

CITY OF OAKLAND
OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

2009 SEP 17 PM 7:16

TO: Office of the City Administrator
ATTN: Dan Lindheim, City Administrator
FROM: Department of Contracting and Purchasing
DATE: September 29, 2009

**RE: Action on a Report on the Findings and Recommendations of the
Fairness In Purchasing and Contracting Disparity Study.**

SUMMARY

Mason Tillman Associates, LTD (MTA) submitted a comprehensive set of findings (Volume I) based on the statistical analysis of spending by the City of Oakland compared to the available Oakland business market. The findings suggested disparities in several areas of contracting. Those disparities were reported in a previous report to the Community and Economic Development (CED) Committee. A copy of the Fairness in Purchasing and Contracting Disparity Study Volume I: Executive Summary is provided as *Attachment A*.

As a result of that report, the CED Committee asked staff to conduct public hearings to augment anecdotal data. The results of the public hearings are provided as *Attachment B- Fairness in Purchasing and Contracting Disparity Study – Report on Public Hearings*. *Attachment C* provides the updated anecdotal analysis based on the public hearings. Race Neutral recommendations are provided as a result of the disparities reflected in Volume I and the results of the anecdotal data and public hearings. *Attachment D: the Fairness in Purchasing and Contracting Disparity Study Volume II*, provides a comprehensive breakdown of race neutral recommendations.

The bulk of this agenda report covers the race and gender-neutral recommendations designed to address disparities. Recommendations are provided in detail in the attached full study documents, and generally summarized in this report under five major categories: (1) Program Requirements; (2) Procurement Strategies; (3) Additional Administrative Recommendations; (4) Web-Site Enhancements; and (5) Data Management Recommendations.

FISCAL IMPACT

There may be direct and/or indirect costs associated with some of the recommendations. Staff will return with cost estimates based on Council recommendations and direction.

BACKGROUND/HISTORY

On May 22, 2007, staff submitted Volume I of the Fairness in Purchasing and Contracting Disparity Study to the City Council. The study represented data constructed from Oracle data, city-wide records, surveys and interviews. The study covered the three year period from 2002 to 2005.

Item: _____
CED Committee
September 29, 2009

This data has not passed the 10 year threshold which has been established by results of previous cases challenging disparity study findings. The Volume I disparity study data was separated into four major industries for purposes of the analysis: (a) Construction; (b) Architecture & Engineering; (c) Professional Services; and (d) Goods and Other Services. The previous report included an analysis of findings of disparity by contract thresholds (i.e. \$15,000, \$50,000 and \$500,000), trade category, ethnicity and gender. Due to the scope of Volume I of the study, a general summary of the salient points are provided as *Attachment D – Volume I Executive Summary*. Per findings in this study, disparities were found across ethnicities and for women in various categories especially when combined as Minority/ Women Owned Business Enterprises. The tables below show that “statistically significant disparities were found by “YES” and when not found “No”. The notation “---” represents insufficient records to determine statistical disparity.

Table 1.02 Summary of Disparity Findings for Formal Contracts

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

Table 1.03 Summary of Disparity Findings for Informal Contracts

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

Table 1.04 Summary of Subcontract Disparity Findings

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

In the three tables above, there are noted disparities in *formal* contracts (Table 1.02) for African Americans in Construction and Professional Services, Asian Americans in Professional Services; Hispanic Americans in Goods and Other Services and Women in Construction and Professional Services.

For *informal* contracts (Table 1.03) noted disparities were found for African Americans in construction and professional services; Asian Americans in Architecture and Engineering and Professional Services; Hispanic Americans in Construction, Architectural Engineering, and Goods and Other Services. In Table 1.04 "Summary of Subcontract Disparity Findings" disparities are noted for African Americans in construction; Asian Americans in construction; and Hispanic Americans in construction.

In terms of dollar distribution, it is important to note that \$61,741,570 61, or 25 percent of all dollars were awarded to 12 vendors. Those 12 vendors represent less than a quarter of a percent of all vendors. Table 4.17, Chapter 4, page 4-30 provides a profile of the twelve most highly used prime contractors during the study period. Construction firms represent 9 of the 12, and the other 3 provided Goods & Other Services.

At the end of the May 22, 2007 report, the Community and Economic Development Committee asked that the consultant work with council members to schedule and hold public hearings to augment the anecdotal data supporting the disparity findings. A public hearing report and amended anecdotal results are included as *Attachment B*.

This report specifically covers 'Fairness in Purchasing and Contracting Volume II', race and gender neutral recommendations.

KEY ISSUES AND IMPACTS

Specific to the City's Local and Small Local Program requirements, the following recommendations were discussed: (1) Review Size Standards; (2) Create a Very Small Business Enterprise Category; (3) Goal Setting; (4) Maintaining Subcontractor Participation Levels; (5) Substitution of Listed Subcontractors; (6) Satisfying Non-Compliance Shortfalls; (7) Un-bundle Large Procurements into Smaller Contracts Where Feasible; (8) Small Contract Rotation Program; (9) Compliance Monitoring and Penalties; and (10) Conduct Routine Post Award Contract Compliance Monitoring.

A. PROGRAM REQUIREMENT RECOMMENDATIONS:

Recommendation # 1: Review Size Standards - The size of a business may be defined by a number of factors that are independently established by a certifying entity. Standard industry practices consider at least two basic factors: (a) dollar amounts/dollar thresholds (defined in terms of average gross receipts) and/or (b) workforce size or number of employees.

Item: _____
CED Committee
September 29, 2009

The City of Oakland opted to use the three-year average gross receipts to determine the size of both profit and not-for-profit businesses and elected to use 30% of the Small Business Administration's (SBA) size standards to define the category of small businesses.

SBA size standards are determined by very complex calculations specific to the industry for which dollar thresholds are set.

However, because these industries are viewed nationally, SBA thresholds are significantly larger than markets such as Oakland. Tables 1 and 2 show a sample of (a) Specialty Trades and (b) Professional, Scientific and Technical Services for the 2003 SBA, City size standards and the current 2008 SBA size standards. The last column (**) shows what might be the City's size standard if the most recent (2008) standards were applied.

Table 2 Industry	Current Standards		Updated to 2008 standards	
	2003 SBA	City 30%	2008 SBA	**City 30%
<u>Specialty Trades</u>				
Poured Concrete Foundation and Structure Contractors	\$12.00	\$3.60	\$14.00	\$4.20
Structural Steel and Pre-cast Concrete Contractors	\$12.00	\$3.60	\$14.00	\$4.20
Framing Contractors	\$12.00	\$3.60	\$14.00	\$4.20
Masonry Contractors	\$12.00	\$3.60	\$14.00	\$4.20

Table 3 <u>Professional, Scientific and Technical Services</u>				
Architectural Services	\$4.00	\$1.20	\$4.50	\$1.20
Landscape Architectural Services	\$6.00	\$1.80	\$7.00	\$1.80
Engineering Services	\$4.00	\$1.20	\$4.50	\$1.20

For specialty trades, the 2003 SBA size standard jumped from \$12m to \$13m in 2006 and up to \$14m in 2008.

If the City continues to use SBA size standards, Council must decide to either maintain the use of the old SBA size standards or shift to the updated SBA size standards. If the City shifts to the new size standards, then Council needs to decide if 30% remains sufficient to define small local businesses in the Oakland market.

Mason Tillman Associates, LTD recommends establishing a size standard using the business tax data base. If Council follows this recommendation thresholds will be smaller. This approach is more reflective of the Oakland market because real time data is used.

Recommendation # 2: Create a Very Small Business Enterprise Category - Currently, the City of Oakland certifies “for profit” and “not for profit” businesses under two categories: (a) Local, and (b) Small Local Business Enterprises (L/SLBE). Minimum requirements include operating an Oakland business for 12-consecutive months in the Oakland geographic region, a substantial Oakland business presence and a current Oakland business tax license.

The category of “small” local business enterprise (SLBE) requires satisfying additional conditions including a headquarters in Oakland and a 3-year average for gross receipts that falls under the City’s dollar threshold of 30% of the 2003 SBA size standards.

City Council updated certification policies in Fiscal Year 2003-2004. Since that time, a number of businesses have requested additional certification categories designed for very small, start-up and emerging businesses in Oakland. In addition, businesses asked that the City consider non-traditional business structures such as incubators, virtual offices, manufacturing, home grown multi-generational businesses and re-organizations of long standing historical small local businesses.

Small local Oakland certified businesses rely on the SLBE certification to enter competitive government contracting. SLBE prime contractors also use the certification to meet the minimum requirements. However, occasionally, SLBE prime contractors will use their certification to meet the minimum 20% participation and will sub contract out to all non-local firms. The Public Works Committee suggested capping the amount of participation the SLBE prime can use toward meeting the local participation requirements so that the prime must use additional local certified firms. If council adopts this approach, it will help to include more L/SLBE certified subcontractors.

Throughout the years, very small start-ups and emerging Oakland based businesses have asked that the City consider reducing the 12-month requirement to a six month (or less) requirement. Small and emerging firms may leverage the certification and earn preference points and discounts early on in the developmental stages of their newly created business.

MTA recommends the City add an additional “Very Small Business” certification category.

Recommendation # 3: Goal Setting (Increasing current 20% minimum Requirement to 50% goal) (local business participation) –Prior to 2003, the City operated a 50% goals program that included a “Good Faith Effort (GFE)”option. Good Faith Effort is referred to by some as a way out (for businesses) of meeting participation goals. Others believe it is a way to truly justify why a business cannot meet a goal. At that time, contractors and consultants were required to submit reams of supporting documentation to justify why a goal was not met. GFEs were rarely sufficient to pass muster and were frequently denied by compliance officers.

Item: _____
CED Committee
September 29, 2009

The 50% goal program was dropped along with the option of GFE. The current program operates under a 20% minimum participation requirement.

Staff recommends setting participation requirements (absent GFE) on a project by project basis. It allows a realistic assessment of the potential involvement of the Oakland certified local business market. Project managers, in concert with Compliance Officers, may follow procedures similar to the Disadvantaged Business Enterprise Program (DBE) analysis. In this instance, availability is determined by using a certification data base and the cost of the project by trade (including trucking, materials, and supplies). From that information an estimate can be made in terms of participation potential. Participation requirements may range from zero to 100%. An aggregate annual goal of 50% could be set to measure overall success.

MTA recommends (a) dispensing with the current 20% minimum L/SLBE Program requirement and implementing a to a 50% "goal" program; (b) setting goals on a project by project basis; and (c) using the 50% as the annual aggregate target. This recommendation matches the previous 50% goals program with the flexibility to set goals up or down depending upon scope of work and availability.

Recommendation #4: Maintaining Subcontractor Participation Levels - MTA recommends imposing a penalty (for non-compliance with L/SLBE) equal to the amount that should have been awarded to L/SLBE's if the L/SLBE goal is not achieved.

Recommendation #5: Substitution of Listed Subcontractors – The current five day timeline is only for subcontractors to put the City on notice that they wish to contest the substitution. Over the years, contractors have been able to respond to the five business day turnaround. Typically, the purpose is to resolve the matter as quickly as possible, with the Director of Contracting and Purchasing hearing/reviewing substitution requests.

MTA recommends ten (10) rather than five (5) business days for a subcontractor to respond to a prime contractor's request for a substitution. In addition, MTA recommends hiring certified mediators as Hearing Officers.

Recommendation #6: Satisfying Non-Compliance Shortfalls - Apply monetary penalties and earning credits whereby the prime is assigned the responsibility of earning credits commensurate with the level of non-compliance. The earning of credits can be redeemed by the use of L/SLBEs on non-city funded projects. The portion of the retainage should be equal to the credits that must be earned. This recommendation is similar to a current Council strategy being used in the Apprenticeship Program, where contractors may earn credit for hiring Oakland residents on non-City funded jobs.

Recommendation #7: Un-bundle Large Procurements into Smaller Contracts Where Feasible
While using agencies have unbundled projects in the past, the decision to un-bundle on a more frequent basis must occur during the planning stages and consider for example: (a) multi-project locations; (b) size or complexity of the service; and/or (c) buying options.

MTA recommends breaking down larger projects into smaller contracts to maximize small local business participation.

Recommendation # 8 Implement a Small Contracts Rotation Program –A Small Contracts Rotation Program requires establishing and maintaining a pre-qualified list of local certified businesses from which bids are solicited such that each pre-qualified firm has the opportunity to win a contract. A work order is awarded to the lowest bidder of that group. Pre-qualified businesses would not be eligible to bid and receive a second work order until all others on the list have been offered at least one work order.

MTA suggests that participants graduate from the Small Contracts Rotation Program after 3 successful work orders have been completed, or have been on the list for two years whichever comes first. Non-responsive or non-performing participants will be dropped from the list and will forfeit the privilege of pre-qualification.

Staff strongly supports a contractor rotation program because it will provide more opportunities for qualified small local businesses and provide an expedient approach to satisfying the types of small construction services work needed by city agencies.

As technical support strategies, MTA recommends implementing a “Prompt Two-Week Payment Program.” The City Council has already adopted a prompt payment ordinance that requires a rapid turnaround of approved invoices.

Recommendation #9: Compliance Monitoring– Compliance staff engage in assertive compliance monitoring from the point of assessing compliance with the 20% L/SLBE requirement, living wage, and equal benefits to site visits and project closeouts. Aggressive enforcement is applied for all non-compliances discovered during the life of a project.

Certified payrolls are collected under penalty of perjury through the Labor Compliance Program (LCP Tracker), a web based certified payroll monitoring system. For example, in the case of non-compliance investigations, staff review cancelled checks, conduct on-site interviews and collect back wages for distribution to underpaid workers.

MTA recommends the City implement a tracking and reporting electronic database system.

B. PROCUREMENT AND RACE AND GENDER NEUTRAL STRATEGIES:

Recommendations specific to the “Pre-Bid” process:

Outreach – Certification is one of several outreach strategies. The City certifies L/SLBE profit and not-for-profit businesses. That list of certified firms is used to conduct mailings and on-line notifications to businesses matching the industry code(s) of that solicitation and the industry code for which firms have registered. Staff have joined with area entities such as the Port and Alameda County to offer a shared certification application. We also work with state entities such

as Bay Area Rapid Transit (BART) to encourage Disadvantaged Business Enterprise (DBE) certifications.

“How to Do Business with the City of Oakland” workshops have been conducted in an effort to engage all businesses interested in doing business with the City of Oakland, but find it hard to navigate the internal structures. The most recent workshop was held in August 2009 and workshops are typically held twice per year. All businesses registered on the business tax license data base are invited to participate. Most recently, the City mounted a new on-line vendor registration system “iSupplier” that captures businesses now doing business or wishing to do business with the City of Oakland.

“No-bid contract” (a.k.a., “sole source”) – While there is no official recognition of the term “sole source” in the Oakland Municipal Code (OMC), state or federal law, the term is in popular usage. A sole source contract suggests that there is **only one source** that can provide the good(s) or service(s) needed and any effort to run a competitive process will result in only one resource. Sole source contracts may be negotiated much more quickly than a typical competitive contract but they are often fraught with suspicion that the company used illegal or immoral means to exclude competitors. Sole source contracts are only allowed with City Council authorization to dispense with advertising and bidding or Request for Proposal / Qualifications (RFP/Q). Guidelines for a bid and/or RFP/Q waiver are set forth in the Oakland Municipal Code. Other entities have guidelines for sole source purchases and they are typically strict and inflexible in order to mitigate misuse.

Mandatory Pre-Bid Meetings – Mandatory pre-bid meetings are held for Disadvantaged Business Enterprise (DBE) projects. Aside from DBE projects, mandatory pre-bid meetings are determined on a case by case basis. Factors such as complexity, size and market may be considered in making the determination. Pre-bid meetings require the attendance of all potential bidders. If a business is not able to attend the pre-bid meeting, the opportunity to bid is lost. There are pros and cons to mandatory pre-bid meetings. While they may impact the number of bidders, it tends to work in favor of smaller firms and those new to the City’s system.

MTA proposed the following “Pre-Bid” recommendations: (1) networking opportunities to include “How To Do Business With Oakland” workshops, mandatory pre-bid and pre-proposal meetings, and using KTOP and other local media to target markets; (2) assess the use of sole source contracts and retain City Council approval to include compliance reviews; (3) use direct contracting to award to small contractors; (4) establish a direct (supply) purchase program for construction contracts; (5) revise insurance requirements; and (6) phase subcontractor retainage requirements.

Recommendations specific to the “Pre-Award” process

Compliance Analysis - City Council considers the compliance analysis of construction and professional services contracts prior to approval of a contract award. Currently, compliance

staff conduct compliance analyses for all agenda reports going through the Public Works Agency only. Staff recommends performing the same analysis for consideration by all Council Committees.

Interview Panels - Typically, interview panels are formed upon completion of an evaluation of submittals documents. The panel consists of non-city subject matter experts. Depending on the number of responders and distribution of scores, the top candidates are invited to participate.

Protests - Disputes are managed on a case-by-case basis in accordance with the nature of the complaint. Currently, on average, one to two disputes per year are brought to the attention of the Social Equity Division of the Department of Contracting and Purchasing. The public may obtain copies of all documents leading up to a contract award. Currently, bid protests come to either the Department of Contracting and Purchasing, the using agency, City Administrator or City Attorney. Protests of the professional services processes may occur directly with the using agency.

Preference points - Currently, up to a maximum of 5 points may be awarded for L/SLBE participation. Preference points are in addition to the total points earned for the overall evaluation.

MTA recommends the following Pre-Award strategies: (1) Review bids and proposals for goal attainment; (2) revise interview panel process; (3) implement formal protest procedures; and (4) Professional services contracts – evaluation credits.

Recommendations specific to the “Post-Award” process: The Oakland City Council adopted a “Prompt Payment” policy designed to establish policies and procedures to ensure that local contractors and all subcontractors working on City of Oakland purchase contracts receive prompt payment for undisputed invoices. Payments must be paid within 20 working days or interest penalties accrue.

MTA Recommends the following post-award strategies: (1) pay mobilization to subcontractors; (2) develop an expedited payment program; (3) give five-day notice of invoice disputes; and (4) implement formal dispute resolution standards.

C. ADDITIONAL ADMINISTRATIVE RECOMMENDATIONS

MTA put forward several recommendations specific to day-to-day operations. Those recommendations include, but are not limited to: (1) Evaluating staff compliance with the L/SLBE Program; (2) publish utilization reports; (3) conduct outreach and implement a formal marketing strategy; and (4) increase use of Equal access Program.

D. WEB-SITE ENHANCEMENTS AND DATA MANAGEMENT

In 2007, a new Business Web Site was launched through the then Contract Compliance and Employment Services Division. The web-site was constructed by the Contract Compliance Officer and Department of Information Technology (DIT) staff. The web-site's Phase II portion will create interactive capacity for businesses to manage their own file of City Schedules, forms, applications, etc. Businesses will also be able to access City-wide contracting and purchasing opportunities and join a web based e-noticing service to alert registered firms of all opportunities matching their industry codes.

Information Technology staff are working with the Department of Contracting and Purchasing to mount a new automated procurement contracts system. This system is scheduled to go live in early October.

E. NOT FOR PROFIT FINDINGS

The key findings provided by MTA are summarized below:

1. Housing development organizations received the greatest amount of the City's dollars over any other types of organizations, which was 24.53 percent of all contract dollars awarded to not for-profit organizations.
2. More cultural organizations received City funding than any other type of organization.
3. City funding was concentrated in the Fruitvale and Downtown Oakland Districts and not-for-profit organizations received 68.88 percent of all contract dollars awarded.
4. The majority of the 129 not-for-profit organizations do not target specific race or gender groups, with 83.72 percent of respondents identifying their organizations as serving the general public.
5. The majority of utilized organizations is located in Oakland and has been in operation for more than 10 years.
6. Sixty-one percent (61%) of the 129 survey respondents reported that their organizations had 10 or more paid employees.

The utilized organizations are managed by a diverse group of individuals. The Boards of Directors of 10.85 percent of the utilized organizations were controlled by African Americans, 9.3 percent by Asian Americans, 0.78 percent by Hispanic Americans, 1.55 percent by Native Americans, 15.5 percent by multiple ethnicities, 41 percent by Caucasians, and 20.93 percent by persons of unstated ethnicity. The Boards of Directors of 36.43 percent of the organizations were controlled by females, 51.94 percent by males, and 11.63 percent by persons of unstated gender.

F. PUBLIC HEARINGS:

MTA held public hearings in different locations throughout the City in December 2007 and February 2008. Oakland business owners were afforded the opportunity to provide testimony

on their experiences in both seeking to do business with the City of Oakland and in contracting with the City. In summary, many of the business owners credit L/SLBE programs with maintaining their businesses. A number of business owners also stated that the City's L/SLBE program, as well as other market area agency L/SLBE programs, is valuable for small, women, and minority owned businesses.

Some business owners were unable to compete for public contract work due to lack of financial assistance from local financing institutions. In addition, racial barriers were also reported by some interviewees who believe there are prime contractors that prefer not to work with minority subcontractors.

The majority of the recommendations received from hearing participants centered on strategies to increase the participation of minority and woman-owned businesses on City contracts. *Several interviewees complained of slow payments and the impact of inadequate lead time in preparing responses to opportunities.*

SUSTAINABLE OPPORTUNITIES

Economic: Policies, programs and procedures tailored to the findings will result in increased opportunities for statistically significant underrepresented groups.

Environmental: Staff makes every effort to encourage the use of sustainable and recycled-content materials and technologies whenever possible.

Social Equity: Fair and equitable contracting opportunities will serve to level the competitive field. Underrepresented groups will have more access to the City's public procurement process.

RECOMMENDATION(S)

Staff recommends the following strategies for Council's consideration:

MTA Recommendation(s)

1. Review Size Standards: The City's current size standards reflect 30 percent of the business sizes defined by the U.S. Small Business Administration (SBA). The objective of the size standards is to include City businesses that are indeed small and can benefit the most from participation in the L/SLBE Program. Recently, SBA size standards have increased. MTA recommends that the City periodically review its size standards and tailor them to correspond with the sizes of the City's businesses.

Staff Recommendation(s)

Agree, set size standards according to the size of businesses holding business tax certificates.

MTA Recommendation(s)	Staff Recommendation(s)
<p>2. Create a Very Small Local Business Enterprise (VSLBE) Category: MTA recommends expanding the L/SLBE program to include a Very Small Local Business Enterprise (VSLBE) category with following criteria: 1) gross sales not exceed \$375,000 per year; 2) business domiciled in Oakland for up to six (6) consecutive months; and 3) the business holds a valid Oakland business license. The VSLBE certification will be valid for one year and is renewable for one two-year term. Therefore a small business can be certified as a Very Small Local Business Enterprise for no more than 3 years.</p>	<p>Agree, create very small two-year certification category under \$375,000 per year, housed in Oakland for six (6) consecutive months and holds a valid business tax license.</p>
<p>3. Goal Setting: Given that local business goals in the Oakland market area range from 35 percent to 70 percent, it is recommended that the target overall local business goal be set at 50 percent. A contract-specific goal will be set on each contract based on the availability of local businesses to perform the specific opportunities.</p>	<p>Agree, set contract specific goals with an overall city-wide goal of 50%.</p>
<p>4. Maintaining Subcontractor Participation Levels: Under the L/SLBE Program requirements, the City has the option of imposing penalties on prime contractors that do not maintain L/SLBE participation. MTA recommends imposing a penalty equal to the amount that should have been awarded to L/SLBEs. Penalty fees can be assigned to a small business training fund.</p>	<p>Agree, as an option. In addition include the opportunity to subcontract with certified firms on non-city projects at a rate of twice the dollar value shortfall.</p>
<p>5. Satisfying Non-Compliance Shortfalls: To address a prime contractor's failure to meet their goal at the end of their contract, the City should use monetary penalties and earning credits. The prime contractor is assigned earning credits commensurate with the level of non-compliance. The earnings credit can be redeemed by the use of L/SLBEs on non-City-funded projects. The portion of the retainage equal to the amount of the earnings credits is withheld until the earnings credits are equal to the amount of the earnings credits is withheld until the earnings credits are redeemed. These options should be used by the compliance staff.</p>	<p>Agree, currently applied to 15% Apprenticeship Program.</p>

MTA Recommendation(s)

Staff Recommendation(s)

6. Un-bundle Large Procurements into Smaller Contracts Where Feasible: Bundling occurs when small purchases are consolidated into one contract, or when goods or services previously purchased individually are grouped together in a single solicitation. *The federal government has made contract unbundling a key element of its small business agenda.*

Agree; apply an "un-bundle" review of all contracts over a certain threshold to determine the feasibility of breaking the project into smaller portions.

7. Small Contracts Rotation Program: A small contracts rotation program could be established for informal contracts in each of the four industries: construction, architecture and engineering, professional services, and goods and other services. This program would limit competition to certified SLBEs and ensure that quotations for informal contracts are solicited from a diverse pool of certified small businesses on a rotating basis. By awarding prime contracts, this program is a means for building the capacity of small businesses.

Strongly support this recommendation.

ACTION REQUESTED OF THE CITY COUNCIL

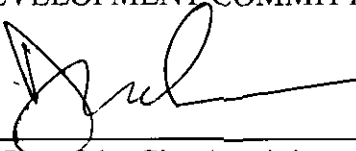
Provide guidance to staff regarding next steps.

Respectfully submitted,



Deborah L. Barnes, Director
Department of Contracting and Purchasing

APPROVED AND FORWARDED TO
THE COMMUNITY & ECONOMIC
DEVELOPMENT COMMITTEE:



Office of the City Administrator

ATTACHMENT A

EXECUTIVE SUMMARY: Volume I Fairness in Purchasing and Contracting Disparity Study: Volume I

City of Oakland and Redevelopment Agency

Fairness in Purchasing and Contracting Disparity Study

Volume I

Executive Summary

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

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



MASON TILLMAN
ASSOCIATES, LTD

May 2007

ACKNOWLEDGMENT

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

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

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

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

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

Table of Contents

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



1

EXECUTIVE SUMMARY

I. OVERVIEW

A. Study Purpose

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

B. Legal Requirements

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



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

C. Study Team

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

D. Overview of Current L/SLBE Program

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

E. Industries Studied

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

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



F. Contract Data Sources

1. Prime Contracts

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

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

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

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

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



2. Subcontracts

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

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

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

G. Contract Thresholds

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

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



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

Table 1.01 Contract Thresholds for the City

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

II. METHODOLOGY AND STRUCTURE

A. Methodology

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

to determine whether there was a statistically significant underutilization within the five industries. In **step six**, the anecdotal analysis, the contemporary experiences of business

Disparity Study: Critical Components

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

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

B. Organization of the Report

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

Volume One: Disparity Study Report

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

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

Volume Two: Recommendations and Not-For-Profit Analysis

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

III. NOTABLE FINDINGS

A. Prime Contractor Utilization Analysis

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

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

B. Disparity Analysis Methodology

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



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

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

C. Contract Size Analysis

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

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

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

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

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



D. Statistical Findings

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

Table 1.02 Summary of Disparity Findings for Formal Contracts

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

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



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

Table 1.03 Summary of Disparity Findings for Informal Contracts

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

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



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

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

Table 1.04 Summary of Subcontract Disparity Findings

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

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

IV. ANECDOTAL FINDINGS

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

⁴ *Croson*, 488 U.S. at 509.

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

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

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

The following is a brief summary of the anecdotal findings:

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

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

⁵ *Id.*



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

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



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

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



List of Tables

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



ATTACHMENT B

REPORT on PUBLIC HEARINGS

City of Oakland and Redevelopment Agency

Fairness in Purchasing and Contracting Disparity Study

Report on Public Hearings

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

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



MASON TILLMAN
ASSOCIATES, LTD

April 2008

Table of Contents

CHAPTER 1: REPORT ON PUBLIC HEARINGS	1-1
I. INTRODUCTION	1-1
II. PURPOSE	1-1
III. OUTREACH EFFORTS	1-2
IV. STATISTICS ON ATTENDEES	1-3
V. PUBLIC HEARING SPEAKERS	1-4
A. December 3 rd Public Hearing	1-4
B. December 5 TH Public Hearing	1-4
C. December 10 TH Public Hearing	1-4
D. December 12 TH Public Hearing	1-4
E. February 27 th Public Hearing	1-4
VI. PARTICIPANTS' COMMENTS	1-5
A. Cultural Barriers	1-5
B. Racial Barriers	1-5
C. Sexism	1-5
D. Difficulty Getting Bid Information	1-6
E. Inadequate Lead Time	1-7
F. Difficulty Breaking into Contracting Network	1-7
G. Cancellation of Contracts	1-10
H. Public Agency Managers Creating Barriers (not Prime)	1-11
I. Excessive or Problems with Certification Procedures	1-14

Table of Contents Continued

J.	Late Payments by Prime Contractors	1-15
K.	Late Payment by Agency	1-15
L.	Size or Capacity Issues	1-17
M.	Prime Contractors Avoiding M/WBE Requirements	1-18
N.	Difficulty with Insurance or Bonding	1-18
O.	Inadequate Lead Time	1-19
P.	Barriers Created By Unions	1-19
Q.	M/WBE Program Comments	1-19
R.	Recommendations	1-21
S.	Positive Statements	1-24

APPENDIX A: PUBLIC HEARING ATTENDEES

APPENDIX B: PUBLIC HEARING QUESTIONNAIRE



List of Tables

Table 1.1	Business Community Outreach Summary	1-2
-----------	---	-----

1

REPORT ON PUBLIC HEARINGS

I. INTRODUCTION

The City Council conducted five public hearings with the Oakland business community. Four of the public hearings were held in December 2007. The December public hearings were held on December 3rd, 5th, 10th, and 12th. The fifth public hearing was held on February 27, 2008. The agenda for each of the public hearings included an overview of the Disparity Study process and provided a comment period for businesses to share their contracting experiences.

The public hearings were held in different locations throughout the City. The December 3rd hearing was held at the West Oakland Senior Center, and the December 5th hearing was held at the East Oakland Senior Center. The Eastmont Mall Police Precinct Substation was the location for the December 10th hearing. The December 12th hearing was held at City Hall and the final February 27th public hearing was held at the Redwood Heights Recreation Center.

The testimony from the five public hearings was transcribed and quotes from the testimony are provided in this report organized by topic. The information will also be incorporated into the Anecdotal Chapter of the City's Fairness in Purchasing and Contracting Disparity Study.

II. PURPOSE

The first volume of the City's Fairness in Purchasing and Contracting Disparity Study was completed in June 2007. The City Council's Community and Economic Development Committee decided to hold public hearings to inform the Oakland business community of the findings from the Volume I Report. The second volume of the Study will include recommendations specific to the statistical findings of disparity. The anecdotal chapter

included in the Volume I Report will be updated to include the public hearing testimony from the public hearings.

The public hearings were coordinated by Mason Tillman Associates, the Disparity Study consultant. The focus of the public hearings was to enable members of the business community to provide testimony on their experiences in both seeking to do business with the City of Oakland and in contracting with the City. Mason Tillman conducted the outreach for all five public hearings, conducted witness preparation, developed a PowerPoint presentation describing the Study, and prepared a public hearing guide for each of the City Councilmembers. The City provided the refreshments, audio visual equipment, multilingual translation services, and a recording system for each meeting.

III. OUTREACH EFFORTS

Mason Tillman's outreach efforts targeted City of Oakland-based firms from all industries. Press releases, radio announcements, flyers, and electronic messages were used to promote the meeting. Electronic invitations were distributed to trade and community organizations and to individual businesses via facsimile and electronic mail. The City mailed post cards twice to all Oakland-based businesses in the Business Tax License database. Table 1.1 details the distribution schedule of the City-approved outreach materials:

Table 1.1 Business Community Outreach Summary

MEDIUM	OUTREACH TOOL	REACH	SOURCE
Meeting Announcement	E-mail/Fax	1,266 Businesses	Disparity Study Database:
Meeting Announcement	E-mail	102 minority organizations, including professional associations, and churches	2006 Community Outreach List and Councilmember Outreach Lists
Post Card Meeting Announcements	U.S. Mail	16,692 Businesses	Oakland Business Tax License Database

MEDIUM	OUTREACH TOOL	REACH	SOURCE
Flyer and Poster Meeting Announcement	Hand Delivered	65 Congregations	Pastors of Oakland Mailing List
Press Release	Fax	10 Newspapers	San Francisco Bay Area Media Websearch
Newsletter Announcement	Email	4,000 District 4 Constituents	Councilmember Jean Quan
Public Service Announcements	Fax	7 TV Stations; 15 Radio Stations	San Francisco Bay Area Media Websearch
Meeting Reminder Announcements	E-mail/Fax	1,266 Businesses	Disparity Study Database:
Meeting Announcement	Telephone	213 Businesses	Councilmember Nancy Nadel Database and Disparity Study Database
Meeting Announcement	Newspapers: Sing Tao Daily, Ming Tao, and World Journal	30,000-40,000 Circulation	Carl Chan
Meeting Announcement	Newspaper: East Bay Business Times	7,515 Circulation	Mason Tillman
Meeting Announcement	Radio: 1400 AM	50,000 Listeners	Interview with Carl Chan on Chinese Radio Program

IV. STATISTICS ON ATTENDEES

The invitation list for the five public hearings had 16,692 firms and eight business organizations. A total of 111 business persons attended the five public hearings. In

addition there were City staff, City Councilmembers, and Mason Tillman staff. The list of attendees is attached in Appendix A.

V. PUBLIC HEARING SPEAKERS

A. December 3rd Public Hearing

The welcome and introductions were given by Councilmember Nancy Nadel, District 3. The Disparity Study Briefing was presented by Mason Tillman's President, Eleanor Mason Ramsey, Ph.D., Project Manager of the Fairness in Purchasing and Contracting Disparity Study. Councilmember Nancy Nadel was the hearing officer.

B. December 5th Public Hearing

The welcome and introductions were given by Councilmember Larry Reid, District 7. The Disparity Study Briefing was presented by Mason Tillman's President, Eleanor Mason Ramsey, Ph.D., Project Manager of the Fairness in Purchasing and Contracting Disparity Study. Councilmember Reid was the hearing officer and Councilmember Desley Brooks was present.

C. December 10th Public Hearing

The welcome and introductions were given by Councilmember Desley Brooks, District 6. The Disparity Study Briefing was presented by Mason Tillman's President, Eleanor Mason Ramsey, Ph.D., Project Manager of the Fairness in Purchasing and Contracting Disparity Study. Councilmember Brooks was the hearing officer.

D. December 12th Public Hearing

The welcome and introductions were given by City Council President Ignacio De La Fuente, District 5. City Councilmembers Henry Chang, District At Large and Jean Quan, District 4 were the hearing officers. The Disparity Study Briefing was presented by Mason Tillman's President, Eleanor Mason Ramsey, Ph.D., Project Manager of the Fairness in Purchasing and Contracting Disparity Study.

E. February 27th Public Hearing

The welcome and introductions were given by Councilmember Jean Quan, District 4. The Disparity Study Briefing was presented by Eleanor Mason Ramsey, Ph. D., Project Manager, Fairness in Purchasing and Contracting Disparity Study, Mason Tillman Associates. Councilmember Jean Quan was the hearing officer.

VI. PARTICIPANTS' COMMENTS

Public comments were solicited during the public hearings to obtain anecdotal information from the Oakland business community on their experiences in seeking to do business with the City of Oakland and in contracting with the City. A questionnaire was distributed to each of the attendees to solicit testimony on their contracting experiences. The attendees were also given the option of completing the questionnaires and mailing them to the City within two weeks from each of the public hearings. The City did not receive any completed questionnaires in the mail. The questionnaire is provided in Appendix B. The public comments were transcribed and summarized below by subject matter.

A. Cultural Barriers

I think a lot of it is not understanding . . . the language. In many instances, even though many of our businesses speak English, a lot of [the] smaller businesses really understand . . . their first language.

B. Racial Barriers

I'd like to ask you, Councilwoman, now that you [realize] Black people are not getting the work, do you propose to do anything about it? Or just let the old boys get the work. If we can get the City to go along with the fund control, I can talk to Councilman Chang and say, 'Hey, give us a chance to bid some of these jobs. Cause we as Black people in the City [are] not getting anything.' And, as far as when people say, 'Well, we got minorities.' No, you got all the minority sub[contractor] Black people.

C. Sexism

. . . being a woman in a trade that's considered to be male-dominated . . . men expect for you not to know, so you have to be ten times more knowledgeable than they are when, you either approach them about bidding on a contract or even, just converse with them about putting a packet together.

Because there's still . . . lots of firms in the construction trade that feel that women don't have any business being in the trade. And so when you have larger primes that feel that way, then you don't have the opportunity just being a woman..

Not that that has been my experience, but I do know that it exists. I'm able to maneuver myself around people that think that way, but it goes on a lot. And only certain primes consistently bid on the larger projects and that goes on across the board.

D. Difficulty Getting Bid Information

I don't hear anything from the City. And, when we bid . . . there was a time that we could call in a specialty sub, and they would give a bid spread. A bid spread is the three low bidder of electrical, three low bidders of the plumbing, or mechanical. That is no more, for some reason. But there was a time I could get it, before Proposition 209 passed. The City has stopped doing it and we want to know why.

It's kind of distressing, but at the same time, a lot of businesses are falling out. As a matter of fact, a case in point that happened to me last week. The City of Oakland is about ready to build a library on 81st Avenue. I wasn't even aware of that. Our company wasn't even notified. If it wasn't for a lot of businesses that either we've been mentored together with, through Redwood Resources or John Cottrell of Comack Plumbing, I wouldn't have even known about this.

The interesting thing is that it's been over one year [and] I have never been contacted about any other opportunity. And from the suppliers of some of the materials that we use, we've heard that, another company, working with AT&T [in] our town is actually doing some of the work.

I contacted the sergeant and he told me right away, [that] the police department does not handle its bids. You have to go to the City agency which handle all the bids. I forgot the name of the requirement. But it was an agency.

And, I went there and they said, 'Oh, no, we don't handle the bids. The individual agencies handle their own bids.' So, of course I went back to the sergeant and he said, 'Oh, well, if that's the case, then you have to talk to the contractor who, whose our building and facilities.' And of course I contacted the contractor and the contractor didn't want to talk to me. As a matter of fact, he wouldn't show me any of the things I needed to know in order to submit a successful bid.

During the course of time of being a certified minority contractor, I [didn't] receive any notifications of projects that I might be able to do. I don't understand that. I hear about them from other people. I don't hear about them from the City. I thought that part of the certification process was to give me notification.

I've been doing business in Oakland for about 15 years now, paying City taxes. We hear about meetings like this but we don't really hear about some of the opportunities. I guess

I need more knowledge on how to get on those lists and how to better serve. Because really what I want to do is save the City money and, and do good work at the same time. Primarily slide repair work. All the work that's going on Skyline Boulevard, we hear about it after the fact, and we just never seem to get involved in it. So, that's where I'd be coming from.

E. Inadequate Lead Time

I'm certified by the City of Oakland. And the last three months, there have been some projects [awarded]. They needed landscaping. . . .But, I've had the . . . director call me and say, 'Would you be interested in bidding the so-and-so job?' I say, 'Yes. When is it due?' Oh, it's due tomorrow.'

They should let the sub know and give him some time because you have to call all your suppliers and get prices and so forth. And you've gotta sleep over this a couple of times of how long it's gonna take you to do the job.

The hardest one to deal with is the amount of time it takes to put together a bid. Now that amount of time is based upon one of the things that'll hit it most of all is the complexity of the job. And also the complexity of whatever are the set of diversity requirements you're dealing with this month.

And probably every quarter I called the purchasing department about the annual bid or whatever. And the City's purchasing [department] gave me . . . the run-around. I get transferred to different individuals. And, I understand that Kelly Moore Paint has been in the system for bidding for the contract.

I have never been notified for the past ten years. So that means, I don't have a chance to [get] a contract.

F. Difficulty Breaking into Contracting Network

For a specific contract, I responded to the RFP, and I have received some disparaging remarks. . . . I've gone to an outreach meeting when I thought that community outreach position was available [and] another company was introduced to say that they were going to be the up-and-coming person, even though the proposals weren't even in.

I did try to get on some other teams to get in your district, to try to get contracts here, but they were about bidding on teams. A couple times the teams lost. That's okay. But if I try

to go in as an independent to provide my services to the City, because they know that I will, I am an advocate and I will disclose things. I've had a door shut on me.

So, some people call it blackballing or whatever. I understand the door's shut. So I don't put in the bids. The same reason why the contractors don't put the bid in, I don't put them in, either. Because I can fight my battle through another source. So I do that. And I'm effective at doing that. But why should I have to? I live in the City. So why should I have to? I should have the same rights that, anyone else has. But I don't think it's fair.

There's a reason why you only have the same people over and over and over on the contract and you don't bring in new people. You don't bring in the new people, that means you also are not mentoring to people that are not there. You want to always open up the door. You can't just exhaust your contracts with the same people all the time. Sometimes you have to open the door of opportunity for other people and you have to make the process fair. And the process is just not fair.

But the idea is, we have to get to the bottom. There are a lot of Black contractors that's not getting work. And they're coming to me. But I don't, I'm a contractor. I'm an electrical contractor. I know nothing about the general and all that. But I do know that the last job I bid, it was two-three weeks ago, for the City of Oakland. I thought it was a County job, because that's what I've been doing.

And, but, like I said, it seems like the City of Oakland has a special prize. I won't call the name, but they're out there and we know who they are. I'm a *[unintelligible]* contractor. We do studies on that also. And we are planning on bringing some money into this City so I, like my colleagues, want me to stand up and start speaking so I can show with numbers. And we have people that do the investigation.

Second of all, when we submit the bid, the approval process through the City Council and the City, took a year. And then, once it started, we were expected to start immediately. And, being a small business, I can't wait a year. I have to keep working and find other contracts. So that presented a challenge as well.

I think one of the challenges with small businesses, and I noted on your statistics regarding *[that] contractors receive regular contracts, they happen to be tapped in. If you're not really tapped in this City, . . . that is what gets you the repeat business.* I found it very, very difficult to break in with my skill set and the amount of years that I've been doing what I was doing.

So, I think there are some ways to explore how *[to] spread [work] across small businesses or ways that they can be more included in that process.* Because *[certain businesses] get*

repeat business and they know who to talk to and they are familiar. And I understand that, but I want to become familiar, too.

There is great difficulty for the small minority and woman-owned business contractors to get work in this area. And so there are a lot of studies that take place. There are a lot of programs that's put in place. [But] there is never benefits. That is for the contractor, and the subtrades, particularly.

Ten years ago, we had a company in town that could bid a five million-dollar contract. We don't have one in the African-American community now. There is no support from this City to help those contractors build their practices or build their businesses. I've not seen support come from within the City offices, unless they hire *[unintelligible]* construction company.

We had a great record. We had a good work force development program. I was on the committee to help develop an apprenticeship workforce program with Dennis Locket. We had a great program there. But somewhere, it lost its teeth. They were helped then, but ten years from then, those same contractors have barely gotten another contract.

They cannot develop their business unless they have a revenue stream. They have to have ongoing contracting opportunities. They can't just have one contract. You can't just mail them a letter, fax them something, email them something, or call them on the telephone and think that's going to make a difference. It doesn't because you're talking about people that have lost hope. You're talking about people whose children won't go into their businesses because they think it is too difficult. They've seen the disparities that exist from the past. But they're the same now. They haven't really changed.

And so I'm an example. Why is it that I've been this City this long and I have a business and, when I go out to bid, other people run in and tell someone else that I don't have a right to work in my City? They say you should give the contract to me. I donated something to you. I should get that contract.

At this time there are several small Black businesses that are not towing for the City of Oakland. There are no Black businesses towing for the City of Oakland, period. I have made several calls. I've also met with the people at A&B Towing. I've always got the brush-off or we're not hiring. We don't have space. We're slow.' We constantly see other new tow truck companies that are smaller, that haven't been in business as long as we have, keep getting in the door.

It's kind of disheartening, because we are here in Oakland and out of all the tow truck companies that tow cars for the City of Oakland through A&B Towing, there's not one minority Black-owned business there. When I look at that, it looks kind of lopsided.

To me it is probably the good old boy network. They've a lot of people there for a long time. They are not trying to give anybody the opportunity to do anything. One day, I went in and said, 'Hey, you know, I'd like to speak to such-and-such about becoming a vendor for the City of Oakland and A&B Towing.' I waited there for about 20 minutes. The guy walks out of the door, he looks at me, then he goes back into his office and another 10 minutes goes by. Then he tells the lady, I can't talk to him today. Give him a business card.' I have given him a business card time and time and time again. Same things he's been saying for almost three years.

I sent an email to Ms. Ramirez, and . . . she did not return my email until I left a message that I'm going to send an email to Mr. Ron Dellums. Then she called me back. She told me that the bid is gonna be out sometime in June.

So my point is, I can't seem to break through to the City Attorney's office. I have had a couple of meetings telling them that I'm available. I [can] provide legal document services for them. I make the presentation but then I never hear anything back, either good or not good.

But what I'm finding is that, as the City grows, I am kind of pushed out. I haven't been able to break into larger quantity of work. And I have stayed in the same location in Oakland. I've tried to be competitive and licensed. But the larger companies, the LA-based companies, San Jose-based companies, I think are getting [the work.]

There's that perception that it's hard to do business with the City or any government agency for that matter.

G. Cancellation of Contracts

I've had the opportunity to work two contracts for Oakland. One was quite small. One is in progress, as it seems to be quite political. The smaller one was quite successful. But I will agree with the gentleman in terms of the RFP bid responses. I've applied to several bids in my ten-year business career and have not heard anything from the City of Oakland and that's predominantly why I don't pursue City of Oakland contracts. With the larger contract, we initiated the process in 2005. Another point to make is I would have applied as the prime for this project, but with Oakland, it's very difficult as a small business to find out what contracts are out there. I actually had a colleague in Houston contact me past the contracting date and say, 'Why didn't you bid on this contract?'

So this project started in 2005, we actually won the contract. That's when most of the problems started occurring. When the City awarded the contract to the prime, the relationship between the prime and myself extremely deteriorated. As a small business contractor, I didn't know what the recourse was. I actually have a law firm retained in San Francisco and they're a reputable law firm. I spent about 20 percent of my percent of the contract to close the deal. Didn't work out. So I actually withdrew because I didn't know of an alternative or recourse in the City. Once I withdrew, there were enough people in Oakland who are really kind of, um, upset about the process for this particular contract. So they encouraged me to fight back. Incidentally, my law firm, which is again a reputable law firm in San Francisco, they stated that the contract was one of the most onerous contracts they had seen for the amount for a small business in their professional opinion.

So what I did was decide to fight back and, um, by that, I contacted everyone that I could and finally, I got someone in the mayor's office who contacted the project manager and the prime and insisted that I put, be put back on the project. So we are currently working on the project, but, there are a few things that I have noted with the prime that I think are very difficult and I think there needs to be a process for Oakland to remain in contact with their subs, particularly the SLBEs in the City of Oakland.

H. Public Agency Managers Creating Barriers (not Prime)

The City . . . says, 'no we don't like what you did.' I said but I followed the specifications. And I did everything you said in the contract. They said, 'Well, no.' And what can I do? I hire a lawyer? I don't think so. You know, if it's gonna cost me \$200,000 in lawyers' fees to collect \$75,000 in contracts. I mean, the City really just says, "no." And, me as a small business person, I'm helpless. There's nothing I can do.

We had a small problem where we just finished doing a baseball field. And I sent in an invoice for a change order. And they told me no I can't get it. I sent [the invoice] to the prime and the City. And they told me no. And you guys can look into it. I kept a copy of it. They just told me, 'Hey, look, don't open up a can of worms.' And I did the job. It was outside [the scope of work].

I [can] give you an incident. We had our concrete set up and . . . the inspector left. He had to go to another job. He was over booked. So he didn't wait to inspect my load. You can't pour concrete into a block wall without having the inspector there. That was the City inspector. Well, they sent the [cement] truck back. The [prime contractor] wouldn't let me pour the wall, because the inspector left the job site. Now, that's not right.

We just had an experience with a City inspector. And he came out there and I think he was in a bad mood or whatever. Doesn't make any difference. But basically what I'm saying is, he was asking for things that didn't need. The codes say you need, only need a 10-foot head of pressure to test the system, as far as the ways for getting drained. We had that 10-foot head. He's asking for a 30 foot. In other words, he wanted a test on this vent pipe and a test on a three-inch in the restroom.

And I didn't get a chance to talk to him today. But I was going to call him. His name was Jim. And he came out there and then I was gonna call him up to ask him what, what's the problem? And he [said] that he now wants the lavatory drain on the outside of the wall. Which is all right, but in a way, it should be concealed. Because most pipes are concealed behind the walls.

It's a cost [to my business] because I have to send my journeyman back out there, because we fill the system back up. When it was ready to pass, it was sealed up. Now we have to do it all over again. So I'm going to send in a journeyman back out there, which is going to be time and material for him to fill the system back up, plus wait for the inspector to come back out. So, yes, it, it costs the company.

I was called and invited by the Housing Authority to submit a bid. And I did and then after the closing date, they contacted me. Well, I contacted them and asked about the results. And they said that they didn't get enough bids so they were gonna open it again. And then they invited me to bid a second time and I submitted the bid and I didn't hear from them. I still haven't heard from them.

The main problem is in all frankness, we want to win every job we go after. So, that's kind of where we are. That's one of the major things that we run into. And I will state for a fact that, at least on one professional services contract with the City of Oakland, the Department of Public Works, we were shot out by whatever your contracting diversity requirement people are before we got started. And I honestly believe it was a function of the ignorance and stupidity of the person standing in front of you, as well as the inability of that person to properly interpret what you were looking for. But the main thing that I found was, there was no mechanism in there to say, 'You missed your numbers. We're gonna disqualify you.' Would you like to clarify your system? Now, the difficulty with that is, I'm certain it probably looks as far as favoritism to, that's one of the difficulties.

He could only get a \$150,000 bond. The architect made a change which exceeded the \$150,000. These are the things that I talk about small jobs. These are the things we're looking at. We're talking about technical stuff, not getting a contract. I'm talking about bonding. I'm beyond all this other stuff. Trying to get a bond. We got architects, people who can change. They call it an addendum. This addendum exceeded the contractor's bond.

He couldn't bid the job. So if we can get fund control, we can have an unlimited [coverage], where he can bid the job. I'm talking about a prime. I'm an electrical [contractor].

The other thing is [to do] more with doing business with the City. It's processing the work plan, that it takes a long time sometimes for the work plans to get through. They may get a little job through the City like a senior upgrade or something. And then they submit the work plan and then it just sits on somebody's desk for weeks. And that's happened on a couple of occasions where people are sick or they're out. Nobody to back fill or to pick it up and move it through the process and through the system.

So that was really a big complaint of a couple of people, was the length of time to process the work plans. So, basically, that's the main thing. Just the idea that the small businesses really don't feel that they even have a chance. So it's hard to motivate them from a chamber perspective to participate when they really feel that it's a losing effort.

There is a retention policy, 10 percent and so forth for contracts. I understand, the way they are used can become a problem. For this particular contract, since they were this late long-term payment, and then the 10 percent on top of that. So now I'm having to finance all of that money that is not in my cash flow. So that's a major problem when you have a small business.

[Another] concern I have is the scope change. The contracts are written to obey a RFP. The bidder does the best they can to make a proposal based on what they understand the RFP is. Then, during the course of the project, there is scope [unintelligible]. The City representatives say, 'Oh, you should do this!' And they add items. They don't want to pay for any additional items. They're afraid to come back to the City Council to ask for additional money.

That's what they tell us and then they keep forcing us to do more work. And how do they do it? With the retention and the late payment. Because, now they've got us strung out. It's 90 days late and you haven't been paid, right? And then they got this retention over your head, so they hold that over you and they pressure you to do more work.

Now, this, the project that I worked on was this one. You may have heard of it. It's called the 88 Transition Plan 2007. To be very specific, it was supposed to be in my scope of work and my contract a 25-page report. This is a 100-page report. Did I get paid any extra for this? No. So I consider that to be an occurrence in a pressure situation because of the way retentions were held and the way the late payment process worked.

I. Excessive or Problems with Certification Procedures

Just to give you some reference for our business. I want to speak about is a new barrier that appears to have arisen for small businesses such as ourselves, marketing our services to the larger contractors. We're an environmental remediation contractor, which means, for most of the projects that the City does, our role is as a subcontractor on larger contracts.

Recently, there have been proposals submitted for environmental consulting services for the City of Oakland by a number of contractors. There will be eight contracts awarded, [at] \$750,000 each, and there's a 10 percent goal for small local businesses.

The prime bidders don't do the hands-on environmental remediation, such as our company does. However, we were not able to support the prime contractors with the points that are awarded to small businesses because it was ruled that our corporate office was not in Oakland, even though we're a very small business. We previously registered as a very small business. We became registered as a small, as a, pardon me, as a local business enterprise, along with the big guys.

We developed our business based on merit and a number of contractors did include us on their teams and we're grateful for that. But we're disappointed that we weren't able to support them with the small local business points advantage for including us on their team.

I went to a pre-bid meeting, the person that was handling the affirmative action and making sure the goals of the City of Oakland were done, tapped me on my shoulder and said, 'Well, you no longer certified.' And I said, 'Well, you know what? We're about ready to get certified again.' And I had a talk with her and basically I was telling her the City's asking for this [information].

This costs a business money, to go make copies to do all the leg work. To turn in a package, to say that, 'Here, we're legitimate in business. We're here in Oakland. We want to do business with Oakland.' And yet, most of us don't even get those contracts. And most of us would like to raise those numbers up on the disparity test.

We recently proposed to a number of consultants who are bidding on the City of Oakland consulting contract for environmental services. We're a remediation contractor, but there was 10 percent of that contract scoped out for remediation contracting.

We were included on eight teams and initially thought we were going to satisfy the small business points that our prime contractors could get with the City of Oakland on their proposal. We found out that we were being certified as a local business enterprise, rather

than a very small local business enterprise. And we skipped over small business and went right to local business.

The reason for that I understand the City Council established a policy or a regulation, I'm not sure which it was, but the corporate office of the small business must be in Oakland. And, even though we're a small business, our corporate office was not in Oakland.

The qualifying office is the home office of the president of our company. And that seems pretty corporate to me, but didn't seem at the time. And, it seems that our business is the type of business that the City of Oakland is trying to promote.

There is extensive paperwork with [the certification process]. Three years of my tax returns and all that. Looking back on it, I consider that kind of discriminatory. Because the other people don't have to have three years and I'm not getting any benefit from being considered a so-called, in quote 'minority contractor.'

J. Late Payments by Prime Contractors

The [primes] sit on my money. And I know that they have cashed the check from the City a month and a half ago. And part of that money should have been paid to me within 15 days. But it wasn't. And the profit margin for a small business like mine is like five percent. So when you're, you're talking about, about floating a quarter of a million dollars in payroll for two months on a, on a \$500,000 contract.....your profit is gone, just like that.

But in order to hold our people, you know, we're a signed signatory to the unions, you being late paying benefits can hurt you. Then you, are late not paying your material bill. They won't serve you. And then you're out there looking like, okay, here we got another one. He can't do the job. He can't pay his bills.

They hold your money and say they haven't gotten paid. They'll take that money and set it in a bank and draw interest off of it and keep telling you, 'No, we haven't gotten paid.' That's an old school thing there.

K. Late Payment by Agency

Well, this is the thing. The City of Oakland would cut the check and the check would go to Los Angeles. And then it would come back here. That's what we were told. I don't know.

And we have a small credit line and I had to use it. And, the money on a credit line, the interest is not cheap. I'm gonna be honest with you. It's not cheap at all.

We had a contract here in the City of Oakland [with the] Senior Citizen phase one and Swinerton [was the contractor]. And they yo-yo'ed us to the fullest. In other words, when we turned in our invoice, we didn't get paid 'til almost 60 to 70 days after. And this was a contractor that had a contract with the City of Oakland and that's an example of how they can just string out the money so they won't have to pay.)

Whenever a City of Oakland contract comes up, I add 25 percent to my bid because the City of Oakland is so slow in paying. Their bureaucracy is so thick that it seems like they're just doing everything they can to not pay you. They make up excuses just out of the blue. I've seen the City of Oakland put prime contractors out of business because they didn't like them.

We did a project for the City of Oakland and the only thing that we had a problem with was payment. And we did the job. We got it done and, within fifteen days because that's how we calculated. But waiting for the money, it just hurt us.

And we're still waiting for the money and our work is done. And it happened to be one of your projects, Ms. Desley, [at] the baseball field. We did the masonry work on the wall. And, we did okay but it's waiting for our retention that's just hurting us really bad. And I sure hope that maybe we can sit down and see what we can do about getting that.

Because just getting the payment, forty-five days to ninety days for a project like that, and it was a good-sized project. It was a \$200,000 project. And I wanted to say that I appreciate getting the work. But it's just the payment that hurts us where I have to have other stuff going just so I can make up and just hold onto our people, you know, that we got our key people.

I started the project on October the 30th. And I haven't got a dime yet. Oh, God, I can't, [say how many bills I have submitted].

The one extreme example was the last project, which was a spin-off project from the City Hall Plaza. We did a Bart new entry [*unintelligible*] for the City. Because the project manager left the City, the last payment we didn't get paid until 18 months later.

And luckily, we can sustain that. We've been around, and we can hold onto that. But many other firms may not be able to do so. We kept calling. They assigned that project to another project manager. And then accounting wouldn't pay until the project manager agreed.

The first concern . . . as a small company is being paid, over 30 days is, is significant. And being paid 90 days late is a major problem. One contract that I just finished with the City of Oakland went from 2005 to 2007. It was a regular experience as a subcontractor to be paid 60 to 90-plus days late.

I did all the normal things because, I had worked for the City and County, so you go and complain to the project manager. Go and complain to the prime and you go and complain to the office of contract compliance.

The other thing that I wanted to talk about was Quick Pay. The City [will] enforce Quick Pay, so you don't have to wait two months to get paid.

So we don't have to wait 60 days and a lot of times small contractors don't want to do City jobs because they have to wait 60 and 90 days. So your credit rating goes down when you have to wait that long.

Last October, I was awarded a contract with the City of Oakland for the Lake Merritt irrigation retrofit. No, [we never got paid].

I was invited to go to one of these meetings. It was my first time I had ever attended one. Contractors we're all complaining about their pay. So I thought, well, I might as well get in line too. So I did, but I want to thank you ladies. Since I started the job, the pay has been right on. It's fantastic. And the only thing, the gripe I have now is that I finished the job, we finished the job in December. And, I've been waiting [for release of retention], there's a lot of politics. . . .

And there's a lot of little personality conflicts. And we can only work with the plans we were given. And we've completed the plans. But yet I have not received my file. And I'd like to get a file to get the bond released.)

L. Size or Capacity Issues

Size [is] probably the disadvantage. But that can be [overcome] working with the major companies.

And I can see the City may have a problem with a real small business trying to handle the large [insurance] cases. But the problem is, if you don't advertise, it doesn't give you an opportunity even to go out and talk to the larger organization and say, 'Put me on as a subcontractor.'

We have to survive other than the City, it makes it very hard. And I can see why a lot of small contractors don't want to join the union because they can't afford it.):

M. Prime Contractors Avoiding M/WBE Requirements

The problem I have is, I cannot participate on City jobs with my trucks because the contractor refuses to pay prevailing wages. Prevailing wages are required by the City for me to pay my drivers. So quick scenario: my trucking rate is \$80 an hour, for a dump truck. When I put in prevailing wages, which comes out to be \$39.62, and that's not counting overtime, that's \$40 to pay for all of the expenses to have that truck on that job.

And I still have to pay workman's comp. So, if you guys can help us out, I really would appreciate it and some way of letting us. No [the prime] does [not pay prevailing wages]. So it leaves the door open. When he gets an owner/operator on that job, on paperwork, he can write down, 'well, I paid them prevailing wages. They got their \$40 an hour.' Which actually they did. They got the normal rate.

When a prime contractor goes on the job, he brings the equipment on the job. That equipment rate is bid into the job. On top of that, he bids the prevailing wage to pay his employees. But, when it's given to me or offered to me, it isn't given.

So I can't participate on City jobs. It's just makes no economic sense at all. But what I'm trying to say is when it all comes up, everybody pretty much turns their head and says, 'No, we're not going to force the contractor to pay a prevailing wage.'

N. Difficulty with Insurance or Bonding

Another issue is insurance. I'm a, a sub and I do carry million-dollar insurance and all that type of stuff. But, I was required to carry the prime on my insurance. And, to me that's ridiculous. If you're gonna be a prime, then carry the subs on your insurance. I did it because I want to do the project and it's my City and I want to bring what I know to the project.

I know that legally that's done. I talked to my insurance agent. He told me he's seeing that more and more. But I don't understand why I had to carry them on my insurance. So that was another contractual issue that was very contentious. He is on our joint piece for that period of time, he's indemnified on my insurance.

Bonding is hard. And the good old boys got it.

You may not know it, but the big boys make it hard for the smaller contractors to get bonds. And when they give you a bond, they put a block in front of it. When I was being bonded, I couldn't do a job under \$100,000 until the bond was used up. But I always had more than that on the books. So the bond didn't do me any good. I don't know if it changed yet or not. But I do know that fund control works well with me.

O. Inadequate Lead Time

Our major impediment is time. Because, two things we have to do is, either meet the goals or most of the time show a good faith effort. And the timing on that is, no matter how good we are in approaching work, it's almost like when it comes out advertised is when we learn about it. And normally we're running short of time right then and there, trying to get together.

P. Barriers Created By Unions

And then the other thing that I'm not sure about is our PLA agreement. That's like a deterrent for a lot of people, too. Because all the City projects are PLA. Then it's harder for a small contractor to get into that pool. Because they would have to join [a union].

Q. M/WBE Program Comments

My business is Wilson Electric and I've been in the City of Oakland for about 20-some years. I haven't had a contract since [Proposition] 209. From what Dr. Ramsey was saying, I guess I'm the only Black contractor that hasn't had a contract. Look like all the other Black contractors have been getting work here.

You can't do anything with the certification, then why get it? And it's such an ordeal just to get the certification. And then you get it and then you have all this paperwork just to bid on it. And so you're constantly submitting paperwork after paperwork and not being awarded any of the contracts. And I'm not saying that's been my experience, but I talk to other contractors and that has been the experience.

It's very discouraging to a lot of the businesses that are here and it's also discouraging to businesses that's not here, that went through the steps of trying to do business with the City, being certified. And then, you don't get a knock on the door or a call.

And, when the next time we up, it's like, why should I go through this? And that's what, one of the people on Ms. Barnes' staff told me. There's a lot of businesses [that] just dropped out.

And one of the things that I can basically state that I have found the greatest difficulty is [being] a prime contractor. We're wholly responsible for delivery of a product. The subcontractor, if they leave us [or] they mess us up, we're in trouble. So if we find a good minority disadvantaged contractor or professional firm or something like that, we will dance for the one that brought us forever. Because we know we've got a winner. So, from the viewpoint of people who are in the business of trying to break in, I have to encourage you to the fact that we try very hard to have everybody we can have covered before we get into anything.

I'm looking at it from the viewpoint of promoting supplier diversity, if you narrow it to specific things associated with the *Croson* case and leave it there, and don't lay all this other stuff on top of it. You will have a much more defensible program if you go in and begin to put every cause from save the whales to, keeping the trees green as part of it is part of the difficulty there. It's sort of like social legislation run amok. We're a broad, large company wanting to do business in Oakland.

I worked the Bancroft job. That was in 2000, 2001 something like that. I haven't had any City work since then. Its [been] a big change after 209, so I find it hard to go in the office and plead for work. I believe in bidding for it. I think I'm as good as any other electrical contractor. I talked to Mr. Henry Chang, our Council at Large, and I found that he's an architect and he knows about the what we call fund control.

The other thing is outreach. They feel that going to a middle man is not effective. It's very ineffective, in fact, in using a middle man to do outreach. That the City should have a way to do directly with the project manager. That he goes out and find the businesses or knows

the businesses that solicit for the bids and such. That somehow the perception is that it's very ineffective using a middleman to do the outreach.)

R. Recommendations

I wanted to make a suggestion to do some kind of outreach process in developing some benchmarks for utilization at the development and disposition level.

I know it won't solve all the problems, but it may create another safeguard for utilization so it doesn't get all the way down to that contracting level. I've made these comments before and I didn't know how that was going to be incorporated into new development and disposition agreements.

Because, in the study period there was a boom in Oakland. And so that's when a lot of the issues arose. There were some very big developments happening here in Oakland. There was a lot of money made and there was obviously a great deal of disparity. And so it seems like, at the development and disposition that some additional safeguards could have been enacted.

One of the things that I found in the packaging of the contracts there is so much information that is necessary in order to put a complete package together. I'm sure that every company wants to have good representation when submitting the package. But the requirements, especially for smaller businesses, the large primes have the ability to have one team that focuses on just putting those packets together. And it's difficult to bid against those companies that can focus on just having a team that can do only that.

Since we do commercial and residential [work], it gives a balance in the market when there's a shift in the market. But, for a lot of companies, their only focus is one thing. But I think that, because of the information, the criteria that is involved in putting a packet together limits a lot of the companies from even wanting to bid on it.

I want to put it out as food for thought. On behalf of the trades, you need to find a way to help the trades get contracts. So that they can build their businesses so they can maintain their residencies here in Oakland. I don't know why we have to move in order to gain residency. Because many of the people that have moved out because they found it affordable and have to travel back in here to try to work. Then they find they can't afford it and they [are] losing their homes to foreclosure for various reasons. And it's just so unfortunate that we've gone full circle.

If Council members, no matter what district they are in, they probably know what they would like to do in their district, or public works, or park and recreation jobs that's in their district, that might be going up for contracts. If they knew [what] businesses are in their district, then that might help as far as where companies might slip through the cracks. Even though they might be certified.

Another thing that might [help] is a policy change to help more small businesses and minority businesses have a check and balance. In other words, the job that might be opening or contracts that might be going out bidding, if they were to go to each Council member so that way they know that this job is going to be done in their district. Then they can see where they can find [what] businesses can bid.

But one of the things I see here is that, what could throw a wrench into these good old boys here, is if you had a bonding program set up with the City where those contractors who have a hard time [getting a bond] because that's another stepping stone.

Where it's required by law the risk management department should issue RFPs. And those are RFPs could be sent to those individuals who would like to bid and also, there can be public announcements in the newspaper.

AC Transit, does issue RFPs whenever there are opportunities for insurance. And the property casualty area. The City of Oakland employees are insured for life insurance. We tried for years to get notification when bids come out, but they don't have [any] RFPs go out at all. And there are significant dollars that are being spent on employees' insurance. Life insurance, disability insurance and other areas.

The other area that concerns me is the Oakland Public and Private Retirement system. When individuals retire, they generally purchase annuities. But, to purchase their retirement, the I've never seen any RFPs or any notifications for insurance brokers to participate.

One of the recommendations I would like to see [from] these disparity studies, is enforcement procedures, they're not effective. So I'd like to see there be some enforcement procedures. Not only that, I would like to see you take a more active role in making sure that the large organizations work with small businesses and Black businesses so that they [can] get a portion of the action.

They have an obligation to try to hire local employees and local subcontractors to join them. And there is such an easy way to avoid that. And doing certified payrolls myself for contractors and trade people. You throw the certified payroll out and you show that you

requested to have an apprentice or a minority person come from the union. So that they're in and what they say is that no one responded, then they're off the hook.

If they do a bid and they don't find that the subcontractors come with everything in place within a certain period of time, they're off the hook. So they have no accountability. So they hire outside of our community. They bring in people. They make the money and they leave.

So I'm wondering if there's anything in place or maybe we might want to entertain something that, when a contractor has a large contract, set up a range, that they are obligated to pay for an apprentice job or a skill job so when the next time they get a contract, there will be other people that are qualified to provide those services or subcontracts.

One thing I think should be done is if somebody actually submits a bid or proposal, at the time of selection, I think they should actually inform everybody and then list all the firms and the ranking, and what they consider. Because, just for me that has been awarded, it's not going to be enough. It doesn't give you an opportunity to compare your ranking with other companies, which actually could also help the City in the future. Because if you know your relative performance, you know that could actually help you next time around. You know exactly [what] you need to improve your position.

In the recommendations, I would like to ask you to take a look at, use them as a guideline for the businesses to protest, to use as a guideline 49CFR. It's Code of Federal Regulation. The reason I am making that suggestion is that Dr. Ramsey, you referred to 209. And I know that there are some limitations in terms of 209. The Code of Federal Regulation 49 refers to DBE businesses, as you know. And there could be some guidelines, even though that has been modified. There could be some guidelines that would allow us to at least officially protest and get things on the records. I don't see any method of protesting.

The reason why I'm here is to . . . suggest that you should take those bids and hang it. You should have one agency who will issue the bids and also determine which bids are won or which are for the police department.

I haven't had any problem with any of your contracts. Now, let me just tell you that a lot of the contractors here were getting bad information when I have gone to these meetings. And this is why I want to work with Dr. Ramsey this time myself, to show that, if we can get a bonding program from a surety company, rather than an agent. We have some competition from the Black side of this City.

So there are some key points that come up and a couple of people have already mentioned one, and that is the bonding level. That seems to be a real barrier to our small business. In fact, they don't even want to try based on the fact that it's expensive, or they don't qualify or they don't understand.

I [do not] know why is there all this extensive paperwork for documentation. And then finally, I would suggest humbly that perhaps some of the City could receive some training in being a project manager or a contract manager. Because, based on my experience, many of them may not have had that kind of background and training. And some awareness and sensitivity to the impact, if you're on the other side of the table. You have to pay your bills, just like anybody else. And so, consequently they should try, once you've done the work to their satisfaction, to pay you in a timely manner.

San Francisco across the Bay is doing a good job on protecting their small businesses a lot and, I think we can take some of what they're doing and bring it over here.

A look-ahead schedule for upcoming contracts [where] someone can look down six months to a year and see what's coming down. I know Caltrans does that, BART does it also.

One thing I thought about as far as the contract limits, I think there needs to be increased from the \$50,000 to maybe \$100,000 and even higher. Because the time that we live in now, we live in 2008 and \$50,000 doesn't do anything for a contract, for the most part. Once you pay your general requirements and your bond.

[For informal contracts, no-bid contracts] because, once you do your general requirements, your Workman's Comp and your general liability, all that stuff, and then you're paying out your worker, you're left over with peanuts after that.

S. Positive Statements

A lot of the projects are umbrellaed in the City, that you can work on. And that helps a lot. You know what I mean by umbrella insurance? They are all umbrellaed. So, anybody can work with these City jobs.

I'll give you a for instance. This is a thing called C-step, for the Fox Theater. They have a C-step where you keep your personnel but they'll also cover you under an umbrella insurance. You keep your requirements because that covers you on your personal [insurance]. But if you are doing work for the City you are covered.

APPENDIX A : PUBLIC HEARING ATTENDEES

1. December 3, 2007

Name	Business Name	Speaker
Randolph Belle	Urban Strategies Council	X
Curtis Chester	Cortewald Club	
Marie De La Parra	BMB Construction Properties	X
Greg Gruendl	Ray's Electric	
Patricia Hanmen	Mocha	
Jumoke Hodge	Jumoke Hodge	
Melvin L. Johnson	Travelers Aide/ Howie Harp Multi Service Center	X
Cynthia Mackey	Winning Strategies	X
Barbarette Newton	Redwood Resources	X
Ray Peretti	Merrily Sign Co.	
Mavis Scanlon	East Bay Business Times	
John W. Schweizer	Remediation Services, Inc.	X
Barbara Wiggins	One Stop Auto Parts	
Curtis Wiggins	One Stop Auto Parts	X
Mel Wilkerson	Dusty & Sons Tires	
Robert M. Wilson	Wilson Electric Company	X
Yosuf Zaihuiddin	Sayfee Hardware	X

2. December 5, 2007

Name	Business Name	Speaker
William R. Brown, III	Brown 3 Plumbing Company Inc.	X
Jere Brown	Brown 3 Plumbing Company Inc.	
Susan Brown	Brown 3 Plumbing Company Inc.	

Ronald Charlese Camese	Camese Transportation	X
Calvin	Elmhurst Presbyterian Church	
Jeremiah Captain	Lincoln Heritage Funeral Advantage	
Edmund Davis	Brown 3 Plumbing	
Edna Davis	Brown 3 Plumbing	
Clifford Gilmeris		
Kin Houston	East Bay Small Business Council	X
Rebecca Kaplan	Consulting (A.C. Transit)	X
Major Lewis	Major Cloth	
David C. McFarland	Jay Phares Corp	
Sam Ogohogho	Uwa Electric	
Michael O'Hare	Jay Phares Corp	
Michael D. Spencer	Spencer & Dixon	X
Adolph Sykes	Adolph's Glass Co., Inc.	X
Toyoji Tomita	T.P.T. Gardener	X
Vanessa Y. Willis	Brown 3 Plumbing	
Robert M. Wilson	Wilson Electric	X
Zina Wyatt	The Globe	
Stephen W. Yue	Kelly-Moore Paints	X

3. December 10, 2007

Name	Business Name	Speaker
Gboyega Aladegbami	Aeko Consulting Inc.	X
Jean Blackseré	AMS	
William R. Brown	Brown 3 Plumbing	
Ivan Burgos	La Oficina de Oakland	
Janis Clark	Janis Clark Enterprises, Inc.	X
Aeesha Clottey	AHC	
Robert Davis	Red Janitorial Services	
Winnie Davis	Red Janitorial Services	
Marie Roberts De La Parra	BMB Construction Properties	
James Ingram	James E. Ingram	X
Unidentified Person	James E. Ingram	
James Kemp	Academy of Truck Driving	X
Leonard King	L.P. King Trucking	
Amor Lozano	Amor's Auto Electric	
Sam Manning	William Wallace Mgt. Consulting	
Alcanor Mendoza	National Mobile Ex	
Phillip Jamse Momon	Family Towing & Transport	X
Ronald Muhammad	Elite Services	
Samuel Oghogho	Uwa Electric	
Philip Onwuato gwu	Chussy International	X

Cleo Pitts	Family Towing & Transport	
Bruce B. Poole	Magnum Structural Pest Control	
Ronda Royster-Price	AP&C Bar Lounge Restaurant	
Solomon C. Sacay	Solomon Construction, Inc.	
John Schweizer	Remediation Services, Inc.	X
Derek Smith	Marinship Development Interest LLC	
Frank A. Tucker	Tucker Technology	
Joe A. Valdez	Green Acres Landscaping & Maintenance	X
Jennifer Walker-Kemp	Academy of Truck Driving	X
Robert Wilson	Wilson Electric	

4. December 12, 2007

Name	Business Name	Speaker
Terry E. Alderete	Alderete Business Visions	X
Adel Ali	East Bay Glass	
Kamorudeen S. Animashaun	Anipruit Security & Patrol	X
Rodney Brooks	Supervisor Keith Carson's Office	
Albert Choi	Bay Concepts, Inc.	
Nancy Cutler	Midnight Oil Design LLC	
Eugene A. Drew	NAMA Vending	X
Kevin Good	Well Grounded Electric	
Creighton Fong	East Bay Municipal	
Mark A. Froelich	Swinerton Builders	
James E. Ingram	James E. Ingram	X
Edward Kamara	Global Construction	
Wai Kan		X
Cheng Ton Lee		
Yui H. Lee	YHLA Architects	X
Ray Lit	Chung Wah Glass, Inc.	X
Alonson Lopez	Lopez Maintenance Services	
Isabella Lung		X
Kevin H. Martin	Martin & Martin	
Kevin Martin	Art Tile, Inc.	
Cynthia Newton	Port of Oakland	
Ali Ousilas	Ali Electric, Inc.	
Hadas Rivera-Weiss	SF Human Rights Commission	
Raydon D. Shippey	Legal Beagle	X
Chet Spikes	Technoid Data Systems	
R.J. Urquhart	Advanced Concepts	
Eugene Allen Walker	Acumen	X

Rick West	Rick West Plastering	
George White	Policy Innovation Works	X
Robert M. Wilson	Wilson Electric Company	X
Wun Yip	Ming Pao SF	

5. February 27, 2008

Name	Business Name	Speaker
Jose Gutierrez	Gutierrez Construction	
Sal P. Italano	SPI Consulting	X
Terry Johnson	M Painting	X
William B. Morrison	Earth Tech	X
Genele Oberich	Alta Engineering Group, Inc.	
Raydon D. Shippey	Legal Beagle	X
Joe A. Valdez	Green Acres Landscaping	X
Leon T. Walters	Leon T. Walters	
Maurice Welsh	WMG	
Robert Wilson	Wilson Electric Company	X

***APPENDIX B:
PUBLIC HEARING
QUESTIONNAIRE***

**City of Oakland and Redevelopment Agency's
Fairness in Purchasing and Contracting Disparity Study
Questionnaire**

1. Have your employees been hired away during the period of your contract? If yes, please describe who and what project.

2. Has anyone inhibited your capacity to perform on a City-funded job?

3. Have you been awarded a City of Oakland prime contract or a subcontract on a City of Oakland project? If yes, please see question 4.

4. Has the General Contractor failed to timely pursue settlement of change orders, claims or release of retention on a City-funded project?

5. Has the City failed to timely pursue settlement of change orders, claims or release of retention on a City-funded project?

6. Has the Prime Contractor withheld payment for change orders, claims or retention even though your work has been satisfactorily completed and they have already been paid by the City?

7. Did the Prime Contractor timely process requests for payment? If not, how?

8. Have you ever filed a bid protest on a City-funded project? If so, what was the outcome?

9. Have you ever been threatened by the Prime Contractor related to a City-funded project?

10. Have you ever been threatened by a person related to a City-funded project?

11. Briefly describe the events you believe were discriminatory.

12. Dates of discriminatory events or date of last discriminatory act.

13. Explain the steps you have taken to resolve the matter (filed with any agency, court, or organization).

14. Do you have any pending deadlines?

15. Do you have a lawyer?

16. Have you been represented by a lawyer regarding this discrimination claim?

17. Is there any special urgency to your situation? If so, please explain.

18. Has anyone discouraged you from contacting/complaining to the Office of Contract Compliance during your performance on a job?

19. Has anyone indicated that they would assist you in resolving a job-related claim only to not follow through on your complaint?

20. Have you had to carry the costs on a City-funded project? If so, how long? Why?

21. Have you ever been threatened by the City related to a City-funded project?

22. Is there any other information you would like to provide relevant to your experience with City staff, general/prime contractors or other personnel while performing or seeking contracts on City funded projects?

Thank you for completing the questionnaire. If you are submitting written responses, please send by March 7th, 2008 to:

City of Oakland
Department of Contracting and Purchasing
250 Frank H. Ogawa Plaza, Suite 3341
Oakland, CA 94612
Attn: Deborah Lusk Barnes, Director

ATTACHMENT C

UPDATED: ANECDOTAL ANALYSIS

Fairness in Purchasing and Contracting Disparity Study: Volume I

Table of Contents

CHAPTER 10:	ANECDOTAL ANALYSIS	10-1
I.	EXECUTIVE SUMMARY	10-1
II.	INTRODUCTION	10-2
	A. Anecdotal Evidence of Active or Passive Participation	10-2
	B. Anecdotal Methodology	10-3
	C. Public Hearings Testimony	10-4
III.	BUSINESS BARRIERS	10-5
	A. Racial Barriers	10-5
	B. Gender Barriers	10-8
IV.	BARRIERS CREATED BY THE CONTRACTOR COMMUNITY	10-9
	A. Difficulty Breaking Into the Contracting Community	10-9
	B. Good Old Boys Network	10-13
	C. City Employees Creating Procedural Barriers	10-15
V.	DIFFICULTIES IN THE CONTRACTING PROCESS	10-16
	A. Difficulty Obtaining Bid Information	10-16
	B. Inadequate Lead Time To Respond To Bid Notices Prevents M/WBEs From Submitting A Comprehensive and Timely Bid Response	10-19
VI.	CERTIFICATION PROCEDURES	10-21
VII.	FINANCIAL BARRIERS	10-23



[REDACTED]

Table of Contents Continued

A.	Difficulty Obtaining Financing	10-23
B.	Late Payment by the City	10-26
C.	Late Payments by Prime Contractors	10-30
VIII.	PUBLIC SECTOR VS. PRIVATE SECTOR	10-32
IX.	COMMENTS ABOUT THE CITY'S L/SLBE PROGRAM	10-36
X.	POSITIVE STATEMENTS	10-40
XI.	RECOMMENDATIONS	10-43
XII.	SUMMARY	10-46



List of Tables

Table 10.01	Summary of Findings Concerning Current Barriers Against Ethnic/Gender Groups	10-48
-------------	---	-------



10

ANECDOTAL ANALYSIS

I. EXECUTIVE SUMMARY

This chapter presents anecdotal accounts excerpted from one-on-one interviews with businesses domiciled in the City of Oakland (City) as well as anecdotes from five public hearings held to receive testimony from Oakland businesses.

Potential interviewees for the one-on-one interviews were identified using contract and certification records, community meetings, and other sources. The interviewees were pre-screened to determine if they operated within the City's market area, and were willing to commit to the interview process. The one-on-one interviews lasted on average one hour. The anecdotal interviews solicited information on general market conditions, prime contractor barriers, and the range of experiences encountered by interviewees attempting to do business in the City and with the City.

The public hearings were held in different locations throughout the City in December 2007 and February 2008. Oakland business owners were afforded the opportunity to provide testimony on their experiences in both seeking to do business with the City of Oakland and in contracting with the City.

The testimony from the one-on-one interviews and the five public hearings were transcribed and incorporated into this Anecdotal Chapter. The claims made by the public speakers during the public hearings are summarized and the City conducted an independent review of the claims noted by the public speakers.

This Chapter describes the general market conditions, prime contractor barriers, and the range of experiences encountered by interviewees and public speakers at the public hearings that attempted to do business in the City and with City.

In summary, many of the business owners credited L/SLBE programs with maintaining their businesses. An overwhelming majority of the business owners explained why they believe the



City's L/SLBE program as well as other market area agencies L/SLBE programs are valuable for small, women, and minority businesses.

There were reports from the business owners that they were unable to compete for public contract work due to lack of financial assistance from local financing institutions. The majority of the recommendations centered on strategies to increase the participation of minority and woman-owned businesses on City contracts. They ranged from setting aside contracts for minority and women business owners to the use of L/SLBE subcontracting participation points. Many City managers were given accolades by the business owners for their hard work and dedication in supporting and sustaining small, minority and women businesses.

II. INTRODUCTION

The United States Supreme Court, in its 1989 decision *City of Richmond v. J.A. Croson Co.*, specified the use of anecdotal testimony as a means to determine whether remedial race-conscious relief may be justified in a particular market area. In its *Croson* decision, the Court stated that "evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proofs, lend support to a [local entity's] determination that broader remedial relief [be] justified."¹

Anecdotal testimony of individual discriminatory acts can, when paired with statistical data, document the routine practices by which minority and women-owned businesses (M/WBEs) are excluded from business opportunities within a given market area. The statistical data can quantify the results of discriminatory practices, while anecdotal testimony provides the human context through which the numbers can be understood. Anecdotal testimony from business owners provides information on the kinds of barriers that the business owners believe exist within the market area, including the means by which those barriers occur, who perpetrates them, and their effect on the development of M/WBEs.

A. Anecdotal Evidence of Active or Passive Participation

Croson authorizes anecdotal inquiries along two lines. The first approach investigates active government discrimination or formal acts of exclusion that are undertaken by representatives of the local government entity. The purpose of this examination is to determine whether the government has committed acts that bar minority and women business owners from government contracting opportunities.

¹ *Croson*, 488 U.S. at 509

The second line of inquiry examines the government's "passive" support of exclusionary conditions that occur in the market area into which its funds are infused. "Passive" governmental exclusion results when government officials knowingly either use public monies to contract with companies that discriminate against M/WBEs, or fail to take positive steps to prevent discrimination by contractors who receive public funds.²

Anecdotal accounts of passive discrimination delve, to some extent, into the activities of purely private-sector entities. In a recent opinion, the Tenth Circuit Court of Appeals has cautioned that anecdotal accounts of discrimination are entitled to less evidentiary weight, to the extent that the accounts concern more private than government-sponsored activities.³ Nonetheless, when paired with appropriate statistical data, anecdotal evidence that the entity has engaged in either active or passive forms of discrimination can support the imposition of a race or gender-conscious remedial program. Anecdotal evidence that is not sufficiently compelling, either alone or in combination with statistical data, to support a race or gender-conscious program is not without utility in the *Croson* framework. As *Croson* points out, jurisdictions have at their disposal "a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races."⁴ Anecdotal accounts can paint a finely detailed portrait of the practices and procedures that generally govern the award of public contracts in the relevant market area. These narratives can thus identify specific generic practices that can be implemented, improved, or eliminated in order to increase contracting opportunities for businesses owned by all citizens.

This chapter presents anecdotal accounts excerpted from interviews with businesses domiciled in the City of Oakland (City). The anecdotes provide accounts of both active and passive discrimination encountered by the business community.

B. Anecdotal Methodology

The method of gathering anecdotal testimony was the oral history interview. Oral history is defined by the *American Heritage Dictionary* as "historical information obtained in tape-recorded interviews with individuals having firsthand knowledge." In-depth interviews have been determined by Mason Tillman Associates to be superior to the other forms of gathering anecdotal evidence—mail, telephone survey, or public hearing testimony. It affords the researcher a greater opportunity to garner in-depth accounts of testimony to assess the effects of exclusionary practices on M/WBEs and the means by which these practices occur.

² *Croson*, 488 U.S. at 491-93, 509.

³ *Concrete Works*, 36 F.3d at 1530: "while a fact finder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality's institutional practices carry more weight due to the systemic impact that such institutional practices have on market conditions."

⁴ 488 U.S. at 509.



The in-depth interviews are also structured in a manner that affords M/WBEs a process in which their anonymity can be preserved.

By allowing interviewees to describe in their own words the details of the barriers they have experienced in conducting business, information can be collected as to how barriers occur, who creates them, and how they affect the development of M/WBEs. Thus, the information obtained not only sheds light on the City, but offers vital insights on future program needs and changes.

Potential interviewees were identified using contract and certification records, community meetings, and other sources. Once identified, interviewees were pre-screened to determine if they operated within the defined market area, and were willing to commit to the interview process.

The interviews lasted on average one hour. A set of probes were designed to cover all aspects of business development, from start-up, to growth issues, and both public and private sector experiences.

Once completed, the interviews were transcribed and analyzed for barriers M/WBEs encountered. From this analysis of the transcripts, the anecdotal report was completed. The anecdotal report describes general market conditions, prime contractor barriers, and the range of experiences encountered by interviewees attempting to do business in the City's market area generally, and with the City, specifically.

C. Public Hearings Testimony

In December 2007 and February 2008, the City Council conducted five public hearings to receive testimony from Oakland businesses. The public hearings were held in different locations throughout the City. The public hearings enabled members of the business community to provide testimony on their experiences in both seeking to do business with the City of Oakland and in contracting with the City. The claims made by the public speakers during the public hearings are summarized in this report. The City conducted an independent review of the claims noted by the public speakers.

The agenda for each of the public hearings included an overview of the Disparity Study process and a comment period for businesses to share their contracting experiences. The testimony from the five public hearings was recorded and transcribed. Quotes from the transcripts of the testimony have been incorporated verbatim into this Chapter.⁵

⁵ The anonymity of the interviewees are not disclosed in this Chapter and are maintained for confidential purposes.



III. BUSINESS BARRIERS

A. Racial Barriers

The interviewees reported incidences of racial prejudice encountered when working for the City and within the City. Racial discrimination restricts the opportunities of minority contractors at various points in the bidding and contracting process. Minority contractors who manage to overcome the obstacles of obtaining the skills and financing necessary to start their own businesses are frequently confronted with discrimination in attempting to bid for, obtain, and perform construction contracts.⁶

A Caucasian female owner of a construction-related company reported an incident when her company was hired by a majority-owned prime contractor to manage a local minority subcontractor:

There was a project in the City of Oakland where a bigger contractor got the job. They hired us to hire and manage the local [minority subcontractors]. They told the subcontractor, 'If we had it our way, we would never hire you at all. We would not work with you ever.' So, they paid us to hire the locals because they had to have them on the site, but they did not want to bother with them. The general contractor charged half a million dollars for the scope of work that [the subcontractor] did, and he paid them maybe a \$100,000. The prime contractor's name was [company name withheld] and they were primarily White men. [The subcontractor] did not complain because she was a minority and she didn't want to make waves.

This minority male owner of an engineering firm reported on an incident where he believed his award was rescinded because of his race:

I have had awards taken away from [my company] when it was [determined that] we were a Black firm.

⁶ *How Information Policy Affects the Competitive Viability of Small and Disadvantaged Businesses in Federal Contracting*, Anthony W. Robinson, President of the Minority Business Enterprise Legal Defense and Education Fund (MBELDEF). (September 24, 2008).



This same business owner also believed that race is a major barrier for minority-owned engineering firms in the Bay area:

My race is the reason my business is small. There are not many Black engineering firms of any size in the State of California. Whereas in other places, they have African American firms of considerable size, but in the Bay area and in Los Angeles, there are not.

A minority male owner of an architectural firm believed some City agencies prefer working with Caucasian female business owners rather than African American male business owners:

We have participated in a number [interviews] for different design projects and [because] of our qualifications, [they erroneously] believe [we] are a White-owned firm. And, [when] we come through the door, they say, 'Oh, wait a minute.'

We have been told by committee members and by our consultants that we made a good presentation, but we still do not get the project. It was fairly obvious why we were not selected. They would rather give [the work] to a White female than a Black male, which is what happened.

A minority female owner of a professional services firm believed that she is judged unfairly as a business owner because of her ethnicity:

My phone voice sounds different than the sound of my voice when you talk to me in person. And [some people say] 'Oh! You are the inspector.' Sometimes when I am in San Rafael or some other place working with my camera in hand, people [will say], 'Oh, what are you doing? It's because of the idea that there is a Black woman jumping out of a car with a camera. If I am going to case their place, I would [not] be in the middle of the street with a camera [during] the middle of the day.



A minority male owner of a consulting firm also believed his work is often judged **negatively** because of his ethnicity:

Throughout my 20-year career my race has been a [negative] factor. I don't like to use [this term] but there is such a thing as 'Black work.' [This is work where] African Americans or other people of color are involved in doing the work. Also, when there are no African Americans or other people of color involved in the [assessment of my work], it is usually [judged negatively].

This minority female owner of a professional services firm reported that she believed **her** race is a negative factor when she tries to obtain contracts:

I think racism is more of an issue now. When I will talk to people on the phone, apparently they cannot determine that [I am] Black. But, when I show up to their office they are totally dumbfounded. I even had somebody tell me, 'I can't believe you are the same person I spoke to.'

I have gone on interviews and sat in a lobby waiting for the interviewer to come out, and they look around again and again. Then they look [at] the receptionist [and say], 'Has the [interviewee name withheld] gotten here yet?' What else can be deduced from that but the fact that they were looking for somebody who was White, or certainly not Black.

However, this minority female owner of a professional services firm that had been **in business** for several decades firmly believed that the City prefers working with African American business owners:

I have no proof, but I believe that if I were an African American in the City of Oakland, I would be doing much better. [It seems] all the people in power seem to favor [working] with African Americans.



B. Gender Barriers

Sexist and unfair treatment toward woman-owned business owners were reported by several interviewees. Some female business owners believed that they have to overcome hurdles that their male counterparts are not subjected to because of their gender.

A minority female owner of a professional services firm believed that women have to prove themselves as capable, while their male counterparts are given the benefit of the doubt:

The [field] of environmental consulting is pretty much male-dominated and I deal with [sexism] a lot. My gender has had a negative impact [on my business]. It's another hurdle that [women] have to get over that [our male] competitors do not [encounter]. I have to prove myself as a woman, and I don't get the benefit of the doubt. [So], I lose contracts to my [male competitors] because some people never give us a chance to prove ourselves. And we get fewer opportunities to prove ourselves.

A minority female owner of a construction company explained her perception that it is harder for women contractors than male contractors in the construction industry:

. . . being a woman in a trade that's considered to be male-dominated . . . men expect for you not to know, so you have to be ten times more knowledgeable than they are when, you either approach them about bidding on a contract or even, just converse with them about putting a packet together.

A minority female owner of a professional services firm reported that some of her male colleagues are threatened by her because she is a female business owner:

My field is dominated by men, and there are not many women in the field. I am a [minority] woman, but women in general are threatening to some of the [men in my field]. In my [organization name withheld] chapter meetings there are some people who look at me like, 'What is she doing here?' There are [some males] in my chapter that won't speak to me because I'm a woman. I have been there for the last three years and I'm not going anywhere.



This minority female owner of a professional services firm reported that she is often subjected to sexist comments:

I have been harassed by . . . sexist comments. [I have been told], 'Obviously, she has a bur up her butt.' [Those are the] types of inappropriate comments to which I have been subjected. [I do not complain because] I feel that [this type of behavior] is inherent.

This minority female owner of a professional services firm also believed that sexism is more prevalent in the construction industry:

Traditionally, sexism is more of an issue in industries where there are very few women, and construction certainly is still one of those industries. That is one of the reasons [why] a lot of [women] leave [this field].

This Caucasian female owner of a professional services firm for seven years believed that women business owners are still subjected to sexist treatment:

I think it is really tough for women. . . . I have had people look at my chest when I'm talking to them or people make jokes about dumb blondes. When a guy looks at my chest while I'm talking to him, I say, 'Do I have something on my shirt?'

IV. BARRIERS CREATED BY THE CONTRACTOR COMMUNITY

A. Difficulty Breaking Into the Contracting Community

Traditionally, large corporations and majority-owned businesses have dominated the public and private contracting sectors. Exclusion from established networks makes it more costly for minorities to compete with non-minority-owned firms.⁷



⁷ *How Information Policy Affects the Competitive Viability of Small and Disadvantaged Businesses in Federal Contracting*, Anthony W. Robinson, President of the Minority Business Enterprise Legal Defense and Education Fund (MBELDEF). (September 24, 2008).

A minority male owner of a professional services firm believed that the City purposely prevents new businesses from obtaining City contracts:

I think that [there are systems in place] that are specifically designed to keep out who they want to keep out [of public contracting]. If you do not have a history [with the City] they will more than likely respond to [a prime contractor] that they have a reputable history with. They do not trust the new guy on the block.

A minority female owner of a professional services firm believed that personal connections with key decision makers are needed to obtain a City of Oakland contract:

I usually have an idea of whom the [City] is going to hire. [If] you don't get to key [decision makers] to make your company known, the business owner that has [the] contacts or better connections will [get the job]. I believe that [my bid responses] are put into a circular file. This has resulted in missed opportunities to grow my company. If [small businesses] do not have access to information about [bid] opportunities then they will stay small.

A minority female owner of a professional services company reported that the City repeatedly utilizes the same contractors:

There's a reason why [the City] only has the same people over and over and over on their contracts and [they] do not bring in new people. You can't just exhaust your contracts with the same people all the time. Sometimes you have to open the door of opportunity for other people and you have to make the process fair. And the process is just not fair.

This minority female owner of a professional services firm reported that the biggest obstacle for his company is breaking into the contracting network:

The biggest [obstacle] for me is trying to break through [the contracting network]. [This problem is with] the City of Oakland and the City of Piedmont. I think it's a matter of being an unknown. They already have people that they are comfortable dealing

M

with. So, the biggest issue is just getting an audience to convince them that we have something valuable to offer. I have not gotten an opportunity to start on an even playing field. It's an uphill climb. It is hard to build a clientele when you're trying to overcome prejudice.

A minority male owner of a professional services firm reported that his company has been denied work because another business was already selected before the interview:

There has been a couple [of instances] where we were rejected because they had already made a selection prior to the interview. The interview was just a formality. We didn't make a complaint because as a [professional services] contractor, if you complain they can bar you from bidding on a project. So, we may not be invited to submit a bid on another project after we complain.

A minority female owner of a professional services firm explained why it has been difficult for her small business to break into the contracting network:

When we submitted a bid, the approval process through the City Council and the City, took a year. And then, once it started, we were expected to start immediately. And, being a small business, I can't wait a year. I have to keep working and find other contracts. So that presented a challenge.

This minority female owner of a professional services company also reported on the difficulties of minority and women contractors obtaining work from the City:

There is great difficulty for the small minority and woman-owned business contractors to get work in this area. And so there are a lot of studies that take place. There are a lot of programs that are put in place. [But] there are never benefits. That is for the contractor, and the subtrades, particularly. Ten years ago, we had a company in town that could bid a five million-dollar contract. We don't have one in the African-American community now. There is no support from this City to help those contractors build their practices or build their businesses.



They cannot develop their business unless they have a revenue stream. They have to have ongoing contracting opportunities. They can't just have one contract. You can't just mail them a letter, fax them something, email them something, or call them on the telephone and think that's going to make a difference. It doesn't because you're talking about people that have lost hope. You're talking about people whose children won't go into their businesses because they think it is too difficult. They've seen the disparities that exist from the past.

A minority female owner of a services firm reported that efforts to network to obtain business for her company have not been fruitful:

I can network all day long, but do not get anything. And it's also very expensive to [join networks], which can be prohibitive for most minority firms. It [can] cost thousands of dollars a year to join networking organizations.

This minority female owner of a professional services firm reported on the lack of support she received from some agencies after she attended a business networking event:

I found it very difficult to break into the [public] arena in terms of finding opportunities. I did attend a small business [networking] event last year and I tried to follow up with a number of government agencies. It was an exercise in futility because these people [seemed] to show interest, and they encouraged me to get certified to get a contract. But, when I used the contact information they gave me, I only was able to talk to [one person] since that time. And the rest of them have not returned my messages. If they're not interested, then I would prefer that I know that early on.

However, this Caucasian male owner of a services company reported that he had not experienced any difficulties participating in networking events in the City of Oakland:

I have not had any difficulties with networking events. I go to networking events in the City of Oakland. I



think this phone call has come from one of the networking events that I [attended].

B. Good Old Boys Network

Many minorities and women find it challenging to enter the “good old boys” network, which they believe deliver a disproportionate number of contracts to a select few Caucasian male contractors. For example, much of the information about upcoming job opportunities is spread through informal “old-boy networks” which are social networks that deliberately excluded minorities, placing minority-owned businesses at a distinct competitive disadvantage.⁸

This minority male owner of an architectural firm believed the private developers that work on City projects prefer working with businesses that are a part of the old boys network. He also stated that it is especially difficult for African American-owned firms to team with private developers:

Since many cities have tight budgets, they have partnered with private developers to [work] on a lot of projects. A lot of the developers are good White ole’ boys who come from old family or real estate wealth. They have their own set of architects that they work with [the majority of] the time. This makes it hard to get on teams for public [contracts].

The City of Oakland’s staff is very good but it is hard to hook up with private developers. The City has been very helpful but the developers stick to their same ‘ole boys’ network. So, I mean that the City offers financing for a lot of those projects. They offer municipal bonds for those developers, but very few of us in the minority design community get a chance to partner with those developers on partially publicly financed projects. I don’t know about Hispanic [Americans] or Asian [Americans’] difficulties, but I know that it is tough for Black guys to get on these White development teams. If you are part of the ‘good ole’ boy’ White network, you get more business. When you have those relationships, like a

8

How Information Policy Affects the Competitive Viability of Small and Disadvantaged Businesses in Federal Contracting, Anthony W. Robinson, President of the Minority Business Enterprise Legal Defense and Education Fund (MBELDEF). (September 24, 2008).

college roommate with a Daddy who owns a big corporation, then you are going to get the big corporate business. It's White people that have those kind of long standing relationships. If you are Black you don't have those opportunities.

This minority female owner of a services company believed the City prefers to work with businesses that are a part of the good old boys network:

It's the same thing, the good old boys or brothers . . . who are at the top of the list. They [are they business owners that] are getting calls [from the City]. If you [are not part of the network] then you are never going to get a call. I think that there is a perception that small businesses are equal to a small mind. [Many] agencies and contracting offices are stuck in the good old boy days.

A minority male owner of a professional services firm also believed the City prefers to work with businesses that are part of the good old boys network:

Many believe that our work [should be performed] by a White business. The industry is still dominated by the good old boys. The City of Oakland is no different from any other environment where [decision makers] feel comfortable [working] with the good old boys. [Trying to] break through the old boys' network has been a real obstacle [for my business].

This Caucasian female owner of a professional services firm believed that the good old boys network controls the available work in her industry:

In the [industry type withheld] there is a good old boy network, especially with the big companies because they are the ones that are still getting the contracts.

A minority female owner of a professional service firm believed that the good old boys network is a major factor as to why women are not succeeding in her field:

In my industry women are not powerful because of the good old boys [network].



And this Caucasian female owner of a services firm believed that the good old boys network exists in the City of Oakland:

There is a good old boys network in place [in the City of Oakland].

C. City Employees Creating Procedural Barriers

Some interviewees reported on incidents where they believe that some City employees' actions created obstacles to their businesses while working on City projects. A minority male owner of a construction-related company reported on an incident where he believed a City inspector unfairly judged his work:

The City . . . says, 'no we don't like what you did.' I said but I followed the specifications. And I did everything you said in the contract. They said, 'Well, no.' And what can I do? I hire a lawyer? I don't think so. You know, it's gonna cost me \$200,000 in lawyers' fees to collect \$75,000 on a contract. I mean, the City really just says, "no." And, me as a small business person, I'm helpless. There's nothing I can do.

A minority male owner of a construction company described a situation where he believes he was forced to perform outside the scope of work without being compensated for his costs:

We had a small problem where we just finished doing a baseball field. And I sent in an invoice for a change order. And they told me no I can't get it. I sent [the invoice] to the prime and the City. And they told me no. They just told me, 'Hey, look, don't open up a can of worms.' And I did the job. It was outside [the scope of work].

A minority male owner of a construction company reported an incident he encountered with a City inspector who demanded work outside the scope and refused to pay for the service:

We just had an experience with a City inspector. And he came out there and I think he was in a bad mood or whatever. Doesn't make any difference. But basically what I'm saying is, he was asking for things

M

that [was not] needed. The codes say we only need a 10-foot head of pressure to test the system, as far as draining. We had that 10-foot head. He asked for a 30 foot [head]. In other words, he wanted a test on this vent pipe and a test on a three-inch in the restroom.

V. DIFFICULTIES IN THE CONTRACTING PROCESS

A. Difficulty Obtaining Bid Information

In order to be placed on the City's bidders lists, several interviewees reported that they had to constantly follow up with inquiries, and even then, they often do not receive notice of bid opportunities. Several interviewees reported that there is a problem getting bid information from the City.

A minority female owner of a professional services firm reported on the difficulties she has encountered trying to get on the City's bidders' list:

I received a notification by e-mail about [getting on a bid list] and [I was instructed to respond] to an email address. I did and I never heard anything back. I sent it again and I did not get a response. It seems that it's incumbent upon the [business owner] to have a lot of time to physically go to these agencies to get information and make personal contacts with the City managers to be able to navigate [through the system] successfully.

A Caucasian male owner of a professional services firm also reported that he experienced difficulty getting on the City's vendor list:

We had some problems [getting on the vendors' list] and we never [received] a response to [our] application. So, I never learned whether I was on the vendor's list. When I tried to [verify if we were on the list], they could never find our name on the list. This [also] happened with the General Services Agency. [We tried] at least four or five [times] because we were very interested in bidding at that



time and we needed to be on the list. But, they never found our application.

A Caucasian female owner of a services firm reported that she had not been able to get on the City's vendor list:

We have not received bids even though I have registered with the City of Oakland under certain product categories. I am aware that they procure services for the product categories we provide, yet we don't get requests for bids. I attempted to make phone calls to the Purchasing Department and the voice-mail box was full. So, I don't know what [bids are out] for the City of Oakland because we could not reach anyone to get on their [bidders] list.

This minority female owner of a professional services firm had not been able to get on the City's or the Port of Oakland's vendor list after trying for a year:

[I had problems trying to get on the bidders' list] with the Port of Oakland and the City of Oakland. I am [still] in the process of trying to get on their lists. After a year still nothing has happened.

A minority male owner of a professional services firm reported that he was not able to get on the City's bidders' list because he was told incorrect information by a City representative:

I had some difficulty with the City of Oakland because I was told several different stories. One was that my business had to be operating for one year in Alameda County. I learned a year later, after I'd been in the County for a year, that I had to be a resident of the City of Oakland in order to get a license. So I never made the bidders list for the City of Oakland.

This Caucasian female owner of a professional services firm for 30 years also experienced difficulty trying to obtain bid information on City projects:

In the past, a lot of agencies would notify us if an RFQ or an RFP was coming out. Now they issue notices online. And, unless you have someone that can constantly [check for notices online] it's a real pain. Frankly, I do not have the time to do that. As

far as the City of Oakland I don't even know what their bidding process looks like. Even though I pay my business taxes to the City of Oakland, I have never [received] anything from them that indicates how to [get on their bidders' list].

A minority male owner of an engineering firm reported that his company has encountered difficulties remaining on the City's bidder's list:

We have had difficulties in the past maintaining our name on the consultant's list with the City of Oakland. For some reason we can't keep our name on the list so we have to check [periodically]. So, when other firms get the notices, we do not. We've had this problem with a number of agencies in the bay area, including the City of Oakland and the City of San Francisco. We have contacted them and asked them to please put our name back on the list, and they comply but when we check the next year our name is off again. I don't think they want any competition, but I believe that race has a lot to do with the fact that [our name] is constantly [being] deleted from many lists. I do get an apology from time to time and they say, "[name withheld], I can't figure out why your name is not on the list anymore." This has affected our business enormously because since we can't find out [about upcoming] projects, we cannot propose on them. So, it has definitely impacted us in terms of our size and our gross revenue.

This minority male owner of a professional services firm has become a part of the good old boys network because of his 26 year relationship with the City:

I have a longstanding relationship with the City of Oakland. In fact, I started doing work for the City back in 1980. So, they will call me and ask me if I'm interested in bidding on a job [in my field]. I have the good fortune that they want me to bid on their job. I have not had any issues regarding [obtaining] information about potential jobs that are going out to bid [with the City].



This minority male owner of a construction-related company believed the City should adopt the bid notification procedures used by Sacramento County:

I called the City to find out who was in charge of construction contracts for parking garages and I got such a run-around. They could not tell me who [was in charge of that] department. To this day, I never found out who was responsible for controlling the contracting. And we are still not on their [vendor] list. Sacramento County has taken great steps to inform business owners of upcoming contracting opportunities. The process that they use is really outstanding. They have a bidders list and their computer sends out a lime green email that is automatically generated to vendors that pertain to the product or service they provide. It's a great system. Oakland does not have this system.

This Caucasian female owner of a professional services company reported that she does not know how to find out about upcoming contracting opportunities with the City:

I have no idea what is out for bid. And, I still do not understand how to find out about available business opportunities

B. Inadequate Lead Time To Respond To Bid Notices Prevents M/WBEs From Submitting A Comprehensive and Timely Bid Response

The failure to provide adequate lead time to respond to a request for bid greatly diminishes the chance of minority and woman-owned businesses to successfully bid. Many of the interviewees reported that they receive inadequate time to respond to a request for bid.

A Caucasian female owner of a professional services company believed that a bid she responded to might have been successful if she had more time to respond:

I participated as a subcontractor for [a project] with Alameda County Transportation Improvement Authority and there was very little lead time. But the [prime contractor] managed to get it in. We did not make the cut, but I think [if we had] a longer period



of time, it might have helped because we really [needed] two or three weeks [to adequately respond].

A minority male owner of a professional services company reported that he typically gets inadequate lead time to respond to a bid:

[Bid notices from prime contracts] have inadequate lead time a 100 percent [of the time].

In some situations the bid process may be uniformed regarding the time required to prepare a bid or the solicitation process may be a formality because the decision-makers may have already identified a preferred contractor. A minority female owner of a services firm also receives requests for bids with an inadequate lead time:

About 20 percent of the bids [we receive are late]. [A bid is] late if the contracting office puts out a solicitation a week or two before the proposal due date. [A contracting officer] gave me . . . a week [to respond] which is ridiculous. So I called him and I said, 'What the hell are you doing?' He finally came to his senses and said, 'Send me a list of questions?' Obviously, this is a situation where the guy didn't know what he [was doing]. A lot of contracting officers don't have a clue. Sometimes you find out that they already knew what business they want [for the job].

This same business owner also complained that sometimes there is not adequate time to obtain a bid bond before the bid response due date:

I also experienced a very tight turnaround time between the issuance of the solicitation and the due date of the bid bond. I have complained to the offices that put the bids out. But, you have to be careful when you [complain] because if you anger them, your [bid response] might end up in a round file. So you have to be very diplomatic about how to approach the situation.



A minority male owner of an engineering firm for 17 years reported that prime consultants frequently provide inadequate lead time to prepare bid proposals:

On a lot of projects prime consultants will sit on [the proposal] deciding whether they should go after it. And during this period time is wasted. By the time they decide to go after the bid, there may only be two weeks left, and then they will then notify us. At that time, we do not have a lot of lead time.

A Caucasian female owner of a professional services firm reported that she had as little as one week to respond to a bid for a City agency:

When teamed with [prime consultant name withheld] we had a week to respond. We could not respond within that time period. So the one that we were trying to get was definitely on a short string of time.

This minority female owner of a professional services firm explained the impact on her business when she receives inadequate lead time.

Late notices preclude us from being able to [adequately respond to a] bid.

Finally, this Caucasian male owner of an engineering firm for 60 years reported that his company had not experienced inadequate lead time to respond to the City's request for proposals:

The City's lead time seems to be fairly typical for public agencies for our type of work. It certainly is not too short.

VI. CERTIFICATION PROCEDURES

Several interviewees complained about the amount of paperwork and time required to obtain their L/SLBE certification. A minority male owner of a construction-related firm reported that it took a year to get certified by the City of Oakland:

[We experienced] a lot of difficulty trying to get certified. We tried to get certification for over a year. The process took a very long time. It has been over a year ago that I contacted the City of Oakland to get certified.



A minority male owner of a professional services company believes the information required to become certified is excessive:

There is extensive paperwork with [the certification process]. Three years of my tax returns and all that. Looking back on it, I consider that kind of discriminatory. Because the other people don't have to have three years and I'm not getting any benefit from being considered a so-called, 'minority contractor.'

A minority female owner of a services firm believed the City should implement reciprocity procedures with other governmental agencies:

We have tried to get certified with the City of Oakland, but if your business is not located within the City of Oakland [you can't get certified]. There is no reciprocity and no such thing as [certification with] the surrounding counties. [I was told that] if your business is not [located] in the City of Oakland, don't waste your time filling out [the application]. But, other counties [use reciprocity] with their surrounding areas. The City and County of San Francisco [will accept certification from businesses located] in Contra Costa County, but not the City of Oakland.

A minority female owner of a professional services firm also explained that reciprocity between local agencies would be beneficial for small business owners:

[The certification process requirements] demands a lot of paperwork. But, hopefully, they will streamline that process. [Even though] they [procure the same services] they do not share [certification] information [between agencies]. The certification documentation should be routinely accepted by agencies within the City or the market area agencies.

This minority female owner of an architectural firm recommends a reciprocity certification process with local agencies within Alameda County:

Universal certification would be helpful. If the public agencies that provide [certification services] had a universal certification process, [it] would save



business owners [time completing] the same paperwork for the City of Oakland, County of Alameda, Caltrans, and other agencies that ask for the same information.

A Caucasian female owner of an architectural firm explained that the City's certification process was time consuming because of the required documentation:

The L/SLBE certification process requires way too much paperwork. We sent in an inch-and-a-half of paperwork that consisted of three years of personal income taxes, business taxes, invoices, and a whole lot of other paperwork. It probably took us eight hours to complete the paperwork.

A Caucasian female owner of a professional services company believed that some agencies' certification requirements are excessive while others are tolerable:

I have refrained from applying for certification with the State because the paperwork was excessive. The Port of Oakland's [certification requirements] also requires a lot of paperwork, but it is tolerable.

Finally, this minority female owner of a professional services firm does not characterize the City's certification process as excessive:

[The certification process] is not excessive. Once you understand the process, it's very easy to comply [with the requirements].

VII. FINANCIAL BARRIERS

A. Difficulty Obtaining Financing

One of the most significant hurdles for minority and women business owners is obtaining loans. Studies show that, among firms with the same borrowing credentials, minority-owned firms are approximately 20 percent less likely to obtain venture-capital financing than comparable non-minority-owned firms, and 15 percent less likely to receive business loans.⁹ Additionally, a study compared Caucasian-owned businesses with African American-owned

⁹ *Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies*, Journal of Urban Affairs, Vol. 14, No. 1, at 34, Grown & Bates (1992).

businesses with the same amount of equity capital found that Caucasian-owned businesses typically received loan amounts three times larger than those received by their African American-owned counterparts.¹⁰

A minority male owner of a professional services company reported on a stereotype that he believed is prevalent in the financing industry:

If you are African American and are trying to get a line of credit, it is [automatically assumed] that you are not credit worthy. It's a stereotype that we have to deal with all the time.

This minority male owner of an architectural firm believed his company was unfairly denied financing:

[Financial institution name withheld] was not very helpful. They had pretty much made up their mind based on who I was and my race. They judged me on that. It certainly wasn't told to me why I was rejected. This happens [often in my community].

This minority male owner of a professional services firm described how lack of financing has impacted his business:

[The inability to obtain financing] has affected my business dramatically. I was [forced] to work off of a line of credit with a wholesale house. And it's hard to get work as a prime contractor, so we have work as a subcontractor. How can I [become] a 'Sears & Roebuck' when I am only given 10 percent of the pie?

A minority male owner of an architectural firm reported on the hardships his company faced after a financial institution withdrew his line of credit:

I lost my line of credit from [financial institution name withheld] after having it for ten years. I could not get another line of credit because we reached our limit. We eventually got another line [of credit] after I mortgaged my house. I do not think we were treated fairly. One day they called and said, 'We are

¹⁰ *Commercial Bank Financing of White and Black Owned Small Business Start-ups*, Quarterly Review of Economics and Business, Vol. 31, No. 1, at 79, T. Bates, (1991).

turning your line [of credit] over to [financial institution name withheld].’ I asked, ‘Well, what does that mean?’ Basically, they took [away my line of credit] and converted it into a term loan with [financial institution name withheld]. It was a 9 percent interest rate which can really hurt a small business. This really limited our ability to go after new work, and we had to pressure our existing clients to pay on time. We also got behind in paying some of our bills and we lost some employees.

A minority male owner of a construction-related company explained why he believed his company was unfairly denied financing:

I was [denied financing] and I was treated unfairly and unjust because I had a divorce that happened 12 years ago. They turned my company down even though I pay my invoices on time. My company pays our suppliers and our utilities on time. I even showed them where we had contracts that were ongoing for more than \$100,000. I could not get \$5 out of them. So, I believe I was treated unjustly. [A lack of financing] keeps me [out of] the market for construction work. [Some contractors] want us to bid with them, but I cannot because I do not have the finances even though I have the resources. I have good employees to do the work, but [lack of financing] keeps my company small.

A Caucasian female owner of a services company explained that a line of credit she had for 12 years was unfairly converted into a loan:

I had a line of credit for 12 years and they told me that they were going to [convert] it into a loan. They wanted to charge me \$900 to apply for this loan so they could cancel the line of credit. And about six months later they turned my line of credit into a loan. I had a \$50,000 line of credit and now it’s a loan. I never missed a payment during the 12 years [I had the line of credit].



A minority male owner of a construction-related company believed that African American businesses are unfairly treated by financing institutions:

The lack of financing [almost depleted] our savings. We basically have to rob Peter to pay Paul to meet our financial business obligations. Our cash flow is basically nil because our expenses are really high, which represents over one-third of our payroll on a biweekly basis. As a [person of color], there are a lot of doors that are shut. There are even doors in the political sector I cannot walk through. [Some financial] institutions advertise for small business loans [but they are] for non-African American businesses.

However, this Caucasian male owner of an engineering company for 60 years reported that his company is self-financed and is not reliant on financial institutions for monetary support:

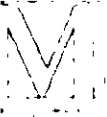
[Our company] is self-financed. Our corporate headquarters is in [City name withheld] and we have had to do very little in the loan arena.

This minority male owner of a professional services company reported on the problems he encountered trying to obtain bonding for his company:

They wanted us to collateralize the bond. This is a new [requirement] because the market has tightened up, so the bonding companies are asking for more security. We had to agree to pay 10 percent of the bond as collateral. So, that ties up our money.

B. Late Payment by the City

Many businesses generally depend on being paid in a timely fashion to meet their financial and administrative obligations. Late payments are particularly onerous for minority and woman-owned businesses that experience cash flow problems. Federal, state, and local government procurement regulations specify the methods and timing of payments to participating contractors. However, problems with late payments by government agencies continue to be reported. Many interviewees reported that the City failed to pay them in a timely manner.



A minority male-owned construction-related company reported that he had waited a year and a half for payment from the City:

Just about every contract I have had with the City of Oakland, I am paid at least four or five months from when the work is performed. I think this is an unreasonable amount of time to wait for payment. I have experienced this about 30 times in the past six years. I still have outstanding payments with the City of Oakland, which have extended from four months to eight months. So, there are a lot of payments where I have not gotten paid yet. I guess the longest that I have gone without payment has been about a year-and-a-half. I am not going to bid on another City of Oakland contract until my payments are current with the contracts that I have.

A Caucasian female owner of a professional services firm for 25 years reported having outstanding invoices that were submitted to the City a year ago:

[Late payments from the City] are constant, protracted and annoying. An invoice from a year ago is still not paid. The excuses are rampant, galore, and repetitive. Such as, 'Oh, it's in Accounts Payable, or it's lost, or we can't find the file, etc. They have never ever paid on time. A late payment is anything that goes out of the boundaries of our contract, which requires payments within 30 days. The City of Oakland has only one paying group, accounts payable, and they are always late. We have complained all the way up to the acting boss [name withheld], to no avail. [Unfortunately] the situation has gotten much worse. It takes away a great deal of time [from operating my business] because we I have one person that is dedicated to chasing after [late payments]. It is very frustrating because we are a very small company.

This minority female owner of a professional services firm reported that she waited seven months to receive a payment from the City:

I think [late payments are caused by] the bureaucracy of the [agency]. I had a situation where I waited



almost seven months before I was paid by the City. As a small business seven months is a long time to wait. I consider a payment as late when it is [past due for] more than 90 days. Technically, a late payment is anything more than 30 days on the original invoice. This limits our ability to build our workload.

It took six months for this Caucasian female owner of an architectural firm to receive payment from a City agency:

I have waited six months for payment from a City agency.

A minority female owner of a professional services firm reported that her invoices are not paid until after 60 days:

A late payment is when I receive payments 60 days or later. [My colleagues] that are [people of color] and have a business the size of mine [are experiencing similar problems]. Small businesses can't afford to be paid late, but larger companies have an infrastructure and resources available to carry them. We cannot pay our bills.

A minority female owner of a professional services firm for 22 years usually waits three months before receiving payment from the City:

When I work for the City of Oakland, I [typically] do not [receive] payment until after two to three months. And sometimes I don't get paid unless I call them half a dozen times [inquiring] about my payment. This has happened approximately ten times.

A minority male owner of an engineering firm reported that he had experienced late payments from the City:

We [experienced] late payments all the time from government agencies and I define a late payment as anything over 60 days. We do the work and then we bill at the end of the month and we allow 30 days. We have had a problem with the City of Oakland with late payments. Sometimes they are slow paying because the construction [part of the project] has not

been completed. Late payments are very common for professional services firms.

A minority male owner of an architectural firm reported that he complained to the City about late payments, even though he believed he might experience retaliation:

Yes, we have experienced late payments. After a couple months of not receiving payment, we usually call and find out what the problem is. I usually complain to the supervisor to get movement on the payments. Of course, this makes that individual pissed off, so they will hold up the next payment.

A minority male owner of a professional services firm also reported on the effects of late payments on his small business:

I have had some problems with late payments. We request net 30 days, so anything past 31 days is a late payment. We had to borrow money to pay our bills. But, we can't charge interest on the past-due money that is owed, but we have to pay [interest] on the money we borrow. So it costs us.

This Caucasian male owner of a services firm reported that he had only waited a few weeks after his payment due date from the City.

A late payment is later than the day that it's due on your contract. I have received late payments from the City of Oakland after a couple of weeks past the due date.

A minority male owner of a construction company reported that waiting for payment from the City was detrimental to his small business:

We did a project for the City of Oakland and the only thing that we had a problem with was payment. And we did the job. We got it done and, within fifteen days because that's how we calculated. But waiting for the money, it just hurt us.

This Caucasian male owner of a 60 year old services company reported that he does not receive late payments, in fact his payments are usually received early:

No, we do not receive our payments late, usually they are early. [Our payments are received on time] 100 percent of the time.

C. Late Payments by Prime Contractors

Subcontractors experience extreme financial burdens when the governmental agency pays its prime contractors late. Furthermore, late payments by prime contractors is another factor that threatens the longevity of minority and woman-owned businesses.

These interviewees reported on the negative impact late payments had on their small businesses. This Caucasian female owner of a construction-related company reported that late payments from prime contractors have had a devastating effect on her small business:

Our company had problems with the IRS which were generated by non payments from general contractors. The City of Oakland paid the general contractor and they refused to pay us. So, we had to operate without money and we paid our payroll first. We [were forced to] let our taxes and our workmen's compensation insurance [become] overdue.

A minority male owner of a construction-related company reported that some prime contractors has withheld his money over a month and an half after they have been paid by the City:

The [primes] sit on my money. And I know that they have cashed the check from the City a month and a half ago. And part of that money should have been paid to me within 15 days. But it wasn't. And the profit margin for a small business like mine is like five percent. So when you're talking about floating a quarter of a million dollars in payroll for two months on a \$500,000 contract . . . your profit is gone, just like that.



A minority male owner of a construction firm reported that some prime contractors will withhold his money and claim they have not been paid:

They hold your money and say they haven't gotten paid. They'll take that money and set it in a bank and draw interest off of it and keep telling you, 'No, we haven't gotten paid.' That's an old school thing there.

A minority male owner of a construction-related company reported that a prime contractor has held his payment almost 70 days after he submitted his invoice:

We had a contract here in the City of Oakland . . . With [prime contractor name withheld]. And they yo-yo'ed us to the fullest. In other words, when we turned in our invoice, we didn't get paid 'til almost 60 to 70 days after. And this was a contractor that had a contract with the City of Oakland and that's an example of how they can just string out the money so they won't have to pay.

This Caucasian female owner of a professional services firm for 30 years reported that she had asked for a 60-day payment clause in her subcontract with prime contractors to avoid late payments:

We [were subcontractors] on a project and we included a clause in our subcontract that required payment in 60 days because we are a small business. Otherwise, payments can drag out five to six months before we receive payment from prime [contractors].

Even though we wrote a 60-day [payment clause in our subcontract] we waited over 60 days before we were paid by that [prime contractor]. Unfortunately, there were no penalties written into the contract. Typically, prime contractors do not give us reasons [why they are late]. They will say, 'Oh, yeah we are almost ready to cut the check.' Occasionally they will say, 'We have not been paid yet, so we are not paying you.' We are on the bottom of the totem pole so we are the last to get paid.



This Caucasian female owner of a professional services firm waited up to four months to receive payments from prime contractors:

I have had payments that were received three or four months after the last of the work was completed. I [consider] six weeks as a late payment because I'm on my own. I do not have another source of income and I rely on those payments. Late payments create a lot of stress in regards to paying bills.

A minority female owner of a services firm explained the effects of late payments on her small business:

Since we do a lot of government contracting, I am always robbing Peter to pay Paul because construction [prime contractors] are notoriously late. I have had to use my line of credit and my personal funds.

A Caucasian female owner of a professional services firm described how the impact of late payments had affected her small business:

Late payments have had a very profound impact on my business. We have to pay our [employees] before we get paid, so we have to front that money. This can make small businesses less competitive.

VIII. PUBLIC SECTOR VS. PRIVATE SECTOR

A majority of the interviewees reported why they prefer to work in the public sector. Several business owners explained that the work they received from the public sector had been a major factor in keeping their business solvent.

Public sector work had been the mainstay for this minority male owner for 20 years of a professional services firm:

The public sector work we have worked on in the federal government has been excellent. I have not had any problems with them. My [experience] working in the private sector has been substantially less than the public sector.



A minority male owner of a professional services firm who primarily works in the public sector does not believe his success would be as great in the private sector:

In the private sector I would not have much of a chance [working] in construction. There are no laws or rules to mandate prime contractors to work with minority businesses. But, it's a well-known fact in the construction industry that if you [are not well connected], it will [be difficult to get work].

A minority female owner of a professional services company also reported that most of her work comes from the public sector:

Usually, I pretty much [work] in the public sector. I find trying to obtain work in the private sector much more difficult.

This minority female owner of a services company reported that the public sector had helped sustained her business:

We are tremendously more successful in the public sector than in the commercial sector. It is very hard to get your foot in the door or your face of color in the door in the commercial arena.

A minority male owner of an architectural firm believed that M/WBE participation requirements are the reason why his company receives more work from the public sector:

We receive more work from the public sector. We have tried to get more private work, but we have not been successful. Due to M/WBE participation requirements in the public [sector] we receive more work in that area.

This Caucasian male owner of a services company explained why he prefers the public sector:

I think the people [in the public sector] are nicer. They are not under the gun and there are no deadlines.

M

A minority male owner of a professional services firm for over several decades described the work he performs in the public sector as rewarding and gratifying:

The public sector is definitely a little bit more democratic. In the private sector, they will pick whomever they want. But, the work that we do in the public sector tends to be more rewarding and gratifying. That is one of the reasons we pursue work in the public sector. It's not as lucrative as the private sector.

However, this minority female owner of a professional services firm believed the public sector is too bureaucratic:

The public sector has much more bureaucracy and paperwork than the public sector.

This minority female owner also believed that the public sector is challenged by too much bureaucracy:

When I worked with the City of Oakland [the project] was very smooth. But, it was the bureaucratic process that was challenging.

A minority female owner of an architectural firm believed the public sector burdens small businesses with too much paperwork. But, she also reported that payments are more reliable from the public sector:

The public sector [requires] a lot more paperwork. In the private sector, you can get a job from a handshake. Payments from the public sector are much more reliable than the private sector, where people tend not to pay.

A minority male owner of a professional services firm explained why he is deterred from working in the public sector:

We have [received] more business in the private sector. The public sector bid packages are overwhelming. This can make or break my business. A lot of small business owners wear several hats as far as responsibilities go. And, to muddle through a

[voluminous] public bid package can be problematic.

A Caucasian female owner of a professional services firm explained what she believed are the disadvantages of trying to obtain work from the public sector:

In the public sector there seems to be a lot more paperwork and is harder to obtain work because of competition with large companies. Also, the public sector has a lot more red tape [that can prevent small businesses] from getting a foot in the door.

A minority female owner of a professional services firm reported that she solicits work equally from the private and public sectors:

I put the same amount of energy to obtain business in the public sector as I do in the private sector. Both sectors are governed by relationships. People tend to work with people they know and like. So, you have to put the same amount of energy in order to get work from the public sector or private sector. Just because the public sector releases RFP's does not necessarily mean the contract will be awarded to the low bidder. A lot of [decisions] are qualifications-based.

This minority female owner of a professional services firm for 25 years described what she believed are the differences between the public and private sectors:

The public sector is notoriously slow in paying their prime contractors. The private sector is a lot more organized and they seem to [prefer] more immediate results than government agencies.

A Caucasian male owner of an engineering firm for 60 years described the public sector as cumbersome and bureaucratic:

The public sector tends to be more cumbersome and they have definite limits on their flexibility. When a particular job situation changes, they are less able to adopt or deal with changes because of budgetary constraints and bureaucratic limitations. The private industry has much more flexibility.

IX. COMMENTS ABOUT THE CITY'S L/SLBE PROGRAM

The City of Oakland and the Redevelopment Agency Local and Small, Local Business Enterprise (L/SLBE) policy established goals for participation of certified Local Business Enterprises (LBEs) and (SLBEs) in City contracts. Construction goals for contracts valued more than \$100,000 and professional services contracts valued less than \$50,000 is 20 percent. The 20 percent goal must be met with a minimum of 10 percent for LBEs or Local Not For Profit Business Enterprises and 10 percent SLBEs or Small Local Not For Profit Business Enterprises.

The City of Oakland certifies for both for-profit and not for profit L/SLBE businesses. Eligibility for-profit and not for profit businesses include having an established operation located in the City of Oakland and fully operational for at least twelve consecutive months prior to applying for certification. A majority of the interviewees believed the City's L/SLBE program is valuable and is needed for small, female and minority businesses.

A minority male owner of a professional services firm believed the City's program is valuable for local residents:

I think the City's L/SLBE program is valuable. I am aware of several projects within the City that require residents of the City of to work on those projects. So, I compliment them for that.

A minority male owner of an engineering firm believed that affirmative action programs are needed because the playing field is not level for minority businesses:

It seems like no matter how good we are, or what level of expertise we have, we are seldom called for work when there are no affirmative action participation [requirements]. Approximately 95 percent of our [work is due to] consciousness of our ethnicity. This is a battle I have fought for over 30 years. I'm sorry to say that in this day and age. We have always wanted to not be listed as a minority firm, just a firm on a fair playing field, but we have never been able to find that level playing field. The City's program is valuable because it opens up the door. The shortcomings of the program is how it is enforced, but without it there would be very little minority business participation. The City of Oakland has been progressive in terms of being inclusive. But,

the City could do a lot more. I haven't had a project with the City of Oakland for ten years, and we submit [bids] all the time but we can't get any response.

This minority male owner of an architectural firm strongly believed the City's L/SLBE program is valuable for minority businesses:

I definitely believe the [City's program] is valuable. If it wasn't in place folks like I would not get an opportunity to show [public agencies] what we can do and compete with other firms. When we [get an opportunity to work] we always do a good job.

This Caucasian male owner of a professional services company also believed the City's program is valuable:

I think the [City's program] is valuable because everybody has a contribution to make [to public contracting]. And it gives [minority businesses the opportunity] to work on the playing field on the same level as other business owners. Therefore, I believe it's valuable in that respect.

A minority female owner of a services company believed the City's program is **only valuable** for businesses that are located in the City of Oakland:

I think it is potentially valuable to firms that are located in the City of Oakland. But, I don't know whether minority firms in the City of Oakland are actually being awarded contracts. It's only valuable if people are getting contracts. It certainly has not been valuable to me because my company is not located in the City of Oakland.

The City's program was described as being valuable by a Caucasian female owner of a construction-related firm:

The City's program is absolutely valuable. It's very valuable because it gives M/WBEs the opportunity to bid projects and be a preferred [vendor].



A Caucasian female owner of a professional services company also believed the City's program is valuable for small and minority-owned businesses:

The City's program is valuable because it gives small, women and minority-owned businesses an opportunity that they would not otherwise have. It empowers the small, minority-owned, and woman-owned businesses.

This minority female owner of a professional services firm for 25 years believed that her company would not have been successful if the City's program did not exist:

The City's L/SLBE program is very valuable. We have been involved in many contracts simply because we are woman-owned. And because that program exists, we are called upon for work [and without] it we would have not been [contacted].

A minority male owner of a professional services firm stated the following concerning the City's L/SLBE program:

It's valuable if it's enforced. If it's not enforced then it's not valuable.

A Caucasian female owner of a professional services company credited the City's program with helping to make her firm a success:

The City's M/WBE program has helped me get business. I think small businesses need that edge.

A minority male owner of a professional services firm for 26 years believed the City's L/SLBE program is needed to level the playing field for minority business owners:

The City's program is valuable because it is an advocate for those who have traditionally not been able to secure public contracts. And at least historically, the field was tilted away from them. I think the program as it exists today helps to level the playing field a little bit more. Hopefully, someday . . . the advocacy needed to promote minority programs won't be needed, but they are still needed today.



This minority male owner of a construction-related company believed the City's program is a valuable service to the City of Oakland:

The L/SLBE program provides a good service to the City of Oakland. It is needed because it's a one-stop place for small and minority contractors. The City of Oakland's [program] is valuable need and I think it should always be there.

This Caucasian female owner of an architectural firm explained why she believed the City's program is beneficial for female and minority-owned businesses:

I believe the City's program allows minorities and females that are new in the industry an equal footing.

A minority male owner of a construction-related company believed the City had a real commitment to increasing opportunities for minority and woman-owned businesses:

I think City managers really make an effort to contact small local businesses. And they are sincere in trying to open up bidding opportunities for City of Oakland contractors.

A minority male owner of a professional services firm believed that minority business owners received more opportunities when affirmative action programs included requirements to utilize minority businesses:

When affirmative action programs had participation requirements, there was more of a commitment to giving minority businesses public contract work. I [have been contacted by prime contractors] when there were goals. I have not been contacted by a contractor when there were no minority business goals.

However, this same business owner explained why he now believed the City's program is not valuable:

There are no opportunities [for minority businesses] to meet [procurement managers]. For example, with the City of Aurora I was given the opportunity to meet their [procurement] manager. But, with the City of Oakland I had to make cold calls to their managers.



Also, I don't think the [City's program] is valuable because there are not clear rules and regulations regarding certification.

A minority male owner of a construction-related company explained why he believed the City's program could be improved:

I think the City's Program would be more valuable if they truly communicate with small and minority businesses to help promote them.

X. POSITIVE STATEMENTS

Many interviewees reported on positive experiences they encountered with City staff and representatives from other agencies in the market area.

A Caucasian female owner of a professional services firm spoke highly of a City manager who assisted her in becoming certified and getting on the City's vendor list:

I ran into [name withheld] at a meeting and I went to her afterwards and I told her that I was having trouble getting certified as a small business. She was aghast and said, 'Call my office, and I'll have someone take care of that for you.' I went back to my office and called. And, within an hour, she called me back and she told me exactly what to do. I was certified within a week. That was a very positive experience. She also had someone call me back and [inform] me on whom to call to get on the vendor's list.

This same business owner reported on a positive relationship she developed with City staff:

I have had very positive experiences with the people at the City of Oakland. I worked pretty closely with the Finance Department . . . and they were very responsive. They helped us get through all the red tape, so that experience was very positive.



A minority male owner of a professional services company for 26 years reported on his relationship with a City agency that has had a positive impact on his firm:

Working with the African American Museum and Library of Oakland has been very rewarding and positive for my company. The current director is [name withheld], who is a male Afro-American. They definitely encouraged me to bid on the contract and they made sure that I was fully apprised of all the demands that the contract required.

A minority male owner of a construction-related company praised both the City and County:

[Name withheld] at the City of Oakland and [name withheld] at the County of Alameda have given [my company] a fair shake. As a matter of fact, I would give them both praises.

A minority male owner of an engineering firm for 17 years spoke highly of the City's efforts in creating more opportunities for minority businesses:

I feel that some of the leaders at the City of Oakland have been pushing for more opportunities for minorities. I think that they have tried really hard to recognize the disparities with minority [businesses]:

This minority male owner of a services firm also spoke highly of one City manager:

A gentleman who works with special events for the City was very helpful in telling me what he wanted [for a project we worked on].

A minority female owner of a professional services firm spoke positively of a program sponsored by the County's Department of Public Works:

The Public Works Agency was really helpful. Their Business Outreach Bureau was particularly helpful because they explained the procurement process in manageable segments and they also sponsor workshops to assist business owners in completing their paperwork or certification documentation.



A Caucasian male owner of a professional services company received assistance from a City employee in his effort to secure a City contract:

There was a lady at the City of Oakland who was sincere in trying to help us get work with the City.

A minority male owner of a professional services company reported that a City employee referred her to procurement managers in an effort to get work:

A woman at the Port Authority gave me the names of a couple managers and she coached me on their [procurement needs].

A minority male owner of a professional services firm reported that several City managers supported his company while working on City projects:

A manager on a school project stood up for us against the [prime] contractor. Also, other managers with the City of Oakland were very helpful. They went a little beyond what they were required to do.

A Caucasian female owner of a professional services company for 25 years reported on a manager that assisted her company in receiving work with the City:

The manager in the Office of Equal Opportunity and Access has helped us get jobs. She is extremely helpful.

A Caucasian female owner of a construction-related company explained that the employees at the Port of Oakland assisted her small business:

The Port of Oakland was always very helpful to us. They let us look at the plans and specifications so that we could determine if we were capable of doing the work. We are also in a mentoring program that forces people to be a little more helpful.

A minority male owner of a construction-related company spoke highly of several local municipalities:

We had a contract with Santa Clara County Parks and Recreation and their manager was very helpful to us. We also received assistance from managers at the San



Francisco Redevelopment Agency around issues of payment.

A minority female owner of a professional services company reported that a City manager provided assistance to her company that was beyond the type of assistance she is accustomed to receiving:

A manager at the City of Oakland's Small Business Administration was extremely helpful. She gave me the details of what was necessary to become certified as well as the required forms. I could have easily downloaded the forms, but she was very aggressive in making sure I got my hands on the right documents. No one has ever gone out of their way like that for my company, or shown that type of interest. Also, the Small Business Administration's website is good in terms of [answering] general questions regarding starting a business.

A female owner of a professional services company also spoke highly about the services offered at the Small Business Administration:

The Small Business Administration has been very helpful through their Small Business Development Center. They offer classes on different subject matters for small business owners.

XI. RECOMMENDATIONS

The interviewees suggested ways for increasing the participation of minority and woman-owned businesses on City and other market area agencies contracts. They ranged from a stronger commitment from City decision-makers, the establishment of participation goals for minority and woman-owned businesses, the elimination of liability and worker's compensation insurance for small business owners to more monitoring to ensure that the compliance points are applied by general contractors.

A Caucasian female owner of a construction-related company suggested that the City waive liability and worker's compensation insurance for small business owners:

The cost of doing business for a small business is higher than bigger businesses. Since the City of



Oakland and the County of Alameda want minority businesses to grow, I would like to see them [waive] liability and workmen's compensation insurance for small businesses. This would give everybody an equal opportunity to make a profit. The way it is now, it will take twice as long for minority businesses to grow, if they ever get over the hump.

This same business owner suggested stricter monitoring on City prime contractors:

Also, there needs to be more monitoring to ensure that the compliance points are actually applied by general contractors. And, I would also like for a policy to be implemented that when a minority contractor is awarded a contract they must perform the entire scope [that was subcontracted]. We have worked on projects where we were only allowed to a little bit of [the scope of work]. I have worked on a \$300,000 contract and my scope was reduced to \$85,000 and this needs to be stopped.

A minority female owner of a professional services firm recommends the establishment of a small business council to assist the City in identifying opportunities for small business owners:

It would be helpful to have a small business council look into the structure of some of the bids to assist the City and other agencies in putting together bid packages that are not detrimental to small businesses. This would be helpful because these business owners understand the dynamics and challenges of small businesses.

This minority female owner of a professional services firm recommends setting aside contracts for small businesses:

I think there definitely needs to be guaranteed contracts for small businesses. I know this has been [implemented] on the federal level and the City of Oakland [should duplicate their efforts].

A minority male owner of a professional services firm explained what he believed is needed to be successful as a small business owner in the City:

In order to be successful, I need to actually make contact and gain referrals to [procurement managers]. It is a real challenge to be seen as a viable candidate for work. Although there have been occasions where I demonstrated that I'm capable and competent to work with people at all levels. We need to be given a real opportunity to learn what kind of jobs [exist], how to become qualified for those opportunities and a chance to demonstrate our service.

This minority male owner of an architectural firm explained what could be done to help M/WBEs compete for City contracts:

The implementation of M/WBE participation points [in the evaluation process] would make a more level playing field.

A Caucasian female owner of a professional services firm for 30 years recommends the City implement a more efficient method of notifying business owners of upcoming contracting opportunities:

Agencies should take more responsibility for notifying contractors [of upcoming bid opportunities], particularly the City of Oakland. We pay business taxes to the City of Oakland and we don't want to spend a lot of time scrambling around to figure out what are their [upcoming] projects. I don't mind getting on a bid list, but I don't want to go through a huge amount of paperwork to prove that I'm qualified, either. When I [submit] a proposal all of my qualifications are in my proposal. But, I think the City of Oakland could be a little more forthcoming with how it operates and what kinds of categories of work they actually need.

This Caucasian female owner of a professional services firm also recommends that the City disseminate its bid notices in a manner that is beneficial for small business owners:

There should be more outreaching from the City of Oakland in reference to bid notices, upcoming



contracts and information on how to do business with the City.

A minority female owner of an architectural firm recommends a clearinghouse that would disseminate upcoming contracting opportunities for local agencies:

A clearinghouse that would give notifications for [upcoming] work [from local agencies] would be better than gathering the information from various web sites.

XII. SUMMARY

An overwhelming majority of the interviewees explained why they believe the City's L/SLBE program as well as other market area agencies L/SLBE programs are valuable for small, women, and minority businesses. Many of the interviewers credited L/SLBE programs with maintaining their businesses. When asked whether they had been contacted by a prime contractor to fulfill a L/SLBE goal the overwhelming response was yes. However, when the interviewees were asked whether they were contacted by prime contractors to submit a bid when there was no L/SLBE goal, the overwhelming response was no.

Conversely, problems with the City's bid process were a significant factor in preventing the interviewees from participating in the City's contracting opportunities. Many stated that bid opportunities are difficult to identify and they typically do not have the time to seek them out. Placement on bidders lists were also reported as a barrier for small business owners. Several interviewees described their attempts to get on the City's bidder list to no avail. Inadequate lead time to respond to the City's and prime contractors' bid requests was reported as another significant barrier. The interviewees explained that the impact of inadequate lead time frequently resulted in lost business opportunities.

The interviewees reported that they were unable to compete for public contract work because they were denied financial assistance from local financing institutions. Additionally, many interviewees expressed other concerns about being barred from City contracting. They complained that the City preferred to work with the same contractors who also belonged to the good old boys network. The business owners lamented that this practice made it impossible to compete.

Racial barriers were also reported by the interviewees. It was reported that some prime contractors preferred not to work with minority subcontractors. Also, many of the women interviewees believed there are still obstacles that women business owners have to overcome, while their male counterparts are exempt. The female interviewees reported on instances

where they were not taken seriously as business owners or spoken to in an inappropriate and unprofessional manner.

The majority of the recommendations centered on strategies to increase the participation of minority and woman-owned businesses on City contracts. They ranged from setting aside contracts for minority and women business owners to the use of L/SLBE subcontracting participation points.

Finally, many City managers were given accolades by the business owners for their hard work and dedication in supporting and sustaining small, minority and women businesses. The effort of staff to ensure that fair and even handed implementation of the City's procurement policy was also lauded by the interviewees. Table 10.01 lists a summary of identified barriers through the anecdotal interviews.



Table 10.01 Summary of Findings Concerning Current Barriers Against Ethnic/Gender Groups

Type of Evidence	African Americans	Hispanic Americans	Asian Americans	Caucasian Females
BUSINESS BARRIERS				
Barriers Based on Race	✓	✓		
Barriers Based on Gender	✓			✓
BARRIERS CREATED BY THE CONTRACTOR COMMUNITY				
Difficulty Breaking into Contracting Network	✓			✓
Good Old Boys Network	✓			✓
DIFFICULTIES IN BID PROCESS				
Difficulty Obtaining Bid Information	✓		✓	✓
Inadequate Lead Time	✓		✓	✓
Supplier Problems	✓			✓
FINANCIAL BARRIERS				
Difficulty Obtaining Financing or Credit	✓			✓

Table 10.01 Summary of Findings Concerning Current Barriers Against Ethnic/Gender Groups

Type of Evidence	African Americans	Hispanic Americans	Asian Americans	Caucasian Females
Late Payment by the City	✓		✓	
Late Payment by Prime Contractors	✓			✓
CERTIFICATION ISSUES				
Paperwork Issues or Problems With Certification Procedures	✓		✓	✓

ATTACHMENT D

Fairness in Purchasing and Contracting Disparity Study: Volume II
(Race and Gender Neutral Recommendations and Not-For-Profit
Analysis)

City of Oakland and Redevelopment Agency

Fairness in Purchasing and Contracting Disparity Study

Volume II

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

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



MASON TILLMAN
ASSOCIATES, LTD

September 2007

Table of Contents

CHAPTER 1: RECOMMENDATIONS	1-1
I. INTRODUCTION	1-1
II. LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM ASSESSMENT	1-1
A. Local and Small Local Business Enterprise Program History	1-1
B. Local and Small Local Business Enterprise Program Components	1-2
III. RACE AND GENDER-NEUTRAL REMEDIES	1-11
A. Local and Small Local Business Program Enhancements	1-11
B. Procurement Strategies	1-16
C. Additional Administrative Recommendations	1-21
D. Website Enhancements	1-25
IV. DATA MANAGEMENT RECOMMENDATIONS	1-27
A. Recommendations for a Subcontractor Data Tracking System	1-28
CHAPTER 2: NOT-FOR-PROFIT ANALYSIS	2-1
I. INTRODUCTION	2-1
II. METHODOLOGY: IDENTIFICATION OF NOT-FOR- PROFIT VENDORS	2-2
A. Comptroller's Database	2-2

Table of Contents Continued

B.	Survey	2-2
III.	STUDY FINDINGS	2-3
A.	Utilization of Not-for-Profit Organizations by Type of Service and Location	2-3
B.	Types of Services Not-for-Profit Organizations Provide	2-3
C.	Top 25 Utilized Not-for-Profit Organizations	2-5
D.	Neighborhood Designations	2-7
IV.	PROFILE OF UTILIZED NOT-FOR-PROFIT ORGANIZATIONS	2-9
A.	Type of Organization	2-9
B.	Issue Area	2-10
C.	Ethnicity and Gender of Target Populations for Not-for-Profit Organizations	2-11
D.	Primary Funding Sources	2-12
E.	Location of Headquarters	2-13
V.	CAPACITY CHARACTERISTICS OF NOT-FOR- PROFIT ORGANIZATIONS	2-14
A.	Years in Operation	2-14
B.	Number of Offices	2-15
C.	Number of Paid Employees	2-15
VI.	COMPARISON OF NOT-FOR-PROFIT CAPACITY CHARACTERISTICS, BY ETHNICITY AND GENDER	2-16
A.	Profile of Not-for-Profit Organizations by Ethnicity and Gender	2-16
B.	Years in Operation, by Ethnicity and Gender	2-17
C.	Number of Offices, by Ethnicity and Gender	2-19
D.	Number of Paid Employees, by Ethnicity and Gender	2-21
VII.	CONCLUSION	2-23

Table of Contents Continued

A.	Scope of the Research	2-23
B.	Key Study Findings	2-23
APPENDIX A		2-24

List of Tables

Table 1.01	Small Business Size Standards	1-4
Table 1.02	Outreach and Marketing Strategies	1-24
Table 2.01	Total Dollars Spent for Services Provided for the City by Not-for-Profit Organizations, by Type of Service	2-4
Table 2.02	Top 25 Utilized Not-for-Profit Organizations	2-6
Table 2.03	Total Dollars, by Oakland Neighborhood	2-9
Table 2.04	Type of Not-for-Profit Organizations	2-10
Table 2.05	Issue Area of Not-for-Profit Organizations	2-11
Table 2.06	Target Populations of Not-for-Profit Organizations	2-12
Table 2.07	Funding Sources of Not-for-Profit Organizations	2-13
Table 2.08	Location of Headquarters	2-14
Table 2.09	Years in Operation	2-15
Table 2.10	Number of Offices	2-15
Table 2.11	Number of Paid Employees	2-16
Table 2.12	Profile of Not-for-Profit Organizations, by Ethnicity and Gender	2-17
Table 2.13	Years in Operation, by Ethnicity and Gender	2-18
Table 2.14	Number of Offices, by Ethnicity and Gender	2-20
Table 2.15	Number of Employees, by Ethnicity and Gender	2-22

List of Figures

Figure 2.1	Neighborhood Designation Map	2-8
------------	------------------------------------	-----

1

RECOMMENDATIONS

I. INTRODUCTION

Crosby case law requires that the City of Oakland and Redevelopment Agency (City) consider, but not exhaust, race and gender-neutral initiatives before resorting to race-conscious remedies. This chapter provides specific race and gender-neutral program recommendations for future contracting programs that the City may implement to achieve parity in its contracting. The recommendations are based on a review of the Local and Small Local Business Enterprise (L/SLBE) Program and a statistical analysis of contracts awarded to minority and woman-owned business enterprises (M/WBEs). An overview of the L/SLBE Program is presented in *Small Local Business Enterprise Program Assessment*. The following section, *Race and Gender-Neutral Remedies*, contains recommendations specific to the L/SLBE Program and general procurement recommendations to improve the City's contracting activities. The final section, *Data Management Recommendations*, presents strategies to enhance data management practices and the systems used to track and monitor participation in City contracts and the procurement process.

II. LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM ASSESSMENT

A. Local and Small Local Business Enterprise Program History

The passage of Ordinance 9739 in 1979 established the City's Local Business Enterprise (LBE) Program. In 1993, City Council Resolution 69687 expanded the LBE Program to the current Local and Small Local Business Enterprise (L/SLBE) Program. The L/SLBE Program was enacted to increase Oakland-based business participation in City contracting and development projects, strengthen Oakland's economic base, and develop Oakland-based

businesses through joint ventures and mentor-protégé relationships. The L/SLBE Program is managed by the Office of Contract Compliance and Employment Services (OCCES).

B. Local and Small Local Business Enterprise Program Components

There are 19 key components of the L/SLBE Program. They are outlined in the Local and Small Local Business Enterprise Program Guide.

1. Certification Eligibility Criteria

a. Business Location and Status

In order to receive certification as an L/SLBE, the business must meet the following requirements:

- Domiciled within the geographical boundaries of the City of Oakland
- Operational for at least 12 consecutive months prior to applying for certification
- Possess a valid City of Oakland Business Tax Certificate issued no less than 12 months prior to applying for certification with current payments and an address that matches the current address of the business
- Maintain a fixed office that reflects a substantial presence in the geographical boundaries of the City of Oakland (Post Office boxes, temporary locations, and moveable work sites do not meet this requirement)
- Maintain availability of the owner and employees during normal operating hours
- Comply with all applicable Federal, State, and local regulations, including but not limited to the City of Oakland Zoning Regulations
- Be current and up-to-date on all taxes, fees, permit fees, and fines
- Possess and make available for inspection documentation citing the Oakland business street address, executed copies of past/ current contracts, Oakland Business Tax Certificate, federal tax identification number, executed lease or other written agreement for occupancy of the Oakland office, business cards, and utility bills
- Respond to City requests for additional information

- Present copies of federal tax returns showing gross revenues for the three most recent fiscal years

b. Ownership Criteria

- An eligible L/SLBE must be an independent business. The ownership and control of the L/SLBE must be substantial and go beyond the pro forma ownership of the firm as reflected in its ownership documents. In determining whether a business is independent, the City will consider all relevant factors such as: date the business was started, adequacy of its resources for the work of the contract, and the nature of its financial or other relationships with other firms.
- The owner of the business must have the power to direct its management and policies, oversee the day-to-day operations, and make major decisions. If the actual management of the firm is contracted out to individuals other than the owner, those persons who have the power to hire and fire the managers are considered to control the business. The business may not be subject to any formal or informal restrictions that would limit the discretion of the owner. The owner may not be subject to limitations imposed by any non-local owner. Firms whose ownership and/or control have changed since the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the change.
- The contribution of capital or expertise by the owner must be real and substantial. Any relationship between an L/SLBE and a non-L/SLBE is carefully reviewed to determine if the interest of the non-L/SLBE conflicts with the ownership and independence requirements. An L/SLBE will be considered bona fide if the ownership interests are real and continuing and not created solely to meet the City goals for L/SLBE participation. The L/SLBEs included in the contract must perform commercially useful services and not merely act as a passive conduit. If the City has reason to question the ownership of a business, the burden of proof is on the claimant to provide documentation to prove its status as an L/SLBE.

c. Business Size Standards

Size is calculated by industry on the gross revenues of the firm for the three most recent fiscal years. Thirty percent of the United States Small Business Administration's Small Business Size is the standard for the City.¹ Table 1.01 below compares the United States Small Business Administration's Small Business Size Standard's with the City's size standards.

¹ U.S. Small Business Administration, *Table of Small Business Size Standards*, Effective January 28, 2004.

Table 1.01 Small Business Size Standards

Category	U.S. Small Business Administration	City of Oakland
Architecture and engineering	\$4 million	\$1.2 million
Computer and software	\$7.5 million	\$2.25 million
Construction building trades	\$28.5 million	\$8.55 million
Construction specialty trades	\$12 million	\$3.6 million
Certified Public Accountant	\$7 million	\$2.1 million
Goods	\$6 to 24.5 million	\$1.8 to 7.35 million
Insurance	\$6.0 million	\$1.8 million
Management	\$4 million	\$1.2 million
Non store electronic retailer	\$21 million	\$6.3 million
Temporary agencies	\$11.5 million	\$3.45 million

d. Certification Process

- **Application**

Applications are available for downloading on the Office of Contract Compliance and Employment Services (OCCES) website. Applications may also be requested by mail, telephone, facsimile, e-mail, or in person. The application must be notarized and submitted with a copy of the firm's most recent City of Oakland Business Tax Certificate. Small business applications must also include the business's three most recent tax returns.

- **Review Process**

The City uses a three-tier certification process as its standard operating procedure, which determines the degree of difficulty and time necessary to complete a review of an application.

- 1) Tier I: Applications are deemed complete and accurate by staff. Analysis, recommendation, and notification regarding the status of the application to approve or deny certification is completed within 10 business days. The applications reviewed at this tier are usually LBE re-certifications.

- 2) Tier II: Upon review, the staff finds that the application requires additional information. If the application is incomplete, additional information must be submitted within 10 business days. Analysis, recommendation, and notification regarding the status of the application to approve or deny certification is completed within 10 business days after the application is deemed to be complete.
- 3) Tier III: The application necessitates a desk audit and site visit, both of which will be conducted within 15 business days. Failure or refusal to provide required information or failure to cooperate voids the application. If the desk audit and site visit result in a satisfactory determination, analysis, recommendation, and notification regarding the status of the application to certify or deny certification is completed within 10 business days.

During the certification process, the City may review any documentation or information it deems necessary to determine if the applicant meets the requirements to receive certification as an L/SLBE. All applicants for L/SLBE certification must submit an application at least three weeks prior to a bid opening or submission of a proposal.

Certification with another agency does not constitute certification with the City. Firms or individuals who knowingly submit false information concerning their L/SLBE status are subject to action(s) for fraud under the State and Federal False Claims Acts and will be barred from bidding on future City work for a period of three years.

e. Other Considerations

The City gives special consideration to firms under the following conditions:

- Newly formed firms and firms whose ownership has changed since the date of the advertisement or the contract are closely scrutinized to determine the reasons for the timing of the formation or change in the firm.
- Previous and/or continuing employer-employee relationships between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.
- Any relationship between an L/SLBE and a non-L/SLBE is carefully reviewed to determine if the interest of the non-L/SLBE conflicts with the ownership and independence requirements.
- A joint venture is eligible for certification if the L/SLBE partner of the joint venture meets the standards for eligibility. The L/SLBE partner must be responsible for a clearly defined portion of the work and share in the ownership, control, management

responsibilities, risks, and profits of the joint venture. The City Attorney's office must approve joint venture agreements.

- Both parties in a mentor-protégé team must be individually certified prior to the submission of a mentor-protégé agreement for approval.

f. Re-Certification Process

A City certification is valid for two years, unless otherwise specified. At the end of the certification period, the business may apply for re-certification.

g. Certification Denial Appeal

Any firm that believes that it has been wrongly denied certification may file an appeal in writing, which must be signed and dated. The appeal must be filed within 30 days after the date of denial. The City may extend the time for filing or waive the time limit in the interest of justice but must specify in writing the reason for doing so. Third parties that have reason to believe that another firm was wrongfully denied or granted certification may advise the City in writing; however, this does not constitute an appeal. The City ensures a prompt investigation and may de-certify an L/SLBE at its discretion pending the outcome of the investigation.

2. Program Elements

a. Program Requirements

The L/SLBE Program mandates 20 percent minimum participation of certified L/SLBEs for all construction contracts valued over \$100,000 and all professional services contracts valued over \$50,000. All construction contracts valued below \$100,000 and all professional services contracts valued below \$50,000 must include outreach to certified L/SLBEs so that the solicitation is provided to at least three local firms.

The 20 percent local business participation requirement must be met with a minimum participation of 10 percent by LBEs and 10 percent by SLBEs. Alternatively, the full 20 percent requirement may be met with SLBE participation. On construction projects that include truckers, 20 percent of the trucking dollars must be allocated to certified Local Truckers.

There must be at least three certified L/SLBEs in the industry, trade, or profession called for in any particular contract in order for the L/SLBE participation requirements to apply. If at least three L/SLBEs are not available, the participation requirement is either waived or reduced. The awarding authority may conduct an availability analysis if there is reason to believe that the availability of L/SLBE firms will not satisfy the 20 percent requirement.

Each contractor is required to submit a completed Subcontractor, Supplier, and Trucking Listing form (Schedule R) naming the subcontractor, supplier, and/or trucker included in the bid. The trade or service to be provided, bid amounts, and certification status must also be included in the Schedule R. This award information will be used to calculate the level of L/SLBE participation. Unless a requirement is waived due to limited availability, there is a 20 percent minimum requirement of L/SLBE participation.

b. Program Incentives

The City uses bid discounts to provide L/SLBE preferences in its contracts. Bid discounts are applied at a rate of one percent, or one preference point for every 10 percent of contract dollars allotted to L/SLBE certified firms. For example, a prime contractor receives a two percent bid discount or two preference points for meeting the 20 percent L/SLBE participation requirement. A prime contractor will also receive an additional one percent bid discount or one preference point for each additional 10 percent of L/SLBE participation. No more than five percent in bid discounts or five preference points may be applied to any single contract.

Prime contractors that include L/SLBE subcontractor participation that exceeds 50 percent of the contract amount may bank the additional points and apply them to projects within a 12-month period following the completion of the contract on which the extra credit was earned.

c. Maintaining Participation

Incentives are earned based on the level of participation proposed in the bid, proposal, or statement of qualification. Once the contract is awarded, the participation level for which the incentives were earned must be maintained. Prime contractors must maintain the L/SLBE percentages indicated at the time the contract was awarded.

If the prime contractors fail to maintain L/SLBE participation requirements, a penalty equal to the amount that should have been awarded to L/SLBEs may be imposed and/or the work may be stopped.

d. Substitution of Listed Subcontractors

Prime contractors cannot substitute a subcontractor listed in a contract without prior written approval. Substitutions may be granted if the subcontractor does the following:

- Provides a written statement agreeing to the substitution
- Does not execute the contract despite having enough time to do so

- Becomes insolvent
- Fails or refuses to satisfy contractual agreements
- Fails to meet contract insurance requirements

Before approving the prime contractor's request for substitution, the City must give written notice to the subcontractor of the prime contractor's request for substitution and the reason for the request. The subcontractor will have five business days to submit a written objection to the City. If written objections are filed, the City will give written notice of a hearing date to the prime contractor and subcontractor within five business days. At the hearing, the prime contractor and subcontractor will present their respective cases, and the Hearing Officer will make a final decision, which will be issued in writing to all parties. The absence of an objection from the subcontractor constitutes a consent to the substitution. The City may also initiate a substitution if it determines that the work performed by the subcontractor is substantially unsatisfactory, not in accordance with the contract agreement, or substantially delaying or disrupting the progress of the project.

e. Emergency Contracts

Ordinance 7937 CMS states that local businesses will be given first priority in the performance of emergency work. The City's goal is that 75 percent of emergency contract dollars must be spent with LBEs and at least two thirds must be spent with SLBEs.

f. Compliance Monitoring and Penalties

The contractor must provide a copy of all agreements, purchase orders, and/or other verification of the total amount to be paid to each subcontractor prior to commencement of the prime contractor's work. A penalty of one percent of the contract amount or \$1,000 per day (whichever is less) may be applied if records or documents are not provided within ten calendar days. If the contractor does not provide the information, the City will deem such refusal as a breach of contract, and the City may terminate the contract and/or stop the work until the contractor provides the information. In addition, the contractor may be prohibited from participating in future City contracts for a period ranging from six months to five years and may lose L/SLBE certification.

Prime contractors and subcontractors must submit progress payment reports to the user department to verify the prime contractor's payments to subcontractors. The prime reports will document the payments made to L/SLBEs, and the subcontract reports will verify the amount received. An Exit Report and Affidavit form should be attached to the final progress payment application.

g. Prevailing Wages

California prevailing wage rates apply to all public works contracts as set forth in California Labor Code Sections 1720-1720.4 and 1771. Workers employed on construction, alteration, or demolition projects that use public funds must be paid the prevailing wage, which is the basic hourly rate the majority of workers in a particular craft or classification earn.

The contractor shall ensure that all workers receive the prevailing wage. This requirement will be monitored and enforced by the City. Any worker who has been paid less than the prevailing wage has the right to commence an action or proceeding against the employer for the difference between the prevailing wage rate and the amount received for each calendar day or portion thereof, as per the provisions outlined in the L/SLBE Program Guide.

h. Winning Compliance

- Local Subcontracting Outreach

Each awarding City agency, department, and division that is authorized to award contracts must post City-funded contracting opportunities on the City's website. The Office of Contract Compliance and Employment Services (OCCES) maintains a list of local businesses, their trade or profession, contact information, and certification status. Each entity is required to solicit responses from certified firms appropriate to the nature and scope of the particular solicitation.

- Mentor-Protégé Agreements

On a case-by-case basis, the City allows a five percent preference for Mentor-Protégé teams on construction and professional services contracts. If a prime contractor develops a "Mentor-Protégé" relationship with a certified L/SLBE, the mentor will receive credits against City goals, especially when availability is zero. In order to earn such credit, a Mentor-Protégé Agreement must be submitted for approval to the OCCES prior to the project bid date or proposal due date.

A written Mentor-Protégé Agreement must be completed by both parties and notarized, and the term of the agreement must be the duration of the project. For the duration of the project, the mentor and protégé must each provide the OCCES with a monthly report of the skills the mentor provides the protégé. These shall include but not be limited to:

- 1) Number of hours the mentor and protégé expended to fulfill the contract
- 2) Managerial assistance provided
- 3) Technical assistance provided

- 4) Bonding assistance provided
- 5) Number of private sector projects bid on by the team
- 6) Number of private sector projects awarded to the team
- 7) Financial assistance provided

No member of the team is allowed to bid or participate independently on a City contract if the team is bidding or participating. The protégé must prove that it is an independent business operation prior to and during the Mentor-Protégé Agreement.

- **Joint Venture Agreements**

A non-L/SLBE may partner with an L/SLBE as a joint venture to meet the contract goal. The agreement must be approved by the City Administrator, and it must remain in effect at least for the duration of the project. Joint ventures receive bid discounts depending on the level of L/SLBE participation. Members of a joint venture must submit a Joint Venture Management Plan and/or a Joint Venture Agreement at least two weeks prior to the bid due date. Each agreement or management plan must at least include:

- 1) Detailed explanation of the financial contribution of each partner
- 2) List of the personnel and equipment used by each partner
- 3) Detailed breakdown of each partner's responsibilities
- 4) Explanation of the distribution of profits and losses
- 5) Bonding capacity of each partner
- 6) Management or incentive fees available for any of the partners, if any

- i. **Earning Credits from Non-City-Funded Project**

The City allows contractors to accumulate credits for hiring L/SLBEs on non-City-funded projects and earn credits for the participation of L/SLBEs beyond the 50 percent threshold on City-funded projects. Prime contractors may bank extra credit based on dollars paid to certified L/SLBEs on non-City-funded projects and apply a maximum of two percent of the banked credits toward meeting L/SLBE participation requirements on City contracts.

j. City-Assisted Private Developments

For City-assisted private developments, such as Disposition and Development Agreements, affordable housing projects, and loans for construction projects, prime contractors are required to solicit competitive bids from subcontractors and comply with the L/SLBE Program's goals and objectives. Prime contractors must give L/SLBE contractors a bid discount up to five percent and LBE contractors a two percent bid discount.

k. Incentives for Supporting Local Business Participation on City Contracts

Each year, the City Administrator will award a certificate of achievement to the City agency that provides the highest level of support to L/SLBEs.

l. Other Program Elements

Prime contractors must not impose any unreasonable additional criteria on subcontractors that are not required by the City. Prime contractors also must not selectively impose criteria upon L/SLBEs that are not applied to other businesses in similar contractual relationships. All bids, proposals, and qualifications submitted to the City from prime contractors and subcontractors shall be made available to the public upon bid opening, as required by the Sunshine Ordinance.

III. RACE AND GENDER-NEUTRAL REMEDIES

Mason Tillman makes specific race and gender-neutral program recommendations for the procurement process. These recommendations incorporate a number of best management practices that could improve the City's procurement process in the various industries. These recommendations can also serve as a guide for the City as it formulates policy and procedures to achieve equity and address the documented disparity in M/WBE contracting.

The recommendations as proposed include program enhancement and data management remedies to increase contracting with L/SLBEs and M/WBEs. These recommendations would also benefit all small businesses interested in doing business with the City. Race and gender-specific recommendations are not included in this chapter.

A. Local and Small Local Business Program Enhancements

This section contains race and gender-neutral remedies applicable to the City's L/SLBE Program. Since the L/SLBE Program is quite comprehensive, the recommendations are offered to enhance the existing program components in order to increase the use of L/SLBEs

in all industries. Mason Tillman's recommendations as they apply to specific components of the Program are outlined below.

1. Program Requirements

Below are programmatic elements of the City's L/SLBE Program Guide for which Mason Tillman offers enhancements.

a. Review Size Standards

The City's current size standards reflect 30 percent of the business sizes defined by the U.S. Small Business Administration (SBA). The objective of the size standards is to include City businesses that are indeed small and can benefit the most from participation in the L/SLBE Program. Recently, SBA size standards have increased. Mason Tillman recommends that the City periodically review its size standards and tailor them to correspond with the sizes of the City's businesses. The size profile of the City's businesses can be derived from the business license data. Such a review would allow the City to base its size standards on conditions in its own environment, rather than the United States as a whole.

b. Create a Very Small Business Enterprise Category

Mason Tillman recommends the City should also expand its L/SLBE program to include a Very Small Local Business Enterprise category. The criteria for a business to qualify as a Very Small Business Enterprise are: 1) Gross sales do not exceed \$375,000 per year; 2) The business is domiciled in Oakland for up to six (6) months; and 3) The business holds a valid Oakland business license. The Very Small Business Enterprise certification will be valid for one year and is renewable for one two-year term. Therefore a small business can be certified as a Very Small Business Enterprise for no more than three (3) years.

c. Goal Setting

It is industry practice for corporations and the government to focus spending on their own market area. This is especially true with government agencies when the services are funded by local dollars. For example, the Alameda County Transportation Improvement Authority (ACTIA), which receives all funding from the local tax base, has established a Local Business goal of 70 percent and a Small Local Business goal of 30 percent for professional services. For construction, the goals are 60 percent for Local Business use and 20 percent for Small Local Business use. The Peralta Community College, which uses the State of California's Small Emerging Business standards, has set its Local Business goal at 25 percent. Alameda County has a 20 percent Small Local Emerging Business participation goal for all contracts. Given that local business goals in the Oakland market area range from 35 percent to 70 percent, it is recommended that the target overall local business goal be set at 50 percent.

A contract-specific goal will be set on each contract based on the availability of local businesses to perform the specific opportunities.

d. Maintaining Subcontractor Participation Levels

Under the L/SLBE Program requirements, the City has the option of imposing penalties on prime contractors that do not maintain L/SLBE participation. Mason Tillman recommends that the City impose a penalty equal to the amount that should have been awarded to L/SLBEs. Penalty fees can be assigned to a small business training fund.

e. Substitution of Listed Subcontractors

The subcontractor should have ten, rather than five business days to respond to prime contractors' requests for substitution which would allow subcontractors to prepare an adequate response to a prime contractor's request for their removal from a project. In addition, the Hearing Officer should be a certified mediator.

f. Satisfying Non-Compliance Shortfalls

To address a prime contractor's failure to meet their goal at the end of their contract, the City should use *monetary penalties and earning credits*. The prime contractor is assigned earning credits commensurate with the level of non-compliance. The earnings credit can be redeemed by the use of L/SLBEs on non-City-funded projects. The portion of the retainage equal to the amount of the earnings credits is withheld until the earnings credits are redeemed. These options should be used by the OCCES staff.

g. Unbundle Large Procurements into Smaller Contracts Where Feasible

Bundling occurs when small purchases are consolidated into one contract, or when goods or services previously purchased individually are grouped together in a single solicitation. The federal government has made contract unbundling a key element of its small business agenda.² Large contracts should be unbundled to maximize small business participation. During the data collection process for this Study, it was found that there were a number of large contracts awarded by the City. Currently, no City agencies provide programs designed to unbundle larger contracts. Multi-year price agreements and task orders are used to combine small purchases. The City should review these multi-year price agreements and task orders to see if they can be unbundled. Unbundling these large procurements would increase the opportunities for L/SLBEs to compete for City contracts.

² United States. The Office of Federal Procurement Policy (OFPP). *Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business*. Washington D.C. Executive Office of the President, October 2002.

In determining whether projects should be unbundled, the following criteria should be reviewed:

- Whether or not the project takes place in more than one location
- Size and complexity of the procurement
- Similarity of the goods and services procured
- Sequencing and delivery of the work
- Public safety issues and convenience
- Procurement division options

h. Small Contracts Rotation Program

A small contracts rotation program could be established for informal contracts in each of the four industries: construction, architecture and engineering, professional services, and goods and other services. This program would limit competition to certified SLBEs and ensure that quotations for informal contracts are solicited from a diverse pool of certified small businesses on a rotating basis. By awarding prime contracts, this program is a means for building the capacity of small businesses. Also, eligibility for membership in this program would serve as an incentive for businesses to become certified with the SLBE Program.

SLBE certification would qualify businesses as eligible for participation in the program. Lists of the approved contractors would be maintained by construction trade, architecture and engineering specialization, and type of professional services and goods and services. For the construction component, the business would have to submit its regular time and overtime prevailing wage rates and insurance certificates for approval. In addition, adjustment factors for the markup on the supplies as well as overhead costs and profit would be submitted for review. Upon approval of the contractor's fee structure, the approved rates would apply to all work orders. For other service industries, the business would pre-qualify by submitting its hourly rate schedule, overhead and profit rates, proof of insurance, and two examples of projects of similar size.

Work orders in all industries would be assigned on a rotating basis, and no business in the rotation would be eligible to receive a second assignment until all other businesses on the list had been offered at least one assignment.

On a regular schedule, perhaps as frequently as each quarter, there would be an open enrollment period. On a designated date during each period, a random list of the newly pre-qualified businesses would be appended to the end of the pre-qualified list.

Financial support and technical assistance should also be made available to firms that participate in the program. Financial incentives could include such items as prompt payment, waived bonding requirements, reduced liability insurance requirement, and mobilization payments to offset start-up costs. Firms would graduate from the program once they reach a certain size threshold or after participating in the program for a specified time period.

i. Compliance Monitoring and Penalties

- **Require Reporting to the City**

The prime contractor is required to submit reports to the using agency of progress payments to subcontractors. Prime contractors and subcontractors should be required to submit these reports to the OCCES on a monthly basis so that their compliance may be more closely monitored. In addition, these reports should be submitted to the Mayor, City Administrator, and City Council on a quarterly basis. They should also be published and posted on the OCCES website on a quarterly basis. This would require having a relational database to capture the data provided by prime contractors and subcontractors.

- **Conduct Routine Post-Award Contract Compliance Monitoring**

Monthly contract compliance monitoring should be conducted to ensure that the subcontractor participation listed in the bids, proposals, and statements of qualification is achieved throughout the duration of a contract. This type of monitoring would verify the prime contractor's commitments prior to and after the award of the contract. Consistent contract compliance should minimize the hardships experienced by L/SLBEs due to unauthorized substitutions and late payments.

The following contract compliance methods are recommended:

- 1) Track and report contract compliance in an electronic database
- 2) Require the monthly submission of a certified subcontractor participation report by the prime contractor with its payment request
- 3) Collect copies of the canceled checks written to subcontractors in order to verify payment information on a quarterly basis
- 4) Prepare a quarterly report, submit it to the City Council, and post it on the OCCES website

B. Procurement Strategies

Remedies that apply to various stages in the procurement process that would increase L/SLBE participation in the City's contracts through race and gender-neutral means are outlined below.

1. Pre-Bid

This section contains recommendations for the City to implement prior to the release of a bid for a City contract.

a. Networking Opportunities

The City should sponsor marketing forums for L/SLBEs to deliver technical presentations to City agencies, procurement personnel, contractors, and senior managers. The forums should be held at the City departments' offices and take place on a quarterly basis. City personnel should aggressively identify and notify L/SLBEs of the opportunity to make a presentation. Each City department should be required to advertise in trade publications that target L/SLBEs, thus informing them of the opportunity to make a presentation at the forum. The forums would allow L/SLBEs to become more familiar with procurement personnel, as well as increase the knowledge that City staff has of local businesses that may be used in City contracts.

b. Assess the Use of Sole Source Contracts

Sole source provisions in the City's procurement process allow for the award of contracts without a competitive bid process to businesses that are the sole providers of a given commodity or service.

All sole source contracts should be reviewed to determine if L/SLBE goals can be applied. Contracts proposed to be awarded as sole source contracts should be submitted to the OCCES for review and approval as a single source contract. Contracts that are proposed to be awarded as sole source procurements should also be posted on the City's website to allow other providers of the goods or services to make themselves known to the City.

c. Use Direct Contracting to Award Small Prime Contracts

Direct contracting occurs when separate contracts are awarded for specialty or non-license services which might otherwise be included as an item of work in a construction contract or within the scope of an architecture and engineering contract. Direct contracting would increase the opportunities for, and build the capacity of, small firms by allowing them to work as prime contractors. The Purchasing Division and the Oakland Public Library System are two City departments that reported the use of direct contracts. The practice of direct

contracting should be common to all City construction and architecture and engineering contracting.

As an addition to the categories of work presently identified by the City, construction support services, including trucking, demolition, and surveying, should be awarded as direct contracts and not as items of work in the general construction contract, when feasible.

Design services, which are not required to be performed by a licensed engineer, architect, or registered surveyor, should be awarded as direct contracts. These services include planning, environmental assessments, ecological services, cultural resource services, and testing services.

d. Establish a Direct Purchase Program for Construction Contracts

Under a direct purchase program, the general contractor includes the cost of construction materials and supplies as well as the supplier's name, quantities, and quotes in the bid. The City would produce a purchase order to pay the supplier directly, and the supplier would deliver the materials to the job site according to the contractor's schedule.

A direct purchase program would reduce the amount of the construction bid subject to a bond. For the purpose of bonding a job, the cost of supplies could be subtracted from the bid price, thereby reducing the amount of the contractor's bond.

This program can be beneficial to construction contractors, especially L/SLBEs, because the cost of the contract, and in turn the amount that has to be bonded, is reduced by the material costs included in the direct purchase. The cash flow required to pay the supplier in advance of receiving reimbursement for the materials from the prime contractor is also eliminated. Additionally, the supplier, knowing that it would receive direct payment from the City, may also give the L/SLBE a more competitive price, thereby reducing the overall bid price. It is notable that direct purchasing is currently used by the Purchasing Division on a limited basis.

e. Revise Insurance Requirements

Insurance requirements should be evaluated to ensure that smaller contracts do not carry a disproportionately high level of coverage. As a general practice, the City should implement standard insurance provisions applicable to all City agencies. The insurance requirements on small contracts should be eliminated; for all other contracts they should be set in relation to the actual contract liability amount. Prohibitive insurance requirements can be a disincentive to bidders, constitute a barrier to L/SLBEs, and increase the City's costs to procure construction services. Revised insurance requirements would attract more bidders, thus increasing competition and reducing costs. Any revisions to the insurance provisions should comply with statutory requirements.

Bonding should be eliminated for all informal contracts, and the City should establish an Owner-Controlled Insurance Program for all contracts to consolidate risk management costs and reduce the burden of insurance premiums for all vendors. The City would also benefit because the business passes the fee for insurance onto the City in its pricing.

f. Phase Retainage Requirements

Retainage is the percentage of the contract value withheld from each payment until the successful completion of a contract. Retainage should be eliminated for small contracts and reduced for all certified prime contractors. Moreover, the subcontractors' retainage should be released on an item-by-item basis as its work is completed and accepted. This practice would reduce the cash flow burden experienced by smaller construction prime contractors and subcontractors. Increased cash flow would allow small businesses to build capacity.

2. Pre-Award

Pre-award remedies apply to the procurement process after a project has been released for solicitation and before it has been awarded to a prime contractor.

a. Review Bids and Proposals for Goal Attainment

The City currently requires Schedules E and R which are used to track subcontractors, suppliers, and truckers for all formal contracts except sole source and emergency contracts. This requirement should be applicable to all formal contracts, including emergency and sole source contracts. *Schedules E and R requesting the identification of subcontractors* should be included in all solicitations and submitted at the time of bid opening. Submission of Schedules E and R should be considered a condition of responsiveness. Subcontractor participation should be reviewed at the time the submission is opened and the level of L/SLBE participation on each contract recommended for award should also be a matter of public record.

b. Revise Interview Panel Process

The interview panel for professional services contracts should be accountable for its evaluations. Identities of the panel members should be disclosed and attached to the signed evaluation forms. Businesses should have access to the evaluation forms promptly after the panel makes its recommendation so that the businesses can assess their performance and engage in protest procedures, if necessary. The Intent to Award should be published and submitted to each firm that submitted a proposal, bid, or statement of qualification. The release of the Intent to Award should mark the beginning of the protest period.

c. Implement Formal Protest Procedures

The City should require that the formal protest procedures established by the Purchasing Division be applied to all formal and informal contracts. These protest procedures outline methods businesses should use to challenge decisions to award a contract. All solicitations should include these protest procedures and a date by which a protest must be filed. In addition, all solicitations should include explicit criteria upon which the award decision will be based. The protest review process should be handled by an authority independent of the awarding department. The appeal process should be handled by the City Administrator or its designee.

d. Professional Services Contracts - Evaluation Credits

In the professional services industry, contracts are not awarded strictly based on the lowest bid. Instead, a firm is selected by accumulating points based upon its qualifications to perform the scope of work in the solicitation.

A point system is used to rank the proposals and statements of qualification in the evaluation process. Incentive credits could be given to prime contractors who are L/SLBEs on architecture and engineering and professional services contracts, when these awards are based on qualifications and not on the lowest bid. Fifteen to 20 percent of the evaluation credits could be comprised of such incentive credits when the selection process includes a proposal or statement of qualifications. Including such credits in the evaluation criteria might counterbalance the competitive disadvantage experienced by these groups. These credits would be applied in the evaluation process for formal contracts under \$500,000.

3. Post-Award

Post-award remedies are applicable to the procurement process after a contract has been awarded.

a. Pay Mobilization to Subcontractors

Mobilization is the initial payment made to a prime contractor when work commences on a project to reimburse the prime contractor for the cost of starting the job. Mobilization payments should be paid to L/SLBE prime contractors and all other contractors meeting the L/SLBE goal. The subcontractors should be paid an amount equal to their participation level on the prime contract prior to commencing their work. Project start-up costs can be significant, and a firm that has limited resources and access to credit may find that the delay in receiving the initial progress payment could inhibit its ability to bid. Payment for mobilization could mitigate the start-up costs and late payment barriers faced by L/SLBEs.

b. Develop an Expedited Payment Program

Expedited payments would remove a major barrier to L/SLBE participation in City contracts. In an expedited payment program, L/SLBEs and other small businesses would be paid on an accelerated schedule. Non-certified prime contractors meeting program participation goals would also be eligible for the expedited payment program. When a participating firm submits an invoice, an identification number would be included to mark it for a 10-day expedited payment. Invoices would be date stamped immediately upon receipt, and approved invoices would be submitted for payment within ten days of receipt.

Prime contractors would also be required to submit monthly invoices for payment of all work performed by subcontractors even when it is not prepared to submit an invoice for its own services. Under no circumstances should the invoice be submitted to the City more than 15 days after the end of each month. The City will pay for approved subcontractor services within 10 days after the receipt of the approved prime contractor's invoice. The prime contractor would be required to pay each subcontractor within 10 days of receiving payment from the City.

Prompt payment standards should also apply to the payment of retainage and mobilization fees. Prime contractors should be required to adhere to prompt payment standards for the payment of subcontractors.

A monetary penalty should be imposed on prime contractors that do not meet the expedited payment requirements. The City should pay interest on its payments to prime contractors after 30 days.

c. Give Five-day Notice of Invoice Disputes

Within five days of receiving a disputed invoice, the contractor should receive a notice from the City detailing any item in dispute. Undisputed invoice amounts should be paid promptly, and disputed items should be resolved in a timely manner. By using this system, L/SLBEs would be better able to maintain positive cash flow while providing services to the City.

d. Implement Formal Dispute Resolution Standards

The City should create and publicize formal dispute resolution standards which should be included in all contracts to allow businesses to resolve issues relating to the performance of work after the contract has been awarded. The dispute resolution standards would apply to disputes between prime contractors and the City as well as disputes between subcontractors

and prime contractors. The City's dispute resolutions should include provisions for an ombudsperson,³ mediation, and arbitration.

The first step in the resolution process would be the aggrieved party submitting its complaint to the ombudsperson, who would then aid the parties in resolving the dispute by investigating the claim and making initial contact with the City, prime contractor, or subcontractor. If the dispute is not resolved through these means, the ombudsperson will assist the aggrieved party in filing a request for mediation. A dispute must be taken to the ombudsperson before it can proceed to mediation.

Mediation is the second step in the resolution process. The mediator contacts both parties involved in the dispute and assists the parties in arriving at an agreed upon resolution. Neither party may involve legal representation. If the parties are not able to reach a mutually agreed upon resolution through mediation, the dispute may proceed to arbitration. A dispute must be taken to mediation before it can proceed to arbitration.

Arbitration is the final step to resolving a dispute, and the decision reached by the arbitrator is final and binding. The parties may retain legal representation during this process.

The City's dispute resolution standards should consider the cost of mediation and arbitration. The fee for using dispute resolution should not prohibit small businesses from using this method of resolving conflicts. There are options for paying for mediation and arbitration: 1) the L/SLBE Program can pay for the services; 2) the parties split the costs; or 3) the L/SLBE Program can pay fees up to a set limit, and then the parties can split the remaining cost. Penalties for violations of Program guidelines could also generate a fund to cover the costs of dispute resolution.

C. Additional Administrative Recommendations

The following recommendations do not apply to a particular step in the procurement process. Instead, they apply to the City's procurement process as a whole and are intended to increase its efficacy and efficiency and the utilization of L/SLBEs.

1. Develop a City-wide Procurement Manual

A City-wide Procurement Manual should be developed. There are currently several manuals in use among the agencies that have procurement authority. Creating one Procurement

³ "Ombuds receive complaints and questions from individuals concerning people within an entity or the functioning of an entity. They work for the resolution of particular issues and, where appropriate, make recommendations for the improvement of the general administration of the entities they serve. Ombuds protect the legitimate interests and rights of individuals with respect to each other, individual rights against the excesses of public and private bureaucracies; and those who are affected by and those who work within these organizations." American Bar Association, 9 August 2006, Section of Administrative Law and Regulatory Practice: Ombuds. 24 May 2007 <<http://www.abanet.org/dch/committee.cfm?com=AL322500>>.

Manual for all City agencies will help streamline the procurement process and provide staff with clear guidance on its responsibilities and requirements. The recommendations in this report should be included in drafting the Procurement Manual.

2. Institute Internal L/SLBE Program Training

In an effort to enhance managerial administration, the City should institute internal L/SLBE Program training to enhance the existing training program. Compliance with this training can be measured or ensured in the following ways:

- Include information concerning managerial compliance with the program in performance evaluations
- Measure compliance with parity in the use of available businesses
- Recognize individual employees who consistently meet or exceed the requirements of the training program. Such acknowledgment could take the form of a letter from the agency's coordinator or a posting on the agency web page.

An L/SLBE Program Training Manual should also be developed to standardize the delivery of the L/SLBE Program requirements and ensure that all department managers and their staff have the knowledge and skills to fulfill their duties within the Program. The procedures set forth in the manual should become standard operating procedures in each department. The L/SLBE Program Manual would also provide staff with clear guidance on its responsibilities to track and report the participation of L/SLBEs and to fulfill other Program requirements.

Furthermore, a training module based on the L/SLBE Program Manual should be developed and incorporated in the City's new employee orientation. Training should be provided when the manual is approved. Staff compliance should be evaluated through both department-level reports of L/SLBE utilization and staff performance reviews.

3. Staff Office of Contract Compliance and Employment

The OCCES should maintain an adequate level of staff with experienced professionals capable of fulfilling the new responsibilities. Adequate staffing is necessary to promote the enhanced L/SLBE Program. The number of staff currently assigned to handle the L/SLBE Program is not adequate to fulfill the expanded responsibility of the office. The staff should be expanded to include an ombudsperson who would handle disputes and address the concerns of businesses that contract with the City or are interested in doing so. Office personnel should have knowledge about procurement procedures, public contracting law, and affirmative action programs. The personnel should have education or professional experience in public administration and be knowledgeable about current business types and the operation of a small business.

4. Publish Utilization Reports

L/SLBE utilization reports should measure the success of the City's program and determine if it requires modification. These reports should include verified payment and award data organized by industry and department. They should also include change orders and substitutions.

Reports should be submitted to the Mayor, City Administrator, and City Council on a quarterly basis. The fourth quarter report should include an assessment of the program activities and recommendations for improvement. Exemplary practices and achievements of each department should be noted in the fourth quarter report. All reports should be posted on the City's website.

5. Evaluate Staff Compliance with the L/SLBE Program

Staff compliance should be evaluated through both department-level reports of L/SLBE utilization and staff performance reviews. Program monitoring reports should describe the level of L/SLBE contracting by department. The performance evaluation of all managers should include criteria on the department's L/SLBE utilization and compliance with the L/SLBE program requirements. Staff members who comply with program requirements to utilize L/SLBEs on informal contracts should be recognized. Such acknowledgment could be in the form of a letter from supervisory staff and recognition in the quarterly utilization report. Formal recognition would provide staff with an additional incentive to meet program requirements and reward those who consistently demonstrate a commitment to diversity. Program compliance should be included as part of manager's performance evaluation as well.

6. Conduct Outreach and Implement Marketing Strategies

The contract compliance office should launch an outreach campaign to promote the approved changes to the L/SLBE Program. Effective outreach will attract more bidders and proposers and inform them of new requirements.

Table 1.02 below lists the strategies for marketing the L/SLBE Program that should be continued to inform the business community of new requirements and attract LBE, SLBE, and M/WBE firms to certify with the City and to bid on City contracts.

Table 1.02 Outreach and Marketing Strategies

Strategy	Tactics	Expected Outcome
Expand outreach campaign	<ul style="list-style-type: none"> • Focus on non-mainstream media and digital outlets such as ethnic and trade publications, electronic newsletters, and Internet presence 	Gain local recognition for the City's revamped business programs. Provide information to LBEs, SLBEs, and M/WBEs.
Expand contractors' open house and other networking events	<ul style="list-style-type: none"> • Plan and coordinate open house events • Send out invitations via mail, fax, and e-mail • Include buyers in outreach events • Make informal contract opportunities available • Distribute contract forecasts and certification forms 	Provide LBEs, SLBEs, and M/WBEs networking opportunities. Increase LBE and SLBE certification.
Develop multi-lingual, collateral print material for outreach campaign	<ul style="list-style-type: none"> • Revise brochure to reflect program changes • Develop articles and media packets • Publish the brochure electronically 	Develop materials to educate the businesses, attract bidders, and attract LBEs, SLBEs and M/WBEs to certify.

7. Increase Use of Equal Access Program

The passage of the Equal Access to Services Ordinance in 2001 signified the City's commitment to afford its residents greater access to its services by providing translation services and bilingual materials to non-English speakers. Departments with procurement authority should coordinate with the Equal Access Department to ensure greater access to City contracts to business owners with English as their second language. The City should also allow businesses to request translation services for pre-bid and pre-proposal conferences.

D. Website Enhancements

The following recommendations are intended to enhance the City's Internet presence and make its website more accessible to firms interested in performing work on the City's contracts.

1. Post Project Forecasts on the Internet

Currently a listing of Request for Proposals and bids is available on the Public Works Agency's website, but it is accessible as a lengthy portable document format (PDF) file. The current format is difficult to use because the vendor must scroll through the entire listing to gain information on a particular solicitation. The vendor would be better served by being able to search the list of contracting opportunities by keyword, industry, or NAIC code.

Project forecasts of all City agencies that fund contracts should post their opportunities on the Internet, so that businesses interested in working with the City can be informed about contracting opportunities. Furthermore, bidding and contracting opportunities should be listed on the Purchasing Division's website.

The City should also consider listing pending solicitations on the Internet prior to the issue of the actual solicitation. Pending solicitations should be listed at least 30 days prior to the actual release date. The listings would consist of the draft project or product specifications, anticipated release date, and subcontracting goals for the project. The listings should be posted on the same day each week.

Also, there is a fee for a contractor to acquire a written work plan for each RFP or bid opportunity. Such fees can be as high as \$50.00, and these costs can oftentimes prevent contractors from applying for the bids. The solicitations should be available for downloading at no charge.

Using the California Department of General Services' California State Contracts Register⁴ website as a model, the City should compile all contracting information onto a single web page, instead of separately by department. The City should also allow businesses to register to receive direct e-mail notification of contracting opportunities based on a set of criteria established by the business. This would save businesses time by providing an alternative to browsing through the entire list of contract opportunities.

⁴ "California State Contracts Register." *California Department of General Services*. 2003. State of California. 4 June 2007. <<http://www.cscr.dgs.ca.gov/cscr/>>.

2. Post Prime Contract and Subcontract Awards on the Internet

Prime contract and subcontract awards should be posted on the City's website. The awards should be posted within 24 hours of the Intent to Award decision having been made and no later than the start of the bid protest period. Posting contract awards would inform the business community of the results of the City's solicitations and notify the bidders of each contract during the protest period. After the start of work on a project, the City should post prime contractor and subcontractor payments on the website.

3. Design Easily Navigable Website Hyperlinks and Features

The City of Oakland website has a task bar, "Business in Oakland: Opportunities, Incentives, Permits." A contractor may access five topics through the task bar: "Doing Business in Oakland," "Contracting with Oakland – Request for Proposals," "Business Support Services," "Employment Services," and "Grant Opportunities." Although some of the topics are listed separately, they are hyperlinked to the same page. Additionally, clicking on the "Purchasing Programs" link leads to the Purchasing web page, which does not allow for easy navigation, because there is no task bar to view a browser history.

It is recommended that the City reorganize its website so that vendors can access relevant information more efficiently, which would reduce the time staff spends answering questions about the procurement process.

4. Make Procurement and Bidding Information Available

Currently, there is no posting of procurement guidelines stipulating the City's practices on the Internet. The City should compile a concise "Frequently Asked Questions" page and provide the procurement procedure manual for public viewing. Such enhancements will ensure that vendors are more informed when entering the bidding process.

5. Consolidate All Bid Information onto a Single Web Page

By clicking on the "Business in Oakland, Opportunities, Incentives, and Permits" link on the City's home page and searching through the Purchasing site, a vendor can access a small tutorial section on how to use forms, as well as general information on bonds, bid opening and closing procedures, and the City's special bid discount information. Such valuable information on bid procedures should be more easily accessible on a single web page, without having to conduct a search through various index features.

IV. DATA MANAGEMENT RECOMMENDATIONS

L/SLBE prime contractor and subcontractor utilization data is assessed when bids are submitted. Each bidder is required to fill out an L/SLBE participation form, which includes the L/SLBE status of the prime contractor and all prospective subcontractors and suppliers. When the successful bidder is selected, one copy of this form remains with the Office of Contract Compliance and Employment Services (OCCES), one copy is placed in the project file located at the awarding department, and one copy remains in Contract Administration.

Until recently, the OCCES had been using a computerized system to enter the information from the L/SLBE participation forms. However, the system is currently in the process of being upgraded, and the data is being stored in a multitude of MS Excel files.

Currently, there are no regular reports on the overall L/SLBE participation on all City contracts being generated.

Recommendations in this section are presented as strategies to enhance the City's management of its prime contract and subcontract records. The recommended enhancements would support a more accurate assessment of the effectiveness and compliance with any implemented business enterprise program given the findings of this Study.

1. L/SLBE Prime Contractor Data

The centralized financial system used by the Finance and Management Agency (FMA) keeps track of all payments made to prime contractors. The system has the capability to link payments to their respective purchase orders and contracts. However, the field that is being used to store contract numbers is often left blank. In addition, the contract numbers being used by the FMA may be a different number than the one used by the OCCES. Purchase order numbers are not uniformly recorded in the contract record. As a result, the system does not allow the prime contract payments to be matched electronically to prime contract awards, and subsequently, to subcontracting data. Thus, the present system does not allow the generation of a computerized report that would calculate L/SLBE participation for all dollars expended by the City. The present system should be modified to make the contract number a required field for all expenditures other than direct payments.

In addition, it is recommended that all records include industry classification of transactions. Presently, object codes are used to classify prime expenditures. Object codes define the purpose of each transaction but not the type of work performed by each contractor. For example, a heavy construction project may include separate contracts with construction suppliers, equipment maintenance contractors, and professional engineers. Since the object code is tied to the type of project, all prime contracts will be labeled under the heavy construction object code and will be reported in the heavy construction category, instead of the category appropriate to their contract. Another shortcoming of the current system is that

payments to government agencies and not-for-profit organizations are not differentiated in the system.

It is recommended that the financial system utilize commodity codes, such as National Institute of Governmental Purchasing (NIGP) or North American Industry Classification System (NAIC) codes, to describe the specific nature of work performed in each contract. All City expenditures should be assigned an appropriate NIGP or NAIC code based on the goods or services provided by the contract. In addition, all expenditures to government agencies and not-for-profit organizations should be coded appropriately.

2. Subcontractor Data Management

The subcontractor data collected by the OCCES should be stored in a relational database. The specification for such a database will be provided later in this report.

Subcontractor data is presently collected at the time of award and does not reflect any substitutions or changes to award amounts. Prime contractors should be required to complete monthly compliance reports that would record payment information for all subcontractors. In addition to an option to submit a paper version of this report, a web-based digital form should be used to capture the payment data from the contractors. The data should then be uploaded to a relational database.

A. Recommendations for a Subcontractor Data Tracking System

A relational database should be implemented to store the subcontractor, supplier, and trucker payment data. A relational database would allow for linking the subcontractor data to the specific prime contract as well as to the subcontractor's certification status and contact information. The database could have customizable reports that summarize the payments to subcontractors. The prime contract records in the centralized financial system should also reference a contract number.

The prime contract and subcontract databases should be able to "communicate" in order to produce reports on both prime contractor and subcontractor participation. For this database to be most efficient, the prime contract and subcontract data should be updated regularly to provide total payments. However, as noted above, the prime contract number must be recorded in each prime contract record.

Below are more specific requirements for an efficient data tracking system.

1. Functionality Requirements

An efficient data tracking system should contain the following components:

a. Vendor Information Component

This component should include contact information, NIGP classification, certification status, and ethnicity and gender. Certified vendor records should include the contractor's identification number, to enable cross-referencing with the certification database. Records for registered vendors should include the vendor identification number to enable cross-referencing with the City's financial system.

b. Contract Management Component

The contract management component should include contract information, such as bids, prime awards, subcontractors, and participation goals. The contract identification number used in this component should be same one as the one used in the financial system, to enable access to prime contractor payment information. As stated above, the contract number field should be made a required field in the financial system.

In particular, the ability to store subcontractor bid information helps in maintaining a current subcontractor availability database and ensuring accurate goal-setting.

c. Subcontractor Payment Component

This component should accommodate all data from the monthly compliance reports. Each subcontractor record should be linked to the corresponding contract management record by contract number and to the vendor information record by a vendor identification number.

2. Technical Specifications

The following technical specifications should be incorporated into the data tracking system:

- Web-based interface to allow submission of data by prime contractors and subcontractors directly over the Internet
- Web-based relational database to produce easily customizable reports with the capability to export and import data to and from existing systems
- Web-based system compatible with existing FMA server, database, and reporting architecture

2

NOT-FOR-PROFIT ANALYSIS

I. INTRODUCTION

The purpose of this chapter is to provide an assessment of the City of Oakland and Redevelopment Agency's (City) award of contracts to not-for-profit organizations during the period July 1, 2002 to June 30, 2005. A not-for-profit organization is defined as a company that is tax exempt pursuant to Section 501(c)(3) of the Internal Revenue Code and is used synonymously with the term non-profit. The definition of a not-for-profit organization excludes grant recipients for the purposes of this study, in conformity to the City's request. The assessment included contracts to provide goods and services, as well as subsidized loans for Housing and Community Development projects. The research plan addressed the six issues stipulated in the not-for-profit analysis portion of Mason Tillman Associates Ltd.'s (Mason Tillman) contract with the City. The issues are:

- Capacity of the utilized not-for-profit organizations
- Services provided to the City by not-for-profit organizations
- Most frequently used not-for-profit organizations
- Neighborhoods where the frequently used not-for-profit organizations were located
- Types of not-for-profit organizations used most often
- Differences in the capacity characteristics of not-for-profit organizations controlled by minorities and women, and those Caucasian male controlled

II. METHODOLOGY: IDENTIFICATION OF NOT-FOR-PROFIT VENDORS

A. Comptroller's Database

The Comptroller's database was used to compile the list of not-for-profit organizations that received at least one payment from the City from July 1, 2002 to June 30, 2005. The Comptroller's data consisted of the name, address, and total dollars received by each organization. Since not-for-profit organizations are not coded in the Comptroller's database, Mason Tillman had to use several methods to identify these vendors:

- Vendors listed in the Comptroller's database were cross-referenced with a list of not-for-profit organizations maintained by the Community and Economic Development Agency.
- Vendor names were also screened by a computer program that identified key words in a vendor's name. The list developed by Mason Tillman includes words that often occur in the names of not-for-profit organizations, such as "association," "foundation," "coalition," "chamber," and "church."
- The balance of the vendors were reviewed individually by Mason Tillman's staff to identify any additional not-for-profit organizations whose names did not contain typical keywords.

Using these methods, Mason Tillman identified 354 not-for-profit organizations that received at least one payment from the City.

Compilation of critical facts from the Comptroller's database provided answers to the first three questions of the research plan, which were:

- Services provided to the City by not-for-profit organizations
- Most frequently used not-for-profit organizations
- Neighborhoods where the frequently used not-for-profit organizations were located

B. Survey

To obtain information on the capacity characteristics and the ethnicity and gender of the directors, Mason Tillman conducted a survey of not-for-profit organizations. Mason Tillman limited the survey to the 212 not-for-profit organizations that received at least \$5,000 in payments.

Mason Tillman also used Internet research to verify and supplement the survey data. The not-for-profit organizations' websites were researched, and information was gathered on the types of services provided, years of operation, and ethnicity and gender of each organization's Board of Directors.

The survey was conducted by telephone. To obtain a maximum response rate, up to three telephone calls were made to each organization. A response to the telephone survey was received from 129 not-for-profit organizations, or 60.85 percent of the not-for-profit organizations surveyed.

The survey consisted of multiple-choice and open-ended questions. A copy of the survey instrument is included in Appendix A.

A relational database was designed to manage the Not-for-Profit Assessment data. The Comptroller's records of the 354 vendors were copied to the database. The survey responses were entered into the database manually. The database was also used to track the survey process. The survey responses were recorded and the number of calls made to secure a response to the survey was also tracked. A series of queries and pivot tables were developed to translate the raw data into meaningful information.

III. STUDY FINDINGS

A. Utilization of Not-for-Profit Organizations by Type of Service and Location

The Comptroller's database provided addresses, the type of service provided, and payment amounts for all utilized not-for-profit organizations. Therefore, Mason Tillman was able to include the entire pool of 354 not-for-profit organizations.

B. Types of Services Not-for-Profit Organizations Provide

Table 2.01 enumerates the types of services provided to the City by not-for-profit organizations during the study period. The list is presented in descending order by total dollars spent for the different services. Out of \$96,761,163.70 spent with not-for-profit organizations, \$23,733,384.74, or 24.53 percent, was expended in housing development.

Most of the not-for-profit organizations that received payments from the City were cultural organizations. These 46 cultural organizations represent 12.99 percent of all not-for-profit organizations utilized by the City.

The 32 organizations classified as “other” provided services either did not respond to the survey question regarding types of services provided or did not respond to the survey at all. These organizations received only 0.47 percent of all dollars spent with not-for-profit organizations.

Table 2.01 Total Dollars Spent for Services Provided for the City by Not-for-Profit Organizations, by Type of Service

Services Provided	Number of Organizations	Percent of Organizations	Total Dollars	Percent of Dollars
Housing Development	11	3.11%	\$23,733,384.74	24.53%
Children and Youth Development	22	6.21%	\$8,765,816.87	9.06%
Economic Development	25	7.06%	\$8,317,286.51	8.60%
Educational Services	42	11.86%	\$7,773,611.67	8.03%
Health Services	14	3.95%	\$6,506,573.98	6.72%
Homeless Services	11	3.11%	\$6,003,458.18	6.20%
Parks and Recreation	7	1.98%	\$4,800,907.54	4.96%
Non-Profit Management and Funding	8	2.26%	\$4,749,835.99	4.91%
Cultural Organizations	46	12.99%	\$4,670,518.40	4.83%
Immigrant Services	6	1.69%	\$3,047,646.02	3.15%
Multipurpose Human Services	17	4.80%	\$2,844,424.17	2.94%
Legal Services	6	1.69%	\$2,460,471.23	2.54%
Family Services	15	4.24%	\$2,445,320.37	2.53%
Senior Services	11	3.11%	\$1,764,149.17	1.82%
Mental Health Services	6	1.69%	\$1,586,811.96	1.64%
Environmental Services	7	1.98%	\$1,570,437.75	1.62%
Disabled Individual Services	10	2.82%	\$1,131,539.60	1.17%
Chamber Of Commerce	8	2.26%	\$1,040,793.89	1.08%
Substance Abuse Program	5	1.41%	\$959,428.10	0.99%
Employment Assistance	12	3.39%	\$846,023.55	0.87%
Community Coalitions	5	1.41%	\$434,303.76	0.45%
Land Purchase	3	0.85%	\$268,004.28	0.28%
Civil Rights	10	2.82%	\$257,225.48	0.27%
Food Banks	2	0.56%	\$132,639.57	0.14%
Professional Organizations	6	1.69%	\$97,916.88	0.10%
Women Services	2	0.56%	\$60,750.00	0.06%
Crime Prevention	3	0.85%	\$39,355.25	0.04%
Humane Associations	2	0.56%	\$1,594.82	0.00%
Other	32	9.04%	\$450,933.97	0.47%
Grand Total	354	100.00%	\$96,761,163.70	100.00%

C. Top 25 Utilized Not-for-Profit Organizations

Table 2.02 lists the 25 organizations that received the most dollars from the City. Typically, Mason Tillman classifies the ownership of a business by the ethnicity and gender of the owner. In theory, the not-for-profit organization's ownership rests with its Board of Directors and/or its members. From a practical point of view there is no one or more individuals who constitute the owners with control over the day-to-day operations and revenue. The Board of Directors are typically selected as a representation of the members and the interests of the organization. Thus, the ethnicity and gender classification of the not-for-profit organizations is based on the ethnicity and gender composition of the Board of Directors. Information regarding the ethnicity and gender composition of the Boards of Directors was provided through the survey and supplemented with Internet research and follow-up telephone calls.

The ethnicity categories used were African American, Asian American, Hispanic American, Native American, Multiple Ethnicity, and Caucasian. These categories include both males and females of each perspective ethnic group. The Multiple Ethnicity category includes the Board of Directors which consisted of individuals from several ethnic groups, with no ethnic group representing more than 50 percent. The Female category includes only Caucasian females, as minority females are already accounted for in their ethnic group categorization. Those organizations for which the named organization declined to state the ethnicity of its Board of Directors are listed as Not Stated.

Table 2.02 Top 25 Utilized Not-for-Profit Organizations

Organization	Description	Total Amount	Percentage of Total	Ethnicity / Gender
Spanish Speaking Unity Council	Housing Development, Construction/Managment	\$20,430,889	21.11%	Hispanic American
Fruitvale Development Corp.	Community and Economic Development	\$4,893,508	5.06%	Not Stated
Operation Dignity Inc.	Homeless Services, Veteran Services	\$3,710,238	3.83%	Caucasian
East Bay Community Foundation	Investments in Charitable Causes	\$3,357,263	3.47%	Caucasian
East Bay Zoological Society Inc.	Zoological Society	\$2,942,145	3.04%	Female
Oakland Business Development	Business Development	\$2,725,429	2.82%	African American
Urban Indian Health Board, Inc.	Health Services	\$2,632,267	2.72%	Native American
Oakland School For The Arts	Educational Services	\$2,323,462	2.40%	Caucasian
MacArthur Park Development Associates, LLC.	Housing Development, Construction/Managment	\$1,953,139	2.02%	Not Stated
Travelers Aid Society	Homeless Services	\$1,947,025	2.01%	Caucasian
East Bay Asian Youth Center	Youth Development Programs	\$1,602,292	1.66%	Asian American
The Marcus A. Foster Educational Institute	Educational Services	\$1,601,548	1.66%	Not Stated
Youth Employment Partnership	Youth Development, Employment Training	\$1,592,116	1.65%	Not Stated
Family Violence Law Center, Inc.	Legal Services	\$1,552,609	1.60%	Female
First Place Fund For Youth	Multipurpose Human Services	\$1,420,879	1.47%	Caucasian
Museum of Children's Art	Children's Museum	\$1,267,595	1.31%	Female
East Bay Conservation Corps	Youth Community Service Club	\$1,237,566	1.28%	Caucasian
La Clinica De La Raza	Health Services	\$1,107,908	1.14%	Hispanic American
Bay Area Community Services	Senior Services, Mental Health Services	\$1,090,383	1.13%	Caucasian
Donald P. Mccullum Youth Court, Inc.	Children's and Youth Services	\$1,056,593	1.09%	Caucasian
Children's and Youth Services	Immigrant Services	\$970,175	1.00%	Caucasian
East Oakland Community Project	Homeless Services	\$920,191	0.95%	African American
Oakland Asian Students	Educational Services	\$847,866	0.88%	Asian American
Oakland Youth Chorus	Educational Services	\$847,207	0.88%	Multi-ethnic
Oakland Commerce Corporation	Promotion of Businesses	\$816,537	0.84%	Caucasian
Total Dollars Paid to Not-For-Profit Organizations		\$96,761,164	100.00%	

Mason Tillman Associates, Ltd. September 2007
 City of Oakland and Redevelopment Agency Fairness in Purchasing and Contracting Disparity Study

D. Neighborhood Designations

Out of the 354 not-for-profit organizations 225, or 63.56 percent, have at least one office located in Oakland. The Oakland-based organizations received \$90,898,940, or 93.94 percent of all dollars awarded to not-for-profit organizations. Since many organizations provide services to the community where they are located, it was informative to look at the distribution of the organizations within Oakland neighborhoods.

Neighborhood classifications of not-for-profit organizations were determined using the City's Zoning and General Plan Map (Map), which is located on the City's website. See Figure 2.1 below. There were twelve neighborhoods identified on the Map. Each not-for-profit organization's neighborhood was determined by using the search by address function on the Map. For those organizations that were not located on the Map, Mason Tillman verified the addresses. If the address was incorrect, the correct address was found by using the Internet and their location on the Map determined. If the address was correct and the organization was not located on the Map, it was grouped with those organizations that were located on the Map and had an address within close proximity. For the Chinatown and Downtown neighborhoods, which are combined on the Map as the Chinatown Central neighborhood, Mason Tillman designated 14th Street as the boundary between the two. Chinatown was defined as the area west of 14th Street, and the boundaries of Downtown were defined as the area east of 14th Street. For the organizations located on 14th Street, their names were generally indicative of the neighborhood they served and were grouped accordingly. Together these two districts received 68.88 percent of the total dollars paid to not-for-profit organizations.

Figure 2.1 Neighborhood Designation Map

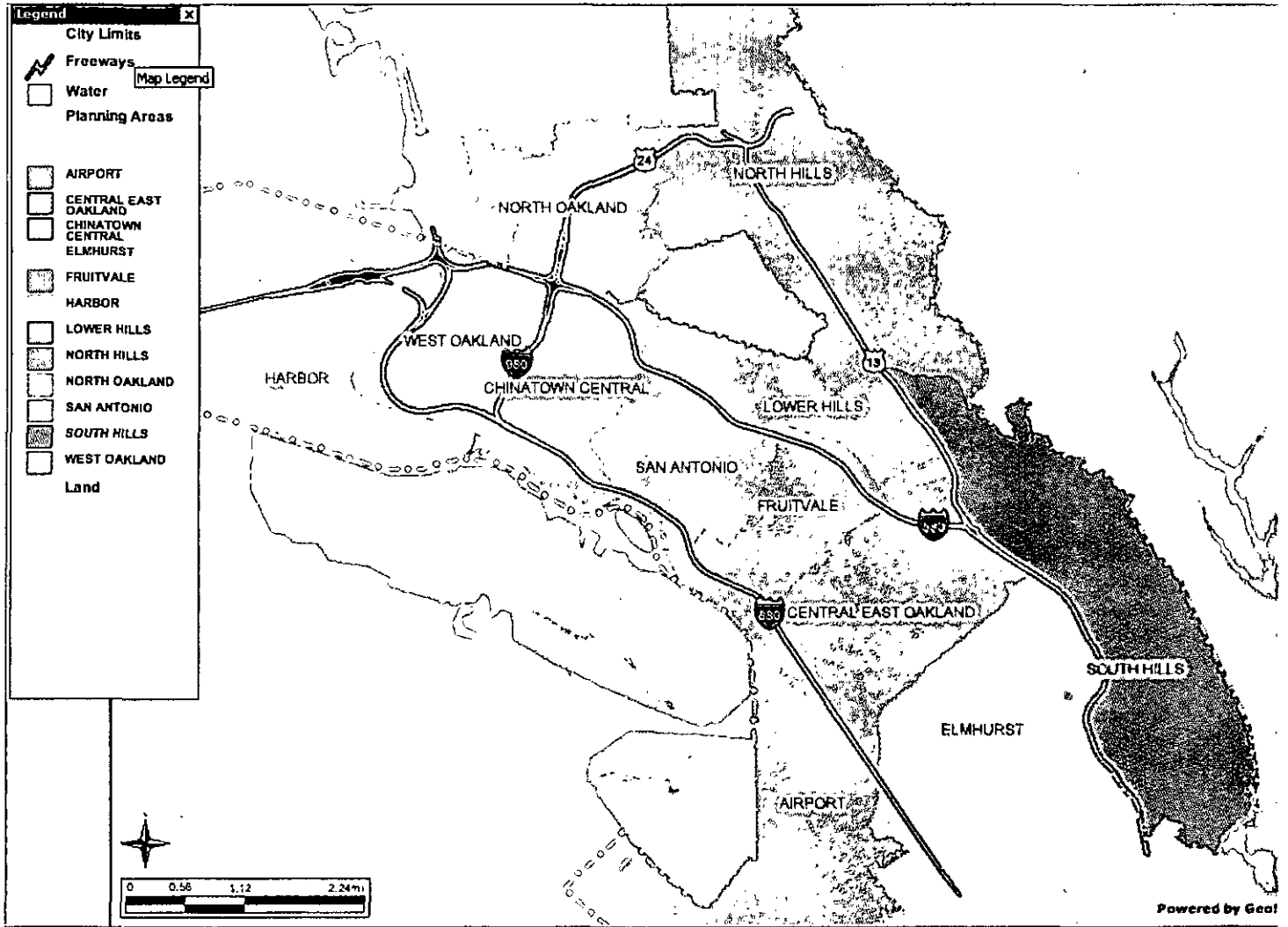


Table 2.03 indicates that most dollars were spent in the Fruitvale and Downtown Oakland neighborhoods.

Table 2.03 Total Dollars, by Oakland Neighborhood

Neighborhood Designation	Number of Organizations	Percent of Organizations	Total Dollars	Percent of Dollars
Fruitvale	17	7.56%	\$33,265,793	36.60%
Downtown Oakland	76	33.78%	\$29,344,069	32.28%
West Oakland	28	12.44%	\$6,739,974	7.41%
Chinatown	19	8.44%	\$4,584,218	5.04%
San Antonio	15	6.67%	\$4,354,875	4.79%
South Hills	7	3.11%	\$3,693,620	4.06%
Central East Oakland	14	6.22%	\$2,615,660	2.88%
Airport	4	1.78%	\$2,334,575	2.57%
Lower Hills	14	6.22%	\$2,146,951	2.36%
North Oakland	15	6.67%	\$1,307,803	1.44%
Elmhurst	8	3.56%	\$398,147	0.44%
North Hills	8	3.56%	\$113,255	0.12%
Grand Total	225	100.00%	\$90,898,940	100.00%

IV. PROFILE OF UTILIZED NOT-FOR-PROFIT ORGANIZATIONS

The 129 not-for-profit organizations that responded to the survey are profiled in this section by their type, issue area, target population, services provided, funding source, and location.

A. Type of Organization

Table 2.04 indicates the number and percent of survey respondents, as well as the total dollars received by each type of organization. The four not-for-profit organization classifications are public charity, private charity, faith-based, or other. The "Other" category included organizations that did not fall under any of the three categories, such as private membership organizations, administrative associations, business improvement districts, government agencies, literacy projects, etcetera.

Table 2.04 Type of Not-for-Profit Organizations

Organization	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
Private Charity	45	34.88%	\$41,450,025	60.03%
Public Charity	73	56.59%	\$26,401,958	38.24%
Other	9	6.98%	\$933,054	1.35%
Faith-based	2	1.55%	\$258,382	0.37%
Grand Total	129	100.00%	\$69,043,418	100.00%

B. Issue Area

Table 2.05 indicates the number and percent of survey respondents, as well as total dollars received by the issue area. Issue areas included Children and Family, Community Health, Economic Development, Cultural, Workforce Development, Environment, Housing, Seniors and Disabled, Other, and Multiple Issue Areas. More than 37 percent of the respondents were concerned with Children and Family issues, representing the largest issue area in the survey. The “Other” category included several issue areas that did not fall into the other listed categories, such as education, immigration-related issues, criminal justice, mental health, and public policy.

Table 2.05 Issue Area of Not-for-Profit Organizations

Issue Area	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
Economic Development	11	8.53%	\$25,712,631	37.24%
Children and Family	49	37.98%	\$23,300,727	33.75%
Multiple Issue Areas	10	7.75%	\$8,348,684	12.09%
Housing	8	6.20%	\$2,837,330	4.11%
Community Health	17	13.18%	\$2,625,357	3.80%
Environment	6	4.65%	\$2,407,333	3.49%
Other	11	8.53%	\$1,936,124	2.80%
Cultural	7	5.43%	\$740,026	1.07%
Workforce Development	5	3.88%	\$589,534	0.85%
Seniors and Disabled	5	3.88%	\$545,672	0.79%
Grand Total	129	100.00%	\$69,043,418	100.00%

C. Ethnicity and Gender of Target Populations for Not-for-Profit Organizations

Table 2.06 indicates the distribution of the 129 survey respondents by the ethnic and gender classification of the population the organization targets with its services. The table also indicates the total dollars received by the not-for-profit organization servicing the target population. Only 21 respondents were identified as targeting minorities or women.

Table 2.06 Target Populations of Not-for-Profit Organizations

Target Population	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
General	108	83.72%	\$58,365,746	84.53%
Asian American	8	6.20%	\$4,354,732	6.31%
Native American	2	1.55%	\$3,579,626	5.18%
Hispanic American	2	1.55%	\$982,921	1.42%
Women	4	3.10%	\$813,664	1.18%
Minority (Multi-Ethnic and Other Minority)	2	1.55%	\$519,081	0.75%
African American	3	2.33%	\$427,649	0.62%
Grand Total	129	100.00%	\$69,043,418	100.00%

D. Primary Funding Sources

Table 2.07 indicates the number and percent of survey respondents and total dollars received from their primary funding sources. Seven funding sources were identified by the respondents. The sources were Federal and State Government, Foundations, Donors, Local Government, Self-Generated Funds, and Special Events/Programs. Three of the 129 survey respondents declined to state their primary funding source.

Table 2.07 Funding Sources of Not-for-Profit Organizations

Funding Source	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
Federal and State Government	48	37.21%	\$47,239,451	68.42%
Donors	19	14.73%	\$6,470,504	9.37%
Foundations	18	13.95%	\$6,442,648	9.33%
Local Government	15	11.63%	\$4,791,403	6.94%
Self-Generated Funds	15	11.63%	\$2,576,438	3.73%
Special Events/Programs	5	3.88%	\$674,136	0.98%
Not Stated	3	2.33%	\$468,722	0.68%
Multiple Sources	6	4.65%	\$380,118	0.55%
Grand Total	129	100.00%	\$69,043,418	100.00%

E. Location of Headquarters

Table 2.08 indicates the number and percent of the survey respondents, as well as total dollars, received at each organization's main office location. More than 75 percent of respondents are located in Oakland.

Table 2.08 Location of Headquarters

Location of Headquarters	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
Oakland	98	75.97%	\$60,290,803	87.32%
Alameda	1	0.78%	\$3,419,082	4.95%
Berkeley	11	8.53%	\$2,874,058	4.16%
Hayward	1	0.78%	\$228,058	0.33%
Hollywood	1	0.78%	\$39,749	0.06%
Richmond	1	0.78%	\$498,279	0.72%
Sacramento	4	3.10%	\$126,227	0.18%
San Carlos	1	0.78%	\$67,004	0.10%
San Francisco	8	6.20%	\$882,073	1.28%
San Leandro	2	1.55%	\$610,753	0.88%
Walnut Creek	1	0.78%	\$7,332	0.01%
Grand Total	129	100.00%	\$69,043,418	100.00%

V. CAPACITY CHARACTERISTICS OF NOT-FOR-PROFIT ORGANIZATIONS

In this section the 129 survey respondents are profiled by their capacity characteristics. These characteristics include the years in operation, number of offices, and number of employees.

A. Years in Operation

Table 2.09 profiles all not-for-profit organizations according to the year the organization was established. The respondents were grouped into four categories of operation: less than 5 years, 5 to 9 years, 10 to 24 years, and 25 years or more. Nearly half of the respondents have been in operation for 25 years or more. In fact, four of the respondents have been in operation for over 100 years. One respondent declined to state the year the organization was established.

Table 2.09 Years in Operation

Years in Operation	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
Less Than 5 Years	1	0.78%	\$10,179	0.01%
5 to 9 Years	13	10.08%	\$3,470,890	5.03%
10 to 24 Years	55	42.64%	\$16,555,920	23.98%
25 or More Years	59	45.74%	\$48,993,709	70.96%
Not Stated	1	0.78%	\$12,720	0.02%
Grand Total	129	100.00%	\$69,043,418	100.00%

B. Number of Offices

Table 2.10 profiles all businesses according to the number of offices they operate. The businesses were grouped into four categories by number of offices: One, two to four, five to nine, and ten or more. The vast majority of respondents, or 72.09 percent, have only one office.

Table 2.10 Number of Offices

Number of Offices	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
1	93	72.09%	\$33,837,894	49.01%
2 to 4	18	13.95%	\$25,718,659	37.25%
5 to 9	8	6.20%	\$6,154,126	8.91%
10 or more	10	7.75%	\$3,332,740	4.83%
Grand Total	129	100.00%	\$69,043,418	100.00%

C. Number of Paid Employees

Table 2.11 profiles all businesses according to number of paid employees. The responses were grouped into four categories by number of paid employees: 0, 1 to 4, 5 to 9, 10 to 19, 20 to 49, 50 to 99, and 100 or more. The organization with no employees reports being

staffed by volunteers. The number of paid employees included full-time and part-time employees.

Table 2.11 Number of Paid Employees

Number of Employees	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
0	3	2.33%	\$493,337	0.71%
1 to 4	22	17.05%	\$3,466,826	5.02%
5 to 9	22	17.05%	\$6,519,412	9.44%
10 to 19	26	20.16%	\$7,474,016	10.83%
20 to 49	26	20.16%	\$13,807,787	20.00%
50 to 99	7	5.43%	\$4,425,498	6.41%
100 or More	20	15.50%	\$32,572,542	47.18%
Not Stated	3	2.33%	\$283,000	0.41%
Grand Total	129	100.00%	\$69,043,418	100.00%

VI. COMPARISON OF NOT-FOR-PROFIT CAPACITY CHARACTERISTICS, BY ETHNICITY AND GENDER

The utilized not-for-profit organizations controlled by a Board of Directors categorized as either minority, women, or Caucasian male are profiled according to six capacity factors. This analysis is performed to determine whether any of the capacity characteristics differ by the ethnicity and gender of the majority of the organization's Board of Directors. The factors analyzed are business type, issue area, target population, services provided, funding source, and geographic location.

A. Profile of Not-for-Profit Organizations by Ethnicity and Gender

Table 2.12 profiles the organizations according to the ethnicity and gender of the majority of members in the Board of Directors. The categories were African American, Asian American, Hispanic American, Native American, Multiple Ethnicity, and Caucasian. The Multiple Ethnicity category includes organizations in which the Board of Directors consists of individuals from several ethnic groups, with no ethnic group representing more than 50 percent.

**Table 2.12 Profile of Not-for-Profit Organizations, by
Ethnicity and Gender**

Ethnicity	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
African American	14	10.85%	\$6,457,491	9.35%
Asian American	12	9.30%	\$5,197,054	7.53%
Hispanic American	1	0.78%	\$20,430,889	29.59%
Native American	2	1.55%	\$3,579,626	5.18%
Multiple Ethnicities	20	15.50%	\$3,340,420	4.84%
Caucasian	53	41.09%	\$22,962,421	33.26%
Not Stated	27	20.93%	\$7,075,518	10.25%
Grand Total	129	100.00%	\$69,043,418	100.00%
Gender	Number of Respondents	Percent of Respondents	Total Dollars	Percent of Dollars
Female	47	36.43%	\$14,421,272	20.89%
Male	67	51.94%	\$52,062,017	75.40%
Not Stated	15	11.63%	\$2,560,130	3.71%
Grand Total	129	100.00%	\$69,043,418	100.00%

B. Years in Operation, by Ethnicity and Gender

Table 2.13 presents a cross-tabulation of information concerning the ethnicity and gender of the not-for-profit organizations' Board of Directors with years in operation. The oldest organizations are Caucasian-operated, with 50.94 percent in operation for 25 or more years. Only 35.71 percent of the African American organizations are 25 or more years old.

By gender, the oldest organizations are among those operated by men, with 55.22 percent in operation for 25 or more years. Among women-operated organizations only 36.17 percent are 25 or more years old.

The number of years in operation for one organization could not be determined; therefore, in Table 2.13, only 128 respondents are reflected in the data.

Table 2.13 Years in Operation, by Ethnicity and Gender

Ethnicity	Years in Operation								Total Number
	Less than 5		5-9		10-24		25 or Older		
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
African American	0	0.00%	1	7.14%	8	57.14%	5	35.71%	14
Asian American	1	8.33%	0	0.00%	6	50.00%	5	41.67%	12
Hispanic American	0	0.00%	0	0.00%	0	0.00%	1	100.00%	1
Native American	0	0.00%	0	0.00%	0	0.00%	2	100.00%	2
Multiple Ethnicities	0	0.00%	3	15.00%	8	40.00%	9	45.00%	20
Caucasian	0	0.00%	8	15.09%	18	33.96%	27	50.94%	53
Unknown	0	0.00%	1	3.85%	15	57.69%	10	38.46%	26
Total	1	0.78%	13	10.16%	55	42.97%	59	46.09%	128
Gender	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
Female	0	0.00%	5	10.64%	25	53.19%	17	36.17%	47
Male	1	1.49%	7	10.45%	22	32.84%	37	55.22%	67
Unknown	0	0.00%	1	7.14%	8	57.14%	5	35.71%	14
Total	1	0.78%	13	10.16%	55	42.97%	59	46.09%	128

Mason Tiltman Associates, Ltd. September 2007
 City of Oakland and Redevelopment Agency Fairness in Purchasing and Contracting Disparity Study

C. Number of Offices, by Ethnicity and Gender

Table 2.14 is a cross-tabulation of the ethnicity and gender of each not-for-profit organization's Board of Directors with its number of offices. There is no substantial difference among the ethnic and gender groups. Organizations with Caucasian Boards of Directors have slightly more offices with 9.43 percent of Caucasian-operated organizations having 10 or more offices. Among multi-ethnic organizations only five percent have 10 or more offices.

By gender, there are no noticeable differences between males and females in the number of offices of not-for-profit organizations.

Table 2.14 Number of Offices, by Ethnicity and Gender

	Number of Offices								Total Number
	1		2-4		5-9		10 or More		
Ethnicity	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
African American	10	71.43%	3	21.43%	0	0.00%	1	7.14%	14
Asian American	8	66.67%	1	8.33%	3	25.00%	0	0.00%	12
Hispanic American	0	0.00%	1	100.00%	0	0.00%	0	0.00%	1
Native American	1	50.00%	0	0.00%	1	50.00%	0	0.00%	2
Multiple Ethnicities	17	85.00%	2	10.00%	0	0.00%	1	5.00%	20
Caucasian	40	75.47%	7	13.21%	1	1.89%	5	9.43%	53
Unknown	17	62.96%	4	14.81%	3	11.11%	3	11.11%	27
Total	93	72.09%	18	13.95%	8	6.20%	10	7.75%	129
Gender	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
Female	35	74.47%	6	12.77%	1	2.13%	5	10.64%	47
Male	47	70.15%	10	14.93%	5	7.46%	5	7.46%	67
Unkown	11	73.33%	2	13.33%	2	13.33%	0	0.00%	15
Total	93	72.09%	18	13.95%	8	6.20%	10	7.75%	129

D. Number of Paid Employees, by Ethnicity and Gender

Table 2.15 presents a cross-tabulation of the ethnicity and gender of not-for-profit organizations with the number of paid employees. The largest organizations were among Asian Americans, with 33.3 percent having 100 or more employees. Among multi-ethnic organizations only five percent have 100 or more employees.

By gender, organizations operated by men appear to be larger, with more male-operated organizations having 50 or more employees and fewer male-operated organizations in the mid-size and small range as compared to those operated by women.

Table 2.15 Number of Employees, by Ethnicity and Gender

Ethnicity	Number of Paid Employees														Total
	None		1 to 4		5 to 9		10 to 19		20 to 49		50 to 99		100 or more		
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
African American	1	7.1%	3	21.4%	3	21.4%	4	28.6%	3	21.4%	0	0.0%	0	0.0%	14
Asian American	0	0.0%	2	16.7%	2	16.7%	2	16.7%	2	16.7%	0	0.0%	4	33.3%	12
Hispanic American	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	100.0%	1
Native American	0	0.0%	0	0.0%	1	50.0%	0	0.0%	0	0.0%	0	0.0%	1	50.0%	2
Multiple Ethnicities	2	10.0%	5	25.0%	4	20.0%	2	10.0%	5	25.0%	1	5.0%	1	5.0%	20
Caucasian	0	0.0%	6	11.8%	8	15.7%	11	21.6%	12	23.5%	6	11.8%	8	15.7%	51
Unknown	0	0.0%	6	23.1%	4	15.4%	7	26.9%	4	15.4%	0	0.0%	5	19.2%	26
Total	3	2.4%	22	17.5%	22	17.5%	26	20.6%	26	20.6%	7	5.6%	20	15.9%	126
Gender	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
Female	3	6.4%	10	21.3%	5	10.6%	8	17.0%	15	31.9%	1	2.1%	5	10.6%	47
Male	0	0.0%	10	15.2%	13	19.7%	16	24.2%	9	13.6%	6	9.1%	12	18.2%	66
Unknown	0	0.0%	2	15.4%	4	30.8%	2	15.4%	2	15.4%	0	0.0%	3	23.1%	13
Total	3	2.4%	22	17.5%	22	17.5%	26	20.6%	26	20.6%	7	5.6%	20	15.9%	126

Mason Tillman Associates, Ltd. September 2007
 City of Oakland and Redevelopment Agency Fairness in Purchasing and Contracting Disparity Study

VII. CONCLUSION

The analysis sought to describe the characteristics of not-for-profit organizations to which the City awarded contracts during the period from July 1, 2002 to June 30, 2005. The analysis was limited to not-for-profit organizations identified in the Comptroller's database that received at least \$5,000 from the City. The results of the research are summarized below.

A. Scope of the Research

The City awarded \$96,761,163.70 to 354 not-for-profit organizations during the study period. The 212 organizations that received \$5,000 or more in one or more contracts were surveyed. A total of 129 not-for-profits responded to the survey, and their responses served as the basis for the analysis. The characteristics of not-for-profit organizations were compiled in accordance to Mason Tillman's contract with the City.

B. Key Study Findings

Housing development organizations received the greatest amount of the City's dollars of any other types of organization, which was 24.53 percent of all contract dollars awarded to not-for-profit organizations. However, more cultural organizations received City funding than any other type of organization. City funding was concentrated in the Fruitvale and Downtown Oakland Districts. Within these two districts, not-for-profit organizations received 68.88 percent of all contract dollars awarded. Also, in regards to funding sources most of the organizations received funding from the federal and state government, in addition to the City.

The telephone survey also revealed that the majority of the 129 not-for-profit organizations do not target specific race or gender groups, with 83.72 percent of respondents identifying their organizations as serving the general public. The majority of the utilized organizations are located in Oakland and have been in operation for more than 10 years. In addition to being mostly local, the utilized organizations are relatively large. Sixty-one percent of the 129 survey respondents reported that their organizations had 10 or more paid employees, and 27.91 percent had more than one office location both within and outside Oakland.

These utilized organizations are managed by a diverse group of individuals. The Board of Directors of 10.85 percent of the utilized organizations were controlled by African Americans, 9.3 percent by Asian Americans, 0.78 percent by Hispanic Americans, 1.55 percent by Native Americans, 15.5 percent by multiple ethnicities, 41 percent by Caucasians, and 20.93 percent by persons of unstated ethnicity. The Board of Directors of 36.43 percent of the organizations were controlled by females, 51.94 percent by males, and 11.63 percent by persons of unstated gender.

APPENDIX A:

Not-For-Profit Organization Survey Instrument

- 1) **What type is your organization?**
 Faith-based
 Private Charity
 Public Charity
 Other (Please specify): _____
- 2) **What's the issue area?**
 Children and Family
 Environment
 Community/ Economic Development
 Community Health
 Employment/ Workforce Development
 Other (Please specify): _____
- 3) **Does your organization target any specific category, such as:**
 Asian American
 African American
 Hispanic American
 Native American
 Women
 Minority
 Other (Please specify): _____
- 4) **What type of services does your organization provide?**
- 5) **What is your primary funding source?**
 Donors
 Foundations
 Federal and State Government
 Special Events Programs
 Other (Please specify): _____
- 6) **What year was it established?** _____
- 7) **How many offices do you have?** _____

8) **Do you have an Oakland office?**

Yes

No

If yes, please provide the address of each Oakland office (street, zip code):

9) **Location of Headquarters?**

City: _____

State: _____

10) **How many members are in your board of directors?** _____

How many of them are women? _____

How many African Americans? _____

How many Asian Americans? _____

How many Hispanic Americans? _____

How many Native Americans? _____

11) **How many employees are in all your offices?**

0

1-4

5-9

10-19

20-49

50-99

100 or more

a) **How many managers?**

0

1-4

5-9

10-19

20-49

50-99

100 or more

b) How many administrative staff?

- 0
- 1-4
- 5-9
- 10-19
- 20-49
- 50-99
- 100 or more

c) How many technical staff?

- 0
- 1-4
- 5-9
- 10-19
- 20-49
- 50-99
- 100 or more