

Report

City of Davenport Disparity Study Regarding Minority and Women Participation In Contracting

**Submitted to:
The City of Davenport,
Iowa**

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



MASON TILLMAN
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ACKNOWLEDGMENT

In 2008, the City of Davenport (City) commissioned a Disadvantaged Business Enterprise Disparity Study. Mason Tillman Associates, Ltd., of Oakland, California was selected by the City to perform the Study.

The Disparity Study focused on four industries - construction, design and engineering, professional services, and general services. It reviewed the award of prime contracts during the study period of January 1, 2003 to December 31, 2007.

Jane Mobely and Associates assisted Mason Tillman in the performance of the Disparity Study. The subcontractor performed data collection activities and conducted anecdotal interviews.

Redmond D. Jones, II Assistant to the City Administrator provided the overall leadership and guidance for the Study. Mr. Redmond and his staff facilitated Mason Tillman's effort to secure the needed resources to complete the Disparity Study.

Additionally, the Study could not have been conducted without the cooperation of the Iowa Department of Human Rights with a special acknowledgment to Abraham L. Funchess, Jr. for solidifying matching funds from the state of Iowa.. The efforts of the City's staff is appreciated for playing a critical role in assisting with the data collection by making available the contract records and documents needed to perform the Disparity Study. The extraordinary effort of the City, the Minority Enterprise Construction Council, and the business community should also be applauded.

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EXECUTIVE SUMMARY

I. STUDY OVERVIEW

A. Study Purpose

In 2008, the City of Davenport (City) commissioned Mason Tillman to determine whether or not a statistically significant disparity existed between the number of minority-owned and woman-owned business enterprises (M/WBEs) that were ready, willing, and able to provide goods and services to the City and the number of M/WBEs that were actually providing goods and services to the City. The City of Davenport Disadvantaged Business Enterprise Disparity Study (Disparity Study) focused on four industries—construction, design and engineering, professional services, and general services.¹ The Disparity Study reviewed the award of prime contracts during the study period of January 1, 2003 to December 31, 2007.

B. Study Team

Mason Tillman Associates, Ltd., a public policy consulting firm based in Oakland, California, was selected to perform the Disparity Study. Mason Tillman also subcontracted with Jane Mobely Associates to perform data collection and anecdotal interviews.

C. Industries Studies

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



¹ Professional services also includes the design and engineering industry category.

Construction was defined as services that include the process of building, altering, renovating, improving, or demolishing any public structure, or building, or other improvements to public real property.

Design and engineering was defined as professional services rendered by a licensed architect, engineer, or land surveyor.

Professional services were defined as services from individuals possessing a high degree of professional skill and include the services of accountants, physicians, and lawyers.

General services were defined as services for labor, time, or effort a contractor provides, except the delivery of a specific product that is merely incidental to the required performance.

D. Prime Contract Data

City prime contract records in the four industries were analyzed to determine the utilization of available M/WBEs and non-M/WBEs. 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.

1. Prime Contract Data Sources

The prime contractor data was extracted from the City's financial system and submitted to Mason Tillman in an electronic format. The data for the study period of January 1, 2003 to December 31, 2007 was provided in the database structure specified by Mason Tillman.

Each contract was either classified into one of the three industry categories—construction, professional services,² general services—or marked for exclusion. A combination of the vendor name and the description provided in the contract record was used to determine the industry classification. Non-profits, government agencies, banks, airlines, payments for legal settlements, employee reimbursements, subscriptions, and seminar registration fees were excluded.

The next phase of the data cleaning process was the determination of the prime contractor's ethnicity and gender. Since ethnicity and gender information is critical to the prime contractor utilization analysis, research was conducted to secure this information for each prime contractor.

The ethnicity and gender of the utilized prime contractors were determined through a combination of research techniques. Company names were cross-referenced with certification lists, chambers of commerce directories, trade and professional organizations' membership



²Professional services included design and engineering contracts.

lists, and various websites. A business survey was also conducted to garner ethnicity and gender information not found using the directories and the Internet.

E. Subcontractor Data

For the subcontract analysis of the utilization of available M/WBEs and non-M/WBEs, Mason Tillman gathered information on prime contractor construction, design and engineering, and professional services contracts awarded by the City. General services subcontracts were not compiled, because this industry typically offers very few subcontracting opportunities.

1. Subcontractor Data Sources

The City did not maintain subcontractor records in an electronic format during the study period. The data collection effort was limited to one industry, construction. Mason Tillman attempted to collect professional services data; however, there was insufficient data to perform a statistical analysis on professional services contracts. General service prime contracts for goods and other services were not considered for analysis because they traditionally do not include a significant number of subcontracts. The examination of construction prime contracts was limited to contracts with an award value of \$50,000 or more.

Several data collection strategies were employed in an effort to collect comprehensive construction subcontract records. Bid packages, prime contractor invoices, purchase orders, progress reports, proposals, and prevailing wage reports served as sources for subcontractor data.

Project managers and engineers responsible for contract management were interviewed to identify the subcontractor records housed in their project files. It was determined that the engineers' files were stored at several different locations. City staff assisted in the identification of 113 project files containing prime contracts awarded during the study period. In 73 of these project files, one or more subcontractors were identified. A total of 261 subcontracts were collected for 73 prime contracts. The data collected from the project files were comprised of subcontractor commitments which were submitted with the prime contractor's bid.

In an effort to verify the accuracy of the subcontractor commitments listed in the prime contractors' bids prime contractor and subcontractor expenditure surveys were conducted. Each contractor that was awarded a prime contract of \$50,000 or more was surveyed to verify the subcontractors listed in the bid and to name any contractors not listed in the bid. Each subcontractor listed in a bid was surveyed to verify utilization and payment.

The prime contractor survey was conducted by mail with a telephone follow-up. The mail survey contained the list of the subcontractor commitments recorded in the bids. Each prime



contractor which failed to respond to the mail survey was called and encouraged to return the survey or provide the requested information via the telephone.

The subcontractor survey was performed by telephone. Each listed subcontractor was called and asked to verify its participation on a specific prime contract. Multiple calls were made to each subcontractor in an effort to confirm the level of participation listed on the prime contract.

The subcontractor records compiled through this research were sufficient to perform the subcontractor analysis for construction. This was only made by possible the extraordinary effort made by our project manager and City staff in reconstructing the subcontracts awarded by the businesses which received construction prime contracts from the City of Davenport from January 1, 2003 to December 31, 2007.

F. Contract Thresholds

In the procurement process, there are two contract dollar thresholds. Formal contracts, which require advertising and competitive solicitations, valued at over \$10,000 and informal contracts, which do not require advertising and competitive solicitations, are valued at \$10,000 and under.

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

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**



determine whether there was a statistically significant underutilization within the four industries. In **step six**, the anecdotal analysis, the contemporary experiences of business 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. 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. Additionally, a Regression Analysis was conducted to determine if factors other than discrimination could account for any statistically significant disparity.

B. Structure

The Disparity Study findings are presented in 11 chapters. The contents of each chapter are briefly described below:

Disparity Study Report

- Chapter 1: Executive Summary presents the Study overview.
- Chapter 2: 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 3: Analysis of Purchasing and Contracting Policies and Procedures presents the City's contracting and procurement practices.
- 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: Anecdotal Analysis presents the business community's experiences and perceptions of barriers encountered in contracting or attempting to contract with the City.
- Chapter 9: 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 10: Subcontractor Disparity Analysis presents subcontractor utilization compared to subcontractor availability by industry, ethnicity and gender and determines whether the comparison is statistically significant.
- Chapter 11: Recommendations presents best management practices to enhance the City's contracting and procurement activities with D/M/WBEs and other small businesses.
- Appendix A: Regression Analysis.
- Appendix B: The U.S. Department of Transportation (USDOT) regulations are set forth in 49 CFR Part 26.

III. NOTABLE FINDINGS

A. Prime Contractor Utilization Analysis

The City issued 477 prime contracts during the January 1, 2003 to December 31, 2007 study period. These included 186 for construction, 23 for professional services, and 268 for general services. The City's design and engineering contracts were included in the professional services contracts for the statistical analysis.

The City expended \$89,802,755 dollars during the January 1, 2003 to December 31, 2007 study period. These included \$71,508,016 for construction, \$3,363,568 for professional services, and \$14,931,170 for general services.

B. Subcontractor Utilization Analysis

Mason Tillman identified 261 construction subcontracts during the January 1, 2003 to December 31, 2007 study period. On the subcontracts identified \$16,313,268 total dollars were expended during the study period for construction subcontracts.

C. Market Area Analysis

Given the geographical distribution of the dollars awarded by the City, the Disparity Study's market area was determined to be the Quad Cities of Bettendorf, Iowa; Davenport, Iowa; East Moline Illinois; Moline, Illinois; and Rock Island, Illinois. The City awarded a total of 58.28 percent of its contracts and 73.02 percent of its dollars to businesses in the Disparity Study's market area.



D. Disparity Analysis Methodology

The objective of the disparity analysis is to determine if minority and women business enterprises (M/WBEs) were underutilized at a statistically significant level on the City's 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/WBEs³ in the relevant market area. If a disparity exists between these proportions, a statistical test could determine the probability that the disparity is due to chance. If there is a low probability that the disparity is due to chance,⁴ *Crosen* states that an inference of discrimination can be made. This analysis should be applied to M/WBEs by ethnicity and gender.

E. Contract Size Analysis

Contract size analysis of prime contracts was undertaken to determine the capacity required to perform on the City's prime contracts. The size distribution illustrates the fact that limited capacity is needed to perform the overwhelming majority of the City's contracts.

The percentage of the City's construction contracts valued at \$25,000 and under was 27.42 percent; those \$100,000 and under was 53.23 percent; and 82.8 percent was under \$500,000. The percent of the City's professional services contracts valued at \$25,000 and under was 43.48 percent; those less than \$100,000 was 78.26 percent; and 95.65 percent was under \$500,000. The percentage of the City's general services contracts valued at \$25,000 and under was 62.31 percent; those \$100,000 and under was 86.94 percent; and those under \$500,000 was 98.13 percent. The contract analysis is discussed in depth in *Chapter 7, Availability Analysis*.

F. Statistical Findings

There was a finding of statistically significant underutilization of M/WBEs in the award of formal and informal prime contracts and the award of subcontracts.

Formal Prime Contract Disparity: A statistically significant underutilization of M/WBEs in formal prime contracts was found in construction and general services contracts. Table 1.01 below reflects the findings. There were too few contract records, as denoted by dashes, to analyze disparity for Native Americans and Asian Americans.

³ Availability is defined as willing and able firms. The methodology for determining willing and able firms is detailed in Chapter 7 of the Report.

⁴ 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.



Table 1.01 Summary of Formal Prime Contract Disparity Findings

Ethnicity and Gender	Construction	General Services
Formal Contracts - \$500,000 and under		
African Americans	Yes	Yes
Asian Americans	---	---
Hispanic Americans	No	Yes
Native Americans	---	---
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	No	Yes
Minority and Woman 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.

A comparison between the prime contractor utilization and availability for the City's construction contracts under \$500,000 is presented in Chart 1.01 below.



Chart 1.01 Comparison between Prime Contractor Utilization and Availability for Construction Contracts under \$500,000

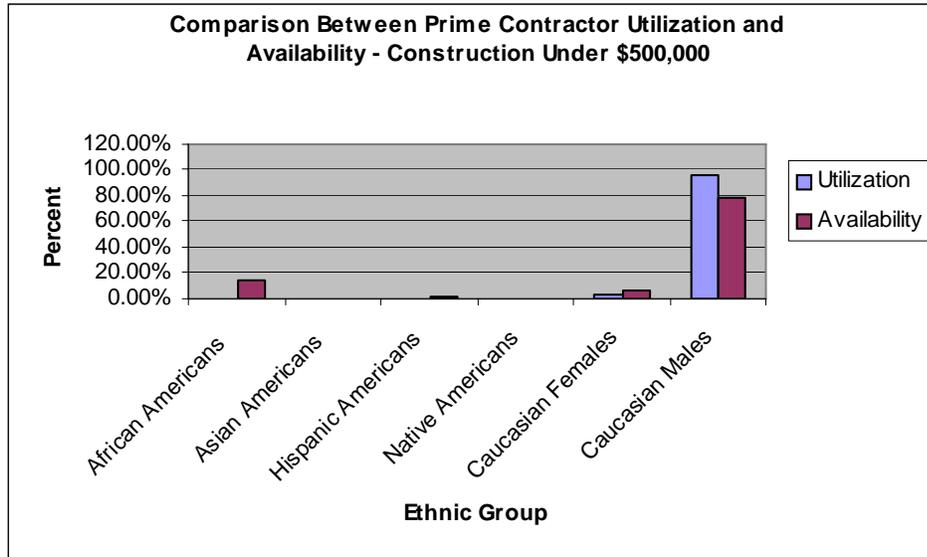
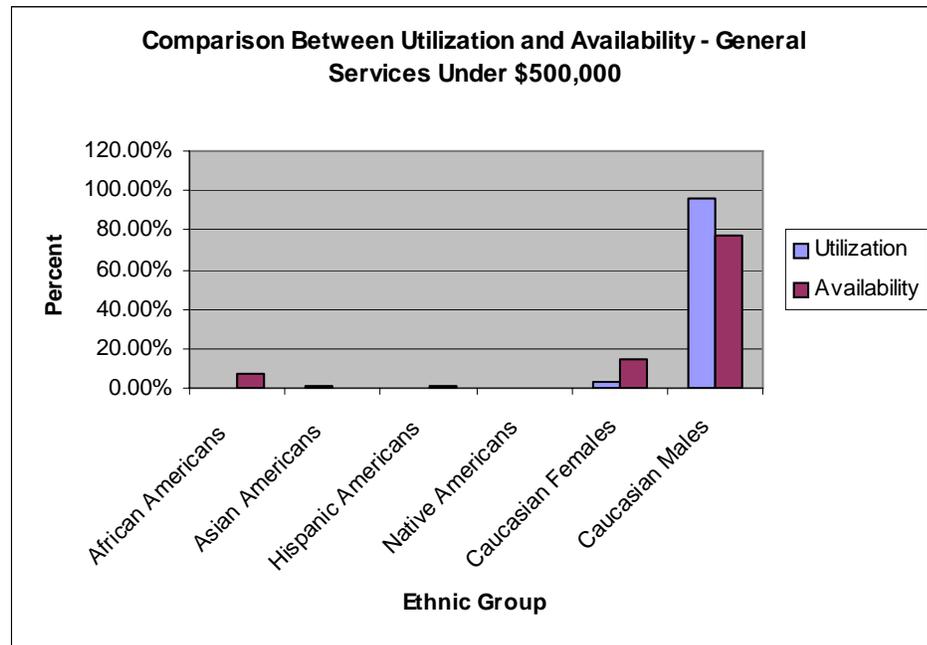


Chart 1.02 Comparison between Prime Contractor Utilization and Availability for General Services under \$500,000



Informal Prime Contract Disparity: A statistically significant underutilization of M/WBEs in informal prime contracts was found in construction and general services contracts. Table 1.02 below reflects the findings. Informal prime contracts do not require advertising.

Table 1.02 Summary of Informal Prime Contract Disparity Findings

Ethnicity and Gender	Construction	General Services
Informal Contracts - \$10,000 and under		
African Americans	Yes	Yes
Asian Americans	---	---
Hispanic Americans	No	No
Native Americans	---	---
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	No	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.

Subcontract Disparity: The statistically significant underutilization of M/WBEs in the award of subcontracts was found in construction where the disparity analysis was performed. Table 1.03 below reflects the findings.



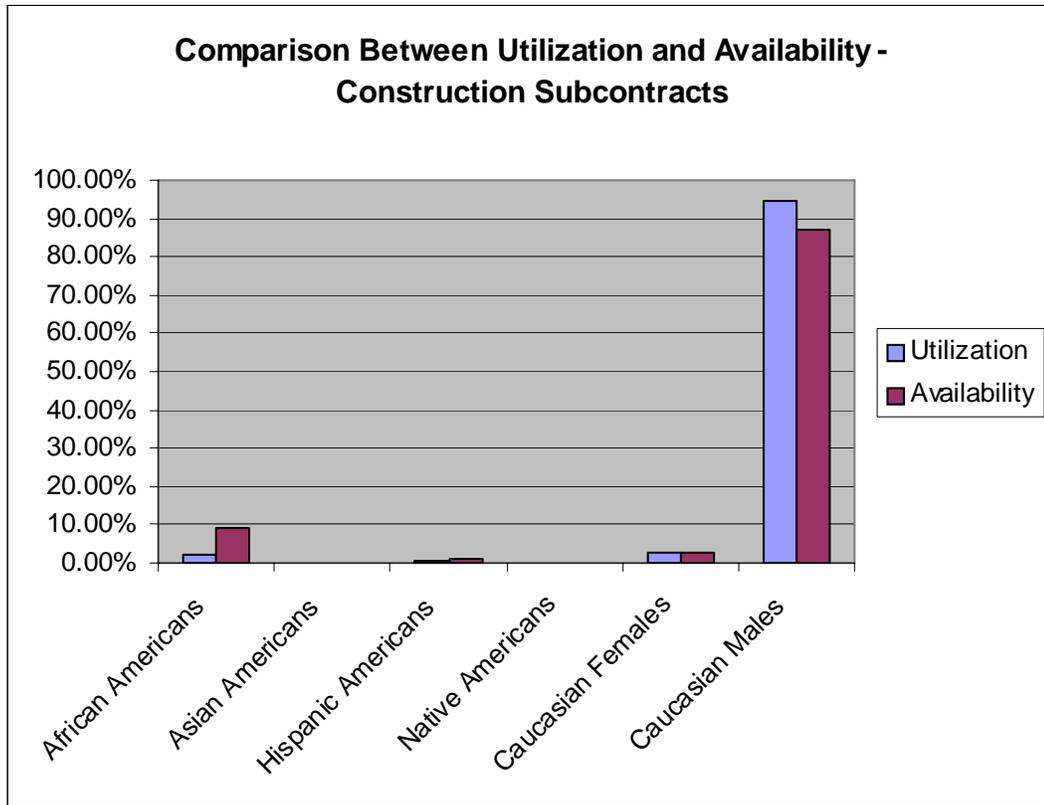
Table 1.03 Summary of Subcontract Disparity Findings

Ethnicity and Gender	Construction Subcontracts
All Contracts over \$50,000	
African Americans	Yes
Asian Americans	---
Hispanic Americans	No
Native Americans	---
Minority Business Enterprises	<i>Yes</i>
Women Business Enterprises	<i>No</i>
Minority and Women Business Enterprises	<i>No</i>

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

A comparison between the prime contractor utilization and availability for the City's construction subcontracts is presented in Chart 1.03 below.

Chart 1.03 Comparison between Prime Contractor Utilization and Availability for the City's Construction Subcontracts



IV. ANECDOTAL FINDINGS

In addition to requiring a statistical analysis, the United States Supreme Court in *Croson*, stated that anecdotal findings “if supported by appropriate statistical proofs, lend support to a [local entity’s] determination that broader remedial relief [be] justified.”⁵ *Croson* authorizes anecdotal inquiries along two lines. The first approach examines barriers attributed to the local entity. Such action is defined as the active participation of the government entity, while the second approach examines passive participation which are the barriers created by the contractors which are awarded public funds.

Twenty business owners were interviewed about their experiences doing business with the City. Members of all ethnic groups were interviewed, and the anecdotes provide accounts of both active and passive barriers M/WBEs encountered in dealing with City officials and the



⁵*Id.*

business community. The anecdotal data also presents examples of exemplary practices of the City and other agencies within the county. Detailed anecdotal findings are presented in *Chapter 8, Anecdotal Analysis*.

It should be noted that many business owners described the City’s DBE Program as valuable and a major factor in keeping their businesses solvent. Additionally, many City staff members received commendations from interviewees concerning their assistance to DBEs.

The following is an overview of the anecdotal findings:

- Minority business owners reported that they were held to a higher standard of review than their Caucasian counterparts.
- DBEs reported that they experienced difficulty in attempting to break into the contractor community.
- DBEs reported difficulty meeting the City’s prequalification requirements, specifically the City’s Contractor Licensing Test (Block Test).
- DBEs recommended that the City relax its standards concerning brand name requirements.
- The interviewees also recommended more diversity on the City’s selection panel committee.

Table 1.04 below presents a summary of findings from the anecdotal analysis regarding barriers reported by DBEs in their efforts to obtain contracts with the City.

Table 1.04 Summary of Barriers Identified

Type of Evidence
BUSINESS COMMUNITY BARRIERS
Barriers Based on Gender
Barriers Based on Race
Difficulty Breaking into Contracting Network
BARRIERS CREATED BY THE CITY
Agency Failure to Monitor M/WBE Program Requirements
Public Agency Managers Creating Barriers
Problems with Certification Procedures



Type of Evidence
DIFFICULTIES IN BID PROCESS
Difficulty Meeting Pre-qualification Requirements
Difficulty Navigating the Bid Process
FINANCIAL BARRIERS
Difficulty Obtaining Financing or Credit
Difficulty Obtaining Insurance or Bonding
Late Payment by the City
Late Payment by Prime Contractors

V. RACE AND GENDER-CONSCIOUS RECOMMENDATIONS

The following race and gender-conscious recommendations result from Mason Tillman’s disparity analysis findings and include prime contracting and subcontracting remedies. The recommendations are discussed in detail in *Chapter 11, Recommendations*.

A. Prime Contract Remedies

- 1) Small Contract Rotation Program for construction contracts: This program should be established for construction contracts valued at \$100,000 or less and limited to competition for businesses from the statistically significant underutilized group and other disadvantaged businesses of comparable capacity.

- 2) Prime contract-Specific DBE Goals: Contract-specific DBE prime contracting goals should be set on all construction and general services contracts to address the identified disparity. The goals could reflect the actual availability for each contract that is advertised, or the goals could be set no higher than the actual availability for each advertised contract. Tables 1.05 and 1.06 below describe the prime contractor availability percentages.



Table 1.05 Construction Prime Contractor Availability

Underutilized Groups	Percentage of Availability
African Americans	14.46%
Minority and Women Business Enterprises	21.69%

Table 1.06 General Services Prime Contractor Availability

Underutilized Groups	Percentage of Availability
African Americans	6.9%
Hispanic Americans	1.48%
Women Business Enterprises	14.29%
Minority and Women Business Enterprises	23.15%

B. Subcontractor Remedies

- 1) DBE Subcontracting Goals: The goals should be applied to the City’s prime construction contracts. The overall goals for the group should reflect its availability, as identified in the Study. Table 1.07 depicts the availability of minority and women construction subcontractors.

Table 1.07 Subcontractor Availability

Underutilized Groups	Construction Availability
African Americans	8.92%
Minority Business Enterprises	10.19%



- 2) Weighted Good Faith Efforts: Detailed and quantifiable Good Faith Effort criteria should be developed and applied to each solicitation with a subcontractor goal. Each criterion, such as negotiation in good faith with potential subcontractors, should define and quantify the minimum behavior required to demonstrate an attempt to meet the subcontracting goal.

VI. RACE AND GENDER-NEUTRAL RECOMMENDATIONS

Race and gender-neutral program recommendations are offered to ensure equity in the contracting process. They incorporate a number of best management practices gleaned from the anecdotal interviews, innovations used in other governmental entities and corporate organizations, and the analysis of the City's contracting process. These race and gender-neutral recommendations can serve as a guide to enhance the City's contracting efforts. Detailed race and gender-neutral recommendations are presented in *Chapter 11, Recommendations*.

A. Procurement Strategies

Pre-Award Recommendations

- Unbundle large procurements into smaller contracts where feasible to maximize small business participation.
- Establish a Direct Purchase Program for construction contracts to encourage purchasing supplies and/or leasing the required equipment for a job, then subcontract only for the expertise or labor required to perform the work.
- Establish an Apprentice Program on construction contracts.
- Post plan holders list for upcoming bids on the City's website.
- Create a virtual plan room by purchasing software that would allow bidders to obtain measurements for bid specifications by digitizing an area on a blueprint on the City's website.



- Form partnerships with lending institutions by leveraging banking relationships with financial institutions to assist DBEs and other small businesses with project financing and start-up costs.
- Establishing an Owner-Controlled Insurance Program to consolidate risk management costs and reduce the burden of the insurance premium for DBEs and small business owners.
- Expand the City's DBE Certification Program by accepting the State's Targeted Small Business certifications.

1. Post-Award Strategies

- Revise the City's procurement procedures to include a requirement that the DBE Program Manager be informed in writing and receive a copy of any proposed contract or procurement for construction, professional services, and general services within three business days of the release of the RFP, RFQ, or RFB.
- Enact uniform affirmative action requirements that do not allow potential bidders to enter into contractual arrangements that circumvent the City's affirmative action requirements.
- Publish DBE utilization reports to measure the effectiveness of the City's DBE Program. The report should include verified payment and award data organized by industry, department, ethnicity, gender, and DBE status.
- Give five-day notice of invoice disputes so that the disputes may be resolved quickly and small businesses can maintain positive cash flow while providing services to the City.
- Failure by prime contractors to list the names of all subcontractors on the City's *Work Types and DBE Contact form* should render the submittal non-responsive and therefore void.
- Conduct routine post-award contract compliance monitoring to ensure that DBE participation is being maintained



B. Best Management Practices

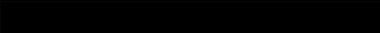
1. Administrative Recommendations

- Enhance the City's website by the addition of a link, as high on the page as possible, to a page consolidating all information for those wishing to work with the City. This destination should list all contracts available for bid, as well all contracts awarded.
- Evaluate staff compliance with the DBE Program through department-level reports of DBE utilization and staff performance reviews.
- Develop a department-wide DBE training manual which would provide background on the DBE Program, any federal regulations which govern the program, and the City's DBE policy and objectives.
- Conduct outreach and implement marketing strategies to attract more market area businesses to bid or propose to perform work on the City's contracts.

2. Data Management Recommendations

- Design a subcontractor utilization tracking database to enhance the tracking and monitoring of subcontract awards more efficiently. The recommended enhancements would support a more accurate assessment of the effectiveness and compliance of the City's DBE Program.
- Track subcontractor utilization in a database to track and verify payments to subcontractors that perform work on the City's contracts.





2

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 will 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 state and locally funded 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 found in a disparity study, and this remedy must impose a minimal burden upon unprotected classes.

A caveat is appropriate here. The review under strict scrutiny is fact-specific. Nevertheless, three post-*Croson* Federal Court of Appeals opinions provide guidelines for the evidence a disparity study has to adduce if race-conscious remedies are put in place. The Third,

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

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



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

Adarand, which followed *Croson* in 1995, applied the strict scrutiny standard to federal programs. The U.S. Department of Transportation (USDOT) 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 USDOT regulations continue to be in effect and control the City of Davenport's (City) federally funded DBE programs.

II. STANDARDS OF REVIEW

The standard of review represents the measure by which a court evaluates whether a particular legal issue meets a certain statute, rule, or precedent. This section discusses the standard of review that the Supreme Court set for evaluating race-conscious state and local programs in *Croson*, women-owned businesses, and 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. It concludes with the standard of review for local business programs that are not race or gender-conscious.

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 MBE programs which are necessarily 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

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 court 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.



rectify the effects of *identified, systemic racial discrimination* within its jurisdiction.⁶ Justice O'Connor, speaking for the majority, 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 of this chapter.

B. Woman-Owned Business Enterprises

Since *Croson*, the Supreme Court has remained silent with respect to the appropriate standard of review for women-owned business enterprise (WBE) programs and local business enterprise (LBE) programs which are geographically based. *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 WBE 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

⁶ *Croson*, 488 U.S. at 509.

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).



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 programs is different from 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 Under the Third Circuit ruling 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 as the standard of review that governs WBE programs.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

¹¹ *Id.* at 728.

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.3d at 909, (citing *Philadelphia*, 6 F.3d at 1010 (3d Cir. 1993)).



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 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 directed toward 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

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

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

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.



C. Disadvantaged Business Enterprise

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 the DBE rules effective, March 1999. The goal of promulgating the new rule was to modify the DBE program consistent with the "narrow tailoring" requirement of *Adarand*. The new provisions apply only to the airport, transit, and highway financial assistance programs of the USDOT. See Appendix B for the main components of the rules.

There have been challenges to the amended DBE regulations. Two circuit courts, the Eighth and Seventh, approved them. The City, being in the Eighth Circuit, is free to follow the amended regulations as written. The Eighth Circuit's position is analyzed below.

The Eighth Circuit Analysis

Sherbrooke Turf Inc. v. Minnesota Department of Transportation and *Gross Seed Co. v. Nebraska Dep't of Roads*²⁹, is a 2003 joint decision. (In both cases, the district courts found that the revised DBE Program, as amended in 1999, met the strict scrutiny standard prescribed in *Adarand*.³ On appeal, the Circuit Court held that Congress had a "compelling interest" to enact the legislation because it "had a sufficient evidentiary basis on which to conclude that the persistent racism and discrimination in highway subcontracting warranted a race-conscious procurement program."

The court's "narrow tailoring" examination looked at the DBE regulations themselves. The court held that four factors demonstrated that the DBE program was narrowly tailored on its face. Those factors were: (1) the emphasis on the use of race-neutral measures to meet the goals; (2) the substantial flexibility allowed; (3) goals were tied to the local market; and (4) participation was open to all small businesses who could show that they were socially and economically disadvantaged, and the presumption that minority businesses qualified was limited to those with \$750,000 or less in net worth.

The Circuit Court then examined whether the program was narrowly tailored *as applied* by Minnesota and Nebraska in their local labor markets. Each state retained a consultant to examine local conditions. In Minnesota, the consultant followed the regulations' two-step goal setting, reducing the availability it found by the precipitous drop in DBE participation when the program was suspended. In Nebraska, the consultant determined the DBE

²⁹ 345 F.3d 964 (8th Cir. 2003).



availability in the four years before the program was amended in 1999 to make clear that the ten percent goal was not mandatory. After determining what decisions had been reached on a race neutral basis, it predicted the amount of the availability that would require race and gender conscious subcontracting. Therefore, the Eighth Circuit rejected plaintiffs' appeal.³⁰

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.³¹ 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 businesses, particularly where the city itself creates some of the disadvantages.”³²

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:³³

³⁰ The Seventh Circuit is in accord. *Northern Contracting Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (2007). Consultant's methodology was consistent with the flexible nature of the DBE regulations: (1) use of its 'custom census' was acceptable method to determine Step 1 availability; (2) it was not required to separate prime and subcontracting availability; and (3) it reasonably determined amount of goal that would use race neutral means.

³¹ *AGCC I*, 813 F.2d at 943.

³² *Id.* At 943.

³³ These were the issues on which the district court in Philadelphia reviewed the disparity study before it.



- 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.³⁴

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.³⁵ The issue of whether or not the government has produced a strong basis in evidence is a question of law.³⁶ 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.³⁷

The adequacy of the government’s evidence is “evaluated in the context of the breadth of the remedial program advanced by the [jurisdiction].”³⁸ The onus is upon the jurisdiction to provide a factual predicate which is sufficient in scope and precision to demonstrate that 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 of this chapter.

³⁴ *Croson*, 488 U.S. 469.

³⁵ *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)).

³⁶ *Id.* (citing *Associated General Contractors v. New Haven*, 791 F.Supp. 941, 944 (D.Conn 1992)).

³⁷ *Concrete Works I*, 36 F.3d at 1522.

³⁸ *Id.* (citing *Croson* 488 U.S. at 498).



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.³⁹ 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)*.⁴⁰ 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."⁴¹

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.⁴² That court wrote that the allocation of the burden of persuasion depends on the theory of constitutional invalidity that is being considered.⁴³ 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.⁴⁴

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 to justify its conclusions, the plaintiff has the burden of persuading the court that those facts are not

³⁹ *Id.* (citing *Wygant*, 476 U.S. at 277-278).

⁴⁰ *Wygant v. Jackson Board of Education*, 476 U.S. 267, 293 (1986).

⁴¹ *Id.*

⁴² *Philadelphia*, 91 F.3d at 597.

⁴³ *Id.*

⁴⁴ *Id.*



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.⁴⁵

Concrete Works II made clear that the 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.”⁴⁶

The Supreme Court's disposition of the 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*.⁴⁷

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 in *Concrete Works II* held that the defendant must show “a strong basis” for concluding that MBEs are being discriminated against. And, the plaintiff has to propound evidence that negates its validity.

⁴⁵ 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.

⁴⁶ *Concrete Works II*, 321 F.3d at 979.

⁴⁷ *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*”).



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.⁴⁸

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 that entity’s contracting opportunities.⁴⁹

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.⁵⁰ 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.”⁵¹

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

⁴⁸ *Croson*, 488 U.S. at 509.

⁴⁹ *Wygant v. Jackson Board of Education*, 476 U.S. 267 at 275 (1985).

⁵⁰ *Croson*, 488 U.S. at 492; *Coral Construction*, 941 F.2d at 916.

⁵¹ *Croson*, 488 U.S. at 492.



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 whether purely private sector discrimination is likely to be a fruitful line of inquiry.⁵² 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. Was there pervasive discrimination throughout the Denver Metropolitan Statistical Area (MSA)?
2. Were all designated groups equally affected?
3. Was 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?

The court concluded that the City of Denver had not documented a firm basis of identified discrimination derived from the statistics submitted.⁵³

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 included private sector

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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."

⁵³ *Id.* at 61.



discrimination in the marketplace. The court, relying on *Shaw v. Hunt*,⁵⁴ 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.*⁵⁵

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.”⁵⁶ The court emphasized that its reading of *Croson*⁵⁷ 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.⁵⁸

The courts found that the disparities in MBE private sector participation, demonstrated with the rate of business formation and lack of access to credit which affected 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,⁵⁹ 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

⁵⁴ 517 U.S. at 519.

⁵⁵ *Concrete Works II*, 321 F.3d at 975-76.

⁵⁶ Slip opinion, pg. 20.

⁵⁷ See also *Shaw v. Hunt*, 517 U.S. 899 (1996), which it cited.

⁵⁸ 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.”

⁵⁹ Plaintiff had not preserved the issue on appeal; therefore, it was no longer part of the case.



findings and that the court should have addressed the issue of whether the program was narrowly tailored.

Ten months later, in *Builders Association of Greater Chicago v. City of Chicago*,⁶⁰ 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 MBE subcontracting goal an appropriate remedy, because it was not “narrowly tailored” to address the lack of access to credit for MBEs which was the documented private discrimination. 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*.⁶¹

The question of whether evidence of private sector practices also arose in *Builders Ass’n of Greater Chicago v. County of Cook*.⁶² In this case the Seventh Circuit cited *Associated General Contractors of Ohio v. Drabik*⁶³ 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 women 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.

⁶⁰ 298 F.Supp2d 725 (N.D.Ill. 2003).

⁶¹ 123 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.

⁶² 256 F.3d 642 (7th Cir. 2001).

⁶³ 214 F.3d 730 (6th Cir. 2000).



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 other illegitimate criteria (arguably gender).⁶⁴ Thus, it is essential to demonstrate a pattern and practice of such discriminatory exclusion in the relevant market area.⁶⁵ 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.⁶⁶ 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.⁶⁷ 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."⁶⁸

⁶⁴ *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 the 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.

⁶⁵ *Id.* at 509.

⁶⁶ *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*.

⁶⁷ *Id.* at 509.

⁶⁸ *Id.* at 501 (citing *Hazelwood School District v. United States*, 433 U.S. 299, 307-08 (1977)).



The *Croson* Court made clear that both prime contract and subcontracting data were 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.”⁶⁹ Subcontracting data is also an important means by which to assess suggested future remedial actions. Since the decision making criteria is different for the awarding of prime contracts and subcontracts, the remedies for discrimination identified at a prime contractor 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.”⁷⁰ 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.⁷¹ 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.⁷² 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.⁷³

Likewise, anecdotal evidence, standing alone, is unlikely to establish a systemic pattern of discrimination.⁷⁴ Nonetheless, anecdotal evidence is important because the individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”⁷⁵

⁶⁹ *Croson*, 488 U.S. at 502-03.

⁷⁰ *Id.* at 509.

⁷¹ *Id.*

⁷² *Coral Construction*, 941 F.2d at 919.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* (quoting *International Brotherhood of Teamsters v. United States (Teamsters)*, 431 U.S. 324, 339 (1977)).



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.”⁷⁶ 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.⁷⁷

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, which determination should be fact-based. An entity may limit consideration of evidence of discrimination within its own jurisdiction.⁷⁸ Extra-jurisdictional evidence may be permitted, when it is reasonably related to where the jurisdiction contracts.⁷⁹

2. Current Versus Historical Evidence

In assessing the existence of identified discrimination through demonstration of a disparity between MBE utilization and availability, it may be important to examine disparity data both prior to and after the entity’s current MBE 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.⁸⁰ 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

⁷⁶ *Coral Construction*, 941 F.2d at 925.

⁷⁷ *Concrete Works*, 823 F.Supp. 821, 835-836 (D.Colo. 1993); rev’d on other grounds, 36 F.3d 1513 (10th Cir. 1994).

⁷⁸ *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).

⁷⁹ 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.

⁸⁰ *See Croson*, 488 U.S. at 509-10.



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 MBE program based upon outdated evidence.⁸¹ 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.⁸²

Pre-program data regarding an entity's utilization of MBEs prior to enacting the MBE program may be relevant to assessing the need for the agency to keep such a program intact. 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)*,⁸³ set forth the possible significance of statistical data during an entity's "pre-program" years. Judge Henderson opined that statistics that provides data on a period when no M/WBE goals were operative is 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."⁸⁴ 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.⁸⁵

⁸¹ *Id.* at 499 (stating that "[i]t is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination").

⁸² *See AGCC II*, 950 F.2d 1401 at 1414 (consultant study looked at City's MBE utilization over a one year period).

⁸³ *RGW Construction v. San Francisco Bay Area Rapid Transit District (BART)*, No. C92-2938 (N.D. Cal. July 29, 1992); *see* November 25, 1992, Order by Judge Thelton Henderson (on file with Mason Tillman Associates).

⁸⁴ *Id.*

⁸⁵ *Dade County*, 122 F.3d at 912.



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.⁸⁶ Disparity indexes have been found highly probative evidence of discrimination where they ensure that the “relevant statistical pool” of minority or women contractors are 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*.⁸⁷

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*

⁸⁶ 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).

The court affirmed the judgment that declared appellant’s affirmative action plan for awarding county construction contracts unconstitutional and enjoined the plan’s operation because there was no statistical evidence of past discrimination and appellant failed to consider race and ethnic-neutral alternatives to the plan.

⁸⁷ *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.



“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.⁸⁸

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.”⁸⁹ However, the Court has not assessed nor attempted to cast 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.⁹⁰

Following the dictates of *Croson*, courts may carefully examine whether there is data that shows that MBEs are ready, willing, and able to perform.⁹¹ *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

⁸⁸ *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.

⁸⁹ *Croson*, 488 U.S. at 501 (quoting *Hazelwood School District v. United States*, 433 U.S. 299, 307-308 (1977)).

⁹⁰ *Concrete Works*, 36 F.3d at 1522.

⁹¹ The *Philadelphia* study was vulnerable on this issue.



MBEs and WBEs available in the marketplace 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 non-minority 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.⁹²

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.⁹³ 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.⁹⁴ 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 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.⁹⁵

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.

⁹² *Concrete Works*, 36 F.3d at 1528.

⁹³ 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*.

⁹⁴ *Id.*

⁹⁵ *Id.* at 736.



The appellate opinions in *Philadelphia*⁹⁶ and *Dade County*,⁹⁷ 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.⁹⁸ 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.⁹⁹

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."¹⁰⁰ 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 more than \$30,000. The consultant determined that no MBEs were used during the study period based upon recollections regarding whether the owners of the utilized firms were MBEs. The court found this evidence insufficient as a basis for finding that prime contractors in the market were discriminating against subcontractors.¹⁰¹

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

⁹⁶ *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).

⁹⁷ *Dade County*, 943 F.Supp. 1546.

⁹⁸ *Philadelphia*, 91 F.3d 586.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 605.

¹⁰¹ 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.



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.¹⁰² 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.”¹⁰³

In addition, the court found that a program certifying MBEs for federal construction projects was a satisfactory measure of capability of MBE firms.¹⁰⁴ 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.”¹⁰⁵ 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.¹⁰⁶ 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.

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.¹⁰⁷ 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

¹⁰² *Philadelphia*, 91 F.3d at 603.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Engineering Contractors Association of South Florida, Inc. et al. v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Florida 1996).



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.¹⁰⁸ In addition, a comprehensive count of bidders is dependent on the adequacy of the agency's record keeping.¹⁰⁹

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.

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."¹¹⁰ Anecdotal evidence should be gathered to determine if minority contractors are systematically being excluded from contracting opportunities in the relevant market area. 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, which 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.¹¹¹

¹⁰⁸ 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).

¹⁰⁹ 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).

¹¹⁰ *Croson*, 488 U.S. at 509. The Court specifically cited to *Teamsters*, 431 U.S. at 338.

¹¹¹ 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.]").



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*¹¹²
- Prime contractors showing MBE bids to non-minority subcontractors to find a non-minority firm to underbid the MBEs —*Cone Corporation v. Hillsborough County*¹¹³
- M/WBEs’ inability to obtain contracts for private sector work — *Coral Construction*¹¹⁴
- M/WBEs told that they were not qualified, although they were later found to be qualified when evaluated by outside parties — *AGCC*¹¹⁵
- Attempts to circumvent M/WBE project goals — *Concrete Works I*¹¹⁶
- Harassment of M/WBEs by an entity's personnel to discourage them from bidding on an entity's contracts — *AGCC*¹¹⁷

¹¹² *Philadelphia*, 6 F.3d at 1002.

¹¹³ *Cone Corporation v. Hillsborough County*, 908 F.2d at 916 (11th Cir.1990).

¹¹⁴ 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).

¹¹⁵ *AGCC II*, 950 F.2d at 1415.

¹¹⁶ *Concrete Works*, 36 F.3d at 1530.

¹¹⁷ *AGCC II*, 950 F.2d at 1415.



Courts must assess the extent to which relief measures disrupt settled “rights and expectations” when determining the appropriate corrective measures.¹¹⁸ 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 the City of 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.”¹¹⁹

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.”¹²⁰

This was not the situation confronting the Ninth Circuit in *Coral Construction*. There, the 700-plus page appellate records contained the affidavits of “at least 57 minorities or women contractors, each of whom complain in varying degrees 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.”¹²¹

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.”¹²² 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:

¹¹⁸ *Wygant*, 476 U.S. at 283.

¹¹⁹ *Croson*, 488 U.S. at 509, citing *Teamsters*, 431 U.S. at 338.

¹²⁰ *Id.* at 480.

¹²¹ *Coral Construction*, 941 F.2d at 917-18.

¹²² *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).



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.¹²³

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.”¹²⁴

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*.¹²⁵ 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.¹²⁶ The circuit court stated:

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.¹²⁷

The District of Columbia Circuit Court echoed the Ninth Circuit’s acknowledgment of the rare case in which anecdotal evidence is singularly potent in *O’Donnell Construction v.*

¹²³ *Id.* at 919.

¹²⁴ *Id.*

¹²⁵ *Philadelphia*, 6 F.3d at 1002.

¹²⁶ *Id.* at 1003.

¹²⁷ *Id.*



District of Columbia.¹²⁸ 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.¹²⁹

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.”¹³⁰ However, it held that this was not the “exceptional case” where, unreinforced by statistics, the anecdotal evidence was enough.¹³¹

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 fact finder should accord less weight to personal accounts of discrimination that reflects isolated incidents, anecdotal evidence of a municipality’s institutional practices carries more weight due to the systemic impact that such institutional practices have on market conditions.”¹³² 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*.¹³³ There, the court approved a “vast number of individual accounts of

¹²⁸ 963 F.2d at 427 (D.C. Cir.1992).

¹²⁹ *Id.*

¹³⁰ *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).

¹³¹ *Id.* at 926.

¹³² *Concrete Works I*, 36 F.3d at 1530.

¹³³ *AGCC II*, 950 F.2d 1401.



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.¹³⁴ 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.¹³⁵ These requirements are that the accounts:

- are gathered from minority contractors, preferably those that are “qualified”¹³⁶
- concern specific, verifiable instances of discrimination¹³⁷
- involve the actions of governmental officials¹³⁸
- involve events within the relevant jurisdiction’s market area¹³⁹
- discuss the harm that the improper conduct has inflicted on the businesses in question¹⁴⁰ and

¹³⁴ *Id.* at 1415.

¹³⁵ *Philadelphia*, 6 F.3d at 1003. The anecdotal evidence must be “dominant or pervasive.”

¹³⁶ *Philadelphia*, 91 F.3d at 603.

¹³⁷ *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.”

¹³⁸ *Croson*, 488 U.S. at 509.

¹³⁹ *Coral Construction*, 941 F.2d at 925.

¹⁴⁰ *O’Donnell*, 963 F.2d at 427.



- collectively reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic¹⁴¹

Given that neither *Croson* nor its progeny identifies 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.¹⁴² While the matter is not free of countervailing considerations, 57 accounts, many of which appeared to be of the type referenced 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 139.¹⁴³ It is, of course, a matter of speculation as to how many of these accounts was 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.

¹⁴¹ *Coral Construction*, 941 F.2d at 919.

¹⁴² *Philadelphia*, 6 F.3d. at 1002-03.

¹⁴³ 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. CONSIDERATION OF RACE-NEUTRAL OPTIONS

A remedial program must address the source of the disadvantage faced by minority 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.¹⁴⁴

On the other hand, an MBE 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.¹⁴⁵ 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.¹⁴⁶ 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. The district court recently wrote in *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County*:

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.¹⁴⁷

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, MBEs also face race discrimination in the awarding of contracts, then a race-conscious program will

¹⁴⁴ *AGCC II*, 950 F.2d at 1404.

¹⁴⁵ *Croson*, 488 U.S. at 508.

¹⁴⁶ *Id.* at 507.

¹⁴⁷ *Hershell Gill*, 333 F.Supp. 2d 1305, 1330 (S.D.Fla. 2004).



stand, so long as it also includes race-neutral measures to address the capital and bonding barriers.¹⁴⁸

Similarly, the Ninth Circuit Court of Appeals in *Coral Construction* ruled that there is no requirement that an entity exhaust every possible race-neutral alternative.¹⁴⁹ Instead, an entity must make a serious, good faith consideration of race-neutral measures in enacting an MBE program. Thus, in assessing MBE utilization, it is imperative to examine barriers to MBE participation that go beyond “small business problems.” The impact on the distribution of contracts programs that have been implemented to improve MBE utilization should also be measured.¹⁵⁰

VI. UNITED STATES DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

The US Department of Transportation promulgated in 1982 its initial DBE regulations, 49 CFR Part 26 in 1982, to enact the contracting affirmative action requirements of the 1982 Surface Transportation Assistance Act. This Act required that a minimum of ten percent of funds be expended with small businesses owned and controlled by socially and economically disadvantaged individuals. The Department’s DBE regulations have been amended several times since 1982. Women business enterprises (WBEs) were added to the DBE Program in the 1987 Surface Transportation and Uniform Relocation Assistance Act. The U.S. Congress reauthorized the DBE Program again in 1991 and 1998 respectively. Both the 1991 Intermodal Surface Transportation Efficiency Act and the 1998 Transportation Equity Act for the 21st Century (TEA-21) continued the ten percent DBE set-aside provision.

The DBE regulations, 49 CFR Part 26, were last amended in 1999. The regulations were amended to conform with the issues raised in numerous court cases dealing with the DBE

¹⁴⁸ *Id.* (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses).

¹⁴⁹ *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991).

¹⁵⁰ *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*, and *City of Chicago*.



program, including the Supreme Court decision in *Adarand v. Pena*. The regulations set forth a personal net worth standard for DBE Program eligibility and the requirement for setting race-neutral goals in conjunction with race-specific goals.

VII. CONCLUSION

The 1989 decision of the U.S. Supreme Court in the *Croson* changed the legal landscape for business affirmative action programs and altered the authority of local governments to institute remedial race-conscious public contracting programs.

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), 214 F.3d 730 (6th Cir. 2000).

Behavioral Interventions v. Missouri Office of Administration, Case No. 04-0872-CV-W-GAF (W. D. Mo. 2005).

Builders Ass'n of Greater Chicago v. City of Chicago, 298 F.Supp 2d 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).

Cantrell, et al v Granholm, No. 06-15637 (E.D. Mich. Jan 17, 2007).

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).

Gross Seed v. Nebraska Dept. of Roads, 2002 U.S. Dist LEXIS 27125 (D. Neb. 2002).
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).

Northern Contracting Inc. v. State of Illinois, 2005 U.S. Dist. LEXIS 19868 (D. Ill. 2005).



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).

Parents Involved in Community Schools v. Seattle School District No.1 No. 01-35450 (9th Cir. July 27, 2004)

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, (N.D. Cal. July 29, 1992).

Ritchey Produce Co. v. State of Ohio. 707 N.E.2d 871 (1999).

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

Sherbrooke Turf, Inc. v. MNDOT, 2001 U.S. Dist. LEXIS 19565 (D. Minn. 2001).

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.



3

ANALYSIS OF PURCHASING AND CONTRACTING POLICIES AND PROCEDURES

I. INTRODUCTION

The City of Davenport (City) commissioned Mason Tillman Associates, Ltd. to conduct a Disadvantaged Business Enterprise (DBE) Disparity Study. This chapter reviews the contracting and procurement policies of the City of Davenport.

A. Governing Laws and Regulations

The laws and regulations that govern the City of Davenport's procurement procedures conform to standards established by State law and the City's code and policies which include:

- State Law
 - i. *Iowa State Code*
- City of Davenport Policy and Ordinances
 - i. City of Davenport Municipal Code, Article 2.12
 - ii. City of Davenport Purchasing Policy Manual (Revised October 1, 2007)



II. DEFINITIONS

Services procured by the City of Davenport are classified within the following four industries:

Construction is defined as the process of building, altering, renovating, improving or demolishing any public structure, or building, or other improvements to public real property.

Design and Engineering is defined as professional services rendered by a licensed architect, engineer, or land surveyor.

Professional Services are defined as services from individuals possessing a high degree of professional skill and include the services of accountants, physicians, and lawyers.

General Services are defined as the labor, time, or effort a contractor provides, except the delivery of a specific product that is merely incidental to the required performance.

III. OVERVIEW OF THE PROCUREMENT PROCESS

The City adopted procurement procedures pursuant to the Purchasing Policy Manual with the intention to provide purchasing guidance and instruction in accordance with the applicable State laws and City codes. The procurement of construction, design and engineering, professional services, and general services have different advertisement, solicitation, and approval standards.

Informal procurements are purchases valued at \$10,000 or less for construction, design and engineering, professional services, and general services. Informal procurements are not subject to advertising requirements and have limited solicitation requirements.

Formal procurements are purchases valued more than \$10,000 that must be advertised and procured through a competitive process. The competitive procurement methods used by the City are requests for competitive sealed bids and requests for competitive sealed proposals.



Purchases exempt from the City's procurement process are emergency purchases, sole source purchases, and cooperative purchases. Cooperative agreements include interlocal agreements¹ and purchases from State contracts.

Table 3.01 below summarizes the procurement requirements by industry. The requirements are described in Section IV.



¹ *Interlocal Agreements* allow local governments to contract with and between each other to provide governmental functions and services.

Table 3.01 City of Davenport Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
Construction	Valued at \$1,000 or less	None	None	Director of Requesting Department
	Valued at \$1,001 through \$10,000	None	Obtain a minimum of three written quotes	Finance Director
	Valued at \$10,001 through \$25,000	<p>Advertise in the <i>Quad-City Times</i> newspaper at least seven days before the bid opening date</p> <p>Post notice on City website, City Hall bid board, bid telephone line, and public cable channel concurrent with placement of the newspaper advertisement</p>	<p>Request for Competitive Sealed Bids</p> <p>A minimum of three DBEs must be contacted, if available</p>	City Administrator

Table 3.01 City of Davenport Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
	Valued at more than \$25,000	<p>Advertise in the <i>Quad-City Times</i> newspaper at least seven days before the bid opening date</p> <p>Post notice on City website, City Hall bid board, bid telephone line, and public cable channel concurrent with placement of the newspaper advertisement</p>	<p>Request for Competitive Sealed Bids</p> <p>A minimum of three DBEs must be contacted, if available</p>	City Council
Design and Engineering	Valued at \$1,000 or less	None	None	Director of Requesting Department
	Valued at \$1,001 through \$10,000	None	Obtain a minimum of three written quotes	Finance Director

Table 3.01 City of Davenport Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
	Valued at \$10,001 through \$25,000	<p>Advertise in the <i>Quad-City Times</i> newspaper at least seven days before the bid opening date</p> <p>Post notice on City website, City Hall bid board, bid telephone line, and public cable channel concurrent with placement of the newspaper advertisement</p>	<p>Request for Sealed Proposals</p> <p>A minimum of three DBEs must be contacted, if available</p>	City Administrator

Table 3.01 City of Davenport Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
	Valued at more than \$25,000	<p>Advertise in the <i>Quad-City Times</i> newspaper at least seven days before the bid opening date</p> <p>Post notice on City website, City Hall bid board, bid telephone line, and public cable channel concurrent with placement of the newspaper advertisement</p>	<p>Request for Sealed Proposals</p> <p>A minimum of three DBEs must be contacted, if available</p>	City Council
Professional Services	Valued at \$1,000 or less	None	None	Director of Requesting Department
	Valued at \$1,001 through \$10,000	None	Obtain a minimum of three written quotes	Finance Director

Table 3.01 City of Davenport Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
	Valued at \$10,001 through \$25,000	<p>Advertise in the <i>Quad-City Times</i> newspaper at least seven days before the bid opening date</p> <p>Post notice on City website, City Hall bid board, bid telephone line, and public cable channel concurrent with placement of the newspaper advertisement</p>	<p>Request for Sealed Proposals</p> <p>A minimum of three DBEs must be contacted, if available</p>	City Administrator

Table 3.01 City of Davenport Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
	Valued at more than \$25,000	<p>Advertise in the <i>Quad-City Times</i> newspaper at least seven days before the bid opening date</p> <p>Post notice on City website, City Hall bid board, bid telephone line, and public cable channel concurrent with placement of the newspaper advertisement</p>	<p>Request for Sealed Proposals</p> <p>A minimum of three DBEs must be contacted, if available</p>	City Council
General Services	Valued at \$1,000 or less	None	None	Director of Requesting Department
	Valued at \$1,001 through \$10,000	None	Obtain a minimum of three written quotes	Finance Director

Table 3.01 City of Davenport Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
	Valued at \$10,001 through \$25,000	<p>Advertise in the <i>Quad-City Times</i> newspaper at least seven days before the bid opening date</p> <p>Post notice on City website, City Hall bid board, bid telephone line, and public cable channel concurrent with placement of the newspaper advertisement</p>	<p>Request for Competitive Sealed Bids or Request for Sealed Proposals</p> <p>A minimum of three DBEs must be contacted, if available</p>	City Administrator

Table 3.01 City of Davenport Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
	Valued at more than \$25,000	<p>Advertise in the <i>Quad-City Times</i> newspaper at least seven days before the bid opening date</p> <p>Post notice on City website, City Hall bid board, bid telephone line, and public cable channel concurrent with placement of the newspaper advertisement</p>	<p>Request for Competitive Sealed Bids or Request for Sealed Proposals</p> <p>A minimum of three DBEs must be contacted, if available</p>	City Council

Table 3.01 City of Davenport Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
Emergency Purchases	Valued at \$1,000 or less	None	None	Purchasing Coordinator
	Valued at \$1,001 through \$10,000	None	Three written quotes, if possible	Purchasing Coordinator or City Administrator
	Valued at \$10,001 through \$25,000	None	Three written quotes, if possible	City Administrator
	Valued at more than \$25,000	None	Three written quotes, if possible	City Council
Sole Source Purchases	Valued at \$10,000 or less	None	None	Finance Director
	Valued at \$10,001 through \$25,000	None	None	City Administrator
	Valued at more than \$25,000	None	None	City Council
Cooperative Purchases	Valued at \$1,000 or less	None	None	Director of Requesting Department
	Valued at \$1,001 through \$10,000	None	None	Finance Director

Table 3.01 City of Davenport Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Procurement Approval
	Valued at \$10,001 through \$25,000	None	None	City Administrator
	Valued at more than \$25,000	None	None	City Council

IV. STANDARDS FOR PROCURING CITY OF DAVENPORT CONTRACTS

A. Informal Contracts

Informal contracts are valued at less than \$10,000 and no advertisement is required.

1. Purchases of Construction Valued at \$1,000 or Less

Purchases of construction services valued at \$1,000 or less are procured without solicitation requirements. The Director of the requesting department has approval authority for these purchases.

2. Purchases of Construction Valued at \$1,001 through \$10,000

Purchases of construction services valued at \$1,001 through \$10,000 are solicited with a minimum of three written quotes. The Finance Director has approval authority for these purchases.

3. Purchases of Design and Engineering Valued at \$1,000 or Less

Purchases of design and engineering services valued at \$1,000 or less are procured without solicitation requirements. The Director of the requesting department has approval authority for these purchases.

4. Purchases of Design and Engineering Valued at \$1,001 through \$10,000

Purchases of design and engineering services valued at \$1,001 through \$10,000 are solicited with a minimum of three written quotes. The Finance Director has approval authority for these purchases.

5. Purchases of Professional Services Valued at \$1,000 or Less

Purchases of professional services valued at \$1,000 or less are procured without solicitation requirements. The Director of the requesting department has approval authority for these purchases.



6. Purchases of Professional Services Valued at \$1,001 through \$10,000

Purchases of professional services valued at \$1,001 through \$10,000 are solicited with a minimum of three written quotes. The Finance Director has approval authority for these purchases.

7. Purchases of General Services Valued at \$1,000 or Less

Purchases of general services valued at less than \$1,000 are procured without solicitation requirements. The Director of the requesting department has approval authority for these purchases.

8. Purchases of General Services Valued at \$1,001 through \$10,000

Purchases of general services valued at \$1,001 through \$10,000 are solicited with a minimum of three written quotes. The Finance Director has approval authority for these purchases.

B. Formal Contracts

Formal contracts are procurements of construction, design and engineering, professional services, and general services valued at more than \$10,000. Formal contracts are required to be advertised in the *Quad-City Times* newspaper at least seven days before the bid opening date. In addition, notification of these contracts are to be posted on the City's website, the bid board in City Hall, the bid telephone line, and public cable channel concurrent with the newspaper advertisement.

1. Purchases of Construction Valued at \$10,001 through \$25,000

Purchases of construction services valued at \$10,001 through \$25,000, are solicited by a Request for Competitive Sealed Bids and must be approved by the City Administrator.

2. Purchases of Construction Valued at More than \$25,000

Purchase of construction services valued at more than \$25,000 are procured by a Request for Competitive Sealed Bids and must be approved by the City Council.



3. Purchases of Design and Engineering Valued at \$10,001 through \$25,000

Purchases of design and engineering services valued at \$10,001 through \$25,000 are procured by a Request for Sealed Proposals and must be approved by the City Administrator.

4. Purchases of Design and Engineering Valued at More than \$25,000

Purchases of design and engineering services valued at more than \$25,000 are procured by a Request for Sealed Proposals and must be approved by the City Council.

5. Purchases of Professional Services Valued at \$10,001 through \$25,000

Purchases of professional services valued at \$10,001 through \$25,000, are procured by a Request for Sealed Proposals and must be approved by the City Administrator.

6. Purchases of Professional Services Valued at More than \$25,000

Purchases of professional services valued at more than \$25,000, are procured by a Request for Sealed Proposals and must be approved by the City Council.

7. Purchases of General Services Valued at \$10,001 through \$25,000

Purchases of general services valued at \$10,001 through \$25,000, are procured by a Request for Competitive Sealed Bids or a Request for Sealed Proposals and must be approved by the City Administrator.

8. Purchases of General Services Valued at More than \$25,000

Purchase of general services valued at more than \$25,000 are procured by a Request for Competitive Sealed Bids or a Request for Sealed Proposals and must be approved by the City Council.



V. EXEMPTIONS FROM CITY OF DAVENPORT'S PROCUREMENT PROCESS

Certain procurements are exempt from the City of Davenport's competitive procurement process. Procurements exempt from advertising and the formal solicitation process do require procurement approval. The three exemptions to the competitive procurement process are described below:

A. Emergency Purchases

There are three different types of emergency purchases. One is a minor emergency or rush procurement which is for minor purchases of maintenance, repair, replacement parts, or operating supplies. Minor rush purchases amounting to more than \$1,000 are subject to approval of the Purchasing Coordinator who may require such purchases to be handled as an administrative emergency purchase.

Another emergency procurement is an administrative emergency purchase. This method is utilized when accidents or failure of mechanical equipment occur due to unforeseen circumstances or conditions beyond the reasonable control of the user department. When such accidents or mechanical failures impact essential City functions or the efficient rendering of public services, the appropriate department director is empowered to make the purchase with the approval of the City Administrator.

The third emergency procurement is a general emergency. A general emergency is a serious threat to public health, welfare, or safety. Emergency purchases are permitted when failure to do so could result in an immediate and apparent loss to the City of Davenport.

1. Emergency Purchases Valued at \$1,000 or Less

Emergency purchases valued at \$1,000 or less have no solicitation requirement. The Purchasing Coordinator has approval authority for these purchases.

2. Emergency Purchases Valued at \$1,001 through \$10,000

Emergency purchases valued at \$1,001 through \$10,000 are procured with three written quotes, if possible. The Purchasing Coordinator and the City Administrator have approval authority for these purchases.



3. Emergency Purchases Valued at \$10,001 through \$25,000

Emergency purchases valued at \$10,001 through \$25,000 are procured with three written quotes, if possible. The City Administrator has approval authority for these purchases.

4. Emergency Purchases Valued More Than \$25,000

Emergency purchases valued more than \$25,000 are procured with three written quotes, if possible. The City Council has approval authority for these purchases.

B. Sole Source Purchases

Sole Source purchases are for the repair of equipment and machinery or for repair parts, when the required parts and services are available only from a single source. Sole source purchases are also used for purchases of goods or services that are of such a nature that they are the only goods or services which will fit and comply with the City's required use.

1. Sole Source Purchases Valued at \$10,000 or Less

The Finance Director has approval authority for sole source purchases valued at \$10,000 or less.

2. Sole Source Purchases Valued at \$10,001 through \$25,000

The City Administrator has approval authority for sole source purchases valued at \$10,001 through \$25,000.

3. Sole Source Purchases Valued More Than \$25,000

The City Council has approval authority for sole source purchases valued more than \$25,000.



C. Cooperative Purchases

Cooperative purchases are procurements where two or more governmental entities coordinate some or all purchasing efforts either to reduce administrative costs, take advantage of quantity discounts, or share specifications. Cooperative purchasing can occur through interlocal agreements and state contracts. Additionally, cooperative purchasing can be utilized through piggybacking where one governmental agency makes its purchases from a contract negotiated by another governmental agency, or through joint purchases where two or more governmental agencies join together to purchase one or more items jointly.

1. Cooperative Purchases Valued at \$1,000 or Less

The Director of the Requesting Department has approval authority for cooperative purchases valued at \$1,000 or less.

2. Cooperative Purchases Valued at \$1,001 through \$10,000

The Finance Director has approval authority for cooperative purchases valued at \$1,001 through \$10,000.

3. Cooperative Purchases Valued at \$10,001 through \$25,000

The City Administrator has approval authority for cooperative purchases valued at \$10,001 through \$25,000.

4. Cooperative Purchases Valued More Than \$25,000

The City Council has approval authority for cooperative purchases valued more than \$25,000.

VI. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

The City of Davenport instituted its Disadvantaged Business Enterprise (DBE) Program to ensure that DBEs have an equal opportunity to participate in the performance of City contracts and purchase awards. Contractors bidding on City projects valued at \$25,000 or more are required to contact a minimum of three disadvantaged businesses for subcontract



work to be performed and to document that contact. To qualify as a disadvantaged business enterprise, a minimum of 51% of the firm's ownership must be female, minority, and/or disabled. The City recognizes the certified DBE listing of the State of Iowa. A detailed description of the City's DBE Program is discussed in *Chapter 11: Recommendations*.



4

PRIME CONTRACTOR UTILIZATION ANALYSIS

I. INTRODUCTION

Croscon set forth the standard for the determination of disparity. The first step in a disparity study is the analysis of expenditures to document minority contracting history in the jurisdiction under review. The objective of the prime utilization 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.

This chapter documents the City of Davenport's (City's) utilization of minority prime contractors and women prime contractors during the January 1, 2003 to December 31, 2007 study period. The City's expenditures during the study period were classified into four industries for purposes of the analysis. The industries are construction, professional services, design and engineering services and general services. Construction is defined as the process of building, altering, renovating, improving, and demolishing a public structure, building, or other improvements to public real property. Design and engineering is defined as professional services rendered by a licensed architect, engineer, or land surveyor. The definition of professional services is services from individuals possessing a high degree of skill and include the services of accountants, physicians, and lawyers. General Services is the labor, time, or effort a contractor provides except the delivery of a specific product that is merely incidental to the required performance.



II. CONTRACT DATA SOURCES

The prime contractor data was extracted from the City's financial system and submitted to Mason Tillman in electronic format. The data for the study period of January 1, 2003 to December 31, 2007 was provided in the database structure specified by Mason Tillman. The dataset needed to be cleaned before it could be analyzed.

Each contract was either classified into one of the three industry categories – construction, professional services¹, general services, or marked for exclusion. A combination of the vendor name and the description provided in the contract record were used to determine the industry classification. Non-profits, government agencies, banks, airlines, payments for legal settlements, employee reimbursements, subscriptions, and seminar registration fees were excluded.

The next phase of the data cleaning process was the determination of the prime contractor's ethnicity and gender. Incomplete ethnicity and gender information is a common condition characterizing data received from government agencies for availability and utilization studies. Since ethnicity and gender information is critical to the prime contractor utilization analysis, research was conducted to secure ethnicity and gender information for each prime contractor.

The ethnicity and gender of the utilized prime contractors was determined through a combination of research techniques. Company names were cross-referenced with certification lists, chambers of commerce directories, trade and professional organizations' membership lists, and the Internet. A business survey was also conducted to garner ethnicity and gender information not found using the directories and the Internet.

III. PRIME CONTRACTOR UTILIZATION THRESHOLDS

Contracts within each of the three industries were analyzed at three size levels. One level included all contracts regardless of size. The second size level included the informal contracts which did not require advertising. The informal level for construction, professional services, and general services was under \$10,000. The third size level included all contracts under \$500,000. This size level was selected because there was documented capacity within the pool of willing M/WBEs to perform the City's contracts under \$500,000.

¹ Professional services also includes the design and engineering industry category.



Table 4.01 Informal Contract Thresholds for the City

Industry	Informal Contract Threshold
Construction	\$10,000
Professional Services	\$10,000
General Services	\$10,000

IV. PRIME CONTRACTOR UTILIZATION

A. All Prime Contractors

As depicted in Table 4.02 below, the City awarded 477 contracts during the January 1, 2003 to December 31, 2007 study period. The 477 contracts included 186 for construction, 23 for professional services, and 268 for general services.

The payments made by the City during the study period for all 477 contracts awarded totaled \$89,802,755. These expenditures included \$71,508,016 for construction, \$3,363,568 for professional services, and \$14,931,170 for general services.

Table 4.02 Total Contracts and Dollars Expended: All Industries, January 1, 2003 to December 31, 2007

Industry	Total Number of Contracts	Total Dollars Expended
Construction	186	\$71,508,016
Professional Services	23	\$3,363,568
General Services	268	\$14,931,170
Total Expenditures	477	\$89,802,755



B. Highly Used Prime Contractors

As depicted in Table 4.03 below, the 477 City contracts were awarded to a total of 252 vendors.

Table 4.03 Total Contracts, Utilized Vendors, and Dollars Expended: All Industries, January 1, 2003 to December 31, 2007

Total Contracts	477
Total Utilized Vendors	252
Total Expenditures	\$89,802,755

The 477 contracts were not evenly distributed among the 252 vendors; the City awarded 60 percent of the contract dollars during the January 1, 2003 to December 31, 2007 study period to only 9 of the 252 utilized vendors .

As depicted in Table 4.04 below, 5 of the 252 utilized vendors received 50 percent or \$45,163,077 of the total contract dollars. Nine vendors received 60 percent of the contract dollars awarded.

Table 4.04 Distribution of All Contract Awards by Number of Vendors

Vendors	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
2 Vendors Received	\$29,440,037	33%	24	5.03%
5 Vendors Received	\$45,163,077	50%	32	6.71%
9 Vendors Received	\$53,717,184	60%	54	11.32%
243 Vendors Received	\$36,085,571	40%	423	88.68%
252 Vendors Received	\$89,802,755	100%	477	100%

Table 4.05 below presents the ethnic and gender profile of the nine most highly used prime contractors. All of the highly used prime contractors were Caucasian male-owned businesses. The total dollars awarded to these nine businesses was \$53,717,184.



Table 4.05 Top Nine Highly Used Prime Contractors by Ethnicity and Gender

Ethnicity/Gender	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
African Americans	\$0	0%	0	0%
Asian Americans	\$0	0%	0	0%
Hispanic Americans	\$0	0%	0	0%
Native Americans	\$0	0%	0	0%
Caucasian Females	\$0	0%	0	0%
Caucasian Males	\$53,717,184	100%	54	100%
Total	\$53,717,184	100%	54	100%



C. All Contracts, by Industry

1. Construction Contract Utilization: All Contracts

Table 4.06 summarizes all contract dollars expended by the City on construction contracts. Minority Business Enterprises received none of the construction contract dollars; Women Business Enterprises received 4.53 percent; and Caucasian Male Business Enterprises received 95.47 percent.

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

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

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

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

Minority Business Enterprises received none of the construction contracts during the study period.

Women Business Enterprises received 9 or 4.84 percent of the construction contracts during the study period, representing \$3,236,664 or 4.53 percent of the contract dollars.

Minority and Women Business Enterprises received 9 or 4.84 percent of the construction contracts during the study period, representing \$3,236,664 or 4.53 percent of the contract dollars.

Caucasian Male Business Enterprises received 177 or 95.16 percent of the construction contracts during the study period, representing \$68,271,352 or 95.47 percent of the contract dollars.



Table 4.06 Construction Contract Utilization: Total Contract Payments, January 1, 2003 to December 31, 2007

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	9	4.84%	\$3,236,664	4.53%
Caucasian Males	177	95.16%	\$68,271,352	95.47%
TOTAL	186	100.00%	\$71,508,016	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	9	4.84%	\$3,236,664	4.53%
Caucasian Males	177	95.16%	\$68,271,352	95.47%
TOTAL	186	100.00%	\$71,508,016	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	0	0.00%	\$0	0.00%
Caucasian Females	9	4.84%	\$3,236,664	4.53%
Caucasian Males	177	95.16%	\$68,271,352	95.47%
TOTAL	186	100.00%	\$71,508,016	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	0	0.00%	\$0	0.00%
Women Business Enterprises	9	4.84%	\$3,236,664	4.53%
Minority and Women Business Enterprises	9	4.84%	\$3,236,664	4.53%
Caucasian Male Business Enterprises	177	95.16%	\$68,271,352	95.47%
TOTAL	186	100.00%	\$71,508,016	100.00%



2. Professional Services Contract Utilization: All Contracts

Table 4.07 summarizes all contract dollars expended by the City on professional services contracts. Minority Business Enterprises received 1.95 percent of the professional services contract dollars; Women Business Enterprises received none of the contract dollars; and Caucasian Male Business Enterprises received 98.05 percent.

African Americans received none of the professional services contracts during the study period.

Asian Americans received none of the professional services contracts during the study period.

Hispanic Americans received 2 or 8.7 percent of the professional services contracts during the study period, representing \$65,605 or 1.95 percent of the contract dollars.

Native Americans received none of the professional services contracts during the study period.

Minority Business Enterprises received 2 or 8.7 percent of the professional services contracts during the study period, representing \$65,605 or 1.95 percent of the contract dollars.

Women Business Enterprises received none of the professional services contracts during the study period.

Minority and Women Business Enterprises received 2 or 8.7 percent of the professional services contracts during the study period, representing \$65,605 or 1.95 percent of the contract dollars.

Caucasian Male Business Enterprises received 21 or 91.3 percent of the professional services contracts during the study period, representing \$3,297,964 or 98.05 percent of the contract dollars.



Table 4.07 Professional Services Contract Utilization: Total Contract Payments, January 1, 2003 to December 31, 2007

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	2	8.70%	\$65,605	1.95%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Caucasian Males	21	91.30%	\$3,297,964	98.05%
TOTAL	23	100.00%	\$3,363,568	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	2	8.70%	\$65,605	1.95%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Caucasian Males	21	91.30%	\$3,297,964	98.05%
TOTAL	23	100.00%	\$3,363,568	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	2	8.70%	\$65,605	1.95%
Minority Males	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Caucasian Males	21	91.30%	\$3,297,964	98.05%
TOTAL	23	100.00%	\$3,363,568	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	2	8.70%	\$65,605	1.95%
Women Business Enterprises	0	0.00%	\$0	0.00%
Minority and Women Business Enterprises	2	8.70%	\$65,605	1.95%
Caucasian Male Business Enterprises	21	91.30%	\$3,297,964	98.05%
TOTAL	23	100.00%	\$3,363,568	100.00%



3. General Services Contract Utilization: All Contracts

Table 4.08 summarizes all contract dollars expended by the City on general services contracts. Minority Business Enterprises received 0.58 percent of the general services contract dollars; Women Business Enterprises received 2.23 percent; and Caucasian Male Business Enterprises received 97.19 percent.

African Americans received none of the general services contracts during the study period.

Asian Americans received 2 or 0.75 percent of the general services contracts during the study period, representing \$86,723 or 0.58 percent of the contract dollars.

Hispanic Americans received none of the general services contracts during the study period.

Native Americans received none of the general services contracts during the study period.

Minority Business Enterprises received 2 or 0.75 percent of the general services contracts during the study period, representing \$86,723 or 0.58 percent of the contract dollars.

Women Business Enterprises received 13 or 4.85 percent of the general services contracts during the study period, representing \$332,893 or 2.23 percent of the contract dollars.

Minority and Women Business Enterprises received 15 or 5.6 percent of the general services contracts during the study period, representing \$419,616 or 2.81 percent of the contract dollars.

Caucasian Male Business Enterprises received 253 or 94.4 percent of the general services contracts during the study period, representing \$14,511,554 or 97.19 percent of the contract dollars.



**Table 4.08 General Services Contract Utilization: Total
Contract Payments, January 1, 2003 to December 31, 2007**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	2	0.75%	\$86,723	0.58%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	13	4.85%	\$332,893	2.23%
Caucasian Males	253	94.40%	\$14,511,554	97.19%
TOTAL	268	100.00%	\$14,931,170	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	1	0.37%	\$7,155	0.05%
Asian American Males	1	0.37%	\$79,568	0.53%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	13	4.85%	\$332,893	2.23%
Caucasian Males	253	94.40%	\$14,511,554	97.19%
TOTAL	268	100.00%	\$14,931,170	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1	0.37%	\$7,155	0.05%
Minority Males	1	0.37%	\$79,568	0.53%
Caucasian Females	13	4.85%	\$332,893	2.23%
Caucasian Males	253	94.40%	\$14,511,554	97.19%
TOTAL	268	100.00%	\$14,931,170	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	2	0.75%	\$86,723	0.58%
Women Business Enterprises	13	4.85%	\$332,893	2.23%
Minority and Women Business Enterprises	15	5.60%	\$419,616	2.81%
Caucasian Male Business Enterprises	253	94.40%	\$14,511,554	97.19%
TOTAL	268	100.00%	\$14,931,170	100.00%



D. Contracts under \$500,000, by Industry

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

Table 4.09 summarizes all contract dollars expended by the City on construction contracts under \$500,000. Minority Business Enterprises received none of the contract dollars; Women Business Enterprises received 3.73 percent; and Caucasian Male Business Enterprises received 96.27 percent.

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

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

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

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

Minority Business Enterprises received none of the construction contracts under \$500,000 during the study period.

Women Business Enterprises received 5 or 3.25 percent of the construction contracts under \$500,000 during the study period, representing \$598,724 or 3.73 percent of the contract dollars.

Minority and Women Business Enterprises received 5 or 3.25 percent of the construction contracts under \$500,000 during the study period, representing \$598,724 or 3.73 percent of the contract dollars.

Caucasian Male Business Enterprises received 149 or 96.75 percent of the construction contracts under \$500,000 during the study period, representing \$15,463,476 or 96.27 percent of the contract dollars.



Table 4.09 Construction Contract Utilization: Total Contract Payments under \$500,000, January 1, 2003 to December 31, 2007

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	5	3.25%	\$598,724	3.73%
Caucasian Males	149	96.75%	\$15,463,476	96.27%
TOTAL	154	100.00%	\$16,062,200	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	5	3.25%	\$598,724	3.73%
Caucasian Males	149	96.75%	\$15,463,476	96.27%
TOTAL	154	100.00%	\$16,062,200	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	0	0.00%	\$0	0.00%
Caucasian Females	5	3.25%	\$598,724	3.73%
Caucasian Males	149	96.75%	\$15,463,476	96.27%
TOTAL	154	100.00%	\$16,062,200	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	0	0.00%	\$0	0.00%
Women Business Enterprises	5	3.25%	\$598,724	3.73%
Minority and Women Business Enterprises	5	3.25%	\$598,724	3.73%
Caucasian Male Business Enterprises	149	96.75%	\$15,463,476	96.27%
TOTAL	154	100.00%	\$16,062,200	100.00%



2. Professional Services Contract Utilization: Contracts under \$500,000

Table 4.10 summarizes all contract dollars expended by the City on professional services contracts under \$500,000. Minority Business Enterprises received 3.92 percent of the professional services contract dollars; Women Business Enterprises received none of the contract dollars; and Caucasian Male Business Enterprises received 96.08 percent.

African Americans received none of the professional services contracts under \$500,000 during the study period.

Asian Americans received none of the professional services contracts under \$500,000 during the study period.

Hispanic Americans received 2 or 9.09 percent of the professional services contracts under \$500,000 during the study period, representing \$65,605 or 3.92 percent of the contract dollars.

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

Minority Business Enterprises received 2 or 9.09 percent of the professional services contracts under \$500,000 during the study period, representing \$65,605 or 3.92 percent of the contract dollars.

Women Business Enterprises received none of the professional services contracts under \$500,000 during the study period.

Minority and Women Business Enterprises received 2 or 9.09 percent of the professional services contracts under \$500,000 during the study period, representing \$65,605 or 3.92 percent of the contract dollars.

Caucasian Male Business Enterprises received 20 or 90.91 percent of the professional services contracts under \$500,000 during the study period, representing \$1,607,964 or 96.08 percent of the contract dollars.



**Table 4.10 Professional Services Contract Utilization: Total
Contract Payments under \$500,000, January 1, 2003 to
December 31, 2007**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	2	9.09%	\$65,605	3.92%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Caucasian Males	20	90.91%	\$1,607,964	96.08%
TOTAL	22	100.00%	\$1,673,568	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	2	9.09%	\$65,605	3.92%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Caucasian Males	20	90.91%	\$1,607,964	96.08%
TOTAL	22	100.00%	\$1,673,568	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	2	9.09%	\$65,605	3.92%
Minority Males	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Caucasian Males	20	90.91%	\$1,607,964	96.08%
TOTAL	22	100.00%	\$1,673,568	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	2	9.09%	\$65,605	3.92%
Women Business Enterprises	0	0.00%	\$0	0.00%
Minority and Women Business Enterprises	2	9.09%	\$65,605	3.92%
Caucasian Male Business Enterprises	20	90.91%	\$1,607,964	96.08%
TOTAL	22	100.00%	\$1,673,568	100.00%



3. General Services Contract Utilization: Contracts under \$500,000

Table 4.11 summarizes all contract dollars expended by the City on general services contracts under \$500,000. Minority Business Enterprises received 0.78 percent of the general services contract dollars; Women Business Enterprises received 3 percent; and Caucasian Male Business Enterprises received 96.22 percent.

African Americans received none of the general services contracts under \$500,000 during the study period.

Asian Americans received 2 or 0.76 percent of the general services contracts under \$500,000 during the study period, representing \$86,723 or 0.78 percent of the contract dollars.

Hispanic Americans received none of the general services contracts under \$500,000 during the study period.

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

Minority Business Enterprises received 2 or 0.76 percent of the general services contracts under \$500,000 during the study period, representing \$86,723 or 0.78 percent of the contract dollars.

Women Business Enterprises received 13 or 4.94 percent of the general services contracts under \$500,000 during the study period, representing \$332,893 or 3 percent of the contract dollars.

Minority and Women Business Enterprises received 15 or 5.7 percent of the general services contracts under \$500,000 during the study period, representing \$419,616 or 3.78 percent of the contract dollars.

Caucasian Male Business Enterprises received 248 or 94.3 percent of the general services contracts under \$500,000 during the study period, representing \$10,668,488 or 96.22 percent of the contract dollars.



**Table 4.11 General Services Contract Utilization: Total
Contract Payments under \$500,000, January 1, 2003 to
December 31, 2007**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	2	0.76%	\$86,723	0.78%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	13	4.94%	\$332,893	3.00%
Caucasian Males	248	94.30%	\$10,668,488	96.22%
TOTAL	263	100.00%	\$11,088,104	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	1	0.38%	\$7,155	0.06%
Asian American Males	1	0.38%	\$79,568	0.72%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	13	4.94%	\$332,893	3.00%
Caucasian Males	248	94.30%	\$10,668,488	96.22%
TOTAL	263	100.00%	\$11,088,104	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1	0.38%	\$7,155	0.06%
Minority Males	1	0.38%	\$79,568	0.72%
Caucasian Females	13	4.94%	\$332,893	3.00%
Caucasian Males	248	94.30%	\$10,668,488	96.22%
TOTAL	263	100.00%	\$11,088,104	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	2	0.76%	\$86,723	0.78%
Women Business Enterprises	13	4.94%	\$332,893	3.00%
Minority and Women Business Enterprises	15	5.70%	\$419,616	3.78%
Caucasian Male Business Enterprises	248	94.30%	\$10,668,488	96.22%
TOTAL	263	100.00%	\$11,088,104	100.00%



E. Informal Contracts under \$10,000 by Industry

1. Construction Contract Utilization: Contracts under \$10,000

Table 4.12 summarizes all contract dollars expended by the City on construction contracts under \$10,000. Minority Business Enterprises received none of the construction contract dollars; Women Business Enterprises received 2.39 percent; and Caucasian Male Business Enterprises received 97.61 percent.

African Americans received none of the construction contracts under \$10,000 during the study period.

Asian Americans received none of the construction contracts under \$10,000 during the study period.

Hispanic Americans received none of the construction contracts under \$10,000 during the study period.

Native Americans received none of the construction contracts under \$10,000 during the study period.

Minority Business Enterprises received none of the construction contracts under \$10,000 during the study period.

Women Business Enterprises received 1 or 3.57 percent of the construction contracts under \$10,000 during the study period, representing \$3,600 or 2.39 percent of the contract dollars.

Minority and Women Business Enterprises received 1 or 3.57 percent of the construction contracts under \$10,000 during the study period, representing \$3,600 or 2.39 percent of the contract dollars.

Caucasian Male Business Enterprises received 27 or 96.43 percent of the construction contracts under \$10,000 during the study period, representing \$147,236 or 97.61 percent of the contract dollars.



Table 4.12 Construction Contract Utilization: Total Contract Payments under \$10,000, January 1, 2003 to December 31, 2007

Prime Contractor Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	1	3.57%	\$3,600	2.39%
Caucasian Males	27	96.43%	\$147,236	97.61%
TOTAL	28	100.00%	\$150,836	100.00%
Prime Contractor Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	1	3.57%	\$3,600	2.39%
Caucasian Males	27	96.43%	\$147,236	97.61%
TOTAL	28	100.00%	\$150,836	100.00%
Prime Contractor Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	0	0.00%	\$0	0.00%
Caucasian Females	1	3.57%	\$3,600	2.39%
Caucasian Males	27	96.43%	\$147,236	97.61%
TOTAL	28	100.00%	\$150,836	100.00%
Prime Contractor Minority and Females	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	0	0.00%	\$0	0.00%
Women Business Enterprises	1	3.57%	\$3,600	2.39%
Minority and Women Business Enterprises	1	3.57%	\$3,600	2.39%
Caucasian Male Business Enterprises	27	96.43%	\$147,236	97.61%
TOTAL	28	100.00%	\$150,836	100.00%



2. Professional Services Contract Utilization: Contracts under \$10,000

Table 4.13 summarizes all contract dollars expended by the City on professional services contracts under \$10,000. Minority Business Enterprises received none of the professional services contract dollars; Women Business Enterprises received none of the contract dollars; and Caucasian Male Business Enterprises received 100 percent.

African Americans received none of the professional services contracts under \$10,000 during the study period.

Asian Americans received none of the professional services contracts under \$10,000 during the study period.

Hispanic Americans received none of the professional services contracts under \$10,000 during the study period.

Native Americans received none of the professional services contracts under \$10,000 during the study period.

Minority Business Enterprises received none of the professional services contracts under \$10,000 during the study period.

Women Business Enterprises received none of the professional services contracts under \$10,000 during the study period.

Minority and Other Female Business Enterprises received none of the professional services contracts under \$10,000 during the study period.

Caucasian Male Business Enterprises received 1 or 100 percent of the professional services contracts under \$10,000 during the study period, representing \$2,107 or 100 percent of the contract dollars.



**Table 4.13 Professional Services Contract Utilization: Total
Contract Payments under \$10,000, January 1, 2003 to
December 1, 2007**

Prime Contractor Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Caucasian Males	1	100.00%	\$2,107	100.00%
TOTAL	1	100.00%	\$2,107	100.00%
Prime Contractor Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Caucasian Males	1	100.00%	\$2,107	100.00%
TOTAL	1	100.00%	\$2,107	100.00%
Prime Contractor Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Caucasian Males	1	100.00%	\$2,107	100.00%
TOTAL	1	100.00%	\$2,107	100.00%
Prime Contractor Minority and Females	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	0	0.00%	\$0	0.00%
Women Business Enterprises	0	0.00%	\$0	0.00%
Minority and Women Business Enterprises	0	0.00%	\$0	0.00%
Caucasian Male Business Enterprises	1	100.00%	\$2,107	100.00%
TOTAL	1	100.00%	\$2,107	100.00%



3. General Services Contract Utilization: Contracts under \$10,000

Table 4.14 summarizes all contract dollars expended by the City on general services contracts under \$10,000. Minority Business Enterprises received 1.29 percent of the general services contract dollars; Women Business Enterprises received 9.47 percent; and Caucasian Male Business Enterprises received 89.23 percent.

African Americans received none of the general services contracts under \$10,000 during the study period.

Asian Americans received 1 or 1.02 percent of the general services contracts under \$10,000 during the study period, representing \$7,155 or 1.29 percent of the contract dollars.

Hispanic Americans received none of the general services contracts under \$10,000 during the study period.

Native Americans received none of the general services contracts under \$10,000 during the study period.

Minority Business Enterprises received 1 or 1.02 percent of the general services contracts under \$10,000 during the study period, representing \$7,155 or 1.29 percent of the contract dollars.

Women Business Enterprises received 7 or 7.14 percent of the general services contracts under \$10,000 during the study period, representing \$52,465 or 9.47 percent of the contract dollars.

Minority and Women Business Enterprises received 8 or 8.16 percent of the general services contracts under \$10,000 during the study period, representing \$59,620 or 10.77 percent of the contract dollars.

Caucasian Male Business Enterprises received 90 or 91.84 percent of the general services contracts under \$10,000 during the study period, representing \$494,148 or 89.23 percent of the contract dollars.



**Table 4.14 General Services Contract Utilization: Total
Contract Payments under \$10,000, January 1, 2003 to
December 31, 2007**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	1	1.02%	\$7,155	1.29%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	7	7.14%	\$52,465	9.47%
Caucasian Males	90	91.84%	\$494,148	89.23%
TOTAL	98	100.00%	\$553,768	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	1	1.02%	\$7,155	1.29%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	7	7.14%	\$52,465	9.47%
Caucasian Males	90	91.84%	\$494,148	89.23%
TOTAL	98	100.00%	\$553,768	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1	1.02%	\$7,155	1.29%
Minority Males	0	0.00%	\$0	0.00%
Caucasian Females	7	7.14%	\$52,465	9.47%
Caucasian Males	90	91.84%	\$494,148	89.23%
TOTAL	98	100.00%	\$553,768	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	1	1.02%	\$7,155	1.29%
Women Business Enterprises	7	7.14%	\$52,465	9.47%
Minority and Women Business Enterprises	8	8.16%	\$59,620	10.77%
Caucasian Male Business Enterprises	90	91.84%	\$494,148	89.23%
TOTAL	98	100.00%	\$553,768	100.00%



V. SUMMARY

The City's prime contractor utilization analysis examined the \$89,802,755 expended on contracts awarded from January 1, 2003 to December 31, 2007. The \$89,802,755 expended included \$71,508,016 for construction, \$3,363,568 for professional services, and \$14,931,170 for general services. A total of 477 contracts were analyzed, which included 186 for construction, 23 for professional services, and 268 for general services.

The utilization analysis was performed separately for informal and formal contracts. The informal levels included contracts under \$10,000 for construction, professional services, and general services. The analysis of formal contracts was limited to contracts under \$500,000 for each industry. The *Prime Contractor Disparity Analysis* will present the statistical analysis of disparity for the construction and general services industries.²



² There were too few professional services contracts to perform a disparity analysis.



5

SUBCONTRACTOR UTILIZATION ANALYSIS

I. INTRODUCTION

As discussed in the prime contractor utilization analysis presented in *Chapter 4*, a disparity study as required under *Croson* documents minority and woman business enterprise (M/WBE) contracting history in the market. A finding of subcontractor disparity is required to implement a race-based M/WBE subcontracting program.

In order to identify the underutilization of minority and woman business enterprises (M/WBEs) subcontractors in the City of Davenport's (City) award of construction contracts, it is imperative to determine the level of M/WBE and non-M/WBE subcontractor utilization in the City. In this Study, the subcontracts awarded by City prime contractors during the January 1, 2003 to December 31, 2007 study period are analyzed.

II. SUBCONTRACTOR UTILIZATION DATA SOURCES

The City of Davenport did not maintain subcontractor records in electronic format during the study period. To compile the subcontract records for contracts awarded by contractors during the study period extensive research was undertaken. The data collection effort was limited to one industry, construction. Mason Tillman attempted to collect professional services data; however, there was insufficient data to perform a statistical analysis on professional services contracts. General service prime contracts for goods and other services were not considered for analysis because they traditionally do not include significant



subcontracts. The examination of construction prime contracts was limited to contracts with a award value of \$50,000 or greater.

Several data collection strategies were employed in an effort to collect comprehensive construction subcontract records. Bid packages, prime contractor invoices, purchase orders, progress reports, proposals and prevailing wage reports were sources of subcontractor data.

Project managers and engineers responsible for contract management were interviewed to identify the subcontractor records housed in their project files. It was determined that the engineers' files were stored at several different locations. City staff assisted in the identification of 113 project files containing prime contracts awarded during the study period. One or more subcontractors was identified in 73 of these project files. A total of 261 subcontracts were collected for 73 prime contracts. The data collected from the project files were subcontractor commitments which were submitted with the prime contractor's bid.

In an effort to verify the accuracy of the subcontractor commitments listed in the prime contractors' bids a prime and subcontractor expenditure survey was conducted. Each contractor that was awarded a prime contract that was \$50,000 or greater was surveyed to verify the subcontractors listed in their bid and to name any contractors not listed in their bid. Each subcontractor listed in a bid was surveyed to verify that it was used and paid the amount listed in the prime contractor's bid.

The prime survey was conducted by mail with a telephone follow-up. The mail survey contained the list of the subcontractor commitments recorded in the bids. Each prime contractor which failed to respond to the mail survey was called and encouraged to return the survey or provide the requested information via the telephone.

The subcontractor survey was performed by telephone. Each listed subcontractor was called and asked to verify its participation on the specific prime contract. Multiple calls were made to each subcontractor in an effort to confirm the level of participation listed on the prime contract.

The subcontractor records compiled through this research were sufficient to perform the subcontractor analysis. The extraordinary effort of our project manager and other City staff made it possible to successfully reconstruct the subcontracts awarded by the businesses which received prime contracts from the City of Davenport from January 1, 2003 to December 31, 2007.



III. SUBCONTRACTOR UTILIZATION ANALYSIS: CONSTRUCTION SUBCONTRACTS

As depicted in Table 5.01 below, Mason Tillman identified 261 construction subcontracts for the January 1, 2003 to December 31, 2007 study period.

On the subcontracts identified, \$16,313,268 total dollars were expended during the study period, for construction subcontracts.

**Table 5.01 Total Subcontract Awards and Dollars, Construction,
January 1, 2003 to December 31, 2007**

Industry	Total Number of Subcontracts	Total Amount Expended
Construction	261	\$16,313,268



A. Construction Utilization: All Subcontracts

Table 5.02 depicts construction subcontracts awarded by prime contractors. Minority Business Enterprises received 2.62 percent of the construction subcontract dollars; Women Business Enterprises received 2.95 percent; and Caucasian Male Business Enterprises received 94.43 percent.

African American Businesses received 18 or 6.9 percent of the construction subcontracts during the study period, representing \$330,362 or 2.03 percent of the subcontract dollars.

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

Hispanic American Businesses received 3 or 1.15 percent of the construction subcontracts during the study period, representing \$97,420 or 0.6 percent of the subcontract dollars.

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

Minority Business Enterprises received 21 or 8.05 percent of the construction subcontracts during the study period, representing \$427,782 or 2.62 percent of the subcontract dollars.

Women Business Enterprises received 25 or 9.58 percent of the construction subcontracts during the study period, representing \$480,868 or 2.95 percent of the subcontract dollars.

Minority and Women Business Enterprises received 46 or 17.62 percent of the construction subcontracts during the study period, representing \$908,649 or 5.57 percent of the subcontract dollars.

Caucasian Male Business Enterprises received 215 or 82.38 percent of the construction subcontracts during the study period, representing \$15,404,618 or 94.43 percent of the subcontract dollars.



**Table 5.02 Construction Subcontractor Utilization: All
Dollars, January 1, 2003 to December 31, 2007**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	18	6.90%	\$330,362	2.03%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	3	1.15%	\$97,420	0.60%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	25	9.58%	\$480,868	2.95%
Other Males	215	82.38%	\$15,404,618	94.43%
TOTAL	261	100.00%	\$16,313,268	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	18	6.90%	\$330,362	2.03%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	3	1.15%	\$97,420	0.60%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	25	9.58%	\$480,868	2.95%
Caucasian Males	215	82.38%	\$15,404,618	94.43%
TOTAL	261	100.00%	16,313,268	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	21	8.05%	\$427,782	2.62%
Other Females	25	9.58%	\$480,868	2.95%
Other Males	215	82.38%	\$15,404,618	94.43%
TOTAL	261	100.00%	\$16,313,268	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	21	8.05%	\$427,782	2.62%
Women Business Enterprises	25	9.58%	\$480,868	2.95%
Minority and Women Business Enterprises	46	17.62%	\$908,649	5.57%
Caucasian Male Business Enterprises	215	82.38%	\$15,404,618	94.43%
TOTAL	261	100.00%	\$16,313,268	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.⁴ However, it is informative to review the Court's definition of the City of Richmond's market area. In discussing the scope of the constitutional violation that must be investigated, the Court interchangeably used the terms "relevant market,"⁵ "Richmond construction industry,"⁶ and "city's construction industry"⁷ to define the proper scope of the examination of the existence of discrimination within the City of Richmond. This interchangeable use 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.⁸ In *Cone Corporation v. Hillsborough County*,⁹ 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

⁴ *Adarand*, which extended *Croson*'s strict scrutiny standard to federal programs, did not change *Croson*'s approach to market area where federal funds are involved.

⁵ *Croson*, 488 U.S. at 471 (1989).

⁶ *Id.* at 500.

⁷ *Id.* at 470.

⁸ See e.g., *Concrete Works of Colorado v. City of Denver, Colorado*, 36 F.3d 1513, 1528 (10th Cir. 1994).

⁹ *Cone Corporation v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990).



County. The court stated that the study was properly conducted within the “local construction industry.”¹⁰

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,¹¹ 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.¹²

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.”¹³ 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. It 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.”¹⁴

¹⁰ *Id.* at 915.

¹¹ *Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991).

¹² *Id.* at 1415.

¹³ *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991), *cert. denied*, 112 S.Ct. 875 (1992).

¹⁴ *Id.* at 917.



However, the court did note that the “world of contracting does not conform itself neatly to jurisdictional boundaries.”¹⁵

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 County of Denver*,¹⁶ 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*,¹⁷ 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.”¹⁸

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.¹⁹

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.²⁰ The text of *Croson* itself suggests that the geographical boundaries of the

¹⁵ Id.

¹⁶ *Concrete Works*, 36 F.3d 1513, 1528 (10th Cir. 1994).

¹⁷ *AGCCII*, 950 F.2d 1401 (9th Cir. 1991).

¹⁸ *Concrete Works*, 36 F.3d at 1528 (10th Cir. 1994).

¹⁹ *Opportunity Denied! New York State’s Study*, 26 *Urban Lawyer* No. 3, Summer 1994.

²⁰ *Croson*, 488 U.S. at 501 (1989).



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, 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. MARKET AREA ANALYSIS

Although *Croson* and its progeny do not provide a bright line rule for the delineation of the local market area, taken collectively, the case law supports a definition of market area as the area within the jurisdiction's own boundaries. It is within the market area where an entity may limit consideration of evidence of discrimination. A review of the contracts awarded by the City of Davenport (City) shows that most of its 477 contract awards and the majority of the contract dollars were awarded to businesses in Davenport and other cities outside of Iowa and Illinois. Additionally, the distribution of contracts and dollars awarded within each of the three industries shows a pattern of contracting with businesses within the Quad Cities of Bettendorf, Iowa; Davenport, Iowa; East Moline Illinois; Moline, Illinois; and Rock Island, Illinois. A review of the contracts and dollars awarded to businesses in these five cities is depicted below:



1. Distribution of All Contracts

The City awarded 477 contracts and \$89,802,755 during the January 1, 2003 to December 31, 2007 study period. 58.28 percent of these contracts and 73.01 percent of the dollars were awarded to the Quad Cities of Bettendorf, Iowa; Davenport, Iowa; East Moline, Illinois; Moline, Illinois; and Rock Island, Illinois. The distribution of the contracts and dollars awarded is depicted in Table 6.01.

Table 6.01 Distribution of All Contracts Awarded January 1, 2003 to December 31, 2007

City	Number of Contracts	Percent of Total Contracts	Amount of Dollars	Percent of Total Dollars
Davenport, IA	164	34.38%	\$34,253,340	38.14%
Bettendorf, IA	53	11.11%	\$18,317,563	20.40%
Rock Island, IL	24	5.03%	\$11,767,939	13.10%
East Moline, IL	23	4.82%	\$924,463	1.03%
Moline, IL	14	2.94%	\$306,688	0.34%
Remaining *	199	41.72%	\$24,232,763	26.98%
Total	477	100.00%	\$89,802,755	100.00%
* Remaining includes Other Cities in IA and IL, Out of IA, Out of IL, and Out of U.S.				



2. Distribution of Construction Contracts

The City awarded 186 construction contracts valued at \$71,508,016 during the January 1, 2003 to December 31, 2007 study period. 72.58 percent of the construction contracts and 79.5 percent of the dollars were awarded to the Quad Cities of Bettendorf, Iowa; Davenport, Iowa; East Moline, Illinois; Moline, Illinois; and Rock Island Illinois.

The distribution of the contracts and dollars awarded to firms within and outside of the Quad Cities is depicted in Table 6.02.

**Table 6.02 Distribution of Construction Contracts Awarded,
January 1, 2003 to December 31, 2007**

City	Number of Contracts	Percent of Total Contracts	Amount of Dollars	Percent of Total Dollars
Davenport, IA	85	45.70%	\$29,516,957	41.28%
Bettendorf, IA	26	13.98%	\$17,266,825	24.15%
Rock Island, IL	16	8.60%	\$9,834,920	13.75%
East Moline, IL	7	3.76%	\$215,017	0.30%
Moline, IL	1	0.54%	\$13,110	0.02%
Remaining *	51	27.42%	\$14,661,187	20.50%
Total	186	100.00%	\$71,508,016	100.00%
* Remaining includes Other Cities in IA and IL, Out of IA, Out of IL, and Out of U.S.				



3. Distribution of Professional Services Contracts

The City awarded 23 professional services contracts valued at \$3,363,568 during the January 1, 2003 to December 31, 2007 study period. 56.52 percent of the professional services contracts and 62.83 percent of the dollars were awarded to Davenport, Iowa; East Moline, Illinois; Moline, Illinois; and Rock Island, Illinois; four of the Quad Cities.

The distribution of the contracts awarded to firms within and outside of the Quad Cities is depicted in Table 6.03.

**Table 6.03 Distribution of Professional Services Contracts
Awarded, January 1, 2003 to December 31, 2007**

City	Number of Contracts	Percent of Total Contracts	Amount of Dollars	Percent of Total Dollars
Rock Island, IL	1	4.35%	\$1,690,000	50.24%
Davenport, IA	8	34.78%	\$262,600	7.81%
East Moline, IL	3	13.04%	\$155,790	4.63%
Moline, IL	1	4.35%	\$4,920	0.15%
Remaining *	10	43.48%	\$1,250,260	37.17%
Total	23	100.00%	\$3,363,568	100.00%

* Remaining includes Other Cities in IA and IL, Out of IA, Out of IL, and Out of U.S.



4. Distribution of General Services Contracts

The City awarded 268 general services contracts valued at \$14,931,170 dollars during the January 1, 2003 to December 31, 2007 study period. 48.51 percent of the general services contracts and 44.27 percent of the dollars were awarded to the Quad Cities of Bettendorf, Iowa; Davenport, Iowa; East Moline, Illinois; Moline, Illinois; and Rock Island, Illinois.

The distribution of the contracts awarded to firms within and outside of the Quad Cities is depicted in Table 6.04.

**Table 6.04 Distribution of General Services Contracts
Awarded, January 1, 2003 to December 31, 2007**

City	Number of Contracts	Percent of Total Contracts	Amount of Dollars	Percent of Total Dollars
Davenport, IA	71	26.49%	\$4,473,783	29.96%
Bettendorf, IA	27	10.07%	\$1,050,738	7.04%
East Moline, IL	13	4.85%	\$553,656	3.71%
Moline, IL	12	4.48%	\$288,658	1.93%
Rock Island, IL	7	2.61%	\$243,019	1.63%
Remaining *	138	51.49%	\$8,321,316	55.73%
Total	268	100.00%	\$14,931,170	100.00%

* Remaining includes Other Cities in IA and IL, Out of IA, Out of IL, and Out of U.S.



A. CITY'S MARKET AREA

More than 58 percent of the City's contracts and 73.02 percent of dollars were awarded to businesses located in the Quad Cities of Bettendorf, Iowa; Davenport, Iowa; East Moline, Illinois; Moline, Illinois; and Rock Island, Illinois. Given the geographical distribution of the contracts awarded by the City and the requirements set forth in the applicable case law, the study's market area is determined to be the Quad Cities of Bettendorf, Iowa; Davenport, Iowa; East Moline, Illinois; Moline, Illinois; and Rock Island, Illinois.

The following table depicts the overall number of construction, professional services, and general services contracts awarded between January 1, 2003 and December 31, 2007.

The City awarded 477 construction, professional services, and general services contracts valued at \$89,802,755 during the study period of January 1, 2003 to December 31, 2007. A total of 58.28 percent of the contracts and 73.02 percent of the dollars were awarded to businesses in the market area of Bettendorf, Davenport, East Moline, Moline, and Rock Island Quad Cities. The analysis of discrimination has been limited to that which occurred within this market area.

Table 4.05 depicts the overall number of construction, professional services, and general services contracts and the dollar value of those contracts awarded by the City between January 1, 2003 and December 31, 2007. Of the 477 contracts awarded by the City during the study period, 278 or 58.28 percent were awarded to market area businesses, which constitutes, \$65,569,992 or 73.02 percent of all contract dollars awarded.

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

Construction Contracts: 135 or 72.58 percent of these contracts were awarded to market area businesses. The dollar value of those contracts was \$56,846,829 or 79.5 percent of the total construction dollars.

Professional Services Contracts: 13 or 56.52 percent of these contracts were awarded to market area businesses. The dollar value of those contracts was \$2,113,309 or 62.83 percent of the total professional services dollars.

General Services Contracts: 130 or 48.51 percent were awarded to market area businesses. The dollar value of those contracts was \$6,609,854 or 44.27 percent of the total general services dollars.



Table 6.05 City's Market Area: January 1, 2003 to December 31, 2007

Market Area	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Combined Types of Work				
Market Area	278	58.28%	\$65,569,992	73.02%
Outside Market Area	199	41.72%	\$24,232,763	26.98%
Total	477	100.00%	\$89,802,755	100.00%
Construction				
Market Area	135	72.58%	\$56,846,829	79.50%
Outside Market Area	51	27.42%	\$14,661,187	20.50%
Total	186	100.00%	\$71,508,016	100.00%
Professional Services				
Market Area	13	56.52%	\$2,113,309	62.83%
Outside Market Area	10	43.48%	\$1,250,260	37.17%
Total	23	100.00%	\$3,363,568	100.00%
General Services				
Market Area	130	48.51%	\$6,609,854	44.27%
Outside Market Area	138	51.49%	\$8,321,316	55.73%
Total	268	100.00%	\$14,931,170	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 be made within the jurisdiction’s market area. The market area analysis presented in *Chapter 6: Market Area Analysis* defined the Quad Cities² as the market area for this Study because the majority of the utilized businesses are domiciled in these five counties.

The compiled list of available businesses includes minority, women, and Caucasian male-owned businesses in the areas of construction, professional services, and general services. The City of Davenport’s (City) records, government certification records, business association membership listings, and an outreach campaign were used to compile the documents used as sources for available market area businesses. Separate availability lists were compiled for

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

² The Quad Cities are Bettendorf, Iowa; Davenport, Iowa; East Moline Illinois; Moline, Illinois; and Rock Island, Illinois.



prime contractors and subcontractors within the three industries. The distribution of available businesses by ethnicity and gender and industry are presented in this chapter.

II. PRIME CONTRACTOR AVAILABILITY DATA SOURCES

A. Identification of Willing Business Within The Market Area

Mason Tillman identified businesses in the Quad Cities market area that provided goods and services that the City procures using three sources: government certification lists, business outreach, and business association membership lists. Only businesses that were determined to be willing were added to the availability list. All businesses identified as willing from more than one source were counted only once. The base document in the availability list was the utilized vendors. To this list was added the unsuccessful bidders, businesses identified through government certification lists, and the willing businesses identified from the business association membership lists. The three sources were ranked with the highest rank assigned to the utilized vendors.

The utilized vendors and unsuccessful bidders were secured from the City records of utilized contractors and unsuccessful bidders records. The certified lists were collected from the State of Iowa DBE Directory, Iowa Department of Inspections and Appeals Certification Program, and the U.S. Small Business Administration; Procurement Marketing and Access Network which certifies businesses as disadvantaged business enterprises and/or M/WBEs.

Extensive outreach to business associations in the Quad cities was performed to identify additional businesses willing to contract with the City. Written and telephone contact with organizations and local governments was used to collect membership lists. From the combined effort 65 market area businesses were identified.

An account of the willing businesses derived by source are listed below:

1. Prime Contractor Utilization Records

All of the City's utilized vendors and unsuccessful bidders were determined to be willing. There were 536 utilized and unsuccessful businesses. To the availability list, 131 unique businesses were added.



2. Government Certification Lists

Certification lists from state and government agencies were collected. There were 996 certified businesses compiled from three agencies and all were determined to be willing. There were 300 unique businesses added to the availability list.

3. Identification of Business Association Membership Lists

Mason Tillman identified and obtained 15 membership lists of businesses within the market area. Membership lists were from 15 entities. From the 15 business association membership lists, 1,928 businesses were identified. Of the 1,928 businesses, there were 1,730 unique businesses that offered the goods and services the City procures. The unique list was queried and 1,313 businesses out of market area were excluded. 417 businesses were surveyed to determine their willingness to contract with the City. There were 65 unique businesses added to the availability list.

B. Prime Contractor Sources

Table 7.01 lists the governmental and business association sources from which the willing businesses were compiled.

Table 7.01 Prime Contractor Availability Data Sources

Source	Type of Information
City Records	
Public Utilized Vendors	M/WBEs and non-M/WBEs
Unsuccessful Bidders	M/WBEs and non-M/WBEs
Government Certification Lists	
Iowa State DOT Consultant Prequalification List	M/WBEs and non-M/WBEs
Quad City International Airport Vendor List	M/WBEs and non-M/WBEs
Iowa Department of Inspections & Appeals Certification Program	M/WBEs and DBEs
State of Iowa DBE Directory	DBEs
United States Small Business Administration: Procurement Marketing and Access Network	M/WBEs and non-M/WBEs



Source	Type of Information
Business Association Membership/Licensing Board Lists	
Council of Engineers American	M/WBEs and non-M/WBEs
Associated Builders and Contractors - Iowa Chapter, Scott County and River Island	M/WBEs and non-M/WBEs
Associated General Contractors of Iowa Scott County	M/WBEs and non-M/WBEs
Associated General Contractors of Quad Cities	M/WBEs and non-M/WBEs
City of Walcott Business Directory	M/WBEs and non-M/WBEs
Downtown Davenport Association	M/WBEs and non-M/WBEs
Dubuque Area Chamber of Commerce	M/WBEs and non-M/WBEs
Eldridge North Scott Chamber of Commerce	M/WBEs and non-M/WBEs
LeClaire Chamber of Commerce	M/WBEs and non-M/WBEs
Master Builders of Iowa, Southeast Region	M/WBEs and non-M/WBEs
National Association of Women Business Owners	WBEs
Quad Cities Chapter National Association of Women in Construction Membership List	WBEs
Scott County Bar Association	M/WBEs and non-M/WBEs
The American Institute of Architects, Iowa Chapter, Southeast Region	M/WBEs and non-M/WBEs
The Iowa Commission on the Status of African Americans, Davenport	M/WBEs

C. Determination of Willingness

All businesses used in the availability analysis were determined to be willing to contract with the City. Willingness is defined in *Croson* and its progeny as a business' interest in doing government contracting. This term is discussed in detail in *Chapter 2: Legal Analysis*. Businesses identified from the Prime Contractor Availability Data Sources listed in Table 5.01 have demonstrated their willingness to perform on public contracts. To be classified as willing the business either had bid on a City contract, secured government certification, responded to the outreach campaign conducted in conjunction with this Study, or was listed on a business organization membership list and affirmed its interest in contracting with the City



through the survey. It was presumed that companies that sought government contracts or certification were willing to contract with the City.

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

Tables 7.02 through 7.07 present the distribution of willing prime contractors by the source. The Prime Contractor Availability Data Sources listed in Table 5.01 are ranked. The highest ranked source was the prime contractors utilized by the City. Each ranked business 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 business, or as a company identified during outreach.

As noted in Table 7.02, 86.9 percent of the businesses on the unique list of available prime contractors were obtained from the City records of utilized contractors, unsuccessful bidders, and government certification lists. Companies identified through business outreach lists represent 13.1 percent of the willing businesses.

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	4.13%	31.47%	24.80%
Unsuccessful Bidders	0.00%	2.13%	1.61%
Certification Lists	71.90%	56.80%	60.48%
Subtotal	76.03%	90.40%	86.90%
Willingness Survey	23.97%	9.60%	13.10%
Subtotal	23.97%	9.60%	13.10%
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, 77.11 percent of the construction companies identified were derived from the City records of utilized contractors and unsuccessful bidders lists. Companies identified through business outreach lists represent 22.89 percent of the willing businesses.

Table 7.03 Distribution of Prime Contractor Availability Data Sources, Construction

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	11.11%	66.15%	54.22%
Unsuccessful Bidders	33.33%	20.00%	22.89%
Subtotal	44.44%	86.15%	77.11%
Willingness Survey	55.56%	13.85%	22.89%
Subtotal	55.56%	13.85%	22.89%
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 available professional services prime contractors. As noted, 69.44 percent of the construction companies identified were derived from the City records of utilized contractors and unsuccessful bidders lists. Companies identified through business outreach and the business association membership lists represent 30.56 percent of the willing businesses.

**Table 7.04 Distribution of Prime Contractor Availability Data Sources
Professional Services**

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	5.00%	19.23%	15.28%
Unsuccessful Bidders	0.00%	11.54%	8.33%
Certification Lists	60.00%	40.38%	45.83%
Subtotal	65.00%	71.15%	69.44%
Willingness Survey	35.00%	28.85%	30.56%
Subtotal	35.00%	28.85%	30.56%
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 general services prime contractors. As noted, 95.07 percent of the goods and other services prime contractors were obtained from the City records of utilized contractors and unsuccessful bidders lists and government certification lists. Companies identified through business outreach and the business association membership lists represent 4.93 percent of the willing businesses.

**Table 7.05 Prime Contractor Availability Data Sources,
General Services**

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	6.38%	44.23%	35.47%
Unsuccessful Bidders	0.00%	1.92%	1.48%
Certification Lists	76.60%	52.56%	58.13%
Subtotal	82.98%	98.72%	95.07%
Willingness Survey	17.02%	1.28%	4.93%
Subtotal	17.02%	1.28%	4.93%
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 business's capacity or ability to work on the contracts awarded by the jurisdiction.³ However, capacity requirements are not delineated in *Croson*. In fact, a standard for capacity has only been addressed in a few subsequent cases. Each case where capacity has been considered has involved large, competitively bid construction prime contracts. Nevertheless, the capacity of willing market area businesses to do business with the City was assessed using four approaches.

³ *Croson*, 488 U.S. 469.



- 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 certification process was assessed to determine if it meets the standard set in *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia (Philadelphia)*,⁴ which found the USDOT certification to measure capacity.
- The disparity analysis was 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

A. Size of 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 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.⁵

The City's construction, professional services, and general services contracts were analyzed to determine the size of awarded contracts and, therefore, the capacity required to perform on the City's contracts. The size distribution illustrates the fact that the majority of the City awarded contracts were under \$25,000 and that limited capacity is needed to perform the overwhelming majority of the City's contracts.

The City's contracts were grouped into eight dollar ranges⁶. Each award was analyzed to determine the number and percentage of contracts that fall within each of the eight size categories. The size distribution of contracts awarded to Caucasian Males, was then

⁴ *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).

⁵ *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).

⁶ 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.



compared to the size distribution of contracts awarded to Caucasian Females, Minority Females, and Minority Males.

The analysis in Table 7.06, which combines all industries, demonstrates that 47.8 percent of the City's contracts were less than \$25,000, 73.38 percent were less than \$100,000, and 92.03 percent were less than \$500,000. Only 7.96 percent of the City's contracts were \$500,000 or more.

1. Construction Contracts by Size

Table 7.07 depicts the City's construction contracts awarded within the eight dollar ranges. Contracts valued at less than \$25,000 were 27.42 percent; those less than \$100,000 were 53.23 percent; and those less than \$500,000 were 82.8 percent. Only 17.21 percent of the City's contracts were \$500,000 or more.

2. Professional Services Contracts by Size

Table 7.08 depicts professional services contracts within the eight dollar ranges. Contracts valued at less than \$25,000 were 43.48 percent; those less than \$50,000 were 56.52 percent; those less than \$100,000 were 78.26 percent; and those less than \$500,000 were 95.65 percent. Only 4.35 percent of the City's contracts were \$500,000 or more.

3. General Services Contracts by Size

Table 7.09 depicts general services contracts within the eight dollar ranges. Contracts valued at less than \$25,000 were 62.31 percent; those less than \$50,000 were 77.99 percent; those less than \$100,000 were 86.94 percent; and those less than \$500,000 were 98.13 percent. Only 1.86 percent of the City's contracts were \$500,000 or more.



Table 7.06 Prime Contracts by Size - All Industries January 1, 2003 to December 31, 2007

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$1 - \$24,999	14	53.85%	212	47.53%	2	66.67%	0	0.00%	228	47.80%
\$25,000 - \$49,999	3	11.54%	62	13.90%	1	33.33%	0	0.00%	66	13.84%
\$50,000 - \$99,999	4	15.38%	51	11.43%	0	0.00%	1	50.00%	56	11.74%
\$100,000 - \$249,999	0	0.00%	59	13.23%	0	0.00%	0	0.00%	59	12.37%
\$250,000 - \$499,999	1	3.85%	28	6.28%	0	0.00%	1	50.00%	30	6.29%
\$500,000 - \$999,999	4	15.38%	11	2.47%	0	0.00%	0	0.00%	15	3.14%
\$1,000,000 - \$2,999,999	0	0.00%	21	4.71%	0	0.00%	0	0.00%	21	4.40%
\$3,000,000 and greater	0	0.00%	2	0.45%	0	0.00%	0	0.00%	2	0.42%
Total	26	100.00%	446	100.00%	3	100.00%	2	100.00%	477	100.00%

Insufficient Data

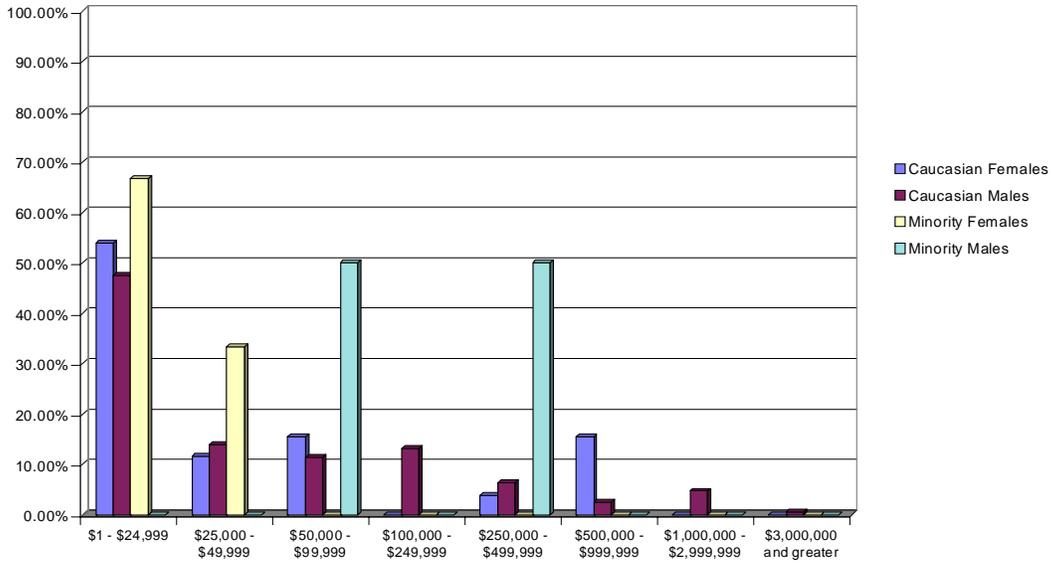
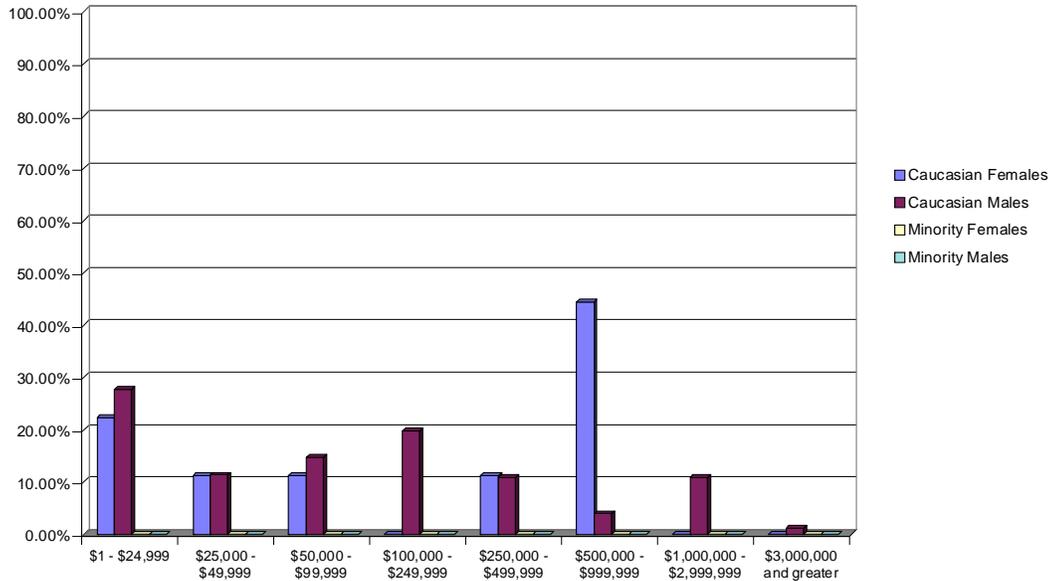


Table 7.07 Construction Contracts by Size January 1, 2003 to December 31, 2007

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$1 - \$24,999	2	22.22%	49	27.68%	0	0.00%	0		51	27.42%
\$25,000 - \$49,999	1	11.11%	20	11.30%	0	0.00%	0		21	11.29%
\$50,000 - \$99,999	1	11.11%	26	14.69%	0	0.00%	0		27	14.52%
\$100,000 - \$249,999	0	0.00%	35	19.77%	0	0.00%	0		35	18.82%
\$250,000 - \$499,999	1	11.11%	19	10.73%	0	0.00%	0		20	10.75%
\$500,000 - \$999,999	4	44.44%	7	3.95%	0	0.00%	0		11	5.91%
\$1,000,000 - \$2,999,999	0	0.00%	19	10.73%	0	0.00%	0		19	10.22%
\$3,000,000 and greater	0	0.00%	2	1.13%	0	0.00%	0		2	1.08%
Total	9	100.00%	177	100.00%	0	0.00%	0	0.00%	186	100.00%

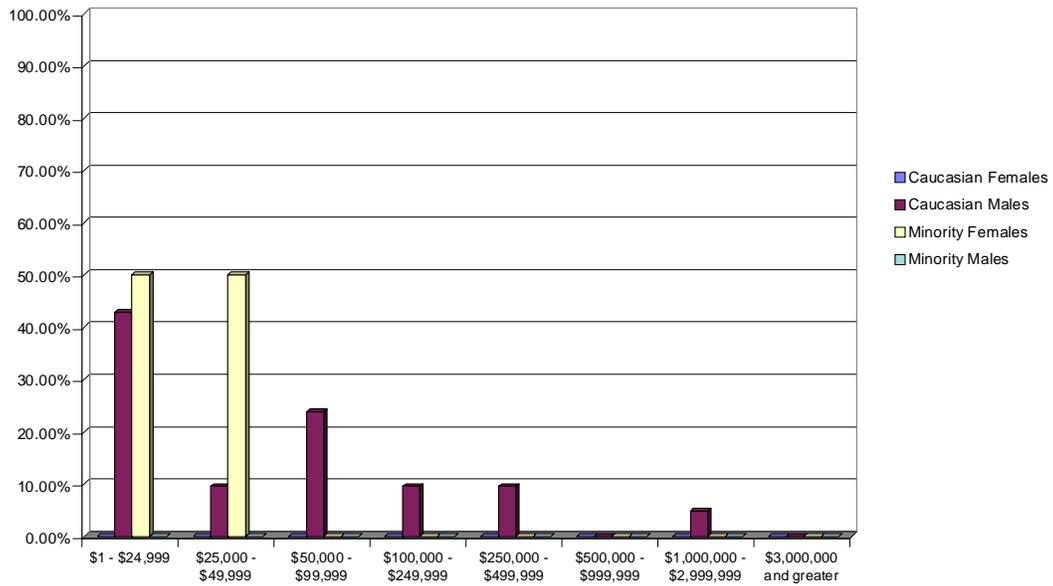
Insufficient Data



**Table 7.08 Professional Services Contracts by Size:
January 1, 2003 to December 31, 2007**

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$1 - \$24,999	0		9	42.86%	1	50.00%	0		10	43.48%
\$25,000 - \$49,999	0		2	9.52%	1	50.00%	0		3	13.04%
\$50,000 - \$99,999	0		5	23.81%	0	0.00%	0		5	21.74%
\$100,000 - \$249,999	0		2	9.52%	0	0.00%	0		2	8.70%
\$250,000 - \$499,999	0		2	9.52%	0	0.00%	0		2	8.70%
\$500,000 - \$999,999	0		0	0.00%	0	0.00%	0		0	0.00%
\$1,000,000 - \$2,999,999	0		1	4.76%	0	0.00%	0		1	4.35%
\$3,000,000 and greater	0		0	0.00%	0	0.00%	0		0	0.00%
Total	0	0.00%	21	100.00%	2	100.00%	0	0.00%	23	100.00%

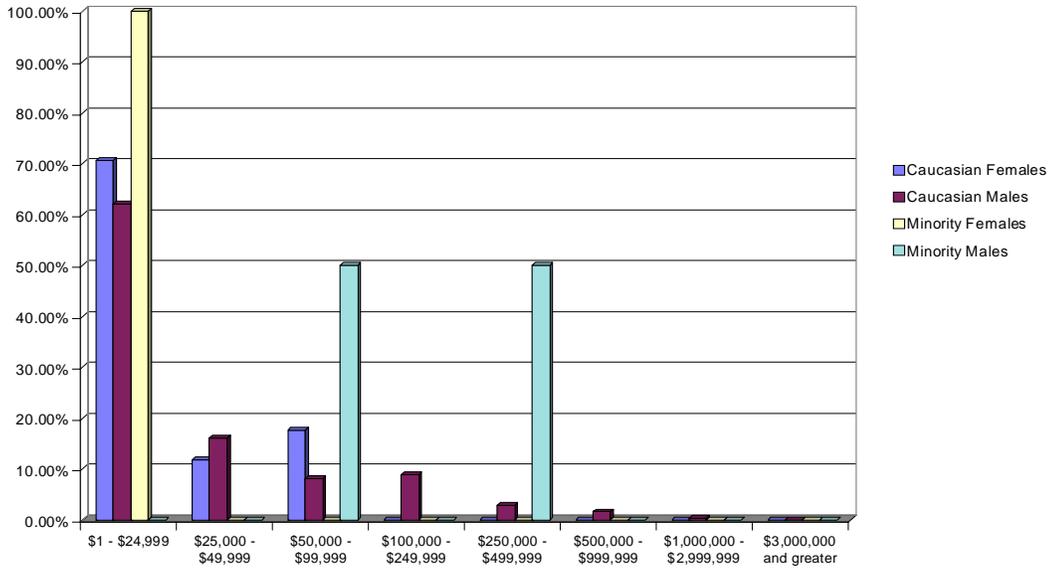
Insufficient Data



**Table 7.09 General Services Contracts by Size:
January 1, 2003 to December 31, 2007**

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$1 - \$24,999	12	70.59%	154	62.10%	1	100.00%	0	0.00%	167	62.31%
\$25,000 - \$49,999	2	11.76%	40	16.13%	0	0.00%	0	0.00%	42	15.67%
\$50,000 - \$99,999	3	17.65%	20	8.06%	0	0.00%	1	50.00%	24	8.96%
\$100,000 - \$249,999	0	0.00%	22	8.87%	0	0.00%	0	0.00%	22	8.21%
\$250,000 - \$499,999	0	0.00%	7	2.82%	0	0.00%	1	50.00%	8	2.99%
\$500,000 - \$999,999	0	0.00%	4	1.61%	0	0.00%	0	0.00%	4	1.49%
\$1,000,000 - \$2,999,999	0	0.00%	1	0.40%	0	0.00%	0	0.00%	1	0.37%
\$3,000,000 and greater	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Total	17	100.00%	248	100.00%	1	100.00%	2	100.00%	268	100.00%

Insufficient Data



B. Largest M/WBE Contract Awards by Industry

M/WBEs were awarded large contracts in the general services industry. WBEs were awarded large contracts in the construction industry and MBEs in the professional services industry. The distribution of the largest M/WBE contracts awarded is depicted below in Table 7.10. The utilization analysis shows that M/WBEs demonstrated the capacity to successfully compete for contracts as large as \$889,159 in construction, \$47,220 in professional services, and \$278,255 in general services.

Table 7.10 Largest M/WBE Contract Awards by the City

Largest Contract Value			
Ethnic Group	Construction	Professional Services	General Services
MBEs	\$0	\$47,220	\$278,255
WBEs	\$889,159	\$0	\$89,855

C. City Certification Standards

Philadelphia is the appellate court decision which addressed the merits of certification as a measure of capacity.⁷ The court found that a certification program which was based on USDOT standards satisfied the determination of a business's capability. Thus, a certification program like the State of Iowa which adheres to the standards set forth in the USDOT regulations, 49 Code of Federal Regulations Part 26, is sufficient documentation of a M/WBEs capacity.

⁷ *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 size of the City's contracts demonstrates that the majority of the contracts are small requiring limited capacity to perform. Furthermore, the awards the City has made to M/WBE businesses demonstrate that the capacity of the available businesses is considerably greater than needed to bid on the majority of the contracts awarded in the three industries studied.

The prime contractor availability findings for the City of Davenport, are summarized below:



A. Construction Prime Contractor Availability

The distribution of available construction prime contractors is summarized in Table 7.11 below:

African Americans account for 14.46 percent of the construction businesses in the City's market area.

Asian Americans account for none of the construction businesses in the City's market area.

Hispanic Americans account for 1.2 percent of the construction businesses in the City's market area.

Native Americans account for none of the construction businesses in the City's market area.

Minority Business Enterprises account for 15.66 percent of the construction businesses in the City's market area.

Women Business Enterprises account for 6.02 percent of the construction businesses in the City's market area.

Minority and Women Business Enterprises account for 21.69 percent of the construction businesses in the City's market area.

Caucasian Male Business Enterprises account for 78.31 percent of the construction businesses in the City's market area.



Table 7.11 Available Construction Prime Contractors

Ethnicity	Percent of Businesses
African Americans	14.46%
Asian Americans	0.00%
Hispanic Americans	1.20%
Native Americans	0.00%
Caucasian Females	6.02%
Caucasian Males	78.31%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	0.00%
African American Males	14.46%
Asian American Females	0.00%
Asian American Males	0.00%
Hispanic American Females	0.00%
Hispanic American Males	1.20%
Native American Females	0.00%
Native American Males	0.00%
Caucasian Females	6.02%
Caucasian Males	78.31%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	0.00%
Minority Males	15.66%
Caucasian Females	6.02%
Caucasian Males	78.31%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	15.66%
Women Business Enterprises	6.02%
Minority and Women Business Enterprises	21.69%
Caucasian Male Business Enterprises	78.31%
TOTAL	100.00%



B. Professional Services Prime Contractor Availability

The distribution of available professional services prime contractors is summarized in Table 7.12 below:

African Americans account for 9.72 percent of the professional services businesses in the City's market area.

Asian Americans account for 1.39 percent of the professional services businesses in the City's market area.

Hispanic Americans account for 4.17 percent of the professional services businesses in the City's market area.

Native Americans account for none of the professional services businesses in the City's market area.

Minority Business Enterprises account for 15.28 percent of the professional services businesses in the City's market area.

Women Business Enterprises account for 12.5 percent of the professional services businesses in the City's market area.

Minority and Women Business Enterprises account for 27.78 percent of the professional services businesses in the City's market area.

Caucasian Male Business Enterprises account for 72.22 percent of the professional services businesses in the City's market area.



Table 7.12 Available Professional Services Prime Contractors

Ethnicity	Percent of Businesses
African Americans	9.72%
Asian Americans	1.39%
Hispanic Americans	4.17%
Native Americans	0.00%
Caucasian Females	12.50%
Caucasian Males	72.22%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	1.39%
African American Males	8.33%
Asian American Females	0.00%
Asian American Males	1.39%
Hispanic American Females	2.78%
Hispanic American Males	1.39%
Native American Females	0.00%
Native American Males	0.00%
Caucasian Females	12.50%
Caucasian Males	72.22%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	4.17%
Minority Males	11.11%
Caucasian Females	12.50%
Caucasian Males	72.22%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	15.28%
Women Business Enterprises	12.50%
Minority and Women Business Enterprises	27.78%
Caucasian Male Business Enterprises	72.22%
TOTAL	100.00%



C. General Service Prime Contractor Availability

The distribution of available general services prime contractors is summarized in Table 7.13.

African Americans account for 6.9 percent of the general services businesses in the City's market area.

Asian Americans account for 0.49 percent of the general services businesses in the City's market area.

Hispanic Americans account for 1.48 percent of the general services businesses in the City's market area.

Native American Businesses account for none of the general services businesses in the City's market area.

Minority Business Enterprises account for 8.87 percent of the general services businesses in the City's market area.

Women Business Enterprises account for 14.29 percent of the general services businesses in the City's market area.

Minority and Women Business Enterprises account for 23.15 percent of the general services businesses in the City's market area.

Caucasian Male Business Enterprises account for 76.85 percent of the general services businesses in the City's market area.



Table 7.13 Available General Services Prime Contractors

Ethnicity	Percent of Businesses
African Americans	6.90%
Asian Americans	0.49%
Hispanic Americans	1.48%
Native Americans	0.00%
Caucasian Females	14.29%
Caucasian Males	76.85%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	1.48%
African American Males	5.42%
Asian American Females	0.49%
Asian American Males	0.00%
Hispanic American Females	0.49%
Hispanic American Males	0.99%
Native American Females	0.00%
Native American Males	0.00%
Caucasian Females	14.29%
Caucasian Males	76.85%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	2.46%
Minority Males	6.40%
Caucasian Females	14.29%
Caucasian Males	76.85%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	8.87%
Women Business Enterprises	14.29%
Minority and Women Business Enterprises	23.15%
Caucasian Male Business Enterprises	76.85%
TOTAL	100.00%



V. SUBCONTRACTOR AVAILABILITY ANALYSIS

A. Sources of Potentially Willing and Able Subcontractors and Availability

All available prime contractors were included in the calculation of the subcontractor availability. Additional subcontractors in the City's market area were identified using sources in Table 7.14.

Table 7.14 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 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 7.15.

African Americans account for 8.92 percent of the construction firms in the City's market area.

Asian Americans account for none of the construction firms in the City's market area.

Hispanic Americans account for 1.27 percent of the construction firms in the City's market area.

Native Americans account for none of the construction firms in the City's market area.

Minority Business Enterprises account for 10.19 percent of the construction firms in the City's market area.

Caucasian Female Business Enterprises account for 2.55 percent of the construction firms in the City's market area.

Minority and Women Business Enterprises account for 12.74 percent of the construction firms in the City's market area.

Caucasian Male Business Enterprises account for 87.26 percent of the construction firms in the City's market area.



Table 7.15 Available Construction Subcontractors

Ethnicity	Percent of Businesses
African Americans	8.92%
Asian Americans	0.00%
Hispanic Americans	1.27%
Native Americans	0.00%
Caucasian Females	2.55%
Other Males	87.26%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	0.00%
African American Males	8.92%
Asian American Females	0.00%
Asian American Males	0.00%
Hispanic American Females	0.00%
Hispanic American Males	1.27%
Native American Females	0.00%
Native American Males	0.00%
Caucasian Females	2.55%
Caucasian Males	87.26%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	0.00%
Minority Males	10.19%
Other Females	2.55%
Other Males	87.26%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	10.19%
Women Business Enterprises	2.55%
Minority and Women Business Enterprises	12.74%
Caucasian Male Business Enterprises	87.26%
TOTAL	100.00%



8

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 business enterprises (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 they believe exist within the market area, including who perpetrates them and their effect on the development of M/WBEs.



¹ *Croson*, 488 U.S. at 509

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 governmental entity. The purpose of this examination is to determine whether the government has committed acts that bar minority and women business owners from contracting opportunities.

The second line of inquiry examines the government's "passive" support of exclusionary practices that occur in the market area into which its funds are infused. "Passive" exclusion results from government officials knowingly using 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 mainly delve into the activities of 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 of evidence 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 identify specific generic practices that can be implemented, improved, or eliminated in order to increase contracting opportunities for businesses owned by all citizens.

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.



This chapter presents anecdotal accounts from interviews with businesses domiciled in the City of Davenport’s market area, which consists of the Quad Cities: Bettendorf, Iowa, Davenport, Iowa, East Moline, Illinois, Moline, Illinois, and Rock Island, Illinois. The anecdotes provide accounts of barriers encountered directly with the City of Davenport and within the City’s market area.

B. Anecdotal Methodology

The method of gathering anecdotal testimony was through oral history interviews. 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 survey, 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 disadvantaged business enterprises (DBEs) and the means by which these practices occur. The in-depth interviews are also structured in a manner that affords DBEs a process in which their anonymity can be preserved.

By allowing interviewees to describe in their own words the barriers they have experienced in conducting business, information can be completed to explain how barriers occur, who creates them, and their effect on the development of DBEs. Thus, the information obtained sheds light on the City of Davenport and offers vital insights on future program needs and changes.

Interviewees were identified from contract and certification records and community meetings. Potential interviewees were pre-screened to determine if they operated within the market area and were willing to commit to the interview process.

Generally, the interviews lasted 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. Completed interviews were transcribed and analyzed for barriers DBEs encountered. From the analysis, 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 with the City of Davenport.

C. Anecdotal Interviewee Profile

Table 8.01 presents a profile of the business owners interviewed for this Study.



Table 8.01 Anecdotal Interviewee Profile

Ethnicity	Number
African American	6
Hispanic American	2
Caucasian	12
Total	20

Gender	Number
Male	14
Female	6
Total	20

Industry	Number
Construction Services	10
Engineering and Professional Services	9
General Services	1
Total	20

II. BUSINESS COMMUNITY BARRIERS

A. Racial and Gender Barriers

Small business owners are confronted with the formidable challenge of growing and sustaining their companies. A major challenge for these business owners is creating a consistent source of revenue. Unfortunately, the business development efforts of small minority business owners' are compounded by numerous challenges associated with their ethnicity.

A minority male construction mediator believes that minorities are held to a higher standard of review than their Caucasian counterparts:



My perspective is that blatant discrimination [is happening at] the City of Davenport. They really don't care if minorities get any work. I am all over the City everyday, and I see few minorities working. I see Mexican and White people. They did not give [a minority] a bid to tear down a dwelling that the City has condemned. [Even though] the man is qualified. Something is wrong, and I know what is wrong. It's discrimination and prejudice in the State of Iowa. These guys have already been certified, and all of a sudden they got to go through that whole process over again and pay fees. What does that tell you? Everyone should be qualified, but why do minorities have to jump through hoops?

A minority male owner of a construction firm also believes that minority contractors are held to a higher standard of review:

We are definitely held to a higher standard than others. We went out and did the work according to specifications. I believe that if any other contractor would have gone out there and done it, they would have been paid by now.

A minority male owner of a construction firm believes that he was denied work with the City because of his race:

When I went to the pre-bid meetings, sometimes I would sign in but they [would not] recognize minorities when it comes to a job. They wouldn't put none of us on the job.

A minority male construction mediator reported on an incident where he believes a minority contractor was unfairly denied a contract because of his race:

In Louisiana [racism] is blatant. [But here] it's covered [up] with bureaucracy, rules, and regulations. You cannot just come out and say we are being discriminated against. In a particular one case there was a problem with the individual who was awarded a [demolition contract] and by right, the [contract] normally goes to the next [lowest bidder]. But instead of them giving it to the second lowest bidder they opened the bid back up, which is out of the norm. The second lowest bidder was a minority. [If they would have awarded]



the contract the typical way that they do, it would have gone to this minority contractor.

A minority male owner of a construction firm explained why he believes he was blackballed by certain prime contractors:

[I have not been able to obtain work from the City] because these [prime] contractors have blackballed me. Because the contractors thought I was ruining the industry by wanting anybody and everybody to have an opportunity. In fact, one of them went out of his way to get on a committee down at the City just so he can have a little bit more clout and control to do such a thing. So that is how they get around using me. They smile in your face and stab you in the back at the same time. So there is a lot of that going on. They tried to pass an ordinance in Davenport [so] that the only way that you can be able to work for the City of Davenport is if you was a union contractor. That is discrimination!

Women business owners report being subjected to unfavorable working conditions due to their gender. A Caucasian female owner of a construction-related firm reported that oftentimes her professionalism has been questioned because of her gender:

I would say about ten to 20 percent of the contractors that I've dealt with have questioned when they call me whether I can help them. Whether I know what they need. And it has been a difficult process to try to ensure them that I know what they need and I can help them.

B. Difficulty Breaking into the Contracting Community

Networking with established majority-owned companies is essential for small and minority business owners to develop possible subcontracting opportunities. However, minority business owners complained that they are excluded from business networks with majority-owned businesses despite their attempts to break into the contracting community. Therefore, it is difficult to receive subcontracts.



A Caucasian male owner of a construction-related company reported that certain companies received the majority of the construction contracts:

[Company names withheld] receive a lot of Davenport contracts. I have been in this business for 22 years, and you accept some things and just say, 'its, just the way that's going to be.'

A Caucasian male owner of a professional services firm reported that he believes the good old boy network still exists. He also explained why he would not want to be a part of that network:

I believe the good old boy network is alive and going. And I'm afraid I'm not part of that network. I don't believe in the old boy network and I would just as soon not be involved in it because it's not fair. I believe very strongly in the fairness of any system. I don't expect to go in and just because I'm one of the good old boys, just to win every contract and so on. Or for them to figure out a way where we don't have to get additional bids or whatever. So I, cause I just don't believe in that, I don't want to be a part of it.

This same Caucasian male business owner believes that the City prefers to work with larger, more established firms:

I think the City [has] excluded us. We are registered with them, and I know [that] they built a couple new buildings and we never received any requests for bids. I know there hasn't been a lot of [type of service withheld], and we never ever received [a bid]. We have talked [to] some people in the Purchasing Department. [We were told] . . . well we're sorry but that is the way it goes. They can't do anything about it. [So], there is only so much you can do. The old saying, you cut off your nose to spite your own face. They want to deal with the big boys. [We would like to] get our foot in the door and let us speak for ourselves.



A minority male construction contractor reported that some prime contractors refused to provide him with an opportunity to bid for subcontracting work on the City's projects:

My problem was when I drove to get bid information from the [prime contractor] that I knew had a project, they would not give me a bid. And they didn't say in a nice way, but they weren't willing to give me a bid because their people were the ones dealing with [the City] and I was and an outsider.

A minority male construction mediator reported that it is common knowledge that the City prefers to use the same four construction contractors:

I hear guys joke about the fact that one of the big four contractors in the area was awarded another one the job. You know that's here. Since you're not in their circle you can't actually [prove it].

A Caucasian male owner of a construction-related company also reported that the City prefers to utilize the same larger, established businesses:

Well it seems kind of pointed that a lot of the contracts with the City of Davenport seem to be getting awarded to the same companies every single year. [Even though] you have other companies under-bidding them that have the same equipment. Or have the same knowledge or manpower. The last time the lawn care for City of Davenport was up for bid, a dozen people bid on it. Two or three were in the realm, including myself. And what used to be [company name withheld] which is now [name withheld] has had the contracts for every bit of the last fifteen years. And you don't see very many business owners, me or anybody else that is not in the political realm having a beer with them downtown at the City bar. I am not buddy buddy with everybody. I don't do business that way. I do a fair bid, what I think I can do the job to make a little bit of money and make a living. But that isn't the way it happens here.



However, this Caucasian male owner of a general services firm reported that he routinely receives bid notices from prime contractors:

There are four or five [prime contractors] that we do quite a bit of business with. They are certainly helpful from the standpoint that they invite us to bid on a lot of things.

A minority male owner of a construction-related company reported that he is unable to obtain work because of tactics used by the union:

As a private non-union contractor, I have lost eleven jobs in the last nine months due to someone underbidding me. And I know for a fact that my equipment cost is less than what they bid the job for. Union companies have target funds where they bid the job so low that we can't bid against it and then the union hall will make up the difference so they can keep their [members] working.

III. DIFFICULTIES IN THE CONTRACTING PROCESS

A. Navigating Through the Bid Process

The inability to obtain information on upcoming contracting opportunities from public agencies can severely limit the growth potential of small and minority businesses. Many interviewees reported that they were unable to obtain bid notices from the City of Davenport even though they are certified DBEs.

A Caucasian female owner of a services company reported that she has not received a bid notice from the City in the last five years:

I don't know if I'm on a [vendor] list. I don't think I have been sent [a bid notice] since 2003. I don't know if there is anything that I could bid on or not. I have no idea.

A Caucasian male owner of a professional services firm also reported that he does not regularly receive bid notices from the City:



We have not been notified [regarding bid notices for] some [time]. But I'm not sure what that is all about because we are registered with the City of Davenport as a vendor. But we never get any requests for the City of Davenport. We asked on a couple of occasions and was told different things, like they had already contracted with another company. We have not attended any pre-bid meetings [because] we have not been notified of any [the meetings].

A Caucasian female owner of a general services company complained that she has been unable to receive bid information for the type of service she provides:

I have called the City of Davenport's procurement officer and asked if I could get on their bid list. I went through a process of signing up. But, I have not been successful finding out about opportunities for graphic design or document scanning. There is not a database set up for those types of services to be filtered out. So when they have directed me to 'just go to the website' there is only [work] for contractors that do road work or buildings. I see brochures, flyers, and all sorts of stuff for the City so they are getting it done somewhere. I just can't find out where. I'm not getting directed to the appropriate people. And, when I do send an introduction letter and try to call their office, I don't get phone calls returned.

A minority male owner of a construction company reported that he is unable to determine where to find comprehensive information on upcoming contracting opportunities:

Unless you're in the right place at the right time, you'll miss [contracting opportunities]. There is no one great place that you can look for all the jobs that come out. The City of Davenport's website is great website, but it doesn't list all the jobs or it doesn't list all the opportunities coming out in one nice place. You got to go into different departments and find out.



A Caucasian male owner of a construction-related company believes that some of the City's specifications are designed in a manner that allows suppliers to charge higher prices for their products:

When there is a lot of stuff [in the specifications] that are not necessary, as far as what the law requires . . . and the exorbitant specifications [allows the suppliers] to charge more money for it. Sometimes I think they make some ridiculous claims . . . as a [way] to raise the price.

This Caucasian male owner of a professional services company believes the City should relax its bid specification requirements regarding brand name requirements:

Sometimes the bid specifications are too rigid. [For example], if the [City] is asking for a specific brand of ice machine and I sell an ice machine that I feel is of equal or greater value but a different brand name, I would think that they should consider that. It would be nice to be on at least a first-name basis with someone [at the City] who I could ask, would you consider [using] a different brand? [Or] who could I talk to [and ask if] another brand could be considered.

A minority male owner of a construction firm reported that he experienced difficulty obtaining answers regarding plan specifications from the City:

When I try to get bid information, they will hang up on you. When I would go into the office, nobody knew anything. I paid for plans and I knew for a fact that you're supposed to be able to ask [questions] to the person that drew the plans. But they would not give me proper information. Now they do put the bids on the computer.

B. Difficulty Meeting Pre-Qualification Requirements

Construction contractors who work in building and mechanical trades were required to take and pass the City's Contractor's Licensing Test [Block Test]. A passing score of at least 70 percent is required. Many of the interviewees expressed concern regarding the arbitrary administration of the test as well as their frustration in trying to comply with the pre-qualification requirements.



A minority male owner of a construction company explained his frustration in trying to pass the Block Test:

Several years ago I tried to take the Block Test. I didn't do very well, and I am a master at my trade. I teach other people [my trade] but I couldn't pass their test. I had a very low score and eye trouble. I went through an agency that gave the pre-test where they teach and give you a pre-test. So I knew exactly what the test would be. But I told them I didn't need to take the test because I was unionized with one of the largest unions around. I took tests to become a journeyman, and I had over eight thousand hours [for journeymen]. And I had over five thousand hours the forestry overhead clearing for parks. I have had schooling on all of it and got very good grades on all of it. I felt that all the City had to do was check and [confirm] who I said I was and about my business.

This same business owner mentioned that he asked for special accommodations when he took the Block Test because of his disabilities:

When I took the Block Test, I asked them for accommodations [because of he disabilities] and I was told, 'I'm the proctor, I'm not an accommodator. If you wanted that done, you should have had somebody else do that.' That was the start of my problem. I thought I did pretty well for what was going on.

This same business owner further elaborated that he knew of other electricians who were able to work on City projects without having to take the Block Test:

I went to the head of the [licensing] department, and he didn't want to hear any of it. He said, 'We got our test and you will either pass it or you won't be a contractor in the City of Davenport.' I said, 'Well I've been a contractor doing this work before this [test] come about. [Company name withheld] did not have to take the test, but they was so hard on me about the test. [Company name withheld] were a non-union [company]. There are a lot of people [working] that didn't pass the test. Then they got another testing group, and they changed the name of the Block Test to another test. And they



convinced the State of Iowa to change the legislation. You know I might have started raising Cain because I'm not in the system. I think they should [explain] why a professional electrician that has been well tested can't pass their test. That system was so controverted and improper.

A minority male owner of a construction firm reported that the Block Test was not a requirement for contractors in his industry:

I worked for a company before I went in business for myself, and this company was doing work for the City. And one of the employees from another company bid against the company which I worked for. They got the contract but he did not have to take the test for at least four years. He was a friend of mine; this was a White male. I scored a 70 on the [Block Test]. They said his score was 70. There are other counties that [require] a 70 [as a passing score]. And there are other counties that require 75. I had difficulties passing [the test] because every time I took that test, I got a different version of what we were doing.

This same business owner explained that he never passed the test after five attempts, while others were allowed to work on City projects without taking the test:

I took it five times. When I took the test, I was given all five versions of this test. They changed the versions of the test. I never passed the test. I'm not taking it again; it's a joke. I have been in this business for over thirty-five years, and there are certain people that don't have to take the test. In fact, one of the guys pushing [the City to administer the test] couldn't even pass the test. He went on television and said he couldn't pass the test and still wanted everybody to take the test. His name was [name withheld], and he is an [ethnicity withheld] general contractor. He was grand fathered in, because his dad owned the business. They actually let another company named [name withheld]; this was a Caucasian firm.



This same business owner further elaborated:

A young lady wrote in the paper that I was a Black man that couldn't pass the test and just wanted a hand-out. And I didn't want to respond, but I really wanted to tell her where to get off. This woman hasn't been, where I've been and she haven't seen what I've seen. It doesn't matter to me what color you are, but the point I'm making is the fact that you cannot grand father one in, then not another. I have been doing [business] longer than all of them. My father also had the same business. I have another license from another State and the [City] wouldn't recognize it. The inspector told me that wasn't good enough. And I told him where he could really go. Because he worked for the City, the City works for me. When I'd taken the test there was some commercial questions on there about laying out a commercial building on a residential test. I don't know if the test still has this because I didn't take it anymore. They have rewritten the legislation and changes were make. You either have to take the test, and you have to go to college to get in the apprentice program. When I first came to this town, they told me you need five years apprenticeship in order to get into the field. Well, my father had passed away so I couldn't get his signature.

C. City Managers and Prime Contractors Creating Barriers

City managers are charged with the responsibility of ensuring that government-sponsored business enterprise programs are implemented. However, some interviewees reported that the actions of certain City managers have created barriers for small and minority firms.

A minority male construction mediator explained that one of his colleagues stopped seeking work from the City because of barriers created by City Managers:

I know of a colleague, [name withheld], who had a landscaping business. He finally gave up [seeking work from the City] and went on his own because he had to jump through all of these hoops with the City of Davenport.



This same interviewee believes the make up of the selection committee can be a barrier for minority contractors:

None of the persons on the Selection Committee looks like me. Everybody there is of the same persuasion. [Which means] it's nothing but a coup. They are going to give the bids to the same people that they've been giving them to. It just upsets me to a point where I had to get away from it.

A minority male owner of construction-related company reported that a City inspector was instrumental in assisting a prime contractor to obtain City contracts:

The Mechanical Contractors Board knew every bid that came out because the City inspector was on the Board, which I thought was unfair in the first place. So when a bid came out, this guy was telling everybody what to bid on. And there was one particular contractor that was getting all the bids and in fact, still is. That inspector quit his job and went to work for [name withheld]. This was just a issue that I didn't like the good old boy system.

There were also reports of prime contractors using tactics to circumvent DBE program requirements. A minority male owner of a construction firm reported that some prime contractors will perform the work that he was subcontracted to do:

I go to pre-construction meetings and the [prime contractors] tell me when the job is going to start, and then the trick that they pull is the prime contractor would come in [and do the work I was supposed to do]. Then we sat and sat waiting for our part of the job to start. And I'm paying [my] guys for nothing. That is one of the tricks they pull, demand that you're out on the job and then they are not prepared for you to do the work.

A minority male owner of a construction company reported that he is often pressured to lower his bid by prime contractors:

The [prime contractor] knows what your prices are going to be. And they will call you back and say we would really like



to use you. But we've got another guy that's got his numbers down there. Is there anything that you can do?

IV. FINANCIAL BARRIERS

A. Difficulty Obtaining Financing

Adequate financing is vital to the survival and the solvency of small, minority, and new businesses. The inability to secure financing was reported by many new and mature minority business owners as a barrier to the viability their businesses.

A Caucasian female owner of a professional services firm reported that she was not able to secure the funds needed to effectively run her business:

I have not been given the credit that I needed. When I opened this business, it did not cost a whole lot to get started compared to other businesses. But I need operating funds to be able to get an office, computers, and software. I asked for sixty thousand dollars which is a pretty small loan for a business start-up. I had a client list of seven people that would help pay back the bank loan within five years. I was told that I could not get sixty thousand but only forty-five thousand, and I have to come up with the rest. And for the first six months I had to operate out of my home, not out of an office. If I had been allowed to get an established office and an assistant, my business would have taken off faster and I would have had a better time of getting through that time. It really slowed me down, and it really caused a lot of hardships that didn't need to happen.

A minority male owner of a construction company reported that he was unable to get a loan for his business. He believes he was unfairly treated by his bank:

The City brought us in and they had seminars to tell us that the bankers were working with people, but your company had to be two years old or older before they would deal with us. I was not able to get bonded or insured due to their qualifications. I couldn't get through the banks to get a line of



credit. I have sent my wife to the bank with my papers, and everything would be fine until I would show up to sign. So I could not get bank loans just because I'm Black. Not only that, I had hell at the bank, but I had other people deposit for me because I covered quite a bit of area. I actually had to get a friend of mine or my wife to go in the bank and get money out of my account.

A minority male owner of a construction-related company believes that the requirements for performance bonds are unattainable for small business owners:

The requirements for obtaining a bond is astronomical. We had to have twenty percent of the bond. I am licensed and bonded right now, but when you talk about performance bonds, it's impossible because of lack of cash flow. If I went through my insurance company, they want my child and everything else.

B. Late Payments from Prime Contractors and the City of Davenport

Late payments by prime contractors and government agencies can be devastating to small business owners who are struggling to keep their businesses solvent. Difficulty paying creditors and employees, as well as other operating expenses, are some of the hurdles these business owners face when they are paid late.

A Caucasian male owner of a design and engineering firm reported that he waited almost a year before receiving a payment from a prime contractor:

There was a prime contractor that dragged [my payment] out for almost a year. They just didn't want to pay us. He had been paid, and he kept telling me he hadn't been paid. I finally got a hold of the City, and [I found out] he was paid. Evidently, they had a chat with him, because I sent him threatening notes [and a week after talking to the City] we got paid. But he had told me the City hadn't paid him. And when I finally got hold a guy from the City, he said, No, he was paid.



A Caucasian male owner of a professional services firm reported that he has utilized credit collection services to resolve payment issues from prime contractors:

We have had trouble collecting on some businesses. Usually [they are] ninety days past due. I have turned them over to collection on occasions.

A Caucasian male owner of a construction-related company reported that he typically waits sixty to ninety days before receiving payment from prime contractors:

Anything past thirty days [is considered late]. As a standard, [I wait] sixty to ninety [days].

A Caucasian female owner of a construction-related firm reported that she experiences difficulty meeting her payroll obligations when she is paid late by prime contractors:

They are supposed to pay me in thirty days. We cannot make the payroll when they are late.

A Caucasian male owner of a construction-related company reported that he had to file a lawsuit to force a prime contractor to pay for his services:

A prime contractor was late, and we had to sue them. We got a judgment, and when we went to their bank [for payment], he took money, out of [his] account. After two and a half to three years [we were paid]. [They owed us] \$100,000. We got our money but the attorney got his third. We paid 80 percent up front to get the job done.

A minority male owner of a construction company explained how his small business is negatively impacted by late payments:

On a couple of jobs I was supposed to [finish the work] before I got paid. And I noticed that they had not paid for the work that I had done. They claimed that they had problems. [This affects your business], because all of a sudden all these friendly vendors you have not longer want to deal with you because you can't pay. And a couple of them actually went to the officials. I have had times where it's taken a year to get paid.



And there was a couple where I didn't get paid until next year. I complained, but they kept giving me different excuses.

A Caucasian male owner of a construction-related company reported that he waited nine months to receive payment from a prime contractor:

I didn't get paid from November through July before we finally got paid. They wanted to change the bill, or they said we are not paying this. You know, basically that.

A minority male owner of a construction firm reported that he is presently waiting for payment on a project that was completed over sixty days ago:

I just see things as unfair and always never to our advantage. Half of the prime contractors for the City do work fairly to some degree. But when it comes down to it, it's still not a real decision that's made where there some [is] hidden factor thrown up. For example we are in a contract to do resurfacing, and we [received] inspect and accord. But we are still waiting for the money. And the work has been completed well over sixty days. Some portions of the project was [completed over] ninety days ago. I haven't been paid any money on this project all year. And now my money's being held, because there is five hundred yards of sod that's in question. And this a prime example where a lot of money is sitting out over a year. I have asked them to pay on a portion, and from the prime contractor's standpoint and the City's standpoint, they're not going to pay until the rework is done. The general contractor has been paid pieces of the projects. He has not paid us, and for this sod work that we did and the City has not paid him either. I have asked the [prime contractor] for payment so that we can complete the project, because we have outstanding debts out there to pay behind this.

This same business owner reported another situation where the invoice he submitted to a prime contractor is sixty days past due:

I have another project that has been done for over sixty days, and the prime contractor been paid going on thirty days. He's



been paid his money. I asked to receive my money, and I've yet to receive it. He said he was too busy. Too busy to pay me right now. He had to get some other quotes done, then he would look at it and get his son to pay. I have mentioned it to one of two people at the City. I've called the City Inspector to make sure that the money was paid.

A minority male owner of a construction-related company reported that his prime contractors are often late paying him, because they claim that have not received payment from the City:

Yes, I have been paid late more than once. We want 80 percent at the start and 20 percent upon completion. I have had people say we ain't got enough money from the City yet so we can't pay you. This happens a lot. I can't pay off my accounts when they are late.

V. EXCESSIVE DBE CERTIFICATION REQUIREMENTS

Excessive and time consuming certification requirements can be a major obstacle for small and minority business owners with limited time and resources to complete the application process.

A Caucasian female owner of a design and engineering firm reported that the DBE certification process was laden with paperwork and not beneficial to her company:

We had a huge volume [of paperwork] that was very time consuming to put together to qualify for the DBE [certification]. And to date it has not benefitted us at all.

A Caucasian female owner of a general services firm reported that she did not finish the application process because it was too time consuming:

I started the certification process and never [finished] the [application]. I probably spent three hours on it. It's time consuming and then you [have] to renew it every year. I didn't really see any that much of a benefit to it here. [It was] very time consuming, and they wanted a whole lot of stuff. It just wasn't worth it to me. I'm a female, here is my birth



certificate, here is the business application. What else do you really need? To me it's real easy to figure out if [I'm] female. Ask for a copy of my birth certificate.

A minority male owner of a construction firm reported that he believes some woman-owned companies are not bone fide disadvantaged businesses:

I wonder how a lot of these women-owned companies are run. Some of the trucking companies are [operated] through the wife's name or the family relative's name. So it's definitely out there. I probably could not prove it, because I don't have enough money and resources but the good old boys all know.

VI. COMPARISON OF THE PUBLIC AND PRIVATE SECTOR CONTRACTING ENVIRONMENTS

The interviewees were asked to compare their experiences seeking work in the public and the private sectors.

A Caucasian male owner of a design and engineering firm explained that the private sector is more amenable than the public sector:

I prefer working with the private sector. They are a lot easier to deal with. There is more paperwork with the government side and more accountability for the taxpayer. But in the private sector it's a more laid-back, relaxed atmosphere to work in. [In the private sector] there is not as much hoop-jumping going on.

A Caucasian male owner of a design and engineering firm believes there are pros and cons to both the public and private sectors:

There is more paperwork in the government sector than in the private sector, but yet the private sector requires a lot more training.



This Caucasian male owner of a professional services company prefers working in the private sector and believes that the public sector prefers working with large companies:

I believe the private sector is quite truthfully much easier to work with than the public sector. And [the public sector] prefers mega-businesses instead of local businesses.

A Caucasian female owner of a professional services firm reported that most of her business is generated from the private sector:

Well, probably ninety percent of our business is private. The government sector is great, it's additional business. It's just more paperwork making sure that we are who we [say we] are.

A Caucasian male owner of a professional services company explained why he only slightly prefers working in the private sector although he acknowledges payment is more reliable in City work:

In the private sector I talk to the decision-making person, there is one less level of bureaucracy. I prefer private, but only slightly because I know I am going to get paid by the City of Davenport. I [may not] from some private businesses.

A Caucasian owner of a construction-related company believes it is easier to obtain work in the private sector than the public sector:

In the private sector it seems to be easier to network and find the possible jobs that are out there.

This Caucasian female owner of a professional services firm reported on her frustration working with the private sector:

I like working with public sector. If I'm working with a larger entity, they have a better feel for what advertisement is all about. If I'm dealing with a smaller business, they are always private businesses just trying to get off the ground. They really don't have a feel for what they need to do. So whatever advice I give them, it seems to go in one ear and out the



other. They are not really listening. So it's a much more frustrating relationship.

A Caucasian female owner of a design and engineering firm also spoke about her frustration working with the private sector:

I think we probably do a lot more government work than private sector work these days. I think the government agencies that we work for tend to not micro-manage, whereas many of the private industries that I work for have sometimes been overbearing. To the point where we couldn't do our work exercise our professional judgment, because we were being strong armed or persuaded one way or another. Things just seem to flow a lot more smoothly in government contracts.

A Caucasian male owner of a construction-related company reported that there are pros and cons to the private and public sectors, but his preference is working in the public sector:

I prefer government contracts, because if you do the work exactly to the letter of what they want, they leave you alone. Which is no big deal. However, you cannot suggest any [changes regarding] the work whatsoever. Whereas with a commercial or personal account, you can suggest all day long and they will tell you yes or no. Government contracts are pretty cut and dry. But there is good and bad on both sides. From a money side I prefer the government.

A minority male owner of a construction company explained that his private sector clients are easier to accommodate:

On the private side you deal with the smaller [projects], and you deal with one individual. You do your work and you just have to satisfy that one person. When you're dealing with the public, you have so many different people that are either dissatisfied or upset. And we always get the ones that are upset. I don't care what I do, they are not going to be happy, because they were not given what they were told they were going to get.



A minority male owner of a construction-related company reported that he receives very little work from the public sector, and he has an great reputation in the private sector:

Right now I receive one percent of my work from the public sector. The public sector is based on who you know. The private sector is based on how you build a foundation for doing things right, in my opinion. And most people want the work done right. They call me and I never had one call back in twenty years.

VII. COMMENTS ABOUT THE CITY OF DAVENPORT'S DBE PROGRAM

Small, minority, and women-owned businesses that are certified as DBEs receive their certification through the State of Iowa. The State's DBE certification requirements conform with 49 Code of Federal Regulations Part 26. The City's Disadvantaged Business Enterprise Program (DBE) was implemented to provide contracting opportunities for DBEs. The Program encourages all City contractors to subcontract with DBE vendors. Certain bid proposals require prime contractors to submit evidence of a good faith effort to contact and solicit bids from DBEs. The interviewees provided candid responses regarding their experience with the City's DBE Program.

A Caucasian male owner of a design and engineering firm believes the DBE Program is valuable for local and disadvantaged Davenport businesses:

I think the [DBE Program] is a valuable asset, [because it] gives disadvantaged businesses a little heads up. If Davenport wants to give a little edge to Davenport companies or disadvantaged companies, I have no problem with that at all. That is a good thing.

A Caucasian male owner of a design and engineering firm believes that the City's DBE Program levels the playing field for disadvantaged business owners:

The program is an advantage because they have leveled the field with disadvantaged [businesses], and it gives them the opportunity to achieve that level. I've seen where DBE



Programs have leveled the field for disadvantaged businesses by giving them the opportunity to grow.

A Caucasian female owner of a general services company also believes that the City's DBE Program levels the playing field for disadvantaged businesses;

I think it helps level the field floor [in regards to] the good old boy network. Because they are required to go get certified I can see the value.

This Caucasian male owner of a professional services company explained that the DBE program is valuable but cautions that it should be safeguarded from abuse:

I think the program does have value provided it's not abused by large companies that have sets of lawyers to [take advantaged of] loopholes.

A Caucasian male owner of a construction-related company also believes that the DBE Program is beneficial to disadvantaged businesses:

The program allows the City to award jobs to DBEs that we would not get otherwise.

A Caucasian female owner of a design and engineering firm believes that the DBE Program needs stricter monitoring:

When you have a small business, there is sort of a catch-22 where it's hard to grow your [business] without getting the projects, and yet it's hard to get the big projects without having the staff to support it. I think the tools are in place that are designed to help businesses such as ours. For some reason they are not always enforced or used appropriately. A minority male construction mediator believes the City's DBE Program has the potential to be valuable for minority contractors, but currently, it is not leveling the playing field for all contractors:

I have had conversations with certified DBEs [and] they are really dissatisfied [with the City's program]. The program can be valuable program for minorities. The reason why I feel



that it's not fair for minorities is they do not give them the same chance as people that don't look like me. They should stop hiring the wife, dads, brothers, cousins, and their relatives and open it up for anyone that qualifies.

A minority male owner of a construction firm believes that the City's DBE Program needs stricter monitoring and enforcement mechanisms:

At one time the program had a lot of great points, but nobody paid much attention to them. But they have no [authority] to make it happen. They do not charge [prime contractors] any fees if they do not meet the goals. They do not punish their prime contractors.

This minority male construction mediator believes that the City's program is not valuable because it lacks enforcement authority:

I think the program has no value. There is no enforcement to really push the objective of the program.

A Caucasian male owner of a construction-related company does not believe that the City's DBE Program is valuable, because the same contractors receive the majority of the work:

I'm not disadvantaged in any way, shape, or form. I'm a White male. I don't need to take anything along those lines. I have more than enough business. But, personally I do not believe the program is valuable, because it's always the same contractors getting the same bids every single year. And I guess the one thing that perturbs me the most is City, County, and State dollars going to a companies that hire immigrants for nine months a year, and then they go back down to Mexico.

The money doesn't even stay here or probably a small portion of it does. When their crew shows up at the job and not one of them speaks English.



A minority male owner of a construction company reported the City's DBE Program is not valuable because prime contractors are not held accountable to the program requirements:

The City of Davenport has failed to monitor DBE requirements, because they don't stick to the DBE guidelines that they are supposed to. They let the prime contractors do it their way, and that's the way it's going to be.

A minority male owner of a construction-related company believes that the DBE Program could do more outreach to DBEs:

The City's program does not have an outreach program to actually promote what they are doing. None whatsoever. It's doggy-dog. You either be there and you know about. You do it or you don't. But they have a lot of the good old [employees] there. I've been knocking on the door for a long time. If everything was fair, we would not need a DBE program but it's not so we need it. So it is needed. I guess it is very valuable.

VIII. EXEMPLARY BUSINESS PRACTICES

Some of the interviewees lauded City of Davenport's managers for their dedication and support to small, minority, and women-owned businesses.

A Caucasian male owner of a professional services firm praised the staff with the DBE Program for being available to answer his inquiries regarding upcoming bidding opportunities:

The DBE Office has been helpful by responding to any questions we may have on proposals or request for bids. They were very thorough with the information they give us. A Caucasian female owner of a general services firm credited a City of Davenport buyer as helpful to her business:

[Name withheld] is great he's the main buyer over there. His name is [name withheld].



A Caucasian male owner of a construction-related company reported joining a networking program sponsored by the City of Davenport's Chamber of Commerce:

We are involved with the Davenport One Program [sponsored by Chamber of Commerce], it's a networking program.

A minority male construction mediator lauded a manager with the City's DBE Program:

The only person that I know with any authority to make any program changes is [name withheld]. And I have a lot of respect for [him]. But there is still prejudice [dealing with the City]. He is doing what he can. He pushed for money from the State to do a [disparity] study.

A minority male construction contractor praised the same DBE manager as well as another City employee:

[Name withheld] has helped me by giving certain information regarding bids and [networking] meetings and so forth. He's an employee of the City, but I can't give you a whole lot of names. Also, there is [name withheld] he has been very helpful to me and he [works] in the Licensing [Division].

And this minority male construction mediator also reported on the helpful assistance he received from the same DBE Manager:

The only person I know that has been helpful is [name withheld] who got involved with the [former] City Mayor. He was helpful. He took time to meet with me and he followed through on a lot [of my questions] and he did research. Also, he went to the State and the City Council to get them to agree to support the DBE Program. He also solicited the State to do this study.

A minority male owner of a construction-related company reported on a positive relationship he developed with one of the City's inspectors:

I have a pretty good relationship with the new inspector. He is a heating inspector. He lets me know if there is a problem



with something and provides information on what needs to be done.

IX. RECOMMENDATIONS FOR THE CITY OF DAVENPORT'S DBE PROGRAM

The interviewees provided recommendations that they believe will enhance the City's DBE Program. Some suggestions included more networking events, stricter monitoring procedures, uniformity when administering the Block Test, spreading the work around, and developing financing opportunities for DBEs.

A Caucasian male owner of a professional services firm recommended a liaison for DBEs:

A liaison that we could talk to on occasions and find out potential work that we could bid on. So, it would be great to have a liaison that we could work with and we can explain to them what we do.

A Caucasian male owner of a professional services company recommends a networking event where DBEs could meet the City's prime contractors and procurement decision-makers:

A trade fair or a meet-and-greet session where the principal of our company [decision makers and prime contractors] could present [our services]. [At least] every year or every other year.

A minority male construction mediator suggests more diversity on the City's selection committee and the City Council:

The selection committee should reflect the diversity of the community. And minorities should be allowed on City Council to run for office. There is not one African American on City Council.



A minority male owner of a construction firm recommends that the City partner with financial institutions to develop financing options for DBEs:

[Partner] with a bank or an agency to provide a line of credit for DBEs would be great.

A minority male construction mediator also believes that the City could do more to help minority contractors secure financing and bonding:

They should work with bonding and financing institutions to help minority contractors. Because in some instances, you need bonding first before [obtaining a contract]. They should also ensure that the policies are adhered to in order to bring minority contractors to the table, so that they may be a part of the work that our taxpayers are paying for. And the key would be to have someone at the City provide reports [on minority utilization] so that the process is transparent. Then someone should report back to community on how the [program is] working. This would [help the community] take pride in our City.

A minority male owner of a construction company recommends breaking up larger contracts into smaller projects to enable more subcontractors the opportunity to be prime contractors:

I think what can be done to help smaller businesses compete is to break out some of the work to make smaller contracts so that some subcontractors can become prime contractors. It's such a large step to become a prime contractor. In order to make it these days you need to be a prime contractor so that you can control what goes out on the job. When you don't have control, you're subject to someone else's control. But in order to be a prime contractor on a job you need to have the equipment, financing, and your labor force. And without money or a line of credit you are not going to make it.



A minority male owner of a construction-related company suggested that training for the Block Test should not be limited to union shops:

I think that they should have something set up for the local colleges where union and non-union workers can go out and compete at the same level. Rather than setting up schools only at the union shops. Because if you are non-union, you can't get that advantage. I think the City should have some standard set where everybody can meet the goal if you wanted to be a contractor. It should not matter if your are union or non-union.

X. SUMMARY

An overwhelming majority of the interviewees described their frustration in trying to break into the City of Davenport's contracting community. As a result, many of the interviewees have become discouraged from continuing to bid on City contracts.

There were several accounts from the interviewees that the Block Test was a barrier for DBEs. Some business owners described incidents where they were unable to pass the test despite taking it several times. The interviewees also reported that certain contractors were allowed to work on City contracts without taking the Block Test.

Only a few interviewees reported that they had received bid opportunities directly from the City. Most business owners reported that they had never received bid notices, despite the fact that they believed they were on a bidder's list.

Most of the interviewees favored the City's DBE Program. However, a substantial number of the business owners felt the DBE Program was ineffectual because it lacked enforcement regulations or penalties.

It should also be noted that business owners described positive relationships that they have had with the City's employees.



9

PRIME CONTRACTOR DISPARITY ANALYSIS

I. INTRODUCTION

The objective of the disparity analysis is to determine the level of minority and woman-owned business enterprises (M/WBEs) utilized on the City of Davenport's (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 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 *Croson* 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.

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.



II. DISPARITY ANALYSIS

A prime contract disparity analysis was performed on construction contracts and general services contracts awarded between January 1, 2003 and December 31, 2007.⁷

As demonstrated in *Chapter 7: Availability Analysis*, the majority of the City's contracts were small with 92.03 percent under \$500,000 and 26.62 percent under \$10,000. The fact that the majority of the City's contracts was 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 \$10,000. Therefore, a threshold of \$10,000 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 three industries under consideration are summarized below.



⁷ There were too few professional services prime contracts to perform a disparity analysis for that industry.

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 9.01 and Chart 9.01.

African American Businesses represent 14.46 percent of the available construction firms and received none of the construction prime contracts under \$500,000. This underutilization is statistically significant.

Asian American Businesses represent 0 percent of the available construction firms and received none of the construction prime contracts under \$500,000. There were insufficient records to test statistical significance.

Hispanic American Businesses represent 1.2 percent of the available construction firms and received none of the construction prime contracts under \$500,000. This underutilization is not statistically significant.

Native American Businesses represent 0 percent of the available construction firms and received none of the construction prime contracts under \$500,000. There were insufficient records to test statistical significance.

Minority Business Enterprises represent 15.66 percent of the available construction firms and received none of the construction prime contracts under \$500,000. This underutilization is statistically significant.

Women Business Enterprises represent 6.02 percent of the available construction firms and received 3.73 percent of the construction prime contracts under \$500,000. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 21.69 percent of available construction firms and received 3.73 percent of the construction prime contracts under \$500,000. This underutilization is statistically significant.



Caucasian Male Business Enterprises represent 78.31 percent of the available construction firms and received 96.27 percent of the construction prime contracts under \$500,000. This overutilization is statistically significant.



Table 9.01 Disparity Analysis: Construction Prime Contracts under \$500,000, January 1, 2003 to December 31, 2007

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	\$0	0.00%	14.46%	\$2,322,246	-\$2,322,246	0.00	< .05 *
Asian Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic Americans	\$0	0.00%	1.20%	\$193,520	-\$193,520	0.00	not significant
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$598,724	3.73%	6.02%	\$967,602	-\$368,879	0.62	not significant
Caucasian Males	\$15,463,476	96.27%	78.31%	\$12,578,831	\$2,884,645	1.23	< .05 †
TOTAL	\$16,062,200	100.00%	100.00%	\$16,062,200			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
African American Males	\$0	0.00%	14.46%	\$2,322,246	-\$2,322,246	0.00	< .05 *
Asian American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Asian American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic American Males	\$0	0.00%	1.20%	\$193,520	-\$193,520	0.00	not significant
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$598,724	3.73%	6.02%	\$967,602	-\$368,879	0.62	not significant
Caucasian Males	\$15,463,476	96.27%	78.31%	\$12,578,831	\$2,884,645	1.23	< .05 †
TOTAL	\$16,062,200	100.00%	100.00%	\$16,062,200			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Minority Males	\$0	0.00%	15.66%	\$2,515,766	-\$2,515,766	0.00	< .05 *
Caucasian Females	\$598,724	3.73%	6.02%	\$967,602	-\$368,879	0.62	not significant
Caucasian Males	\$15,463,476	96.27%	78.31%	\$12,578,831	\$2,884,645	1.23	< .05 †
TOTAL	\$16,062,200	100.00%	100.00%	\$16,062,200			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$0	0.00%	15.66%	\$2,515,766	-\$2,515,766	0.00	< .05 *
Women Business Enterprises	\$598,724	3.73%	6.02%	\$967,602	-\$368,879	0.62	not significant
Minority and Women Business Enterprises	\$598,724	3.73%	21.69%	\$3,483,369	-\$2,884,645	0.17	< .05 *
Caucasian Male Business Enterprises	\$15,463,476	96.27%	78.31%	\$12,578,831	\$2,884,645	1.23	< .05 †

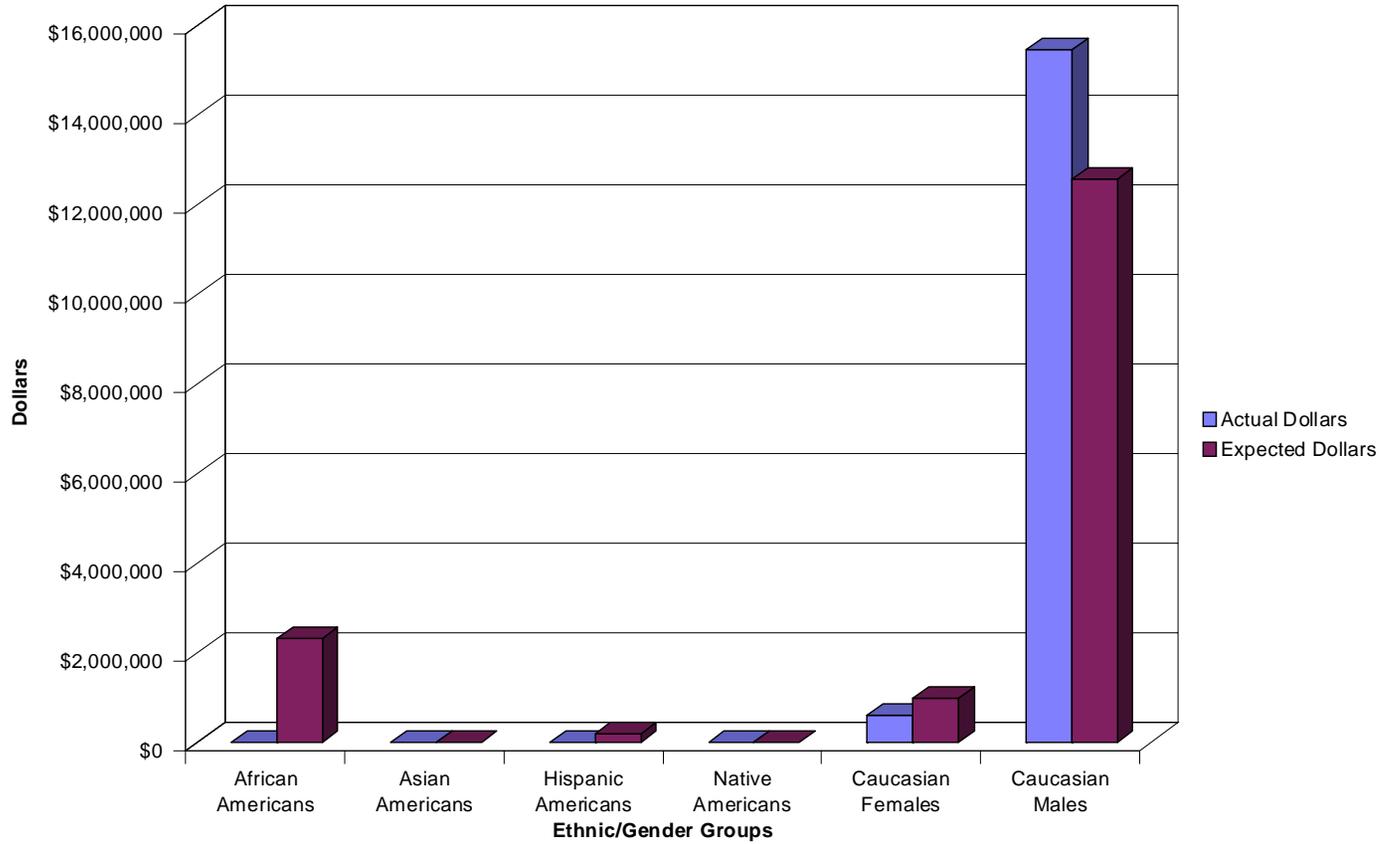
(*) denotes a statistically significant underutilization.

(†) 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 9.01 Disparity Analysis: Construction Prime Contracts under \$500,000, January 1, 2003 to December 31, 2007



*Mason Tillman Associates, Ltd. June 2009
City of Davenport DBE Disparity Study*

2. General Services Prime Contracts under \$500,000

The disparity analysis of all general services prime contracts under \$500,000 is depicted in Table 9.02 and Chart 9.02.

African American Businesses represent 6.9 percent of the available general services firms and received none of the general services prime contracts under \$500,000. This underutilization is statistically significant.

Asian American Businesses represent 0.49 percent of the available general services firms and received 0.78 percent of the general services prime contracts under \$500,000. This study does not test statistically the overutilization of minority groups.

Hispanic American Businesses represent 1.48 percent of the available general services firms and received none of the general services prime contracts under \$500,000. This underutilization is statistically significant.

Native American Businesses represent 0 percent of the available general services firms and received none of the general services prime contracts under \$500,000. There were insufficient records to test statistical significance.

Minority Business Enterprises represent 8.87 percent of the available general services firms and received 0.78 percent of the general services prime contracts under \$500,000. This underutilization is statistically significant.

Women Business Enterprises represent 14.29 percent of the available general services firms and received 3 percent of the general services prime contracts under \$500,000. This underutilization is statistically significant.

Minority and Women Business Enterprises represent 23.15 percent of the available general services firms and received 3.78 percent of the general services prime contracts under \$500,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 76.85 percent of the available general services firms and received 96.22 percent of the general services prime contracts under \$500,000. This overutilization is statistically significant.



Table 9.02 Disparity Analysis: General Services Prime Contracts under \$500,000, January 1, 2003 to December 31, 2007

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	\$0	0.00%	6.90%	\$764,697	-\$764,697	0.00	< .05 *
Asian Americans	\$86,723	0.78%	0.49%	\$54,621	\$32,101	1.59	**
Hispanic Americans	\$0	0.00%	1.48%	\$163,864	-\$163,864	0.00	< .05 *
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$332,893	3.00%	14.29%	\$1,584,015	-\$1,251,122	0.21	< .05 *
Caucasian Males	\$10,668,488	96.22%	76.85%	\$8,520,908	\$2,147,581	1.25	< .05 †
TOTAL	\$11,088,104	100.00%	100.00%	\$11,088,104			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	1.48%	\$163,864	-\$163,864	0.00	< .05 *
African American Males	\$0	0.00%	5.42%	\$600,833	-\$600,833	0.00	< .05 *
Asian American Females	\$7,155	0.06%	0.49%	\$54,621	-\$47,466	0.13	----
Asian American Males	\$79,568	0.72%	0.00%	\$0	\$79,568	----	**
Hispanic American Females	\$0	0.00%	0.49%	\$54,621	-\$54,621	0.00	----
Hispanic American Males	\$0	0.00%	0.99%	\$109,242	-\$109,242	0.00	----
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$332,893	3.00%	14.29%	\$1,584,015	-\$1,251,122	0.21	< .05 *
Caucasian Males	\$10,668,488	96.22%	76.85%	\$8,520,908	\$2,147,581	1.25	< .05 †
TOTAL	\$11,088,104	100.00%	100.00%	\$11,088,104			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$7,155	0.06%	2.46%	\$273,106	-\$265,951	0.03	< .05 *
Minority Males	\$79,568	0.72%	6.40%	\$710,076	-\$630,508	0.11	< .05 *
Caucasian Females	\$332,893	3.00%	14.29%	\$1,584,015	-\$1,251,122	0.21	< .05 *
Caucasian Males	\$10,668,488	96.22%	76.85%	\$8,520,908	\$2,147,581	1.25	< .05 †
TOTAL	\$11,088,104	100.00%	100.00%	\$11,088,104			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$86,723	0.78%	8.87%	\$983,182	-\$896,459	0.09	< .05 *
Women Business Enterprises	\$332,893	3.00%	14.29%	\$1,584,015	-\$1,251,122	0.21	< .05 *
Minority and Women Business Enterprises	\$419,616	3.78%	23.15%	\$2,567,197	-\$2,147,581	0.16	< .05 *
Caucasian Male Business Enterprises	\$10,668,488	96.22%	76.85%	\$8,520,908	\$2,147,581	1.25	< .05 †

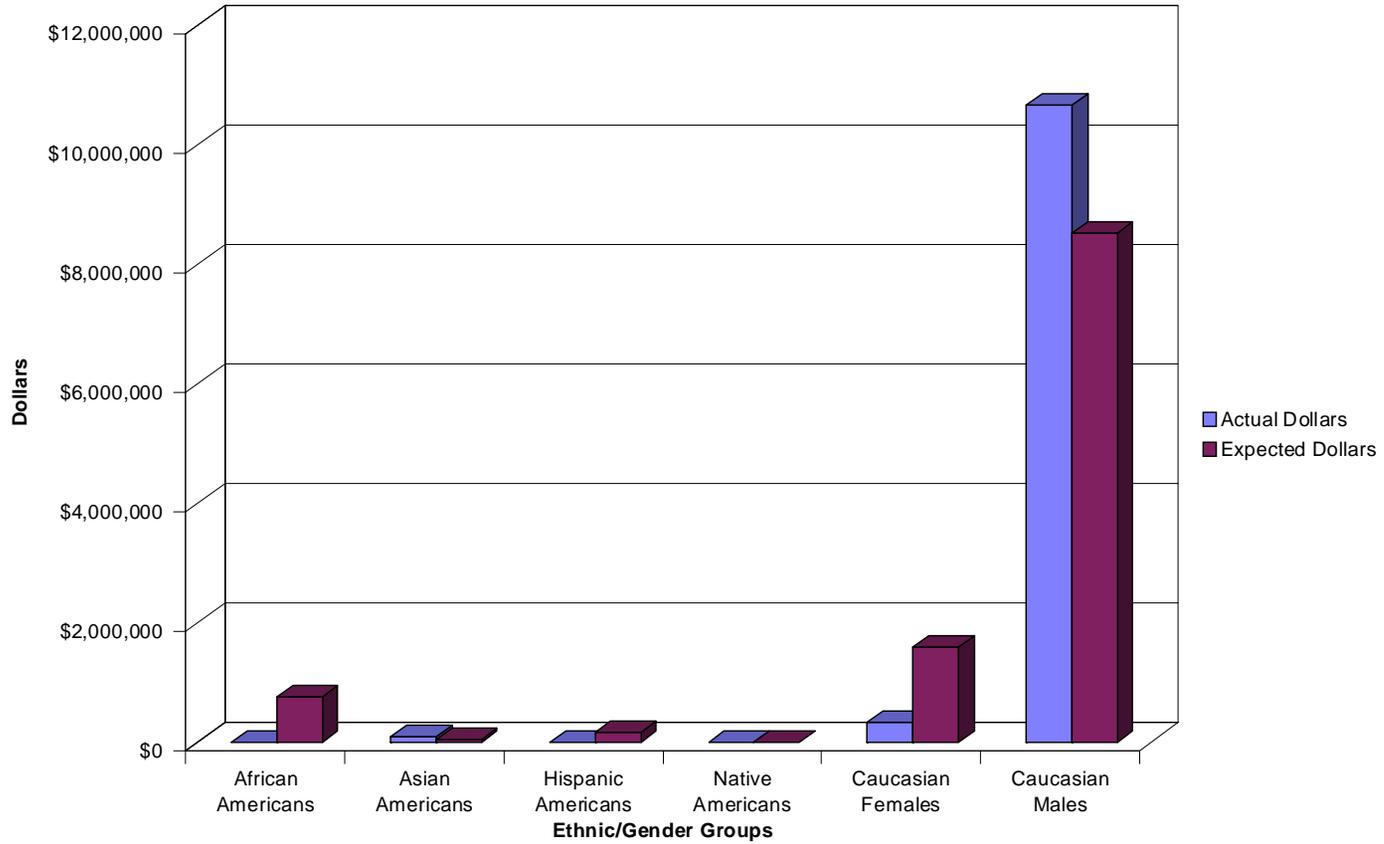
(*) denotes a statistically significant underutilization.

(†) 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 9.02 Disparity Analysis: General Services Prime Contracts under \$500,000, January 1, 2003 to December 31, 2007



Mason Tillman Associates, Ltd. June 2009
 City of Doverport DBE Disparity Study

B. Disparity Analysis: All Contracts under \$10,000 by Industry

1. Construction Prime Contracts under \$10,000

The disparity analysis of all construction prime contracts under \$10,000 is depicted in Table 9.03 and Chart 9.03.

African American Businesses represent 14.46 percent of the available construction firms and received none of the construction prime contracts under \$10,000. This underutilization is statistically significant.

Asian American Businesses represent 0 percent of the available construction firms and received none of the construction prime contracts under \$10,000. There were insufficient records to test statistical significance.

Hispanic American Businesses represent 1.2 percent of the available construction firms and received none of the construction prime contracts under \$10,000. This underutilization is not statistically significant.

Native American Businesses represent 0 percent of the available construction firms and received none of the construction prime contracts under \$10,000. There were insufficient records to test statistical significance.

Minority Business Enterprises represent 15.66 percent of the available construction firms and received none of the construction prime contracts under \$10,000. This underutilization is statistically significant.

Women Business Enterprises represent 6.02 percent of the available construction firms and received 2.39 percent of the construction prime contracts under \$10,000. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 21.69 percent of the available construction firms and received 2.39 percent of the construction prime contracts under \$10,000. This underutilization is statistically significant.



Caucasian Male Business Enterprises represent 78.31 percent of the available construction firms and received 97.61 percent of the construction prime contracts under \$10,000. This overutilization is statistically significant.



Table 9.03 Disparity Analysis: Construction Prime Contracts under \$10,000, January 1, 2003 to December 31, 2007

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	\$0	0.00%	14.46%	\$21,808	-\$21,808	0.00	< .05 *
Asian Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic Americans	\$0	0.00%	1.20%	\$1,817	-\$1,817	0.00	not significant
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$3,600	2.39%	6.02%	\$9,087	-\$5,487	0.40	not significant
Caucasian Males	\$147,236	97.61%	78.31%	\$118,125	\$29,111	1.25	< .05 †
TOTAL	\$150,836	100.00%	100.00%	\$150,836			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
African American Males	\$0	0.00%	14.46%	\$21,808	-\$21,808	0.00	< .05 *
Asian American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Asian American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic American Males	\$0	0.00%	1.20%	\$1,817	-\$1,817	0.00	not significant
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$3,600	2.39%	6.02%	\$9,087	-\$5,487	0.40	not significant
Caucasian Males	\$147,236	97.61%	78.31%	\$118,125	\$29,111	1.25	< .05 †
TOTAL	\$150,836	100.00%	100.00%	\$150,836			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Minority Males	\$0	0.00%	15.66%	\$23,625	-\$23,625	0.00	< .05 *
Caucasian Females	\$3,600	2.39%	6.02%	\$9,087	-\$5,487	0.40	not significant
Caucasian Males	\$147,236	97.61%	78.31%	\$118,125	\$29,111	1.25	< .05 †
TOTAL	\$150,836	100.00%	100.00%	\$150,836			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$0	0.00%	15.66%	\$23,625	-\$23,625	0.00	< .05 *
Women Business Enterprises	\$3,600	2.39%	6.02%	\$9,087	-\$5,487	0.40	not significant
Minority and Women Business Enterprises	\$3,600	2.39%	21.69%	\$32,711	-\$29,111	0.11	< .05 *
Caucasian Male Business Enterprises	\$147,236	97.61%	78.31%	\$118,125	\$29,111	1.25	< .05 †

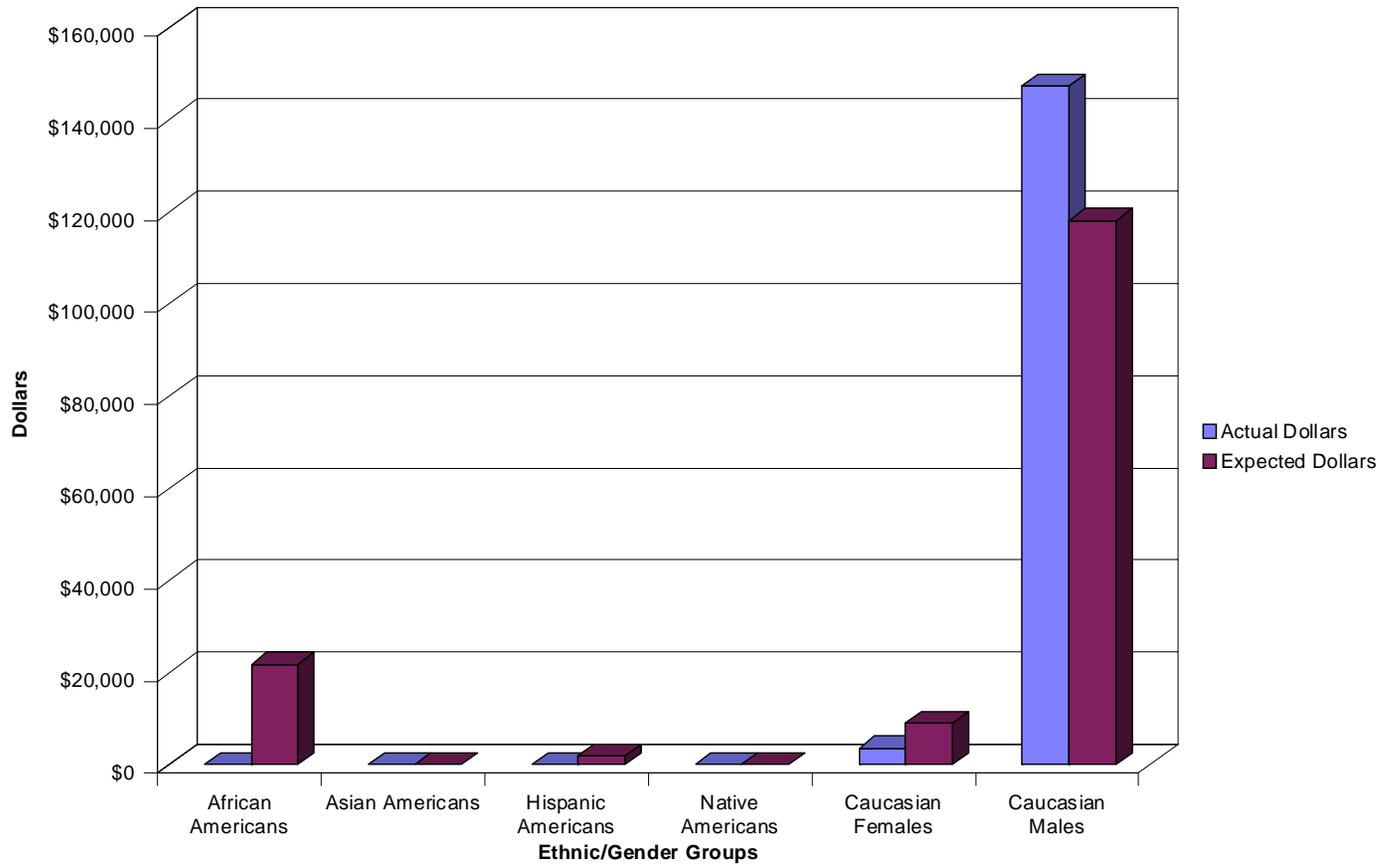
(*) denotes a statistically significant underutilization.

(†) 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 9.03 Disparity Analysis: Construction Prime Contracts under \$10,000, January 1, 2003 to December 31, 2007



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2. General Services Prime Contracts under \$10,000

The disparity analysis of all general services prime contracts under \$10,000 is depicted in Table 9.04 and Chart 9.04.

African American Businesses represent 6.9 percent of the available general services firms and received none of the general services prime contracts under \$10,000. This underutilization is statistically significant.

Asian American Businesses represent 0.49 percent of the available general services firms and received 1.29 percent of the general services prime contracts under \$10,000. This study does not test statistically the overutilization of minority groups.

Hispanic American Businesses represent 1.48 percent of the available general services firms and received none of the general services prime contracts under \$10,000. This underutilization is not statistically significant.

Native American Businesses represent 0 percent of the available general services firms and received none of the general services prime contracts under \$10,000. There were insufficient records to test statistical significance.

Minority Business Enterprises represent 8.87 percent of the available general services firms and received 1.29 percent of the general services prime contracts under \$10,000. This underutilization is statistically significant.

Women Business Enterprises represent 14.29 percent of the available general services firms and received 9.47 percent of the general services prime contracts under \$10,000. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 23.15 percent of the available general services firms and received 10.77 percent of the general services prime contracts under \$10,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 76.85 percent of the available general services firms and received 89.23 percent of the general services prime contracts under \$10,000. This overutilization is statistically significant.



Table 9.04 Disparity Analysis: General Services Prime Contracts under \$10,000, January 1, 2003 to December 31, 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	\$0	0.00%	6.90%	\$38,191	-\$38,191	0.00	< .05 *
Asian Americans	\$7,155	1.29%	0.49%	\$2,728	\$4,427	2.62	**
Hispanic Americans	\$0	0.00%	1.48%	\$8,184	-\$8,184	0.00	not significant
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$52,465	9.47%	14.29%	\$79,110	-\$26,645	0.66	not significant
Caucasian Males	\$494,148	89.23%	76.85%	\$425,555	\$68,592	1.16	< .05 †
TOTAL	\$553,768	100.00%	100.00%	\$553,768			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	1.48%	\$8,184	-\$8,184	0.00	not significant
African American Males	\$0	0.00%	5.42%	\$30,007	-\$30,007	0.00	< .05 *
Asian American Females	\$7,155	1.29%	0.49%	\$2,728	\$4,427	2.62	**
Asian American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic American Females	\$0	0.00%	0.49%	\$2,728	-\$2,728	0.00	----
Hispanic American Males	\$0	0.00%	0.99%	\$5,456	-\$5,456	0.00	----
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$52,465	9.47%	14.29%	\$79,110	-\$26,645	0.66	not significant
Caucasian Males	\$494,148	89.23%	76.85%	\$425,555	\$68,592	1.16	< .05 †
TOTAL	\$553,768	100.00%	100.00%	\$553,768			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$7,155	1.29%	2.46%	\$13,640	-\$6,485	0.52	not significant
Minority Males	\$0	0.00%	6.40%	\$35,463	-\$35,463	0.00	< .05 *
Caucasian Females	\$52,465	9.47%	14.29%	\$79,110	-\$26,645	0.66	not significant
Caucasian Males	\$494,148	89.23%	76.85%	\$425,555	\$68,592	1.16	< .05 †
TOTAL	\$553,768	100.00%	100.00%	\$553,768			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$7,155	1.29%	8.87%	\$49,103	-\$41,948	0.15	< .05 *
Women Business Enterprises	\$52,465	9.47%	14.29%	\$79,110	-\$26,645	0.66	not significant
Minority and Women Business Enterprises	\$59,620	10.77%	23.15%	\$128,212	-\$68,592	0.47	< .05 *
Caucasian Male Business Enterprises	\$494,148	89.23%	76.85%	\$425,555	\$68,592	1.16	< .05 †

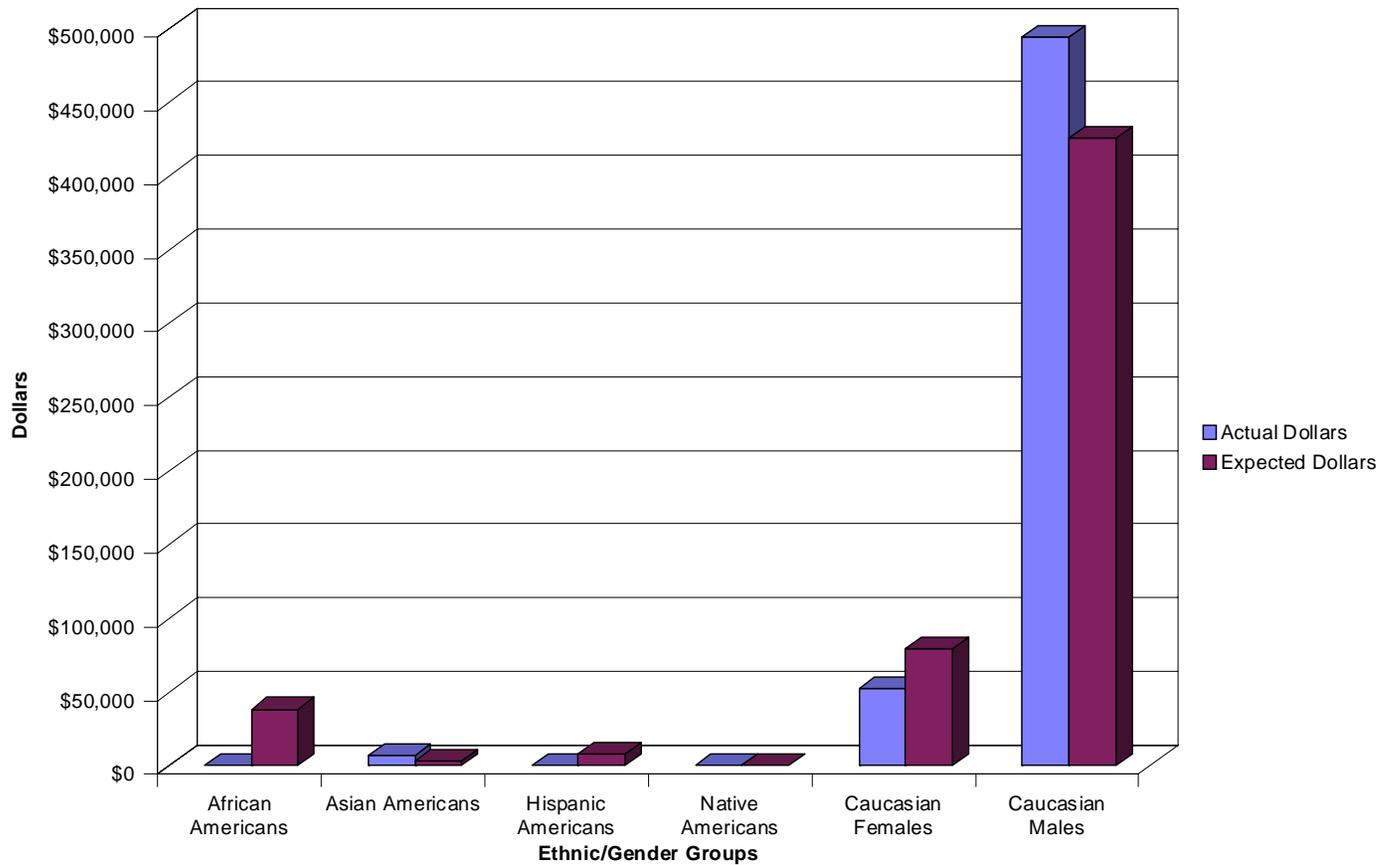
(*) denotes a statistically significant underutilization.

(†) 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 9.04 Disparity Analysis: General Services Prime Contracts under \$10,000, January 1, 2003 to December 31, 2005



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III. SUMMARY

A. Construction Prime Contracts

As indicated in Table 9.05, African American construction prime contractors were determined to be underutilized at both the formal (contracts under \$500,000) and informal (contracts under \$10,000) contract levels.

Table 9.05 Disparity Summary: Construction Prime Contract Dollars, January 1, 2003 to December 31, 2007

Ethnicity/Gender	Construction	
	Formal Contracts under \$500,000	Informal Contracts under \$10,000
African Americans	Yes	Yes
Asian Americans	---	---
Hispanic Americans	No	No
Native Americans	---	---
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	No	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.



B. General Services Prime Contracts

As indicated in Table 9.06, African American general services prime contractors were determined to be underutilized at both the formal (contracts under \$500,000) and informal (contracts under \$10,000) contract levels. Hispanic American general services prime contractors were determined to be underutilized at the formal contract level but not to be underutilized at the informal contract level.

Table 9.06 Disparity Summary: General Services Contract Dollars, January 1, 2003 to December 31, 2007

Ethnicity/Gender	General Services	
	Formal Contracts under \$500,000	Informal Contracts under \$10,000
African Americans	Yes	Yes
Asian Americans	No	No
Hispanic Americans	Yes	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.



10

SUBCONTRACTOR DISPARITY ANALYSIS

I. INTRODUCTION

The objective of this analysis is to determine if Minority-owned Business Enterprise 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 the Chapter 9: *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 of Davenport's (City's) construction contracts. Subcontract records were compiled for construction contracts during the January

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



1, 2003 to December 31, 2007 study period. A subcontractor disparity analysis of these records was performed.

A. Construction Subcontractor Disparity Analysis: January 1, 2003 to December 31, 2007

The disparity analysis of construction subcontract dollars is depicted in Table 10.01 and Chart 10.01.

African American Businesses represent 8.92 percent of the available construction firms and received 2.03 percent of the construction subcontract dollars. This underutilization is statistically significant.

Asian American Businesses represent none 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.

Hispanic American Businesses represent 1.27 percent of the available construction firms and received 0.6 percent of the construction subcontract dollars. This underutilization is not statistically significant.

Native American Businesses represent none 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 10.19 percent of the available construction firms and received 2.62 percent of the construction subcontract dollars. This underutilization is statistically significant.

Women Business Enterprises represent 2.55 percent of the available construction firms and received 2.95 percent of the construction subcontract dollars. This Study does not test statistically the overutilization of women business groups.

Minority and Women Business Enterprises represent 12.74 percent of the available construction firms and received 5.57 percent of the construction subcontract dollars. This underutilization is not statistically significant.



Caucasian Male Business Enterprises represent 87.26 percent of the available construction firms and received 94.43 percent of the construction subcontract dollars. This overutilization is not statistically significant.



Table 10.01 Disparity Analysis: Construction Subcontracts, January 1, 2003 to December 31, 2007

Subcontractor Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$330,362	2.03%	8.92%	\$1,454,686	-\$1,124,325	0.23	< .05 *
Asian Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic Americans	\$97,420	0.60%	1.27%	\$207,812	-\$110,392	0.47	not significant
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$480,868	2.95%	2.55%	\$415,625	\$65,243	1.16	**
Other Males	\$15,404,618	94.43%	87.26%	\$14,235,144	\$1,169,474	1.08	not significant
TOTAL	\$16,313,268	100.00%	100.00%	\$16,313,268			
Subcontractor Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
African American Males	\$330,362	2.03%	8.92%	\$1,454,686	-\$1,124,325	0.23	< .05 *
Asian American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Asian American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic American Males	\$97,420	0.60%	1.27%	\$207,812	-\$110,392	0.47	not significant
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$480,868	2.95%	2.55%	\$415,625	\$65,243	1.16	**
Caucasian Males	\$15,404,618	94.43%	87.26%	\$14,235,144	\$1,169,474	1.08	not significant
TOTAL	\$16,313,268	100.00%	100.00%	\$16,313,268			
Subcontractor Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Minority Males	\$427,782	2.62%	10.19%	\$1,662,499	-\$1,234,717	0.26	< .05 *
Other Females	\$480,868	2.95%	2.55%	\$415,625	\$65,243	1.16	**
Other Males	\$15,404,618	94.43%	87.26%	\$14,235,144	\$1,169,474	1.08	not significant
TOTAL	\$16,313,268	100.00%	100.00%	\$16,313,268			
Subcontractor Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$427,782	2.62%	10.19%	\$1,662,499	-\$1,234,717	0.26	< .05 *
Women Business Enterprises	\$480,868	2.95%	2.55%	\$415,625	\$65,243	1.16	**
Minority and Women Business Enterprises	\$908,649	5.57%	12.74%	\$2,078,123	-\$1,169,474	0.44	not significant
Caucasian Male Business Enterprises	\$15,404,618	94.43%	87.26%	\$14,235,144	\$1,169,474	1.08	not significant

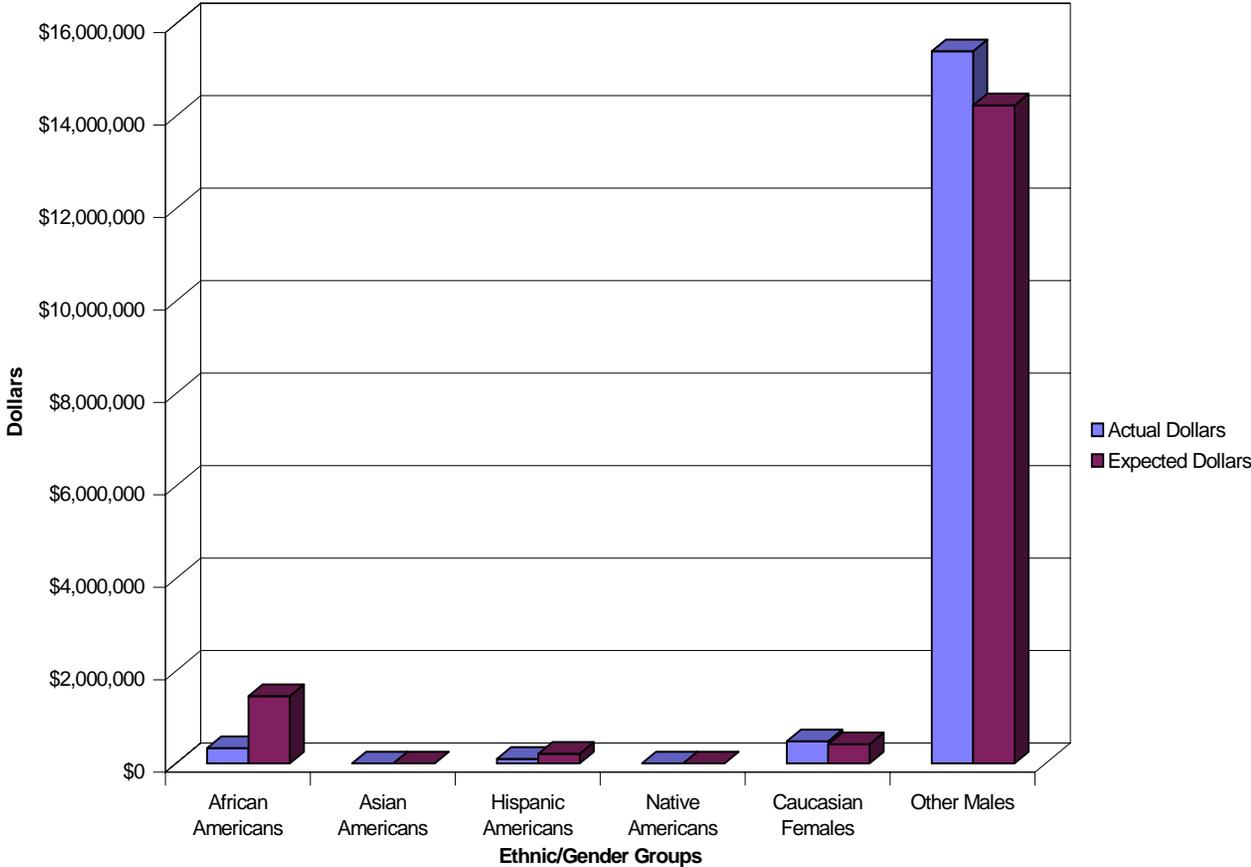
(*) denotes a statistically significant underutilization.

(†) 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 10.01 Disparity Analysis: Construction Subcontracts, January 1, 2003 to December 31, 2007



Mason Tillman Associates, Ltd. June 2009
 City of Davenport DBE Disparity Study

III. SUBCONTRACTOR DISPARITY SUMMARY

The subcontractor disparity findings in the industries under consideration are summarized in Table 10.02 below. There was a statistically significant disparity found in construction subcontracts for African Americans.

**Table 10.02 Subcontractor Disparity Summary, January 1, 2003
to December 31, 2007**

Ethnicity / Gender	Construction Subcontracts
African Americans	Yes
Asian Americans	---
Hispanic Americans	No
Native Americans	---
Minority Business Enterprises	Yes
Women Business Enterprises	No
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.



11

RECOMMENDATIONS

I. INTRODUCTION

This chapter provides race conscious and race-neutral recommendations for the City of Davenport's (City's) consideration. The recommendations offer strategies to maximize the use of DBEs and other small businesses. The recommendations are based on an analysis of the disparity study statistics, best management practices of other government agencies, and the City's Purchasing Policy Manual. The analysis included a review of construction, professional services, and general services contract for which payments were issued during the study period of January 1, 2003 through December 31, 2007.

The statistical findings provided evidence of the utilization of minority and woman-owned business enterprises (M/WBEs) compared to their rate of availability in the City's geographic market area. The recommendations contained in this chapter are intended to assist the City, where appropriate, to enhance its procedures and meet the objectives of the DBE Program.

This chapter is organized into sections in response to the criteria set forth in the contract between Mason Tillman and the City. The first is an *Introduction*. The second section, *Disparity Findings*, presents the disparity analysis statistical results. Race and gender-conscious recommendations are provided in section three, *Race-Conscious Remedies*. Section four, *Race and Gender-Neutral Remedies*, provides an analysis of the City's DBE Program objectives and recommends race and gender-neutral enhancements. Finally, *Administrative Recommendations* are contained in section five.



II. DISPARITY FINDINGS

The statistical analysis of DBE utilization is a key component of this Study. The purpose of the analysis is to determine whether or not the City is meeting its goals of DBE participation. The United States Supreme Court's *Croson*¹ decision enumerates a methodology for measuring the attainment of M/WBE participation in government contracting. The measure of attainment is a statistical finding derived from the analysis of the City's use of available DBEs.

The findings are presented by ethnicity and gender within each industry and at two different dollar thresholds. The divisions used in the analysis are: formal contracts valued at \$500,000 and less, informal contracts valued at \$10,000 and less, and subcontracts on all prime contracts valued over \$100,000. Where an ethnic or gender group was underutilized and the underutilization was statistically significant, the finding constitutes a disparity.

The City's prime contractor utilization analysis examined the \$89,802,755 expended on contracts awarded from January 1, 2003 to December 31, 2007. The \$89,802,755 expended included \$71,508,016 for construction, \$3,363,568 for professional services, and \$14,931,170 for general services. A total of 477 contracts were analyzed, which included 186 for construction, 23 for professional services, and 268 for general services.

The 477 contracts were not evenly distributed among the 252 total utilized vendors; the City awarded 60 percent of the contract dollars during the January 1, 2003 to December 31, 2007 study period to only nine of the 252 utilized vendors.



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

A. Prime Contractor Disparity Findings

1. Construction Contracts

As indicated in Table 11.01, African American construction prime contractors were determined to be underutilized at both the formal (contracts under \$500,000) and informal (contracts under \$10,000) contract levels.²

Table 11.01 Disparity Summary: Construction Prime Contract Dollars, January 1, 2003 to December 31, 2007

Ethnicity/Gender	Construction	
	Formal Contracts under \$500,000	Informal Contracts under \$10,000
African Americans	Yes	Yes
Asian Americans	---	---
Hispanic Americans	No	No
Native Americans	---	---
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	No	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.



² There were too few professional services contracts to conduct a disparity analysis on this industry.

2. General Services Prime Contracts

As indicated in Table 11.02, African American general services prime contractors were determined to be underutilized at both the formal (contracts under \$500,000) and informal (contracts under \$10,000) contract levels. Hispanic American general services prime contractors were determined to be underutilized at the formal contract level but not to be underutilized at the informal contract level.

**Table 11.02 Disparity Summary: General Services Contract
Dollars, January 1, 2003 to December 31, 2007**

Ethnicity/Gender	General Services	
	Formal Contracts under \$500,000	Informal Contracts under \$10,000
African Americans	Yes	Yes
Asian Americans	No	No
Hispanic Americans	Yes	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.



3. Subcontractor Disparity Findings

The subcontractor disparity findings for construction services are summarized in Table 11.03 below. There was a statistically significant disparity found in all construction subcontracts for African Americans but not for Hispanic Americans.

Table 11.03 Subcontractor Disparity Summary, January 1, 2003 to December 31, 2007

Ethnicity / Gender	Construction Subcontracts
African Americans	Yes
Asian Americans	---
Hispanic Americans	No
Native Americans	---
Minority Business Enterprises	Yes
Women Business Enterprises	No
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.



III. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REVIEW

1. Policy Statement

It is the policy of the City to assist small and disadvantaged businesses by providing information and assistance related to the bidding process and contractual requirements.

2. Federal Requirements

The Purchasing Coordinator or City Engineer is responsible for complying with federal law and authorized regulations for procurements that involve the expenditure of federal assistance or contract funds. The Purchasing Coordinator is also charged with the responsibility of ensuring that small and/or disadvantaged businesses are solicited by the City on each procurement when appropriate.

3. Procedures to Ensure that DBEs Have an Equitable Opportunity to Compete for Contracts

The City implemented the following strategies to provide equal opportunity for DBEs to participate in City contracts:

- Developing solicitations of subcontract bids to increase potential DBE participation. This may include breaking down large subcontracts into smaller ones and issuing notice of solicitations in a timely manner.
- Providing technical assistance and guidance in the bidding, estimating, and scheduling processes.
- Providing accelerated payments or establishing pro-rated payment and delivery schedules so as to minimize cash flow problems faced by small firms.
- Providing a pre-bid conference for potential subcontractors.
- Advertising in trade association newsletters and minority-oriented and general circulation media of potential opportunities or projects.
- Notifying minority contractor assistance agencies of potential opportunities or projects
- Reviewing the State of Iowa's approved DBE directory.



4. Certification

The City complies with and participates in the State of Iowa's DBE Certification Program as federally mandated.

5. DBE Reports

The Purchasing Coordinator is required to report in writing to the Affirmative Action Advisory Committee the awarding of contracts to small and disadvantaged businesses during the preceding month and year to date. The City's prime contractors are required to submit DBE utilization reports to the Project Manager. The report must include the payments made to DBE subcontractors to date and the projected payments to DBEs.

IV. RACE AND GENDER-CONSCIOUS REMEDIES

Mason Tillman recommends several race and gender-conscious remedies to address the statistically significant findings of underutilization. Contract-specific goals are recommended for prime construction and general services contracts, as well as construction subcontracts. Additionally, a small contracts rotation program is being advocated for both informal and formal prime construction contracts.

A. Prime Contractor and Subcontractor Remedies

1. Construction Industry

a. Small Contracts Rotation Program

There are statistically significant findings of underutilization for African Americans in informal and formal prime construction contracts. A small contracts rotation program could be established for construction contracts valued at \$100,000 or less. These contracts would be awarded under the small contracts rotation program. This program would limit competition to businesses from the statistically significant underutilized group and other disadvantaged businesses of comparable capacity.

This program would ensure that quotations for informal contracts are solicited from a diverse pool of small businesses on a rotating basis. By awarding prime contracts, the program is a



means for building the capacity of the DBEs that have a finding of statistically significant underutilization and other similarly situated small, disadvantaged businesses. The statistically significant underutilized groups would be presumed to be eligible. The eligibility of any other groups would be determined through a certification process. This process would determine whether the business was small and disadvantaged.

Eligible businesses would be required to pre-certify for the program. Lists of the approved contractors would be maintained by construction trade. 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.

Work orders 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. The existence of a small contracts rotation program should be widely advertised to the ethnic and gender group with a statistical underutilization and all other certified businesses. The list of certified vendors would be posted for public view on the City's website.

Financial support and technical assistance should also be made available to businesses 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. Businesses would graduate from the program once they reach a certain size threshold or after participating in the program for a specified time period.

2. Contract-Specific DBE Prime Contracting Goals

Contract-specific DBE prime contracting goals should be set on all construction and general services contracts. These goals will address the identified disparity. Setting goals narrowly tailored to the availability of the businesses to perform the identified subcontracting opportunities is the most prudent method to remedy the disparity. A contract-specific goal setting method also ensures that DBE goals are reasonably attainable.

The goals could reflect the actual availability for each contract that is advertised, or the goals could be set no higher than the actual availability for each advertised contract. Both the items



of work in the contract and the availability of DBEs to perform the work items must be determined in order to set a contract-specific goal. The City will also need to maintain a current database with available DBE and non-DBE firms willing and able to perform on the City's contracts. Tables 11.04 and 11.05 below describe the prime contractor availability percentages.

Table 11.04 Construction Prime Contractor Availability

Underutilized Groups	Percentage of Availability
African Americans	14.46%
Minority and Women Business Enterprises	21.69%

Table 11.05 General Services Prime Contractor Availability

Underutilized Groups	Percentage of Availability
African Americans	6.9%
Hispanic Americans	1.48%
Women Business Enterprises	14.29%
Minority and Women Business Enterprises	23.15%

a. Contract-Specific DBE Subcontracting Goals

Setting DBE subcontracting goals for the City's prime contracts is a strategy for eliminating documented disparity in the prime contractors' award of subcontracts. The subcontract goal should reflect the availability of the statistically significant underutilized group as documented in the Study. Table 11.06 depicts the availability of minority and women construction subcontractors.



Table 11.06 Subcontractor Availability

Underutilized Groups	Construction Availability
African Americans	8.92%
Minority Business Enterprises	10.19%

V. RACE AND GENDER-NEUTRAL RECOMMENDATIONS

A. Pre-Award Recommendations

1. Expand Unbundling Policy

The City routinely engages in procurement unbundling by dividing large contracts into smaller ones thereby providing additional procurement opportunities for DBEs and small businesses. While these measures to improve DBE participation were encouraging, five of the City’s 252 utilized vendors received 50 percent or \$45,163,077 of the total contract dollars. Nine vendors received 60 percent of the contract dollars awarded.

The City should consider further unbundling large contracts to increase the number of businesses participating at both prime contracting and subcontracting levels. The DBE Program can provide great opportunities to implement procedures to unbundle large contracts. In determining whether projects should be unbundled, the following criteria should be reviewed:

- Whether the project will be conducted in multiple locations
- Size and complexity of the procurement
- Similarity of the goods and services procured
- Sequencing and delivery of the work
- Public safety issues and convenience
- Options presented by the Procurement division



2. Establish a Direct Purchase Program for Construction Contracts

According to the City's DBE Program objectives, the City encourages purchasing supplies and/or leasing the required equipment for a job, then subcontracting only for the expertise or labor required to perform the work. The City could meet this objective by implementing a direct purchase program. Under a direct purchase program, the general contractor would include 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 DBEs, 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 DBE a more competitive price, thereby reducing the overall bid price.

3. Establish an Apprenticeship Program

The City could establish an apprenticeship program for apprentices on its construction contracts. The United States Department of Labor's Bureau of Apprenticeship and Training (BAT) is the federal agency responsible for the administration of the National Apprenticeship System in the United States. BAT maintains an office in Des Moines, Iowa, to administer the provisions of the National Apprenticeship Act. Additionally, the Iowa Department of Economic Development funds apprenticeship projects that must be approved by BAT.

Once programs are established, BAT officials do not act as compliance officers. The BAT keeps records of all registered apprenticeship programs in the State and can verify if apprentices who present a U.S. Department of Labor certification are registered with the BAT. Contractors who use registered apprentices are authorized to pay less than the prevailing wage on public works jobs. Upon request of a public agency, construction contractors must provide proof of the apprentice's registration with the BAT registered apprenticeship program.



Any person or organization operating an apprenticeship program is required to adopt an affirmative action plan as set forth in 29 CFR 30.4. The affirmative action plan must include procedures, methods, and programs for the identification, positive recruitment, training, and motivation of present and potential minority and female apprentices including the establishment of goals and timetables. Data from various sources is used to determine workforce availability. These recruitment goals are subject to review on an annual basis.

4. Post Plan Holder Lists

The City should upload and make available on its website the plan holders lists for upcoming bids. Additionally, these lists could be e-mailed to certified DBEs listed in the City's directory. Delivering correspondence via e-mail and posting online reduces costs for the City while increasing the potential pool of DBEs that are available to be utilized by prime contractors for upcoming bids.

5. Virtual Plan Room

The City should consider purchasing software that would allow bidders to obtain measurements for bid specifications by digitizing an area on a blueprint on the City's website. The measurement can be automatically inserted into an Excel spreadsheet. Such action would eliminate the need to designate space for a plan room in the City's offices.

6. Form Partnerships with Lending Institutions

The City should leverage its banking relationships with financial institutions to assist DBEs and other small businesses with project financing and start-up costs. It is critical to develop programs and incentives with lending institutions currently providing services to the City that can be offered to DBEs and other small business that wish to do business with the City. This could provide more access to financing for small and DBE businesses.

7. Remove Brand Name Requirements in Solicitations

The specification of brand names in solicitations can reduce the small and DBE firms' levels of competitiveness, because many large firms receive reduced pricing from major suppliers while smaller firms do not. The City should refrain from requiring specific brand name products in its solicitations.



8. Revise Insurance Requirements

Prohibitive insurance requirements serve as a significant disincentive to bidders, constitute a barrier to DBE and other small business participation, and ultimately increase the City's costs to procure construction services. 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 provisions applicable to all of the City's contracts. The insurance requirements on small contracts should be set in relation to the actual contract liability amount. A revision of insurance requirements would attract more bidders and thereby increase competition and reduce costs. Any revisions to the insurance provisions must comply with statutory requirements.

9. Owner-Controlled Insurance Program

The City should also consider establishing an Owner-Controlled Insurance Program (OCIP) to consolidate risk management costs and reduce the burden of the insurance premium for DBEs and small business owners. Under an OCIP or "wrap-up" program, a single insurance program provides insurance for the owner and all eligible (on-site) project contractors and subcontractors. An OCIP could be established in cooperation with other local governmental agencies. The City and any other participating governmental agencies would benefit, as well, since the vendor passes the fee for the surety bond to the City in its pricing. The OCIP could be used to allow coverages for multiple insured entities to be "wrapped up" into a single consolidated insurance program. Additionally, the program could assist the City in leveling the playing field by reducing insurance expenses for DBEs which can be higher than those expenses for large prime contractors.

10. Informal Contracts

Informal contracts should be posted on the City's website and made available in hard copy format, as well as to all businesses who wish to do business with the City. The City's DBE Office should receive timely notice of informal contracts to allow the department to identify DBEs capable of providing goods and services for these smaller procurements.

11. Conduct an Extensive DBE and Other Small Business Outreach Campaign

Efforts to meet the City's DBE Program objectives and policy goals could be enhanced with a comprehensive outreach campaign to communicate contracting procedures and detail the goals and objectives of the DBE Program. Table 11.07 below lists the strategies and tactics that can be used to market the DBE Program to attract DBE firms to certify with the City and bid on City contracts, as well as to inform the business community of the new requirements and enhanced services.



Table 11.07 Outreach and Marketing Strategies

Strategy	Tactics
Design tagline produce banner display	<ul style="list-style-type: none"> • Develop tagline • Design banner with placement of existing logo and new tagline
Define design standards, layout, and appearance of procurement documents for the organization	<ul style="list-style-type: none"> • Revise all procurement materials to include the program logo and tagline in order to have a uniform appearance
Develop collateral print material for outreach campaign	<ul style="list-style-type: none"> • Produce brochure to reflect program changes • Develop articles and media packets
Launch outreach campaign	<ul style="list-style-type: none"> • Distribute media packets and press releases • Place public service announcements • Pitch campaign to broadcast media
Host semi-annual 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 procurement department in outreach events • Make informal contract opportunities available • Distribute contract forecasts and certification forms
Distribute forecasts to targeted businesses	<ul style="list-style-type: none"> • Advertise on trains and billboards • Post forecast to website • Distribute through fax and e-mail • Advertise forecasts on trains and billboards
Partner with agencies and organizations to disseminate program information	<ul style="list-style-type: none"> • Continue current agency partnerships • Develop local business and trade group partners
Conduct an annual program evaluation	<ul style="list-style-type: none"> • Establish measurable outcomes • Conduct surveys • Examine bidding history

12. Expand DBE Certification Program

Currently, the City accepts DBE certifications from the State of Iowa's DBE Certification Program. The City could attract more small businesses to its DBE Program by also accepting certifications from the State's Targeted Small Business (TSB) Program. The TSB certification requirements are in accordance with the standards set forth in Iowa Administrative Code 481-25.1(73) and IAC 261-30. TSBs must be located in the State of Iowa, operated for a profit, have a gross income of less than \$4.0 million computed as an average of the preceding three fiscal years, and owned, operated, and actively managed by a female, a minority group member, or a person with a disability.



13. Expand Project Manager Participation on Outreach Events

The City participates in periodic outreach events and trade fairs to facilitate DBE and small business participation and should continue to engage in and sponsor these activities. The outreach events should include Project Managers and provide information about small projects as well as the large major capital projects. A procedure should be established to follow-up on inquiries and requests for information from the attendees.

14. Improve Communication with DBEs and Other Small Businesses

A monthly procurement newsletter should be developed specifically for DBE and small businesses. The newsletter could be made available online. Business owners could also sign up for e-mail alerts and news briefs. The newsletter would contain information about upcoming contracts, trade fairs, business focus groups, and other information pertinent to the business community. Additionally, each newsletter could contain an advertisement and website link to an online DBE certification application.

15. Good Faith Effort Criteria

The good faith efforts policy could be enhanced through the addition of quantifiable criteria. The City's Purchasing Policy manual provides a list of criteria that businesses must follow to demonstrate their good faith efforts. To measure a prime contractor's effort, each criterion should have an assigned value in a point system. For example, a prime contractor would earn five points for advertising in the general circulation media, minority focused media, or trade related publications at least twice, ten days prior to submission. Requisite documentation such as dated copies of the advertisement or an affidavit from the periodical verifying these efforts would be required from the prime contractors. There would be a minimum overall score for the prime contractor to demonstrate making sufficient good faith efforts, as shown in Table 11.08 below.



Table 11.08 Good Faith Effort Criteria

Criterion	Effort	Documentation
Advertising (5 points)	Advertise in the general circulation media, minority focused media, or trade related publications at least twice, ten days prior to submission.	Dated copies of the advertisement or an affidavit from the periodical.

16. Pay Mobilization to Subcontractors

Project start-up costs can be significant, and a firm that has limited resources and access to credit may find that expenses inhibit its ability to bid. Payment for mobilization, the initial payment made to a prime contractor when work commences on a construction project as reimbursement for the costs of starting a job, could mitigate the start-up cost barriers faced by DBEs and small businesses. If a mobilization payment is made to a prime contractor, a subcontractor should be paid an amount equal to its participation level on the prime contract prior to commencing work at the time it is directed to mobilize.

17. Develop an Expedited Payment Program

The City should implement a formal expedited payment program. Expedited payments would remove a major barrier to DBE and small business participation in the City’s contracts. In an expedited payment program, DBEs and other small businesses would be paid on an accelerated schedule. Non-certified prime contractors meeting DBE 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 ten 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 will also be required to submit an invoice on a monthly basis 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 ten days of the receipt of the approved prime contractor’s invoice, and the prime contractor would be required to pay each subcontractor within five days of receiving payment from the City.



18. Require Prime Contractor Validation of Subcontractor Payments Prior to Receiving Final Payment

All City prime contractors requesting final contract payment should submit, with their final payment voucher, an affidavit to verify payments to subcontractors. The final payment to the prime contractor should be held until the final and full payment to the listed subcontractors is verified. This practice would ensure that all City subcontractors get paid.

B. Post-Award Recommendations

1. Improve Procurement Procedures

The City's procurement procedures should be revised to include a requirement that the DBE Program Manager be informed in writing and receive a copy of any proposed contract or procurements for construction, professional services, and general services within three business days of the release of the RFP, RFQ, or RFB. Additionally, a report of all contracts and procurement advertised by the City should be produced and submitted to the City's DBE Program Manager. This practice would provide more opportunities for DBEs to be contacted and informed of upcoming contract opportunities.

2. Sponsor Open House Events

The City should sponsor quarterly open house events to meet and greet DBEs and other small businesses. These open house events should provide general information regarding procedures for the contract and procurement process. Sign up sheets at these events should at a minimum collect vendor names, addresses, contact information, and type of services provided. This information can be added to a tracking database which will be accessible to Project Managers.

3. Conduct Bi-Annual Review of the DBE Directory

Some City departments can fall victim to the overutilization of firms that have become familiar. Each department should conduct a bi-annual review of its contracting activities to determine the types of goods and services it procures. This information should be compared against the DBE directory to identify certified DBEs capable of providing services to the City in specific industries but have not been utilized.



4. Conduct Routine Post-Award Contract Compliance Monitoring

Routine and rigorous contract compliance monitoring should be conducted to ensure that the DBE participation listed in the bids, proposals, and statements of qualification is achieved and maintained throughout the duration of a contract and that the businesses are paid according to the prompt payment program standards. The monitoring would verify the prime contractor's commitments prior to and after the award of the contract. Consistent contract compliance would minimize the hardships experienced by DBEs and small businesses due to unauthorized substitutions and late payments by prime contractors. It would also ensure that the race and gender conscious remedy is narrowly tailored.

5. Uniform Affirmative Action Requirements

The City's affirmative action requirements should be applicable to all City departments. Potential bidders should not be allowed to enter into contractual arrangements that circumvent the City's affirmative action requirements.

6. Publish DBE Utilization Reports

Utilization reports to measure the effectiveness of the City's DBE Program should include verified payment and award data organized by industry, department, ethnicity, gender, and DBE status. Change orders and substitutions should be identified as well.

Detailed reports should be submitted to the City Council on a quarterly basis. The fourth quarter report should include an assessment of program activities and recommendations for improvement. Exemplary practices and achievements in each department should also be noted in the fourth quarter report. All utilization reports should be posted on the City's website and be made available to businesses by e-mail as well.

7. Convene Debriefing Sessions for Unsuccessful Bidders

Debriefing sessions for unsuccessful bidders should be held. These sessions will provide vital information for assisting DBEs and other small businesses in targeting areas of their bid, proposal, or interview that could be enhanced to make them more competitive when pursuing future contracts.



8. Provide Five-Day Notice of Invoice Disputes

Within five days of receiving a disputed invoice, the contractor should receive a notice from the prime contractor or the City detailing any item in dispute. Undisputed invoice amounts should be paid promptly, and disputed items should be resolved in a timely manner.

9. Establish Penalties for Failure to Submit Work Types and DBE Contact Forms

Failure by prime contractors to list the names of all subcontractors on the *Work Types and DBE Contact form* should render the submittal non-responsive and therefore void.

10. Expand Subcontractor Substitution Standards

The City's Purchasing Policy Manual includes comprehensive subcontractor substitution standards. Substitution standards are necessary to generate accurate subcontract reports. To enhance the City's substitution standards, all subcontractor substitutions, DBE status of the substituted contractors, amounts awarded, and other critical information should be incorporated in the DBE utilization report submitted to the City Council to ensure compliance with the policy.

11. 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. Regular compliance monitoring would verify that the prime contractors are honoring their subcontracting commitments prior to and after the award of the contract. Consistent contract compliance monitoring would minimize the hardships experienced by DBEs and small businesses due to unauthorized substitutions and late payments.

The following contract compliance monitoring methods are recommended:

- Track and report subcontractor utilization in an electronic database
- Collect copies of the canceled checks written to subcontractors in order to verify payment information on a quarterly basis
- Impose penalties for failure to list or pay a subcontractor for work performed



VI. ADMINISTRATIVE RECOMMENDATIONS

A. Website Enhancements

The City's website makes a good first impression with a clean, uncluttered design that loads quickly. However, there are some modifications that would improve functionality, informational value, and access to contracting information.

1. Improve Website Structure to Assist Users in Achieving Their Goals

The most effective websites direct users toward the information they seek as clearly as possible. This is especially important because users on the Internet are very goal-oriented and scan selected areas of a page extremely rapidly in search of relevant information. If they find a link that seems to apply, they often follow it without bothering to read the rest of the page. With this in mind, the site must be organized with a focus on allowing the target users to achieve their goals as quickly as possible. In this case, the target user is a business owner interested in contracting with the City. He or she needs to find out what opportunities are available and how to submit a bid properly.

In this regard, the City's website starts well. The Business link is prominently placed in a location that users would immediately see in their first scan of the page. Therefore, a contractor seeking information on how to do business with the City would very likely arrive at the Business page within seconds. Once there, however, the path to the desired information becomes much less obvious. The main content section of the page, where most users start their scan, features a short text extolling the City's virtues, and there are two short sections with links, Related City Websites and Community Websites, but no mention of contracting or bid opportunities. The information is there, either in the Events section or in the Document Center area, but a user is not directed to it and must seek it out.

The site would be enhanced by the addition of a link, as high on the page as possible, to a page consolidating all information for those wishing to work with the City. Providing such ready access is especially helpful to small businesses which may not have the capacity for researching bid opportunities that their larger counterparts may possess.

2. Consolidate All Contracting Information in a Single Destination

As mentioned in the above recommendation, a page consolidating all contracting information should be created. Not only does this have advantages in making it easier to direct first-time users to the contracting information, but frequent users can bookmark that page and access



the page even faster, knowing they will find all the information they need. This destination should list all contracts available for bid, as well all contracts awarded. Also, if major projects are forecast which would require extensive bid preparation, these projects should be listed here to allow all contractors lead time for networking, outreach, and team building before the official request for proposal is published.

The page should also serve as a how-to guide for those wishing to work with the City and provide all the information that a business would need to correctly submit bids to the City. For example, contact information for personnel who are involved in the bidding process should be listed and important documents such as requirements or guidelines that apply generally to all bids or to all bids of a certain type should be published on this page as well. This would also be the natural place to highlight the City's relevant DBE-related services, as well as links to any ethnic and/or trade organizations active in the area that provide assistance to M/WBEs. A major goal of this page should be to level the playing field for first-time bidders, allowing them to compete on the basis of the services and prices they offer, rather than on their knowledge and experience with the City's procedures.

3. Develop an Interactive Contracting Portal

By adding interactive features, the contracting page can become a management tool facilitating communication between all parties in the business relationship. The site should allow contractors to submit online as many of the reports or compliance documents required during the execution of a contract as possible; paper forms should be replaced with functional online equivalents to the fullest extent allowable. This will streamline the bidding process, reducing costs for all involved.

The portal should also feature a registration page where businesses who want to do business with the City can register and enter a profile of the kinds of goods and services they provide and other important information about them. The companies could then receive alerts that would notify them of new bid notices, change orders to existing bids, or updates to relevant events, all targeted toward their area of expertise. Aggressive promotion and marketing of this registration feature would be a very effective form of outreach, and would ensure that interested and motivated companies are aware of the opportunities offered by the City. As it grows, this registration database would also provide the City with a reference for who is actively pursuing their business and could suggest areas in which to focus their future outreach efforts.



B. Implement Construction Project Management Best Practices

Best practices of construction project management should be implemented to mitigate the barriers faced by prime contractors, which in turn would provide more opportunities for small subcontractors. These practices, listed below, will ensure on-time and on-budget project delivery and will encourage small firms to submit bids to the City and to promote their success on contracts.

- **Ensure that inspections are timely.** Delays in inspection idle labor and equipment, which can be costly. Inspections should be conducted according to the written schedule. The cost of inspectors' overtime should be paid by the City if it is required to meet the inspection schedule after the contractor has provided sufficient notice.
- **Avoid the use of Critical Path Method Schedules on smaller projects.** Critical Path Method (CPM) schedules require specialized software and expertise that may be beyond the capacity of small contractors. For small projects, the logic and timing of the CPM can be replicated with the use of spreadsheets or other simple and readily available computer software.
- **Answer Requests for Information (RFIs) promptly.** Invariably, questions arise during the construction process. Timely responses to RFIs must be provided to prevent project delays and cost overruns. If an RFI requires an unavoidably time-consuming response, the City must provide a reasonable time extension for the project.
- **Provide timely feedback and constructive criticism.** Open communication between project manager and contractor is critical in effective project management. Identifying potential problems before they reach the level of a crisis ensures a harmonious work environment for both the project manager and contractor. For small contractors, timely information can reduce project cost.

C. Data Management Enhancements

1. Establish Performance Accountability Reviews

Accountability standards to promote and ensure compliance with the revised procurement procedures should be developed. These standards would be incorporated as part of the management and staff performance reviews. Development of accountability standards reduces potential non-compliance with the revised procurement procedures, and will function to



increase the number of DBEs aware of contract opportunities as well as the number of DBEs and other small businesses utilized on these contracts.

2. Develop Department-Wide DBE Manager and Staff Training

A department-wide DBE training manual should be developed. This manual would provide background on the DBE Program, any federal regulations which govern the program, and the City's DBE policy and objectives and discuss standard methods employed by the City to increase DBE participation and administer the Program in accordance with City, State, and federal regulations. Managers and departmental staff would be responsible for attending annual training seminars to ensure they are abreast of current changes in the law to the City's DBE Program.

3. Design a Subcontractor Utilization Tracking Database

Strategies have been identified to enhance the tracking and monitoring of subcontract awards more efficiently. The recommended enhancements would support a more accurate assessment of the effectiveness and compliance of the City's DBE Program.

Data from the City's financial system, and an analysis of the organization of the City's subcontract records for the disparity study were examined. Several aspects of the City's current financial system and organization of the subcontract data can be enhanced in order to more effectively track and monitor subcontract awards. The recommended enhancements would allow the City to conduct a more accurate assessment of the effectiveness of its DBE Program and compliance with its policies.

The City should require prime contractors to list all subcontractors and suppliers in their bids, proposals, and statements of qualification. A contract module within the City's financial system should be developed. This module would track the prime contract information. Capturing contract information would make it possible to track and monitor subcontracts and any other modifications to the original contract award amount during the term of the contract and to record annual renewals. It would also enable the tracking of purchase order payments to the encumbered contract award amount and any payments issued against the purchase order or contract.

Data to be recorded in the contract module includes a contract number, subcontractor name, project description, original award amount, and award modifications. Additionally, all purchase orders would be tied to the contract number.



APPENDIX A

REGRESSION ANALYSIS

Introduction

The City of Davenport (City) commissioned Mason Tillman Associates, Ltd. to conduct a Disadvantaged Business Enterprise (DBE) Disparity Study. The purpose of the Disparity Study is to ascertain whether discrimination exists in the City's contracting industry and, if so, to identify its scope and the extent of the impact on the ethnic and gender groups. The Study found disparity in the utilization of available African American businesses. Recommendations were offered to address the identified disparity. A regression analysis was also undertaken to determine whether there were factors other than discrimination that might account for the statistical disparities between DBE availability and utilization. The factors considered in this analysis were rates of business ownership, disparities in business earnings, and the likelihood of business loan denial.

The regression analysis noted that there were statistically significant disparities for some ethnic and gender groups in rates of business ownership, earnings of business owners, and frequency of business loan denials. The analysis considered the possibility that neutral factors, such as age, education, access to capital and creditworthiness might account for at least a portion of these disparities. The analysis further investigated these issues through multivariate regression analyses. The findings suggest that there are discriminatory factors in the market place that adversely effect women and minority business owners' access to the resources needed to form and grow businesses. The detailed analyses are presented below.

Business Ownership

Previous research has shown that many factors, such as access to financial capital, education, age, and marital status, are associated with self-employment. These factors, along with race and gender, in a probit regression model of 2000 Census Public Use Microdata Sample (2000 PUMS) data from Davenport, IA, were used to determine whether observed disparities by race or gender were independent of the non-discriminatory factors known to be associated with self-employment.¹

¹ The 2000 Census Public Use Microdata Sample (PUMS) files are American Standard Codes for Information Interchange (ASCII) which include a sample of individual records of the characteristics of people and housing units, including the Census' computerized versions of questionnaires collected from each household. Specifically, the data reported on household income, mortgage payments,

The PUMS data were collected by the US Census Bureau from a 5 percent sample of U.S. households. The observations were weighted to preserve the representative nature of the sample in relation to the population as a whole. The probit model used the sample weights and adjusted the sample errors used in statistical testing for the similarity of observations from the same household.

The model included 10,595 individuals from Davenport, IA and estimated the probability of being a business owner among workers in each industry. The data were insufficient to conduct separate analyses for the construction or engineering industries.

The dependent variable was binary – coded as a “1” for individuals who are self-employed and a “0” for individuals who are not self-employed.

The independent variables included:

- Personal characteristics potentially linked to the likelihood of business ownership (age, age-squared, marital status, number of children and elderly people in the household, ability to speak English and disability status);
- Variables to control for differences in educational attainment;
- Measures and indicators related to personal financial resources and constraints (home ownership, home value, monthly mortgage payment, dividend and interest income and additional household income from a spouse or unmarried partner); and
- Variables to indicate the race, ethnicity and gender of the individual.

The specification of this model is very similar to models used in other studies previously reviewed by the courts.

Results for Davenport, Iowa. The results of the regression analysis of business ownership are presented in Figure A-1. The model shows:

- Older individuals are more likely to be business owners, but this marginal effect declines for the oldest individuals;
- Being married is positively correlated with being a business owner;
- Being disabled is negatively correlated with being a business owner;
- Having pre-school age children is positively correlated with being a business owner;
- Having some college, up to a four year college degree, decreases the likelihood of being a business owner;
- Having an advanced degree increases the likelihood of being a business owner;

mortgage status, ability to speak English, age, and industry. For the purposes of this analysis the dataset was limited to the Davenport, Moline, and Rock Island areas.

- Homeownership decreases the likelihood of being a business owner until the value of the home rises above approximately \$ 70,000, at which point increasing home values also increase the likelihood of being a business owner.

The model also shows that statistically significant disparities in rates of business ownership remain for Asian Pacific Americans, Subcontinent Asian Americans, and women, even after controlling for non-discriminatory factors.

**Figure A-1.
Davenport, Iowa Probit Model**

Variable	Coefficient	t-statistic
Constant	-6.2891	-13.35*
Age	0.1483	7.52*
Age-squared	-0.0014	-6.59*
Married	0.4871	3.5*
Disabled	-0.2672	-1.81
Own children younger than 6	0.6441	2.84*
Number of people over 65 in HH	-0.0203	-0.16
Own home	-0.7458	-2.83*
Home value (24 level categorical variable)	0.0683	3.45*
Monthly mortgage payment	0.0002	1.29
Interest and dividend income (\$000s)	0.0086	2.59*
Income of spouse or partner (\$000s)	-0.0008	-0.78
Speaks English very well	0.4529	1.35
Less than high school education	-0.376	-1.89
Some college	-0.232	-1.76
Four year degree	-0.5752	-3.24*
Advanced degree	0.7366	3.47*
African American	-0.5181	-1.63
Asian Pacific American	0.7989	1.97*
Subcontinent Asian American	-3.4249	-3.75*
Hispanic American	-0.4811	-1.39
Native American	0.6531	1.13
Other minority group	-0.8088	-1.42
Female	-0.4194	-3.87*

Note:*Significant at 95% confidence level.

Source Mason Tillman Research & Consulting based on analysis of 2000 Census Public Use Microdata Sample.

The data were insufficient to conduct separate analyses for the construction or engineering industries.

Business Earnings

Ordinary least squares regression was used to analyze the 2000 PUMS data to look for disparities in business earnings after controlling for non-discriminatory factors. The model of business owner earnings in Davenport included 9,883 observations. Business owners reporting negative business earnings were excluded. The data were insufficient to conduct separate analyses for the construction or engineering industries.

The dependent variable in this model is business earnings; using the natural log of mathematical transformation of business earnings lessens the effect of distortion of the model by the outliers. The independent variables are those from the PUMS data considered likely to affect earnings potential – including age, age-squared, marital status, ability to speak English very well, disability condition and educational attainment.

Results for Davenport, Iowa. The results of the ordinary least squares regression model of business earnings in Davenport, Iowa are shown in Figure A-2 below. The model shows:

- Older business owners have higher earnings, but this marginal effect declines for the oldest individuals;
- Owners who are married tend to have higher business earnings; and
- Owners who are disabled tend to have lower business earnings; and
- Business owners with an advanced degree tend to have higher business earnings.

After adjusting for these non-discriminatory factors, female business owners continue to have significantly lower business earnings than their male counterparts.

**Figure A-2.
Davenport Business Owner Earnings Model**

Variable	Coefficient	t-statistic
Constant	-0.07278	-1.55
Age	0.01286	6.13
Age-squared	-0.00013	-6.02
Married	0.12030	5.95
Speak English Very Well	0.08023	1.68
Disabled	-0.05302	-2.32
Less than HS	-0.01768	-0.67
Some College	-0.03492	-1.54
Four Year Degree	-0.02171	-0.73
Advanced Degree	0.39550	9.21
African American	-0.03420	-0.90
Asian Pacific American	0.07063	0.90
Subcontinent Asian American	-0.18900	-1.03
Hispanic American	-0.07234	-1.44
Native American	0.09704	0.92
Other Minority Group	-0.09879	-1.42
Female	-0.07154	-4.43

Note:*Significant at 95% confidence level.

Source: Mason Tillman Research & Consulting, 2009 based on analysis of 2000 Census Public Use Microdata Sample.

The data were insufficient to conduct separate analyses for the construction or engineering industries

Likelihood of Business Loan Denial

Data from the 2003 National Survey of Small Business Finances (NSSBF) were used to examine access to business capital in the form of loans. The national sample included 7,640 firms that had applied for a loan in the North Eastern Central Region during the three years preceding the survey; the North Eastern Central Region included 3,260 such firms. This data shows that loan applications from firms owned by African Americans and women are more frequently denied than those from Caucasian male-owned firms.

A probit regression analysis was used to examine whether non-discriminatory factors might explain the higher rates of loan denials for some minority groups. This statistical model looks at a binary outcome, for example yes/no. The dependent variable collected by NSSBF aggregated all loans for the business into three categories: whether the loans were (1) “always approved”, (2) “sometimes approved and sometimes denied”, or (3) “always denied”. The probit regression model used these outcomes as ordered categories where for every observed value of the independent variable, there was a corresponding value for the dependent variable. Using this data, a binary comparison was performed: (category (1) vs. categories (2) + (3), category (2) vs. category (3)).

The independent variables describe four groups of factors:

- The owner’s credit and resources;
- The firm’s credit and financial health;
- The environment in which the firm and lender operate, and
- Owner’s minority group membership.

A large number of variables are required to control for differences in the non-discriminatory factors listed above. Ten variables are used to estimate the owners’ credit and resources, twenty-nine are used for the firm’s credit and financial health, and fifteen are needed for the environment in which the firm and lender operate.

The model could not be used for the North Eastern Central Region because it required several variables and the data set from the North Central Region did not contain enough data to perform the analysis. Therefore, the variables were fitted to a model using data from throughout the entire country. The focus on the North Eastern Central Region was achieved through the use of interaction terms; these added terms would identify any significant differences in the effects of race or gender between the national credit market and the North Eastern Central Region credit market.

Figure A-3 on the following page presents the coefficients and t-statistics from the probit model of load denials.

**Figure A-3.
Dependent Variable: Loan Approval**

Variable	Coefficient	t-statistic	Variable	Coefficient	t-statistic	Variable	Coefficient	t-statistic
Race/Ethnicity/Gender			Firm's Credit and Financial Health			Firm and Lender Environment and Loan Characteristics		
Constant								
-0.3753	-0.3753	0.31	D&B high risk	-0.5592	20.62*	Partnership	0.1418	0.39
Asian (including PI)	-0.1808	1.17	D&B significant risk	-0.3118	6.72*	S corporation	0.3212	2.39
African American	-1.3949	76.85*	D&B average risk	-0.2583	5.28*	C corporation	0.3173	2.11
Hispanic	-0.2030	1.90	D&B moderate risk	-0.0203	0.04	Construction	-0.2753	5.58*
Female	-0.1657	3.62	Total employees	0.0002	0.05	Manufacturing	0.1360	1.32
North East Central Region	-0.1234	0.94	% Principal owned	-0.0040	5.65*	Transportation	0.4545	3.58
Asian in North East Central	4.5731	0	Family owned	-0.0600	0.31	Finance	-0.1136	0.42
Afr Am in North East Central	5.2105	0	Purchased	0.5738	31.94*	Services	0.1313	1.74
Hispanic in North East Central	4.1385	0	Inherited	0.5052	6.28*	Herf = .1 to .18	-0.3241	3.15
Female in North East Central	6.5658	0	Firm age	0.0102	4.18*	Herf = .18 or above	-0.3519	3.61
Owners' Credit and Resources			Firm has checking	0.5039	2.57	Capital lease applic	-9.1976	0
Age	0.0051	0.99	Firm has savings acct	0.3245	13.54*	Mortgage applic	-12.1642	0
Experience	-0.0004	0.01	Firm has line of credit	0.6796	85.96*	Vehicle loan applic	-9.5508	0
Less than High School education	6.0614	0	Existing capital leases	0.2041	4.12*	Equip loan applic	-10.0389	0
Some college	-0.1098	1.41	Existing bus mortgage	-0.2032	5.92*	Other loan applic	-9.2532	0
Four year degree	0.3689	4.35*	Existing vehicle loan	0.2955	14.74*			
Advanced degree	-0.1196	1.76	Existing equip loan	-0.0956	1.17			
Bankruptcy in past 7 years	-0.6897	5.02*	Existing stockholder	-0.1411	3.22			
Judgment against in past 3 yrs	-0.1604	0.82	Existing other loans	-0.2546	8.05*			
Log of net worth exc home	0.0692	1.97	Used trade credit	-0.2461	5.39*			
Negative worth indicator	0.6445	4.08*	Log of total sales	0.0246	0.02			
			Negative sales indic	5.3910	0			
			Log of cost doing bus.	0.1354	0.67			
			Log of total assets	0.0467	0.26			
			Negative assets indic	1.0369	3.42			
			Log of total equity	-0.0002	0			
			Negative equity indic	-0.2989	0.65			
			Firm bankruptcy p7Y	-0.8644	4.81*			
			Firm delinquency	-0.3147	13.03*			

Note:* Significant at 95% confidence level.

Source: Mason Tillman Associates, Ltd. analysis of 2003 NSSBF data.

The loan denial model indicates that a number of factors are significantly associated with the probability of loan denial. These include:

- Factors specific to the business owner, including whether or not the owner had a four-year college degree, been personally bankrupt within the past seven years, or had negative net worth;
- Factors related to the firm’s credit and financial health, including the firm’s credit rating, the method of acquisition of the business, or if the existence of loans and lines of credit for the firm. Firms with a bankruptcy in the past seven years or with delinquencies in business transactions were more likely to be denied.
- Some of the firm, lender and loan environment characteristics. Firms in the construction industry are more likely to have their loan applications denied than firms in other industries, but transportation firms were also likely to be denied. Firms in highly concentrated industry segments (as measured by the Herfindahl Index, a commonly accepted measure calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers) are more likely to be denied.

Nationwide, firms owned by African Americans and women remain significantly more likely to have their loans denied than other firms, even after accounting for the factors described above. Furthermore, the relationship between race or gender and loan denial is no different in the North Eastern Central Region than nationwide, as shown by the statistically insignificant interaction terms.

The same probit regression model was used to calculate a predicted rate of loan approvals among African American firms and compared it to the actual, observed mean probability of loan approval for the same group in the NSSBF data set. The results of the comparison are shown in Figure A-4 below.

**Figure A-4.
Comparison of Actual Loan Approval Rates to Simulated Loan Approval Rates Under Non-Hispanic, Caucasian Male Business Environment for African Americans**

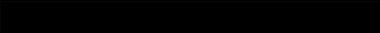
Group	Loan Approval Rates		Disparity Index (100 = parity)
	Actual	Benchmark	
African Americans	47.6%	64.7%	74

Source: Mason Tillman Research & Consulting analysis of 2003 NSSBF data.

These results indicated that African American firms that applied for loans were denied at a rate of nearly 48 percent, whereas the predicted rate from the model was nearly 35 percent if they were denied at the same rate as similarly situate firms owned by non-Hispanic, Caucasian males.

Conclusions

The regression analyses show that women and minority business owners face harsher business conditions than Caucasian male business owners. Asians and women are less likely to be self-employed, women-owned businesses have lower earnings, and African American business owners are more likely to be denied business loans even after accounting for factors such as type of business and age and experience of the owner. These analyses suggest that there are discriminatory factors in the market place that adversely effect women and minority business owners' access to the resources needed to form and grow businesses. Given these private sector findings there is a continued need for government to monitor business conditions for signs of discrimination.



APPENDIX B

The U.S. Department of Transportation (USDOT) regulations are set forth at 49 CFR Part 26. Their main components are as follows:

1. Goal Setting

Section 26.45 lays out a two-step process for setting goals. Step 1 is establishing a base figure for DBE availability. It specifies three examples: DBE Directories and Census Bureau Data; Bidders List; and Disparity Study Data (but see *Western States Paving*). Step 2 is an adjustment of that base figure if there is evidence available in the jurisdiction that supports one.

2. 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 26 except, “in limited and extreme circumstances when no other method could be reasonably expected to address egregious instances of discrimination.”



3. 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.

4. 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.

5. 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 rule making that establish this part.”

