITION	6-1	
	A.	Legal Criteria for Geographic Market Area	6-1
	B.	Application of the Croson Standard	6-2
II.	CITY OF OAKLAND AND REDEVELOPMENT AGENCY'S MARKET AREA	6-5	
CHAPTER 7:	AVAILABILITY ANALYSIS	7-1	
I.	INTRODUCTION	7-1	
II.	PRIME CONTRACTOR AVAILABILITY DATA SOURCES	7-2	
	A.	Prime Contractor Sources	7-2
	B.	Contractor Outreach	7-3
	C.	Determination of Willingness	7-4
	D.	Distribution of Available Prime Contractors by Source, Ethnicity, and Gender	7-6
III.	CAPACITY	7-11	
	A.	Size of Prime Contracts Analyzed	7-11



Table of Contents Continued

B.	Largest M/WBE Prime Contract Awards by Industry	7-19
C.	City of Oakland Certification Standards	7-19
IV.	PRIME CONTRACTOR AVAILABILITY ANALYSIS	7-20
A.	Construction Prime Contractor Availability	7-21
B.	Architecture and Engineering Prime Contractor Availability	7-23
C.	Professional Services Prime Contractor Availability	7-25
D.	Goods and Other Services Prime Contractor Availability	7-27
V.	SUBCONTRACTOR AVAILABILITY ANALYSIS	7-29
A.	Sources of Potentially Willing and Able Subcontractors and Availability	7-29
B.	Determination of Willingness and Capacity	7-29
C.	Construction Subcontractor Availability	7-30
D.	Architecture and Engineering Subcontractor Availability	7-32
E.	Professional Services Subcontractor Availability	7-34
CHAPTER 8:	PRIME CONTRACTOR DISPARITY ANALYSIS	8-1
I.	INTRODUCTION	8-1
II.	DISPARITY ANALYSIS	8-3
A.	Disparity Analysis: All Contracts under \$500,000, by Industry	8-4
B.	Disparity Analysis: All Contracts under \$50,000 and \$15,000, by Industry	8-16
III.	SUMMARY	8-28



Table of Contents Continued

A.	Construction Prime Contracts	8-28
B.	Architecture and Engineering Prime Contracts	8-29
C.	Professional Services Prime Contracts	8-30
D.	Goods and Other Services Prime Contracts	8-31
CHAPTER 9:	SUBCONTRACTOR DISPARITY ANALYSIS	9-1
I.	INTRODUCTION	9-1
II.	DISPARITY ANALYSIS	9-1
A.	Construction Subcontractor Disparity Analysis: July 1, 2003 to June 30, 2005	9-2
B.	Architecture and Engineering Subcontractor Analysis: July 1, 2003 to June 30, 2005	9-5
C.	Professional Services Subcontractor Analysis: July 1, 2003 to June 30, 2005	9-8
III.	SUBCONTRACTOR DISPARITY SUMMARY	9-11
CHAPTER 10:	ANECDOTAL ANALYSIS	10-1
I.	INTRODUCTION	10-1
A.	Anecdotal Evidence of Active or Passive Participation	10-1
B.	Anecdotal Methodology	10-2
II.	BUSINESS BARRIERS	10-3
A.	Racial Barriers	10-3
B.	Gender Barriers	10-6
III.	BARRIERS CREATED BY THE CONTRACTOR COMMUNITY	10-8



Table of Contents Continued

A.	Difficulty Breaking Into the Contracting Community	10-8
B.	Good Old Boys Network	10-10
IV.	DIFFICULTIES IN THE CONTRACTING PROCESS	10-11
A.	Difficulty Obtaining Bid Information	10-11
B.	Inadequate Lead Time	10-14
V.	CERTIFICATION PROCEDURES	10-16
VI.	FINANCIAL BARRIERS	10-18
A.	Difficulty Obtaining Financing	10-18
B.	Late Payment by the City	10-21
C.	Late Payments by Prime Contractors	10-24
VII.	PUBLIC SECTOR VS. PRIVATE SECTOR	10-25
VIII.	COMMENTS ABOUT THE CITY’S L/SLBE PROGRAM	10-28
IX.	POSITIVE STATEMENTS	10-32
X.	RECOMMENDATIONS	10-35
XI.	SUMMARY	10-38



List of Tables

Table 2.01	City of Oakland Procurement Process	2-4
Table 4.01	Informal Contract Thresholds for City Departments	4-3
Table 4.02	Total Prime Contracts and Dollars Expended: All Industries, July 1, 2002 to June 30, 2005	4-4
Table 4.03	Construction Prime Contractor Utilization All Contracts, July 1, 2002 to June 30, 2005	4-6
Table 4.04	Architecture and Engineering Prime Contractor Utilization: All Contracts, July 1, 2002 to June 30, 2005	4-8
Table 4.05	Professional Services Prime Contractor Utilization: All Contracts, July 1, 2002 to June 30, 2005	4-10
Table 4.06	Goods and Other Services Prime Contractor Utilization: All Contracts, July 1, 2002 to June 30, 2005	4-12
Table 4.07	Construction Prime Contractor Utilization: Contracts under \$500,000, July 1, 2002 to June 30, 2005	4-14
Table 4.08	Architecture and Engineering Prime Contractor Utilization: Contracts under \$500,000, July 1, 2002 to June 30, 2005	4-16
Table 4.09	Professional Services Prime Contractor Utilization: Contracts under \$500,000, July 1, 2002 to June 30, 2005	4-18
Table 4.10	Goods and Other Services Prime Contractor Utilization: Contracts under \$500,000, July 1, 2002 to June 30, 2005	4-20
Table 4.11	Construction Prime Contractor Utilization: Contracts under \$50,000, July 1, 2002 to June 30, 2005	4-22
Table 4.12	Architecture and Engineering Prime Contractor Utilization: Contracts \$15,000 or less, July 1, 2002 to June 30, 2005	4-24
Table 4.13	Professional Services Prime Contractor Utilization: Contracts \$15,000 or less, July 1, 2002 to June 30, 2005	4-26
Table 4.14	Goods and Other Services Prime Contractor Utilization: Contracts \$50,000 or less, July 1, 2002 to June 30, 2005	4-28
Table 4.15	Total Prime Contracts, Utilized Vendors, and Dollars Expended: All Industries, July 1, 2002 to June 30, 2005	4-29



List of Tables Continued

Table 4.16	Distribution of All Contracts	4-29
Table 4.17	Profile of Top Twelve Highly Used Prime Contractors	4-30
Table 4.18	Highly Used African American Prime Contractors	4-31
Table 4.19	Highly Used Asian American Prime Contractors	4-31
Table 4.20	Highly Used Hispanic American Prime Contractors	4-31
Table 4.21	Highly Used Native American Prime Contractors	4-32
Table 4.22	Highly Used Caucasian Female Prime Contractors	4-32
Table 4.23	Highly Used Caucasian Male Prime Contractors	4-32
Table 5.01	Total Subcontract Awards and Dollars: All Industries, July 1, 2003 to June 30, 2005	5-2
Table 5.02	Construction Utilization: All Subcontracts, July 1, 2003 to June 30, 2005	5-4
Table 5.03	Architecture and Engineering Utilization: All Subcontracts, July 1, 2003 to June 30, 2005	5-6
Table 5.04	Professional Services Utilization: All Subcontracts, July 1, 2003 to June 30, 2005	5-8
Table 6.01	City of Oakland Market Area: July 1, 2002 to June 30, 2005	6-6
Table 7.01	Prime Contractor Availability Data Sources	7-2
Table 7.02	Distribution of Prime Contractor Availability Data Sources, All Industries	7-6
Table 7.03	Distribution of Prime Contractor Availability Data Sources, Construction	7-7
Table 7.04	Distribution of Prime Contractor Availability Data Sources, Architecture and Engineering	7-8
Table 7.05	Distribution of Prime Contractor Availability Data Sources, Professional Services	7-9
Table 7.06	Distribution of Prime Contractor Availability Data Sources, Goods and Other Services	7-10
Table 7.07	Prime Contracts by Size: All Industries, July 1, 2002 to June 30, 2005	7-14
Table 7.08	Construction Prime Contracts by Size: July 1, 2002 to June 30, 2005	7-15
Table 7.09	Architecture and Engineering Prime Contracts by Size: July 1, 2002 to June 30, 2005	7-16
Table 7.10	Professional Services Prime Contracts by Size: July 1, 2002 to June 30, 2005	7-17
Table 7.11	Goods and Other Services Prime Contracts by Size: July 1, 2002 to June 30, 2005	7-18



List of Tables Continued

Table 7.12	Largest M/WBE Prime Contract Awards by Industry	7-19
Table 7.13	Available Construction Prime Contractors	7-22
Table 7.14	Available Architecture and Engineering Prime Contractors	7-24
Table 7.15	Available Professional Services Prime Contractors	7-26
Table 7.16	Available Goods and Other Services Prime Contractors	7-28
Table 7.17	Unique Subcontractor Availability Data Sources	7-29
Table 7.18	Available Construction Subcontractors	7-31
Table 7.19	Available Architecture and Engineering Subcontractors	7-33
Table 7.20	Available Professional Services Subcontractors	7-35
Table 8.01	Disparity Analysis: Construction Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005	8-5
Table 8.02	Disparity Analysis: Architecture and Engineering Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005	8-8
Table 8.03	Disparity Analysis: Professional Services Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005	8-11
Table 8.04	Disparity Analysis: Goods and Other Services Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005	8-14
Table 8.05	Disparity Analysis: Construction Prime Contracts under \$50,000, July 1, 2002 to June 30, 2005	8-17
Table 8.06	Disparity Analysis: Architecture and Engineering Prime Contracts under \$15,000, July 1, 2002 to June 30, 2005	8-20
Table 8.07	Disparity Analysis: Professional Services Prime Contracts under \$15,000, July 1, 2002 to June 30, 2005	8-23
Table 8.08	Disparity Analysis: Goods and Other Services Prime Contracts under \$50,000, July 1, 2002 to June 30, 2005	8-26
Table 8.09	Disparity Summary: Construction Prime Contract Dollars, July 1, 2002 to June 30, 2005	8-28
Table 8.10	Disparity Summary: Architecture and Engineering Contract Dollars, July 1, 2002 to June 30, 2005	8-29
Table 8.11	Disparity Summary: Professional Services Prime Contract Dollars, July 1, 2002 to June 30, 2005	8-30
Table 8.12	Disparity Summary: Goods and Other Services Prime Contract Dollars, July 1, 2002 to June 30, 2005	8-31



List of Tables Continued

Table 9.01	Disparity Analysis: Construction Subcontracts, July 1, 2003 to June 30, 2005	9-3
Table 9.02	Disparity Analysis: Architecture and Engineering Subcontracts, July 1, 2003 to June 30, 2005	9-6
Table 9.03	Disparity Analysis: Professional Services Subcontracts, July 1, 2003 to June 30, 2005	9-9
Table 9.04	Subcontractor Disparity Summary, July 1, 2003 to June 30, 2005	9-11
Table 10.01	Summary of Findings Concerning Current Barriers Against Ethnic/Gender Groups	10-40



List of Charts

Chart 8.01	Disparity Analysis: Construction Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005	8-6
Chart 8.02	Disparity Analysis: Architecture and Engineering Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005	8-9
Chart 8.03	Disparity Analysis: Professional Services Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005	8-12
Chart 8.04	Disparity Analysis: Goods and Other Services Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005	8-15
Chart 8.05	Disparity Analysis: Construction Prime Contracts under \$50,000, July 1, 2002 to June 30, 2005	8-18
Chart 8.06	Disparity Analysis: Architecture and Engineering Prime Contracts under \$15,000, July 1, 2002 to June 30, 2005	8-21
Chart 8.07	Disparity Analysis: Professional Services Prime Contracts under \$15,000, July 1, 2002 to June 30, 2005	8-24
Chart 8.08	Disparity Analysis: Goods and Other Services Prime Contracts under \$50,000, July 1, 2002 to June 30, 2005	8-27
Chart 9.01	Disparity Analysis: Construction Subcontracts, July 1, 2003 to June 30, 2005	9-4
Chart 9.02	Disparity Analysis: Architecture and Engineering Subcontracts, July 1, 2003 to June 30, 2005	9-7
Chart 9.03	Disparity Analysis: Professional Services Subcontracts, July 1, 2003 to June 30, 2005	9-10



1

LEGAL ANALYSIS

I. INTRODUCTION

This section discusses the state of the law applicable to affirmative action programs in the area of public contracting. Two United States Supreme Court decisions, *City of Richmond v. J.A. Croson Co.*¹ (*Croson*) and *Adarand v. Peña*² (*Adarand*), raised the standard by which federal courts shall review such programs. In those decisions, the Court announced that the constitutionality of affirmative action programs that employ racial classifications would be subject to “strict scrutiny.” An understanding of *Croson*, which applies to state and local governments, is necessary in developing sound Minority Owned Business Enterprise (MBE) and Woman-owned Business Enterprise (WBE) programs. Broad notions of equity or general allegations of historical and societal discrimination against minorities are insufficient to meet the requirements of the Equal Protection clause of the Constitution. Instead, governments may adopt race-conscious programs only as a remedy for identified discrimination, and this remedy must impose a minimal burden upon unprotected classes.

Adarand, which followed *Croson* in 1995, applied the strict scrutiny standard to federal programs. As a result, the U.S. Department of Transportation amended its regulations to focus on outreach to Disadvantaged Business Enterprises (DBEs). Although the Supreme Court heard argument in *Adarand* in the October 2001 term, it subsequently decided that it had improvidently granted *certiorari*. Thus, the amended DOT regulations continue to be in effect.

A caveat is appropriate here. The review under strict scrutiny is fact-specific. Nevertheless, three post-*Croson* Federal Court of Appeals opinions do provide guidelines for the evidence that should be adduced if race-conscious remedies are put in place. The Third, Eleventh,

¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

² *Adarand Constructors, Inc. v. Federico Peña*, 115 S.Ct. 2097 (1995).



and Tenth Circuits assessed the disparity studies in question on the merits instead of disposing of the cases on procedural issues.³

The Disparity Study was commissioned in order to comply with the provisions in the City of Oakland and Redevelopment Agency's (City) Charter. Section 808 (b) of the Charter obligates the City to conduct "a race and gender disparity evaluation to determine if the City has been an active or passive participant in actual, identifiable discrimination within its relevant market place." "If such disparity evaluation evidences such discrimination the City Council, in order to remedy the discrimination, shall establish a narrowly tailored race and/or gender business participation program, as substantiated by the disparity evaluation, for the bidding and awarding of purchases and contracts. Any such program shall continue only until the discrimination has been remedied."

II. STANDARDS OF REVIEW

The standard of review represents the measure by which a court evaluates a particular legal issue. This section discusses the standard of review that the Supreme Court set for state and local programs in *Croson* and, potentially, federal programs in *Adarand*. It also discusses lower courts' interpretations of these two Supreme Court cases and evaluates the implications for program design that arise from these decisions.

A. Race-Conscious Programs

In *Croson*, the United States Supreme Court affirmed that pursuant to the 14th Amendment, the proper standard of review for state and local race-based programs is strict scrutiny.⁴ Specifically, the government must show that the classification is narrowly tailored to achieve a compelling state interest.⁵ The Court recognized that a state or local entity may take action, in the form of an MBE Program, to rectify the effects of *identified, systemic racial discrimination* within its jurisdiction.⁶ Justice O'Connor, speaking for the majority,

³ *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990 (3d Cir. 1993), on remand, 893 F. Supp. 419 (E.D. Penn. 1995), aff'd, 91 F.3d 586 (3d Cir. 1996); *Engineering Contractors of South Florida v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Fla. 1996), aff'd, 122 F. 3d 895 (11th Cir. 1997); and *Concrete Works of Colorado v. City and County of Denver*, 823 F. Supp 821 (D. Colo 1993), rev'd 36 F.3d 1513 (10th Cir. 1994) ("*Concrete Works I*"), on remand, 86 F.Supp 2d 1042 (D. Colo. 2000), rev'd 321 F.3d 950 (10th Cir. 2003) ("*Concrete Works II*"). In the federal court system, there are primarily three levels of courts: the Supreme Court, appellate courts, and district courts. The Supreme Court is the highest ranking federal court, and its rulings are binding on all other federal courts. Appellate courts' rulings are binding on all district courts in their geographical area and are used for guidance in other circuits. District court rulings, while providing insight into an appropriate legal analysis, are not binding on other courts at the district, appellate, or Supreme Court levels.

⁴ *Croson*, 488 U.S. at 493-95.

⁵ *Id.* at 493.

⁶ *Croson*, 488 U.S. at 509.



articulated various methods of demonstrating discrimination and set forth guidelines for crafting MBE programs so that they are “narrowly tailored” to address systemic racial discrimination.⁷ The specific evidentiary requirements are detailed in Section IV.

B. Woman-Owned Business Enterprise Programs

Since *Croson*, the Supreme Court has remained silent with respect to the appropriate standard of review for Women-Owned Business Enterprise (WBE) and Local Business Enterprise (LBE) programs. *Croson* was limited to the review of a race-conscious plan. In other contexts, however, the Supreme Court has ruled that gender classifications are not subject to the rigorous strict scrutiny standard applied to racial classifications. Instead, gender classifications are subject only to an “intermediate” level of review, regardless of which gender is favored.

Notwithstanding the Supreme Court’s failure thus far to rule on a WBE program, the consensus among the Circuit Courts of Appeals is that these programs are subject only to intermediate scrutiny, rather than the more exacting strict scrutiny to which race-conscious programs are subject.⁸ Intermediate review requires the governmental entity to demonstrate an “important governmental objective” and a method for achieving this objective which bears a fair and substantial relation to the goal.⁹ The Court has also expressed the test as requiring an “exceedingly persuasive justification” for classifications based on gender.¹⁰

The Supreme Court acknowledged that in limited circumstances a gender-based classification favoring one sex can be justified if it intentionally and directly assists the members of that sex which are disproportionately burdened.¹¹

The Third Circuit, in *Contractors Association of Eastern Pennsylvania v. City of Philadelphia (Philadelphia)*, ruled in 1993 that the standard of review that governs WBE

⁷ *Id.* at 501-02. Cases involving education and employment frequently refer to the principal concepts applicable to the use of race in government contracting: compelling interest and narrowly tailored remedies. The Supreme Court in *Croson* and subsequent cases provides fairly detailed guidance on how those concepts are to be treated in contracting. In education and employment, the concepts are not explicated to nearly the same extent. Therefore, references in those cases to “compelling governmental interest” and “narrow tailoring” for purposes of contracting are essentially generic and of little value in determining the appropriate methodology for disparity studies.

⁸ See e.g., *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991); *Philadelphia*, 91 F.3d 586 (3d Cir. 1996); *Engineering Contractors Association of South Florida Inc., et al. v. Metropolitan Dade County et al.*, 122 F.3d 895 (11th Cir. 1997). *Concrete Works II*, 321 F.3d at 959, is in accord.

⁹ *Craig v. Boren*, 429 U.S. at 198-99 (1976).

¹⁰ *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982). See also *Michigan Road Builders Ass’n., Inc. v. Milliken*, 834 F.2d 583 (6th Cir. 1987).

¹¹ *Id.* at 728.



programs is different than the standard imposed upon MBE programs.¹² The Third Circuit held that whereas MBE programs must be “narrowly tailored” to a “compelling state interest,” WBE programs must be “substantially related” to “important governmental objectives.”¹³ An MBE program would only survive constitutional scrutiny by demonstrating a pattern and practice of systemic racial exclusion or discrimination in which a state or local government was an active or passive participant.¹⁴

The Ninth Circuit in *Associated General Contractors of California v. City and County of San Francisco (AGCC I)* held that classifications based on gender require an “exceedingly persuasive justification.”¹⁵ The justification is valid only if members of the gender benefitted by the classification actually suffer a disadvantage related to the classification, and the classification does not reflect or reinforce archaic and stereotyped notions of the roles and abilities of women.¹⁶

The Eleventh Circuit also applies intermediate scrutiny.¹⁷ The district court in *Engineering Contractors Association of South Florida v. Metropolitan Dade County (Dade County)*, which was affirmed by the Eleventh Circuit U.S. Court of Appeals, cited the Third Circuit’s 1993 formulation in *Philadelphia*: “[T]his standard requires the [county] to present probative evidence in support of its stated rationale for the gender preference, discrimination against women-owned contractors.”¹⁸ Although the *Dade County* district court applied the intermediate scrutiny standard, it queried whether the Supreme Court decision in *United States v. Virginia*,¹⁹ finding the all-male program at Virginia Military Institute unconstitutional, signaled a heightened level of scrutiny: parties who seek to defend gender-based government action must demonstrate an “exceedingly persuasive justification” for that action.²⁰ The *Dade County* appellate court echoed that speculation but likewise concluded that “[u]nless and until the Supreme Court tells us otherwise, intermediate scrutiny remains the applicable constitutional standard in gender discrimination cases, and a gender

¹² *Philadelphia*, 6 F.3d at 1000-01.

¹³ *Id.* at 1009.

¹⁴ *Id.* at 1002.

¹⁵ *Associated General Contractors of California v. City and County of San Francisco*, 813 F.2d 922, 940 (9th Cir. 1987).

¹⁶ *Id.* at 940.

¹⁷ *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548, 1579-1580 (11th Cir. 1994).

¹⁸ *Dade County*, 122 F.3rd at 909, (citing *Philadelphia*, 6 F.3d at 1010 (3d Cir. 1993)).

¹⁹ *United States v. Virginia*, 116 S.Ct. 2264 (1996).

²⁰ *Dade County*, 943 F.Supp. at 1556.



preference may be upheld so long as it is substantially related to an important governmental objective.”²¹

The *Dade County* appellate court noted that, at the time, by articulating the “probative evidence” standard, the Third Circuit in *Philadelphia* was the only federal appellate court that explicitly attempted to clarify the evidentiary requirement applicable to gender-conscious programs.²² It went on to interpret that standard to mean that “evidence offered in support of a gender preference must not only be ‘probative’ [but] must also be ‘sufficient.’”²³ It also reiterated two principal guidelines of intermediate scrutiny evidentiary analysis: (1) under this test, a local government must demonstrate some past discrimination against women, but not necessarily discrimination by the government itself;²⁴ and (2) the intermediate scrutiny evidentiary review is not to be directed toward mandating that gender-conscious affirmative action is used only as a “last resort”²⁵ but instead ensuring that the affirmative action is “a product of analysis rather than a stereotyped reaction based on habit.”²⁶ This determination turns on whether there is evidence of past discrimination in the economic sphere at which the affirmative action program is directed.²⁷ The court also stated that “a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”²⁸

C. Disadvantaged Business Enterprise Programs

In response to the United States Supreme Court’s decision in *Adarand*, which applied the strict scrutiny standard to federal programs, the U. S. Department of Transportation (USDOT) revised provisions of its DBE rules. Effective March 1999, the USDOT replaced 49 CFR part 23 of its DBE Program rules, with 49 CFR part 26. The goal of promulgating the new rule was to modify the DBE program so that it would be consistent with the “narrow tailoring” requirement of *Adarand*. The new provisions apply only to the airport,

²¹ *Dade County*, 122 F.3d at 908.

²² *Id.* at 909.

²³ *Id.*

²⁴ *Id.* at 910 (citing *Ensley Branch*, 31 F.3d at 1580).

²⁵ *Id.* (citing *Hayes v. North State Law Enforcement Officers Ass’n.*, 10 F.3d 207, 217 (4th Cir. 1993), racial discrimination case).

²⁶ *Id.* (citing *Philadelphia*, 6 F.3d at 1010 (quoting *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 582-583 (1990)).

²⁷ *Id.* (citing *Ensley Branch*, 31 F.3d at 1581).

²⁸ *Dade County*, 122 F.3d at 929. However, Judge Posner, in *Builders Ass’n of Greater Chicago v. County of Cook*, 256 F.3d 642 (7th Cir. 2001), questioned why there should be a lesser standard where the discrimination was against women rather than minorities.



transit, and highway financial assistance programs of the USDOT. See Appendix A for the main components of the Rules.

The Ninth Circuit decision in *Western States Paving v. Washington State DOT*²⁹ criticized WSDOT goals, even though they were derived from the DOT regulations, because the capacity of DBEs to perform contracts was not taken into account. In WSDOT's program, all ethnic groups were included without determining whether there had been discrimination against each one. Congress' findings that there was discrimination nationally were sufficient to meet the "compelling interest," justifying federal legislation. However, the majority held that for the State's program to be "narrowly tailored," those local determinations had to be made. The holding that a State had to make such findings is contrary to the consolidated Eighth Circuit Court of Appeals decision in *Sherbrooke Turf, Inc. v. MNDOT*, *Gross Seed v. Nebraska Dept. of Roads* 345 F.3d 715 (8th Cir. 2003) and the Seventh Circuit Court of Appeals decision in *Northern Contracting Inc., v. Illinois Department of Transportation (NCI)* 473 F.3d 715 (7th Cir. 2007). However, *Western States Paving*, being a Ninth Circuit decision, controls Oakland's DBE program. This operational challenge is not a daunting one because it can be overcome if the disparity study methodology option for determining goals is followed

D. Local Business Enterprise

The Ninth Circuit Court of Appeals applied the rational basis standard when evaluating LBE programs, holding that a local entity may give a preference to local businesses to address the economic disadvantages those businesses face in doing business within the city or county.³⁰ In *AGCC I*, a pre-*Croson* case, the City and County of San Francisco conducted a detailed study of the economic disadvantages faced by San Francisco-based businesses versus businesses located outside the City and County boundaries. The study showed a competitive disadvantage in public contracting for businesses located within the City versus businesses from other areas.

San Francisco-based businesses incurred higher administrative costs in doing business within the City. Such costs included higher taxes, rents, wages, insurance rates, and benefits for labor. In upholding the LBE Ordinance, the Ninth Circuit held that "... the city may rationally allocate its own funds to ameliorate disadvantages suffered by local business, particularly where the city itself creates some of the disadvantages."³¹

Federal constitutional issues do not end the inquiry, however. State statutes may impose their own restrictions.

²⁹ 407 F.3d 983 (9th Cir. 2005).

³⁰ *AGCC I*, 813 F.2d at 943.

³¹ *Id.* at 943.



California Statutory Law-Assembly Bill 1084

The changes in the California Public Contract Code allowed by Assembly Bill 1084 provide local governments a legal basis for extending preferences to local small businesses.

Assembly Bill 1084 became law in January 2002. Assembly Bill 1084 amended Sections 14836, 14837, 14838.5, 14839, 14839.1, 14840, 14842, and 14842.5 of the Government Code, and repealed and added Section 14838 of the Code. The Bill also amended Sections 2000 and 2001, and added Sections 2002 and 10116 to the Public Contracting Code relating to public contracts.

- Public Contracting Code Section 2002

The Public Contracting Code section 2002 identifies small business requirements and allowances:

- State agencies are required to give small businesses³² a 5 percent preference in contracts for construction, the procurement of goods, or the delivery of services. This includes microbusinesses³³ and revises annual goals for the program.
- All State awarding departments must report to the Governor and the Legislature on the level of participation by business enterprises, by race, ethnicity, and gender of the owner, in specified contracts.
- Local agencies are authorized to provide for a small business preference in construction, the procurement of goods, or the delivery of services, and to establish a subcontracting participation goal for small and microbusinesses on contracts with a preference for those bidders who meet the goal.
- Good Faith Efforts are allowed to meet a subcontracting participation goal for small business contracts.
- The definition of a small business shall be determined by each local agency

In addition to this State program, some local entities have adopted their own local business program. Oakland is one municipality that has its own local and small business program.

³² A small business is defined as “an independently owned and operated business, which is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with its affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.”

³³ Microbusiness is defined as “a small business that, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars or less over the previous three years, or is a manufacturer, as defined in subsection (c), with 25 or fewer employees.”



III. BURDEN OF PROOF

The procedural protocol established by *Croson* imposes an initial burden of proof upon the government to demonstrate that the challenged MBE program is supported by a strong factual predicate, i.e., documented evidence of past discrimination. Notwithstanding this requirement, the plaintiff bears the ultimate burden of proof to persuade the court that the MBE program is unconstitutional. The plaintiff may challenge a government’s factual predicate on any of the following grounds:³⁴

- the disparity exists due to race-neutral reasons
- the methodology is flawed
- the data is statistically insignificant
- controverting data exists.

Thus, a disparity study must be analytically rigorous, at least to the extent that the data permits, if it is to withstand legal challenge.³⁵

A. Strong Basis in Evidence

Croson requires defendant jurisdictions to produce a “strong basis in evidence” that the objective of the challenged MBE program is to rectify the effects of discrimination.³⁶ The issue of whether or not the government has produced a strong basis in evidence is a question of law.³⁷ Because the sufficiency of the factual predicate supporting the MBE program is at issue, factual determinations relating to the accuracy and validity of the proffered evidence underlie the initial legal conclusion to be drawn.³⁸

The adequacy of the government’s evidence is “evaluated in the context of the breadth of the remedial program advanced by the [jurisdiction].”³⁹ The onus is upon the jurisdiction to provide a factual predicate which is sufficient in scope and precision to demonstrate that

³⁴ These were the issues on which the district court in Philadelphia reviewed the disparity study before it.

³⁵ *Croson*, 488 U.S. 469.

³⁶ *Concrete Works of Colorado v. City and County of Denver*, 36 F.3d 1513 at 1522 (10th Cir. 1994), (citing *Wygant v. Jackson Board of Education*, 476 U.S. 267, 292 (1986); see *Croson* 488 U.S. at 509 (1989)).

³⁷ *Id.* (citing *Associated General Contractors v. New Haven*, 791 F.Supp. 941, 944 (D.Conn 1992)).

³⁸ *Concrete Works I*, 36 F.3d at 1522.

³⁹ *Id.* (citing *Croson* 488 U.S. at 498).



contemporaneous discrimination necessitated the adoption of the MBE program. The various factors which must be considered in developing and demonstrating a strong factual predicate in support of MBE programs are discussed in Section IV.

B. Ultimate Burden of Proof

The party challenging an MBE program will bear the ultimate burden of proof throughout the course of the litigation—despite the government’s obligation to produce a strong factual predicate to support its program.⁴⁰ The plaintiff must persuade the court that the program is constitutionally flawed by challenging the government’s factual predicate for the program or by demonstrating that the program is overly broad.

Justice O’Connor explained the nature of the plaintiff’s burden of proof in her concurring opinion in *Wygant v. Jackson Board of Education (Wygant)*.⁴¹ She stated that following the production of the factual predicate supporting the program:

[I]t is incumbent upon the non-minority [plaintiffs] to prove their case; they continue to bear the ultimate burden of persuading the court that the [government’s] evidence did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently “narrowly tailored.”⁴²

In *Philadelphia*, the Third Circuit Court of Appeals clarified this allocation of the burden of proof and the constitutional issue of whether facts constitute a “strong basis” in evidence.⁴³ That court wrote that the allocation of the burden of persuasion depends on the theory of constitutional invalidity that is being considered.⁴⁴ If the plaintiff’s theory is that an agency has adopted race-based preferences with a purpose other than remedying past discrimination, the plaintiff has the burden of convincing the court that the identified remedial motivation is a pretext and that the real motivation was something else.⁴⁵

The situation differs if the plaintiff’s theory is that an agency’s conclusions as to the existence of discrimination and the necessity of the remedy chosen have no strong basis in evidence. In such a situation, once the agency comes forward with evidence of facts alleged

⁴⁰ *Id.* (citing *Wygant*, 476 U.S. at 277-278).

⁴¹ *Wygant v. Jackson Board of Education*, 476 U.S. 267, 293 (1986).

⁴² *Id.*

⁴³ *Philadelphia*, 91 F.3d at 597.

⁴⁴ *Id.*

⁴⁵ *Id.*



to justify its conclusions, the plaintiff has the burden of persuading the court that those facts are not accurate. However, the ultimate issue of whether a strong basis in evidence exists is an issue of law, and the burden of persuasion in the traditional sense plays no role in the court's resolution of that ultimate issue.⁴⁶

Concrete Works II made clear that plaintiff's burden is an evidentiary one; it cannot be discharged simply by argument. The court cited its opinion in *Adarand Constructors Inc. v. Slater*, 228 F.3d 1147 (2000): “[g]eneral criticism of disparity studies, as opposed to particular evidence undermining the reliability of the particular disparity study is of little persuasive value.”⁴⁷

The Supreme Court's disposition of plaintiff's petition for *certiorari* strongly supports the conclusion that plaintiff has the burden of proof. Supreme Court review of appellate decisions is discretionary, in that four justices have to agree, so normally little can be inferred from its denial. However, *Concrete Works* is not the typical instance. Justice Scalia concurred in *Croson* that strict scrutiny was required of race-conscious contracting programs. However, his antagonism there, and over the years, to the use of race is clear. Justice Scalia's view is that governmental remedies should be limited to provable individual victims. That view is at the base of his written dissent, on which only Chief Justice Rehnquist joined, to the Court's November 17, 2003 decision not to grant *certiorari* in *Concrete Works*.⁴⁸

Justice Scalia would place the burden of proof squarely on the defendant jurisdiction when a plaintiff pleads unequal treatment. For him, the Tenth Circuit was simply wrong because the defendant should have to *prove* that there was discrimination. He takes this position despite the case law in equal employment cases, from which *Croson* was derived, that the defendant has the burden of *production*. Once the defendant satisfies that, the burden of *proof* shifts to the plaintiff. Contrary to Scalia, the Tenth Circuit's position in *Concrete Works II* is once the defendant shows “a strong basis” for concluding that MBEs are being discriminated against, the plaintiff has to put in evidence that negates its validity.

⁴⁶ At first glance, the position of the Third Circuit does not square with what the Eleventh Circuit announced as its standard in reviewing whether a jurisdiction has established the “compelling interest” required by strict scrutiny. That court said the inquiry was factual and would be reversed only if it was “clearly erroneous.” However, the difference in formulation may have had to do with the angle from which the question is approached: If one starts with the disparity study – whether a compelling interest has been shown – factual issues are critical. If the focus is the remedy, because the constitutional issue of equal protection in the context of race comes into play, the review is necessarily a legal one.

⁴⁷ *Concrete Works II*, 321 F.3d at 979.

⁴⁸ *Concrete Works of Colorado, Inc. v. City and County of Denver, Colorado*, 321 F.3d 950 (10th Cir. 2003), *petition for cert. denied*, (U.S. Nov. 17, 2003) (No. 02-1673) (“*Concrete Works II*”). Chief Justice Roberts has replaced Chief Justice Rehnquist. Presuming Roberts and Justice Alito -- who has replaced Justice O'Connor on the Supreme Court -- would have voted to grant *certiorari*, that would still make only three votes on the current Court.



IV. CROSON EVIDENTIARY FRAMEWORK

Government entities must construct a strong evidentiary framework to stave off legal challenges and ensure that the adopted MBE programs comport with the requirements of the Equal Protection clause of the U.S. Constitution. The framework must comply with the stringent requirements of the strict scrutiny standard. Accordingly, there must be a strong basis in evidence, and the race-conscious remedy must be “narrowly tailored,” as set forth in *Croson*. A summary of the appropriate types of evidence to satisfy the first element of the *Croson* standard follows.

A. Active or Passive Participation

Croson requires that the local entity seeking to adopt an MBE program must have perpetuated the discrimination to be remedied by the program. However, the local entity need not be an active perpetrator of such discrimination. Passive participation will satisfy this part of the Court’s strict scrutiny review.⁴⁹

An entity will be considered an “active” participant if the evidence shows that it has created barriers that actively exclude MBEs from its contracting opportunities. In addition to examining the government’s contracting record and process, MBEs who have contracted or attempted to contract with that entity can be interviewed to relay their experiences in pursuing contracting opportunities with that entity.⁵⁰

An entity will be considered to be a “passive” participant in private sector discriminatory practices if it has infused tax dollars into that discriminatory industry.⁵¹ The *Croson* Court emphasized a government’s ability to passively participate in private sector discrimination with monetary involvement, stating, “[I]t is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from tax contributions of all citizens, do not serve to finance the evil of private prejudice.”⁵²

Until *Concrete Works I*, the inquiry regarding passive discrimination was limited to the subcontracting practices of government prime contractors. In *Concrete Works I*, the Tenth Circuit considered a purely private sector definition of passive discrimination. Since no government funds were involved in the contracts analyzed in the case, the court questioned

⁴⁹ *Croson*, 488 U.S. at 509.

⁵⁰ *Wygant v. Jackson Board of Education*, 476 U.S. 267 at 275 (1985).

⁵¹ *Croson*, 488 U.S. at 492; *Coral Construction*, 941 F.2d at 916.

⁵² *Croson*, 488 U.S. at 492.



whether purely private sector discrimination is likely to be a fruitful line of inquiry.⁵³ On remand, the district court rejected the three disparity studies offered to support the continuation of Denver's M/WBE program because each focused on purely private sector discrimination. Indeed, Denver's focus on purely private sector discrimination may account for what seemed to be a shift by the court away from the standard *Croson* queries of: (1) whether there was a firm basis in the entity's contracting process to conclude that discrimination existed; (2) whether race-neutral remedies would resolve what was found; and (3) whether any race-conscious remedies had to be narrowly tailored. The court noted that in the City of Denver's disparity studies the chosen methodologies failed to address the following six questions:

- 1) whether there was pervasive discrimination throughout the Denver Metropolitan Statistical Area (MSA)
- 2) were all designated groups equally affected
- 3) was such discrimination intentional
- 4) would Denver's use of such firms constitute "passive participation"
- 5) would the proposed remedy change industry practices
- 6) was the burden of compliance—which was on white male prime contractors in an intensely competitive, low profit margin business—a fair one.⁵⁴

The court concluded that the City of Denver had not documented a firm basis of identified discrimination derived from the statistics submitted.⁵⁵

However, the Tenth Circuit on appeal of that decision completely rejected the district court's analysis. The district court's queries required Denver to *prove* the existence of discrimination. Moreover, the Tenth Circuit explicitly held that "passive" participation

⁵³ *Concrete Works I*, 36 F.3d at 1529. "What the Denver MSA data does not indicate, however, is whether there is any linkage between Denver's award of public contracts and the Denver MSA evidence of industry-wide discrimination. That is, we cannot tell whether Denver indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against MBE and/or WBE subcontractors in other private portions of their business or whether the private discrimination was practiced by firms who did not receive any public contracts. Neither *Croson* nor its progeny clearly state whether private discrimination that is in no way funded with public tax dollars can, by itself, provide the requisite strong basis in evidence necessary to justify a municipality's affirmative action program. A plurality in *Croson* simply suggested that remedial measures could be justified upon a municipality's showing that 'it had essentially become a "a passive participant" in a system of racial exclusion practiced by elements of the local construction industry' [citing *Croson*]. Although we do not read *Croson* as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination, such evidence would at least enhance the municipality's factual predicate for a race- and gender-conscious program. The record before us does not explain the Denver government's role in contributing to the underutilization of MBEs and WBEs in the private construction market in the Denver MSA, and this may well be a fruitful issue to explore at trial."

⁵⁴ *Concrete Works*, 86 F.Supp. 2d at 1042 (D. Colo 2000).

⁵⁵ *Id.* at 61.



included private sector discrimination in the marketplace. The court, relying on *Shaw v. Hunt*,⁵⁶ a post-*Croson* Supreme Court decision, wrote as follows:

The *Shaw* Court did not adopt any requirement that only discrimination by the governmental entity, either directly or by utilizing firms engaged in discrimination on projects funded by the entity, was remediable. The Court, however, did set out two conditions which must be met for the governmental entity to show a compelling interest. “First, the discrimination must be identified discrimination.” *Id.* at 910. The City can satisfy this condition by identifying the discrimination “public or private, with some specificity.” *Id.* (quoting *Croson*, 488 U.S. at 504 (*emphasis added*)). The governmental entity must also have a “strong basis in evidence to conclude that remedial action was necessary.” *Id.*⁵⁷

The Tenth Circuit therefore held that the City was correct in its attempt to show that it “indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against M/WBE subcontractors in other private portions of their business.”⁵⁸ The court emphasized that its reading of *Croson*⁵⁹ and its own precedents supported that conclusion. Also, the court pointed out that the plaintiff, which had the burden of proof, failed to introduce controverting evidence and merely *argued* that the private sector was out of bounds and that Denver’s data was flawed.⁶⁰

The courts found that the disparities in MBE private sector participation, demonstrated with rate of business formation and lack of access to credit which effected MBEs’ ability to expand in order to perform larger contracts, gave Denver a firm basis to conclude that there was actionable private sector discrimination. For technical legal reasons,⁶¹ however, the court did not examine whether the consequent public sector remedy – i.e., one involving a goal requirement on the City of Denver’s contracts – was “narrowly tailored.” The court took this position despite the plaintiff’s contention that the remedy was inseparable from the findings and that the court should have addressed the issue of whether the program was narrowly tailored.

⁵⁶ 517 U.S. at 519.

⁵⁷ *Concrete Works II*, 321 F.3d at 975-76.

⁵⁸ Slip opinion, pg. 20.

⁵⁹ See also *Shaw v. Hunt*, 517 U.S. 899 (1996), which it cited.

⁶⁰ Whether Denver had the requisite strong basis to conclude that there was discrimination was a question of law; it was for the Tenth Circuit to decide. The standard by which the factual record before it was reviewed was “clearly erroneous.”

⁶¹ Plaintiff had not preserved the issue on appeal; therefore, it was no longer part of the case.



Ten months later, in *Builders Association of Greater Chicago v. City of Chicago*,⁶² the question of whether a public sector remedy is “narrowly tailored” when it is based on purely private sector discrimination was at issue. The district court reviewed the remedies derived from private sector practices with a more stringent scrutiny. It found that there was discrimination against minorities in the Chicago construction industry. However, it did not find the City of Chicago’s subcontracting goal an appropriate remedy because it was not “narrowly tailored” to address the documented private discrimination due to lack of access to credit for MBEs. The court also criticized the remedy because it was a “rigid numerical quota,” and there was no individualized review of MBE beneficiaries, citing Justice O’Connor’s opinion in *Gratz v. Bollinger*.⁶³

The question of whether evidence of private sector practices also arose in *Builders Ass’n of Greater Chicago v. County of Cook*.⁶⁴ In this case the Seventh Circuit cited *Associated General Contractors of Ohio v. Drabik*⁶⁵ in throwing out a 1988 County ordinance under which at least 30 percent of the value of prime contracts were to go to minority subcontractors and at least 10 percent to woman-owned businesses. Appellants argued that evidence of purely private sector discrimination justified a public sector program. However, the court pointed out that the program remedying discrimination in the private sector would necessarily address only private sector participation. In order to justify the public sector remedy, the County would have had to demonstrate that it had been at least a passive participant in the discrimination by showing that it had infused tax dollars into the discriminatory private industry.

B. Systemic Discriminatory Exclusion

Croson clearly established that an entity enacting a business affirmative action program must demonstrate identified, systemic discriminatory exclusion on the basis of race or any

⁶² 298 F.Supp2d 725 (N.D.Ill. 2003).

⁶³ 123 S.Ct. 2411, 2431 (2003). *Croson* requires a showing that there was a strong basis for concluding that there was *discrimination* before a race-conscious remedy can be used in government contracting. In the University of Michigan cases that considered race-conscious admissions programs, a key element in the decisions is the Court acceptance of *diversity* as a constitutionally sufficient ground; it did not require a showing of past *discrimination* against minority applicants. If it had, the basis for a program would have disappeared. Discrimination is the historic concern of the 14th Amendment, while promoting diversity is of recent origin. The Court may have been disposed therefore to apply a more rigorous review of legislation based on diversity. The 14th Amendment’s prohibitions are directed against “state action.” The private sector behavior of businesses that contract with state and local governments is a conceptual step away from what it does in its public sector transactions. That distinction may lead courts to apply the *Gratz* approach of more searching scrutiny to remedial plans based on private sector contracting.

⁶⁴ 256 F.3d 642 (7th Cir. 2001).

⁶⁵ 214 F.3d 730 (6th Cir. 2000).



other illegitimate criteria (arguably gender).⁶⁶ Thus, it is essential to demonstrate a pattern and practice of such discriminatory exclusion in the relevant market area.⁶⁷ Using appropriate evidence of the entity's active or passive participation in the discrimination, as discussed above, the showing of discriminatory exclusion must cover each racial group to whom a remedy would apply.⁶⁸ Mere statistics and broad assertions of purely societal discrimination will not suffice to support a race or gender-conscious program.

Croson enumerates several ways an entity may establish the requisite factual predicate. First, a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by an entity or by the entity's prime contractors, may support an inference of discriminatory exclusion.⁶⁹ In other words, when the relevant statistical pool is used, a showing of gross statistical disparity alone "may constitute prima facie proof of a pattern or practice of discrimination."⁷⁰

The *Croson* Court made clear that both prime and subcontracting data was relevant. The Court observed that "[w]ithout any information on minority participation in subcontracting, it is quite simply impossible to evaluate overall minority representation in the city's construction expenditures."⁷¹ Subcontracting data is also an important means by which to assess suggested future remedial actions. Since the decision makers are different for the

⁶⁶ *Croson*, 488 U.S. 469. See also *Monterey Mechanical v. Pete Wilson*, 125 F.3d 702 (9th Cir. 1997). The Fifth Circuit Court in *W.H. Scott Construction Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (1999), found that the City's MBE program was unconstitutional for construction contracts because minority participation goals were arbitrarily set and not based on any objective data. Moreover, the Court noted that had the City implemented the recommendations from the disparity study it commissioned, the MBE program may have withstood judicial scrutiny (the City was not satisfied with the study and chose not to adopt its conclusions). "Had the City adopted particularized findings of discrimination within its various agencies, and set participation goals for each accordingly, our outcome today might be different. Absent such evidence in the City's construction industry, however, the City lacks the factual predicates required under the Equal Protection Clause to support the Department's 15% DBE-participation goal."

In 1996, Houston Metro had adopted a study done for the City of Houston whose statistics were limited to aggregate figures that showed *income* disparity between groups, without making any connection between those statistics and City's contracting policies. The disadvantages cited that M/WBEs faced in contracting with the City also applied to small businesses. Under *Croson*, that would have pointed to race-neutral remedies. The additional data on which Houston Metro relied was even less availing. Its own expert contended that the ratio of lawsuits involving private discrimination to total lawsuits and ratio of unskilled black wages to unskilled white wages established that the correlation between low rates of black self-employment was due to discrimination. Even assuming that nexus, there is nothing in *Croson* that accepts a low number of MBE business formation as a basis for a race-conscious remedy.

⁶⁷ *Id.* at 509.

⁶⁸ *Id.* at 506. As the Court said in *Croson*, "[t]he random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the city's purpose was not in fact to remedy past discrimination." See *North Shore Concrete and Assoc. v. City of New York*, 1998 U.S. Dist. LEXIS 6785 (EDNY 1998), which rejected the inclusion of Native Americans and Alaskan Natives in the City's program, citing *Croson*.

⁶⁹ *Id.* at 509.

⁷⁰ *Id.* at 501 (citing *Hazelwood School District v. United States*, 433 U.S. 299, 307-08 (1977)).

⁷¹ *Croson*, 488 U.S. at 502-03.



awarding of prime and subcontracts, the remedies for discrimination identified at a prime versus subcontractor level might also be different.

Second, “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”⁷² Thus, if an entity has statistical evidence that non-minority contractors are systematically excluding minority businesses from subcontracting opportunities, it may act to end the discriminatory exclusion.⁷³ Once an inference of discriminatory exclusion arises, the entity may act to dismantle the closed business system.

In *Coral Construction*, the Ninth Circuit Court of Appeals further elaborated upon the type of evidence needed to establish the factual predicate that justifies a race-conscious remedy. The court held that both statistical and anecdotal evidence should be relied upon in establishing systemic discriminatory exclusion in the relevant marketplace as the factual predicate for an MBE program.⁷⁴ The court explained that statistical evidence, standing alone, often does not account for the complex factors and motivations guiding contracting decisions, many of which may be entirely race-neutral.⁷⁵

Likewise, anecdotal evidence, standing alone, is unlikely to establish a systemic pattern of discrimination.⁷⁶ Nonetheless, anecdotal evidence is important because the individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”⁷⁷

1. Geographic Market

Croson did not speak directly to how the geographic market is to be determined. In *Coral Construction*, the Court of Appeals held that “an MBE program must limit its geographical scope to the boundaries of the enacting jurisdiction.”⁷⁸ Conversely, in *Concrete Works I*, the Tenth Circuit Court of Appeals specifically approved the Denver MSA as the appropriate market area since 80 percent of the construction contracts were let there.⁷⁹

⁷² *Id.* at 509.

⁷³ *Id.*

⁷⁴ *Coral Construction*, 941 F.2d at 919.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* (quoting *International Brotherhood of Teamsters v. United States (Teamsters)*, 431 U.S. 324, 339 (1977)).

⁷⁸ *Coral Construction*, 941 F.2d at 925.

⁷⁹ *Concrete Works*, 823 F.Supp. 821, 835-836 (D.Colo. 1993); rev’d on other grounds, 36 F.3d 1513 (10th Cir. 1994).



Read together, these cases support a definition of market area that is reasonable rather than dictated by a specific formula. Since *Croson* and its progeny did not provide a bright line rule for local market area, that determination should be fact-based. An entity may limit consideration of evidence of discrimination within its own jurisdiction.⁸⁰ Extra-jurisdictional evidence may be permitted, where doing so is reasonably related to where the jurisdiction contracts.⁸¹

2. Current Versus Historical Evidence

In assessing the existence of identified discrimination through demonstration of a disparity between M/WBE utilization and availability, it may be important to examine disparity data both prior to and after the entity's current M/WBE program was enacted. This will be referred to as "pre-program" versus "post-program" data.

On the one hand, *Croson* requires that an MBE program be "narrowly tailored" to remedy current evidence of discrimination.⁸² Thus, goals must be set according to the evidence of disparity found. For example, if there is a current disparity between the percentage of an entity's utilization of Hispanic construction contractors and the availability of Hispanic construction contractors in that entity's marketplace, then that entity can set a goal to bridge that disparity.

It is not mandatory to examine a long history of an entity's utilization to assess current evidence of discrimination. In fact, *Croson* indicates that it may be legally fatal to justify an M/WBE program based upon outdated evidence.⁸³ Therefore, the most recent two or three years of an entity's utilization data would suffice to determine whether a statistical disparity exists between current M/WBE utilization and availability.⁸⁴

Pre-program data regarding an entity's utilization of M/WBEs prior to enacting the M/WBE program may be relevant to assessing the need for the agency to keep such a program intact.

⁸⁰ *Cone Corporation v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990); *Associated General Contractors v. Coalition for Economic Equity*, 950 F.2d 1401 (9th Cir. 1991).

⁸¹ There is a related question of which firms can participate in a remedial program. In *Coral Construction*, the Court held that the definition of "minority business" used in King County's MBE program was over-inclusive. The Court reasoned that the definition was overbroad because it included businesses other than those who were discriminated against in the King County business community. The program would have allowed, for instance, participation by MBEs who had no prior contact with the County. Hence, location within the geographic area is not enough. An MBE had to have shown that it previously sought business, or is currently doing business, in the market area.

⁸² *See Croson*, 488 U.S. at 509-10.

⁸³ *Id.* at 499 (stating that "[i]t is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination").

⁸⁴ *See AGCC II*, 950 F.2d 1401 at 1414 (consultant study looked at City's MBE utilization over a one year period).



A 1992 opinion by Judge Henderson of the U.S. District Court for the Northern District of California, *RGW Construction v. San Francisco Bay Area Rapid Transit District (BART)*,⁸⁵ set forth the possible significance of statistical data during an entity’s “pre-program” years. Judge Henderson opined that statistics that provide data on a period when no M/WBE goals were operative are often the most relevant data in evaluating the need for remedial action by an entity. Indeed, “to the extent that the most recent data reflect the impact of operative DBE goals, then such data are not necessarily a reliable basis for concluding that remedial action is no longer warranted.”⁸⁶ Judge Henderson noted that this is particularly so given the fact that M/WBEs report that they are seldom or never used by a majority prime contractor without M/WBE goals. That this may be the case suggests a possibly fruitful line of inquiry: an examination of whether different programmatic approaches in the same market area led to different outcomes in M/WBE participation. The Tenth Circuit came to the same conclusion in *Concrete Works II*. It is permissible for a study to examine programs where there were no goals.

Similarly, the Eleventh Circuit in *Dade County* cautions that using post-enactment evidence (post-program data) may mask discrimination that might otherwise be occurring in the relevant market. Still, the court agreed with the district court that it was not enough to speculate on what MBE utilization would have been in the absence of the program.⁸⁷

Thus, an entity should look both at pre-program and post-program data in assessing whether discrimination exists currently and analyze whether it would exist in the absence of an M/WBE program.

3. Statistical Evidence

To determine whether statistical evidence is adequate to give rise to an inference of discrimination, courts have looked to the “disparity index,” which consists of the percentage of minority (or women) contractor participation in local contracts divided by the percentage of minority (or women) contractor availability or composition in the population of available firms in the local market area.⁸⁸ Disparity indexes have been found highly probative

⁸⁵ See November 25, 1992, Order by Judge Thelton Henderson (on file with Mason Tillman Associates).

⁸⁶ *Id.*

⁸⁷ *Dade County*, 122 F.3d at 912.

⁸⁸ Although the disparity index is a common category of statistical evidence considered, other types of statistical evidence have been taken into account. In addition to looking at Dade County’s contracting and subcontracting statistics, the district court also considered marketplace data statistics (which looked at the relationship between the race, ethnicity, and gender of surveyed firm owners and the reported sales and receipts of those firms), the County’s Wainwright study (which compared construction business ownership rates of M/WBEs to those of non-M/WBEs and analyzed disparities in personal income between M/WBE and non-M/WBE business owners), and the County’s Brimmer Study (which focused only on Black-owned construction firms and looked at whether disparities existed when the sales and receipts of Black-owned construction firms in Dade County were compared with the sales and receipts of all Dade County construction firms).



evidence of discrimination where they ensure that the “relevant statistical pool” of minority (or women) contractors is being considered.

The Third Circuit Court of Appeals, in *Philadelphia*, ruled that the “relevant statistical pool” includes those businesses that not only exist in the marketplace, but that are qualified and interested in performing the public agency’s work. In that case, the Third Circuit rejected a statistical disparity finding where the pool of minority businesses used in comparing utilization to availability were those that were merely licensed to operate in the City of Philadelphia. Merely being licensed to do business with the City does not indicate either a willingness or capability to do work for the City. As such, the Court concluded this particular statistical disparity did not satisfy *Croson*.⁸⁹

Statistical evidence demonstrating a disparity between the utilization and availability of M/WBEs can be shown in more than one way. First, the number of M/WBEs utilized by an entity can be compared to the number of available M/WBEs. This is a strict *Croson* “disparity” formula. A significant statistical disparity between the number of MBEs that an entity utilizes in a given product/service category and the number of available MBEs in the relevant market area specializing in the specified product/service category would give rise to an inference of discriminatory exclusion.

Second, M/WBE dollar participation can be compared to M/WBE availability. This comparison could show a disparity between the award of contracts by an entity in the relevant locality/market area to available majority contractors and the award of contracts to M/WBEs. Thus, in *AGCC II*, an independent consultant’s study compared the number of available MBE prime contractors in the construction industry in San Francisco with the amount of contract dollars awarded to San Francisco-based MBEs over a one-year period. The study found that available MBEs received far fewer construction contract dollars in proportion to their numbers than their available non-minority counterparts.⁹⁰

Whether a disparity index supports an inference that there is discrimination in the market turns not only on what is being compared, but also on whether any disparity is statistically significant. In *Croson*, Justice O’Connor opined, “[w]here the gross statistical disparities can be shown, they alone, in a proper case, may constitute a *prima facie* proof of a pattern or practice of discrimination.”⁹¹ However, the Court has not assessed nor attempted to cast

⁸⁹ *Philadelphia*, 91 F.3d 586. The courts have not spoken to the non-M/WBE component of the disparity index. However, if only as a matter of logic, the “availability” of non-M/WBEs requires that their willingness to be government contractors be established. The same measures used to establish the interest of M/WBEs should be applied to non-M/WBEs.

⁹⁰ *AGCC II*, 950 F.2d 1401 at 1414. Specifically, the study found that MBE availability was 49.5 percent for prime construction, but MBE dollar participation was only 11.1 percent; that MBE availability was 36 percent prime equipment and supplies, but MBE dollar participation was 17 percent; and that MBE availability for prime general services was 49 percent, but dollar participation was 6.2 percent.

⁹¹ *Croson*, 488 U.S. at 501 (quoting *Hazelwood School District v. United States*, 433 U.S. 299, 307-308 (1977)).



bright lines for determining if a disparity index is sufficient to support an inference of discrimination. Rather, the analysis of the disparity index and the finding of its significance are judged on a case-by-case basis.⁹²

Following the dictates of *Croson*, courts may carefully examine whether there is data that shows that M/WBEs are ready, willing, and able to perform.⁹³ *Concrete Works I* made the same point: capacity—i.e., whether the firm is “able to perform”—is a ripe issue when a disparity study is examined on the merits:

[Plaintiff] has identified a legitimate factual dispute about the accuracy of Denver’s data and questioned whether Denver’s reliance on the percentage of MBEs and WBEs available in the market place overstates “the ability of MBEs or WBEs to conduct business relative to the industry as a whole because M/WBEs tend to be smaller and less experienced than nonminority owned firms.” In other words, a disparity index calculated on the basis of the absolute number of MBEs in the local market may show greater underutilization than does data that takes into consideration the size of MBEs and WBEs.⁹⁴

Notwithstanding that appellate concern, the disparity studies before the district court on remand did not examine the issue of M/WBE capacity to perform Denver’s public sector contracts. As mentioned above, they were focused on the private sector, using census-based data and Dun & Bradstreet statistical extrapolations.

The Sixth Circuit Court of Appeals, in *Drabik*, concluded that for statistical evidence to meet the legal standard of *Croson*, it must consider the issue of capacity.⁹⁵ The State’s factual predicate study based its statistical evidence on the percentage of M/WBE businesses in the population. The statistical evidence did not take into account the number of minority businesses that were construction firms, let alone how many were qualified, willing, and able to perform state contracts.⁹⁶ The court reasoned as follows:

Even statistical comparisons that might be apparently more pertinent, such as with the percentage of all firms qualified in some minimal sense, to

⁹² *Concrete Works*, 36 F.3d at 1522.

⁹³ The *Philadelphia* study was vulnerable on this issue.

⁹⁴ *Concrete Works*, 36 F.3d at 1528.

⁹⁵ See *Drabik*, 214 F.3d 730. The Court reviewed Ohio’s 1980, pre-*Croson*, program, which the Sixth Circuit found constitutional in *Ohio Contractors Ass’n v. Keip*, 1983 U.S. App. LEXIS 24185 (6th Cir. 1983), finding the program unconstitutional under *Croson*.

⁹⁶ *Id.*



perform the work in question, would also fail to satisfy the Court’s criteria. If MBEs comprise 10% of the total number of contracting firms in the State, but only get 3% of the dollar value of certain contracts, that does not alone show discrimination, or even disparity. It does not account for the relative size of the firms, either in terms of their ability to do particular work or in terms of the number of tasks they have resources to complete.⁹⁷

Further, *Drabik* also pointed out that the State not only relied upon the *wrong type of statistical data* but that the data was more than twenty years old.

The appellate opinions in *Philadelphia*⁹⁸ and *Dade County*,⁹⁹ regarding disparity studies involving public sector contracting, are particularly instructive in defining availability.

First, in *Philadelphia*, the earlier of the two decisions, contractors’ associations challenged a city ordinance that created set-asides for minority subcontractors on city public works contracts. Summary judgment was granted for the contractors.¹⁰⁰ The Third Circuit upheld the third appeal, affirming that there was no firm basis in evidence for finding that race-based discrimination existed to justify a race-based program, and that the program was not narrowly tailored to address past discrimination by the City.¹⁰¹

The Third Circuit reviewed the evidence of discrimination in prime contracting and stated that whether it is strong enough to infer discrimination is a “close call” which the court “chose not to make.”¹⁰² It was unnecessary to make this determination because the court found that even if there was a strong basis in evidence for the program, a subcontracting program was not narrowly tailored to remedy prime contracting discrimination.

When the court looked at subcontracting, it found that a firm basis in evidence did not exist. The only subcontracting evidence presented was a review of a random 25 to 30 percent of project engineer logs on projects over \$30,000. The consultant reviewer determined that no MBEs were used during the study period based upon the consultant’s recollection regarding whether the owners of the utilized firms were MBEs. The court found this

⁹⁷ *Id.* at 736.

⁹⁸ *Philadelphia*, 6 F.3d 990 (3rd Cir. 1993), on remand, 893 F.Supp. 419 (E.D. Penn. 1995), aff’d, 91 F.3d 586 (3rd Cir. 1996).

⁹⁹ *Dade County*, 943 F.Supp. 1546.

¹⁰⁰ *Philadelphia*, 91 F.3d 586.

¹⁰¹ *Id.*

¹⁰² *Id.* at 605.



evidence insufficient as a basis for finding that prime contractors in the market were discriminating against subcontractors.¹⁰³

The Third Circuit has recognized that consideration of qualifications can be approached at different levels of specificity, and the practicality of the approach also should be weighed. The Court of Appeals found that “[i]t would be highly impractical to review the hundreds of contracts awarded each year and compare them to each and every MBE”; and it was a “reasonable choice” under the circumstances to use a list of certified contractors as a source for available firms.¹⁰⁴ Although theoretically it may have been possible to adopt a more refined approach, the court found that using the list of certified contractors was a rational approach to identifying qualified firms.

Furthermore, the court discussed whether bidding was required in prime construction contracts as the measure of “willingness” and stated, “[p]ast discrimination in a marketplace may provide reason to believe the minorities who would otherwise be willing are discouraged from trying to secure work.”¹⁰⁵

In addition, the court found that a program certifying MBEs for federal construction projects was a satisfactory measure of capability of MBE firms.¹⁰⁶ In order to qualify for certification, the federal certification program required firms to detail their bonding capacity, size of prior contracts, number of employees, financial integrity, and equipment owned. According to the court, “the process by which the firms were certified [suggests that] those firms were both qualified and willing to participate in public work projects.”¹⁰⁷ The court found certification to be an adequate process of identifying capable firms, recognizing that the process may even understate the availability of MBE firms.¹⁰⁸ Therefore, the court was somewhat flexible in evaluating the appropriate method of determining the availability of MBE firms in the statistical analysis of a disparity.

¹⁰³ Another problem with the program was that the 15 percent goal was not based on data indicating that minority businesses in the market area were available to perform 15 percent of the City’s contracts. The court noted, however, that “we do not suggest that the percentage of the preferred group in the universe of qualified contractors is necessarily the ceiling for all set-asides.” The court also found the program flawed because it did not provide sufficient waivers and exemptions, as well as consideration of race neutral alternatives.

¹⁰⁴ *Philadelphia*, 91 F.3d at 603.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*



In *Dade County*, the district court held that the County had not shown the compelling interest required to institute a race-conscious program, because the statistically significant disparities upon which the County relied disappeared when the size of the M/WBEs was taken into account.¹⁰⁹ The *Dade County* district court accepted the Disparity Study's limiting of "available" prime construction contractors to those that had bid at least once in the study period. However, it must be noted that relying solely on bidders to identify available firms may have limitations. If the solicitation of bidders is biased, then the results of the bidding process will be biased.¹¹⁰ In addition, a comprehensive count of bidders is dependent on the adequacy of the agencies' record keeping.¹¹¹

The appellate court in *Dade County* did not determine whether the County presented sufficient evidence to justify the M/WBE program. It merely ascertained that the lower court was not clearly erroneous in concluding that the County lacked a strong basis in evidence to justify race-conscious affirmative action. The appellate court did *not* prescribe the district court's analysis or any other specific analysis for future cases.

4. Bidding

In *Dade County*, the district court held that the County had not shown the compelling interest required to institute a race-conscious program because the statistically significant disparities upon which the County relied disappeared when the size of the M/WBEs were taken into account.¹¹² The *Dade County* district court accepted the disparity study's limiting of "available" prime construction contractors to those that had bid at least once in the study period. However, it must be noted that relying solely on bidders to identify available firms may have limitations. The results will be biased if the solicitation of bidders is biased, or if the perception of potential bidders is that selection is biased.¹¹³ In addition, the source is dependent on the diligence of the agencies' record keeping.¹¹⁴

¹⁰⁹ *Engineering Contractors Association of South Florida, Inc. et al. v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Florida 1996).

¹¹⁰ Cf. *League of United Latin American Citizens v. Santa Ana*, 410 F.Supp. 873, 897 (C.D. Cal. 1976); *Reynolds v. Sheet Metal Workers, Local 102*, 498 F.Supp 952, 964 n. 12 (D. D.C. 1980), *aff'd*, 702 F.2d 221 (D.C. Cir. 1981). (Involving the analysis of available applicants in the employment context).

¹¹¹ Cf. *EEOC v. American Nat'l Bank*, 652 F.2d 1176, 1196-1197 (4th Cir.), *cert. denied*, 459 U.S. 923 (1981). (In the employment context, actual applicant flow data may be rejected where race coding is speculative or nonexistent).

¹¹² *Engineering Contractors Association of South Florida, Inc. et al. v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Florida 1996).

¹¹³ Cf. *League of United Latin American Citizens v. Santa Ana*, 410 F.Supp. 873, 897 (C.D. Cal. 1976); *Reynolds v. Sheet Metal Workers, Local 102*, 498 F.Supp 952, 964 n. 12 (D. D.C. 1980), *aff'd*, 702 F.2d 221 (D.C. Cir. 1981). (Involving the analysis of available applicants in the employment context).

¹¹⁴ Cf. *EEOC v. American Nat'l Bank*, 652 F.2d 1176, 1196-1197 (4th Cir.), *cert. denied*, 459 U.S. 923 (1981). (In the employment context, actual applicant flow data may be rejected where race coding is speculative or nonexistent).



In any case, whether *Dade County* stands for the proposition that bidding is a mandatory measure of availability in *all* procurements must be judged in light of the program that was the subject of the litigation. The case involved construction contracts where competitive bidding was the method of selection for prime contractors. Consequently, it was not unreasonable to limit availability in those instances to firms that had bid. Indeed, given the comments of the Eleventh Circuit in upholding the district court decision in *Dade County*,¹¹⁵ it would be difficult to assert that the lower court opinion established substantive bright line rules in reviewing affirmative action programs:

Both the Supreme Court and this Court have held that a district court makes a *factual* determination when it determines whether there exists a sufficient evidentiary basis justifying affirmative action on the basis of race or ethnicity (emphasis added) . . . We review a district court’s factual findings only for clear error.¹¹⁶

The Supreme Court has explained with unmistakable clarity our duty in evaluating the district court’s factfinding in this case. That duty most emphatically is *not* to decide whether we agree with the district court’s view of the evidence. Instead, we must determine only whether the district court’s view of the evidence, as reflected in its fact findings, is a permissible one, i.e., a plausible one in light of the entire record.¹¹⁷

The appellate court in *Dade County* did not determine whether the County presented sufficient evidence to justify the M/WBE program: it merely ascertained that the lower court was not clearly erroneous in concluding that the County lacked a strong basis in evidence to justify race-conscious affirmative action. The appellate court did *not* prescribe the district court’s analysis or any other specific analysis for future cases.

In *Dade County*, subcontractors were identified as M/WBEs that had filed a subcontractors’ release of lien on at least one Dade County contract during the study period. The number of such firms was compared to the sales and receipts claimed by such firms. That district court rejected the comparison as inappropriate because the income received was not limited to Dade County subcontractors.

For the Tenth Circuit in *Concrete Works II*, the issue of bidding is clear: it is not required. “[W]e do not read *Croson* to require disparity studies that measure whether construction firms are able to perform a particular contract. The studies must only determine whether

¹¹⁵ *Dade County*, 122 F.3d 895 (1997).

¹¹⁶ *Dade County*, 122 F.3d at 903.

¹¹⁷ *Id.* at 904.



the firms are capable of ‘undertak[ing] prime or subcontracting work in public construction projects’ *Croson*, 488 at 502.”¹¹⁸

5. Capacity

The Third Circuit has recognized that the issue of qualifications can be approached at different levels of specificity, and some consideration of the practicality of various approaches is required. The Court of Appeals found that “[i]t would be highly impractical to review the hundreds of contracts awarded each year and compare them to each and every MBE,” and it was a “reasonable choice” under the circumstances to use a list of certified contractors as a source for available firms.¹¹⁹ An analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach.

Furthermore, the Court discussed whether bidding was required in prime construction contracts as the measure of “willingness,” and stated, “[P]ast discrimination in a marketplace may provide reason to believe the minorities who would otherwise be willing are discouraged from trying to secure work.”¹²⁰

In addition, the Court found that a program certifying MBEs for federal construction programs satisfied the determination of capability of MBE firms included in the study.¹²¹ The certification program required potential firms to detail their bonding capacity, prior experience, the size of prior contracts, number of employees, financial integrity, and equipment owned before being qualified to bid on federally funded city contracts as an MBE. The Court stated that “the process by which the firms were certified appears to suggest that, as a general proposition, those firms were both qualified and willing to participate in public work projects.”¹²² Moreover, the Court not only found the process to be adequate, but may have been on the conservative side, possibly even “underinclusive in terms of firms capable of performing some portion of City projects.”¹²³

¹¹⁸ Pg. 24,

¹¹⁹ Philadelphia, 91 F.3d at 603.

¹²⁰ Philadelphia, 91 F.3d 586.

¹²¹ Id.

¹²² Id.

¹²³ Id.



C. Anecdotal Evidence

In *Croson*, Justice O'Connor opined that "evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified."¹²⁴ Anecdotal evidence should be gathered to determine if minority contractors are systematically being excluded from contracting opportunities in the relevant market area. As will be discussed below, anecdotal evidence will not suffice standing alone to establish the requisite predicate for a race conscious program. Its great value lies in pointing to remedies that are "narrowly tailored," the second prong of a *Croson* study.

The following types of anecdotal evidence have been presented and relied upon by the Ninth Circuit, in both *Coral Construction* and *AGCC II*, to justify the existence of an M/WBE program:

- M/WBEs denied contracts despite being the low bidders – *Philadelphia*¹²⁵
- Prime contractors showing MBE bids to non-minority subcontractors to find a non-minority firm to underbid the MBEs – *Cone Corporation v. Hillsborough County*¹²⁶
- M/WBEs' inability to obtain contracts for private sector work – *Coral Construction*¹²⁷
- M/WBEs told that they were not qualified, although they were later found to be qualified when evaluated by outside parties – *AGCC*¹²⁸
- Attempts to circumvent M/WBE project goals – *Concrete Works I*¹²⁹

¹²⁴ *Croson*, 488 U.S. at 509. The Court specifically cited to *Teamsters*, 431 U.S. at 338.

¹²⁵ *Philadelphia*, 6 F.3d at 1002.

¹²⁶ *Cone Corporation v. Hillsborough County*, 908 F.2d at 916 (11th Cir.1990).

¹²⁷ For instance, where a small percentage of an MBE or WBE's business comes from private contracts and most of its business comes from race or gender-based set-asides, this would demonstrate exclusion in the private industry. *Coral Construction*, 941 F.2d 910 at 933 (WBE's affidavit indicated that less than 7 percent of the firm's business came from private contracts and that most of its business resulted from gender-based set-asides).

¹²⁸ *AGCC II*, 950 F.2d at 1415.

¹²⁹ *Concrete Works*, 36 F.3d at 1530.



- Harassment of M/WBEs by an entity's personnel to discourage them from bidding on an entity's contracts – *AGCC*¹³⁰

Remedial measures fall along a sliding scale determined by their intrusiveness on non-targeted groups. At one end of the spectrum are race-neutral measures and policies, such as outreach to the M/WBE community. Set-asides are at the other end of the spectrum. Race-neutral measures, by definition, are accessible to all segments of the business community regardless of race. They are not intrusive, and in fact, require no evidence of discrimination before implementation. Conversely, race-conscious measures, such as set-asides, fall at the other end of the spectrum and require a larger amount of evidence.¹³¹

Courts must assess the extent to which relief measures disrupt settled “rights and expectations” when determining the appropriate corrective measures.¹³² Presumably, courts would look more favorably upon anecdotal evidence, which supports a less intrusive program than a more intrusive one. For example, if anecdotal accounts related experiences of discrimination in obtaining bonds, they may be sufficient evidence to support a bonding program that assists M/WBEs. However, these accounts would not be evidence of a statistical availability that would justify a racially limited program such as a set-aside.

As noted above, in *Croson*, the Supreme Court found that Richmond’s MBE program was unconstitutional, because the City lacked proof that race-conscious remedies were justified. However, the Court opined that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”¹³³

In part, it was the absence of such evidence that proved lethal to the program. The Supreme Court stated that “[t]here was no direct evidence of race discrimination on the part of the city in letting contracts or any evidence that the city’s prime contractors had discriminated against minority-owned subcontractors.”¹³⁴

This was not the situation confronting the Ninth Circuit in *Coral Construction*. There, the 700-plus page appellate record contained the affidavits of “at least 57 minority or women

¹³⁰ *AGCC II*, 950 F.2d at 1415.

¹³¹ Cf. *AGCC II*, 950 F.2D at 1417-18 (in finding that an ordinance providing for bid preferences was narrowly tailored, the Ninth Circuit stated that the program encompassed the required flexibility and stated that “the burdens of the bid preferences on those not entitled to them appear relatively light and well distributed. . . . In addition, in contrast to remedial measures struck down in other cases, those bidding have no settled expectation of receiving a contract. [Citations omitted.]”).

¹³² *Wygant*, 476 U.S. at 283.

¹³³ *Croson*, 488 U.S. at 509, citing *Teamsters*, 431 U.S. at 338.

¹³⁴ *Id.* at 480.



contractors, each of whom complains in varying degree of specificity about discrimination within the local construction industry. These affidavits certainly suggest that ongoing discrimination may be occurring in much of the King County business community.”¹³⁵

Nonetheless, this anecdotal evidence standing alone was insufficient to justify King County’s MBE program since “[n]otably absent from the record, however, is *any* statistical data in support of the County’s MBE program.”¹³⁶ After noting the Supreme Court’s reliance on statistical data in Title VII employment discrimination cases and cautioning that statistical data must be carefully used, the Court elaborated on its mistrust of pure anecdotal evidence:

Unlike the cases resting exclusively upon statistical deviations to prove an equal protection violation, the record here contains a plethora of anecdotal evidence. However, anecdotal evidence, standing alone, suffers the same flaws as statistical evidence. Indeed, anecdotal evidence may even be less probative than statistical evidence in the context of proving discriminatory patterns or practices.¹³⁷

The Court concluded its discourse on the potency of anecdotal evidence in the absence of a statistical showing of disparity by observing that “rarely, if ever, can such evidence show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan.”¹³⁸

Two other circuit courts also suggested that anecdotal evidence might be dispositive, while rejecting it in the specific case before them. For example, in *Contractors Ass’n*, the Third Circuit Court of Appeals noted that the Philadelphia City Council had “received testimony from at least fourteen minority contractors who recounted personal experiences with racial discrimination,” which the district court had “discounted” because it deemed this evidence to be “impermissible” for consideration under *Croson*.¹³⁹ The circuit court disapproved of the district court’s actions because in its view the court’s rejection of this evidence betrayed the court’s role in disposing of a motion for summary judgment.¹⁴⁰ “Yet,” the circuit court stated:

¹³⁵ *Coral Construction*, 941 F.2d at 917-18.

¹³⁶ *Id.* at 918 (emphasis added) (additional statistical evidence gathered after the program had been implemented was also considered by the court and the case was remanded to the lower court for an examination of the factual predicate).

¹³⁷ *Id.* at 919.

¹³⁸ *Id.*

¹³⁹ *Philadelphia*, 6 F.3d at 1002.

¹⁴⁰ *Id.* at 1003.



given *Croson*'s emphasis on statistical evidence, even had the district court credited the City's anecdotal evidence, we do not believe this amount of anecdotal evidence is sufficient to satisfy strict scrutiny [quoting *Coral*, supra]. Although anecdotal evidence alone may, in an exceptional case, be so dominant or pervasive that it passes muster under *Croson*, it is insufficient here.¹⁴¹

The D.C. Circuit Court echoed the Ninth Circuit's acknowledgment of the rare case in which anecdotal evidence is singularly potent in *O'Donnell Construction v. District of Columbia*.¹⁴² The court found that in the face of conflicting statistical evidence, the anecdotal evidence there was not sufficient:

It is true that in addition to statistical information, the Committee received testimony from several witnesses attesting to problems they faced as minority contractors. Much of the testimony related to bonding requirements and other structural impediments any firm would have to overcome, no matter what the race of its owners. The more specific testimony about discrimination by white firms could not in itself support an industry-wide remedy [quoting *Coral*]. Anecdotal evidence is most useful as a supplement to strong statistical evidence—which the Council did not produce in this case.¹⁴³

The Eleventh Circuit is also in accord. In applying the “clearly erroneous” standard to its review of the district court's decision in *Dade County*, it commented that “[t]he picture painted by the anecdotal evidence is not a good one.”¹⁴⁴ However, it held that this was not the “exceptional case” where, unreinforced by statistics, the anecdotal evidence was enough.¹⁴⁵

In *Concrete Works I*, the Tenth Circuit Court of Appeals described the type of anecdotal evidence that is most compelling: evidence within a statistical context. In approving of the anecdotal evidence marshaled by the City of Denver in the proceedings below, the court recognized that “[w]hile a factfinder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality's institutional practices carries more weight due to the systemic impact that such institutional

¹⁴¹ *Id.*

¹⁴² 963 F.2d at 427 (D.C. Cir.1992).

¹⁴³ *Id.*

¹⁴⁴ *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade County*, 943 F.Supp 1546 (S.D. Fla. 1996), *aff'd*, 122 F.3d 895 (11th Cir. 1997).

¹⁴⁵ *Id.* at 926.



practices have on market conditions.”¹⁴⁶ The court noted that the City had provided such systemic evidence.

The Ninth Circuit Court of Appeals has articulated what it deems to be permissible anecdotal evidence in *AGCC II*.¹⁴⁷ There, the court approved a “vast number of individual accounts of discrimination” which included numerous reports of MBEs denied contracts despite being the low bidder; MBEs told they were not qualified although they were later found qualified when evaluated by outside parties; MBEs refused work even after they were awarded the contracts as low bidder; and MBEs being harassed by city personnel to discourage them from bidding on city contracts. On appeal, the City points to numerous individual accounts of discrimination to substantiate its findings that discrimination exists in the city’s procurement processes; an “old boy’s network” still exists; and racial discrimination is still prevalent within the San Francisco construction industry.¹⁴⁸ Based on *AGCC II*, it would appear that the Ninth Circuit’s standard for acceptable anecdotal evidence is more lenient than other Circuits that have considered the issue.

Taken together, these statements constitute a taxonomy of appropriate anecdotal evidence. The cases suggest that, to be optimally persuasive, anecdotal evidence must satisfy six particular requirements.¹⁴⁹ These requirements are that the accounts:

- are gathered from minority contractors, preferably those that are “qualified”¹⁵⁰
- concern specific, verifiable instances of discrimination¹⁵¹
- involve the actions of governmental officials¹⁵²
- involve events within the relevant jurisdiction’s market area¹⁵³

¹⁴⁶ *Concrete Works I*, 36 F.3d at 1530.

¹⁴⁷ *AGCC II*, 950 F.2d 1401.

¹⁴⁸ *Id.* at 1415.

¹⁴⁹ *Philadelphia*, 6 F.3d at 1003. The anecdotal evidence must be “dominant or pervasive.”

¹⁵⁰ *Philadelphia*, 91 F.3d at 603.

¹⁵¹ *Coral Construction*, 941 F.2d at 917-18. *But see Concrete Works II*, 321 F.3d at 989. “There is no merit to [plaintiff’s] argument that the witnesses accounts must be verified to provide support for Denver’s burden.”

¹⁵² *Croson*, 488 U.S. at 509.

¹⁵³ *Coral Construction*, 941 F.2d at 925.



- discuss the harm that the improper conduct has inflicted on the businesses in question¹⁵⁴ and
- collectively reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic¹⁵⁵

Given that neither *Croson* nor its progeny identify the circumstances under which anecdotal evidence alone will carry the day, it is not surprising that none of these cases explicate bright line rules specifying the quantity of anecdotal evidence needed to support a race-conscious remedy. However, the foregoing cases, and others, provide some guidance by implication.

Philadelphia makes clear that 14 anecdotal accounts will not suffice.¹⁵⁶ While the matter is not free of countervailing considerations, 57 accounts, many of which appeared to be of the type called for above, were insufficient to justify the program in *Coral Construction*. The number of anecdotal accounts relied upon by the district court in approving Denver's M/WBE program in *Concrete Works I* is unclear, but by one count the number might have exceeded 139.¹⁵⁷ It is, of course, a matter of speculation as to how many of these accounts were indispensable to the court's approval of the Denver M/WBE program.

In addition, as noted above, the quantum of anecdotal evidence that a court would likely find acceptable may depend on the remedy in question. The remedies that are least burdensome to non-targeted groups would likely require a lesser degree of evidence. Those remedies that are more burdensome on the non-targeted groups would require a stronger factual basis likely extending to verification.

¹⁵⁴ *O'Donnell*, 963 F.2d at 427.

¹⁵⁵ *Coral Construction*, 941 F.2d at 919.

¹⁵⁶ *Philadelphia*, 6 F.3d. at 1002-03.

¹⁵⁷ The Denver City Council enacted its M/WBE ordinance in 1990. The program was based on the results of public hearings held in 1983 and 1988 at which numerous people testified (approximately 21 people and at least 49 people, respectively), and on a disparity study performed in 1990. See *Concrete Works of Colorado v. Denver*, 823 F.Supp. 821, 833-34. The disparity study consultant examined all of this preexisting data, presumably including the anecdotal accounts from the 1983 and 1988 public hearings, as well as the results of its own 69 interviews, in preparing its recommendations. *Id.* at 833-34. Thus, short of analyzing the record in the case, it is not possible to determine a minimum number of accounts because it is not possible to ascertain the number of consultant interviews and anecdotal accounts that are recycled statements or statements from the same people. Assuming no overlap in accounts, however, and also assuming that the disparity study relied on prior interviews in addition to its own, the number of M/WBEs interviewed in this case could be as high as 139, and, depending on the number of new people heard by the Denver Department of Public Works in March 1988 (*see id.* at 833), the number might have been even greater.



V. CALIFORNIA'S PROPOSITION 209

A public entity in California seeking to adopt an MBE Program must comply with Proposition 209 requirements.

In *Croson*, the Supreme Court held that the Fourteenth Amendment authorized state and local governments to employ race-conscious remedies when they are based on a properly conducted disparity study. Proposition 209's strictures against racial preferences aside, in *Monterey Mechanical v. Wilson*, the Ninth Circuit made clear that findings of discrimination and a narrowly tailored remedy are essential.¹⁵⁸

Proposition 209 prohibits the State from discriminating “against, or grant[ing] preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” However, Proposition 209 also states that “if any parts [of Proposition 209] are found to be in conflict with federal law or the U.S. Constitution, the section shall be implemented to the maximum extent that federal law and the U.S. Constitution permit.”

As for the reach of Proposition 209, the leading California cases are *Hi-Voltage v. City of San Jose*¹⁵⁹ and *Ward Connerly v. State Personnel Board*.¹⁶⁰ In *Hi-Voltage*, the California Supreme Court held that Proposition 209 prohibited the City from requiring construction contractors to document their efforts to solicit M/WBEs as subcontractors. The court noted two fatal flaws: (1) Contractors were required to request bids from at least four M/WBEs, which the court considered a preference in favor of M/WBEs; (2) The program also failed because the extent to which M/WBEs were chosen would be measured against the City’s statistical expectation. *Ward Connerly*, a subsequent appellate court opinion, determined that Proposition 209 applied to the five California statutory programs before that court.¹⁶¹ However, neither *Hi-Voltage* nor *Ward Connerly* speak directly to what would happen should the findings of the City of Oakland’s disparity study point to a race-conscious remedy.

In *Ward Connerly*, the California Court of Appeal stated the following:

Under equal protection principles all state actions that rely upon suspect classifications must be tested under strict scrutiny, but those actions which

¹⁵⁸ 125 F. 3d 702, 713-14 (9th Cir. 1997). Plaintiff had not complied with a state statutory requirement that it meet specified MBE and WBE goals, or show Good Faith Efforts to do so. The court agreed that its low bid could not be rejected.

¹⁵⁹ 24 Cal. 4th 537 (Cal. 2000).

¹⁶⁰ 92 Cal. App. 4th 16 (Cal. 2001).

¹⁶¹ State Lottery, Professional Bond Services, State Civil Service, Community Colleges, State Contracting (reporting requirements).



can meet the rigid strict scrutiny test are constitutionally permissible. Proposition 209, on the other hand, prohibits discrimination against or preferential treatment to individuals or groups regardless of whether the governmental action could be justified under strict scrutiny.

In this respect the distinction between what the federal Constitution permits and what it requires becomes particularly relevant. To the extent that the federal Constitution would permit, but not require, the state to grant preferential treatment to suspect classes, Proposition 209 precludes such action. In fact, Proposition 209 contains no compelling interest exception.¹⁶²

Proposition 209 does not include a “compelling interest” exception. Had there been such an exception, there would have been no conflict between Proposition 209 and use of race, which is permissible under the Fourteenth Amendment. However, the *Croson* test has a second prong: the remedy has to be “narrowly tailored.” Note then the following language in *Ward Connerly*:

The statutory scheme [re: professional bond services] does not arguably withstand strict scrutiny. No justification has been shown. There was no specific finding of identified prior discrimination in the contracting for professional bond services. There was no effort to limit recovery to those who actually suffered from prior discrimination. There was no showing that non-race-based and non-gender-based remedies would be inadequate or were even considered. The scheme is unlimited in duration. And, except for its limitation to citizens and lawfully admitted aliens, the scheme is unlimited in reach.¹⁶³

Hi-Voltage also refers to the impact of a remedy based on a disparity study. The California Supreme Court wrote: “. . .if it were determined the City had violated federal constitutional or statutory law, the supremacy clause as well as the express terms of Proposition 209 would dictate federal law prevails . . .”¹⁶⁴ Crucially, it went on: “The disparity study is not part of the record in this case. Without it, the court has no basis for measuring the fit between the Program and the goal of eliminating a disparity in the amount of contract dollars awarded MBEs in comparison to non-MBEs.”¹⁶⁵ Therefore, it was unclear whether the inclusion of a disparity study in this case may have permitted a race-conscious remedy despite Proposition 209.

¹⁶² *Ward Connerly*, 92 Cal. App. 4th at 42.

¹⁶³ *Ward Connerly*, 92 Cal. App. 4th at 54.

¹⁶⁴ *Hi-Voltage*, 24 Cal. 4th 537 at 569.

¹⁶⁵ *Id.*



By implication, this issue was involved in *Coral Construction v. San Francisco*,¹⁶⁶ where the California Superior Court determined that Proposition 209 barred San Francisco's race-conscious program.¹⁶⁷ On April 18, 2007, the First District Court of Appeal affirmed that judgment but remanded the case for a determination of whether the defendant's evidence met the majority opinion's test that the discrimination was **intentional**. Disparity studies, however, have a lower standard; which is whether there is statistically significant underutilization of available MBEs. If there is, an inference that there is actionable discrimination may be drawn.

Even so, federal courts still need to decide whether Proposition 209, as applied, conflicts with the Equal Protection Clause of the Fourteenth Amendment. Croson stated that such race-conscious contracting remedies are appropriate. In accordance with the Supreme Court's 1803 decision, *Marbury v. Madison*,¹⁶⁸ the federal courts are granted the power to determine whether a remedy growing out of a disparity study process sanctioned by the Court in *Croson* is narrowly tailored. This question cannot be finally answered by the state of California.

Title VI of the Civil Rights Act of 1964 established nondiscrimination requirements in association with federal funds.¹⁶⁹ The recent opinion in *Coral Construction* also held that Title VI was permissive and, therefore, did not trump Proposition 209.

The application of Title VI was also raised in *C&C Construction v. Sacramento Municipal Utility District (SMUD)*.¹⁷⁰ The 2004 majority Court of Appeals opinion began with the point that race-neutral programs are the only ones Proposition 209 permits in California, but also acknowledged that its provisions were subject to federal law. It viewed the regulations of the Departments of Energy, Defense, and Transportation as not *requiring* recipients of federal funds to use race-conscious remedial programs for identified discrimination. Moreover, its reading of the regulations themselves was that SMUD's actions had to be consistent with Proposition 209.¹⁷¹ Also, SMUD's 1998 update of its 1993 disparity study, both of which found *Croson*-level discrimination against MBEs, did not look at whether

¹⁶⁶ See 116 Cal. App. 4th 6

¹⁶⁷ It is also challenging the procedural of the court granting plaintiff summary judgment because of the factual record did not support one.

¹⁶⁸ 5 U.S. 137 (1803).

¹⁶⁹ The 1987 Civil Rights Restoration Act reversed court decisions that restricted its reach.

¹⁷⁰ 122 Cal. App. 4th 284 (Cal. App. 2004).

¹⁷¹ "SMUD offers no argument or authority that the Department of Energy requires race-based discrimination [a violation of Proposition 209], either in general or specifically, in SMUD's case, as an 'appropriate remedial step.' It would appear that the Department of Energy, by using the general term 'appropriate,' meant for the funding recipient to consider the state laws and regulations relevant to that recipient when determining what action to take. In SMUD's case, such consideration includes the limitations of [Proposition 209]."



race-neutral remedies would suffice to meet its federal nondiscrimination obligations.¹⁷² Indeed, the majority observed that the update consultant was specifically instructed not to consider this factor. Finally, under its reading of the regulations, the burden was on SMUD to show that it would *lose* funds if it did not put in place the race-conscious program that it had implemented.

Citing *S.J. Groves & Sons v. Fulton County*,¹⁷³ the dissent's view of the regulations was that, properly read, a race-conscious program is not an *option* where a race-neutral one will not suffice. The required "affirmative action" did not refer only to race-neutral programs, it also included race-conscious programs.¹⁷⁴ The Department Secretary determined whether SMUD was in compliance. What the majority did in affirming the trial court decision to enjoin the use of race interfered with that authority and SMUD's obligation to comply with the regulations. As such, SMUD violated the Supremacy Clause. However, the majority held that what could be seen as a cogent argument was raised too late to be considered during the appeal.

The dissent summarized its position as follows:

Since the requirement of 'affirmative action' includes both race-neutral and race-conscious action and the undisputed evidence establishes that SMUD has attempted to use race-neutral outreach and other methods and concluded in good faith that they were not sufficient to remedy the statistical underutilization reflected in the disparity studies, SMUD was left with no other alternative but to adopt a race-conscious remedial plan to eliminate the effects of its own discriminatory practices.¹⁷⁵

In light of this decision, the City of Oakland must carefully consider whether its race-neutral programs have proved ineffective. If this is the case, and there is statistically significant MBE underutilization, there may be grounds - adopting the dissent's analysis --to implement a race-conscious remedy.

Given the state of the law, it would seem that the better course is to proceed where the facts take it. Indeed, based on the decisions in the University of Michigan cases, one could argue

¹⁷² By implication, we note, if SMUD had, it could have move to a race-conscious program.

¹⁷³ 920 F.2d 752 (11th Cir. 1991).

¹⁷⁴ The applicable regulation "condone[s], and in some cases *require[s]*, race-conscious regulations and/or action". (*italics added*), *S.J. Groves*, 920 F.2d at 764-765.

¹⁷⁵ 122 Cal. App. 4th 284 at 324.



that the federal courts will not reject carefully constructed resorts to race.¹⁷⁶ They may well conclude that Proposition 209 does not prohibit the City of Oakland, having threaded the constitutional needle, from going ahead. There is also the risk of a lawsuit by MBEs if it failed to act. Contra Costa County faced such litigation commencing in 1998 in *L. Tarango Trucking v. Contra Costa County*. Plaintiffs contended that Proposition 209 did not supercede the Equal Protection clause and Title VI of the Civil Rights of 1964. After extensive proceedings and paying plaintiffs' substantial attorneys fees, the County settled in 2001.¹⁷⁷

VI. CONSIDERATION OF RACE-NEUTRAL OPTIONS

A remedial program must address the source of the disadvantage faced by minority or woman-owned businesses. If it is found that race discrimination places MBEs at a competitive disadvantage, an MBE program may seek to counteract the situation by providing MBEs with a counterbalancing advantage.¹⁷⁸

On the other hand, an M/WBE program cannot stand if the sole barrier to minority or woman-owned business participation is a barrier which is faced by all new businesses, regardless of ownership.¹⁷⁹ If the evidence demonstrates that the sole barrier to M/WBE participation is that M/WBEs disproportionately lack capital or cannot meet bonding requirements, then only a race-neutral program of financing for all small firms would be justified.¹⁸⁰ In other words, if the barriers to minority participation are race-neutral, then the program must be race-neutral or contain race-neutral aspects.

The requirement that race-neutral measures be considered does not mean that they must be exhausted before race-conscious remedies can be employed. As the district court recently wrote in *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County*:

¹⁷⁶ Discrimination is the traditional concern of the Equal Protection Clause; it is the predicate for affirmative action in contracting and employment. The threshold issue in those cases was whether diversity, a more amorphous concern, could suffice as a constitutional basis for the use of race in education. The Court found that it did. It went on to render a 'split' decision on the undergraduate and law school remedies using a 'narrow tailoring' analysis. However, the make up of the Court has changed with the addition of Roberts and Alito.

¹⁷⁷ In making this judgment, see again the language in *Hi-Voltage* about what the California Supreme Court would have done if a disparity studies had been in the record.

¹⁷⁸ *AGCC II*, 950 F.2d at 1404.

¹⁷⁹ *Crosen*, 488 U.S. at 508.

¹⁸⁰ *Id.* at 507.



The Supreme Court has recently explained that although ‘narrow tailoring does not require exhaustion of every conceivable race-neutral alternative’ it ‘does require serious, good faith consideration of workable race-neutral alternatives that will achieve . . . diversity[.]’ *Grutter*, 123 S.Ct, at 2344, 2345. The County has failed to show the necessity for the relief it has chosen, and the efficacy of alternative remedies has not been sufficiently explored.¹⁸¹

If the barriers appear race-related but are not systemic, then the remedy should be aimed at the specific arena in which exclusion or disparate impact has been found. If the evidence shows that in addition to capital and bonding requirements, which are race-neutral, M/WBEs also face race discrimination in the awarding of contracts, then a race-conscious program will stand, so long as it also includes race-neutral measures to address the capital and bonding barriers.¹⁸²

The Ninth Circuit Court of Appeals in *Coral Construction* ruled that there is no requirement that an entity exhaust every possible race-neutral alternative.¹⁸³ Instead, an entity must make a serious, good faith consideration of race-neutral measures in enacting an MBE program. Thus, in assessing low MBE utilization, it is imperative to examine barriers to MBE participation that go beyond “small business problems.” The impact on the distribution of contracts of programs that have been implemented to improve MBE utilization should also be measured.¹⁸⁴

VII. CONCLUSION

The decision of the U.S. Supreme Court in the *Croson* case changed the legal landscape for business affirmative action programs and altered the authority of local governments to institute remedial race-conscious public contracting programs. This chapter has examined what *Croson* and its progeny require of a disparity study if it is to serve as legal justification for a race (and gender)-conscious affirmative action program for the City of Oakland. Great care must be exercised in determining whether discrimination has been “identified.” If it has, race-neutral remedies have to be considered, and any race-conscious remedy must be “narrowly tailored.”

¹⁸¹ *Hershell Gill*, 333 F.Supp. 2d 1305, 1330 (S.D.Fla. 2004).

¹⁸² *Id.* (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses).

¹⁸³ *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991).

¹⁸⁴ *Dade County*, 122 F.3d at 927. At the same time, the Eleventh Circuit’s caveat in *Dade County* should be kept in mind: “Supreme Court decisions teach that a race-conscious remedy is not merely one of many equally acceptable medications that a government may use to treat race-based problems. Instead, it is the strongest of medicines, with many potentially harmful side-effects, and must be reserved to those severe cases that are highly resistant to conventional treatment.” For additional guidance, see *supra* the discussion of narrow tailoring in *Concrete Works, Adarand,, County of Cook, City of Chicago*.



VIII. LIST OF CASES

Cases

Adarand Constructors, Inc. v. Federico Pena, 115 S.Ct. 2097 (1995).

Associated General Contractors of California v. City and County of San Francisco, 813 F.2d 922 (9th Cir. 1987).

Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco, 950 F.2d 1401 (9th Cir. 1991).

Associated General Contractors of Connecticut v. City of New Haven, 791 F.Supp. 941 (D. Conn. 1992).

Associated General Contractors of Ohio v. Drabik, 50 F.Supp. 741 (S.D. Ohio 1999).

Builders Ass'n of Greater Chicago v. City of Chicago, 298 F.Supp2d 725 (N.D.Ill. 2003).

Builders Ass'n of Greater Chicago v. County of Cook, 256 F.3d 642 (7th Cir. 2001).

C&C Construction v. Sacramento Municipal Utility District (SMUD), 122 Cal. App. 4th 284 (Cal. App. 2004).

City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).

Concrete Works of Colorado v. City and County of Denver, 823 F.Supp. 821 (D. Colo. 1993).

Concrete Works of Colorado v. City and County of Denver, 36 F.3d 1513 (10th Cir. 1994).
“Concrete Works I”

Concrete Works of Colorado v. City and County of Denver, on remand, 86 F.Supp.2d 1042 (D. Colo 2000)

Concrete Works of Colorado v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003),
petition for cert. denied, (U.S. Nov. 17, 2003) (No. 02-1673). “Concrete Works II”

Cone Corporation v. Hillsborough County, 908 F.2d 908 (11th Cir. 1990).

Contractors Association of Eastern Pennsylvania v. City of Philadelphia, 6 F.3d 990 (3rd Cir. 1993), *on remand*, 893 F.Supp. 419 (E.D. Penn. 1995), *aff'd*, 91 F.3d 586 (3rd Cir. 1996).



Coral Construction Co. v. King County, 941 F.2d 910 (9th Cir. 1991), *cert. denied*, 112 S.Ct. 875 (1992).

Coral Construction v. San Francisco, See 116.Cal. App. 4th 6. (Sup. Ct. 2004)

Craig v. Boren, 429 U.S. 190 (1976).

EEOC v. American Nat'l Bank, 652 F.2d 1176 (4th Cir. 1981), *cert. denied*, 459 U.S. 923 (1981).

Engineering Contractors Ass'n of South Florida v. Metropolitan Dade County, 943 F. Supp. 1546 (S.D. Fla. 1996), *aff'd*, 122 F.3d 895 (11th Cir. 1997).

Ensley Branch N.A.A.C.P. v. Seibels, 31 F.3d 1548 (11th Cir. 1994).

Gratz v. Bollinger, 123 S.Ct, 2411 (2003).

Hayes v. North State Law Enforcement Officers Ass'n, 10 F.3d 207 (4th Cir. 1993).

Hazelwood School District v. United States, 433 U.S. 299 (1977).

Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, 333 F.Supp. 2d 1305 (S.D.Fla. 2004).

Hi-Voltage v. City of San Jose, 24 Cal. 4th 537 (Cal. 2000).

International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977).

League of United Latin American Citizens v. Santa Ana, 410 F.Supp. 873 (C.D. Cal. 1976).

Michigan Road Builders Association v. Milliken, 834 F.2d 583 (6th Cir. 1987).

Mississippi University for Women v. Hogan, 458 U.S. 718 (1982).

Monterey Mechanical Co. v. Pete Wilson et al., 125 F.3d 702 (9th Cir. 1997).

North Shore Concrete and Assoc. v. City of New York, 1998 U.S. Dist. LEXIS 6785 (EDNY 1998).

O'Donnell Construction Company v. District of Columbia, 963 F.2d 420 (D.C. Cir. 1992).

Ohio Contractors Ass'n v. Keip, 1983 U.S. App. LEXIS 24185 (6th Cir. 1983).



Reynolds v. Sheet Metal Workers, Local 102, 498 F.Supp 952 (D. D.C. 1980), aff'd, 702 F.2d 221 (D.C. Cir. 1981).

RGW Construction v. San Francisco Bay Area Rapid Transit District, No. C92-2938 THE (N.D. Cal. Sept. 18, 1992).

Shaw v. Hunt, 517 U.S. 899 (1996).

S.J. Groves & Sons v. Fulton County, 920 F.2d 752 (11th Cir. 1991).

United States v. Virginia, 116 S.Ct. 2264 (1996).

Ward Connerly v. State Personnel Board, 92 Cal. App. 4th 16 (Cal. 2001).

Wygant v. Jackson Board of Education, 476 U.S. 267 (1986).

Statutes

42 U.S.C. Section 14000e et seq.

Cal. Const., Article I, Section 31.

Cal. Public Contracting Code, Section 2002.



Appendix A

The main components of the new U.S. Department of Transportation rules are as follows:

1. Meeting Overall Goals

Section 26.51 requires that the “maximum feasible portion” of the overall DBE goal be met through the use of race/gender-neutral mechanisms. To the extent that these means are insufficient to meet overall goals, recipients may use race/gender-conscious mechanisms, such as contract goals. However, contract goals are not required on every USDOT-assisted contract, regardless of whether they were needed to meet overall goals.

If during the year it becomes apparent that the goals will be exceeded, the recipient is to reduce or eliminate the use of goals. Similarly, if it is determined that a goal will not be met, an agency should modify the use of race and gender-neutral and race and gender-conscious measures in order to meet its overall goals.

Set-asides may not be used for DBEs on USDOT contracts subject to part 23 except, “in limited and extreme circumstances when no other method could be reasonably expected to address egregious instances of discrimination.”

2. Good Faith Efforts

The new regulation emphasizes that when recipients use contract goals, they must award the contract to a bidder that makes good faith efforts to meet the goal. The contract award cannot be denied if the firm has not attained the goal, but has documented good faith efforts to do so. Recipients must provide administrative reconsideration to a bidder who is denied a contract on the basis of a failure to make good faith efforts.

3. DBE Diversification

Section 26.33 is an effort to diversify the types of work in which DBEs participate, as well as to reduce perceived unfair competitive pressure on non-DBE firms attempting to work in certain fields. This provision requires that if agencies determine there is an over-concentration of DBEs in a certain type of work, they must take appropriate measures to address the issue. Remedies may include incentives, technical assistance, business development programs, and other appropriate measures.

4. Alternative Programs

Section 26.15 allows recipients to obtain a waiver of the provisions of the DBE program requirements if they demonstrate that there are “special or exceptional circumstances, not



likely to be generally applicable, and not contemplated in connection with the rulemaking that establish this part.”



2

CONTRACTING AND PROCUREMENT ANALYSIS

I. INTRODUCTION

The City of Oakland and the Oakland Redevelopment Agency (City) have enacted ordinances establishing rules and procedures for its procurement process, which are set forth in procurement documents provided by the Office of Contract Compliance and Employment Services (OCCES) and the Public Works Agency (PWA). Mason Tillman received a total of eight separate documents describing procurement policies, procedures, and business development programs utilized by the City between July 1, 2002, to June 30, 2005. The documents provided by the OCCES are listed below:

- City of Oakland Construction Contract Process, March 1, 1995
- City of Oakland Professional Services Contract Process, April 4, 1995
- Construction Contract Process (Not Dated)
- Contracting Guidelines, Standardized Contracting Procedures, March 15, 2001
- Local and Small Local For Profit and Not For Profit Business Enterprise Program, April 29, 2004
- Oakland Municipal Code, Chapter 2.04 Purchasing Systems, October 31, 2006.
- Professional Services Process (Not Dated)
- Public Works Agency, Standard Operating Procedures for Professional Services Contracts, July 1, 1996

Mason Tillman has reviewed all of the procurement documents listed above and found them to contain conflicting information about the City's procurement standards. As a result, procurement standards as set forth in the Contracting Guidelines, Standardized Contracting Procedures, revised March 15, 2001, and in effect closer to the study period were used for contradicting procurement standards. Some of the processes described in this section are



also based on the procurement practices as described by Deborah Lusk-Barnes, the Contract Compliance and Employment Services Office Manager. ¹

II. DEFINITIONS

Goods and services procured by the City are classified under three industries. The three industries are defined below:

Construction Services are defined as any public work for new construction, remodeling, renovation, maintenance, and repair.

Goods and Other Services are defined as supplies, materials, commodities, and equipment, as well as non-professional services.

Professional and Consultant Services are defined as services which are of an advisory nature that provide a recommended course of action or personal expertise that will result in the transmittal of information to the City, either verbal or written, related to city administration and management or program management. Professional and consultant services must be performed by appropriately licensed consultants, architectural or engineering personnel, or persons possessing unique or special training, education, or skills.

III. OVERVIEW OF THE PROCUREMENT PROCESS

The City of Oakland has adopted procurement procedures to provide economic opportunity for its residents and businesses and to stimulate its economic development. The procurement of goods and other services, construction services, and professional and consultant services are subject to different advertisement, solicitation, and approval requirements. The requirements are determined by the type, circumstance, and value of the purchase.

There are two types of procurements, informal and formal. Informal procurements are purchases valued at \$50,000 or less for goods and other services, less than \$50,000 for construction services, and at \$15,000 or less for professional and consultant services. Informal procurements are not subject to formal advertising or solicitation requirements.

Formal procurements are purchases valued more than \$50,000 for goods and other services, at \$50,000 or more for construction services, and more than \$15,000 for professional and

¹ The detailed requirements for procurement procedures for the City of Oakland differed significantly in the three year study period than stipulated in the new procurement plan adopted by the City in 2005.



consultant services. Formal procurements must be advertised and procured through a competitive process. Formal procurements are subject to approval by the City Council.

Table 2.01 summarizes the City's procurement policies and procedures, which are described below in Section IV. Section V summarizes procurements that are exempt from the City's competitive procurement process.



Table 2.01 City of Oakland Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
Goods and Other Services	Valued less than \$5,000	None	Obtain a minimum of three quotes from certified Local Business Enterprises (LBEs), collect all required schedules and forms, verify insurance and licenses	User Department Head
	Valued at \$5,000 through \$14,999	Advertisement in at least one local newspaper with wide circulation and may advertise on the City's Contracting and Opportunities website at a minimum of 7 working days prior to bid opening Notify minimum of three certified Local Business Enterprises (LBEs)	Request for Proposals/Qualifications or Notice to Invite Bids	User Department Head

Table 2.01 City of Oakland Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
	Valued at \$15,000 through \$50,000	<p>Advertisement in local newspapers of general circulation and may advertise on the City's Contracting and Opportunities website at a minimum of 7 working days prior to bid opening</p> <p>Mail notifications to all registered vendors with the User Department, Purchasing Services, and Office of Contract Compliance and Employment Services</p>	Request for Proposals/Qualifications	City Administrator

Table 2.01 City of Oakland Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
	Valued more than \$50,000 through \$250,000	<p>Advertisement in an official City newspaper at least 10 calendar days prior to bid opening and in additional local newspapers of general circulation. May advertise on the City's Contracting and Opportunities website at a minimum of 7 working days prior to bid opening</p> <p>Mail notifications to all registered vendors with the User Department, Purchasing Services, Contract Administration/Public Works Agency, and Office of Contract Compliance and Employment Services</p>	Request for Proposals/Qualifications	City Council

Table 2.01 City of Oakland Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
	Valued more than \$250,000	<p>Advertisement in an official City newspaper at least 10 calendar days prior to bid opening and in additional local newspapers of general circulation May advertise on the City's Contracting and Opportunities website at a minimum of 7 working days prior to bid opening</p> <p>Mail notifications to all registered vendors with the User Department, Purchasing Services, Contract Administration/Public Works Agency, and Office of Contract Compliance and Employment Services</p>	Request for Proposals/Qualifications	City Council

Table 2.01 City of Oakland Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
Construction Services	Valued less than \$50,000	Advertisement in an official City newspaper (typically the <i>Oakland Tribune</i>), Builder’s Exchange, ethnic newspapers, and membership organizations Pre-bid meeting at least 15 calendar days prior to bid opening date when applicable	Competitive Sealed Bid	City Administrator
	Valued at \$50,000 through \$250,000	Advertisement in an official City newspaper (typically the <i>Oakland Tribune</i>), Builder’s Exchange, ethnic newspapers, and membership organizations Pre-bid meeting at least 15 calendar days prior to bid opening date	Competitive Sealed Bid	City Council
	Valued more than \$250,000	Advertisement in an official City newspaper (typically the <i>Oakland Tribune</i>), Builder’s Exchange, ethnic newspapers, and membership organizations Pre-bid meeting at least 20 calendar days prior to bid opening date	Competitive Sealed Bid	City Council

Table 2.01 City of Oakland Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
Professional and Consultant Services	Valued less than \$5,000	None	Obtain at least three quotes/proposals from certified Local Business Enterprises (LBEs)	User Department Head
	Valued at \$5,000 through \$15,000	Mail notifications to all registered vendors with the User Department, Purchasing Services, Contract Administration/Public Works Agency, and Office of Contract Compliance and Employment Services Pre-proposal meeting at least 15 calendar days prior to the proposal due date, when applicable	Request for Proposals/Qualifications	User Department Head

Table 2.01 City of Oakland Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
	Valued more than \$15,000 through \$150,000	<p>Advertisement in an official City newspaper at least 10 calendar days prior to the proposal due date</p> <p>Mail notifications to all registered vendors with the User Department, Purchasing Services, Contract Administration/Public Works Agency, and Office of Contract Compliance and Employment Services</p> <p>Pre-proposal meeting must be held at least 15 calendar days prior to proposal due date</p>	Request for Proposals/Qualifications	City Council
	Valued more than \$150,000	<p>Advertisement in an official City newspaper at least 10 calendar days prior to the proposal due date</p> <p>Mail notifications to all registered vendors with the User Department and Office of Contract Compliance and Employment Services</p> <p>Pre-proposal meeting must be held at least 15 calendar days prior to proposal due date</p>	Request for Proposals/Qualifications	City Council

Table 2.01 City of Oakland Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
Emergency Purchases of Goods and Services and Construction	None	None	None	City Administrator
Emergency Purchases of Professional and Consultant Services	None	None	None	City Administrator
Exceptions to Competitive Bidding	None	None	None	City Council
Cooperative Agreement Purchases	None	None	None	City Administrator

IV. STANDARDS FOR PROCURING CITY OF OAKLAND CONTRACTS

A. Informal Contracts

1. Purchases of Goods and Other Services Valued at \$50,000 or Less

Purchase orders (POs) are required for purchases of goods and other services up to the amount of \$4,999. City staff must obtain a minimum of three quotes from certified Local Business Enterprises (LBEs). In addition, they must collect all required schedules and forms, verify insurance, business tax licenses, and professional licenses. If all documents are in order, the department head has the authority to approve the purchase.

For purchases of goods and other services valued at \$5,000 through \$14,999, the user department must advertise in at least one local paper with wide distribution (i.e., Oakland Tribune) and may advertise on the City's Contracting and Opportunities website at a minimum of 7 days prior to bid opening. The user department is also required to notify a minimum of three certified LBEs and solicit businesses using Request for Proposals/Qualifications or Notice to Invite Bids processes. The user department has the authority to grant these contracts.

Purchases of goods and other services valued at \$15,000 through \$50,000 must be additionally advertised in at least one local paper with wide distribution (i.e., Oakland Tribune). The user department must also notify all registered vendors on lists maintained by the user department, Purchasing Services, and the Contract Compliance Office. The City Administrator has the authority to review and sign off on these purchases.

2. Purchases of Construction Services Valued less than \$50,000

For purchases of construction contracts valued less than \$50,000, the City must solicit competitive sealed bids through an Invitation for Bid (IFB). The IFB must be advertised in an official City newspaper (typically the *Oakland Tribune*), the Builder's Exchange, ethnic newspapers, and membership organizations. The user department, in conjunction with the Contract Compliance Office, is encouraged to set up a pre-bid meeting at least 15 calendar days prior to the bid opening date as necessary.

Informal construction contracts valued less than \$50,000 must be approved by the City Administrator.



3. Purchases of Professional and Consultant Services Valued less than \$15,000

For purchases of professional and consultant services valued less than \$5,000, the City must solicit at least three quotes/proposals from certified LBEs. The user department has the authority to grant contracts at this level.

For purchases of professional and consultant services valued at \$5,000 through \$14,999, the user department must notify all vendors registered with the user department, Purchasing Services, Contract Administration/Public Works Agency, and the Contract Compliance Office's mailing lists. The user department is also required to set a pre-proposal meeting at least 15 calendar days prior to the proposal due date with the Contract Compliance Office whenever it is deemed applicable or beneficial. The user department has the procurement authority to purchase informal professional and consultant services valued less than \$15,000.

B. Formal Contracts

1. Purchases of Goods and Other Services Valued More than \$50,000

For the purchases of goods and other services valued more than \$50,000, the City must advertise in an official City newspaper at least 10 calendar days prior to the bid opening date. The user department is also required to advertise in additional local newspapers of general circulation, as well as notify all registered vendors with the user department, Purchasing Services, Contract Administration/Public Works Agency, and the Contract Compliance Office's mailing lists.

Formal purchases of goods and other services valued more than \$50,000 must be approved by the City Council.

2. Purchases of Construction Services Valued at \$50,000 or More

For purchases of construction services valued at \$50,000 or more, the City must solicit competitive sealed bids through an Invitation for Bid (IFB). The IFB must be advertised in an official City newspaper (typically the *Oakland Tribune*), the Builder's Exchange, ethnic newspapers, and membership organizations. The user department, in conjunction with the Contract Compliance Office, must set up a pre-bid meeting at least 15 calendar days prior to the bid opening date.

Formal construction contracts valued at \$50,000 through \$250,000 must be approved by the City Council.



3. Purchases of Professional and Consultant Services Valued at \$15,000 or more

Purchases of professional and consultant services valued more than \$15,000 are solicited using a Request for Proposals or Qualifications process. The user department must advertise in an official City newspaper at least 10 calendar days prior to the proposal due date and notify all registered vendors in the user department, Purchasing Services, Contract Administration/Public Works Agency, and the Contract Compliance Office's mailing lists. A pre-proposal meeting is scheduled at least 15 calendar days prior to the proposal due date.

Formal professional and consultant services purchases valued more than \$15,000 must be approved by the City Council.

V. EXEMPTIONS FROM THE CITY'S PROCUREMENT PROCESS

Certain formal procurements are exempt from the City's procurement process. As described below, there are two types of exempt procurements.

A. Emergency Purchases

Emergency purchases of goods and services are permitted when a situation arises to threaten the preservation of public peace, health or safety. For goods and other services and professional services, emergency purchases are not subject to formal advertising or solicitation requirements. However, the City has an established goal of awarding 75 percent of emergency contract dollars to local firms, of which two thirds must be spent with small local businesses, whenever possible. The user department is also required to solicit from certified LBEs for all informally bid emergency work.

The City Administrator has the authority to procure emergency purchases of goods and other services for any dollar level as deemed necessary without previous specific action by the City Council. All emergency contracts awarded by the City Administrator are to be presented for informational purposes to the City Council within a reasonable time of contract execution.

B. Exceptions to Competitive Bidding

Exceptions to Competitive Bidding or waivers are purchases of goods and services under any of the following conditions:



- To contracts involving professional or specialized services such as, but not limited to, services rendered by architects, engineers and other specialized professional consultants
- When calling for bids on a competitive basis is impracticable, unavailing or impossible
- Placement of insurance coverage
- When public work is performed by the city with its own employees
- In other cases when specifically authorized by the City Council after a finding and determination that it is in the best interests of the City

All exceptions to competitive bidding must be approved by the City Council.

C. Cooperative Agreements

A cooperative agreement, also called a “piggy back” purchase, is a procurement by the City from the vendors under contract with another government agency. The products and services are procured at the same or substantially same prices. Cooperative agreements must be approved by the City Administrator.





3

HISTORY OF M/W/L/SLBE LEGISLATION AND DBE REGULATIONS

I. INTRODUCTION

The City of Oakland (City) has a Local and Small Local Business Enterprise (L/SLBE) program and Disadvantaged Business Enterprise (DBE) program governing the procurement of goods and services. Prior to the current L/SLBE and DBE Programs, the City utilized a Minority and Woman-owned Business Enterprise (M/WBE) Program.

The first section of this chapter, *Minority and Woman-Owned Business Enterprise Program*, traces the legislative history of the City's M/WBE Program spanning from its formation in 1971 to 1997, when the rules governing the program became modified to the current L/SLBE Program. The second section, *Local and Small Local Business Enterprise Program*, covers the legislative history governing the introduction of the City's L/SLBE Program, its program goals, and the Disparity Study that was commissioned to assess the efficacy of the program. The final section, *Disadvantaged Business Enterprise Program*, presents the City's implementation of the federal program to ensure nondiscrimination on the City's federally funded projects.

A. Minority and Woman-Owned Business Enterprise Program

The M/WBE Program preceded the study period. The operation of the M/WBE Program was discontinued in 1997. The legislative background of the M/WBE Program is detailed below.

Resolution 51299 was enacted by the Oakland City Council (City Council) on February 4, 1971. The Resolution promulgated the City's commitment to including all contractors,



regardless of race or gender, on City contracts and set up provisions to monitor prime contractors' adherence to non-discriminatory recruiting and hiring practices to increase subcontracting opportunities for minority contractors. The Resolution required prime contractors to submit a written plan for contracts valued at \$10,000 or more, demonstrating their goal of utilizing M/WBEs within ten days of receiving the contract from the City. Additionally, the prime contractors were required to submit weekly payroll records for all subcontractors employed on the project, identifying all minority business owners and employees as part of the good faith effort criteria.

On June 29, 1972, the City Council passed Resolution 52432 to adopt additional M/WBE Program provisions. Resolution 52432 required prime contractors to meet a 33 percent MBE subcontracting goal, or provide a statement of good faith effort to meet the minority goal. The Resolution also included a provision to increase the goal to 37 percent by June 1973. In addition, the Resolution required the prime contractors to advertise their contract opportunities in the media and notify minority subcontractors and suppliers of contract opportunities through minority contractors' associations.

Resolution 57926, passed by the City Council on March 6, 1979, required M/WBE goals to apply separately for construction and professional services industries. The MBE and WBE subcontracting goal was set at 30 and 5 percent, respectively, for construction, and 40 and 15 percent for professional services contracts. On October 27, 1997, the Oakland City Council passed Resolution 96463 which suspended the M/WBE Program.

B. Local and Small Local Business Enterprise Program

1. Definition

Local Business Enterprise (LBE) - An Oakland business with a substantial presence in the City of Oakland's geographic boundaries that is fully operational for 12 consecutive months and has a valid business tax certificate.

Small Local Business Enterprise (SLBE) - A business with a substantial presence in the City of Oakland's geographic boundaries that is a fully operational for 12 consecutive months, has a valid business tax certification, and is an independent business headquartered in Oakland. The SLBE's gross revenue in most recent three years cannot exceed 30 percent of the United States Small Business Administration's small business size standards.

2. History

The City has had a LBE program since 1979. Ordinance 9739 authorized a 3 percent preference for local businesses for purchase orders. The City expanded its Program to



include construction contracts and mandated a biennial review of the by enacting Resolution 69687 on February 2, 1993. The Resolution affirmed the City's ongoing commitment to increasing disadvantaged contractors' participation on City projects

The Resolution set participation goals for certified LBEs and SLBEs at 50 percent for all construction contracts valued at more than \$100,000 and all professional services contracts valued at more than \$50,000. The Resolution also set a subcontracting outreach requirement for construction contracts valued at \$100,000 or less and professional services contracts valued at \$50,000 or less by requiring prime contractors to solicit a minimum of three L/SLBE firms. The Resolution established a 75 percent LBE goal in emergency situations that require immediate purchases of goods and services, and further mandated that at least 50 percent of these dollars be spent with SLBEs. Additionally, the Resolution established a bid preference system in which prime contractors were able to receive a maximum of five additional points in the bid evaluation for every 10 percent of contract dollars subcontracted to certified LBEs and SLBEs.

On October 28, 1997, the City Council adopted Resolution 73889 to assess the efficacy of the L/SLBE Program in response to the *Monterey Mechanical Co. v. Pete Wilson*, et al., 97 C.D.O.S. 7099 (9th Cir., 1997) decision. The Resolution mandated that the City complete a Disparity Study within twelve months to determine the legal efficacy of the L/SLBE program requirements. The Resolution also mandated the City Manager to produce quarterly reports that track minority, women, and local business participation on City contracts.

On July 29, 2003, the City Council filed a motion to modify the L/SLBE goal to 20 percent from 50 percent. The L/SLBE goal must comprise of either 10 percent LBE and 10 percent SLBE participation or 20 percent SLBE participation. This goal has not been modified since 2003.

C. Disadvantaged Business Enterprise Program

1. Definition

Disadvantaged Business Enterprise (DBE) - A business that is for-profit, small, and is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of a corporation, 51% or more of the stock is owned by one or more socially and economically disadvantaged individuals, whose management and day-to-day business operations are controlled by one or more socially and economically disadvantaged individuals who own the business. The DBE must not have average annual gross receipt exceeding the cap defined in section 26.659B of 13 CFR Part 121 and cannot have average



annual gross receipt over the previous three fiscal years exceed \$19.57 million, as adjusted for inflation by the U.S. Secretary of Transportation.

Socially and Economically Disadvantaged Individual - An individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is in the following groups: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Women, and any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration, at such time as the SBA designation becomes effective.

2. History

The City's Disadvantaged Business Enterprise (DBE) program was first enacted by the City Council on January 10, 1984 with the passage of Resolution 61857. The DBE program, as mandated by the U.S. Department of Transportation (USDOT), is based on the USDOT, 49 CFR, Part 26 requirements to ensure nondiscrimination in the award and administration of federally funded public contracts.

The City Council established a 35 percent DBE goal for USDOT-funded projects through Resolution 61857. The annual DBE goal remained unchanged with each year's review until the fiscal year October 1, 2003 to September 30, 2004, when the City Council increased the annual DBE goal to 36.46 percent. There has been no change in the DBE goal since fiscal year of 2003-2004. Going forward, the City will have to comply with the Ninth Circuit's May 2005 decision in *Western States Paving v. Washington DOT* 407f.3d 983 (*Western States*). As required by *Western States*, any race conscious DBE goal must be broken down on an ethnic group specific basis.

D. References

Documents reviewed for the preceding M/WBE and L/SLBE analyses were obtained from the City's Office of Contract Compliance and Employment Services. Specific references are listed below:

City of Oakland, City Council Resolution 51299 (February 4, 1971)

City of Oakland, City Council Resolution 52432 (June 29, 1972)

City of Oakland, City Council Resolution 57926 (March 6, 1979)

City of Oakland, City Council Ordinance 9739 C.M.S. (March 13, 1979)

City of Oakland, City Council Resolution 61857 (January 10, 1984)



City of Oakland, City Council Resolution 69687 (February 2, 1993)

City of Oakland, City Council Resolution 73889 (October 28, 1997)

City of Oakland. Agenda Report: Resolution Amending Resolution No. 61857, as Amended, to Reestablish the City of Oakland's Disadvantaged Business Enterprise Program for U.S. Department of Transportation-funded Projects Between October 1, 1995 and September 30, 1996. By Sabrina Mitchell, OPW-CC. (December 7, 1995)

City of Oakland, Office of the City Administrator. City of Oakland Local and Small Local Business Enterprise Program Policy Manual. (April 29, 2004), 1-30.

City of Oakland. Disadvantaged Business Enterprise Program: For the Federal Fiscal Year October 1, 2003 to September 30, 2004. (October 1, 2003), 1-29.

City of Oakland. Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for the City of Oakland. (May 1, 2006), 1-8.



4

PRIME CONTRACTOR UTILIZATION ANALYSIS

I. INTRODUCTION

As set forth in *Croson* and its progeny, a disparity study must document minority contracting history in the jurisdiction under review. The first step in a disparity study is the statistical analysis of prime contracts. In this study, purchase orders and direct purchases were categorized as prime contracts. The objective of the statistical analysis is to determine the level of minority and woman-owned business enterprise (M/WBE) prime contractor utilization compared to non-M/WBE prime contractor utilization. A prime contractor utilization analysis was undertaken on contracts awarded by the City of Oakland and Redevelopment Agency (City) between July 1, 2002 to June 30, 2005.

The contracts awarded by the City during the study period were separated into four industries for purposes of the analysis. The industries are construction, architecture and engineering, professional services, and goods and other services. Construction included public work for new construction, remodeling, renovation, maintenance, demolition and repair of any public structure or building, and other public improvements. Architecture and engineering included architecture, engineering, research planning, development, design, alteration or repair of real property, surveying and mapping, comprehensive planning, and other professional services of an architectural and engineering nature. Construction management services were also included in this category. Professional services included consulting, personal, professional, and technical services. Goods and other services included materials, as well as supplies, equipment, and non-professional services. Construction maintenance was also included in this category.

The City's utilization of prime contractors in these four industries is analyzed in this chapter.



II. PRIME CONTRACT DATA SOURCES

The prime utilization analysis included contracts, purchase orders, and direct purchases awarded by the City during the study period. Contracts, purchase orders, and direct purchases will hereafter be referred to as contracts.

The prime contractor data for the City of Oakland and for the Community and Economic Development Agency (CEDA) was extracted by the City's Purchasing Division from their Oracle-based centralized financial system. The data included the list of purchase orders and a list of payments. There were a large number of payments that did not refer to any purchase order. Some of these payments were direct purchases and others were actually issued against a contract or a purchase order. To avoid over-counting the number of awards made to each vendor, these payments were aggregated by vendor and by fiscal year.

The data for Oakland Base Reuse Authority (OBRA) is not tracked in the City's centralized financial system. This data was manually compiled by OBRA's staff from hard-copy documents.

Payments made to housing developers by CEDA were excluded from the present analysis. CEDA provides loans to not-for-profit developers that cover only a portion of each affordable housing construction project. Although the dollars paid to developers were excluded from the prime contractor analysis, these projects are included in the subcontractor utilization analysis portion of this report.

Mason Tillman cleaned and compiled the provided data and requested corrections for what appeared to be missing or incorrect information. The contracts were then classified into four industry categories defined earlier in this chapter: Construction, Architecture and Engineering, Professional Services, and Goods and Other Services using the object codes provided with the payments data. However, the object codes did not accurately describe the type of work performed by each particular contractor. For example, vendors that were paid in relation to a heavy construction project may include construction suppliers, equipment maintenance contractors, professional engineers, and government agencies. Mason Tillman had to review most of the records one by one to determine the correct industry category for each vendor. Mason Tillman excluded from this analysis expenditures to not-for-profit organizations, government agencies, and banks, as well as expenditures for rental space, subscriptions, and seminars.



III. PRIME CONTRACTOR UTILIZATION THRESHOLDS

Contracts within each of the four industries were analyzed at three dollar levels. One category included all contracts regardless of size. The second category included all contracts under \$500,000. This analysis was restricted to a level where there was a demonstrated capacity within the pool of willing M/WBEs to perform. The third size category included the informal contracts under \$50,000 for construction, \$50,000 or less for goods and other services and \$15,000 or less for architecture and engineering, and professional services which did not require advertising.

Table 4.01 Informal Contract Thresholds for City Departments

Industry	Informal Contract Thresholds
Construction	\$50,000
Architecture and Engineering	\$15,000
Professional Services	\$15,000
Goods and Other Services	\$50,000

IV. PRIME CONTRACTOR UTILIZATION

As depicted in Table 4.02 below, the City awarded 24,956 prime contracts during the July 1, 2002 to June 30, 2005 study period. These contracts included 608 for construction, 424 for architecture and engineering, 1,101 for professional services, and 22,823 for goods and other services.

The payments made by the City during the study period for all contracts awarded totaled \$244,205,430. These expenditures included \$77,252,468 for construction, \$21,976,119 for architecture and engineering, \$37,112,084 for professional services, and \$107,864,759 for goods and other services.



Table 4.02 Total Prime Contracts and Dollars Expended: All Industries, July 1, 2002 to June 30, 2005

Industry	Total Number of Contracts	Total Dollars Expended
Construction	608	\$77,524,468
Architecture and Engineering Services	424	\$21,976,119
Professional Services	1,101	\$37,112,084
Goods and Other Services	22,823	\$107,864,759
Total Expenditures	24,956	\$244,205,430



A. All Prime Contracts, by Industry

1. Construction Prime Contractor Utilization: All Contracts

Table 4.03 summarizes all contract dollars expended by the City on construction prime contracts. Minority Business Enterprises received 32.01 percent of the construction prime contract dollars; Women Business Enterprises received 0.12 percent; and Caucasian Male Business Enterprises received 67.86 percent.

African Americans received 50 or 8.22 percent of the construction contracts during the study period, representing \$3,293,834 or 4.26 percent of the contract dollars.

Asian Americans received 37 or 6.09 percent of the construction contracts during the study period, representing \$6,053,466 or 7.84 percent of the contract dollars.

Hispanic Americans received 59 or 9.7 percent of the construction contracts during the study period, representing \$15,384,428 or 19.91 percent of the contract dollars.

Native Americans received none of the construction contracts during the study period.

Minority Business Enterprises received 146 or 24.01 percent of the construction contracts during the study period, representing \$24,731,728 or 32.01 percent of the contract dollars.

Women Business Enterprises received 3 or 0.49 percent of the construction contracts during the study period, representing \$94,280 or 0.12 percent of the contract dollars.

Minority and Women Business Enterprises received 149 or 24.51 percent of the construction contracts during the study period, representing \$24,826,008 or 32.14 percent of the contract dollars.

Caucasian Male Business Enterprises received 459 or 75.49 percent of the construction contracts during the study period, representing \$52,426,460 or 67.86 percent of the contract dollars.



**Table 4.03 Construction Prime Contractor Utilization All
Contracts, July 1, 2002 to June 30, 2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	50	8.22%	\$3,293,834	4.26%
Asian Americans	37	6.09%	\$6,053,466	7.84%
Hispanic Americans	59	9.70%	\$15,384,428	19.91%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	3	0.49%	\$94,280	0.12%
Caucasian Males	459	75.49%	\$52,426,460	67.86%
TOTAL	608	100.00%	\$77,252,468	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	8	1.32%	\$573,211	0.74%
African American Males	42	6.91%	\$2,720,623	3.52%
Asian American Females	2	0.33%	\$1,455,441	1.88%
Asian American Males	35	5.76%	\$4,598,026	5.95%
Hispanic American Females	1	0.16%	\$479,196	0.62%
Hispanic American Males	58	9.54%	\$14,905,231	19.29%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	3	0.49%	\$94,280	0.12%
Caucasian Males	459	75.49%	\$52,426,460	67.86%
TOTAL	608	100.00%	\$77,252,468	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	11	1.81%	\$2,507,848	3.25%
Minority Males	135	22.20%	\$22,223,879	28.77%
Caucasian Females	3	0.49%	\$94,280	0.12%
Caucasian Males	459	75.49%	\$52,426,460	67.86%
TOTAL	608	100.00%	\$77,252,468	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	146	24.01%	\$24,731,728	32.01%
Women Business Enterprises	3	0.49%	\$94,280	0.12%
Minority and Women Business Enterprises	149	24.51%	\$24,826,008	32.14%
Caucasian Male Business Enterprises	459	75.49%	\$52,426,460	67.86%
TOTAL	608	100.00%	\$77,252,468	100.00%



2. Architecture and Engineering Prime Contractor Utilization: All Contracts

Table 4.04 summarizes all contract dollars expended by the City on architecture and engineering prime contracts. Minority Business Enterprises received 22.62 percent of the architecture and engineering prime contract dollars; Women Business Enterprises received 8.1 percent; and Caucasian Male Business Enterprises received 69.28 percent.

African Americans received 32 or 7.55 percent of the architecture and engineering contracts during the study period, representing \$355,608 or 1.62 percent of the contract dollars.

Asian Americans received 61 or 14.39 percent of the architecture and engineering contracts during the study period, representing \$4,172,316 or 18.99 percent of the contract dollars.

Hispanic Americans received 8 or 1.89 percent of the architecture and engineering contracts during the study period, representing \$443,880 or 2.02 percent of the contract dollars.

Native Americans received none of the architecture and engineering contracts during the study period.

Minority Business Enterprises received 101 or 23.82 percent of the architecture and engineering contracts during the study period, representing \$4,971,804 or 22.62 percent of the contract dollars.

Women Business Enterprises received 106 or 25 percent of the architecture and engineering contracts during the study period, representing \$1,779,597 or 8.1 percent of the contract dollars.

Minority and Women Business Enterprises received 207 or 48.82 percent of the architecture and engineering contracts during the study period, representing \$6,751,401 or 30.72 percent of the contract dollars.

Caucasian Male Business Enterprises received 217 or 51.18 percent of the architecture and engineering contracts during the study period, representing \$15,224,718 or 69.28 percent of the contract dollars.



**Table 4.04 Architecture and Engineering Prime Contractor
Utilization: All Contracts, July 1, 2002 to June 30, 2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	32	7.55%	\$355,608	1.62%
Asian Americans	61	14.39%	\$4,172,316	18.99%
Hispanic Americans	8	1.89%	\$443,880	2.02%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	106	25.00%	\$1,779,597	8.10%
Caucasian Males	217	51.18%	\$15,224,718	69.28%
TOTAL	424	100.00%	\$21,976,119	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	19	4.48%	\$131,351	0.60%
African American Males	13	3.07%	\$224,257	1.02%
Asian American Females	16	3.77%	\$213,724	0.97%
Asian American Males	45	10.61%	\$3,958,592	18.01%
Hispanic American Females	1	0.24%	\$18,182	0.08%
Hispanic American Males	7	1.65%	\$425,698	1.94%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	106	25.00%	\$1,779,597	8.10%
Caucasian Males	217	51.18%	\$15,224,718	69.28%
TOTAL	424	100.00%	\$21,976,119	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	36	8.49%	\$363,256	1.65%
Minority Males	65	15.33%	\$4,608,548	20.97%
Caucasian Females	106	25.00%	\$1,779,597	8.10%
Caucasian Males	217	51.18%	\$15,224,718	69.28%
TOTAL	424	100.00%	\$21,976,119	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	101	23.82%	\$4,971,804	22.62%
Women Business Enterprises	106	25.00%	\$1,779,597	8.10%
Minority and Women Business Enterprises	207	48.82%	\$6,751,401	30.72%
Caucasian Male Business Enterprises	217	51.18%	\$15,224,718	69.28%
TOTAL	424	100.00%	\$21,976,119	100.00%



3. Professional Services Prime Contractor Utilization: All Contracts

Table 4.05 summarizes all contract dollars expended by the City on professional services prime contracts. Minority Business Enterprises received 9.97 percent of the professional services prime contract dollars; Women Business Enterprises received 1.62 percent; and Caucasian Male Business Enterprises received 88.41 percent.

African Americans received 37 or 3.36 percent of the professional services contracts during the study period, representing \$551,589 or 1.49 percent of the contract dollars.

Asian Americans received 18 or 1.63 percent of the professional services contracts during the study period, representing \$1,442,711 or 3.89 percent of the contract dollars.

Hispanic Americans received 40 or 3.63 percent of the professional services contracts during the study period, representing \$1,699,935 or 4.58 percent of the contract dollars.

Native Americans received 1 or 0.09 percent of the professional services contracts during the study period, representing \$4,500 or 0.01 percent of the contract dollars.

Minority Business Enterprises received 96 or 8.72 percent of the professional services contracts during the study period, representing \$3,698,735 or 9.97 percent of the contract dollars.

Women Business Enterprises received 69 or 6.27 percent of the professional services contracts during the study period, representing \$601,671 or 1.62 percent of the contract dollars.

Minority and Women Business Enterprises received 165 or 14.99 percent of the professional services contracts during the study period, representing \$4,300,405 or 11.59 percent of the contract dollars.

Caucasian Male Business Enterprises received 936 or 85.01 percent of the professional services contracts during the study period, representing \$32,811,679 or 88.41 percent of the contract dollars.



**Table 4.05 Professional Services Prime Contractor
Utilization: All Contracts, July 1, 2002 to June 30, 2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	37	3.36%	\$551,589	1.49%
Asian Americans	18	1.63%	\$1,442,711	3.89%
Hispanic Americans	40	3.63%	\$1,699,935	4.58%
Native Americans	1	0.09%	\$4,500	0.01%
Caucasian Females	69	6.27%	\$601,671	1.62%
Caucasian Males	936	85.01%	\$32,811,679	88.41%
TOTAL	1,101	100.00%	\$37,112,084	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	8	0.73%	\$15,891	0.04%
African American Males	29	2.63%	\$535,698	1.44%
Asian American Females	4	0.36%	\$70,605	0.19%
Asian American Males	14	1.27%	\$1,372,106	3.70%
Hispanic American Females	36	3.27%	\$502,754	1.35%
Hispanic American Males	4	0.36%	\$1,197,180	3.23%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	1	0.09%	\$4,500	0.01%
Caucasian Females	69	6.27%	\$601,671	1.62%
Caucasian Males	936	85.01%	\$32,811,679	88.41%
TOTAL	1,101	100.00%	\$37,112,084	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	48	4.36%	\$589,250	1.59%
Minority Males	48	4.36%	\$3,109,484	8.38%
Caucasian Females	69	6.27%	\$601,671	1.62%
Caucasian Males	936	85.01%	\$32,811,679	88.41%
TOTAL	1,101	100.00%	\$37,112,084	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	96	8.72%	\$3,698,735	9.97%
Women Business Enterprises	69	6.27%	\$601,671	1.62%
Minority and Women Business Enterprises	165	14.99%	\$4,300,405	11.59%
Caucasian Male Business Enterprises	936	85.01%	\$32,811,679	88.41%
TOTAL	1,101	100.00%	\$37,112,084	100.00%



4. Goods and Other Services Prime Contractor Utilization: All Contracts

Table 4.06 summarizes all contract dollars expended by the City on goods and other services prime contracts. Minority Business Enterprises received 12.33 percent of the goods and other services prime contract dollars; Women Business Enterprises received 5.59 percent; and Caucasian Male Business Enterprises received 82.08 percent.

African Americans received 1,355 or 5.94 percent of the goods and other services contracts during the study period, representing \$5,421,663 or 5.03 percent of the contract dollars.

Asian Americans received 821 or 3.6 percent of the goods and other services contracts during the study period, representing \$4,805,933 or 4.46 percent of the contract dollars.

Hispanic Americans received 77 or 0.34 percent of the goods and other services contracts during the study period, representing \$3,073,874 or 2.85 percent of the contract dollars.

Native Americans received 2 or 0.01 percent of the goods and other services contracts during the study period, representing \$883 or 0 percent of the contract dollars.

Minority Business Enterprises received 2,255 or 9.88 percent of the goods and other services contracts during the study period, representing \$13,302,352 or 12.33 percent of the contract dollars.

Women Business Enterprises received 1,482 or 6.49 percent of the goods and other services contracts during the study period, representing \$6,025,685 or 5.59 percent of the contract dollars.

Minority and Women Business Enterprises received 3,737 or 16.37 percent of the goods and other services contracts during the study period, representing \$19,328,038 or 17.92 percent of the contract dollars.

Caucasian Male Business Enterprises received 19,086 or 83.63 percent of the goods and other services contracts during the study period, representing \$88,536,722 or 82.08 percent of the contract dollars.



**Table 4.06 Goods and Other Services Prime Contractor
Utilization: All Contracts, July 1, 2002 to June 30, 2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	1,355	5.94%	\$5,421,663	5.03%
Asian Americans	821	3.60%	\$4,805,933	4.46%
Hispanic Americans	77	0.34%	\$3,073,874	2.85%
Native Americans	2	0.01%	\$883	0.00%
Caucasian Females	1,482	6.49%	\$6,025,685	5.59%
Caucasian Males	19,086	83.63%	\$88,536,722	82.08%
TOTAL	22,823	100.00%	\$107,864,759	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	888	3.89%	\$3,666,256	3.40%
African American Males	467	2.05%	\$1,755,407	1.63%
Asian American Females	130	0.57%	\$412,777	0.38%
Asian American Males	691	3.03%	\$4,393,156	4.07%
Hispanic American Females	39	0.17%	\$2,858,799	2.65%
Hispanic American Males	38	0.17%	\$215,074	0.20%
Native American Females	2	0.01%	\$883	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	1,482	6.49%	\$6,025,685	5.59%
Caucasian Males	19,086	83.63%	\$88,536,722	82.08%
TOTAL	22,823	100.00%	\$107,864,759	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1,059	4.64%	\$6,938,715	6.43%
Minority Males	1,196	5.24%	\$6,363,637	5.90%
Caucasian Females	1,482	6.49%	\$6,025,685	5.59%
Caucasian Males	19,086	83.63%	\$88,536,722	82.08%
TOTAL	22,823	100.00%	\$107,864,759	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	2,255	9.88%	\$13,302,352	12.33%
Women Business Enterprises	1,482	6.49%	\$6,025,685	5.59%
Minority and Women Business Enterprises	3,737	16.37%	\$19,328,038	17.92%
Caucasian Male Business Enterprises	19,086	83.63%	\$88,536,722	82.08%
TOTAL	22,823	100.00%	\$107,864,759	100.00%



B. Prime Contracts under \$500,000, by Industry

1. Construction Prime Contractor Utilization: Contracts under \$500,000

Table 4.07 summarizes all contract dollars expended by the City on construction prime contracts under \$500,000. Minority Business Enterprises received 35.94 percent of the construction prime contract dollars; Women Business Enterprises received 0.35 percent; and Caucasian Male Business Enterprises received 63.71 percent.

African Americans received 49 or 8.58 percent of the construction contracts under \$500,000 during the study period, representing \$2,131,793 or 7.86 percent of the contract dollars.

Asian Americans received 34 or 5.95 percent of the construction contracts under \$500,000 during the study period, representing \$3,377,016 or 12.45 percent of the contract dollars.

Hispanic Americans received 50 or 8.76 percent of the construction contracts under \$500,000 during the study period, representing \$4,242,889 or 15.64 percent of the contract dollars.

Native Americans received none of the construction contracts under \$500,000 during the study period.

Minority Business Enterprises received 133 or 23.29 percent of the construction contracts under \$500,000 during the study period, representing \$9,751,698 or 35.94 percent of the contract dollars.

Women Business Enterprises received 3 or 0.53 percent of the construction contracts under \$500,000 during the study period, representing \$94,280 or 0.35 percent of the contract dollars.

Minority and Women Business Enterprises received 136 or 23.82 percent of the construction contracts under \$500,000 during the study period, representing \$9,845,978 or 36.29 percent of the contract dollars.

Caucasian Male Business Enterprises received 435 or 76.18 percent of the construction contracts under \$500,000 during the study period, representing \$17,285,472 or 63.71 percent of the contract dollars.



**Table 4.07 Construction Prime Contractor Utilization:
Contracts under \$500,000, July 1, 2002 to June 30, 2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	49	8.58%	\$2,131,793	7.86%
Asian Americans	34	5.95%	\$3,377,016	12.45%
Hispanic Americans	50	8.76%	\$4,242,889	15.64%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	3	0.53%	\$94,280	0.35%
Caucasian Males	435	76.18%	\$17,285,472	63.71%
TOTAL	571	100.00%	\$27,131,450	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	8	1.40%	\$573,211	2.11%
African American Males	41	7.18%	\$1,558,582	5.74%
Asian American Females	1	0.18%	\$593	0.00%
Asian American Males	33	5.78%	\$3,376,424	12.44%
Hispanic American Females	1	0.18%	\$479,196	1.77%
Hispanic American Males	49	8.58%	\$3,763,692	13.87%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	3	0.53%	\$94,280	0.35%
Caucasian Males	435	76.18%	\$17,285,472	63.71%
TOTAL	571	100.00%	\$27,131,450	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	10	1.75%	\$1,053,000	3.88%
Minority Males	123	21.54%	\$8,698,697	32.06%
Caucasian Females	3	0.53%	\$94,280	0.35%
Caucasian Males	435	76.18%	\$17,285,472	63.71%
TOTAL	571	100.00%	\$27,131,450	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	133	23.29%	\$9,751,698	35.94%
Women Business Enterprises	3	0.53%	\$94,280	0.35%
Minority and Women Business Enterprises	136	23.82%	\$9,845,978	36.29%
Caucasian Male Business Enterprises	435	76.18%	\$17,285,472	63.71%
TOTAL	571	100.00%	\$27,131,450	100.00%



2. Architecture and Engineering Prime Contractor Utilization: Contracts under \$500,000

Table 4.08 summarizes all contract dollars expended by the City on architecture and engineering prime contracts under \$500,000. Minority Business Enterprises received 19.06 percent of the architecture and engineering prime contract dollars; Women Business Enterprises received 16.3 percent; and Caucasian Male Business Enterprises received 64.64 percent.

African Americans received 32 or 7.73 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$355,608 or 3.26 percent of the contract dollars.

Asian Americans received 58 or 14.01 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$1,281,539 or 11.74 percent of the contract dollars.

Hispanic Americans received 8 or 1.93 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$443,880 or 4.07 percent of the contract dollars.

Native Americans received none of the architecture and engineering contracts under \$500,000 during the study period.

Minority Business Enterprises received 98 or 23.67 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$2,081,027 or 19.06 percent of the contract dollars.

Women Business Enterprises received 106 or 25.6 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$1,779,597 or 16.3 percent of the contract dollars.

Minority and Women Business Enterprises received 204 or 49.28 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$3,860,624 or 35.36 percent of the contract dollars.

Caucasian Male Business Enterprises received 210 or 50.72 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$7,057,870 or 64.64 percent of the contract dollars.



**Table 4.08 Architecture and Engineering Prime Contractor
Utilization: Contracts under \$500,000, July 1, 2002 to June 30,
2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	32	7.73%	\$355,608	3.26%
Asian Americans	58	14.01%	\$1,281,539	11.74%
Hispanic Americans	8	1.93%	\$443,880	4.07%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	106	25.60%	\$1,779,597	16.30%
Caucasian Males	210	50.72%	\$7,057,870	64.64%
TOTAL	414	100.00%	\$10,918,494	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	19	4.59%	\$131,351	1.20%
African American Males	13	3.14%	\$224,257	2.05%
Asian American Females	16	3.86%	\$213,724	1.96%
Asian American Males	42	10.14%	\$1,067,815	9.78%
Hispanic American Females	1	0.24%	\$18,182	0.17%
Hispanic American Males	7	1.69%	\$425,698	3.90%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	106	25.60%	\$1,779,597	16.30%
Caucasian Males	210	50.72%	\$7,057,870	64.64%
TOTAL	414	100.00%	\$10,918,494	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	36	8.70%	\$363,256	3.33%
Minority Males	62	14.98%	\$1,717,770	15.73%
Caucasian Females	106	25.60%	\$1,779,597	16.30%
Caucasian Males	210	50.72%	\$7,057,870	64.64%
TOTAL	414	100.00%	\$10,918,494	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	98	23.67%	\$2,081,027	19.06%
Women Business Enterprises	106	25.60%	\$1,779,597	16.30%
Minority and Women Business Enterprises	204	49.28%	\$3,860,624	35.36%
Caucasian Male Business Enterprises	210	50.72%	\$7,057,870	64.64%
TOTAL	414	100.00%	\$10,918,494	100.00%



3. Professional Services Prime Contractor Utilization: Contracts under \$500,000

Table 4.09 summarizes all contract dollars expended by the City on professional services prime contracts under \$500,000. Minority Business Enterprises received 8.79 percent of the professional services prime contract dollars; Women Business Enterprises received 2.15 percent; and Caucasian Male Business Enterprises received 89.06 percent.

African Americans received 37 or 3.39 percent of the professional services contracts under \$500,000 during the study period, representing \$551,589 or 1.97 percent of the contract dollars.

Asian Americans received 17 or 1.56 percent of the professional services contracts under \$500,000 during the study period, representing \$798,899 or 2.86 percent of the contract dollars.

Hispanic Americans received 39 or 3.57 percent of the professional services contracts under \$500,000 during the study period, representing \$1,101,855 or 3.94 percent of the contract dollars.

Native Americans received 1 or 0.09 percent of the professional services contracts under \$500,000 during the study period, representing \$4,500 or 0.02 percent of the contract dollars.

Minority Business Enterprises received 94 or 8.62 percent of the professional services contracts under \$500,000 during the study period, representing \$2,456,843 or 8.79 percent of the contract dollars.

Women Business Enterprises received 69 or 6.32 percent of the professional services contracts under \$500,000 during the study period, representing \$601,671 or 2.15 percent of the contract dollars.

Minority and Women Business Enterprises received 163 or 14.94 percent of the professional services contracts under \$500,000 during the study period, representing \$3,058,513 or 10.94 percent of the contract dollars.

Caucasian Male Business Enterprises received 928 or 85.06 percent of the professional services contracts under \$500,000 during the study period, representing \$24,907,498 or 89.06 percent of the contract dollars.



**Table 4.09 Professional Services Prime Contractor
Utilization: Contracts under \$500,000, July 1, 2002 to June 30,
2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	37	3.39%	\$551,589	1.97%
Asian Americans	17	1.56%	\$798,899	2.86%
Hispanic Americans	39	3.57%	\$1,101,855	3.94%
Native Americans	1	0.09%	\$4,500	0.02%
Caucasian Females	69	6.32%	\$601,671	2.15%
Caucasian Males	928	85.06%	\$24,907,498	89.06%
TOTAL	1,091	100.00%	\$27,966,012	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	8	0.73%	\$15,891	0.06%
African American Males	29	2.66%	\$535,698	1.92%
Asian American Females	4	0.37%	\$70,605	0.25%
Asian American Males	13	1.19%	\$728,294	2.60%
Hispanic American Females	36	3.30%	\$502,754	1.80%
Hispanic American Males	3	0.27%	\$599,100	2.14%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	1	0.09%	\$4,500	0.02%
Caucasian Females	69	6.32%	\$601,671	2.15%
Caucasian Males	928	85.06%	\$24,907,498	89.06%
TOTAL	1,091	100.00%	\$27,966,012	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	48	4.40%	\$589,250	2.11%
Minority Males	46	4.22%	\$1,867,592	6.68%
Caucasian Females	69	6.32%	\$601,671	2.15%
Caucasian Males	928	85.06%	\$24,907,498	89.06%
TOTAL	1,091	100.00%	\$27,966,012	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	94	8.62%	\$2,456,843	8.79%
Women Business Enterprises	69	6.32%	\$601,671	2.15%
Minority and Women Business Enterprises	163	14.94%	\$3,058,513	10.94%
Caucasian Male Business Enterprises	928	85.06%	\$24,907,498	89.06%
TOTAL	1,091	100.00%	\$27,966,012	100.00%



4. Goods and Other Services Prime Contractor Utilization: Contracts under \$500,000

Table 4.10 summarizes all contract dollars expended by the City on goods and other services prime contracts under \$500,000. Minority Business Enterprises received 13.14 percent of the goods and other services prime contract dollars; Women Business Enterprises received 7.1 percent; and Caucasian Male Business Enterprises received 79.77 percent.

African Americans received 1,355 or 5.94 percent of the goods and other services contracts under \$500,000 during the study period, representing \$5,421,663 or 6.39 percent of the contract dollars.

Asian Americans received 821 or 3.6 percent of the goods and other services contracts under \$500,000 during the study period, representing \$4,805,933 or 5.66 percent of the contract dollars.

Hispanic Americans received 75 or 0.33 percent of the goods and other services contracts under \$500,000 during the study period, representing \$924,574 or 1.09 percent of the contract dollars.

Native Americans received 2 or 0.01 percent of the goods and other services contracts under \$500,000 during the study period, representing \$883 or 0 percent of the contract dollars.

Minority Business Enterprises received 2,253 or 9.88 percent of the goods and other services contracts under \$500,000 during the study period, representing \$11,153,052 or 13.14 percent of the contract dollars.

Women Business Enterprises received 1,482 or 6.5 percent of the goods and other services contracts under \$500,000 during the study period, representing \$6,025,685 or 7.1 percent of the contract dollars.

Minority and Women Business Enterprises received 3,735 or 16.38 percent of the goods and other services contracts under \$500,000 during the study period, representing \$17,178,738 or 20.23 percent of the contract dollars.

Caucasian Male Business Enterprises received 19,072 or 83.62 percent of the goods and other services contracts under \$500,000 during the study period, representing \$67,722,736 or 79.77 percent of the contract dollars.



**Table 4.10 Goods and Other Services Prime Contractor
Utilization: Contracts under \$500,000, July 1, 2002 to June 30,
2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	1,355	5.94%	\$5,421,663	6.39%
Asian Americans	821	3.60%	\$4,805,933	5.66%
Hispanic Americans	75	0.33%	\$924,574	1.09%
Native Americans	2	0.01%	\$883	0.00%
Caucasian Females	1,482	6.50%	\$6,025,685	7.10%
Caucasian Males	19,072	83.62%	\$67,722,736	79.77%
TOTAL	22,807	100.00%	\$84,901,474	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	888	3.89%	\$3,666,256	4.32%
African American Males	467	2.05%	\$1,755,407	2.07%
Asian American Females	130	0.57%	\$412,777	0.49%
Asian American Males	691	3.03%	\$4,393,156	5.17%
Hispanic American Females	37	0.16%	\$709,500	0.84%
Hispanic American Males	38	0.17%	\$215,074	0.25%
Native American Females	2	0.01%	\$883	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	1,482	6.50%	\$6,025,685	7.10%
Caucasian Males	19,072	83.62%	\$67,722,736	79.77%
TOTAL	22,807	100.00%	\$84,901,474	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1,057	4.63%	\$4,789,415	5.64%
Minority Males	1,196	5.24%	\$6,363,637	7.50%
Caucasian Females	1,482	6.50%	\$6,025,685	7.10%
Caucasian Males	19,072	83.62%	\$67,722,736	79.77%
TOTAL	22,807	100.00%	\$84,901,474	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	2,253	9.88%	\$11,153,052	13.14%
Women Business Enterprises	1,482	6.50%	\$6,025,685	7.10%
Minority and Women Business Enterprises	3,735	16.38%	\$17,178,738	20.23%
Caucasian Male Business Enterprises	19,072	83.62%	\$67,722,736	79.77%
TOTAL	22,807	100.00%	\$84,901,474	100.00%



C. Informal Prime Contracts under \$50,000 or \$15,000, by Industry

1. Construction Prime Contractor Utilization: Contracts under \$50,000

Table 4.11 summarizes all contract dollars expended by the City on construction prime contracts under \$50,000. Minority Business Enterprises received 22.91 percent of the construction prime contract dollars; Women Business Enterprises received 2.45 percent; and Caucasian Male Business Enterprises received 74.64 percent.

African Americans received 38 or 8.52 percent of the construction contracts under \$50,000 during the study period, representing \$399,213 or 10.39 percent of the contract dollars.

Asian Americans received 18 or 4.04 percent of the construction contracts under \$50,000 during the study period, representing \$148,621 or 3.87 percent of the contract dollars.

Hispanic Americans received 29 or 6.5 percent of the construction contracts under \$50,000 during the study period, representing \$332,505 or 8.65 percent of the contract dollars.

Native Americans received none of the construction contracts under \$50,000 during the study period.

Minority Business Enterprises received 85 or 19.06 percent of the construction contracts under \$50,000 during the study period, representing \$880,338 or 22.91 percent of the contract dollars.

Women Business Enterprises received 3 or 0.67 percent of the construction contracts under \$50,000 during the study period, representing \$94,280 or 2.45 percent of the contract dollars.

Minority and Women Business Enterprises received 88 or 19.73 percent of the construction contracts under \$50,000 during the study period, representing \$974,618 or 25.36 percent of the contract dollars.

Caucasian Male Business Enterprises received 358 or 80.27 percent of the construction contracts under \$50,000 during the study period, representing \$2,868,178 or 74.64 percent of the contract dollars.



**Table 4.11 Construction Prime Contractor Utilization:
Contracts under \$50,000, July 1, 2002 to June 30, 2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	38	8.52%	\$399,213	10.39%
Asian Americans	18	4.04%	\$148,621	3.87%
Hispanic Americans	29	6.50%	\$332,505	8.65%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	3	0.67%	\$94,280	2.45%
Caucasian Males	358	80.27%	\$2,868,178	74.64%
TOTAL	446	100.00%	\$3,842,796	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	6	1.35%	\$101,916	2.65%
African American Males	32	7.17%	\$297,297	7.74%
Asian American Females	1	0.22%	\$593	0.02%
Asian American Males	17	3.81%	\$148,028	3.85%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	29	6.50%	\$332,505	8.65%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	3	0.67%	\$94,280	2.45%
Caucasian Males	358	80.27%	\$2,868,178	74.64%
TOTAL	446	100.00%	\$3,842,796	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	7	1.57%	\$102,508	2.67%
Minority Males	78	17.49%	\$777,830	20.24%
Caucasian Females	3	0.67%	\$94,280	2.45%
Caucasian Males	358	80.27%	\$2,868,178	74.64%
TOTAL	446	100.00%	\$3,842,796	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	85	19.06%	\$880,338	22.91%
Women Business Enterprises	3	0.67%	\$94,280	2.45%
Minority and Women Business Enterprises	88	19.73%	\$974,618	25.36%
Caucasian Male Business Enterprises	358	80.27%	\$2,868,178	74.64%
TOTAL	446	100.00%	\$3,842,796	100.00%



2. Architecture and Engineering Prime Contractor Utilization: Contracts \$15,000 or less

Table 4.12 summarizes all contract dollars expended by the City on architecture and engineering prime contracts \$15,000 or less. Minority Business Enterprises received 18.38 percent of the architecture and engineering prime contract dollars; Women Business Enterprises received 34.27 percent; and Caucasian Male Business Enterprises received 47.35 percent.

African Americans received 25 or 8.09 percent of the architecture and engineering contracts \$15,000 or less during the study period, representing \$114,202 or 7.47 percent of the contract dollars.

Asian Americans received 43 or 13.92 percent of the architecture and engineering contracts \$15,000 or less during the study period, representing \$158,759 or 10.39 percent of the contract dollars.

Hispanic Americans received 1 or 0.32 percent of the architecture and engineering contracts \$15,000 or less during the study period, representing \$7,935 or 0.52 percent of the contract dollars.

Native Americans received none of the architecture and engineering contracts \$15,000 or less during the study period.

Minority Business Enterprises received 69 or 22.33 percent of the architecture and engineering contracts \$15,000 or less during the study period, representing \$280,896 or 18.38 percent of the contract dollars.

Women Business Enterprises received 83 or 26.86 percent of the architecture and engineering contracts \$15,000 or less during the study period, representing \$523,889 or 34.27 percent of the contract dollars.

Minority and Women Business Enterprises received 152 or 49.19 percent of the architecture and engineering contracts \$15,000 or less during the study period, representing \$804,785 or 52.65 percent of the contract dollars.

Caucasian Male Business Enterprises received 157 or 50.81 percent of the architecture and engineering contracts \$15,000 or less during the study period, representing \$723,816 or 47.35 percent of the contract dollars.



**Table 4.12 Architecture and Engineering Prime Contractor
Utilization: Contracts \$15,000 or less, July 1, 2002 to June 30,
2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	25	8.09%	\$114,202	7.47%
Asian Americans	43	13.92%	\$158,759	10.39%
Hispanic Americans	1	0.32%	\$7,935	0.52%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	83	26.86%	\$523,889	34.27%
Caucasian Males	157	50.81%	\$723,816	47.35%
TOTAL	309	100.00%	\$1,528,602	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	17	5.50%	\$63,760	4.17%
African American Males	8	2.59%	\$50,442	3.30%
Asian American Females	13	4.21%	\$41,969	2.75%
Asian American Males	30	9.71%	\$116,791	7.64%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	1	0.32%	\$7,935	0.52%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	83	26.86%	\$523,889	34.27%
Caucasian Males	157	50.81%	\$723,816	47.35%
TOTAL	309	100.00%	\$1,528,602	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	30	9.71%	\$105,728	6.92%
Minority Males	39	12.62%	\$175,168	11.46%
Caucasian Females	83	26.86%	\$523,889	34.27%
Caucasian Males	157	50.81%	\$723,816	47.35%
TOTAL	309	100.00%	\$1,528,602	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	69	22.33%	\$280,896	18.38%
Women Business Enterprises	83	26.86%	\$523,889	34.27%
Minority and Women Business Enterprises	152	49.19%	\$804,785	52.65%
Caucasian Male Business Enterprises	157	50.81%	\$723,816	47.35%
TOTAL	309	100.00%	\$1,528,602	100.00%



3. Professional Services Prime Contractor Utilization: Contracts \$15,000 or less

Table 4.13 summarizes all contract dollars expended by the City on professional services prime contracts \$15,000 or less. Minority Business Enterprises received 11.96 percent of the professional services prime contract dollars; Women Business Enterprises received 9.73 percent; and Caucasian Male Business Enterprises received 78.31 percent.

African Americans received 32 or 3.78 percent of the professional services contracts \$15,000 or less during the study period, representing \$115,154 or 5.52 percent of the contract dollars.

Asian Americans received 12 or 1.42 percent of the professional services contracts \$15,000 or less during the study period, representing \$81,555 or 3.91 percent of the contract dollars.

Hispanic Americans received 31 or 3.66 percent of the professional services contracts \$15,000 or less during the study period, representing \$48,275 or 2.31 percent of the contract dollars.

Native Americans received 1 or 0.12 percent of the professional services contracts \$15,000 or less during the study period, representing \$4,500 or 0.22 percent of the contract dollars.

Minority Business Enterprises received 76 or 8.98 percent of the professional services contracts \$15,000 or less during the study period, representing \$249,484 or 11.96 percent of the contract dollars.

Women Business Enterprises received 66 or 7.8 percent of the professional services contracts \$15,000 or less during the study period, representing \$203,010 or 9.73 percent of the contract dollars.

Minority and Women Business Enterprises received 142 or 16.78 percent of the professional services contracts \$15,000 or less during the study period, representing \$452,494 or 21.69 percent of the contract dollars.

Caucasian Male Business Enterprises received 704 or 83.22 percent of the professional services contracts \$15,000 or less during the study period, representing \$1,634,170 or 78.31 percent of the contract dollars.



**Table 4.13 Professional Services Prime Contractor
Utilization: Contracts \$15,000 or less, July 1, 2002 to June 30,
2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	32	3.78%	\$115,154	5.52%
Asian Americans	12	1.42%	\$81,555	3.91%
Hispanic Americans	31	3.66%	\$48,275	2.31%
Native Americans	1	0.12%	\$4,500	0.22%
Caucasian Females	66	7.80%	\$203,010	9.73%
Caucasian Males	704	83.22%	\$1,634,170	78.31%
TOTAL	846	100.00%	\$2,086,664	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	8	0.95%	\$15,891	0.76%
African American Males	24	2.84%	\$99,263	4.76%
Asian American Females	3	0.35%	\$8,016	0.38%
Asian American Males	9	1.06%	\$73,539	3.52%
Hispanic American Females	31	3.66%	\$48,275	2.31%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	1	0.12%	\$4,500	0.22%
Caucasian Females	66	7.80%	\$203,010	9.73%
Caucasian Males	704	83.22%	\$1,634,170	78.31%
TOTAL	846	100.00%	\$2,086,664	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	42	4.96%	\$72,182	3.46%
Minority Males	34	4.02%	\$177,302	8.50%
Caucasian Females	66	7.80%	\$203,010	9.73%
Caucasian Males	704	83.22%	\$1,634,170	78.31%
TOTAL	846	100.00%	\$2,086,664	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	76	8.98%	\$249,484	11.96%
Women Business Enterprises	66	7.80%	\$203,010	9.73%
Minority and Women Business Enterprises	142	16.78%	\$452,494	21.69%
Caucasian Male Business Enterprises	704	83.22%	\$1,634,170	78.31%
TOTAL	846	100.00%	\$2,086,664	100.00%



4. Goods and Other Services Prime Contractor Utilization: Contracts \$50,000 or less

Table 4.14 summarizes all contract dollars expended by the City on goods and other services prime contracts \$50,000 or less. Minority Business Enterprises received 12.12 percent of the goods and other services prime contract dollars; Women Business Enterprises received 8.23 percent; and Caucasian Male Business Enterprises received 79.64 percent.

African Americans received 1,347 or 5.96 percent of the goods and other services contracts \$50,000 or less during the study period, representing \$4,577,145 or 7.6 percent of the contract dollars.

Asian Americans received 804 or 3.56 percent of the goods and other services contracts \$50,000 or less during the study period, representing \$2,316,957 or 3.85 percent of the contract dollars.

Hispanic Americans received 72 or 0.32 percent of the goods and other services contracts \$50,000 or less during the study period, representing \$404,530 or 0.67 percent of the contract dollars.

Native Americans received 2 or 0.01 percent of the goods and other services contracts \$50,000 or less during the study period, representing \$883 or 0 percent of the contract dollars.

Minority Business Enterprises received 2,225 or 9.84 percent of the goods and other services contracts \$50,000 or less during the study period, representing \$7,299,515 or 12.12 percent of the contract dollars.

Women Business Enterprises received 1,468 or 6.49 percent of the goods and other services contracts \$50,000 or less during the study period, representing \$4,957,283 or 8.23 percent of the contract dollars.

Minority and Women Business Enterprises received 3,693 or 16.33 percent of the goods and other services contracts \$50,000 or less during the study period, representing \$12,256,798 or 20.36 percent of the contract dollars.

Caucasian Male Business Enterprises received 18,922 or 83.67 percent of the goods and other services contracts \$50,000 or less during the study period, representing \$47,951,705 or 79.64 percent of the contract dollars.



**Table 4.14 Goods and Other Services Prime Contractor
Utilization: Contracts \$50,000 or less, July 1, 2002 to June 30,
2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	1,347	5.96%	\$4,577,145	7.60%
Asian Americans	804	3.56%	\$2,316,957	3.85%
Hispanic Americans	72	0.32%	\$404,530	0.67%
Native Americans	2	0.01%	\$883	0.00%
Caucasian Females	1,468	6.49%	\$4,957,283	8.23%
Caucasian Males	18,922	83.67%	\$47,951,705	79.64%
TOTAL	22,615	100.00%	\$60,208,502	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	882	3.90%	\$2,987,578	4.96%
African American Males	465	2.06%	\$1,589,567	2.64%
Asian American Females	130	0.57%	\$412,777	0.69%
Asian American Males	674	2.98%	\$1,904,180	3.16%
Hispanic American Females	34	0.15%	\$189,456	0.31%
Hispanic American Males	38	0.17%	\$215,074	0.36%
Native American Females	2	0.01%	\$883	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	1,468	6.49%	\$4,957,283	8.23%
Caucasian Males	18,922	83.67%	\$47,951,705	79.64%
TOTAL	22,615	100.00%	\$60,208,502	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1,048	4.63%	\$3,590,694	5.96%
Minority Males	1,177	5.20%	\$3,708,821	6.16%
Caucasian Females	1,468	6.49%	\$4,957,283	8.23%
Caucasian Males	18,922	83.67%	\$47,951,705	79.64%
TOTAL	22,615	100.00%	\$60,208,502	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	2,225	9.84%	\$7,299,515	12.12%
Women Business Enterprises	1,468	6.49%	\$4,957,283	8.23%
Minority and Women Business Enterprises	3,693	16.33%	\$12,256,798	20.36%
Caucasian Male Business Enterprises	18,922	83.67%	\$47,951,705	79.64%
TOTAL	22,615	100.00%	\$60,208,502	100.00%



V. HIGHLY USED PRIME CONTRACTORS

A. Highly Used Prime Contractors, All Industries

As presented in Table 4.02, the City awarded 24,596 contracts worth \$244,205,430 during the July 1, 2002 to June 30, 2005 study period. As depicted in Table 4.15 below, the 24,596 City contracts were awarded to 5,018 vendors.

Table 4.15 Total Prime Contracts, Utilized Vendors, and Dollars Expended: All Industries, July 1, 2002 to June 30, 2005

Total Contracts	24,956
Total Utilized Vendors	5,018
Total Expenditures	\$244,205,430

The 24,956 contracts were awarded disproportionately to the 5,018 utilized vendors. The City awarded 60 percent of the contract dollars to less than 2 percent of the 5,018 utilized vendors. As depicted in Table 4.16 below, of the 5,018 utilized vendors, 88 vendors received 60 percent or \$146,953,160 of the total expenditures while the remaining 4,930 vendors received 40 percent or \$97,252,270 of the total expenditures.

Table 4.16 Distribution of All Contracts

Vendors	Total Dollars	Percent of Dollars	Number of Contracts
12 Vendors Received	\$61,741,570	25%	184
50 Vendors Received	\$122,430,483	50%	2,020
88 Vendors Received	\$146,953,160	60%	4,741
4,930 Vendors Received	\$97,252,270	40%	20,215
5,018 Vendors Received	\$244,205,430	100%	24,956

More than 61 million dollars, or 25 percent of all dollars, were awarded to only 12 vendors who represent less than a quarter of a percent of all vendors. Table 4.17 below is a profile of the twelve most highly used prime contractors.



Table 4.17 Profile of Top Twelve Highly Used Prime Contractors

Rank	Vendor	Industry	Number of Contracts	Ethnicity	Gender	Dollars
1	Andes Construction	Construction	23	Hispanic	Male	\$8,258,032
2	Ray's Electric	Construction	18	Caucasian	Male	\$7,184,346
3	Gallagher & Burk, Inc.	Construction	27	Caucasian	Male	\$6,561,722
4	Motorola	Goods & Other Services	6	Caucasian	Male	\$6,154,437
5	Swinerton Builders, Inc.	Construction	1	Caucasian	Male	\$6,010,063
6	McGuire and Hester	Construction	14	Caucasian	Male	\$5,013,159
7	CSAC Excess Insurance	Goods & Other Services	3	Caucasian	Male	\$4,743,627
8	AJW Construction	Construction	14	Hispanic	Male	\$4,419,057
9	ValleyCrest Landscape Development	Construction	2	Caucasian	Male	\$3,911,038
10	Arthur Young Debris Removal	Construction	67	Caucasian	Male	\$3,237,974
11	Bay Area Parking Company	Goods & Other Services	6	Caucasian	Male	\$3,158,114
12	Zakskorn Construction	Construction	3	Caucasian	Male	\$3,090,002
	Total		184			\$61,741,570
Twelve Firms Received						25.28%



B. Highly Used Prime Contractors By Ethnicity and Gender

The utilization pattern by ethnic group indicates a similar pattern with most contracts awarded to only a few firms. Tables 4.18 through 4.23 below profiles the highly used prime contractors by ethnic group. Most notable of the highly used Hispanic American prime contractors in Construction, over 80 percent of dollars awarded went to the two construction companies profiled in Table 4.17.

Table 4.18 Highly Used African American Prime Contractors

Industry	Number of Vendors	Percent of Dollars
Construction	5	95.59%
Architecture and Engineering	5	99.21%
Professional Services	5	94.66%
Goods and Other Services	5	66.45%

Table 4.19 Highly Used Asian American Prime Contractors

Industry	Number of Vendors	Percent of Dollars
Construction	5	97.31%
Architecture and Engineering	5	89.11%
Professional Services	5	98.89%
Goods and Other Services	5	67.08%

Table 4.20 Highly Used Hispanic American Prime Contractors

Industry	Number of Vendors	Percent of Dollars
Construction	5	98.36%
Architecture and Engineering	5	100%
Professional Services	5	100%
Goods and Other Services	5	94.34%



Table 4.21 Highly Used Native American Prime Contractors

Industry	Number of Vendors	Percent of Dollars
Construction	---	---
Architecture and Engineering	---	---
Professional Services	1	100%
Goods and Other Services	2	100%

Table 4.22 Highly Used Caucasian Female Prime Contractors

Industry	Number of Vendors	Percent of Dollars
Construction	3	100%"
Architecture and Engineering	5	78.79%
Professional Services	5	84.25%
Goods and Other Services	5	36.63%

Table 4.23 Highly Used Caucasian Male Prime Contractors

Industry	Number of Vendors	Percent of Dollars
Construction	5	54.71%
Architecture and Engineering	5	56.24%
Professional Services	5	23.61%
Goods and Other Services	5	21.57%

VI. SUMMARY

The City's prime contractor utilization analysis examined the \$244,205,430 expended on the 24,956 contracts awarded between July 1, 2002 to June 30, 2005. The \$244,205,430 expended included \$77,252,468 for construction, \$21,976,119 for architecture and engineering, \$37,112,084 for professional services, and \$107,864,759 for goods and other services. A total of 24,956 contracts were analyzed, which included 608 for construction,



424 for architecture and engineering, 1,101 for professional services, and 22,823 for goods and other services.

The 24,956 contracts were awarded disproportionately to the 5,018 utilized vendors. The City awarded 60 percent of the contract dollars to less than 2 percent of the 5,018 utilized vendors. Of the 5,018 utilized vendors, 88 vendors received 60 percent or \$146,953,160 of the total expenditures while the remaining 4,930 vendors received 40 percent or \$97,252,270 of the total expenditures.

The utilization analysis was performed separately for informal and formal contracts. The informal levels included contracts under \$50,000 or \$15,000 for each industry. The analysis of formal contracts was limited to contracts under \$500,000 for each industry. *Chapter 8: Prime Contractor Disparity Analysis* presents the statistical analysis of disparity in each of the four industries.





5

SUBCONTRACTOR UTILIZATION ANALYSIS

I. INTRODUCTION

As discussed in *Chapter 4: Prime Contractor Utilization Analysis*, a disparity study documents Minority and Women Business Enterprise (M/WBE) contracting history in the jurisdiction under review. A finding of subcontractor disparity is required to implement a race-based program targeted to benefit M/WBE subcontractors. In order to analyze subcontractor disparity, it is imperative to determine the level of M/WBE and non-M/WBE subcontractor utilization on City of Oakland and Redevelopment Agency (City) contracts during the July 1, 2003 to June 30, 2005 study period.

II. SUBCONTRACTOR UTILIZATION DATA SOURCES

Extensive efforts were undertaken to obtain subcontractor records for the City's construction, architecture and engineering, and professional services contracts. Goods and other services contracts traditionally do not include significant subcontracting activity and they were not included in the analysis.

Two sources, City project files and prime contractor and subcontractor expenditure surveys, were used to reconstruct all construction, architecture and engineering, and professional services prime contracts valued at \$100,000 or more. Mason Tillman visited the City's Contract Compliance Division, Public Works Department, Community and Economic Development Agency, and Oakland Base Reuse Authority to reconstruct subcontractor data from various documents found in the project files. The documents include but are not limited to contract documents, contract compliance status report, subcontractor affidavit for final payment, contractor utilization plan, and prevailing wage documents. The second



source was prime contractors who were surveyed by Mason Tillman to determine their subcontractors. The prime contractors were asked to provide the name, award, and payment amounts for each subcontractor. Subcontractors were then surveyed to verify the payments that were received from the prime contractors.

City staff from all agencies described above provided indispensable assistance throughout this process. In addition to providing access to their records, they encouraged the prime contractors and subcontractors to respond to each survey. City staff also assisted in locating subcontractor contact information and payment data which Mason Tillman was not able to locate.

III. SUBCONTRACTOR UTILIZATION ANALYSIS

As depicted in Table 5.01 below, Mason Tillman was able to reconstruct and analyze 868 subcontracts for the 147 prime contracts valued at \$50,000 and more that were awarded between July 1, 2003 and June 30, 2005, the two-year study period for the subcontractor analysis. The 868 subcontracts included 634 construction subcontracts, 171 architecture and engineering subcontracts, and 63 professional services subcontracts.

On the subcontracts identified, \$88,736,187 total dollars were expended of which \$82,246,610 were for construction subcontracts, \$4,161,398 were for architecture and engineering subcontracts, and \$2,328,179 for professional services subcontracts.

Table 5.01 Total Subcontract Awards and Dollars: All Industries, July 1, 2003 to June 30, 2005

Industry	Total Number of Subcontracts	Total Dollars Expended
Construction	634	\$82,246,610
Architecture and Engineering	171	\$4,161,398
Professional Services	63	\$2,328,179
Total	868	\$88,736,187



A. Construction Utilization: All Subcontracts

1. Construction Subcontracts

Table 5.02 depicts construction subcontracts awarded by prime contractors. Minority Business Enterprises received 22.61 percent of the construction subcontract dollars; Women Business Enterprises received 5.48 percent; and Caucasian Male Business Enterprises received 71.91 percent.

African American Businesses received 94 or 14.83 percent of the construction subcontracts during the study period, representing \$8,082,982 or 9.83 percent of the subcontract dollars.

Asian American Businesses received 24 or 3.79 percent of the construction subcontracts during the study period, representing \$4,395,336 or 5.34 percent of the subcontract dollars.

Hispanic American Businesses received 67 or 10.57 percent of the construction subcontracts during the study period, representing \$6,114,828 or 7.43 percent of the subcontract dollars.

Native American Businesses received none of the construction subcontracts during the study period.

Minority Business Enterprises received 185 or 29.18 percent of the construction subcontracts during the study period, representing \$18,593,146 or 22.61 percent of the subcontract dollars.

Women Business Enterprises received 28 or 4.42 percent of the construction subcontracts during the study period, representing \$4,506,028 or 5.48 percent of the subcontract dollars.

Minority and Women Business Enterprises received 213 or 33.6 percent of the construction subcontracts during the study period, representing \$23,099,174 or 28.09 percent of the subcontract dollars.

Caucasian Male Business Enterprises received 421 or 66.4 percent of the construction subcontracts during the study period, representing \$59,147,436 or 71.91 percent of the subcontract dollars.



**Table 5.02 Construction Utilization: All Subcontracts, July 1,
2003 to June 30, 2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	94	14.83%	\$8,082,982	9.83%
Asian Americans	24	3.79%	\$4,395,336	5.34%
Hispanic Americans	67	10.57%	\$6,114,828	7.43%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	28	4.42%	\$4,506,028	5.48%
Caucasian Males	421	66.40%	\$59,147,436	71.91%
TOTAL	634	100.00%	\$82,246,610	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	24	3.79%	\$1,516,623	1.84%
African American Males	70	11.04%	\$6,566,358	7.98%
Asian American Females	6	0.95%	\$697,164	0.85%
Asian American Males	18	2.84%	\$3,698,172	4.50%
Hispanic American Females	7	1.10%	\$673,145	0.82%
Hispanic American Males	60	9.46%	\$5,441,683	6.62%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	28	4.42%	\$4,506,028	5.48%
Caucasian Males	421	66.40%	\$59,147,436	71.91%
TOTAL	634	100.00%	82,246,610	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	37	5.84%	\$2,886,933	3.51%
Minority Males	148	23.34%	\$15,706,213	19.10%
Caucasian Females	28	4.42%	\$4,506,028	5.48%
Caucasian Males	421	66.40%	\$59,147,436	71.91%
TOTAL	634	100.00%	\$82,246,610	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	185	29.18%	\$18,593,146	22.61%
Women Business Enterprises	28	4.42%	\$4,506,028	5.48%
Minority and Women Business Enterprises	213	33.60%	\$23,099,174	28.09%
Caucasian Male Business Enterprises	421	66.40%	\$59,147,436	71.91%
TOTAL	634	100.00%	\$82,246,610	100.00%



B. Architecture and Engineering Utilization: All Subcontracts

Table 5.03 depicts architecture and engineering subcontracts awarded by prime contractors. Minority Business Enterprises received 43.2 percent of the architecture and engineering subcontract dollars; Women Business Enterprises received 4.75 percent; and Caucasian Male Business Enterprises received 52.06 percent.

African American Businesses received 17 or 9.94 percent of the architecture and engineering subcontracts during the study period, representing \$269,560 or 6.48 percent of the subcontracting dollars.

Asian American Businesses received 26 or 15.2 percent of the architecture and engineering subcontracts during the study period, representing \$1,475,869 or 35.47 percent of the subcontracting dollars.

Hispanic American Businesses received 4 or 2.34 percent of the architecture and engineering subcontracts during the study period, representing \$52,091 or 1.25 percent of the subcontracting dollars.

Native American Businesses received none of the architecture and engineering subcontracts during the study period.

Minority Business Enterprises received 47 or 27.49 percent of the architecture and engineering subcontracts during the study period, representing \$1,797,520 or 43.2 percent of the subcontract dollars.

Women Business Enterprises received 17 or 9.94 percent of the architecture and engineering subcontracts during the study period, representing \$197,609 or 4.75 percent of the subcontract dollars.

Minority and Women Business Enterprises received 64 or 37.43 percent of the architecture and engineering subcontracts during the study period, representing \$1,995,129 or 47.94 percent of the subcontract dollars.

Caucasian Male Business Enterprises received 107 or 62.57 percent of the architecture and engineering subcontracts during the study period, representing \$2,166,269 or 52.06 percent of the subcontract dollars.



**Table 5.03 Architecture and Engineering Utilization: All
Subcontracts, July 1, 2003 to June 30, 2005**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	17	9.94%	\$269,560	6.48%
Asian Americans	26	15.20%	\$1,475,869	35.47%
Hispanic Americans	4	2.34%	\$52,091	1.25%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	17	9.94%	\$197,609	4.75%
Caucasian Males	107	62.57%	\$2,166,269	52.06%
TOTAL	171	100.00%	\$4,161,398	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	5	2.92%	\$47,935	1.15%
African American Males	12	7.02%	\$221,626	5.33%
Asian American Females	7	4.09%	\$332,344	7.99%
Asian American Males	19	11.11%	\$1,143,525	27.48%
Hispanic American Females	1	0.58%	\$3,143	0.08%
Hispanic American Males	3	1.75%	\$48,948	1.18%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	17	9.94%	\$197,609	4.75%
Caucasian Males	107	62.57%	\$2,166,269	52.06%
TOTAL	171	100.00%	4,161,398	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	13	7.60%	\$383,422	9.21%
Minority Males	34	19.88%	\$1,414,098	33.98%
Caucasian Females	17	9.94%	\$197,609	4.75%
Caucasian Males	107	62.57%	\$2,166,269	52.06%
TOTAL	171	100.00%	\$4,161,398	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	47	27.49%	\$1,797,520	43.20%
Women Business Enterprises	17	9.94%	\$197,609	4.75%
Minority and Women Business Enterprises	64	37.43%	\$1,995,129	47.94%
Caucasian Male Business Enterprises	107	62.57%	\$2,166,269	52.06%
TOTAL	171	100.00%	\$4,161,398	100.00%



C. Professional Services Utilization: All Subcontracts

Table 5.04 depicts professional services subcontracts awarded by prime contractors. Minority Business Enterprises received 27.35 percent of the professional services subcontract dollars; Women Business Enterprises received 18.04 percent; and Caucasian Male Business Enterprises received 54.61 percent.

African American Businesses received 7 or 11.11 percent of the professional services subcontracts during the study period, representing \$518,707 or 22.28 percent of the subcontracting dollars.

Asian American Businesses received 3 or 4.76 percent of the professional services subcontracts during the study period, representing \$116,479 or 5 percent of the subcontracting dollars.

Hispanic American Businesses received 1 or 1.59 percent of the professional services subcontracts during the study period, representing \$1,559 or 0.07 percent of the subcontracting dollars.

Native American Businesses received none of the professional services subcontracts during the study period.

Minority Business Enterprises received 11 or 17.46 percent of the professional services subcontracts during the study period, representing \$636,745 or 27.35 percent of the subcontract dollars.

Women Business Enterprises received 6 or 9.52 percent of the professional services subcontracts during the study period, representing \$420,077 or 18.04 percent of the subcontract dollars.

Minority and Women Business Enterprises received 17 or 26.98 percent of the professional services subcontracts during the study period, representing \$1,056,822 or 45.39 percent of the subcontract dollars.

Caucasian Male Business Enterprises received 46 or 73.02 percent of the professional services subcontracts during the study period, representing \$1,271,357 or 54.61 percent of the subcontract dollars.



Table 5.04 Professional Services Utilization: All Subcontracts, July 1, 2003 to June 30, 2005

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	7	11.11%	\$518,707	22.28%
Asian Americans	3	4.76%	\$116,479	5.00%
Hispanic Americans	1	1.59%	\$1,559	0.07%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	6	9.52%	\$420,077	18.04%
Caucasian Males	46	73.02%	\$1,271,357	54.61%
TOTAL	63	100.00%	\$2,328,179	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	2	3.17%	\$15,929	0.68%
African American Males	5	7.94%	\$502,778	21.60%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	3	4.76%	\$116,479	5.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	1	1.59%	\$1,559	0.07%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	6	9.52%	\$420,077	18.04%
Caucasian Males	46	73.02%	\$1,271,357	54.61%
TOTAL	63	100.00%	2,328,179	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	2	3.17%	\$15,929	0.68%
Minority Males	9	14.29%	\$620,816	26.67%
Caucasian Females	6	9.52%	\$420,077	18.04%
Caucasian Males	46	73.02%	\$1,271,357	54.61%
TOTAL	63	100.00%	\$2,328,179	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	11	17.46%	\$636,745	27.35%
Women Business Enterprises	6	9.52%	\$420,077	18.04%
Minority and Women Business Enterprises	17	26.98%	\$1,056,822	45.39%
Caucasian Male Business Enterprises	46	73.02%	\$1,271,357	54.61%
TOTAL	63	100.00%	\$2,328,179	100.00%



6

MARKET AREA ANALYSIS

I. MARKET AREA DEFINITION

A. Legal Criteria for Geographic Market Area

The Supreme Court's decision in *City of Richmond v. J.A. Croson Co.*¹ held that programs established by local governments to set goals for the participation of minority and woman-owned firms, must be supported by *evidence of past discrimination in the awarding of their contracts*.

Prior to the *Croson* decision, many agencies and jurisdictions implementing race-conscious programs did so without developing a detailed public record to document discrimination in their awarding of contracts. Instead, they relied upon common knowledge and what was viewed as widely-recognized patterns of discrimination, both local and national.²

Croson established that a local government could not rely on society-wide discrimination as the basis for a race-based program, but, instead, was required to identify discrimination within its own jurisdiction.³ In *Croson*, the Court found the City of Richmond's Minority Business Enterprise (MBE) construction program to be unconstitutional because there was insufficient evidence of discrimination in the *local construction market*.

¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

² *United Steelworkers v. Weber*, 433 U.S. 193, 198, n. 1 (1979).

³ *Croson*, 488 U.S. at 497 (1989).



Croson was explicit in saying that the *local construction market* was the appropriate geographical framework within which to perform statistical comparisons of business availability and business utilization. Therefore, the identification of the local market area is particularly important because that factor establishes the parameters within which to conduct a disparity study.

B. Application of the Croson Standard

While *Croson* emphasized the importance of the local market area, it provided little assistance in defining its parameters. It, however, is informative to review the Court's definition of market area in the City of Richmond context. In discussing the scope of the constitutional violation that must be investigated, the Court interchangeably used the terms "relevant market,"⁴ "Richmond construction industry,"⁵ and "city's construction industry"⁶ to define the proper scope of the examination of the existence of discrimination. This substitution of terms lends support to a definition of market area that coincides with the boundaries of a jurisdiction.

In analyzing the cases following *Croson*, a pattern emerges that provides additional guidance. The body of cases examining market area support a definition of market area that is reasonable.⁷ In *Cone Corporation v. Hillsborough County*,⁸ the Eleventh Circuit Court of Appeals considered a study in support of Florida's Hillsborough County MBE program, which used minority contractors located in the County as the measure of available firms. The program was found to be constitutional under the compelling governmental interest element of the strict scrutiny standard.

Hillsborough County's program was based on statistics indicating that specific discrimination existed in the construction contracts awarded by the County, not in the construction industry in general. Hillsborough County had extracted data from within its own jurisdictional boundaries and assessed the percentage of minority businesses available in Hillsborough County. The court stated that the study was properly conducted within the "local construction industry."⁹

⁴ *Croson*, 488 U.S. at 471 (1989).

⁵ *Id.* at 500.

⁶ *Id.* at 470.

⁷ See e.g., *Concrete Works of Colorado v. City of Denver, Colorado*, 36 F.3d 1513, 1528 (10th Cir. 1994).

⁸ *Cone Corporation v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990).

⁹ *Id.* at 915.



Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,¹⁰ the Ninth Circuit Court of Appeals found the City and County of San Francisco’s MBE program to have the factual predicate necessary to survive strict scrutiny. The San Francisco MBE program was supported by a study that assessed the number of available MBE contractors within the City and County of San Francisco. The court found it appropriate to use the City and County as the relevant market area within which to conduct a disparity study.¹¹

In *Coral Construction v. King County*, the Ninth Circuit Court of Appeals held that “a set-aside program is valid only if actual, identifiable discrimination has occurred within the local industry affected by the program.”¹² In support of its MBE program, the State of Washington’s King County offered studies compiled by other jurisdictions, including entities completely within the County or coterminous with the boundaries of the County, as well as a separate jurisdiction completely outside of the County. The plaintiffs contended that *Croson* required King County to compile its own data and cited *Croson* as prohibiting data sharing.

The court found that data sharing could potentially lead to the improper use of societal discrimination data as the factual basis for a local MBE program and that innocent third parties could be unnecessarily burdened if an MBE program were based on outside data. However, the court also found that the data from entities within the County and from coterminous jurisdictions was relevant to discrimination in the County. They also found that the data posed no risk of unfairly burdening innocent third parties.

Concerning data gathered by a neighboring county, the court concluded that this data could not be used to support King County’s MBE program. The court noted, “It is vital that a race-conscious program align itself as closely to the scope of the problem legitimately sought to be rectified by the governmental entity. To prevent overbreadth, the enacting jurisdiction should limit its factual inquiry to the presence of discrimination within its own boundaries.”¹³ However, the court did note that the “world of contracting does not conform itself neatly to jurisdictional boundaries.”¹⁴

There are other situations where courts have approved a definition of market area that extends beyond a jurisdiction’s geographic boundaries. In *Concrete Works v. City and*

¹⁰ *Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991).

¹¹ *Id.* at 1415.

¹² *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991), *cert. denied*, 112 S.Ct. 875 (1992).

¹³ *Id.* at 917.

¹⁴ *Id.*



County of Denver,¹⁵ the Tenth Circuit Court of Appeals directly addressed the issue of whether extra-jurisdictional evidence of discrimination can be used to determine “local market area” for a disparity study. In *Concrete Works*, the defendant relied on evidence of discrimination in the six-county Denver Metropolitan Statistical Area (MSA) to support its MBE program. Plaintiffs argued that the federal constitution prohibited consideration of evidence beyond jurisdictional boundaries. The Court of Appeals disagreed.

Critical to the court’s acceptance of the Denver MSA as the relevant local market, was the finding that more than 80 percent of construction and design contracts awarded by Denver were awarded to contractors within the MSA. Another consideration was that Denver’s analysis was based on U.S. Census data, which was available for the Denver MSA but not for the city itself. There was no undue burden placed on nonculpable parties, as Denver had conducted a majority of its construction contracts within the area defined as the local market. Citing *AGCCII*,¹⁶ the court noted, “that any plan that extends race-conscious remedies beyond territorial boundaries must be based on very specific findings that actions that the city has taken in the past have visited racial discrimination on such individuals.”¹⁷

Similarly, New York State conducted a disparity study in which the geographic market consisted of New York State and eight counties in northern New Jersey. The geographic market was defined as the area encompassing the location of businesses which received more than 90 percent of the dollar value of all contracts awarded by the agency.¹⁸

State and local governments must pay special attention to the geographical scope of their disparity studies. *Croson* determined that the statistical analysis should focus on the number of qualified minority individuals or qualified minority business owners in the government’s marketplace.¹⁹ The text of *Croson* itself suggests that the geographical boundaries of the government entity comprise an appropriate market area, and other courts have agreed with this finding. In addition, other cases have approved the use of a percentage of the dollars spent by an agency on contracting.

It follows then that an entity may limit consideration of evidence of discrimination to discrimination occurring within its own jurisdiction. Under certain circumstances, extra-jurisdictional evidence can be used if the percentage of governmental dollars supports such boundaries. Taken collectively, the cases support a definition of market area that is reasonable rather than dictating a specific or unreasonably rigid formula. In other words,

¹⁵ *Concrete Works*, 36 F.3d 1513, 1528 (10th Cir. 1994).

¹⁶ *AGCCII*, 950 F.2d 1401 (9th Cir. 1991).

¹⁷ *Concrete Works*, 36 F.3d at 1528 (10th Cir. 1994).

¹⁸ *Opportunity Denied! New York State’s Study*, 26 *Urban Lawyer* No. 3, Summer 1994.

¹⁹ *Croson*, 488 U.S. at 501 (1989).



since *Croson* and its progeny did not provide a bright line rule for local market area, that determination should be fact-based and case-specific.

II. CITY OF OAKLAND AND REDEVELOPMENT AGENCY'S MARKET AREA

The City of Oakland and Redevelopment Agency awarded 24,956 construction, architecture and engineering, professional services, and goods and other services contracts valued at \$244,205,430 during the study period of July 1, 2002 to June 30, 2005. A total of 54.21 percent of the contracts and 60.83 percent of the dollars were awarded to businesses in the market area of Oakland, California. In light of standards articulated by *Croson*, determination of the market area has been based on the City of Oakland's jurisdictional boundaries. The identification of available firms was limited to the market area.

Table 6.01 depicts the overall number of construction, architecture and engineering, professional services, and goods and other services contracts and the dollar value of those contracts awarded by the City between July 1, 2002 and June 30, 2005. Of the 24,956 contracts awarded by the City during the study period, 13,529 or 54.21 percent were awarded to market area businesses. The dollar value of contracts awarded to market area businesses was \$148,561,599 or 60.83 percent of all contract dollars awarded.

The breakdown of contracts awarded to market area businesses is as follows:

Construction Contracts: 467 or 76.94 percent of these contracts were awarded to market area businesses. The dollar value of those contracts was \$67,568,754 or 87.47 percent of the total construction dollars.

Architecture and Engineering Contracts: 328 or 77.36 percent of these contracts were awarded to market area businesses. The dollar value of those contracts was \$15,663,717 or 71.28 percent of the total architecture and engineering dollars.

Professional Services Contracts: 470 or 42.69 percent of these contracts were awarded to market area businesses. The dollar value of those contracts was \$17,314,873 or 46.66 percent of the total professional services dollars.²⁰

Goods and Other Services Contracts: 12,264 or 53.73 percent were awarded to market area businesses. The dollar value of those contracts was \$48,014,255 or 44.51 percent of the total goods and other services dollars.²¹

²⁰ 50.1 percent of the total professional services dollars were awarded to businesses outside Alameda County

²¹ 46.1 percent of the total goods and other service dollars were awarded to businesses outside Alameda County



**Table 6.01 City of Oakland Market Area: July 1, 2002 to
June 30, 2005**

Market Area	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Combined Types of Work				
Market Area	13,529	54.21%	\$148,561,599	60.83%
Outside Market Area	11,427	45.79%	\$95,643,831	39.17%
Total	24,956	100.00%	\$244,205,430	100.00%
Construction				
Market Area	467	76.94%	\$67,568,754	87.47%
Outside Market Area	140	23.06%	\$9,681,166	12.53%
Total	607	100.00%	\$77,249,921	100.00%
Architecture and Engineering				
Market Area	328	77.36%	\$15,663,717	71.28%
Outside Market Area	96	22.64%	\$6,312,401	28.72%
Total	424	100.00%	\$21,976,119	100.00%
Professional Services				
Market Area	470	42.69%	\$17,314,873	46.66%
Outside Market Area	631	57.31%	\$19,797,212	53.34%
Total	1,101	100.00%	\$37,112,084	100.00%
Procurement of Goods and Other Services				
Market Area	12,264	53.73%	\$48,014,255	44.51%
Outside Market Area	10,560	46.27%	\$59,853,052	55.49%
Total	22,824	100.00%	\$107,867,306	100.00%





7

AVAILABILITY ANALYSIS

I. INTRODUCTION

According to *Croson*, availability is defined as the number of businesses in the jurisdiction's market area that are willing and able to provide goods or services.¹ To determine availability, minority and woman-owned business enterprises (M/WBEs) and non-M/WBEs within the jurisdiction's market area that are willing and able to provide the goods and services need to be enumerated. When considering sources for determining the number of willing and able M/WBEs and non-M/WBEs, the selection must be based on whether two significant aspects about the population in question can be gauged from the sources: 1) a firm's interest in doing business with the jurisdiction, as implied by the term "willing"; and 2) a firm's ability or capacity to provide a service or good, as implied by the term "able."

The determination of availability must follow from the definition of the jurisdiction's market area. The market area analysis presented in *Chapter 6: Market Area Analysis* defined the City of Oakland as the market area for this Study because the majority of the utilized businesses are domiciled in the City.

The compiled list of available businesses includes minority, woman, and Caucasian male-owned businesses in the areas of construction, architecture and engineering services, professional services, and goods and other services. Separate availability lists were compiled for prime contractors and subcontractors within the four industries. Each availability list is presented below.



¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509 (1989).

II. PRIME CONTRACTOR AVAILABILITY DATA SOURCES

A. Prime Contractor Sources

Market area M/WBEs and non-M/WBEs willing and able to do business with the City were identified from various public and private organization sources. The government sources included businesses that had demonstrated their willingness to provide the goods and services procured by the City. For all of the other sources the business' willingness had to be determined. Table 7.01 lists all the sources used.

Table 7.01 Prime Contractor Availability Data Sources

Source	Type of Information
City of Oakland and Other Government Records	
Alameda County Utilized Vendor	M/WBEs and non-M/WBEs
City of Oakland Bidders	M/WBEs and non-M/WBEs
City of Oakland Utilized Vendors	M/WBEs and non-M/WBEs
Oakland Base Redevelopment Authority Utilized Vendors	M/WBEs and non-M/WBEs
Small Business Administration: Pronet	M/WBEs and non-M/WBEs
Certification Lists	
Alameda County Transportation Improvement Agency Certification	LBEs and S/LBEs
Alameda County Small/Local/Emerging/Business Program	LBEs and S/LEBs
California Unified Certification Program List	DBEs
East Bay Municipal Utility District Certification List	SBEs
City of Oakland Small Local Business Enterprise Certification List	LBEs and S/LBEs
Port of Oakland Certification List	LBABEs, LIABEs, SBEs, and VSBEs



Table 7.01 Prime Contractor Availability Data Sources

Source	Type of Information
Trade Association Membership Lists	
Associated Builders and Contractors	M/WBEs and non-M/WBEs
Associated General Contractors of California	M/WBEs and non-M/WBEs
Builders Exchange of Alameda County	M/WBEs and non-M/WBEs
East Bay Asian Design Professionals	M/WBEs
Business Association Membership Lists	
Alameda County Chamber of Commerce	M/WBEs and non-M/WBEs
Dublin Chamber of Commerce	M/WBEs and non-M/WBEs
Fremont Chamber of Commerce	M/WBEs and non-M/WBEs
Hayward Chamber of Commerce	M/WBEs and non-M/WBEs
Hispanic Chamber of Commerce of Alameda County	M/WBEs
National Association of Women Business Owners	WBEs
City of Oakland African American Chamber of Commerce	M/WBEs
Oakland Chinatown Chamber of Commerce	M/WBEs
Oakland Metropolitan Chamber of Commerce	M/WBEs and non-M/WBEs
Oakland Hispanic Business List	M/WBEs

B. Contractor Outreach

Mason Tillman performed extensive, targeted outreach to businesses and professional and trade associations in the City of Oakland to ensure that all businesses willing to contract with the City were made aware of the Disparity Study. Outreach efforts specifically targeted those ethnic and gender groups underrepresented in the public agency certification lists. Based on experience with previous disparity studies and other research, Mason Tillman had found that Asian and Hispanic owned businesses tended not to register with government certification agencies. These business segments were specifically targeted with the intensive outreach program. The primary strategies used in the outreach campaign were community meetings, presentations at chamber/trade association meetings, meetings with Oakland City Council members, and print, electronic and digital media. In combination these strategies achieved maximum reach to the targeted ethnic and gender groups.



Community Meetings

Two community meetings were held. One was held on March 13 at the Oakland Airport Hilton Hotel, and the other one was held on March 16, 2006 at the Oakland Waterfront Plaza Hotel. To advertise the meetings broadly the City mailed an invitation to City of Oakland licensed business, and published public notices of the two meetings in local ethnic papers. Simultaneous translation services were provided by the City of Oakland's Equal Access service and the availability of the services was promoted in the public notices. Key City department managers participated and provided information on their contracting opportunities. Mason Tillman also contracted with local subconsultants who had expert knowledge and respect in the Hispanic and Asian communities to provide outreach and help ensure that the message reached the target groups. These professionals also made telephone calls 48 hours in advance of the scheduled meetings to encourage the invited businesses to attend. There were 389 attendees at these two meetings. The meetings were scheduled to inform the Oakland business community about the disparity study. The proceedings were not recorded.

Chamber of Commerce/Trade Association Meetings

In addition to the community meetings, briefings were conducted at six chambers/trade associations including the Oakland Metropolitan Chamber of Commerce, the Hispanic Chamber of Commerce of Alameda County, the Oakland Chinatown Chamber of Commerce, the Oakland African American Chamber of Commerce, and local ethnic and trade associations. Following these meetings, an additional two meetings were hosted by our subconsultants. One was with the Asian business community sponsored by Carl Chan, and the other was hosted by the Hispanic Chamber of Commerce of Alameda County. At these meetings, Mason Tillman Associates outlined the research objectives, discussed the data collection process and provided partnership opportunities for the Chamber members to work with the City of Oakland. The success in reaching the City's multi-ethnic business community was due in great part to the extensive outreach campaign and the willingness of the business associations to partner with us to reach their members.

Outreach Materials

Multilingual outreach materials were used to promote the community and chamber/trade association meetings. In addition, all of the informational material, business survey, fact sheet, and website were prepared in Chinese, English, Spanish, and Vietnamese.

C. Determination of Willingness

The term "willingness" refers to a firm's indicated interest in doing government contracting. This term, as it has been used in *Croson* and its progeny, is discussed in detail in *Volume I*,



Chapter 1 Legal Analysis of this report. Companies identified from the City and other government sources listed in Table 7.01, have demonstrated their willingness to perform on public contracts. These businesses either had bid on City or other government contracts, secured government certification, or responded to the outreach campaign conducted in conjunction with this Study. It is therefore presumed that companies that sought government contracts are willing to provide the goods and services needed by the City.

Companies from the non-government sources listed in Table 7.01 were not presumed to be willing, based on the *Croson* criteria. These companies were surveyed to determine their willingness to bid on City contracts. The surveyed businesses that indicated an interest in contracting with the City were combined with the market area businesses from the government and outreach lists to create a unique list of willing businesses.



D. Distribution of Available Prime Contractors by Source, Ethnicity, and Gender

Tables 7.02 through 7.06 present the distribution of willing prime contractors. The sources are ranked from prime contractors utilized by a City agency to companies identified during the Study outreach activities. Each company in the distribution of sources is *counted only once*. For example, a utilized prime contractor counted once in the prime contractor utilization source will not be counted a second time as a bidder, as a certified firm, or as a company identified during outreach.

As noted in Table 7.02, 94.58 percent of the businesses on the unique list of available prime contractors were obtained from the City’s records of utilized contractors, bidders, or various government certification lists. Companies identified through the community meeting and willingness survey made up 5.42 percent of the available firms.

Table 7.02 Distribution of Prime Contractor Availability Data Sources, All Industries

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	22.15%	52.89%	44.66%
Bidders Lists	8.51%	4.55%	5.61%
Certification Lists	48.05%	34.92%	38.44%
SBA Pro-Net	8.34%	4.96%	5.87%
Subtotal	87.05%	97.33%	94.58%
Community Meeting Attendees	3.82%	1.59%	2.19%
Willingness Survey	9.12%	1.08%	3.24%
Subtotal	12.95%	2.67%	5.42%
Grand Total*	100.00%	100.00%	100.00%

* The percentages may not total 100 percent due to rounding.



The distribution of available businesses by source was performed for each industry. As noted in Table 7.03, 83.43 percent of the construction companies identified were derived from the City's records and various government certification lists. Companies identified through the community meeting and willingness survey represent 16.57 percent of the willing firms.

Table 7.03 Distribution of Prime Contractor Availability Data Sources, Construction

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	14.90%	21.97%	18.50%
Bidders Lists	10.20%	20.45%	15.41%
Certification Lists	43.92%	51.52%	47.78%
SBA Pro-net	2.35%	1.14%	1.73%
Subtotal	71.37%	95.08%	83.43%
Community Meeting Attendees	4.71%	1.89%	3.28%
Willingness Survey	23.92%	3.03%	13.29%
Subtotal	28.63%	4.92%	16.57%
Grand Total*	100.00%	100.00%	100.00%

* The percentages may not total 100 percent due to rounding.



Table 7.04 depicts the data sources for the available architecture and engineering prime contractors. As noted, 98.11 percent of the architecture and engineering prime contractors were obtained from the City’s records and various government certification lists. Companies identified through the community meeting and willingness survey represent 1.89 percent of the willing firms.

Table 7.04 Distribution of Prime Contractor Availability Data Sources, Architecture and Engineering

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	20.74%	12.50%	15.76%
Bidders Lists	29.79%	19.44%	23.53%
Certification Lists	47.34%	62.50%	56.51%
SBA Pro-net	0.53%	3.47%	2.31%
Subtotal	98.40%	97.92%	98.11%
Community Meeting Attendees	0.00%	1.04%	0.63%
Willingness Survey	1.60%	1.04%	1.26%
Subtotal	1.60%	2.08%	1.89%
Grand Total*	100.00%	100.00%	100.00%

* The percentages may not total 100 percent due to rounding.



Table 7.05 depicts the data sources for available professional services prime contractors. As noted, 94.55 percent of the professional services prime contractors were obtained from the City's records and various government certification lists. Companies identified through the community meeting and willingness survey represent 5.45 percent of the willing firms.

Table 7.05 Distribution of Prime Contractor Availability Data Sources, Professional Services

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	12.95%	21.33%	18.38%
Bidders Lists	5.04%	4.70%	4.82%
Certification Lists	56.12%	60.27%	58.81%
SBA Pro-net	13.31%	12.13%	12.55%
Subtotal	87.41%	98.43%	94.55%
Community Meeting Attendees	6.47%	0.59%	2.66%
Willingness Survey	6.12%	0.98%	2.79%
Subtotal	12.59%	1.57%	5.45%
Grand Total*	100.00%	100.00%	100.00%

* The percentages may not total 100 percent due to rounding.



Table 7.06 depicts the data sources for available goods and other services prime contractors. As noted, 96.28 percent of the goods and other services prime contractors were obtained from City’s records and various government certification lists. Companies identified through the community meeting and willingness survey represent 3.72 percent of the willing firms.

Table 7.06 Distribution of Prime Contractor Availability Data Sources, Goods and Other Services

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	33.56%	70.08%	63.64%
Bidders Lists	2.44%	0.38%	0.74%
Certification Lists	44.00%	22.98%	26.68%
SBA Pro-net	11.56%	3.85%	5.21%
Subtotal	91.56%	97.29%	96.28%
Community Meeting Attendees	3.11%	1.86%	2.08%
Willingness Survey	5.33%	0.86%	1.65%
Subtotal	8.44%	2.71%	3.72%
Grand Total*	100.00%	100.00%	100.00%

* The percentages may not total 100 percent due to rounding.



III. CAPACITY

The second component of the availability requirement set forth in *Croson* is a firm's capacity or ability to work on the contracts awarded by the jurisdiction.² However, capacity requirements are not delineated in *Croson*. In fact, a standard for capacity has only been addressed in a few cases. Each case where capacity has been considered has involved large, competitively bid construction prime contracts. Therefore, in order to assess the capacity of willing market area firms to do business with the City, four approaches were employed.

- The size of all prime contracts awarded by the City was analyzed to determine the capacity needed to perform the average awarded contract
- The largest contracts awarded to M/WBEs were identified to determine demonstrated ability to win large, competitively bid contracts
- The M/WBE certification process was assessed to determine if it meets the standard set in *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia (Philadelphia)*,³ which found certification to be a measure of capacity
- The disparity analysis has been restricted to an examination of the prime contract awards in the amount of \$500,000 or less to limit the capacity required to perform the contracts subjected to the statistical analysis

This methodology was sufficient to determine the capacity of the willing market area firms to do business with the City.

A. Size of Prime Contracts Analyzed

In *Associated General Contractors of California v. City of Columbus* and *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade City*, the courts were primarily concerned with the capacity analysis of available businesses to bid on large, competitively bid contracts. It should also be noted that the focus in both cases was on the bidding company's size and ability to perform on large, competitively bid construction contracts.⁴

² *Croson*, 488 U.S. 469.

³ *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990 (3d Cir. 1993), on remand, 893 F. Supp. 419 (E.D. Penn. 1995), aff'd, 91 F.3d 586 (3d Cir. 1996).

⁴ *Associated General Contractors of California v. City of Columbus*, 936 F. Supp. 1363 (S.D. Ohio 1996), and *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade City*, 943 F. Supp. 1546 (S.D. Fla. 1996), aff'd 122 F.3d 895 (11th Cir. 1997).



The City's construction, architecture and engineering, professional services, and goods and other services contracts were analyzed to determine the size of awarded contracts and, therefore, the capacity required to perform the City's contracts. Business capacity includes, financing, insurance, bonding, and staffing. The size distribution illustrates the fact that limited capacity is needed to perform the overwhelming majority of the City's contracts. The analysis in Table 7.07, which combines all industries, demonstrates that 95.63 percent of the City's contracts were less than \$25,000, 98.56 percent were less than \$100,000, and 99.71 percent were less than \$500,000. Less than 1 percent of the contracts were more than \$500,000.

It should be noted that some of the data was only available as purchase orders with more than one purchase order corresponding to the same contract. In that case, one large contract may also be represented in the data by multiple small purchase orders. Some purchase orders could not be linked to a contract so the number of small contracts may be overstated.

The City's contracts were grouped into eight dollar ranges⁵. Then, the number and percentage of contracts that fall within each of the eight size categories were calculated. The size distribution of contracts awarded to Caucasian Males, was then compared to the size distribution of contracts awarded to Caucasian Females, Minority Females, and Minority Males.

To determine whether the differences in the contract size distribution were statistically significant, a *Chi-squared* test of independence was performed. This test is commonly used when one needs to determine if two variables are dependent, in this case, the test is to determine if the size of the contracts awarded by the City depends on the M/WBE status of contractors. As in most statistical tests, the outcome is a "probability value" or P-value.

P-value is the probability that the observed difference in size distribution is due to chance. P-value is a number between 0 and 1. When a P-value is very small, it means that the differences in the M/WBE and non-M/WBE contract sizes are very unlikely to be a chance occurrence and are very likely to represent an existing pattern. The industry standard is that if a P-value is less than 0.05, or in other words, the probability that a given finding is due to chance is less than 5 percent, the finding is considered statistically significant. "P-value<0.001" means that the probability that the differences in the M/WBE and non-M/WBE contract sizes are due to chance is less than 0.1 percent and indicates a very strong statistical significance.



⁵ The eight dollar ranges are \$1 to \$24,999, \$25,000 to \$49,999, \$50,000 to \$99,999, \$100,000 to \$249,999, \$250,000 to \$499,999, \$500,000 to \$999,999, \$1,000,000 to \$2,999,999, and \$3,000,000 and greater

1. Construction Contracts by Size

Table 7.08 depicts the City's construction contracts awarded within eight dollar ranges. Contracts valued at less than \$25,000 were 64.64 percent; those less than \$100,000 were 79.61 percent; and those less than \$500,000 were 93.91 percent.

The P-value cannot be calculated because of an insufficient number of construction contracts awarded to M/WBEs.

2. Architecture and Engineering Contracts by Size

Table 7.09 depicts the City's architecture and engineering contracts within eight dollar ranges. Contracts valued at less than \$25,000 were 78.77 percent; those less than \$100,000 were 90.57 percent; and those less than \$500,000 were 97.64 percent.

The P-value of <0.05 denotes a significant difference in the size of architecture and engineering contract dollars awarded to the ethnic and gender groups.

3. Professional Services Contracts by Size

Table 7.10 depicts professional services contracts within eight dollar ranges. Contracts valued at less than \$25,000 were 79.65 percent; those less than \$100,000 were 91.37 percent; and those less than \$500,000 were 99.09 percent.

The P-value cannot be calculated because of an insufficient number of professional services contracts awarded to M/WBEs.

4. Goods and Other Services Contracts by Size

Table 7.11 depicts goods and other services contracts within eight dollar ranges. Contracts valued at less than \$25,000 were 97.54 percent; those less than \$100,000 were 99.56 percent; and those less than \$500,000 were 99.93 percent.

The P-value cannot be calculated because of an insufficient number of goods and other services contracts awarded to M/WBEs.



Table 7.07 Prime Contracts by Size: All Industries, July 1, 2002 to June 30, 2005

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$24,999	1585	95.48%	19,858	95.94%	1,115	96.62%	1,308	90.58%	23,866	95.63%
\$25,000 - \$49,999	50	3.01%	380	1.84%	16	1.39%	38	2.63%	484	1.94%
\$50,000 - \$99,999	15	0.90%	199	0.96%	11	0.95%	21	1.45%	246	0.99%
\$100,000 - \$249,999	10	0.60%	128	0.62%	6	0.52%	49	3.39%	193	0.77%
\$250,000 - \$499,999	0	0.00%	80	0.39%	3	0.26%	11	0.76%	94	0.38%
\$500,000 - \$999,999	0	0.00%	28	0.14%	0	0.00%	8	0.55%	36	0.14%
\$1,000,000 - \$2,999,999	0	0.00%	21	0.10%	3	0.26%	9	0.62%	33	0.13%
\$3,000,000 and greater	0	0.00%	4	0.02%	0	0.00%	0	0.00%	4	0.02%
Total	1660	100.00%	20698	100.00%	1154	100.00%	1444	100.00%	24956	100.00%

P-Value < 0.001

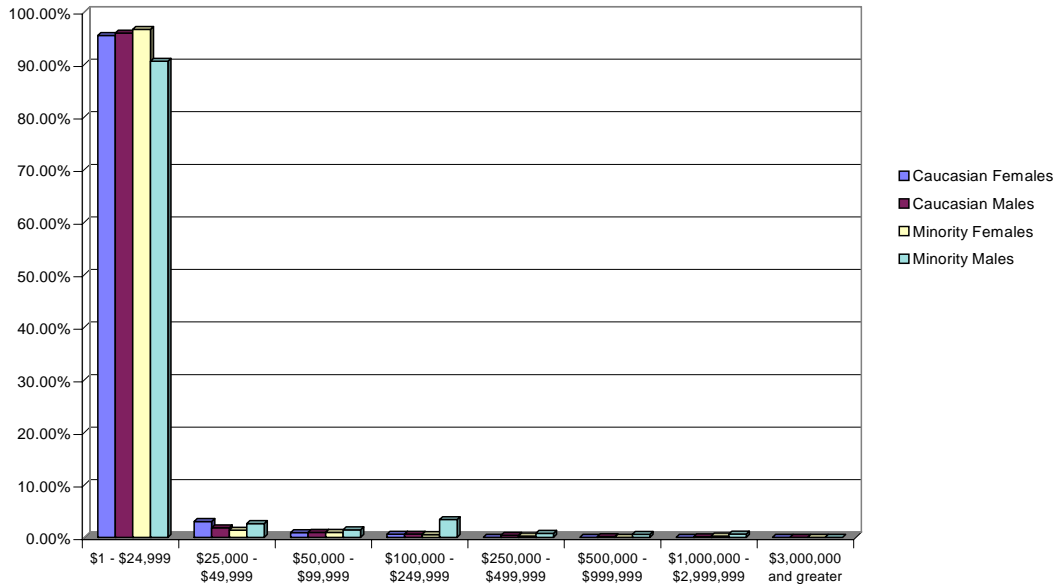


Table 7.08 Construction Prime Contracts by Size: July 1, 2002 to June 30, 2005

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$1 - \$24,999	1	33.33%	319	69.50%	5	45.45%	68	50.37%	393	64.64%
\$25,000 - \$49,999	2	66.67%	39	8.50%	2	18.18%	11	8.15%	54	8.88%
\$50,000 - \$99,999	0	0.00%	29	6.32%	0	0.00%	8	5.93%	37	6.09%
\$100,000 - \$249,999	0	0.00%	25	5.45%	1	9.09%	27	20.00%	53	8.72%
\$250,000 - \$499,999	0	0.00%	23	5.01%	2	18.18%	9	6.67%	34	5.59%
\$500,000 - \$999,999	0	0.00%	12	2.61%	0	0.00%	5	3.70%	17	2.80%
\$1,000,000 - \$2,999,999	0	0.00%	10	2.18%	1	9.09%	7	5.19%	18	2.96%
\$3,000,000 and greater	0	0.00%	2	0.44%	0	0.00%	0	0.00%	2	0.33%
Total	3	100.00%	459	100.00%	11	100.00%	135	100.00%	608	100.00%

Insufficient Data

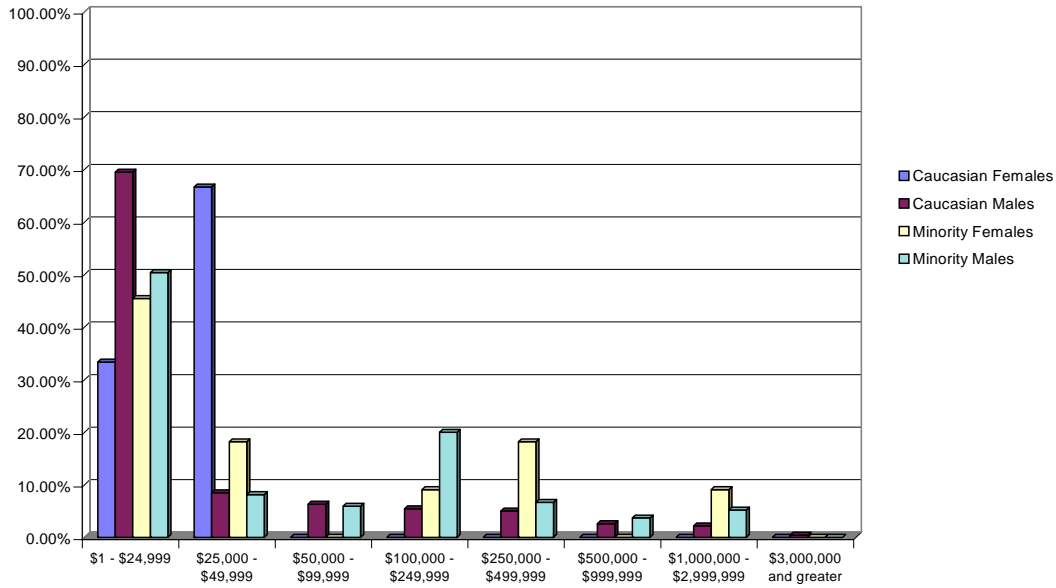
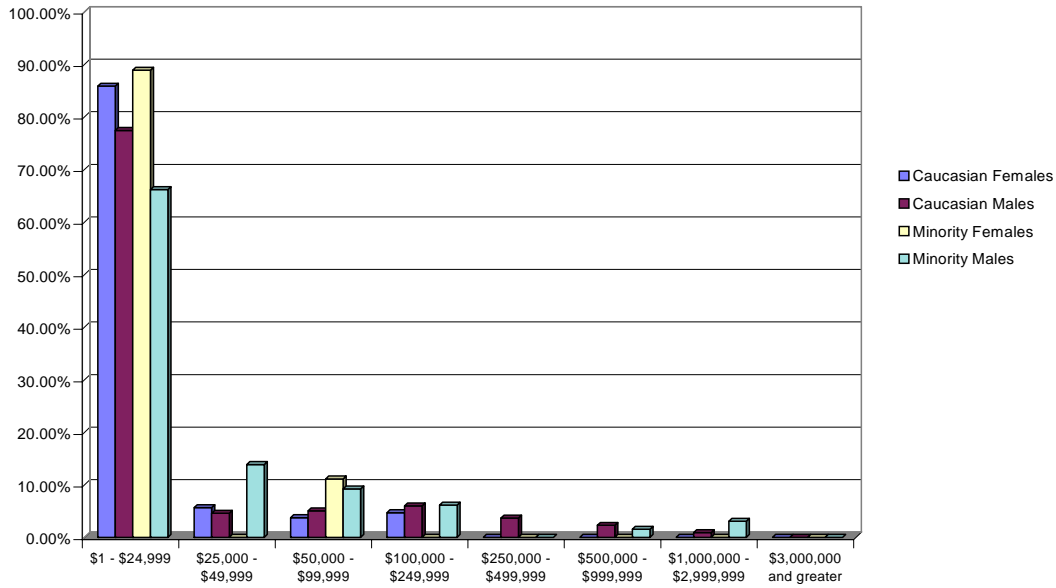


Table 7.09 Architecture and Engineering Prime Contracts by Size: July 1, 2002 to June 30, 2005

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$1 - \$24,999	91	85.85%	168	77.42%	32	88.89%	43	66.15%	334	78.77%
\$25,000 - \$49,999	6	5.66%	10	4.61%	0	0.00%	9	13.85%	25	5.90%
\$50,000 - \$99,999	4	3.77%	11	5.07%	4	11.11%	6	9.23%	25	5.90%
\$100,000 - \$249,999	5	4.72%	13	5.99%	0	0.00%	4	6.15%	22	5.19%
\$250,000 - \$499,999	0	0.00%	8	3.69%	0	0.00%	0	0.00%	8	1.89%
\$500,000 - \$999,999	0	0.00%	5	2.30%	0	0.00%	1	1.54%	6	1.42%
\$1,000,000 - \$2,999,999	0	0.00%	2	0.92%	0	0.00%	2	3.08%	4	0.94%
\$3,000,000 and greater	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Total	106	100.00%	217	100.00%	36	100.00%	65	100.00%	424	100.00%

P-Value < 0.05



**Table 7.10 Professional Services Prime Contracts by Size:
July 1, 2002 to June 30, 2005**

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$1 - \$24,999	66	95.65%	730	77.99%	44	91.67%	37	77.08%	877	79.65%
\$25,000 - \$49,999	1	1.45%	53	5.66%	0	0.00%	1	2.08%	55	5.00%
\$50,000 - \$99,999	0	0.00%	69	7.37%	2	4.17%	3	6.25%	74	6.72%
\$100,000 - \$249,999	2	2.90%	49	5.24%	2	4.17%	3	6.25%	56	5.09%
\$250,000 - \$499,999	0	0.00%	27	2.88%	0	0.00%	2	4.17%	29	2.63%
\$500,000 - \$999,999	0	0.00%	4	0.43%	0	0.00%	2	4.17%	6	0.54%
\$1,000,000 - \$2,999,999	0	0.00%	4	0.43%	0	0.00%	0	0.00%	4	0.36%
\$3,000,000 and greater	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Total	69	100.00%	936	100.00%	48	100.00%	48	100.00%	1101	100.00%

Insufficient Data

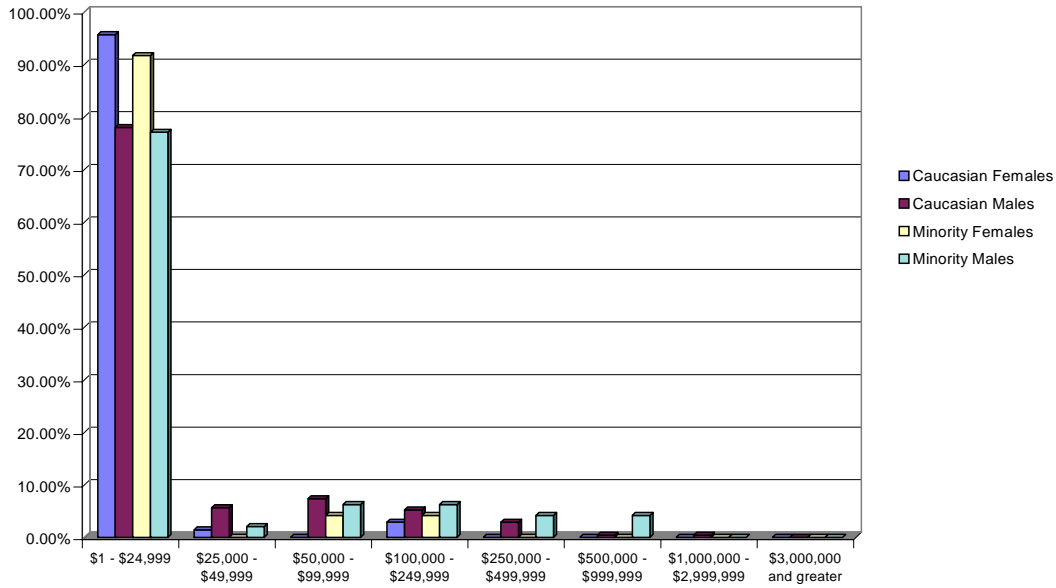
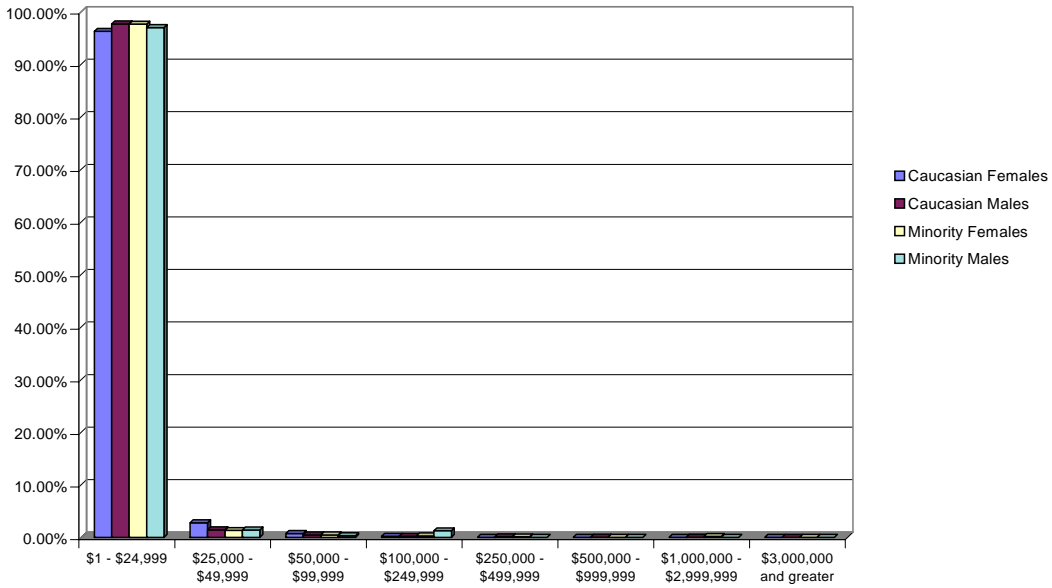


Table 7.11 Goods and Other Services Prime Contracts by Size: July 1, 2002 to June 30, 2005

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$1 - \$24,999	1427	96.29%	18,641	97.67%	1,034	97.64%	1,160	96.99%	22,262	97.54%
\$25,000 - \$49,999	41	2.77%	278	1.46%	14	1.32%	17	1.42%	350	1.53%
\$50,000 - \$99,999	11	0.74%	90	0.47%	5	0.47%	4	0.33%	110	0.48%
\$100,000 - \$249,999	3	0.20%	41	0.21%	3	0.28%	15	1.25%	62	0.27%
\$250,000 - \$499,999	0	0.00%	22	0.12%	1	0.09%	0	0.00%	23	0.10%
\$500,000 - \$999,999	0	0.00%	7	0.04%	0	0.00%	0	0.00%	7	0.03%
\$1,000,000 - \$2,999,999	0	0.00%	5	0.03%	2	0.19%	0	0.00%	7	0.03%
\$3,000,000 and greater	0	0.00%	2	0.01%	0	0.00%	0	0.00%	2	0.01%
Total	1482	100.00%	19086	100.00%	1059	100.00%	1196	100.00%	22823	100.00%

Insufficient Data



B. Largest M/WBE Prime Contract Awards by Industry

The distribution of the largest M/WBE prime contracts awarded is depicted in Table 7.12 below. In each industry, M/WBEs were awarded very large, competitively bid contracts. The utilization analysis shows that M/WBEs demonstrated the capacity to successfully compete for contracts as large as \$1.9 million in construction, \$1.3 million in architecture and engineering, \$0.6 million in professional services, and \$1.1 million in goods and other services.

Table 7.12 Largest M/WBE Prime Contract Awards by Industry

Ethnic Group	Largest Prime Contract Value			
	Construction	Architecture and Engineering	Professional Services	Goods and Other Services
African Americans	\$1,162,041	\$50,000	\$224,621	\$194,156
Asian Americans	\$1,454,848	\$1,356,275	\$643,812	\$179,250
Hispanic Americans	\$1,992,352	\$128,110	\$598,080	\$1,125,397
Native Americans	\$0	\$0	\$4,500	\$754
Caucasian Females	\$48,380	\$165,000	\$244,834	\$140,352
M/WBEs	\$1,992,352	\$1,356,275	\$643,812	\$1,125,397

C. City of Oakland Certification Standards

Philadelphia is the only appellate court decision to address the merits of certification as a measure of capacity.⁶ The court found that programs certifying MBEs for the City of Philadelphia construction projects funded by the United States Department of Transportation (USDOT) satisfied the determination of a firm’s capability. Thus, a certification process which reviews the qualifications of an applicant using the standards set forth in the USDOT regulations, 49 Code of Federal Regulations Part 26, would be sufficient to demonstrate the capability of MBEs.

⁶ *Contractors Ass’n of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990 (3d Cir. 1993), on remand, 893 F. Supp. 419 (E.D. Penn. 1995), affd, 91 F.3d 586 (3d Cir. 1996).



IV. PRIME CONTRACTOR AVAILABILITY ANALYSIS

The analysis of the City's contracts demonstrates that the capacity needed to perform on most of the contracts is limited. Additionally, the M/WBE firms awarded the City's contracts demonstrate the capacity to win competitively bid large contracts in each of the four industries.

The prime contractor availability findings are summarized below.



A. Construction Prime Contractor Availability

The distribution of available construction prime contractors is summarized in Table 7.13 below:

African Americans account for 20.62 percent of the construction firms in the City's market area.

Asian Americans account for 7.13 percent of the construction firms in the City's market area.

Hispanic Americans account for 18.11 percent of the construction firms in the City's market area.

Native Americans account for 0.19 percent of the construction firms in the City's market area.

Minority Business Enterprises account for 46.05 percent of the construction firms in the City's market area.

Women Business Enterprises account for 3.08 percent of the construction firms in the City's market area.

Minority and Women Business Enterprises account for 49.13 percent of the construction firms in the City's market area.

Caucasian Male Business Enterprises account for 50.87 percent of the construction firms in the City's market area.



Table 7.13 Available Construction Prime Contractors

Ethnicity	Percent of Businesses
African Americans	20.62%
Asian Americans	7.13%
Hispanic Americans	18.11%
Native Americans	0.19%
Caucasian Females	3.08%
Caucasian Males	50.87%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	3.08%
African American Males	17.53%
Asian American Females	1.54%
Asian American Males	5.59%
Hispanic American Females	1.35%
Hispanic American Males	16.76%
Native American Females	0.00%
Native American Males	0.19%
Caucasian Females	3.08%
Caucasian Males	50.87%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	5.97%
Minority Males	40.08%
Caucasian Females	3.08%
Caucasian Males	50.87%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	46.05%
Women Business Enterprises	3.08%
Minority and Women Business Enterprises	49.13%
Caucasian Male Business Enterprises	50.87%
TOTAL	100.00%



B. Architecture and Engineering Prime Contractor Availability

The distribution of available architecture and engineering prime contractors is summarized in Table 7.14.

African Americans account for 6.93 percent of the architecture and engineering firms in the City's market area.

Asian Americans account for 18.07 percent of the architecture and engineering firms in the City's market area.

Hispanic Americans account for 4.62 percent of the architecture and engineering firms in the City's market area.

Native Americans account for none of the architecture and engineering firms in the City's market area.

Minority Business Enterprises account for 29.62 percent of the architecture and engineering firms in the City's market area.

Women Business Enterprises account for 9.24 percent of the architecture and engineering firms in the City's market area.

Minority and Women Business Enterprises account for 38.87 percent of the architecture and engineering firms in the City's market area.

Caucasian Male Business Enterprises account for 61.13 percent of the architecture and engineering firms in City's market area.



Table 7.14 Available Architecture and Engineering Prime Contractors

Ethnicity	Percent of Businesses
African Americans	6.93%
Asian Americans	18.07%
Hispanic Americans	4.62%
Native Americans	0.00%
Caucasian Females	9.24%
Caucasian Males	61.13%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	0.63%
African American Males	6.30%
Asian American Females	4.62%
Asian American Males	13.45%
Hispanic American Females	0.63%
Hispanic American Males	3.99%
Native American Females	0.00%
Native American Males	0.00%
Caucasian Females	9.24%
Caucasian Males	61.13%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	5.88%
Minority Males	23.74%
Caucasian Females	9.24%
Caucasian Males	61.13%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	29.62%
Women Business Enterprises	9.24%
Minority and Women Business Enterprises	38.87%
Caucasian Male Business Enterprises	61.13%
TOTAL	100.00%



C. Professional Services Prime Contractor Availability

The distribution of available professional services prime contractors is summarized in Table 7.15 below:

African Americans account for 14.7 percent of the professional services firms in the City's market area.

Asian Americans account for 7.22 percent of the professional services firms in the City's market area.

Hispanic Americans account for 2.53 percent of the professional services firms in the City's market area.

Native Americans account for 0.51 percent of the professional services firms in the City's market area.

Minority Business Enterprises account for 24.97 percent of the professional services firms in the City's market area.

Women Business Enterprises account for 10.27 percent of the professional services firms in the City's market area.

Minority and Women Business Enterprises account for 35.23 percent of the professional services firms in the City's market area.

Caucasian Male Business Enterprises account for 64.77 percent of the professional services firms in the City's market area.



Table 7.15 Available Professional Services Prime Contractors

Ethnicity	Percent of Businesses
African Americans	14.70%
Asian Americans	7.22%
Hispanic Americans	2.53%
Native Americans	0.51%
Caucasian Females	10.27%
Caucasian Males	64.77%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	6.46%
African American Males	8.24%
Asian American Females	3.04%
Asian American Males	4.18%
Hispanic American Females	1.01%
Hispanic American Males	1.52%
Native American Females	0.25%
Native American Males	0.25%
Caucasian Females	10.27%
Caucasian Males	64.77%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	10.77%
Minority Males	14.20%
Caucasian Females	10.27%
Caucasian Males	64.77%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	24.97%
Women Business Enterprises	10.27%
Minority and Women Business Enterprises	35.23%
Caucasian Male Business Enterprises	64.77%
TOTAL	100.00%



D. Goods and Other Services Prime Contractor Availability

The distribution of available goods and other services prime contractors is summarized in Table 7.16.

African Americans account for 6.66 percent of the goods and other services firms in the City's market area.

Asian Americans account for 4.35 percent of the goods and other services firms in the City's market area.

Hispanic Americans account for 1.88 percent of the goods and other services firms in the City's market area.

Native American Businesses account for 0.12 percent of the goods and other services firms in the City's market area.

Minority Business Enterprises account for 13.01 percent of the goods and other services firms in the City's market area.

Women Business Enterprises account for 4.62 percent of the goods and other services firms in the City's market area.

Minority Women Business Enterprises account for 17.63 percent of the goods and other services firms in the City's market area.

Caucasian Male Business Enterprises account for 82.37 percent of the goods and other services firms in the City's market area.



Table 7.16 Available Goods and Other Services Prime Contractors

Ethnicity	Percent of Businesses
African Americans	6.66%
Asian Americans	4.35%
Hispanic Americans	1.88%
Native Americans	0.12%
Caucasian Females	4.62%
Caucasian Males	82.37%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	2.59%
African American Males	4.08%
Asian American Females	1.06%
Asian American Males	3.29%
Hispanic American Females	0.47%
Hispanic American Males	1.41%
Native American Females	0.04%
Native American Males	0.08%
Caucasian Females	4.62%
Caucasian Males	82.37%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	4.15%
Minority Males	8.86%
Caucasian Females	4.62%
Caucasian Males	82.37%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	13.01%
Women Business Enterprises	4.62%
Minority and Women Business Enterprises	17.63%
Caucasian Male Business Enterprises	82.37%
TOTAL	100.00%



V. SUBCONTRACTOR AVAILABILITY ANALYSIS

A. Sources of Potentially Willing and Able Subcontractors and Availability

All available prime contractors were also included in the calculation of subcontractor availability. Additional subcontractors in the City’s market area were identified using the sources in Table 7.17.

Table 7.17 Unique Subcontractor Availability Data Sources

Type Record	Type Information
<ul style="list-style-type: none"> Subcontracting records provided by the City 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> Prime contractor survey which identified subcontractors utilized by the City 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs

B. Determination of Willingness and Capacity

Subcontractor availability was limited to businesses determined to be willing and able to perform as prime contractors and businesses utilized as subcontractors; therefore, the determination of willingness was achieved. *Croson* does not require a measure of subcontractor capacity; therefore, it is not necessary to address capacity issues in the context of subcontractors.



C. Construction Subcontractor Availability

The distribution of available construction subcontractors is summarized in Table 7.18.

African Americans account for 18.89 percent of the construction firms in the City's market area.

Asian Americans account for 7.2 percent of the construction firms in the City's market area.

Hispanic Americans account for 14.13 percent of the construction firms in the City's market area.

Native Americans account for 0.14 percent of the construction firms in the City's market area.

Minority Business Enterprises account for 40.35 percent of the construction firms in the City's market area.

Women Business Enterprises account for 3.4 percent of the construction firms in the City's market area.

Minority and Women Business Enterprises account for 43.75 percent of the construction firms in the City's market area.

Caucasian Male Business Enterprises account for 56.25 percent of the construction firms in the City's market area.



Table 7.18 Available Construction Subcontractors

Ethnicity	Percent of Businesses
African Americans	18.89%
Asian Americans	7.20%
Hispanic Americans	14.13%
Native Americans	0.14%
Caucasian Females	3.40%
Caucasian Males	56.25%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	2.58%
African American Males	16.30%
Asian American Females	1.90%
Asian American Males	5.30%
Hispanic American Females	0.95%
Hispanic American Males	13.18%
Native American Females	0.00%
Native American Males	0.14%
Caucasian Females	3.40%
Caucasian Males	56.25%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	5.43%
Minority Males	34.92%
Caucasian Females	3.40%
Caucasian Males	56.25%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	40.35%
Women Business Enterprises	3.40%
Minority and Women Business Enterprises	43.75%
Caucasian Male Business Enterprises	56.25%
TOTAL	100.00%



D. Architecture and Engineering Subcontractor Availability

The distribution of available architecture and engineering subcontractors is summarized in Table 7.19.

African Americans account for 9.74 percent of the architecture and engineering firms in the City's market area.

Asian Americans account for 16.24 percent of the architecture and engineering firms in the City's market area.

Hispanic Americans account for 4.27 percent of the architecture and engineering firms in the City's market area.

Native Americans account for 0.17 percent of the architecture and engineering firms in the City's market area.

Minority Business Enterprises account for 30.43 percent of the architecture and engineering firms in the City's market area.

Women Business Enterprises account for 10.26 percent of the architecture and engineering firms in the City's market area.

Minority and Women Business Enterprises account for 40.68 percent of the architecture and engineering firms in the City's market area.

Caucasian Male Business Enterprises account for 59.32 percent of the architecture and engineering firms in the City's market area.



Table 7.19 Available Architecture and Engineering Subcontractors

Ethnicity	Percent of Businesses
African Americans	9.74%
Asian Americans	16.24%
Hispanic Americans	4.27%
Native Americans	0.17%
Caucasian Females	10.26%
Caucasian Males	59.32%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	1.37%
African American Males	8.38%
Asian American Females	3.93%
Asian American Males	12.31%
Hispanic American Females	0.51%
Hispanic American Males	3.76%
Native American Females	0.00%
Native American Males	0.17%
Caucasian Females	10.26%
Caucasian Males	59.32%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	5.81%
Minority Males	24.62%
Caucasian Females	10.26%
Caucasian Males	59.32%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	30.43%
Women Business Enterprises	10.26%
Minority and Women Business Enterprises	40.68%
Caucasian Male Business Enterprises	59.32%
TOTAL	100.00%



E. Professional Services Subcontractor Availability

The distribution of available professional services subcontractors is summarized in Table 7.20.

African Americans account for 14.46 percent of the professional services firms in the City's market area.

Asian Americans account for 7.79 percent of the professional services firms in the City's market area.

Hispanic Americans account for 3 percent of the professional services firms in the City's market area.

Native Americans account for 0.33 percent of the professional services firms in the City's market area.

Minority Business Enterprises account for 25.58 percent of the professional services firms in the City's market area.

Women Business Enterprises account for 10.01 percent of the professional services in the City's market area.

Minority and Women Business Enterprises account for 35.6 percent of the professional services firms in the City's market area.

Caucasian Male Business Enterprises account for 64.4 percent of the professional services firms in the City's market area.



Table 7.20 Available Professional Services Subcontractors

Ethnicity	Percent of Businesses
African Americans	14.46%
Asian Americans	7.79%
Hispanic Americans	3.00%
Native Americans	0.33%
Caucasian Females	10.01%
Caucasian Males	64.40%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	6.23%
African American Males	8.23%
Asian American Females	3.11%
Asian American Males	4.67%
Hispanic American Females	1.00%
Hispanic American Males	2.00%
Native American Females	0.11%
Native American Males	0.22%
Caucasian Females	10.01%
Caucasian Males	64.40%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	10.46%
Minority Males	15.13%
Caucasian Females	10.01%
Caucasian Males	64.40%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	25.58%
Women Business Enterprises	10.01%
Minority and Women Business Enterprises	35.60%
Caucasian Male Business Enterprises	64.40%
TOTAL	100.00%



8

PRIME CONTRACTOR DISPARITY ANALYSIS

I. INTRODUCTION

The objective of the disparity analysis is to determine the level minority and woman-owned business enterprises (M/WBEs) were utilized on the City of Oakland and Redevelopment Agency (City) contracts. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs would be approximate to the proportion of available M/WBEs¹ in the relevant market area. If the available M/WBEs businesses are underutilized, a statistical test can determine the probability that the disparity is due to chance. If there is a low probability that the disparity is due to chance,² *Crososn* states that an inference of discrimination can be made.

The first step in conducting a statistical test of disparity is to calculate the contract value that each ethnic/gender group is expected to receive, based on each group's availability in the market area. This value shall be referred to as the **expected contract amount**. The next step is to compute the difference between the expected contract amount of each ethnic/gender group and the **actual contract amount** received by each group.

¹ Availability is defined as the number of willing and able firms. The methodology for determining willing and able firms is detailed in Chapter 7.

² When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95 percent confidence level is considered by the courts to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analyzed here was done within the 95 percent confidence level.



A disparity ratio less than 0.80 indicates a relevant degree of disparity. This disparity may be detected using a parametric analysis,³ where the number of contracts is sufficiently large and the variation of the contract amount is not too large. When the variation in contract dollar amounts is high, a disparity may not be detectable. Under the condition when the variation in contract dollar amounts is high, a non-parametric analysis⁴ would be employed to analyze the contracts ranked by dollar amount.

In order to assess whether the difference in contract values is attributable to chance, a P-value⁵ is calculated. The P-value takes into account the number of contracts, amount of contract dollars, and variation in contract dollars. If the difference between the actual and expected number of contracts and total contract dollars has a P-value of less than 0.05, the difference is statistically significant.⁶

There are two critical constraints in performing statistical tests of significance. First, the size of the population affects the reliability of the results. In other words, a relatively small population size, whether in terms of the total number of contracts or the total number of available businesses, decreases the reliability of the statistical results. Second, although an inference of discrimination cannot be made if statistical significance is not obtained from the test, one cannot infer from the results that there was no discrimination. Thus, the results of the statistical disparity analysis are necessarily influenced by the size of the population in each industry and ethnic/gender category. Where the results are not statistically significant, the existence of discrimination *cannot* be ruled out. Given these limitations, the anecdotal data has an especially important role in explaining the conditions of discrimination that might exist in the market area.

The analysis of the value of prime contract dollars for each ethnic and gender group incorporates the number of prime contracts awarded. Hence, the disparity analysis for the value of prime contract dollars awarded reflects an analysis of both the number of prime contracts awarded and the value of the prime contract dollars received by each ethnic/gender group.

It is important to note that the findings of statistical significance may be counterintuitive. It is not infrequent that the same disparity ratio, or the same difference between the

³ Parametric analysis is a statistical examination based on the actual values of the variable. In this case, the parametric analysis consists of the actual dollar values of the contracts.

⁴ Non-parametric analysis is a method to make data more suitable for statistical testing by allowing one variable to be replaced with a new variable that maintains the essential characteristics of the original one. In this case, the contracts are ranked from the smallest to the largest. The dollar value of each contract is replaced with its rank order number.

⁵ P-value is a measure of statistical significance.

⁶ The study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.



utilization percentage and the availability percentage is statistically significant in one industry and not statistically significant in another.

The test of statistical significance determines whether the difference between the actual dollars and the expected dollars exceeds two standard deviations. However, the standard deviation is calculated separately by industry for each ethnic and gender group. For each industry studied the calculation of the standard deviation is based on the total number of contracts and dollars analyzed in the Study and each ethnic and gender groups respective percentage of availability. Therefore, the findings of statistical significance are influenced by the percentage of availability for each ethnic and gender group in the industry. In effect, across the industries, similar utilization patterns with different availability patterns could yield different findings of statistical significance.

II. DISPARITY ANALYSIS

Prime contract disparity analysis was performed on construction, architecture and engineering, professional services, and goods and other services contracts awarded between July 1, 2002 and June 30, 2005.

As demonstrated in *Chapter 7: Availability Analysis*, the majority of the City's contracts were small with 95.63 percent under \$25,000 and 98.56 percent under \$100,000. The fact that the majority of the City's contracts were small suggests that the capacity needed to perform most of the contracts awarded during the study period was minimal. There is also evidence that the willing firms had the capacity to perform contracts in excess of \$500,000. Therefore, a threshold of \$500,000 was set for the prime contract disparity analysis to ensure that willing firms had the capacity to perform contracts included in the analysis. The prime contract disparity findings in the four industries under consideration are summarized below.



A. Disparity Analysis: All Contracts under \$500,000, by Industry

1. Construction Prime Contracts under \$500,000

The disparity analysis of all construction prime contracts under \$500,000 is depicted in Table 8.01 and Chart 8.01.

African American Businesses represent 20.62 percent of the available construction firms and received 7.86 percent of the construction prime contracts under \$500,000. This underutilization is statistically significant.

Asian American Businesses represent 7.13 percent of the available construction firms and received 12.45 percent of the construction prime contracts under \$500,000. This study does not test statistically the overutilization of minority groups.

Hispanic American Businesses represent 18.11 percent of the available construction firms and received 15.64 percent of the construction prime contracts under \$500,000. This underutilization is not statistically significant.

Native American Businesses represent 0.19 percent of the available construction firms and received none of the construction prime contracts under \$500,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Minority Business Enterprises represent 46.05 percent of the available construction firms and received 35.94 percent of the construction prime contracts under \$500,000. This underutilization is statistically significant.

Women Business Enterprises represent 3.08 percent of the available construction firms and received 0.35 percent of the construction prime contracts under \$500,000. This underutilization is statistically significant.

Minority and Women Business Enterprises represent 49.13 percent of available construction firms and received 36.29 percent of the construction prime contracts under \$500,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 50.87 percent of the available construction firms and received 63.71 percent of the construction prime contracts under \$500,000. This overutilization is statistically significant.



Table 8.01 Disparity Analysis: Construction Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$2,131,793	7.86%	20.62%	\$5,593,574	-\$3,461,782	0.38	< .05 *
Asian Americans	\$3,377,016	12.45%	7.13%	\$1,934,227	\$1,442,790	1.75	**
Hispanic Americans	\$4,242,889	15.64%	18.11%	\$4,913,981	-\$671,093	0.86	not significant
Native Americans	\$0	0.00%	0.19%	\$52,276	-\$52,276	0.00	----
Caucasian Females	\$94,280	0.35%	3.08%	\$836,422	-\$742,142	0.11	< .05 *
Caucasian Males	\$17,285,472	63.71%	50.87%	\$13,800,969	\$3,484,504	1.25	< .05 †
TOTAL	\$27,131,450	100.00%	100.00%	\$27,131,450			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$573,211	2.11%	3.08%	\$836,422	-\$263,211	0.69	not significant
African American Males	\$1,558,582	5.74%	17.53%	\$4,757,152	-\$3,198,570	0.33	< .05 *
Asian American Females	\$593	0.00%	1.54%	\$418,211	-\$417,619	0.00	not significant
Asian American Males	\$3,376,424	12.44%	5.59%	\$1,516,016	\$1,860,408	2.23	**
Hispanic American Females	\$479,196	1.77%	1.35%	\$365,935	\$113,262	1.31	**
Hispanic American Males	\$3,763,692	13.87%	16.76%	\$4,548,047	-\$784,354	0.83	not significant
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.19%	\$52,276	-\$52,276	0.00	----
Caucasian Females	\$94,280	0.35%	3.08%	\$836,422	-\$742,142	0.11	< .05 *
Caucasian Males	\$17,285,472	63.71%	50.87%	\$13,800,969	\$3,484,504	1.25	< .05 †
TOTAL	\$27,131,450	100.00%	100.00%	\$27,131,450			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$1,053,000	3.88%	5.97%	\$1,620,568	-\$567,568	0.65	not significant
Minority Males	\$8,698,697	32.06%	40.08%	\$10,873,490	-\$2,174,793	0.80	< .05 *
Caucasian Females	\$94,280	0.35%	3.08%	\$836,422	-\$742,142	0.11	< .05 *
Caucasian Males	\$17,285,472	63.71%	50.87%	\$13,800,969	\$3,484,504	1.25	< .05 †
TOTAL	\$27,131,450	100.00%	100.00%	\$27,131,450			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$9,751,698	35.94%	46.05%	\$12,494,059	-\$2,742,361	0.78	< .05 *
Women Business Enterprises	\$94,280	0.35%	3.08%	\$836,422	-\$742,142	0.11	< .05 *
Minority and Women Business Enterprises	\$9,845,978	36.29%	49.13%	\$13,330,481	-\$3,484,504	0.74	< .05 *
Caucasian Male Business Enterprises	\$17,285,472	63.71%	50.87%	\$13,800,969	\$3,484,504	1.25	< .05 †

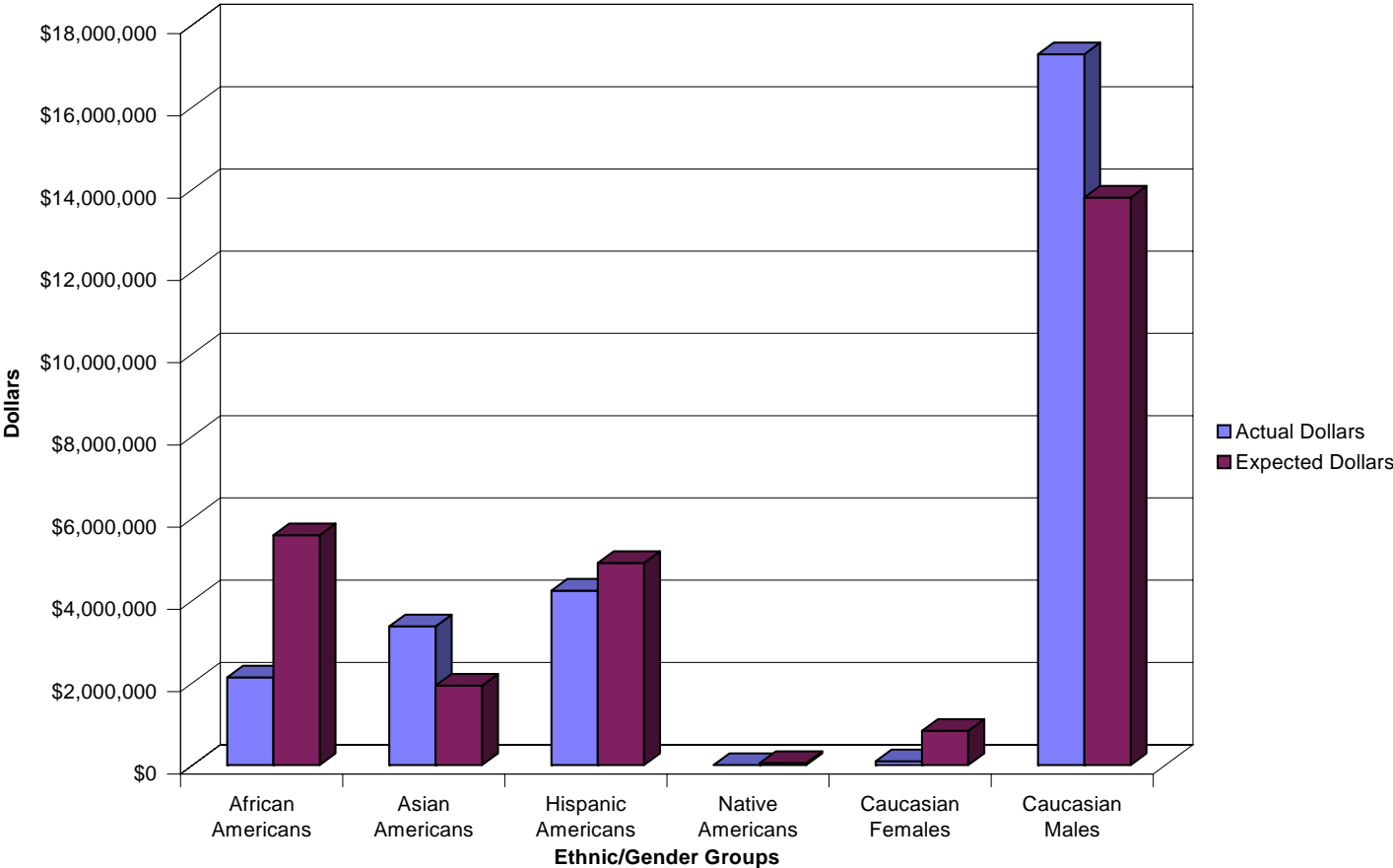
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.

(----) denotes an underutilized group with too few available firms to test statistical significance.

Chart 8.01 Disparity Analysis: Construction Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005



2. Architecture and Engineering Prime Contracts under \$500,000

The disparity analysis of all architecture and engineering prime contracts under \$500,000 is depicted in Table 8.02 and Chart 8.02.

African American Businesses represent 6.93 percent of the available architecture and engineering firms and received 3.26 percent of the architecture and engineering prime contracts under \$500,000. This underutilization is not statistically significant.

Asian American Businesses represent 18.07 percent of the available architecture and engineering firms and received 11.74 percent of the architecture and engineering prime contracts under \$500,000. This underutilization is not statistically significant.

Hispanic American Businesses represent 4.62 percent of the available architecture and engineering firms and received 4.07 percent of the architecture and engineering prime contracts under \$500,000. This underutilization is not statistically significant.

Native American Businesses represent none of the available architecture and engineering firms under \$500,000 and received none of the architecture and engineering contracts under \$500,000. There were no contracts or available firms to determine statistical significance.

Minority Business Enterprises represent 29.62 percent of the available architecture and engineering firms and received 19.06 percent of the architecture and engineering prime contracts under \$500,000. This underutilization is statistically significant.

Women Business Enterprises represent 9.24 percent of the available architecture and engineering firms and received 16.3 percent of the architecture and engineering prime contracts under \$500,000. This study does not test statistically the overutilization of women business groups.

Minority and Women Business Enterprises represent 38.87 percent of the available architecture and engineering firms and received 35.36 percent of the architecture and engineering prime contracts under \$500,000. This underutilization is not statistically significant.

Caucasian Male Business Enterprises represent 61.13 percent of the available architecture and engineering firms and received 64.64 percent of the architecture and engineering prime contracts under \$500,000. This overutilization is not statistically significant.



Table 8.02 Disparity Analysis: Architecture and Engineering Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$355,608	3.26%	6.93%	\$756,954	-\$401,347	0.47	not significant
Asian Americans	\$1,281,539	11.74%	18.07%	\$1,972,669	-\$691,130	0.65	not significant
Hispanic Americans	\$443,880	4.07%	4.62%	\$504,636	-\$60,756	0.88	not significant
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$1,779,597	16.30%	9.24%	\$1,009,273	\$770,324	1.76	**
Caucasian Males	\$7,057,870	64.64%	61.13%	\$6,674,962	\$382,908	1.06	not significant
TOTAL	\$10,918,494	100.00%	100.00%	\$10,918,494			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$131,351	1.20%	0.63%	\$68,814	\$62,537	1.91	**
African American Males	\$224,257	2.05%	6.30%	\$688,140	-\$463,883	0.33	not significant
Asian American Females	\$213,724	1.96%	4.62%	\$504,636	-\$290,912	0.42	not significant
Asian American Males	\$1,067,815	9.78%	13.45%	\$1,468,033	-\$400,218	0.73	not significant
Hispanic American Females	\$18,182	0.17%	0.63%	\$68,814	-\$50,632	0.26	----
Hispanic American Males	\$425,698	3.90%	3.99%	\$435,822	-\$10,124	0.98	not significant
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$1,779,597	16.30%	9.24%	\$1,009,273	\$770,324	1.76	**
Caucasian Males	\$7,057,870	64.64%	61.13%	\$6,674,962	\$382,908	1.06	not significant
TOTAL	\$10,918,494	100.00%	100.00%	\$10,918,494			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$363,256	3.33%	5.88%	\$642,264	-\$279,008	0.57	not significant
Minority Males	\$1,717,770	15.73%	23.74%	\$2,591,995	-\$874,225	0.66	< .05 *
Caucasian Females	\$1,779,597	16.30%	9.24%	\$1,009,273	\$770,324	1.76	**
Caucasian Males	\$7,057,870	64.64%	61.13%	\$6,674,962	\$382,908	1.06	not significant
TOTAL	\$10,918,494	100.00%	100.00%	\$10,918,494			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$2,081,027	19.06%	29.62%	\$3,234,260	-\$1,153,233	0.64	< .05 *
Women Business Enterprises	\$1,779,597	16.30%	9.24%	\$1,009,273	\$770,324	1.76	**
Minority and Women Business Enterprises	\$3,860,624	35.36%	38.87%	\$4,243,532	-\$382,908	0.91	not significant
Caucasian Male Business Enterprises	\$7,057,870	64.64%	61.13%	\$6,674,962	\$382,908	1.06	not significant

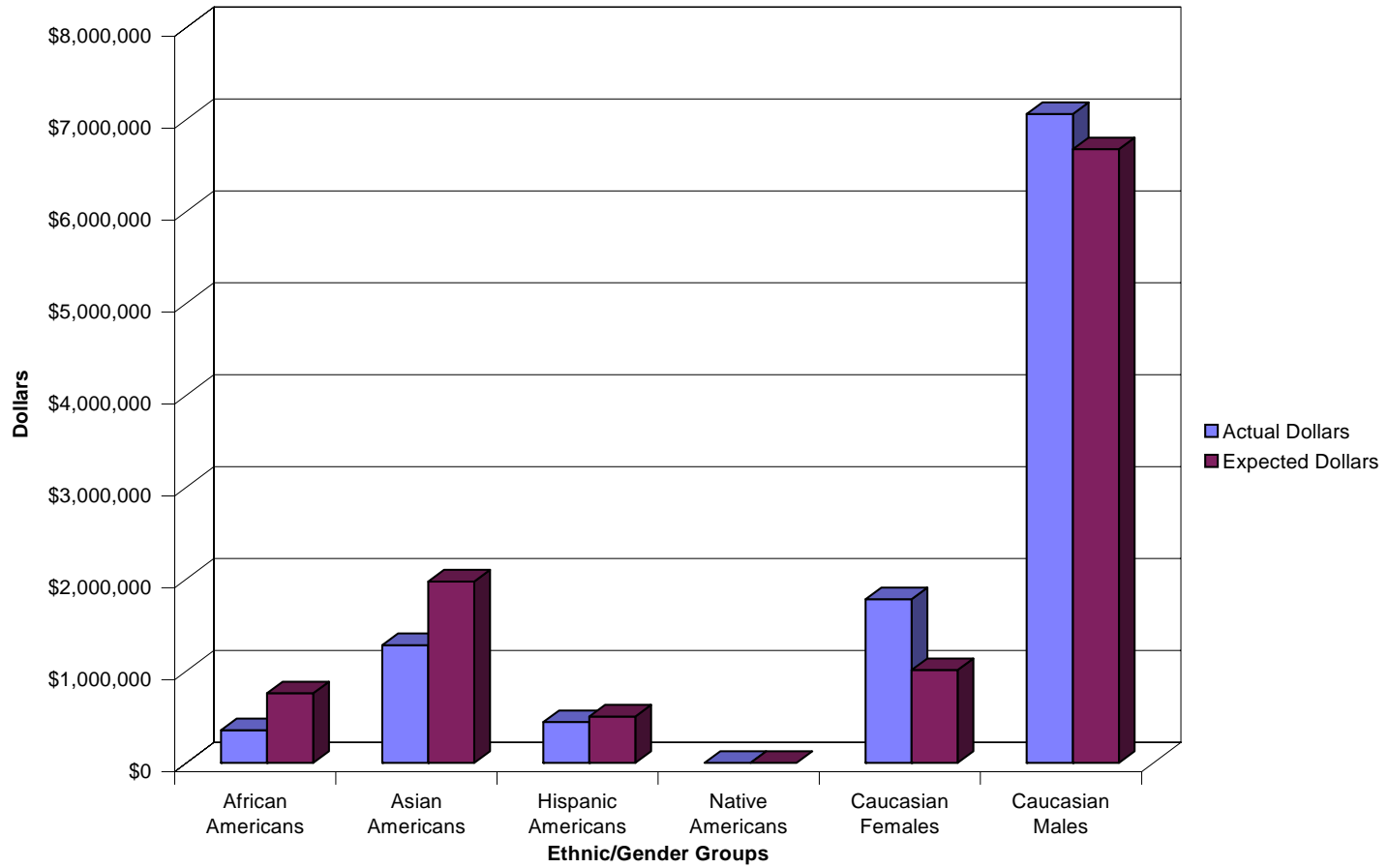
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.

(----) denotes an underutilized group with too few available firms to test statistical significance.

**Chart 8.02 Disparity Analysis: Architecture and Engineering Prime Contracts under \$500,000,
July 1, 2002 to June 30, 2005**



3. Professional Services Prime Contracts under \$500,000

The disparity analysis of all professional services prime contracts under \$500,000 is depicted in Table 8.03 and Chart 8.03.

African American Businesses represent 14.7 percent of the available professional services firms and received 1.97 percent of the professional services prime contracts under \$500,000. This underutilization is statistically significant.

Asian American Businesses represent 7.22 percent of the available professional services firms and received 2.86 percent of the professional services prime contracts under \$500,000. This underutilization is statistically significant.

Hispanic American Businesses represent 2.53 percent of the available professional services firms and received 3.94 percent of the professional services prime contracts under \$500,000. This study does not test statistically the overutilization of minority groups.

Native American Businesses represent 0.51 percent of the available professional services firms and received 0.02 percent of the professional services prime contracts under \$500,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Minority Business Enterprises represent 24.97 percent of the available professional services firms and received 8.79 percent of the professional services prime contracts under \$500,000. This underutilization is statistically significant.

Women Business Enterprises represent 10.27 percent of the available professional services firms and received 2.15 percent of the professional services prime contracts under \$500,000. This underutilization is statistically significant.

Minority and Women Business Enterprises represent 35.23 percent of the available professional services firms and received 10.94 percent of the professional services prime contracts under \$500,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 64.77 percent of the available professional services firms and received 89.06 percent of the professional services prime contracts under \$500,000. This overutilization is statistically significant.



Table 8.03 Disparity Analysis: Professional Services Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$551,589	1.97%	14.70%	\$4,111,606	-\$3,560,017	0.13	< .05 *
Asian Americans	\$798,899	2.86%	7.22%	\$2,020,358	-\$1,221,460	0.40	< .05 *
Hispanic Americans	\$1,101,855	3.94%	2.53%	\$708,898	\$392,957	1.55	**
Native Americans	\$4,500	0.02%	0.51%	\$141,780	-\$137,280	0.03	----
Caucasian Females	\$601,671	2.15%	10.27%	\$2,871,035	-\$2,269,365	0.21	< .05 *
Caucasian Males	\$24,907,498	89.06%	64.77%	\$18,112,335	\$6,795,164	1.38	< .05 †
TOTAL	\$27,966,012	100.00%	100.00%	\$27,966,012			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$15,891	0.06%	6.46%	\$1,807,689	-\$1,791,798	0.01	< .05 *
African American Males	\$535,698	1.92%	8.24%	\$2,303,917	-\$1,768,219	0.23	< .05 *
Asian American Females	\$70,605	0.25%	3.04%	\$850,677	-\$780,072	0.08	< .05 *
Asian American Males	\$728,294	2.60%	4.18%	\$1,169,681	-\$441,387	0.62	< .05 *
Hispanic American Females	\$502,754	1.80%	1.01%	\$283,559	\$219,195	1.77	**
Hispanic American Males	\$599,100	2.14%	1.52%	\$425,339	\$173,762	1.41	**
Native American Females	\$0	0.00%	0.25%	\$70,890	-\$70,890	0.00	----
Native American Males	\$4,500	0.02%	0.25%	\$70,890	-\$66,390	0.06	----
Caucasian Females	\$601,671	2.15%	10.27%	\$2,871,035	-\$2,269,365	0.21	< .05 *
Caucasian Males	\$24,907,498	89.06%	64.77%	\$18,112,335	\$6,795,164	1.38	< .05 †
TOTAL	\$27,966,012	100.00%	100.00%	\$27,966,012			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$589,250	2.11%	10.77%	\$3,012,815	-\$2,423,564	0.20	< .05 *
Minority Males	\$1,867,592	6.68%	14.20%	\$3,969,827	-\$2,102,235	0.47	< .05 *
Caucasian Females	\$601,671	2.15%	10.27%	\$2,871,035	-\$2,269,365	0.21	< .05 *
Caucasian Males	\$24,907,498	89.06%	64.77%	\$18,112,335	\$6,795,164	1.38	< .05 †
TOTAL	\$27,966,012	100.00%	100.00%	\$27,966,012			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$2,456,843	8.79%	24.97%	\$6,982,642	-\$4,525,799	0.35	< .05 *
Women Business Enterprises	\$601,671	2.15%	10.27%	\$2,871,035	-\$2,269,365	0.21	< .05 *
Minority and Women Business Enterprises	\$3,058,513	10.94%	35.23%	\$9,853,677	-\$6,795,164	0.31	< .05 *
Caucasian Male Business Enterprises	\$24,907,498	89.06%	64.77%	\$18,112,335	\$6,795,164	1.38	< .05 †

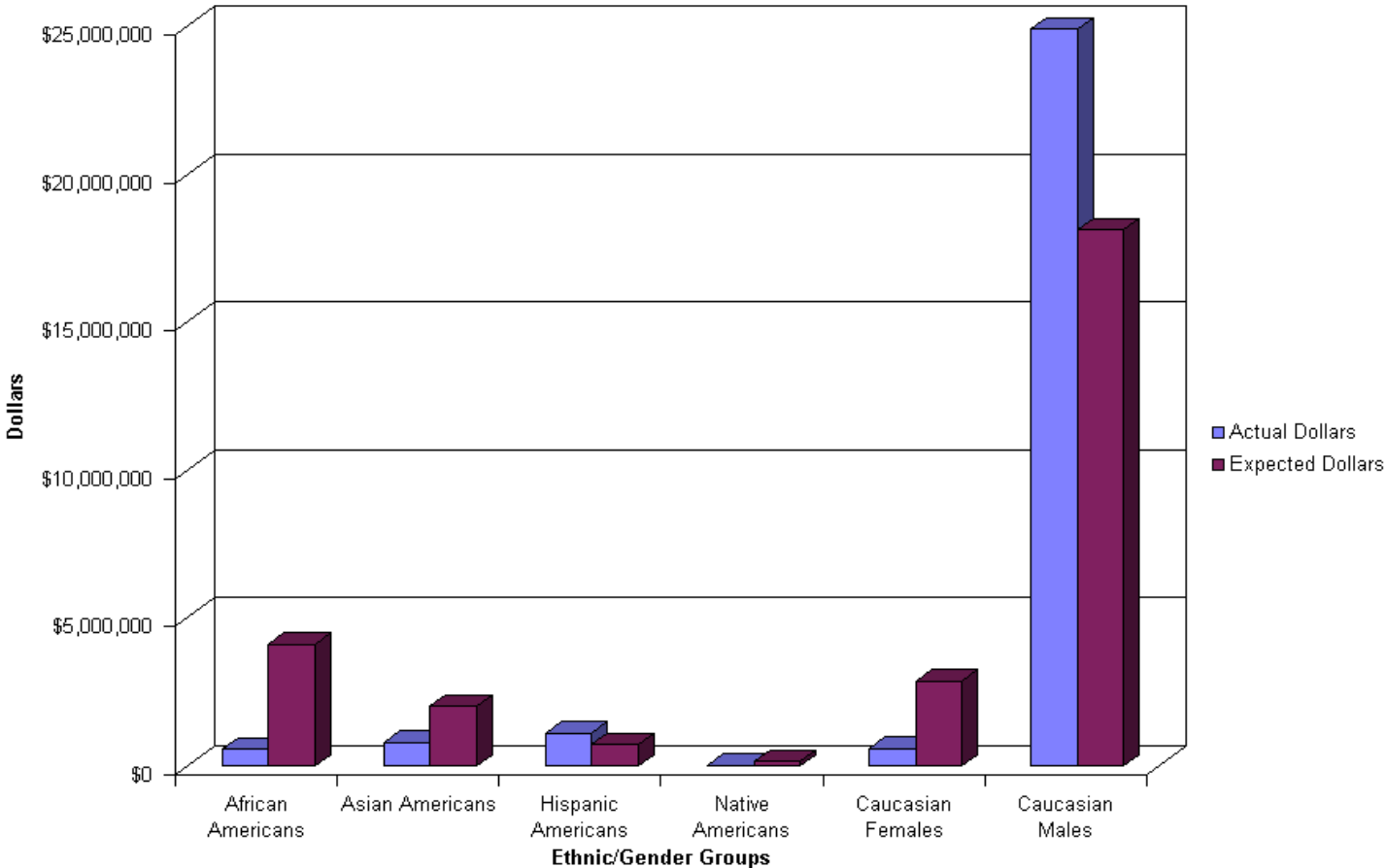
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.

(----) denotes an underutilized group with too few available firms to test statistical significance.

Chart 8.03 Disparity Analysis: Professional Services Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005



4. Goods and Other Services Prime Contracts under \$500,000

The disparity analysis of all goods and other services prime contracts under \$500,000 is depicted in Table 8.04 and Chart 8.04.

African American Businesses represent 6.66 percent of the available goods and other services firms and received 6.39 percent of the goods and other services prime contracts under \$500,000. This underutilization is not statistically significant.

Asian American Businesses represent 4.35 percent of the available goods and other services firms and received 5.66 percent of the goods and other services prime contracts under \$500,000. This study does not test statistically the overutilization of minority groups.

Hispanic American Businesses represent 1.88 percent of the available goods and other services firms and received 1.09 percent of the goods and other services prime contracts under \$500,000. This underutilization is statistically significant.

Native American Businesses represent 0.12 percent of the available goods and other services firms and received none of the goods and other services prime contracts under \$500,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Minority Business Enterprises represent 13.01 percent of the available goods and other services firms and received 13.14 percent of the goods and other services prime contracts under \$500,000. This study does not test statistically the overutilization of minority groups.

Women Business Enterprises represent 4.62 percent of the available goods and other services firms and received 7.1 percent of the goods and other services prime contracts under \$500,000. This study does not test statistically the overutilization of women business groups.

Minority and Women Business Enterprises represent 17.63 percent of the available goods and other services firms and received 20.23 percent of the goods and other services prime contracts under \$500,000. This study does not test statistically the overutilization of minority and women business groups.

Caucasian Male Business Enterprises represent 82.37 percent of the available goods and other services firms and received 79.77 percent of the goods and other services prime contracts under \$500,000. This study does not test statistically the underutilization of Caucasian Males.



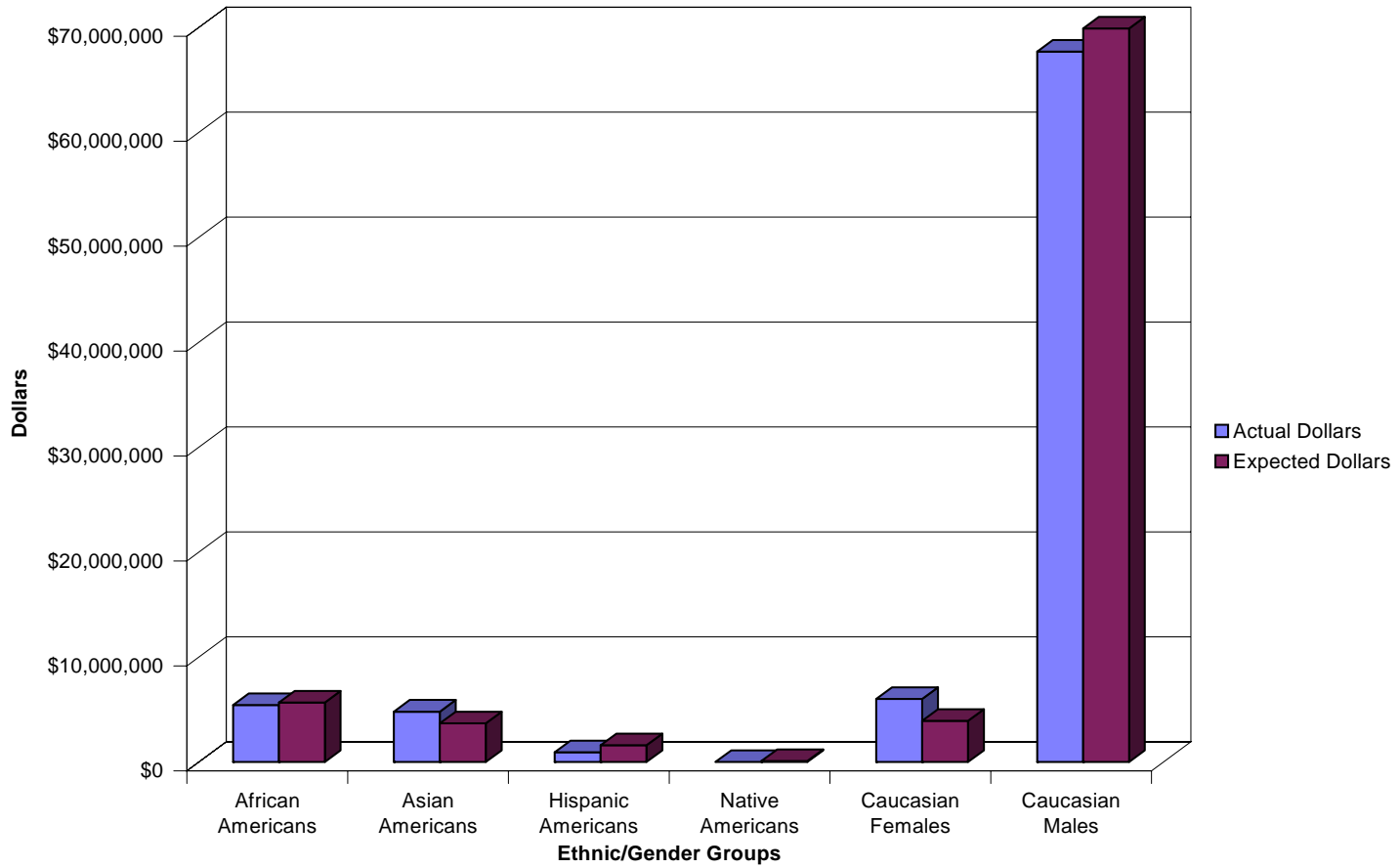
Table 8.04 Disparity Analysis: Goods and Other Services Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$5,421,663	6.39%	6.66%	\$5,655,662	-\$234,000	0.96	not significant
Asian Americans	\$4,805,933	5.66%	4.35%	\$3,692,815	\$1,113,118	1.30	**
Hispanic Americans	\$924,574	1.09%	1.88%	\$1,596,893	-\$672,319	0.58	< .05 *
Native Americans	\$883	0.00%	0.12%	\$99,806	-\$98,923	0.01	----
Caucasian Females	\$6,025,685	7.10%	4.62%	\$3,925,695	\$2,099,990	1.53	**
Caucasian Males	\$67,722,736	79.77%	82.37%	\$69,930,603	-\$2,207,867	0.97	**
TOTAL	\$84,901,474	100.00%	100.00%	\$84,901,474			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$3,666,256	4.32%	2.59%	\$2,195,728	\$1,470,528	1.67	**
African American Males	\$1,755,407	2.07%	4.08%	\$3,459,935	-\$1,704,528	0.51	< .05 *
Asian American Females	\$412,777	0.49%	1.06%	\$898,252	-\$485,476	0.46	< .05 *
Asian American Males	\$4,393,156	5.17%	3.29%	\$2,794,563	\$1,598,594	1.57	**
Hispanic American Females	\$709,500	0.84%	0.47%	\$399,223	\$310,276	1.78	**
Hispanic American Males	\$215,074	0.25%	1.41%	\$1,197,670	-\$982,596	0.18	< .05 *
Native American Females	\$883	0.00%	0.04%	\$33,269	-\$32,386	0.03	----
Native American Males	\$0	0.00%	0.08%	\$66,537	-\$66,537	0.00	----
Caucasian Females	\$6,025,685	7.10%	4.62%	\$3,925,695	\$2,099,990	1.53	**
Caucasian Males	\$67,722,736	79.77%	82.37%	\$69,930,603	-\$2,207,867	0.97	**
TOTAL	\$84,901,474	100.00%	100.00%	\$84,901,474			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$4,789,415	5.64%	4.15%	\$3,526,472	\$1,262,943	1.36	**
Minority Males	\$6,363,637	7.50%	8.86%	\$7,518,704	-\$1,155,067	0.85	< .05 *
Caucasian Females	\$6,025,685	7.10%	4.62%	\$3,925,695	\$2,099,990	1.53	**
Caucasian Males	\$67,722,736	79.77%	82.37%	\$69,930,603	-\$2,207,867	0.97	**
TOTAL	\$84,901,474	100.00%	100.00%	\$84,901,474			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$11,153,052	13.14%	13.01%	\$11,045,176	\$107,876	1.01	**
Women Business Enterprises	\$6,025,685	7.10%	4.62%	\$3,925,695	\$2,099,990	1.53	**
Minority and Women Business Enterprises	\$17,178,738	20.23%	17.63%	\$14,970,871	\$2,207,867	1.15	**
Caucasian Male Business Enterprises	\$67,722,736	79.77%	82.37%	\$69,930,603	-\$2,207,867	0.97	**

(*) denotes a statistically significant underutilization.
 (†) denotes a statistically significant overutilization.
 (**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.
 (----) denotes an underutilized group with too few available firms to test statistical significance.

Chart 8.04 Disparity Analysis: Goods and Other Services Prime Contracts under \$500,000, July 1, 2002 to June 30, 2005

Mason Tillman Associates, Ltd. May 2007
 Vol. I: City of Oakland and Redevelopment Agency Fairness in Purchasing and Contracting Disparity Study 8-15



B. Disparity Analysis: All Contracts under \$50,000 and \$15,000, by Industry

1. Construction Prime Contracts under \$50,000

The disparity analysis of all construction prime contracts under \$50,000 is depicted in Table 8.05 and Chart 8.05.

African American Businesses represent 20.62 percent of the available construction firms and received 10.39 percent of the construction prime contracts under \$50,000. This underutilization is statistically significant.

Asian American Businesses represent 7.13 percent of the available construction firms and received 3.87 percent of the construction prime contracts under \$50,000. This underutilization is not statistically significant.

Hispanic American Businesses represent 18.11 percent of the available construction firms and received 8.65 percent of the construction prime contracts under \$50,000. This underutilization is statistically significant.

Native American Businesses represent 0.19 percent of the available construction firms and received none of the construction prime contracts under \$50,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Minority Business Enterprises represent 46.05 percent of the available construction firms and received 22.91 percent of the construction prime contracts under \$50,000. This underutilization is statistically significant.

Women Business Enterprises represent 3.08 percent of the available construction firms and received 2.45 percent of the construction prime contracts under \$50,000. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 49.13 percent of the available construction firms and received 25.36 percent of the construction prime contracts under \$50,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 50.87 percent of the available construction firms and received 74.64 percent of the construction prime contracts under \$50,000. This overutilization is statistically significant.



Table 8.05 Disparity Analysis: Construction Prime Contracts under \$50,000, July 1, 2002 to June 30, 2005

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$399,213	10.39%	20.62%	\$792,253	-\$393,040	0.50	< .05 *
Asian Americans	\$148,621	3.87%	7.13%	\$273,957	-\$125,336	0.54	not significant
Hispanic Americans	\$332,505	8.65%	18.11%	\$695,998	-\$363,493	0.48	< .05 *
Native Americans	\$0	0.00%	0.19%	\$7,404	-\$7,404	0.00	----
Caucasian Females	\$94,280	2.45%	3.08%	\$118,468	-\$24,188	0.80	not significant
Caucasian Males	\$2,868,178	74.64%	50.87%	\$1,954,717	\$913,461	1.47	< .05 †
TOTAL	\$3,842,796	100.00%	100.00%	\$3,842,796			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$101,916	2.65%	3.08%	\$118,468	-\$16,552	0.86	not significant
African American Males	\$297,297	7.74%	17.53%	\$673,785	-\$376,488	0.44	< .05 *
Asian American Females	\$593	0.02%	1.54%	\$59,234	-\$58,641	0.01	not significant
Asian American Males	\$148,028	3.85%	5.59%	\$214,723	-\$66,695	0.69	not significant
Hispanic American Females	\$0	0.00%	1.35%	\$51,830	-\$51,830	0.00	not significant
Hispanic American Males	\$332,505	8.65%	16.76%	\$644,168	-\$311,663	0.52	< .05 *
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.19%	\$7,404	-\$7,404	0.00	----
Caucasian Females	\$94,280	2.45%	3.08%	\$118,468	-\$24,188	0.80	not significant
Caucasian Males	\$2,868,178	74.64%	50.87%	\$1,954,717	\$913,461	1.47	< .05 †
TOTAL	\$3,842,796	100.00%	100.00%	\$3,842,796			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$102,508	2.67%	5.97%	\$229,531	-\$127,023	0.45	< .05 *
Minority Males	\$777,830	20.24%	40.08%	\$1,540,080	-\$762,251	0.51	< .05 *
Caucasian Females	\$94,280	2.45%	3.08%	\$118,468	-\$24,188	0.80	not significant
Caucasian Males	\$2,868,178	74.64%	50.87%	\$1,954,717	\$913,461	1.47	< .05 †
TOTAL	\$3,842,796	100.00%	100.00%	\$3,842,796			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$880,338	22.91%	46.05%	\$1,769,611	-\$889,273	0.50	< .05 *
Women Business Enterprises	\$94,280	2.45%	3.08%	\$118,468	-\$24,188	0.80	not significant
Minority and Women Business Enterprises	\$974,618	25.36%	49.13%	\$1,888,079	-\$913,461	0.52	< .05 *
Caucasian Male Business Enterprises	\$2,868,178	74.64%	50.87%	\$1,954,717	\$913,461	1.47	< .05 †

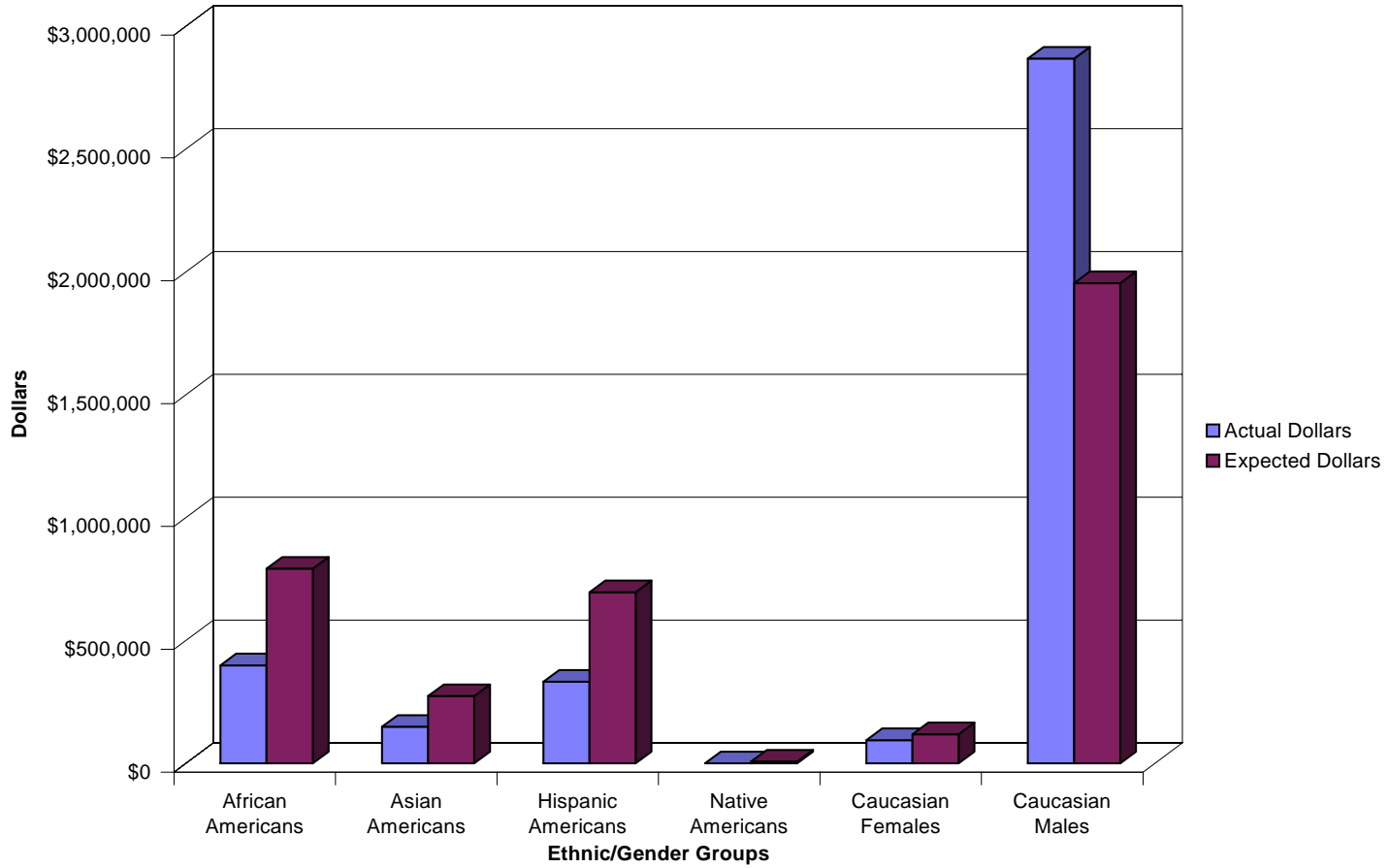
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.

(----) denotes an underutilized group with too few available firms to test statistical significance.

Chart 8.05 Disparity Analysis: Construction Prime Contracts under \$50,000, July 1, 2002 to June 30, 2005



2. Architecture and Engineering Prime Contracts under \$15,000

The disparity analysis of all architecture and engineering prime contracts under \$15,000 is depicted in Table 8.06 and Chart 8.06.

African American Businesses represent 6.93 percent of the available architecture and engineering firms and received 7.47 percent of the architecture and engineering prime contracts under \$15,000. This study does not test statistically the overutilization of minority groups.

Asian American Businesses represent 18.07 percent of the available architecture and engineering firms and received 10.39 percent of the architecture and engineering prime contracts under \$15,000. This underutilization is statistically significant.

Hispanic American Businesses represent 4.62 percent of the available architecture and engineering firms and received 0.52 percent of the architecture and engineering prime contracts under \$15,000. This underutilization is statistically significant.

Native American Businesses represent none of the available architecture and engineering firms and received none of the architecture and engineering prime contracts under \$15,000. There were no contracts or available firms to determine statistical significance.

Minority Business Enterprises represent 29.62 percent of the available architecture and engineering firms and received 18.38 percent of the architecture and engineering prime contracts under \$15,000. This underutilization is statistically significant.

Women Business Enterprises represent 9.24 percent of the available architecture and engineering firms and received 34.27 percent of the architecture and engineering prime contracts under \$15,000. This study does not test statistically the overutilization of women business groups.

Minority and Women Business Enterprises represent 38.87 percent of the available architecture and engineering firms and received 52.65 percent of the architecture and engineering prime contracts under \$15,000. This study does not test statistically the overutilization of minority and women business groups.

Caucasian Male Business Enterprises represent 61.13 percent of the available architecture and engineering firms and received 47.35 percent of the architecture and engineering prime contracts under \$15,000. This study does not test statistically the underutilization of Caucasian Males.



Table 8.06 Disparity Analysis: Architecture and Engineering Prime Contracts under \$15,000, July 1, 2002 to June 30, 2005

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$114,202	7.47%	6.93%	\$105,974	\$8,227	1.08	**
Asian Americans	\$158,759	10.39%	18.07%	\$276,176	-\$117,417	0.57	< .05 *
Hispanic Americans	\$7,935	0.52%	4.62%	\$70,650	-\$62,715	0.11	< .05 *
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$523,889	34.27%	9.24%	\$141,299	\$382,590	3.71	**
Caucasian Males	\$723,816	47.35%	61.13%	\$934,502	-\$210,686	0.77	**
TOTAL	\$1,528,602	100.00%	100.00%	\$1,528,602			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$63,760	4.17%	0.63%	\$9,634	\$54,126	6.62	**
African American Males	\$50,442	3.30%	6.30%	\$96,340	-\$45,898	0.52	not significant
Asian American Females	\$41,969	2.75%	4.62%	\$70,650	-\$28,681	0.59	not significant
Asian American Males	\$116,791	7.64%	13.45%	\$205,526	-\$88,736	0.57	< .05 *
Hispanic American Females	\$0	0.00%	0.63%	\$9,634	-\$9,634	0.00	----
Hispanic American Males	\$7,935	0.52%	3.99%	\$61,016	-\$53,081	0.13	< .05 *
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$523,889	34.27%	9.24%	\$141,299	\$382,590	3.71	**
Caucasian Males	\$723,816	47.35%	61.13%	\$934,502	-\$210,686	0.77	**
TOTAL	\$1,528,602	100.00%	100.00%	\$1,528,602			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$105,728	6.92%	5.88%	\$89,918	\$15,811	1.18	**
Minority Males	\$175,168	11.46%	23.74%	\$362,882	-\$187,715	0.48	< .05 *
Caucasian Females	\$523,889	34.27%	9.24%	\$141,299	\$382,590	3.71	**
Caucasian Males	\$723,816	47.35%	61.13%	\$934,502	-\$210,686	0.77	**
TOTAL	\$1,528,602	100.00%	100.00%	\$1,528,602			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$280,896	18.38%	29.62%	\$452,800	-\$171,904	0.62	< .05 *
Women Business Enterprises	\$523,889	34.27%	9.24%	\$141,299	\$382,590	3.71	**
Minority and Women Business Enterprises	\$804,785	52.65%	38.87%	\$594,099	\$210,686	1.35	**
Caucasian Male Business Enterprises	\$723,816	47.35%	61.13%	\$934,502	-\$210,686	0.77	**

(*) denotes a statistically significant underutilization.

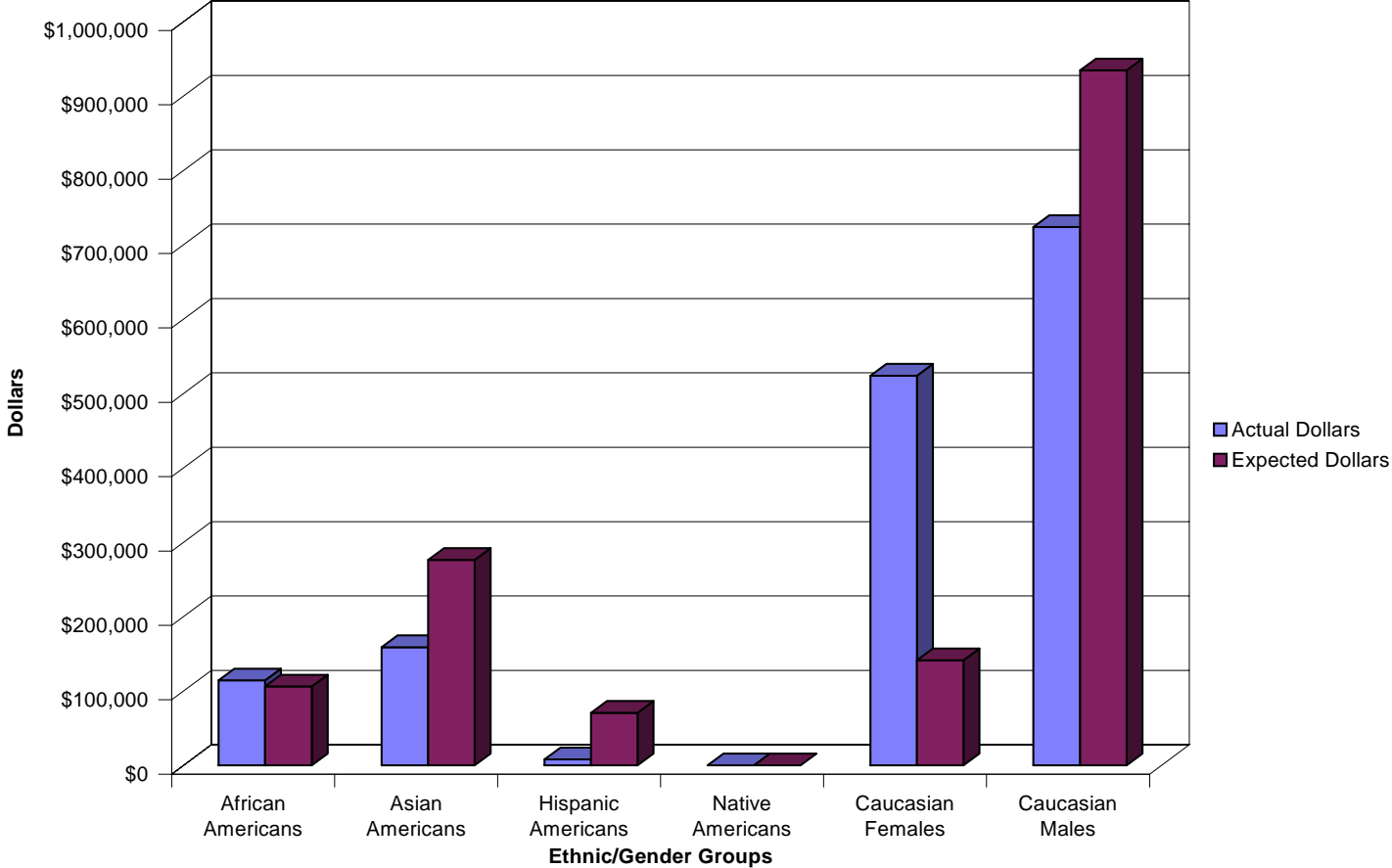
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.

(----) denotes an underutilized group with too few available firms to test statistical significance.

**Chart 8.06 Disparity Analysis: Architecture and Engineering Prime Contracts under \$15,000,
July 1, 2002 to June 30, 2005**

Mason Tillman Associates, Ltd. May 2007
Vol. I: City of Oakland and Redevelopment Agency Fairness in Purchasing and Contracting Disparity Study 8-21



3. Professional Services Prime Contracts under \$15,000

The disparity analysis of all professional services prime contracts under \$15,000 is depicted in Table 8.07 and Chart 8.07.

African American Businesses represent 14.7 percent of the available professional services firms and received 5.52 percent of the professional services prime contracts under \$15,000. This underutilization is statistically significant.

Asian American Businesses represent 7.22 percent of the available professional services firms and received 3.91 percent of the professional services prime contracts under \$15,000. This underutilization is statistically significant.

Hispanic American Businesses represent 2.53 percent of the available professional services firms and received 2.31 percent of the professional services prime contracts under \$15,000. This underutilization is not statistically significant.

Native American Businesses represent 0.51 percent of the available professional services firms and received 0.22 percent of the professional services prime contracts under \$15,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Minority Business Enterprises represent 24.97 percent of the available professional services firms and received 11.96 percent of the professional services prime contracts under \$15,000. This underutilization is statistically significant.

Women Business Enterprises represent 10.27 percent of the available professional services firms and received 9.73 percent of the professional services prime contracts under \$15,000. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 35.23 percent of the available professional services firms and received 21.69 percent of the professional services prime contracts under \$15,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 64.77 percent of the available professional services firms and received 78.31 percent of the professional services prime contracts under \$15,000. This overutilization is statistically significant.



Table 8.07 Disparity Analysis: Professional Services Prime Contracts under \$15,000, July 1, 2002 to June 30, 2005

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$115,154	5.52%	14.70%	\$306,785	-\$191,631	0.38	< .05 *
Asian Americans	\$81,555	3.91%	7.22%	\$150,748	-\$69,193	0.54	< .05 *
Hispanic Americans	\$48,275	2.31%	2.53%	\$52,894	-\$4,619	0.91	not significant
Native Americans	\$4,500	0.22%	0.51%	\$10,579	-\$6,079	0.43	----
Caucasian Females	\$203,010	9.73%	10.27%	\$214,220	-\$11,210	0.95	not significant
Caucasian Males	\$1,634,170	78.31%	64.77%	\$1,351,439	\$282,731	1.21	< .05 †
TOTAL	\$2,086,664	100.00%	100.00%	\$2,086,664			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$15,891	0.76%	6.46%	\$134,879	-\$118,988	0.12	< .05 *
African American Males	\$99,263	4.76%	8.24%	\$171,905	-\$72,643	0.58	< .05 *
Asian American Females	\$8,016	0.38%	3.04%	\$63,473	-\$55,457	0.13	< .05 *
Asian American Males	\$73,539	3.52%	4.18%	\$87,275	-\$13,736	0.84	not significant
Hispanic American Females	\$48,275	2.31%	1.01%	\$21,158	\$27,118	2.28	**
Hispanic American Males	\$0	0.00%	1.52%	\$31,736	-\$31,736	0.00	< .05 *
Native American Females	\$0	0.00%	0.25%	\$5,289	-\$5,289	0.00	----
Native American Males	\$4,500	0.22%	0.25%	\$5,289	-\$789	0.85	----
Caucasian Females	\$203,010	9.73%	10.27%	\$214,220	-\$11,210	0.95	not significant
Caucasian Males	\$1,634,170	78.31%	64.77%	\$1,351,439	\$282,731	1.21	< .05 †
TOTAL	\$2,086,664	100.00%	100.00%	\$2,086,664			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$72,182	3.46%	10.77%	\$224,799	-\$152,617	0.32	< .05 *
Minority Males	\$177,302	8.50%	14.20%	\$296,206	-\$118,904	0.60	< .05 *
Caucasian Females	\$203,010	9.73%	10.27%	\$214,220	-\$11,210	0.95	not significant
Caucasian Males	\$1,634,170	78.31%	64.77%	\$1,351,439	\$282,731	1.21	< .05 †
TOTAL	\$2,086,664	100.00%	100.00%	\$2,086,664			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$249,484	11.96%	24.97%	\$521,005	-\$271,521	0.48	< .05 *
Women Business Enterprises	\$203,010	9.73%	10.27%	\$214,220	-\$11,210	0.95	not significant
Minority and Women Business Enterprises	\$452,494	21.69%	35.23%	\$735,225	-\$282,731	0.62	< .05 *
Caucasian Male Business Enterprises	\$1,634,170	78.31%	64.77%	\$1,351,439	\$282,731	1.21	< .05 †

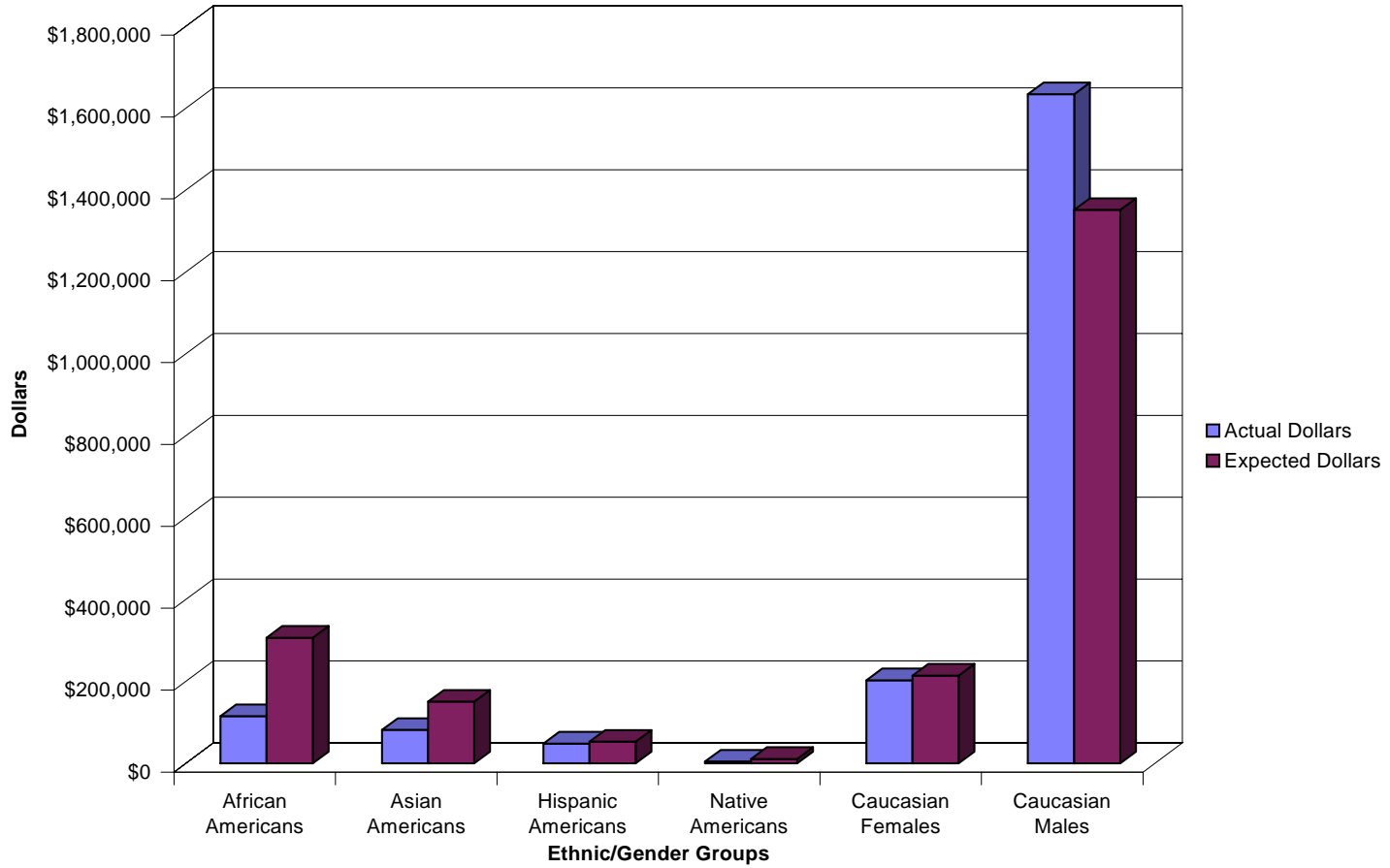
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.

(----) denotes an underutilized group with too few available firms to test statistical significance.

Chart 8.07 Disparity Analysis: Professional Services Prime Contracts under \$15,000, July 1, 2002 to June 30, 2005



4. Goods and Other Services Prime Contracts under \$50,000

The disparity analysis of all goods and other services prime contracts under \$50,000 is depicted in Table 8.08 and Chart 8.08.

African American Businesses represent 6.66 percent of the available goods and other services firms and received 7.6 percent of the goods and other services prime contracts under \$50,000. This study does not test statistically the overutilization of minority groups.

Asian American Businesses represent 4.35 percent of the available goods and other services firms and received 3.85 percent of the goods and other services prime contracts under \$50,000. This underutilization is not statistically significant.

Hispanic American Businesses represent 1.88 percent of the available goods and other services firms and received 0.67 percent of the goods and other services prime contracts under \$50,000. This underutilization is statistically significant.

Native American Businesses represent 0.12 percent of the available goods and other services firms and received 0 percent of the goods and other services prime contracts under \$50,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Minority Business Enterprises represent 13.01 percent of the available goods and other services firms and received 12.12 percent of the goods and other services prime contracts under \$50,000. This underutilization is statistically significant.

Women Business Enterprises represent 4.62 percent of the available goods and other services firms and received 8.23 percent of the goods and other services prime contracts under \$50,000. This study does not test statistically the overutilization of women business groups.

Minority and Women Business Enterprises represent 17.63 percent of the available goods and other services firms and received 20.36 percent of the goods and other services prime contracts under \$50,000. This study does not test statistically the overutilization of minority and women business groups.

Caucasian Male Business Enterprises represent 82.37 percent of the available goods and other services firms and received 79.64 percent of the goods and other services prime contracts under \$50,000. This study does not test statistically the underutilization of Caucasian Males.



Table 8.08 Disparity Analysis: Goods and Other Services Prime Contracts under \$50,000, July 1, 2002 to June 30, 2005

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$4,577,145	7.60%	6.66%	\$4,010,754	\$566,391	1.14	**
Asian Americans	\$2,316,957	3.85%	4.35%	\$2,618,787	-\$301,830	0.88	not significant
Hispanic Americans	\$404,530	0.67%	1.88%	\$1,132,448	-\$727,918	0.36	< .05 *
Native Americans	\$883	0.00%	0.12%	\$70,778	-\$69,895	0.01	----
Caucasian Females	\$4,957,283	8.23%	4.62%	\$2,783,935	\$2,173,347	1.78	**
Caucasian Males	\$47,951,705	79.64%	82.37%	\$49,591,799	-\$1,640,095	0.97	**
TOTAL	\$60,208,502	100.00%	100.00%	\$60,208,502			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$2,987,578	4.96%	2.59%	\$1,557,116	\$1,430,462	1.92	**
African American Males	\$1,589,567	2.64%	4.08%	\$2,453,638	-\$864,071	0.65	< .05 *
Asian American Females	\$412,777	0.69%	1.06%	\$637,002	-\$224,226	0.65	< .05 *
Asian American Males	\$1,904,180	3.16%	3.29%	\$1,981,785	-\$77,605	0.96	not significant
Hispanic American Females	\$189,456	0.31%	0.47%	\$283,112	-\$93,656	0.67	----
Hispanic American Males	\$215,074	0.36%	1.41%	\$849,336	-\$634,262	0.25	< .05 *
Native American Females	\$883	0.00%	0.04%	\$23,593	-\$22,710	0.04	----
Native American Males	\$0	0.00%	0.08%	\$47,185	-\$47,185	0.00	----
Caucasian Females	\$4,957,283	8.23%	4.62%	\$2,783,935	\$2,173,347	1.78	**
Caucasian Males	\$47,951,705	79.64%	82.37%	\$49,591,799	-\$1,640,095	0.97	**
TOTAL	\$60,208,502	100.00%	100.00%	\$60,208,502			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$3,590,694	5.96%	4.15%	\$2,500,823	\$1,089,870	1.44	**
Minority Males	\$3,708,821	6.16%	8.86%	\$5,331,944	-\$1,623,123	0.70	< .05 *
Caucasian Females	\$4,957,283	8.23%	4.62%	\$2,783,935	\$2,173,347	1.78	**
Caucasian Males	\$47,951,705	79.64%	82.37%	\$49,591,799	-\$1,640,095	0.97	**
TOTAL	\$60,208,502	100.00%	100.00%	\$60,208,502			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$7,299,515	12.12%	13.01%	\$7,832,768	-\$533,253	0.93	< .05 *
Women Business Enterprises	\$4,957,283	8.23%	4.62%	\$2,783,935	\$2,173,347	1.78	**
Minority and Women Business Enterprises	\$12,256,798	20.36%	17.63%	\$10,616,703	\$1,640,095	1.15	**
Caucasian Male Business Enterprises	\$47,951,705	79.64%	82.37%	\$49,591,799	-\$1,640,095	0.97	**

(*) denotes a statistically significant underutilization.

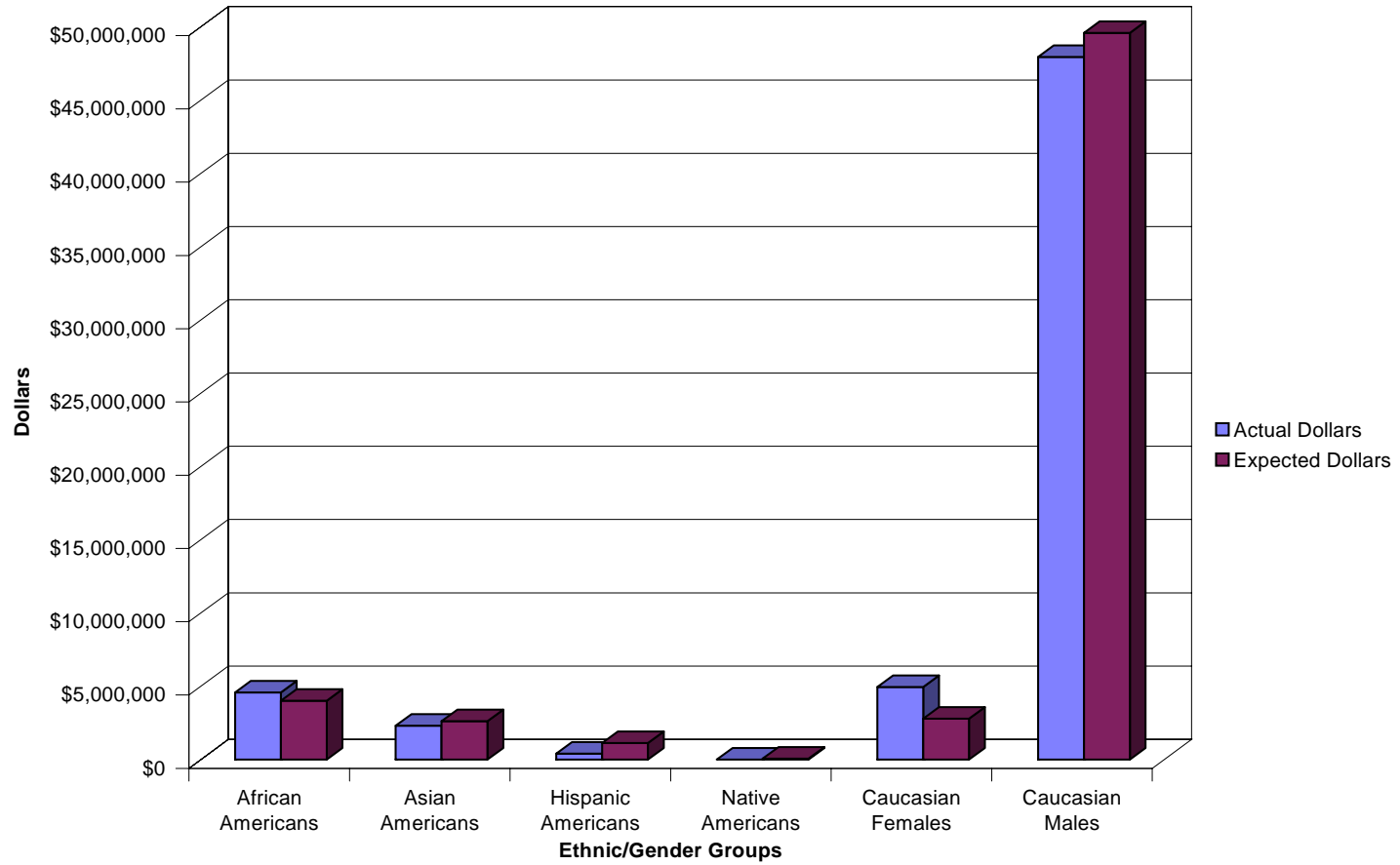
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.

(----) denotes an underutilized group with too few available firms to test statistical significance.

Chart 8.08 Disparity Analysis: Goods and Other Services Prime Contracts under \$50,000, July 1, 2002 to June 30, 2005

Mason Tillman Associates, Ltd. May 2007
 Vol. I: City of Oakland and Redevelopment Agency Fairness in Purchasing and Contracting Disparity Study 8-27



III. SUMMARY

A. Construction Prime Contracts

As indicated in Table 8.09, African American construction prime contractors were determined to be underutilized at both contract levels. Hispanic American construction prime contractors were found to be underutilized at the under \$50,000 contract level and Women Business Enterprises were underutilized at the under \$500,000 contract level.

Table 8.09 Disparity Summary: Construction Prime Contract Dollars, July 1, 2002 to June 30, 2005

Ethnicity/Gender	Construction	
	Contracts under \$500,000	Contracts under \$50,000
African Americans	Yes	Yes
Asian Americans	**	No
Hispanic Americans	No	Yes
Native Americans	---	---
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	Yes	No
Minority and Women Business Enterprises	Yes	Yes

Yes = Statistically significant disparity was found
 No = Statistically significant disparity was not found
 --- = There were insufficient records to determine statistical disparity
 ** = The study did not test statistically the overutilization of M/WBEs



B. Architecture and Engineering Prime Contracts

As indicated in Table 8.10, Asian American and Hispanic American architecture and engineering prime contractors were determined to be underutilized at the \$15,000 and under contract level.

Table 8.10 Disparity Summary: Architecture and Engineering Contract Dollars, July 1, 2002 to June 30, 2005

Ethnicity/Gender	Architecture and Engineering	
	Contracts under \$500,000	Contracts \$15,000 and under
African Americans	No	**
Asian Americans	No	Yes
Hispanic Americans	No	Yes
Native Americans	---	---
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	**	**
Minority and Women Business Enterprises	No	**

Yes = Statistically significant disparity was found
 No = Statistically significant disparity was not found
 --- = There were insufficient records to determine statistical disparity
 ** = The study did not test statistically the overutilization of M/WBEs



C. Professional Services Prime Contracts

As indicated in Table 8.11, African American and Asian American professional services prime contractors were determined to be underutilized at both contract levels. Women Business Enterprises were underutilized at the under \$500,000 contract level.

Table 8.11 Disparity Summary: Professional Services Prime Contract Dollars, July 1, 2002 to June 30, 2005

Ethnicity/Gender	Professional Services	
	Contracts under \$500,000	Contracts \$15,000 and under
African Americans	Yes	Yes
Asian Americans	Yes	Yes
Hispanic Americans	**	No
Native Americans	---	---
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	Yes	No
Minority and Women Business Enterprises	Yes	Yes

- Yes = Statistically significant disparity was found
- No = Statistically significant disparity was not found
- = There were insufficient records to determine statistical disparity
- ** = The study did not test statistically the overutilization of M/WBEs



D. Goods and Other Services Prime Contracts

As indicated in Table 8.12, Hispanic American goods and other services prime contractors were determined to be underutilized at both contract levels.

Table 8.12 Disparity Summary: Goods and Other Services Prime Contract Dollars, July 1, 2002 to June 30, 2005

Ethnicity/Gender	Goods and Other Services	
	Contracts under \$500,000	Contracts \$50,000 and under
African Americans	No	**
Asian Americans	**	No
Hispanic Americans	Yes	Yes
Native Americans	---	---
Minority Business Enterprises	**	Yes
Women Business Enterprises	**	**
Minority and Women Business Enterprises	**	**

- Yes = Statistically significant disparity was found
- No = Statistically significant disparity was not found
- = There were insufficient records to determine statistical disparity
- ** = The study did not test statistically the overutilization of M/WBEs



9

SUBCONTRACTOR DISPARITY ANALYSIS

I. INTRODUCTION

The objective of this analysis is to determine if minority and woman-owned business enterprise (M/WBE) subcontractors were underutilized at a statistically significant level. A detailed discussion of the statistical procedures for conducting a disparity analysis is set forth in *Chapter 8: Prime Contractor Disparity Analysis*. The same analytical procedures were used to perform the subcontractor disparity analysis. Under a fair and equitable system of awarding subcontracts, the proportion of subcontracts and subcontract dollars awarded to M/WBEs should be approximate to the proportion of available M/WBEs in the relevant market area. If the proportions are not approximate and a disparity exists between these proportions, the probability that the disparity is due to chance can be determined using a statistical test. If there is a low probability that the disparity is due to chance, *Croson* states that an inference of discrimination can be made.¹

II. DISPARITY ANALYSIS

As detailed in *Chapter 5: Subcontractor Utilization Analysis*, extensive efforts were undertaken to obtain subcontracting records for the City's construction, architecture and engineering, and professional services prime contracts. The City could provide information on construction, architecture and engineering, and professional services subcontracts. The goods and other services industry was not available and therefore not included in the subcontractor analysis. Subcontract records were compiled for the three industries within

¹ When conducting statistical tests, a level of confidence must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95 percent confidence level is considered by the courts as an acceptable level in determining whether an inference of discrimination can be made. Thus the data analyzed here was done within the 95 percent confidence level.



the July 1, 2003 to June 30, 2005 study period. A subcontractor disparity analysis of these records was performed.

A. Construction Subcontractor Disparity Analysis: July 1, 2003 to June 30, 2005

The disparity analysis of construction subcontract dollars is depicted in Table 9.01 and Chart 9.01.

African American Businesses represent 18.89 percent of the available construction firms and received 9.83 percent of the construction subcontract dollars. This underutilization is statistically significant.

Asian American Businesses represent 7.2 percent of the available construction firms and received 5.34 percent of the construction subcontract dollars. This underutilization is statistically significant.

Hispanic American Businesses represent 14.13 percent of the available construction firms and received 7.43 percent of the construction subcontract dollars. This underutilization is statistically significant.

Native American Businesses represent 0.14 percent of the available construction firms and received none of the construction subcontract dollars. While this group was underutilized, there were too few available firms to determine statistical significance.

Minority Business Enterprises represent 40.35 percent of the available construction firms and received 22.61 percent of the construction subcontract dollars. This underutilization is statistically significant.

Women Business Enterprises represent 3.4 percent of the available construction firms and received 5.48 percent of the construction subcontract dollars. This study does not test statistically the overutilization of women business groups.

Minority and Women Business Enterprises represent 43.75 percent of the available construction firms and received 28.09 percent of the construction subcontract dollars. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 56.25 percent of the available construction firms and received 71.91 percent of the construction subcontract dollars. This overutilization is statistically significant.



Table 9.01 Disparity Analysis: Construction Subcontracts, July 1, 2003 to June 30, 2005

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$8,082,982	9.83%	18.89%	\$15,532,988	-\$7,450,006	0.52	< .05 *
Asian Americans	\$4,395,336	5.34%	7.20%	\$5,922,650	-\$1,527,314	0.74	< .05 *
Hispanic Americans	\$6,114,828	7.43%	14.13%	\$11,621,804	-\$5,506,975	0.53	< .05 *
Native Americans	\$0	0.00%	0.14%	\$111,748	-\$111,748	0.00	----
Caucasian Females	\$4,506,028	5.48%	3.40%	\$2,793,703	\$1,712,325	1.61	**
Caucasian Males	\$59,147,436	71.91%	56.25%	\$46,263,718	\$12,883,718	1.28	< .05 †
TOTAL	\$82,246,610	100.00%	100.00%	\$82,246,610			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$1,516,623	1.84%	2.58%	\$2,123,214	-\$606,591	0.71	not significant
African American Males	\$6,566,358	7.98%	16.30%	\$13,409,773	-\$6,843,415	0.49	< .05 *
Asian American Females	\$697,164	0.85%	1.90%	\$1,564,474	-\$867,309	0.45	not significant
Asian American Males	\$3,698,172	4.50%	5.30%	\$4,358,176	-\$660,004	0.85	not significant
Hispanic American Females	\$673,145	0.82%	0.95%	\$782,237	-\$109,092	0.86	----
Hispanic American Males	\$5,441,683	6.62%	13.18%	\$10,839,567	-\$5,397,884	0.50	< .05 *
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.14%	\$111,748	-\$111,748	0.00	----
Caucasian Females	\$4,506,028	5.48%	3.40%	\$2,793,703	\$1,712,325	1.61	**
Caucasian Males	\$59,147,436	71.91%	56.25%	\$46,263,718	\$12,883,718	1.28	< .05 †
TOTAL	\$82,246,610	100.00%	100.00%	\$82,246,610			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$2,886,933	3.51%	5.43%	\$4,469,924	-\$1,582,992	0.65	not significant
Minority Males	\$15,706,213	19.10%	34.92%	\$28,719,265	-\$13,013,051	0.55	< .05 *
Caucasian Females	\$4,506,028	5.48%	3.40%	\$2,793,703	\$1,712,325	1.61	**
Caucasian Males	\$59,147,436	71.91%	56.25%	\$46,263,718	\$12,883,718	1.28	< .05 †
TOTAL	\$82,246,610	100.00%	100.00%	\$82,246,610			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$18,593,146	22.61%	40.35%	\$33,189,189	-\$14,596,043	0.56	< .05 *
Women Business Enterprises	\$4,506,028	5.48%	3.40%	\$2,793,703	\$1,712,325	1.61	**
Minority and Women Business Enterprises	\$23,099,174	28.09%	43.75%	\$35,982,892	-\$12,883,718	0.64	< .05 *
Caucasian Male Business Enterprises	\$59,147,436	71.91%	56.25%	\$46,263,718	\$12,883,718	1.28	< .05 †

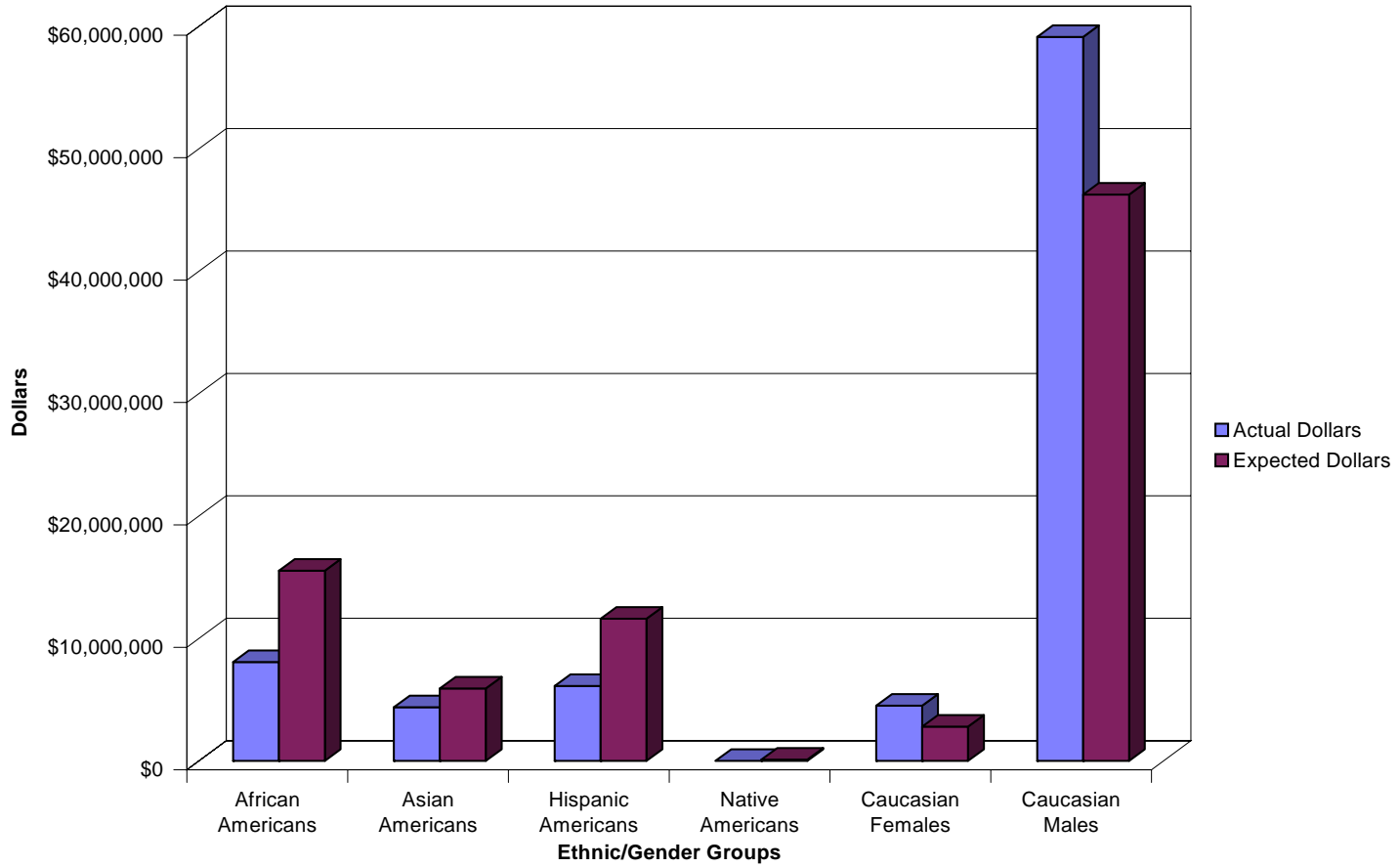
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.

(----) denotes an underutilized group with too few available firms to test statistical significance.

Chart 9.01 Disparity Analysis: Construction Subcontracts, July 1, 2003 to June 30, 2005



**B. Architecture and Engineering
Subcontractor Analysis: July 1, 2003 to
June 30, 2005**

The disparity analysis of architecture and engineering subcontract dollars is depicted in Table 9.02 and Chart 9.02.

African American Businesses represent 9.74 percent of the available architecture and engineering firms and received 6.48 percent of the architecture and engineering subcontract dollars. This underutilization is not statistically significant.

Asian American Businesses represent 16.24 percent of the available architecture and engineering firms and received 35.47 percent of the architecture and engineering subcontract dollars. This study does not test statistically the overutilization of minority groups.

Hispanic American Businesses represent 4.27 percent of the available architecture and engineering firms and received 1.25 percent of the architecture and engineering subcontract dollars. This underutilization is not statistically significant.

Native American Businesses represent 0.17 percent of the available architecture and engineering firms and received none of the architecture and engineering subcontract dollars. While this group was underutilized, there were too few available firms to determine statistical significance.

Minority Business Enterprises represent 30.43 percent of the available architecture and engineering firms and received 43.2 percent of the architecture and engineering subcontract dollars. This study does not test statistically the overutilization of minority groups.

Women Business Enterprises represent 10.26 percent of the available architecture and engineering firms and received 4.75 percent of the architecture and engineering subcontract dollars. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 40.68 percent of the available architecture and engineering firms and received 47.94 percent of the architecture and engineering subcontract dollars. This study does not test statistically the overutilization of minority and women business groups.

Caucasian Male Business Enterprises represent 59.32 percent of the available architecture and engineering firms and received 52.06 percent of the architecture and engineering subcontract dollars. This study does not test statistically the underutilization of Caucasian Males.



Table 9.02 Disparity Analysis: Architecture and Engineering Subcontracts, July 1, 2003 to June 30, 2005

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$269,560	6.48%	9.74%	\$405,470	-\$135,909	0.66	not significant
Asian Americans	\$1,475,869	35.47%	16.24%	\$675,783	\$800,086	2.18	**
Hispanic Americans	\$52,091	1.25%	4.27%	\$177,838	-\$125,747	0.29	not significant
Native Americans	\$0	0.00%	0.17%	\$7,114	-\$7,114	0.00	----
Caucasian Females	\$197,609	4.75%	10.26%	\$426,810	-\$229,201	0.46	not significant
Caucasian Males	\$2,166,269	52.06%	59.32%	\$2,468,385	-\$302,116	0.88	**
TOTAL	\$4,161,398	100.00%	100.00%	\$4,161,398			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$47,935	1.15%	1.37%	\$56,908	-\$8,973	0.84	not significant
African American Males	\$221,626	5.33%	8.38%	\$348,562	-\$126,936	0.64	not significant
Asian American Females	\$332,344	7.99%	3.93%	\$163,611	\$168,734	2.03	**
Asian American Males	\$1,143,525	27.48%	12.31%	\$512,172	\$631,352	2.23	**
Hispanic American Females	\$3,143	0.08%	0.51%	\$21,341	-\$18,198	0.15	----
Hispanic American Males	\$48,948	1.18%	3.76%	\$156,497	-\$107,549	0.31	not significant
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.17%	\$7,114	-\$7,114	0.00	----
Caucasian Females	\$197,609	4.75%	10.26%	\$426,810	-\$229,201	0.46	not significant
Caucasian Males	\$2,166,269	52.06%	59.32%	\$2,468,385	-\$302,116	0.88	**
TOTAL	\$4,161,398	100.00%	100.00%	\$4,161,398			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$383,422	9.21%	5.81%	\$241,859	\$141,563	1.59	**
Minority Males	\$1,414,098	33.98%	24.62%	\$1,024,344	\$389,754	1.38	**
Caucasian Females	\$197,609	4.75%	10.26%	\$426,810	-\$229,201	0.46	not significant
Caucasian Males	\$2,166,269	52.06%	59.32%	\$2,468,385	-\$302,116	0.88	**
TOTAL	\$4,161,398	100.00%	100.00%	\$4,161,398			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$1,797,520	43.20%	30.43%	\$1,266,203	\$531,317	1.42	**
Women Business Enterprises	\$197,609	4.75%	10.26%	\$426,810	-\$229,201	0.46	not significant
Minority and Women Business Enterprises	\$1,995,129	47.94%	40.68%	\$1,693,013	\$302,116	1.18	**
Caucasian Male Business Enterprises	\$2,166,269	52.06%	59.32%	\$2,468,385	-\$302,116	0.88	**

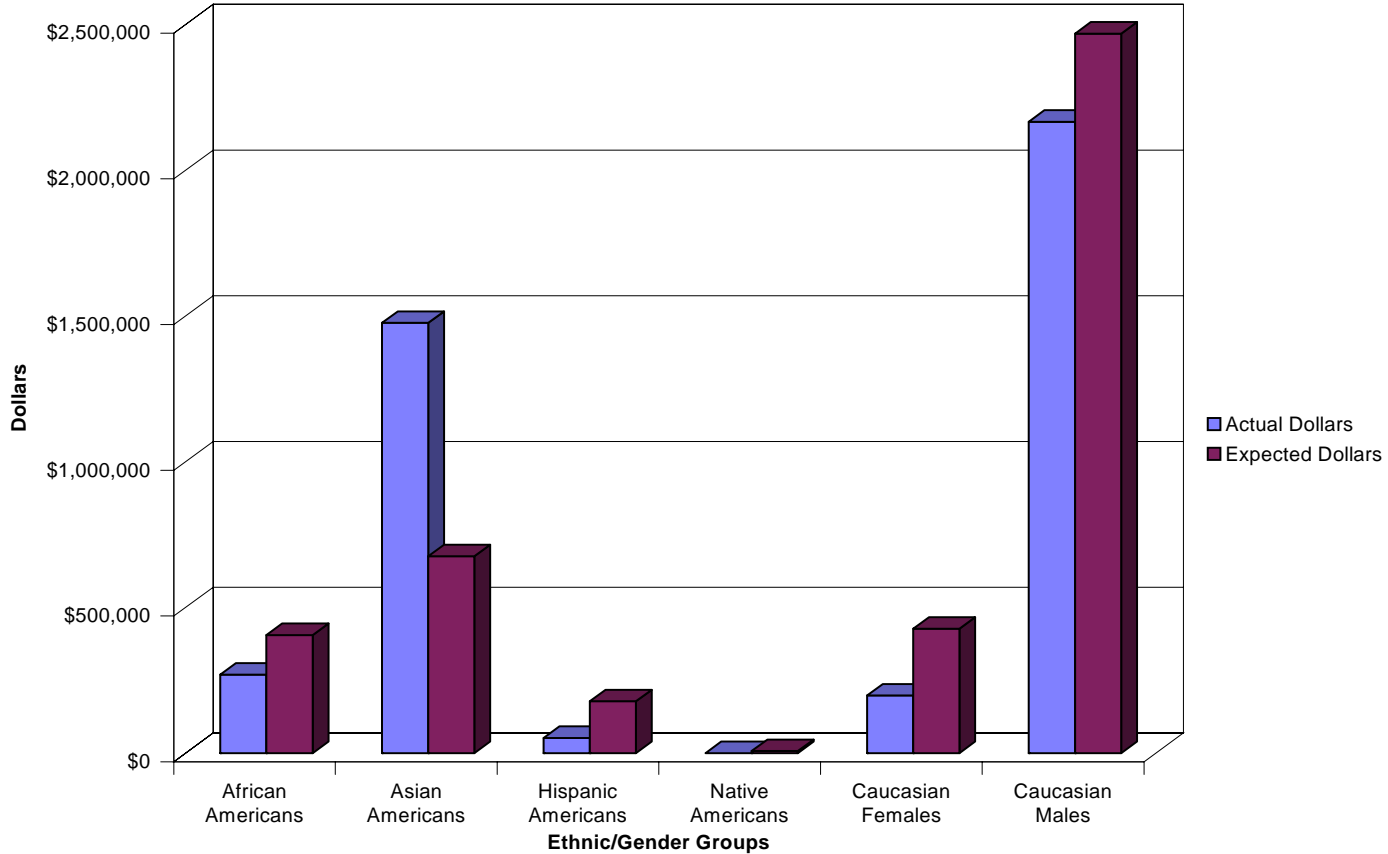
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.

(----) denotes an underutilized group with too few available firms to test statistical significance.

Chart 9.02 Disparity Analysis: Architecture and Engineering Subcontracts, July 1, 2003 to June 30, 2005



**C. Professional Services Subcontractor
Analysis: July 1, 2003 to June 30,
2005**

The disparity analysis of professional services subcontract dollars is depicted in Table 9.03 and Chart 9.03.

African American Businesses represent 14.46 percent of the available professional services firms and received 22.28 percent of the professional services subcontract dollars. This study does not test statistically the overutilization of minority groups.

Asian American Businesses represent 7.79 percent of the available professional services firms and received 5 percent of the professional services subcontract dollars. This underutilization is not statistically significant.

Hispanic American Businesses represent 3 percent of the available professional services firms and received 0.07 percent of the professional services subcontract dollars. This underutilization is not statistically significant.

Native American Businesses represent 0.33 percent of the available professional services firms and received none of the professional services subcontract dollars. While this group was underutilized, there were too few available firms to determine statistical significance.

Minority Business Enterprises represent 25.58 percent of the available professional services firms and received 27.35 percent of the professional services subcontract dollars. This study does not test statistically the overutilization of minority groups.

Women Business Enterprises represent 10.01 percent of the available professional services firms and received 18.04 percent of the professional services subcontract dollars. This study does not test statistically the overutilization of women business groups.

Minority and Women Business Enterprises represent 35.6 percent of the available professional services firms and received 45.39 percent of the professional services subcontract dollars. This study does not test statistically the overutilization of minority and women business groups

Caucasian Male Business Enterprises represent 64.4 percent of the available professional services firms and received 54.61 percent of the professional services subcontract dollars. This study does not test statistically the underutilization of Caucasian Males.



Table 9.03 Disparity Analysis: Professional Services Subcontracts, July 1, 2003 to June 30, 2005

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$518,707	22.28%	14.46%	\$336,667	\$182,041	1.54	**
Asian Americans	\$116,479	5.00%	7.79%	\$181,282	-\$64,803	0.64	not significant
Hispanic Americans	\$1,559	0.07%	3.00%	\$69,923	-\$68,364	0.02	not significant
Native Americans	\$0	0.00%	0.33%	\$7,769	-\$7,769	0.00	----
Caucasian Females	\$420,077	18.04%	10.01%	\$233,077	\$187,000	1.80	**
Caucasian Males	\$1,271,357	54.61%	64.40%	\$1,499,461	-\$228,105	0.85	**
TOTAL	\$2,328,179	100.00%	100.00%	\$2,328,179			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$15,929	0.68%	6.23%	\$145,026	-\$129,097	0.11	not significant
African American Males	\$502,778	21.60%	8.23%	\$191,641	\$311,137	2.62	**
Asian American Females	\$0	0.00%	3.11%	\$72,513	-\$72,513	0.00	not significant
Asian American Males	\$116,479	5.00%	4.67%	\$108,769	\$7,710	1.07	**
Hispanic American Females	\$0	0.00%	1.00%	\$23,308	-\$23,308	0.00	not significant
Hispanic American Males	\$1,559	0.07%	2.00%	\$46,615	-\$45,056	0.03	not significant
Native American Females	\$0	0.00%	0.11%	\$2,590	-\$2,590	0.00	----
Native American Males	\$0	0.00%	0.22%	\$5,179	-\$5,179	0.00	----
Caucasian Females	\$420,077	18.04%	10.01%	\$233,077	\$187,000	1.80	**
Caucasian Males	\$1,271,357	54.61%	64.40%	\$1,499,461	-\$228,105	0.85	**
TOTAL	\$2,328,179	100.00%	100.00%	\$2,328,179			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$15,929	0.68%	10.46%	\$243,436	-\$227,507	0.07	< .05 *
Minority Males	\$620,816	26.67%	15.13%	\$352,205	\$268,611	1.76	**
Caucasian Females	\$420,077	18.04%	10.01%	\$233,077	\$187,000	1.80	**
Caucasian Males	\$1,271,357	54.61%	64.40%	\$1,499,461	-\$228,105	0.85	**
TOTAL	\$2,328,179	100.00%	100.00%	\$2,328,179			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$636,745	27.35%	25.58%	\$595,641	\$41,104	1.07	**
Women Business Enterprises	\$420,077	18.04%	10.01%	\$233,077	\$187,000	1.80	**
Minority and Women Business Enterprises	\$1,056,822	45.39%	35.60%	\$828,718	\$228,105	1.28	**
Caucasian Male Business Enterprises	\$1,271,357	54.61%	64.40%	\$1,499,461	-\$228,105	0.85	**

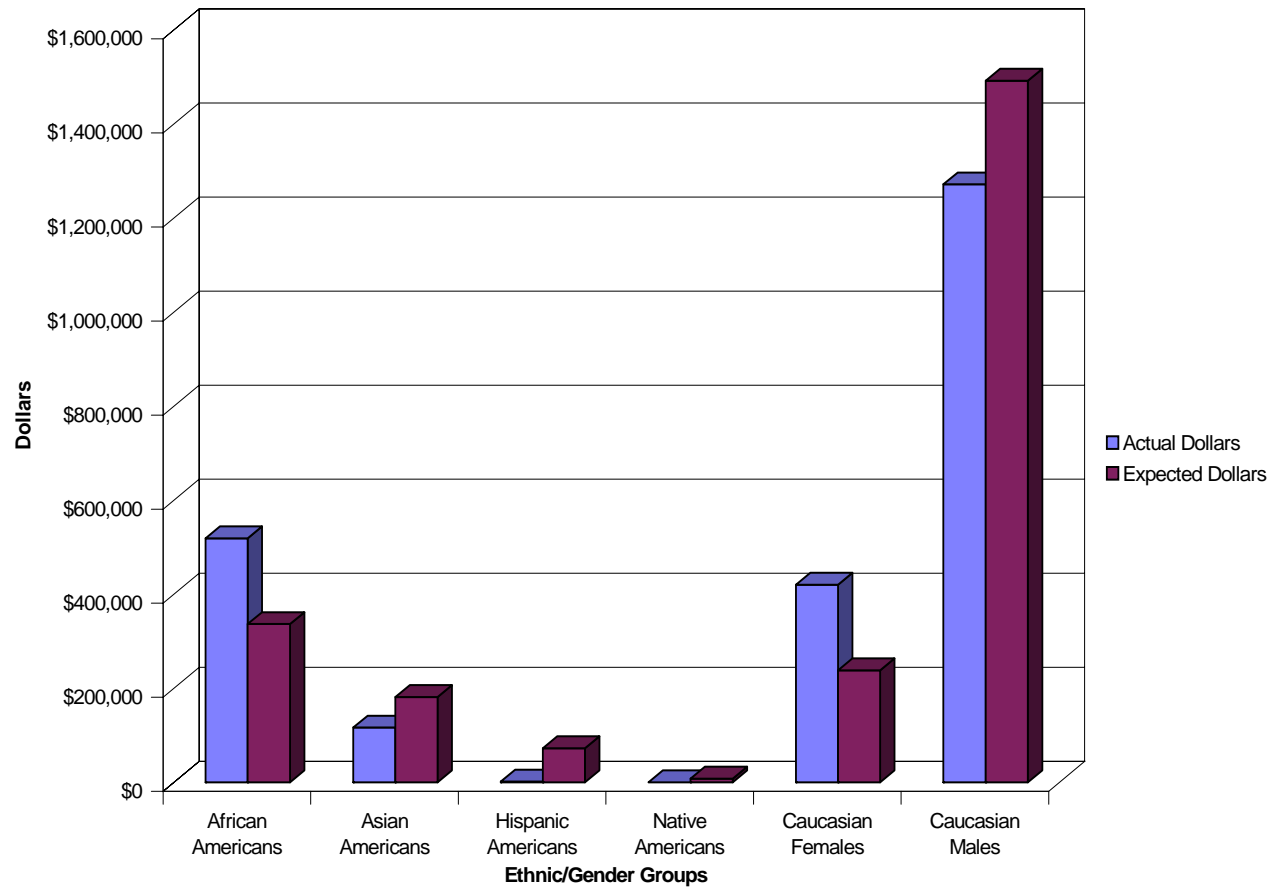
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.

(----) denotes an underutilized group with too few available firms to test statistical significance.

Chart 9.03 Disparity Analysis: Professional Services Subcontracts, July 1, 2003 to June 30, 2005



III. SUBCONTRACTOR DISPARITY SUMMARY

The subcontractor disparity findings in the industries under consideration are summarized in Table 9.04 below.

As indicated in Table 9.04, construction subcontracts had a statistically significant disparity for African Americans, Asian Americans and Hispanic Americans but not for Native Americans or Women Business Enterprises. No statistically significant disparity was found in architecture and engineering and professional services subcontracts for any minority group or Women Business Enterprises.

Table 9.04 Subcontractor Disparity Summary, July 1, 2003 to June 30, 2005

Ethnicity / Gender	Construction	Architecture and Engineering	Professional Services
African Americans	Yes	No	**
Asian Americans	Yes	**	No
Hispanic Americans	Yes	No	No
Native Americans	---	---	---
Minority Business Enterprises	Yes	**	**
Women Business Enterprises	**	No	**
Minority and Women Business Enterprises	Yes	**	**

- Yes = Statistically significant disparity was found
- No = Statistically significant disparity was not found
- = There were insufficient records to determine statistical disparity
- ** = The study did not test statistically the overutilization of M/WBEs



10

ANECDOTAL ANALYSIS

I. INTRODUCTION

The United States Supreme Court, in its 1989 decision *City of Richmond v. J.A. Croson Co.*, specified the use of anecdotal testimony as a means to determine whether remedial race-conscious relief may be justified in a particular market area. In its *Croson* decision, the Court stated that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proofs, lend support to a [local entity’s] determination that broader remedial relief [be] justified.”¹

Anecdotal testimony of individual discriminatory acts can, when paired with statistical data, document the routine practices by which minority and women-owned businesses (M/WBEs) are excluded from business opportunities within a given market area. The statistical data can quantify the results of discriminatory practices, while anecdotal testimony provides the human context through which the numbers can be understood. Anecdotal testimony from business owners provides information on the kinds of barriers that the business owners believe exist within the market area, including the means by which those barriers occur, who perpetrates them, and their effect on the development of M/WBEs.

A. Anecdotal Evidence of Active or Passive Participation

Croson authorizes anecdotal inquiries along two lines. The first approach investigates active government discrimination or formal acts of exclusion that are undertaken by representatives of the local government entity. The purpose of this examination is to determine whether the government has committed acts that bar minority and women business owners from government contracting opportunities.

¹ *Croson*, 488 U.S. at 509



The second line of inquiry examines the government’s “passive” support of exclusionary conditions that occur in the market area into which its funds are infused. “Passive” governmental exclusion results when government officials knowingly either use public monies to contract with companies that discriminate against M/WBEs, or fail to take positive steps to prevent discrimination by contractors who receive public funds.²

Anecdotal accounts of passive discrimination delve, to some extent, into the activities of purely private-sector entities. In a recent opinion, the Tenth Circuit Court of Appeals has cautioned that anecdotal accounts of discrimination are entitled to less evidentiary weight, to the extent that the accounts concern more private than government-sponsored activities.³ Nonetheless, when paired with appropriate statistical data, anecdotal evidence that the entity has engaged in either active or passive forms of discrimination can support the imposition of a race or gender-conscious remedial program. Anecdotal evidence that is not sufficiently compelling, either alone or in combination with statistical data, to support a race or gender-conscious program is not without utility in the *Croson* framework. As *Croson* points out, jurisdictions have at their disposal “a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races.”⁴ Anecdotal accounts can paint a finely detailed portrait of the practices and procedures that generally govern the award of public contracts in the relevant market area. These narratives can thus identify specific generic practices that can be implemented, improved, or eliminated in order to increase contracting opportunities for businesses owned by all citizens.

This chapter presents anecdotal accounts excerpted from interviews with businesses domiciled in the City of Oakland (City). The anecdotes provide accounts of both active and passive discrimination encountered by the business community.

B. Anecdotal Methodology

The method of gathering anecdotal testimony was the oral history interview. Oral history is defined by the *American Heritage Dictionary* as “historical information obtained in tape-recorded interviews with individuals having firsthand knowledge.” In-depth interviews have been determined by Mason Tillman Associates to be superior to the other forms of gathering anecdotal evidence—mail, telephone survey, or public hearing testimony. It affords the researcher a greater opportunity to garner in-depth accounts of testimony to assess the effects of exclusionary practices on M/WBEs and the means by which these practices occur. The

² *Croson*, 488 U.S. at 491-93, 509.

³ *Concrete Works*, 36 F.3d at 1530: “while a fact finder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality’s institutional practices carry more weight due to the systemic impact that such institutional practices have on market conditions.”

⁴ 488 U.S. at 509.



in-depth interviews are also structured in a manner that affords M/WBEs a process in which their anonymity can be preserved.

By allowing interviewees to describe in their own words the details of the barriers they have experienced in conducting business, information can be collected as to how barriers occur, who creates them, and how they affect the development of M/WBEs. Thus, the information obtained not only sheds light on the City, but offers vital insights on future program needs and changes.

Potential interviewees were identified using contract and certification records, community meetings, and other sources. Once identified, interviewees were pre-screened to determine if they operated within the defined market area, and were willing to commit to the interview process.

The interviews lasted on average one hour. A set of probes were designed to cover all aspects of business development, from start-up, to growth issues, and both public and private sector experiences.

Once completed, the interviews were transcribed and analyzed for barriers M/WBEs encounter. From this analysis of the transcripts, the anecdotal report was completed. The anecdotal report describes general market conditions, prime contractor barriers, and the range of experiences encountered by interviewees attempting to do business in the City's market area generally, and with the City, specifically.

II. BUSINESS BARRIERS

A. Racial Barriers

The interviewees reported incidences of racial prejudice encountered when working for the City and within the City. Stereotyping and prejudgment based on race and gender makes minority business owners' attempts to gain fair access to business opportunities more difficult, if not impossible. It also increases the cost of doing business.

A Caucasian female owner of a construction-related company reported an incident when her company was hired by a majority-owned prime contractor to manage a local minority subcontractor:

There was a project in the City of Oakland where a bigger contractor got the job. They hired us to hire and manage the local [minority subcontractors]. They told the subcontractor, 'If we had it our way, we would never hire you at all. We would not work with you ever.' So, they paid us to hire the



locals because they had to have them on the site, but they did not want to bother with them. The general contractor charged half a million dollars for the scope of work that [the subcontractor] did, and he paid them maybe a \$100,000. The prime contractor's name was [company name withheld] and they were primarily White men. [The subcontractor] did not complain because she was a minority and she didn't want to make waves.

This minority male owner of an engineering firm reported on an incident where he believed his award was rescinded because of his race:

I have had awards taken away from [my company] when it was [determined that] we were a Black firm.

This same business owner also believed that race is a major barrier for minority-owned engineering firms in the Bay area:

My race is the reason my business is small. There are not many Black engineering firms of any size in the State of California. Whereas in other places, they have African American firms of considerable size, but in the Bay area and in Los Angeles, there are not.

A minority female owner of a services company reported an incident where she believed her firm was unfairly treated by the selection panel during an interview for a contract with a local government agency:

We were a potential prime contractor on a two-and-a-half million dollar contract with a utility company. And we made it to the interview or source selection committee stage. They were not happy [that we were] allowed to bid on the job in the first place. So, I felt a strong racist undertone [during the interview] because of the nature of the questions [we were asked]. It was a very tense meeting. The lead [interviewer] on the selection committee was the same person who did not want [us] to bid on the job. So she made no bones about the fact that she felt that we were not qualified to do the job. She asked my [Caucasian] business partner why does he [works] with me and my company because we are a small business.

I complained to the Supplier Diversity person, who notified me of the opportunity, immediately to inform her of the



[outcome of the interview]. She said she would look into it, but she did not have the authority to do anything about it. But, I just wanted her to be aware of it. [My competitor] had been in business a lot longer than I. Their firm is located in San Francisco and are owned by a well-known, powerful White male and they were currently working on the contract.

A minority male owner of an architectural firm believed some City agencies prefer working with Caucasian female business owners rather than African American male business owners:

We have participated in a number [interviews] for different design projects and [because] of our qualifications, [they erroneously] believe [we] are a White-owned firm. And, [when] we come through the door, they say, ‘Oh, wait a minute.’

We have been told by committee members and by our consultants that we made a good presentation, but we still do not get the project. It was fairly obvious why we were not selected. They would rather give [the work] to a White female than a Black male, which is what happened.

A minority female owner of a professional services firm believed that she is judged unfairly as a business owner because of her ethnicity:

My phone voice sounds different than the sound of my voice when you talk to me in person. And [some people say] ‘Oh! You are the inspector.’ Sometimes when I am in San Rafael or some other place working with my camera in hand, people [will say], ‘Oh, what are you doing? It’s because of the idea that there is a Black woman jumping out of a car with a camera. If I am going to case their place, I would [not] be in the middle of the street with a camera [during] the middle of the day.

A minority male owner of a consulting firm also believed his work is often judged negatively because of his ethnicity:

Throughout my 20-year career my race has been a [negative] factor. I don’t like to use [this term] but there is such a thing as ‘Black work.’ [This is work where] African Americans or other people of color are involved in doing the work. Also, when there are no African Americans or other people of color



involved in the [assessment of my work], it is usually [judged negatively].

This minority female owner of a professional services firm reported that she believed her race is a negative factor when she tries to obtain contracts:

I think racism is more of an issue now. When I will talk to people on the phone, apparently they cannot determine that [I am] Black. But, when I show up to their office they are totally dumbfounded. I even had somebody tell me, ‘I can’t believe you are the same person I spoke to.’

I have gone on interviews and sat in a lobby waiting for the interviewer to come out, and they look around again and again. Then they look [at] the receptionist [and say], ‘Has the [interviewee name withheld] gotten here yet?’ What else can be deduced from that but the fact that they were looking for somebody who was White, or certainly not Black.

However, this minority female owner of a professional services firm that had been in business for over several decades firmly believed that the City prefers working with African American business owners:

I have no proof, but I believe that if I were an African American in the City of Oakland, I would be doing much better. [It seems] all the people in power seem to favor [working] with African Americans.

B. Gender Barriers

Sexist and unfair treatment toward woman-owned business owners were reported by several interviewees. Some female business owners believed that they have to overcome hurdles that their male counterparts are not subjected to because of their gender.

A minority female owner of a professional services firm believed that women have to prove themselves as capable, while their male counterparts are given the benefit of the doubt:

The [field] of environmental consulting is pretty much male-dominated and I deal with [sexism] a lot. My gender has had a negative impact [on my business]. It’s another hurdle that [women] have to get over that [our male] competitors do not [encounter]. I have to prove myself as a woman, and I don’t get the benefit of the doubt. [So], I lose contracts to my [male



competitors] because some people never give us a chance to prove ourselves. And we get fewer opportunities to prove ourselves.

A minority female owner of a professional services firm reported that some of her male colleagues are threatened by her because she is a female business owner:

My field is dominated by men, and there are not many women in the field. I am a [minority] woman, but women in general are threatening to some of the [men in my field]. In my [organization name withheld] chapter meetings there are some people who look at me like, ‘What is she doing here?’ There are [some males] in my chapter that won’t speak to me because I’m a woman. I have been there for the last three years and I’m not going anywhere.

This minority female owner of a professional services firm reported that she is often subjected to sexist comments:

I have been harassed by . . . sexist comments. [I have been told], ‘Obviously, she has a bur up her butt.’ [Those are the] types of inappropriate comments to which I have been subjected. [I do not complain because] I feel that [this type of behavior] is inherent.

This minority female owner of a professional services firm also believed that sexism is more prevalent in the construction industry:

Traditionally, sexism is more of an issue in industries where there are very few women, and construction certainly is still one of those industries. That is one of the reasons [why] a lot of [women] leave [this field].

This Caucasian female owner of a professional services firm for seven years believed that women business owners are still subjected to sexist treatment:

I think it is really tough for women. . . . I have had people look at my chest when I’m talking to them or people make jokes about dumb blondes. When a guy looks at my chest while I’m talking to him, I say, ‘Do I have something on my shirt?’



III. BARRIERS CREATED BY THE CONTRACTOR COMMUNITY

A. Difficulty Breaking Into the Contracting Community

Traditionally, large corporations and majority-owned businesses have dominated the public and private contracting sectors. As a result, they have developed longstanding business and personal networks that systematically exclude minority and woman-owned businesses.

A minority male owner of a professional services firm believed that the City purposely prevents new businesses from obtaining City contracts:

I think that [there are systems in place] that are specifically designed to keep out who they want to keep out [of public contracting]. If you do not have a history [with the City] they will more than likely respond to [a prime contractor] that they have a reputable history with. They do not trust the new guy on the block.

A minority female owner of a professional services firm believed that personal connections with key decision makers are needed to obtain a City of Oakland contract:

I usually have an idea of whom the [City] is going to hire. [If] you don't get to key [decision makers] to make your company known, the business owner that has [the] contacts or better connections will [get the job]. I believe that [my bid responses] are put into a circular file. This has resulted in missed opportunities to grow my company. If [small businesses] do not have access to information about [bid] opportunities then they will stay small.

This minority female owner of a professional services firm reported that the biggest obstacle for his company is breaking into the contracting network:

The biggest [obstacle] for me is trying to break through [the contracting network]. [This problem is with] the City of Oakland and the City of Piedmont. I think it's a matter of being an unknown. They already have people that they are comfortable dealing with. So, the biggest issue is just getting an audience to convince them that we have something valuable to offer. I have not gotten an opportunity to start on



an even playing field. It's an uphill climb. It is hard to build a clientele when you're trying to overcome prejudice.

A minority male owner of a professional services firm reported that his company has been denied work because another business was already selected before the interview:

There has been a couple [of instances] where we were rejected because they had already made a selection prior to the interview. The interview was just a formality. We didn't make a complaint because as a [professional services] contractor, if you complain they can bar you from bidding on a project. So, we may not be invited to submit a bid on another project after we complain.

A minority female owner of a services firm reported that efforts to network to obtain business for her company have not been fruitful:

I can network all day long, but do not get anything. And it's also very expensive to [join networks], which can be prohibitive for most minority firms. It [can] cost thousands of dollars a year to join networking organizations.

This minority female owner of a professional services firm reported on the lack of support she received from some agencies after she attended a business networking event:

I found it very difficult to break into the [public] arena in terms of finding opportunities. I did attend a small business [networking] event last year and I tried to follow up with a number of government agencies. It was an exercise in futility because these people [seemed] to show interest, and they encouraged me to get certified to get a contract. But, when I used the contact information they gave me, I only was able to talk to [one person] since that time. And the rest of them have not returned my messages. If they're not interested, then I would prefer that I know that early on.

However, this Caucasian male owner of a services company reported that he had not experienced any difficulties participating in networking events in the City of Oakland:

I have not had any difficulties with networking events. I go to networking events in the City of Oakland. I think this phone call has come from one of the networking events that I [attended].



B. Good Old Boys Network

Many minorities and women find it challenging to crack the closed social and professional “good old boys” network, which they believe deliver a disproportionate number of contracts to a select few Caucasian male contractors.

This minority male owner of an architectural firm believed the private developers that work on City projects prefer working with businesses that are a part of the old boys network. He also stated that it is especially difficult for African American-owned firms to team with private developers:

Since many cities have tight budgets, they have partnered with private developers to [work] on a lot of projects. A lot of the developers are good White ole’ boys who come from old family or real estate wealth. They have their own set of architects that they work with [the majority of] the time. This makes it hard to get on teams for public [contracts].

The City of Oakland’s staff is very good but it is hard to hook up with private developers. The City has been very helpful but the developers stick to their same ‘ole boys’ network. So, I mean that the City offers financing for a lot of those projects. They offer municipal bonds for those developers, but very few of us in the minority design community get a chance to partner with those developers on partially publicly financed projects. I don’t know about Hispanic [Americans] or Asian [Americans’] difficulties, but I know that it is tough for Black guys to get on these White development teams. If you are part of the ‘good ole’ boy’ White network, you get more business. When you have those relationships, like a college roommate with a Daddy who owns a big corporation, then you are going to get the big corporate business. It’s White people that have those kind of long standing relationships. If you are Black you don’t have those opportunities.

This minority female owner of a services company believed the City prefers to work with businesses that are a part of the good old boys network:

It’s the same thing, the good old boys or brothers . . . who are at the top of the list. They [are they business owners that] are getting calls [from the City]. If you [are not part of the network] then you are never going to get a call. I think that



there is a perception that small businesses are equal to a small mind. [Many] agencies and contracting offices are stuck in the good old boy days.

A minority male owner of a professional services firm also believed the City prefers to work with businesses that are part of the good old boys network:

Many believe that our work [should be performed] by a White business. The industry is still dominated by the good old boys. The City of Oakland is no different from any other environment where [decision makers] feel comfortable [working] with the good old boys. [Trying to] break through the old boys' network has been a real obstacle [for my business].

This Caucasian female owner of a professional services firm believed that the good old boys network controls the available work in her industry:

In the [industry type withheld] there is a good old boy network, especially with the big companies because they are the ones that are still getting the contracts.

A minority female owner of a professional service firm believed that the good old boys network is a major factor as to why women are not succeeding in her field:

In my industry women are not powerful because of the good old boys [network].

And this Caucasian female owner of a services firm believed that the good old boys network exists in the City of Oakland:

There is a good old boys network in place [in the City of Oakland].

IV. DIFFICULTIES IN THE CONTRACTING PROCESS

A. Difficulty Obtaining Bid Information

In order to be placed on the public and private bidding lists, contractors must constantly follow up with inquiries, and even then, they often do not receive notice of bid opportunities. Several interviewees reported that there is a problem getting bid information from the City.



A minority female owner of a professional services firm reported on the difficulties she has encountered trying to get on the City's bidders' list:

I received a notification by e-mail about [getting on a bid list] and [I was instructed to respond] to an email address. I did and I never heard anything back. I sent it again and I did not get a response. It seems that it's incumbent upon the [business owner] to have a lot of time to physically go to these agencies to get information and make personal contacts with the City managers to be able to navigate [through the system] successfully.

A Caucasian male owner of a professional services firm also reported that he experienced difficulty getting on the City's vendor list:

We had some problems [getting on the vendors' list] and we never [received] a response to [our] application. So, I never learned whether I was on the vendor's list. When I tried to [verify if we were on the list], they could never find our name on the list. This [also] happened with the General Services Agency. [We tried] at least four or five [times] because we were very interested in bidding at that time and we needed to be on the list. But, they never found our application.

A Caucasian female owner of a services firm reported that she had not been able to get on the City's vendor list:

We have not received bids even though I have registered with the City of Oakland under certain product categories. I am aware that they procure services for the product categories we provide, yet we don't get requests for bids. I attempted to make phone calls to the Purchasing Department and the voice-mail box was full. So, I don't know what [bids are out] for the City of Oakland because we could not reach anyone to get on their [bidders] list.

This minority female owner of professional services firm had not been able to get on the City's or the Port of Oakland's vendor list after trying for a year:

[I had problems trying to get on the bidders' list] with the Port of Oakland and the City of Oakland. I am [still] in the process of trying to get on their lists. After a year still nothing has happened.



A minority male owner of a professional services firm reported that he was not able to get on the City's bidders' list because he was told incorrect information by a City representative:

I had some difficulty with the City of Oakland because I was told several different stories. One was that my business had to be operating for one year in Alameda County. I learned a year later, after I'd been in the County for a year, that I had to be a resident of the City of Oakland in order to get a license. So I never made the bidders list for the City of Oakland.

This Caucasian female owner of a professional services firm for 30 years also experienced difficulty trying to obtain bid information on City projects:

In the past, a lot of agencies would notify us if an RFQ or an RFP was coming out. Now they issue notices online. And, unless you have someone that can constantly [check for notices online] it's a real pain. Frankly, I do not have the time to do that. As far as the City of Oakland I don't even know what their bidding process looks like. Even though I pay my business taxes to the City of Oakland, I have never [received] anything from them that indicates how to [get on their bidders' list].

A minority male owner of an engineering firm reported that his company has encountered difficulties remaining on the City's bidder's list:

We have had difficulties in the past maintaining our name on the consultant's list with the City of Oakland. For some reason we can't keep our name on the list so we have to check [periodically]. So, when other firms get the notices, we do not. We've had this problem with a number of agencies in the bay area, including the City of Oakland and the City of San Francisco. We have contacted them and asked them to please put our name back on the list, and they comply but when we check the next year our name is off again. I don't think they want any competition, but I believe that race has a lot to do with the fact that [our name] is constantly [being] deleted from many lists. I do get an apology from time to time and they say, "[name withheld], I can't figure out why your name is not on the list anymore." This has affected our business enormously because since we can't find out [about upcoming] projects, we cannot propose on them. So, it has definitely impacted us in terms of our size and our gross revenue.



This minority male owner of a professional services firm has become a part of the good old boys network because of his 26 year relationship with the City:

I have a longstanding relationship with the City of Oakland. In fact, I started doing work for the City back in 1980. So, they will call me and ask me if I'm interested in bidding on a job [in my field]. I have the good fortune that they want me to bid on their job. I have not had any issues regarding [obtaining] information about potential jobs that are going out to bid [with the City].

This minority male owner of a construction-related company believed the City should adopt the bid notification procedures used by Sacramento County:

I called the City to find out who was in charge of construction contracts for parking garages and I got such a run-around. They could not tell me who [was in charge of that] department. To this day, I never found out who was responsible for controlling the contracting. And we are still not on their [vendor] list. Sacramento County has taken great steps to inform business owners of upcoming contracting opportunities. The process that they use is really outstanding. They have a bidders list and their computer sends out a lime green email that is automatically generated to vendors that pertain to the product or service they provide. It's a great system. Oakland does not have this system.

This Caucasian female owner of a professional services company reported that she does not know how to find out about upcoming contracting opportunities with the City:

I have no idea what is out for bid. And, I still do not understand how to find out about available business opportunities

B. Inadequate Lead Time

The failure to provide adequate lead time to respond to a request for bid greatly diminishes the chance of minority and woman-owned businesses to successfully bid. Many of the interviewees reported that they receive inadequate time to respond to a request for bid.

A Caucasian female owner of a professional services company believed that a bid she responded to might have been successful if she had more time to respond:



I participated as a subcontractor for [a project] with Alameda County Transportation Improvement Authority and there was very little lead time. But the [prime contractor] managed to get it in. We did not make the cut, but I think [if we had] a longer period of time, it might have helped because we really [needed] two or three weeks [to adequately respond].

A minority male owner of a professional services company reported that he typically gets inadequate lead time to respond to a bid:

[Bid notices from prime contracts] have inadequate lead time a 100 percent [of the time].

In some situations the bid process may be uniformed regarding the time required to prepare a bid or the solicitation process may be a formality because the decision-makers may have already identified a preferred contractor. A minority female owner of a services firm also receives requests for bids with an inadequate lead time:

About 20 percent of the bids [we receive are late]. [A bid is] late if the contracting office puts out a solicitation a week or two before the proposal due date. [A contracting officer] gave me . . . a week [to respond] which is ridiculous. So I called him and I said, 'What the hell are you doing?' He finally came to his senses and said, 'Send me a list of questions?' Obviously, this is a situation where the guy didn't know what he [was doing]. A lot of contracting officers don't have a clue. Sometimes you find out that they already knew what business they want [for the job].

This same business owner also complained that sometimes there is not adequate time to obtain a bid bond before the bid response due date:

I also experienced a very tight turnaround time between the issuance of the solicitation and the due date of the bid bond. I have complained to the offices that put the bids out. But, you have to be careful when you [complain] because if you anger them, your [bid response] might end up in a round file. So you have to be very diplomatic about how to approach the situation.



A minority male owner of an engineering firm for 17 years reported that prime consultants frequently provide inadequate lead time to prepare bid proposals:

On a lot of projects prime consultants will sit on [the proposal] deciding whether they should go after it. And during this period time is wasted. By the time they decide to go after the bid, there may only be two weeks left, and then they will then notify us. At that time, we do not have a lot of lead time.

A Caucasian female owner of a professional services firm reported that she had as little as one week to respond to a bid for a City agency:

When teamed with [prime consultant name withheld] we had a week to respond. We could not respond within that time period. So the one that we were trying to get was definitely on a short string of time.

This minority female owner of a professional services firm explained the impact on her business when she receives inadequate lead time.

Late notices preclude us from being able to [adequately respond to a] bid.

Finally, this Caucasian male owner of an engineering firm for 60 years reported that his company had not experienced inadequate lead time to respond to the City's request for proposals:

The City's lead time seems to be fairly typical for public agencies for our type of work. It certainly is not too short.

V. CERTIFICATION PROCEDURES

Several interviewees complained about the amount of paperwork required to obtain their L/SLBE certification. A minority male owner of a construction-related firm reported that it took a year to get certified by the City of Oakland:

[We experienced] a lot of difficulty trying to get certified. We tried to get certification for over a year. The process took a very long time. It has been over a year ago that I contacted the City of Oakland to get certified.



A minority female owner of a services firm believed the City should implement reciprocity procedures with other governmental agencies:

We have tried to get certified with the City of Oakland, but if your business is not located within the City of Oakland [you can't get certified]. There is no reciprocity and no such thing as [certification with] the surrounding counties. [I was told that] if your business is not [located] in the City of Oakland, don't waste your time filling out [the application]. But, other counties [use reciprocity] with their surrounding areas. The City and County of San Francisco [will accept certification from businesses located] in Contra Costa County, but not the City of Oakland.

A minority female owner of a professional services firm also explained that reciprocity between local agencies would be beneficial for small business owners:

[The certification process requirements] demands a lot of paperwork. But, hopefully, they will streamline that process. [Even though] they [procure the same services] they do not share [certification] information [between agencies]. The certification documentation should be routinely accepted by agencies within the City or the market area agencies.

This minority female owner of an architectural firm recommends a reciprocity certification process with local agencies within Alameda County:

Universal certification would be helpful. If the public agencies that provide [certification services] had a universal certification process, [it] would save business owners [time completing] the same paperwork for the City of Oakland, County of Alameda, Caltrans, and other agencies that ask for the same information.

A Caucasian female owner of an architectural firm explained that the City's certification process was time consuming because of the required documentation:

The L/SLBE certification process requires way too much paperwork. We sent in an inch-and-a-half of paperwork that consisted of three years of personal income taxes, business taxes, invoices, and a whole lot of other paperwork. It probably took us eight hours to complete the paperwork.



A Caucasian female owner of a professional services company believed that some agencies' certification requirements are excessive while others are tolerable:

I have refrained from applying for certification with the State because the paperwork was excessive. The Port of Oakland's [certification requirements] also requires a lot of paperwork, but it is tolerable.

Finally, this minority female owner of a professional services firm does not characterize the City's certification process as excessive:

[The certification process] is not excessive. Once you understand the process, it's very easy to comply [with the requirements].

VI. FINANCIAL BARRIERS

A. Difficulty Obtaining Financing

One of the most significant hurdles for minority and women business owners is obtaining loans. Many of these business owners endure a vicious cycle of leveraging their personal assets to maintain an adequate level of working capital to sustain or grow their businesses.

A minority male owner of a professional services company reported on a stereotype that he believed is prevalent in the financing industry:

If you are African American and are trying to get a line of credit, it is [automatically assumed] that you are not credit worthy. It's a stereotype that we have to deal with all the time.

This minority male owner of an architectural firm believed his company was unfairly denied financing:

[Financial institution name withheld] was not very helpful. They had pretty much made up their mind based on who I was and my race. They judged me on that. It certainly wasn't told to me why I was rejected. This happens [often in my community].



This minority male owner of a professional services firm described how lack of financing has impacted his business:

[The inability to obtain financing] has affected my business dramatically. I was [forced] to work off of a line of credit with a wholesale house. And it's hard to get work as a prime contractor, so we have work as a subcontractor. How can I [become] a 'Sears & Roebuck' when I am only given 10 percent of the pie?

A minority male owner of an architectural firm reported on the hardships his company faced after a financial institution withdrew his line of credit:

I lost my line of credit from [financial institution name withheld] after having it for ten years. I could not get another line of credit because we reached our limit. We eventually got another line [of credit] after I mortgaged my house. I do not think we were treated fairly. One day they called and said, 'We are turning your line [of credit] over to [financial institution name withheld].' I asked, 'Well, what does that mean?' Basically, they took [away my line of credit] and converted it into a term loan with [financial institution name withheld]. It was a 9 percent interest rate which can really hurt a small business. This really limited our ability to go after new work, and we had to pressure our existing clients to pay on time. We also got behind in paying some of our bills and we lost some employees.

A minority male owner of a construction-related company explained why he believed his company was unfairly denied financing:

I was [denied financing] and I was treated unfairly and unjust because I had a divorce that happened 12 years ago. They turned my company down even though I pay my invoices on time. My company pays our suppliers and our utilities on time. I even showed them where we had contracts that were ongoing for more than \$100,000. I could not get \$5 out of them. So, I believe I was treated unjustly. [A lack of financing] keeps me [out of] the market for construction work. [Some contractors] want us to bid with them, but I cannot because I do not have the finances even though I have the resources. I have good employees to do the work, but [lack of financing] keeps my company small.



A Caucasian female owner of a services company explained that a line of credit she had for 12 years was unfairly converted into a loan:

I had a line of credit for 12 years and they told me that they were going to [convert] it into a loan. They wanted to charge me \$900 to apply for this loan so they could cancel the line of credit. And about six months later they turned my line of credit into a loan. I had a \$50,000 line of credit and now it's a loan. I never missed a payment during the 12 years [I had the line of credit].

A minority male owner of a construction-related company believed that African American businesses are unfairly treated by financing institutions:

The lack of financing [almost depleted] our savings. We basically have to rob Peter to pay Paul to meet our financial business obligations. Our cash flow is basically nil because our expenses are really high, which represents over one-third of our payroll on a biweekly basis. As a [person of color], there are a lot of doors that are shut. There are even doors in the political sector I cannot walk through. [Some financial] institutions advertise for small business loans [but they are] for non-African American businesses.

However, this Caucasian male owner of an engineering company for 60 years reported that his company is self-financed and is not reliant on financial institutions for monetary support:

[Our company] is self-financed. Our corporate headquarters is in [City name withheld] and we have had to do very little in the loan arena.

Finally, this minority male owner of a professional services company reported on the problems he encountered trying to obtain bonding for his company:

They wanted us to collateralize the bond. This is a new [requirement] because the market has tightened up, so the bonding companies are asking for more security. We had to agree to pay 10 percent of the bond as collateral. So, that ties up our money.



B. Late Payment by the City

Many businesses generally depend on being paid in a timely fashion to meet their financial and administrative obligations. Late payments are particularly onerous for minority and woman-owned businesses that experience cash flow problems. Federal, state, and local government procurement regulations specify the methods and timing of payments to participating contractors. However, problems with late payments by government agencies continue to be reported. Many interviewees reported that the City failed to pay them in a timely manner.

A minority male-owned construction-related company reported that he had waited a year and a half for payment from the City:

Just about every contract I have had with the City of Oakland, I am paid at least four or five months from when the work is performed. I think this is an unreasonable amount of time to wait for payment. I have experienced this about 30 times in the past six years. I still have outstanding payments with the City of Oakland, which have extended from four months to eight months. So, there are a lot of payments where I have not gotten paid yet. I guess the longest that I have gone without payment has been about a year-and-a-half. I am not going to bid on another City of Oakland contract until my payments are current with the contracts that I have.

A Caucasian female owner of a professional services firm for 25 years reported having outstanding invoices that were submitted to the City a year ago:

[Late payments from the City] are constant, protracted and annoying. An invoice from a year ago is still not paid. The excuses are rampant, galore, and repetitive. Such as, 'Oh, it's in Accounts Payable, or it's lost, or we can't find the file, etc. They have never ever paid on time. A late payment is anything that goes out of the boundaries of our contract, which requires payments within 30 days. The City of Oakland has only one paying group, accounts payable, and they are always late. We have complained all the way up to the acting boss [name withheld], to no avail. [Unfortunately] the situation has gotten much worse. It takes away a great deal of time [from operating my business] because we I have one



person that is dedicated to chasing after [late payments]. It is very frustrating because we are a very small company.

This minority female owner of a professional services firm reported that she waited seven months to receive a payment from the City:

I think [late payments are caused by] the bureaucracy of the [agency]. I had a situation where I waited almost seven months before I was paid by the City. As a small business seven months is a long time to wait. I consider a payment as late when it is [past due for] more than 90 days. Technically, a late payment is anything more than 30 days on the original invoice. This limits our ability to build our workload.

It took six months for this Caucasian female owner of an architectural firm to receive payment from a City agency:

I have waited six months for payment from a City agency.

A minority female owner of a professional services firm reported that her invoices are not paid until after 60 days:

A late payment is when I receive payments 60 days or later. [My colleagues] that are [people of color] and have a business the size of mine [are experiencing similar problems]. Small businesses can't afford to be paid late, but larger companies have an infrastructure and resources available to carry them. We cannot pay our bills.

A minority female owner of a professional services firm for 22 years usually waits three months before receiving payment from the City:

When I work for the City of Oakland, I [typically] do not [receive] payment until after two to three months. And sometimes I don't get paid unless I call them half a dozen times [inquiring] about my payment. This has happened approximately ten times.

A minority male owner of an engineering firm reported that he had experienced late payments from the City:

We [experienced] late payments all the time from government agencies and I define a late payment as anything over 60 days.



We do the work and then we bill at the end of the month and we allow 30 days. We have had a problem with the City of Oakland with late payments. Sometimes they are slow paying because the construction [part of the project] has not been completed. Late payments are very common for professional services firms.

A minority male owner of an architectural firm reported that he complained to the City about late payments, even though he believed he might experience retaliation:

Yes, we have experienced late payments. After a couple months of not receiving payment, we usually call and find out what the problem is. I usually complain to the supervisor to get movement on the payments. Of course, this makes that individual pissed off, so they will hold up the next payment.

A minority male owner of a professional services firm also reported on the effects of late payments on his small business:

I have had some problems with late payments. We request net 30 days, so anything past 31 days is a late payment. We had to borrow money to pay our bills. But, we can't charge interest on the past-due money that is owed, but we have to pay [interest] on the money we borrow. So it costs us.

This Caucasian male owner of a services firm reported that he had only waited a few weeks after his payment due date from the City.

A late payment is later than the day that it's due on your contract. I have received late payments from the City of Oakland after a couple of weeks past the due date.

This Caucasian male owner of a 60 year old services company reported that he does not receive late payments, in fact his payments are usually received early:

No, we do not receive our payments late, usually they are early. [Our payments are received on time] 100 percent of the time.



C. Late Payments by Prime Contractors

Subcontractors experience extreme financial burdens when the governmental agency pays its prime contractors late. Furthermore, late payments by prime contractors is another factor that threatens the longevity of minority and woman-owned businesses.

These interviewees reported on the negative impact late payments had on their small businesses. This Caucasian female owner of a construction-related company reported that late payments from prime contractors have had a devastating effect on her small business:

Our company had problems with the IRS which were generated by non payments from general contractors. The City of Oakland paid the general contractor and they refused to pay us. So, we had to operate without money and we paid our payroll first. We [were forced to] let our taxes and our workmen's compensation insurance [become] overdue.

This Caucasian female owner of a professional services firm for 30 years reported that she had asked for a 60-day payment clause in her subcontract with prime contractors to avoid late payments:

We [were subcontractors] on a project and we included a clause in our subcontract that required payment in 60 days because we are a small business. Otherwise, payments can drag out five to six months before we receive payment from prime [contractors].

Even though we wrote a 60-day [payment clause in our subcontract] we waited over 60 days before were paid by that [prime contractor]. Unfortunately, there were no penalties written into the contract. Typically, prime contractors do not give us reasons [why they are late]. They will say, 'Oh, yeah we are almost ready to cut the check.' Occasionally they will say, 'We have not been paid yet, so we are not paying you.' We are on the bottom of the totem pole so we are the last to get paid.

This Caucasian female owner of a professional services firm waited up to four months to receive payments from prime contractors:

I have had payments that were received three or four months after the last of the work was completed. I [consider] six weeks as a late payment because I'm on my own. I do not



have another source of income and I rely on those payments. Late payments create a lot of stress in regards to paying bills.

A minority female owner of a services firm explained the effects of late payments on her small business:

Since we do a lot of government contracting, I am always robbing Peter to pay Paul because construction [prime contractors] are notoriously late. I have had to use my line of credit and my personal funds.

A Caucasian female owner of a professional services firm described how the impact of late payments had affected her small business:

Late payments have had a very profound impact on my business. We have to pay our [employees] before we get paid, so we have to front that money. This can make small businesses less competitive.

VII. PUBLIC SECTOR VS. PRIVATE SECTOR

A majority of the interviewees reported why they prefer to work in the public sector. Several business owners explained that the work they received from the public sector had been a major factor in keeping their business solvent.

Public sector work had been the mainstay for this minority male owner for 20 years of a professional services firm:

The public sector work we have worked on in the federal government has been excellent. I have not had any problems with them. My [experience] working in the private sector has been substantially less than the public sector.

A minority male owner of a professional services firm who primarily works in the public sector does not believe his success would be as great in the private sector:

In the private sector I would not have much of a chance [working] in construction. There are no laws or rules to mandate prime contractors to work with minority businesses. But, it's a well-known fact in the construction industry that if you [are not well connected], it will [be difficult to get work].



A minority female owner of a professional services company also reported that most of her work comes from the public sector:

Usually, I pretty much [work] in the public sector. I find trying to obtain work in the private sector much more difficult.

This minority female owner of a services company reported that the public sector had helped sustained her business:

We are tremendously more successful in the public sector than in the commercial sector. It is very hard to get your foot in the door or your face of color in the door in the commercial arena.

A minority male owner of an architectural firm believed that M/WBE participation requirements are the reason why his company receives more work from the public sector:

We receive more work from the public sector. We have tried to get more private work, but we have not been successful. Due to M/WBE participation requirements in the public [sector] we receive more work in that area.

This Caucasian male owner of a services company explained why he prefers the public sector:

I think the people [in the public sector] are nicer. They are not under the gun and there are no deadlines.

A minority male owner of a professional services firm for over several decades described the work he performs in the public sector as rewarding and gratifying:

The public sector is definitely a little bit more democratic. In the private sector, they will pick whomever they want. But, the work that we do in the public sector tends to be more rewarding and gratifying. That is one of the reasons we pursue work in the public sector. It's not as lucrative as the private sector.



However, this minority female owner of a professional services firm believed the public sector is too bureaucratic:

The public sector has much more bureaucracy and paperwork than the public sector.

This minority female owner also believed that the public sector is challenged by too much bureaucracy:

When I worked with the City of Oakland [the project] was very smooth. But, it was the bureaucratic process that was challenging.

A minority female owner of an architectural firm believed the public sector burdens small businesses with too much paperwork. But, she also reported that payments are more reliable from the public sector:

The public sector [requires] a lot more paperwork. In the private sector, you can get a job from a handshake. Payments from the public sector are much more reliable than the private sector, where people tend not to pay.

A minority male owner of a professional services firm explained why he is deterred from working in the public sector:

We have [received] more business in the private sector. The public sector bid packages are overwhelming. This can make or break my business. A lot of small business owners wear several hats as far as responsibilities go. And, to muddle through a [voluminous] public bid package can be problematic.

A Caucasian female owner of a professional services firm explained what she believed are the disadvantages of trying to obtain work from the public sector:

In the public sector there seems to be a lot more paperwork and is harder to obtain work because of competition with large companies. Also, the public sector has a lot more red tape [that can prevent small businesses] from getting a foot in the door.



A minority female owner of a professional services firm reported that she solicits work equally from the private and public sectors:

I put the same amount of energy to obtain business in the public sector as I do in the private sector. Both sectors are governed by relationships. People tend to work with people they know and like. So, you have to put the same amount of energy in order to get work from the public sector or private sector. Just because the public sector releases RFP's does not necessarily mean the contract will be awarded to the low bidder. A lot of [decisions] are qualifications-based.

This minority female owner of a professional services firm for 25 years described what she believed are the differences between the public and private sectors:

The public sector is notoriously slow in paying their prime contractors. The private sector is a lot more organized and they seem to [prefer] more immediate results than government agencies.

A Caucasian male owner of an engineering firm for 60 years described the public sector as cumbersome and bureaucratic:

The public sector tends to be more cumbersome and they have definite limits on their flexibility. When a particular job situation changes, they are less able to adopt or deal with changes because of budgetary constraints and bureaucratic limitations. The private industry has much more flexibility.

VIII. COMMENTS ABOUT THE CITY'S L/SLBE PROGRAM

The City of Oakland and the Redevelopment Agency Local and Small, Local Business Enterprise (L/SLBE) policy established goals for participation of certified Local Business Enterprises (LBEs) and (SLBEs) in City contracts. Construction goals for contracts valued more than \$100,000 and professional services contracts valued less than \$50,000 is 20 percent. The 20 percent goal must be met with a minimum of 10 percent for LBEs or Local Not For Profit Business Enterprises and 10 percent SLBEs or Small Local Not For Profit Business Enterprises.



The City of Oakland certifies for both for-profit and not for profit L/SLBE businesses. Eligibility for-profit and not for profit businesses include having an established operation located in the City of Oakland and fully operational for at least twelve consecutive months prior to applying for certification. A majority of the interviewees believed the City's L/SLBE program is valuable and is needed for small, female and minority businesses.

A minority male owner of a professional services firm believed the City's program is valuable for local residents:

I think the City's L/SLBE program is valuable. I am aware of several projects within the City that require residents of the City of to work on those projects. So, I compliment them for that.

A minority male owner of an engineering firm believed that affirmative action programs are needed because the playing field is not level for minority businesses:

It seems like no matter how good we are, or what level of expertise we have, we are seldom called for work when there are no affirmative action participation [requirements]. Approximately 95 percent of our [work is due to] consciousness of our ethnicity. This is a battle I have fought for over 30 years. I'm sorry to say that in this day and age. We have always wanted to not be listed as a minority firm, just a firm on a fair playing field, but we have never been able to find that level playing field. The City's program is valuable because it opens up the door. The shortcomings of the program is how it is enforced, but without it there would be very little minority business participation. The City of Oakland has been progressive in terms of being inclusive. But, the City could do a lot more. I haven't had a project with the City of Oakland for ten years, and we submit [bids] all the time but we can't get any response.

This minority male owner of an architectural firm strongly believed the City's L/SLBE program is valuable for minority businesses:

I definitely believe the [City's program] is valuable. If it wasn't in place folks like I would not get an opportunity to show [public agencies] what we can do and compete with other firms. When we [get an opportunity to work] we always do a good job.



This Caucasian male owner of a professional services company also believed the City's program is valuable:

I think the [City's program] is valuable because everybody has a contribution to make [to public contracting]. And it gives [minority businesses the opportunity] to work on the playing field on the same level as other business owners. Therefore, I believe it's valuable in that respect.

A minority female owner of a services company believed the City's program is only valuable for businesses that are located in the City of Oakland:

I think it is potentially valuable to firms that are located in the City of Oakland. But, I don't know whether minority firms in the City of Oakland are actually being awarded contracts. It's only valuable if people are getting contracts. It certainly has not been valuable to me because my company is not located in the City of Oakland.

The City's program was described as being valuable by a Caucasian female owner of a construction-related firm:

The City's program is absolutely valuable. It's very valuable because it gives M/WBEs the opportunity to bid projects and be a preferred [vendor].

A Caucasian female owner of a professional services company also believed the City's program is valuable for small and minority-owned businesses:

The City's program is valuable because it gives small, women and minority-owned businesses an opportunity that they would not otherwise have. It empowers the small, minority-owned, and woman-owned businesses.

This minority female owner of a professional services firm for 25 years believed that her company would not have been successful if the City's program did not exist:

The City's L/SLBE program is very valuable. We have been involved in many contracts simply because we are woman-owned. And because that program exists, we are called upon for work [and without] it we would have not been [contacted].



A minority male owner of a professional services firm stated the following concerning the City's L/SLBE program:

It's valuable if it's enforced. If it's not enforced then it's not valuable.

A Caucasian female owner of a professional services company credited the City's program with helping to make her firm a success:

The City's M/WBE program has helped me get business. I think small businesses need that edge.

A minority male owner of a professional services firm for 26 years believed the City's L/SLBE program is needed to level the playing field for minority business owners:

The City's program is valuable because it is an advocate for those who have traditionally not been able to secure public contracts. And at least historically, the field was tilted away from them. I think the program as it exists today helps to level the playing field a little bit more. Hopefully, someday . . . the advocacy needed to promote minority programs won't be needed, but they are still needed today.

This minority male owner of a construction-related company believed the City's program is a valuable service to the City of Oakland:

The L/SLBE program provides a good service to the City of Oakland. It is needed because it's a one-stop place for small and minority contractors. The City of Oakland's [program] is valuable need and I think it should always be there.

This Caucasian female owner of an architectural firm explained why she believed the City's program is beneficial for female and minority-owned businesses:

I believe the City's program allows minorities and females that are new in the industry an equal footing.

A minority male owner of a construction-related company believed the City had a real commitment to increasing opportunities for minority and woman-owned businesses:

I think City managers really make an effort to contact small local businesses. And they are sincere in trying to open up bidding opportunities for City of Oakland contractors.



A minority male owner of a professional services firm believed that minority business owners received more opportunities when affirmative action programs included requirements to utilize minority businesses:

When affirmative action programs had participation requirements, there was more of a commitment to giving minority businesses public contract work. I [have been contacted by prime contractors] when there were goals. I have not been contacted by a contractor when there were no minority business goals.

However, this same business owner explained why he now believed the City's program is not valuable:

There are no opportunities [for minority businesses] to meet [procurement managers]. For example, with the City of Aurora I was given the opportunity to meet their [procurement] manager. But, with the City of Oakland I had to make cold calls to their managers. Also, I don't think the [City's program] is valuable because there are not clear rules and regulations regarding certification.

A minority male owner of a construction-related company explained why he believed the City's program could be improved:

I think the City's Program would be more valuable if they truly communicate with small and minority businesses to help promote them.

IX. POSITIVE STATEMENTS

Many interviewees reported on positive experiences they encountered with City staff and representatives from other agencies in the market area.

A Caucasian female owner of a professional services firm spoke highly of a City manager who assisted her in becoming certified and getting on the City's vendor list:

I ran into [name withheld] at a meeting and I went to her afterwards and I told her that I was having trouble getting certified as a small business. She was aghast and said, 'Call my office, and I'll have someone take care of that for you.' I went back to my office and called. And, within an hour, she



called me back and she told me exactly what to do. I was certified within a week. That was a very positive experience. She also had someone call me back and [inform] me on whom to call to get on the vendor's list.

This same business owner reported on a positive relationship she developed with City staff:

I have had very positive experiences with the people at the City of Oakland. I worked pretty closely with the Finance Department . . . and they were very responsive. They helped us get through all the red tape, so that experience was very positive.

A minority male owner of a professional services company for 26 years reported on his relationship with a City agency that has had a positive impact on his firm:

Working with the African American Museum and Library of Oakland has been very rewarding and positive for my company. The current director is [name withheld], who is a male Afro-American. They definitely encouraged me to bid on the contract and they made sure that I was fully apprised of all the demands that the contract required.

A minority male owner of a construction-related company praised both the City and County:

[Name withheld] at the City of Oakland and [name withheld] at the County of Alameda have given [my company] a fair shake. As a matter of fact, I would give them both praises.

A minority male owner of an engineering firm for 17 years spoke highly of the City's efforts in creating more opportunities for minority businesses:

I feel that some of the leaders at the City of Oakland have been pushing for more opportunities for minorities. I think that they have tried really hard to recognize the disparities with minority [businesses]:

This minority male owner of a services firm also spoke highly of one City manager:

A gentleman who works with special events for the City was very helpful in telling me what he wanted [for a project we worked on].



A minority female owner of a professional services firm spoke positively of a program sponsored by the County's Department of Public Works:

The Public Works Agency was really helpful. Their Business Outreach Bureau was particularly helpful because they explained the procurement process in manageable segments and they also sponsor workshops to assist business owners in completing their paperwork or certification documentation.

A Caucasian male owner of a professional services company received assistance from a City employee in his effort to secure a City contract:

There was a lady at the City of Oakland who was sincere in trying to help us get work with the City.

A minority male owner of a professional services company reported that a City employee referred her to procurement managers in an effort to get work:

A woman at the Port Authority gave me the names of a couple managers and she coached me on their [procurement needs].

A minority male owner of a professional services firm reported that several City managers supported his company while working on City projects:

A manager on a school project stood up for us against the [prime] contractor. Also, other managers with the City of Oakland were very helpful. They went a little beyond what they were required to do.

A Caucasian female owner of a professional services company for 25 years reported on a manager that assisted her company in receiving work with the City:

The manager in the Office of Equal Opportunity and Access has helped us get jobs. She is extremely helpful.

A Caucasian female owner of a construction-related company explained that the employees at the Port of Oakland assisted her small business:

The Port of Oakland was always very helpful to us. They let us look at the plans and specifications so that we could determine if we were capable of doing the work. We are



also in a mentoring program that forces people to be a little more helpful.

A minority male owner of a construction-related company spoke highly of several local municipalities:

We had a contract with Santa Clara County Parks and Recreation and their manager was very helpful to us. We also received assistance from managers at the San Francisco Redevelopment Agency around issues of payment.

A minority female owner of a professional services company reported that a City manager provided assistance to her company that was beyond the type of assistance she is accustomed to receiving:

A manager at the City of Oakland's Small Business Administration was extremely helpful. She gave me the details of what was necessary to become certified as well as the required forms. I could have easily downloaded the forms, but she was very aggressive in making sure I got my hands on the right documents. No one has ever gone out of their way like that for my company, or shown that type of interest. Also, the Small Business Administration's website is good in terms of [answering] general questions regarding starting a business.

A female owner of a professional services company also spoke highly about the services offered at the Small Business Administration:

The Small Business Administration has been very helpful through their Small Business Development Center. They offer classes on different subject matters for small business owners.

X. RECOMMENDATIONS

The interviewees suggested ways for increasing the participation of minority and woman-owned businesses on City and other market area agencies contracts. They ranged from a stronger commitment from City decision-makers, the establishment of participation goals for minority and woman-owned businesses, the elimination of liability and worker's compensation insurance for small business owners to more monitoring to ensure that the compliance points are applied by general contractors.



A Caucasian female owner of a construction-related company suggested that the City waive liability and worker's compensation insurance for small business owners:

The cost of doing business for a small business is higher than bigger businesses. Since the City of Oakland and the County of Alameda want minority businesses to grow, I would like to see them [waive] liability and workmen's compensation insurance for small businesses. This would give everybody an equal opportunity to make a profit. The way it is now, it will take twice as long for minority businesses to grow, if they ever get over the hump.

This same business owner suggested stricter monitoring on City prime contractors:

Also, there needs to be more monitoring to ensure that the compliance points are actually applied by general contractors. And, I would also like for a policy to be implemented that when a minority contractor is awarded a contract they must perform the entire scope [that was subcontracted]. We have worked on projects where we were only allowed to a little bit of [the scope of work]. I have worked on a \$300,000 contract and my scope was reduced to \$85,000 and this needs to be stopped.

A minority female owner of a professional services firm recommends the establishment of a small business council to assist the City in identifying opportunities for small business owners:

It would be helpful to have a small business council look into the structure of some of the bids to assist the City and other agencies in putting together bid packages that are not detrimental to small businesses. This would be helpful because these business owners understand the dynamics and challenges of small businesses.

This minority female owner of a professional services firm recommends setting aside contracts for small businesses:

I think there definitely needs to be guaranteed contracts for small businesses. I know this has been [implemented] on the federal level and the City of Oakland [should duplicate their efforts].



A minority male owner of a professional services firm explained what he believed is needed to be successful as a small business owner in the City:

In order to be successful, I need to actually make contact and gain referrals to [procurement managers]. It is a real challenge to be seen as a viable candidate for work. Although there have been occasions where I demonstrated that I'm capable and competent to work with people at all levels. We need to be given a real opportunity to learn what kind of jobs [exist], how to become qualified for those opportunities and a chance to demonstrate our service.

This minority male owner of an architectural firm explained what could be done to help M/WBEs compete for City contracts:

The implementation of M/WBE participation points [in the evaluation process] would make a more level playing field.

A Caucasian female owner of a professional services firm for 30 years recommends the City implement a more efficient method of notifying business owners of upcoming contracting opportunities:

Agencies should take more responsibility for notifying contractors [of upcoming bid opportunities], particularly the City of Oakland. We pay business taxes to the City of Oakland and we don't want to spend a lot of time scrambling around to figure out what are their [upcoming] projects. I don't mind getting on a bid list, but I don't want to go through a huge amount of paperwork to prove that I'm qualified, either. When I [submit] a proposal all of my qualifications are in my proposal. But, I think the City of Oakland could be a little more forthcoming with how it operates and what kinds of categories of work they actually need.

This Caucasian female owner of a professional services firm also recommends that the City disseminate its bid notices in a manner that is beneficial for small business owners:

There should be more outreach from the City of Oakland in reference to bid notices, upcoming contracts and information on how to do business with the City.



A minority female owner of an architectural firm recommends a clearinghouse that would disseminate upcoming contracting opportunities for local agencies:

A clearinghouse that would give notifications for [upcoming] work [from local agencies] would be better than gathering the information from various web sites.

XI. SUMMARY

An overwhelming majority of the interviewees explained why they believe the City's L/SLBE program as well as other market area agencies L/SLBE programs are valuable for small, women, and minority businesses. Many of the interviewers credited L/SLBE programs with maintaining their businesses. When asked whether they had been contacted by a prime contractor to fulfill a L/SLBE goal the overwhelming response was yes. However, when the interviewees were asked whether they were contacted by prime contractors to submit a bid when there was no L/SLBE goal, the overwhelming response was no.

Conversely, problems with the City's bid process were a significant factor in preventing the interviewees from participating in the City's contracting opportunities. Many stated that bid opportunities are difficult to identify and they typically do not have the time to seek them out. Placement on bidders lists were also reported as a barrier for small business owners. Several interviewees described their attempts to get on the City's bidder list to no avail. Inadequate lead time to respond to the City's and prime contractors' bid requests was reported as another significant barrier. The interviewees explained that the impact of inadequate lead time frequently resulted in lost business opportunities.

The interviewees reported that they were unable to compete for public contract work because they were denied financial assistance from local financing institutions. Additionally, many interviewees expressed other concerns about being barred from City contracting. They complained that the City preferred to work with the same contractors who also belonged to the good old boys network. The business owners lamented that this practice made it impossible to compete.

Racial barriers were also reported by the interviewees. It was reported that some prime contractors preferred not to work with minority subcontractors. Also, many of the women interviewees believed there are still obstacles that women business owners have to overcome, while their male counterparts are exempt. The female interviewees reported on instances where they were not taken seriously as business owners or spoken to in an inappropriate and unprofessional manner.



The majority of the recommendations centered on strategies to increase the participation of minority and woman-owned businesses on City contracts. They ranged from setting aside contracts for minority and women business owners to the use of L/SLBE subcontracting participation points.

Finally, many City managers were given accolades by the business owners for their hard work and dedication in supporting and sustaining small, minority and women businesses. The effort of staff to ensure that fair and even handed implementation of the City's procurement policy was also lauded by the interviewees. Table 10.01 lists a summary of identified barriers through the anecdotal interviews.



Table 10.01 Summary of Findings Concerning Current Barriers Against Ethnic/Gender Groups

Type of Evidence	African Americans	Hispanic Americans	Asian Americans	Caucasian Females
BUSINESS BARRIERS				
Barriers Based on Race	✓	✓		
Barriers Based on Gender	✓			✓
BARRIERS CREATED BY THE CONTRACTOR COMMUNITY				
Difficulty Breaking into Contracting Network	✓			✓
Good Old Boys Network	✓			✓
DIFFICULTIES IN BID PROCESS				
Difficulty Obtaining Bid Information	✓		✓	✓
Inadequate Lead Time	✓		✓	✓
Supplier Problems	✓			✓

Table 10.01 Summary of Findings Concerning Current Barriers Against Ethnic/Gender Groups

Type of Evidence	African Americans	Hispanic Americans	Asian Americans	Caucasian Females
FINANCIAL BARRIERS				
Difficulty Obtaining Financing or Credit	✓			✓
Late Payment by the City	✓		✓	
Late Payment by Prime Contractors	✓			✓
CERTIFICATION ISSUES				
Paperwork Issues or Problems With Certification Procedures	✓		✓	✓

City of Oakland and Redevelopment Agency

Fairness in Purchasing and Contracting Disparity Study

Volume II

Submitted to:
City of Oakland and
Redevelopment Agency

Submitted by:
Mason Tillman Associates, Ltd.



MASON TILLMAN
ASSOCIATES, LTD

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Table of Contents

CHAPTER 1: RECOMMENDATIONS	1-1
I. INTRODUCTION	1-1
II. LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM ASSESSMENT	1-1
A. Local and Small Local Business Enterprise Program History	1-1
B. Local and Small Local Business Enterprise Program Components	1-2
III. RACE AND GENDER-NEUTRAL REMEDIES	1-11
A. Local and Small Local Business Program Enhancements	1-11
B. Procurement Strategies	1-16
C. Additional Administrative Recommendations	1-21
D. Website Enhancements	1-25
IV. DATA MANAGEMENT RECOMMENDATIONS	1-27
A. Recommendations for a Subcontractor Data Tracking System	1-28
CHAPTER 2: NOT-FOR-PROFIT ANALYSIS	2-1
I. INTRODUCTION	2-1
II. METHODOLOGY: IDENTIFICATION OF NOT-FOR-PROFIT VENDORS	2-2
A. Comptroller's Database	2-2



Table of Contents Continued

B.	Survey	2-2
III.	STUDY FINDINGS	2-3
A.	Utilization of Not-for-Profit Organizations by Type of Service and Location	2-3
B.	Types of Services Not-for-Profit Organizations Provide	2-3
C.	Top 25 Utilized Not-for-Profit Organizations	2-5
D.	Neighborhood Designations	2-7
IV.	PROFILE OF UTILIZED NOT-FOR-PROFIT ORGANIZATIONS	2-9
A.	Type of Organization	2-9
B.	Issue Area	2-10
C.	Ethnicity and Gender of Target Populations for Not-for-Profit Organizations	2-11
D.	Primary Funding Sources	2-12
E.	Location of Headquarters	2-13
V.	CAPACITY CHARACTERISTICS OF NOT-FOR- PROFIT ORGANIZATIONS	2-14
A.	Years in Operation	2-14
B.	Number of Offices	2-15
C.	Number of Paid Employees	2-15
VI.	COMPARISON OF NOT-FOR-PROFIT CAPACITY CHARACTERISTICS, BY ETHNICITY AND GENDER	2-16
A.	Profile of Not-for-Profit Organizations by Ethnicity and Gender	2-16
B.	Years in Operation, by Ethnicity and Gender	2-17
C.	Number of Offices, by Ethnicity and Gender	2-19
D.	Number of Paid Employees, by Ethnicity and Gender	2-21
VII.	CONCLUSION	2-23



Table of Contents Continued

A.	Scope of the Research	2-23
B.	Key Study Findings	2-23
APPENDIX A		2-24



List of Tables

Table 1.01	Small Business Size Standards	1-4
Table 1.02	Outreach and Marketing Strategies	1-24
Table 2.01	Total Dollars Spent for Services Provided for the City by Not-for-Profit Organizations, by Type of Service	2-4
Table 2.02	Top 25 Utilized Not-for-Profit Organizations	2-6
Table 2.03	Total Dollars, by Oakland Neighborhood	2-9
Table 2.04	Type of Not-for-Profit Organizations	2-10
Table 2.05	Issue Area of Not-for-Profit Organizations	2-11
Table 2.06	Target Populations of Not-for-Profit Organizations	2-12
Table 2.07	Funding Sources of Not-for-Profit Organizations	2-13
Table 2.08	Location of Headquarters	2-14
Table 2.09	Years in Operation	2-15
Table 2.10	Number of Offices	2-15
Table 2.11	Number of Paid Employees	2-16
Table 2.12	Profile of Not-for-Profit Organizations, by Ethnicity and Gender	2-17
Table 2.13	Years in Operation, by Ethnicity and Gender	2-18
Table 2.14	Number of Offices, by Ethnicity and Gender	2-20
Table 2.15	Number of Employees, by Ethnicity and Gender	2-22



List of Figures

Figure 2.1 Neighborhood Designation Map 2-8



1

RECOMMENDATIONS

I. INTRODUCTION

Croson case law requires that the City of Oakland and Redevelopment Agency (City) consider, but not exhaust, race and gender-neutral initiatives before resorting to race-conscious remedies. This chapter provides specific race and gender-neutral program recommendations for future contracting programs that the City may implement to achieve parity in its contracting. The recommendations are based on a review of the Local and Small Local Business Enterprise (L/SLBE) Program and a statistical analysis of contracts awarded to minority and woman-owned business enterprises (M/WBEs). An overview of the L/SLBE Program is presented in *Small Local Business Enterprise Program Assessment*. The following section, *Race and Gender-Neutral Remedies*, contains recommendations specific to the L/SLBE Program and general procurement recommendations to improve the City's contracting activities. The final section, *Data Management Recommendations*, presents strategies to enhance data management practices and the systems used to track and monitor participation in City contracts and the procurement process.

II. LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM ASSESSMENT

A. Local and Small Local Business Enterprise Program History

The passage of Ordinance 9739 in 1979 established the City's Local Business Enterprise (LBE) Program. In 1993, City Council Resolution 69687 expanded the LBE Program to the current Local and Small Local Business Enterprise (L/SLBE) Program. The L/SLBE Program was enacted to increase Oakland-based business participation in City contracting and development projects, strengthen Oakland's economic base, and develop Oakland-based



businesses through joint ventures and mentor-protégé relationships. The L/SLBE Program is managed by the Office of Contract Compliance and Employment Services (OCCES).

B. Local and Small Local Business Enterprise Program Components

There are 19 key components of the L/SLBE Program. They are outlined in the Local and Small Local Business Enterprise Program Guide.

1. Certification Eligibility Criteria

a. Business Location and Status

In order to receive certification as an L/SLBE, the business must meet the following requirements:

- Domiciled within the geographical boundaries of the City of Oakland
- Operational for at least 12 consecutive months prior to applying for certification
- Possess a valid City of Oakland Business Tax Certificate issued no less than 12 months prior to applying for certification with current payments and an address that matches the current address of the business
- Maintain a fixed office that reflects a substantial presence in the geographical boundaries of the City of Oakland (Post Office boxes, temporary locations, and moveable work sites do not meet this requirement)
- Maintain availability of the owner and employees during normal operating hours
- Comply with all applicable Federal, State, and local regulations, including but not limited to the City of Oakland Zoning Regulations
- Be current and up-to-date on all taxes, fees, permit fees, and fines
- Possess and make available for inspection documentation citing the Oakland business street address, executed copies of past/ current contracts, Oakland Business Tax Certificate, federal tax identification number, executed lease or other written agreement for occupancy of the Oakland office, business cards, and utility bills
- Respond to City requests for additional information



- Present copies of federal tax returns showing gross revenues for the three most recent fiscal years

b. Ownership Criteria

- An eligible L/SLBE must be an independent business. The ownership and control of the L/SLBE must be substantial and go beyond the pro forma ownership of the firm as reflected in its ownership documents. In determining whether a business is independent, the City will consider all relevant factors such as: date the business was started, adequacy of its resources for the work of the contract, and the nature of its financial or other relationships with other firms.
- The owner of the business must have the power to direct its management and policies, oversee the day-to-day operations, and make major decisions. If the actual management of the firm is contracted out to individuals other than the owner, those persons who have the power to hire and fire the managers are considered to control the business. The business may not be subject to any formal or informal restrictions that would limit the discretion of the owner. The owner may not be subject to limitations imposed by any non-local owner. Firms whose ownership and/or control have changed since the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the change.
- The contribution of capital or expertise by the owner must be real and substantial. Any relationship between an L/SLBE and a non-L/SLBE is carefully reviewed to determine if the interest of the non-L/SLBE conflicts with the ownership and independence requirements. An L/SLBE will be considered bona fide if the ownership interests are real and continuing and not created solely to meet the City goals for L/SLBE participation. The L/SLBEs included in the contract must perform commercially useful services and not merely act as a passive conduit. If the City has reason to question the ownership of a business, the burden of proof is on the claimant to provide documentation to prove its status as an L/SLBE.

c. Business Size Standards

Size is calculated by industry on the gross revenues of the firm for the three most recent fiscal years. Thirty percent of the United States Small Business Administration's Small Business Size is the standard for the City.¹ Table 1.01 below compares the United States Small Business Administration's Small Business Size Standard's with the City's size standards.

¹ U.S. Small Business Administration, *Table of Small Business Size Standards*, Effective January 28, 2004.



Table 1.01 Small Business Size Standards

Category	U.S. Small Business Administration	City of Oakland
Architecture and engineering	\$4 million	\$1.2 million
Computer and software	\$7.5 million	\$2.25 million
Construction building trades	\$28.5 million	\$8.55 million
Construction specialty trades	\$12 million	\$3.6 million
Certified Public Accountant	\$7 million	\$2.1 million
Goods	\$6 to 24.5 million	\$1.8 to 7.35 million
Insurance	\$6.0 million	\$1.8 million
Management	\$4 million	\$1.2 million
Non store electronic retailer	\$21 million	\$6.3 million
Temporary agencies	\$11.5 million	\$3.45 million

d. Certification Process

- Application

Applications are available for downloading on the Office of Contract Compliance and Employment Services (OCCES) website. Applications may also be requested by mail, telephone, facsimile, e-mail, or in person. The application must be notarized and submitted with a copy of the firm’s most recent City of Oakland Business Tax Certificate. Small business applications must also include the business’s three most recent tax returns.

- Review Process

The City uses a three-tier certification process as its standard operating procedure, which determines the degree of difficulty and time necessary to complete a review of an application.

- 1) Tier I: Applications are deemed complete and accurate by staff. Analysis, recommendation, and notification regarding the status of the application to approve or deny certification is completed within 10 business days. The applications reviewed at this tier are usually LBE re-certifications.



- 2) Tier II: Upon review, the staff finds that the application requires additional information. If the application is incomplete, additional information must be submitted within 10 business days. Analysis, recommendation, and notification regarding the status of the application to approve or deny certification is completed within 10 business days after the application is deemed to be complete.
- 3) Tier III: The application necessitates a desk audit and site visit, both of which will be conducted within 15 business days. Failure or refusal to provide required information or failure to cooperate voids the application. If the desk audit and site visit result in a satisfactory determination, analysis, recommendation, and notification regarding the status of the application to certify or deny certification is completed within 10 business days.

During the certification process, the City may review any documentation or information it deems necessary to determine if the applicant meets the requirements to receive certification as an L/SLBE. All applicants for L/SLBE certification must submit an application at least three weeks prior to a bid opening or submission of a proposal.

Certification with another agency does not constitute certification with the City. Firms or individuals who knowingly submit false information concerning their L/SLBE status are subject to action(s) for fraud under the State and Federal False Claims Acts and will be barred from bidding on future City work for a period of three years.

e. Other Considerations

The City gives special consideration to firms under the following conditions:

- Newly formed firms and firms whose ownership has changed since the date of the advertisement or the contract are closely scrutinized to determine the reasons for the timing of the formation or change in the firm.
- Previous and/or continuing employer-employee relationships between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.
- Any relationship between an L/SLBE and a non-L/SLBE is carefully reviewed to determine if the interest of the non-L/SLBE conflicts with the ownership and independence requirements.
- A joint venture is eligible for certification if the L/SLBE partner of the joint venture meets the standards for eligibility. The L/SLBE partner must be responsible for a clearly defined portion of the work and share in the ownership, control, management



responsibilities, risks, and profits of the joint venture. The City Attorney's office must approve joint venture agreements.

- Both parties in a mentor-protégé team must be individually certified prior to the submission of a mentor-protégé agreement for approval.

f. Re-Certification Process

A City certification is valid for two years, unless otherwise specified. At the end of the certification period, the business may apply for re-certification.

g. Certification Denial Appeal

Any firm that believes that it has been wrongly denied certification may file an appeal in writing, which must be signed and dated. The appeal must be filed within 30 days after the date of denial. The City may extend the time for filing or waive the time limit in the interest of justice but must specify in writing the reason for doing so. Third parties that have reason to believe that another firm was wrongfully denied or granted certification may advise the City in writing; however, this does not constitute an appeal. The City ensures a prompt investigation and may de-certify an L/SLBE at its discretion pending the outcome of the investigation.

2. Program Elements

a. Program Requirements

The L/SLBE Program mandates 20 percent minimum participation of certified L/SLBEs for all construction contracts valued over \$100,000 and all professional services contracts valued over \$50,000. All construction contracts valued below \$100,000 and all professional services contracts valued below \$50,000 must include outreach to certified L/SLBEs so that the solicitation is provided to at least three local firms.

The 20 percent local business participation requirement must be met with a minimum participation of 10 percent by LBEs and 10 percent by SLBEs. Alternatively, the full 20 percent requirement may be met with SLBE participation. On construction projects that include truckers, 20 percent of the trucking dollars must be allocated to certified Local Truckers.

There must be at least three certified L/SLBEs in the industry, trade, or profession called for in any particular contract in order for the L/SLBE participation requirements to apply. If at least three L/SLBEs are not available, the participation requirement is either waived or reduced. The awarding authority may conduct an availability analysis if there is reason to believe that the availability of L/SLBE firms will not satisfy the 20 percent requirement.



Each contractor is required to submit a completed Subcontractor, Supplier, and Trucking Listing form (Schedule R) naming the subcontractor, supplier, and/or trucker included in the bid. The trade or service to be provided, bid amounts, and certification status must also be included in the Schedule R. This award information will be used to calculate the level of L/SLBE participation. Unless a requirement is waived due to limited availability, there is a 20 percent minimum requirement of L/SLBE participation.

b. Program Incentives

The City uses bid discounts to provide L/SLBE preferences in its contracts. Bid discounts are applied at a rate of one percent, or one preference point for every 10 percent of contract dollars allotted to L/SLBE certified firms. For example, a prime contractor receives a two percent bid discount or two preference points for meeting the 20 percent L/SLBE participation requirement. A prime contractor will also receive an additional one percent bid discount or one preference point for each additional 10 percent of L/SLBE participation. No more than five percent in bid discounts or five preference points may be applied to any single contract.

Prime contractors that include L/SLBE subcontractor participation that exceeds 50 percent of the contract amount may bank the additional points and apply them to projects within a 12-month period following the completion of the contract on which the extra credit was earned.

c. Maintaining Participation

Incentives are earned based on the level of participation proposed in the bid, proposal, or statement of qualification. Once the contract is awarded, the participation level for which the incentives were earned must be maintained. Prime contractors must maintain the L/SLBE percentages indicated at the time the contract was awarded.

If the prime contractors fail to maintain L/SLBE participation requirements, a penalty equal to the amount that should have been awarded to L/SLBEs may be imposed and/or the work may be stopped.

d. Substitution of Listed Subcontractors

Prime contractors cannot substitute a subcontractor listed in a contract without prior written approval. Substitutions may be granted if the subcontractor does the following:

- Provides a written statement agreeing to the substitution
- Does not execute the contract despite having enough time to do so



- Becomes insolvent
- Fails or refuses to satisfy contractual agreements
- Fails to meet contract insurance requirements

Before approving the prime contractor's request for substitution, the City must give written notice to the subcontractor of the prime contractor's request for substitution and the reason for the request. The subcontractor will have five business days to submit a written objection to the City. If written objections are filed, the City will give written notice of a hearing date to the prime contractor and subcontractor within five business days. At the hearing, the prime contractor and subcontractor will present their respective cases, and the Hearing Officer will make a final decision, which will be issued in writing to all parties. The absence of an objection from the subcontractor constitutes a consent to the substitution. The City may also initiate a substitution if it determines that the work performed by the subcontractor is substantially unsatisfactory, not in accordance with the contract agreement, or substantially delaying or disrupting the progress of the project.

e. Emergency Contracts

Ordinance 7937 CMS states that local businesses will be given first priority in the performance of emergency work. The City's goal is that 75 percent of emergency contract dollars must be spent with LBEs and at least two thirds must be spent with SLBEs.

f. Compliance Monitoring and Penalties

The contractor must provide a copy of all agreements, purchase orders, and/or other verification of the total amount to be paid to each subcontractor prior to commencement of the prime contractor's work. A penalty of one percent of the contract amount or \$1,000 per day (whichever is less) may be applied if records or documents are not provided within ten calendar days. If the contractor does not provide the information, the City will deem such refusal as a breach of contract, and the City may terminate the contract and/or stop the work until the contractor provides the information. In addition, the contractor may be prohibited from participating in future City contracts for a period ranging from six months to five years and may lose L/SLBE certification.

Prime contractors and subcontractors must submit progress payment reports to the user department to verify the prime contractor's payments to subcontractors. The prime reports will document the payments made to L/SLBEs, and the subcontract reports will verify the amount received. An Exit Report and Affidavit form should be attached to the final progress payment application.



g. Prevailing Wages

California prevailing wage rates apply to all public works contracts as set forth in California Labor Code Sections 1720-1720.4 and 1771. Workers employed on construction, alteration, or demolition projects that use public funds must be paid the prevailing wage, which is the basic hourly rate the majority of workers in a particular craft or classification earn.

The contractor shall ensure that all workers receive the prevailing wage. This requirement will be monitored and enforced by the City. Any worker who has been paid less than the prevailing wage has the right to commence an action or proceeding against the employer for the difference between the prevailing wage rate and the amount received for each calendar day or portion thereof, as per the provisions outlined in the L/SLBE Program Guide.

h. Winning Compliance

- Local Subcontracting Outreach

Each awarding City agency, department, and division that is authorized to award contracts must post City-funded contracting opportunities on the City's website. The Office of Contract Compliance and Employment Services (OCCES) maintains a list of local businesses, their trade or profession, contact information, and certification status. Each entity is required to solicit responses from certified firms appropriate to the nature and scope of the particular solicitation.

- Mentor-Protégé Agreements

On a case-by-case basis, the City allows a five percent preference for Mentor-Protégé teams on construction and professional services contracts. If a prime contractor develops a "Mentor-Protégé" relationship with a certified L/SLBE, the mentor will receive credits against City goals, especially when availability is zero. In order to earn such credit, a Mentor-Protégé Agreement must be submitted for approval to the OCCES prior to the project bid date or proposal due date.

A written Mentor-Protégé Agreement must be completed by both parties and notarized, and the term of the agreement must be the duration of the project. For the duration of the project, the mentor and protégé must each provide the OCCES with a monthly report of the skills the mentor provides the protégé. These shall include but not be limited to:

- 1) Number of hours the mentor and protégé expended to fulfill the contract
- 2) Managerial assistance provided
- 3) Technical assistance provided



- 4) Bonding assistance provided
- 5) Number of private sector projects bid on by the team
- 6) Number of private sector projects awarded to the team
- 7) Financial assistance provided

No member of the team is allowed to bid or participate independently on a City contract if the team is bidding or participating. The protégé must prove that it is an independent business operation prior to and during the Mentor-Protégé Agreement.

- Joint Venture Agreements

A non-L/SLBE may partner with an L/SLBE as a joint venture to meet the contract goal. The agreement must be approved by the City Administrator, and it must remain in effect at least for the duration of the project. Joint ventures receive bid discounts depending on the level of L/SLBE participation. Members of a joint venture must submit a Joint Venture Management Plan and/or a Joint Venture Agreement at least two weeks prior to the bid due date. Each agreement or management plan must at least include:

- 1) Detailed explanation of the financial contribution of each partner
- 2) List of the personnel and equipment used by each partner
- 3) Detailed breakdown of each partner's responsibilities
- 4) Explanation of the distribution of profits and losses
- 5) Bonding capacity of each partner
- 6) Management or incentive fees available for any of the partners, if any

- i. Earning Credits from Non-City-Funded Project**

The City allows contractors to accumulate credits for hiring L/SLBEs on non-City-funded projects and earn credits for the participation of L/SLBEs beyond the 50 percent threshold on City-funded projects. Prime contractors may bank extra credit based on dollars paid to certified L/SLBEs on non-City-funded projects and apply a maximum of two percent of the banked credits toward meeting L/SLBE participation requirements on City contracts.



j. City-Assisted Private Developments

For City-assisted private developments, such as Disposition and Development Agreements, affordable housing projects, and loans for construction projects, prime contractors are required to solicit competitive bids from subcontractors and comply with the L/SLBE Program's goals and objectives. Prime contractors must give L/SLBE contractors a bid discount up to five percent and LBE contractors a two percent bid discount.

k. Incentives for Supporting Local Business Participation on City Contracts

Each year, the City Administrator will award a certificate of achievement to the City agency that provides the highest level of support to L/SLBEs.

l. Other Program Elements

Prime contractors must not impose any unreasonable additional criteria on subcontractors that are not required by the City. Prime contractors also must not selectively impose criteria upon L/SLBEs that are not applied to other businesses in similar contractual relationships. All bids, proposals, and qualifications submitted to the City from prime contractors and subcontractors shall be made available to the public upon bid opening, as required by the Sunshine Ordinance.

III. RACE AND GENDER-NEUTRAL REMEDIES

Mason Tillman makes specific race and gender-neutral program recommendations for the procurement process. These recommendations incorporate a number of best management practices that could improve the City's procurement process in the various industries. These recommendations can also serve as a guide for the City as it formulates policy and procedures to achieve equity and address the documented disparity in M/WBE contracting.

The recommendations as proposed include program enhancement and data management remedies to increase contracting with L/SLBEs and M/WBEs. These recommendations would also benefit all small businesses interested in doing business with the City. Race and gender-specific recommendations are not included in this chapter.

A. Local and Small Local Business Program Enhancements

This section contains race and gender-neutral remedies applicable to the City's L/SLBE Program. Since the L/SLBE Program is quite comprehensive, the recommendations are offered to enhance the existing program components in order to increase the use of L/SLBEs



in all industries. Mason Tillman's recommendations as they apply to specific components of the Program are outlined below.

1. Program Requirements

Below are programmatic elements of the City's L/SLBE Program Guide for which Mason Tillman offers enhancements.

a. Review Size Standards

The City's current size standards reflect 30 percent of the business sizes defined by the U.S. Small Business Administration (SBA). The objective of the size standards is to include City businesses that are indeed small and can benefit the most from participation in the L/SLBE Program. Recently, SBA size standards have increased. Mason Tillman recommends that the City periodically review its size standards and tailor them to correspond with the sizes of the City's businesses. The size profile of the City's businesses can be derived from the business license data. Such a review would allow the City to base its size standards on conditions in its own environment, rather than the United States as a whole.

b. Create a Very Small Business Enterprise Category

Mason Tillman recommends the City should also expand its L/SLBE program to include a Very Small Local Business Enterprise category. The criteria for a business to qualify as a Very Small Business Enterprise are: 1) Gross sales do not exceed \$375,000 per year; 2) The business is domiciled in Oakland for up to six (6) months; and 3) The business holds a valid Oakland business license. The Very Small Business Enterprise certification will be valid for one year and is renewable for one two-year term. Therefore a small business can be certified as a Very Small Business Enterprise for no more than three (3) years.

c. Goal Setting

It is industry practice for corporations and the government to focus spending on their own market area. This is especially true with government agencies when the services are funded by local dollars. For example, the Alameda County Transportation Improvement Authority (ACTIA), which receives all funding from the local tax base, has established a Local Business goal of 70 percent and a Small Local Business goal of 30 percent for professional services. For construction, the goals are 60 percent for Local Business use and 20 percent for Small Local Business use. The Peralta Community College, which uses the State of California's Small Emerging Business standards, has set its Local Business goal at 25 percent. Alameda County has a 20 percent Small Local Emerging Business participation goal for all contracts. Given that local business goals in the Oakland market area range from 35 percent to 70 percent, it is recommended that the target overall local business goal be set at 50 percent.



A contract-specific goal will be set on each contract based on the availability of local businesses to perform the specific opportunities.

d. Maintaining Subcontractor Participation Levels

Under the L/SLBE Program requirements, the City has the option of imposing penalties on prime contractors that do not maintain L/SLBE participation. Mason Tillman recommends that the City impose a penalty equal to the amount that should have been awarded to L/SLBEs. Penalty fees can be assigned to a small business training fund.

e. Substitution of Listed Subcontractors

The subcontractor should have ten, rather than five business days to respond to prime contractors' requests for substitution which would allow subcontractors to prepare an adequate response to a prime contractor's request for their removal from a project. In addition, the Hearing Officer should be a certified mediator.

f. Satisfying Non-Compliance Shortfalls

To address a prime contractor's failure to meet their goal at the end of their contract, the City should use monetary penalties and earning credits. The prime contractor is assigned earning credits commensurate with the level of non-compliance. The earnings credit can be redeemed by the use of L/SLBEs on non-City-funded projects. The portion of the retainage equal to the amount of the earnings credits is withheld until the earnings credits are redeemed. These options should be used by the OCCES staff.

g. Unbundle Large Procurements into Smaller Contracts Where Feasible

Bundling occurs when small purchases are consolidated into one contract, or when goods or services previously purchased individually are grouped together in a single solicitation. The federal government has made contract unbundling a key element of its small business agenda.² Large contracts should be unbundled to maximize small business participation. During the data collection process for this Study, it was found that there were a number of large contracts awarded by the City. Currently, no City agencies provide programs designed to unbundle larger contracts. Multi-year price agreements and task orders are used to combine small purchases. The City should review these multi-year price agreements and task orders to see if they can be unbundled. Unbundling these large procurements would increase the opportunities for L/SLBEs to compete for City contracts.

² United States. The Office of Federal Procurement Policy (OFPP). *Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business*. Washington D.C. Executive Office of the President, October 2002.



In determining whether projects should be unbundled, the following criteria should be reviewed:

- Whether or not the project takes place in more than one location
- Size and complexity of the procurement
- Similarity of the goods and services procured
- Sequencing and delivery of the work
- Public safety issues and convenience
- Procurement division options

h. Small Contracts Rotation Program

A small contracts rotation program could be established for informal contracts in each of the four industries: construction, architecture and engineering, professional services, and goods and other services. This program would limit competition to certified SLBEs and ensure that quotations for informal contracts are solicited from a diverse pool of certified small businesses on a rotating basis. By awarding prime contracts, this program is a means for building the capacity of small businesses. Also, eligibility for membership in this program would serve as an incentive for businesses to become certified with the SLBE Program.

SLBE certification would qualify businesses as eligible for participation in the program. Lists of the approved contractors would be maintained by construction trade, architecture and engineering specialization, and type of professional services and goods and services. For the construction component, the business would have to submit its regular time and overtime prevailing wage rates and insurance certificates for approval. In addition, adjustment factors for the markup on the supplies as well as overhead costs and profit would be submitted for review. Upon approval of the contractor's fee structure, the approved rates would apply to all work orders. For other service industries, the business would pre-qualify by submitting its hourly rate schedule, overhead and profit rates, proof of insurance, and two examples of projects of similar size.

Work orders in all industries would be assigned on a rotating basis, and no business in the rotation would be eligible to receive a second assignment until all other businesses on the list had been offered at least one assignment.

On a regular schedule, perhaps as frequently as each quarter, there would be an open enrollment period. On a designated date during each period, a random list of the newly pre-qualified businesses would be appended to the end of the pre-qualified list.



Financial support and technical assistance should also be made available to firms that participate in the program. Financial incentives could include such items as prompt payment, waived bonding requirements, reduced liability insurance requirement, and mobilization payments to offset start-up costs. Firms would graduate from the program once they reach a certain size threshold or after participating in the program for a specified time period.

i. Compliance Monitoring and Penalties

- Require Reporting to the City

The prime contractor is required to submit reports to the using agency of progress payments to subcontractors. Prime contractors and subcontractors should be required to submit these reports to the OCCES on a monthly basis so that their compliance may be more closely monitored. In addition, these reports should be submitted to the Mayor, City Administrator, and City Council on a quarterly basis. They should also be published and posted on the OCCES website on a quarterly basis. This would require having a relational database to capture the data provided by prime contractors and subcontractors.

- Conduct Routine Post-Award Contract Compliance Monitoring

Monthly contract compliance monitoring should be conducted to ensure that the subcontractor participation listed in the bids, proposals, and statements of qualification is achieved throughout the duration of a contract. This type of monitoring would verify the prime contractor's commitments prior to and after the award of the contract. Consistent contract compliance should minimize the hardships experienced by L/SLBEs due to unauthorized substitutions and late payments.

The following contract compliance methods are recommended:

- 1) Track and report contract compliance in an electronic database
- 2) Require the monthly submission of a certified subcontractor participation report by the prime contractor with its payment request
- 3) Collect copies of the canceled checks written to subcontractors in order to verify payment information on a quarterly basis
- 4) Prepare a quarterly report, submit it to the City Council, and post it on the OCCES website



B. Procurement Strategies

Remedies that apply to various stages in the procurement process that would increase L/SLBE participation in the City's contracts through race and gender-neutral means are outlined below.

1. Pre-Bid

This section contains recommendations for the City to implement prior to the release of a bid for a City contract.

a. Networking Opportunities

The City should sponsor marketing forums for L/SLBEs to deliver technical presentations to City agencies, procurement personnel, contractors, and senior managers. The forums should be held at the City departments' offices and take place on a quarterly basis. City personnel should aggressively identify and notify L/SLBEs of the opportunity to make a presentation. Each City department should be required to advertise in trade publications that target L/SLBEs, thus informing them of the opportunity to make a presentation at the forum. The forums would allow L/SLBEs to become more familiar with procurement personnel, as well as increase the knowledge that City staff has of local businesses that may be used in City contracts.

b. Assess the Use of Sole Source Contracts

Sole source provisions in the City's procurement process allow for the award of contracts without a competitive bid process to businesses that are the sole providers of a given commodity or service.

All sole source contracts should be reviewed to determine if L/SLBE goals can be applied. Contracts proposed to be awarded as sole source contracts should be submitted to the OCCES for review and approval as a single source contract. Contracts that are proposed to be awarded as sole source procurements should also be posted on the City's website to allow other providers of the goods or services to make themselves known to the City.

c. Use Direct Contracting to Award Small Prime Contracts

Direct contracting occurs when separate contracts are awarded for specialty or non-license services which might otherwise be included as an item of work in a construction contract or within the scope of an architecture and engineering contract. Direct contracting would increase the opportunities for, and build the capacity of, small firms by allowing them to work as prime contractors. The Purchasing Division and the Oakland Public Library System are two City departments that reported the use of direct contracts. The practice of direct



contracting should be common to all City construction and architecture and engineering contracting.

As an addition to the categories of work presently identified by the City, construction support services, including trucking, demolition, and surveying, should be awarded as direct contracts and not as items of work in the general construction contract, when feasible.

Design services, which are not required to be performed by a licensed engineer, architect, or registered surveyor, should be awarded as direct contracts. These services include planning, environmental assessments, ecological services, cultural resource services, and testing services.

d. Establish a Direct Purchase Program for Construction Contracts

Under a direct purchase program, the general contractor includes the cost of construction materials and supplies as well as the supplier's name, quantities, and quotes in the bid. The City would produce a purchase order to pay the supplier directly, and the supplier would deliver the materials to the job site according to the contractor's schedule.

A direct purchase program would reduce the amount of the construction bid subject to a bond. For the purpose of bonding a job, the cost of supplies could be subtracted from the bid price, thereby reducing the amount of the contractor's bond.

This program can be beneficial to construction contractors, especially L/SLBEs, because the cost of the contract, and in turn the amount that has to be bonded, is reduced by the material costs included in the direct purchase. The cash flow required to pay the supplier in advance of receiving reimbursement for the materials from the prime contractor is also eliminated. Additionally, the supplier, knowing that it would receive direct payment from the City, may also give the L/SLBE a more competitive price, thereby reducing the overall bid price. It is notable that direct purchasing is currently used by the Purchasing Division on a limited basis.

e. Revise Insurance Requirements

Insurance requirements should be evaluated to ensure that smaller contracts do not carry a disproportionately high level of coverage. As a general practice, the City should implement standard insurance provisions applicable to all City agencies. The insurance requirements on small contracts should be eliminated; for all other contracts they should be set in relation to the actual contract liability amount. Prohibitive insurance requirements can be a disincentive to bidders, constitute a barrier to L/SLBEs, and increase the City's costs to procure construction services. Revised insurance requirements would attract more bidders, thus increasing competition and reducing costs. Any revisions to the insurance provisions should comply with statutory requirements.



Bonding should be eliminated for all informal contracts, and the City should establish an Owner-Controlled Insurance Program for all contracts to consolidate risk management costs and reduce the burden of insurance premiums for all vendors. The City would also benefit because the business passes the fee for insurance onto the City in its pricing.

f. Phase Retainage Requirements

Retainage is the percentage of the contract value withheld from each payment until the successful completion of a contract. Retainage should be eliminated for small contracts and reduced for all certified prime contractors. Moreover, the subcontractors' retainage should be released on an item-by-item basis as its work is completed and accepted. This practice would reduce the cash flow burden experienced by smaller construction prime contractors and subcontractors. Increased cash flow would allow small businesses to build capacity.

2. Pre-Award

Pre-award remedies apply to the procurement process after a project has been released for solicitation and before it has been awarded to a prime contractor.

a. Review Bids and Proposals for Goal Attainment

The City currently requires Schedules E and R which are used to track subcontractors, suppliers, and truckers for all formal contracts except sole source and emergency contracts. This requirement should be applicable to all formal contracts, including emergency and sole source contracts. Schedules E and R requesting the identification of subcontractors should be included in all solicitations and submitted at the time of bid opening. Submission of Schedules E and R should be considered a condition of responsiveness. Subcontractor participation should be reviewed at the time the submission is opened and the level of L/SLBE participation on each contract recommended for award should also be a matter of public record.

b. Revise Interview Panel Process

The interview panel for professional services contracts should be accountable for its evaluations. Identities of the panel members should be disclosed and attached to the signed evaluation forms. Businesses should have access to the evaluation forms promptly after the panel makes its recommendation so that the businesses can assess their performance and engage in protest procedures, if necessary. The Intent to Award should be published and submitted to each firm that submitted a proposal, bid, or statement of qualification. The release of the Intent to Award should mark the beginning of the protest period.



c. Implement Formal Protest Procedures

The City should require that the formal protest procedures established by the Purchasing Division be applied to all formal and informal contracts. These protest procedures outline methods businesses should use to challenge decisions to award a contract. All solicitations should include these protest procedures and a date by which a protest must be filed. In addition, all solicitations should include explicit criteria upon which the award decision will be based. The protest review process should be handled by an authority independent of the awarding department. The appeal process should be handled by the City Administrator or its designee.

d. Professional Services Contracts - Evaluation Credits

In the professional services industry, contracts are not awarded strictly based on the lowest bid. Instead, a firm is selected by accumulating points based upon its qualifications to perform the scope of work in the solicitation.

A point system is used to rank the proposals and statements of qualification in the evaluation process. Incentive credits could be given to prime contractors who are L/SLBEs on architecture and engineering and professional services contracts, when these awards are based on qualifications and not on the lowest bid. Fifteen to 20 percent of the evaluation credits could be comprised of such incentive credits when the selection process includes a proposal or statement of qualifications. Including such credits in the evaluation criteria might counterbalance the competitive disadvantage experienced by these groups. These credits would be applied in the evaluation process for formal contracts under \$500,000.

3. Post-Award

Post-award remedies are applicable to the procurement process after a contract has been awarded.

a. Pay Mobilization to Subcontractors

Mobilization is the initial payment made to a prime contractor when work commences on a project to reimburse the prime contractor for the cost of starting the job. Mobilization payments should be paid to L/SLBE prime contractors and all other contractors meeting the L/SLBE goal. The subcontractors should be paid an amount equal to their participation level on the prime contract prior to commencing their work. Project start-up costs can be significant, and a firm that has limited resources and access to credit may find that the delay in receiving the initial progress payment could inhibit its ability to bid. Payment for mobilization could mitigate the start-up costs and late payment barriers faced by L/SLBEs.



b. Develop an Expedited Payment Program

Expedited payments would remove a major barrier to L/SLBE participation in City contracts. In an expedited payment program, L/SLBEs and other small businesses would be paid on an accelerated schedule. Non-certified prime contractors meeting program participation goals would also be eligible for the expedited payment program. When a participating firm submits an invoice, an identification number would be included to mark it for a 10-day expedited payment. Invoices would be date stamped immediately upon receipt, and approved invoices would be submitted for payment within ten days of receipt.

Prime contractors would also be required to submit monthly invoices for payment of all work performed by subcontractors even when it is not prepared to submit an invoice for its own services. Under no circumstances should the invoice be submitted to the City more than 15 days after the end of each month. The City will pay for approved subcontractor services within 10 days after the receipt of the approved prime contractor's invoice. The prime contractor would be required to pay each subcontractor within 10 days of receiving payment from the City.

Prompt payment standards should also apply to the payment of retainage and mobilization fees. Prime contractors should be required to adhere to prompt payment standards for the payment of subcontractors.

A monetary penalty should be imposed on prime contractors that do not meet the expedited payment requirements. The City should pay interest on its payments to prime contractors after 30 days.

c. Give Five-day Notice of Invoice Disputes

Within five days of receiving a disputed invoice, the contractor should receive a notice from the City detailing any item in dispute. Undisputed invoice amounts should be paid promptly, and disputed items should be resolved in a timely manner. By using this system, L/SLBEs would be better able to maintain positive cash flow while providing services to the City.

d. Implement Formal Dispute Resolution Standards

The City should create and publicize formal dispute resolution standards which should be included in all contracts to allow businesses to resolve issues relating to the performance of work after the contract has been awarded. The dispute resolution standards would apply to disputes between prime contractors and the City as well as disputes between subcontractors



and prime contractors. The City's dispute resolutions should include provisions for an ombudsperson,³ mediation, and arbitration.

The first step in the resolution process would be the aggrieved party submitting its complaint to the ombudsperson, who would then aid the parties in resolving the dispute by investigating the claim and making initial contact with the City, prime contractor, or subcontractor. If the dispute is not resolved through these means, the ombudsperson will assist the aggrieved party in filing a request for mediation. A dispute must be taken to the ombudsperson before it can proceed to mediation.

Mediation is the second step in the resolution process. The mediator contacts both parties involved in the dispute and assists the parties in arriving at an agreed upon resolution. Neither party may involve legal representation. If the parties are not able to reach a mutually agreed upon resolution through mediation, the dispute may proceed to arbitration. A dispute must be taken to mediation before it can proceed to arbitration.

Arbitration is the final step to resolving a dispute, and the decision reached by the arbitrator is final and binding. The parties may retain legal representation during this process.

The City's dispute resolution standards should consider the cost of mediation and arbitration. The fee for using dispute resolution should not prohibit small businesses from using this method of resolving conflicts. There are options for paying for mediation and arbitration: 1) the L/SLBE Program can pay for the services; 2) the parties split the costs; or 3) the L/SLBE Program can pay fees up to a set limit, and then the parties can split the remaining cost. Penalties for violations of Program guidelines could also generate a fund to cover the costs of dispute resolution.

C. Additional Administrative Recommendations

The following recommendations do not apply to a particular step in the procurement process. Instead, they apply to the City's procurement process as a whole and are intended to increase its efficacy and efficiency and the utilization of L/SLBEs.

1. Develop a City-wide Procurement Manual

A City-wide Procurement Manual should be developed. There are currently several manuals in use among the agencies that have procurement authority. Creating one Procurement

³ "Ombuds receive complaints and questions from individuals concerning people within an entity or the functioning of an entity. They work for the resolution of particular issues and, where appropriate, make recommendations for the improvement of the general administration of the entities they serve. Ombuds protect: the legitimate interests and rights of individuals with respect to each other; individual rights against the excesses of public and private bureaucracies; and those who are affected by and those who work within these organizations." American Bar Association, 9 August 2006, Section of Administrative Law and Regulatory Practice: Ombuds. 24 May 2007 <<http://www.abanet.org/dch/committee.cfm?com=AL322500>>.



Manual for all City agencies will help streamline the procurement process and provide staff with clear guidance on its responsibilities and requirements. The recommendations in this report should be included in drafting the Procurement Manual.

2. Institute Internal L/SLBE Program Training

In an effort to enhance managerial administration, the City should institute internal L/SLBE Program training to enhance the existing training program. Compliance with this training can be measured or ensured in the following ways:

- Include information concerning managerial compliance with the program in performance evaluations
- Measure compliance with parity in the use of available businesses
- Recognize individual employees who consistently meet or exceed the requirements of the training program. Such acknowledgment could take the form of a letter from the agency's coordinator or a posting on the agency web page.

An L/SLBE Program Training Manual should also be developed to standardize the delivery of the L/SLBE Program requirements and ensure that all department managers and their staff have the knowledge and skills to fulfill their duties within the Program. The procedures set forth in the manual should become standard operating procedures in each department. The L/SLBE Program Manual would also provide staff with clear guidance on its responsibilities to track and report the participation of L/SLBEs and to fulfill other Program requirements.

Furthermore, a training module based on the L/SLBE Program Manual should be developed and incorporated in the City's new employee orientation. Training should be provided when the manual is approved. Staff compliance should be evaluated through both department-level reports of L/SLBE utilization and staff performance reviews.

3. Staff Office of Contract Compliance and Employment

The OCCES should maintain an adequate level of staff with experienced professionals capable of fulfilling the new responsibilities. Adequate staffing is necessary to promote the enhanced L/SLBE Program. The number of staff currently assigned to handle the L/SLBE Program is not adequate to fulfill the expanded responsibility of the office. The staff should be expanded to include an ombudsperson who would handle disputes and address the concerns of businesses that contract with the City or are interested in doing so. Office personnel should have knowledge about procurement procedures, public contracting law, and affirmative action programs. The personnel should have education or professional experience in public administration and be knowledgeable about current business types and the operation of a small business.



4. Publish Utilization Reports

L/SLBE utilization reports should measure the success of the City's program and determine if it requires modification. These reports should include verified payment and award data organized by industry and department. They should also include change orders and substitutions.

Reports should be submitted to the Mayor, City Administrator, and City Council on a quarterly basis. The fourth quarter report should include an assessment of the program activities and recommendations for improvement. Exemplary practices and achievements of each department should be noted in the fourth quarter report. All reports should be posted on the City's website.

5. Evaluate Staff Compliance with the L/SLBE Program

Staff compliance should be evaluated through both department-level reports of L/SLBE utilization and staff performance reviews. Program monitoring reports should describe the level of L/SLBE contracting by department. The performance evaluation of all managers should include criteria on the department's L/SLBE utilization and compliance with the L/SLBE program requirements. Staff members who comply with program requirements to utilize L/SLBEs on informal contracts should be recognized. Such acknowledgment could be in the form of a letter from supervisory staff and recognition in the quarterly utilization report. Formal recognition would provide staff with an additional incentive to meet program requirements and reward those who consistently demonstrate a commitment to diversity. Program compliance should be included as part of manager's performance evaluation as well.

6. Conduct Outreach and Implement Marketing Strategies

The contract compliance office should launch an outreach campaign to promote the approved changes to the L/SLBE Program. Effective outreach will attract more bidders and proposers and inform them of new requirements.

Table 1.02 below lists the strategies for marketing the L/SLBE Program that should be continued to inform the business community of new requirements and attract LBE, SLBE, and M/WBE firms to certify with the City and to bid on City contracts.



Table 1.02 Outreach and Marketing Strategies

Strategy	Tactics	Expected Outcome
Expand outreach campaign	<ul style="list-style-type: none"> • Focus on non-mainstream media and digital outlets such as ethnic and trade publications, electronic newsletters, and Internet presence 	Gain local recognition for the City’s revamped business programs. Provide information to LBEs, SLBEs, and M/WBEs.
Expand contractors’ open house and other networking events	<ul style="list-style-type: none"> • Plan and coordinate open house events • Send out invitations via mail, fax, and e-mail • Include buyers in outreach events • Make informal contract opportunities available • Distribute contract forecasts and certification forms 	Provide LBEs, SLBEs, and M/WBEs networking opportunities. Increase LBE and SLBE certification.
Develop multi-lingual, collateral print material for outreach campaign	<ul style="list-style-type: none"> • Revise brochure to reflect program changes • Develop articles and media packets • Publish the brochure electronically 	Develop materials to educate the businesses, attract bidders, and attract LBEs, SLBEs and M/WBEs to certify.

7. Increase Use of Equal Access Program

The passage of the Equal Access to Services Ordinance in 2001 signified the City’s commitment to afford its residents greater access to its services by providing translation services and bilingual materials to non-English speakers. Departments with procurement authority should coordinate with the Equal Access Department to ensure greater access to City contracts to business owners with English as their second language. The City should also allow businesses to request translation services for pre-bid and pre-proposal conferences.



D. Website Enhancements

The following recommendations are intended to enhance the City's Internet presence and make its website more accessible to firms interested in performing work on the City's contracts.

1. Post Project Forecasts on the Internet

Currently a listing of Request for Proposals and bids is available on the Public Works Agency's website, but it is accessible as a lengthy portable document format (PDF) file. The current format is difficult to use because the vendor must scroll through the entire listing to gain information on a particular solicitation. The vendor would be better served by being able to search the list of contracting opportunities by keyword, industry, or NAIC code.

Project forecasts of all City agencies that fund contracts should post their opportunities on the Internet, so that businesses interested in working with the City can be informed about contracting opportunities. Furthermore, bidding and contracting opportunities should be listed on the Purchasing Division's website.

The City should also consider listing pending solicitations on the Internet prior to the issue of the actual solicitation. Pending solicitations should be listed at least 30 days prior to the actual release date. The listings would consist of the draft project or product specifications, anticipated release date, and subcontracting goals for the project. The listings should be posted on the same day each week.

Also, there is a fee for a contractor to acquire a written work plan for each RFP or bid opportunity. Such fees can be as high as \$50.00, and these costs can oftentimes prevent contractors from applying for the bids. The solicitations should be available for downloading at no charge.

Using the California Department of General Services' California State Contracts Register⁴ website as a model, the City should compile all contracting information onto a single web page, instead of separately by department. The City should also allow businesses to register to receive direct e-mail notification of contracting opportunities based on a set of criteria established by the business. This would save businesses time by providing an alternative to browsing through the entire list of contract opportunities.



⁴ "California State Contracts Register." *California Department of General Services*. 2003. State of California. 4 June 2007. <<http://www.cscr.dgs.ca.gov/cscr/>>.

2. Post Prime Contract and Subcontract Awards on the Internet

Prime contract and subcontract awards should be posted on the City's website. The awards should be posted within 24 hours of the Intent to Award decision having been made and no later than the start of the bid protest period. Posting contract awards would inform the business community of the results of the City's solicitations and notify the bidders of each contract during the protest period. After the start of work on a project, the City should post prime contractor and subcontractor payments on the website.

3. Design Easily Navigable Website Hyperlinks and Features

The City of Oakland website has a task bar, "Business in Oakland: Opportunities, Incentives, Permits." A contractor may access five topics through the task bar: "Doing Business in Oakland," "Contracting with Oakland – Request for Proposals," "Business Support Services," "Employment Services," and "Grant Opportunities." Although some of the topics are listed separately, they are hyperlinked to the same page. Additionally, clicking on the "Purchasing Programs" link leads to the Purchasing web page, which does not allow for easy navigation, because there is no task bar to view a browser history.

It is recommended that the City reorganize its website so that vendors can access relevant information more efficiently, which would reduce the time staff spends answering questions about the procurement process.

4. Make Procurement and Bidding Information Available

Currently, there is no posting of procurement guidelines stipulating the City's practices on the Internet. The City should compile a concise "Frequently Asked Questions" page and provide the procurement procedure manual for public viewing. Such enhancements will ensure that vendors are more informed when entering the bidding process.

5. Consolidate All Bid Information onto a Single Web Page

By clicking on the "Business in Oakland, Opportunities, Incentives, and Permits" link on the City's home page and searching through the Purchasing site, a vendor can access a small tutorial section on how to use forms, as well as general information on bonds, bid opening and closing procedures, and the City's special bid discount information. Such valuable information on bid procedures should be more easily accessible on a single web page, without having to conduct a search through various index features.



IV. DATA MANAGEMENT RECOMMENDATIONS

L/SLBE prime contractor and subcontractor utilization data is assessed when bids are submitted. Each bidder is required to fill out an L/SLBE participation form, which includes the L/SLBE status of the prime contractor and all prospective subcontractors and suppliers. When the successful bidder is selected, one copy of this form remains with the Office of Contract Compliance and Employment Services (OCCES), one copy is placed in the project file located at the awarding department, and one copy remains in Contract Administration.

Until recently, the OCCES had been using a computerized system to enter the information from the L/SLBE participation forms. However, the system is currently in the process of being upgraded, and the data is being stored in a multitude of MS Excel files.

Currently, there are no regular reports on the overall L/SLBE participation on all City contracts being generated.

Recommendations in this section are presented as strategies to enhance the City's management of its prime contract and subcontract records. The recommended enhancements would support a more accurate assessment of the effectiveness and compliance with any implemented business enterprise program given the findings of this Study.

1. L/SLBE Prime Contractor Data

The centralized financial system used by the Finance and Management Agency (FMA) keeps track of all payments made to prime contractors. The system has the capability to link payments to their respective purchase orders and contracts. However, the field that is being used to store contract numbers is often left blank. In addition, the contract numbers being used by the FMA may be a different number than the one used by the OCCES. Purchase order numbers are not uniformly recorded in the contract record. As a result, the system does not allow the prime contract payments to be matched electronically to prime contract awards, and subsequently, to subcontracting data. Thus, the present system does not allow the generation of a computerized report that would calculate L/SLBE participation for all dollars expended by the City. The present system should be modified to make the contract number a required field for all expenditures other than direct payments.

In addition, it is recommended that all records include industry classification of transactions. Presently, object codes are used to classify prime expenditures. Object codes define the purpose of each transaction but not the type of work performed by each contractor. For example, a heavy construction project may include separate contracts with construction suppliers, equipment maintenance contractors, and professional engineers. Since the object code is tied to the type of project, all prime contracts will be labeled under the heavy construction object code and will be reported in the heavy construction category, instead of the category appropriate to their contract. Another shortcoming of the current system is that



payments to government agencies and not-for-profit organizations are not differentiated in the system.

It is recommended that the financial system utilize commodity codes, such as National Institute of Governmental Purchasing (NIGP) or North American Industry Classification System (NAIC) codes, to describe the specific nature of work performed in each contract. All City expenditures should be assigned an appropriate NIGP or NAIC code based on the goods or services provided by the contract. In addition, all expenditures to government agencies and not-for-profit organizations should be coded appropriately.

2. Subcontractor Data Management

The subcontractor data collected by the OCCES should be stored in a relational database. The specification for such a database will be provided later in this report.

Subcontractor data is presently collected at the time of award and does not reflect any substitutions or changes to award amounts. Prime contractors should be required to complete monthly compliance reports that would record payment information for all subcontractors. In addition to an option to submit a paper version of this report, a web-based digital form should be used to capture the payment data from the contractors. The data should then be uploaded to a relational database.

A. Recommendations for a Subcontractor Data Tracking System

A relational database should be implemented to store the subcontractor, supplier, and trucker payment data. A relational database would allow for linking the subcontractor data to the specific prime contract as well as to the subcontractor's certification status and contact information. The database could have customizable reports that summarize the payments to subcontractors. The prime contract records in the centralized financial system should also reference a contract number.

The prime contract and subcontract databases should be able to "communicate" in order to produce reports on both prime contractor and subcontractor participation. For this database to be most efficient, the prime contract and subcontract data should be updated regularly to provide total payments. However, as noted above, the prime contract number must be recorded in each prime contract record.

Below are more specific requirements for an efficient data tracking system.

1. Functionality Requirements

An efficient data tracking system should contain the following components:



a. Vendor Information Component

This component should include contact information, NIGP classification, certification status, and ethnicity and gender. Certified vendor records should include the contractor's identification number, to enable cross-referencing with the certification database. Records for registered vendors should include the vendor identification number to enable cross-referencing with the City's financial system.

b. Contract Management Component

The contract management component should include contract information, such as bids, prime awards, subcontractors, and participation goals. The contract identification number used in this component should be same one as the one used in the financial system, to enable access to prime contractor payment information. As stated above, the contract number field should be made a required field in the financial system.

In particular, the ability to store subcontractor bid information helps in maintaining a current subcontractor availability database and ensuring accurate goal-setting.

c. Subcontractor Payment Component

This component should accommodate all data from the monthly compliance reports. Each subcontractor record should be linked to the corresponding contract management record by contract number and to the vendor information record by a vendor identification number.

2. Technical Specifications

The following technical specifications should be incorporated into the data tracking system:

- Web-based interface to allow submission of data by prime contractors and subcontractors directly over the Internet
- Web-based relational database to produce easily customizable reports with the capability to export and import data to and from existing systems
- Web-based system compatible with existing FMA server, database, and reporting architecture



2

NOT-FOR-PROFIT ANALYSIS

I. INTRODUCTION

The purpose of this chapter is to provide an assessment of the City of Oakland and Redevelopment Agency's (City) award of contracts to not-for-profit organizations during the period July 1, 2002 to June 30, 2005. A not-for-profit organization is defined as a company that is tax exempt pursuant to Section 501(c)(3) of the Internal Revenue Code and is used synonymously with the term non-profit. The definition of a not-for-profit organization excludes grant recipients for the purposes of this study, in conformity to the City's request. The assessment included contracts to provide goods and services, as well as subsidized loans for Housing and Community Development projects. The research plan addressed the six issues stipulated in the not-for-profit analysis portion of Mason Tillman Associates Ltd.'s (Mason Tillman) contract with the City. The issues are:

- Capacity of the utilized not-for-profit organizations
- Services provided to the City by not-for-profit organizations
- Most frequently used not-for-profit organizations
- Neighborhoods where the frequently used not-for-profit organizations were located
- Types of not-for-profit organizations used most often
- Differences in the capacity characteristics of not-for-profit organizations controlled by minorities and women, and those Caucasian male controlled



II. METHODOLOGY: IDENTIFICATION OF NOT-FOR-PROFIT VENDORS

A. Comptroller's Database

The Comptroller's database was used to compile the list of not-for-profit organizations that received at least one payment from the City from July 1, 2002 to June 30, 2005. The Comptroller's data consisted of the name, address, and total dollars received by each organization. Since not-for-profit organizations are not coded in the Comptroller's database, Mason Tillman had to use several methods to identify these vendors:

- Vendors listed in the Comptroller's database were cross-referenced with a list of not-for-profit organizations maintained by the Community and Economic Development Agency.
- Vendor names were also screened by a computer program that identified key words in a vendor's name. The list developed by Mason Tillman includes words that often occur in the names of not-for-profit organizations, such as "association," "foundation," "coalition," "chamber," and "church."
- The balance of the vendors were reviewed individually by Mason Tillman's staff to identify any additional not-for-profit organizations whose names did not contain typical keywords.

Using these methods, Mason Tillman identified 354 not-for-profit organizations that received at least one payment from the City.

Compilation of critical facts from the Comptroller's database provided answers to the first three questions of the research plan, which were:

- Services provided to the City by not-for-profit organizations
- Most frequently used not-for-profit organizations
- Neighborhoods where the frequently used not-for-profit organizations were located

B. Survey

To obtain information on the capacity characteristics and the ethnicity and gender of the directors, Mason Tillman conducted a survey of not-for-profit organizations. Mason Tillman limited the survey to the 212 not-for-profit organizations that received at least \$5,000 in payments.



Mason Tillman also used Internet research to verify and supplement the survey data. The not-for-profit organizations' websites were researched, and information was gathered on the types of services provided, years of operation, and ethnicity and gender of each organization's Board of Directors.

The survey was conducted by telephone. To obtain a maximum response rate, up to three telephone calls were made to each organization. A response to the telephone survey was received from 129 not-for-profit organizations, or 60.85 percent of the not-for-profit organizations surveyed.

The survey consisted of multiple-choice and open-ended questions. A copy of the survey instrument is included in Appendix A.

A relational database was designed to manage the Not-for-Profit Assessment data. The Comptroller's records of the 354 vendors were copied to the database. The survey responses were entered into the database manually. The database was also used to track the survey process. The survey responses were recorded and the number of calls made to secure a response to the survey was also tracked. A series of queries and pivot tables were developed to translate the raw data into meaningful information.

III. STUDY FINDINGS

A. Utilization of Not-for-Profit Organizations by Type of Service and Location

The Comptroller's database provided addresses, the type of service provided, and payment amounts for all utilized not-for-profit organizations. Therefore, Mason Tillman was able to include the entire pool of 354 not-for-profit organizations.

B. Types of Services Not-for-Profit Organizations Provide

Table 2.01 enumerates the types of services provided to the City by not-for-profit organizations during the study period. The list is presented in descending order by total dollars spent for the different services. Out of \$96,761,163.70 spent with not-for-profit organizations, \$23,733,384.74, or 24.53 percent, was expended in housing development.

Most of the not-for-profit organizations that received payments from the City were cultural organizations. These 46 cultural organizations represent 12.99 percent of all not-for-profit organizations utilized by the City.



The 32 organizations classified as “other” provided services either did not respond to the survey question regarding types of services provided or did not respond to the survey at all. These organizations received only 0.47 percent of all dollars spent with not-for-profit organizations.

Table 2.01 Total Dollars Spent for Services Provided for the City by Not-for-Profit Organizations, by Type of Service

Services Provided	Number of Organizations	Percent of Organizations	Total Dollars	Percent of Dollars
Housing Development	11	3.11%	\$23,733,384.74	24.53%
Children and Youth Development	22	6.21%	\$8,765,816.87	9.06%
Economic Development	25	7.06%	\$8,317,286.51	8.60%
Educational Services	42	11.86%	\$7,773,611.67	8.03%
Health Services	14	3.95%	\$6,506,573.98	6.72%
Homeless Services	11	3.11%	\$6,003,458.18	6.20%
Parks and Recreation	7	1.98%	\$4,800,907.54	4.96%
Non-Profit Management and Funding	8	2.26%	\$4,749,835.99	4.91%
Cultural Organizations	46	12.99%	\$4,670,518.40	4.83%
Immigrant Services	6	1.69%	\$3,047,646.02	3.15%
Multipurpose Human Services	17	4.80%	\$2,844,424.17	2.94%
Legal Services	6	1.69%	\$2,460,471.23	2.54%
Family Services	15	4.24%	\$2,445,320.37	2.53%
Senior Services	11	3.11%	\$1,764,149.17	1.82%
Mental Health Services	6	1.69%	\$1,586,811.96	1.64%
Environmental Services	7	1.98%	\$1,570,437.75	1.62%
Disabled Individual Services	10	2.82%	\$1,131,539.60	1.17%
Chamber Of Commerce	8	2.26%	\$1,040,793.89	1.08%
Substance Abuse Program	5	1.41%	\$959,428.10	0.99%
Employment Assistance	12	3.39%	\$846,023.55	0.87%
Community Coalitions	5	1.41%	\$434,303.76	0.45%
Land Purchase	3	0.85%	\$268,004.28	0.28%
Civil Rights	10	2.82%	\$257,225.48	0.27%
Food Banks	2	0.56%	\$132,639.57	0.14%
Professional Organizations	6	1.69%	\$97,916.88	0.10%
Women Services	2	0.56%	\$60,750.00	0.06%
Crime Prevention	3	0.85%	\$39,355.25	0.04%
Humane Associations	2	0.56%	\$1,594.82	0.00%
Other	32	9.04%	\$450,933.97	0.47%
Grand Total	354	100.00%	\$96,761,163.70	100.00%



C. Top 25 Utilized Not-for-Profit Organizations

Table 2.02 lists the 25 organizations that received the most dollars from the City. Typically, Mason Tillman classifies the ownership of a business by the ethnicity and gender of the owner. In theory, the not-for-profit organization's ownership rests with its Board of Directors and/or its members. From a practical point of view there is no one or more individuals who constitute the owners with control over the day-to-day operations and revenue. The Board of Directors are typically selected as a representation of the members and the interests of the organization. Thus, the ethnicity and gender classification of the not-for-profit organizations is based on the ethnicity and gender composition of the Board of Directors. Information regarding the ethnicity and gender composition of the Boards of Directors was provided through the survey and supplemented with Internet research and follow-up telephone calls.

The ethnicity categories used were African American, Asian American, Hispanic American, Native American, Multiple Ethnicity, and Caucasian. These categories include both males and females of each perspective ethnic group. The Multiple Ethnicity category includes the Board of Directors which consisted of individuals from several ethnic groups, with no ethnic group representing more than 50 percent. The Female category includes only Caucasian females, as minority females are already accounted for in their ethnic group categorization. Those organizations for which the named organization declined to state the ethnicity of its Board of Directors are listed as Not Stated.



Table 2.02 Top 25 Utilized Not-for-Profit Organizations

Organization	Description	Total Amount	Percentage of Total	Ethnicity / Gender
Spanish Speaking Unity Council	Housing Development, Construction/Managment	\$20,430,889	21.11%	Hispanic American
Fruitvale Development Corp.	Community and Economic Development	\$4,893,508	5.06%	Not Stated
Operation Dignity Inc.	Homeless Services, Veteran Services	\$3,710,238	3.83%	Caucasian
East Bay Community Foundation	Investments in Charitable Causes	\$3,357,263	3.47%	Caucasian
East Bay Zoological Society Inc.	Zoological Society	\$2,942,145	3.04%	Female
Oakland Business Development	Business Development	\$2,725,429	2.82%	African American
Urban Indian Health Board, Inc.	Health Services	\$2,632,267	2.72%	Native American
Oakland School For The Arts	Educational Services	\$2,323,462	2.40%	Caucasian
MacArthur Park Development Associates, LLC	Housing Development, Construction/Managment	\$1,953,139	2.02%	Not Stated
Travelers Aid Society	Homeless Services	\$1,947,025	2.01%	Caucasian
East Bay Asian Youth Center	Youth Development Programs	\$1,602,292	1.66%	Asian American
The Marcus A. Foster Educational Institute	Educational Services	\$1,601,548	1.66%	Not Stated
Youth Employment Partnership	Youth Development, Employment Training	\$1,592,116	1.65%	Not Stated
Family Violence Law Center, Inc.	Legal Services	\$1,552,609	1.60%	Female
First Place Fund For Youth	Multipurpose Human Services	\$1,420,879	1.47%	Caucasian
Museum of Children's Art	Children's Museum	\$1,267,595	1.31%	Female
East Bay Conservation Corps	Youth Community Service Club	\$1,237,566	1.28%	Caucasian
La Clinica De La Raza	Health Services	\$1,107,908	1.14%	Hispanic American
Bay Area Community Services	Senior Services, Mental Health Services	\$1,090,383	1.13%	Caucasian
Donald P. Mccullum Youth Court, Inc.	Children's and Youth Services	\$1,056,593	1.09%	Caucasian
Children's and Youth Services	Immigrant Services	\$970,175	1.00%	Caucasian
East Oakland Community Project	Homeless Services	\$920,191	0.95%	African American
Oakland Asian Students	Educational Services	\$847,866	0.88%	Asian American
Oakland Youth Chorus	Educational Services	\$847,207	0.88%	Multi-ethnic
Oakland Commerce Corporation	Promotion of Businesses	\$816,537	0.84%	Caucasian
Total Dollars Paid to Not-For-Profit Organizations		\$96,761,164	100.00%	

D. Neighborhood Designations

Out of the 354 not-for-profit organizations 225, or 63.56 percent, have at least one office located in Oakland. The Oakland-based organizations received \$90,898,940, or 93.94 percent of all dollars awarded to not-for-profit organizations. Since many organizations provide services to the community where they are located, it was informative to look at the distribution of the organizations within Oakland neighborhoods.

Neighborhood classifications of not-for-profit organizations were determined using the City's Zoning and General Plan Map (Map), which is located on the City's website. See Figure 2.1 below. There were twelve neighborhoods identified on the Map. Each not-for-profit organization's neighborhood was determined by using the search by address function on the Map. For those organizations that were not located on the Map, Mason Tillman verified the addresses. If the address was incorrect, the correct address was found by using the Internet and their location on the Map determined. If the address was correct and the organization was not located on the Map, it was grouped with those organizations that were located on the Map and had an address within close proximity. For the Chinatown and Downtown neighborhoods, which are combined on the Map as the Chinatown Central neighborhood, Mason Tillman designated 14th Street as the boundary between the two. Chinatown was defined as the area west of 14th Street, and the boundaries of Downtown were defined as the area east of 14th Street. For the organizations located on 14th Street, their names were generally indicative of the neighborhood they served and were grouped accordingly. Together these two districts received 68.88 percent of the total dollars paid to not-for-profit organizations.



Figure 2.1 Neighborhood Designation Map

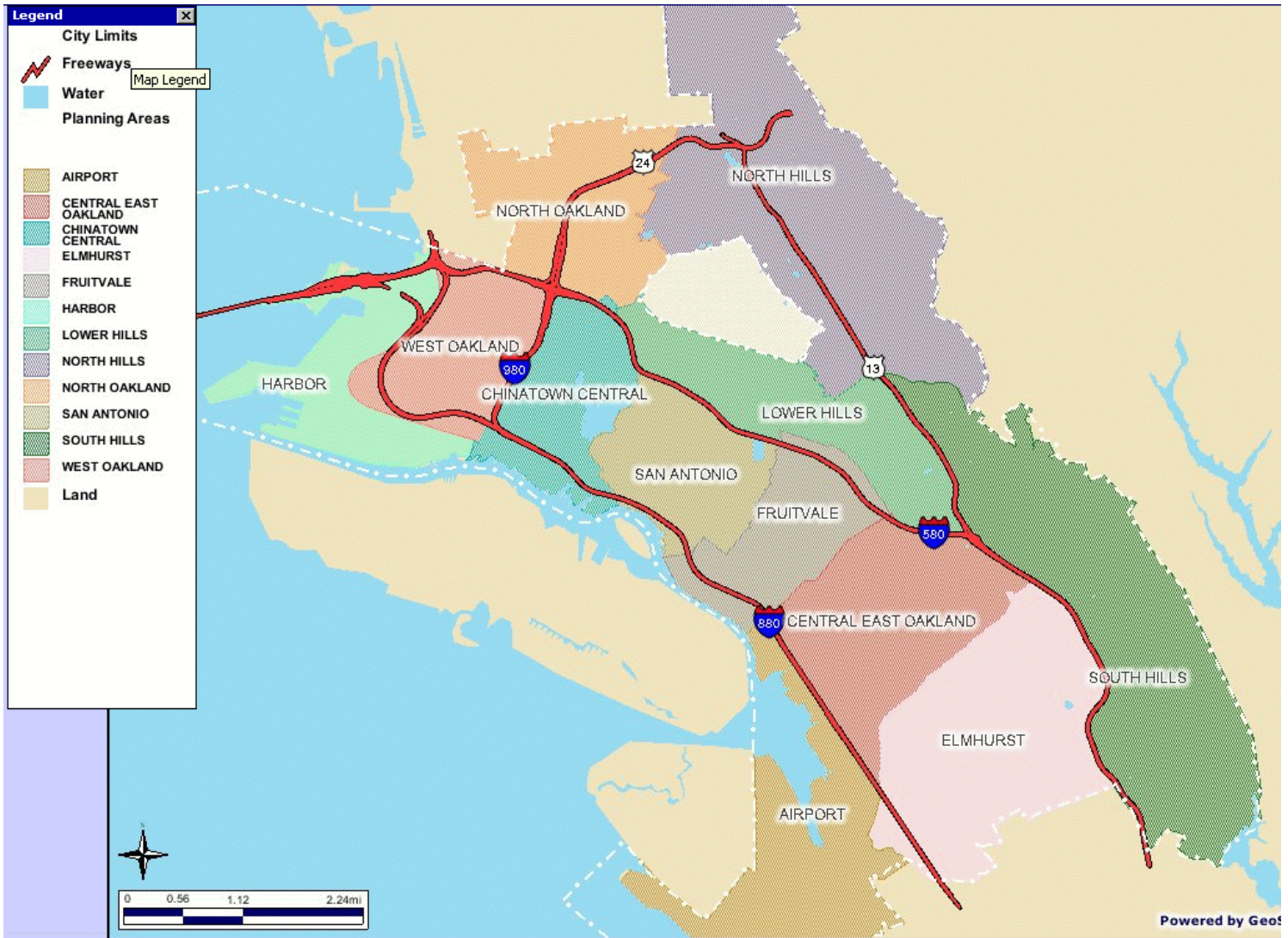


Table 2.03 indicates that most dollars were spent in the Fruitvale and Downtown Oakland neighborhoods.

Table 2.03 Total Dollars, by Oakland Neighborhood

Neighborhood Designation	Number of Organizations	Percent of Organizations	Total Dollars	Percent of Dollars
Fruitvale	17	7.56%	\$33,265,793	36.60%
Downtown Oakland	76	33.78%	\$29,344,069	32.28%
West Oakland	28	12.44%	\$6,739,974	7.41%
Chinatown	19	8.44%	\$4,584,218	5.04%
San Antonio	15	6.67%	\$4,354,875	4.79%
South Hills	7	3.11%	\$3,693,620	4.06%
Central East Oakland	14	6.22%	\$2,615,660	2.88%
Airport	4	1.78%	\$2,334,575	2.57%
Lower Hills	14	6.22%	\$2,146,951	2.36%
North Oakland	15	6.67%	\$1,307,803	1.44%
Elmhurst	8	3.56%	\$398,147	0.44%
North Hills	8	3.56%	\$113,255	0.12%
Grand Total	225	100.00%	\$90,898,940	100.00%

IV. PROFILE OF UTILIZED NOT-FOR-PROFIT ORGANIZATIONS

The 129 not-for-profit organizations that responded to the survey are profiled in this section by their type, issue area, target population, services provided, funding source, and location.

A. Type of Organization

Table 2.04 indicates the number and percent of survey respondents, as well as the total dollars received by each type of organization. The four not-for-profit organization classifications are public charity, private charity, faith-based, or other. The “Other” category included organizations that did not fall under any of the three categories, such as private membership organizations, administrative associations, business improvement districts, government agencies, literacy projects, etcetera.



Table 2.04 Type of Not-for-Profit Organizations

Organization	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
Private Charity	45	34.88%	\$41,450,025	60.03%
Public Charity	73	56.59%	\$26,401,958	38.24%
Other	9	6.98%	\$933,054	1.35%
Faith-based	2	1.55%	\$258,382	0.37%
Grand Total	129	100.00%	\$69,043,418	100.00%

B. Issue Area

Table 2.05 indicates the number and percent of survey respondents, as well as total dollars received by the issue area. Issue areas included Children and Family, Community Health, Economic Development, Cultural, Workforce Development, Environment, Housing, Seniors and Disabled, Other, and Multiple Issue Areas. More than 37 percent of the respondents were concerned with Children and Family issues, representing the largest issue area in the survey. The “Other” category included several issue areas that did not fall into the other listed categories, such as education, immigration-related issues, criminal justice, mental health, and public policy.



Table 2.05 Issue Area of Not-for-Profit Organizations

Issue Area	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
Economic Development	11	8.53%	\$25,712,631	37.24%
Children and Family	49	37.98%	\$23,300,727	33.75%
Multiple Issue Areas	10	7.75%	\$8,348,684	12.09%
Housing	8	6.20%	\$2,837,330	4.11%
Community Health	17	13.18%	\$2,625,357	3.80%
Environment	6	4.65%	\$2,407,333	3.49%
Other	11	8.53%	\$1,936,124	2.80%
Cultural	7	5.43%	\$740,026	1.07%
Workforce Development	5	3.88%	\$589,534	0.85%
Seniors and Disabled	5	3.88%	\$545,672	0.79%
Grand Total	129	100.00%	\$69,043,418	100.00%

C. Ethnicity and Gender of Target Populations for Not-for-Profit Organizations

Table 2.06 indicates the distribution of the 129 survey respondents by the ethnic and gender classification of the population the organization targets with its services. The table also indicates the total dollars received by the not-for-profit organization servicing the target population. Only 21 respondents were identified as targeting minorities or women.



Table 2.06 Target Populations of Not-for-Profit Organizations

Target Population	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
General	108	83.72%	\$58,365,746	84.53%
Asian American	8	6.20%	\$4,354,732	6.31%
Native American	2	1.55%	\$3,579,626	5.18%
Hispanic American	2	1.55%	\$982,921	1.42%
Women	4	3.10%	\$813,664	1.18%
Minority (Multi-Ethnic and Other Minority)	2	1.55%	\$519,081	0.75%
African American	3	2.33%	\$427,649	0.62%
Grand Total	129	100.00%	\$69,043,418	100.00%

D. Primary Funding Sources

Table 2.07 indicates the number and percent of survey respondents and total dollars received from their primary funding sources. Seven funding sources were identified by the respondents. The sources were Federal and State Government, Foundations, Donors, Local Government, Self-Generated Funds, and Special Events/Programs. Three of the 129 survey respondents declined to state their primary funding source.



Table 2.07 Funding Sources of Not-for-Profit Organizations

Funding Source	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
Federal and State Government	48	37.21%	\$47,239,451	68.42%
Donors	19	14.73%	\$6,470,504	9.37%
Foundations	18	13.95%	\$6,442,648	9.33%
Local Government	15	11.63%	\$4,791,403	6.94%
Self-Generated Funds	15	11.63%	\$2,576,438	3.73%
Special Events/Programs	5	3.88%	\$674,136	0.98%
Not Stated	3	2.33%	\$468,722	0.68%
Multiple Sources	6	4.65%	\$380,118	0.55%
Grand Total	129	100.00%	\$69,043,418	100.00%

E. Location of Headquarters

Table 2.08 indicates the number and percent of the survey respondents, as well as total dollars, received at each organization’s main office location. More than 75 percent of respondents are located in Oakland.



Table 2.08 Location of Headquarters

Location of Headquarters	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
Oakland	98	75.97%	\$60,290,803	87.32%
Alameda	1	0.78%	\$3,419,082	4.95%
Berkeley	11	8.53%	\$2,874,058	4.16%
Hayward	1	0.78%	\$228,058	0.33%
Hollywood	1	0.78%	\$39,749	0.06%
Richmond	1	0.78%	\$498,279	0.72%
Sacramento	4	3.10%	\$126,227	0.18%
San Carlos	1	0.78%	\$67,004	0.10%
San Francisco	8	6.20%	\$882,073	1.28%
San Leandro	2	1.55%	\$610,753	0.88%
Walnut Creek	1	0.78%	\$7,332	0.01%
Grand Total	129	100.00%	\$69,043,418	100.00%

V. CAPACITY CHARACTERISTICS OF NOT-FOR-PROFIT ORGANIZATIONS

In this section the 129 survey respondents are profiled by their capacity characteristics. These characteristics include the years in operation, number of offices, and number of employees.

A. Years in Operation

Table 2.09 profiles all not-for-profit organizations according to the year the organization was established. The respondents were grouped into four categories of operation: less than 5 years, 5 to 9 years, 10 to 24 years, and 25 years or more. Nearly half of the respondents have been in operation for 25 years or more. In fact, four of the respondents have been in operation for over 100 years. One respondent declined to state the year the organization was established.



Table 2.09 Years in Operation

Years in Operation	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
Less Than 5 Years	1	0.78%	\$10,179	0.01%
5 to 9 Years	13	10.08%	\$3,470,890	5.03%
10 to 24 Years	55	42.64%	\$16,555,920	23.98%
25 or More Years	59	45.74%	\$48,993,709	70.96%
Not Stated	1	0.78%	\$12,720	0.02%
Grand Total	129	100.00%	\$69,043,418	100.00%

B. Number of Offices

Table 2.10 profiles all businesses according to the number of offices they operate. The businesses were grouped into four categories by number of offices: One, two to four, five to nine, and ten or more. The vast majority of respondents, or 72.09 percent, have only one office.

Table 2.10 Number of Offices

Number of Offices	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
1	93	72.09%	\$33,837,894	49.01%
2 to 4	18	13.95%	\$25,718,659	37.25%
5 to 9	8	6.20%	\$6,154,126	8.91%
10 or more	10	7.75%	\$3,332,740	4.83%
Grand Total	129	100.00%	\$69,043,418	100.00%

C. Number of Paid Employees

Table 2.11 profiles all businesses according to number of paid employees. The responses were grouped into four categories by number of paid employees: 0, 1 to 4, 5 to 9, 10 to 19, 20 to 49, 50 to 99, and 100 or more. The organization with no employees reports being



staffed by volunteers. The number of paid employees included full-time and part-time employees.

Table 2.11 Number of Paid Employees

Number of Employees	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
0	3	2.33%	\$493,337	0.71%
1 to 4	22	17.05%	\$3,466,826	5.02%
5 to 9	22	17.05%	\$6,519,412	9.44%
10 to 19	26	20.16%	\$7,474,016	10.83%
20 to 49	26	20.16%	\$13,807,787	20.00%
50 to 99	7	5.43%	\$4,425,498	6.41%
100 or More	20	15.50%	\$32,572,542	47.18%
Not Stated	3	2.33%	\$283,000	0.41%
Grand Total	129	100.00%	\$69,043,418	100.00%

VI. COMPARISON OF NOT-FOR-PROFIT CAPACITY CHARACTERISTICS, BY ETHNICITY AND GENDER

The utilized not-for-profit organizations controlled by a Board of Directors categorized as either minority, women, or Caucasian male are profiled according to six capacity factors. This analysis is performed to determine whether any of the capacity characteristics differ by the ethnicity and gender of the majority of the organization’s Board of Directors. The factors analyzed are business type, issue area, target population, services provided, funding source, and geographic location.

A. Profile of Not-for-Profit Organizations by Ethnicity and Gender

Table 2.12 profiles the organizations according to the ethnicity and gender of the majority of members in the Board of Directors. The categories were African American, Asian American, Hispanic American, Native American, Multiple Ethnicity, and Caucasian. The Multiple Ethnicity category includes organizations in which the Board of Directors consists of individuals from several ethnic groups, with no ethnic group representing more than 50 percent.



**Table 2.12 Profile of Not-for-Profit Organizations, by
Ethnicity and Gender**

Ethnicity	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
African American	14	10.85%	\$6,457,491	9.35%
Asian American	12	9.30%	\$5,197,054	7.53%
Hispanic American	1	0.78%	\$20,430,889	29.59%
Native American	2	1.55%	\$3,579,626	5.18%
Multiple Ethnicities	20	15.50%	\$3,340,420	4.84%
Caucasian	53	41.09%	\$22,962,421	33.26%
Not Stated	27	20.93%	\$7,075,518	10.25%
Grand Total	129	100.00%	\$69,043,418	100.00%

Gender	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
Female	47	36.43%	\$14,421,272	20.89%
Male	67	51.94%	\$52,062,017	75.40%
Not Stated	15	11.63%	\$2,560,130	3.71%
Grand Total	129	100.00%	\$69,043,418	100.00%

B. Years in Operation, by Ethnicity and Gender

Table 2.13 presents a cross-tabulation of information concerning the ethnicity and gender of the not-for-profit organizations' Board of Directors with years in operation. The oldest organizations are Caucasian-operated, with 50.94 percent in operation for 25 or more years. Only 35.71 percent of the African American organizations are 25 or more years old.

By gender, the oldest organizations are among those operated by men, with 55.22 percent in operation for 25 or more years. Among women-operated organizations only 36.17 percent are 25 or more years old.

The number of years in operation for one organization could not be determined; therefore, in Table 2.13, only 128 respondents are reflected in the data.



Table 2.13 Years in Operation, by Ethnicity and Gender

	Years in Operation								Total Number
	Less than 5		5-9		10-24		25 or Older		
Ethnicity	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
African American	0	0.00%	1	7.14%	8	57.14%	5	35.71%	14
Asian American	1	8.33%	0	0.00%	6	50.00%	5	41.67%	12
Hispanic American	0	0.00%	0	0.00%	0	0.00%	1	100.00%	1
Native American	0	0.00%	0	0.00%	0	0.00%	2	100.00%	2
Multiple Ethnicities	0	0.00%	3	15.00%	8	40.00%	9	45.00%	20
Caucasian	0	0.00%	8	15.09%	18	33.96%	27	50.94%	53
Unknown	0	0.00%	1	3.85%	15	57.69%	10	38.46%	26
Total	1	0.78%	13	10.16%	55	42.97%	59	46.09%	128
Gender	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
Female	0	0.00%	5	10.64%	25	53.19%	17	36.17%	47
Male	1	1.49%	7	10.45%	22	32.84%	37	55.22%	67
Unknown	0	0.00%	1	7.14%	8	57.14%	5	35.71%	14
Total	1	0.78%	13	10.16%	55	42.97%	59	46.09%	128

C. Number of Offices, by Ethnicity and Gender

Table 2.14 is a cross-tabulation of the ethnicity and gender of each not-for-profit organization's Board of Directors with its number of offices. There is no substantial difference among the ethnic and gender groups. Organizations with Caucasian Boards of Directors have slightly more offices with 9.43 percent of Caucasian-operated organizations having 10 or more offices. Among multi-ethnic organizations only five percent have 10 or more offices.

By gender, there are no noticeable differences between males and females in the number of offices of not-for-profit organizations.



Table 2.14 Number of Offices, by Ethnicity and Gender

	Number of Offices								Total Number
	1		2-4		5-9		10 or More		
Ethnicity	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
African American	10	71.43%	3	21.43%	0	0.00%	1	7.14%	14
Asian American	8	66.67%	1	8.33%	3	25.00%	0	0.00%	12
Hispanic American	0	0.00%	1	100.00%	0	0.00%	0	0.00%	1
Native American	1	50.00%	0	0.00%	1	50.00%	0	0.00%	2
Multiple Ethnicities	17	85.00%	2	10.00%	0	0.00%	1	5.00%	20
Caucasian	40	75.47%	7	13.21%	1	1.89%	5	9.43%	53
Unknown	17	62.96%	4	14.81%	3	11.11%	3	11.11%	27
Total	93	72.09%	18	13.95%	8	6.20%	10	7.75%	129
Gender	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
Female	35	74.47%	6	12.77%	1	2.13%	5	10.64%	47
Male	47	70.15%	10	14.93%	5	7.46%	5	7.46%	67
Unkown	11	73.33%	2	13.33%	2	13.33%	0	0.00%	15
Total	93	72.09%	18	13.95%	8	6.20%	10	7.75%	129

D. Number of Paid Employees, by Ethnicity and Gender

Table 2.15 presents a cross-tabulation of the ethnicity and gender of not-for-profit organizations with the number of paid employees. The largest organizations were among Asian Americans, with 33.3 percent having 100 or more employees. Among multi-ethnic organizations only five percent have 100 or more employees.

By gender, organizations operated by men appear to be larger, with more male-operated organizations having 50 or more employees and fewer male-operated organizations in the mid-size and small range as compared to those operated by women.



Table 2.15 Number of Employees, by Ethnicity and Gender

	Number of Paid Employees														
	None		1 to 4		5 to 9		10 to 19		20 to 49		50 to 99		100 or more		Total
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
Ethnicity															
African American	1	7.1%	3	21.4%	3	21.4%	4	28.6%	3	21.4%	0	0.0%	0	0.0%	14
Asian American	0	0.0%	2	16.7%	2	16.7%	2	16.7%	2	16.7%	0	0.0%	4	33.3%	12
Hispanic American	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	100.0%	1
Native American	0	0.0%	0	0.0%	1	50.0%	0	0.0%	0	0.0%	0	0.0%	1	50.0%	2
Multiple Ethnicities	2	10.0%	5	25.0%	4	20.0%	2	10.0%	5	25.0%	1	5.0%	1	5.0%	20
Caucasian	0	0.0%	6	11.8%	8	15.7%	11	21.6%	12	23.5%	6	11.8%	8	15.7%	51
Unknown	0	0.0%	6	23.1%	4	15.4%	7	26.9%	4	15.4%	0	0.0%	5	19.2%	26
Total	3	2.4%	22	17.5%	22	17.5%	26	20.6%	26	20.6%	7	5.6%	20	15.9%	126
Gender															
Female	3	6.4%	10	21.3%	5	10.6%	8	17.0%	15	31.9%	1	2.1%	5	10.6%	47
Male	0	0.0%	10	15.2%	13	19.7%	16	24.2%	9	13.6%	6	9.1%	12	18.2%	66
Unknown	0	0.0%	2	15.4%	4	30.8%	2	15.4%	2	15.4%	0	0.0%	3	23.1%	13
Total	3	2.4%	22	17.5%	22	17.5%	26	20.6%	26	20.6%	7	5.6%	20	15.9%	126

Mason Tillman Associates, Ltd. September 2007
 City of Oakland and Redevelopment Agency Fairness in Purchasing and Contracting Disparities Study

VII. CONCLUSION

The analysis sought to describe the characteristics of not-for-profit organizations to which the City awarded contracts during the period from July 1, 2002 to June 30, 2005. The analysis was limited to not-for-profit organizations identified in the Comptroller's database that received at least \$5,000 from the City. The results of the research are summarized below.

A. Scope of the Research

The City awarded \$96,761,163.70 to 354 not-for-profit organizations during the study period. The 212 organizations that received \$5,000 or more in one or more contracts were surveyed. A total of 129 not-for-profits responded to the survey, and their responses served as the basis for the analysis. The characteristics of not-for-profit organizations were compiled in accordance to Mason Tillman's contract with the City.

B. Key Study Findings

Housing development organizations received the greatest amount of the City's dollars of any other types of organization, which was 24.53 percent of all contract dollars awarded to not-for-profit organizations. However, more cultural organizations received City funding than any other type of organization. City funding was concentrated in the Fruitvale and Downtown Oakland Districts. Within these two districts, not-for-profit organizations received 68.88 percent of all contract dollars awarded. Also, in regards to funding sources most of the organizations received funding from the federal and state government, in addition to the City.

The telephone survey also revealed that the majority of the 129 not-for-profit organizations do not target specific race or gender groups, with 83.72 percent of respondents identifying their organizations as serving the general public. The majority of the utilized organizations are located in Oakland and have been in operation for more than 10 years. In addition to being mostly local, the utilized organizations are relatively large. Sixty-one percent of the 129 survey respondents reported that their organizations had 10 or more paid employees, and 27.91 percent had more than one office location both within and outside Oakland.

These utilized organizations are managed by a diverse group of individuals. The Board of Directors of 10.85 percent of the utilized organizations were controlled by African Americans, 9.3 percent by Asian Americans, 0.78 percent by Hispanic Americans, 1.55 percent by Native Americans, 15.5 percent by multiple ethnicities, 41 percent by Caucasians, and 20.93 percent by persons of unstated ethnicity. The Board of Directors of 36.43 percent of the organizations were controlled by females, 51.94 percent by males, and 11.63 percent by persons of unstated gender.



APPENDIX A:



Not-For-Profit Organization Survey Instrument

- 1) **What type is your organization?**
 Faith-based
 Private Charity
 Public Charity
 Other (Please specify): _____
- 2) **What's the issue area?**
 Children and Family
 Environment
 Community/ Economic Development
 Community Health
 Employment/ Workforce Development
 Other (Please specify): _____
- 3) **Does your organization target any specific category, such as:**
 Asian American
 African American
 Hispanic American
 Native American
 Women
 Minority
 Other (Please specify): _____
- 4) **What type of services does your organization provide?**
- 5) **What is your primary funding source?**
 Donors
 Foundations
 Federal and State Government
 Special Events Programs
 Other (Please specify): _____
- 6) **What year was it established?** _____
- 7) **How many offices do you have?** _____

8) Do you have an Oakland office?

- Yes
- No

If yes, please provide the address of each Oakland office (street, zip code):

9) Location of Headquarters?

City: _____
State: _____

10) How many members are in your board of directors? _____

How many of them are women? _____
How many African Americans? _____
How many Asian Americans? _____
How many Hispanic Americans? _____
How many Native Americans? _____

11) How many employees are in all your offices?

- 0
- 1-4
- 5-9
- 10-19
- 20-49
- 50-99
- 100 or more

a) How many managers?

- 0
- 1-4
- 5-9
- 10-19
- 20-49
- 50-99
- 100 or more

b) How many administrative staff?

- 0
- 1-4
- 5-9
- 10-19
- 20-49
- 50-99
- 100 or more

c) How many technical staff?

- 0
- 1-4
- 5-9
- 10-19
- 20-49
- 50-99
- 100 or more