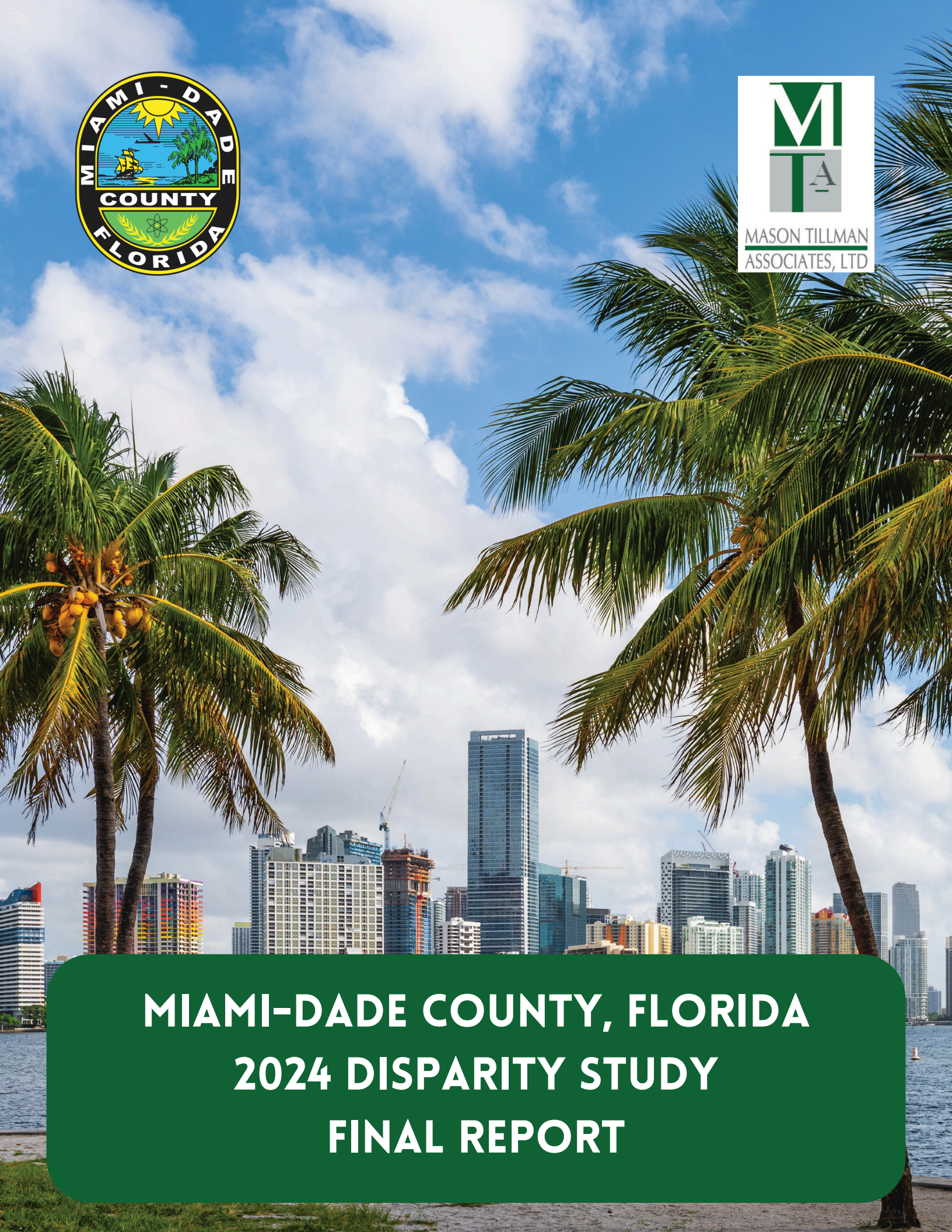

MIAMI-DADE COUNTY, FLORIDA
2024 DISPARITY STUDY
FINAL REPORT

MASON TILLMAN ASSOCIATES, LTD

Table of Contents

EXECUTIVE SUMMARY **1**

I. STUDY OVERVIEW **1**

A. Study Team 1

B. Purpose and Industries Studied 1

II. METHODOLOGY **2**

A. Legal Framework 2

B. Structure of the Report 4

III. NOTABLE FINDINGS **5**

A. Size of Contracts 5

B. Utilization Analysis 5

C. Market Area Analysis 6

D. Availability Analysis 7

E. Dollars Lost 7

IV. DISPARITY FINDINGS **8**

A. Prime Contracts 8

B. Subcontracts 11

V. SMALL BUSINESS PROGRAM EFFICACY **12**

VI. ECONOMIC IMPACT OF THE DISPARITY FROM 2007 TO 2024 ..... **13**

VII. ANECDOTAL ANALYSIS **14**

VIII. RECOMMENDATIONS **14**

A. Race and Gender-Conscious Recommendations 15

B. Race and Gender-Neutral Recommendations 16

C. Legislative Recommendations 17

List of Tables

TABLE 1: SUMMARY OF PRIME CONTRACTS ANALYZED 6

TABLE 2: SUMMARY OF SUBCONTRACTOR UTILIZATION AND AWARDS BY ETHNIC GROUP 6

TABLE 3: PRIME CONTRACTOR AVAILABILITY BY INDUSTRY 7

TABLE 4: SUBCONTRACTOR AVAILABILITY BY INDUSTRY 7

TABLE 5: DISPARITY SUMMARY: CONSTRUCTION PRIME CONTRACT DOLLARS 8

TABLE 6: DISPARITY SUMMARY: ARCHITECTURE AND ENGINEERING PRIME CONTRACT DOLLARS 9

TABLE 7: DISPARITY SUMMARY: PROFESSIONAL AND OTHER SERVICES PRIME CONTRACT DOLLARS 10

TABLE 8: DISPARITY SUMMARY: GOODS AND SERVICES PRIME CONTRACT DOLLARS 10

TABLE 9: SUBCONTRACT DISPARITY SUMMARY 11

TABLE 10: DISPARITY FINDINGS: ALL PRIME CONTRACTS COMPARED TO 13

TABLE 11: M/WBE PRIME DOLLARS LOST 2007 TO 2021 14

Executive Summary

I. Study Overview

A. Study Team

Mason Tillman Associates, Ltd., a public policy consulting firm headquartered in Oakland, California, performed the 2024 Miami-Dade County, Florida Disparity Study. A local subconsultant— Anderson & Associates, P.A.—assisted Mason Tillman in the performance of the Study.

B. Purpose and Industries Studied

The purpose of the Study was to determine if minority and woman-owned business enterprises (M/WBEs) were underutilized in the award of the County's prime contracts and subcontracts during the November 1, 2018, to October 31, 2021, study period despite the County's robust race-neutral Small Business Enterprise Program (SBE Program). The County's contracts were classified into four industries—construction, architecture and engineering, professional and other services, and goods and services. The industries in the Study include the following:

- **Construction**: building, renovating, retrofitting, rehabilitating, restoration, painting, altering, and repairing or improving public buildings, roads, parks, and docks.

- **Architecture and Engineering**: professional architecture, engineering, landscape architecture, design, construction management, construction inspection services, land surveying, project estimating services, and mapping services.

- **Professional and Other Services**: consulting, research, auditing, legal, accounting, appraisal, software design and implementation, professional translation, facility management, and other similar services.

- **Goods and Services**: supplies, materials, commodities, equipment, and non-technical services.



II. Methodology

A. Legal Framework

The *City of Richmond v. J.A. Croson Co.*[1] (*Croson)* and its progeny provided the legal framework for conducting an Availability/Disparity Study. Specifically, two United States Supreme Court decisions, *Croson* and *Adarand v. Pena*[2] *(Adarand)*, raised the standard by which federal courts review both local minority and federal disadvantaged business enterprise public contracting programs.

The City of Richmond, Virginia, implemented a plan requiring prime contractors on City construction contracts to meet a 30% subcontracting goal with minority businesses. This goal was based on a statistical study demonstrating that while 50 percent of the City's population was African American, their utilization in the City's prime construction contracts was only 0.67 percent.

The plaintiff, J.A. Croson, Inc., was denied a waiver of this goal and subsequently challenged the City's plan under 42 U.S.C. § 1983, arguing that it was unconstitutional under the Fourteenth Amendment's Equal Protection Clause. The Supreme Court determined that programs employing racial classifications are subject to "strict scrutiny," the highest legal standard of review and ruled that the City of Richmond's contracting program was unconstitutional.

The *Croson* decision allows agencies like the County to implement race-conscious programs if they show a compelling interest via statistically significant disparities with remedies narrowly tailored. A gross statistical disparity can serve as *prima facie* evidence of discrimination. This analysis was applied to Minority/Women Business Enterprise (M/WBE) and Disadvantaged Business Enterprise contracting by ethnicity and gender in the relevant industry.

Adarand, which the United States Supreme Court decided in 1995, directly challenged the USDOT's Disadvantaged Business Enterprise (DBE) Program as set forth in statute and regulations. The Court found a compelling interest for the USDOT DBE Program but ruled, after applying the *Croson* "strict scrutiny" standard, that the DBE Program was not narrowly tailored. In response, the USDOT amended its regulations in 1999 to include goals which can be met by race-neutral and race-specific means.



[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).

Following *Adarand*, there were several circuit court cases which challenged the constitutionality of the USDOT DBE regulations.[3] Until the 2005 Ninth Circuit Court of Appeals decision in *Western States Paving Co. v. State of Washington Dept. of Transportation*[4] (*Western States*), the challenges had been unsuccessful. However, *Western States* found that the State of Washington's DBE Program was facially constitutional, but determined the State's application of the regulations was invalid because it was not narrowly tailored to a finding of statistically significant underutilization of the respective minority groups.

The following critical components were performed for the County's Disparity Study:

Disparity Study

Critical Components

1. Legal Framework
2. Utilization Analysis
3. Market Area Analysis
4. Availability Analysis
5. Disparity Analysis
6. Anecdotal Analysis
7. Recommendations
8. Regression Analysis

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 County used M/WBEs to secure its needed goods and services. Utilization records were also used to determine the geographical area in which companies that received the County's prime contracts were located. In **step three**, the County's market area was identified. Once the market area was defined, the **fourth step**, the availability analysis, identified businesses willing and able to provide the goods and services needed by the County. In the **fifth step**, a disparity analysis was performed to determine whether there was a statistically significant underutilization of M/WBEs. In **step six**, the anecdotal analysis, experiences of business owners in the market area were collected. In **step seven**, the statistical and anecdotal analyses were reviewed, and recommendations were written to enhance the County's efforts in contracting with M/WBEs. Additionally, **a regression analysis** was conducted to determine if factors other than discrimination could account for any statistically significant disparity.

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[3] *Sherbrooke Turf Inc. v. Minnesota Department of Transportation*, 345 F3d 964, 969-73 (8th Cir 2003); *Gross Seed Co. v. Nebraska Department of Roads*, 345 F.3d 964 (8th Cir. 2003); *Western States Paving Co. v. State of Washington Dept. of Transportation*, 407 F. 3d 983 (9th Cir. 2005); *Northern Contracting Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (2007).

[4] *Western States,* 407 F. 3d 983 (9th Cir. 2005)

B. Structure of the Report

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

1. Overview of the Disparity Study Report

a. *Chapter 1: Legal Review* presents the case law applicable to business affirmative action programs and the methodology based on those cases required for the Study.

b. *Chapter 2: Prime Contractor Utilization Analysis* presents the distribution of prime contracts by industry, ethnicity, and gender.

c. *Chapter 3: Subcontractor Utilization Analysis* presents the distribution of subcontracts by industry, ethnicity, and gender.

d. *Chapter 4: Market Area Analysis* presents the legal basis for geographical market area determination and defines the County's market area.

e. *Chapter 5: Prime Contractor and Subcontractor Analysis* presents the distribution of available businesses in the County's market area.

f. *Chapter 6: Prime Contract Disparity Analysis* presents prime contractor utilization as compared to prime contractor availability by ethnicity, gender, and industry and evaluates the statistical significance of any underutilization.

g. *Chapter 7: Subcontract Disparity Analysis* presents subcontractor utilization as compared to subcontractor availability by ethnicity, gender, and industry and evaluates the statistical significance of any underutilization.

h. *Chapter 8: Regression Analysis* presents an examination of private sector economic indicators of discrimination in the County's market area which could impact M/WBE formation and development.

i. *Chapter 9: Anecdotal Analysis* presents the business community's perceptions of barriers and exemplary practices encountered in contracting or attempting to contract with the County.

j. *Chapter 10: Recommendations* presents race and gender-neutral remedies to enhance the County's M/WBE Program and contracting with M/WBEs and other small businesses.

III. Notable Findings

A. Size of Contracts

Most County contracts are small. When the County's contracts were ordered by the size of the award to determine the distribution of the awarded contracts, approximately 53.43% of the prime contracts awarded were less than $100,000. Additionally, 71.88% were less than $250,000; 80.40% were less than $500,000; 87.96% were less than $1,000,000; and 94.46% were less than $3,000,000. Only 5.54% of the prime contracts awarded were valued at $3,000,000 and greater. The purpose of this distribution is to gauge the capacity required to perform the County's contracts.

The size of the County's prime contracts is a determinant of the capacity that a willing business needs to compete at the prime contract level. The fact that 53.43% are less than $100,000 illustrates that the capacity needed to perform a significant number of the County's contracts is not considerable.

B. Utilization Analysis

The County's utilization of M/WBE and non-M/WBE prime contractors and subcontractors by ethnicity, gender, and industry for the study period was documented. Over 70% of the prime contract dollars were awarded to 35 prime contractors. Thus, the majority of the subcontracts were awarded by the 35 highly used prime contractors.

1. Prime Contractor Utilization

The County issued 3,955 prime contracts from November 1, 2018, to October 31, 2021. These 3,955 prime contracts included outliers. These large contracts were excluded from the statistical analysis of disparity to avoid skewing the findings.

The 3,955 prime contracts awarded included 2,102 construction, 728 architecture and engineering, 160 professional and other services, and 965 goods and services contracts. The payments made by the County during the study period totaled $4,225,842,104 for all 3,955 prime contracts. Payments included $2,099,258,723 for construction, $566,799,944 for architecture and engineering, $368,383,991 for professional and other services, and $1,201,399,446 for goods and services.

Table 1 summarizes prime contractor utilization by industry and the percentage of dollars awarded by ethnicity and gender.



Table 1: Summary of Prime Contracts Analyzed

Ethnicity	Construction	Architecture and Engineering	Professional and Other Services	Goods and Services
African Americans	0.96%	1.14%	1.09%	3.15%
Asian Americans	0.90%	0.84%	0.43%	3.71%
Hispanic Americans	30.66%	53.79%	9.33%	16.63%
Native Americans	0.00%	0.00%	0.00%	0.71%
Caucasian Females	0.19%	12.47%	9.57%	3.18%
Non-minority Males	67.29%	31.76%	79.58%	72.62%

2. Subcontractor Utilization Analysis

The subcontractor data collection process included four steps: (1) extraction of data from B2Gnow, the County's web-based business management workforce system used to track and report subcontract award and payment information, (2) collection of data from County project managers, (3) research of prime contract documents in SharePoint, and (4) an expenditure survey of prime contractors and collection of payment information from the subcontractors.

The multi-phased effort to collect the subcontracts awarded during the study period identified 2,340 construction, architecture and engineering, and professional and other services subcontracts. These subcontract data collection efforts produced a significant dataset and allowed for an analysis of the statistical significance of the subcontracts awarded to each ethnic and gender group.

Table 2 summarizes by industry the subcontractor utilization by the percentage of dollars awarded by ethnicity and gender.

Table 2: Summary of Subcontractor Utilization and Awards by Ethnic Group

Ethnicity	Construction	Architecture and Engineering	Professional and Other Services
African Americans	3.34%	8.32%	7.89%
Asian Americans	1.91%	2.41%	20.84%
Hispanic Americans	40.11%	57.72%	57.13%
Native Americans	0.00%	0.00%	0.00%
Caucasian Females	3.15%	4.96%	2.96%
Non-minority Males	51.49%	26.59%	11.18%

C. Market Area Analysis

Although *Croson* and its progeny do not provide a bright line rule for delineating the local market area, taken collectively, the case law supports a definition of the market area as the geographical boundaries of the government entity. Given the case law and the findings, the Study's market area is determined to be the geographical boundaries of Miami-Dade County, Florida. It is within the market area that the available businesses were identified.

D. Availability Analysis

To identify willing businesses in the County that provide the construction, architecture and engineering, professional and other services, and goods and services the County procures, four main sources of information were used: (1) the County's records, including pre-qualified firms, (2) government certification directories, (3) business and trade association membership lists, and (4) business surveys. Additionally, unique businesses were identified from the list of anecdotal interviewees. Only businesses from these sources determined to be willing and able were added to the availability list. If a business was willing and able to perform work or provide goods in more than one industry, it was listed in each industry.

Table 3 presents prime contractor availability according to ethnicity, gender, and industry.

Table 3: Prime Contractor Availability by Industry

Ethnicity	Construction	Architecture and Engineering	Professional and Other Services	Goods and Services
African Americans	12.03%	7.96%	25.37%	16.02%
Asian Americans	1.26%	5.09%	2.36%	2.03%
Hispanic Americans	65.18%	55.09%	42.48%	48.58%
Native Americans	0.10%	0.00%	0.00%	0.10%
Caucasian Females	3.49%	4.87%	7.67%	7.51%
Non-minority Males	17.94%	26.99%	22.12%	25.76%

Table 4 presents subcontractor availability according to ethnicity, gender, and industry.

Table 4: Subcontractor Availability by Industry

Ethnicity	Construction	Architecture and Engineering
African Americans	13.76%	13.71%
Asian Americans	2.37%	2.58%
Hispanic Americans	58.43%	58.40%
Native Americans	0.09%	0.05%
Caucasian Females	5.00%	4.97%
Non-minority Males	20.35%	20.30%

E. Dollars Lost

The cumulative direct economic impact of nearly 15 years of unmitigated systemic discrimination, when defined in contract dollars lost, portrays the staggering cost to these business communities. While the dollars lost cannot be recovered, the procurement policies and practices that created the loss can be corrected so that the damage does not persist.



IV. Disparity Findings

A disparity analysis was undertaken on all prime contracts and subcontracts awarded during the study period. Disparity was found at both the prime contract and subcontract levels for most ethnic and gender groups.

A. Prime Contracts

1. Construction Prime Contracts

Disparity was found for African American, Caucasian female, and Woman Business Enterprise prime contractors on construction prime contracts valued between $25,000 and $1,960,000. Minority female prime contractors were underutilized on these contracts, although the underutilization was not statistically significant.[5] There were insufficient data to determine the statistical significance of the underutilization of Asian American prime contractors on informal construction prime contracts and Native American prime contractors on both informal and formal construction prime contracts.

Table 5: Disparity Summary: Construction Prime Contract Dollars

Ethnicity/Gender	Construction	
	Contracts Valued at $25,000 and under	Contracts Valued between $25,000 and $1,960,000
African Americans	No Disparity	*Disparity*
Asian Americans	Insufficient Data	No Disparity
Hispanic Americans	No Disparity	No Disparity
Native Americans	Insufficient Data	Insufficient Data
Caucasian Females	No Disparity	*Disparity*
Minority Females	No Disparity	Underutilization
Minority Business Enterprises	No Disparity	No Disparity
Women Business Enterprises	No Disparity	*Disparity*

2. Architecture and Engineering Prime Contracts

As indicated in Table 6, there was not enough data to conduct a meaningful analysis for architecture and engineering contracts valued at $25,000 and under. Disparity was found for African American, Hispanic American, minority female, minority business enterprise, and woman business enterprise

[5] Women-owned businesses are subject to a strict scrutiny test, thus the only application of gender-based remedies only requires the group to be underutilized.

prime contractors on architecture and engineering contracts valued between $25,000 and $850,000. Caucasian female prime contractors were underutilized on these contracts, although the underutilization was not statistically significant. There were insufficient data to determine the statistical significance of the underutilization of Native American prime contractors on formal architecture and engineering prime contracts.

Table 6: Disparity Summary: Architecture and Engineering Prime Contract Dollars

Ethnicity/Gender	Architecture and Engineering	
	Contracts Valued at $25,000 and under	Contracts Valued between $25,000 and $850,000
African Americans	There were too few contracts and dollars to conduct an analysis.	*Disparity*
Asian Americans		No Disparity
Hispanic Americans		*Disparity*
Native Americans		Insufficient Data
Caucasian Females		Underutilization
Minority Females		*Disparity*
Minority Business Enterprises		*Disparity*
Women Business Enterprises		*Disparity*

3. Professional and Other Services Prime Contracts

As indicated in Table 7, there was not enough data to conduct a meaningful analysis for professional and other services contracts valued at $25,000 and under. Disparity was found for African American, Hispanic American, minority female, MBE and WBE prime contractors on professional and other services contracts valued between $25,000 and $2,570,000. Caucasian female prime contractors were underutilized on these contracts, although the underutilization was not statistically significant. There were insufficient data to determine the statistical significance of the underutilization of Native American prime contractors on formal professional and other services prime contracts.

Table 7: Disparity Summary: Professional and Other Services Prime Contract Dollars

Ethnicity/Gender	Professional and Other Services	
	Contracts Valued at $25,000 and under	Contracts Valued between $25,000 and $2,570,000
African Americans	There were too few contracts and dollars to conduct an analysis.	*Disparity*
Asian Americans		No Disparity
Hispanic Americans		*Disparity*
Native Americans		Insufficient Data
Caucasian Females		Underutilization
Minority Females		*Disparity*
Minority Business Enterprises		*Disparity*
Women Business Enterprises		*Disparity*

4. Goods and Services Prime Contracts

As indicated in Table 8, disparity was found for African American, Hispanic American, Minority Female, MBE, and WBE prime contractors on both informal and formal goods and services contracts. Caucasian female prime contractors were underutilized on goods and services prime contracts valued between $25,000 and $1,740,000, although the underutilization was not statistically significant. There were insufficient data to determine the statistical significance of the underutilization of Native American prime contractors on both informal and formal goods and services prime contracts.

Table 8: Disparity Summary: Goods and Services Prime Contract Dollars

Ethnicity/Gender	Goods and Services	
	Contracts Valued at $25,000 and under	Contracts Valued between $25,000 and $1,740,000
African Americans	*Disparity*	*Disparity*
Asian Americans	No Disparity	No Disparity
Hispanic Americans	*Disparity*	*Disparity*
Native Americans	Insufficient Data	Insufficient Data
Caucasian Females	No Disparity	Underutilization
Minority Females	*Disparity*	*Disparity*
Minority Business Enterprises	*Disparity*	*Disparity*
Women Business Enterprises	*Disparity*	*Disparity*

B. Subcontracts

As listed in Table 9, statistically significant disparity was found for African American, Hispanic American, Minority Female, MBE, and WBE subcontractors in the award of construction subcontracts. Statistically significant disparity was also found for African American, Minority Female, and WBE subcontractors in the award of architecture and engineering subcontracts. Caucasian Females were underutilized for both construction and architecture and engineering subcontracts, although not at a statistically significant level. There were insufficient data to determine the statistical significance of the utilization of Native American subcontractors in the award of construction and architecture and engineering subcontracts.

Table 9: Subcontract Disparity Summary

Ethnicity/Gender	Construction	Architecture and Engineering
African Americans	*Disparity*	*Disparity*
Asian- Americans	No Disparity	No Disparity
Hispanic Americans	*Disparity*	No Disparity
Native Americans	Insufficient Data	Insufficient Data
Caucasian Females	Underutilization	Underutilization
Minority Females	*Disparity*	*Disparity*
Minority Business Enterprises	*Disparity*	No Disparity
Woman Business Enterprises	*Disparity*	*Disparity*

In each industry, the subcontractor selection is the decision of the prime contractor. During the study period, $1,451,755,155 construction prime contract dollars were awarded to 17 prime contractors, and $388,957,824 of the architecture prime contract dollars were awarded to 18 prime contractors. The 35 highly used prime contractors received 70 percent of the contract dollars awarded in the two industries and therefore selected the contractors who received most of the subcontract dollars.

The data shows that in the award of construction and architecture and engineering subcontracts, the prime contractors discriminated against African Americans, minority females, and woman businesses. The construction prime contractors also discriminated against Hispanic American businesses. It is notable that most of the subcontracts were awarded by the 35 prime contractors who controlled 70% of the prime contract dollars.

Croson defines discrimination as the statistically significant disparity in the award of a government's prime contracts or its prime contractors award of subcontracts. According to the law, the disparity created by County decisions is active discrimination, and the finding of statistically significant disparity in the prime contractors' award of subcontracts is passive discrimination. In

either instance, it is the government's responsibility to rectify the conditions and ensure its prime contractors and subcontractors are awarded in a fair and unbiased manner. A procurement process administered in a fair and equitable manner should foster neither active nor passive discrimination in the award of the County's contracts.

V. Small Business Program Efficacy

Following the completion of the 2015 Disparity Study, which documented both active and passive discrimination in the award of contracts to M/WBEs by the County and its prime contractors, the County implemented numerous enhancements to their Small Business Enterprise Program. The enhancements were designed to address and eliminate the documented M/WBE disparity.

The enhanced SBE Program was staffed with experienced professionals with the skills, knowledge, and authority to implement the program. The program had 33 components which were both broad-based and comprehensive. SBE goals were authorized on prime contracts, and compliance was monitored and reported. The expectation was that the SBE Program would ensure prime contracts and subcontracts would be awarded to businesses owned by minorities and women at a level commensurate with their availability to perform County contracts. It was also anticipated that the SBE requirements would ensure that all County prime contract and subcontract awards were made in a fair and equitable manner, and the percentage of the County's dollars spent with M/WBEs would mirror their ethnic and gender composition in the pool of available County businesses. Consequently, the SBE Program would eliminate the M/WBE disparity documented in the 2015 Disparity Study.

The data indicates that the assumption was false. The data in this 2024 Disparity Study not only documents the perpetuation of the disparity documented in the 2015 Disparity Study, but also provides evidence that the majority of the awards to SBE-certified businesses during the 2018 to 2023 study period were made to SBE-certified non-M/WBEs, even though the population of certified SBEs was predominantly M/WBEs.

Table 10 depicts the disparity by ethnicity and gender of the contracts awarded to all prime contractors compared to the contracts awarded to certified SBEs.



Table 10: Disparity Findings: All Prime Contracts Compared to Contracts Awarded to SBEs

Ethnicity/Gender	All Prime Contracts Awarded	Prime Contracts Only Awarded to SBEs
African Americans	*Disparity*	*Disparity*
Asian Americans	*Disparity*	No Disparity
Hispanic Americans	*Disparity*	No Disparity
Native Americans	Insufficient Data	Insufficient Data
Caucasian Females	*Disparity*	Underutilized
Minority Females	*Disparity*	No Disparity
Minority Business Enterprises	*Disparity*	No Disparity
Woman Business Enterprises	*Disparity*	No Disparity

VI. Economic Impact of the Disparity from 2007 to 2024

The direct economic impact of discrimination against African American, Hispanic American, Minority Women, Women Business Enterprises, and Minority Businesses Enterprises across all industries between 2007 and 2024 can be measured as the contract dollars these businesses did not receive due to the County's procurement practices. The 2015 and 2024 disparity studies document the fact that African American, Hispanic American, Native American, and Caucasian Female businesses received fewer contract dollars than expected given their availability in the market area. Table 11 illustrates the dollars each ethnic group lost due to the discrimination documented over a nearly two-decade period.



Table 11: M/WBE Prime Dollars Lost 2007 to 2021

ETHNICITY	DOLLARS EXPECTED	DOLLARS AWARDED	DOLLARS LOST
African Americans	$119,207,775	$53,243,009	$65,964,765
Asian Americans	$14,340,183	$22,400,501	-$8,060,317
Hispanic Americans	$482,420,446	$405,158,564	$77,261,882
Native Americans	$629,767	$0	$629,767
Caucasian Females	$45,630,750	$29,403,613	$16,227,137

Although the indirect impact from this loss is not measured in this study, the underutilization of these groups no doubt depressed the rate of their business formation and growth. The fact that the County was both an active and passive participant in the discrimination that resulted in the dollars M/WBEs lost over an extended period, is egregious. Given this extended history of prime contractor and subcontractor discrimination, this 2024 Disparity Study offers a number of race and gender-specific and race and gender-neutral recommendations for the County to employ in order to eliminate the discrimination in the award of both its prime contracts and subcontracts.

VII. Anecdotal Analysis

Evidence of the discrimination documented in the statistical analysis is described in the anecdotal testimony. Business accounts of the effort to do business with the County and its prime contractors were gathered through 40 one-on-one interviews. The interviews were conducted by telephone with small business owners certified as Small Business Enterprises under the County's Small Business Enterprise Program and/or participants in the Equitable Distribution Program. These accounts describe the process for acquiring a government contract, benefits and limitations of SBE certification, common barriers within the procurement and contracting processes, perceptions of opportunities within the Miami-Dade County market area, experiences doing business in the market area, and recommendations for improvement.

The number of interviewees represented in each procurement area is as follows: 14 architectural and engineering, 11 construction, eight goods and services, and seven professional and other services. All interviewees worked on County contracts during the study period of 2018 to 2021.

VIII. Recommendations

These recommendations address the statistical findings documenting the disparity in the County's award of prime contracts and subcontracts to M/WBEs and SBEs. These statistical findings were derived from an analysis of the contracts awarded during the period when the County had a robust, race-neutral SBE Program.



A. Race and Gender-Conscious Recommendations

The County has a compelling interest in implementing a legally sound race-based contracting program given the evidence that the best-efforts requirement to use certified M/WBEs has not achieved equity in contracting for either minority or woman-owned businesses at the prime contract or the subcontract level. Narrowly tailored bid discounts and evaluation points are recommended to address the documented statistically significant disparity at the prime contract level. At the subcontract level, goals are recommended to be applied to prime contracts.

- Prime contract race and gender-conscious remedies include:
  - Apply bid discounts to construction prime contracts.
  - Apply bid discounts to goods and services prime contracts.
  - Apply evaluation points to professional and other services prime contracts.
  - Apply evaluation points to architecture and engineering prime contracts.

- Subcontract remedy

- M/WBE policy recommendations:
  - Expand the *Program Manual* to include an M/WBE component.
  - Update the *Procurement Policy Manual* to incorporate provisions in the new ordinance.
  - Define M/WBE eligibility standards for:
    - Minority-owned business enterprise.
    - Woman-owned business enterprise
    - Business location
  - Establish race and gender-specific prime contract remedies:
    - Bid discounts on construction and goods and services prime contracts.
    - Evaluation points on architecture and engineering and professional and other services prime contracts.
    - Subcontracting goals on construction prime contracts.
  - Require subcontract goal attainment at bid opening.
  - Quantify good faith effort criteria:
    - Advertise solicitation (5 points).
    - Outreach to identify M/WBEs (15 points).
    - Attend the pre-bid meeting (5 points).
    - Provide timely written notification (30 points).
    - Follow-up with subcontractors (10 points).
    - Identify items of work (10 points).
    - Negotiate in good faith (15 points).
    - Offer assistance to secure financing, bonding, insurance, or mentoring (10 points).
  - Verify commercially useful function.
  - Require a subcontractor utilization plan with bids and proposals.
  - Require approval to substitute listed M/WBE subcontractors.
  - Assess penalties for failure to achieve M.WBE subcontract goals during the contract.
  - Require diversity on the proposal evaluation committees.

- Review professional service selection panel process.
- Establish M/WBE certification program.
  - Provide pre-application training sessions for businesses.
- Implement routine training for certification staff.

B. Race and Gender-Neutral Recommendations

The following are race and gender-neutral recommendations to improve procurement policies and practices and diversify the pool of companies doing business with the County.

- Enhance the SBE Program:
  - Review small business size standard.

- Conduct outreach to announce program modifications.

- Establish a Service-Disabled Veteran-Owned Business (SDVOB) Program:
  - Initiate a campaign to increase the number of County-based certified SDVOBs.
  - Recruit certification applications from County-based SDVOBs certified with the United States SBA to augment the number of Miami-Dade County SDVOB businesses in the Florida State Service-Disabled Veteran-Owned Business Directory.
  - Mandate SDVOB goals on all solicitations for construction and professional and other services solicitations.
  - Require goal attainment as a condition of a responsive and responsible bid.
  - Track and monitor compliance on all prime contracts and subcontracts.
  - Require departments to publish a list of contracts set aside for SDVOBs on a semi-annual basis.
  - Report SDVOB participation quarterly by ethnicity, gender, and department.

- Reevaluate the use of bundled contracts.

- Broaden the solicitation notification criteria.

- Develop a contract opportunities forecast.
- Analyze projects for opportunities to meet program goals.

- Provide debriefing sessions for unsuccessful bidders.

- Publish prime contractor payments.

- Apply a Diversity, Equity, and Inclusion (DEI) lens to the procurement and contracting process.

- Publish program accomplishments.

C. Legislative Recommendations

Creating an M/WBE Program will require adopting the Study and enacting new legislation with the requirements described herein. In five years, the County should re-examine the effectiveness of its policies. The assessment should determine if the statistical disparity has been eliminated by applying M/WBE requirements on prime contracts and whether administrative barriers to contracting with M/WBEs have been removed from the procurement and contracting policy and practices.



TABLE OF CONTENTS

CHAPTER 1: LEGAL REVIEW 1-1

I. INTRODUCTION 1-1

II. STANDARD OF REVIEW 1-5

Race-and Gender-Conscious Programs 1-5

Burden of Proof 1-6

Strong Basis in Evidence 1-6

Ultimate Burden of Proof 1-7

III. CROSON EVIDENTIARY FRAMEWORK 1-8

Active or Passive Discrimination 1-8

Establishing Systemic Discriminatory Exclusion 1-12

Anecdotal Evidence 1-20

Remedial Statutory Scheme 1-25

IV. CONSIDERATION OF RACE-NEUTRAL OPTIONS 1-26

V. ELEVENTH CIRCUIT CASE LAW 1-28

Engineering Contractors Association v. Metropolitan Dade County 1-28

Hershell Gill Consulting Engineers, Inc. v. Miami Dade County 1-35

Mason Tillman's 2022 Disparity Study 1-37

VI. CONCLUSION 1-39

VII. LIST OF AUTHORITIES 1-40

CHAPTER 2: PRIME CONTRACTOR UTILIZATION ANALYSIS 2-1

I. INTRODUCTION 2-1

II. PRIME CONTRACT DATA SOURCES 2-3

III. THRESHOLDS FOR ANALYSIS 2-3

Informal Prime Contract Thresholds 2-4
Formal Prime Contract Thresholds Without Outliers 2-4
IV. PRIME CONTRACTOR UTILIZATION 2-5
All Prime Contractors 2-5
Distribution of Prime Contract Dollars 2-6
Highly Used Construction Prime Contractors 2-6
Highly Used Architecture and Engineering Prime Contractors 2-7
Highly Used Professional and Other Services Prime Contractors 2-8
Highly Used Goods and Services Prime Contractors 2-9
All Prime Contracts by Industry 2-10
Informal Prime Contracts by Industry 2-18
Formal Prime Contracts by Industry 2-26
V. SUMMARY 2-34
CHAPTER 3: SUBCONTRACTOR UTILIZATION ANALYSIS 3-1
I. INTRODUCTION 3-1
II. SUBCONTRACTOR DATA COLLECTION PROCESS 3-1
All Subcontracts 3-2
Subcontractor Utilization 3-3
III. SUMMARY 3-10
CHAPTER 4: MARKET AREA ANALYSIS 4-1
I. MARKET AREA DEFINITION 4-1
Legal Criteria for Geographic Market Area 4-1
Application of the Croson Standard 4-1

II. MARKET AREA ANALYSIS 4-4

Summary of the Distribution of All Prime Contracts Awarded 4-4

Distribution of Construction Prime Contracts 4-5

Distribution of Architecture and Engineering Prime Contracts 4-5

Distribution of Professional and Other Services Prime Contracts 4-6

Distribution of Goods and Services Prime Contracts 4-7

III. SUMMARY 4-8

CHAPTER 5: PRIME CONTRACTOR AND SUBCONTRACTOR AVAILABILITY ANALYSIS 5-1

I. INTRODUCTION 5-1

II. PRIME CONTRACTOR AVAILABILITY DATA SOURCES 5-1

Identification of Willing Businesses Within the Market Area 5-1

Prime Contractor Sources 5-2

Determination of Willingness 5-3

Distribution of Available Prime Contractors by Source, Ethnicity, and Gender 5-3

III. CAPACITY 5-6

Prime Contract Size Distribution 5-7

Largest M/WBE Prime Contracts Awarded by Industry 5-8

Frequency Distribution 5-9

Formal Contract Threshold Analysis 5-10

Business Capacity Assessment 5-10

IV. PRIME CONTRACTOR AVAILABILITY ANALYSIS 5-11

Construction Prime Contractor Availability 5-11

Architecture and Engineering Prime Contractor Availability 5-13

Professional and Other Services Prime Contractor Availability 5-15
Goods and Services Prime Contractor Availability 5-17
V. SUBCONTRACTOR AVAILABILITY ANALYSIS 5-19
Source of Willing and Able Subcontractors 5-19
Determination of Willingness and Capacity 5-19
Construction Subcontractor Availability 5-20
Architecture and Engineering Subcontractor Availability 5-22
Professional and Other Services Subcontractor Availability 5-24
VI. SUMMARY 5-26
CHAPTER 6: PRIME CONTRACT DISPARITY ANALYSIS 6-1
I. INTRODUCTION 6-1
II. DISPARITY ANALYSIS 6-2
Disparity Analysis: Informal Prime Contracts by Industry 6-4
Disparity Analysis: Formal Prime Contracts by Industry 6-10
III. DISPARITY ANALYSIS SUMMARY 6-22
Construction Prime Contracts 6-22
Architecture and Engineering Prime Contracts 6-23
Professional and Other Services Prime Contracts 6-24
Goods and Services Prime Contracts 6-25
CHAPTER 7: SUBCONTRACT DISPARITY ANALYSIS 7-1
I. INTRODUCTION 7-1
II. DISPARITY ANALYSIS 7-2
III. DISPARITY ANALYSIS: ALL SUBCONTRACTS BY INDUSTRY 7-3

Construction Subcontracts 7-3
Architecture and Engineering Subcontracts 7-6
Professional and Other Services Subcontracts 7-9
IV. SUBCONTRACT DISPARITY SUMMARY 7-12
CHAPTER 8: REGRESSION ANALYSIS 8-1
I. INTRODUCTION 8-1
II. LEGAL ANALYSIS 8-2
Passive Discrimination 8-2
Narrow Tailoring 8-2
Conclusion 8-4
III. REGRESSION ANALYSIS METHODOLOGY 8-4
IV. DATASETS ANALYZED 8-4
V. REGRESSION MODELS DEFINED 8-5
Business Ownership Analysis 8-5
The Earnings Disparity Analysis 8-6
VI. FINDINGS 8-7
Business Ownership Analysis 8-7
Business Ownership Analysis Conclusion 8-12
Business Earnings Analysis 8-12
Business Earnings Analysis Conclusion 8-17
VII. CONCLUSION 8-18
CHAPTER 9: ANECDOTAL ANALYSIS 9-1
I. INTRODUCTION 9-1

Anecdotal Evidence of Active and Passive Discrimination 9-1
Anecdotal Methodology 9-2
II. INTERVIEWS 9-3
III. ANECDOTAL FINDINGS 9-3
Bidding Process 9-3
SBE Certification Process 9-6
Access to Capital 9-7
Small Business Development Office 9-8
Legacy Contractors and "Good Old Boy" Networks 9-10
Delayed Payments 9-11
Contract Delays 9-14
Interactions with County Staff 9-14
Equitable Distribution Program 9-16
Lack of Adequate Contract Opportunities 9-18
Inadequate Contract Terms and Specifications 9-19
Unfair Business Practices 9-20
Perceptions of Discrimination 9-23
Effects of COVID-19 9-27
IV. SUMMARY 9-27
CHAPTER 10: RECOMMENDATIONS 10-1
I. INTRODUCTION 10-1
II. OVERVIEW OF THE SMALL BUSINESS ENTERPRISE PROGRAM 10-1
Eligibility for the Small Business Enterprise Program 10-2

Implementation of the Small Business Enterprise Program Components 10-2

III. EFFICACY OF THE SMALL BUSINESS PROGRAM 10-9

M/WBE Disparity Analysis Findings for 2024 Study 10-9

Disparity Analysis of M/WBE Certified-SBEs for the Study Period 2018 to 2023 10-17

A. Dollars Lost as a Direct Economic Impact 10-22

Prime Contract Race and Gender-Conscious Remedies 10-25

Subcontract Remedies 10-27

M/WBE Policy Recommendations 10-28

IV. RACE AND GENDER-NEUTRAL RECOMMENDATIONS 10-35

Race and Gender-Neutral Program Enhancements 10-35

Impact of COVID-19 on County Businesses 10-40

Data Management Enhancements 10-40

V. LEGISLATIVE RECOMMENDATIONS 10-41

List of Tables

TABLE 2.1: BUSINESS ETHNIC AND GENDER GROUP DEFINITIONS 2-2

TABLE 2.2: INFORMAL CONTRACT THRESHOLDS BY INDUSTRY 2-4

TABLE 2.3: FORMAL CONTRACT THRESHOLD BY INDUSTRY EXCLUDING OUTLIERS 2-5

TABLE 2.4: TOTAL PRIME CONTRACTS AND DOLLARS EXPENDED ALL INDUSTRIES, NOVEMBER 1, 2018 TO OCTOBER 31, 2021 2-5

TABLE 2.5: CONSTRUCTION PRIME CONTRACTS 2-6

TABLE 2.6: CONSTRUCTION PRIME CONTRACTS DISTRIBUTED BY NUMBER OF BUSINESSES 2-6

TABLE 2.7: MOST HIGHLY USED CONSTRUCTION PRIME CONTRACTORS 2-7

TABLE 2.8: ARCHITECTURE AND ENGINEERING PRIME CONTRACTS 2-7

TABLE 2.9: ARCHITECTURE AND ENGINEERING PRIME CONTRACTS DISTRIBUTED BY NUMBER OF BUSINESSES 2-7

TABLE 2.10: MOST HIGHLY USED ARCHITECTURE AND ENGINEERING PRIME CONTRACTORS 2-8

TABLE 2.11: PROFESSIONAL AND OTHER SERVICES PRIME CONTRACTS 2-8

TABLE 2.12: PROFESSIONAL AND OTHER SERVICES PRIME CONTRACTS DISTRIBUTED BY NUMBER OF BUSINESSES 2-8

TABLE 2.13: MOST HIGHLY USED PROFESSIONAL AND OTHER SERVICES PRIME CONTRACTORS. 2-9

TABLE 2.14: GOODS AND SERVICES PRIME CONTRACTS 2-9

TABLE 2.15: GOODS AND SERVICES PRIME CONTRACTS DISTRIBUTED BY NUMBER OF BUSINESSES 2-9

TABLE 2.16: MOST HIGHLY USED GOODS AND SERVICES PRIME CONTRACTORS 2-9

TABLE 2.17: CONSTRUCTION PRIME CONTRACT UTILIZATION: ALL CONTRACTS 2-11

TABLE 2.18: ARCHITECTURE AND ENGINEERING PRIME CONTRACT UTILIZATION: ALL CONTRACTS 2-13

TABLE 2.19: PROFESSIONAL AND OTHER SERVICES PRIME CONTRACT UTILIZATION: ALL CONTRACTS 2-15

TABLE 2.20: GOODS AND SERVICES PRIME CONTRACT UTILIZATION: ALL CONTRACTS 2-17

TABLE 2.21: CONSTRUCTION PRIME CONTRACT UTILIZATION: CONTRACTS VALUED AT $25,000 AND UNDER 2-19

TABLE 2.22: ARCHITECTURE AND ENGINEERING PRIME CONTRACT UTILIZATION: CONTRACTS VALUED AT $25,000 AND UNDER 2-21

TABLE 2.23: PROFESSIONAL AND OTHER SERVICES PRIME CONTRACT UTILIZATION: CONTRACTS VALUED AT $25,000 AND UNDER 2-23

TABLE 2.24: GOODS AND SERVICES PRIME CONTRACT UTILIZATION: CONTRACTS VALUED AT $25,000 AND UNDER 2-25

TABLE 2.25: CONSTRUCTION PRIME CONTRACT UTILIZATION: CONTRACTS VALUED BETWEEN $25,000 AND $1,960,000 2-27

TABLE 2.26: ARCHITECTURE AND ENGINEERING PRIME CONTRACT UTILIZATION: CONTRACTS VALUED BETWEEN $25,000 AND $850,000 2-29

TABLE 2.27: PROFESSIONAL AND OTHER SERVICES PRIME CONTRACT UTILIZATION: CONTRACTS VALUED BETWEEN $25,000 AND $2,570,000 2-31

TABLE 2.28: GOODS AND SERVICES PRIME CONTRACT UTILIZATION: CONTRACTS VALUED BETWEEN $25,000 AND $1,740,000 2-33

TABLE 3.1: ALL SUBCONTRACT AWARDS AND DOLLARS BY INDUSTRY 3-3

TABLE 3.2: CONSTRUCTION SUBCONTRACTOR UTILIZATION 3-5

TABLE 3.3: ARCHITECTURE AND ENGINEERING SUBCONTRACTOR UTILIZATION 3-7

TABLE 3.4: PROFESSIONAL AND OTHER SERVICES SUBCONTRACTOR UTILIZATION 3-9

TABLE 4.1: DISTRIBUTION OF ALL CONTRACTS AWARDED DURING THE STUDY PERIOD 4-4

TABLE 4.2: DISTRIBUTION OF CONSTRUCTION PRIME CONTRACTS 4-5

TABLE 4.3: DISTRIBUTION OF ARCHITECTURE AND ENGINEERING PRIME CONTRACTS 4-6

TABLE 4.4: DISTRIBUTION OF PROFESSIONAL AND OTHER SERVICES PRIME CONTRACTS 4-6

TABLE 4.5: DISTRIBUTION OF GOODS AND SERVICES PRIME CONTRACTS 4-7

TABLE 4.6: MIAMI-DADE COUNTY CONTRACT DISTRIBUTION 4-9

TABLE 5.1: PRIME CONTRACTOR AVAILABILITY DATA SOURCES 5-2

TABLE 5.2: DISTRIBUTION OF PRIME CONTRACTOR AVAILABILITY DATA SOURCES CONSTRUCTION 5-4

TABLE 5.3: DISTRIBUTION OF PRIME CONTRACTOR AVAILABILITY DATA SOURCES ARCHITECTURE AND ENGINEERING 5-4

TABLE 5.4: DISTRIBUTION OF PRIME CONTRACTOR AVAILABILITY DATA SOURCES PROFESSIONAL AND OTHER SERVICES 5-5

TABLE 5.5: DISTRIBUTION OF PRIME CONTRACTOR AVAILABILITY DATA SOURCES GOODS AND SERVICES 5-5

TABLE 5.6: ALL INDUSTRY CONTRACTS BY SIZE 5-7

TABLE 5.7: LARGEST PRIME CONTRACTS AWARDED TO M/WBES 5-9

TABLE 5.8: AVAILABLE CONSTRUCTION PRIME CONTRACTORS 5-12

TABLE 5.9: AVAILABLE ARCHITECTURE AND ENGINEERING PRIME CONTRACTORS 5-14

TABLE 5.10: AVAILABLE PROFESSIONAL AND OTHER SERVICES PRIME CONTRACTORS 5-16

TABLE 5.11: AVAILABLE GOODS AND SERVICES PRIME CONTRACTORS 5-18

TABLE 5.12: UNIQUE SUBCONTRACTOR AVAILABILITY DATA SOURCE 5-19

TABLE 5.13: AVAILABLE CONSTRUCTION SUBCONTRACTORS 5-21

TABLE 5.14: AVAILABLE ARCHITECTURE AND ENGINEERING SUBCONTRACTORS 5-23

TABLE 5.15: AVAILABLE PROFESSIONAL AND OTHER SERVICES SUBCONTRACTORS 5-25

TABLE 6.1: INFORMAL THRESHOLDS FOR ANALYSIS BY INDUSTRY 6-2

TABLE 6.2: FORMAL CONTRACT THRESHOLDS FOR ANALYSIS BY INDUSTRY 6-3

TABLE 6.3: STATISTICAL OUTCOME DESCRIPTIONS 6-3

TABLE 6.4: DISPARITY ANALYSIS: CONSTRUCTION PRIME CONTRACTS VALUED AT $25,000 AND UNDER 6-5

TABLE 6.5: DISPARITY ANALYSIS: GOODS AND SERVICES PRIME CONTRACTS VALUED AT $25,000 AND UNDER 6-8

TABLE 6.6: DISPARITY ANALYSIS: CONSTRUCTION PRIME CONTRACTS VALUED BETWEEN $25,000 AND $1,960,000 6-11

TABLE 6.7: DISPARITY ANALYSIS: ARCHITECTURE AND ENGINEERING PRIME CONTRACTS VALUED BETWEEN $25,000 AND $850,000 6-14



TABLE 6.8: DISPARITY ANALYSIS: PROFESSIONAL AND OTHER SERVICES PRIME CONTRACTS VALUED BETWEEN $25,000 AND $2,570,000 6-17

TABLE 6.9: DISPARITY ANALYSIS: GOODS AND SERVICES PRIME CONTRACTS VALUED BETWEEN $25,000 AND $1,740,000 6-20

TABLE 6.10: DISPARITY SUMMARY: CONSTRUCTION PRIME CONTRACT DOLLARS 6-22

TABLE 6.11: DISPARITY SUMMARY: ARCHITECTURE AND ENGINEERING PRIME CONTRACT DOLLARS 6-23

TABLE 6.12: DISPARITY SUMMARY: PROFESSIONAL AND OTHER SERVICES PRIME CONTRACT DOLLARS 6-24

TABLE 6.13: DISPARITY SUMMARY: GOODS AND SERVICES PRIME CONTRACT DOLLARS 6-25

TABLE 7.1: STATISTICAL OUTCOME DESCRIPTIONS 7-2

TABLE 7.2: DISPARITY ANALYSIS: CONSTRUCTION SUBCONTRACTS 7-4

TABLE 7.3: DISPARITY ANALYSIS: ARCHITECTURE AND ENGINEERING SUBCONTRACTS 7-7

TABLE 7.4: DISPARITY ANALYSIS: PROFESSIONAL AND OTHER SERVICES SUBCONTRACTS 7-10

TABLE 7.5: SUBCONTRACT DISPARITY SUMMARY 7-12

TABLE 8.1: UNEMPLOYMENT RATE BY ETHNICITY 8-5

TABLE 8.2: INDEPENDENT VARIABLES USED IN THE BUSINESS OWNERSHIP ANALYSIS 8-6

TABLE 8.3: INDEPENDENT VARIABLES USED FOR THE EARNINGS DISPARITY ANALYSIS 8-7

TABLE 8.4: CONSTRUCTION INDUSTRY LOGISTIC MODEL 8-8

TABLE 8.5: ARCHITECTURE AND ENGINEERING INDUSTRY LOGISTIC MODEL 8-9

TABLE 8.6: PROFESSIONAL AND OTHER SERVICES INDUSTRY LOGISTIC MODEL 8-10

TABLE 8.7: GOODS AND SERVICES INDUSTRY LOGISTIC MODEL 8-11

TABLE 8.8: STATISTICALLY SIGNIFICANT BUSINESS OWNERSHIP DISPARITIES 8-12

TABLE 8.9: CONSTRUCTION INDUSTRY OLS REGRESSION 8-13

TABLE 8.10: ARCHITECTURE AND ENGINEERING INDUSTRY OLS REGRESSION 8-14

TABLE 8.11: PROFESSIONAL AND OTHER SERVICES INDUSTRY OLS REGRESSION 8-15



TABLE 8.12: GOODS AND SERVICES INDUSTRY OLS REGRESSION 8-16

TABLE 8.13: STATISTICALLY SIGNIFICANT BUSINESS EARNINGS DISPARITIES 8-17

TABLE 10.1: TOTAL PRIME CONTRACTS AND DOLLARS EXPENDED 10-10

TABLE 10.2: INFORMAL CONTRACT THRESHOLDS BY INDUSTRY 10-11

TABLE 10.3: FORMAL CONTRACT THRESHOLDS BY INDUSTRY WITHOUT OUTLIERS 10-11

TABLE 10.4: DISPARITY FINDINGS, CONSTRUCTION PRIME CONTRACTS 10-12

TABLE 10.5: DISPARITY SUMMARY: ARCHITECTURE AND ENGINEERING PRIME CONTRACTS 10-13

TABLE 10.6: DISPARITY SUMMARY: PROFESSIONAL AND OTHER SERVICES PRIME CONTRACTS 10-14

TABLE 10.7: DISPARITY SUMMARY: GOODS AND SERVICES PRIME CONTRACTS 10-15

TABLE 10.8: SUBCONTRACT DISPARITY FINDINGS 10-16

TABLE 10.9: UTILIZATION OF AVAILABLE SBES 10-17

TABLE 10.10: UTILIZATION OF CERTIFIED SBES COMPARED TO NON-CERTIFIED BUSINESSES 10-18

TABLE 10.11: DISPARITY FINDINGS: ALL PRIME CONTRACTS COMPARED TO CONTRACTS AWARDED TO SBES 10-19

TABLE 10.12: SBE DISPARITY ANALYSIS BY ETHNICITY AND GENDER 10-20

TABLE 10.13: ALL INDUSTRIES PRIME CONTRACT DOLLARS, 2007 TO 2011 10-21

TABLE 10.14: CONSTRUCTION SUBCONTRACT DISPARITY 10-21

TABLE 10.15: PRIME DISPARITY FINDINGS FROM 2015 AND 2024 10-22

TABLE 10.16: TOTAL PRIME CONTRACT DOLLARS EXPECTED FROM 2007 TO 2021 10-23

TABLE 10.17: M/WBE DOLLARS LOST BY ETHNICITY 10-23

TABLE 10.18: M/WBE DOLLARS LOST BY INDUSTRY 10-23

TABLE 10.19: GROUPS ELIGIBLE FOR CONSTRUCTION BID DISCOUNTS 10-25

TABLE 10.20: GROUPS ELIGIBLE FOR GOODS AND SERVICES BID DISCOUNTS 10-26

TABLE 10.21: GROUPS ELIGIBLE FOR ARCHITECTURE AND ENGINEERING EVALUATION POINTS 10-26

TABLE 10.22: GROUPS ELIGIBLE FOR PROFESSIONAL AND OTHER SERVICES EVALUATION POINTS 10-26

TABLE 10.23: SUBCONTRACTOR AVAILABILITY FOR GROUPS WITH DISPARITY 10-27

TABLE 10.24: BUSINESS PROFILE BY ANNUAL REVENUE 10-36

List of Charts

CHART 5.1: ALL INDUSTRY CONTRACTS BY SIZE, NOVEMBER 1, 2018 TO OCTOBER 31, 2021 5-8

CHART 5.2: MEDIAN CONTRACT VALUE 5-9

CHART 6.1: DISPARITY ANALYSIS: CONSTRUCTION PRIME CONTRACTS VALUED AT $25,000 AND UNDER 6-6

CHART 6.2: DISPARITY ANALYSIS: GOODS AND SERVICES PRIME CONTRACTS VALUED AT $25,000 AND UNDER 6-9

CHART 6.3: DISPARITY ANALYSIS: CONSTRUCTION PRIME CONTRACTS VALUED BETWEEN $25,000 AND $1,960,000 6-12

CHART 6.4: DISPARITY ANALYSIS: ARCHITECTURE AND ENGINEERING PRIME CONTRACTS VALUED BETWEEN $25,000 AND $850,000 6-15

CHART 6.5: DISPARITY ANALYSIS: PROFESSIONAL AND OTHER SERVICES PRIME CONTRACTS VALUED BETWEEN $25,000 AND $2,570,000 6-18

CHART 6.6: DISPARITY ANALYSIS: GOODS AND SERVICES PRIME CONTRACTS VALUED BETWEEN $25,000 AND $1,740,000 6-21

CHART 7.1: DISPARITY ANALYSIS: CONSTRUCTION SUBCONTRACTS 7-5

CHART 7.2: DISPARITY ANALYSIS: ARCHITECTURE AND ENGINEERING SUBCONTRACTS 7-8

CHART 7.3: DISPARITY ANALYSIS: PROFESSIONAL AND OTHER SERVICES SUBCONTRACTS 7-11



CHAPTER 1: Legal Review

I. Introduction

Two United States Supreme Court decisions—*City of Richmond v. J.A. Croson Co.* (*Croson*)[1] and *Adarand v. Pena* (*Adarand*)[2]—established the standard of review for both local and federal government minority business enterprise (MBE) and disadvantaged business enterprise (DBE) contracting programs. This chapter discusses the federal law applicable to public contracting affirmative action programs.

The United States Supreme Court's 1989 decision in *Croson* sets forth the strict scrutiny constitutional analysis applicable to race-conscious remedies for public contracting programs. *Croson* dealt with non-federally funded programs and established an evidentiary standard of review for race-based programs. The Court announced that programs employing racial classification would be subject to "strict scrutiny," the highest legal standard. Broad notions of equity or general allegations of historical and societal discrimination against minorities fail to meet the requirements of strict scrutiny.

As set forth in *Croson*, a state or local government ("government or governmental entity") may adopt race-conscious programs as a remedy only "where it has actively discriminated in its award of contracts or has been a 'passive participant' in a system of racial exclusion practiced by elements of the local construction industry."[3] The statistical predicate for race or gender-conscious measures is typically referred to as a "disparity study." Such a study is done by comparing "the number of qualified minority contractors" available for contract awards ["availability"] to the number of public contracts awarded by the State or local government to such firms and the number of subcontractors engaged by the prime contractors ["utilization"].[4] The disparity study must find a "significant disparity"[5] between availability and utilization in contracts funded by the government to justify the use of race-conscious measures.[6]

There have been several cases post-*Croson* that have addressed the definitions of availability and utilization, as well as the computation of disparity. The relevant Eleventh Circuit case law will be discussed herein since Miami Dade County is in its jurisdiction. Case law pertaining to

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1 488 U.S. 469 (1989).

2 515 U.S. 200 (1995).

3 *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia* ("*Philadelphia II*"), 6 F.3d 990, 1002 (3d Cir. 1993) (quoting *Croson,* 488 U.S. at 492).

4 *Id.* (quoting *Croson*, 488 U.S. at 492).

5 The Eleventh Circuit in *Engineering Contractors Ass'n v. Metropolitan Dade County ("Engineering Contractors"),* 122 F.3d 896, 907 (11th Cir. 1997) used the phrase "gross statistical disparities" in discussing the *Croson* strong basis in evidence standard. The *Croson* Court also used the phrase "significant statistical disparities" in the body of the opinion.

6 *Id.* at 1007-08 (quoting *Croson*, 488 U.S. at 509).

Minority/Woman Business Enterprise (M/WBE) programs and the DBE regulations adjudicated outside of the Eleventh Circuit, although not binding in the Eleventh Circuit, is also discussed to the extent it may be instructive when implementing race-conscious public contracting programs, albeit not binding authority.

In *Adarand*, which directly challenged the federal statute that enabled the United States Department of Transportation's (USDOT's) DBE program as set forth in statute and regulations, the Court extended the "strict scrutiny" standard of review to federally funded or assisted contracts. The Supreme Court in *Adarand* found a compelling interest in a DBE program but ruled that the particular program that USDOT adopted through regulations was not narrowly tailored. In response to *Adarand*, USDOT amended the DBE regulations in 1999 to include a race-neutral component to the DBE goal.

In one of the most significant affirmative action decisions since *Croson* in decades, on June 29, 2023, the United States Supreme Court decided *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College and University of North Carolina et al.* ("*SFFA*").[7] The question presented to the Supreme Court did not address public contracting but whether the admissions systems used by Harvard University (Harvard) and the University of North Carolina (UNC) violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq*.[8] The United States Supreme Court, in a six-three decision, held that the Harvard and UNC admission programs could not be reconciled with the guarantees of the Equal Protection Clause of the Fourteenth Amendment and, therefore, are unconstitutional.[9]

Specifically, the Court held that Harvard and UNC's consideration of race in the admission process failed to satisfy the strict scrutiny standard and violated the Equal Protection Clause of the Fourteenth Amendment and Title VI. The Court reaffirmed that Title VI applies to public and private colleges and universities that receive federal assistance. Further, the Court reaffirmed that colleges and universities must comply with the requirements imposed by the Equal Protection Clause.



[7] 143 S. Ct. 2141 (2023).

[8] Justice Jackson took no part in the decision or consideration of the Harvard University appeal.

[9] *SFFA*, 143 S. Ct. at 2175. The above styled action concerns a constitutional challenge to college admissions programs, but its reasoning has application beyond the facts discussed in the Harvard opinion.

In reaching this conclusion, the Supreme Court started with what it considered an essential principle:

> Our acceptance of race-based state action has been rare for a reason. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Rice* v. *Cayetano*, 528 U. S. 495, 517, 120 S. Ct. 1044, 145 L. Ed. 2d 1007 (2000) (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100, 63 S. Ct. 1375, 87 L. Ed. 1774 (1943)). That principle cannot be overridden except in the most extraordinary case.[10]

The Supreme Court reasoned, first, that the compelling interests in considering race in admissions proffered by Harvard and UNC[11] were too amorphous for meaningful judicial review and instead required compelling interests that could be measured.[12] Second, the Court concluded that there must be a meaningful connection between the means and the goal if race is to be used as a factor in college admissions.[13] Third, the Court held that race-conscious programs must not use race as a negative.[14] Fourth, the Court also opined that race-conscious admissions programs must not use race in a manner that reinforces racial stereotypes.[15] Finally, the Court concluded that race-conscious admission programs must have a logical end point.[16] The Court found the Harvard and UNC college admission programs were deficient on each of these points and, therefore, unconstitutional.

Although the *SFFA* decision specifically addresses the use of race-conscious measures in college and university admissions, the opinion raises fundamental questions about the future of affirmative action and the use of the race-conscious measures in public contracting. To be constitutional, a race-conscious affirmative action program must meet the compelling interest prong of the strict scrutiny standard, with the clear goal of eliminating disparities attributed to *discrimination*. The Supreme Court makes clear in *SFFA* that the only constitutional justification for using race in college admission cases is to address specific identified past discrimination that violates the Constitution or a statute. Accordingly, the evidence proffered to substantiate a compelling state interest in the admissions context must relate to such identified past discrimination. But in

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[10] *Id.* at 2162-63.

[11] The Court explained: Harvard identifies the following educational benefits that it is pursuing: (1) "training future leaders in the public and private sectors"; (2) preparing graduates to "adapt to an increasingly pluralistic society"; (3) "better educating its students through diversity"; and (4) "producing new knowledge stemming from diverse outlooks." 980 F. 3d, at 173-174. UNC points to similar benefits, namely, "(1) promoting the robust exchange of ideas; (2) broadening and refining understanding; (3) fostering innovation and problem-solving; (4) preparing engaged and productive citizens and leaders; [and] (5) enhancing appreciation, respect, and empathy, cross-racial understanding, and breaking down stereotypes."

[12] *Id* at 2166-67.

[13] *Id.* at 2167-68.

[14] *Id.* at 2168-69.

[15] *Id.* at 2169-70.

[16] *Id.* at 2170.

Croson,[17] which *SFFA* did not purport to disturb, the Supreme Court recognized availability/disparity studies and statistical evidence as a means of establishing the evidentiary predicate for race-conscious measures in public contracting.

While *SFFA* suggests that there must be a specific nexus to past discrimination for a government program to pass constitutional muster, that decision does not alter the *Croson* holding that government entities have a compelling interest to address discrimination, as a plurality of the Court put it in *Croson*:

> We think it clear that the city could take affirmative steps to dismantle such a system. It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollar, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.[18]

Thus, the predicate evidence must be clear that any use of race-conscious measures is to address discrimination either by the governmental entity directly or as a passive participant in private discrimination, i.e., by prime contractors. *SFFA* reaffirmed that racial balancing and general assertions of industry discrimination or societal discrimination will not satisfy the compelling interest prong.[19] Availability/disparity studies, however, may still be employed to determine if there are significant statistical disparities in the State's contract awards to M/WBE firms, establishing an inference of discrimination. Under those circumstances, the State has a compelling interest not to perpetuate that disparity in future contract awards and race-conscious measures may be appropriate. Even then, any race-based government program, once instituted, must be measurable and capable of judicial review—a standard that the goal of eliminating discrimination in public contracting is likely to meet. Unlike the achievement of sufficient diversity, evidence of a statistically significant disparity in contract awards is both objectively measurable and capable of meaningful judicial review. Further, unlike the goal of achieving diversity, which is much more subjective, the goal of eliminating a statistically significant disparity in public contracting provides an objective measure to implement race-conscious affirmative relief and an end date for race-conscious public contracting programs. The natural end date for such a race-based program would be when there ceases to be significant statistical disparities in contract awards.

Given the history of the *Croson* decision, due diligence must be taken to ensure that the methodology employed in disparity studies meets the legal standards set by case law. The relevant and instructive federal circuit court decisions that address the application of race in public contracting following *Croson* are summarized in the sections below. This legal review is not to be understood as legal advice to Miami Dade County nor a comprehensive discussion of the case law but as background and support for the methodology employed in conducting this study.



[17] *Croson*, 488 U.S. 469.

[18] *Croson*, 488 U.S. at 492 (O'Connor, Rehnquist and White, JJ.).

[19] *SFFA*, 143 S. Ct. at 2173.

II. Standard of Review

The standard of review used represents the measure by which a court evaluates whether a particular legal claim meets a certain statute, rule, or precedent.

Race-and Gender-Conscious Programs

In *Croson*, the United States Supreme Court affirmed that pursuant to the Fourteenth Amendment, the proper standard of review for state and local MBE programs, which are race-conscious, is strict scrutiny.[20] Specifically, the government must show that the classification is narrowly tailored to achieve a compelling state interest.[21] The Court recognized that a governmental entity may take action in the form of an MBE program to rectify the effects of identified, systemic racial discrimination within its jurisdiction.[22] Justice O'Connor, speaking for the majority, articulated various methods for demonstrating that systemic discrimination existed within a jurisdiction and set forth guidelines for crafting MBE programs so that they are "narrowly tailored" to address systemic racial discrimination.[23]

Gender preferences in the Eleventh Circuit are governed by a different standard of review, intermediate scrutiny. In discussing intermediate scrutiny, the Eleventh Circuit in *Engineering Contractors Assn v. Metropolitan Dade County* cited with approval and agreed with the Third Circuit's reasoning in *Contractors Association of Eastern Pennsylvania v. City of Philadelphia* ("*Philadelphia II*") regarding intermediate scrutiny.[24] Under intermediate scrutiny, the gender preference is valid if it was "substantially related to an important governmental objective."[25] In *Philadelphia II*, the Third Circuit stated that "an affirmative action program survives intermediate scrutiny if the proponent can present probative evidence to justify a gender-conscious affirmative action program."[26] Further, *Philadelphia II* also concluded that the gender affirmative action program must not only present probative evidence of discrimination, but also that the evidence of gender discrimination must be sufficient.[27]

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[20] *Croson*, 488 U.S. at 493-95.

[21] *Id.* at 493.

[22] *Id.* at 509.

[23] *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 in 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.

[24] *Engineering Contractors*, 122 F.3d at 910.

[25] *Philadelphia II,* 6 F.3d 990, 1009 (3d Cir. 1993).

[26] *Philadelphia II*, 6 F.3d at 1010. (citing *Metro Broadcasting, Inc. v. F.C.C.*, 497 U.S. 547, 582-83, 110 S. Ct. 2997, 3018 – 19, 111 L.Ed. 2d 445 (1990)).

[27] *Id*.

Burden of Proof

The procedural protocol established by *Croson* imposes an initial burden of proof on 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. As set forth in *Engineering Contractors*, the plaintiff may challenge a government's factual predicate on any of the following grounds:[28]

- Statistics are flawed.
- Disparities are not significant or actionable.
- Presenting contrasting statistical data.

Thus, a disparity study must be analytically rigorous, at least to the extent that the data permits, if it is to withstand legal challenge.[29]

Strong Basis in Evidence

Croson requires a government to produce a "strong basis in evidence" that the objective of the challenged MBE program is to rectify the effects of discrimination.[30] Whether or not the government has produced a strong basis in evidence is a question of law.[31] 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.[32] In 1996, the Third Circuit in *Contractors Association of Eastern Pennsylvania v. City of Philadelphia* ("*Philadelphia IV*") carefully examined each aspect of Philadelphia's race, ethnicity, and gender-based program, finding the City's disparity study in the absence of statistical evidence did not establish a strong basis in evidence as applied to firms owned by women, Native Americans, Hispanic Americans, and Pacific Islanders.[33]

In *Philadelphia II*, the Third Circuit recognized that a government may rely upon less evidence in enacting gender preferences. That intermediate scrutiny standard requires a government to present "probative evidence in support of its stated rationale for the gender preference, discrimination against women-owned contractors."[34]

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[28] These were the methods the appellate court in *Engineering Contractors* considered in *Engineering Contractors Ass'n v. Metropolitan Dade County,* 122 F.3d 896*,* 916 (11th Cir. 1997).

[29] *Croson*, 488 U.S. at 469.

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

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

[32] *Concrete Works I*, 36 F.3d at 1522.

[33] *Philadelphia IV,* 91 F.3d 586, 596 (3rd Cir. 1996).

[34] *Philadelphia II,* 6 F.3d at 1010.

The intermediate scrutiny standard for gender classifications can be met with statistical evidence of underutilization that is not statistically significant. However, this does not apply when there is demonstrated overutilization. Woman-owned businesses should be considered for gender-conscious remedies when the statistical evidence demonstrates the overutilization is not statistically significant.

The adequacy of the government's evidence is "evaluated in the context of the breadth of the remedial program advanced by the [jurisdiction]."[35] The onus is on the jurisdiction to provide a factual predicate that is sufficient in scope and precision to demonstrate that contemporaneous discrimination necessitated the adoption of the M/WBE program.

Ultimate Burden of Proof

The Eleventh Circuit recognized that the party challenging an M/WBE 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.[36] 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*).[37] Although *Wygant* specifically concerned a challenge to a school district's race-based lay-off plan designed to avoid terminating under-represented minority staff, the case is informative in the context of race-conscious contracting because it involved allegations of "reverse discrimination" asserted by non-minority plaintiffs. Justice O'Connor addressed the burden of proof in such reverse discrimination cases by stating 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."[38]

In *Philadelphia IV*, the Third Circuit Court of Appeals clarified this allocation of the burden of proof and the constitutional issue of whether or not facts constitute a "strong basis" in evidence.[39] The Third Circuit wrote that the allocation of the burden of persuasion depends on the theory of constitutional invalidity that is being considered (e.g., on the basis of race or gender).[40] For

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[35] *Id.* (citing *Croson*, 488 U.S. at 498).

[36] *Engineering Contractors*, 122 F.3d at 916.

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

[38] *Id.*

[39] *Philadelphia IV*, 91 F3d at 586 (1996).

[40] *Philadelphia IV*, 91 F3d at 597.

example, if the plaintiff's theory is that the government has adopted race-conscious 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.[41]

The situation differs if the plaintiff's theory is that the government'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, the agency comes forward with evidence of facts alleged to justify its conclusions, and the plaintiff has the burden of persuading the court that those facts are not accurate. However, the ultimate issue of whether a strong basis in evidence exists is an issue of law, and the burden of persuasion in the traditional sense plays no role in the court's resolution of that ultimate issue.[42]

In *Concrete Works of Colorado, Inc. v. City and County of Denver, Colorado* ("*Concrete Works II"*), the Tenth Circuit concluded that, as the plaintiff's burden is an evidentiary one, it cannot be discharged simply by argument.[43] The court cited its opinion in *Adarand Constructors Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 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."

III. Croson Evidentiary Framework

The government must construct a strong evidentiary framework to stave off legal challenges and to ensure that the adopted MBE program complies with the requirements of the Equal Protection clause of the United States 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.

Active or Passive Discrimination

Croson recognized that the government need not be an active perpetrator of racial discrimination to have a basis to create an affirmative action program. Instead, it is sufficient that the government seeking to adopt a program is a passive participant in the discrimination by infusing tax dollars into an industry in which there are significant statistical disparities in the utilization of minorities that did not receive the number or dollar value of contracts that would have been expected based on

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41 *Id.*

42 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. The Eleventh Circuit said the inquiry 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 was 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.

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

their availability in the marketplace. Thus, passive participation was found in *Croson* to satisfy this prong of the Court's strict scrutiny review.[44]

An entity will be considered an "active" participant if the evidence shows it has created barriers that actively exclude MBEs from its contracting opportunities. In addition to examining the government's contracting record and process, MBEs that have contracted or attempted to contract with that entity can be interviewed to relay their experiences in pursuing that entity's contracting opportunities.[45]

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.[46] A plurality in *Croson* 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.[47]

Such passive participation in discrimination in an industry remains a compelling interest even after *SFFA* and is distinguishable from the general interest in diversity or even the interest in addressing societal discrimination because it involves the expenditure of public funds.[48]

In *Concrete Works I*, the Tenth Circuit Court of Appeals considered an appeal involving the sufficiency of purely private sector evidence to support a passive discrimination predicate. That analysis was driven by the fact that Denver did not offer evidence of any studies focusing on government-funded contracts, relying instead on industry discrimination in the awarding of privately funded contracts. This raised the issue of whether, in a challenge to a government program, analyzing private contracts and, thus, purely private sector discrimination was likely to be a fruitful line of inquiry.[49] On remand, the district court rejected the three disparity studies

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[44] *Croson*, 488 U.S. at 509.

[45] *Wygant*, 476 U.S. at 275.

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

[47] *Croson*, 488 U.S. at 492 (O'Connor, Rehnquist and White, JJ.).

[48] *Id.*

[49] *Concrete Works I*, 36 F.3d at 1529. "What the Denver MSA data do 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 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."

offered to support the continuation of Denver's M/WBE program because each focused on purely private-sector discrimination. The district court concluded that the City of Denver had not documented a firm basis of identified discrimination derived from the statistics submitted.[50]

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 discrimination in the marketplace. The court, relying on *Shaw v. Hunt*,[51] 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)). Second, the governmental entity must also have a "strong basis in evidence to conclude that remedial action was necessary."[52]

The Tenth Circuit, therefore, held that the City of Denver 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."[53] The court emphasized that its reading of *Croson*[54] and its own precedents supported that conclusion. Also, the court pointed out that the plaintiff had the burden of proof, failed to introduce conflicting evidence, and merely argued that the private sector was out of bounds and that Denver's data were flawed.[55]

The Tenth Circuit court found that the disparities in MBE private sector participation, together with the rate of business formation and lack of access to credit that affected MBEs' ability to expand in order to perform larger contracts, gave Denver a firm basis to conclude there was actionable private sector discrimination. The Court did not address,[56] however, 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

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[50] *Id.* at 61.

[51] 517 U.S. 899, 519 (1996).

[52] *Concrete Works II*, 321 F.3d at 975-76.

[53] *Id.* at 972.

[54] See also *Shaw v. Hunt*, 517 U.S. 899 (1996).

[55] Whether Denver had the requisite strong basis to conclude 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."

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

that the remedy was inseparable from the 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 (City of Chicago)*,[57] the District Court, not in the Tenth Circuit, considered 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 more stringent scrutiny. It found there was discrimination against minorities in the Chicago construction industry. However, it did not find the City of Chicago's MBE subcontracting goal to be 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*.[58]

The Seventh Circuit also considered whether or not evidence of private sector practices met the strict scrutiny standard, which also arose in *Builders Ass'n of Greater Chicago v. County of Cook (County of Cook)*.[59] In this case, the Seventh Circuit cited *Associated General Contractors of Ohio v. Drabik*[60] in throwing out a 1988 County ordinance under which at least 30% of the value of prime contracts was to go to minority subcontractors and at least 10% to woman-owned businesses. Appellants argued that evidence of purely private-sector discrimination justified a public-sector program. The Court found that the County, in order to justify the public-sector remedy, had to demonstrate it had been at least a *passive participant* in the private-sector discrimination by showing it had infused tax dollars into the discriminatory private industry.

In sum, this discussion demonstrates that best practice in conducting a disparity study will involve identifying discrimination in an industry, whether funded by government dollars or private dollars, with some specificity and that the government has a "strong basis in evidence" that remedial action was necessary. In *Croson*, the plurality answered these questions emphatically:

> [I]t is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollar, drawn from tax contributions of all citizens, do not serve to finance the evil of private prejudice.

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[57] *Builders Ass'n of Greater Chicago v. City of Chicago*, 298 F. Supp. 2d 725, 726 (N.D. Ill. 2003).

[58] *Gratz v. Bollinger*, 539 U.S. 244, 258 (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 Fourteenth 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 Fourteenth 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.

[59] *Builders Ass'n of Greater Chicago v. Cnty. of Cook*, 256 F.3d 642, 643 (7th Cir. 2001).

[60] *Associated Gen. Contrs. of Ohio, Inc. v. Drabik*, 214 F.3d 730, 731 (6th Cir. 2000).

This study is designed to meet this threshold by examining whether the State's funds were spent on past contracts in a manner that furthered existing discrimination against minority firms in various industries.

Establishing Systemic Discriminatory Exclusion

Croson clearly established that if a government "had evidence before it that nonminority contractors were systematically excluding minority businesses from subcontracting opportunities, it could take action to end the discriminatory exclusion."[61] Thus, it is essential for a government to demonstrate a pattern and practice of such discriminatory exclusion in the relevant market area.[62] Using appropriate evidence of the government'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.[63] 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 the government or as subcontractors by the government's prime contractors may support an inference of discriminatory exclusion.[64] 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."[65]

Croson made it clear that both prime contract and subcontract 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

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[61] *Croson*, 488 U.S. at 469. See also *Monterey Mechanical v. Pete Wilson*, 125 F.3d 702, 703 (9th Cir. 1997). The Fifth Circuit Court in *W.H. Scott Construction Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 207 (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 were 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 if nexus, there is nothing in *Croson* that accepts a low number of MBE business *formation* as a basis for a race-conscious remedy.

[62] *Croson*, 488 U.S. at 509. See also *Monterey Mechanical*, 125 F.3d at 703.

[63] *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*.

[64] *Croson*, 488 U.S. at 509.

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

expenditures."[66] Subcontracting data is also an important means by which to assess suggested future remedial actions. Since the decision makers are 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.

Additionally, "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."[67] Thus, if a governmental entity has statistical evidence that non-minority contractors are systematically excluding minority businesses from subcontracting opportunities, it may act to end the discriminatory exclusion. Once an inference of discriminatory exclusion arises, the entity may act to dismantle the closed business system.[68]

In *Coral Construction*, the Ninth Circuit Court of Appeals further elaborated on 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 on in establishing systemic discriminatory exclusion in the relevant marketplace as the factual predicate for an MBE program.[69] The court explained that statistical evidence alone often does not account for the complex factors and motivations guiding contracting decisions, many of which may be entirely race-neutral.[70]

Likewise, anecdotal evidence, standing alone, is unlikely to establish a systemic pattern of discrimination.[71] The Eleventh Circuit recognized the significance of anecdotal evidence and concluded that anecdotal evidence coupled with gross statistical disparities may support the use of race or gender-conscious measures.[72] Nonetheless, as Justice O'Connor wrote in *Croson,* anecdotal evidence is important because the individuals who testify about their personal experiences bring "the cold numbers convincingly to life."[73]

1. Geographic Market

Croson did not speak directly to how a government's geographic market is to be determined, nor has the Third Circuit. But the Eastern District of Pennsylvania has done so in the remand from *Philadelphia III.*

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66 *Id.* at 502-03.

67 *Id.* at 509.

68 *Id.*

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

70 *Id.*

71 *Id.*

72 *Engineering Contractors*, 122 F.3d at 925 (citing *Cone Corp v. Hillsborough County*, 908 F.2d 908, 916 (11th Cir. 1990).

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

In *Philadelphia III,* the District Court found that for a disparity study examining whether a program could be put in place by the City, the Philadelphia Standard Metropolitan Statistical Area (SMSA) (consisting of eight counties in the Philadelphia geographic area: Philadelphia County, Montgomery County, Chester County, Delaware County and Bucks County in Pennsylvania; and Gloucester County, Burlington County and Camden County in New Jersey) was the relevant geographic market for three reasons:

1. The City's declared purpose for enacting Chapter 17-500 was to remedy racial discrimination in the Philadelphia metropolitan area.

2. In fiscal year 1982 (the fiscal year before the ordinance establishing the program was enacted), the Procurement Department analyzed City contract information to determine the geographic location of successful bidders, amounts awarded, and the percentage of "sole source" contracts. As a result of this study, the Procurement Department found that 75% of City contracts and contract dollars were awarded to firms in the five-county Philadelphia area. An additional 12% of City contracts and contract dollars were awarded to firms in New Jersey. However, less than 1% of City contracts and contract dollars were awarded to firms in Delaware. Similarly, Pennsylvania firms located outside the five-county Philadelphia area received less than 3% of City contracts.

3. Expanding the relevant geographic area beyond the Philadelphia SMSA distorts the court's inquiry because it would unnecessarily expand the number of potentially available contractors of all races without any corresponding evidence that those additional contractors were qualified, willing, and able to perform City contracts, or that black contractors located outside the Philadelphia SMSA were discriminated against in the award of City contracts.[74]

In addition, a review of other Circuits may provide further guidance. In *Concrete Works I*, like in *Philadelphia V,* the Tenth Circuit Court of Appeals specifically approved the Denver Metropolitan Statistical Area as the appropriate market area since 80% of the construction contracts were located there.[75] By contrast, in *Coral Construction*, the Ninth Circuit Court of Appeals held that "an MBE program must limit its geographical scope to the boundaries of the enacting jurisdiction."[76]

Taken together, these cases support a definition of market area that is reasonable rather than dictated by a specific formula. *Croson* and its progeny did not provide a bright-line rule for defining the market area, for which determination should be fact-based. An entity may limit

[74] *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 893 F. Supp. 419, 447 n. 4-5 (E.D. Pa. 1995), *aff'd*, 91 F.3d 586 (3d Cir. 1996), *cert. den.*, 519 U.S. 1113 (1997) *(Philadelphia III).*

[75] *Concrete Works of Colorado v. City and County of Denver (Concrete Works I)*, 823 F. Supp. 821, 835-36 (D. Colo. 1993); *rev'd on other grounds*, 36 F.3d 1513 (10th Cir. 1994).

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

consideration of evidence of discrimination within its own jurisdiction.[77] Extra-jurisdictional evidence may be permitted when it is reasonably related to where the jurisdiction contracts.[78]

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 if this data is available. This will be referred to as "pre-program" versus "post-program" data.

Croson requires that an MBE program be "narrowly tailored" to remedy current evidence of discrimination.[79] Thus, goals must be set according to the evidence of disparity found. For example, if there is a current disparity between the percentage of an entity's utilization of Hispanic construction contractors and the availability of Hispanic construction contractors in that entity's marketplace, then that entity can set a goal to bridge that disparity.

It is not mandatory to examine a long history of a government's utilization to assess current evidence of discrimination. In fact, *Croson* indicates that it may be legally fatal to justify an MBE program based on outdated evidence.[80] 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.[81]

Thus, a government should look both at pre-program and post-program data, to the extent it exists, to assess whether current discrimination exists and to analyze whether it would exist in the absence of an M/WBE program.[82]

3. Statistical Evidence

To determine whether or not 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 woman contractor participation in local contracts divided by the percentage of minority

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[77] *Cone Corp. v. Hillsborough Cnty*., 908 F.2d 908, 913 (11th Cir. 1990); *Associated General Contractors v. Coalition for Economic Equity*, 950 F.2d 1401, 1402 (9th Cir. 1991).

[78] 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.

[79] See *Croson*, 488 U.S. at 509-10.

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

[81] See *Associated General Contractors of California v. Coalition for Economic Equity and City and Cnty. of San Francisco*, 950 F.2d 1401, 1402 (9th Cir. 1991). (Consultant study looked at City's MBE utilization over a one-year period).

[82] *Engineering Contractors,* 122 F.3d at 911. The Eleventh Circuit approved the use of post-enactment evidence explaining that a violation of federal statutory or constitutional requirements does not arise with the making of a finding; but when the wrong is committed.

or woman contractor availability or composition in the population of available firms in the local market area.[83] Disparity indexes have been found to be highly probative evidence of discrimination as long as they ensure that the "relevant statistical pool" of minority or women contractors is being considered.

a. Availability

In *Engineering Contractors*, the Eleventh Circuit Court of Appeals emphasized that the study's statistical universe was larger than the number of firms that are willing, able, or qualified to perform work for the County. In that case, the statistical pool consisted of firms that had filed a "certificate of competency" with the County. The appellate court reasoned that the filing of a certificate indicates that the firm is a licensed construction contractor, nothing more. Merely being licensed to do business in the County includes firms that are unwilling, unable, or unqualified to perform County construction work. Although the court did not find the weakness in the methodology fatal, the court did consider the weakness a factor the district court could take into consideration when weighing the statistical evidence.[84]

In *Philadelphia IV*, the Third Circuit Court of Appeals reached a similar result, holding that the "relevant statistical pool," or availability, includes those businesses that not only exist in the marketplace but are also qualified and interested in performing the public agency's work. In that case, the Third Circuit rejected a statistical disparity finding in which 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 statistical disparity did not satisfy *Croson*.[85]

Following the dictates of *Croson*, courts may carefully examine whether there are data that show that MBEs are ready, willing, and able to perform.[86] *Concrete Works II* made the same point, stating that capacity (i.e., whether the firm is "able to perform") is a ripe issue when a disparity study is examined on the merits:

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[83] Although the disparity index is a common category of statistical evidence considered, other types of statistical evidence have been considered. 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 the appellant failed to consider race and ethnic-neutral alternatives to the plan.

[84] *Engineering Contractors,* 122 F.3d at 920-921. 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.

[85] *Philadelphia IV*, 91 F.3d at 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.

[86] The *Philadelphia* study was vulnerable on this issue.

> [Plaintiff] has identified a legitimate factual dispute about the accuracy of Denver's data and questioned whether Denver's reliance on the percentage of MBEs and WBEs available in the 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.[87]

Notwithstanding that appellate concern, the disparity studies before the district court on remand did not examine the issue of M/WBE's 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.[88] 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 consider the number of minority businesses that were construction firms, let alone how many were qualified, willing, and able to perform state contracts.[89] 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.[90]

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

The appellate opinions in *Philadelphia IV*[91] and *Dade County*[92] regarding disparity studies involving public sector contracting are particularly instructive in defining availability. In

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[87] *Concrete Works II*, 36 F.3d at 1528.

[88] See *Assoc. General Contractors of Ohio v. Drabik*, 214 F.3d 730 (6th Cir. 2000). The court reviewed Ohio's 1980 pre-*Croson*, program, which the Sixth Circuit found constitutional in *Ohio Contractors Ass'n v. Keip*, 713 F.2d 167 (6th Cir. 1983), finding the program unconstitutional under *Croson*.

[89] *Id.* at 730.

[90] *Id.* at 736.

[91] *Philadelphia IV*, 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).

[92] *Dade County I*, 943 F. Supp. 1546 (11th Cir. 1997).

Philadelphia IV, 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.[93] The Third Circuit, ultimately – in 1996, upheld the lower court in finding that there was no firm basis in evidence for finding that race-conscious discrimination existed to justify a race-conscious program, and the program was not narrowly tailored to address past discrimination by the City.[94]

The Third Circuit reviewed the evidence of discrimination in prime contracting and stated that whether or not it is strong enough to infer discrimination is a "close call," which the Third Circuit "chose not to make."[95] 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.

The Third Circuit has recognized that consideration of qualifications can be approached at different levels of specificity, and the practicality of the approach should also be weighed. The Court of Appeals found that "[i]t would be highly impractical to review the hundreds of contracts awarded each year and compare them to each and every MBE" and that it was a "reasonable choice" under the circumstances to use a list of certified contractors as a source for available firms.[96] 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.

In addition, the court found that a program certifying MBEs for federal construction projects was a satisfactory measure of the capability of MBE firms.[97] 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."[98] 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.[99] 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

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93 *Philadelphia IV*, 91 F.3d 586.

94 *Id*. at 586.

95 *Id.* at 605.

96 *Id.* at 603.

97 *Id.*

98 *Id.*

99 *Id.*

which the County relied disappeared when the size of the M/WBEs was taken into account.[100] The *Dade County* district court accepted the disparity study's limiting of "available" prime construction contractors to those that had bid at least once in the study period. However, it must be noted that relying solely on bidders to identify available firms may have limitations. If the solicitation of bidders is biased, then the results of the bidding process will be biased.[101] In addition, a comprehensive count of bidders is dependent on the adequacy of the agency's record keeping.[102]

b. Utilization

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 comprises a strict *Croson* "disparity" formula. A significant statistical disparity between the number of MBEs an entity utilizes in each 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 utilization can be compared to M/WBE availability as measured by the value of contracts awarded. This comparison would examine if there is a disparity between the value of the award of contracts by an entity in the relevant market area to available majority contractors and subcontractors and the value of the awarded contracts (and subcontracts) 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 fewer construction contract dollars in proportion to their numbers than their available non-minority counterparts.[103]

Whether or not a disparity index supports an inference of discrimination in the market depends not only on what is being compared but also on whether any disparity found 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."[104]

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

[101] 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).

[102] Cf. *EEOC v. American Nat'l Bank*, 652 F.2d 1176, 1196-1197 (4th Cir. Year?), *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).

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

[104] *Croson*, 488 U.S. at 501 (citing *Hazelwood School District v. United States*, 433 U.S. 299, 307-08 (1977)).

The *Engineering Contractors* Court of Appeals acknowledged the utility of disparity indexes to examine the utilization of M/WBE firms in a particular industry. In general, disparity indices of 80% or greater, which are close to full participation, are not considered indications of discrimination. Further, the court also stated that a finding of two standard deviations is significant:

> Meaning there is about one chance in 20 that the explanation for the deviation could be random, and the deviation must be accounted for by some factor other than chance.[105]

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.[106]

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% of project engineer logs on projects more than $30,000. The consultant determined that no MBEs were used during the study period based on 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.[107]

Furthermore, the court discussed whether bidding was required in prime construction contracts as the measure of "willingness." The court 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."[108]

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."[109] 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 require no

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[105] *Engineering Contractors,* 122 F.3d at 914.

[106] *Concrete Works*, 36 F.3d at 1522.

[107] Another problem with the program was that the 15% goal was not based on data indicating that minority businesses in the market area were available to perform 15% of the City's contracts. The court noted, however, that "we do not suggest that the percentage of the preferred group in the number 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.

[108] *Id.*

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

evidence of discrimination before implementation. Conversely, race-conscious measures, such as contracting goals, fall at the other end of the spectrum and require a larger amount of evidence.[110]

As will be discussed below, anecdotal evidence alone will not suffice to establish the requisite predicate for a race-conscious program, but there is a suggestion that its absence, even in the face of statistical evidence of disparity, will undermine the basis for a remedial program. Ultimately, it appears from the cases that anecdotal evidence's 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 on 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 VI*).[111]
- Prime contractors showing MBE bids to non-minority subcontractors to find a non-minority firm to underbid the MBEs (*Cone Corporation v. Hillsborough County*).[112]
- M/WBEs' inability to obtain contracts for private sector work (*Coral Construction*).[113]
- M/WBEs were told that they were not qualified, although they were later found to be qualified when evaluated by outside parties (*AGCC*).[114]
- Attempts to circumvent M/WBE project goals (*Concrete Works I*).[115]
- Harassment of M/WBEs by an entity's personnel to discourage them from bidding on an entity's contracts (*AGCC*).[116]

Courts must assess the extent to which relief measures disrupt settled "rights and expectations" when determining the appropriate corrective measures.[117] Courts would look more favorably on anecdotal evidence, which supports a less intrusive program than a more intrusive one. For example, if anecdotal accounts related to experiences of discrimination in obtaining bonds, there 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 contract goal or participation goal.

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[110] 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.]").

[111] *Philadelphia II*, 6 F.3d at 1002.

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

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

[114] *AGCC II*, 950 F.2d at 1415.

[115] *Concrete Works*, 36 F.3d at 1530.

[116] *AGCC II*, 950 F.2d at 1415.

[117] *Wygant*, 476 U.S. at 283.

As noted above, the Supreme Court found in *Croson* 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."[118]

In part, it was the absence of such evidence that proved lethal to Richmond's 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."[119]

This was not the situation confronting the Ninth Circuit in *Coral Construction*. In that case, 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."[120]

Nonetheless, this anecdotal evidence 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."[121] 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 purely anecdotal evidence:

> Unlike the cases resting exclusively upon statistical deviations to prove an equal protection violation, the record here contains a plethora of anecdotal evidence. However, anecdotal evidence, standing alone, suffers the same flaws as statistical evidence. Indeed, anecdotal evidence may even be less probative than statistical evidence in the context of proving discriminatory patterns or practices.[122]

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."[123]
Two other circuit courts also suggested that anecdotal evidence might be dispositive while rejecting it in the specific case before them. For example, in *Philadelphia VI*, the Third Circuit 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

[118] *Croson*, 488 U.S. at 509 (citing *Teamsters*, 431 U.S. at 338).

[119] *Id.* (citing *Teamsters*, 431 U.S. at 480).

[120] *Coral Construction*, 941 F.2d at 917-18.

[121] *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).

[122] *Coral Construction*, 941 F.2d at 919.

[123] *Id.*

court had "discounted" because it deemed this evidence to be "impermissible" for consideration under *Croson*.[124] The Third Circuit disapproved of the district court's actions discounting this anecdotal evidence because, in its view, the court's rejection of this evidence was contrary to *Croson*.[125] The Third Circuit, in emphasizing that the anecdotal evidence required the trial court's consideration, stated:

> Yet, [g]iven *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.[126]

The District of Columbia Circuit Court echoed the Ninth Circuit's acknowledgment of the rare case in which anecdotal evidence is particularly potent in *O'Donnell Construction v. District of Columbia*.[127] The court found that, in the face of conflicting statistical evidence, the anecdotal evidence 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.[128]

The Eleventh Circuit Court agreed. In applying the "clearly erroneous" standard to its review of the district court's decision in *Dade County*, it commented, "[t]he picture painted by the anecdotal evidence is not a good one."[129] However, it held that this was not the "exceptional case" where, unreinforced by statistics, the anecdotal evidence was enough.[130]

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 the anecdotal evidence marshaled by the City of Denver in the proceedings below, the court recognized that:

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[124] *Philadelphia II*, 6 F.3d at 1002.

[125] *Id*. at 1003.

[126] *Id.*

[127] *O'Donnell Construction v. District of Columbia*, 963 F.2d at 427 (D.C. Cir. 1992).

[128] *Id*.

[129] *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).

[130] *Id*. at 926.

> [W]hile a fact finder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality's institutional practices carries more weight due to the systemic impact that such institutional practices have on market conditions.[131]

The court noted that the City had provided such systemic evidence. The Ninth Circuit has articulated what it deems to be persuasive anecdotal evidence in *AGCC II*.[132] In that case, the court gave weight to a "vast number of individual accounts of discrimination," which included numerous reports of MBEs being denied contracts despite being the low bidder, MBEs told they were not qualified although they were found qualified when evaluated by outside parties, and MBEs being harassed by City personnel to discourage them from bidding on City contracts. On appeal, the City pointed 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.[133] Based on *AGCC II*, it would appear that the Ninth Circuit's standard for persuasive anecdotal evidence is more lenient than other Circuits that have considered the issue, or there was a larger volume of anecdotal evidence that more directly pointed to pervasive discrimination in the industry.

Taken together, these statements constitute a taxonomy of appropriate anecdotal evidence. The cases suggest that to be persuasive, anecdotal evidence must have one or more of the following five qualities.[134] These requirements are that the accounts:

- Are gathered from minority contractors, preferably those that are "qualified"[135]
- Concern specific, allegations of discrimination[136]
- Involve the actions of governmental officials[137]
- Involve events within the relevant jurisdiction's market area[138]
- Discuss the harm that the improper conduct has inflicted on the businesses in question[139]
- Collectively reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic[140]

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[131] *Concrete Works I*, 36 F.3d at 1530.

[132] *AGCC II*, 950 F.2d 1401.

[133] *Id.* at 1415.

[134] *Philadelphia II*, 6 F.3d at 1003. The anecdotal evidence must be "dominant or pervasive."

[135] *Philadelphia IV*, 91 F.3d at 603.

[136] *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.").

[137] *Croson*, 488 U.S. at 509.

[138] *Coral Construction*, 941 F.2d at 925.

[139] *O'Donnell*, 963 F.2d at 427.

[140] *Coral Construction*, 941 F.2d at 919.

Moreover, when viewed collectively, anecdotal evidence that is the most persuasive will reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic.[141]

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.

In *Engineering Contractors*, the testimony of two County employees, 23 M/WBE contractors, and a survey of 78 black-owned construction firms did not suffice.[142] While the matter is not free of countervailing considerations, 57 accounts, many of which appeared to have the qualities referenced above, were insufficient to justify the program in *Coral Construction*. The number of anecdotal accounts relied on 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]

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

Remedial Statutory Scheme

In the 2010 case, *H.B. Rowe Company v. Tippett (Rowe)*, plaintiffs challenged the constitutionality of a North Carolina statute creating a program of specific goals for the award of contracts.[144] The Statute set forth a general policy to promote the use of small, minority, physically disabled, and women contractors in non-federally funded State construction projects. The Fourth Circuit Court of Appeals considered whether the statutory scheme as it relates to women survives the intermediate scrutiny standard. The evidence demonstrated that the State's prime contractors "substantially over-utilized" woman-owned businesses on public road construction projects. The 2004 Study calculated the overutilization of woman subcontractors as statistically significant at a 95% confidence level. The circuit court further noted that the private sector evidence was insufficient to overcome the strong evidence of overutilization. Consequently, the circuit court

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

142 *Engineering Contractors,* 122 F.3d at 924 -926.

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 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.

144 *H.B. Rowe Company v. Tippett*, 615 F.3d 233 (4th Cir. 2010).

determined that the evidence in the 2004 Study did not provide "exceedingly persuasive justification" to include woman-owned businesses in gender-conscious remedies.

Similarly, in *Association for Business Fairness v. New Jersey*, the New Jersey District Court decided that the minority "set-aside" provisions of New Jersey's Casino Control Act and the implementing regulations promulgated by the Casino Control Commission were unconstitutional. In addition to lacking an appropriate finding of discrimination that would support a finding that New Jersey had a compelling interest in applying its set-asides, the implemented program was not narrowly tailored. Many of the goals for M/WBE participation were higher than the agency's own determination of what was necessary to address discrimination. For some defined minority-owned companies, including Native American, Native Alaskan, Hawaiian, or those of Portuguese descent, there was simply no statistical evidence study at all to provide evidence of discrimination against such companies.[145]

Considering the *Rowe and Association for Business Fairness* decisions, caution should be exercised when determining which minority or gender group is appropriate for race-conscious or gender-conscious remedies. For an M/WBE program to be narrowly tailored, there must be a statistical finding of underutilization of minority subcontractors. When the underutilization of a minority group is not found to be statistically significant, the minority group should not be included in race-conscious remedies.

IV. Consideration of Race-Neutral Options

A government's remedial program must address the source of the disadvantage faced by minority businesses in its geographic area. 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.[146] On the other hand, an MBE program cannot stand if the sole barrier to minority or woman-owned business participation is a barrier faced by all new businesses, regardless of ownership.[147] In *Croson*, the majority made an observation that before creating its race-conscious program, Richmond did not "appear to have consider[ed] any use of race-neutral means to increase minority business participation in city contracting."[148] 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 *Croson* Court's observation about the absence of race-neutral measures is otherwise understood as a requirement that is part of the narrow tailoring of a remedy under the strict scrutiny standard.[149] But it does not mean race-neutral options must be exhausted before race-conscious

[145] *Ass'n for Business Fairness v. New Jersey*, 82 F. Supp. 2d 353 (D.N J. 2000).

[146] *AGCC II*, 950 F.2d at 1404.

[147] *Croson*, 488 U.S. at 508.

[148] *Id*. at 509.

[149] *Id*.

remedies can be employed. In 2003, the Supreme Court 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[.]"[150] In *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County*, the district court referenced this language in finding that Miami-Dade County had failed to show the necessity for the relief it had chosen, and the efficacy of alternative remedies had not been sufficiently explored.[151]

The *Engineering Contractors* Court confirmed that if a race–neutral remedy is sufficient to correct a race-based problem, a race-based solution is inappropriate. Relying upon *Croson,* the Court opined:

> A race-conscious remedy is not merely one of many equally acceptable medications the government may use to treat a race-based problem. Instead, it is the strongest of medicines, with many potential harmful side effects, and must be reserved for those severe cases that are highly resistant to conventional treatment.[152]

In short, the County must make a serious and good-faith effort to use race-neutral measures to increase the participation of M/WBE firms in the County's construction market.[153] 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 demonstrates the sole barrier to M/WBE participation is that M/WBEs disproportionately lack capital or cannot meet bonding requirements, then a race-neutral program of financing for all small firms would be justified.[154] If the evidence shows that in addition to capital and bonding requirements, which are race-neutral, MBEs also face racial discrimination in the awarding of contracts, then a race-conscious program will stand as long as it also includes race-neutral measures to address the capital and bonding barriers.[155]

The Ninth Circuit Court of Appeals in *Coral Construction Co. v. King County* ruled there is no requirement, however, that an entity exhaust every possible race-neutral alternative.[156] 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 contract programs that have been implemented to improve MBE utilization should also be measured.[157]

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[150] *Grutter v. Bollinger* 539 U.S. 306 (2003).

[151] *Hershell Gill Consulting Engineers, Inc. v. Miami Dade County*, 333 F. Supp. 2d 1305, 1330 (S.D. Fla. 2004).

[152] *Engineering Contractors,* 122 F.3d at 928.

[153] *Engineering Contractors,* 122 F.3d at 927 -928.

[154] *Croson*, 488 U.S. at 507.

[155] *Id.* at 509. (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses).

[156] *Coral Construction*, 941 F.2d 910 (9th Cir. 1991).

[157] *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

V. Eleventh Circuit Case Law

Miami Dade County has been a party to two federal cases challenging the County's business affirmative action programs: *Engineering Contractors*[158] and *Hershell Gill.*[159] In *Engineering Contractors,* the Eleventh Circuit Court of Appeals affirmed the district court decision that the County's construction programs were unconstitutional and permanently enjoined their operations.[160] The district court in *Hershell Gill* considered a challenge to the County's M/WBE program for awarding architecture and engineering (A&E) contracts and held the County's program was also unconstitutional.[161] These cases provide guidance and are instructive of the evidentiary requirements to establish a "strong basis in evidence" that would support a race or gender-conscious remedy in awarding County contracts. Each case is discussed in turn below.

Engineering Contractors Association v. Metropolitan Dade County

Engineering Contractors Association, an Eleventh Circuit appeals case, considered a challenge to three County affirmative action programs based on the assertion that the programs violated the equal protection clause of the Fourteenth Amendment. The three affirmative action programs at issue in the appeal are as follows: (1) the Black Business Enterprise Program (BBE), (2) the Hispanic Business Enterprise Program (HBE), and (3) the Woman Business Enterprise program (WBE) program. The M/WBE programs had been designed to increase the participation of M/WBEs in the County's construction projects.[162]

The affirmative action programs are applied to construction categories within three Standard Industry Classification (SIC) codes for construction contracts valued over $25,000. These SIC codes included general building construction, heavy construction other than building construction, and specialty trade construction (i.e., electrical, plumbing, heating, ventilation, and air conditioning). Participation goals were set at 15% for BBE, 19% for HBE, and 11% for WBE Enterprises.[163]

The BBE program challenged in 1984, was upheld by the 11th Circuit at that time. Relying on *Fullilove v. Klutznic*k[164], the court ruled that the strict scrutiny standard was not applicable, along with any other standard of equal protection review. Five years later, the Supreme Court in *Croson*

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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*.

158 *Engineering Contractors,* 122 F.3d 895 (11th Cir. 1997).

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

160 *Engineering Contractors,* 122 F.3d 895, 929 (11th Cir. 1997).

161 *Hershell Gill,* 333 F. Supp. 2d at 1333 (S.D. Fla. 2004).

162 *Engineering Contractors,* 122 F.3d at 900 (11th Cir. 1997).

163 *Id.* at 901.

164 *Fullilove v. Klutznick*, 488 U.S. 448, 100 S. Ct. 2758, 65 L. Ed 2d 902 (1980).

held that local and state affirmative action programs based on race must satisfy the strict scrutiny standard.[165]

Following the *Croson* decision, a second constitutional challenge was lodged against the County's BBE Program. Even though the second case was settled in 1992 and dismissed with prejudice, evidence from that case by stipulation was incorporated into a subsequent case challenging the County's three affirmative action programs, again claiming an equal protection violation. In the third case, the district court, after a four-day bench trial, declared the three affirmative action programs unconstitutional and permanently enjoined them.[166]

The district court, applying strict scrutiny, held that the County lacked a "strong basis in evidence" to support race and ethnic-conscious measures in the BBE and the HBE programs.[167] Applying intermediate scrutiny, the lower court held that the County failed to present sufficient probative evidence to justify implementing a gender preference.[168] In a separate analysis, the district court, assuming the sufficiency of the evidence, held that BBE and HBE programs were not narrowly tailored and the WBE program was not substantially related to an important governmental interest in remedying discrimination, past or present.[169]

In reviewing the district court's fact findings, the Court of Appeals in *Engineering Contractors* emphasized that the role of the appellate court was to determine only if the district court's view of the evidence is a plausible one considering the entire record.[170] The Court reviewed the two types of evidence proffered by the County to support its M/WBE programs: (1) statistical evidence and (2) anecdotal evidence.

Mason Tillman's methodology used in the current County study, unlike that employed by *Engineering Contractors,* adheres to the standard set forth in *Croson.* The methodology for determining utilization, availability, and disparity mirrors the predicate set forth in *Croson*. The utilization data is calculated from the actual prime and subcontracts awarded by the County and its prime contractors, and the availability data is derived from the enumeration of willing and able businesses domiciled in the County's market area. Thus, the Mason Tillman methodology is significantly different than either employed in *Engineering Contractors* or *Hershel Gill.*

The first step is to determine the County's prime contractor utilization by ethnicity and gender; the second step is to determine the market area where the utilized businesses are domiciled and then enumerate the willing and able M/WBEs and non-M/WBEs within the geographic market area.

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[165] *Engineering Contractors,* 122 F.3d at 901 (11th Cir. 1997).

[166] *Engineering Contractors,* 122 F.3d at 902 (11th Cir. 1997).

[167] *Id.*

[168] *Id.*

[169] *Id.*

[170] *Engineering Contractors,* 122 F.3d at 904 (11th Cir. 1997).

Mason Tillman uses a wide variety of sources to identify businesses within the market area that perform as either prime or subcontractors on the type of contracts the County has awarded.[171] Willingness of the identified businesses to perform as a prime or subcontractor on the County's contracts is assessed. A business survey is used to determine which market area businesses are willing to perform the County's contracts. The final step is to address the issue of the capacity of the willing businesses to perform the County contracts.

The capacity analysis examines the frequency distribution of the dollar value of all contracts the County awarded to M/WBEs and non-M/WBEs. Based upon this analysis, the current study determines the mean and median size of the County contracts awarded to both M/WBEs and non-M/WBEs and then assesses the significance of the difference in the awards each group received. The largest M/WBE awards are also classified by ethnicity and gender to document the demonstrated capacity of M/WBE firms to perform the County's large prime contracts. To avoid skewing the statistical findings, the contract awards analyzed are capped to exclude the large contracts that are outliers. The final capacity measure is the business capacity survey to assess the relative capacity of M/WBEs and non-M/WBEs through a comparative analysis of the business owners' profile, business revenue, frequency of bidding, and average size of contracts bid.

The disparity analysis determines if the County's utilization of M/WBEs and non-M/WBEs is in parity with the availability of the willing and able M/WBEs and non-M/WBEs. Where there is a disparity in the utilization of available M/WBEs, the disparity ratio is tested to determine if the underutilization is statistically significant.

The following legal discussion examines the statistical evidence presented by the County and reviewed by the district court in *Engineering Contractors*. The evidence offered was intended to document the County's utilization, availability, and disparity in the prime contracts awarded and the prime contractors' award of subcontracts.

1. Prime Contract Statistical Evidence for Utilization, Availability and Disparity

The first category of statistical analysis offered for the Court's consideration is the County's utilization, availability, and disparity of construction prime contractors. The County derived utilization, availability, and disparity from a comparison of (1) the percentage of bidders that were M/WBE firms, (2) the percentage of awardees that were M/WBE firms, and (3) the proportion of County contract dollars that was awarded to M/WBE firms.

The court found that the statistical findings did not consistently demonstrate negative disparities between the bidder and the awardee percentages.[172] In fact, it was determined that the BBE and HBE bidders were being awarded more than their proportionate "share" of the total number of County contracts in every SIC category when the bidder percentages were used as the baseline for

[171] Miami Dade County Disparity Study, Chapter 2 outlines the study's methodology for determining availability.

[172] *Engineering Contractors,* 122 F.3d at 904 (11th Cir. 1997).

predicting those percentages.[173] The County's statistics for WBE were inconsistent and reflected over-utilization for SIC 17. For SIC categories 15 and 16, the Court found the difference in WBE bidders and awardee percentages small.[174]

Next, the Court considered the disparity indices the consultant calculated for M/WBE firms awarded construction dollars. The Court found the consultant's use of bid and award data to calculate the disparity index a significant departure from the standard set forth in *Croson* for determining a statistically significant or gross disparity as a prerequisite for race-conscious remedies.

In *Croson,* the Supreme Court provided that a governmental entity may establish the requisite factual predicate demonstrating discrimination when the relevant statistical pool is used, including willing and able businesses in the market area, a showing of statistically significant underutilization, "an inference of discriminatory exclusion may arise."[175] Using bid data in the disparity equation potentially understates the available pool of M/WBE firms in the relevant market area.

2. Market Area Statistical Evidence

The third category of statistical evidence in *Engineering Contractors* is the County's market area statistical analysis. The statistical analysis was based on a sample of contractors that had filed a "certificate of competency" with Miami Dade County using a telephone survey.[176] The survey solicited information about the race, ethnicity, and gender of the firm's owner, as well as information on the firm's total sales and receipts.[177]

The Eleventh Circuit emphasized that the statistical data for a marketplace analysis was greater than the number of firms that were willing, able, or qualified to perform work on the County construction contracts.[178] Filing a "certificate of competency" with the County only meant a firm was a licensed construction contractor. Therefore, the parameters of the study's statistical universe included firms that might be unwilling, unable, or unqualified to perform County construction contracts.[179] The Eleventh Circuit opined that this problem was an appropriate factor for the district court to consider when evaluating the weight of the statistical results.[180]

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[173] *Engineering Contractors,* 122 F.3d at 916 (11th Cir. 1997).

[174] *Id.*

[175] *Croson,* 488 U.S. at 509 (1989).

[176] *Id*.

[177] *Id.*

[178] *Id.*

[179] *Id*.

[180] *Id.*

Further, the marketplace data did not establish any significant statistical disparities for BBEs and WBEs.[181] The marketplace data did, however, reveal unfavorable disparities for HBEs in SIC 15, ISC 17, and in the aggregate.[182] The Eleventh Circuit Court of Appeals found that given the totality of the evidence, the district court erred in not concluding that the County had a strong basis in evidence for implementing an affirmative action program for HBEs.[183]

3. Subcontract Statistical Evidence

The County's second category of statistical evidence was a subcontract study. The intent of the County's subcontracting study was to measure the participation of each M/WBE group by the subcontracts the County's prime contractors awarded.[184] The analysis compared the proportion of the designated group that filed a subcontractor's release of lien on a County construction project between 1991 and 1994 with the proportion of sales and receipt dollars that each M/WBE group received during the same time.[185] The district court found serious methodological problems with this approach, and the Eleventh Circuit concurred.

The denominator used in the calculation of the M/WBE sales and receipt percentages was based on the total sales and receipts from all sources for the firm filing a subcontractor's release of lien with the County.[186] The district court reasoned that this method was flawed since if a nationwide non-M/WBE construction company that performed 99 percent of its business outside of Miami Dade County filed a single subcontractor's release of lien with the County during the relevant time frame, all its sales and receipts for that time frame would be counted in the denominator against which the M/WBE sales and receipts were compared.[187] Thus, the Eleventh Circuit held that "the data underlying the defendants' subcontracting analysis are inappropriate."[188] The current study does not use the methodology employed in the County's subcontracting study. In this study, the subcontractor availability is limited to the unique businesses the County's prime contractors utilized as subcontractors during the study period. The disparity indices are derived from a comparative analysis of the prime contractors' utilization of available market area subcontractors. The available market area subcontractors are derived from the utilized subcontractors and the utilized prime contractors that performed the same scope of work as the utilized subcontractors. Given the source of the subcontractor availability, there is no need for a separate availability analysis.

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[181] *Engineering Contractors,* 122 F.3d at 921 (11th Cir. 1997).

[182] *Id.*

[183] *Id.*

[184] *Engineering Contractors,* 122 F.3d at 919 (11th Cir. 1997).

[185] *Id.*

[186] *Id.*

[187] *Engineering Contractors,* 122 F.3d at 920 (11th Cir. 1997).

[188] *Id.*

The Eleventh Circuit recognized that once the County produced evidence to support an inference of discrimination, the plaintiff must rebut the evidence to prevail.[189] In *Engineering Contractors*, the plaintiff asserted that there was a race-neutral reason for the disparity. Specifically, the plaintiff contended that the disparities are the result of firm size and not discrimination.[190] The County's study sought to address this argument by conducting a regression analysis to control for firm size. The County's regression analysis was conducted using two different proxies for firm size: (1) the total awarded value of all contracts bid on and (2) the largest single contract awarded.[191] The results of the County's regression analysis, controlling for firm size, confirmed the plaintiff's argument that most of the unfavorable disparities became statistically insignificant for the M/WBE firms during the study years.[192] Considering the evidence, the Court of Appeals affirmed the district court's conclusion that the disparities in M/WBE contracting were the result of firm size and not discrimination.[193]

The current study avoids this statistical defect because the market area is defined by the geographic distribution of businesses receiving one or more prime contracts from the County.

a. The Wainwright Study

Finally, the Wainwright Study sought to determine whether African Americans, Hispanic Americans, and women entered the construction industry at lower rates than similarly situated Caucasian males. To answer this query, the study (1) "compared construction business ownership rates of M/WBEs to those of non-M/WBEs" and (2) "analyzed disparities in personal income between M/WBEs and non-M/WBEs."[194]

The study found that African Americans, Hispanic Americans, and women were less likely to own construction firms compared to "similarly situated" Caucasian males.[195] Factors such as human capital, years of education, years of labor market experience, marital status, and English proficiency were considered to determine whether the groups studied were "similarly situated."[196] The Eleventh Circuit rejected this methodology based on the reasoning in *Croson,* where the court determined that similar evidence regarding minority membership in a local contractors' association was insufficient to establish "similarly situated."[197] The Eleventh Circuit stated that "it is

[189] *Engineering Contractors,* 122 F.3d at 916 (11th Cir. 1997).

[190] *Id*.

[191] *Engineering Contractors,* 122 F.3d at 917 (11th Cir. 1997).

[192] *Engineering Contractors,* 122 F.3d at 917-918. (11th Cir. 1997).

[193] *Engineering Contractors,* 122 F.3d at 919 (11th Cir. 1997).

[194] *Engineering Contractors,* 122 F.3d at 921 (11th Cir. 1997).

[195] *Id.*

[196] *Id.*

[197] *Engineering Contractors,* 122 F.3d at 922 (11th Cir. 1997).

unreasonable to assume that equality of opportunity will inevitably lead different groups with similar human and financial capital characteristics to make similar career choices."[198]

The Wainwright Study also found that the owners of M/WBEs in the construction industry earn less money than "similarly situated" Caucasian males by comparing the personal incomes of M/WBE construction contractors to non-M/WBE construction contractors through a regression analysis. The study found statistically significant income disparities for Black owners.[199] Again, the Eleventh Circuit rejected the study's methodology because the business owner income component failed to account for the firms' size in the regression analysis.[200] The Public Use Microdata was limited to data on the business owner and not the business. The authors of the study acknowledged this shortcoming and argued to the court that they "tried to approach the size and capacity issue from an individual [business owner] standpoint as best we could." However, the Eleventh Circuit concluded that the lower court was not required to take into consideration the Wainwright study in isolation from the other statistical evidence.[201]

b. The Brimmer Study

The Brimmer Study sought to determine the existence of disparities when variables such as the sales and receipts of African American-owned construction firms in the County were compared with the same variables of all the County's construction firms. The data analyzed included business receipts from African American-owned construction firms during 1977, 1982, and 1987 from the Census Bureau's Survey of Minority and Woman-Owned Businesses database.[202]

The findings from the study revealed disparities for African American-owned construction firms. As with the Wainwright Study, the Eleventh Circuit agreed with the district court's ruling that the identified disparities should be discounted because the methodology failed to consider the firms' size.[203]

The current MTA study does not suffer from the data issues in *Engineering Contractors*. The availability of M/WBE firms is capped to address the issue of capacity on prime contracts, limiting the analysis only to contracts with M/WBE capacity. Further, the prime and subcontract utilization data is derived from the data records of the County. The determination of market area and the subsequent filtering of firms that are willing and able avoids overstating availability by utilizing firms in the analysis that are unwilling or unable. The pool of available subcontractors is limited to prime contractors and subcontractors utilized in County contract awards. Accordingly, the issue of firm size, which was a critical weakness in the underlying studies in *Engineering Contractors,* is not a consideration in the current Miami-Dade availability/disparity study.

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[198] *Id.*

[199] *Engineering Contractors,* 122 F.3d at 923 (11th Cir. 1997).

[200] *Id.*

[201] *Id*

[202] *Id.*

[203] *Engineering Contractors,* 122 F.3d at 923 - 924 (11th Cir. 1997).

Hershell Gill Consulting Engineers, Inc. v. Miami Dade County

In *Hershell Gill Consulting Engineers, Inc. v. Miami Dade County* (*Hershell Gill*)[204], the United States District Court for the Southern District of Florida held that the County's M/WBE program for architecture and engineering contracts was unconstitutional and entered a permanent injunction prohibiting the use of the M/WBE program in architecture and engineering contracts and services.[205] The *Hershell Gill* court held that the County had enacted M/WBE goals on its architecture and engineering contracts without establishing a factual predicate that satisfied the strict scrutiny or intermediate scrutiny standards.[206]

Following the decision in *Engineering Contractors*, the plaintiffs requested that the County discontinue the use of race and gender measures on architecture and engineering contracts.[207] The County Manager appointed staff to formulate new processes and to potentially enact a Community Small Business Enterprise (CSBE) program.[208] The County's Department of Business Development conducted a study that reported that the utilization of African Americans, Hispanic Americans, and WBEs had reached parity on the County's architecture and engineering contracts. The County's analysis was predicated on architecture and engineering dollars awarded by the County to M/WBEs.[209]

The County Manager proposed to establish a CSBE program for architecture and engineering contracts and recommended adoption by the Commissioners.[210] The Commissioner refused to adopt the program because, in their opinion, the study did not present a complete picture of the marketplace.[211] The County Manager submitted another memorandum indicating parity had been reached and recommending that the M/WBE program for architecture and engineering services be terminated. The Commissioners rejected the recommendation and expressed their concern that the County's study reflected dollars awarded rather than amounts actually paid.[212] The Commissioners chose not to enact the CSBE program and voted to continue the M/WBE program in the award of architecture and engineering contracts.

After the complaint in *Hershell Gill* was filed, the County hired Dr. Manual J. Carvajal to conduct a study of architecture and engineering contracting.[213] The Dr. Carvajal final report consisted of four parts: 1) data identification and collection methodology; 2) tables pertaining to architecture,

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

[205] *Hershell Gill*, 333 F. Supp 2d at 1344.

[206] *Id.*

[207] *Hershell Gill*, 333 F. Supp 2d at 1313.

[208] *Hershell Gill*, 333 F. Supp 2d at 1313 - 1314.

[209] *Hershell Gill*, 333 F. Supp 2d at 1314.

[210] *Id.*

[211] *Id.*

[212] *Id.*

[213] *Hershell Gill*, 333 F. Supp 2d at 1315.

civil engineering, structural engineering, and contract awards; 3) regression analysis and indices 4) conclusion.[214]

The Carvajal study attempted to identify and measure gender and ethnic disparities in three fields: architecture, structural engineering, and civil engineering.[215] Dr. Carvajal used four data sets to define the universe of firms in the above fields. A list of potentially available firms had been determined by identifying businesses in the Bell South telephone directory, a list compiled by infoUSA, and a list of firms registered for technical certification with the County's Department of Public Works.[216] For architectural firms only, the study used a list of firms with professional architecture licenses.[217]

Dr. Carvajal further refined the data from several sources, such as award data, telephone surveys, and information provided by the firms to the County.[218] Dr. Carvajal presented the empirical findings in five sets of tables and a separate part that dealt with the regression analysis. Dr. Carvajal determined that the analysis of the award data was unreliable and concentrated his analysis on the firm's annual volume of business in the marketplace.

The survey found that disparities exist for M/WBE between the percentage of the annual volume of business and the percentage of annual revenue.[219] Dr. Carvajal performed a regression analysis and determined, using the annual volume revenue, that disparities were present in each of the specialty fields.[220] Dr. Carvajal concluded that woman and Hispanic-owned business's gross statistical disparities in annual revenue could be attributed to discrimination. Dr. Carvajal did not find sufficient evidence of discrimination against Black-owned firms.[221]

The district court reviewed the evidence presented by the County and concluded that the market data upon which the study relied to establish a disparity for woman and Hispanic-owned firms was unreliable and inaccurate.[222] The *Hershell Gill* Court reasoned that the data collected was overinclusive because no attempt was made to limit the volume of business to the amount earned in Miami-Dade County.[223]

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[214] *Id.*

[215] *Hershell Gill*, 333 F. Supp 2d at 1318.

[216] *Id.*

[217] *Id.*

[218] *Hershell Gill*, 333 F. Supp 2d at 1319.

[219] *Id.*

[220] *Hershell Gill*, 333 F. Supp 2d at 1320.

[221] *Id.* The County conceded that the evidence of discrimination against BBE firms was insufficient, and the Court did not conduct any further analysis.

[222] *Hershell Gill*, 333 F. Supp 2d at 1321.

[223] *Id.*

The district court also concluded that the data was also underinclusive. The market area analysis was deemed under-inclusive because it failed to include firms from neighboring counties that provide architecture and engineering services in Miami-Dade County.[224] The Court stated that neighboring counties, such as Broward County, should have been considered. Therefore, the marketplace analysis was incomplete.[225]
The *Hershell Gill* Court also found that the study's analysis failed to properly define the County's product market. The study included the total revenues of each firm that provided services in more than one industry.[226] Thus, if a firm had annual revenue of $100,000 from architectural services and $15 million from civil engineering services, the firm's annual revenues were reported as $15,100,000 in both the architectural engineering and civil engineering datasets, which clearly overstates the firm's revenues.[227]

Finally, the district court concluded that the marketplace survey data was unreliable. The court was critical of the survey questions used to collect the annual volume of business data. The court considered the survey questions ambiguous and found that the critical questions collecting data on annual revenue were not clear whether the question sought gross revenue, net revenue, or revenue from a particular industry.[228] Thus, the Court decided to exclude or minimize the survey results and determined the findings not to be persuasive due to the survey's deficiencies.

In the Court's conclusion, the district court noted one final matter that warranted discussion. The *Hershel Gill* Court concluded that the Tenth Circuit's allocation of the burden of proof in *Concrete Works* conflicted with the Eleventh Circuit precedent. [229]

Mason Tillman's 2022 Disparity Study

Mason Tillman's methodology used in the current County study, unlike that employed by *Engineering Contractors* and *Hershel Gill,* adheres to the standard set forth in *Croson.* The methodology for determining utilization, availability, and disparity comports with the predicate set forth in *Croson*. The current Mason Tillman 2024 Disparity Study does not suffer from the data deficiencies identified in *Engineering Contractors* and *Hershell Gill.*

The method for analyzing utilization employed in the current study determines the County's spend with the prime contractors and the prime contractors' spend with their subcontractors. The

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[224] *Id.*

[225] *Id*.

[226] *Id.*

[227] *Hershell Gill*, 333 F. Supp 2d at 1322.

[228] *Hershell Gill*, 333 F. Supp 2d at 1323.

[229] *Hershell Gill*, 333 F. Supp 2d at 1325. The *Hershell Gill* Court considered the Tenth Circuit's decision in *Concrete Works of Colorado, Inc. v. City and County of Denver,* 321 F.3d 950 (10th Cir. 2003) and found the decision flawed for the reason articulated by Justice Scalia in his dissent for the denial of certiorari. But see, *Engineering Contractors,* 122 F.3d at 906 (11th Cir. 1997). The party challenging the affirmative action program bears the ultimate burden of proof of establishing that the public entity's evidence does not establish an inference of discrimination.

utilization data is calculated from the actual prime and subcontracts awarded by the County and its prime contractors. The availability data is derived from the enumeration of willing and able businesses domiciled in the County's market area, and it is the geographic parameters where the County awarded its contracts.

Unlike *Hershell Gill*, the disparity analysis does not rely upon the annual volume of business and percentage of annual revenue. The disparity analysis determines if there is underutilization of available M/WBEs in the County's award of prime contracts and its prime contractors' award of their subcontracts. Where there is a disparity, a test of statistical significance is applied to determine if the underutilization is due to something other than chance. Thus, the Mason Tillman methodology is significantly different than those employed in both Engineering *Contractors* and Hershel *Gill*.

The first step is to determine the County's prime contractor utilization by ethnicity and gender; the second step is to determine the market area where the utilized businesses are domiciled and then enumerate the willing and able M/WBEs and non-M/WBEs within the geographic market area.

Mason Tillman uses a wide variety of sources to identify businesses within the market area that perform as either prime or subcontractors on the type of contracts the County awarded.[230] The willingness of the identified businesses to perform as a prime or subcontractor on the County's contracts is assessed. A business survey is used to determine which market area businesses are willing to perform the County's contracts. The final step is to address the issue of the capacity of the willing businesses to perform the County contracts.

The capacity analysis examines the frequency distribution of the dollar value of all contracts the County awarded to M/WBEs and non-M/WBEs. Based upon this analysis, the current study determines the mean and median size of the County contracts awarded to both M/WBEs and non-M/WBEs and then assesses the significance of the difference in the awards each group received. The largest M/WBE awards are also classified by ethnicity and gender to document the demonstrated capacity of M/WBE firms to perform the County's large prime contracts. To avoid skewing the statistical findings, the contract awards analyzed are capped to exclude the large contracts that are outliers. The final capacity measure is the business capacity survey to assess the relative capacity of M/WBEs and non-M/WBEs through a comparative analysis of the business owners' profile, business revenue, frequency of bidding, and average size of contract bids.

The disparity analysis determines if the County's utilization of M/WBEs and non-M/WBEs is in parity with the availability of the willing and able M/WBEs and non-M/WBEs. The disparity analysis, unlike *Engineering Contractors,* is not used in the calculation of M/WBE sales and receipt percentages based on the total sales and receipts from the firm filing a subcontractor's release of lien with the County.

[230] *Miami Dade County Disparity Study, Chapter 2* outlines the study's methodology for determining availability.

VI. Conclusion

The decisions of the Supreme Court in *Croson* and *Adarand* have defined the legal landscape for business affirmative action programs. The guidance provided by the Eleventh Circuit decisions in *Engineering Contractor* and *Hershell Gill* provides further guidance on the strict and intermediate scrutiny analysis. These decisions require that all race-conscious programs satisfy strict scrutiny by requiring gross statistical evidence of underutilization of each ethnic group and narrow tailoring of the remedies while still underscoring the importance of anecdotal evidence from M/WBE groups. These decisions require that gender-conscious programs satisfy intermediate scrutiny by requiring sufficient probative evidence of underutilization and a remedy that is substantially related to achieving the state goal.

The Supreme Court in *SFFA* did not overrule the precedent established by *Croson* or *Adarand,* and it is far too early to determine the legal impact of the *SFFA* case on public contracting. There is no doubt that the *SFFA* decision, however, will trigger additional challenges to public contracting affirmative action programs. Future federal cases and decisions applying the *SFFA* decision to race-conscious affirmative action in public contracting will determine the road map by which to judge race and ethnicity-based classifications. The Court's disposition of these cases as they develop will provide guidance on the evidence required to establish the existence of an "extraordinary case"[231] that warrants the use of race-conscious measures. Relying on language in *SFFA,* litigation has been filed in the Eastern District of Kentucky challenging the Disadvantaged Business Enterprise Program, and other challenges have been asserted against private sector Diversity Equity and Inclusion programs.[232]

This chapter has examined what *Croson* and its progeny require for a local or state government to institute a constitutional race or gender-conscious public contracting program. Given the case law discussed in this chapter, any recommended race or gender-conscious affirmative action contracting programs must be based on a constitutionally sound factual predicate.

[231] 143 S. Ct. at 2162.

[232] *Mid-America Milling Company, LLC et al. v. U.S. Department of Transportation, et al.,* Case No. 23-CV. 00072, filed October 26, 2023.

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228 F.3d 1147 (10th Cir. 2000) 8

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950 F.2d 1401 (9th Cir. 1991) ..... *passim*

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214 F.3d 730 (6th Cir. 2000) 11, 17

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791 F. Supp. 941 (D. Conn. 1992) 6

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298 F. Supp. 2d 725 (N.D. Ill. 2003) 11, 28

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256 F.3d 642 (7th Cir. 2001) 11, 28

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488 U.S. 469 (1989) ..... *passim*

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36 F.3d 1513 (10th Cir. 1994) ..... *passim*

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321 F.3d 950 (10th Cir. 2003) 37

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908 F.2d 908 (11th Cir. 1990) 13, 15, 21

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6 F.3d 990 (3d Cir. 1993) .....*passim*

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893 F. Supp. 419 (E.D. Pa.1995) 14, 18

Coral Constr. Co. v. King Cnty.,
941 F.2d 910 (9th Cir. 1991) 21, 27

EEOC v. Am. Nat'l Bank,
652 F.2d 1176 (4th Cir. 1981) 19

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943 F. Supp. 1546 (S.D. Fla. 1996) 18, 19, 23

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122 F.3d 895 (11th Cir. 1997) .....*passim*

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539 U.S. 244, 258 (2003) 11

Grutter v. Bollinger,
539 U.S. 306 (2003) 27

Hazelwood Sch. Dist. v. United States,
433 U.S. 299 (1977) 12, 20

H.B. Rowe Co. v. Tippett ("Rowe"),
615 F.3d 233 (4th Cir. 2010) 25, 26

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333 F. Supp. 2d 1305 (S.D. Fla. 2004) .....*passim*

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431 U.S. 324 (1977) 13, 20, 22

League of United Latin Am. Citizens v. Santa Ana,
410 F. Supp. 873 (C.D. Cal. 1976) 19

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125 F.3d 702 (9th Cir. 1997) 12

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1998 U.S. Dist. LEXIS 6785 (EDNY 1998) 12

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963 F.2d 420 (D.C. Cir. 1992).....23, 24

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1983 U.S. App. LEXIS 24185 (6th Cir. 1983).....17

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498 F. Supp. 952 (D. D.C. 1980).....19

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517 U.S. 899 (1996).....10

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476 U.S. 267 (1986) 6, 7, 9, 21

CHAPTER 2: Prime Contractor Utilization Analysis

I. Introduction

This chapter documents Miami-Dade County's (County) utilization of minority and woman-owned business enterprise (M/WBE) and non-minority male-owned business enterprise (non-M/WBE) prime contractors by ethnicity, gender, and industry during the study period of November 1, 2018 to October 31, 2021. The County's contracts were classified into four industries—construction, architecture and engineering, professional and other services, and goods and services. The definitions of the industries reflect those used in the Disparity Study (Study).

- **Construction**: building, renovating, retrofitting, rehabilitating, restoration, painting, altering, and repairing or improvements of public buildings, roads, parks, and docks.

- **Architecture and Engineering**: professional architecture, engineering, landscape architecture, design, construction management, construction inspection services, land surveying, project estimating services, and mapping services.

- **Professional and Other Services**: consulting, research, auditing, legal, accounting, appraisal, software design and implementation, professional translation, facility management, and other similar services.

- **Goods and Services**: supplies, materials, commodities, equipment, and non-technical services.

Table 2.1 lists the nine race and gender groups in which the prime contractors are classified.

Table 2.1: Business Ethnic and Gender Group Definitions

Ethnicity and Gender Category	Definition[233]
African Americans	Businesses owned by males and females having origins in any of the black racial groups of Africa.
Asian Americans	Businesses owned by males and females having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.
Hispanic Americans	Businesses owned by males and females of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
Native Americans	Businesses owned by males and females having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.
Caucasian Females	Businesses owned by non-minority women.
Minority Females	Businesses owned by African American, Asian American, Hispanic American, and Native American females.
Non-minority Male-owned Businesses	Businesses owned by Caucasian males, and businesses that could not be identified as minority or female-owned.[234]
Minority-owned Businesses	Businesses owned by male and female African Americans, Asian Americans, Hispanic Americans, and Native Americans.
Woman-owned Businesses	Businesses owned by females.

[233] Statistical Policy Directive No. 15, The U.S. Office of Management and Budget, 1977.

[234] See *Section II: Prime Contract Data Sources* for the methodology employed to identify the ethnicity and gender of the utilized prime contractors.

II. Prime Contract Data Sources

The prime contract data is managed in the County's Integrated Financial Resources Management System (INFORMS). The prime contract award and payment information is transferred to B2Gnow monthly from INFORMS. B2Gnow is the County's web-based business management workforce system managed by Small Business Development Office to track and report subcontract award and payment information. The system is accessible to all prime contractors, subcontractors, and County staff.

The prime contracts analyzed were extracted from B2Gnow. The B2Gnow dataset included award and payment amounts for the prime contracts awarded during the November 1, 2018 to October 31, 2021 study period.

The County's prime contract data were normalized to conform to a standard format. The dataset was then scrubbed to exclude the records without payment or award amount, lease agreements, duplicate contracts, closed with no payment contracts, and contracts with dollar amounts of $1 or less. Prime contractors with total payments of $5,000 or less were also excluded.

Each contract included in the dataset was assigned one of four industries: construction, architecture and engineering, professional and other services, or goods and services. Research was undertaken to assign an industry to the contracts in the dataset. Industries were assigned based on business name, contract type, and contract title. The industry classifications were reviewed and approved by the County.

Ethnicity and gender designations were also assigned to each prime contractor. Most prime contractors in the dataset had an ethnicity and gender designation. The accuracy of the designations was verified using several techniques. Ethnicity and gender classifications derived from certification records were verified by reviewing the certification directory. For the other businesses, the company's website, if available, was reviewed for the owner's ethnicity and gender. To verify the designation for those without a website, social media accounts were checked. Prime contractors whose ethnicity and gender could not be determined were classified as non-M/WBE. The non-M/WBE category also included publicly traded corporations, employee-owned businesses, and 50/50 partnerships, in which the partners were neither minority nor female.

III. Thresholds for Analysis

The County's prime contracts awarded in each industry are analyzed at three size thresholds: (1) all prime contracts, including outliers, (2) informal prime contracts defined by the *Procurement Guidance Document and Best Practices Manual* (*Manual*),[235] and (3) formal prime contracts with the upper limits determined by a statistical calculation and the outliers removed. Outliers are the atypical contract values that are notably different from the rest of the contract values in the dataset.

[235] *Procurement Guidance Document and Best Practices Manual,* Strategic Procurement Division, Internal Services Department, updated on July 4, 2021.

Informal Prime Contract Thresholds

Informal procurement methods are used for small purchases to reduce the procurement lead time. The informal threshold for each industry, as defined by the *Manual,* is listed in Table 2.2.

Table 2.2: Informal Contract Thresholds by Industry

Industry	Informal Contract Threshold
Construction	$25,000 and under
Architecture and Engineering	$25,000 and under
Professional and Other Services	$25,000 and under
Goods and Services	$25,000 and under

Formal Prime Contract Thresholds Without Outliers

Given the size of contract values in the formal prime contract data, upper limits, or maximum amounts, were defined to avoid skewing the analysis of disparity. The outliers, or otherwise atypical contract amounts, were removed from each industry's formal threshold. To define the upper limits, a distribution cluster analysis was performed to determine the characteristics of the prime contract data. The distribution analysis reveals the presence of outliers in the prime contract data. Outliers are the atypical contract amounts, which are notably different from the rest of the contract values and can either be contract amounts that are atypically high or low.

To determine outliers, both the upper and lower limits of the accepted contract values in the prime data were defined, and the 1.5 x interquartile range (IQR) rule was applied. Calculating the IQR required identifying the value of the contracts at the first and third quartiles. The distance, or the difference in value, between the first and third quartiles defined the IQR. The IQR multiplied by 1.5 was subtracted from the first quartile to identify the lower limit of the accepted contract amount. Anything below that amount was considered an outlier and was not counted in the formal threshold. The value of 1.5 multiplied by the IQR was then added to the third quartile to identify the upper limit of the accepted contract amount. Contracts that had an amount above the upper range were considered outliers and excluded from the formal contracts analyzed. Table 2.3 lists the contract thresholds by industry for the formal contracts with outliers removed.



Table 2.3: Formal Contract Threshold by Industry Excluding Outliers

Industry	Formal Contract Threshold
Construction	between $25,000 and $1,960,000
Architecture and Engineering	between $25,000 and $850,000
Professional and Other Services	between $25,000 and $2,570,000
Goods and Services	between $25,000 and $1,740,000

This chapter presents the analysis of M/WBE and non-M/WBE prime contractor utilization with and without outliers. However, outliers were removed from the statistical analysis of disparity presented in *Chapter 6: Prime Contract Disparity Analysis*.

IV. Prime Contractor Utilization

All Prime Contractors

As shown in Table 2.4, the County issued 3,955 prime contracts from November 1, 2018 to October 31, 2021. These 3,955 prime contracts include the outliers.

The 3,955 prime contracts awarded included 2,102 for construction, 728 for architecture and engineering, 160 for professional and other services, and 965 for goods and services. The payments made by the County during the study period totaled $4,225,842,104 for all 3,955 prime contracts. Payments included $2,099,258,723 for construction, $566,799,944 for architecture and engineering, $368,383,991 for professional and other services, and $1,201,399,446 for goods and services.

Table 2.4: Total Prime Contracts and Dollars Expended
All Industries, November 1, 2018 to October 31, 2021

Industry	Total Number of Contracts	Total Dollars Awarded
Construction	2,102	$2,099,258,723
Architecture and Engineering	728	$556,799,944
Professional and Other Services	160	$368,383,991
Goods and Services	965	$1,201,399,446
Total Expenditures	**3,955**	**$4,225,842,104**

Distribution of Prime Contract Dollars

All prime contracts, including the outliers, are included in the analysis of highly used contractors. The County awarded a significant number of its prime contract dollars to a few businesses, referred to as "highly used." The highly used businesses received approximately 70% of the total contract dollars awarded in each industry. The "most highly used" businesses, a subset of the highly used businesses, received approximately 50% of the total contract dollars in each industry. Given the percentage of prime contract dollars awarded to the most highly used businesses, most of the County's subcontractors were selected by a few businesses. These few prime contractors effectively controlled the award of most of the County's subcontracts.

Highly Used Construction Prime Contractors

The County awarded a total of 2,102 construction prime contracts during the study period. As listed in Table 2.5, 2,102 construction prime contracts were received by 350 businesses for a total of $2,099,258,723.

Table 2.5: Construction Prime Contracts

Total Contracts	2,102
Total Utilized Businesses	350
Total Expenditures	**$2,099,258,723**

Table 2.6 lists the distribution of construction prime contracts by the number of businesses. Seventeen of the 350 businesses received $1,451,755,155, approximately 70% of the total construction prime contract dollars. The findings show that a small group of prime contractors received most of the construction prime contract dollars spent by the County.

Table 2.6: Construction Prime Contracts Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
17 Vendors Received	$1,451,755,155	69.16%	87	4.14%
333 Vendors Received	$647,503,568	30.84%	2,015	95.86%
350 Vendors Received	**$2,099,258,723**	**100.00%**	**2,102**	**100.00%**

Table 2.7 lists the ethnicity and gender of the most highly used construction prime contractors who received the most construction prime contract dollars. The seven most highly used prime contractors were non-minority male-owned businesses. The seven contractors received $1,028,614,607, approximately 50% of the total construction prime contract dollars. The contracts received by these seven businesses ranged from $76,150 to $195,555,440.

Table 2.7: Most Highly Used Construction Prime Contractors

Businesses	Total Dollars	Number of Contracts
7 Non-Minority Males	$1,028,614,607	24

Highly Used Architecture and Engineering Prime Contractors

The County awarded a total of 728 architecture and engineering prime contracts during the study period. As listed in Table 2.8, 728 architecture and engineering prime contracts were received by 290 businesses for a total of $556,799,944.

Table 2.8: Architecture and Engineering Prime Contracts

Total Contracts	728
Total Utilized Businesses	290
Total Expenditures	**$556,799,944**

Table 2.9 lists the distribution of architecture and engineering prime contracts by the number of businesses. Eighteen of the 290 businesses received $388,957,824, approximately 70% of the total architecture and engineering prime contract dollars. The findings show that a small group of prime contractors received most of the architecture and engineering prime contract dollars spent by the County.

Table 2.9: Architecture and Engineering Prime Contracts Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
18 Vendors Received	$388,957,824	69.86%	99	13.60%
272 Vendors Received	$167,842,119	30.14%	629	86.40%
290 Vendors Received	**$556,799,944**	**100.00%**	**728**	**100.00%**

Table 2.10 lists the ethnicity and gender of the most highly used architecture and engineering prime contractors who received the most architecture and engineering prime contract dollars. The five most highly used prime contractors were one Caucasian female business, two Hispanic American businesses, and two non-minority male-owned businesses. These five prime contractors received $283,895,390, approximately 50% of the total architecture and engineering prime contract dollars. The contracts received by these five businesses ranged from $1,565 to $120,751,935.



Table 2.10: Most Highly Used Architecture and Engineering Prime Contractors

Businesses	Total Dollars	Number of Contracts
2 Non-Minority Males	$51,124,587	7
1 Caucasian Female	$61,534,100	3
2 Hispanic Americans	$171,236,703	28

Highly Used Professional and Other Services Prime Contractors

The County awarded a total of 160 professional and other services prime contracts during the study period. As listed in Table 2.11, 160 professional and other services prime contracts were received by 105 businesses for a total of $368,383,991.

Table 2.11: Professional and Other Services Prime Contracts

Total Contracts	160
Total Utilized Businesses	105
Total Expenditures	**$368,383,991**

Table 2.12 lists the distribution of professional and other services prime contracts by the number of businesses. Six of the 105 businesses received $262,918,500, approximately 70% of the total professional and other services prime contract dollars. The findings show that a small group of prime contractors received most of the professional and other services prime contract dollars spent by the County.

Table 2.12: Professional and Other Services Prime Contracts Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
6 Vendors Received	$262,918,500	71.37%	12	7.50%
99 Vendors Received	$105,465,491	28.63%	148	92.50%
105 Vendors Received	**$368,383,991**	**100.00%**	**160**	**100.00%**

Table 2.13 lists the ethnicity and gender of the most highly used professional and other services prime contractors who received the most professional and other services prime contract dollars. The three most highly used prime contractors were non-minority male-owned businesses. The three prime contractors received $198,567,480, approximately 50% of the total professional and other services prime contract dollars. The contracts received by these three businesses ranged from $33,084,000 to $90,000,000.



Table 2.13: Most Highly Used Professional and Other Services Prime Contractors

Businesses	Total Dollars	Number of Contracts
3 Non-Minority Males	$198,567,480	6

Highly Used Goods and Services Prime Contractors

The County awarded a total of 965 goods and services prime contracts during the study period. As listed in Table 2.14, 965 goods and services prime contracts were received by 686 businesses for a total of $1,201,399,466.

Table 2.14 Goods and Services Prime Contracts

Total Contracts	965
Total Utilized Businesses	686
Total Expenditures	**$1,201,399,446**

Table 2.15 lists the distribution of goods and services prime contracts by the number of businesses. Thirty-eight of the 686 businesses received $838,659,513, approximately 70% of the total goods and services prime contract dollars. The findings show that a small group of prime contractors received most of the goods and services prime contract dollars spent by the County.

Table 2.15: Goods and Services Prime Contracts Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
38 Vendors Received	$838,659,513	69.81%	94	9.74%
649 Vendors Received	$362,739,934	30.19%	871	90.26%
686 Vendors Received	**$1,201,399,446**	**100.00%**	**965**	**100.00%**

Table 2.16 lists the ethnicity and gender of the most highly used goods and services prime contractors. The 13 most highly used prime contractors were one Asian American business, one Hispanic American business, and 11 non-minority male-owned businesses. The 13 prime contractors received $600,434,237, approximately 50% of the total goods and services prime contract dollars. The contracts received by these 13 businesses ranged from $1,263 to $97,022,852.

Table 2.16: Most Highly Used Goods and Services Prime Contractors

Businesses	Total Dollars	Number of Contracts
1 Asian American	$16,759,574	2
1 Hispanic American	$58,081,447	4
11 Non-Minority Males	$525,593,215	32

All Prime Contracts by Industry

1. Construction Prime Contract Utilization: All Contracts

Table 2.17 lists all prime contract dollars expended by the County on construction prime contracts for all contracts. MBEs received 32.52%, WBEs received 3.60%, and non-M/WBEs received 67.29% of the construction prime contract dollars.

African Americans received 297, or 14.13% of all construction prime contracts awarded during the study period, representing $20,173,523, or 0.96% of the construction prime contract dollars.

Asian Americans received 14, or 0.67% of all construction prime contracts awarded during the study period, representing $18,937,097, or 0.90% of the construction prime contract dollars.

Hispanic Americans received 1,408, or 66.98% of all construction prime contracts awarded during the study period, representing $643,609,991, or 30.66% of the construction prime contract dollars.

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

Caucasian Females received 126, or 5.99% of all construction prime contracts awarded during the study period, representing $3,983,608, or 0.19% of the construction prime contract dollars.

Minority Females received 337, or 16.03% of all construction prime contracts awarded during the study period, representing $71,619,442, or 3.41% of the construction prime contract dollars.

Non-minority Males received 257, or 12.23% of all construction prime contracts awarded during the study period, representing $1,412,554,504, or 67.29% of the construction prime contract dollars.

Minority Business Enterprises received 1,719, or 81.78% of all construction prime contracts awarded during the study period, representing $682,720,611, or 32.52% of the construction prime contract dollars.

Woman Business Enterprises received 463, or 22.03% of all construction prime contracts awarded during the study period, representing $75,603,051, or 3.60% of the construction prime contract dollars.

Table 2.17: Construction Prime Contract Utilization: All Contracts

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	297	14.13%	$20,173,523	0.96%
Asian Americans	14	0.67%	$18,937,097	0.90%
Hispanic Americans	1,408	66.98%	$643,609,991	30.66%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	126	5.99%	$3,983,608	0.19%
Non-minority Males	257	12.23%	$1,412,554,504	67.29%
TOTAL	2,102	100.00%	$2,099,258,723	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Females	22	1.05%	$4,495,570	0.21%
African American Males	275	13.08%	$15,677,953	0.75%
Asian American Females	2	0.10%	$162,002	0.01%
Asian American Males	12	0.57%	$18,775,095	0.89%
Hispanic American Females	313	14.89%	$66,961,871	3.19%
Hispanic American Males	1,095	52.09%	$576,648,121	27.47%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	126	5.99%	$3,983,608	0.19%
Non-minority Males	257	12.23%	$1,412,554,504	67.29%
TOTAL	2,102	100.00%	$2,099,258,723	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	337	16.03%	$71,619,442	3.41%
Minority Males	1,382	65.75%	$611,101,168	29.11%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	1,719	81.78%	$682,720,611	32.52%
Woman Business Enterprises	463	22.03%	$75,603,051	3.60%



2. Architecture and Engineering Prime Contract Utilization: All Contracts

Table 2.18 lists all prime contract dollars expended by the County on architecture and engineering prime contracts for all contracts. MBEs received 55.79%, WBEs received 16.07%, and non-M/WBEs received 31.75% of the architecture and engineering prime contract dollars.

African Americans received 25, or 3.43% of all architecture and engineering prime contracts awarded during the study period, representing $6,191,267, or 1.11% of the architecture and engineering prime contract dollars.

Asian Americans received 30, or 4.12% of all architecture and engineering prime contracts awarded during the study period, representing $4,897,514, or 0.88% of the architecture and engineering prime contract dollars.

Hispanic Americans received 334, or 45.88% of all architecture and engineering prime contracts awarded during the study period, representing $299,530,220, or 53.79% of the architecture and engineering prime contract dollars.

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

Caucasian Females received 31, or 4.26% of all architecture and engineering prime contracts awarded during the study period, representing $69,418,807, or 12.47% of the architecture and engineering prime contract dollars.

Minority Females received 57, or 7.83% of all architecture and engineering prime contracts awarded during the study period, representing $20,059,443, or 3.60% of the architecture and engineering prime contract dollars.

Non-minority Males received 308, or 42.31% of all architecture and engineering prime contracts awarded during the study period, representing $176,762,135, or 31.75% of the architecture and engineering prime contract dollars.

Minority Business Enterprises received 389, or 53.43% of all architecture and engineering prime contracts awarded during the study period, representing $310,619,001, or 55.79% of the architecture and engineering prime contract dollars.

Woman Business Enterprises received 88, or 12.09% of all architecture and engineering prime contracts awarded during the study period, representing $89,478,250, or 16.07% of the architecture and engineering prime contract dollars.



Table 2.18: Architecture and Engineering Prime Contract Utilization: All Contracts

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	25	3.43%	$6,191,267	1.11%
Asian Americans	30	4.12%	$4,897,514	0.88%
Hispanic Americans	334	45.88%	$299,530,220	53.79%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	31	4.26%	$69,418,807	12.47%
Non-minority Males	308	42.31%	$176,762,135	31.75%
TOTAL	728	100.00%	$556,799,944	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Females	2	0.27%	$394,699	0.07%
African American Males	23	3.16%	$5,796,568	1.04%
Asian American Females	1	0.14%	$400,000	0.07%
Asian American Males	29	3.98%	$4,497,514	0.81%
Hispanic American Females	54	7.42%	$19,264,744	3.46%
Hispanic American Males	280	38.46%	$280,265,476	50.34%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	31	4.26%	$69,418,807	12.47%
Non-minority Males	308	42.31%	$176,762,135	31.75%
TOTAL	728	100.00%	$556,799,944	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	57	7.83%	$20,059,443	3.60%
Minority Males	332	45.60%	$290,559,558	52.18%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	389	53.43%	$310,619,001	55.79%
Woman Business Enterprises	88	12.09%	$89,478,250	16.07%



3. Professional and Other Services Prime Contract Utilization: All Contracts

Table 2.19 lists all prime contract dollars expended by the County on professional and other services prime contracts for all contracts. MBEs received 10.85%, WBEs received 16.53%, and non-M/WBEs received 79.58% of the professional and other services prime contract dollars.

African Americans received 6, or 3.75% of all professional and other services prime contracts awarded during the study period, representing $4,013,087, or 1.09% of the professional and other services prime contract dollars.

Asian Americans received 6, or 3.75% of all professional and other services prime contracts awarded during the study period, representing $1,575,085, or 0.43% of the professional and other services prime contract dollars.

Hispanic Americans received 25, or 15.63% of all professional and other services prime contracts awarded during the study period, representing $34,380,707, or 9.33% of the professional and other services prime contract dollars.

Native Americans received none of the professional and other services prime contracts awarded during the study period.

Caucasian Females received 10, or 6.25% of all professional and other services prime contracts awarded during the study period, representing $35,262,869, or 9.57% of the professional and other services prime contract dollars.

Minority Females received 11, or 6.88% of all professional and other services prime contracts awarded during the study period, representing $25,617,650, or 6.95% of the professional and other services prime contract dollars.

Non-minority Males received 113, or 70.63% of all professional and other services prime contracts awarded during the study period, representing $293,152,243, or 79.58% of the professional and other services prime contract dollars.

Minority Business Enterprises received 37, or 23.13% of all professional and other services prime contracts awarded during the study period, representing $39,968,879, or 10.85% of the professional and other services prime contract dollars.

Woman Business Enterprises received 21, or 13.13% of all professional and other services prime contracts awarded during the study period, representing $60,880,519, or 16.53% of the professional and other services prime contract dollars.



Table 2.19: Professional and Other Services Prime Contract Utilization: All Contracts

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	6	3.75%	$4,013,087	1.09%
Asian Americans	6	3.75%	$1,575,085	0.43%
Hispanic Americans	25	15.63%	$34,380,707	9.33%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	10	6.25%	$35,262,869	9.57%
Non-minority Males	113	70.63%	$293,152,243	79.58%
TOTAL	160	100.00%	$368,383,991	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Females	2	1.25%	$777,750	0.21%
African American Males	4	2.50%	$3,235,337	0.88%
Asian American Females	3	1.88%	$490,126	0.13%
Asian American Males	3	1.88%	$1,084,959	0.29%
Hispanic American Females	6	3.75%	$24,349,774	6.61%
Hispanic American Males	19	11.88%	$10,030,934	2.72%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	10	6.25%	$35,262,869	9.57%
Non-minority Males	113	70.63%	$293,152,243	79.58%
TOTAL	160	100.00%	$368,383,991	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	11	6.88%	$25,617,650	6.95%
Minority Males	26	16.25%	$14,351,229	3.90%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	37	23.13%	$39,968,879	10.85%
Woman Business Enterprises	21	13.13%	$60,880,519	16.53%



4. Goods and Services Prime Contract Utilization: All Contracts

Table 2.20 lists all prime contract dollars expended by the County on goods and services prime contracts for all contracts. MBEs received 24.20%, WBEs received 13.04%, and non-M/WBEs received 72.63% of the goods and services prime contract dollars.

African Americans received 35, or 3.63% of all goods and services prime contracts awarded during the study period, representing $37,813,568, or 3.15% of the goods and services prime contract dollars.

Asian Americans received 41, or 4.25% of all goods and services prime contracts awarded during the study period, representing $44,575,094, or 3.71% of the goods and services prime contract dollars.

Hispanic Americans received 251, or 26.01% of all goods and services prime contracts awarded during the study period, representing $199,778,624, or 16.63% of the goods and services prime contract dollars.

Native Americans received 2, or 0.21% of all goods and services prime contracts awarded during the study period, representing $8,528,887, or 0.71% of the goods and services prime contract dollars.

Caucasian Females received 72, or 7.46% of all goods and services prime contracts awarded during the study period, representing $38,161,278, or 3.18% of the goods and services prime contract dollars.

Minority Females received 84, or 8.70% of all goods and services prime contracts awarded during the study period, representing $118,545,526, or 9.87% of the goods and services prime contract dollars.

Non-minority Males received 564, or 58.45% of all goods and services prime contracts awarded during the study period, representing $872,541,995, or 72.63% of the goods and services prime contract dollars.

Minority Business Enterprises received 329, or 34.09% of all goods and services prime contracts awarded during the study period, representing $290,696,173, or 24.20% of the goods and services prime contract dollars.

Woman Business Enterprises received 156, or 16.17% of all goods and services prime contracts awarded during the study period, representing $156,706,804, or 13.04% of the goods and services prime contract dollars.



Table 2.20: Goods and Services Prime Contract Utilization: All Contracts

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	35	3.63%	$37,813,568	3.15%
Asian Americans	41	4.25%	$44,575,094	3.71%
Hispanic Americans	251	26.01%	$199,778,624	16.63%
Native Americans	2	0.21%	$8,528,887	0.71%
Caucasian Females	72	7.46%	$38,161,278	3.18%
Non-minority Males	564	58.45%	$872,541,995	72.63%
TOTAL	965	100.00%	$1,201,399,446	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Females	8	0.83%	$8,603,333	0.72%
African American Males	27	2.80%	$29,210,235	2.43%
Asian American Females	2	0.21%	$188,809	0.02%
Asian American Males	39	4.04%	$44,386,285	3.69%
Hispanic American Females	74	7.67%	$109,753,384	9.14%
Hispanic American Males	177	18.34%	$90,025,241	7.49%
Native American Females	0	0.00%	$0	0.00%
Native American Males	2	0.21%	$8,528,887	0.71%
Caucasian Females	72	7.46%	$38,161,278	3.18%
Non-minority Males	564	58.45%	$872,541,995	72.63%
TOTAL	965	100.00%	$1,201,399,446	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	84	8.70%	$118,545,526	9.87%
Minority Males	245	25.39%	$172,150,647	14.33%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	329	34.09%	$290,696,173	24.20%
Woman Business Enterprises	156	16.17%	$156,706,804	13.04%



Informal Prime Contracts by Industry

5. Construction Prime Contract Utilization: Contracts Valued at $25,000 and under

Table 2.21 lists all prime contract dollars expended by the County on construction prime contracts valued at $25,000 and under. MBEs received 88.42%, WBEs received 22.70%, and non-M/WBEs received 4.92% of the construction prime contract dollars.

African Americans received 219, or 19.85% of construction prime contracts valued at $25,000 and under awarded during the study period, representing $1,725,784, or 22.33% of the construction prime contract dollars.

Asian Americans received 5, or 0.45% of construction prime contracts valued at $25,000 and under awarded during the study period, representing $72,551, or 0.94% of the construction prime contract dollars.

Hispanic Americans received 735, or 66.64% of construction prime contracts valued at $25,000 and under awarded during the study period, representing $5,035,421, or 65.15% of the construction prime contract dollars.

Native Americans received none of the construction prime contracts valued at $25,000 and under awarded during the study period.

Caucasian Females received 96, or 8.70% of construction prime contracts valued at $25,000 and under awarded during the study period, representing $515,182, or 6.67% of the construction prime contract dollars.

Minority Females received 212, or 19.22% of construction prime contracts valued at $25,000 and under awarded during the study period, representing $1,239,501, or 16.04% of the construction prime contract dollars.

Non-minority Males received 48, or 4.35% of construction prime contracts valued at $25,000 and under awarded during the study period, representing $379,897, or 4.92% of the construction prime contract dollars.

Minority Business Enterprises received 959, or 86.94% of construction prime contracts valued at $25,000 and under awarded during the study period, representing $6,833,756, or 88.42% of the construction prime contract dollars.

Woman Business Enterprises received 308, or 27.92% of construction prime contracts valued at $25,000 and under awarded during the study period, representing $1,754,683, or 22.70% of the construction prime contract dollars.



Table 2.21: Construction Prime Contract Utilization: Contracts Valued at $25,000 and under

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	219	19.85%	$1,725,784	22.33%
Asian Americans	5	0.45%	$72,551	0.94%
Hispanic Americans	735	66.64%	$5,035,421	65.15%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	96	8.70%	$515,182	6.67%
Non-minority Males	48	4.35%	$379,897	4.92%
TOTAL	1,103	100.00%	$7,728,836	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Females	10	0.91%	$88,025	1.14%
African American Males	209	18.95%	$1,637,759	21.19%
Asian American Females	1	0.09%	$10,000	0.13%
Asian American Males	4	0.36%	$62,551	0.81%
Hispanic American Females	201	18.22%	$1,141,475	14.77%
Hispanic American Males	534	48.41%	$3,893,946	50.38%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	96	8.70%	$515,182	6.67%
Non-minority Males	48	4.35%	$379,897	4.92%
TOTAL	1,103	100.00%	$7,728,836	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	212	19.22%	$1,239,501	16.04%
Minority Males	747	67.72%	$5,594,255	72.38%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	959	86.94%	$6,833,756	88.42%
Woman Business Enterprises	308	27.92%	$1,754,683	22.70%



6. Architecture and Engineering Prime Contract Utilization: Contracts Valued at $25,000 and under

Table 2.22 lists all prime contract dollars expended by the County on architecture and engineering prime contracts valued at $25,000 and under. MBEs received 59.03%, WBEs received 12.88%, and non-M/WBEs received 35.24% of the architecture and engineering prime contract dollars.

African Americans received 2, or 2.60% of architecture and engineering prime contracts valued at $25,000 and under awarded during the study period, representing $30,000, or 3.62% of the architecture and engineering prime contract dollars.

Asian Americans received 4, or 5.19% of architecture and engineering prime contracts valued at $25,000 and under awarded during the study period, representing $29,891, or 3.60% of the architecture and engineering prime contract dollars.

Hispanic Americans received 38, or 49.35% of architecture and engineering prime contracts valued at $25,000 and under awarded during the study period, representing $429,891, or 51.81% of the architecture and engineering prime contract dollars.

Native Americans received none of the architecture and engineering prime contracts valued at $25,000 and under awarded during the study period.

Caucasian Females received 7, or 9.09% of architecture and engineering prime contracts valued at $25,000 and under awarded during the study period, representing $47,530, or 5.73% of the architecture and engineering prime contract dollars.

Minority Females received 5, or 6.49% of architecture and engineering prime contracts valued at $25,000 and under awarded during the study period, representing $59,300, or 7.15% of the architecture and engineering prime contract dollars.

Non-minority Males received 26, or 33.77% of architecture and engineering prime contracts valued at $25,000 and under awarded during the study period, representing $292,406, or 35.24% of the architecture and engineering prime contract dollars.

Minority Business Enterprises received 44, or 57.14% of architecture and engineering prime contracts valued at $25,000 and under awarded during the study period, representing $489,782, or 59.03% of the architecture and engineering prime contract dollars.

Woman Business Enterprises received 12, or 15.58% of architecture and engineering prime contracts valued at $25,000 and under awarded during the study period, representing $106,830, or 12.88% of the architecture and engineering prime contract dollars.



Table 2.22: Architecture and Engineering Prime Contract Utilization: Contracts Valued at $25,000 and under

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	2	2.60%	$30,000	3.62%
Asian Americans	4	5.19%	$29,891	3.60%
Hispanic Americans	38	49.35%	$429,891	51.81%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	7	9.09%	$47,530	5.73%
Non-minority Males	26	33.77%	$292,406	35.24%
TOTAL	77	100.00%	$829,718	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	2	2.60%	$30,000	3.62%
Asian American Females	0	0.00%	$0	0.00%
Asian American Males	4	5.19%	$29,891	3.60%
Hispanic American Females	5	6.49%	$59,300	7.15%
Hispanic American Males	33	42.86%	$370,591	44.66%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	7	9.09%	$47,530	5.73%
Non-minority Males	26	33.77%	$292,406	35.24%
TOTAL	77	100.00%	$829,718	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	5	6.49%	$59,300	7.15%
Minority Males	39	50.65%	$430,482	51.88%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	44	57.14%	$489,782	59.03%
Woman Business Enterprises	12	15.58%	$106,830	12.88%



7. Professional and Other Services Prime Contract Utilization: Contracts Valued at $25,000 and under

Table 2.23 lists all prime contract dollars expended by the County on professional and other services prime contracts valued at $25,000 and under. MBEs received 12.29%, WBEs received none, and non-M/WBEs received 87.71% of the professional and other services prime contract dollars.

African Americans received none of the professional and other services prime contracts valued at $25,000 and under awarded during the study period.

Asian Americans received none of the professional and other services prime contracts valued at $25,000 and under awarded during the study period.

Hispanic Americans received 2, or 14.29% of professional and other services prime contracts valued at $25,000 and under awarded during the study period, representing $22,486, or 12.29% of the professional and other services prime contract dollars.

Native Americans received none of the professional and other services prime contracts valued at $25,000 and under awarded during the study period.

Caucasian Females received none of the professional and other services prime contracts valued at $25,000 and under awarded during the study period.

Minority Females received none of the professional and other services prime contracts valued at $25,000 and under awarded during the study period.

Non-minority Males received 12, or 85.71% of professional and other services prime contracts valued at $25,000 and under awarded during the study period, representing $160,545, or 87.71% of the professional and other services prime contract dollars.

Minority Business Enterprises received 2, or 14.29% of professional and other services prime contracts valued at $25,000 and under awarded during the study period, representing $22,486, or 12.29% of the professional and other services prime contract dollars.

Woman Business Enterprises received none of the professional and other services prime contracts valued at $25,000 and under awarded during the study period.

Table 2.23: Professional and Other Services Prime Contract Utilization: Contracts Valued at $25,000 and under

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	14.29%	$22,486	12.29%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	0	0.00%	$0	0.00%
Non-minority Males	12	85.71%	$160,545	87.71%
TOTAL	14	100.00%	$183,031	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	2	14.29%	$22,486	12.29%
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%
Non-minority Males	12	85.71%	$160,545	87.71%
TOTAL	14	100.00%	$183,031	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	2	14.29%	$22,486	12.29%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	2	14.29%	$22,486	12.29%
Woman Business Enterprises	0	0.00%	$0	0.00%



8. Goods and Services Prime Contract Utilization: Contracts Valued at $25,000 and under

Table 2.24 lists all prime contract dollars expended by the County on goods and services prime contracts valued at $25,000 and under. MBEs received 35.85%, WBEs received 19.67%, and non-M/WBEs received 51.26% of the goods and services prime contract dollars.

African Americans received 2, or 1.28% of goods and services prime contracts valued at $25,000 and under awarded during the study period, representing $16,302, or 0.92% of the goods and services prime contract dollars.

Asian Americans received 12, or 7.69% of goods and services prime contracts valued at $25,000 and under awarded during the study period, representing $108,763, or 6.14% of the goods and services prime contract dollars.

Hispanic Americans received 49, or 31.41% of goods and services prime contracts valued at $25,000 and under awarded during the study period, representing $509,704, or 28.79% of the goods and services prime contract dollars.

Native Americans received none of the goods and services prime contracts valued at $25,000 and under awarded during the study period.

Caucasian Females received 21, or 13.46% of goods and services prime contracts valued at $25,000 and under awarded during the study period, representing $228,134, or 12.88% of the goods and services prime contract dollars.

Minority Females received 15, or 9.62% of goods and services prime contracts valued at $25,000 and under awarded during the study period, representing $120,148, or 6.79% of the goods and services prime contract dollars.

Non-minority Males received 72, or 46.15% of goods and services prime contracts valued at $25,000 and under awarded during the study period, representing $907,654, or 51.26% of the goods and services prime contract dollars.

Minority Business Enterprises received 63, or 40.38% of goods and services prime contracts valued at $25,000 and under awarded during the study period, representing $634,770, or 35.85% of the goods and services prime contract dollars.

Woman Business Enterprises received 36, or 23.08% of goods and services prime contracts valued at $25,000 and under awarded during the study period, representing $348,282, or 19.67% of the goods and services prime contract dollars.

Table 2.24: Goods and Services Prime Contract Utilization: Contracts Valued at $25,000 and under

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	2	1.28%	$16,302	0.92%
Asian Americans	12	7.69%	$108,763	6.14%
Hispanic Americans	49	31.41%	$509,704	28.79%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	21	13.46%	$228,134	12.88%
Non-minority Males	72	46.15%	$907,654	51.26%
TOTAL	156	100.00%	$1,770,557	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	2	1.28%	$16,302	0.92%
Asian American Females	0	0.00%	$0	0.00%
Asian American Males	12	7.69%	$108,763	6.14%
Hispanic American Females	15	9.62%	$120,148	6.79%
Hispanic American Males	34	21.79%	$389,556	22.00%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	21	13.46%	$228,134	12.88%
Non-minority Males	72	46.15%	$907,654	51.26%
TOTAL	156	100.00%	$1,770,557	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	15	9.62%	$120,148	6.79%
Minority Males	48	30.77%	$514,622	29.07%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	63	40.38%	$634,770	35.85%
Woman Business Enterprises	36	23.08%	$348,282	19.67%



Formal Prime Contracts by Industry

9. Construction Prime Contract Utilization: Contracts Valued between $25,000 and $1,960,000

Table 2.25 lists all prime contract dollars expended by the County on construction prime contracts valued between $25,000 and $1,960,000. MBEs received 79.47%, WBEs received 15.18%, and non-M/WBEs received 19.30% of the construction prime contract dollars.

African Americans received 77, or 9.00% of construction prime contracts valued between $25,000 and $1,960,000 awarded during the study period, representing $13,993,809, or 4.95% of the construction prime contract dollars.

Asian Americans received 6, or 0.70% of construction prime contracts valued between $25,000 and $1,960,000 awarded during the study period, representing $5,067,492, or 1.79% of the construction prime contract dollars.

Hispanic Americans received 588, or 68.69% of construction prime contracts valued between $25,000 and $1,960,000 awarded during the study period, representing $205,568,739, or 72.73% of the construction prime contract dollars.

Native Americans received none of the construction prime contracts valued between $25,000 and $1,960,000 awarded during the study period.

Caucasian Females received 30, or 3.50% of construction prime contracts valued between $25,000 and $1,960,000 awarded during the study period, representing $3,468,426, or 1.23% of the construction prime contract dollars.

Minority Females received 115, or 13.43% of construction prime contracts valued between $25,000 and $1,960,000 awarded during the study period, representing $39,448,910, or 13.96% of the construction prime contract dollars.

Non-minority Males received 155, or 18.11% of construction prime contracts valued between $25,000 and $1,960,000 awarded during the study period, representing $54,552,541, or 19.30% of the construction prime contract dollars.

Minority Business Enterprises received 671, or 78.39% of construction prime contracts valued between $25,000 and $1,960,000 awarded during the study period, representing $224,630,040, or 79.47% of the construction prime contract dollars.

Woman Business Enterprises received 145, or 16.94% of construction prime contracts valued between $25,000 and $1,960,000 awarded during the study period, representing $42,917,336, or 15.18% of the construction prime contract dollars.

Table 2.25: Construction Prime Contract Utilization: Contracts Valued between $25,000 and $1,960,000

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	77	9.00%	$13,993,809	4.95%
Asian Americans	6	0.70%	$5,067,492	1.79%
Hispanic Americans	588	68.69%	$205,568,739	72.73%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	30	3.50%	$3,468,426	1.23%
Non-minority Males	155	18.11%	$54,552,541	19.30%
TOTAL	856	100.00%	$282,651,007	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Females	12	1.40%	$4,407,544	1.56%
African American Males	65	7.59%	$9,586,265	3.39%
Asian American Females	1	0.12%	$152,002	0.05%
Asian American Males	5	0.58%	$4,915,490	1.74%
Hispanic American Females	102	11.92%	$34,889,363	12.34%
Hispanic American Males	486	56.78%	$170,679,375	60.39%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	30	3.50%	$3,468,426	1.23%
Non-minority Males	155	18.11%	$54,552,541	19.30%
TOTAL	856	100.00%	$282,651,007	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	115	13.43%	$39,448,910	13.96%
Minority Males	556	64.95%	$185,181,131	65.52%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	671	78.39%	$224,630,040	79.47%
Woman Business Enterprises	145	16.94%	$42,917,336	15.18%



10. Architecture and Engineering Prime Contract Utilization: Contracts Valued between $25,000 and $850,000

Table 2.26 lists all prime contract dollars expended by the County on architecture and engineering prime contracts valued between $25,000 and $850,000. MBEs received 49.11%, WBEs received 11.71%, and non-M/WBEs received 47.15% of the architecture and engineering prime contract dollars.

African Americans received 22, or 3.81% of architecture and engineering prime contracts valued between $25,000 and $850,000 awarded during the study period, representing $3,961,267, or 3.28% of the architecture and engineering prime contract dollars.

Asian Americans received 26, or 4.50% of architecture and engineering prime contracts valued between $25,000 and $850,000 awarded during the study period, representing $4,867,623, or 4.03% of the architecture and engineering prime contract dollars.

Hispanic Americans received 252, or 43.60% of architecture and engineering prime contracts valued between $25,000 and $850,000 awarded during the study period, representing $50,517,104, or 41.80% of the architecture and engineering prime contract dollars.

Native Americans received none of the architecture and engineering prime contracts valued between $25,000 and $850,000 awarded during the study period.

Caucasian Females received 20, or 3.46% of architecture and engineering prime contracts valued between $25,000 and $850,000 awarded during the study period, representing $4,528,927, or 3.75% of the architecture and engineering prime contract dollars.

Minority Females received 48, or 8.30% of architecture and engineering prime contracts valued between $25,000 and $850,000 awarded during the study period, representing $9,620,113, or 7.96% of the architecture and engineering prime contract dollars.

Non-minority Males received 258, or 44.64% of architecture and engineering prime contracts valued between $25,000 and $850,000 awarded during the study period, representing $56,974,688, or 47.15% of the architecture and engineering prime contract dollars.

Minority Business Enterprises received 300, or 51.90% of architecture and engineering prime contracts valued between $25,000 and $850,000 awarded during the study period, representing $59,345,994, or 49.11% of the architecture and engineering prime contract dollars.

Woman Business Enterprises received 68, or 11.76% of architecture and engineering prime contracts valued between $25,000 and $850,000 awarded during the study period, representing $14,149,040, or 11.71% of the architecture and engineering prime contract dollars.



Table 2.26: Architecture and Engineering Prime Contract Utilization: Contracts Valued between $25,000 and $850,000

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	22	3.81%	$3,961,267	3.28%
Asian Americans	26	4.50%	$4,867,623	4.03%
Hispanic Americans	252	43.60%	$50,517,104	41.80%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	20	3.46%	$4,528,927	3.75%
Non-minority Males	258	44.64%	$56,974,688	47.15%
TOTAL	578	100.00%	$120,849,609	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Females	2	0.35%	$394,699	0.33%
African American Males	20	3.46%	$3,566,568	2.95%
Asian American Females	1	0.17%	$400,000	0.33%
Asian American Males	25	4.33%	$4,467,623	3.70%
Hispanic American Females	45	7.79%	$8,825,414	7.30%
Hispanic American Males	207	35.81%	$41,691,690	34.50%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	20	3.46%	$4,528,927	3.75%
Non-minority Males	258	44.64%	$56,974,688	47.15%
TOTAL	578	100.00%	$120,849,609	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	48	8.30%	$9,620,113	7.96%
Minority Males	252	43.60%	$49,725,881	41.15%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	300	51.90%	$59,345,994	49.11%
Woman Business Enterprises	68	11.76%	$14,149,040	11.71%



11. Professional and Other Services Prime Contract Utilization: Contracts Valued between $25,000 and $2,570,000

Table 2.27 lists all prime contract dollars expended by the County on professional and other services prime contracts valued between $25,000 and $2,570,000. MBEs received 23.26%, WBEs received 11.54%, and non-M/WBEs received 69.31% of the professional and other services prime contract dollars.

African Americans received 6, or 4.72% of professional and other services prime contracts valued between $25,000 and $2,570,000 awarded during the study period, representing $4,013,087, or 6.54% of the professional and other services prime contract dollars.

Asian Americans received 6, or 4.72% of professional and other services prime contracts valued between $25,000 and $2,570,000 awarded during the study period, representing $1,575,085, or 2.57% of the professional and other services prime contract dollars.

Hispanic Americans received 20, or 15.75% of professional and other services prime contracts valued between $25,000 and $2,570,000 awarded during the study period, representing $8,680,276, or 14.15% of the professional and other services prime contract dollars.

Native Americans received none of the professional and other services prime contracts valued between $25,000 and $2,570,000 awarded during the study period.

Caucasian Females received 9, or 7.09% of professional and other services prime contracts valued between $25,000 and $2,570,000 awarded during the study period, representing $4,558,639, or 7.43% of the professional and other services prime contract dollars.

Minority Females received 9, or 7.09% of professional and other services prime contracts valued between $25,000 and $2,570,000 awarded during the study period, representing $2,521,269, or 4.11% of the professional and other services prime contract dollars.

Non-minority Males received 86, or 67.72% of professional and other services prime contracts valued between $25,000 and $2,570,000 awarded during the study period, representing $42,509,573, or 69.31% of the professional and other services prime contract dollars.

Minority Business Enterprises received 32, or 25.20% of professional and other services prime contracts valued between $25,000 and $2,570,000 awarded during the study period, representing $14,268,448, or 23.26% of the professional and other services prime contract dollars.

Woman Business Enterprises received 18, or 14.17% of professional and other services prime contracts valued between $25,000 and $2,570,000 awarded during the study period, representing $7,079,907, or 11.54% of the professional and other services prime contract dollars.



Table 2.27: Professional and Other Services Prime Contract Utilization: Contracts Valued between $25,000 and $2,570,000

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	6	4.72%	$4,013,087	6.54%
Asian Americans	6	4.72%	$1,575,085	2.57%
Hispanic Americans	20	15.75%	$8,680,276	14.15%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	9	7.09%	$4,558,639	7.43%
Non-minority Males	86	67.72%	$42,509,573	69.31%
TOTAL	127	100.00%	$61,336,660	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Females	2	1.57%	$777,750	1.27%
African American Males	4	3.15%	$3,235,337	5.27%
Asian American Females	3	2.36%	$490,126	0.80%
Asian American Males	3	2.36%	$1,084,959	1.77%
Hispanic American Females	4	3.15%	$1,253,393	2.04%
Hispanic American Males	16	12.60%	$7,426,883	12.11%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	9	7.09%	$4,558,639	7.43%
Non-minority Males	86	67.72%	$42,509,573	69.31%
TOTAL	127	100.00%	$61,336,660	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	9	7.09%	$2,521,269	4.11%
Minority Males	23	18.11%	$11,747,179	19.15%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	32	25.20%	$14,268,448	23.26%
Woman Business Enterprises	18	14.17%	$7,079,907	11.54%



12. Goods and Services Prime Contract Utilization: Contracts Valued between $25,000 and $1,740,000

Table 2.28 lists all prime contract dollars expended by the County on goods and services prime contracts valued between $25,000 and $1,740,000. MBEs received 36.13%, WBEs received 15.75%, and non-M/WBEs received 58.71% of the goods and services prime contract dollars.

African Americans received 28, or 4.00% of goods and services prime contracts valued between $25,000 and $1,740,000 awarded during the study period, representing $13,210,703, or 6.04% of the goods and services prime contract dollars.

Asian Americans received 25, or 3.57% of goods and services prime contracts valued between $25,000 and $1,740,000 awarded during the study period, representing $8,493,633, or 3.88% of the goods and services prime contract dollars.

Hispanic Americans received 178, or 25.43% of goods and services prime contracts valued between $25,000 and $1,740,000 awarded during the study period, representing $57,306,981, or 26.21% of the goods and services prime contract dollars.

Native Americans received none of the goods and services prime contracts valued between $25,000 and $1,740,000 awarded during the study period.

Caucasian Females received 46, or 6.57% of goods and services prime contracts valued between $25,000 and $1,740,000 awarded during the study period, representing $11,283,288, or 5.16% of the goods and services prime contract dollars.

Minority Females received 58, or 8.29% of goods and services prime contracts valued between $25,000 and $1,740,000 awarded during the study period, representing $23,161,142, or 10.59% of the goods and services prime contract dollars.

Non-minority Males received 423, or 60.43% of goods and services prime contracts valued between $25,000 and $1,740,000 awarded during the study period, representing $128,374,147, or 58.71% of the goods and services prime contract dollars.

Minority Business Enterprises received 231, or 33.00% of goods and services prime contracts valued between $25,000 and $1,740,000 awarded during the study period, representing $79,011,317, or 36.13% of the goods and services prime contract dollars.

Woman Business Enterprises received 104, or 14.86% of goods and services prime contracts valued between $25,000 and $1,740,000 awarded during the study period, representing $34,444,430, or 15.75% of the goods and services prime contract dollars.



Table 2.28: Goods and Services Prime Contract Utilization: Contracts Valued between $25,000 and $1,740,000

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	28	4.00%	$13,210,703	6.04%
Asian Americans	25	3.57%	$8,493,633	3.88%
Hispanic Americans	178	25.43%	$57,306,981	26.21%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	46	6.57%	$11,283,288	5.16%
Non-minority Males	423	60.43%	$128,374,147	58.71%
TOTAL	700	100.00%	$218,668,752	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Females	7	1.00%	$3,982,333	1.82%
African American Males	21	3.00%	$9,228,370	4.22%
Asian American Females	2	0.29%	$188,809	0.09%
Asian American Males	23	3.29%	$8,304,824	3.80%
Hispanic American Females	49	7.00%	$18,990,000	8.68%
Hispanic American Males	129	18.43%	$38,316,981	17.52%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	46	6.57%	$11,283,288	5.16%
Non-minority Males	423	60.43%	$128,374,147	58.71%
TOTAL	700	100.00%	$218,668,752	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	58	8.29%	$23,161,142	10.59%
Minority Males	173	24.71%	$55,850,175	25.54%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	231	33.00%	$79,011,317	36.13%
Woman Business Enterprises	104	14.86%	$34,444,430	15.75%



V. Summary

The prime contract utilization analysis examined prime contracts valued at $4,255,842,104 awarded by the County during the November 1, 2018 to October 31, 2021 study period. The expended included $2,099,258,723 for construction, $556,799,944 for architecture and engineering, $368,383,991 for professional and other services, and $1,201,399,466 for goods and services. A total of 3,955 prime contracts were analyzed, which included 2,102 for construction, 728 for architecture and engineering, 160 for professional and other services, and 965 for goods and services.

The utilization analysis was performed for prime contracts in the four industries at three-dollar thresholds: (1) all prime contracts, (2) all informal prime contracts valued at $25,000 and under for construction, architecture and engineering, professional and other services, and goods and services, as defined by the County's *Manual*, and (3) formal prime contracts valued between $25,000 and $1,960,000 for construction, between $25,000 and $850,000 for architecture and engineering, between $25,000 and $2,570,000 for professional and other services, and between $25,000 and $1,740,000 for goods and services.



CHAPTER 3: Subcontractor Utilization Analysis

I. Introduction

In compliance with *Croson,* a disparity study must document the local government's utilization of available minority and woman-owned business enterprises (M/WBEs) and non-minority male-owned businesses enterprises (non-M/WBEs) as prime contractors and subcontractors. This chapter presents the County's utilization of available M/WBEs and non-M/WBEs subcontractors by ethnicity, gender, and industry. The study period was 2018 to 2023, two years longer than the prime contract study period. Additional years were required because the subcontracts had to be reconstructed. The subcontract industries studied are construction, architecture and engineering, and professional and other services.

To compile the most comprehensive subcontract dataset, an extensive research and data collection effort was undertaken. The research strategies identified the subcontractors utilized on formal prime contracts the County awarded in the three industries. These strategies were also employed to compile the most comprehensive data set of the subcontract award and payment amounts.

The effort fell short, however, in reconstructing a professional and other services subcontract data sufficient to test the statistical significance of the underutilization of the M/WBE subcontractors in this industry.

II. Subcontractor Data Collection Process

The subcontractor data collection process included five steps: (1) extraction of the subcontract data from B2Gnow, the County's web-based business management workforce system, (2) collection of subcontract data from the County's project managers, (3) identification of subcontracts in the prime contract bid documents recorded in SharePoint, a web-based platform used to manage documents, including prime bids, proposals, and contracts, (4) a survey of prime contractors to identify subcontracts from their records, and (5) a survey of subcontractors to collect missing award and payment data.

B2Gnow was the most comprehensive source of subcontract records. Prime contractors, at the time of award, are required to list in B2Gnow the certified small businesses they intend to use on their contract. However, some subcontract records in B2Gnow did not have either award or payment information. Presumably, the information was not available at the time the prime contract was awarded. Telephone research was undertaken to secure payment and award information directly from the subcontractors listed in B2Gnow without award or payment amounts. In B2Gnow 2,873 subcontracts were identified and either the award or payment data was confirmed.

There were large prime contracts exceeding $2,000,000 reported in B2Gnow without a listed subcontractor. To determine if these prime contracts utilized subcontractors, meetings were held

with project managers in seven departments. The project managers were asked to identify any subcontractors that had worked on their projects. Subcontractor names and award amounts for five prime contracts were collected from the project managers.

Prime contract documents in SharePoint, the County's web-based platform used to manage documents including prime bids, proposals, and contracts, were reviewed to identify any subcontractors not recorded in B2Gnow. In the bids and proposals reviewed in SharePoint 18 subcontracts were identified.

Subcontract records were also collected directly from the prime contractors. An expenditure survey requesting subcontract award and payment data was distributed by email to prime contractors with a contract award over $1,500,000 in construction and over $500,000 in architecture and engineering and professional and other services. A total of 176 surveys were distributed.

To maximize the response rate, a letter from the County Administrator requesting the prime contractors' cooperation accompanied each survey. Follow-up calls were made to each prime contractor to address any questions concerning the study and encourage the businesses to submit their subcontract records. Four prime contractors provided 16 subcontracts.

Payment information was collected from subcontractors listed without award and payment via telephone calls. Telephone calls were made to 180 subcontractors to collect the missing data.

As noted in Table 3.1, this multi-phased effort identified 2,341 construction, architecture and engineering, and professional and other services subcontracts. The subcontractor payment data were tested to determine if there was a disparity in the award of subcontracts to available subcontractors. Underutilization of available M/WBEs was documented in the award of subcontracts to M/WBEs in each of the three industries. However, there were insufficient subcontracts reconstructed to assess the statistical significance of the underutilization of M/WBEs in the professional and other services industry.

All Subcontracts

The construction, architecture and engineering, and professional and other services subcontracts analyzed were valued at $1,134,518,396. This amount included $899,168,619 for construction, $177,990,971 for architecture and engineering, and $57,358,806 for professional and other services subcontracts.



Table 3.1: All Subcontract Awards and Dollars by Industry

Industry	Total Number of Subcontracts	Total Subcontract Amount
Construction	1,712	$899,168,619
Architecture and Engineering	569	$177,990,971
Professional and Other Services	59	$57,358,806
Total	**2,340**	**$1,134,518,396**

Subcontractor Utilization

The subcontract records collected from the various sources were appended to the relational database and cleaned to remove duplicate records. The cleaned dataset without duplicates totaled 2,340. The ethnicity and gender of each subcontractor were verified through a combination of certification directories, internet research, and telephone calls. Subcontract findings presented below are organized and reported by ethnicity and gender within each industry.



1. Construction Subcontracts

Table 3.2 lists the identified construction subcontracts awarded by the County's prime contractors. MBEs received 45.36%, WBEs received 8.15%, and non-M/WBEs received 51.49% of the construction subcontract dollars.

African Americans received 83, or 4.85% of the County's construction subcontracts during the study period, representing $30,015,214 or 3.34% of the construction subcontract dollars.

Asian Americans received 18, or 1.05% of the County's construction subcontracts during the study period, representing $17,176,370 or 1.91% of the construction subcontract dollars.

Hispanic Americans received 1,033, or 60.34% of the County's construction subcontracts during the study period, representing $360,664,792 or 40.11% of the construction subcontract dollars.

Native Americans received none of the County's construction subcontracts awarded during the study period.

Caucasian Females received 87, or 5.08% of the County's construction subcontracts during the study period, representing $28,357,719 or 3.15% of the construction subcontract dollars.

Minority Females received 222, or 12.97% of the County's construction subcontracts during the study period, representing $44,945,049 or 5.00% of the construction subcontract dollars.

Non-minority Males received 491, or 28.68%, of the County's construction subcontracts during the study period, representing $462,959,023 or 51.49% of the construction subcontract dollars.

Minority Business Enterprises received 1,134, or 66.24% of the County's construction subcontracts during the study period, representing $407,856,377 or 45.36% of the construction subcontract dollars.

Woman Business Enterprises received 309, or 18.05% of the Miami-Dade County's construction subcontracts during the study period, representing $73,302,768 or 8.15% of the construction subcontract dollars.



Table 3.2: Construction Subcontractor Utilization

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	83	4.85%	$30,015,214	3.34%
Asian Americans	18	1.05%	$17,176,370	1.91%
Hispanic Americans	1,033	60.34%	$360,664,792	40.11%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	87	5.08%	$28,357,719	3.15%
Non-minority Males	491	28.68%	$462,954,523	51.49%
TOTAL	1,712	100.00%	$899,168,619	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Females	12	0.70%	$4,800,690	0.53%
African American Males	71	4.15%	$25,214,525	2.80%
Asian American Females	3	0.18%	$1,474,985	0.16%
Asian American Males	15	0.88%	$15,701,385	1.75%
Hispanic American Females	207	12.09%	$38,669,374	4.30%
Hispanic American Males	826	48.25%	$321,995,418	35.81%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	87	5.08%	$28,357,719	3.15%
Non-minority Males	491	28.68%	$462,954,523	51.49%
TOTAL	1,712	100.00%	$899,168,619	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	222	12.97%	$44,945,049	5.00%
Minority Males	912	53.27%	$362,911,328	40.36%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	1,134	66.24%	$407,856,377	45.36%
Woman Business Enterprises	309	18.05%	$73,302,768	8.15%



2. Architecture and Engineering Subcontracts

Table 3.3 lists the identified architecture and engineering subcontracts awarded by the County's prime contractors. MBEs received 68.44%, WBEs received 13.18%, and non-M/WBEs received 26.59% of the architecture and engineering subcontract dollars.

African Americans received 55, or 9.67%, of the County's architecture and engineering subcontracts during the study period, representing $14,801,049 or 8.32% of the architecture and engineering subcontract dollars.

Asian Americans received 16, or 2.81%, of the County's architecture and engineering subcontracts during the study period, representing $4,282,497 or 2.41% of the architecture and engineering subcontract dollars.

Hispanic Americans received 337, or 59.23%, of the County's architecture and engineering subcontracts during the study period, representing $102,737,786 or 57.72% of the architecture and engineering subcontract dollars.

Native Americans received none of the County's architecture and engineering subcontracts awarded during the study period.

Caucasian Females received 29, or 5.10%, of the County's architecture and engineering subcontracts during the study period, representing $8,835,899 or 4.96% of the architecture and engineering subcontract dollars.

Minority Females received 79, or 13.88%, of the County's architecture and engineering subcontracts during the study period, representing $14,623,370 or 8.22% of the architecture and engineering subcontract dollars.

Non-minority Males received 132, or 23.20%, of the County's architecture and engineering subcontracts during the study period, representing $47,333,740 or 26.59% of the architecture and engineering subcontract dollars.

Minority Business Enterprises received 408, or 71.70%, of the County's architecture and engineering subcontracts during the study period, representing $121,821,331 or 68.44% of the architecture and engineering subcontract dollars.

Woman Business Enterprises received 108, or 18.98%, of the County's architecture and engineering subcontracts during the study period, representing $23,459,270 or 13.18% of the architecture and engineering subcontract dollars.

Table 3.3: Architecture and Engineering Subcontractor Utilization

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	55	9.67%	$14,801,049	8.32%
Asian Americans	16	2.81%	$4,282,497	2.41%
Hispanic Americans	337	59.23%	$102,737,786	57.72%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	29	5.10%	$8,835,899	4.96%
Non-minority Males	132	23.20%	$47,333,740	26.59%
TOTAL	569	100.00%	$177,990,971	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Females	9	1.58%	$645,253	0.36%
African American Males	46	8.08%	$14,155,796	7.95%
Asian American Females	2	0.35%	$53,290	0.03%
Asian American Males	14	2.46%	$4,229,206	2.38%
Hispanic American Females	68	11.95%	$13,924,827	7.82%
Hispanic American Males	269	47.28%	$88,812,958	49.90%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	29	5.10%	$8,835,899	4.96%
Non-minority Males	132	23.20%	$47,333,740	26.59%
TOTAL	569	100.00%	$177,990,971	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	79	13.88%	$14,623,370	8.22%
Minority Males	329	57.82%	$107,197,961	60.23%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	408	71.70%	$121,821,331	68.44%
Woman Business Enterprises	108	18.98%	$23,459,270	13.18%



3. Professional and Other Services Subcontracts

Table 3.4 lists the identified professional and other services subcontracts awarded by the County's prime contractors. MBEs received 85.85%, WBEs received 10.78%, and non-M/WBEs received 11.18% of the professional and other services subcontract dollars.

African Americans received 5, or 8.47%, of the County's professional and other services subcontracts during the study period, representing $4,523,333 or 7.89% of the professional and other services subcontract dollars.

Asian Americans received 5, or 8.47%, of the County's professional and other services subcontracts during the study period, representing $11,951,348 or 20.84% of the professional and other services subcontract dollars.

Hispanic Americans received 39, or 66.10%, of the County's professional and other services subcontracts during the study period, representing $32,770,127 or 57.13% of the professional and other services subcontract dollars.

Native Americans received none of the County's professional and other services subcontracts awarded during the study period.

Caucasian Females received 3, or 5.08%, of the County's professional and other services subcontracts during the study period, representing $1,699,802 or 2.96% of the professional and other services subcontract dollars.

Minority Females received 8, or 13.56%, of the County's professional and other services subcontracts during the study period, representing $4,483,998 or 7.82% of the professional and other services subcontract dollars.

Non-minority Males received 7, or 11.86%, of the County's professional and other services subcontracts during the study period, representing $6,414,195 or 11.18% of the professional and other services subcontract dollars.

Minority Business Enterprises received 49, or 83.05%, of the County's professional and other services subcontracts during the study period, representing $49,244,809 or 85.85% of the professional and other services subcontract dollars.

Woman Business Enterprises received 11, or 18.64%, of the County's professional and other services subcontracts during the study period, representing $6,183,800 or 10.78% of the professional and other services subcontract dollars.

Table 3.4: Professional and Other Services Subcontractor Utilization

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	5	8.47%	$4,523,333	7.89%
Asian Americans	5	8.47%	$11,951,348	20.84%
Hispanic Americans	39	66.10%	$32,770,127	57.13%
Native Americans	0	0.00%	$0	0.00%
Caucasian Females	3	5.08%	$1,699,802	2.96%
Non-minority Males	7	11.86%	$6,414,195	11.18%
TOTAL	59	100.00%	$57,358,806	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Females	2	3.39%	$2,648,988	4.62%
African American Males	3	5.08%	$1,874,345	3.27%
Asian American Females	0	0.00%	$0	0.00%
Asian American Males	5	8.47%	$11,951,348	20.84%
Hispanic American Females	6	10.17%	$1,835,010	3.20%
Hispanic American Males	33	55.93%	$30,935,117	53.93%
Native American Females	0	0.00%	$0	0.00%
Native American Males	0	0.00%	$0	0.00%
Caucasian Females	3	5.08%	$1,699,802	2.96%
Non-minority Males	7	11.86%	$6,414,195	11.18%
TOTAL	59	100.00%	$57,358,806	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Females	8	13.56%	$4,483,998	7.82%
Minority Males	41	69.49%	$44,760,811	78.04%
Minority and Women	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Business Enterprises	49	83.05%	$49,244,809	85.85%
Woman Business Enterprises	11	18.64%	$6,183,800	10.78%

III. Summary

Mason Tillman collected the most comprehensive data available for the subcontracts awarded by the County's construction, architecture and engineering, and professional and other services prime contractors. Most of the subcontracts analyzed were extracted from B2Gnow. Additional research was conducted with assistance from the Office of Small Business Development to collect subcontractor information from departments, and prime contractors. The effort produced the most complete subcontractor information available.

The collaborative data collection effort involved extensive outreach including meetings with the County's project managers, review of County documents, and communication with the contractors. Contractor surveys were also conducted as another method to identify subcontractors and verify subcontractor award and payment amounts.

Mason Tillman identified 2,340 construction, architecture and engineering, and professional and other services subcontracts that were awarded during the study period. The subcontracts analyzed included 1,712 construction, 569 architecture and engineering, and 59 professional and other services subcontracts.

CHAPTER 4: Market Area Analysis

I. Market Area Definition

Legal Criteria for Geographic Market Area

The Supreme Court's decision in *City of Richmond v. J.A. Croson Co.* (*Croson*)[236] held that programs established by local governments to set goals for the participation of minority-owned business enterprises (MBEs) in public contracting must be supported by evidence of past discrimination in the award of their contracts. Prior to the *Croson* decision, local governments could implement race-conscious programs without developing a detailed public record to document the underutilization of MBEs in their award of contracts. Instead, they relied on widely recognized societal patterns of discrimination.[237]

Croson established that a local government could not rely on society-wide discrimination as the basis for a race-based contracting program. Instead, a local government was required to identify discrimination within its own contracting jurisdiction.[238] In *Croson*, the United States Supreme Court found the City of Richmond, Virginia's MBE construction program to be unconstitutional because there was insufficient evidence of discrimination in the local construction market.

Croson was explicit in saying that the local construction market was the appropriate geographical framework within which to perform statistical comparisons of the availability of minority businesses to their utilization. The identification of the local market area is, therefore, particularly important because it establishes the parameters within which to conduct a disparity study.

Application of the Croson Standard

While *Croson* emphasized the importance of the local market area, it provided little assistance in defining its parameters. However, it is informative to review the Court's definition of the City of Richmond, Virginia's market area. In discussing the geographic parameters of the constitutional violation that must be investigated, the Court interchangeably used the terms "relevant market," "Richmond construction industry,"[239] and "city's construction industry."[240] These terms were used to define the proper scope for examining the existence of discrimination within the City. This interchangeable use of terms lends support to a definition of market area that coincides with the geographic area where the County spends most of its dollars.

An analysis of the cases following *Croson* reveals a pattern that provides additional guidance for defining the market area. The body of cases examining the *reasonable* market area definition is

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

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

[238] *Croson*, 488 U.S. at 497.

[239] *Croson*, 488 U.S. at 500.

[240] *Id.* at 470.

fact-based—rather than dictated by a specific formula.[241] For example, in *Cone Corporation v. Hillsborough County*,[242] the United States Eleventh Circuit Court of Appeals considered a disparity study in support of Hillsborough County, Florida's MBE Program, which used minority contractors located in Hillsborough County as the measure of available businesses. 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 Hillsborough County, not in the construction industry in general. Hillsborough County extracted data from businesses within its own jurisdictional boundaries and assessed the percentage of minority businesses available in the County. The Court stated that the disparity study was properly conducted within the "local construction industry."[243]

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,[244] the United States Ninth Circuit Court of Appeals found the City and County of San Francisco, California'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 of San Francisco as the relevant market area within which to conduct a disparity study.[245]

In *Coral Construction v. King County*, the United States 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."[246] In support of its MBE program, King County, Washington, offered studies compiled by other jurisdictions, including entities completely within the County, others coterminous with the boundaries of the County, as well as a 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 was based on outside data. However, the Court also found that the data from entities within King County and from coterminous jurisdictions were relevant to discrimination in the County and that the data posed no risk of unfairly burdening innocent third parties.

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

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

[243] *Id.* at 915.

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

[245] *AGCCII*, 950 F.2d at 1415.

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

The Court concluded that data gathered by a neighboring county 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 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."[247] However, the Court did note that the "world of contracting does not conform itself neatly to jurisdictional boundaries."[248]

Courts have approved a market area definition that extended beyond a jurisdiction's geographic boundaries in other cases as well. In *Concrete Works v. City and County of Denver* (*Concrete Works*),[249] the United States Tenth Circuit Court of Appeals directly addressed the issue of whether extra-jurisdictional evidence of discrimination can be used to determine the "local market area" for a disparity study. In *Concrete Works*, the defendant relied on evidence of discrimination in the six-county Denver, Colorado, Metropolitan Statistical Area (Denver 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% of construction and design contracts awarded by the City and County of Denver were awarded to contractors within the Denver MSA. Another consideration was that the City and County of Denver's analysis was based on United States Census data, which was available for the Denver MSA but not for the City of Denver itself. The Court concluded that there was no undue burden placed on nonculpable parties, as the City and County of Denver had expended a majority of its construction contract dollars within the area defined as the local market. Citing *AGCCII*,[250] the Court noted "that any plan that extends race-conscious remedies beyond territorial boundaries must be based on very specific findings that actions the City has taken in the past have visited racial discrimination on such individuals."[251]

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 business owners in the government's marketplace.[252] The text of *Croson* itself suggests that the geographical boundaries of the government entity comprise an appropriate market area, and other courts have agreed with this finding. It follows then that an entity may limit consideration of evidence of discrimination to discrimination occurring within its own jurisdiction.

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247 *Coral Construction Co. v. King County*, 941 F.2d at 917.

248 *Id.*

249 *Concrete Works*, 36 F.3d at 1528.

250 *AGCC II*, 950 F.2d at 1401.

251 *Concrete Works*, 36 F.3d at 1528.

252 *Croson*, 488 U.S. at 501.

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 the market area as the geographical boundaries of the government entity. Given the case law and the findings, the Study's market area is determined to be the geographical boundaries of Miami-Dade County, Florida.

Summary of the Distribution of All Prime Contracts Awarded

The County awarded 3,955 prime contracts valued at $4,225,842,104 during the November 1, 2018 to October 31, 2021 study period. The distribution of all prime contracts awarded and dollars received by all businesses domiciled inside and outside of the market area is listed below in Table 4.1.

Table 4.1: Distribution of All Contracts Awarded During the Study Period

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Miami-Dade	3,309	83.67%	$3,159,107,815	74.76%
Broward	117	2.96%	$305,403,937	7.23%
Hillsborough	25	0.63%	$107,320,651	2.54%
Lee	6	0.15%	$80,450,662	1.90%
Leon	36	0.91%	$48,578,691	1.15%
Palm Beach	41	1.04%	$20,401,936	0.48%
St. Johns	6	0.15%	$9,269,710	0.22%
Polk	8	0.20%	$7,410,061	0.18%
Orange	9	0.23%	$7,392,427	0.17%
Pinellas	8	0.20%	$4,794,582	0.11%
Seminole	6	0.15%	$4,577,986	0.11%
Suwannee	2	0.05%	$3,663,707	0.09%
Martin	4	0.10%	$1,362,991	0.03%
Indian River	4	0.10%	$918,377	0.02%
Manatee	2	0.05%	$908,227	0.02%
Sarasota	2	0.05%	$868,776	0.02%
Alachua	4	0.10%	$313,957	0.01%
Brevard	1	0.03%	$268,522	0.01%
Pasco	1	0.03%	$213,837	0.01%
St Lucie	1	0.03%	$132,000	0.00%
Clay	1	0.03%	$114,354	0.00%
Escambia	2	0.05%	$109,583	0.00%
Volusia	2	0.05%	$80,702	0.00%
Bradford	1	0.03%	$41,407	0.00%

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Walton	1	0.03%	$24,344	0.00%
Caddo Parish	1	0.03%	$19,500	0.00%
Out of State	346	8.75%	$431,828,141	10.22%
Out of Country	9	0.23%	$30,265,221	0.72%
Total	**3,955**	**100.00%**	**$4,225,842,104**	**100.00%**

Distribution of Construction Prime Contracts

The County awarded 2,102 construction prime contracts valued at $2,099,258,723 during the study period. Businesses located in the market area received 96.86% of the construction prime contracts and 86.28% of the dollars. The distribution of the construction prime contracts awarded and dollars received by all businesses domiciled inside and outside of the market area is listed below in Table 4.2.

Table 4.2: Distribution of Construction Prime Contracts

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Miami-Dade	2,036	96.86%	$1,811,209,047	86.28%
Broward	23	1.09%	$141,896,757	6.76%
Lee	1	0.05%	$77,763,530	3.70%
Palm Beach	17	0.81%	$13,626,951	0.65%
St. Johns	2	0.10%	$8,324,871	0.40%
Hillsborough	2	0.10%	$821,145	0.04%
Pinellas	1	0.05%	$163,020	0.01%
Clay	1	0.05%	$114,354	0.01%
Leon	3	0.14%	$108,797	0.01%
Out of State	16	0.76%	$45,230,251	2.15%
Total	**2,102**	**100.00%**	**$2,099,258,723**	**100.00%**

Distribution of Architecture and Engineering Prime Contracts

The County awarded 728 architecture and engineering prime contracts valued at $556,799,944 during the study period. Businesses located in the market area received 97.12% of the architecture and engineering prime contracts and 98.36% of the dollars. The distribution of the architecture and engineering prime contracts awarded and dollars received by all businesses domiciled inside and outside of the market area is listed below in Table 4.3.



Table 4.3: Distribution of Architecture and Engineering Prime Contracts

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Miami-Dade	707	97.12%	$547,672,402	98.36%
Broward	5	0.69%	$1,476,090	0.27%
Indian River	3	0.41%	$900,000	0.16%
Palm Beach	3	0.41%	$426,204	0.08%
Hillsborough	2	0.27%	$102,100	0.02%
Out of State	8	1.10%	$6,223,147	1.12%
Total	**728**	**100.00%**	**$556,799,944**	**100.00%**

Distribution of Professional and Other Services Prime Contracts

The County awarded 160 professional and other services prime contracts valued at $368,383,991 during the study period. Businesses located in the market area received 51.25% of the professional and other services prime contracts and 75.04% of the dollars. The distribution of the professional and other services prime contracts awarded and dollars received by all businesses domiciled inside and outside of the market area is listed below in Table 4.4.

Table 4.4: Distribution of Professional and Other Services Prime Contracts

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Miami-Dade	82	51.25%	$276,438,894	75.04%
Broward	9	5.63%	$9,107,422	2.47%
Leon	8	5.00%	$2,240,614	0.61%
Lee	1	0.63%	$2,107,594	0.57%
Hillsborough	5	3.13%	$1,961,999	0.53%
Palm Beach	4	2.50%	$1,861,049	0.51%
Sarasota	1	0.63%	$816,947	0.22%
Orange	1	0.63%	$130,196	0.04%
Suwannee	1	0.63%	$43,453	0.01%
Walton	1	0.63%	$24,344	0.01%
Out of State	47	29.38%	$73,651,478	19.99%
Total	**160**	**100.00%**	**$368,383,991**	**100.00%**



Distribution of Goods and Services Prime Contracts

The County awarded 965 goods and services prime contracts valued at $1,201,399,446 during the study period. Businesses located in the market area received 50.16% of the goods and services prime contracts and 43.60% of the dollars. The distribution of the goods and services prime contracts awarded and dollars received by all businesses domiciled inside and outside of the market area is listed below in Table 4.5.

Table 4.5: Distribution of Goods and Services Prime Contracts

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Miami-Dade	484	50.16%	$523,787,472	43.60%
Broward	80	8.29%	$152,923,669	12.73%
Hillsborough	16	1.66%	$104,435,407	8.69%
Leon	25	2.59%	$46,229,280	3.85%
Polk	8	0.83%	$7,410,061	0.62%
Orange	8	0.83%	$7,262,231	0.60%
Pinellas	7	0.73%	$4,631,562	0.39%
Seminole	6	0.62%	$4,577,986	0.38%
Palm Beach	17	1.76%	$4,487,732	0.37%
Suwannee	1	0.10%	$3,620,254	0.30%
Martin	4	0.41%	$1,362,991	0.11%
St. Johns	4	0.41%	$944,839	0.08%
Manatee	2	0.21%	$908,227	0.08%
Lee	4	0.41%	$579,538	0.05%
Alachua	4	0.41%	$313,957	0.03%
Brevard	1	0.10%	$268,522	0.02%
Pasco	1	0.10%	$213,837	0.02%
St Lucie	1	0.10%	$132,000	0.01%
Escambia	2	0.21%	$109,583	0.01%
Volusia	2	0.21%	$80,702	0.01%
Sarasota	1	0.10%	$51,829	0.00%
Bradford	1	0.10%	$41,407	0.00%
Caddo Parish	1	0.10%	$19,500	0.00%
Indian River	1	0.10%	$18,377	0.00%
Out of State	275	28.50%	$306,723,265	25.53%
Out of Country	9	0.93%	$30,265,221	2.52%
Total	**965**	**100.00%**	**$1,201,399,446**	**100.00%**



III. Summary

During the study period, the County awarded 3,955 construction, architecture and engineering, professional and other services, and goods and services prime contracts valued at $4,225,842,104. The County awarded 83.67% of prime contracts and 74.76% of dollars to businesses domiciled within the market area.

Table 4.6 below lists an overview of the number of construction, architecture and engineering, professional and other services, and goods and services prime contracts the County awarded and the dollars spent in the market area.

Construction Prime Contracts: 2,036, or 96.86% of construction prime contracts were awarded to market area businesses. Construction prime contracts in the market area accounted for $1,811,209,047, or 86.28% of the total construction prime contract dollars.

Architecture and Engineering Prime Contracts: or 97.12% of architecture and engineering prime contracts were awarded to market area businesses. Architecture and engineering prime contracts in the market area accounted for $547,672,402, or 98.36% of the total architecture and engineering prime contract dollars.

Professional and Other Services Prime Contracts: 82, or 51.25% of professional and other services prime contracts were awarded to market area businesses. Professional and other services prime contracts in the market area accounted for $276,438,894, or 75.04% of the total professional and other services prime contract dollars.

Goods and Services Prime Contracts: 484, or 50.16% of goods and services prime contracts were awarded to market area businesses. Goods and services prime contracts in the market area accounted for $523,787,472, or 43.60% of the total goods and services prime contract dollars.

Table 4.6: Miami-Dade County Contract Distribution

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Combined Industries				
Market Area	3,309	83.67%	$3,159,107,815	74.76%
Outside Market Area	646	16.33%	$1,066,734,289	25.24%
TOTAL	**3,955**	**100.00%**	**$4,225,842,104**	**100.00%**
Construction				
Market Area	2,036	96.86%	$1,811,209,047	86.28%
Outside Market Area	66	3.14%	$288,049,676	13.72%
TOTAL	**2,102**	**100.00%**	**$2,099,258,723**	**100.00%**
Architecture and Engineeering				
Market Area	707	97.12%	$547,672,402	98.36%
Outside Market Area	21	2.88%	$9,127,542	1.64%
TOTAL	**728**	**100.00%**	**$556,799,944**	**100.00%**
Professional and Other Services				
Market Area	82	51.25%	$276,438,894	75.04%
Outside Market Area	78	48.75%	$91,945,097	24.96%
TOTAL	**160**	**100.00%**	**$368,383,991**	**100.00%**
Goods and Services				
Market Area	484	50.16%	$523,787,472	43.60%
Outside Market Area	481	49.84%	$677,611,974	56.40%
TOTAL	**965**	**100.00%**	**$1,201,399,446**	**100.00%**



CHAPTER 5: Prime Contractor and Subcontractor Availability Analysis

I. Introduction

According to *City of Richmond v. J.A. Croson Co*. (*Croson*), availability is defined as the number of businesses in the jurisdiction's market area that are ready, willing, and able to provide the goods or services procured by the jurisdiction.[253] To determine the availability of minority and woman-owned business enterprises[254] (M/WBEs) and non-minority male-owned business enterprises (non-M/WBEs) within the jurisdiction's market area, businesses domiciled within the market area must be enumerated. As defined in *Chapter 4: Market Area Analysis*, the market area is the jurisdictional boundaries of Miami-Dade County.

When considering sources to determine the number of available M/WBEs and non-M/WBEs in the market area, the selection must be based on whether two aspects of the population in question can be gauged from the sources. One consideration is a business's interest in contracting with the jurisdiction, as implied by the term "willing." The other is the business's ability or capacity to provide a service or good, as implied by the term "able." The enumeration of available businesses met these criteria.

II. Prime Contractor Availability Data Sources

Identification of Willing Businesses Within the Market Area

To identify willing businesses in the County that provide the construction, architecture and engineering, professional and other services, and goods and services the County procures, five main sources of information were used: (1) the County's records, including pre-qualified firms, (2) government certification directories, (3) willingness surveys from business and trade association membership lists, (4) business surveys, and (5) unique businesses identified from the list of anecdotal interviewees. Only businesses from these sources determined to be willing and able were added to the availability list. If a business was willing and able to perform work or provide goods in more than one industry, it was listed separately in each industry.

The five sources were ranked according to their reliability in determining a business's willingness to contract with the County, with the highest rank assigned to utilized businesses and pre-qualified firms. Government certification lists ranked second, business and trade association membership lists ranked third, the business capacity survey ranked fourth, and the anecdotal interviewees

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

[254] Hereinafter referred to as Minority and Woman Business Enterprises in the statistical tables.

ranked last. The first source used to build the availability database was the County's utilized businesses and pre-qualified firms. These lists were then appended to the availability database. Businesses identified from federal and local government certification sources were thereafter appended. Following this, businesses identified from business association membership lists that affirmed their willingness through a survey were appended. The business associations included trade organizations, professional organizations, and chambers of commerce. The fourth source appended to the availability database were businesses identified from the list of anecdotal interviewees.

Prime Contractor Sources

Extensive targeted outreach to business associations in the market area was performed to identify and secure business membership directories. Table 5.1 lists the compiled sources from which at least one willing market area business was identified.

Table 5.1: Prime Contractor Availability Data Sources

Source	Type of Information
Miami-Dade Data Sources	
DSReport_Period11-1-18to10-31-21_Run2-11-22	M/WBE and Non-minority Male
Miami-Dade County Pre-Qualified List	M/WBE and Non-minority Male
Certification Lists	
Florida Unified Certification Program	M/WBE and Non-minority Male
Miami-Dade County Public School Certification List	M/WBE and Non-minority Male
Miami-Dade Certified Directory	M/WBE and Non-minority Male
U.S. Small Business Administration, Miami Dade County, 8a	M/WBE and Non-minority Male
U.S. Small Business Administration, Miami Dade County, Economically Disadvantaged Businesses	M/WBE
U.S. Small Business Administration, Miami Dade County, HUBZone	M/WBE and Non-minority Male
U.S. Small Business Administration, Miami Dade County, Veteran-Owned Business	M/WBE and Non-minority Male
U.S. Small Business Administration, Miami Dade County, Woman-Owned Small Businesses	M/WBE
Chambers and Trade Organizations	
Air Conditioning Contractors of America	M/WBE and Non-minority Male
American Institute of Architects	M/WBE and Non-minority Male
Associated Builders and Contractors	M/WBE and Non-minority Male
Associated General Contractors of America-Florida East Coast Chapter	M/WBE and Non-minority Male
Brazilian Chamber of Commerce of Florida	M/WBE
Building Trades Association	M/WBE and Non-minority Male
Business Network International	M/WBE and Non-minority Male

Source	Type of Information
Chambers and Trade Organizations	
Construction Association of South Florida, Inc.	M/WBE and Non-minority Male
Coral Gables Chamber of Commerce	M/WBE and Non-minority Male
Directory of African American Architects	M/WBE
Doral Chamber of Commerce	M/WBE and Non-minority Male
Engineering Contractor's Association of South Florida, Inc.	M/WBE and Non-minority Male
Florida Irrigation Society	M/WBE and Non-minority Male
Greater Miami Shores Chamber of Commerce	M/WBE and Non-minority Male
Greater North Miami Chamber of Commerce	M/WBE and Non-minority Male
Jamaica USA Chamber of Commerce	M/WBE and Non-minority Male
Key Biscayne Chamber of Commerce	M/WBE and Non-minority Male
Miami Beach Chamber of Commerce	M/WBE and Non-minority Male
Miami Lakes Chamber of Commerce	M/WBE and Non-minority Male
Miami-Dade Chamber of Commerce	M/WBE and Non-minority Male
National Association of Women In Construction Miami Chapter 41	M/WBE
Palmetto Bay Business Association	M/WBE and Non-minority Male
Pinecrest Business Association	M/WBE and Non-minority Male
Roofing Contractors Association of South Florida	M/WBE and Non-minority Male
South Dade Chamber of Commerce	M/WBE and Non-minority Male
The Greater Kendall Business Association	M/WBE and Non-minority Male
Women's Chamber of Commerce of Miami-Dade County	M/WBE

Determination of Willingness

From the five sources, 2,412 unique market area businesses, including those that had not contracted with the County but provide goods or services in one or more of the four industries, were identified. A total of 991 unique market area businesses were added to the availability database from the County's contract records and pre-qualification lists, 1,365 were added from government certification lists, 49 were added from business and trade association lists that affirmed their willingness through a survey, four were added from business surveys, and three were added from the list of anecdotal interviewees.

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

Tables 5.2 through 5.5 present the distribution of willing prime contractors according to the sources. The distribution of available businesses by source was also calculated for each industry. As noted in Table 5.2, 98.55% of the construction businesses identified were derived from the County's records, including pre-qualified lists and certification lists. Companies identified through willingness surveys, business capacity surveys, and anecdotal interviews represent 1.45% of the willing businesses.

Table 5.2: Distribution of Prime Contractor Availability Data Sources
Construction

Sources	M/WBEs Percentage	Non M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	31.69%	29.61%	31.33%
Pre-Qualified List	0.00%	0.56%	0.10%
Certification Lists	67.49%	65.36%	67.12%
Subtotal	**99.18%**	**95.53%**	**98.55%**
Willingness Survey	0.59%	4.47%	1.26%
Business Capacity Survey	0.12%	0.00%	0.10%
Anecdotal Interviews	0.12%	0.00%	0.10%
Subtotal	**0.82%**	**4.47%**	**1.45%**
Grand Total*	**100.00%**	**100.00%**	**100.00%**

*The percentages may not total 100 percent due to rounding

Table 5.3 lists the data sources for the available architecture and engineering prime contractors. As noted, 99.56% of the architecture and engineering businesses identified were derived from the County's records, including pre-qualified lists and certification lists. Companies identified through willingness surveys and business capacity surveys represent 0.44% of the willing businesses. No architecture and engineering businesses were identified from anecdotal interviews.

Table 5.3: Distribution of Prime Contractor Availability Data Sources
Architecture and Engineering

Sources	M/WBEs Percentage	Non M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	59.88%	71.54%	63.02%
Pre-Qualified List	15.57%	13.82%	15.10%
Certification Lists	23.95%	14.63%	21.44%
Subtotal	**99.40%**	**100.00%**	**99.56%**
Willingness Survey	0.30%	0.00%	0.22%
Business Capacity Survey	0.30%	0.00%	0.22%
Subtotal	**0.60%**	**0.00%**	**0.44%**
Grand Total*	**100.00%**	**100.00%**	**100.00%**

*The percentages may not total 100 percent due to rounding

Table 5.4 lists the data sources for the available professional and other services prime contractors. As noted, 95.30% of the professional and other services businesses identified were derived from the County's records, including pre-qualified lists and certification lists. Companies identified through willingness surveys, business capacity surveys, and anecdotal interviews represent 4.70% of the willing businesses.

Table 5.4: Distribution of Prime Contractor Availability Data Sources
Professional and Other Services

Sources	M/WBEs Percentage	Non M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	19.64%	56.10%	27.90%
Pre-Qualified List	5.36%	3.66%	4.97%
Certification Lists	71.07%	32.93%	62.43%
Subtotal	**96.07%**	**92.68%**	**95.30%**
Willingness Survey	3.57%	6.10%	4.14%
Business Capacity Survey	0.00%	1.22%	0.28%
Anecdotal Interviews	0.38%	0.00%	0.28%
Subtotal	**3.93%**	**7.32%**	**4.70%**
Grand Total*	**100.01%**	**100.00%**	**100.00%**

*The percentages may not total 100 percent due to rounding

Table 5.5 lists the data sources for the available goods and services prime contractors. As noted, 97.13% of the goods and services businesses identified were derived from the County's records, including pre-qualified lists and certification lists. Companies identified through willingness surveys, business capacity surveys, and anecdotal interviews represent 2.87% of the willing businesses.

Table 5.5: Distribution of Prime Contractor Availability Data Sources
Goods and Services

Sources	M/WBEs Percentage	Non M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	37.61%	59.09%	43.16%
Pre-Qualified List	0.18%	0.00%	0.13%
Certification Lists	59.93%	36.36%	53.85%
Subtotal	**97.72%**	**95.45%**	**97.13%**
Willingness Survey	1.93%	4.55%	2.61%
Business Capacity Survey	0.18%	0.00%	0.13%
Anecdotal Interviews	0.18%	0.00%	0.13%
Subtotal	**2.28%**	**4.55%**	**2.87%**
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 the capacity or ability of a business to perform the contracts awarded by the jurisdiction.[255] Capacity requirements are not delineated in *Croson*, but capacity has been considered in subsequent cases. Specifically, the Third Circuit held certification to be a valid method of defining availability.[256] In *Contractors Association of Eastern Pennsylvania v. City of Philadelphia* (*Philadelphia*), the court held that utilizing a list of certified contractors was a rational approach to identify qualified, willing firms.[257] The court stated, "[a]n analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach [of qualification]."[258] As noted in *Philadelphia*, "[t]he issue of qualifications can be approached at different levels of specificity[.]"[259]

Researchers have attempted to define capacity using census data to profile the age of the business, education of the business owner, business revenue, number of employees, and bonding limits. However, these conventional indices are themselves impacted by race and gender-based discrimination.[260]

Capacity is also a subject of review in *North Shore Concrete and Assoc., Inc. v. City of New York* (*North Shore*),[261] in which North Shore Concrete and Associates challenged the constitutionality of the New York City M/WBE program. The plaintiff argued that in calculating availability, the disparity study failed to take into consideration relevant criteria, such as willingness or the ability to perform the services required by the City's contracts. The plaintiff asserted that the disparity study considered all M/WBE construction firms with one employee other than the owner as qualified to perform any type of construction work, thereby overstating the number of qualified M/WBEs.

The Court rejected the plaintiff's argument that the study overstated the number of available M/WBE firms because it did not take into consideration certain criteria, such as the size of the firm. The *North Shore* Court concluded that business size was not a proper indicator of capacity in determining the pool of available firms. The District Court accepted the defendant's argument that in construction, it is easy to obtain "qualifications" by hiring additional employees. The Court noted that the plaintiff, North Shore, was a small construction business with an owner and only

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[255] *Croson*, 488 U.S. 469.

[256] *Contractors Ass'n of E. Pa*., 91 F.3d at 603.

[257] *Contractors Ass'n of E. Pa*., 91 F.3d at 603.

[258] *Id.* at 603; see also, *Concrete Works IV*, 321 F.3d at 966 (noting a less sophisticated method to calculate availability does not render a disparity study flawed).

[259] *Contractors Ass'n of E. Pa.*, 91 F.3d at 610.

[260] Blanchflower, D.G., Levine, P.B., and Zimmerman, D.J. (2003). "Discrimination in the Small-Business Credit Market." In: *The Review of Economics and Statistics*, 85(4). Cambridge, MA: MIT Press.

[261] *North Shore Concrete and Assoc., Inc. v. City of New York,* No. 94-CV-4017, 1998 WL 273027 (E.D.N.Y. April 12, 1998).

one employee, a secretary, but had bid on construction projects worth more than one million dollars.[262]

Given the requirement to assess capacity and the challenges of measuring it, Mason Tillman uses five methods to compare the capacity of M/WBEs to similarly situated non-M/WBE businesses. These measures, as applied in this study, also control the impact of race and gender discrimination on the capacity findings. The capacity measures include: (1) a review of the distribution of contracts to determine the size of the contracts that the County awarded, (2) the identification of the largest prime contracts the County awarded to M/WBEs, (3) an analysis of the frequency distribution of the County's contracts awarded to M/WBEs and non-M/WBE firms, (4) a threshold applied to formal prime contracts in the disparity analysis to remove outliers that would skew the disparity findings, and (5) an assessment of capacity-related economic factors affecting M/WBE and non-M/WBE businesses using a capacity e-survey.

Prime Contract Size Distribution

The County's prime contracts were ordered according to the size of the award to determine the distribution of the awarded contacts. The distribution gauged the capacity required to perform the County's contracts. In Table 5.6, the distribution of the contract awards in the four industries was grouped into nine ranges[263] and are presented under the groupings of non-minority females, non-minority males, minority females, and minority males.

The distribution revealed that 53.43% of all the prime contracts the County awarded were less than $100,000. Additionally, 71.88% were less than $250,000; 80.40% were less than $500,000; 87.96% were less than $1,000,000; and 94.46% were less than $3,000,000. Only 5.54% of the awarded prime contracts were valued at $3,000,000 and greater.

Table 5.6: All Industry Contracts by Size

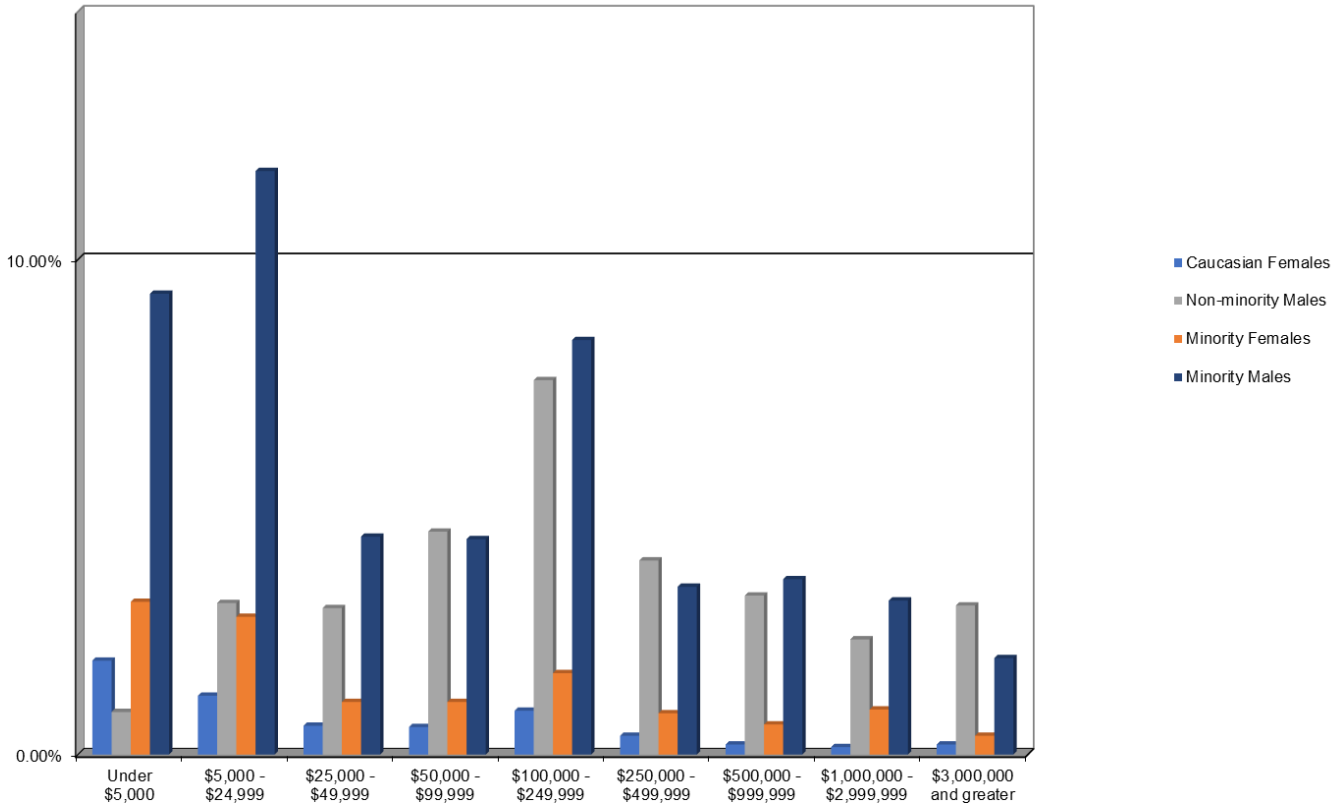
Size	Non-minority				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
Under $5,000	75	1.90%	34	0.86%	122	3.08%	368	9.30%	599	15.15%
$5,000 - $24,999	47	1.19%	121	3.06%	110	2.78%	466	11.78%	744	18.81%
$25,000 - $49,999	23	0.58%	117	2.96%	42	1.06%	174	4.40%	356	9.00%
$50,000 - $99,999	22	0.56%	178	4.50%	42	1.06%	172	4.35%	414	10.47%
$100,000 - $249,999	35	0.88%	299	7.56%	65	1.64%	331	8.37%	730	18.46%
$250,000 - $499,999	15	0.38%	155	3.92%	33	0.83%	134	3.39%	337	8.52%
$500,000 - $999,999	8	0.20%	127	3.21%	24	0.61%	140	3.54%	299	7.56%
$1,000,000 - $2,999,999	6	0.15%	92	2.33%	36	0.91%	123	3.11%	257	6.50%
$3,000,000 and greater	8	0.20%	119	3.01%	15	0.38%	77	1.95%	219	5.54%
Total	**239**	**6.04%**	**1,242**	**31.40%**	**489**	**12.36%**	**1,985**	**50.19%**	**3,955**	**100.00%**

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

[262] *North Shore Concrete and Assoc., Inc. v. City of New York,* No. 94-CV-4017, 1998 WL 273027 at *25 (E.D.N.Y. April 12, 1998).

[263] The nine-dollar ranges are $0 - $4,999; $5,000 - $24,999; $25,000 - $49,999; $50,000 - $99,999; $100,000 - $249,999; $250,000 - $499,999; $500,000 - $999,999; $1,000,000 - $2,999,999; and $3,000,000 and greater.

Chart 5.1: All Industry Contracts by Size, November 1, 2018 to October 31, 2021



The size of the County's prime contracts is a determinant of the capacity that a willing business needs to be competitive at the prime contract level. The fact that 53.43% of the County's contracts are less than $100,000 illustrates that the capacity needed to perform a significant number of the County's contracts is not considerable.

Largest M/WBE Prime Contracts Awarded by Industry

Table 5.7 shows that M/WBEs demonstrated the capacity to perform contracts as large as $34,880,820 in construction, $120,751,935 in architecture and engineering, $30,704,230 in professional and other services, and $57,982,000 in goods and services. The size of the largest prime contract the County awarded to M/WBEs illustrates there are M/WBEs in the availability database with the capacity to perform substantial prime contracts.

Table 5.7: Largest Prime Contracts Awarded to M/WBEs

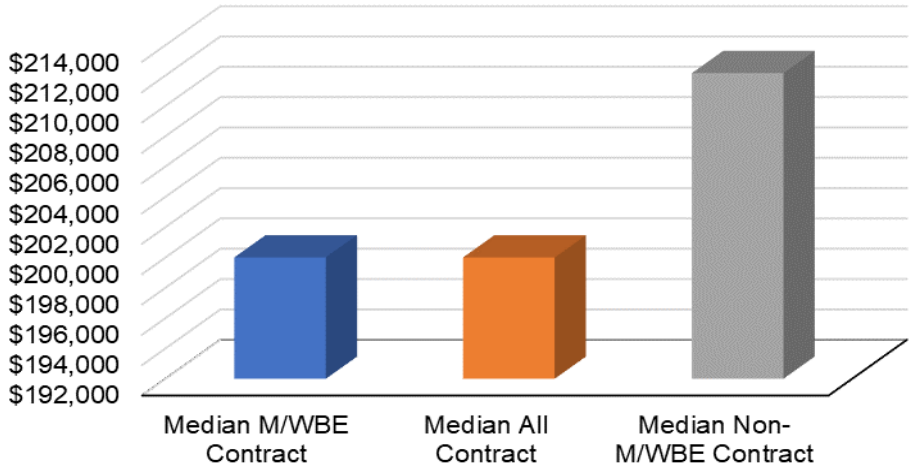
Ethnic/Gender Group	Construction	Architecture and Engineering	Professional Services	Goods and Services
African American Female	$1,613,500	$256,699	$594,750	$4,621,000
African American Male	$4,453,929	$2,200,000	$1,357,919	$10,300,401
Asian American Female	$152,002	$400,000	$324,663	$143,165
Asian American Male	$5,491,790	$600,000	$438,665	$16,193,314
Hispanic American Female	$4,381,051	$6,155,005	$18,830,739	$57,982,000
Hispanic American Male	$34,880,820	$120,751,935	$2,581,565	$10,019,000
Native American Female	----	----	----	----
Native American Male	----	----	----	$5,893,887
Caucasian Female	$336,418	$28,527,995	$30,704,230	$14,000,000
Largest Dollar Amounts MBEs	**$34,880,820**	**$120,751,935**	**$18,830,739**	**$57,982,000**
Largest Dollar Amounts WBEs	**$4,381,051**	**$28,527,995**	**$30,704,230**	**$57,982,000**

(-----) Denotes a group that was not awarded any contracts within the respective industry.

Frequency Distribution

The County's formal contracts ranged from $25,017 to $195,555,440. A frequency distribution was calculated for the County's prime contracts to illustrate the median, where the size of a contract marks the midpoint between the smallest and largest contract. The same distribution was calculated separately for M/WBEs and non-M/WBEs. Within each frequency distribution, the median of the dataset for M/WBEs and non-M/WBEs was determined. As shown in Chart 5.2, the median of the County's prime contracts for all industries was $200,000. This median marks the value at which 50% of contracts were above and 50% were below $200,000. The median of the prime contracts awarded to M/WBEs was $200,000, while the median of the prime contracts awarded to non-minority males was $212,153.

Chart 5.2: Median Contract Value



These statistics show only a $12,153 difference between the median of contracts performed by M/WBEs and non-M/WBEs. These data illustrate that M/WBEs have a comparable capacity to perform at least 50% of the prime contracts awarded by the County.

Formal Contract Threshold Analysis

Outliers were excluded from the prime contract disparity analysis to remove the extraordinarily large contracts to avoid skewing the statistical findings. As discussed in *Chapter 2: Prime Contractor Utilization Analysis,* the removal of the outliers reduced the business capacity requirements and thereby increased the reliability of the statistical findings of disparity.

Business Capacity Assessment

A capacity survey was administered to compile relevant measures to profile all of the available businesses and to determine the percentage of the M/WBEs that are similarly situated to non-M/WBEs. The survey included questions on the business owner's ethnicity, gender, education, and years in business. Questions on gross revenue, bonding limits, number of employees, and maximum number of contracts performed at one time were also asked to profile the businesses surveyed.

The survey was sent to the 7,806 market area prime contractors in the availability database. Only 18 businesses responded, and two responses were from businesses in industries not included in the disparity study. When the two businesses were removed, there were only 16 useful surveys, which represented less than 1% of the surveyed population. Since the responses were significantly less than needed for a meaningful analysis, the data could not be used to assess the capacity of either the M/WBEs or the non-M/WBEs.

As noted in *North Shore,* prime contractors, when presented with an opportunity to acquire a large contract, can use various industry practices to increase capacity in order to be competitive. To increase the capacity to acquire large contracts, prime contractors use subcontracting, joint ventures, and staff augmentation to increase their capacity.

This chapter clearly demonstrates that the available M/WBEs have the capacity to perform the County's prime contracts analyzed in the disparity chapter. It should also be noted a prime contractors' capacity, as set forth in *North Shore,* is not static and can be increased in response to a contracting opportunity by subcontracting, a joint venture, and staff augmentation.



IV. Prime Contractor Availability Analysis

The prime contractor availability analysis is based on the 2,412 willing market area businesses enumerated from the availability sources. The availability of willing market area businesses is presented by ethnicity, gender, and industry in the sections below.

Construction Prime Contractor Availability

The distribution of available construction prime contractors is summarized in Table 5.8 below.

African Americans account for 12.16% of the construction prime contractors in the County's market area.

Asian Americans account for 0.97% of the construction prime contractors in the County's market area.

Hispanic Americans account for 65.56% of the construction prime contractors in the County's market area.

Native Americans account for 0.10% of the construction prime contractors in the County's market area.

Caucasian Females account for 3.79% of the construction prime contractors in the County's market area.

Minority Females account for 15.47% of the construction prime contractors in the County's market area.

Non-minority Males account for 17.41% of the construction prime contractors in the County's market area.

Minority Business Enterprises account for 78.79% of the construction prime contractors in the County's market area.

Woman Business Enterprises account for 19.26% of the construction prime contractors in the County's market area.

Table 5.8: Available Construction Prime Contractors

Ethnicity	Percent of Businesses
African Americans	12.16%
Asian Americans	0.97%
Hispanic Americans	65.56%
Native Americans	0.10%
Caucasian Females	3.79%
Non-minority Males	17.41%
TOTAL	100.00%
Ethnicity and Gender	**Percent of Businesses**
African American Females	3.11%
African American Males	9.05%
Asian American Females	0.29%
Asian American Males	0.68%
Hispanic American Females	11.96%
Hispanic American Males	53.60%
Native American Females	0.10%
Native American Males	0.00%
Caucasian Females	3.79%
Non-minority Males	17.41%
TOTAL	100.00%
Minority and Gender	**Percent of Businesses**
Minority Females	15.47%
Minority Males	63.33%
Minority and Females	**Percent of Businesses**
Minority Business Enterprises	78.79%
Woman Business Enterprises	19.26%



Architecture and Engineering Prime Contractor Availability

The distribution of available architecture and engineering prime contractors is summarized in Table 5.9 below.

African Americans account for 7.74% of the architecture and engineering prime contractors in the County's market area.

Asian Americans account for 4.42% of the architecture and engineering prime contractors in the County's market area.

Hispanic Americans account for 55.53% of the architecture and engineering prime contractors in the County's market area.

Native Americans account for none of the architecture and engineering prime contractors in the County's market area.

Caucasian Females account for 5.09% of the architecture and engineering prime contractors in the County's market area.

Minority Females account for 13.27% of the architecture and engineering prime contractors in the County's market area.

Non-minority Males account for 27.21% of the architecture and engineering prime contractors in the County's market area.

Minority Business Enterprises account for 67.70% of the architecture and engineering prime contractors in the County's market area.

Woman Business Enterprises account for 18.36% of the architecture and engineering prime contractors in the County's market area.



Table 5.9: Available Architecture and Engineering Prime Contractors

Ethnicity	Percent of Businesses
African Americans	7.74%
Asian Americans	4.42%
Hispanic Americans	55.53%
Native Americans	0.00%
Caucasian Females	5.09%
Non-minority Males	27.21%
TOTAL	100.00%
Ethnicity and Gender	**Percent of Businesses**
African American Females	0.66%
African American Males	7.08%
Asian American Females	0.66%
Asian American Males	3.76%
Hispanic American Females	11.95%
Hispanic American Males	43.58%
Native American Females	0.00%
Native American Males	0.00%
Caucasian Females	5.09%
Non-minority Males	27.21%
TOTAL	100.00%
Minority and Gender	**Percent of Businesses**
Minority Females	13.27%
Minority Males	54.42%
Minority and Females	**Percent of Businesses**
Minority Business Enterprises	67.70%
Woman Business Enterprises	18.36%

Professional and Other Services Prime Contractor Availability

The distribution of available professional and other services prime contractors is summarized in Table 5.10 below.

African Americans account for 26.18% of the professional and other services prime contractors in the County's market area.

Asian Americans account for 1.95% of the professional and other services prime contractors in the County's market area.

Hispanic Americans account for 41.50% of the professional and other services prime contractors in the County's market area.

Native Americans account for none of the professional and other services prime contractors in the County's market area.

Caucasian Females account for 7.52% of the professional and other services prime contractors in the County's market area.

Minority Females account for 33.43% of the professional and other services prime contractors in the County's market area.

Non-minority Males account for 22.84% of the professional and other services prime contractors in the County's market area.

Minority Business Enterprises account for 69.64% of the professional and other services prime contractors in the County's market area.

Woman Business Enterprises account for 40.95% of the professional and other services prime contractors in the County's market area.



Table 5.10: Available Professional and Other Services Prime Contractors

Ethnicity	Percent of Businesses
African Americans	26.18%
Asian Americans	1.95%
Hispanic Americans	41.50%
Native Americans	0.00%
Caucasian Females	7.52%
Non-minority Males	22.84%
TOTAL	100.00%
Ethnicity and Gender	**Percent of Businesses**
African American Females	14.21%
African American Males	11.98%
Asian American Females	0.28%
Asian American Males	1.67%
Hispanic American Females	18.94%
Hispanic American Males	22.56%
Native American Females	0.00%
Native American Males	0.00%
Caucasian Females	7.52%
Non-minority Males	22.84%
TOTAL	100.00%
Minority and Gender	**Percent of Businesses**
Minority Females	33.43%
Minority Males	36.21%
Minority and Females	**Percent of Businesses**
Minority Business Enterprises	69.64%
Woman Business Enterprises	40.95%



Goods and Services Prime Contractor Availability

The distribution of available goods and services prime contractors is summarized in Table 5.11 below.

African Americans account for 16.38% of the goods and services prime contractors in the County's market area.

Asian Americans account for 0.92% of the goods and services prime contractors in the County's market area.

Hispanic Americans account for 49.27% of the goods and services prime contractors in the County's market area.

Native Americans account for 0.13% of the goods and services prime contractors in the County's market area.

Caucasian Females account for 7.13% of the goods and services prime contractors in the County's market area.

Minority Females account for 22.85% of the goods and services prime contractors in the County's market area.

Non-minority Males account for 26.16% of the goods and services prime contractors in the County's market area.

Minority Business Enterprises account for 66.71% of the goods and services prime contractors in the County's market area.

Woman Business Enterprises account for 29.99% of the goods and services prime contractors in the County's market area.

Table 5.11: Available Goods and Services Prime Contractors

Ethnicity	Percent of Businesses
African Americans	16.38%
Asian Americans	0.92%
Hispanic Americans	49.27%
Native Americans	0.13%
Caucasian Females	7.13%
Non-minority Males	26.16%
TOTAL	100.00%
Ethnicity and Gender	**Percent of Businesses**
African American Females	5.02%
African American Males	11.36%
Asian American Females	0.40%
Asian American Males	0.53%
Hispanic American Females	17.44%
Hispanic American Males	31.84%
Native American Females	0.00%
Native American Males	0.13%
Caucasian Females	7.13%
Non-minority Males	26.16%
TOTAL	100.00%
Minority and Gender	**Percent of Businesses**
Minority Females	22.85%
Minority Males	43.86%
Minority and Females	**Percent of Businesses**
Minority Business Enterprises	66.71%
Woman Business Enterprises	29.99%



V. Subcontractor Availability Analysis

Source of Willing and Able Subcontractors

The calculation of subcontractor availability included the unique subcontractors identified in the subcontractor utilization analysis and the prime contractors that offer the type of services provided by the utilized subcontractors. The sources are presented in Table 5.12.

Table 5.12: Unique Subcontractor Availability Data Source

Type Record	Type Information
Contractors awarded a Miami-Dade County subcontract	M/WBEs and Non-minority Males
Prime contractors offering services similar to those awarded Miami-Dade subcontractors	M/WBEs and Non-minority Males

Determination of Willingness and Capacity

The enumeration of available subcontractors was limited to the unique businesses utilized as subcontractors and the prime contractors that provide the type of services subcontractors performed. Given the fact that these available subcontractors had successfully performed contracts with the County or its prime contractors, their willingness and capacity had been confirmed. It is also noteworthy that *Croson* does not require a measure of capacity in the analysis of the subcontractors' availability.



Construction Subcontractor Availability

The distribution of available construction subcontractors is summarized in Table 5.13 below.

African Americans account for 13.61% of the construction subcontractors in the County's market area.

Asian Americans account for 2.39% of the construction subcontractors in the County's market area.

Hispanic Americans account for 57.77% of the construction subcontractors in the County's market area.

Native Americans account for 0.08% of the construction subcontractors in the County's market area.

Caucasian Females account for 5.29% of the construction subcontractors in the County's market area.

Minority Females account for 19.33% of the construction subcontractors in the County's market area.

Non-minority Males account for 20.84% of the construction subcontractors in the County's market area.

Minority Business Enterprises account for 73.87% of the construction subcontractors in the County's market area.

Woman Business Enterprises account for 24.62% of the construction subcontractors in the County's market area.

Table 5.13: Available Construction Subcontractors

Ethnicity	Percent of Businesses
African Americans	13.61%
Asian Americans	2.39%
Hispanic Americans	57.77%
Native Americans	0.08%
Caucasian Females	5.29%
Non-minority Males	20.84%
TOTAL	100.00%
Ethnicity and Gender	**Percent of Businesses**
African American Females	4.54%
African American Males	9.08%
Asian American Females	0.50%
Asian American Males	1.89%
Hispanic American Females	14.24%
Hispanic American Males	43.53%
Native American Females	0.04%
Native American Males	0.04%
Caucasian Females	5.29%
Non-minority Males	20.84%
TOTAL	100.00%
Minority and Gender	**Percent of Businesses**
Minority Females	19.33%
Minority Males	54.54%
Minority and Females	**Percent of Businesses**
Minority Business Enterprises	73.87%
Woman Business Enterprises	24.62%



Architecture and Engineering Subcontractor Availability

The distribution of available architecture and engineering subcontractors is summarized in Table 5.14 below.

African Americans account for 13.57% of the architecture and engineering subcontractors in the County's market area.

Asian Americans account for 2.61% of the architecture and engineering subcontractors in the County's market area.

Hispanic Americans account for 58.30% of the architecture and engineering subcontractors in the County's market area.

Native Americans account for 0.05% of the architecture and engineering subcontractors in the County's market area.

Caucasian Females account for 5.12% of the architecture and engineering subcontractors in the County's market area.

Minority Females account for 19.31% of the architecture and engineering subcontractors in the County's market area.

Non-minority Males account for 20.35% of the architecture and engineering subcontractors in the County's market area.

Minority Business Enterprises account for 74.53% of the architecture and engineering subcontractors in the County's market area.

Woman Business Enterprises account for 24.43% of the architecture and engineering subcontractors in the County's market area.

Table 5.14: Available Architecture and Engineering Subcontractors

Ethnicity	Percent of Businesses
African Americans	13.57%
Asian Americans	2.61%
Hispanic Americans	58.30%
Native Americans	0.05%
Caucasian Females	5.12%
Non-minority Males	20.35%
TOTAL	100.00%
Ethnicity and Gender	**Percent of Businesses**
African American Females	4.65%
African American Males	8.92%
Asian American Females	0.62%
Asian American Males	1.99%
Hispanic American Females	14.04%
Hispanic American Males	44.26%
Native American Females	0.00%
Native American Males	0.05%
Caucasian Females	5.12%
Non-minority Males	20.35%
TOTAL	100.00%
Minority and Gender	**Percent of Businesses**
Minority Females	19.31%
Minority Males	55.22%
Minority and Females	**Percent of Businesses**
Minority Business Enterprises	74.53%
Woman Business Enterprises	24.43%



Professional and Other Services Subcontractor Availability

The distribution of available professional and other services subcontractors is summarized in Table 5.15 below.

African Americans account for 15.06% of the professional and other services subcontractors in the County's market area.

Asian Americans account for 2.48% of the professional and other services subcontractors in the County's market area.

Hispanic Americans account for 61.85% of the professional and other services subcontractors in the County's market area.

Native Americans account for none of the professional and other services subcontractors in the County's market area.

Caucasian Females account for 4.62% of the professional and other services subcontractors in the County's market area.

Minority Females account for 18.65% of the professional and other services subcontractors in the County's market area.

Non-minority Males account for 16.00% of the professional and other services subcontractors in the County's market area.

Minority Business Enterprises account for 79.38% of the professional and other services subcontractors in the County's market area.

Woman Business Enterprises account for 23.27% of the professional and other services subcontractors in the County's market area.

Table 5.15: Available Professional and Other Services Subcontractors

Ethnicity	Percent of Businesses
African Americans	15.06%
Asian Americans	2.48%
Hispanic Americans	61.85%
Native Americans	0.00%
Caucasian Females	4.62%
Non-minority Males	16.00%
TOTAL	100.00%
Ethnicity and Gender	**Percent of Businesses**
African American Females	5.05%
African American Males	10.01%
Asian American Females	0.51%
Asian American Males	1.97%
Hispanic American Females	13.09%
Hispanic American Males	48.76%
Native American Females	0.00%
Native American Males	0.00%
Caucasian Females	4.62%
Non-minority Males	16.00%
TOTAL	100.00%
Minority and Gender	**Percent of Businesses**
Minority Females	18.65%
Minority Males	60.74%
Minority and Females	**Percent of Businesses**
Minority Business Enterprises	79.38%
Woman Business Enterprises	23.27%



VI. Summary

This chapter presented the enumeration of willing and able market area businesses by ethnicity, gender, and industry. The availability of prime contractors and subcontractors is presented separately.

In compliance with the *Croson* standard, the capacity of the available prime contractors was assessed. Four methods were successfully employed: (1) a review of the distribution of contracts to determine the size of the contracts that the County awarded, (2) the identification of the largest prime contracts the County awarded to M/WBEs, (3) an analysis of the frequency distribution of the County's contracts awarded to M/WBEs and non-M/WBEs, and (4) a threshold applied to formal prime contracts in the disparity analysis in order to remove outliers that would skew the disparity findings. Mason Tillman's methodology also included an assessment of capacity-related economic factors affecting M/WBE and non-M/WBE businesses using a capacity e-survey. However, this method did not yield meaningful results for the analysis.

The findings from these analyses illustrate that M/WBEs have the capacity, comparable to most non-M/WBE prime contractors, to perform the contracts included in the prime contract and subcontract analysis.



CHAPTER 6: Prime Contract Disparity Analysis

I. Introduction

The objective of this chapter is to determine if available minority and woman-owned business enterprises (M/WBEs) were underutilized on Miami-Dade County prime contracts during the study period of November 1, 2018, to October 31, 2021. Under a fair and equitable system of awarding prime contracts, the proportion of prime contract dollars awarded to M/WBEs should be relatively close to the corresponding proportion of available M/WBEs[264] in the relevant market area. If the ratio of utilized M/WBE prime contractors compared to available M/WBE prime contractors is less than 1, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio. This analysis assumes a fair and equitable system.[265] *City of Richmond v. J.A. Croson Co.* (*Croson*)[266] states that an inference of discrimination can be made if the disparity is statistically significant. Under the *Croson* standard, non-minority male-owned business enterprises (non-M/WBEs) and woman-owned businesses are not subject to a statistical test of disparity. Woman-owned businesses, however, are subject to the intermediate legal standard, which only requires a finding of underutilization to be eligible for gender-based remedies.

The first step in conducting the statistical test is to calculate the contract dollars each ethnic and gender group is expected to receive. This value is based on each group's availability in the market area and is referred to as the expected contract amount. The next step is to compute the difference between each ethnic and gender group's expected contract amount and the actual contract amount each group received. The disparity ratio is then computed by dividing the actual contract amount by the expected contract amount. The significance of the disparity ratio is measured by the p-value.

A disparity ratio of less than 0.80 indicates a relevant degree of disparity. To test the significance of a disparity ratio, a P-value must be calculated. A disparity ratio less than one is subject to a statistical test of significance. The three methods employed to calculate statistical significance are a parametric analysis, a non-parametric analysis, and a simulation analysis. A parametric analysis is most commonly used when the number of contracts is sufficiently large, and the variation of the contract dollar amounts is not too large. When the variation in contract dollar amounts is large, a disparity may not be detectable using a parametric analysis. Therefore, a non-parametric analysis would be employed to analyze the contracts ranked by dollar amount. Both parametric and non-parametric analyses are effective due to the central limit theorem, which is strongest when the

[264] Availability is defined as the number of ready, willing, and able firms. The methodology for determining willing and able firms is detailed in *Chapter 5: Prime Contractor and Subcontractor Availability Analysis*.

[265] 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% confidence level or a level of absolute certainty can never be obtained in statistics. A 95% confidence level is the statistical standard used in physical and social sciences and is thus used in the present report to determine if an inference of discrimination can be made.

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

number of contracts is large, and the data are not skewed. When there are too few contracts or the contract dollar data is skewed, a simulation analysis is employed. The utility of the simulation analysis is also dependent on the severity of the disparity when there are too few contracts. The simulation analysis utilizes randomization to simulate a distribution for the contracts. By conducting multiple trials in the simulation, the empirical data can be used to test the distribution of contract awards for significance. Findings from one of the three methods are reported. If the p-value from any one of the three methods is less than 0.05, the finding is reported in the disparity tables as statistically significant. If the p-value is greater than 0.05, the finding is reported as not statistically significant.

II. Disparity Analysis

A prime contract disparity analysis was performed on formal construction, architecture and engineering, professional and other services, and goods and services contracts and on informal construction and goods and services contracts awarded from November 1, 2018 to October 31, 2021. For informal architecture and engineering prime contracts, there were only 77 contracts and $829,718 total dollars awarded. For informal professional and other services prime contracts, there were only 14 contracts and $183,031 total dollars awarded. There were too few informal architecture and engineering, and professional and other services prime contracts and dollars awarded to perform a meaningful analysis. The informal thresholds were defined in the County's procurement policy. The informal threshold for each industry is listed in Table 6.1.

Table 6.1: Informal Thresholds for Analysis by Industry

Industry	Informal Contract Threshold
Construction	$25,000 and under
Architecture and Engineering	$25,000 and under
Professional and Other Services	$25,000 and under
Goods and Services	$25,000 and under

The County's procurement policy has no upper limits on the formal contract levels. However, for the disparity analysis of formal contracts, upper limits were derived from a statistical calculation that determined the contract values that were outliers and could skew the disparity analysis. The statistical analysis performed to define the outliers is discussed in *Chapter 2: Prime Contractor Utilization Analysis*. The formal contract thresholds derived from this analysis for each industry are listed in Table 6.2.



Table 6.2: Formal Contract Thresholds for Analysis by Industry

Industry	Formal Contract Threshold
Construction	between $25,000 and $1,960,000
Architecture and Engineering	between $25,000 and $850,000
Professional and Other Services	between $25,000 and $2,570,000
Goods and Services	between $25,000 and $1,740,000

The findings from the calculation of statistical significance for each industry at the formal threshold and for construction and goods and services contracts at the informal threshold are presented in the subsequent sections. The outcomes from the statistical analyses are presented in the "P-Value" column of each table. A description of these statistical outcomes, as shown in the disparity tables, is presented in Table 6.3.

Table 6.3: Statistical Outcome Descriptions

P-Value Outcome	Definition of P-Value Outcome
< 0.05 *	This underutilization is statistically significant.
not significant	M/WBEs: This underutilization is not statistically significant. Non-minority males: This overutilization is not statistically significant.
< 0.05 †	This overutilization is statistically significant.
----	The disparity could not be subject to the statistical test because there were no/too few contracts awarded and available firms.
**	This study does not statistically test the overutilization of minority or gender groups or the underutilization of non-minority males.

Disparity Analysis: Informal Prime Contracts by Industry

1. Construction Prime Contracts Valued at $25,000 and under

The disparity analysis of construction prime contracts valued at $25,000 and under is described below in Table 6.4 and shown in Chart 6.1.

African Americans represent 12.16% of the available construction businesses and received 22.33% of the dollars on construction prime contracts valued at $25,000 and under. This study does not statistically test the overutilization of M/WBEs.

Asian Americans represent 0.97% of the available construction businesses and received 0.94% of the dollars on construction prime contracts valued at $25,000 and under. This underutilization could not be tested because there were too few businesses, and too few contracts awarded.

Hispanic Americans represent 65.56% of the available construction businesses and received 65.15% of the dollars on construction prime contracts valued at $25,000 and under. This underutilization is not statistically significant.

Native Americans represent 0.10% of the available construction businesses and received none of the dollars on construction prime contracts valued at $25,000 and under. This underutilization could not be tested because there were too few businesses, and no contracts awarded.

Caucasian Females represent 3.79% of the available construction businesses and received 6.67% of the dollars on construction prime contracts valued at $25,000 and under. This study does not statistically test the overutilization of M/WBEs.

Minority Females represent 15.47% of the available construction businesses and received 16.04% of the dollars on construction prime contracts valued at $25,000 and under. This study does not statistically test the overutilization of M/WBEs.

Non-minority Males represent 17.41% of the available construction businesses and received 4.92% of the dollars on construction prime contracts valued at $25,000 and under. This study does not statistically test the underutilization of non-minority males.

Minority Business Enterprises represent 78.79% of the available construction businesses and received 88.42% of the dollars on construction prime contracts valued at $25,000 and under. This study does not statistically test the overutilization of M/WBEs.

Woman Business Enterprises represent 19.26% of the available construction businesses and received 22.70% of the dollars on construction prime contracts valued at $25,000 and under. This study does not statistically test the overutilization of M/WBEs.



Table 6.4: Disparity Analysis: Construction Prime Contracts Valued at $25,000 and under

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	$1,725,784	22.33%	12.16%	$939,790	$785,994	1.84	**
Asian Americans	$72,551	0.94%	0.97%	$75,183	-$2,632	0.96	----
Hispanic Americans	$5,035,421	65.15%	65.56%	$5,067,349	-$31,929	0.99	not significant
Native Americans	$0	0.00%	0.10%	$7,518	-$7,518	0.00	----
Caucasian Females	$515,182	6.67%	3.79%	$293,215	$221,968	1.76	**
Non-minority Males	$379,897	4.92%	17.41%	$1,345,780	-$965,882	0.28	**
TOTAL	$7,728,836	100.00%	100.00%	$7,728,836			
Ethnicity and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
African American Females	$88,025	1.14%	3.11%	$240,586	-$152,561	0.37	< .05 *
African American Males	$1,637,759	21.19%	9.05%	$699,204	$938,555	2.34	**
Asian American Females	$10,000	0.13%	0.29%	$22,555	-$12,555	0.44	----
Asian American Males	$62,551	0.81%	0.68%	$52,628	$9,923	1.19	**
Hispanic American Females	$1,141,475	14.77%	11.96%	$924,754	$216,721	1.23	**
Hispanic American Males	$3,893,946	50.38%	53.60%	$4,142,596	-$248,650	0.94	not significant
Native American Females	$0	0.00%	0.10%	$7,518	-$7,518	0.00	----
Native American Males	$0	0.00%	0.00%	$0	$0	----	----
Caucasian Females	$515,182	6.67%	3.79%	$293,215	$221,968	1.76	**
Non-minority Males	$379,897	4.92%	17.41%	$1,345,780	-$965,882	0.28	**
TOTAL	$7,728,836	100.00%	100.00%	$7,728,836			
Minority and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Females	$1,239,501	16.04%	15.47%	$1,195,413	$44,087	1.04	**
Minority Males	$5,594,255	72.38%	63.33%	$4,894,428	$699,827	1.14	**
Minority and Females	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Business Enterprises	$6,833,756	88.42%	78.79%	$6,089,841	$743,915	1.12	**
Woman Business Enterprises	$1,754,683	22.70%	19.26%	$1,488,628	$266,055	1.18	**

(*) denotes a statistically significant underutilization.

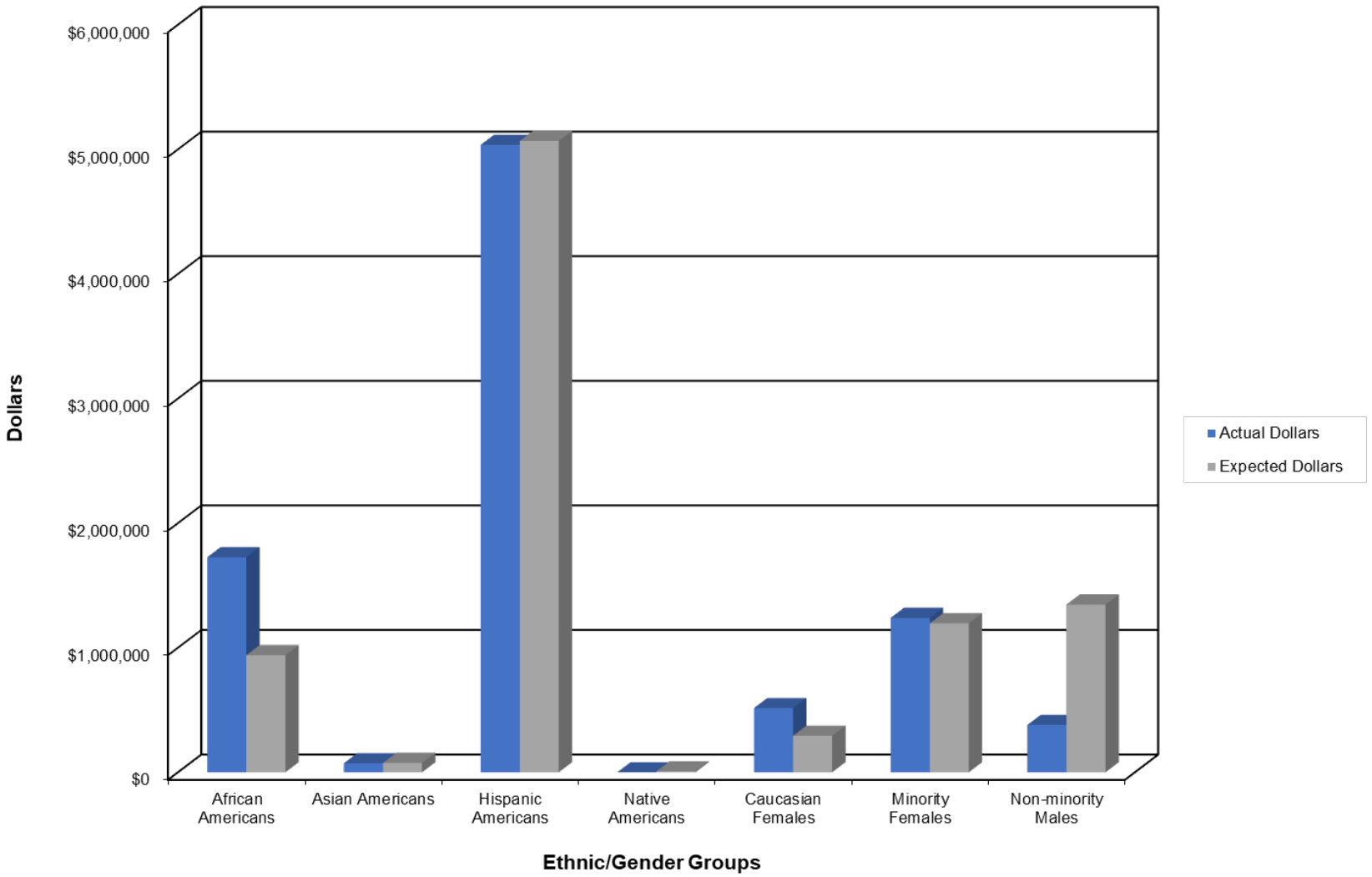
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of non-minority males.

(----) denotes an underutilized group with no/too few contracts awarded and available firms to test statistical significance.



Chart 6.1: Disparity Analysis: Construction Prime Contracts Valued at $25,000 and under



2. Goods and Services Prime Contracts Valued at $25,000 and under

The disparity analysis of goods and services prime contracts valued at $25,000 and under is described below and shown in Table 6.5 and Chart 6.2.

African Americans represent 16.38% of the available goods and services businesses and received 0.92% of the dollars on goods and services prime contracts valued at $25,000 and under. This underutilization is statistically significant.

Asian Americans represent 0.92% of the available goods and services businesses and received 6.14% of the dollars on goods and services prime contracts valued at $25,000 and under. This study does not statistically test the overutilization of M/WBEs.

Hispanic Americans represent 49.27% of the available goods and services businesses and received 28.79% of the dollars on goods and services prime contracts valued at $25,000 and under. This underutilization is statistically significant.

Native Americans represent 0.13% of the available goods and services businesses and received none of the dollars on goods and services prime contracts valued at $25,000 and under. This underutilization could not be tested because there were too few businesses, and no contracts awarded.

Caucasian Females represent 7.13% of the available goods and services businesses and received 12.88% of the dollars on goods and services prime contracts valued at $25,000 and under. This study does not statistically test the overutilization of M/WBEs.

Minority Females represent 22.85% of the available goods and services businesses and received 6.79% of the dollars on goods and services prime contracts valued at $25,000 and under. This underutilization is statistically significant.

Non-minority Males represent 26.16% of the available goods and services businesses and received 51.26% of the dollars on goods and services prime contracts valued at $25,000 and under. This overutilization is statistically significant.

Minority Business Enterprises represent 66.71% of the available goods and services businesses and received 35.85% of the dollars on goods and services prime contracts valued at $25,000 and under. This underutilization is statistically significant.

Woman Business Enterprises represent 29.99% of the available goods and services businesses and received 19.67% of the dollars on goods and services prime contracts valued at $25,000 and under. This underutilization is statistically significant.



Table 6.5: Disparity Analysis: Goods and Services Prime Contracts Valued at $25,000 and under

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	$16,302	0.92%	16.38%	$290,025	-$273,723	0.06	< .05 *
Asian Americans	$108,763	6.14%	0.92%	$16,372	$92,391	6.64	**
Hispanic Americans	$509,704	28.79%	49.27%	$872,415	-$362,710	0.58	< .05 *
Native Americans	$0	0.00%	0.13%	$2,339	-$2,339	0.00	----
Caucasian Females	$228,134	12.88%	7.13%	$126,301	$101,832	1.81	**
Non-minority Males	$907,654	51.26%	26.16%	$463,105	$444,549	1.96	< .05 †
TOTAL	$1,770,557	100.00%	100.00%	$1,770,557			
Ethnicity and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
African American Females	$0	0.00%	5.02%	$88,879	-$88,879	0.00	< .05 *
African American Males	$16,302	0.92%	11.36%	$201,147	-$184,844	0.08	< .05 *
Asian American Females	$0	0.00%	0.40%	$7,017	-$7,017	0.00	----
Asian American Males	$108,763	6.14%	0.53%	$9,356	$99,408	11.63	**
Hispanic American Females	$120,148	6.79%	17.44%	$308,737	-$188,588	0.39	< .05 *
Hispanic American Males	$389,556	22.00%	31.84%	$563,678	-$174,122	0.69	< .05 *
Native American Females	$0	0.00%	0.00%	$0	$0	----	----
Native American Males	$0	0.00%	0.13%	$2,339	-$2,339	0.00	----
Caucasian Females	$228,134	12.88%	7.13%	$126,301	$101,832	1.81	**
Non-minority Males	$907,654	51.26%	26.16%	$463,105	$444,549	1.96	< .05 †
TOTAL	$1,770,557	100.00%	100.00%	$1,770,557			
Minority and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Females	$120,148	6.79%	22.85%	$404,632	-$284,484	0.30	< .05 *
Minority Males	$514,622	29.07%	43.86%	$776,519	-$261,897	0.66	< .05 *
Minority and Females	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Business Enterprises	$634,770	35.85%	66.71%	$1,181,151	-$546,381	0.54	< .05 *
Woman Business Enterprises	$348,282	19.67%	29.99%	$530,933	-$182,652	0.66	< .05 *

(*) denotes a statistically significant underutilization.

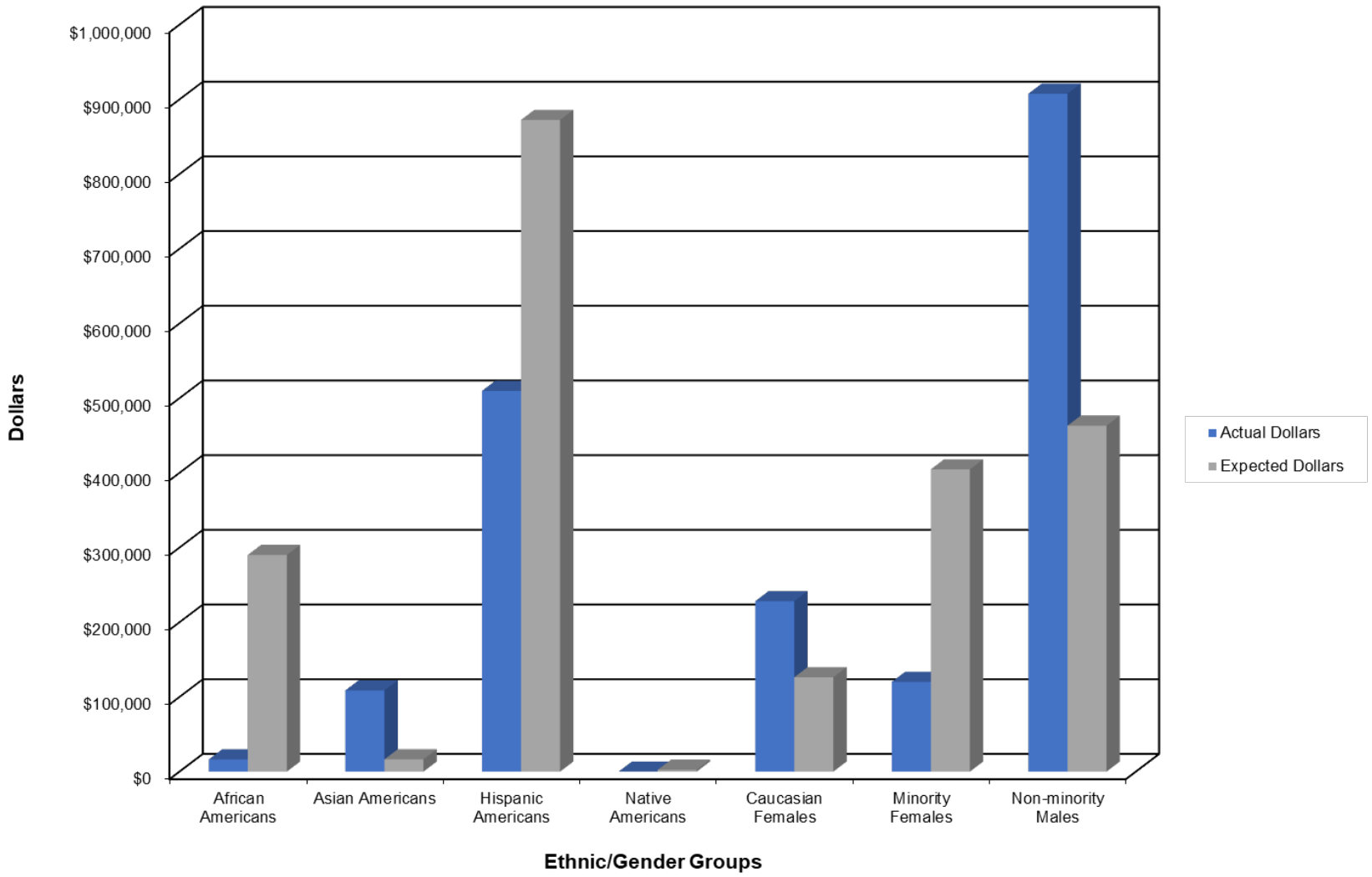
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of non-minority males.

(----) denotes an underutilized group with no/too few contracts awarded and available firms to test statistical significance.



Chart 6.2: Disparity Analysis: Goods and Services Prime Contracts Valued at $25,000 and under



Disparity Analysis: Formal Prime Contracts by Industry

3. Construction Prime Contracts Valued between $25,000 and $1,960,000

The disparity analysis of construction prime contracts valued between $25,000 and $1,960,000 is described below and shown in Table 6.6 and Chart 6.3.

African Americans represent 12.16% of the available construction businesses and received 4.95% of the dollars on construction prime contracts valued between $25,000 and $1,960,000. This underutilization is statistically significant.

Asian Americans represent 0.97% of the available construction businesses and received 1.79% of the dollars on construction prime contracts valued between $25,000 and $1,960,000. This study does not statistically test the overutilization of M/WBEs.

Hispanic Americans represent 65.56% of the available construction businesses and received 72.73% of the dollars on construction prime contracts valued between $25,000 and $1,960,000. This study does not statistically test the overutilization of M/WBEs.

Native Americans represent 0.10% of the available construction businesses and received none of the dollars on construction prime contracts valued between $25,000 and $1,960,000. This underutilization could not be tested because there were too few businesses, and no contracts awarded.

Caucasian Females represent 3.79% of the available construction businesses and received 1.23% of the dollars on construction prime contracts valued between $25,000 and $1,960,000. This underutilization is statistically significant.

Minority Females represent 15.47% of the available construction businesses and received 13.96% of the dollars on construction prime contracts valued between $25,000 and $1,960,000. This underutilization is not statistically significant.

Non-minority Males represent 17.41% of the available construction businesses and received 19.30% of the dollars on construction prime contracts valued between $25,000 and $1,960,000. This overutilization is not statistically significant.

Minority Business Enterprises represent 78.79% of the available construction businesses and received 79.47% of the dollars on construction prime contracts valued between $25,000 and $1,960,000. This study does not statistically test the overutilization of M/WBEs.

Woman Business Enterprises represent 19.26% of the available construction businesses and received 15.18% of the dollars on construction prime contracts valued between $25,000 and $1,960,000. This underutilization is statistically significant.

Table 6.6: Disparity Analysis: Construction Prime Contracts Valued between $25,000 and $1,960,000

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	$13,993,809	4.95%	12.16%	$34,369,043	-$20,375,233	0.41	< .05 *
Asian Americans	$5,067,492	1.79%	0.97%	$2,749,523	$2,317,969	1.84	**
Hispanic Americans	$205,568,739	72.73%	65.56%	$185,317,878	$20,250,860	1.11	**
Native Americans	$0	0.00%	0.10%	$274,952	-$274,952	0.00	----
Caucasian Females	$3,468,426	1.23%	3.79%	$10,723,141	-$7,254,715	0.32	< .05 *
Non-minority Males	$54,552,541	19.30%	17.41%	$49,216,469	$5,336,072	1.11	not significant
TOTAL	$282,651,007	100.00%	100.00%	$282,651,007			
Ethnicity and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
African American Females	$4,407,544	1.56%	3.11%	$8,798,475	-$4,390,931	0.50	< .05 *
African American Males	$9,586,265	3.39%	9.05%	$25,570,568	-$15,984,303	0.37	< .05 *
Asian American Females	$152,002	0.05%	0.29%	$824,857	-$672,855	0.18	----
Asian American Males	$4,915,490	1.74%	0.68%	$1,924,666	$2,990,824	2.55	**
Hispanic American Females	$34,889,363	12.34%	11.96%	$33,819,138	$1,070,225	1.03	**
Hispanic American Males	$170,679,375	60.39%	53.60%	$151,498,740	$19,180,635	1.13	**
Native American Females	$0	0.00%	0.10%	$274,952	-$274,952	0.00	----
Native American Males	$0	0.00%	0.00%	$0	$0	----	----
Caucasian Females	$3,468,426	1.23%	3.79%	$10,723,141	-$7,254,715	0.32	< .05 *
Non-minority Males	$54,552,541	19.30%	17.41%	$49,216,469	$5,336,072	1.11	not significant
TOTAL	$282,651,007	100.00%	100.00%	$282,651,007			
Minority and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Females	$39,448,910	13.96%	15.47%	$43,717,422	-$4,268,513	0.90	not significant
Minority Males	$185,181,131	65.52%	63.33%	$178,993,974	$6,187,156	1.03	**
Minority and Females	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Business Enterprises	$224,630,040	79.47%	78.79%	$222,711,397	$1,918,644	1.01	**
Woman Business Enterprises	$42,917,336	15.18%	19.26%	$54,440,564	-$11,523,228	0.79	< .05 *

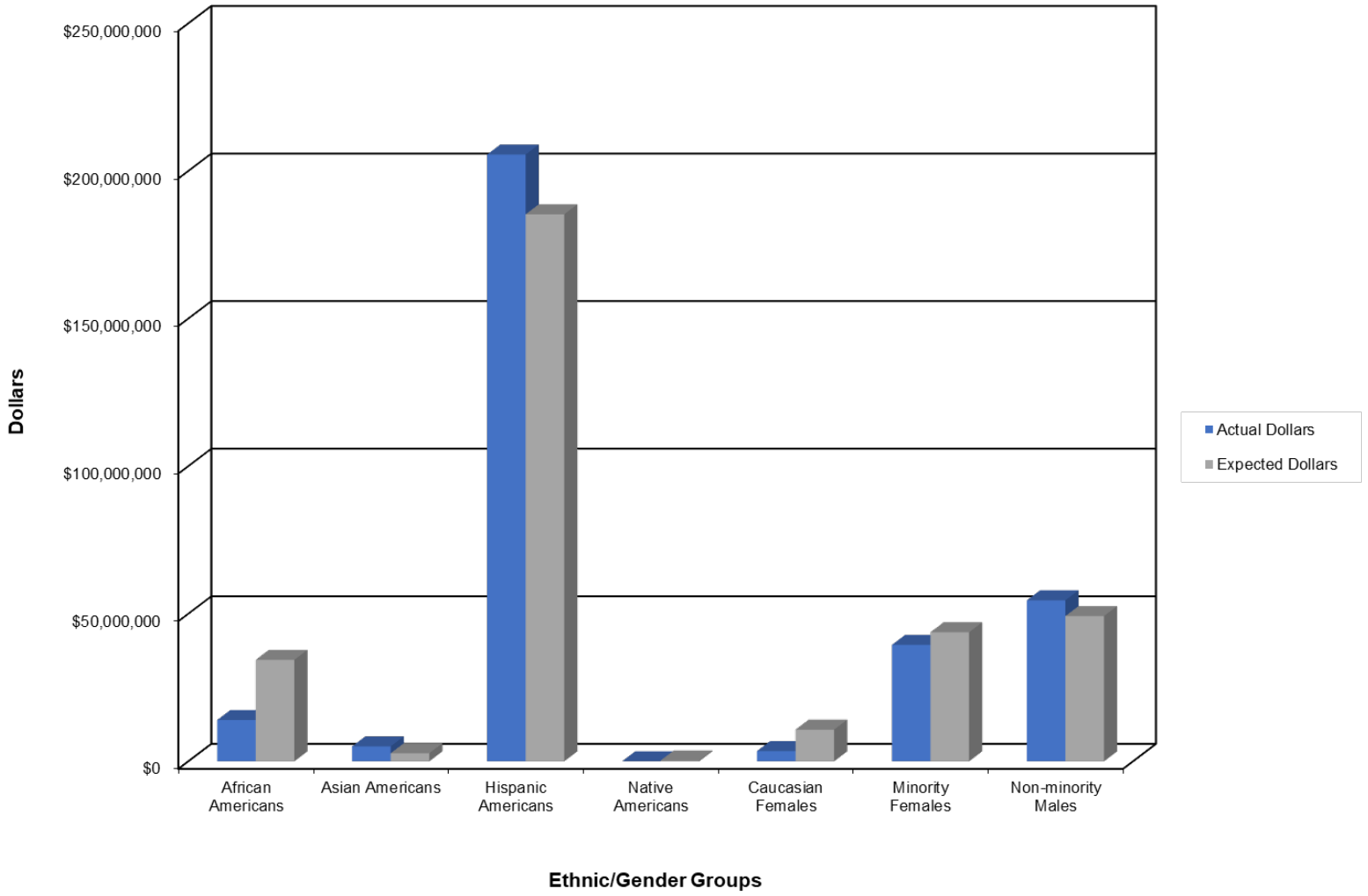
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no/too few contracts awarded and available firms to test statistical significance.

Chart 6.3: Disparity Analysis: Construction Prime Contracts Valued between $25,000 and $1,960,000



4. Architecture and Engineering Prime Contracts Valued between $25,000 and $850,000

The disparity analysis of architecture and engineering prime contracts valued between $25,000 and $850,000 is described below and shown in Table 6.7 and Chart 6.4.

African Americans represent 7.74% of the available architecture and engineering businesses and received 3.28% of the dollars on architecture and engineering prime contracts valued between $25,000 and $850,000. This underutilization is statistically significant.

Asian Americans represent 4.42% of the available architecture and engineering businesses and received 4.03% of the dollars on architecture and engineering prime contracts valued between $25,000 and $850,000. This underutilization is not statistically significant.

Hispanic Americans represent 55.53% of the available architecture and engineering businesses and received 41.80% of the dollars on architecture and engineering prime contracts valued between $25,000 and $850,000. This underutilization is statistically significant.

Native Americans represent none of the available architecture and engineering businesses and received none of the dollars on architecture and engineering prime contracts valued between $25,000 and $850,000. There was no data to conduct an analysis.

Caucasian Females represent 5.09% of the available architecture and engineering businesses and received 3.75% of the dollars on architecture and engineering prime contracts valued between $25,000 and $850,000. This underutilization is not statistically significant.

Minority Females represent 13.27% of the available architecture and engineering businesses and received 7.96% of the dollars on architecture and engineering prime contracts valued between $25,000 and $850,000. This underutilization is statistically significant.

Non-minority Males represent 27.21% of the available architecture and engineering businesses and received 47.15% of the dollars on architecture and engineering prime contracts valued between $25,000 and $850,000. This overutilization is statistically significant.

Minority Business Enterprises represent 67.70% of the available architecture and engineering businesses and received 49.11% of the dollars on architecture and engineering prime contracts valued between $25,000 and $850,000. This underutilization is statistically significant.

Woman Business Enterprises represent 18.36% of the available architecture and engineering businesses and received 11.71% of the dollars on architecture and engineering prime contracts valued between $25,000 and $850,000. This underutilization is statistically significant.



Table 6.7: Disparity Analysis: Architecture and Engineering Prime Contracts Valued between $25,000 and $850,000

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	$3,961,267	3.28%	7.74%	$9,357,824	-$5,396,557	0.42	< .05 *
Asian Americans	$4,867,623	4.03%	4.42%	$5,347,328	-$479,705	0.91	not significant
Hispanic Americans	$50,517,104	41.80%	55.53%	$67,108,964	-$16,591,861	0.75	< .05 *
Native Americans	$0	0.00%	0.00%	$0	$0	----	----
Caucasian Females	$4,528,927	3.75%	5.09%	$6,149,427	-$1,620,500	0.74	not significant
Non-minority Males	$56,974,688	47.15%	27.21%	$32,886,066	$24,088,622	1.73	< .05 †
TOTAL	$120,849,609	100.00%	100.00%	$120,849,609			
Ethnicity and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
African American Females	$394,699	0.33%	0.66%	$802,099	-$407,400	0.49	----
African American Males	$3,566,568	2.95%	7.08%	$8,555,725	-$4,989,157	0.42	< .05 *
Asian American Females	$400,000	0.33%	0.66%	$802,099	-$402,099	0.50	----
Asian American Males	$4,467,623	3.70%	3.76%	$4,545,229	-$77,606	0.98	not significant
Hispanic American Females	$8,825,414	7.30%	11.95%	$14,437,785	-$5,612,372	0.61	< .05 *
Hispanic American Males	$41,691,690	34.50%	43.58%	$52,671,179	-$10,979,489	0.79	< .05 *
Native American Females	$0	0.00%	0.00%	$0	$0	----	----
Native American Males	$0	0.00%	0.00%	$0	$0	----	----
Caucasian Females	$4,528,927	3.75%	5.09%	$6,149,427	-$1,620,500	0.74	not significant
Non-minority Males	$56,974,688	47.15%	27.21%	$32,886,066	$24,088,622	1.73	< .05 †
TOTAL	$120,849,609	100.00%	100.00%	$120,849,609			
Minority and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Females	$9,620,113	7.96%	13.27%	$16,041,983	-$6,421,871	0.60	< .05 *
Minority Males	$49,725,881	41.15%	54.42%	$65,772,132	-$16,046,251	0.76	< .05 *
Minority and Females	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Business Enterprises	$59,345,994	49.11%	67.70%	$81,814,116	-$22,468,122	0.73	< .05 *
Woman Business Enterprises	$14,149,040	11.71%	18.36%	$22,191,410	-$8,042,371	0.64	< .05 *

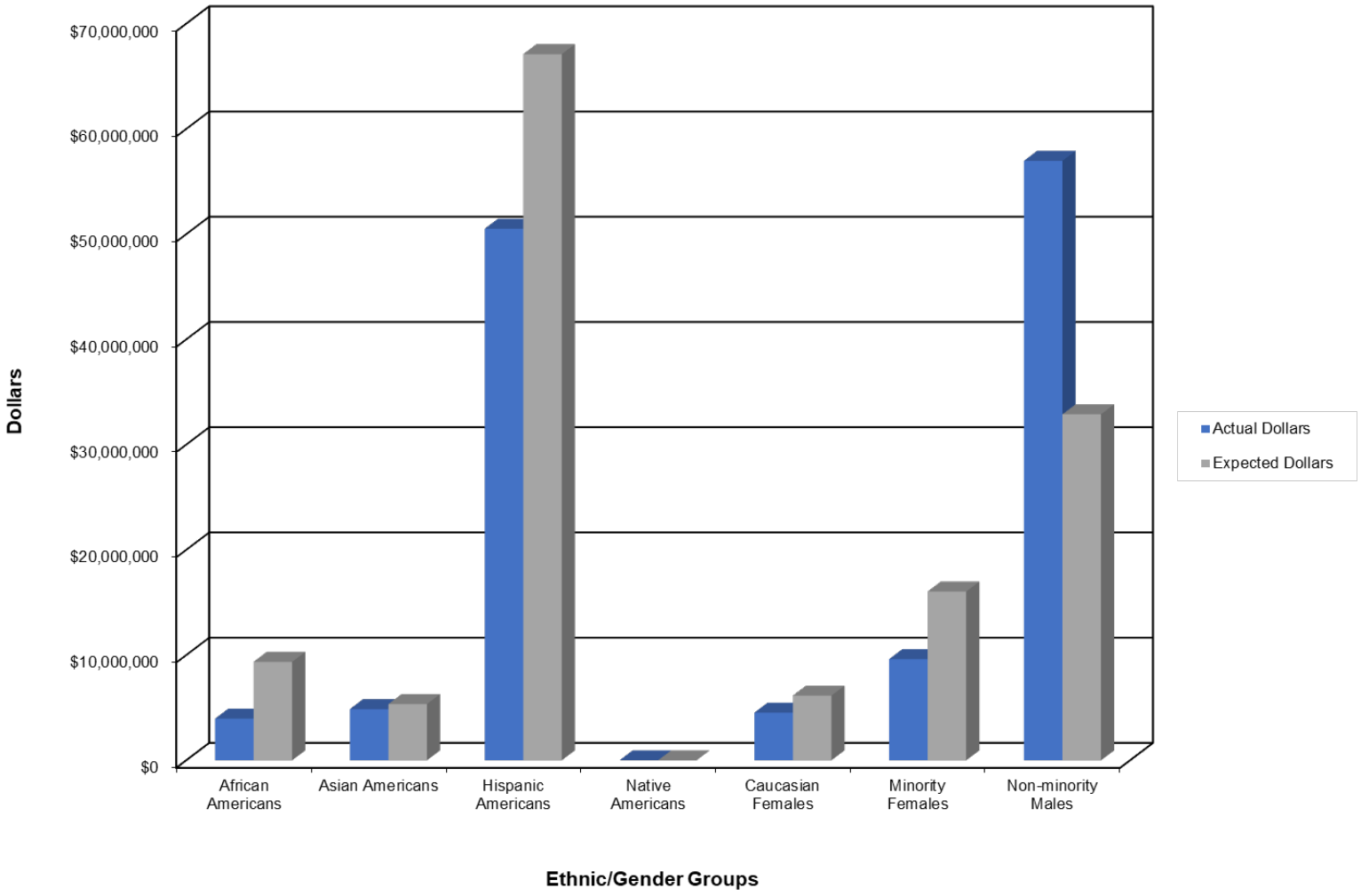
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no/too few contracts awarded and available firms to test statistical significance.

Chart 6.4: Disparity Analysis: Architecture and Engineering Prime Contracts Valued between $25,000 and $850,000



5. Professional and Other Services Prime Contracts Valued between $25,000 and $2,570,000

The disparity analysis of professional and other services prime contracts valued between $25,000 and $2,570,000 is described below and shown in Table 6.8 and Chart 6.5.

African Americans represent 26.18% of the available professional and other services businesses and received 6.54% of the dollars on professional and other services prime contracts valued between $25,000 and $2,570,000. This underutilization is statistically significant.

Asian Americans represent 1.95% of the available professional and other services businesses and received 2.57% of the dollars on professional and other services prime contracts valued between $25,000 and $2,570,000. This study does not statistically test the overutilization of M/WBEs.

Hispanic Americans represent 41.50% of the available professional and other services businesses and received 14.15% of the dollars on professional and other services prime contracts valued between $25,000 and $2,570,000. This underutilization is statistically significant.

Native Americans represent none of the available professional and other services businesses and received none of the dollars on professional and other services prime contracts valued between $25,000 and $2,570,000. There was no data to conduct an analysis.

Caucasian Females represent 7.52% of the available professional and other services businesses and received 7.43% of the dollars on professional and other services prime contracts valued between $25,000 and $2,570,000. This underutilization is not statistically significant.

Minority Females represent 33.43% of the available professional and other services businesses and received 4.11% of the dollars on professional and other services prime contracts valued between $25,000 and $2,570,000. This underutilization is statistically significant.

Non-minority Males represent 22.84% of the available professional and other services businesses and received 69.31% of the dollars on professional and other services prime contracts valued between $25,000 and $2,570,000. This overutilization is statistically significant.

Minority Business Enterprises represent 69.64% of the available professional and other services businesses and received 23.26% of the dollars on professional and other services prime contracts valued between $25,000 and $2,570,000. This underutilization is statistically significant.

Woman Business Enterprises represent 40.95% of the available professional and other services businesses and received 11.54% of the dollars on professional and other services prime contracts valued between $25,000 and $2,570,000. This underutilization is statistically significant.



Table 6.8: Disparity Analysis: Professional and Other Services Prime Contracts Valued between $25,000 and $2,570,000

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	$4,013,087	6.54%	26.18%	$16,060,295	-$12,047,209	0.25	< .05 *
Asian Americans	$1,575,085	2.57%	1.95%	$1,195,979	$379,106	1.32	**
Hispanic Americans	$8,680,276	14.15%	41.50%	$25,457,277	-$16,777,001	0.34	< .05 *
Native Americans	$0	0.00%	0.00%	$0	$0	----	----
Caucasian Females	$4,558,639	7.43%	7.52%	$4,613,064	-$54,425	0.99	not significant
Non-minority Males	$42,509,573	69.31%	22.84%	$14,010,045	$28,499,528	3.03	< .05 †
TOTAL	$61,336,660	100.00%	100.00%	$61,336,660			
Ethnicity and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
African American Females	$777,750	1.27%	14.21%	$8,713,564	-$7,935,814	0.09	< .05 *
African American Males	$3,235,337	5.27%	11.98%	$7,346,731	-$4,111,394	0.44	< .05 *
Asian American Females	$490,126	0.80%	0.28%	$170,854	$319,272	2.87	**
Asian American Males	$1,084,959	1.77%	1.67%	$1,025,125	$59,834	1.06	**
Hispanic American Females	$1,253,393	2.04%	18.94%	$11,618,086	-$10,364,693	0.11	< .05 *
Hispanic American Males	$7,426,883	12.11%	22.56%	$13,839,191	-$6,412,307	0.54	< .05 *
Native American Females	$0	0.00%	0.00%	$0	$0	----	----
Native American Males	$0	0.00%	0.00%	$0	$0	----	----
Caucasian Females	$4,558,639	7.43%	7.52%	$4,613,064	-$54,425	0.99	not significant
Non-minority Males	$42,509,573	69.31%	22.84%	$14,010,045	$28,499,528	3.03	< .05 †
TOTAL	$61,336,660	100.00%	100.00%	$61,336,660			
Minority and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Females	$2,521,269	4.11%	33.43%	$20,502,505	-$17,981,236	0.12	< .05 *
Minority Males	$11,747,179	19.15%	36.21%	$22,211,047	-$10,463,867	0.53	< .05 *
Minority and Females	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Business Enterprises	$14,268,448	23.26%	69.64%	$42,713,551	-$28,445,104	0.33	< .05 *
Woman Business Enterprises	$7,079,907	11.54%	40.95%	$25,115,568	-$18,035,661	0.28	< .05 *

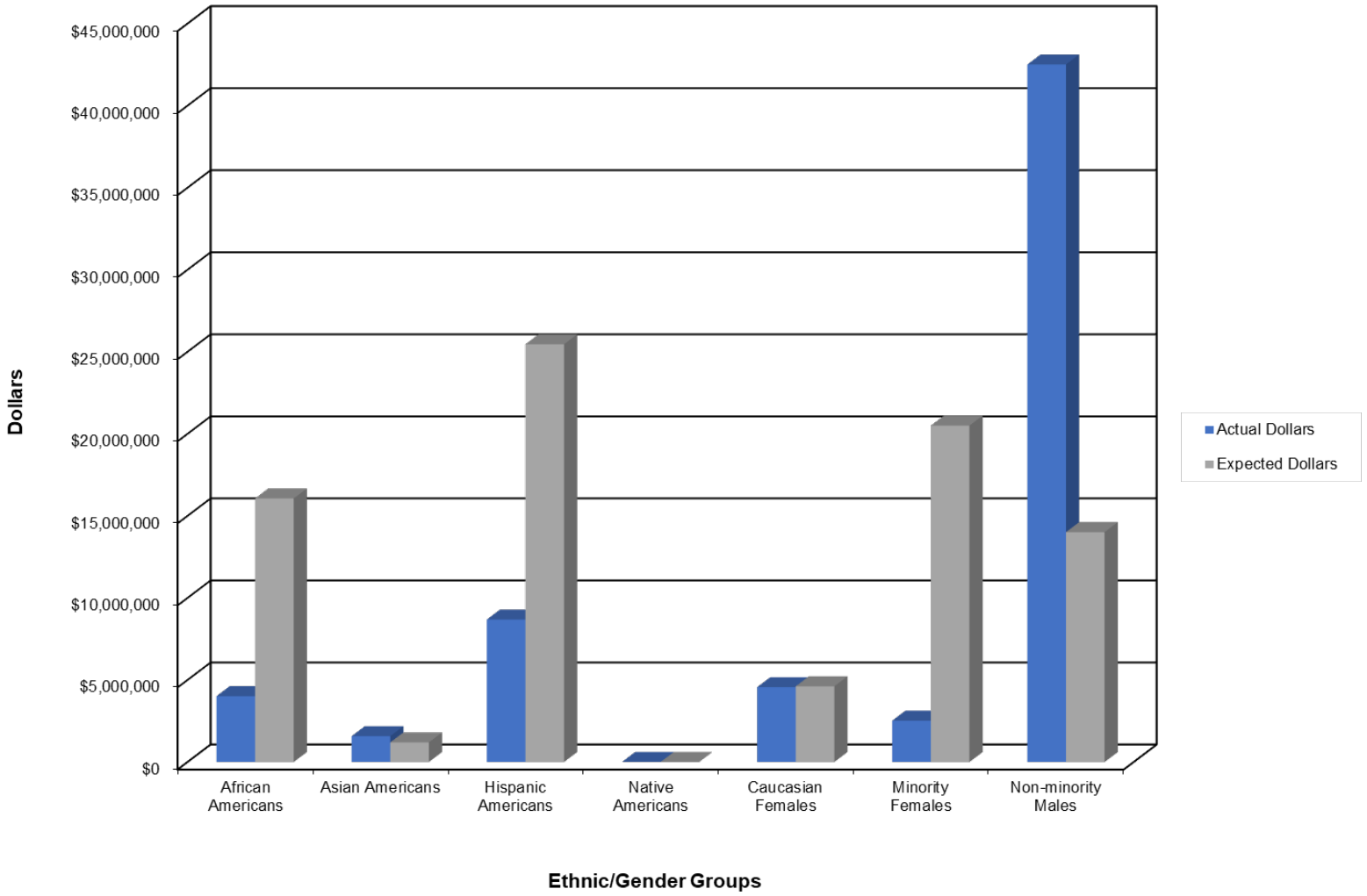
(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no/too few contracts awarded and available firms to test statistical significance.

Chart 6.5: Disparity Analysis: Professional and Other Services Prime Contracts Valued between $25,000 and $2,570,000



6. Goods and Services Prime Contracts Valued between $25,000 and $1,740,000

The disparity analysis of goods and services prime contracts valued between $25,000 and $1,740,000 is described below and shown in Table 6.9 and Chart 6.6.

African Americans represent 16.38% of the available goods and services businesses and received 6.04% of the dollars on goods and services prime contracts valued between $25,000 and $1,740,000. This underutilization is statistically significant.

Asian Americans represent 0.92% of the available goods and services businesses and received 3.88% of the dollars on goods and services prime contracts valued between $25,000 and $1,740,000. This study does not statistically test the overutilization of M/WBEs.

Hispanic Americans represent 49.27% of the available goods and services businesses and received 26.21% of the dollars on goods and services prime contracts valued between $25,000 and $1,740,000. This underutilization is statistically significant.

Native Americans represent 0.13% of the available goods and services businesses and received none of the dollars on goods and services prime contracts valued between $25,000 and $1,740,000. This underutilization could not be tested because there were too few businesses, and no contracts awarded.

Caucasian Females represent 7.13% of the available goods and services businesses and received 5.16% of the dollars on goods and services prime contracts valued between $25,000 and $1,740,000. This underutilization is not statistically significant.

Minority Females represent 22.85% of the available goods and services businesses and received 10.59% of the dollars on goods and services prime contracts valued between $25,000 and $1,740,000. This underutilization is statistically significant.

Non-minority Males represent 26.16% of the available goods and services businesses and received 58.71% of the dollars on goods and services prime contracts valued between $25,000 and $1,740,000. This overutilization is statistically significant.

Minority Business Enterprises represent 66.71% of the available goods and services businesses and received 36.13% of the dollars on goods and services prime contracts valued between $25,000 and $1,740,000. This underutilization is statistically significant.

Woman Business Enterprises represent 29.99% of the available goods and services businesses and received 15.75% of the dollars on goods and services prime contracts valued between $25,000 and $1,740,000. This underutilization is statistically significant.



Table 6.9: Disparity Analysis: Goods and Services Prime Contracts Valued between $25,000 and $1,740,000

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	$13,210,703	6.04%	16.38%	$35,818,924	-$22,608,221	0.37	< .05 *
Asian Americans	$8,493,633	3.88%	0.92%	$2,022,036	$6,471,597	4.20	**
Hispanic Americans	$57,306,981	26.21%	49.27%	$107,745,633	-$50,438,652	0.53	< .05 *
Native Americans	$0	0.00%	0.13%	$288,862	-$288,862	0.00	----
Caucasian Females	$11,283,288	5.16%	7.13%	$15,598,564	-$4,315,276	0.72	not significant
Non-minority Males	$128,374,147	58.71%	26.16%	$57,194,733	$71,179,414	2.24	< .05 †
TOTAL	$218,668,752	100.00%	100.00%	$218,668,752			
Ethnicity and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
African American Females	$3,982,333	1.82%	5.02%	$10,976,767	-$6,994,434	0.36	< .05 *
African American Males	$9,228,370	4.22%	11.36%	$24,842,157	-$15,613,787	0.37	< .05 *
Asian American Females	$188,809	0.09%	0.40%	$866,587	-$677,778	0.22	----
Asian American Males	$8,304,824	3.80%	0.53%	$1,155,449	$7,149,375	7.19	**
Hispanic American Females	$18,990,000	8.68%	17.44%	$38,129,822	-$19,139,822	0.50	< .05 *
Hispanic American Males	$38,316,981	17.52%	31.84%	$69,615,811	-$31,298,830	0.55	< .05 *
Native American Females	$0	0.00%	0.00%	$0	$0	----	----
Native American Males	$0	0.00%	0.13%	$288,862	-$288,862	0.00	----
Caucasian Females	$11,283,288	5.16%	7.13%	$15,598,564	-$4,315,276	0.72	not significant
Non-minority Males	$128,374,147	58.71%	26.16%	$57,194,733	$71,179,414	2.24	< .05 †
TOTAL	$218,668,752	100.00%	100.00%	$218,668,752			
Minority and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Females	$23,161,142	10.59%	22.85%	$49,973,176	-$26,812,034	0.46	< .05 *
Minority Males	$55,850,175	25.54%	43.86%	$95,902,279	-$40,052,105	0.58	< .05 *
Minority and Females	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Business Enterprises	$79,011,317	36.13%	66.71%	$145,875,455	-$66,864,139	0.54	< .05 *
Woman Business Enterprises	$34,444,430	15.75%	29.99%	$65,571,739	-$31,127,310	0.53	< .05 *

(*) denotes a statistically significant underutilization.

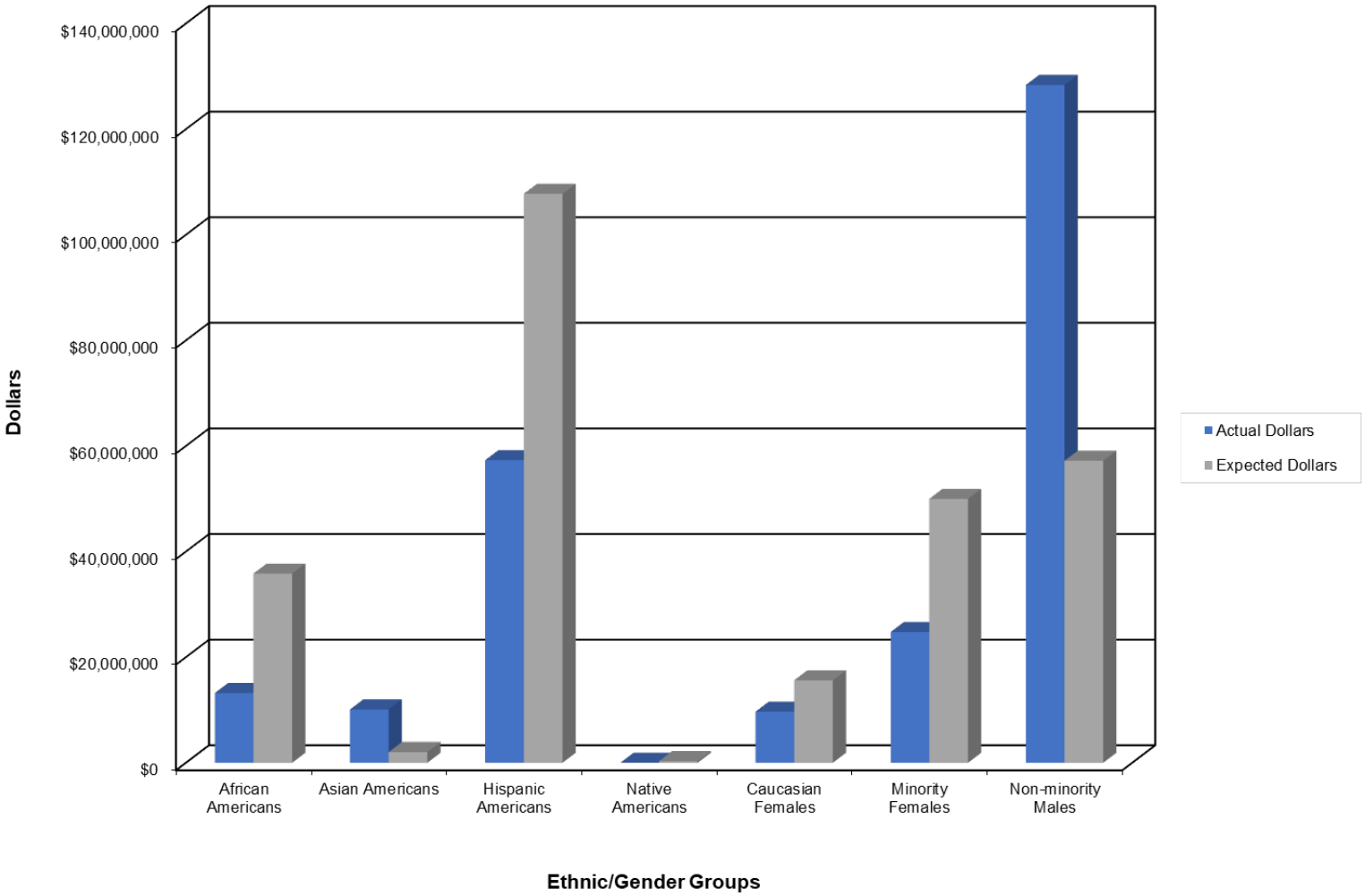
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no/too few contracts awarded and available firms to test statistical significance.



Chart 6.6: Disparity Analysis: Goods and Services Prime Contracts Valued between $25,000 and $1,740,000



III. Disparity Analysis Summary

Construction Prime Contracts

As indicated in Table 6.10 below, disparity was found for African American, Caucasian female, and woman business enterprise prime contractors on formal construction prime contracts valued between $25,000 and $1,960,000. Minority female prime contractors were underutilized on these contracts although the underutilization was not statistically significant. There was insufficient data to determine the statistical significance of the underutilization of Asian American prime contractors on informal construction prime contracts and Native American prime contractors on both informal and formal construction prime contracts.

Table 6.10: Disparity Summary: Construction Prime Contract Dollars

Ethnicity/Gender	Construction	
	Contracts Valued at $25,000 and under	Contracts Valued between $25,000 and $1,960,000
African Americans	No Disparity	*Disparity*
Asian Americans	Insufficient Data	No Disparity
Hispanic Americans	No Disparity	No Disparity
Native Americans	Insufficient Data	Insufficient Data
Caucasian Females	No Disparity	*Disparity*
Minority Females	No Disparity	Underutilization
Minority Business Enterprises	No Disparity	No Disparity
Woman Business Enterprises	No Disparity	*Disparity*

Architecture and Engineering Prime Contracts

As indicated in Table 6.11 below, there was not enough data to conduct a meaningful analysis for architecture and engineering contracts valued at $25,000 and under. Disparity was found for African American, Hispanic American, minority female, minority business enterprise, and woman business enterprise prime contractors on architecture and engineering contracts valued between $25,000 and $850,000. Caucasian female prime contractors were underutilized on these contracts although the underutilization was not statistically significant. There was insufficient data to determine the statistical significance of the underutilization of Native American prime contractors on formal architecture and engineering prime contracts.

Table 6.11: Disparity Summary: Architecture and Engineering Prime Contract Dollars

Ethnicity/Gender	Architecture and Engineering	
	Contracts Valued at $25,000 and under	Contracts Valued between $25,000 and $850,000
African Americans	There were too few contracts and dollars to conduct a meaningful analysis.	*Disparity*
Asian Americans		No Disparity
Hispanic Americans		*Disparity*
Native Americans		Insufficient Data
Caucasian Females		Underutilization
Minority Females		*Disparity*
Minority Business Enterprises		*Disparity*
Woman Business Enterprises		*Disparity*

Professional and Other Services Prime Contracts

As indicated in Table 6.12 below, there was not enough data to conduct a meaningful analysis for professional and other services contracts valued at $25,000 and under. Disparity was found for African American, Hispanic American, minority female, minority business enterprise, and woman business enterprise prime contractors on professional and other services contracts valued between $25,000 and $2,570,000. Caucasian female prime contractors were underutilized on these contracts although the underutilization was not statistically significant. There was insufficient data to determine the statistical significance of the underutilization of Native American prime contractors on formal professional and other services prime contracts.

Table 6.12: Disparity Summary: Professional and Other Services Prime Contract Dollars

Ethnicity/Gender	Professional and Other Services	
	Contracts Valued at $25,000 and under	Contracts Valued between $25,000 and $2,570,000
African Americans	There were too few contracts and dollars to conduct a meaningful analysis.	*Disparity*
Asian Americans		No Disparity
Hispanic Americans		*Disparity*
Native Americans		Insufficient Data
Caucasian Females		Underutilization
Minority Females		*Disparity*
Minority Business Enterprises		*Disparity*
Woman Business Enterprises		*Disparity*

Goods and Services Prime Contracts

As indicated in Table 6.13 below, disparity was found for African American, Hispanic American, minority female, minority business enterprise, and woman business enterprise prime contractors on both informal and formal goods and services contracts. Caucasian female prime contractors were underutilized on goods and services prime contracts valued between $25,000 and $1,740,000 although the underutilization was not statistically significant. There was insufficient data to determine the statistical significance of the underutilization of Native American prime contractors on both informal and formal goods and services prime contracts.

Table 6.13: Disparity Summary: Goods and Services Prime Contract Dollars

Ethnicity/Gender	Goods and Services	
	Contracts Valued at $25,000 and under	Contracts Valued between $25,000 and $1,740,000
African Americans	*Disparity*	*Disparity*
Asian Americans	No Disparity	No Disparity
Hispanic Americans	*Disparity*	*Disparity*
Native Americans	Insufficient Data	Insufficient Data
Caucasian Females	No Disparity	Underutilization
Minority Females	*Disparity*	*Disparity*
Minority Business Enterprises	*Disparity*	*Disparity*
Woman Business Enterprises	*Disparity*	*Disparity*



CHAPTER 7: Subcontract Disparity Analysis

I. Introduction

The objective of this chapter is to determine if available minority and woman-owned business enterprises (M/WBEs) were underutilized in the award of Miami-Dade County's subcontracts during the November 1, 2018 to October 31, 2021 study period. A detailed discussion of the statistical procedures for conducting a disparity analysis is set forth in *Chapter 6: Prime Contract Disparity Analysis*. The same statistical procedures are used to perform the subcontract disparity analysis.

Under a fair and equitable system of awarding subcontracts, the proportion of subcontracts and subcontract dollars awarded to M/WBE subcontractors should be relatively close to the proportion of available M/WBE subcontractors in the County's market area. Availability is defined as the number of willing and able businesses. The methodology for determining willing and able businesses is detailed in *Chapter 5: Prime Contractor and Subcontractor Availability Analysis.*

If the ratio of utilized M/WBE subcontractors to available M/WBE subcontractors is less than one, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event that is less probable.[267] *Croson* states that an inference of discrimination can be made *prima facie* if the MBE disparity is statistically significant.

Female groups, which were not considered in *Croson,* are subject to a lesser or intermediate legal standard. The intermediate legal standard, unlike the *Croson* strict scrutiny standard, only requires a finding that the utilization is less than the availability. In this study, all female groups with a disparity are also subject to the statistical significance test. When the underutilization of either Caucasian females or minority females is statistically significant, the finding for the group is reported as disparity. When the underutilization for either female group is not statistically significant, the outcome is reported as underutilization. In the event where there is no underutilization for either group, the finding is reported as no disparity. Non-minority male-owned business enterprises (non-M/WBEs) are not subjected to a statistical test of underutilization under the *Croson* standard.[268]

[267] 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% confidence level or a level of absolute certainty can never be obtained in statistics. A 95% confidence level is the statistical standard used in physical and social sciences and is thus used in the present report to determine if an inference of discrimination can be made.

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

II. Disparity Analysis

As detailed in *Chapter 3: Subcontractor Utilization Analysis,* the disparity analysis was performed on the subcontracts the construction and architecture and engineering prime contractors issued during the study period.

The statistical analysis documented a disparity in the award of professional and other services subcontracts to the available M/WBEs. However, there were too few subcontracts in the analysis to test the statistical significance of the disparity ratio. As the sample size increases, statistical tests have more power to detect even small effects. A larger, more robust dataset would provide a more accurate estimate of the contracting parameters and be more likely to discern the statistical significance. Therefore, the recommendation is to perform a test of statistical significance of the disparity for professional and other services subcontracts on a larger dataset. If the additional data trends in the same way as these few subcontracts, a statistically significant disparity in the award of professional service subcontracts to M/WBEs is likely to be documented

The subcontract disparity findings are detailed in *Section III. Disparity Analysis: All Subcontracts by Industry*. The outcomes of the test of statistical significance are presented in the "P-Value" column of the tables. A description of the statistical outcomes in the disparity tables is listed in Table 7.1. When there is insufficient data to test the statistical significance of the disparity, no p-value is reported.

Table 7.1: Statistical Outcome Descriptions

P-Value Outcome	Definition of P-Value Outcome
< 0.05 *	This underutilization is statistically significant.
not significant	M/WBEs: This underutilization is not statistically significant. Non-minority males: This overutilization is not statistically significant.
< 0.05 †	This overutilization is statistically significant.
----	The disparity could not be subject to the statistical test because there were no/too few contracts awarded and available firms.
**	This study does not statistically test the overutilization of minority or gender groups or the underutilization of non-minority males.

III. Disparity Analysis: All Subcontracts by Industry

Construction Subcontracts

The disparity analysis of construction subcontracts is described below in Table 7.2 and shown in Chart 7.1.

African Americans represent 13.61% of the available construction businesses and received 3.34% of the dollars on construction subcontracts. This underutilization is statistically significant.

Asian Americans represent 2.39% of the available construction businesses and received 1.91% of the dollars on construction subcontracts. This underutilization is statistically significant.

Hispanic Americans represent 57.77% of the available construction businesses and received 40.11% of the dollars on construction subcontracts. This underutilization is statistically significant.

Native Americans represent 0.08% of the available construction businesses and received none of the dollars on construction subcontracts. This underutilization could not be tested because there were too few businesses, and no contracts awarded.

Caucasian Females represent 5.29% of the available construction businesses and received 3.15% of the dollars on construction subcontracts. This underutilization is not statistically significant.

Minority Females represent 19.33% of the available construction businesses and received 5.00% of the dollars on construction subcontracts. This underutilization is statistically significant.

Non-minority Males represent 20.84% of the available construction businesses and received 51.49% of the dollars on construction subcontracts. This overutilization is statistically significant.

Minority Business Enterprises represent 73.87% of the available construction businesses and received 45.36% of the dollars on construction subcontracts. This underutilization is statistically significant.

Woman Business Enterprises represent 24.62% of the available construction businesses and received 8.15% of the dollars on construction subcontracts. This underutilization is statistically significant.



Table 7.2: Disparity Analysis: Construction Subcontracts

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	$30,015,214	3.34%	13.61%	$122,407,829	-$92,392,614	0.25	< .05 *
Asian Americans	$17,176,370	1.91%	2.39%	$21,534,711	-$4,358,341	0.80	< .05 *
Hispanic Americans	$360,664,792	40.11%	57.77%	$519,477,668	-$158,812,876	0.69	< .05 *
Native Americans	$0	0.00%	0.08%	$755,604	-$755,604	0.00	----
Caucasian Females	$28,357,719	3.15%	5.29%	$47,603,045	-$19,245,325	0.60	not significant
Non-minority Males	$462,954,523	51.49%	20.84%	$187,389,763	$275,564,760	2.47	< .05 †
TOTAL	$899,168,619	100.00%	100.00%	$899,168,619			
Ethnicity and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
African American Females	$4,800,690	0.53%	4.54%	$40,802,610	-$36,001,920	0.12	< .05 *
African American Males	$25,214,525	2.80%	9.08%	$81,605,219	-$56,390,695	0.31	< .05 *
Asian American Females	$1,474,985	0.16%	0.50%	$4,533,623	-$3,058,638	0.33	----
Asian American Males	$15,701,385	1.75%	1.89%	$17,001,087	-$1,299,702	0.92	not significant
Hispanic American Females	$38,669,374	4.30%	14.24%	$128,074,858	-$89,405,484	0.30	< .05 *
Hispanic American Males	$321,995,418	35.81%	43.53%	$391,402,811	-$69,407,392	0.82	< .05 *
Native American Females	$0	0.00%	0.04%	$377,802	-$377,802	0.00	----
Native American Males	$0	0.00%	0.04%	$377,802	-$377,802	0.00	----
Caucasian Females	$28,357,719	3.15%	5.29%	$47,603,045	-$19,245,325	0.60	not significant
Non-minority Males	$462,954,523	51.49%	20.84%	$187,389,763	$275,564,760	2.47	< .05 †
TOTAL	$899,168,619	100.00%	100.00%	$899,168,619			
Minority and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Females	$44,945,049	5.00%	19.33%	$173,788,893	-$128,843,844	0.26	< .05 *
Minority Males	$362,911,328	40.36%	54.54%	$490,386,919	-$127,475,591	0.74	< .05 *
Minority and Females	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Business Enterprises	$407,856,377	45.36%	73.87%	$664,175,812	-$256,319,435	0.61	< .05 *
Woman Business Enterprises	$73,302,768	8.15%	24.62%	$221,391,937	-$148,089,169	0.33	< .05 *

(*) denotes a statistically significant underutilization.

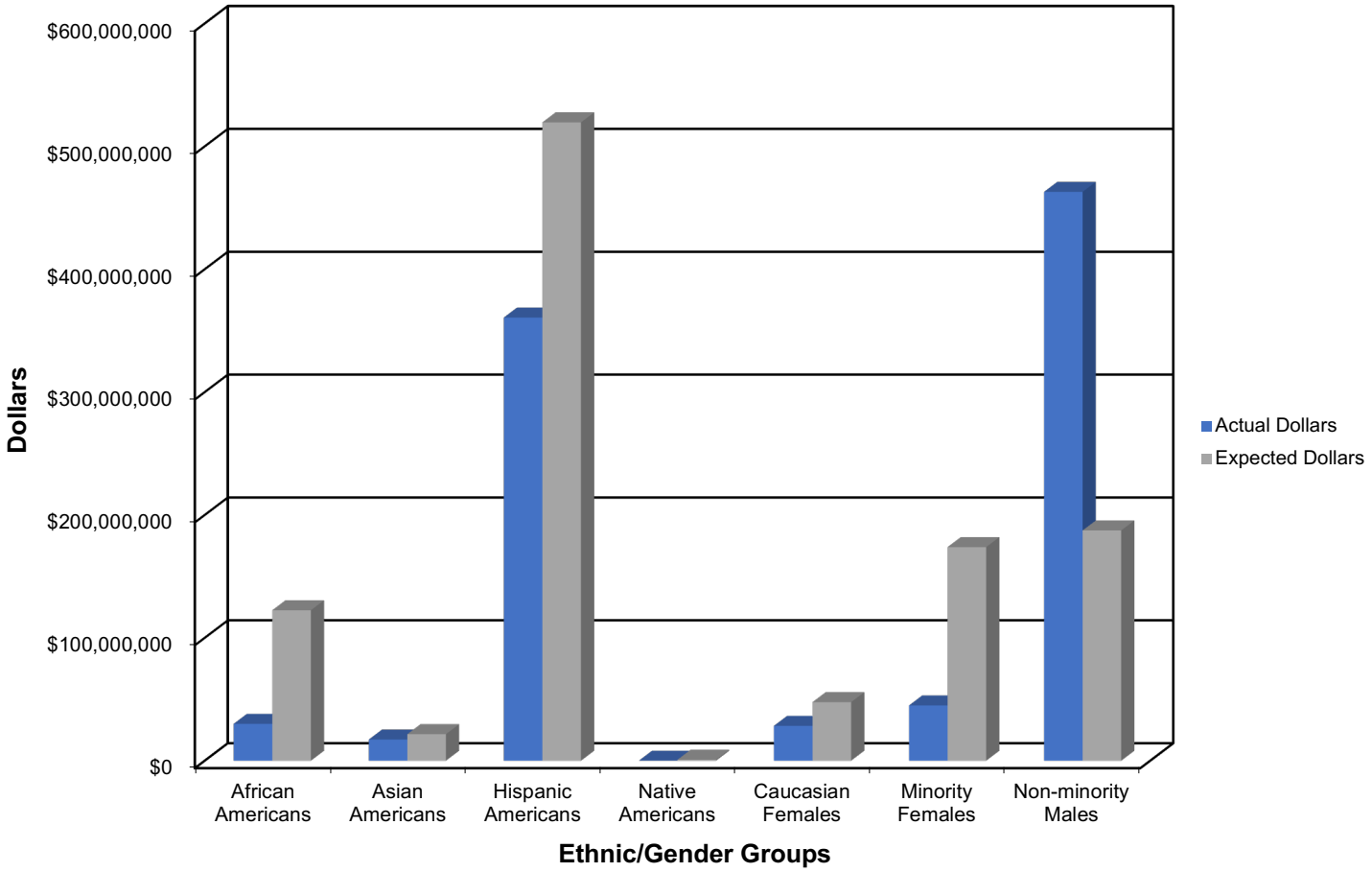
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no/too few contracts awarded and available firms to test statistical significance.



Chart 7.1: Disparity Analysis: Construction Subcontracts



Architecture and Engineering Subcontracts

The disparity analysis of architecture and engineering subcontracts is described below in Table 7.3 and listed in Chart 7.2.

African Americans represent 13.57%% of the available architecture and engineering businesses and received 8.32% of the dollars on architecture and engineering subcontracts. This underutilization is statistically significant.

Asian Americans represent 2.61% of the available architecture and engineering businesses and received 2.41% of the dollars on architecture and engineering subcontracts. This underutilization is not statistically significant.

Hispanic Americans represent 58.30% of the available architecture and engineering businesses and received 57.72% of the dollars on architecture and engineering subcontracts. This underutilization is not statistically significant.

Native Americans represent 0.05% of the available architecture and engineering businesses and received none of the dollars on architecture and engineering subcontracts. This underutilization could not be tested because there were too few businesses, and no contracts awarded.

Caucasian Females represent 5.12% of the available architecture and engineering businesses and received 4.96% of the dollars on architecture and engineering subcontracts. This underutilization is not statistically significant.

Minority Females represent 19.31% of the available architecture and engineering businesses and received 8.22% of the dollars on architecture and engineering subcontracts. This underutilization is statistically significant.

Non-minority Males represent 20.35% of the available architecture and engineering businesses and received 26.59% of the dollars on architecture and engineering subcontracts. This overutilization is statistically significant.

Minority Business Enterprises represent 74.53% of the available architecture and engineering businesses and received 68.44% of the dollars on architecture and engineering subcontracts. This underutilization is not statistically significant.

Woman Business Enterprises represent 24.43% of the available architecture and engineering businesses and received 13.18% of the dollars on architecture and engineering subcontracts. This underutilization is statistically significant.

Table 7.3: Disparity Analysis: Architecture and Engineering Subcontracts

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	$14,801,049	8.32%	13.57%	$24,148,680	-$9,347,631	0.61	< .05 *
Asian Americans	$4,282,497	2.41%	2.61%	$4,643,977	-$361,480	0.92	not significant
Hispanic Americans	$102,737,786	57.72%	58.30%	$103,771,776	-$1,033,990	0.99	not significant
Native Americans	$0	0.00%	0.05%	$84,436	-$84,436	0.00	----
Caucasian Females	$8,835,899	4.96%	5.12%	$9,119,082	-$283,183	0.97	not significant
Non-minority Males	$47,333,740	26.59%	20.35%	$36,223,020	$11,110,720	1.31	< .05 †
TOTAL	$177,990,971	100.00%	100.00%	$177,990,971			
Ethnicity and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
African American Females	$645,253	0.36%	4.65%	$8,274,723	-$7,629,470	0.08	< .05 *
African American Males	$14,155,796	7.95%	8.92%	$15,873,958	-$1,718,161	0.89	not significant
Asian American Females	$53,290	0.03%	0.62%	$1,097,667	-$1,044,377	0.05	----
Asian American Males	$4,229,206	2.38%	1.99%	$3,546,310	$682,897	1.19	**
Hispanic American Females	$13,924,827	7.82%	14.04%	$24,993,040	-$11,068,212	0.56	< .05 *
Hispanic American Males	$88,812,958	49.90%	44.26%	$78,778,736	$10,034,222	1.13	**
Native American Females	$0	0.00%	0.00%	$0	$0	----	----
Native American Males	$0	0.00%	0.05%	$84,436	-$84,436	0.00	----
Caucasian Females	$8,835,899	4.96%	5.12%	$9,119,082	-$283,183	0.97	not significant
Non-minority Males	$47,333,740	26.59%	20.35%	$36,223,020	$11,110,720	1.31	< .05 †
TOTAL	$177,990,971	100.00%	100.00%	$177,990,971			
Minority and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Females	$14,623,370	8.22%	19.31%	$34,365,429	-$19,742,059	0.43	< .05 *
Minority Males	$107,197,961	60.23%	55.22%	$98,283,440	$8,914,521	1.09	**
Minority and Females	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Business Enterprises	$121,821,331	68.44%	74.53%	$132,648,869	-$10,827,538	0.92	not significant
Woman Business Enterprises	$23,459,270	13.18%	24.43%	$43,484,512	-$20,025,242	0.54	< .05 *

(*) denotes a statistically significant underutilization.

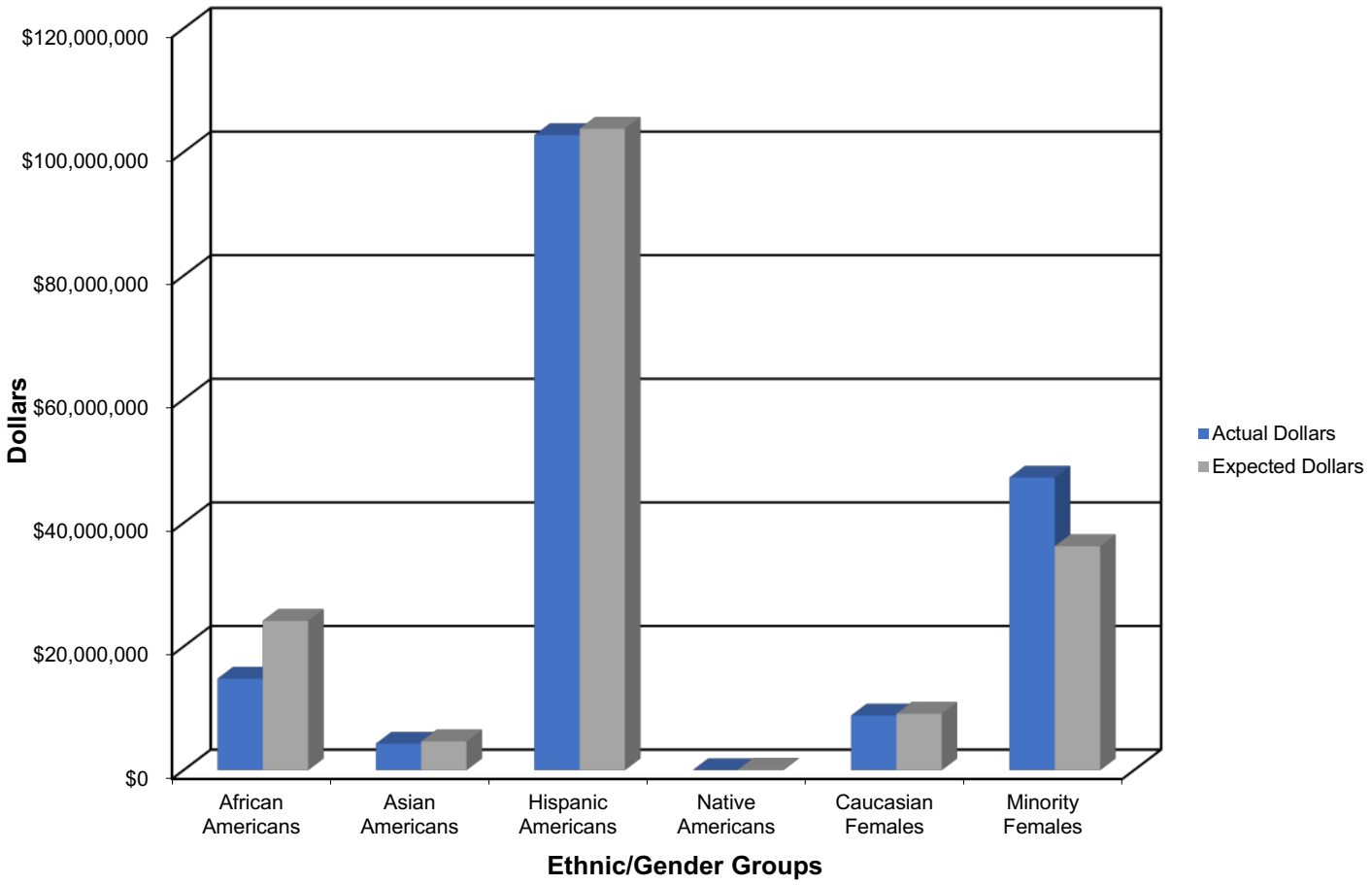
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no/too few contracts awarded and available firms to test statistical significance.



Chart 7.2: Disparity Analysis: Architecture and Engineering Subcontracts



Professional and Other Services Subcontracts

The disparity analysis of professional and other services subcontracts is described below in Table 7.4 and listed in Chart 7.3.

There were only 59 professional and other services subcontracts awarded during the study period. Since there were too few professional and other services subcontracts to perform a meaningful test of statistical significance, only the disparity ratio is reported.



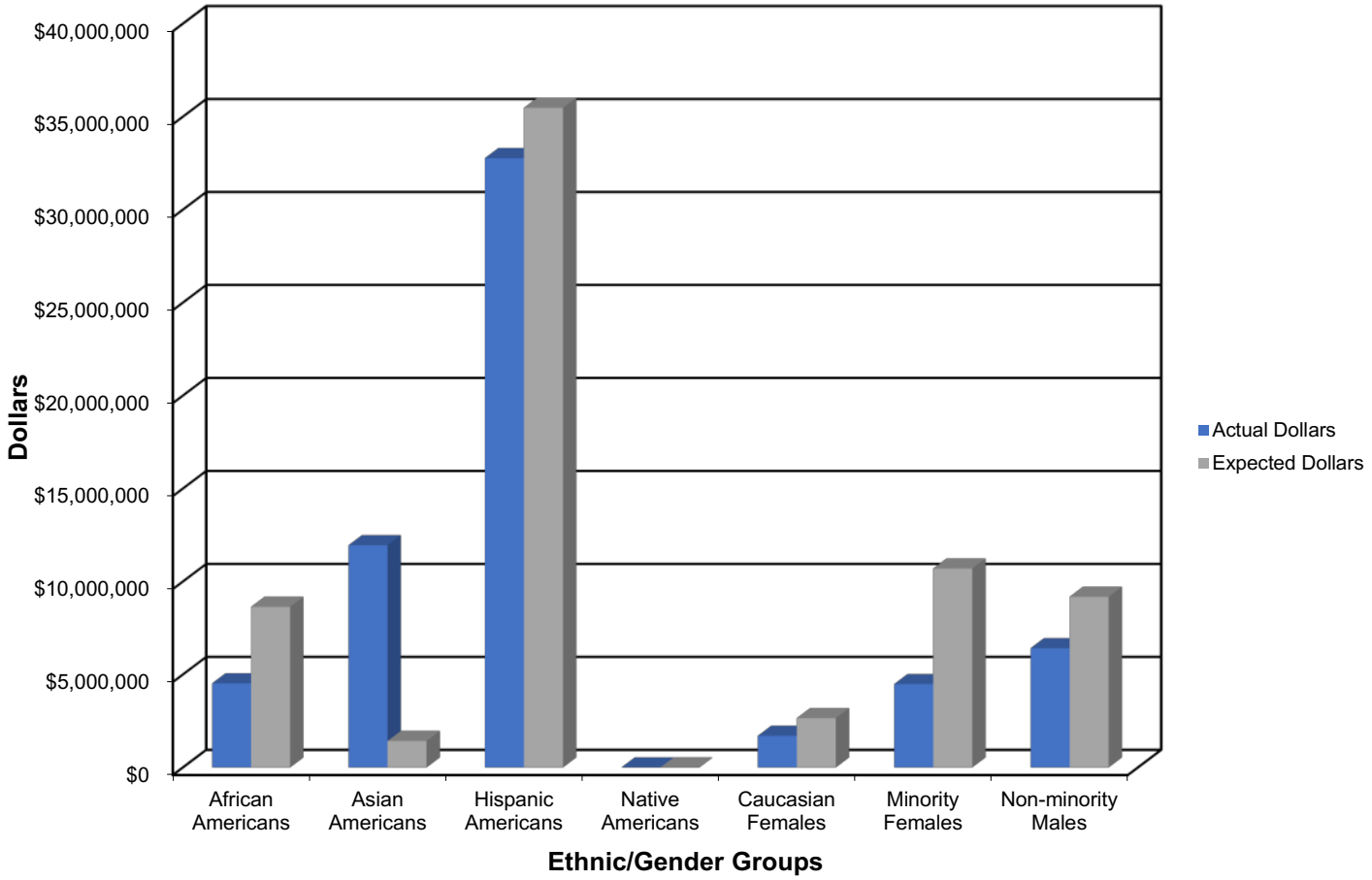
Table 7.4: Disparity Analysis: Professional and Other Services Subcontracts

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio
African Americans	$4,523,333	7.89%	15.06%	$8,635,714	-$4,112,381	0.52
Asian Americans	$11,951,348	20.84%	2.48%	$1,422,930	$10,528,418	8.40
Hispanic Americans	$32,770,127	57.13%	61.85%	$35,475,121	-$2,704,994	0.92
Native Americans	$0	0.00%	0.00%	$0	$0	----
Caucasian Females	$1,699,802	2.96%	4.62%	$2,649,594	-$949,792	0.64
Non-minority Males	$6,414,195	11.18%	16.00%	$9,175,446	-$2,761,251	0.70
TOTAL	$57,358,806	100.00%	100.00%	$57,358,806		
Ethnicity and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**
African American Females	$2,648,988	4.62%	5.05%	$2,894,927	-$245,939	0.92
African American Males	$1,874,345	3.27%	10.01%	$5,740,787	-$3,866,442	0.33
Asian American Females	$0	0.00%	0.51%	$294,399	-$294,399	0.00
Asian American Males	$11,951,348	20.84%	1.97%	$1,128,531	$10,822,817	10.59
Hispanic American Females	$1,835,010	3.20%	13.09%	$7,507,183	-$5,672,174	0.24
Hispanic American Males	$30,935,117	53.93%	48.76%	$27,967,938	$2,967,180	1.11
Native American Females	$0	0.00%	0.00%	$0	$0	----
Native American Males	$0	0.00%	0.00%	$0	$0	----
Caucasian Females	$1,699,802	2.96%	4.62%	$2,649,594	-$949,792	0.64
Non-minority Males	$6,414,195	11.18%	16.00%	$9,175,446	-$2,761,251	0.70
TOTAL	$57,358,806	100.00%	100.00%	$57,358,806		
Minority and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**
Minority Females	$4,483,998	7.82%	18.65%	$10,696,510	-$6,212,512	0.42
Minority Males	$44,760,811	78.04%	60.74%	$34,837,256	$9,923,555	1.28
Minority and Females	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**
Minority Business Enterprises	$49,244,809	85.85%	79.38%	$45,533,765	$3,711,043	1.08
Woman Business Enterprises	$6,183,800	10.78%	23.27%	$13,346,104	-$7,162,304	0.46

(----) denotes an underutilized group with no/too few contracts awarded and available firms to test statistical significance.



Chart 7.3: Disparity Analysis: Professional and Other Services Subcontracts



IV. Subcontract Disparity Summary

Table 7.5 presents the disparity summary for construction and architecture and engineering subcontracts. There were too few professional and other services subcontracts to perform a meaningful test of statistical significance. In the award of construction subcontracts, disparity was found for African American, Asian American, Hispanic American, minority female, minority business enterprise, and woman business enterprise subcontractors. In the award of architecture and engineering subcontracts, disparity was found for African American, minority female, and woman business enterprise subcontractors. Caucasian female construction and architecture and engineering subcontractors were underutilized although the underutilization was not statistically significant. There was insufficient data to determine the statistical significance of the underutilization of Native American construction and architecture and engineering subcontractors.

Table 7.5: Subcontract Disparity Summary

Ethnicity/Gender	Construction	Architecture and Engineering	Professional and Other Services
African Americans	*Disparity*	*Disparity*	There were too few contracts to conduct a meaningful analysis.
Asian-Americans	*Disparity*	No Disparity	
Hispanic Americans	*Disparity*	No Disparity	
Native Americans	Insufficient Data	Insufficient Data	
Caucasian Females	Underutilization	Underutilization	
Minority Females	*Disparity*	*Disparity*	
Minority Business Enterprises	*Disparity*	No Disparity	
Woman Business Enterprises	*Disparity*	*Disparity*	

CHAPTER 8: Regression Analysis

I. Introduction

Private sector business practices that are not subject to government minority and woman-owned business enterprise (M/WBE) requirements are indicators of marketplace conditions that could adversely affect the formation and growth of M/WBEs. The adverse marketplace conditions thereby could depress the current availability of M/WBEs. *Concrete Works of Colorado v. City and County of Denver* (*Concrete Works III*)[269] sets forth a framework for considering a passive participant model for an analysis of discrimination in private sector business practices. In accordance with *Concrete Works III*, regression analyses were conducted to examine two outcome variables—business ownership rates and business earnings—to determine whether or not Miami-Dade County, Florida is passively participating in ethnic and gender discrimination. These two regression analyses examined possible impediments to minority and woman business ownership, as well as factors affecting M/WBE business earnings. Further details are provided in the current chapter, under *Section IV: Datasets Analyzed*.

Each regression analysis compared minority group members[270] and Caucasian females to non-minority male-owned business enterprises by controlling for race and gender-neutral explanatory variables, such as age, education, marital status, and access to capital. The impact of the explanatory variables on the outcome variables is described in this chapter. These findings elucidate the socioeconomic conditions in the County's market area that could adversely affect the measuring of relative availability of M/WBEs and non-minority male-owned business enterprises. It is important to note that the data used, as described below in the regression analysis varies from the County's contract data used in the disparity analysis for this Study. Statistically significant findings for lower M/WBE business earnings and lower likelihoods of minority and Caucasian female business ownership could indicate patterns of discrimination that might result in disproportionately smaller numbers of willing and capable M/WBEs.

The United States Census Public Use Microdata Sample (PUMS) was used to compare a minority male, minority female, and Caucasian female's probability of owning a business to the probability of a non-minority male owning a business. Logistic regression was used to determine if race and gender have a statistically significant effect on the probability of business ownership. The PUMS data were also used to compare the business earnings of M/WBEs to non-minority male-owned businesses. An Ordinary Least Squares (OLS) regression was utilized to analyze the PUMS data for disparities in owner-reported incomes when controlling for race and gender-neutral factors.

The applicable limits of the private sector discrimination findings are set forth in *Builders Association of Greater Chicago v. City of Chicago* (*City of Chicago*),[271] in which the court established that even when there is evidence of private sector discrimination, the findings cannot

[269] *Concrete Works of Colo., Inc. v. Denver*, 86 F. Supp. 2d 1042, 1057-61 (D. Colo. 2000), *rev'd on other grounds*, 321 F.3d 950 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027 (2003) ("*Concrete Works III*").

[270] Minority group members include both males and females.

[271] *Builders Ass'n of Greater Chicago v. Chicago*, 298 F. Supp. 2d 725 (N.D. III. 2003).

be used as the factual predicate for a government-sponsored, race-conscious M/WBE program unless there is a nexus between the private sector data and the public agency actions. The private sector findings, however, can be used to develop race-neutral programs to address barriers to the formation and development of M/WBEs. Given the case law, caution must be exercised in the interpretation and application of the regression findings. Case law regarding the application of private sector discrimination is discussed below in detail.

II. Legal Analysis

Passive Discrimination

The controlling legal precedent set forth in the 1989 *City of Richmond v. J.A. Croson Co.*[272] decision authorized state and local governments to remedy discrimination in the awarding of subcontracts by its prime contractors on the grounds that the government cannot be a "passive participant" in such discrimination. In January 2003, *Concrete Works IV*[273] and *City of Chicago*[274] extended the private sector analysis to the investigation of discriminatory barriers that M/WBEs encountered in the formation and development of businesses and their consequence for state and local remedial programs. *Concrete Works IV* set forth a framework for considering such private sector discrimination as a passive participant model for analysis. However, the obligation of presenting an appropriate nexus between the government remedy and the private sector discrimination was first addressed in *City of Chicago*.

The Tenth Circuit Court decided in *Concrete Works IV* that business activities conducted in the private sector, if within the government's market area, are also appropriate areas to explore the issue of passive participation.[275] However, the appropriateness of the City's remedy, given the finding of private sector discrimination, was not at issue before the court. The question before the court was whether or not sufficient facts existed to determine if the private sector business practices under consideration constituted discrimination. For technical legal reasons,[276] the court did not examine whether a consequent public sector remedy, i.e., one involving a goal requirement on the City of Denver's contracts, was "narrowly tailored" or otherwise supported by the City's private sector findings of discrimination.

Narrow Tailoring

The question of whether a particular public sector remedy is narrowly tailored when it is based solely on business practices within the private sector was at issue in *City of Chicago.* The case, decided ten months after *Concrete Works IV*, found that certain private sector business practices constituted discrimination against minorities in the Chicago market area. However, the district court did not find the City of Chicago's M/WBE subcontracting goal to be a remedy "narrowly

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[272] 488 U.S. 469 (1989).

[273] *Concrete Works of Colo., Inc. v. Denver*, 321 F.3d 950, 965-69 (10th Cir. 2003) ("*Concrete Works IV*").

[274] *City of Chicago*, 298 F. Supp. 2d at 738-39.

[275] *Concrete Works IV*, 321 F.3d at 966-67.

[276] Plaintiff had not preserved the issue on appeal. Therefore, it was no longer part of the case.

tailored" to address the documented private sector discriminatory business practices that had been discovered within the City's market area.[277] The court explicitly stated that certain discriminatory business practices documented by regression analyses constituted private sector discrimination.[278] It is also notable that the documented discriminatory business practices reviewed by the court in *City of Chicago* were similar to those reviewed in *Concrete Works IV*. Notwithstanding the fact that discrimination in the City of Chicago's market area was documented, the court determined that the evidence was insufficient to support the City's race-based subcontracting goals.[279] The court ordered an injunction to invalidate the City of Chicago's race-based program.[280]

The following statements from that opinion are noteworthy:

> Racial preferences are, by their nature, highly suspect, and they cannot be used to benefit one group that, by definition, is not either individually or collectively the present victim of discrimination... There may well also be (and the evidence suggests that there are) minorities and women who do not enter the industry because they perceive barriers to entry. If there is none, and their perception is in error, that false perception cannot be used to provide additional opportunities to M/WBEs already in the market to the detriment of other firms who, again by definition, neither individually nor collectively, are engaged in discriminatory practices.[281]
>
> Given these distortions of the market and these barriers, is City's program narrowly tailored as a remedy? It is here that I believe the program fails. There is no "meaningful individualized review" of M/WBEs. *Gratz v. Bollinger*, 539 U.S. 244, 156 L. Ed. 2d 257, 123 S.Ct. 2411, 2431 (2003) (Justice O'Connor concurring). Chicago's program is more expansive and more rigid than plans that have been sustained in the courts. It has no termination date, nor has it any means for determining a termination date. The "graduation" revenue amount is very high, $27,500,000, and very few have graduated. There is no net worth threshold. A third-generation Japanese-American from a wealthy family, with a graduate degree from MIT, qualifies (and an Iraqi immigrant does not). Waivers are rarely or never granted on construction contracts, but "regarding flexibility, 'the availability of waivers' is of particular importance... a 'rigid numerical quota' particularly disserves the cause of narrow tailoring." *Adarand Constructors v. Slater, supra*, at 1177. The City's program is "rigid numerical quota," a quota not related to the number of available, willing, and able firms but to concepts of how many of those firms there should be. Formalistic points did not survive strict scrutiny in *Gratz v. Bollinger, supra*, and formalistic percentages cannot survive scrutiny.[282]

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[277] *City of Chicago*, 298 F. Supp. 2d at 739.

[278] *Id.* at 731-32.

[279] *Id*. at 742.

[280] *Id*.

[281] *Id*. at 734-35.

[282] *City of Chicago*, 298 F.Supp.2d at 739-40.

Conclusion

As established in *City of Chicago*, private sector discrimination cannot be used as the factual basis for a government-sponsored, race-based M/WBE program without a nexus to the government's actions. Therefore, the discrimination that might be revealed in the regression analysis is not a sufficient factual predicate for the City to establish a race-based M/WBE program unless a nexus is established between the City and the private sector data. These economic indicators, albeit not a measure of passive discrimination, are illustrative of private sector discrimination and can support the City-sponsored, race-neutral programs.

III. Regression Analysis Methodology

A regression analysis is the methodology employed to ascertain whether there are private sector economic indicators of discrimination in the County's market area that could impact the formation and development of M/WBEs. The two regression analyses focus on the construction, architecture and engineering, professional and other services, and goods and services industries. The datasets used for the regression analyses did not allow for an exact match of the industries used in this Study. Therefore, the four industries were selected to most closely mirror the industries used in the County's Study.

As noted, two separate regression analyses were conducted. They are the Business Ownership Analysis and the Earnings Disparity Analysis. Both analyses take into consideration race and gender-neutral factors, such as age, education, and creditworthiness in assessing whether the explanatory factors examined are disproportionately affecting minorities and females when compared to similarly situated non-minority males.

IV. Datasets Analyzed

The 2018 through 2020 PUMS dataset produced by the United States Census Bureau was used to analyze business ownership and earnings disparities within Miami-Dade County, Florida. The 2018 through 2020 PUMS dataset represented the most recent data that most closely matched the study period of November 1, 2018 to October 31, 2020. The data for Miami-Dade County, Florida was identified using Public Use Microdata Areas (PUMA), a variable within the PUMS dataset that reports data for counties and cities within states. The dataset includes information on personal profile, industry, work characteristics, and family structure. The PUMS data enabled an analysis by an individual's ethnicity and gender.

Unemployment rates by ethnicity within the State of Florida were examined using the 2021 3Q EPI analysis of Bureau of Labor Statistics Local Area Unemployment Statistics (LAUS) data and Current Population Survey (CPS) data. These data represent the most recent information within the study period available for access to observations for unemployment status by an individual's ethnicity. The dataset uses a defining variable that can specify the geographical boundaries, and the area variable was used to determine the unemployment rates within the State of Florida. Table 8.1 lists the percentage of unemployed individuals by ethnicity.



Table 8.1: Unemployment Rate by Ethnicity

Ethnicity	Unemployment Rate
All Ethnicities	5.0%
Caucasian American	4.1%
African American	6.0%
Hispanic American	5.9%

In the State of Florida, 4.1% of Caucasian Americans were unemployed, while 5% of all individuals in the State were unemployed. Meanwhile, 6% of African Americans and 5.9% of Hispanic Americans were unemployed, which are higher than the state average.

V. Regression Models Defined

Business Ownership Analysis

The Business Ownership Analysis examines the relationship between the likelihood of being a business owner and independent socioeconomic variables. Business ownership, the dependent variable, includes business owners of incorporated and non-incorporated firms. The business ownership variable utilizes two values. A value of "1" indicates that a person is a business owner, whereas a value of "0" indicates that a person is not a business owner. When the dependent variable is defined this way, it is called a binary variable. In this case, a logistic regression model is utilized to predict the likelihood of business ownership using independent socioeconomic variables. Four logistic models are run to predict the probability of business ownership in each of the four industries examined in the County's Study. Categories of the independent variables analyzed include educational level, citizenship status, personal characteristics, ethnicity, and gender.

In the table below, a finding of disparity is denoted by an asterisk (*) when the independent variable is significant at or above the 95% confidence level. A finding of disparity indicates that there is a non-random relationship between the probability of owning a business and the independent variable. Tables of regression results indicate the sign of each variable's coefficient from the regression output. If the coefficient sign is positive, it indicates that there is a positive relationship between the dependent variable and that independent variable. For example, having an advanced degree is positively related to the likelihood of being a business owner, holding all other variables constant. If the coefficient sign for the independent variable is negative, this implies an inverse relationship between the dependent variable and that independent variable. For instance, an individual with children under the age of 6 has a lower likelihood of owning a business, holding all other variables constant.

For each of the four industries, the logistic regression is used to identify the likelihood that an individual owns a business given his or her background, including ethnicity, gender, and race and gender-neutral factors. The dependent variables in all regressions are binary variables coded as "1"

for individuals who are self-employed and "0" for individuals who are not self-employed.[283] Table 8.2 presents the independent variables used for the Business Ownership Analysis.

Table 8.2: Independent Variables Used in the Business Ownership Analysis

Personal Characteristics	Educational Attainment	Ethnicity	Gender
1. Age 2. Age Squared 3. Home Ownership 4. Home Value 5. Monthly Mortgage Payments 6. Interest and Dividends 7. Speaks English at Home 8. Children Under the Age of Six in the Household 9. Marital Status	10. Bachelor's Degree 11. Advanced Degree	12. Caucasian American 13. African American 14. Asian American 15. Hispanic American 16. Native American 17. Other Minority Group[284]	18. Female

The Earnings Disparity Analysis

The Earnings Disparity Analysis examines the relationship between the annual self-employment income and independent socioeconomic variables. "Wages" are defined as the individual's total dollar income earned in the previous 12 months. Categories of independent socioeconomic variables analyzed include educational level, citizenship status, personal characteristics, business characteristics, ethnicity, and gender.

All independent variables are regressed against wages in an Ordinary Least Squares (OLS) regression model. The OLS model estimates a linear relationship between the independent variables and the dependent variable. This multivariate regression model estimates a line similar to the standard y = mx+b format, but with additional independent variables. The mathematical purpose of a regression analysis is to estimate a best-fit line for the model and determine the findings that are statistically significant.

In the table below, a finding of disparity is denoted by an asterisk (*) when an independent variable is significant at or above the 95% confidence level. A finding of disparity indicates that there is a non-random relationship between wages and the independent variable. If the coefficient sign is positive, it means there is a positive relationship between the dependent variable and that independent variable. If the coefficient sign for the independent variable is negative, this implies an inverse relationship between the dependent variable and that independent variable.

[283] Note: The terms "business owner" and "self-employed" are used interchangeably throughout the chapter.
[284] Other Minority Group includes individuals who belong to two or more racial groups.

An OLS regression analysis is used to assess the presence of business earning disparities. OLS regressions have been conducted separately for each industry. Table 8.3 presents the independent variables used for the Earnings Disparity Analysis.[285]

Table 8.3: Independent Variables Used for the Earnings Disparity Analysis

Personal Characteristics	Educational Attainment	Ethnicity	Gender
1. Age 2. Age Squared 3. Incorporated Business 4. Home Ownership 5. Home Value 6. Monthly Mortgage Payments 7. Interest and Dividends 8. Speaks English at Home 9. Children Under the Age of Six in the Household 10. Marital Status	11. Bachelor's Degree 12. Advanced Degree	13. Caucasian American 14. African American 15. Asian American 16. Hispanic American 17. Native American 18. Other Minority Group	19. Female

VI. Findings

Business Ownership Analysis

The business ownership variable is defined by the number of self-employed individuals in each of the four industries. The analysis considered incorporated and non-incorporated businesses. The data in this section come from Miami-Dade County, Florida, which was specified using PUMA, a variable within the PUMS dataset that can specify the different counties and cities within states.[286] As noted in *Section IV*, because each PUMA is determined by the United States Census, the region analyzed in the regression analyses could be limited to Miami-Dade County, Florida.

Previous studies have shown that many non-discriminatory factors, such as education, age, and marital status, are associated with self-employment. In this analysis, race and gender-neutral factors are combined with race and gender-specific factors in a logistic regression model. The purpose of this model is to determine whether observed race or gender disparities are independent of the race and gender-neutral factors known to be associated with self-employment. It must be noted that many of these variables, such as having an advanced degree, while seeming to be race and gender-neutral, may in fact be correlated with race and gender. For example, if Caucasian females are less likely to have advanced degrees and the regression results show that individuals

[285] If an independent variable is a binary variable, it will be coded as "1" if the individual has that variable present and "0" if otherwise (i.e., for the Hispanic American variable, it is coded as "1" if the individual is Hispanic American and "0" if otherwise). If an independent variable is a continuous variable, a value will be used (i.e., one's age can be labeled as 35).

[286] The PUMS data were collected by the United States Census Bureau from a five-percent sample of United States households. The observations were weighted to preserve the representative nature of the sample in relation to the population as a whole.

with advanced degrees are significantly more likely to own a business, Caucasian females may be disadvantaged in multiple ways. First, Caucasian females may have statistically significant lower business ownership rates, so they face a direct disadvantage as a group. Second, they are indirectly disadvantaged, as fewer of them tend to have advanced degrees, which significantly increase one's chances of owning a business.

1. Logistic Model Results for Construction Business Ownership

Table 8.4 presents the logistic regression results for the likelihood of owning a business in the construction industry, based on the 20 variables analyzed in this model.

Table 8.4: Construction Industry Logistic Model

Business Ownership Model	Coefficient	Significance	Standard Error	Z-score	P>|z|
Age	0.071045	*	0.032348	2.20	0.028
Age-squared	-0.000449		0.000333	-1.35	0.177
Bachelor's Degree (a)	-0.010284		0.155169	-0.07	0.947
Advanced Degree (a)	-0.080001		0.298627	-0.27	0.789
Home Owner	-0.148435		0.142283	-1.04	0.297
Home Value	0.000000		0.000000	1.23	0.218
Monthly Mortgage Payment	0.000081		0.000074	1.10	0.273
Interest and Dividends	0.000002		0.000002	0.88	0.376
Speaks English at Home	-0.342526		0.231772	-1.48	0.139
Has a Child under the Age of Six	0.000000		-	-	-
Married	-0.005213		0.131088	-0.04	0.968
Caucasian Female (b)	-		-	-	-
African American (b)	-0.750531	*	0.347736	-2.16	0.031
Asian American (b)	1.130178		1.214957	0.93	0.352
Hispanic American (b)	-0.278458		0.267931	-1.04	0.299
Native American (b)	0.000000		-	-	-
Other Minority (b)	-0.869223		0.748548	-1.16	0.246
Year 2019 (c)	-0.123639		0.124872	-0.99	0.322
Year 2020 (c)	-0.004036		0.155846	-0.03	0.979
Constant	-2.758244	*	0.775163	-3.56	0.000

(a) the baseline variable is high school.
(b) the baseline variable is Caucasian males.
(c) the baseline variable is Year 2018.
(P>|z|) of less than 0.05 denotes findings of statistical significance.
(*) denotes a statistically significant variable with 95% confidence.
(-) denotes an omitted variable due to insufficient observations.

The construction industry logistic regression results indicate the following:

- The likelihood of construction business ownership is positively associated with an increased age. Older individuals are significantly[287] more likely to be business owners in the construction industry.
- African Americans are significantly less likely to be business owners in the construction industry than non-minority males.

[287] Throughout this chapter, significance refers to statistical significance.

2. Logistic Model Results for Architecture and Engineering Business Ownership

Table 8.5 presents the logistic regression results for the likelihood of owning a business in the architecture and engineering industry, based on the 20 variables analyzed in this model.

Table 8.5: Architecture and Engineering Industry Logistic Model

Business Ownership Model	Coefficient	Significance	Standard Error	Z-score	P>|z|
Age	0.093382		0.071358	1.31	0.191
Age-squared	-0.000730		0.000685	-1.07	0.286
Bachelor's Degree (a)	0.056249		0.356457	0.16	0.875
Advanced Degree (a)	-0.534078		0.458250	-1.17	0.244
Home Owner	-0.053981		0.450247	-0.12	0.905
Home Value	0.000001		0.000001	1.08	0.280
Monthly Mortgage Payment	0.000187		0.000134	1.40	0.161
Interest and Dividends	-0.000004		0.000004	-0.92	0.356
Speaks English at Home	0.328531		0.501002	0.66	0.512
Has a Child under the Age of Six	0.000000		-	-	-
Married	0.491958		0.334152	1.47	0.141
Caucasian Female (b)	-		-	-	-
African American (b)	0.936046		0.692608	1.35	0.177
Asian American (b)	1.483719		1.659475	0.89	0.371
Hispanic American (b)	-0.232415		0.514533	-0.45	0.651
Native American (b)	0.000000		-	-	-
Other Minority (b)	0.000000		-	-	-
Year 2019 (c)	0.422993		0.359745	1.18	0.240
Year 2020 (c)	-0.376550		0.375565	-1.00	0.316
Constant	-4.568647	*	1.731812	-2.64	0.008

(a) the baseline variable is high school.
(b) the baseline variable is Caucasian males.
(c) the baseline variable is Year 2018.
(P>|z|) of less than 0.05 denotes findings of statistical significance.
(*) denotes a statistically significant variable with 95% confidence.
(-) denotes an omitted variable due to insufficient observations.

The architecture and engineering industry logistic regression results do not indicate significant findings in relation to personal characteristics and ethnicity/gender variables.

3. Logistic Model Results for Professional and Other Services Business Ownership

Table 8.6 presents the logistic regression results for the likelihood of owning a business in the professional and other services industry, based on the 20 variables analyzed in this model.

Table 8.6: Professional and Other Services Industry Logistic Model

Business Ownership Model	Coefficient	Significance	Standard Error	Z-score	P>|z|
Age	0.142348	*	0.039320	3.62	0.000
Age-squared	-0.000860	*	0.000371	-2.32	0.020
Bachelor's Degree (a)	-0.219459		0.241330	-0.91	0.363
Advanced Degree (a)	-0.052013		0.251836	-0.21	0.836
Home Owner	0.410685		0.250996	1.64	0.102
Home Value	0.000000		0.000000	-0.67	0.505
Monthly Mortgage Payment	0.000052		0.000081	0.64	0.521
Interest and Dividends	-0.000001		0.000001	-0.74	0.462
Speaks English at Home	-0.214871		0.221468	-0.97	0.332
Has a Child under the Age of Six	0.000000		-	-	-
Married	-0.189344		0.179719	-1.05	0.292
Caucasian Female (b)	-		-	-	-
African American (b)	-0.538827		0.380648	-1.42	0.157
Asian American (b)	-0.268521		1.285387	-0.21	0.835
Hispanic American (b)	-0.347371		0.229012	-1.52	0.129
Native American (b)	-		-	-	-
Other Minority (b)	0.986607		0.659923	1.50	0.135
Year 2019 (c)	-0.098828		0.175552	-0.56	0.573
Year 2020 (c)	0.212776		0.229881	0.93	0.355
Constant	-5.160092	*	1.116939	-4.62	0.000

(a) the baseline variable is high school.
(b) the baseline variable is Caucasian males.
(c) the baseline variable is Year 2018.
(P>|z|) of less than 0.05 denotes findings of statistical significance.
(*) denotes a statistically significant variable with 95% confidence.
(-) denotes an omitted variable due to insufficient observations.

The professional and other services industry logistic regression results indicate the following:

- The likelihood of professional and other services business ownership is positively associated with an increased age. Older individuals are significantly more likely to be business owners in the professional and other services industry. However, as individuals reach an advanced age, the likelihood of being a business owner significantly decreases.

4. Logistic Model Results for Goods and Services Business Ownership

Table 8.7 presents the logistic regression results for the likelihood of owning a business in the goods and services industry, based on the 20 variables analyzed in this model.

Table 8.7: Goods and Services Industry Logistic Model

Business Ownership Model	Coefficient	Significance	Standard Error	Z-score	P>|z|
Age	0.082829	*	0.031704	2.61	0.009
Age-squared	-0.000661	*	0.000327	-2.02	0.043
Bachelor's Degree (a)	-0.280246		0.180022	-1.56	0.120
Advanced Degree (a)	-0.165490		0.377645	-0.44	0.661
Home Owner	0.154649		0.181460	0.85	0.394
Home Value	0.000000	*	0.000000	2.28	0.023
Monthly Mortgage Payment	0.000042		0.000089	0.47	0.638
Interest and Dividends	-0.000005		0.000004	-1.32	0.185
Speaks English at Home	-0.014946		0.207767	-0.07	0.943
Has a Child under the Age of Six	0.000000		-	-	-
Married	0.365760	*	0.173056	2.11	0.035
Caucasian Female (b)	-		-	-	-
African American (b)	-0.168055		0.303366	-0.55	0.580
Asian American (b)	0.122148		1.076890	0.11	0.910
Hispanic American (b)	0.401411		0.257645	1.56	0.119
Native American (b)	-		-	-	-
Other Minority (b)	-1.263024		0.932456	-1.35	0.176
Year 2019 (c)	-0.334141	*	0.152358	-2.19	0.028
Year 2020 (c)	0.244304		0.192088	1.27	0.203
Constant	-4.187564	*	0.786263	-5.33	0.000

(a) the baseline variable is high school.
(b) the baseline variable is Caucasian males.
(c) the baseline variable is Year 2018.
(P>|z|) of less than 0.05 denotes findings of statistical significance.
(*) denotes a statistically significant variable with 95% confidence.
(-) denotes an omitted variable due to insufficient observations.

The goods and services industry logistic regression results indicate the following:

- The likelihood of goods and services business ownership is positively associated with an increased age. Older individuals are significantly more likely to be business owners in the goods and services industry. However, as individuals reach an advanced age, the likelihood of being a business owner significantly decreases.
- Individuals who have a higher-valued home are significantly more likely to be business owners in the goods and services industry.
- Married individuals are significantly more likely to be business owners in the goods and services industry.
- In 2019, individuals were significantly less likely than in 2018 to be business owners in the goods and services industry.



Business Ownership Analysis Conclusion

The Business Ownership Analysis examined the different explanatory variables' impact on an individual's likelihood of owning a business in the construction, architecture and engineering, professional and other services, and goods and services industries. Controlling for race and gender-neutral factors, the Business Ownership Analysis results show that statistically significant disparities in the likelihood of owning a business exist for minorities when compared to similarly situated non-minority males.

African Americans experience the greatest disparity, as they are significantly less likely to own a business in the construction industry than are similarly situated non-minority males. Table 8.8 shows the business ownership regression analysis results by ethnicity, gender, and industry.

Table 8.8: Statistically Significant Business Ownership Disparities

Ethnicity/Gender	Construction	Architecture and Engineering	Professional and Other Services	Goods and Services
Caucasian Female	Not Significant	Not Significant	Not Significant	Not Significant
African American	***Significant***	Not Significant	Not Significant	Not Significant
Asian American	Not Significant	Not Significant	Not Significant	Not Significant
Hispanic American	Not Significant	Not Significant	Not Significant	Not Significant
Native American	Not Significant	Not Significant	Not Significant	Not Significant
Other Minority	Not Significant	Not Significant	Not Significant	Not Significant

Business Earnings Analysis

The business earnings variable is identified by self-employment income[288] from 2018 to 2020 for the four industries: construction, architecture and engineering, professional and other services, and goods and services. The analysis considered incorporated and non-incorporated businesses.

Previous studies have shown that many non-discriminatory factors, such as education, age, and marital status, are associated with self-employment income. In this analysis, race and gender-neutral factors are combined with race and gender groups in an OLS regression model to determine whether observed race or gender disparities were independent of the race and gender-neutral factors known to be associated with self-employment income.

[288] The terms "business earnings" and "self-employment income" are used interchangeably.

5. OLS Regression Results in the Construction Industry

Table 8.9 shows the results of the OLS regression for business earnings in the construction industry, based on the 21 variables analyzed in this model.

Table 8.9: Construction Industry OLS Regression

Business Earnings Model	Coefficient	Significance	Standard Error	t-value	P>|t|
Age	1265.583	*	504.070	2.51	0.012
Age-squared	-12.183	*	5.907	-2.06	0.039
Incorporated Business	-1622.988		3621.980	-0.45	0.654
Bachelor's Degree (a)	10094.600	*	2842.975	3.55	0.000
Advanced Degree (a)	42501.850	*	11765.310	3.61	0.000
Home Owner	5100.164		3164.866	1.61	0.107
Home Value	0.015		0.008	1.92	0.055
Monthly Mortgage Payment	9.495	*	2.465	3.85	0.000
Interest and Dividends	0.571	*	0.223	2.56	0.011
Speaks English at Home	8307.205		4933.807	1.68	0.092
Has a Child under the Age of Six	0.000		-	-	-
Married	6645.342	*	2160.409	3.08	0.002
Caucasian Female (b)	-		-	-	-
African American (b)	-15980.820	*	5807.366	-2.75	0.006
Asian American (b)	-14567.540		8924.078	-1.63	0.103
Hispanic American (b)	-14266.620	*	6742.593	-2.12	0.034
Native American (b)	-48939.390	*	5464.076	-8.96	0.000
Other Minority (b)	-22919.580	*	8572.225	-2.67	0.008
Year 2019 (c)	-540.024		2274.479	-0.24	0.812
Year 2020 (c)	-4567.098		2572.255	-1.78	0.076
Constant	248.402		11464.400	0.02	0.983

(a) the baseline variable is high school.
(b) the baseline variable is Caucasian males.
(c) the baseline variable is Year 2018.
(P>|z|) of less than 0.05 denotes findings of statistical significance.
(*) denotes a statistically significant variable with 95% confidence.
(-) denotes an omitted variable due to insufficient observations.

The OLS regression results for business earnings in the construction industry indicate the following:

- Older business owners have significantly higher business earnings in the construction industry. However, as business owners reach an advanced age, they have significantly lower business earnings.
- Business owners with a bachelor's degree or an advanced degree have significantly higher business earnings in the construction industry.
- Business owners with a higher monthly mortgage payment have significantly higher business earnings in the construction industry.
- Business owners who have higher interest and dividends income have significantly higher business earnings in the construction industry.

- Married business owners have significantly higher business earnings in the construction industry.
- African American, Hispanic American, Native American, and other minority business owners have significantly lower business earnings in the construction industry than do non-minority males.

6. OLS Regression Results in the Architecture and Engineering Industry

Table 8.10 shows the results of the OLS regression for business earnings in the architecture and engineering industry, based on the 21 variables analyzed in this model.

Table 8.10: Architecture and Engineering Industry OLS Regression

Business Earnings Model	Coefficient	Significance	Standard Error	t-value	P>|t|
Age	7527.103	*	2018.501	3.73	0.000
Age-squared	-72.748	*	20.273	-3.59	0.000
Incorporated Business	-13407.970		14263.450	-0.94	0.348
Bachelor's Degree (a)	49804.210	*	9704.998	5.13	0.000
Advanced Degree (a)	45979.380	*	12944.020	3.55	0.000
Home Owner	5179.226		16051.850	0.32	0.747
Home Value	-0.002		0.045	-0.03	0.973
Monthly Mortgage Payment	21.818		16.285	1.34	0.181
Interest and Dividends	-0.191		0.125	-1.53	0.128
Speaks English at Home	10911.960		11830.240	0.92	0.357
Has a Child under the Age of Six	0.000		-	-	-
Married	-2949.345		10547.740	-0.28	0.780
Caucasian Female (b)	-		-	-	-
African American (b)	-36274.180		23625.120	-1.54	0.126
Asian American (b)	-88162.060	*	31602.870	-2.79	0.006
Hispanic American (b)	-26029.740		20661.470	-1.26	0.209
Native American (b)	-34203.350		29018.190	-1.18	0.239
Other Minority (b)	-25551.770		22764.640	-1.12	0.263
Year 2019 (c)	7035.634		8889.732	0.79	0.429
Year 2020 (c)	21114.730		12832.660	1.65	0.101
Constant	-154335.800	*	52598.800	-2.93	0.004

(a) the baseline variable is high school.
(b) the baseline variable is Caucasian males.
(c) the baseline variable is Year 2018.
(P>|z|) of less than 0.05 denotes findings of statistical significance.
(*) denotes a statistically significant variable with 95% confidence.
(-) denotes an omitted variable due to insufficient observations.

The OLS regression results for business earnings in the architecture and engineering industry indicate the following:

- Older business owners have significantly higher business earnings in the architecture and engineering industry. However, as business owners reach an advanced age, they have significantly lower business earnings.
- Business owners with a bachelor's degree or an advanced degree have significantly higher business earnings in the architecture and engineering industry.
- Asian American business owners have significantly lower business earnings in the architecture and engineering industry than do non-minority males.

7. OLS Regression Results in the Professional and Other Services Industry

Table 8.11 shows the results of the OLS regression for business earnings in the professional and other services industry, based on the 21 variables analyzed in this model.

Table 8.11: Professional and Other Services Industry OLS Regression

Business Earnings Model	Coefficient	Significance	Standard Error	t-value	P>|t|
Age	9564.526	*	1449.813	6.60	0.000
Age-squared	-88.529	*	15.757	-5.62	0.000
Incorporated Business	-25526.570	*	11758.080	-2.17	0.030
Bachelor's Degree (a)	15784.580	*	6480.936	2.44	0.015
Advanced Degree (a)	53491.540	*	11926.180	4.49	0.000
Home Owner	-5561.686		8970.638	-0.62	0.535
Home Value	0.054	*	0.011	4.97	0.000
Monthly Mortgage Payment	10.810	*	4.189	2.58	0.010
Interest and Dividends	0.345	*	0.155	2.22	0.026
Speaks English at Home	23093.400		14479.020	1.59	0.111
Has a Child under the Age of Six	0.000		-	-	-
Married	1483.025		10172.930	0.15	0.884
Caucasian Female (b)	-		-	-	-
African American (b)	-31070.660	*	10386.640	-2.99	0.003
Asian American (b)	43743.350		51390.740	0.85	0.395
Hispanic American (b)	-2915.466		13748.940	-0.21	0.832
Native American (b)	-		-	-	-
Other Minority (b)	27772.160		38290.100	0.73	0.468
Year 2019 (c)	9196.401		8450.971	1.09	0.277
Year 2020 (c)	-9769.820		9425.384	-1.04	0.300
Constant	-194244.300	*	34771.180	-5.59	0.000

(a) the baseline variable is high school.
(b) the baseline variable is Caucasian males.
(c) the baseline variable is Year 2018.
(P>|z|) of less than 0.05 denotes findings of statistical significance.
(*) denotes a statistically significant variable with 95% confidence.
(-) denotes an omitted variable due to insufficient observations.

The OLS regression results for business earnings in the professional and other services industry indicate the following:

- Older business owners have significantly higher business earnings in the professional and other services industry. However, as business owners reach an advanced age, they have significantly lower business earnings.
- Incorporated business owners have significantly lower business earnings in the professional and other services industry.
- Business owners with a bachelor's degree or an advanced degree have significantly higher business earnings in the professional and other services industry.
- Business owners who have a higher-valued home have significantly higher business earnings in the professional and other services industry.
- Business owners with a higher monthly mortgage payment have significantly higher business earnings in the professional and other services industry.
- African American business owners have significantly lower business earnings in the professional and other services industry than do non-minority males.

8. OLS Regression Results in the Goods and Services Industry

Table 8.12 shows the results of the OLS regression for business earnings in the goods and services industry, based on the 21 variables analyzed in this model.

Table 8.12: Goods and Services Industry OLS Regression

Business Earnings Model	Coefficient	Significance	Standard Error	t-value	P>|t|
Age	2555.948	*	361.733	7.07	0.000
Age-squared	-25.354	*	4.223	-6.00	0.000
Incorporated Business	15475.670		10014.430	1.55	0.122
Bachelor's Degree (a)	9416.236	*	2738.525	3.44	0.001
Advanced Degree (a)	22332.840	*	10569.100	2.11	0.035
Home Owner	-6221.927		4159.077	-1.50	0.135
Home Value	0.021	*	0.008	2.58	0.010
Monthly Mortgage Payment	3.111		2.667	1.17	0.244
Interest and Dividends	0.762	*	0.331	2.30	0.021
Speaks English at Home	1104.632		2994.479	0.37	0.712
Has a Child under the Age of Six	0.000		-	-	-
Married	2684.707		3069.288	0.87	0.382
Caucasian Female (b)	-		-	-	-
African American (b)	-14966.540	*	4609.743	-3.25	0.001
Asian American (b)	-1068.077		23158.050	-0.05	0.963
Hispanic American (b)	-8852.364	*	4351.171	-2.03	0.042
Native American (b)	-		-	-	-
Other Minority (b)	-8014.348		6877.710	-1.17	0.244
Year 2019 (c)	1593.403		1858.460	0.86	0.391
Year 2020 (c)	4355.717		3181.357	1.37	0.171
Constant	-23261.250	*	8757.245	-2.66	0.008

(a) the baseline variable is high school.
(b) the baseline variable is Caucasian males.
(c) the baseline variable is Year 2018.
(P>|z|) of less than 0.05 denotes findings of statistical significance.
(*) denotes a statistically significant variable with 95% confidence.
(-) denotes an omitted variable due to insufficient observations.

The OLS regression results for business earnings in the goods and services industry indicate the following:

- Older business owners have significantly higher business earnings in the goods and services industry. However, as business owners reach an advanced age, they have significantly lower business earnings.
- Business owners with a bachelor's degree or an advanced degree have significantly higher business earnings in the goods and services industry.
- Business owners who have a higher-valued home have significantly higher business earnings in the goods and services industry.
- Business owners who have higher interest and dividends income have significantly higher business earnings in the goods and services industry.
- African American and Hispanic American business owners have significantly lower business earnings in the goods and services industry than do non-minority males.

Business Earnings Analysis Conclusion

Controlling for race and gender-neutral factors, the Business Earnings Analysis documented statistically significant disparities in business earnings for minorities and Caucasian females when compared to similarly situated non-minority males. African American business owners experience the greatest disparity, as they have significantly lower business earnings in the construction, professional and other services, and goods and services industries than do similarly situated non-minority males. Hispanic American business owners have significantly lower business earnings in the construction and goods and services industries. Asian American business owners have significantly lower business earnings in the architecture and engineering industry. Native American and other minority business owners have significantly lower business earnings in the construction industry. Table 8.13 shows the earnings disparity regression results by ethnicity, gender, and industry.

Table 8.13: Statistically Significant Business Earnings Disparities

Ethnicity/Gender	Construction	Architecture and Engineering	Professional and Other Services	Goods and Services
Caucasian Female	Not Significant	Not Significant	Not Significant	Not Significant
African American	***Significant***	Not Significant	***Significant***	***Significant***
Asian American	Not Significant	***Significant***	Not Significant	Not Significant
Hispanic American	***Significant***	Not Significant	Not Significant	***Significant***
Native American	***Significant***	Not Significant	Not Significant	Not Significant
Other Minority	***Significant***	Not Significant	Not Significant	Not Significant

VII. Conclusion

Two regression analyses were conducted to determine whether there were factors in the private sector that might help explain the current levels of M/WBE availability and any statistical disparities between M/WBE availability and utilization identified in this Study. The analyses examined the outcome variables of business ownership and business earnings.

These analyses were performed for the four industries—construction, architecture and engineering, professional and other services, and goods and services—included in the County's Disparity Study. The regression analyses examined the effect of race and gender on the two outcome variables. The Business Ownership Analysis and the Earnings Disparity Analysis used data from the 2018 through 2020 PUMS datasets for the County and compared business ownership rates and earnings for M/WBEs to those of similarly situated non-minority males.

The analyses of the two outcome variables document disparities that could adversely affect the formation and growth of M/WBEs within the construction, architecture and engineering, professional and other services, and goods and services industries. In the absence of a race and gender-neutral explanation for the disparities, the regression findings point to racial and gender discrimination that depressed business ownership and business earnings. Such discrimination is a manifestation of economic conditions in the private sector that impede minorities and Caucasian females' efforts to own, expand, and sustain businesses. It can reasonably be inferred that these private sector conditions are manifested in the current M/WBEs' experiences and likely contributed to lower levels of willing and able M/WBEs.

It is important to note that there are limitations to using the regression findings in order to determine disparity between the utilization and availability of businesses. No matter how discriminatory the private sector may be, the findings cannot be used as the factual basis for a government-sponsored race-conscious M/WBE program. Therefore, caution must be used in the interpretation and application of the regression findings in a disparity study. Nevertheless, the findings can be used to enhance the race-neutral recommendations to eliminate identified statistically significant disparities in the County's use of available M/WBEs.



CHAPTER 9: Anecdotal Analysis

I. Introduction

This chapter presents anecdotal testimony gathered through in-depth one-on-one interviews. The purpose of this analysis was to garner anecdotal evidence of acts that may have prevented Small Business Enterprises (SBEs) access to Miami-Dade County contract opportunities. The anecdotal testimony supplements the disparity study's statistical findings.

The utility of anecdotal testimony in a disparity study was discussed in the landmark case, *City of Richmond v. J.A. Croson Co. (Croson)*[289] in 1989. In this decision, the United States Supreme Court considered the use of anecdotal testimony to determine if remedial, race-conscious relief may be justified in a market area. The Court opined that "evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a [local entity's] determination that broader remedial relief [be] justified."[290] However, the Court found anecdotal evidence alone cannot provide the predicate for a race-based remedy.

Anecdotal testimony from business owners provides information on the types of barriers that are perceived to exist within the market area and affect the development of SBEs. Anecdotal testimony, when paired with statistical data, can document the routine practices affecting SBEs' access to contracting opportunities. The statistical data can quantify the results of discriminatory practices, while anecdotal testimony provides the human context to understand the numbers. Anecdotal testimony solicited from a diverse group of prime contractors, subcontractors, and suppliers in Miami-Dade County has also informed the race and gender-neutral recommendations set forth in the study.

Anecdotal Evidence of Active and Passive Discrimination

Croson authorizes anecdotal analyses along two lines of inquiry. The first line of inquiry investigates active government discrimination as reflected in the award of prime contracts or acts of exclusion committed by contractors working on behalf of the government. The second line of anecdotal analysis examines the government's passive support of exclusionary practices that occur in the market area in which its funds are infused.

Anecdotal evidence of passive exclusion pertains to the discriminatory activities of private-sector entities. Passive exclusion results from government officials who knowingly use public funds to contract with companies that discriminate against minority and women enterprises or

[289] *City of Richmond v. J.A. Croson Co*., 488 U.S. 509 (1989).

[290] *Id.*

fail to take positive steps to prevent discrimination by contractors who receive public contracts.[291]

The Court has cautioned that anecdotal evidence of discrimination is entitled to less evidentiary weight than statistical findings, because the evidence concerns more private than government-sponsored activities. Less weight should be afforded to personal accounts of discrimination that reflect isolated incidents compared to anecdotal evidence of a municipality's institutional practices, because of the impact that institutional practices have on market conditions.[292] Nonetheless, when paired with appropriate statistical data, anecdotal evidence of either active or passive forms of discrimination can support the imposition of a race or gender-conscious remedial program.[293]

As *Croson* points out, jurisdictions have "a whole array of race-neutral devices to increase the accessibility of County contracting opportunities to small entrepreneurs of all races."[294] Nevertheless, the Court found that anecdotal evidence has value because it can paint a portrait of the practices and procedures that generally govern the award of public contracts in the relevant market area. According to *Croson*, these narratives can identify specific generic practices that the governmental entity can implement, improve, or eliminate to increase contracting opportunities for businesses owned by all citizens. In this study the anecdotal evidence considered is within the parameters of the law.

Anecdotal Methodology

The method used to elicit anecdotal information consisted of 40 one-on-one interviews conducted by telephone. This process allowed business owners to describe their experiences conducting business in the market area and to inform a better understanding of how barriers occur, who creates them, and what their effects are on business development. Thus, the information obtained offers Miami-Dade County vital insights that can govern policy changes to increase contracting with small businesses within their market area. The interviews solicited information regarding the SBE Program, Equitable Distribution Program, and the Miami-Dade County market area.

The SBE Program governs participation of SBEs in the procurement areas of architecture and engineering, construction, professional and other services, and goods and services. The SBE Program is race and gender-neutral in scope, and eligibility is based upon having an establishment in Miami-Dade County, whose three-year average gross receipts or number of employees meet the program's size thresholds. After successfully completing an application, SBE certification status lasts for three years, and renewal is required thereafter.

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[291] *Croson,* 488 U.S. at 491-93, 509.

[292] *Concrete Works of Colorado v. City and County of Denver, 36 F.3d at 1530 (10th Cir. 1994):* "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."

[293] *Croson,* 488 U.S. at 509

[294] *Id.*

The Equitable Distribution Program (EDP) is a race and gender-neutral program designed specifically for architecture and engineering firms. The EDP was created by Miami-Dade County to increase contracting opportunities among qualified professional architecture and engineering firms in an expedited fashion without the requirements of formal solicitation processes. The applicant must be in business for at least one year and have an office in Miami-Dade County. The County distributes contract opportunities through a centralized rotation process. Each firm's position is based upon their prior contracting awards with the County. The firms are required to reapply upon request to renew.

II. Interviews

Forty telephone interviews were conducted with business owners who were certified as Small Business Enterprises under Miami-Dade County's Small Business Enterprise Program and/or participants in the Equitable Distribution Program. The interviews discussed the process for acquiring a government contract, benefits and limitations of SBE certification, common barriers within the procurement and/or contracting processes, perceptions of opportunities within the Miami-Dade County market area, experience doing business in the market area, and recommendations for improvement.

The number of interviewees represented in each procurement area is as follows: 14 architecture and engineering, 11 construction, eight goods and services, and seven professional and other services. All interviewees worked on Miami-Dade County contracts during the study period of 2018 to 2021.

III. Anecdotal Findings

The following anecdotal findings from the 40 interviews are organized into sections according to subject matter, ranging from delayed payments to recommendations to improve the SBE Program.

Bidding Process

Interviewees reported their experiences with the County's bidding process, including those regarding time requirements, access to information, expenses required to submit a bid, and required qualifications.

When asked whether there was sufficient time to respond to bidding advertisements and the bidding process, 12 of the 40 SBE owners thought that there was adequate time to respond to bids from the date of posting. However, ten percent of interviewees would prefer more time to complete bid packages or have more access to postings. The issue of access revolves around SBEs not knowing when bids are released, as well as how to complete bid packages, because sometimes the specifications were unclear or outdated.

Two Hispanic female business owners suggested that the County should bear the responsibility of ensuring that the bid postings get to everyone who qualifies. Information concerning the County's receipt of bids should be made more transparent at the time of bid opening. Similarly, an African

American female contractor expressed that she does not receive adequate information about bid notifications (i.e., status of the notification, whether bid was received, how many responded, etc.).

A Hispanic male business owner noted that updates to solicitations are not available to everyone, while an African American female owner recommended that trade contractors should get the bid notifications at the same time as prime contractors. Another Hispanic SBE owner stated that all solicitation information, including updates, should be posted on the County's website so that everyone can have access.

An African American supplier explained why more time is needed for his firm to put together a bid proposal:

> *Sometimes you got to go and source the parts, and somebody has to give you a number for the parts. [If] [y]ou want a widget, I got to go figure out how much it's going to cost me to get the widget, and those people who give me the price on widgets, sometimes need time to go out and [get] me that number. And then, once I get the price for the widget, I got to put together the labor with it, and then bid it.*

Numerous SBEs in the professional and other services industry explained that the preparation of proposals is expensive. One female owner of an architectural firm recalled that a big national firm produced a presentation for the airport that was designed by a film director — "Those are not things that a small business can do, we just can't afford it," she said.

An African American provider of goods and services agreed that preparing a response to a Request for Proposal takes approximately 80 hours, because of the time required to get information notarized, dot the "i's," cross the "t's," get all of the documents together, and make sure "your stuff looks nice and fancy so that you can compete with the bigger guys."

A female business owner in the architecture and engineering field noted that she had enough time to bid, and the cost in preparing her proposal, while expensive, was mitigated a bit because the County allows for the electronic submission of proposals, which cuts the cost of printing.

An African American contractor reported that the bid requirements are too stringent and unnecessary. She gave examples of the County's bids that may require five solar jobs, 25 years of experience in water or sewer, or the completion of a $5 million painting job. She believed that such unnecessarily stringent bid requirements are barriers put in place to eliminate competition.

An African American service provider agreed that requiring a local company to provide references or projects with three clients with over 10,000 employees unnecessarily restricts local businesses who are otherwise qualified. In her opinion, such specifications limit the pool to only large, national firms based in the County.

One female owner of an architectural firm stated that professional experience in previous companies should receive greater weight than it currently receives. She stated:

> *...the problem is when you're starting a firm, even though I had lots of experience as a principal in a previous firm for eight years, the experience that everybody is looking for in response to RFPs, is the firm experience.*

One Hispanic male owner of a professional and other services firm noted that County departments have their preferred architects and engineers and formulate bids with them in mind. "The staff will not call the name of their favorites, but it is clear when the requirements are: a company has done five jobs like this, has 10 people that does this, has this category. They might as well spell out the name of the company they want."

An African American service provider stated that the selection process is not fair when organizations put their scores out in advance for other team members to see. He said, "The selection committee will already, in their mind, factor in the points they know what they're going to get. So, they lowball us in other areas to make up the points they know we're going to get from being local or small or minority."

Many SBEs mentioned the need to have contract opportunities forecasted ahead of time to give ample time to prepare a response. One female owner of an architectural firm noted that even though the rotation process in the EDP is well designed, the flaw is "nobody really knows what projects are out there." In addition, project managers do not know the companies well enough to understand their capabilities or capacity.

Some SBEs reported that they are not informed about the outcomes of contract awards. One African American contractor reported that some large prime contractors use the same subcontractors. When she submits a bid, she does not get feedback on whether she was the lowest, in the middle, or the highest bid. She learns the outcome when she drives by and witnesses the project under construction. She said, "There is absolutely no feedback from any of the companies that I have bid that would help me to bid the next project or to encourage me to go after the next project."

Two architecture and engineering SBE owners expressed concern about County staff's lack of understanding of essential metrics in the industry, such as multipliers and overhead rates in operating businesses:

> *I believe it was a city manager that wanted industry to come in and speak to those that sit down and negotiate, because I believe they don't know what a multiplier is.*

SBE Certification Process

Interviewees commented upon the County's SBE certification process. Some reported barriers in obtaining SBE certification due to the time needed to complete excess paperwork and produce documentation in an antiquated, complicated process that needs to be updated and streamlined.

This SBE discussed the barriers he faced:

> *So, we had to change our legal name [or a symbol within the name]. So, we went through months of having to change all the paperwork, et cetera, so that the County will take our name. . .even though we had a consultant helping us out with the process, it was long.*

An African American female owner stated that it took many months to become certified due to the numerous requests for "irrelevant" documentation, tax documents needing initials on every page, the existence of a non-operational second business, etc. She reasoned that the County has problems getting eligible firms to participate because of its complicated, excessive, and daunting certification process.

An African American male service provider reported, "They ask for all these tax documents, all these letters from your corporation meetings. Like 30 freaking documents." A Hispanic male architect pointed out that recertification should be simpler and more automatic.

A Hispanic female stated that the County's certification process is 20 years old, antiquated, and needs to be revamped. "There are businesses that started out with a particular owner who are not involved in the business, and some owners have moved, retired, or died. Businesses have closed, and they are still on the list."

A female SBE owner shared her thoughts on the impact of race and gender-based certification:

> *It [race/gender neutrality] impacted [my business] because for a while, there was no program at all until somebody could put something together. Now, it's really like almost every single firm is certified because the thresholds are very high for fees paid. There's a very small micro-firm, which we do not qualify [as] because it's very small—$500,000 in fees. After that, it just goes higher by leaps and bounds so that in the end, everyone but two or three of the local firms are qualified under SBE.*



A Hispanic male consultant with years of experience in the architecture and engineering field found a disconnect between certification as an SBE and the ability to participate in the EDP. He believed that the interpretation of licensure requirements for certification to participate in the EDP is misaligned. He reasoned that County staff lacks adequate knowledge and understanding of the architecture and engineering industry and technical capabilities.

Access to Capital

Many interviewees reported that their lack of access to capital is a major barrier to bidding for County contracts.

An African American contractor stated that even though she has perfect credit and no debt, when she applied for a loan for working capital, she was denied.

A Hispanic male service provider reported that even though he had a FICO score in the 800s, he was forced to get an unconventional loan, because the bank would not give him a business loan.

An African American contractor also reported that she was forced to get short-term funds through non-traditional sources as well.

Both newly formed and seasoned SBE owners reported that lack of access to capital was a barrier to contract acquisition. A minority male owner explained how Miami-Dade County differs from the private sector, which uses retainer agreements

> *[W]hen you do private work, you have a retainer. Once the contract [is] signed, the owner or the client will pay [up] front, ahead of time, a fee. So, when we start doing work, we deal against the retainer. With the County, there is no retainer, which means that all the initial space of the work or the initial part of the job, we have to pay, then bill to the County once it's completed. And the County typically takes some time to pay [us] back. So, basically you are running on your own savings for a couple of months or more than a couple of months. Some small businesses may not be able to do it, even if they get the job. [O]r you might take out a loan to pay for the expenses before you get payment.*

An African American female owner discussed financing issues for SBEs:

> *It is difficult to find financing for small businesses. A lot of institutions are looking for maybe, sometimes [a] years' worth of financials, profit and loss, your balance sheet. Then they're asking perhaps for a personal guarantee. So, it is a challenge for small businesses to have the resources to even get the application ready for requesting a loan. So, it is a very tedious process.*

Small Business Development Office

Small Business Development (SBD) is an office of the County's Internal Services Department. The SBD oversees the SBE Program. The SBE participants believe in the mission of the SBE Program and had many good things to report about SBD. Nevertheless, some indicated the need for stronger enforcement of laws and stronger advocacy on behalf of SBE owners.

One African American contractor stated that because of how the SBE Program is designated within the County hierarchy, the office has no power.

A former County employee who is now an SBE owner, explained that the County went to great efforts to diversify its selection panels and strove to include women and African Americans in various departments. He reported that diversifying selection panels reduced the tendency to select the same consultants and develop "cushy relationships."

> *[My success is due] to the entire County Small Business Program. So, the equity distribution program saved us. So, I'm very thankful to it also.*

A female SBE participant praised the SBD office:

> *[T]he few times we've had to reach out to the higher ups, they've been helpful. They've always responded.*

Most business owners called for more stringent project and contractor monitoring, including enforcing prompt payment laws, in addition to better communication from SBD about upcoming contracting opportunities and more support for SBEs during contract negotiations and mediation

efforts to resolve disagreements. One contractor reported that he would benefit from technical assistance and apprenticeship programs.

An SBE owner in the construction industry explained his frustration in dealing with SBD:

> *I think it's difficult to get to know them because they're providing less information. So, the access is not as available to you.*

Two SBE owners in the goods and services industry recommended the following:

> *There needs to be more personalization on the part of the County. They need to interact with the SBE a little more, by conference call, Zoom, or Teams.*

Some SBEs reported that the SBD should help them when they have issues on County projects with prime contractors and/or County project managers.

According to a Hispanic female architect, more compliance is needed to ensure that what prime contractors state as their goals is honored. She added that compliance with the SBE Program requirements must be included in the prime contracts.

Several African American contractors expressed a desire for more support from the County and less penalties for correctable errors. One owner reported there is a conflict of interest when SBD monitors for compliance and punishes the SBEs who need help, advice, and support. Given a perceived conflict, this SBE does not want to report problems he has with the prime contractor.

Another owner reported that the SBD should train County project managers about the purpose, intent, mission, and goals of the SBE Program. Several SBEs perceived a disconnect between what the County and the Ordinance say, and what the County employees do to undermine SBEs and the programs. However, a Hispanic Male professional and other services consultant and a Middle Eastern contractor found that the managers are helpful, and they have not experienced problems.

Some SBE owners desire for SBD to allow more creative ways to fulfill SBE participation goals, especially for SBEs who participate in the EDP. Goals could be established so that larger SBEs could give contracts to smaller SBEs.

One female owner of an architectural firm expressed that large architecture contracts could be amended so that multiple SBEs could work on a project together, as a team.

Many SBEs praised the training and outreach efforts of SBD. An African American female contractor stated, "They've put on some tremendously outstanding small business educational programs. From teaching you how to do business with them directly or just keeping you abreast to what is going on."

Legacy Contractors and "Good Old Boy" Networks

Several SBE owners believe that their opportunities to contract with Miami-Dade County are hindered due to "legacy" contracting, where the County and its prime contractors routinely use the same businesses rather than hiring available SBE prime contractors and subcontractors.

This owner recommended that the County do the following for SBEs:

> *Divide the firms into groups, assign those groups a representative or coordinator who will contact them and coach them on bidding procedures so that they do not feel as though they are being taken advantage of.*

Another African American owner said, "I mean, to put a bid together, it's time and money and only to find out that the same three people are the ones that are winning the project. It's not encouraging." A Hispanic female contractor reported that:

> *So, you have these contracts that seem to be very locked in with a particular vendor, as well as the length and term of the contract may be very long. It could be a 10-year contract that doesn't allow for someone else to have the opportunity to service the contract.*

A Hispanic female contractor described the "good old boy" network this way:

"Construction is a business of network[s]. It's who you know, who you are friendly with. Who you go fishing with. Who you go drinking beer with. It's that type of industry. And that's how business is done. It's always been that way." She also identified a "Little Latin Boys Club" at the Miami-Dade County School Board, that controls the CM at-risk awards which resulted in her not bidding anymore.

Delayed Payments

When participants were asked about the timeliness of receiving payments, 97% of the interviewees reported that failing to receive timely payment is a common practice in Miami-Dade County. A further distinction of delayed payments occurs when prime contractors pay their subcontractors late. Generally, prime contractors receive payment within 30 days, while some reported having to wait up to 60 days for the payment system to be set up within the County. Subcontractors generally receive very late payments between 60 and 120 days.

One Hispanic engineer reported that payments vary by department— he was paid within two days by one County department and two months by a different County department. A Hispanic female architect noted that late payments were sometimes the result of prime contractors not submitting invoices until they were months into the project. She recalled that the impact of late payments was that her company was forced to get loans from the bank which she has to personally guarantee to cover costs. She described one County project payment that was 90 days late, and she didn't expect to be paid for another 60 days. This architect said, "I know that that's going to be a cash flow situation, because I had a significant amount of staff working on that, so I have to balance that. So, that becomes extremely, extremely challenging."

An African American contractor reported that he was still waiting for payment on a completed project that passed inspection after five months, whereas he was told that the County would pay him within 14 days. His capital is tied to the County's project, which prevents him pursuing other projects, as he explained:

> *If they're going to charge us for non-performance, it should be reciprocated that we can charge them interest for lack of payments too.*

A Hispanic male professional and other services consultant, who worked a prime contractor in the EDP, explained that financially carrying the project for two months until accomplishing specific milestones is a struggle: "For a small business, I have to carry all of the labor. Then, the consultants that I hire are also small businesses, so they have to sit and wait as well." He did credit EDP for paying reimbursables in 15 to 20 days. However, he explained that in his experience, County departments do not follow a consistent process or timeframe for paying invoices.

An African American male owner shared that he doesn't complain about late payments due to fear of retribution later:

> *Because of who I am, I want to keep a good record with the County, and I want to keep the name of my business shining across the mountain, which means just shut up, say 'yes ma'am, it's okay, that's fine, we'll fix it,' and we move on even though I disagree. Why? Because the same people you disagree with too much, they're the one that's going to evaluate you.*

In one instance, an SBE owner who participated as prime contractor reported not receiving payment by the County for three months and was provided no notice or reason for the delay. He explained his situation as such:

> *Hey look, all you need to do is explain it this way and you're sitting there waiting for it to get paid and all of a sudden when you raise a little Cain, then it's 'Well, your invoice wasn't right.' So, why didn't they say it wasn't right [earlier]? Tell me what's wrong with it, so I can correct it.*

As a result of a three-month delay in payment, one African American business owner mortgaged his home in order to pay his bills.

Fifty percent of interviewees reported that when a contractor breaches an express term of the contract with them, there is no remedy for the subcontractor. Many do not report or complain, because they do not want to or cannot afford to hire attorneys.

A Hispanic male architect noted that if an SBE pushes too hard for payment, the prime contractor will retaliate by never hiring the SBE again.

A Hispanic female owner of an architecture and engineering firm reported not being paid for a project since 2017 and had to hire an attorney to get paid. No one at the County offered help or enforced the laws for prompt payment.

An African American female SBE owner recalled her experience with the County regarding a late payment charge:

> *The SBD (Small Business Department) has a procedure which allows for a 1% late invoice charge when the County pays a subcontractor's invoice more than 90 days late. I submitted the invoice for the 1% late fee, and it was never acknowledged [nor payment received].*

A Hispanic female SBE owner of an architecture and engineering firm shared her experience:

> *We incurred financial hardship as a result of not getting paid on time because even though the contractor might get paid…they'll have issues with the engineering firm. The engineering firm gets paid… sometimes we wait six months to get paid.*

Several SBE owners explained that County contracts, which resulted in profit loss or delay in release of retainage of funds, were negotiated between the SBE and Miami-Dade County. A Hispanic male subcontractor complained that after he successfully completed his work and punch list, his retainage was delayed for months.

A Caucasian male SBE described why he believes payments are delayed from the County:

> *Because they do everything backwards, because they're supposed to provide a purchase order [before] and they provide a purchase order AFTER we actually do the job. So, they do everything backwards in order to proceed and authorize it after we actually complete the job. So, that's when they start their payment process.*



Contract Delays

A common complaint among the SBE owners was the substantial gap from the date of contract procurement to the actual contract start date and how the delay adversely impacted their businesses. A Hispanic male contractor reported that he experienced a contract delay starting in 2019 for several years, which required him to continue his business insurance coverage, mobilize workers, and maintain vehicle coverage without additional compensation during that time period. His contract was originally for 11 months. He explained:

> *Small businesses don't have the cashflow to maintain staff because once selected for a project, it might take two or three years before the project begins and employees leave and work elsewhere. It is taking too long to get the work.*

A Hispanic female owner who contracted with the County discussed the length of time it took her to start work:

> *So, we got the request from EDP. EDP sent us a letter or the email. We responded. Then we put the proposal together. The negotiations for the fee with the County took us six months after we were selected. Six months. And after we had negotiated the fee, it took us about another six months to start doing the work.*

She added that as a result of the delays, the total length of the project "will easily be five years."

Interactions with County Staff

Several interviewees commented upon their interactions with County staff during the contracting process.

An African American contractor stated that the County staff makes project participation for SBEs more difficult than it should be:

> *The staff is not getting the message in terms of what the program is set up for. Instead of helping the SBEs to grow, they're forcing the SBEs to lose money and contracts.*

He reported that while his contract was terminated, he believes that it could have been saved with adequate support from County staff and wishes they had a better appreciation of the intent of the SBE Program.

A few SBE owners were reluctant to answer the interviewer's questions regarding adverse actions by the County toward SBE participants due to fear of retaliation from the County.

> *I don't want to sound like I'm not grateful. I am grateful, but there's a lot of things that happen that we're not able to share. And what happens if I start sharing? They put an 'X' on me.*

A female owner of an architectural firm stated that the County shows a preference for large businesses to handle large jobs, without solid basis. She suggested that her firm can handle large projects and was also able to subcontract to a larger company:

> *Often, we've seen that the department prefers to work with larger businesses, discriminates against the small business for the reasons that I understand is that we may not have the resources that a larger company has. [T]hey prefer to work with a large company, at a much higher cost. However, they believe that it gives them security, especially on jobs that are urgent. [It] gives them more security on the job that the job will get done on time and it will get done better.*



One owner reported that County staff projected a perception of preference for larger majority firms over smaller SBE firms, which is counterintuitive to the intent of the SBE Program:

> *"You cannot be requiring goals and requirements and saying that you're going to help people get paid and that you're going to check utilization and the goals only to later say, 'I'm so sorry, our contract doesn't protect you.' And so yes, in every single one of those design build contracts that we have right now with Miami-Dade County, and I cannot emphasize this more, there are no protections for small businesses."*

Many owners reported that their perception was that SBD had a hands-off approach to helping SBE subcontractors, especially lower tier ones. A Hispanic female professional and other services consultant stated that she believes that the County would not help her firm because she was a third-tier subcontractor.

Equitable Distribution Program

Interviewees were asked about their experiences with the County's Equitable Distribution Program (EDP).

Only one of the 40 business owners interviewed saw the EDP process of bidding in a pool of ten consultants as valid; others recommended that a pool of three businesses was more palatable. Also, a majority of the interviewees explained that prime contractors often chose the same firms for their projects with no recourse from the County or SBD and that was the reason their business was not chosen.

Many interviewees who participated in the EDP expressed dissatisfaction with the rotation process, since a large national firm is able to quickly enter the program and obtain a position at the head of the rotation list. They stated that all a large national firm had to do was obtain a business receipt, open an office space, and hire a few employees. The interviewees perceived this practice as a disconnect with the County's announcement of interest in growing small businesses. In their opinion, the reality is that large national businesses take money out of the County, and local SBEs are not able to receive sustainable business.

However, not all interviewees held this view. A Hispanic male owner of an engineering firm did not believe that national businesses' participation in the EDP had a negative impact on his business growth. He explained that one large firm has a Miami staff of five to seven employees, which is about the same size as his firm.

Another Hispanic male architect perceived that national businesses become local by having an address, empty office, and only a year and a day in business in the County. As a result, they are the part of the rotation list to receive work in the EDP:

So, the opportunities are being thrown away or given away to the nationals…and the people that are here that are really relying on the rotation hardly make it up…. As they have less and less work.

Most interviewees believe that the EDP rotation process, as it stands, is beneficial, but does not allow for continuous contracts to expand their expertise and revenue. One SBE owner wondered why her name had not come up after seven years in the rotation pool. A Hispanic male architect observed that the large size of the contract opportunities attracts national firms that enter the pool for competition. He suggested that the contracts should be smaller, so that small firms like his could receive more opportunities, rather than having to wait for six to 18 months for an opportunity. The results would be growth for his business so that he would feel comfortable hiring full-time staff.

One African American male professional and other services consultant stated: "It shouldn't be that you just sign up for work, and then, if you have no work, you're at the top to get work. So, it actually favors companies coming in from out of state, companies from out of the County. It actually makes it hard for small businesses here."

Many of the SBE owners interviewed had access to bonding, but they also agreed that their ability to compete was limited by their bonding capacity. Some interviewees reported having difficulty acquiring financing, which limited their ability to bid for County contracts with bonding requirements.

An African American female contractor agreed that bonding was a challenge for her firm; however, she was able to get bonding through the Small Business Administration. A Hispanic male owner agreed that there are challenges with obtaining bonding:

Bonds are hard to get without money and experience.

A Middle Eastern SBE owner had a similar opinion:

A lot of jobs for small businesses is bonded or limited by the bonding capacity that they have. This is due to builder's risk insurance being hard to obtain and being expensive.



SBE contractors reported that obtaining builder's risk insurance and other types of insurance was expensive and difficult to locate. Insurance is required for most County contracts. With increased bonding and insurance prices and long project start times, bonding and insurance requirements can quickly become a burden to new and existing SBEs.

Lack of Adequate Contract Opportunities

Many interviewees reported that the County did not offer adequate contract opportunities to SBEs, because of unnecessary product stipulations or experience requirements. They also stated that many of the contracts that are available to SBEs are "undesirable." Others lauded the SBE Program and its contract opportunities.

A supplier reported that sometimes manufacturers will shut out new distributors like her company, when the contract stipulates that the product must come from a particular manufacturer. Some SBE owners said that their firms are kept from acquiring the needed experience, when experience is what an SBE hopes to acquire through the County's program.

A minority male SBE owner shared his thoughts:

> *Although they are qualified, they cannot get work from the Department of Parks and Recreation because they're told, 'You don't have any park projects that you completed in the past, you don't have the park experience' and they have not been provided the opportunity to get such experience through Miami-Dade.*

A difference of opinion exists regarding limitations to contract opportunities within the County among the three procurement areas. Here, a Hispanic male architecture and engineering firm owner shared his thoughts on the availability of work for SBEs within the County:

> *I think if you're within this [architecture and engineering], if you're qualified and certified, there's no reason why you can't get a job.*

A Hispanic female owner of an architecture and engineering firm sees it differently. She stated, "The work that is set-aside for small businesses is not the work that anybody else wants to do. So, it's not like you can develop other professional areas in your firm, but mostly the field work, the data collection, that type of work." She explained that to pursue work as a prime contractor in the set-aside, you must qualify for all major categories of the work, and if as a small business you do

not have all those categories of work, you are never going to be selected as a prime contractor. She went on to explain that the SBE Program is needed, because if there are no goals in place, prime contractors will not share work with SBE firms.

A Hispanic male service provider agreed that much of SBE work is undesirable and categorized the work as shifts that the prime contractor does not want to do or is a big headache to handle.

A Black contractor credited the County for the SBE Program. He found the benefits to be residual, because once you complete a project, you expand your experience and others will give you an opportunity afterwards. He said, "If there were not programs like this to give smaller guys like ourselves an opportunity, I don't think we would be considered as a sub in many of these projects."

A couple of graduated SBEs stated that creativity is needed within the County programs to allow for graduated SBEs to continue to participate. One graduated SBE owner is a proponent of raising the limits higher, because there is a fear of graduation at $4, $6, and $8 million. He reported that graduated SBEs still do not have the capacity to compete with the large national firms in the County:

> *It would be insane to graduate from the program, because then you have nothing to help you. Everything's against you, because now you have to compete with the national firms [when] they have bigger resumes. And if capital is one of the most important things in running a business, they have more capital than you. So, they have more experience.... The advantage you have is you may know the local market better, but then, they can hire a team to overcome your advantage.*

A Hispanic female contractor praised the programs for the contract opportunities afforded her company. She was able to work as a successful subcontractor for a large prime contractor who consistently awarded her company contracts for years, which helped her grow as a business, pay good wages, and support 42 families.

Inadequate Contract Terms and Specifications

Twenty-eight percent of SBEs interviewed raised concerns regarding the inadequacy of contract terms and project specifications, as well as a lack of an escalation clauses in SBE contracts.

One Hispanic service provider described the negative impact of having a multi-year contract, where the cost of doing business increased and the SBE was stuck with a contract that did not allow for price increases to cover the rising costs.

When asked about escalation clauses, a female SBE owner shared her experience:

> *I suppose there are if something is flagrant. Things that involve chips have had escalation [clauses], because the chip issue is obviously a worldwide issue. But not other things, not normally. If they have concrete and concrete goes up, it goes up. They don't get, 'oh, concrete went up.' That doesn't work that way.*

An African American SBE owner described an experience where work had to be stopped because of plan discrepancies:

> *[You] get into a project where you're excited about getting the work done in a timely manner, and before you can get off of first base, [you've] got to stop what you're doing, go back to the drawing board, because there's so many discrepancies in the plan. [T]he information in the plan [did] not match the job specs.*

His experience resulted in the plan requiring re-approval before being able to continue the project.

Unfair Business Practices

Numerous SBE owners reported covert and overt unfair business practices described as "bullying" tactics committed by prime contractors and County project managers, such as requiring them to perform work without prior approval, replacing them with other SBEs, and failing to pay for the work performed.

An SBE reported:

> *What's been happening is we put a price in for $15,000, and they only want to give it to us for $5,000 and we've already done the work and that's just not fair.*

A Hispanic female owner of a professional and other services firm stated that in the past, contractors in the County paid small survey contractors $10,000 to sign and seal a survey, sight unseen. She refused to be paid to certify something that she had not seen.

A Hispanic male owner of an engineering firm reported that he helped a consultant win a contract, because he was listed as their SBE. Two to three years passed, and he never got the subcontract.

A Hispanic male SBE owner in the services industry reported that a large national firm charged his company extra fees amounting to $1.2 million to be monitored as an SBE in a contract. Even after complaining, the fee was never waived. He said, "I'm a local vendor. I'm basically subsidizing you with fees that you should never be charging.... That's against the spirit of the program and the purpose of the program, which is to help businesses grow." This service provider further explained that a prime contractor threatened to replace him with another SBE or add another SBE when he continued to complain about the "SBE tax."

An African American SBE recalled this experience:

> *[I was] pressured to do tasks that were not in my contract.*

An area of concern for SBE Program participants occurs when the prime contractor or project manager requests that work be performed after the execution of their contract, outside of the original scope of work. Most of the time, such a request has not been approved by the County, and the subcontractor or subconsultant is pressured to perform and usually does. Many interviewees shared that when the additional work is complete, there is usually a challenge in obtaining payment or no payment is received.

Other issues arose when the contract is awarded and work is assigned years later. Most of the contractors or consultants interviewed did not factor the impact of the delay and rising costs for materials and labor in their contracts. Since such contracts usually do not include escalation clauses, the SBE owners reported that they find themselves moving forward without compensation, and some reported falling on tough financial times as a result.

An African American SBE goods and services provider described an unfair bidding practice:

> *The County places a bid for a quantity of goods from an SBE owner. The SBE owner sets his price based upon a specific quantity requested by the County. Once the price is agreed upon, the County purchases the goods at a substantially smaller quantity and pays for the goods at the negotiated price (based on higher quantity), instead of adjusting the per unit price based on a substantially smaller quantity.*



This female subcontractor continued to submit bids as a subcontractor and never received a response from the prime contractor.

> *I continue [bidding] hoping to get a new prime. There's some days where you just come home dragging with your face on the ground, because you're like: What do I do next?*

A Hispanic male SBE owner recalled what happened when he attempted to enter the "niche" of "legacy" or highly used contractors:

> *They make your life miserable. When you have a PM or a GC on top of you, you are like the rock and the egg. They pressure you so much, they hold your payment, they threaten you. They find other way[s] to pressure [you]. When you have somebody bigger on top of you, you are the small one, they find a way to pressure you.*

An African American contractor recalled that County department staff interpreted his two contracts in two different ways, which benefited the County. Instead of the County staff accepting their error of omitting a task in a line-item contract for the contractors to bid, the County attempted to make the SBE perform the $300,000 task without pay. When the contractor refused to complete the task without obtaining a change order, his contract was terminated.

Several SBE owners reported feeling devalued in their work and burdened by unfair requests and actions of both prime contractors and County staff.



An African American supplier described her experience when completing a change order that resulted in a financial loss for her company:

> *The County is requesting SBEs to provide a price to complete a change order, and the SBE provides the price. The County accepts the price, has the SBE complete the work, and then, after the work is fully completed, the County says, 'Your price is too high, we won't pay,' and they don't pay.*

A Hispanic male professional and other services owner described on "fronts" as businesses that set up a shared office in a space without staff enabling them to qualify for certification and participation in programs meant for small businesses. He recommended that SBD monitor and investigate such companies.

An African American contractor reported that some prime contractors create smaller SBEs, so that they can give the contracts to their "front" SBE businesses. A couple of SBE owners referred to these businesses as "pet subcontractors."

A Hispanic female contractor reported that a prime contractor used her as a "front": manufacturer and would not provide a quote to her company, which blocked her from participating on a County contract. She concluded:

> *Because it gets to the point that they just won't work with you, period. And I can't force them to. And they know the little loopholes and the only thing I can do is cry.*

In 2019, an African American SBE owner reported that he procured a contract to provide goods to Miami-Dade County. The goods at issue were regulated under the current United States standard, which the SBE met. A lobbyist for the incumbent contractor advocated for a different standard for determining the quality of the goods. Although the SBE's contract met the requested standards and would have saved the County $1 million dollars, the County used the standard submitted by the lobbyist, and the SBE lost his contract.

Perceptions of Discrimination

One African American contractor suggested that bonding companies predetermine the limits on African American contractors and that they charge African American contractors 2.25% to 2.5%, while non-African American contractors receive bonds at 0.5% to 1%. He added that the bonding

companies are limiting African American contractors to a bonding limit of $2.5 million. He also reported that suppliers charge higher prices to African American contractors, as opposed to non-African American ones, which puts their bids at a disadvantage. He described how a supplier provided him one price and another contactor a lower price, which was noticed by the project lead.

Some African American and Hispanic female owners whose businesses were not chosen for contracts by White male prime contractors reported that they were overlooked even though they have same licenses, experience, and education as other contractors. One of them recalled her experience:

> *I am treated as if I don't belong, as a woman and as an African American, in [this] field, by primes and contractors. They feel like, as a woman, if you want to be in [this] trade, go work for a man.*

A Hispanic female SBE owner reported that the sewer contractors that do business with the County "have no respect for women at all." She recalled a meeting in her conference room where one sewer contractor yelled, banged on the desk, and became so angry that she thought he was going to hit her. He demanded that she perform work not in the contract, without payment.

A female owner of an architectural firm stated that she thinks that the construction industry is biased and not particularly open to women. She said of her experience working for the County: "I've never felt in any way lesser on any of the projects that I've ever worked for them."

Numerous African American SBE owners reported that African American contractors and service providers receive less than 1% to 2% of the SBE contracts in the County, and many have gone out of business. One stated that during the Black Business Enterprise Ordinance implementation period, there were more than 300 African American certified firms, and now there are only around 90 firms.

An African American female contractor stated that Black businesses are not getting enough contracts at the airport. Another African American owner said that general contractors within the General Contractors Association use tactics to make them lose contracts, such as telling suppliers not to provide supplies to a particular African American contractor.



He explains that the general contractor will call the supplier or equipment company and say, 'I don't like the way this guy's performing. Come get your stuff off my job. I'll pay you now, and it's your last chance to be made whole.' The supplies do not show up on the job and the equipment is removed. He admits that no one says, 'because it's African American,' and it is very difficult to prove, but he believes it is discrimination.

An African American male, an owner of an architectural and engineering firm, recalled what he believes is the reason the number of African American SBEs in the County has declined:

Here's the irony and the obstacle: In Miami-Dade County, the minority has become the majority [the governmental body is primarily Hispanic]. Contracts awarded to Black contractors are a drop in the bucket when compared to construction contracts given to Spanish contractors.

Some African American contractors reported that Hispanic managers at the County give Hispanic contractors better treatment than their African American counterparts. One claimed that Hispanic section heads in various County departments hire other Hispanics, rather than utilizing qualification-based hiring. He went on to say that these same Hispanic employees fine, withhold payments to, and terminate African American contractors, while Hispanic contractors in similar circumstances are given more time to correct project issues, obtain more payments, and remain on the projects until completion. He stated, "The availability of African American contractors is commensurate and in direct proportion to the treatment they receive on the job. I guarantee you that there are not two Black contractors working in the Water and Sewer program."

One African American contractor reported that many African American contractors work outside the County, where it is easier to participate on contracts.



An African American contractor reported using a contractor and were not being allowed to perform when a white prime contractor, that gets repeat work, took the contracts by asking for additional information. A practice not required from other subcontractors. The contractor reported having

lost a half million-dollar contract despite being the lowest bidder, and having previously performed well on prior contracts.

Another African American contractor stated that when the SBD performed a compliance visit one of his jobs, although the majority of the employees were African American, the Hispanic compliance staff interviewed only Hispanic employees and spoke to them in Spanish. No other employees on the site were interviewed.

A Hispanic female contractor said, "The black community and the women community, especially in the construction trades, are not getting fair opportunities." She went on to say that "Hispanics are no longer the minority." However, a male architect said that no one calls him to be on their team because he is Hispanic—they call him because he does good work, and they want to continue to work with him.

An African American female goods and services owner shared her concern:

> *[A]ccess to potential bids is limited when procurement outreaches, that are meant to attract small businesses, are generally not hosted in African American communities.*

African American SBE business owners believe favoritism by Hispanic contractors permeates the procurement process in the award of subcontracts. African American SBE owner discussed why he no longer works with the County's SBE Program:

> *"And me in particular and the people that I know, we stopped doing business with them [Miami-Dade County] because we've never seen the win, and when we do win, we lose."*

An African American contractor reported that he submitted supplemental materials highlighting the negative experiences of five African American contractors trying to do business with the County which resulted in contract terminations and business closures.

This African American female SBE owner provided an explanation as to why she thinks the SBE benefits some and not others:

The program works better for some than others because of access to capital, local government, unlike the federal government. [The program] does not recognize that there are communities that are historically disadvantaged (i.e., lower income, access to business related requisites) and adjust accordingly.

Effects of COVID-19

The interviewer asked 30% of the interviewees about the impact of COVID-19 on their businesses. Of that number, 5% agreed that they were not negatively impacted, because they returned to previous processes via telecommuting from home. A construction business owner reported that his business was not negatively affected because construction opportunities continued during Covid-19. Another saw the pandemic as having a positive effect which "helped [him] pursue more private-sector projects."

Twenty-one percent interviewees described a variety of negative effects from the Covid-19 pandemic on their businesses, including:

- Shortage of materials resulting in missed deadlines.
- Cancelled or bundled projects, which required additional resources.
- Work slowed considerably.
- Access to capital was negatively affected.
- Business halted for an owner in the traffic collection business when there was no traffic.
- Some with existing contracts suffered a 20% reduction in their contract prices.

IV. Summary

This chapter represents the primary and tertiary concerns of Small Business Enterprises in their procurement and retention of contracts with Miami-Dade County and the surrounding market area.

Prevailing themes include: (1) difficulty with timely payments, (2) perception of discrimination, (3) access to opportunities, (4) legacy or "good-old boys" networks, and (5) unfair business practices.

Receipt of timely payments was the resounding request of the vast majority of interviewees. African American and female SBE owners reported being overlooked for potential contracts or have had their contracts terminated, supplemented without prior approval, and/or unpaid.

As a result, many SBEs do not seek to contract with Miami-Dade County. Others have decided to entirely forego SBE certification, citing that doing so is burdensome when the opportunities are elusive.

Most interviewees applauded the intent of the program but believed that reaching the objective of the SBE Program will take intentional steps by County leadership to implement.

CHAPTER 10: Recommendations

I. Introduction

This chapter presents recommendations to address the statistical findings that documented a disparity in Miami-Dade County's (County) award of prime contracts and subcontracts to minority and woman-owned business enterprises (M/WBEs) during the study period. The statistical findings were derived from an analysis of the contracts awarded during the period when the County administered a comprehensive robust race-neutral Small Business Enterprise Program (SBE Program).

The SBE Program was established 1997 under Sections 1.01, 2.02 and 4.02 of the Miami-Dade County Home Rule Amendment, and was amended to address the statistically significant disparity documented in the 2015 Disparity Study. The SBE Program includes a comprehensive set of program elements designed to achieve equity in the participation of M/WBEs on County contracts without the use of race or gender specific strategies. The efficacy of the SBE Program in eliminating the documented disparity is assessed in this chapter. Recommendations are offered to remediate the significant statistical disparities.

The SBE Program's effectiveness is measured in four ways: (1) the implementation of the race neutral procurement and contracting policies and procedures recommended in the 2015 Disparity Study, (2) findings from this 2024 Disparity Study analysis of M/WBE utilization on the County contracts awarded under the current SBE Program, (3) the attainment of race and gender parity in the utilization of minority and woman-owned SBE-certified businesses on County contracts awarded in each industry examined in this Study, and 4) the impact of discrimination measured by dollars lost by the ethnic and gender groups underutilized in both the 2015 and 2024 disparity studies. Findings from these analyses are the legal predicate for the race and gender-specific and the race and gender-neutral recommendations presented in this chapter.

This chapter is organized into six sections: (1) *Introduction*, (2) *Overview of the Small Business Enterprise Program*, (3) *Efficacy of the Small Business Enterprise Program*, (4) *Race and Gender-Conscious Recommendations*, (5) *Race and Gender-Neutral Recommendations*, and (6) *Legislative Recommendations*.

II. Overview of the Small Business Enterprise Program

The SBE Program established a subcontract participation goal for small businesses on construction, goods and services, and architecture and engineering prime contracts. The SBE Program has solicitation requirements and services to promote business development in three industries: construction, architecture and engineering, and goods and services. In addition, the program has workforce requirements and policies to build business capacity and support the creation of new County businesses. To encourage County based small businesses to certify under the SBE Program the County conducted an aggressive outreach campaign.

The SBE Program is administered by the Small Business Development (SBD) Office in the Department of Internal Affairs, a unit of the Office of the Mayor.[295] The SBD is responsible for small business certification, enforcement of program compliance, business outreach, and small business education and technical assistance. The Program is administered by a staff of experienced professionals.

Eligibility for the Small Business Enterprise Program

The SBE Program is race and gender-neutral and includes targeted programs for, (1) goods and services, (2) architecture and engineering (A&E), and (3) construction. Eligibility for SBE certification depends on the business size and industry.

For goods and services, a small business must have a Miami-Dade County Local Business Tax Receipt for at least one year, an actual location in the County (no virtual offices), and the owner must reside at the location for home-based businesses. The three-year average gross receipts should not exceed $5 million, except for manufacturers and wholesalers. The size of these businesses is defined by the number of employees. The business owner must hold the required license for the company and own at least 10% of the firm's issued stocks or have a 10% ownership interest. The owner's Personal Financial Net Worth Statement cannot exceed $1.5 million.

For architecture and engineering, a small business's average gross revenue for the preceding three years cannot exceed $4.5 million for architectural services or $6 million for engineering, surveying, mapping, and landscape architecture services. The certified firms must be located in the County and perform a commercially useful function. The owner must have at least 25% of the certified firm's issued stock. An owner's personal net worth should not exceed $1.5 million.

For construction, a small business's average gross receipts vary from $5 to $10 million, depending on the specialty. The owner must hold at least 10% of the issued stock and a personal net worth not exceeding $1.5 million for each owner.

Implementation of the Small Business Enterprise Program Components

The 2015 Disparity Study recommended 33 procurement and contracting best practices that are race and gender-neutral to promote equity in the County's award of contracts to M/WBEs and address the statistical disparity. The County's SBE Program recommendations were implemented and rules and regulations set aimed at addressing the documented disparity in M/WBE utilization identified in the 2015 Disparity Study.

Over the last 10 years the County has systematically implemented the recommendations. Detailed below is a summary of the SBE Program's rules and regulations set forth in the SBE policy.

[295] "About Us." https://www.miamidade.gov/global/business/smallbusiness/home.page.

1. Require prime contractors to include the Certificate of Assurance in their bids and proposals.

Prime contractors are required to include with their bids/proposals the Certificate of Assurance, and upon request, complete the Utilization Plan using B2Gnow, the County's business management workforce system. The Utilization Plan submitted through B2Gnow requires the prime contractors to identify all subcontractors and subconsultants meeting a goal or participating in a set-aside project. This requirement has been implemented.

2. Publish the Quarterly Countywide Progress Report, once applicable technology is implemented, to detail the department's performance in meeting Small Business Program goals and necessary recommendations to improve a department's efforts.

The software was acquired to capture the department's performance in meeting the Small Business Program goals. Bi-monthly progress reports are produced for the four advisory boards (Construction, A&E, Goods & Services, and Living Wage). The data for the reports is extracted from B2Gnow and others online. This recommendation has been implemented.

3. Provide mandatory annual training for key staff involved with the procurement process to ensure that procedures are applied uniformly across all departments.

The SBD Office is tasked with the second phase of a standardization initiative to develop standard forms and practices, including procurement, instructions to bidders, invitations to bid, bid forms, change order forms, and invoice forms. The SBD Office provides ongoing training to user departments. It collaborates with the user departments, the County Attorney's Office, and the construction industry to implement the program requirements. This recommendation has been implemented.

4. Increase funding and staff overseeing the Small Business Programs.

Since 2015, the Office of SBD's table of organization has increased from 38 full-time equivalents to 102, and the overall operating budget has grown by approximately 234%

5. Unbundle large procurements into smaller contracts whenever practicable.

The SBD Office works very closely with the capital departments to limit bundling whenever possible.

6. Waive the County's bonding requirements when the engineer's estimate is less than $25,000.

SBD reviews all projects under $200,000 to ensure bond requirements are not applied.

7. Have the County's Equitable Distribution Program managed by the SBD Office and train key procurement staff on the requirements of the EDP.

The administrative functions of the Equitable Distribution Program (EDP) were transferred from the Procurement Division to the SBD Office in 2014-2015. SBD conducts training for procurement staff on the requirements of the EDP. This recommendation has been implemented.

8. Purchase software that would allow bidders to obtain digital plans and specifications from the County's website and have plan rooms established at both the County and trade and business associations headquarters.

SBD launched its drafting and plan room program in 2017. The room is located in the Stephen P. Clark Center (SPCC) building on the 19th floor and is available to certified firms. The room is equipped with three computers and Microsoft Project to help firms with construction scheduling. The room also has high and large surface tables to make the plan review process easier. User departments provide the digital plans to the SBD Office, and the staff are available to review the plans with SBEs. SBD has an in-house engineer to guide and assist when needed. The room is also used to assist firms with the online certification process. This recommendation has been implemented.

9. Revise insurance requirements on small contracts and develop criteria for obtaining insurance waivers on small contracts.

Implementing Order 3-53, which governs the Miscellaneous Construction Contracts Program, was amended in 2016 to revise the insurance requirement submittal process.

10. Require selection panel members to sign their evaluation forms and release the evaluation scores, proposal, statement of qualifications, or bid of the business(es) selected for award when the Intent to Award is issued.

SBD is responsible for establishing the selection committees. Once the committee selection is finalized, the Committee Chair and Procurement Division ensure the necessary forms are completed correctly, signed, and available to the public.

11. Train key County procurement staff on bid protest procedures.

Bid protests are not handled by the Office of SBD. Bid protests outside the Miscellaneous Construction Contracts Program are handled by the Procurement Division or capital department.



12. Enhance the County's outreach efforts by hosting forums to assist businesses in becoming more familiar with the County's procurement procedures and maintain a website to keep business owners apprised of important announcements and upcoming projects.

SBD organizes monthly forums, trainings, and outreach meetings to inform certified firms and other local businesses on the best way to do business with the County. Services include recruiting local businesses in areas of "low to no" participation so more contract opportunities can be identified. The outreach module in B2Gnow allows for online advertisement and posting of workshops, advisory board meetings, and other information pertinent to the business community.

13. Establish a payment verification system, publish prime contractor payments online, and notify subcontractors when prime contractors have received mobilization payments.

The B2Gnow software, purchased in December 2016, went live in May 2018. The system is utilized in all areas of SBD. It produces subcontractor payment reports (all contracts, regardless of value). Additionally, reporting of payments to all subcontractors is required during the term of the contract and prior to the final payment. Payments are reported in B2Gnow, which generates automated notifications regarding compliance issues or discrepancies in subcontractor payment reporting. Publication of prime payments is online, through the Finance Department's vendor payment tool that allows users to track payments. The software's online checkbook allows the user to search for County payments to contractors for goods or services.

14. Conduct routine contract compliance monitoring that tracks subcontractor utilization in an online database, verifies actual subcontractor participation, and certifies that only eligible firms are being used to meet the SBE goals.

For monitored projects, staff requests and uploads subcontracts into the B2Gnow software. The site visits are conducted no later than the 25% completion point before the release of the first contractor payment. The contracts require prime contractors with SBE requirements to report payments to SBEs and to upload invoices from SBEs with proof of payment. Prime contractors must verify SBE payments.

Compliance staff reviews discrepancies reported by SBEs; reviews subcontracts, invoices, and payments; and when necessary, conducts site visits. Certified payrolls and other project information (i.e., daily reports, building permits) are used to verify that SBEs are actually performing work and paying the prevailing wages. The SBD Office cites violations and penalizes firms that do not meet SBE participation measures. SBD can decertify the prime contractors to self-perform the SBE's work if they do not comply with SBE requirements.



15. Publish a 12 to 24-month contract opportunities forecast.

The projects are posted prior to advertisement on the County's procurement website and SBD's website. These postings appear three to 12 months prior to advertisement and award. SBD reminds firms to continuously check online for contract opportunities. This recommendation has been implemented.

16. Optimize the County's website for mobile devices and provide greater accessibility for persons with disabilities.

B2Gnow is accessible on any computer, tablet, or mobile device and is optimized for each type of device. Vendor payments can be made with a few clicks. B2Gnow is also ADA-compliant. This recommendation has been implemented.

17. Verify the subcontractor data reported on the Schedule of Intent by the prime contractor and require the prime contractor to submit the executed subcontracts related to Small Business Program goals prior to the County issuing any payments.

As required by the *Code of Miami Dade County*, prior to awarding a contract with small business requirements, the SBD staff reviews the Certificate of Assurance (COA) submitted by bidders for compliance with SBE measures. The SBD reports the compliance status to the contracting departments. Post-award monitoring staff reviews subcontracts to ensure the subcontractor's scope and price match the information on the Schedule of Intent (SOI).

18. Host debriefing sessions for unsuccessful bidders.

SBD meets quarterly, and upon request, with unsuccessful SBE bidders to discuss their bids.

19. Reduce the size thresholds for SBE Program participation.

October 18, 2022, the creation of additional tiers within small business enterprise programs, allowing certified small businesses to compete with similarly situated businesses.

May 7, 2024, an increase in the Personal Net Worth (PNW) threshold to $3,500,000, making more businesses eligible for participation. Additionally, more solicitations were introduced for smaller contracts, likely to encourage broader small business participation.

20. Eliminate the subcontractor waiver provision.



The waiver provision has been modified. SBD requires all prime contractors to comply with the small business requirements stipulated in the bid documents. The Certificate of Assurance (COA) must be submitted with the business proposals.

SBD also acknowledges that when fewer than two or no firms are certified in the relevant trades or providing the commodities, the prime contract may be exempt from the goal. In situations where certified firms are not available, prime firms can submit documents to demonstrate the unavailability of certified firms, or if the small bid is not competitive (over 25% higher than non-SBE firm), a form must be completed to provide reasons and evidence of unavailability and non-competitiveness.

21. Modify advertising requirements.

All contracts over $25K related to G&S are publicly advertised with the exclusion of a pre-qualified pool.

Contracts are not publicly advertised when they are under a pool contract because firms are required to be pre-qualified.

22. Pay mobilization to subcontractors.

Not approved to move forward with this recommendation.

23. Distribute bid protest procedures.

All project documents include bid protest procedures.

24. Assess penalties for not achieving M/WBE and SBE contract goals.

SBD assesses and collects monetary penalties from prime contractors that do not meet SBE goals or set-aside measures.

25. Include compliance with Small Business Program requirements as a factor when conducting performance reviews of managers and staff members.

Implementing Order 3-42, which governs the Contractor Evaluation process, is pending further discussion with the Administration.

26. Implement formal dispute resolution standards.

Formal dispute resolution standards are included in the County's standard construction contract.

27. Establish procedures for the resolution of payment disputes.

SBD has established internal procedures to resolve prompt payment disputes. SBD Staff members are trained to assist SBEs with payment issues.

28. Adopt a single contract numbering system for all County contracts and purchases.

This recommendation is not feasible through the Integrated Financial Resources Management System (INFORMS).

29. Apply the Small Business Program standard uniformly.

SBD has been capturing data as recommended to include by department, awards for period, dollar value, measures, compliance and whether minimum 10% is being attained.

30. Expand the Advisory Board's function.

Four Advisory Boards are staffed by the SBD Office to address racial and gender equity and inclusion on County contracts—for Construction, Architecture and Engineering, Goods and Services, and Living Wage. Each board meets on a bimonthly basis. The role and responsibilities of the Advisory Boards have been significantly expanded to enhance their input and effectively achieve their objective. A collective advisory board, with members from each of the four boards, has been formed to achieve greater efficiency as an advocacy group. The boards have the authority to present their issues and concerns directly to the Mayor's Office. SBD facilitates the meeting of the four advisory boards.

The boards have provided recommendations as white papers and have worked with the SBD Office and Strategic Procurement Department to implement the recommendations. The process is ongoing because some recommendations require findings of statistical disparity in the County's award of its contracts to M/WBEs.

31. Enhance the SBD Office's organizational structure.

The recommendation was to establish an SBD Department with the staff and authority to ensure racial and gender equity in the County's procurement and contracting process. In August 2023, the SBD became an Office within the Mayor's Office. It has not yet achieved the autonomy needed to fulfill its responsibilities effectively. However, there is active recruitment by the Office to fill all position vacancies.

32. Apply the Direct Purchase Program to all construction contracts.

The option for Direct Purchase is included in the County's standard contract. The decision to utilize this is at the discretion of the contracting department and is project specific.

33. Improve oversight of non-competitively bid contracts.

Non-competitively bid contracts are managed through the Strategic Procurement Department (SPD). The Mayor's Office of Equity and Inclusion is considering the recommendations and options for improving oversight of these procurements.

III. Efficacy of the Small Business Program

Since the SBE Program was created by the County as a remedial plan to address the disadvantages market area minority and woman-owned businesses faced in securing County contracts, an objective measure of the effectiveness of this race and gender-neutral strategy would be the elimination of the statistically significant disparity.

Three methods have been employed to measure the SBE Program's effectiveness in eliminating disparity during the November 1, 2018 to October 31, 2021 study period: 1) the disparity analysis of the award of County prime contracts and subcontracts to all available M/WBEs and non-M/WBEs, 2) the disparity analysis of prime contracts awarded to SBE-certified M/WBEs and SBE-certified non M/WBEs and 3) a comparative analysis of the disparity findings from the 2015 Study disparity and this 2024 Study.

M/WBE Disparity Analysis Findings for 2024 Study

Chapter 6: Prime Contract Disparity Analysis and *Chapter 7: Subcontract Disparity Analysis* of this report measured the statistical significance of the underutilization of available M/WBEs to determine if any ethnic or gender group had a disparity. The calculation, performed in compliance with the constitutional parameters set forth in *Croson*[296] and its progeny, documented statistically significant disparity for various ethnic groups.

The statistical findings for each ethnic group are reported in the tables as either disparity or no disparity. However, for the female groups, which are held to an intermediate standard of review, a finding of statistically significant disparity is not required. Thus, the findings are reported as either underutilization, or disparity if the underutilization is statistically significant.

1. Number of Prime Contracts

As shown in Table 10.1 3,955 prime contracts were awarded by the County during the November 1, 2018 to October 31, 2021 study period. The analysis during the study period included 2,102 for construction, 728 for architecture and engineering, 160 for professional and other services, and 965 for goods and services.

During this period the County awarded a total of $4,225,842,104 prime contract dollars. The expenditure included formal and informal contracts. Prime contract expenditures included $2,099,258,723 for construction, $556,799,944 for architecture and engineering, $368,383,991 for professional and other services, and $1,201,399,446 for goods and services.

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

Table 10.1: Total Prime Contracts and Dollars Expended

Industry	Total Number of Contracts	Total Dollars Expended
Construction	2,102	$2,099,258,723
Architecture and Engineering	728	$556,799,944
Professional and Other Services	160	$368,383,991
Goods and Services	965	$1,201,399,446
Total Expenditures	**3,955**	**$4,225,842,104**

2. Prime Contract Disparity Findings

The prime contract disparity analysis was performed on the formal construction, architecture and engineering, professional and other services, and goods and services contracts and on the informal construction and goods and services contracts awarded from 2018 to 2021. There were too few informal architecture and engineering and professional and other services prime contracts and dollars awarded to perform a statistical analysis.

The informal threshold levels are defined by the *Procurement Guidance Document and Best Practices Manual.*[297] The formal threshold level for the analysis of disparity is derived from a statistical calculation that removes the outliers or atypical contracts with unusually large values. Since the outliers are notably different from the rest of the contract values in the dataset, they would skew the statistical analysis. Identification of the outliers is described in *Chapter 2: Prime Contractor Utilization Analysis*.

Table 10.2 presents informal contract thresholds by industry. Table 10.3 presents the formal contract thresholds without outliers by industry.

[297] *Procurement Guidance Document and Best Practices Manual,* Strategic Procurement Division, Internal Services Department, updated on July 4, 2021.

Table 10.2: Informal Contract Thresholds by Industry

Industry	Informal Contract Threshold
Construction	$25,000 and under
Architecture and Engineering	$25,000 and under
Professional and Other Services	$25,000 and under
Goods and Services	$25,000 and under

Table 10.3: Formal Contract Thresholds by Industry without Outliers

Industry	Formal Contract Threshold
Construction	between $25,000 and $1,960,000
Architecture and Engineering	between $25,000 and $850,000
Professional and Other Services	between $25,000 and $2,570,000
Goods and Services	between $25,000 and $1,740,000

3. Construction Prime Contract Disparity Findings

Table 10.4 shows the disparity findings for all construction prime contracts by industry without outliers. Disparity was found for African American, Caucasian female, and woman business enterprise prime contractors on formal construction contracts valued between $25,000 and $1,960,000. Minority female prime contractors were underutilized on construction prime contracts valued between $25,000 and $1,960,000, although this underutilization was not statistically significant.



Table 10.4: Disparity Findings, Construction Prime Contracts

Ethnicity/Gender	Construction	
	Contracts Valued at $25,000 and under	Contracts Valued between $25,000 and $1,960,000
African Americans	No Disparity	*Disparity*
Asian Americans	Insufficient Data	No Disparity
Hispanic Americans	No Disparity	No Disparity
Native Americans	Insufficient Data	Insufficient Data
Caucasian Females	No Disparity	*Disparity*
Minority Females	No Disparity	Underutilization
Minority Business Enterprises	No Disparity	No Disparity
Woman Business Enterprises	No Disparity	*Disparity*

4. Architecture and Engineering Prime Contract Disparity Findings

Table 10.5 shows the disparity findings for all architecture and engineering prime contracts. There was not enough data to conduct a meaningful statistical analysis of architecture and engineering contracts valued at $25,000 and under. Disparity was found for African American, Hispanic American, minority female, minority business enterprise, and woman business enterprise prime contractors on architecture and engineering contracts valued between $25,000 and $850,000. Caucasian female prime contractors were underutilized on architecture and engineering prime contracts valued between $25,000 and $850,000, although this underutilization was not statistically significant.



Table 10.5: Disparity Summary: Architecture and Engineering Prime Contracts

Ethnicity/Gender	Architecture and Engineering	
	Contracts Valued at $25,000 and under	Contracts Valued between $25,000 and $850,000
African Americans	There were too few contracts and dollars to conduct a statistical analysis.	*Disparity*
Asian Americans		No Disparity
Hispanic Americans		*Disparity*
Native Americans		Insufficient Data
Caucasian Females		Underutilization
Minority Females		*Disparity*
Minority Business Enterprises		*Disparity*
Woman Business Enterprises		*Disparity*

5. Professional and Other Services Prime Contract Disparity Findings

Table 10.6 shows the disparity findings for all professional and other services prime contracts. There was not enough data to conduct a statistical analysis for professional and other services contracts valued at $25,000 and under. Disparity was found for African American, Hispanic American, minority female, minority business enterprise, and woman business enterprise prime contractors on professional and other services contracts valued between $25,000 and $2,570,000. Caucasian female prime contractors were underutilized on professional and other services contracts valued between $25,000 and $2,570,000, although this underutilization was not statistically significant.

Table 10.6: Disparity Summary: Professional and Other Services Prime Contracts

Ethnicity/Gender	Professional and Other Services	
	Contracts Valued at $25,000 and under	Contracts Valued between $25,000 and $2,570,000
African Americans	There were too few contracts and dollars to conduct a meaningful analysis.	*Disparity*
Asian Americans		No Disparity
Hispanic Americans		*Disparity*
Native Americans		Insufficient Data
Caucasian Females		Underutilization
Minority Females		*Disparity*
Minority Business Enterprises		*Disparity*
Woman Business Enterprises		*Disparity*

6. Goods and Services Contract Disparity Findings

Table 10.7 shows the disparity findings for all goods and services prime contracts. Disparity was found for African American, Hispanic American, minority female, minority business enterprise, and woman business enterprise prime contractors on goods and services contracts valued at $25,000 and under, and between $25,000 and $1,740,000. Caucasian female prime contractors were underutilized on goods and services contracts valued between $25,000 and $1,740,000, although this underutilization was not statistically significant.



Table 10.7: Disparity Summary: Goods and Services Prime Contracts

Ethnicity/Gender	Goods and Services	
	Contracts Valued at $25,000 and under	Contracts Valued between $25,000 and $1,740,000
African Americans	*Disparity*	*Disparity*
Asian Americans	No Disparity	No Disparity
Hispanic Americans	*Disparity*	*Disparity*
Native Americans	Insufficient Data	Insufficient Data
Caucasian Females	No Disparity	Underutilization
Minority Females	*Disparity*	*Disparity*
Minority Business Enterprises	*Disparity*	*Disparity*
Woman Business Enterprises	*Disparity*	*Disparity*

7. Subcontract Disparity Findings

Table 10.8 presents the disparity summary for construction and architecture and engineering subcontracts. There were too few professional and other services subcontracts to perform a test of statistical significance for Native Americans. In the award of construction subcontracts, disparity was found for African American, Asian American, Hispanic American, minority female, minority business enterprise, and woman business enterprise subcontractors. In the award of architecture and engineering subcontracts, disparity was found for African American, minority female, and woman business enterprise subcontractors. Caucasian female construction and architecture and engineering subcontractors were underutilized although the underutilization was not statistically significant. African Americans, Hispanic Americans, and Caucasian females were underutilized on professional and other services subcontracts, but there were too few contracts identified to assess the statistical significance of the disparity.



Table 10.8: Subcontract Disparity Findings

Ethnicity/Gender	Construction	Architecture and Engineering	Professional and Other Services
African Americans	*Disparity*	*Disparity*	There were too few contracts to conduct a meaningful analysis.
Asian-Americans	*Disparity*	No Disparity	
Hispanic Americans	*Disparity*	No Disparity	
Native Americans	Insufficient Data	Insufficient Data	
Caucasian Females	Underutilization	Underutilization	
Minority Females	*Disparity*	*Disparity*	
Minority Business Enterprises	*Disparity*	No Disparity	
Woman Business Enterprises	*Disparity*	*Disparity*	

The subcontractor selection, in each industry, is the decision of the prime contractor. *Croson* defined subcontractor disparity as passive discrimination in contrast to prime contractor disparity defined as active discrimination. It is also the government's responsibility to ensure its subcontracts are awarded in a fair and unbiased manner. When the procurement process is administered in a fair and equitable manner there should be neither active nor passive discrimination in the award of the government's contracts.

Subcontractor selection during the 2018-2021 study period was controlled by a small group of prime contractors who were awarded most of the prime contracts. This group, which was awarded more than 70% of the prime contract dollars, is described as the highly used prime contractors.

1. Highly Used Prime Contractors

The highly used prime contract analysis identified, by ethnicity and gender, the contractors who received most of the prime contract dollars awarded during the study period and thereby controlled the subcontract awards. During the study period $1,451,755,155 construction prime contract dollars were awarded to 17 highly used prime contractors and $388,957,824 of the architecture

and engineering prime contract dollars were awarded to 18 highly used prime contractors. These 35 prime contractors controlled 70 percent of the contract dollars available for subcontract awards in the two industries.

The County expanded the SBE Program after the 2015 Disparity Study to address the documented discrimination and ensure fair awarding of prime and subcontracts. Despite the program's policies and procedures, there were disparities in the award to certified SBEs and disparities in contracts awarded to M/WBEs have persisted. The 2024 Disparity Study continues to show ethnic and gender disparity in contracts awarded to certified SBEs.

Disparity Analysis of M/WBE Certified-SBEs for the Study Period 2018 to 2023

There were 1,296 certified small businesses in the availability data compiled for the 2024 Study and presented in *Chapter 5: Prime Contractor and Subcontractor Availability Analysis*. The SBE-certified businesses represented 53.73% of the available businesses. An analysis was undertaken to identify any statistically significant disparity in the award of contracts to SBE-certified M/WBEs during the five-year period when the County's comprehensive race-neutral Small Business Program was a procurement and contracting standard. It is notable that during the 2018-2021 study period the statistically significant disparity findings in the County's award of contracts to SBE-certified M/WBEs is similar to the findings for the award of contracts to all available M/WBEs as reported in Chapters 6 and 7 and summarized above in Tables 10.4 to 10.7.

2. Utilization of Certified SBEs on Prime Contracts

As presented in Table 10.9, SBEs represented 53.73% of the available businesses enumerated in *Chapter 5: Prime Contractor and Subcontractor Availability Analysis*. The data shows only 32% of the SBEs received a contract during the study period.

Table 10.9: Utilization of Available SBEs

All Available Businesses	Available SBE Businesses	Percent of SBE Availability	Utilized SBE Businesses	Percent of SBEs Utilized
2,412	1,296	53.73%	419	32%

Table 10.10 compares the utilization of SBEs to non-certified businesses. Prime contracts awarded to certified SBEs in the four industries during the study period account for 2,152, or 54.41% of the total number of prime contracts awarded, but only $579,843,238 or 13.72% of the total prime contract dollars awarded. Since certified SBEs represented 53.73% of the businesses available to contract with the County, the percentage of dollars awarded to certified SBEs was not commensurate with their availability.

Table 10.10: Utilization of Certified SBEs Compared to Non-certified Businesses

SBE Certified Businesses				Non-certified Businesses			
Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
2,152	54.41%	$579,843,238	13.72%	1,803	45.59%	$3,645,998,867	86.28%

3. Small Business Enterprise Utilization by Ethnicity and Gender

The statistical analysis undertaken to determine if minority and woman-owned certified SBEs were used at the level commensurate with their availability revealed a statistically significant disparity for African Americans and underutilization for Caucasian females. The disparity is particularly concerning for African American-owned businesses, as the finding of a statistically significant disparity suggests that this group, which was statistically underutilized in the prime contract disparity analysis reported in Chapter 6, did not receive equitable treatment within the SBE Program. This race and gender-neutral policy was intentionally designed to mitigate the statistically significant disparity documented in the 2015 Study.

Table 10.11 presents the findings by ethnicity and gender from the disparity analysis of all prime contracts awarded during the study period compared to those awarded to SBE-certified businesses. As noted, African Americans had the unique distinction of having a disparity under circumstances where the contracts analyzed included contracts awarded to all businesses and contracts awarded exclusively to SBEs.



Table 10.11: Disparity Findings: All Prime Contracts Compared to Contracts Awarded to SBEs

Ethnicity/Gender	All Prime Contracts Awarded	Prime Contracts Only Awarded to SBEs
African Americans	*Disparity*	*Disparity*
Asian Americans	*Disparity*	No Disparity
Hispanic Americans	*Disparity*	No Disparity
Native Americans	Insufficient Data	Insufficient Data
Caucasian Females	*Disparity*	Underutilized
Minority Females	*Disparity*	No Disparity
Minority Business Enterprises	*Disparity*	No Disparity
Woman Business Enterprises	*Disparity*	No Disparity

The data documents the SBE Program did not achieve parity in the award of contracts to SBE-certified M/WBEs. Table 10.12 shows that African American prime contractors represent 14.97% of the certified SBEs but received 6.63%, or $38,442,873 of the total dollars awarded to SBEs. Caucasian female prime contractors represent 5.48% of the SBE-certified businesses but received 3.53%, or $20,455,729 of the total prime contract dollars awarded to SBEs.

The underutilization of African American-certified SBEs is at a statistically significant level, denoted as $p < .05$ in the table below. This finding is yet another example of the disparity African American businesses experienced in doing business with the County. Woman-owned businesses were underutilized, although the underutilization is not statistically significant.



Table 10.12: SBE Disparity Analysis by Ethnicity and Gender

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	$38,442,873	6.63%	14.97%	$86,797,522	-$48,354,649	0.44	< .05 *
Asian Americans	$21,876,486	3.77%	2.16%	$12,527,477	$9,349,009	1.75	**
Hispanic Americans	$435,669,522	75.14%	61.27%	$355,243,465	$80,426,057	1.23	**
Native Americans	$0	0.00%	0.00%	$0	$0	----	----
Caucasian Females	$20,455,729	3.53%	5.48%	$31,766,103	-$11,310,374	0.64	not significant
Non-minority Males	$63,398,628	10.93%	16.13%	$93,508,670	-$30,110,043	0.68	**
TOTAL	$579,843,238	100.00%	100.00%	$579,843,238			
Minority and Gender	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Females	$131,574,718	22.69%	18.52%	$107,378,377	$24,196,341	1.23	**
Minority Males	$364,414,163	62.85%	59.88%	$347,190,087	$17,224,077	1.05	**
Minority and Females	**Actual Dollars**	**Utilization**	**Availability**	**Expected Dollars**	**Dollars Lost**	**Disp. Ratio**	**P-Value**
Minority Business Enterprises	$495,988,881	85.54%	78.40%	$454,568,464	$41,420,417	1.09	**
Woman Business Enterprises	$152,030,447	26.22%	24.00%	$139,144,481	$12,885,966	1.09	**

This pattern of disparity in the utilization of M/WBEs within the SBE Program is not only documented in the 2024 Disparity Study but is also present in the 2015 Disparity Study.

4. M/WBE Disparity Analysis Findings in the 2015 Disparity Study

The County's two disparity studies analyzed the utilization of minority and woman-owned businesses as prime contractors and subcontractors for nearly two decades. The study period for the 2015 Disparity Study was from 2007 to 2011 and the current study spans the years 2018 to 2023. While these studies both produced statistical findings of prime contract and subcontract disparity there were three groups, African Americans, Hispanic American and Woman-owned businesses with documented statistical disparity in both study periods.

The 2015 Study documented a statistically significant disparity in all prime contracts awarded in each of the four industries studied. The disparity was present even though most County contracts awarded during that study period were under $100,000. In fact, 70.47 percent of all contracts were under $50,000 and 78.53 percent were under $100,000. Table 10.13 depicts the disparity findings for each ethnic and gender group in the 2015 Study. The findings from the 2024 Study suggest the County's aggressive Small Business Program did not correct the disparity in the award of prime contracts for all groups.

5. Prime Disparity Findings

Table 10.13 depicts the prime contract disparity findings for the study period 2007 to 2011.



Table 10.13: All Industries Prime Contract Dollars, 2007 to 2011

Ethnicity/Gender	All Industries	
	All Contracts	Contracts under $250,000
African Americans	Disparity	Disparity
Asian Americans	Disparity	Disparity
Hispanic Americans	Disparity	Disparity
Native Americans	----	----
Women Business Enterprises	Disparity	Disparity

(----) denotes an underutilized group with too few available firms to test statistical significance.

6. Subcontract Disparity Findings

The construction subcontractor disparity findings in the 2015 Study documented an underutilization for all ethnic groups and a disparity for African American and Hispanic Americans. Women-owned businesses were also underutilized. Construction, however, was the only subcontractor data available for analysis in the 2015 Study, despite the extensive effort undertaken to reconstruct the other industry data. The construction disparity findings are depicted in Table 10.14. The findings from the 2015 Study also documented statistically significant underutilization of African Americans and woman-owned subcontractors on the construction prime contracts.

Table 10.14: Construction Subcontract Disparity

Ethnicity/Gender	Construction
African Americans	*Disparity*
Asian-Americans	Insufficient Data
Hispanic Americans	*Disparity*
Native Americans	Insufficient Data
Women Businesses Enterprises	**

(**) denotes that this study does not test statistically the overutilization of minority or gender groups.

7. Pattern of Discrimination from 2007 to 2023

The evidence from the two studies strongly indicates that the disparity documented in the 2015 Study during the period 2007 to 2011 has persisted for nearly two decades. Table 10.15 compares the prime disparity findings for the two study periods.

Table 10.15: Prime Disparity Findings from 2015 and 2024

Ethnicity/Gender	All Prime Contracts	
	2015	2024
African Americans	*Disparity*	*Disparity*
Asian- Americans	*Disparity*	No Disparity
Hispanic Americans	*Disparity*	*Disparity*
Native Americans	Insufficient Data	Insufficient Data
Caucasian Females	Not Studied	*Disparity*
Minority Females	Not Studied	*Disparity*
Minority Business Enterprises	Not Studied	*Disparity*
Women Business Enterprises	*Disparity*	*Disparity*

These significant conditions, institutionalized over this extensive time period, suggests that the current pattern of discrimination is supported by longstanding institutional policies and practices maintained by structural conditions evident in the County's procurement and contracting practices, as well as its small group of highly used prime contractors. The statistical evidence provides a statistical predicate for the County to legally address both its active and passive participant in the discrimination.

8. Economic Impact of Two Decades of Discrimination

The structural racism has not only had a profound impact on the contracting practices of the County and its prime contractors for nearly two decades, but it has also had a measurable economic impact on the underutilized ethnic and gender groups.

Dollars Lost as a Direct Economic Impact

There is a direct economic impact over nearly two decades from the County's failure to award prime contracts to M/WBEs at a level equal to their availability. One measurable economic impact of the County's procurement and contracting decisions, documented in both the 2015 and 2024 disparity studies, are the prime contract and subcontract dollars M/WBEs were expected to receive that were awarded to non-M/WBEs. Table 10.16 illustrates the dollars M/WBEs prime contractors lost when non-M/WBEs received more contracts than expected given their availability.

Table 10.16: Total Prime Contract Dollars Expected from 2007 to 2021

TOTAL DOLLARS NON-MINORITY MALES EXPECTED TO RECEIVE	TOTAL DOLLARS NON-MINORITY MALES RECEIVED
$186,055,252	$338,078,487
TOTAL DOLLARS M/WBEs EXPECTED TO RECEIVE	**TOTAL DOLLARS M/WBEs RECEIVED**
$662,228,923	$510,205,688

Table 10.17 illustrates the prime contract dollars each ethnic and gender group lost during the two five-year periods studied.

Table 10.17: M/WBE Dollars Lost by Ethnicity

ETHNICITY	DOLLARS EXPECTED	DOLLARS AWARDED	DOLLARS LOST
African Americans	$119,207,775	$53,243,009	$65,964,765
Asian Americans	$14,340,183	$22,400,501	-$8,060,317
Hispanic Americans	$482,420,446	$405,158,564	$77,261,882
Native Americans	$629,767	$0	$629,767
Caucasian Females	$45,630,750	$29,403,613	$16,227,137

Each group's lost by industry is illustrated in Table 10.18. The data suggests there was unabated discrimination by the County and its prime contractors for nearly two decades.

Table 10.18: M/WBE Dollars Lost by Industry

M/WBEs DOLLARS LOST BY INDUSTRY	
CONSTRUCTION	
African Americans	$20,375,233
Asian Americans	-$1,852,342
Hispanic Americans	-$21,650,880
Native Americans	$274,952
Caucasian Females	$9,787,122
ARCHITECTURE AND ENGINEERING	
African Americans	$6,366,878
Asian Americans	$749,175
Hispanic Americans	$19,276,129
Native Americans	$0
Caucasian Females	$2,546,658

Although the indirect impact from this loss is not measured in this analysis, the underutilization of these two groups no doubt depressed the rate of African American and business formation and growth.

9. Conclusion

The County's attempt to mitigate the disparity with the implementation of a robust SBE Program failed to address the disparity in the prime and subcontracts awarded over nearly two decades. Not only did the SBE Program fail to eliminate the disparity in the award of both prime and subcontracts to all available businesses, but it also failed to equitably award contracts African American and Woman-owned businesses when the contracting was limited to certified-SBEs.

There is no single socioeconomic factor or combination of factors reported in the research to explain why non-M/WBE businesses SBE certified and non-SBEs are awarded more contracts than expected based on their availability.

What is indicated by the findings and supported by the anecdotal and procurement analysis is a long-standing preference to award most large and small prime and subcontracts to non-minority male owned businesses. A pattern that was revealed in the 2015 Study and has continued to persist in the 2024 Disparity Study.

The cumulative direct and indirect economic impact of nearly two decades of unmitigated systemic discrimination, when defined as contract dollars lost, portrays the staggering cost to these business communities. While the dollars lost cannot be recovered, the procurement policies and practices that created the loss can be corrected so that the damage does not persist.

The County needs to address the persistent and egregious institutional discrimination against M/WBEs with a targeted M/WBE program including prime preferences and discounts and subcontracting goals. The 1989 landmark Supreme Court decision, Croson,[298] allows a local government to enact race-conscious remedies when, as documented in this Study, there is a strong basis in evidence of the ongoing effects of past or present discrimination. Croson held that "where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise."[299]

The County has a compelling interest in implementing a legally sound race-based contracting program given the evidence from two disparity studies and the best effort requirement to use M/WBE certified SBEs has not achieved equity in contracting for either minority or woman owned businesses at the prime contract or the subcontract levels.[300]

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

[299] *Id* at 509.

[300] *Id.*

Specific race and gender recommendations are provided, and it is advised that these be implemented together with race and gender-neutral institutional changes. This approach aims to address the documented systemic and statistically significant disparities at the prime contract level. At the subcontract level, M/WBE goals are recommended to be applied to prime contracts.

Prime Contract Race and Gender-Conscious Remedies

The prime contract remedies should be applied to the ethnic and gender groups with a statistically significant disparity.

10. Apply Bid Discounts to Construction Prime Contracts

Bid discounts for the groups with a statistically significant disparity should be implemented on construction prime contracts awarded based on low bid. A bid discount equal to 10% of the total bid should be applied during the evaluation process to eligible construction prime contractors who are members of the minority groups underutilized at a statistically significant level and the underutilized females. When the bid discount is applied, the bid amount is reduced by the discount for the evaluation only. For the purposes of the award amount, the total bid price should be used. The eligible M/WBE groups are listed in Table 10.18.

Table 10.19: Groups Eligible for Construction Bid Discounts

Ethnicity/Gender
African Americans
Caucasian Females
Asian American Females
Native American Females

11. Apply Bid Discounts to Goods and Services Prime Contracts

Bid discounts for the groups with a statistically significant disparity should be implemented on goods and services prime contracts awarded based on low bid. A bid discount equal to 10% of the total bid should be applied during the evaluation process to eligible goods and services prime contractors who are members of the minority groups underutilized at a statistically significant level and the underutilized females. When the bid discount is applied, the bid amount is reduced by the discount for the evaluation only. For the purposes of the award amount, the total bid price should be used. The eligible M/WBE groups are listed in Table 10.19.



Table 10.20: Groups Eligible for Goods and Services Bid Discounts

Ethnicity/Gender
African Americans
Hispanic Americans
Caucasian Females
Minority Females

12. Apply Evaluation Points to Architecture and Engineering Prime Contracts

Evaluation points for the groups with a statistically significant disparity should be implemented on architecture and engineering prime contracts. Evaluation points equal to 10% of the total points should be applied during the evaluation process to eligible architecture and engineering prime contractors who are members of the minority groups underutilized at a statistically significant level and the underutilized females. The eligible M/WBE groups are listed in Table 10.20.

Table 10.21: Groups Eligible for Architecture and Engineering Evaluation Points

Ethnicity/Gender
African Americans
Hispanic Americans
Caucasian Females
Minority Females

13. Apply Evaluation Points to Professional and Other Services Prime Contracts

Evaluation points for the groups with a statistically significant disparity should be implemented on professional and other services prime contracts. Evaluation points equal to 10% of the total points should be applied during the evaluation process to eligible professional and other services prime contractors who are members of the minority groups underutilized at a statistically significant level and the underutilized females. The eligible M/WBE groups are listed in Table 10.21.

Table 10.22: Groups Eligible for Professional and Other Services Evaluation Points

Ethnicity/Gender
African Americans
Hispanic Americans
Caucasian Females
Minority Females



Subcontract Remedies

The recommended subcontract remedies should mitigate the adverse impact of the discrimination documented in the prime contractors' award of subcontracts to available M/WBEs. The proposed remedies include construction and architecture and engineering subcontract goals.

Construction and architecture and engineering subcontract goals should be limited to the ethnic and gender groups with a statistically significant disparity and to underutilized females based on their availability. Since female groups are subject to a lesser legal standard, their disparity is not subject to the strict scrutiny test of statistical significance.

As depicted in Table 10.22, African Americans, Hispanic Americans, Caucasian Females, Minority Females, WBEs, and MBEs are eligible for subcontract goals in construction. African Americans, Caucasian Females, Minority Females, and MBEs are eligible for subcontract goals in architecture and engineering. While Asian Americans are not eligible as a group, Asian American Females are underutilized in both industries. Similarly, Hispanic American females are underutilized and eligible for subcontract goals in architecture and engineering

Table 10.23: Subcontractor Availability for Groups with Disparity

Ethnic Group	Construction Availability Percentage	Architecture and Engineering Availability Percentage
African Americans	13.61%	13.57%
African American Males	9.08%	-----
African American Females	4.54%	4.65%
Asian Americans	2.39%	-----
Hispanic Americans	57.77%	-----
Hispanic American Males	43.53%	-----
Hispanic American Females	14.24%	14.04%
Caucasian Females	5.29%	5.12%
Minority Females	19.33%	19.31%
Minority Business Enterprises	73.87%	------
Woman Business Enterprises	24.62%	24.43%

(----) denotes ethnic and gender groups that are not eligible for subcontract goals.

A disparity ratio for professional and other services subcontracts was calculated for a number of ethnic and gender groups. However, the statistical significance of the disparity could not be determined because there were too few contracts in the analysis.

There was insufficient professional and other services subcontract data compiled for the analysis despite the extensive research effort undertaken, in cooperation with the County, to identify the professional and other services subcontracts awarded by the prime contractors. The research resulted in only 59 professional and other services subcontracts. Since that number was insufficient to measure the statistical significance of the disparity, the recommendation is to conduct a follow-

up assessment of the professional and other services subcontracts in 12 months after implementing a more rigorous subcontractor data collection process.

The County's solicitation documents should be modified to establish penalties for the failure to report subcontractors. Prime contractors should be required to report all subcontractors specifying their name and award amount before the first invoice payment is released. The additional professional and other services subcontract information, if collected for 12 months, should be sufficient to measure the statistical significance of any documented disparity in the award of these subcontracts. A finding of statistically significant underutilization of minority groups or the underutilization of woman-owned businesses would be sufficient evidence to establish professional and other services subcontracting goals.

M/WBE Policy Recommendations

A comprehensive M/WBE policy with race and gender-specific bid discounts, evaluation points, and subcontract goals, in combination with enhanced race and gender-neutral program components, should eliminate the documented statistically significant disparity at both the prime contract and subcontract levels. The recommended M/WBE policy would augment the scope of services provided by the SBD Office. The SBD Office should be elevated to a department independent of other departments and offices and renamed the Department of Business and Economic Development. The Director should report directly to the Mayor.

14. Expand the SBE Program Manual to Include an M/WBE Component

An M/WBE component should be added to the County's *SBE Program Manual*. The information should describe the program's mission, policy, and procedures. The *SBE Program Manual* should be available to all staff electronically and downloadable from the Department of Business and Economic Development's webpage. The requirements set forth in the *SBE Program Manual* should be standard operating procedures for all departments' compliance with the M/WBE and SBE programs. The *SBE Program Manual* should be incorporated into a new employee orientation.

15. Update the Procurement Policy Manual to Incorporate Provisions of the M/WBE Ordinance

The County Procurement Policy Manual and the *General County Procurement Guidelines* should be updated to comport with the requirements set forth in the new M/WBE ordinance. Modifications to align the two manuals are essential to ensure the integrity of the M/WBE Program.

16. Define M/WBE Eligibility Standards

The County's M/WBE eligibility standards should include the following definitions:

a. Minority-Owned Business Enterprise

The definition of a minority-owned business enterprise (MBE) should be an establishment owned by an individual who is African American, Hispanic American, Asian American, or Native American, as defined by the United States Small Business Administration (SBA). The business must be 51%-owned and controlled by one or more of the eligible minorities.

b. Women-Owned Business Enterprise

The definition of a woman-owned business enterprise (WBE) is an establishment owned and controlled by one or more females. The business must be 51%-owned and controlled by one or more women.

c. Business Location

The M/WBE should be headquartered in Miami-Dade County. The headquarters must be its principal place of business. The business should be in operation for at least six months prior to applying for certification and hold a valid business license issued by the government in the County.

17. Establish Race and Gender-specific Prime Contract Remedies

The following race and gender-specific remedies should be established to remedy the statistically significant disparity documented in the Study.

a. Bid Discounts on Construction and Goods and Services Prime Contracts

Bid discounts, as recommended above, should apply to eligible M/WBEs on construction and goods and services prime contract bids.

b. Evaluation Points on Architecture and Engineering and Professional and Other Services Prime Contracts

Evaluation points, as recommended above, should apply to eligible M/WBEs when calculating the evaluators' scores during the review of proposals for architecture and engineering and professional and other services prime contracts.

c. Subcontracting Goals on Construction and Architecture and Engineering Prime Contracts

Subcontractor goals should be set for all formal construction and architecture and engineering prime contracts for eligible M/WBEs.



18. Evaluate Subcontract Goal Attainment at Bid Opening

The subcontract goal commitments should be submitted at bid opening. Prime contractors who fail to meet the M/WBE goal at bid opening must document that a good faith effort was made to meet the published goal to be considered for the award. The good faith effort criteria is required to satisfy the legal standard that allows for flexibility and consideration of mitigating circumstances in evaluating the contractor's efforts to meet the goals. The quantifiable good faith effort criteria should be included in the solicitation.

19. Quantify Good Faith Effort Criteria

A good faith effort program is a provision required by law to reduce the risk of harm to third parties caused when M/WBEs are not available to perform the solicited subcontract work. It allows prime businesses that do not meet the goal to be granted a goal waiver in the event the specific level of effort has been made to secure the MBE and WBE subcontractors to meet the goal.

The good faith effort documentation should be reviewed and evaluated by the Department of Business and Economic Development. The Department should evaluate the availability of M/WBEs and the conduct of the prime contractor to achieve the M/WBE goal before granting a waiver. The prime contractors' efforts to meet the goal should be evaluated to ensure that they are not *pro forma* but calculated to achieve the M/WBE participation goal. The Department's good faith efforts determination should be final.

A maximum score for good faith effort is 100 points. A prime contractor should achieve a minimum score of 80 points to demonstrate a bona fide good faith effort. In the event the prime contractor is unable to meet the subcontracting goal, a good faith effort waiver form with an explanation of the efforts undertaken to meet the goal should be submitted. If the determination is made that a good faith effort was not undertaken, the prime contractor should be deemed non-responsive and disqualified from competition, and the goal attainment of the next lowest-ranked bid should be reviewed. The good faith effort elements and recommended point assignments are:

a. Advertise Solicitation (5 points)

Effort: Prime contractors should advertise opportunities for M/WBEs at least two weeks prior to bid opening through reasonable means, such as attendance at pre-bid meetings, media placement, and written notices. Contractors should be required to publish these opportunities in the general circulation media, minority-focused media, or trade-related publications at least two times unless the County waives this requirement due to time constraints.

Documentation: The advertisement shall include the name and location of the project, the location where plans and specifications can be viewed, the subcontractor proposal due date, and items of work or specialties being solicited.



b. Outreach to Identify M/WBEs (15 points)

Effort: Prime contractors should contact M/WBEs through personal, frequent, and persistent communication. The contractor is required to return telephone calls and emails promptly.

Documentation: Prime contractors should provide a list of the names of the organizations or businesses, persons contacted, and dates of contact. They should also include copies of correspondence received from any organization or business responding to the bidder's solicitation or initiating contact for the purpose of seeking subcontracting work. The contractor must contact at least three businesses or an amount sufficient to reasonably result in a viable subcontract.

c. Attend the Pre-bid Meeting (5 points)

Effort: Pre-bid meeting attendance should be mandatory to comply with the good faith effort requirement if a pre-bid meeting is held.

Documentation: The name of the prime contractor and its representative should appear on the pre-bid meeting sign-in sheet. The representative's presence at the pre-bid meeting shall serve as documentation.

d. Provide Timely Written Notification (30 points)

Effort: Prime contractors should solicit subcontract bids and material quotes from relevant eligible businesses in writing at least two weeks prior to bid opening. Relevant businesses are those that could feasibly provide the services or supplies required for completing the scope of services provided in the bid document. In soliciting bids, quotes, and proposals, the contractor will furnish the following information:

- Contractor's name, address, and telephone number.
- Project location and description.
- Solicited items of work to be subcontracted or materials purchased, including a specific description of the work involved.
- Placement of bid documents, plans, and specifications in a convenient location where they can be reviewed.
- Date and time when bids must be received by the contractor.

Documentation: Written notification must include verification of transmission date. Such verification may include copies of mail delivery receipts or emails.

e. Follow-up with Subcontractors (10 points)

Effort: Prime contractors should promptly return telephone calls and electronic communication after the initial solicitation at least two weeks prior to bid opening. The follow-up should take the form of a telephone call, facsimile, or email during regular business hours. Such contact should be

within a reasonable amount of time to allow the prospective subcontractor an opportunity to submit a competitive sub-bid.

Documentation: The list of subcontractors who were contacted, including the results of that contact, should be documented in a telephone log, email print-out, automated facsimile journal, or facsimile transmittal document. Included should be names of the eligible businesses, telephone numbers, contact persons, and dates of contact.

f. Identify Items of Work (10 points)

Effort: Prime contractors should solicit subcontracts for discrete scopes of work or packages that market area M/WBEs may find economically feasible to perform. Smaller portions of work or other assistance that could reasonably be expected to produce a level of participation sufficient to meet the goals should be offered to eligible subcontractors. Prime contractors should not deny a subcontract to a qualified and competitive M/WBE solely because the M/WBE cannot perform the entire package unless unbundling would jeopardize scheduling or increase costs by more than 5%.

Documentation: Prime contractors should submit a list of the specific items of work solicited, including identification of eligible businesses from whom the work was solicited.

g. Negotiate in Good Faith (15 points)

Effort: Prime contractors should negotiate fairly with interested M/WBEs, even if the selection of the M/WBE would increase costs. A contractor should not unjustifiably reject sub-bids, quotes, or proposals prepared by eligible businesses.

Documentation: Provide written documentation of the names, addresses, and telephone numbers of subcontractors contacted to negotiate prices or services. Include dates of the negotiations and the results, including the bid amount. Document the bids, quotes, and proposals received from eligible businesses. Lack of qualifications or price difference of 5% or more will be considered just cause for rejecting bids from eligible M/WBEs. Proof of price differential must be made available to the County.

h. Offer Assistance to Secure Financing, Bonding, Insurance, or Mentoring (10 points)

Effort: Prime contractors should provide M/WBEs with technical assistance with plans, specifications, and contract requirements in a timely manner to respond to a solicitation. In addition, the contractor should also advise and make efforts to assist interested businesses in obtaining bonds, lines of credit, or the required insurance, where applicable. A prime contractor may also receive ten points for a good faith effort by offering mentoring assistance.



Documentation: The prime contractor should provide written comments about the type of assistance offered. The contractor shall provide the name, contact person, and telephone number of the bonding company or financial institution helping.

To claim points for mentoring, the prime contractor must submit a mentoring plan subject to the County's approval for the eligible businesses included as a subcontractor for the project. The mentoring plan objectives should enhance the protégé's capability to bid on projects as a prime contractor and offer new skills in estimating projects, completing project schedules, hiring subcontractors, acquiring additional licenses or certification, accessing capital, and increasing bonding capacity. An endorsement from the protégé agreeing to the mentoring plan should be included with the submittal.

20. Verify Commercially Useful Function

The County's determination that each certified business listed in the bid and proposal can perform a commercially useful function should be made at the time of bid opening as a condition of goal attainment. Services assigned to the M/WBE subcontractor should be considered useful if they were provided in the normal course of conducting business or trade activities. The subcontractor must perform a distinct element of work and possess the skill and expertise, as well as responsibility for managing and supervising the work. The items of work should be related to the services listed in the business' certification profile.

The responsibility for demonstrating that the listed M/WBEs can perform a commercially useful function is the sole responsibility of the prime contractor. The commercially useful function requirement should apply to all procurement activity, including substitutions, change orders, and task orders. A business that performs a commercially useful function minimally does the following:

- Executes a distinct element of the contract scope of work.
- Carries out its obligations by performing, managing, and supervising the assigned work involved and, in the case of a supplier, warehousing its materials, supplies, and equipment.
- Performs work that is part of normal business practice for its industry.
- Completes its scope of work and does not further subcontract portions of the work greater than expected to be subcontracted by normal industry standards.

21. Require a Subcontractor Utilization Plan with Bids and Proposals

All prime contractors should provide a subcontractor utilization plan with their bids and proposals. The plan should list all subcontractors to be used on the contract with their names, addresses, and award amounts. Bid documents and proposals should require *all subcontractors*, certified or not, to be listed. Compliance with this requirement should be considered a measure of a responsible bidder. Bidders who do not plan to use non-M/WBE subcontractors should sign an affidavit to that effect and commit to recording the names of all subcontractors selected during the contract period, if applicable, in the tracking system when payment is issued.

22. Require Approval to Substitute Listed M/WBE Subcontractors

Subcontractors used to meet the subcontracting goal should perform the work listed in the bid or proposal unless the County approves a substitution. Prime contractors should be required to submit a signed Letter of Intent to Subcontract for every subcontractor listed to meet the goal. Except in

circumstances determined by the County that justify the unapproved substitution, contractors who do not use the listed M/WBE subcontractors and fail to secure an approved substitution should not receive payment for self-performance or having another contractor perform the listed M/WBE's work.

Due process should be afforded to the subcontractor when the prime contractor notifies the County in writing of its request for substitution. Standards for subcontractor substitution should be included in each solicitation, prime contract, and subcontract. The standard should require the prime contractor to provide the reason for the substitution in its written request to substitute a listed subcontractor.

A written request for substitution should be submitted to the Department of Business and Economic Development and the user department. The subcontractor should also be copied on the request. The subcontractor should be afforded a hearing to present its written or oral statement of the facts. The County should hold the hearing within 48 hours of receiving the request for substitution. Prior to the hearing, the Director of the Department of Business and Economic Development should endeavor to mediate the dispute. The decision reached by the project manager and the Department of Business and Economic Development should be final and binding.

If the substitution is granted, the substituted M/WBE should be replaced with another M/WBE and be approved by the Department of Business and Economic Development. In the event the prime contractor's request for subcontractor substitution is denied, the prime contractor must reinstate the subcontractor and ensure the subcontractor is allowed to perform the percentage of the subcontract that is equal to or greater than the amount listed in the prime contract. Contractors who fail to secure an approved substitution should not receive reimbursement for self-performance or having another contractor perform any of the listed M/WBEs' work.

23. Assess Penalties for Failure to Achieve M/WBE Subcontract Goals during the Contract

Compliance reviews should occur throughout the term of the contract to ensure that the M/WBEs listed to perform the subcontract work are utilized unless a substitution is approved. Failure to meet the M/WBE goals should constitute a material breach of contract. The penalty should equal the M/WBE goal shortfall and be consistent with other penalties for breach of contract. Liquidated damages should be assessed during the project close-out and deducted from the prime contractor's final payment.

24. Require Diversity on the Proposal Evaluation Committees

The Department of Business and Economic Development should have a voting member on each evaluation committee. To avoid the potential of preferential treatment, staff serving as technical evaluators should be rotated quarterly to ensure that the same personnel do not sit on each panel. Priority should be given to the selection of technical evaluators from cross-functional departments and from various ethnic and gender backgrounds to ensure diversity of professional perspectives as well as ethnicity and gender.

25. Establish M/WBE Certification Program

The certification review process should include both a desk audit and a site visit. The review should be conducted in a timely manner in accordance with a published schedule. Incomplete applications should be flagged within seven days of receipt and returned. The desk audit and site visit should be performed within 30 days. The decision should be issued within 60 days of receipt of a complete application. Expedited certification should be available in the event the applicant is bidding on a contract.

For the benefit of the available market area businesses, the County should consider conforming its certification application to the structure of the Florida Office of Supplier Diversity's application. This modification would minimize the cost for a market area business to complete both the State of Florida and Miami-Dade County certifications.

The certification programs currently managed by the SBD Office should be expanded to include criteria to certify M/WBEs.

Training tools should be customized to standardize the process and the requirements for certification. The training material should identify and explain common errors in the application review process. Social media tools should be employed to simplify and disseminate the message. A YouTube® video should be prepared as a tutorial explaining the certification process.

26. Implement Routine Training for Certification Staff

Continuous education for certification analysts should be provided to ensure that certification standards are uniformly applied during both the desk audit and site visit. Formal and regular professional training should be available for staff members responsible for conducting the certifications. Training should ensure analysts are consistent in the decisions made in the application review process and can also equip them to detect fraudulent activity, which is ever-changing and often elusive.

IV. Race and Gender-Neutral Recommendations

The following are race and gender-neutral recommendations to improve procurement policies and practices and diversify the pool of companies doing business with the County.

Race and Gender-Neutral Program Enhancements

1. Create a Very Small Business Eligibility Standard



The SBE program is race-neutral, with eligibility criteria based on the size and residency of the business. Allowing businesses to compete with similarly situated businesses would afford smaller businesses the opportunity to perform as prime contractors. A very small business size category supports smaller businesses.

The size threshold defined by the lower quartile of the businesses within the County could define a very small business. According to AtoZdatabases.com, a division of Database USA, about 26% of all businesses in Miami Dade County had gross annual incomes under $1 million during the study period. This revenue is roughly 10% less than the national average business revenue profile. Table 10.19 shows that more than 62% of the businesses in Miami-Dade County in the four industries included in the Study have an annual revenue of less than $2.5 million.

The County should consider setting the very small business threshold at $1 million. This threshold would align with the profile of businesses in the market area.

Table 10.24: Business Profile by Annual Revenue

Annual Revenue	United States	Florida	Miami-Dade County
Up to $500,000	17.65%	15.49%	10.55%
$500,000-$999,999	20.35%	19.27%	15.69%
$1,000,000-$2,499,999	31.38%	34.98%	36.62%
$2,500,000-$4,999,999	14.23%	15.00%	18.26%
$5,000,000-$10,000,000	6.05%	6.16%	6.70%
Over $10,000,000	3.64%	3.19%	3.99%

2. Conduct Outreach to Announce Program Modifications

Develop and implement an outreach campaign for M/WBE and non-M/WBE County businesses to launch the new program requirements. The outreach campaign should utilize technical assistance and be coordinated with professional organizations to maximize outreach. The campaign should be broad-based to reach County-based businesses that work as either prime contractors or subcontractors.

3. Establish a Service-Disabled Veteran-Owned Business Program

The following recommendations are presented to enhance the Service-Disabled Veteran-Owned Business (SDVOB) program and establish goals for the utilization of SDVOBs as both subcontractors and prime contractors. The recommendations also propose accountability and reporting measures to ensure the program's integrity:

- Initiate a campaign to increase the number of County-based certified SDVOBs.
- Recruit certification applications from County-based SDVOBs certified with the United States SBA to augment the number of Miami-Dade County SDVOB businesses in the Florida State Service-Disabled Veteran-Owned Business Directory.
- Mandate SDVOB goals on all solicitations for construction, architecture and engineering, and professional and other services solicitations.
- Require goal attainment as a condition of a responsive and responsible bid.
- Track and monitor compliance on all prime contracts and subcontracts.

- Require departments to publish a list of contracts set aside for SDVOBs semi-annually.
- Report SDVOB participation quarterly by ethnicity, gender, and department.

4. Reevaluate the Use of Bundled Contracts

Large multi-year contracts that bundle small projects can create unintentional barriers to the utilization of M/WBEs as prime contractors and subcontractors. When the multi-year contract is used to procure services for construction, architecture and engineering, professional and other services, or goods and services, the requirements set forth in the solicitation frequently do not align with the size of projects/work orders/task orders awarded under the agreement. Solicitations for multi-year contracts generally require significant capacity to be competitive, and they are customarily awarded to large businesses. However, the actual purchase orders, work orders, and task orders issued under multi-year contracts are often relatively small.

A deliberate effort to unbundle multi-year prime contracts should be undertaken to achieve a more diverse pool of prime contractors. To create more procurement opportunities for small businesses, consider removing the small projects that are under the informal threshold from the large multi-year contracts. It would also be feasible to align the capacity requirements of multi-year contracts with the size of the purchase orders, work orders, and task orders issued under the agreements and not align them with the aggregate value of task orders.

Multi-year contracts should not be extended over multiple years through change orders or amendments unless the modification is required to complete the scope of work specified in the original contract. Services with new specifications or additional work with the same requirements should be solicited as a new contract.

When multi-year contracts are used to procure services for construction, architecture and engineering, professional and other services, and goods and services, there should be at least two types of contracts. One should be the agreement that bundles multiple small contracts, and the qualifications required should be commensurate with the size of the average contract. The current qualifications standard should be used only when the agreement bundles large contracts.

5. Broaden the Solicitation Notification Criteria

Enhanced outreach efforts to certified businesses should improve access to contracting opportunities and increase the number and the type of businesses bidding on County contracts. Notice should be mailed to relevant certified businesses. The notices should be posted on a regular schedule at the same time or at least the same day each week. A copy of the notice should be provided to the Department of Business and Economic Development.



The published notices should also be distributed to minority media, professional and trade organizations, and certified businesses. The trade publications list should be expanded to include small, veteran, minority, and women-focused periodicals and newspapers to target minority, woman-owned, and service-disabled veteran-owned businesses.

6. Develop a Contract Opportunities Forecast

Annually, the County should publish a six to twelve-month contract opportunity forecast. The forecast should identify contract opportunities anticipated to be advertised. This forecast should be distributed electronically to certified businesses and trade associations and published on the County's website. The publication date should be the same month each year.

7. Analyze Projects for Opportunities to Meet Program Goals

The Department of Business and Economic Development should participate in pre-solicitation planning and design review meetings with all departments to support establishing goals and identify opportunities for unbundling larger contracts into smaller solicitations. Minimally, meetings should be held quarterly with the departments to review upcoming projects and identify the scope of work and technical requirements. The review should also determine items of work that could be subcontracted. This information should be used to inform the business community about the potential opportunities and encourage the M/WBEs, SBEs, and SDVOBs to get certified.

8. Review the Qualification Based Evaluation Panel Selection Process

The evaluation panel members for qualification based procurement should be accountable for their scores. Transparency is a good public policy and best practice. The panel members should be required to sign their evaluation form. A summary of the panel members' evaluation scores should be published when the Intent to Award is issued. Proposers should have access to the evaluation forms promptly, subject to the freedom of information Law (FOIL), so they may assess their performance and engage in protest procedures, if necessary. Also, providing such information upon demand allows unsuccessful bidders to improve their bids on future County procurements.

9. Provide Debriefing Sessions for Unsuccessful Bidders

The County should have formal procedures to debrief unsuccessful bidders and proposers. Debriefing sessions should be made available to any unsuccessful business. This option should be published on the County's website and included in the Notice of Intent to Award, which should be sent to unsuccessful respondents prior to the contract award. The proposal, statement of qualifications, and the business' bid recommended for award should be available upon written request after the contract is awarded.

The evaluation committee's evaluation report and individual scores should be provided upon request. The availability of this information should be published in the solicitation and the Notice of Intent to Award. The project manager and a representative from the Department of Business and Economic Development should participate in the debriefing sessions.



10. Publish Prime Contractor Payments

Prime contractor payments should be posted on the County's website to allow prime contractors and subcontractors to track payment of the prime contractors' invoices. Payment status reports

should be updated on the County's website weekly or bi-weekly on the same day of the week. The reported prime contract payment information should be searchable by contract number, project name, and prime contractor name. An automatic payment notification system should issue an email to inform the prime contractor and its subcontractor(s) when the invoice payment is issued.

Published payment information would enable subcontractors to track disbursements to their prime contractors in real-time, thereby eliminating the subcontractor's need to ask the County project manager for the status of its prime contractor's invoice payment. This information would also allow prime contractors to receive real-time status of their payments, thus eliminating their need to inquire directly to the County about payment. Timely access to prime contract payment status would eliminate staff time needed to respond to inquiries from both the prime contractor and subcontractor about the status of the prime contractor's payment.

11. Apply a Diversity, Equity, and Inclusion Lens to the Procurement and Contracting Process

The County should apply a Diversity, Equity, and Inclusion (DEI) lens to assess the barriers to equity in the award of prime contracts and subcontracts. The assessment would consider the standards used in procurement decisions to award, pay, and modify a contract. The application of the DEI lens would require a review of the ethnicity and gender of the entire County's workforce and aspects of the procurement or contracting process that allow for subjectivity.

The workforce analysis should quantify the race and gender of the incumbent workforce by the department and the recruitment, hiring, promotion, firing, and professional development of the staff in each department. The DEI lens should also be applied to the prime contractor selection process by reviewing the project planning and procurement development phases, which determine the size and scope of a solicitation and impact the number of businesses that can be competitive and the ethnicity and gender of the businesses available to meet the requirements.

The authority and decisions of department managers and their staff when developing project scopes, bid packages, and the solicitation to solicit bids and proposals for contracts should also be assessed through a DEI lens. The project scope, budget, terms, and conditions determine the capacity needed for a business to be competitive. Likewise, the bonding level for construction contracts and qualification for architecture and engineering and professional and other services contracts are determined by the scope of work and specifications in the solicitation.

Large, multi-year contracts and design-build contracts are procurement methods requiring extensive capacity, while cooperative or interagency agreements, which allow the County to accept another government's business selection, have a similar impact on the business owner's race and gender. These procurement processes should also be reviewed with a DEI lens.



12. Publish Program Accomplishments

Promote small businesses, including minority, woman, and service-disabled veteran-owned business programs and their accomplishments, through innovative initiatives, such as recognition programs, annual reports, and newsletters.

Impact of COVID-19 on County Businesses

The attempt to measure the COVID-19 pandemic's impact on the number of available businesses in the County was not fulfilled. When the availability of businesses in the January 1, 2007 to December 31, 2011 study period was compared to the availability documented in the current November 1, 2018 to October 31, 2021 study period, the difference in the number of businesses was less than 600. This analysis did not indicate a significant reduction in the number of available businesses in the County.

Given the complexity of intangible factors that impacted business operations in the County during the pandemic and thereafter, drawing any conclusions about the availability data without a more comprehensive long-term analysis is speculative. Despite the potential impact of COVID-19 on availability, the data could not be used as a predicate because the legal analysis hinges upon whether or not there was active or passive discrimination in the award of contracts by the County.

The County should, however, consider modifying its approach to procurement and contracting given the notable changes in how business is being conducted post-COVID-19. Consideration should be given to modifications in the requirements to disseminate and collect bids and proposals, requirements for on-site in-person meetings, and execution of contract requirements virtually.

Data Management Enhancements

Prime contractors are required to list the certified small businesses they intend to use on each awarded contract in B2Gnow at the time of award. Some subcontract records in B2Gnow did not have either award or payment information because the information was not available at the time the prime contract was awarded or the prime contractor did not respond to the requirement. The analysis of the B2Gnow data also identified instances where prime contractors awarded large contracts did not report any subcontractors. This finding may be due to non-compliance by prime contractors or because the contracts were awarded without a defined scope of work. Prime contractors cannot report the subcontractor award without a defined scope of work.

B2Gnow should be modified to capture the type of contracts awarded to prime contractors. This modification could enhance the data entry form to capture the procurement method under which the contracts were awarded and therefore identify task order contracts awarded without a defined scope of work. The requirement should be to enter the subcontract award at the time the task/work/purchase order is issued. Prime contractors should be required to report subcontractor payments during the course of the contract. Prime contractors who fail to report subcontractor award or payment in B2Gnow should be penalized in accordance with their contract's non-compliance penalty provisions.

V. Legislative Recommendations

Creating an M/WBE Program will require adopting the Study and enacting new legislation with the requirements described herein. In five years, the County should re-examine the effectiveness of its policies. The assessment should determine if the statistical disparity has been eliminated with the application of the M/WBE goals on prime contracts and subcontracts. The elimination of administrative barriers to M/WBE participation to contracting with the County should also be assessed.





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