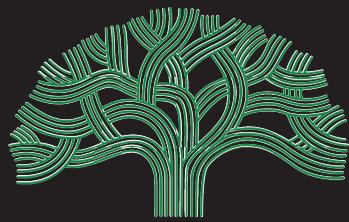




MASON TILLMAN
ASSOCIATES, LTD

Attachment A **DISPARITY STUDY** **FINAL REPORT**



CITY OF OAKLAND

MAY 2024



May 31, 2024

Mr. Jestin D. Johnson
City Administrator
City of Oakland
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Dear Mr. Johnson,

I am pleased to submit the 2024 City of Oakland Disparity Study Final Report. This report provides a detailed statistical and anecdotal analysis of the ethnic and gender disparities in the City's contracting and procurement policies and practices.

The draft report was submitted on February 22, 2024. Comments on the report were received on April 3, 2024, with the City's instructions to remove the recommendations and legal chapters. Resolution No. 89058, which awarded the disparity study contract, states that Mason Tillman shall "recommend actions, programs, policies, procedures and practices to address race and gender-based disparities that are documented." Schedule T: Contract Summary Transmittal also states that Mason Tillman shall "identify disparities in City procurement and offer recommendations for mitigation." Nonetheless, Mason Tillman has removed the recommendations chapter in accordance with the City's instructions.

Mason Tillman has not elected to remove the legal chapter from the final report because it is the fundamental framework for a sound legally defensible study. Because the methodology is intertwined with the case law, which provides the standard for the disparity study methodology, Mason Tillman has inserted the legal chapter in the appendix.

We appreciate the opportunity to assist the City of Oakland with this important project. Should you have any further questions or require additional information, please do not hesitate to contact me directly.

Our contract provides for a presentation of the Study findings. Please let me know if you would like to proceed with a presentation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eleanor Mason Ramsey'.

Eleanor Mason Ramsey, Ph.D.
President

Preface

On March 1, 2022, the City of Oakland retained Mason Tillman Associates, Ltd. to study the construction, architectural and engineering, professional services, and goods and services contracts awarded from July 1, 2016, to June 30, 2021. A disparity study, as required by *Section 808(b)* of the *City Charter*,¹ must be performed every five years. The purpose of the disparity study as set forth in Resolution No. 89058 is to determine if:

...the City has been an active or passive participant in actual, identifiable discrimination within its relevant contracting marketplace, and to establish a narrowly tailored race and/or gender business participation program, if discrimination is demonstrated and substantiated by the disparity.²

The 2024 City of Oakland Disparity Study documented with statistical and qualitative evidence that the City was both an active and passive participant in the disparity of both prime contracts and subcontracts awarded to minority and woman-owned business enterprises (M/WBEs). While the California Constitution prohibits preferential treatment in the award of public contracts, there is a paucity of California case law discussing preferential treatment. However, the disproportionate share of contracts awarded to non-minority firms may be characterized, considering the case law, as preferential treatment. The disparity study also highlights significant statistical disparities in the award of federally assisted contracts and raises concerns regarding the City's compliance with Title VI and the United States Department of Transportation's Disadvantaged Business Enterprise regulations. The disparity study provides a detailed examination of the City's procurement and contracting processes and practices.

The statistical findings constitute the legal predicate for the City to address the deficiencies in its contracting policies and practices. The findings also meet the Supreme Court's strict scrutiny standard required for race-based remedies and arguably satisfy the requirements for race-based remedies under Section 31 of the California Constitution.³ Section 31 exempts race and gender-conscious remedies that are required under the Federal Equal Protection Clause to remedy intentional discrimination.⁴ To address the discrimination findings and authorize a race and gender-based contracting policy, the City Council must adopt the Disparity Study report and take appropriate legislative actions.

This comprehensive Disparity Study report is organized into two parts. Part I includes the standard statistical chapters as required by the strict scrutiny constitutional analysis applicable to race-based remedies for public contracting programs, as set forth in *City of Richmond v. J.A. Croson Co. (Croson)*.⁵ These chapters analyze the utilization, availability, and disparity of minority and

¹ The Charter of the City of Oakland, Section 808(b), Oakland, 2022.

² Resolution No. 89058 C.M.S., page 1, passed on March 1, 2022.

³ California Constitution, Art 1, Section 31.

⁴ *Hi-Voltage Wire Works Inc. v. City of San Jose*, 24 Cal. 4th 537, 569 (2000) (*Hi-Voltage*).

⁵ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).



woman-owned businesses as both prime contractors and subcontractors. Part II provides the chapters that analyze components of the City's local equity program and compliance with the affirmative action provisions on the federally assisted contracts. The recommendations chapter, required by the Council Resolution No. 89058⁶ which authorized this study, has been prepared but is not included in this Final Report.

Part I

The eight chapters in Part I constitute the core of the disparity study report. Seven chapters present the statistical evidence of the City and its prime contractors' award of subcontracts, and the eighth chapter consists of anecdotal accounts of businesses' perceptions of the City's contracting process. The Regression Analysis chapter presents evidence of disparity from federal census data.

- 1. Prime Contractor Utilization Analysis**—This chapter documents the City of Oakland's utilization of minority and women-owned business enterprises (M/WBEs) and non-minority, male-owned business enterprises (non-M/WBEs) as prime contractors by ethnicity, gender, and industry during the study period.
- 2. Subcontractor Utilization Analysis**—This chapter presents the utilization of subcontractors by ethnicity, gender, and industry. The subcontracts examined were awarded by the City of Oakland's prime contractors during the study period.
- 3. Geographic Market Area Analysis**—This chapter offers the legal criteria for defining the geographic market area. The geographic distribution of all prime contracts awarded by the City of Oakland was analyzed to determine the market area for the study.
- 4. Prime Contractor and Subcontractor Availability Analysis**—This chapter enumerates willing and able market area businesses by ethnicity, gender, and industry. In compliance with the *Croson* standard, the capacity of the enumerated businesses was assessed.
- 5. Prime Contract Disparity Analysis**—This chapter determines if M/WBEs available to perform the City of Oakland's prime contracts were underutilized during the study period. The statistical significance of documented underutilization was assessed.
- 6. Subcontract Disparity Analysis**—This chapter determines if available M/WBEs were underutilized in awarding the City of Oakland's subcontracts during the study period. The statistical significance of documented underutilization was assessed.
- 7. Regression Analysis**—The regression analysis examined two outcome variables—business ownership rates and earnings—to determine if the City of Oakland passively participated in ethnic or gender discrimination.



⁶ Resolution No. 89058 C.M.S., page 1, passed on March 1, 2022.

8. Anecdotal Analysis—This chapter presents anecdotal evidence from in-depth, one-on-one business interviews to highlight actions that may have prevented M/WBEs from accessing the City’s contracts.

Part II

Part II consists of three chapters. The first chapter assesses the implementation of the Local and Small Local Business Enterprise (L/SLBE) Program. The second chapter reviews compliance with the affirmative action requirements of federal financial assistance grants. The third chapter examines the impact of the COVID-19 pandemic on M/WBEs with consideration to the local and federal policies intended to mitigate the pandemic’s effect on local businesses.

- 1. Local and Small Local Business Enterprise Program Analysis**—This chapter analyzes the City’s current L/SLBE Program to determine its utilization of M/WBEs. It includes a review of program policies and procedures, interviews with City staff and business owners, and recommendations for improvements.
- 2. Federally Funded Contracts Analysis**—This chapter analyzes the awarded contracts funded in whole or part by a federal grant directly from the United States government or from a California state department or local agency. The City’s compliance with Title VI affirmative action requirements associated with federal financial assistance was also assessed.
- 3. COVID-19 Impact on M/WBEs**—This chapter examines the immediate and enduring effects of COVID-19 on M/WBEs in the City. This analysis examines the direct and nuanced relationship between the pandemic’s impact and the resilience of M/WBEs.

Appendix

The Legal Review summarizes the constitutional standards the federal and state courts have applied in reviewing local governments’ affirmative action contracting programs. It also summarizes the state constitutional standard and relevant case law for applying race and gender-conscious measures in California.



City of Oakland Disparity Study Final Report

Part I



Table of Contents

CHAPTER 1: PRIME CONTRACTOR UTILIZATION ANALYSIS	1-1
I. INTRODUCTION	1-1
II. PRIME CONTRACT DATA SOURCES.....	1-3
III. THRESHOLDS FOR ANALYSIS.....	1-5
A. ALL FORMAL PRIME CONTRACT THRESHOLDS.....	1-5
B. INFORMAL PRIME CONTRACT THRESHOLDS	1-5
C. FORMAL PRIME CONTRACT THRESHOLDS WITHOUT OUTLIERS	1-6
IV. PRIME CONTRACTOR UTILIZATION.....	1-7
A. ALL PRIME CONTRACTORS.....	1-7
B. HIGHLY USED PRIME CONTRACTORS	1-7
C. ALL PRIME CONTRACTS BY INDUSTRY	1-12
D. INFORMAL PRIME CONTRACTS BY INDUSTRY	1-20
E. FORMAL PRIME CONTRACTS BY INDUSTRY	1-28
V. CONCLUSION	1-36
A. DISCRETIONARY PROCUREMENT PROCESSES	1-36
B. SUMMARY OF POLICIES AND PRACTICES TO MAXIMIZE THE UTILIZATION OF LOCAL BUSINESSES	1-38
CHAPTER 2: SUBCONTRACTOR UTILIZATION ANALYSIS	2-1
I. INTRODUCTION	2-1
II. DATA SOURCES	2-1
III. DATA COLLECTION PROCESS.....	2-1
A. SUBCONTRACT RECORDS FROM THE CITY	2-1
B. PRIME CONTRACTOR EXPENDITURE SURVEY	2-2
C. SUBCONTRACT DATA ANALYSIS	2-2
IV. SUBCONTRACTOR UTILIZATION.....	2-3
A. ALL SUBCONTRACTS	2-3
B. SUBCONTRACTS BY INDUSTRY	2-4



V. CONCLUSION	2-10
CHAPTER 3: GEOGRAPHIC MARKET AREA ANALYSIS.....	3-1
I. MARKET AREA DEFINITION	3-1
A. LEGAL CRITERIA FOR GEOGRAPHIC MARKET AREA	3-1
B. APPLICATION OF THE CROSON STANDARD	3-1
II. GEOGRAPHIC MARKET AREA ANALYSIS.....	3-3
A. SUMMARY OF THE DISTRIBUTION OF ALL PRIME CONTRACTS AWARDED.....	3-4
III. SUMMARY.....	3-6
CHAPTER 4: PRIME CONTRACTOR AND SUBCONTRACTOR AVAILABILITY ANALYSIS	4-1
I. INTRODUCTION	4-1
II. PRIME CONTRACTOR AVAILABILITY DATA SOURCES	4-1
A. IDENTIFICATION OF WILLING MARKET AREA BUSINESSES.....	4-1
B. PRIME CONTRACTOR SOURCES.....	4-2
C. DETERMINATION OF WILLINGNESS	4-4
D. DISTRIBUTION OF AVAILABLE PRIME CONTRACTORS BY SOURCE, ETHNICITY, AND GENDER	4-4
III. CAPACITY	4-6
A. PRIME CONTRACT SIZE DISTRIBUTION	4-7
B. LARGEST M/WBE PRIME CONTRACTS AWARDED BY INDUSTRY	4-8
C. FREQUENCY DISTRIBUTION	4-9
D. FORMAL CONTRACT THRESHOLD ANALYSIS.....	4-10
E. BUSINESS CAPACITY ASSESSMENT.....	4-10
IV. PRIME CONTRACTOR AVAILABILITY ANALYSIS	4-11
A. CONSTRUCTION PRIME CONTRACTOR AVAILABILITY	4-11
B. ARCHITECTURAL AND ENGINEERING PRIME CONTRACTOR AVAILABILITY	4-13
C. PROFESSIONAL SERVICES PRIME CONTRACTOR AVAILABILITY	4-15
D. GOODS AND SERVICES PRIME CONTRACTOR AVAILABILITY	4-17



V.	SUBCONTRACTOR AVAILABILITY ANALYSIS	4-19
A.	SOURCE OF WILLING AND ABLE SUBCONTRACTORS	4-19
B.	DETERMINATION OF WILLINGNESS AND CAPACITY.....	4-19
C.	CONSTRUCTION SUBCONTRACTOR AVAILABILITY	4-20
D.	ARCHITECTURAL AND ENGINEERING SUBCONTRACTOR AVAILABILITY	4-22
E.	PROFESSIONAL SERVICES SUBCONTRACTOR AVAILABILITY	4-24
VI.	SUMMARY.....	4-26
CHAPTER 5: PRIME CONTRACT DISPARITY ANALYSIS		5-1
I.	INTRODUCTION	5-1
II.	DISPARITY ANALYSIS.....	5-2
A.	DISPARITY ANALYSIS: INFORMAL PRIME CONTRACTS BY INDUSTRY.....	5-4
B.	DISPARITY ANALYSIS: FORMAL PRIME CONTRACTS BY INDUSTRY	5-16
III.	CONCLUSION	5-28
A.	DISPARITY FINDINGS	5-28
B.	BEST PRACTICES IN PUBLIC CONTRACTING.....	5-34
CHAPTER 6: SUBCONTRACT DISPARITY ANALYSIS		6-1
I.	INTRODUCTION	6-1
II.	DISPARITY ANALYSIS.....	6-2
III.	DISPARITY ANALYSIS: ALL SUBCONTRACTS BY INDUSTRY	6-3
A.	CONSTRUCTION SUBCONTRACTS.....	6-3
B.	ARCHITECTURAL AND ENGINEERING SUBCONTRACTS	6-6
C.	PROFESSIONAL SERVICES SUBCONTRACTS.....	6-9
IV.	CONCLUSION	6-12
A.	DISPARITY FINDINGS	6-12
B.	SUMMARY OF POLICIES AND PRACTICES TO REMEDY STATISTICAL DISPARITIES ON SUBCONTRACTS	6-13
CHAPTER 7: REGRESSION ANALYSIS		7-1
I.	INTRODUCTION	7-1



II.	LEGAL ANALYSIS	7-2
A.	PASSIVE DISCRIMINATION	7-2
B.	NARROW TAILORING	7-2
C.	CONCLUSION	7-4
III.	REGRESSION ANALYSIS METHODOLOGY	7-4
IV.	DATASETS ANALYZED.....	7-4
V.	REGRESSION MODELS DEFINED.....	7-5
A.	BUSINESS OWNERSHIP ANALYSIS.....	7-5
B.	THE EARNINGS DISPARITY ANALYSIS	7-6
VI.	FINDINGS	7-7
A.	BUSINESS OWNERSHIP ANALYSIS.....	7-7
B.	BUSINESS OWNERSHIP ANALYSIS CONCLUSION.....	7-13
C.	BUSINESS EARNINGS ANALYSIS	7-13
D.	BUSINESS EARNINGS ANALYSIS CONCLUSION	7-22
VII.	CONCLUSION	7-23
CHAPTER 8: ANECDOTAL ANALYSIS.....		8-1
I.	INTRODUCTION	8-1
A.	ANECDOTAL EVIDENCE OF ACTIVE AND PASSIVE DISCRIMINATION.....	8-1
B.	ANECDOTAL METHODOLOGY	8-2
II.	ANECDOTAL FINDINGS	8-4
A.	FOCUS GROUP RESPONSES	8-5
B.	PRINT AND SOCIAL MEDIA NEWS ARTICLES	8-11
C.	JUDICIAL COMPLAINTS	8-14
D.	ONE-ON-ONE INTERVIEWS	8-16
III.	SUMMARY.....	8-32



List of Tables

TABLE 1.1: SIX DIGIT NAICS CODES AND TITLES FOR FLOORING	1-1
TABLE 1.2: BUSINESS ETHNIC AND GENDER GROUPS	1-3
TABLE 1.3: FORMAL CONTRACT THRESHOLDS BY INDUSTRY	1-5
TABLE 1.4: INFORMAL CONTRACT THRESHOLDS BY INDUSTRY	1-6
TABLE 1.5: FORMAL CONTRACT THRESHOLDS BY INDUSTRY EXCLUDING OUTLIERS	1-6
TABLE 1.6: TOTAL PRIME CONTRACTS AND DOLLARS EXPENDED, ALL INDUSTRIES	1-7
TABLE 1.7: CONSTRUCTION PRIME CONTRACTS	1-8
TABLE 1.8: CONSTRUCTION PRIME CONTRACTS DISTRIBUTED BY NUMBER OF BUSINESSES	1-8
TABLE 1.9: MOST HIGHLY USED CONSTRUCTION PRIME CONTRACTORS	1-8
TABLE 1.10: ARCHITECTURAL AND ENGINEERING PRIME CONTRACTS.....	1-8
TABLE 1.11: ARCHITECTURAL AND ENGINEERING PRIME CONTRACTS DISTRIBUTED BY NUMBER OF BUSINESSES	1-9
TABLE 1.12: MOST HIGHLY USED ARCHITECTURAL AND ENGINEERING PRIME CONTRACTORS	1-9
TABLE 1.13: PROFESSIONAL SERVICES PRIME CONTRACTS	1-9
TABLE 1.14: PROFESSIONAL SERVICES PRIME CONTRACTS DISTRIBUTED BY NUMBER OF BUSINESSES.....	1-10
TABLE 1.15: MOST HIGHLY USED PROFESSIONAL SERVICES PRIME CONTRACTORS	1-10
TABLE 1.16: GOODS AND SERVICES PRIME CONTRACTS.....	1-10
TABLE 1.17: GOODS AND SERVICES PRIME CONTRACTS DISTRIBUTED BY NUMBER OF BUSINESSES.....	1-11
TABLE 1.18: MOST HIGHLY USED GOODS AND SERVICES PRIME CONTRACTORS.....	1-11



TABLE 1.19: CONSTRUCTION PRIME CONTRACT UTILIZATION, ALL CONTRACTS JULY 1, 2016 TO JUNE 30, 2021	1-13
TABLE 1.20: ARCHITECTURAL AND ENGINEERING PRIME CONTRACT UTILIZATION, ALL CONTRACTS JULY 1, 2016 TO JUNE 30, 2021	1-15
TABLE 1.21: PROFESSIONAL SERVICES PRIME CONTRACT UTILIZATION, ALL CONTRACTS JULY 1, 2016 TO JUNE 30, 2021	1-17
TABLE 1.22: GOODS AND SERVICES PRIME CONTRACT UTILIZATION, ALL CONTRACTS JULY 1, 2016 TO JUNE 30, 2021	1-19
TABLE 1.23: CONSTRUCTION PRIME CONTRACT UTILIZATION, CONTRACTS VALUED AT \$50,000 AND UNDER, JULY 1, 2016 TO JUNE 30, 2021	1-21
TABLE 1.24: ARCHITECTURAL AND ENGINEERING PRIME CONTRACT UTILIZATION, CONTRACTS VALUED AT \$50,000 AND UNDER, JULY 1, 2016 TO JUNE 30, 2021	1-23
TABLE 1.25: PROFESSIONAL SERVICES PRIME CONTRACT UTILIZATION, CONTRACTS VALUED AT \$50,000 AND UNDER, JULY 1, 2016 TO JUNE 30, 2021	1-25
TABLE 1.26: GOODS AND SERVICES PRIME CONTRACT UTILIZATION, CONTRACTS VALUED AT \$50,000 AND UNDER, JULY 1, 2016 TO JUNE 30, 2021	1-27
TABLE 1.27: CONSTRUCTION PRIME CONTRACT UTILIZATION, CONTRACTS VALUED BETWEEN \$50,000 AND \$3,730,000, JULY 1, 2016 TO JUNE 30, 2021	1-29
TABLE 1.28: ARCHITECTURAL AND ENGINEERING PRIME CONTRACT UTILIZATION, CONTRACTS VALUED BETWEEN \$50,000 AND \$790,000, JULY 1, 2016 TO JUNE 30, 2021	1-31
TABLE 1.29: PROFESSIONAL SERVICES PRIME CONTRACT UTILIZATION, CONTRACTS VALUED BETWEEN \$50,000 AND \$700,000, JULY 1, 2016 TO JUNE 30, 2021	1-33
TABLE 1.30: GOODS AND SERVICES PRIME CONTRACT UTILIZATION, CONTRACTS VALUED BETWEEN \$50,000 AND \$590,000, JULY 1, 2016 TO JUNE 30, 2021	1-35
TABLE 2.1: SUBCONTRACTS AWARDED AND DOLLARS EXPENDED BY INDUSTRY JULY 1, 2016 TO JUNE 30, 2021	2-3
TABLE 2.2: CONSTRUCTION SUBCONTRACTOR UTILIZATION JULY 1, 2016 TO JUNE 30, 2021	2-5
TABLE 2.3: ARCHITECTURAL AND ENGINEERING SUBCONTRACTOR UTILIZATION JULY 1, 2016 TO JUNE 30, 2021	2-7



TABLE 2.4: PROFESSIONAL SERVICES SUBCONTRACTOR UTILIZATION JULY 1, 2016 TO JUNE 30, 2021	2-9
TABLE 3.1: DISTRIBUTION OF ALL CONTRACTS AWARDED	3-4
TABLE 3.2: CITY OF OAKLAND CONTRACT DISTRIBUTION	3-6
TABLE 4.1: PRIME CONTRACTOR AVAILABILITY DATA SOURCES.....	4-2
TABLE 4.2: DISTRIBUTION OF PRIME CONTRACTOR AVAILABILITY DATA SOURCES: CONSTRUCTION.....	4-4
TABLE 4.3: DISTRIBUTION OF PRIME CONTRACTOR AVAILABILITY DATA SOURCES: ARCHITECTURAL & ENGINEERING.....	4-5
TABLE 4.4: DISTRIBUTION OF PRIME CONTRACTOR AVAILABILITY DATA SOURCES: PROFESSIONAL SERVICES	4-5
TABLE 4.5: DISTRIBUTION OF PRIME CONTRACTOR AVAILABILITY DATA SOURCES: GOODS AND SERVICES	4-6
TABLE 4.6: ALL INDUSTRY CONTRACTS BY SIZE JULY 1, 2016 TO JUNE 30, 2021	4-8
TABLE 4.7: LARGEST PRIME CONTRACTS AWARDED BY CITY OF OAKLAND TO M/WBES.....	4-9
TABLE 4.8: AVAILABLE CONSTRUCTION PRIME CONTRACTORS JULY 1, 2016 TO JUNE 30, 2021	4-12
TABLE 4.9: AVAILABLE ARCHITECTURAL AND ENGINEERING PRIME CONTRACTORS JULY 1, 2016 TO JUNE 30, 2021	4-14
TABLE 4.10: AVAILABLE PROFESSIONAL SERVICES PRIME CONTRACTORS JULY 1, 2016 TO JUNE 30, 2021	4-16
TABLE 4.11: AVAILABLE GOODS AND SERVICES PRIME CONTRACTORS JULY 1, 2016 TO JUNE 30, 2021	4-18
TABLE 4.12: SUBCONTRACTOR AVAILABILITY DATA SOURCES	4-19
TABLE 4.13: AVAILABLE CONSTRUCTION SUBCONTRACTORS JULY 1, 2016 TO JUNE 30, 2021	4-21
TABLE 4.14: AVAILABLE ARCHITECTURAL AND ENGINEERING SUBCONTRACTORS JULY 1, 2016 TO JUNE 30, 2021	4-23



TABLE 4.15: AVAILABLE PROFESSIONAL SERVICES SUBCONTRACTORS JULY 1, 2016 TO JUNE 30, 2021	4-25
TABLE 5.1: INFORMAL THRESHOLDS BY INDUSTRY	5-2
TABLE 5.2: FORMAL CONTRACT THRESHOLDS BY INDUSTRY WITHOUT OUTLIERS.....	5-3
TABLE 5.3: STATISTICAL OUTCOME DESCRIPTIONS	5-3
TABLE 5.4: DISPARITY ANALYSIS: CONSTRUCTION PRIME CONTRACTS VALUED AT \$50,000 AND UNDER JULY 1, 2016 TO JUNE 30, 2021	5-5
TABLE 5.5: DISPARITY ANALYSIS: ARCHITECTURAL AND ENGINEERING PRIME CONTRACTS VALUED AT \$50,000 AND UNDER JULY 1, 2016 TO JUNE 30, 2021.....	5-8
TABLE 5.6: DISPARITY ANALYSIS: PROFESSIONAL SERVICES PRIME CONTRACTS VALUED AT \$50,000 AND UNDER JULY 1, 2016 TO JUNE 30, 2021	5-11
TABLE 5.7: DISPARITY ANALYSIS: GOODS AND SERVICES PRIME CONTRACTS VALUED AT \$50,000 AND UNDER JULY 1, 2016 TO JUNE 30, 2021	5-14
TABLE 5.8: DISPARITY ANALYSIS: CONSTRUCTION PRIME CONTRACTS VALUED BETWEEN \$50,000 AND \$3,730,000 JULY 1, 2016 TO JUNE 30, 2021	5-17
TABLE 5.9: DISPARITY ANALYSIS: ARCHITECTURAL AND ENGINEERING PRIME CONTRACTS VALUED BETWEEN \$50,000 AND \$790,000 JULY 1, 2016 TO JULY 30, 2021.....	5-20
TABLE 5.10: DISPARITY ANALYSIS: PROFESSIONAL SERVICES CONTRACTS VALUED BETWEEN \$50,000 AND \$700,000 JULY 1, 2016 TO JUNE 30, 2021.....	5-23
TABLE 5.11: DISPARITY ANALYSIS: GOODS AND SERVICES PRIME CONTRACTS VALUED BETWEEN \$50,000 AND \$590,000 JULY 1, 2016 TO JUNE 30, 2021.....	5-26
TABLE 5.12: DISPARITY SUMMARY: CONSTRUCTION PRIME CONTRACT DOLLARS JULY 1, 2016 TO JUNE 30, 2021	5-29
TABLE 5.13: DISPARITY SUMMARY: ARCHITECTURAL AND ENGINEERING PRIME CONTRACT DOLLARS JULY 1, 2016 TO JUNE 30, 2021	5-29
TABLE 5.14: DISPARITY SUMMARY: PROFESSIONAL SERVICES PRIME CONTRACT DOLLARS JULY 1, 2016 TO JUNE 30, 2021	5-30
TABLE 5.15: DISPARITY SUMMARY: GOODS AND SERVICES PRIME CONTRACT DOLLARS JULY 1, 2016 TO JUNE 30, 2021	5-31



TABLE 5.16: DISPARITY SUMMARY: FEDERALLY ASSISTED PRIME CONTRACT DOLLARS JULY 1, 2016 TO JUNE 30, 2021	5-32
TABLE 5.17: CALTRANS FEDERALLY ASSISTED PRIME CONTRACTS BY DBE STATUS.....	5-32
TABLE 5.18: DISPARITY ANALYSIS: ON-CALL, EMERGENCY, AND COOPERATIVE AGREEMENTS JULY 1, 2016 TO JUNE 30, 2021	5-33
TABLE 6.1: STATISTICAL OUTCOME DESCRIPTIONS	6-2
TABLE 6.2: DISPARITY ANALYSIS: CONSTRUCTION SUBCONTRACTS JULY 1, 2016 TO JUNE 30, 2021	6-4
TABLE 6.3: DISPARITY ANALYSIS: ARCHITECTURAL AND ENGINEERING SUBCONTRACTS JULY 1, 2016 TO JUNE 30, 2021	6-7
TABLE 6.4: DISPARITY ANALYSIS: PROFESSIONAL SERVICES SUBCONTRACTS JULY 1, 2016 TO JUNE 30, 2021	6-10
TABLE 6.5: SUBCONTRACT DISPARITY SUMMARY, JULY 1, 2016 TO JUNE 30, 2021	6-12
TABLE 7.1: UNEMPLOYMENT RATE BY ETHNICITY	7-5
TABLE 7.2: INDEPENDENT VARIABLES USED IN THE BUSINESS OWNERSHIP ANALYSIS.....	7-6
TABLE 7.3: INDEPENDENT VARIABLES USED FOR THE EARNINGS DISPARITY ANALYSIS.....	7-7
TABLE 7.4: CONSTRUCTION INDUSTRY LOGISTIC MODEL.....	7-8
TABLE 7.5: ARCHITECTURAL AND ENGINEERING INDUSTRY LOGISTIC MODEL	7-9
TABLE 7.6: PROFESSIONAL SERVICES INDUSTRY LOGISTIC MODEL.....	7-10
TABLE 7.7: GOODS AND SERVICES INDUSTRY LOGISTIC MODEL	7-12
TABLE 7.8: STATISTICALLY SIGNIFICANT BUSINESS OWNERSHIP DISPARITIES.....	7-13
TABLE 7.9: CONSTRUCTION INDUSTRY OLS REGRESSION	7-14
TABLE 7.10: ARCHITECTURAL AND ENGINEERING INDUSTRY OLS REGRESSION	7-16
TABLE 7.11: PROFESSIONAL SERVICES INDUSTRY OLS REGRESSION	7-18
TABLE 7.12: GOODS AND SERVICES INDUSTRY OLS REGRESSION	7-20



TABLE 7.13: STATISTICALLY SIGNIFICANT BUSINESS EARNINGS DISPARITIES	7-22
TABLE 8.1: KEY RECOMMENDATIONS FROM THE DSI REPORT TO ADDRESS BARRIERS IN THE CONSTRUCTION INDUSTRY	8-9
TABLE 8.2: KEY SUGGESTIONS FOR COMPLIANCE AND MONITORING FROM THE DSI REPORT ...	8-10
TABLE 8.3: BARRIERS REPORTED BY THE INTERVIEWEES	8-32



List of Charts

CHART 4.1: ALL INDUSTRY CONTRACTS BY SIZE JULY 1, 2016 TO JUNE 30, 2021.....	4-8
CHART 4.2: MEDIAN CONTRACT VALUE.....	4-10
CHART 5.1: DISPARITY ANALYSIS: CONSTRUCTION PRIME CONTRACTS VALUED AT \$50,000 AND UNDER JULY 1, 2016 TO JUNE 30, 2021.....	5-6
CHART 5.2: DISPARITY ANALYSIS: ARCHITECTURAL AND ENGINEERING PRIME CONTRACTS VALUED AT \$50,000 AND UNDER JULY 1, 2016 TO JUNE 30, 2021	5-9
CHART 5.3: DISPARITY ANALYSIS: PROFESSIONAL SERVICES PRIME CONTRACTS VALUED AT \$50,000 AND UNDER JULY 1, 2016 TO JUNE 30, 2021	5-12
CHART 5.4: DISPARITY ANALYSIS: GOODS AND SERVICES PRIME CONTRACTS VALUED AT \$50,000 AND UNDER JULY 1, 2016 TO JUNE 30, 2021	5-15
CHART 5.5: DISPARITY ANALYSIS: CONSTRUCTION PRIME CONTRACTS VALUED BETWEEN \$50,000 AND \$3,730,000 JULY 1, 2016 TO JUNE 30, 2021	5-18
CHART 5.6: DISPARITY ANALYSIS: ARCHITECTURAL AND ENGINEERING PRIME CONTRACTS VALUED BETWEEN \$50,000 AND \$790,000 JULY 1, 2016 TO JUNE 30, 2021	5-21
CHART 5.7: DISPARITY ANALYSIS: PROFESSIONAL SERVICES CONTRACTS VALUED BETWEEN \$50,000 AND \$700,000 JULY 1, 2016 TO JULY 1, 2021	5-24
CHART 5.8: DISPARITY ANALYSIS: GOODS AND SERVICES PRIME CONTRACTS VALUED BETWEEN \$50,000 AND \$590,000 JULY 1, 2016 TO JUNE 30, 2021	5-27
CHART 6.1: DISPARITY ANALYSIS: CONSTRUCTION SUBCONTRACTS JULY 1, 2016 TO JUNE 30, 2021	6-5
CHART 6.2: DISPARITY ANALYSIS: ARCHITECTURAL AND ENGINEERING SUBCONTRACTS JULY 1, 2016 TO JUNE 30, 2021	6-8
CHART 6.3: DISPARITY ANALYSIS: PROFESSIONAL SERVICES SUBCONTRACTS JULY 1, 2016 TO JUNE 30, 2021	6-11
CHART 8.1: 2019 ANECDOTAL BARRIERS	8-5
CHART 8.2: THE L/SLBE PROGRAM'S KEY COMPONENTS	8-24



CHAPTER 1: Prime Contractor Utilization Analysis

I. Introduction

This chapter documents the City of Oakland's utilization of minority and woman-owned business enterprises (M/WBEs) and non-minority male-owned business enterprises (non-M/WBEs) as prime contractors by ethnicity, gender, and industry during the study period of July 1, 2016 to June 30, 2021. The City requested that the industry analysis be disaggregated by six-digit North American Industry Classification System (NAICS) codes. The NAICS system is the standard used by federal statistical agencies in classifying business establishments into their primary industry. It was developed under the direction and guidance of the Office of Management and Budget for the collection, tabulation, presentation, and analysis of statistical data.¹

Establishments are assigned industries/codes according to similarities in the processes used to produce their goods or services. For example, a business listed in a source document as a flooring company would require an additional description of its output to assign the six-digit code. Flooring has nine, six-digit NAICS codes describing an output. As noted in Table 1.1, flooring's six-digit codes describe the various services of a flooring company.

Table 1.1: Six Digit NAICS Codes and Titles for Flooring

NAICS Codes	NAICS Titles
238330	Flooring Contractors
321918	Other Millwork (including Flooring)
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers
332323	Ornamental and Architectural Metal Work Manufacturing
238310	Drywall and Insulation Contractors
332322	Sheet Metal Work Manufacturing
444190	Other Building Material Dealers
321114	Wood Preservation
238340	Tile and Terrazzo Contractors

The classification of a business by a six-digit NAICS code requires relevant descriptive information about the business's primary good or service. In the performance of the disparity study, the utilization data define the goods and services the agency procures and dictate the types of goods and services available market area businesses must provide. The City's data did not meet the minimum requirements to classify the utilized businesses by their primary good or service.

 In the utilization data extracted from the City's Oracle financial system, there were 914 unique businesses which received 2,289 prime contracts. Since there was no NAICS code information in Oracle, an extensive effort was undertaken to determine if the contracts could be classified

¹ North American Industry Classification System, United States Census Bureau, North American Industry Classification System (NAICS) U.S. Census Bureau.

by a primary good or service. Businesses from Oracle were cross referenced with the City's vendor registration lists—iSupplier and B2Gnow—to identify their NAICS codes. These sources did not contain NAICS codes for the primary good or service provided by the utilized businesses. Some vendor profiles contained six-digit NAICS codes, some three-digit codes, and others no codes. Only 24% of the 914 unique businesses had a single six-digit NAICS code, and 42% of the unique businesses had no NAICS codes. A meeting was held with the City's Finance Director and key staff to determine if the NAICS codes could be extracted from their systems. The department did not have additional resources to assist in identifying the NAICS codes.

Given the NAICS code limitations, the prime contracts were classified into four industries, as defined by the City of Oakland *Municipal Code*² and the *Bureau of Design and Construction, Capital Contracts Division Standard Operations Procedures*.³

- **Construction:** Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
- **Architectural and Engineering:** Professional services of architectural or engineering nature associated with research, planning, development, design, construction, alteration, or repair of real property.
- **Professional Services:** Advisory services that recommend a course of action or personal expertise that will result in the provision of information to the City. Information related to the administration, program management, and innovation services performed by licensed consultants or persons possessing unique or special training, education, or skills.
- **Goods and Services:** Supplies, materials, commodities, and equipment; services such as labor, professional services, consulting services, or a combination of services and supplies that include public works projects.

The businesses are disaggregated into eight ethnic and gender groups, which are listed and defined in Table 1.2.



² Oakland Municipal Code, ch..2.04 Purchasing System §2.04.010.

³ Bureau of Design & Construction, Capital Contracts Division, Standard Operation Procedure, January 2023.

Table 1.2: Business Ethnic and Gender Groups

Ethnic and Gender Group	Definition ⁴
African Americans	Businesses owned by males and females having origins in any of the Black racial groups of Africa.
Asian Americans	Businesses owned by males and females having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.
Hispanic Americans	Businesses owned by males and females of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
Native Americans	Businesses owned by males and females having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.
Caucasian Females	Businesses owned by non-minority women.
Minority Females	Businesses owned by African American, Asian American, Hispanic American, and Native American females.
Non-minority Male-owned Businesses	Businesses owned by Caucasian males and businesses that could not be identified as minority or female-owned. ⁵
Minority-owned Businesses	Businesses owned by male and female African Americans, Asian Americans, Hispanic Americans, and Native Americans.
Woman-owned Businesses	Businesses owned by females.

II. Prime Contract Data Sources

The analyzed construction, architectural and engineering, professional services, and goods and services prime contracts were extracted from the City of Oakland Oracle 11i and Oracle 12 financial systems and provided in October 2022.

During the study period, the City migrated its contract management system from Oracle 11i to Oracle 12. Oracle 11i housed data for 2016, and was migrated to Oracle 12, which housed data from 2017 to 2021. Award and payment data were recorded for each purchase order, although a unique identifier was not available in each record. Even though there was a field in both Oracle 11i and Oracle 12 that tied the purchase order to the authorizing contract, it was not populated for 74% of Oracle 11i and 18.59% of Oracle 12 datasets. For some records, a contract number, resolution number, or cooperative agreement number was embedded in the comment

⁴ Statistical Policy Directive No. 15, The U.S. Office of Management and Budget, 1977.

⁵ See *Section II: Prime Contract Data Sources* for the methodology employed to identify the ethnicity and gender of utilized prime contractors.



field instead. Mason Tillman applied the City's decision rules in an attempt to assign a unique identifier to each record. Identifying the unique contract and number authorizing each order was difficult and, for some records, impossible.

The decision rules the City provided to link the purchase order numbers to the authorizing contract could only be applied when the contract number field was populated, or if the contract number, resolution number, or cooperative agreement number was embedded in a text field. Some of the relevant information in the text field could be extracted by code, although most of the extractions were done manually. Given the limitations of the data captured in Oracle, only the unique purchase orders could be linked to the payment. It was not possible to link the purchase orders' missing contract numbers to the contract that authorized the purchase order. Therefore, standard purchase orders missing contract numbers were grouped and totaled by purchase order year (i.e., the first 4 figures of the purchase order number) and prime vendor. The purchase orders missing contract numbers were grouped and totaled into 629 prime records and were analyzed as separate contracts. The 629 contracts represented \$22,555,597 or 4.63% of all dollars.

The data verification report (DVR) outlined these issues and was provided to the City in December 2022. The City responded to the issues and data questions detailed in the DVR in January 2023. However, the responses were insufficient to determine each record's unique contract number.

Once the City reviewed the DVR and responded to the data questions, the dataset was scrubbed to remove payments made on contracts awarded outside the study period. Exclusions—which included payments to entities such as not-for-profit organizations, procurement card vendors, manufacturers, big box stores and utility companies—were coded for removal from the dataset. Purchases of proprietary commodities, as well as maintenance and service of the commodities, were also excluded.

Each contract included in the dataset was assigned one of four industries: construction, architectural and engineering, professional services, or goods and services. An industry was assigned by reviewing the project name, contractor name, contract type, and category description. The industry classifications were reviewed and approved by the City.

Prime contractors' ethnicity and gender designations were determined from either Mason Tillman's proprietary database of regional businesses or research. The initial step in the ethnicity and gender research was to determine if the contractor was certified by a government agency. When available, the ethnicity and gender of certified firms were derived from certification records. Additional sources used to determine ethnicity and gender included internet research and a contractor survey. Internet research examined the company's website, social media, digital media, and business listings to determine the business owner's ethnicity and gender. The contractor survey solicited ethnicity and gender information directly from the business when it was not available from another source. Prime contractors whose ethnicity and gender could not be verified as minority or Caucasian female-owned were classified as non-M/WBE. The non-M/WBE category also included publicly traded corporations, employee-owned businesses, and 50/50 partnerships, in which the partners were neither minority nor female.



III. Thresholds for Analysis

The City's prime contracts awarded in each industry were analyzed at three size thresholds: (1) all prime contracts, (2) informal prime contracts, as defined by the City's *Municipal Code*, and (3) formal prime contracts, with the outliers removed. While formal prime contracts are defined by the City's *Municipal Code*, an upper limit for each industry was calculated using a statistical calculation. The methodology for defining the upper limits of the formal contract threshold for each industry is detailed below.

A. All Formal Prime Contract Thresholds

The formal threshold for each industry is defined by the City's *Municipal Code*. Formal contracts require public notice of the solicitation and a specified advertisement period. The formal thresholds for each industry are listed in Table 1.3.

Table 1.3: Formal Contract Thresholds by Industry

Industry	Formal Contract Threshold
Construction	Over \$50,000
Architectural and Engineering	Over \$50,000
Professional Services	Over \$50,000
Goods and Services	Over \$50,000

The description of all formal contracts, including the outliers, is presented in *Section IV: Prime Contractor Utilization*. The data, including the outliers, represent the City's total spending during the study period.

B. Informal Prime Contract Thresholds

The City of Oakland's *Municipal Code* defines an informal contract threshold for each of the four industries. Public notice is not required to solicit informal bids.⁶ The informal threshold for each industry is listed in Table 1.4.



⁶ *Oakland Municipal Code*, Chapter 2.04 – Purchasing System, §2.04.010.

Table 1.4: Informal Contract Thresholds by Industry

Industry	Informal Contract Threshold
Construction	\$50,000 and under
Architectural and Engineering	\$50,000 and under
Professional Services	\$50,000 and under
Goods and Services	\$50,000 and under

C. Formal Prime Contract Thresholds without Outliers

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

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

Table 1.5: Formal Contract Thresholds by Industry Excluding Outliers

Industry	Formal Contract Threshold
Construction	Between \$50,000 and \$3,730,000
Architectural and Engineering	Between \$50,000 and \$790,000
Professional Services	Between \$50,000 and \$700,000
Goods and Services	Between \$50,000 and \$590,000



In this chapter, the analysis of M/WBE and non-M/WBE prime contractor utilization is presented with and without outliers. However, outliers were removed from the statistical analysis of disparity presented in *Chapter 5: Prime Contract Disparity Analysis*.

IV. Prime Contractor Utilization

A. All Prime Contractors

As shown in Table 1.6, the City issued 2,264 prime contracts from July 1, 2016 to June 30, 2021. The 2,264 prime contracts awarded included 191 for construction, 112 for architectural and engineering, 457 for professional services, and 1,504 for goods and services. The payments made by the City during the study period totaled \$486,705,907 for all 2,264 prime contracts. Payments included \$214,636,848 for construction, \$28,586,595 for architectural and engineering, \$78,883,345 for professional services, and \$164,599,118 for goods and services.

**Table 1.6: Total Prime Contracts and Dollars Expended, All Industries
July 1, 2016 to June 30, 2021**

Industry	Total Number of Contracts	Total Dollars Expended
Construction	191	\$214,636,848
Architectural and Engineering	112	\$28,586,595
Professional Services	457	\$78,883,345
Goods and Services	1,504	\$164,599,118
Total	2,264	\$486,705,907*

* The total dollars expended may not add up to \$486,705,907 due to rounding.

B. Highly Used Prime Contractors

The City awarded a significant number of its prime contract dollars to a few contractors referred to as “highly used.” All prime contracts, including the outliers, are included in the analysis of highly used contractors. The “highly used” analysis shows the businesses that received approximately 70% of the total contract dollars awarded in each industry. The “most highly used” analysis shows a subset of the “highly used” businesses that received approximately 50% of the total contract dollars in each industry. The most highly used businesses received the largest percentage of the contract dollars in their industry. The percentage of the prime contract dollars awarded to the highly used contractors illustrates that most of the City’s subcontracts were controlled by a few businesses.

1. Highly Used Construction Prime Contractors

The City awarded a total of 191 construction prime contracts during the study period. As listed in Table 1.7, the 191 construction prime contracts were awarded to 62 unique businesses, for a total of \$214,636,848.



Table 1.7: Construction Prime Contracts

Total Contracts	191
Total Utilized Vendors	62
Total Expenditures	\$214,636,848

Table 1.8 lists the distribution of construction prime contracts by the number of businesses. Seven of the 62 businesses received \$152,425,256, or 71%, of the total construction prime contract dollars. The findings show that a small group of prime contractors received the majority of the construction prime contract dollars spent by the City.

Table 1.8: Construction Prime Contracts Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
7 Highly Used Businesses	\$152,425,256	71%	73	38%
55 Businesses	\$62,211,592	29%	118	62%
62 Total Businesses	\$214,636,848	100%	191	100%

Table 1.9 lists the ethnicity and gender of the most highly used construction prime contractors, who received the most construction prime contract dollars. The four most highly used prime contractors were one Hispanic American business and three non-minority male-owned businesses. The four contractors received \$107,997,979, or 50% of the total construction prime contract dollars. The distribution of \$107,997,979 between these two groups was 18% and 82%, respectively. The contracts received by these four businesses ranged in value from \$17,039 to \$25,220,897.

Table 1.9: Most Highly Used Construction Prime Contractors

Ethnicity/ Gender	Total Dollars	Number of Contracts
1 Hispanic American	\$19,270,238	14
3 Non-Minority Males	\$88,727,741	30

2. Highly Used Architectural and Engineering Prime Contractors

The City awarded 112 architectural and engineering prime contracts during the study period. As listed in Table 1.10, the 112 architectural and engineering prime contracts were received by 69 unique businesses, for a total of \$28,586,595.

Table 1.10: Architectural and Engineering Prime Contracts

Total Contracts	112
Total Utilized Vendors	69
Total Expenditures	\$28,586,595

Table 1.11 lists the distribution of architectural and engineering prime contracts by the number of businesses. Twelve of the 69 businesses received \$20,314,803, or 71%, of the total architectural and engineering prime contract dollars. The findings show that a small group of



prime contractors received a majority of the architectural and engineering prime contract dollars spent by the City.

Table 1.11: Architectural and Engineering Prime Contracts Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
12 Highly Used Businesses	\$20,314,803	71%	28	25%
57 Businesses	\$8,271,792	29%	84	75%
69 Total Businesses	\$28,586,595	100%	112	100%

Table 1.12 shows the ethnicity and gender of the most highly used architectural and engineering prime contractors, who received the most architectural and engineering prime contract dollars. The seven most highly used prime contractors were one Asian American business, one Caucasian female business, and five non-minority male-owned businesses. The seven contractors received \$14,306,457, or 50% of the total architectural and engineering prime contract dollars. The distribution of \$14,306,457 between these three groups was 12%, 18%, and 70%, respectively. The contracts received by these seven businesses ranged in value from \$22,505 to \$2,540,000.

Table 1.12: Most Highly Used Architectural and Engineering Prime Contractors

Ethnicity/ Gender	Total Dollars	Number of Contracts
1 Asian American	\$1,800,000	1
1 Caucasian Female	\$2,554,996	2
5 Non-Minority Males	\$9,951,461	11

3. Highly Used Professional Services Prime Contractors

The City awarded 457 professional services prime contracts during the study period. As listed in Table 1.13, the 457 professional services prime contracts were received by 234 unique businesses, for a total of \$78,883,345.

Table 1.13: Professional Services Prime Contracts

Total Contracts	457
Total Utilized Vendors	234
Total Expenditures	\$78,883,345

Table 1.14 lists the distribution of the City's professional services prime contracts by the number of businesses. Thirty-two of the 234 businesses received \$55,510,309, or 70%, of the total professional services prime contract dollars. The findings show that a small group of prime contractors received most of the professional services prime contract dollars spent by the City.



Table 1.14: Professional Services Prime Contracts Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
32 Highly Used Businesses	\$55,510,309	70%	120	26%
202 Businesses	\$23,373,036	30%	337	74%
234 Total Businesses	\$78,883,345	100%	457	100%

Table 1.15 shows the ethnicity and gender of the most highly used professional services prime contractors, who received the most professional services prime contract dollars. The 14 most highly used prime contractors were one Caucasian female business, one African American business, one Asian American business, and 11 non-minority male-owned businesses. The 14 contractors received \$39,450,573, or 50% of the total professional services prime contract dollars. The distribution of \$39,450,573 between these four groups was 3%, 4%, 10%, and 83%, respectively. The contracts received by these 14 businesses ranged in value from \$283,070 to \$6,846,808.

Table 1.15: Most Highly Used Professional Services Prime Contractors

Ethnicity/ Gender	Total Dollars	Number of Contracts
1 Caucasian Female	\$1,241,772	5
1 African American	\$1,499,203	2
1 Asian American	\$4,019,243	5
11 Non-Minority Males	\$32,690,355	40

4. Highly Used Goods and Services Prime Contractors

The City awarded a total of 1,504 goods and services prime contracts during the study period. As listed in Table 1.16, the 1,504 goods and services prime contracts were received by 563 unique businesses, for a total of \$164,599,118.

Table 1.16: Goods and Services Prime Contracts

Total Contracts	1,504
Total Utilized Vendors	563
Total Expenditures	\$164,599,118

Table 1.17 lists the distribution of the City's goods and services prime contracts by the number of businesses. Seventy-six of the 563 businesses received \$115,002,520, or 70%, of the total goods and services prime contract dollars. The findings show that a small group of prime contractors received most of the City's goods and services prime contract dollars.



Table 1.17: Goods and Services Prime Contracts Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
76 Highly Used Businesses	\$115,002,520	70%	350	23%
487 Businesses	\$49,596,598	30%	1,154	77%
563 Total Businesses	\$164,599,118	100%	1,504	100%

Table 1.18 shows the ethnicity and gender of the 34 most highly used goods and services prime contractors, who received the most goods and services prime contract dollars. The 34 most highly used prime contractors were one Asian American business, one Hispanic American business, one Caucasian female business, and 31 non-minority male-owned businesses. The 34 contractors received \$82,319,613, or 50% of the total goods and services prime contract dollars. The distribution of \$82,319,613 between the four groups was about 1%, 2%, 2%, and 95%, respectively. The contracts received by these 34 businesses ranged in value from \$125 to \$4,218,795.

Table 1.18: Most Highly Used Goods and Services Prime Contractors

Ethnicity/Gender	Total Dollars	Number of Contracts
1 Asian American	\$1,319,692	7
1 Hispanic American	\$1,674,357	1
1 Caucasian Female	\$1,298,414	10
31 Non-Minority Males	\$78,027,150	170



C. All Prime Contracts by Industry

1. Construction Prime Contract Utilization: All Contracts

Table 1.19 lists all prime contract dollars expended by the City on construction prime contracts. MBEs received 15.71%, WBEs received 0.97%, and non-M/WBEs received 84.24% of the construction prime contract dollars.

African Americans received 8, or 4.19% of the construction prime contracts awarded during the study period, representing \$651,985, or 0.30% of the construction prime contract dollars.

Asian Americans received 13, or 6.81% of the construction prime contracts awarded during the study period, representing \$4,615,008, or 2.15% of the construction prime contract dollars.

Hispanic Americans received 36, or 18.85% of the construction prime contracts awarded during the study period, representing \$28,449,052, or 13.25% of the construction prime contract dollars.

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

Caucasian Females received 2, or 1.05% of the construction prime contracts awarded during the study period, representing \$101,122, or 0.05% of the construction prime contract dollars.

Minority Females received 3, or 1.57% of the construction prime contracts awarded during the study period, representing \$1,980,836, or 0.92% of the construction prime contract dollars.

Non-minority Males received 132, or 69.11% of all construction prime contracts for all contracts awarded during the study period, representing \$180,819,682, or 84.24% of the construction prime contract dollars.

Minority Business Enterprises received 57, or 29.84% of the construction prime contracts awarded during the study period, representing \$33,716,044, or 15.71% of the construction prime contract dollars.

Woman Business Enterprises received 5, or 2.62% of the construction prime contracts awarded during the study period, representing \$2,081,958, or 0.97% of the construction prime contract dollars.



Table 1.19: Construction Prime Contract Utilization, All Contracts
July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	8	4.19%	\$651,985	0.30%
Asian Americans	13	6.81%	\$4,615,008	2.15%
Hispanic Americans	36	18.85%	\$28,449,052	13.25%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	2	1.05%	\$101,122	0.05%
Non-minority Males	132	69.11%	\$180,819,682	84.24%
TOTAL	191	100.00%	\$214,636,848	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	0.52%	\$338,000	0.16%
African American Males	7	3.66%	\$313,985	0.15%
Asian American Females	2	1.05%	\$1,642,836	0.77%
Asian American Males	11	5.76%	\$2,972,172	1.38%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	36	18.85%	\$28,449,052	13.25%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	2	1.05%	\$101,122	0.05%
Non-minority Males	132	69.11%	\$180,819,682	84.24%
TOTAL	191	100.00%	\$214,636,848	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	3	1.57%	\$1,980,836	0.92%
Minority Males	54	28.27%	\$31,735,209	14.79%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	57	29.84%	\$33,716,044	15.71%
Woman Business Enterprises	5	2.62%	\$2,081,958	0.97%



2. Architectural and Engineering Prime Contract Utilization: All Contracts

Table 1.20 lists all prime contract dollars expended by the City on architectural and engineering prime contracts. MBEs received 15.65%, WBEs received 18.26%, and non-M/WBEs received 69.61% of the architectural and engineering prime contract dollars.

African Americans received 1, or 0.89% of the architectural and engineering prime contracts awarded during the study period, representing \$31,000, or 0.11% of the architectural and engineering prime contract dollars.

Asian Americans received 19, or 16.96% of the architectural and engineering prime contracts awarded during the study period, representing \$3,864,963, or 13.52% of the architectural and engineering prime contract dollars.

Hispanic Americans received 8, or 7.14% of the architectural and engineering prime contracts awarded during the study period, representing \$577,707, or 2.02% of the architectural and engineering prime contract dollars.

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

Caucasian Females received 17, or 15.18% of the architectural and engineering prime contracts awarded during the study period, representing \$4,213,190, or 14.74% of the architectural and engineering prime contract dollars.

Minority Females received 5, or 4.46% of the architectural and engineering prime contracts awarded during the study period, representing \$1,007,229, or 3.52% of the architectural and engineering prime contract dollars.

Non-minority Males received 67, or 59.82% of the architectural and engineering prime contracts awarded during the study period, representing \$19,899,735, or 69.61% of the architectural and engineering prime contract dollars.

Minority Business Enterprises received 28, or 25.00% of the architectural and engineering prime contracts awarded during the study period, representing \$4,473,670, or 15.65% of the architectural and engineering prime contract dollars.

Woman Business Enterprises received 22, or 19.64% of the architectural and engineering prime contracts awarded during the study period, representing \$5,220,420, or 18.26% of the architectural and engineering prime contract dollars.



Table 1.20: Architectural and Engineering Prime Contract Utilization, All Contracts
July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	1	0.89%	\$31,000	0.11%
Asian Americans	19	16.96%	\$3,864,963	13.52%
Hispanic Americans	8	7.14%	\$577,707	2.02%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	17	15.18%	\$4,213,190	14.74%
Non-minority Males	67	59.82%	\$19,899,735	69.61%
TOTAL	112	100.00%	\$28,586,595	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	1	0.89%	\$31,000	0.11%
Asian American Females	4	3.57%	\$992,229	3.47%
Asian American Males	15	13.39%	\$2,872,734	10.05%
Hispanic American Females	1	0.89%	\$15,000	0.05%
Hispanic American Males	7	6.25%	\$562,707	1.97%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	17	15.18%	\$4,213,190	14.74%
Non-minority Males	67	59.82%	\$19,899,735	69.61%
TOTAL	112	100.00%	\$28,586,595	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	5	4.46%	\$1,007,229	3.52%
Minority Males	23	20.54%	\$3,466,441	12.13%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	28	25.00%	\$4,473,670	15.65%
Woman Business Enterprises	22	19.64%	\$5,220,420	18.26%



3. Professional Services Prime Contract Utilization: All Contracts

Table 1.21 lists all prime contract dollars expended by the City on professional services prime contracts. MBEs received 16.38%, WBEs received 14.74%, and non-M/WBEs received 75.01% of the professional services prime contract dollars.

African Americans received 39, or 8.53% of the professional services prime contracts awarded during the study period, representing \$4,874,086, or 6.18% of the professional services prime contract dollars.

Asian Americans received 28, or 6.13% of the professional services prime contracts awarded during the study period, representing \$6,664,922, or 8.45% of the professional services prime contract dollars.

Hispanic Americans received 20, or 4.38% of the professional services prime contracts awarded during the study period, representing \$1,384,440, or 1.76% of the professional services prime contract dollars.

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

Caucasian Females received 70, or 15.32% of the professional services prime contracts awarded during the study period, representing \$6,787,337, or 8.60% of the professional services prime contract dollars.

Minority Females received 51, or 11.16% of the professional services prime contracts awarded during the study period, representing \$4,837,981, or 6.13% of the professional services prime contract dollars.

Non-minority Males received 300, or 65.65% of the professional services prime contracts awarded during the study period, representing \$59,172,559, or 75.01% of the professional services prime contract dollars.

Minority Business Enterprises received 87, or 19.04% of the professional services prime contracts awarded during the study period, representing \$12,923,449, or 16.38% of the professional services prime contract dollars.

Woman Business Enterprises received 121, or 26.48% of the professional services prime contracts awarded during the study period, representing \$11,625,319, or 14.74% of the professional services prime contract dollars.



Table 1.21: Professional Services Prime Contract Utilization, All Contracts
July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	39	8.53%	\$4,874,086	6.18%
Asian Americans	28	6.13%	\$6,664,922	8.45%
Hispanic Americans	20	4.38%	\$1,384,440	1.76%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	70	15.32%	\$6,787,337	8.60%
Non-minority Males	300	65.65%	\$59,172,559	75.01%
TOTAL	457	100.00%	\$78,883,345	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	24	5.25%	\$3,317,240	4.21%
African American Males	15	3.28%	\$1,556,847	1.97%
Asian American Females	11	2.41%	\$227,763	0.29%
Asian American Males	17	3.72%	\$6,437,159	8.16%
Hispanic American Females	16	3.50%	\$1,292,979	1.64%
Hispanic American Males	4	0.88%	\$91,461	0.12%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	70	15.32%	\$6,787,337	8.60%
Non-minority Males	300	65.65%	\$59,172,559	75.01%
TOTAL	457	100.00%	\$78,883,345	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	51	11.16%	\$4,837,981	6.13%
Minority Males	36	7.88%	\$8,085,467	10.25%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	87	19.04%	\$12,923,449	16.38%
Woman Business Enterprises	121	26.48%	\$11,625,319	14.74%



4. Goods and Services Prime Contract Utilization: All Contracts

Table 1.22 lists all prime contract dollars expended by the City on goods and services prime contracts. MBEs received 8.36%, WBEs received 6.90%, and non-M/WBEs received 87.54% of the goods and services prime contract dollars.

African Americans received 25, or 1.66% of the goods and services prime contracts awarded during the study period, representing \$1,281,756, or 0.78% of the goods and services prime contract dollars.

Asian Americans received 80, or 5.32% of the goods and services prime contracts awarded during the study period, representing \$7,786,477, or 4.73% of the goods and services prime contract dollars.

Hispanic Americans received 52, or 3.46% of the goods and services prime contracts awarded during the study period, representing \$4,647,068, or 2.82% of the goods and services prime contract dollars.

Native Americans received 5, or 0.33% of the goods and services prime contracts awarded during the study period, representing \$47,232, or 0.03% of the goods and services prime contract dollars.

Caucasian Females received 129, or 8.58% of the goods and services prime contracts awarded during the study period, representing \$6,753,371, or 4.10% of the goods and services prime contract dollars.

Minority Females received 50, or 3.32% of the goods and services prime contracts awarded during the study period, representing \$4,609,598, or 2.80% of the goods and services prime contract dollars.

Non-minority Males received 1,213, or 80.65% of the goods and services prime contracts awarded during the study period, representing \$144,083,215, or 87.54% of the goods and services prime contract dollars.

Minority Business Enterprises received 162, or 10.77% of the goods and services prime contracts awarded during the study period, representing \$13,762,533, or 8.36% of the goods and services prime contract dollars.

Woman Business Enterprises received 179, or 11.90% of the goods and services prime contracts awarded during the study period, representing \$11,362,969, or 6.90% of the goods and services prime contract dollars.



Table 1.22: Goods and Services Prime Contract Utilization, All Contracts
July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	25	1.66%	\$1,281,756	0.78%
Asian Americans	80	5.32%	\$7,786,477	4.73%
Hispanic Americans	52	3.46%	\$4,647,068	2.82%
Native Americans	5	0.33%	\$47,232	0.03%
Caucasian Females	129	8.58%	\$6,753,371	4.10%
Non-minority Males	1,213	80.65%	\$144,083,215	87.54%
TOTAL	1,504	100.00%	\$164,599,118	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	15	1.00%	\$551,859	0.34%
African American Males	10	0.66%	\$729,897	0.44%
Asian American Females	8	0.53%	\$1,239,085	0.75%
Asian American Males	72	4.79%	\$6,547,392	3.98%
Hispanic American Females	22	1.46%	\$2,771,421	1.68%
Hispanic American Males	30	1.99%	\$1,875,646	1.14%
Native American Females	5	0.33%	\$47,232	0.03%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	129	8.58%	\$6,753,371	4.10%
Non-minority Males	1,213	80.65%	\$144,083,215	87.54%
TOTAL	1,504	100.00%	\$164,599,118	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	50	3.32%	\$4,609,598	2.80%
Minority Males	112	7.45%	\$9,152,935	5.56%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	162	10.77%	\$13,762,533	8.36%
Woman Business Enterprises	179	11.90%	\$11,362,969	6.90%



D. Informal Prime Contracts by Industry

1. Construction Prime Contract Utilization: Contracts Valued at \$50,000 and under

Table 1.23 lists all prime contract dollars expended by the City on construction prime contracts valued at \$50,000 and under. MBEs received 23.97%, WBEs received 1.90%, and non-M/WBEs received 74.13% of the construction prime contract dollars.

African Americans received 4, or 8.16% of the construction prime contracts valued at \$50,000 and under awarded during the study period, representing \$23,326, or 2.45% of the construction prime contract dollars.

Asian Americans received 5, or 10.20% of the construction prime contracts valued at \$50,000 and under awarded during the study period, representing \$103,731, or 10.88% of the construction prime contract dollars.

Hispanic Americans received 6, or 12.24% of the construction prime contracts valued at \$50,000 and under awarded during the study period, representing \$101,515, or 10.65% of the construction prime contract dollars.

Native Americans received none of the construction prime contracts valued at \$50,000 and under awarded during the study period.

Caucasian Females received 1, or 2.04% of the construction prime contracts valued at \$50,000 and under awarded during the study period, representing \$18,094, or 1.90% of the construction prime contract dollars.

Minority Females received none of the construction prime contracts valued at \$50,000 and under awarded during the study period.

Non-minority Males received 33, or 67.35% of the construction prime contracts valued at \$50,000 and under awarded during the study period, representing \$706,946, or 74.13% of the construction prime contract dollars.

Minority Business Enterprises received 15, or 30.61% of the construction prime contracts valued at \$50,000 and under awarded during the study period, representing \$228,572, or 23.97% of the construction prime contract dollars.

Woman Business Enterprises received 1, or 2.04% of the construction prime contracts valued at \$50,000 and under awarded during the study period, representing \$18,094, or 1.90% of the construction prime contract dollars.



Table 1.23: Construction Prime Contract Utilization, Contracts Valued at \$50,000 and under, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	4	8.16%	\$23,326	2.45%
Asian Americans	5	10.20%	\$103,731	10.88%
Hispanic Americans	6	12.24%	\$101,515	10.65%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	1	2.04%	\$18,094	1.90%
Non-minority Males	33	67.35%	\$706,946	74.13%
TOTAL	49	100.00%	\$953,612	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	4	8.16%	\$23,326	2.45%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	5	10.20%	\$103,731	10.88%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	6	12.24%	\$101,515	10.65%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	1	2.04%	\$18,094	1.90%
Non-minority Males	33	67.35%	\$706,946	74.13%
TOTAL	49	100.00%	\$953,612	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	15	30.61%	\$228,572	23.97%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	15	30.61%	\$228,572	23.97%
Woman Business Enterprises	1	2.04%	\$18,094	1.90%



2. Architectural and Engineering Prime Contract Utilization: Contracts Valued at \$50,000 and under

Table 1.24 lists all prime contract dollars expended by the City on architectural and engineering prime contracts for contracts valued at \$50,000 and under. MBEs received 32.22%, WBEs received 18.44%, and non-M/WBEs received 51.07% of the architectural and engineering prime contract dollars.

African Americans received 1, or 2.27% of the architectural and engineering prime contracts valued at \$50,000 and under awarded during the study period, representing \$31,000, or 2.96% of the architectural and engineering prime contract dollars.

Asian Americans received 8, or 18.18% of the architectural and engineering prime contracts valued at \$50,000 and under awarded during the study period, representing \$188,793, or 18.03% of the architectural and engineering prime contract dollars.

Hispanic Americans received 5, or 11.36% of the architectural and engineering prime contracts valued at \$50,000 and under awarded during the study period, representing \$117,577, or 11.23% of the architectural and engineering prime contract dollars.

Native Americans received none of the architectural and engineering prime contracts valued at \$50,000 and under awarded during the study period.

Caucasian Females received 7, or 15.91% of the architectural and engineering prime contracts valued at \$50,000 and under awarded during the study period, representing \$174,924, or 16.71% of the architectural and engineering prime contract dollars.

Minority Females received 2, or 4.55% of the architectural and engineering prime contracts valued at \$50,000 and under awarded during the study period, representing \$18,119, or 1.73% of the architectural and engineering prime contract dollars.

Non-minority Males received 23, or 52.27% of the architectural and engineering prime contracts valued at \$50,000 and under awarded during the study period, representing \$534,701, or 51.07% of the architectural and engineering prime contract dollars.

Minority Business Enterprises received 14, or 31.82% of the architectural and engineering prime contracts valued at \$50,000 and under awarded during the study period, representing \$337,370, or 32.22% of the architectural and engineering prime contract dollars.

Woman Business Enterprises received 9, or 20.45% of the architectural and engineering prime contracts valued at \$50,000 and under awarded during the study period, representing \$193,043, or 18.44% of the architectural and engineering prime contract dollars.



Table 1.24: Architectural and Engineering Prime Contract Utilization, Contracts Valued at \$50,000 and under, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	1	2.27%	\$31,000	2.96%
Asian Americans	8	18.18%	\$188,793	18.03%
Hispanic Americans	5	11.36%	\$117,577	11.23%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	7	15.91%	\$174,924	16.71%
Non-minority Males	23	52.27%	\$534,701	51.07%
TOTAL	44	100.00%	\$1,046,996	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	1	2.27%	\$31,000	2.96%
Asian American Females	1	2.27%	\$3,119	0.30%
Asian American Males	7	15.91%	\$185,674	17.73%
Hispanic American Females	1	2.27%	\$15,000	1.43%
Hispanic American Males	4	9.09%	\$102,577	9.80%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	7	15.91%	\$174,924	16.71%
Non-minority Males	23	52.27%	\$534,701	51.07%
TOTAL	44	100.00%	\$1,046,996	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	2	4.55%	\$18,119	1.73%
Minority Males	12	27.27%	\$319,251	30.49%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	14	31.82%	\$337,370	32.22%
Woman Business Enterprises	9	20.45%	\$193,043	18.44%



3. Professional Services Prime Contract Utilization: Contracts Valued at \$50,000 and under

Table 1.25 lists all prime contract dollars expended by the City on professional services prime contracts valued at \$50,000 and under. MBEs received 17.99%, WBEs received 28.87%, and non-M/WBEs received 63.04% of the professional services prime contract dollars.

African Americans received 20, or 8.20% of the professional services prime contracts valued at \$50,000 and under awarded during the study period, representing \$518,722, or 8.65% of the professional services prime contract dollars.

Asian Americans received 14, or 5.74% of the professional services prime contracts valued at \$50,000 and under awarded during the study period, representing \$336,642, or 5.62% of the professional services prime contract dollars.

Hispanic Americans received 12, or 4.92% of the professional services prime contracts valued at \$50,000 and under awarded during the study period, representing \$222,885, or 3.72% of the professional services prime contract dollars.

Native Americans received none of the professional services prime contracts valued at \$50,000 and under awarded during the study period.

Caucasian Females received 41, or 16.80% of the professional services prime contracts valued at \$50,000 and under awarded during the study period, representing \$1,137,044, or 18.97% of the professional services prime contract dollars.

Minority Females received 30, or 12.30% of the professional services prime contracts valued at \$50,000 and under awarded during the study period, representing \$593,222, or 9.90% of the professional services prime contract dollars.

Non-minority Males received 157, or 64.34% of the professional services prime contracts valued at \$50,000 and under awarded during the study period, representing \$3,778,345, or 63.04% of the professional services prime contract dollars.

Minority Business Enterprises received 46, or 18.85% of the professional services prime contracts valued at \$50,000 and under awarded during the study period, representing \$1,078,249, or 17.99% of the professional services prime contract dollars.

Woman Business Enterprises received 71, or 29.10% of the professional services prime contracts valued at \$50,000 and under awarded during the study period, representing \$1,730,266, or 28.87% of the professional services prime contract dollars.



Table 1.25: Professional Services Prime Contract Utilization, Contracts Valued at \$50,000 and under, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	20	8.20%	\$518,722	8.65%
Asian Americans	14	5.74%	\$336,642	5.62%
Hispanic Americans	12	4.92%	\$222,885	3.72%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	41	16.80%	\$1,137,044	18.97%
Non-minority Males	157	64.34%	\$3,778,345	63.04%
TOTAL	244	100.00%	\$5,993,637	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	12	4.92%	\$287,869	4.80%
African American Males	8	3.28%	\$230,854	3.85%
Asian American Females	10	4.10%	\$173,930	2.90%
Asian American Males	4	1.64%	\$162,711	2.71%
Hispanic American Females	8	3.28%	\$131,423	2.19%
Hispanic American Males	4	1.64%	\$91,461	1.53%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	41	16.80%	\$1,137,044	18.97%
Non-minority Males	157	64.34%	\$3,778,345	63.04%
TOTAL	244	100.00%	\$5,993,637	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	30	12.30%	\$593,222	9.90%
Minority Males	16	6.56%	\$485,026	8.09%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	46	18.85%	\$1,078,249	17.99%
Woman Business Enterprises	71	29.10%	\$1,730,266	28.87%



4. Goods and Services Prime Contract Utilization: Contracts Valued at \$50,000 and under

Table 1.26 lists all prime contract dollars expended by the City on goods and services prime contracts valued at \$50,000 and under. MBEs received 10.02%, WBEs received 10.23%, and non-M/WBEs received 82.36% of the goods and services prime contract dollars.

African Americans received 18, or 1.81% of the goods and services prime contracts valued at \$50,000 and under awarded during the study period, representing \$191,836, or 1.35% of the goods and services prime contract dollars.

Asian Americans received 45, or 4.52% of the goods and services prime contracts valued at \$50,000 and under awarded during the study period, representing \$740,919, or 5.23% of the goods and services prime contract dollars.

Hispanic Americans received 32, or 3.21% of the goods and services prime contracts valued at \$50,000 and under awarded during the study period, representing \$440,741, or 3.11% of the goods and services prime contract dollars.

Native Americans received 5, or 0.50% of the goods and services prime contracts valued at \$50,000 and under awarded during the study period, representing \$47,232, or 0.33% of the goods and services prime contract dollars.

Caucasian Females received 104, or 10.44% of the goods and services prime contracts valued at \$50,000 and under awarded during the study period, representing \$1,080,954, or 7.62% of the goods and services prime contract dollars.

Minority Females received 32, or 3.21% of the goods and services prime contracts valued at \$50,000 and under awarded during the study period, representing \$370,116, or 2.61% of the goods and services prime contract dollars.

Non-minority Males received 792, or 79.52% of the goods and services prime contracts valued at \$50,000 and under awarded during the study period, representing \$11,677,866, or 82.36% of the goods and services prime contract dollars.

Minority Business Enterprises received 100, or 10.04% of the goods and services prime contracts valued at \$50,000 and under awarded during the study period, representing \$1,420,727, or 10.02% of the goods and services prime contract dollars.

Woman Business Enterprises received 136, or 13.65% of the goods and services prime contracts valued at \$50,000 and under awarded during the study period, representing \$1,451,070, or 10.23% of the goods and services prime contract dollars.



Table 1.26: Goods and Services Prime Contract Utilization, Contracts Valued at \$50,000 and under, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	18	1.81%	\$191,836	1.35%
Asian Americans	45	4.52%	\$740,919	5.23%
Hispanic Americans	32	3.21%	\$440,741	3.11%
Native Americans	5	0.50%	\$47,232	0.33%
Caucasian Females	104	10.44%	\$1,080,954	7.62%
Non-minority Males	792	79.52%	\$11,677,866	82.36%
TOTAL	996	100.00%	\$14,179,547	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	11	1.10%	\$69,637	0.49%
African American Males	7	0.70%	\$122,199	0.86%
Asian American Females	5	0.50%	\$97,072	0.68%
Asian American Males	40	4.02%	\$643,847	4.54%
Hispanic American Females	11	1.10%	\$156,176	1.10%
Hispanic American Males	21	2.11%	\$284,565	2.01%
Native American Females	5	0.50%	\$47,232	0.33%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	104	10.44%	\$1,080,954	7.62%
Non-minority Males	792	79.52%	\$11,677,866	82.36%
TOTAL	996	100.00%	\$14,179,547	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	32	3.21%	\$370,116	2.61%
Minority Males	68	6.83%	\$1,050,611	7.41%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	100	10.04%	\$1,420,727	10.02%
Woman Business Enterprises	136	13.65%	\$1,451,070	10.23%



E. Formal Prime Contracts by Industry

1. Construction Prime Contract Utilization: Contracts Valued between \$50,000 and \$3,730,000

Table 1.27 lists all prime contract dollars expended by the City on construction prime contracts valued between \$50,000 and \$3,730,000. MBEs received 28.86%, WBEs received 1.78%, and non-M/WBEs received 71.07% of the construction prime contract dollars

African Americans received 4, or 3.01% of the construction prime contracts valued between \$50,000 and \$3,730,000 awarded during the study period, representing \$628,658, or 0.54% of the construction prime contract dollars.

Asian Americans received 8, or 6.02% of the construction prime contracts valued between \$50,000 and \$3,730,000 awarded during the study period, representing \$4,511,277, or 3.89% of the construction prime contract dollars.

Hispanic Americans received 30, or 22.56% of the construction prime contracts valued between \$50,000 and \$3,730,000 awarded during the study period, representing \$28,347,537, or 24.43% of the construction prime contract dollars.

Native Americans received none of the construction prime contracts valued between \$50,000 and \$3,730,000 awarded during the study period.

Caucasian Females received 1, or 0.75% of the construction prime contracts valued between \$50,000 and \$3,730,000 awarded during the study period, representing \$83,028, or 0.07% of the construction prime contract dollars.

Minority Females received 3, or 2.26% of the construction prime contracts valued between \$50,000 and \$3,730,000 awarded during the study period, representing \$1,980,836, or 1.71% of the construction prime contract dollars.

Non-minority Males received 90, or 67.67% of the construction prime contracts valued between \$50,000 and \$3,730,000 awarded during the study period, representing \$82,475,933, or 71.07% of the construction prime contract dollars.

Minority Business Enterprises received 42, or 31.58% of the construction prime contracts valued between \$50,000 and \$3,730,000 awarded during the study period, representing \$33,487,472, or 28.86% of the construction prime contract dollars.

Woman Business Enterprises received 4, or 3.01% of the construction prime contracts valued between \$50,000 and \$3,730,000 awarded during the study period, representing \$2,063,864, or 1.78% of the construction prime contract dollars.



Table 1.27: Construction Prime Contract Utilization, Contracts Valued between \$50,000 and \$3,730,000, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	4	3.01%	\$628,658	0.54%
Asian Americans	8	6.02%	\$4,511,277	3.89%
Hispanic Americans	30	22.56%	\$28,347,537	24.43%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	1	0.75%	\$83,028	0.07%
Non-minority Males	90	67.67%	\$82,475,933	71.07%
TOTAL	133	100.00%	\$116,046,433	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	0.75%	\$338,000	0.29%
African American Males	3	2.26%	\$290,658	0.25%
Asian American Females	2	1.50%	\$1,642,836	1.42%
Asian American Males	6	4.51%	\$2,868,441	2.47%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	30	22.56%	\$28,347,537	24.43%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	1	0.75%	\$83,028	0.07%
Non-minority Males	90	67.67%	\$82,475,933	71.07%
TOTAL	133	100.00%	\$116,046,433	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	3	2.26%	\$1,980,836	1.71%
Minority Males	39	29.32%	\$31,506,636	27.15%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	42	31.58%	\$33,487,472	28.86%
Woman Business Enterprises	4	3.01%	\$2,063,864	1.78%



2. Architectural and Engineering Prime Contract Utilization: Contracts Valued between \$50,000 and \$790,000

Table 1.28 lists all prime contract dollars expended by the City on architectural and engineering prime contracts valued between \$50,000 and \$790,000. MBEs received 20.62%, WBEs received 22.43%, and non-M/WBEs received 65.68% of the architectural and engineering prime contract dollars.

African Americans received none of the architectural and engineering prime contracts valued between \$50,000 and \$790,000 awarded during the study period.

Asian Americans received 10, or 17.24% of the architectural and engineering prime contracts valued between \$50,000 and \$790,000 awarded during the study period, representing \$1,876,170, or 16.56% of the architectural and engineering prime contract dollars.

Hispanic Americans received 3, or 5.17% of the architectural and engineering prime contracts valued between \$50,000 and \$790,000 awarded during the study period, representing \$460,130, or 4.06% of the architectural and engineering prime contract dollars.

Native Americans received none of the architectural and engineering prime contracts valued between \$50,000 and \$790,000 awarded during the study period.

Caucasian Females received 9, or 15.52% of the architectural and engineering prime contracts valued between \$50,000 and \$790,000 awarded during the study period, representing \$1,551,600, or 13.70% of the architectural and engineering prime contract dollars.

Minority Females received 3, or 5.17% of the architectural and engineering prime contracts valued between \$50,000 and \$790,000 awarded during the study period, representing \$989,110, or 8.73% of the architectural and engineering prime contract dollars.

Non-minority Males received 36, or 62.07% of the architectural and engineering prime contracts valued between \$50,000 and \$790,000 awarded during the study period, representing \$7,440,384, or 65.68% of the architectural and engineering prime contract dollars.

Minority Business Enterprises received 13, or 22.41% of the architectural and engineering prime contracts valued between \$50,000 and \$790,000 awarded during the study period, representing \$2,336,300, or 20.62% of the architectural and engineering prime contract dollars.

Woman Business Enterprises received 12, or 20.69% of the architectural and engineering prime contracts valued between \$50,000 and \$790,000 awarded during the study period, representing \$2,540,710, or 22.43% of the architectural and engineering prime contract dollars.



Table 1.28: Architectural and Engineering Prime Contract Utilization, Contracts Valued between \$50,000 and \$790,000, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	10	17.24%	\$1,876,170	16.56%
Hispanic Americans	3	5.17%	\$460,130	4.06%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	9	15.52%	\$1,551,600	13.70%
Non-minority Males	36	62.07%	\$7,440,384	65.68%
TOTAL	58	100.00%	\$11,328,284	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	3	5.17%	\$989,110	8.73%
Asian American Males	7	12.07%	\$887,060	7.83%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	3	5.17%	\$460,130	4.06%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	9	15.52%	\$1,551,600	13.70%
Non-minority Males	36	62.07%	\$7,440,384	65.68%
TOTAL	58	100.00%	\$11,328,284	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	3	5.17%	\$989,110	8.73%
Minority Males	10	17.24%	\$1,347,190	11.89%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	13	22.41%	\$2,336,300	20.62%
Woman Business Enterprises	12	20.69%	\$2,540,710	22.43%



3. Professional Services Prime Contract Utilization: Contracts Valued between \$50,000 and \$700,000

Table 1.29 lists all prime contract dollars expended by the City on professional services prime contracts valued between \$50,000 and \$700,000. MBEs received 18.90%, WBEs received 22.81%, and non-M/WBEs received 66.70% of the professional services prime contract dollars.

African Americans received 18, or 9.23% of the professional services prime contracts valued between \$50,000 and \$700,000 awarded during the study period, representing \$3,407,173, or 8.69% of the professional services prime contract dollars.

Asian Americans received 12, or 6.15% of the professional services prime contracts valued between \$50,000 and \$700,000 awarded during the study period, representing \$2,844,687, or 7.25% of the professional services prime contract dollars.

Hispanic Americans received 8, or 4.10% of the professional services prime contracts valued between \$50,000 and \$700,000 awarded during the study period, representing \$1,161,556, or 2.96% of the professional services prime contract dollars.

Native Americans received none of the professional services prime contracts valued between \$50,000 and \$700,000 awarded during the study period.

Caucasian Females received 29, or 14.87% of the professional services prime contracts valued between \$50,000 and \$700,000 awarded during the study period, representing \$5,650,294, or 14.40% of the professional services prime contract dollars.

Minority Females received 20, or 10.26% of the professional services prime contracts valued between \$50,000 and \$700,000 awarded during the study period, representing \$3,296,568, or 8.40% of the professional services prime contract dollars.

Non-minority Males received 128, or 65.64% of the professional services prime contracts valued between \$50,000 and \$700,000 awarded during the study period, representing \$26,164,563, or 66.70% of the professional services prime contract dollars.

Minority Business Enterprises received 38, or 19.49% of the professional services prime contracts valued between \$50,000 and \$700,000 awarded during the study period, representing \$7,413,416, or 18.90% of the professional services prime contract dollars.

Woman Business Enterprises received 49, or 25.13% of the professional services prime contracts valued between \$50,000 and \$700,000 awarded during the study period, representing \$8,946,862, or 22.81% of the professional services prime contract dollars.



Table 1.29: Professional Services Prime Contract Utilization, Contracts Valued between \$50,000 and \$700,000, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	18	9.23%	\$3,407,173	8.69%
Asian Americans	12	6.15%	\$2,844,687	7.25%
Hispanic Americans	8	4.10%	\$1,161,556	2.96%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	29	14.87%	\$5,650,294	14.40%
Non-minority Males	128	65.64%	\$26,164,563	66.70%
TOTAL	195	100.00%	\$39,228,272	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	11	5.64%	\$2,081,180	5.31%
African American Males	7	3.59%	\$1,325,993	3.38%
Asian American Females	1	0.51%	\$53,832	0.14%
Asian American Males	11	5.64%	\$2,790,855	7.11%
Hispanic American Females	8	4.10%	\$1,161,556	2.96%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	29	14.87%	\$5,650,294	14.40%
Non-minority Males	128	65.64%	\$26,164,563	66.70%
TOTAL	195	100.00%	\$39,228,272	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	20	10.26%	\$3,296,568	8.40%
Minority Males	18	9.23%	\$4,116,848	10.49%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	38	19.49%	\$7,413,416	18.90%
Woman Business Enterprises	49	25.13%	\$8,946,862	22.81%



4. Goods and Services Prime Contract Utilization: Contracts Valued between \$50,000 and \$590,000

Table 1.30 lists all prime contract dollars expended by the City on goods and services prime contracts valued between \$50,000 and \$590,000. MBEs received 11.43%, WBEs received 7.02%, and non-M/WBEs received 83.97% of the goods and services prime contract dollars.

African Americans received 7, or 1.58% of the goods and services prime contracts valued between \$50,000 and \$590,000 awarded during the study period, representing \$1,089,921, or 1.49% of the goods and services prime contract dollars.

Asian Americans received 32, or 7.22% of the goods and services prime contracts valued between \$50,000 and \$590,000 awarded during the study period, representing \$4,737,914, or 6.48% of the goods and services prime contract dollars.

Hispanic Americans received 19, or 4.29% of the goods and services prime contracts valued between \$50,000 and \$590,000 awarded during the study period, representing \$2,531,970, or 3.46% of the goods and services prime contract dollars.

Native Americans received none of the goods and services prime contracts valued between \$50,000 and \$590,000 awarded during the study period.

Caucasian Females received 23, or 5.19% of the goods and services prime contracts valued between \$50,000 and \$590,000 awarded during the study period, representing \$3,368,223, or 4.60% of the goods and services prime contract dollars.

Minority Females received 16, or 3.61% of the goods and services prime contracts valued between \$50,000 and \$590,000 awarded during the study period, representing \$1,769,001, or 2.42% of the goods and services prime contract dollars.

Non-minority Males received 362, or 81.72% of the goods and services prime contracts valued between \$50,000 and \$590,000 awarded during the study period, representing \$61,442,867, or 83.97% of the goods and services prime contract dollars.

Minority Business Enterprises received 58, or 13.09% of the goods and services prime contracts valued between \$50,000 and \$590,000 awarded during the study period, representing \$8,359,805, or 11.43% of the goods and services prime contract dollars.

Woman Business Enterprises received 39, or 8.80% of the goods and services prime contracts valued between \$50,000 and \$590,000 awarded during the study period, representing \$5,137,224, or 7.02% of the goods and services prime contract dollars.



Table 1.30: Goods and Services Prime Contract Utilization, Contracts Valued between \$50,000 and \$590,000, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	7	1.58%	\$1,089,921	1.49%
Asian Americans	32	7.22%	\$4,737,914	6.48%
Hispanic Americans	19	4.29%	\$2,531,970	3.46%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	23	5.19%	\$3,368,223	4.60%
Non-minority Males	362	81.72%	\$61,442,867	83.97%
TOTAL	443	100.00%	\$73,170,896	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	4	0.90%	\$482,223	0.66%
African American Males	3	0.68%	\$607,698	0.83%
Asian American Females	2	0.45%	\$345,890	0.47%
Asian American Males	30	6.77%	\$4,392,024	6.00%
Hispanic American Females	10	2.26%	\$940,889	1.29%
Hispanic American Males	9	2.03%	\$1,591,082	2.17%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	23	5.19%	\$3,368,223	4.60%
Non-minority Males	362	81.72%	\$61,442,867	83.97%
TOTAL	443	100.00%	\$73,170,896	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	16	3.61%	\$1,769,001	2.42%
Minority Males	42	9.48%	\$6,590,804	9.01%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	58	13.09%	\$8,359,805	11.43%
Woman Business Enterprises	39	8.80%	\$5,137,224	7.02%



V. Conclusion

The City awarded \$486,705,907 prime contract dollars from July 1, 2016 to June 30, 2021. The \$486,705,907 expended included \$214,636,848 for construction, \$28,586,595 for architectural and engineering, \$78,883,345 for professional services, and \$164,599,118 for goods and services. A total of 2,264 prime contracts were analyzed, which included 191 for construction, 112 for architectural and engineering, 457 for professional services, and 1,504 for goods and services.

The analysis revealed that 27 prime contractors received \$244,765,900, or 50% of the total prime contract dollars awarded in the four industries. The concentration of prime contract dollars with a small number of contractors indicates that most of the City's prime contract dollars were controlled by a relatively few businesses and, in turn, most of the subcontracts were awarded by the few prime contractors.

A. Discretionary Procurement Processes

Standards in the City's procurement process allow the discretionary award of contracts with limited or no competition. These standards have contributed to the concentration of prime contract dollars with a small number of contractors. The most significant standards are the on-call, emergency, and cooperative procurements. In addition, there is the practice of the City Council authorizing departments to make awards without complying with the formal competitive selection process.

1. On-Call Contracts

The City may, under its discretion and when deemed by the City Administrator to be in its best interest, establish a list of pre-qualified businesses for on-call contracts to perform as needed and specified construction work valued at over \$250,000. The City may also establish a list of pre-qualified businesses to perform on-call construction work valued at less than \$250,000.

The City advertises a request for qualifications to create an on-call list. The request is advertised without a defined scope of work. Contractors are selected from the pre-qualified list at the time a scope of work is defined.

There were 180 contracts in the Oracle financial system identified as on-call contracts, and these were awarded to 111 prime contractors. The 111 on-call contractors were paid a total of \$75,959,148. On-call contracts represented 15.61% of the total awards for the study period. Only 79 of the contractors were local businesses, and 44 were M/WBEs. The M/WBEs received 22.84% of the total on-call contract dollar awards.

2. Emergency Contracts

In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health, or safety, the City Administrator may authorize an emergency contract. Emergency contracts are awarded without advertising or authorization by the City Council.



A total of 125 contracts in the Oracle financial system were identified as emergency contracts. During the study period, payments were made to 83 prime contractors under an emergency contract totaling \$45,984,590. Emergency purchases represented 9.45% of the total awards for the study period. Only 29 of the contractors were local businesses, and 16 were M/WBEs. The M/WBEs received 29.07% of the total emergency contract dollar awards.

3. Cooperative Agreements

The City's cooperative agreement policy allows departments to award contracts to businesses using agreements executed by another entity that employs procurement standards similar to Oakland. These awards are made without a competitive process.

The Oracle financial system identified 686 contracts as cooperative agreements. Payments totaling \$116,503,288 were made to 300 prime contractors under a cooperative agreement during the study period. Cooperative agreements represented 23.94% of the total awards for the study period. Only 67 of the contractors were local businesses, and 43 were M/WBEs. Local businesses were awarded 25.95% of the cooperative agreements and 21.61% of the dollars. The M/WBEs received 8.86% of the total cooperative agreement dollar awards.

4. Mitigation Measures

In sum, the City awarded 39.75% of its contracts and 40.26% of total dollar awards using a discretionary procurement process.

Measures exist that could mitigate the adverse impacts resulting from policies that limit the number of competitively bid contracts. The number of bidders is no doubt adversely affected by the City's long-standing practice of issuing large, multi-year contracts and contract modifications for new services without competition. The analysis of highly used contractors performed in this disparity study indicates that only a few contractors have received most of the contract dollars for both large and small contracts. This trend is a deterrent to potential bidders who do not have relationships with department managers and any reason to assume a discretionary award would be received. Unbundling large contracts and advertising in smaller, more manageable components would align with small and local businesses' capability and capacity.

Restructuring the on-call contracting process could increase the utilization of small businesses. Limiting the assignment of small contracts to businesses on a small contract rotation list would maximize the participation of small businesses on small contracts. Pre-qualification of this list could be done through an RFQ process that sets the qualification requirements commensurate with the size of the contracts in the program. A Small Contract Rotation Program would award informal contracts to small businesses on a rotational basis. Each specialty within construction, architectural and engineering, and professional services would have its own pre-qualified list. Pre-qualified small businesses would be placed automatically on the rotation list according to their certification date and specialty. Businesses with the same certification date, industry, and specialty would be placed alphabetically, according to the owner's last name.

Limiting the use of cooperative agreements should also increase the participation of local and M/WBE businesses on City contracts. Posting solicitations with local trade organizations, advertising opportunities in ethnic media, and sending notices to certified businesses offering



the same or similar services before executing a cooperative agreement would provide more opportunities to local businesses and could limit the use of cooperative agreements. A notice of the opportunity released no less than six weeks prior to the solicitation of a cooperative agreement could also reduce the need for cooperative agreements. Compliance with the City's subcontracting goals should be required when a cooperative agreement is authorized.

B. Summary of Policies and Practices to Maximize the Utilization of Local Businesses

Government agencies in multi-racial urban centers employ numerous best procurement and contracting practices to facilitate the utilization of minority, woman-owned, and small businesses. These practices are generally supported by policies intended to diversify the pool of certified vendors, remove barriers to utilize new businesses, increase the number of bids and proposals submitted, and mandate transparency in contracting. The implementation of these policies is generally prompted by a disparity study which documented statistically significant underutilization in contracts awarded to M/WBEs. Given the disparity in the City's award of prime contracts and its prime contractors' utilization of M/WBEs during the 2016 to 2021 study period, the City's consideration of the best practices of other government entities seems warranted. A summary of best practices that seem most relevant given the findings from the City's current disparity study are discussed below.

1. Annual Contract Forecast

Contract forecasting, used to inform businesses about potential contracting opportunities early in the procurement process, can increase and diversify the pool of bidders. Federal executive agencies use forecasting platforms to allow businesses to view contract opportunities before the formal requirements are posted. The Forecast Tool⁷ is used by the U.S. General Services Administration. This tool posts a searchable list of anticipated federal contracting opportunities for the current and future fiscal years. Local governments post the forecasts on their website, and some distribute them directly to their registered vendors.

An annual contract forecast prepared by each department identifying upcoming solicitations for a 12 to 24-month period could allow more local businesses timely notice of anticipated contract opportunities. The forecast could be published on the City's website and emailed to certified businesses, registered vendors, and professional and trade associations.

2. Diverse Selection Panel Membership

A diverse selection panel is a means to promote fair and equitable access for small, minority, and woman-owned businesses when the procurement is qualification-based. Portland, Oregon, reported in a June 28, 2012 publication⁸ that its diversity panel mandates each selection panel to have at least one minority evaluator in order to increase the award of professional services prime contracts to small, minority, and woman-owned businesses. The report acknowledged that the award of contracts to M/WBEs and small businesses increased from 13.63% in 2008 to 15.12% in 2012. It also documented a surge of M/WBE subcontractors from 49.97% in 2008 to 80.74% in 2012. Portland, like Oakland, performed its first disparity study in the early 1990s.

⁷ The Forecast of Contracting Opportunities Tool, U.S. General Services Administration, Forecast of contracting opportunities | GSA.

⁸ Report to Mayor Sam Adams from Christine Moody, Chief Procurement Officer, City of Portland, Oregon, June 28, 2012.

Transparency, which is a good public policy and best practice, should govern the process. This policy would require panel members to sign their evaluation forms and the chairperson to publish the scores when the Notice of Intent to Award is issued.

3. Debriefing Sessions

Debriefing sessions, offered to all unsuccessful bidders, provide vital information to help small businesses prepare more competitive submittals that could enhance their capacity to be competitive. The City of Columbus, Ohio, in response to the findings in its 2019 Disparity Study, instituted post-award debriefings as a standard procedure and included the requirement in the City's *Minority and Women-owned Business Enterprise and Small Local Business Enterprise Program Manual*.⁹

Availability of the debriefing sessions could be published on the City's website and included in the Notice of Intent to Award, which could be sent to all bidders before the contract is authorized for award. The procedures for scheduling a debriefing session and the timeframe for holding the meetings would need to be outlined in the solicitation and the Notice of Intent to Award. If requested, the evaluators' scores could be made available at the debriefing or beforehand.

4. Publication of Prime Contractor Payments

Regular and timely posting of prime contractor payments reduces the number of inquiries the government receives from both prime contractors and subcontractors regarding the payment of the prime contractor's invoices. It also allows subcontractors to verify their prime contractor's payments in real time. The City of Columbus, Ohio, requires prime contractor payments to be posted on a scheduled day(s) each month.¹⁰

The City of Oakland has a Prompt Payment Policy, but there is no formal process to enable the subcontractors to verify the disbursement date in order to monitor their prime contractor's compliance with the policy.

5. Invoice Dispute Resolution Process

Invoice disputes can be a source of delayed invoice payments to both the prime contractor and subcontractor. St Petersburg, Florida, has established a dispute resolution procedure based on the recommendations in its 2021 Disparity Study. These procedures outlined in the *Procurement Operations Manual* provide step-by-step instructions to resolve a dispute between the prime contractor and the City or its subcontractor.¹¹

⁹ Minority and Women-owned Business Enterprise and Small Local Business Enterprise Program Manual, April 2022, Office of Diversity and Inclusion, City of Columbus, Ohio, page 47.

¹⁰ Id. page 51.

¹¹ The Procurement Operations Manual, Procurement and Supply Management Department, December 2021, the City of Saint Petersburg, Florida, page 8.

The City of Oakland has an invoice dispute resolution policy that requires the City to notice its prime contractors within five days of receiving a disputed invoice.¹² The contractor should be provided with a formal Invoice Dispute Notification detailing all disputed items. Undisputed invoice amounts should be paid in a timely manner, no later than 15 days after receipt. Disputed items should be resolved in a timely manner and thereafter paid promptly. However, there is no process to monitor compliance.

6. Quarterly Utilization Reports

Regular utilization reports of all prime contracts and subcontracts awarded are necessary to track the utilization of M/WBEs. Publishing quarterly utilization reports is a standard practice used by various government agencies nationwide. The reports published on the website of the New York City Mayor's Office of Contract services is an example of a comprehensive reporting process that summarizes prime contract and subcontract utilization data for City-certified M/WBEs.¹³

7. Track Contract Award and Payment by Unique Contract Number

Tracking contract awards and payments by unique contract numbers is a best practice for ensuring efficient and transparent contract management. This method facilitates precise tracking, easy retrieval of contract data, and accountability.

The process of securing the City's prime contract data for the statistical analysis evidenced the decentralized and fragmented management of contract data. The data in the Oracle system did not link task orders, work orders, and purchase orders to the master agreements, price agreements, or other contract documents used to authorize the order. For some purchase orders, information linking them to the authorizing agreement was embedded in the comments field instead of being recorded in the proper contract number field.

Capturing critical data in separate fields in the Oracle system would maintain a more comprehensive description of contracts. An input mask could be added to the data entry form, requiring all the contract numbers to be entered in the same format.

Furthermore, each vendor captured in the Oracle database should be issued an identification number, which is a unique identifier or vendor number assigned to each business when a required vendor registration form is prepared. The number should be uniquely linked to the vendor and included with the vendor's name in all procurement and contracting transactions.

The vendors list should be updated every five years. The status of the vendor that does not renew could be marked inactive.



¹² Oakland Municipal Code, Chapter 2.06 – Prompt Payment.

¹³ Mayor's Office of Contract Services, New York City, M/WBE Reports | MOCS (nyc.gov).

CHAPTER 2: Subcontractor Utilization Analysis

I. Introduction

A disparity study, as required by *City of Richmond v. J.A. Croson Co. (Croson)*,¹⁴ must document a local government's utilization of available minority and woman-owned business enterprises (M/WBEs) as prime contractors and subcontractors. The objective of this chapter is to present the subcontractor utilization by ethnicity, gender, and industry in the construction, architectural and engineering, and professional services industries. The subcontracts examined were awarded by City of Oakland's prime contractors during the July 1, 2016 to June 30, 2021 study period.

II. Data Sources

The collection of subcontract data was conducted in conjunction with the City. Prime contractors are required to list subcontractors on construction bid documents using Schedule R. Architectural and engineering, and professional services prime contractors are required to list subcontractors in their proposals using Schedule E.

Subcontract award data were extracted from the two schedules. An additional effort was made to verify the actual payments made to each listed subcontractor. This research was undertaken in cooperation with the City.

III. Data Collection Process

A. Subcontract Records from the City

The City provided prime contract bids and proposals awarded during the study period. The subcontract data were extracted from Schedule R, included in the bids, and Schedule E, included with the proposals. The subcontractor industry information reported on both schedules was evaluated as a source to determine the subcontractors' six-digit NAICS code. There was no NAICS code information on the schedules and the required information was insufficient to classify the subcontracts according to a six-digit NAICS code. As a result, the subcontractors were assigned the same industry as the prime contractor.

Schedule R required the prime contractor to provide each listed construction subcontractor's license number, type of work, company name, business address, telephone number, and award amount. For Schedule E, the prime contractor was required to include for each listed subcontractor the type of work, company name, address, telephone number, and percentage of project or work. The only industry-related information on the schedules was type of work. This information was insufficient to determine a six-digit NAICS code.

¹⁴ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).



A total of 614 subcontractor records were reported on Schedules R and E and only 498 included an award amount. The schedules did not include payment data because they were produced at the time of the award.

There were 410 subcontractors listed on Schedule R documents, which were submitted by construction prime contractors, 136 reported on Schedule E documents submitted by architectural and engineering prime contractors, and 68 submitted by professional services prime contractors. Eight subcontracts were identified on one of the two schedules but without award or payment amounts. One schedule listed a subcontractor twice to perform two types of work. To determine the number of unique subcontracts, the types of work listed on the schedule to be performed by the same subcontractor was counted as one subcontract, which resulted in a total of 464 subcontracts.

B. Prime Contractor Expenditure Survey

A survey was conducted to collect subcontract payment data from prime contractors. The survey was emailed to prime contractors awarded either a construction prime contract or a professional services prime contract valued at \$250,000 and over; or an architectural and engineering prime contract valued at \$100,000 and over. Each prime contractor was asked to provide the name, award, and payment amount for each of their subcontractors. The survey was emailed to 133 prime contractors that submitted a Schedule R or E.

To maximize the response rate, each survey was accompanied by a letter from the City Administrator, requesting the prime contractor's assistance. Mason Tillman made follow-up calls to each prime contractor to address any questions concerning the survey and encouraged the business to submit its subcontract payment records. Of the 133 prime contractors surveyed, seven completed the survey, and five responded and provided a total of 33 subcontractor records. Of the 33 records, 31 had both subcontractor award and payment amounts, one had subcontractors' award amounts, and one had only the subcontractor payment amount. The surveyed prime contractors provided 25 new unique subcontracts which were added to the dataset for analysis.

C. Subcontract Data Analysis

The subcontract records Mason Tillman compiled from Schedules R and E and the prime expenditure survey were cleaned to remove duplicates. Once the data were cleaned, the ethnicity and gender of each subcontractor were verified through a combination of certification directories, internet research, and telephone surveys. The records were then appended to the relational database used to analyze the prime contract records. The analysis produced the subcontract utilization tables for the three industries. The subcontractor utilization analyzed by industry is presented below.



IV. Subcontractor Utilization

A. All Subcontracts

As shown in Table 2.1, 489 subcontracts were analyzed. The subcontract data included records for 365 construction, 64 architectural and engineering, and 60 professional services subcontracts.

The total subcontract dollar amount analyzed was \$42,937,441. This amount included \$35,872,086 for construction, \$5,025,729 for architectural and engineering, and \$2,039,626 for professional services subcontracts.

Table 2.1: Subcontracts Awarded and Dollars Expended by Industry
July 1, 2016 to June 30, 2021

Industry	Total Number of Subcontracts	Total Amount Expended
Construction	365	\$35,872,086
Architectural and Engineering	64	\$5,025,729
Professional Services	60	\$2,039,626
Total	489	\$42,937,441



B. Subcontracts by Industry

1. Construction Subcontracts

Table 2.2 lists the construction subcontracts awarded by the City's prime contractors. MBEs received 33.36%, WBEs received 14.09%, and non-M/WBEs received 56.56% of the construction subcontract dollars during the study period.

African Americans received 10, or 2.74% of the construction subcontracts awarded during the study period, representing \$755,675, or 2.11% of the construction subcontract dollars.

Asian Americans received 34, or 9.32% of the construction subcontracts awarded during the study period, representing \$4,156,875, or 11.59% of the construction subcontract dollars.

Hispanic Americans received 44, or 12.05% of the construction subcontracts awarded during the study period, representing \$6,716,937, or 18.72% of the construction subcontract dollars.

Native Americans received 5, or 1.37% of the construction subcontracts awarded during the study period, representing \$337,564, or 0.94% of the construction subcontract dollars.

Caucasian Females received 22, or 6.03% of the construction subcontracts awarded during the study period, representing \$3,615,420, or 10.08% of the construction subcontract dollars.

Minority Females received 6, or 1.64% of the construction subcontracts awarded during the study period, representing \$1,440,597, or 4.02% of the construction subcontract dollars.

Non-minority Males received 250, or 68.49% of the construction subcontracts awarded during the study period, representing \$20,289,615, or 56.56%, of the construction subcontract dollars.

Minority Business Enterprises received 93, or 25.48% of the construction subcontracts awarded during the study period, representing \$11,967,051, or 33.36% of the construction subcontract dollars.

Woman Business Enterprises received 28, or 7.67% of the construction subcontracts awarded during the study period, representing \$5,056,017, or 14.09% of the construction subcontract dollars.



Table 2.2: Construction Subcontractor Utilization
July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	10	2.74%	\$755,675	2.11%
Asian Americans	34	9.32%	\$4,156,875	11.59%
Hispanic Americans	44	12.05%	\$6,716,937	18.72%
Native Americans	5	1.37%	\$337,564	0.94%
Caucasian Females	22	6.03%	\$3,615,420	10.08%
Non-minority Males	250	68.49%	\$20,289,615	56.56%
TOTAL	365	100.00%	\$35,872,086	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	0.27%	\$675	0.00%
African American Males	9	2.47%	\$755,000	2.10%
Asian American Females	1	0.27%	\$800,000	2.23%
Asian American Males	33	9.04%	\$3,356,875	9.36%
Hispanic American Females	3	0.82%	\$579,922	1.62%
Hispanic American Males	41	11.23%	\$6,137,016	17.11%
Native American Females	1	0.27%	\$60,000	0.17%
Native American Males	4	1.10%	\$277,564	0.77%
Caucasian Females	22	6.03%	\$3,615,420	10.08%
Non-minority Males	250	68.49%	\$20,289,615	56.56%
TOTAL	365	100.00%	\$35,872,086	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	6	1.64%	\$1,440,597	4.02%
Minority Males	87	23.84%	\$10,526,455	29.34%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	93	25.48%	\$11,967,051	33.36%
Woman Business Enterprises	28	7.67%	\$5,056,017	14.09%



2. Architectural and Engineering Subcontracts

Table 2.3 lists the architectural and engineering subcontracts awarded by the City's prime contractors. MBEs received 10.75%, WBEs received 11.05%, and non-M/WBEs received 80.49% of the architectural and engineering subcontract dollars during the study period.

African Americans received 3, or 4.69% of the architectural and engineering subcontracts awarded during the study period, representing \$117,815, or 2.34% of the architectural and engineering subcontract dollars.

Asian Americans received 5, or 7.81% of the architectural and engineering subcontracts awarded during the study period, representing \$385,319, or 7.67% of the architectural and engineering subcontract dollars.

Hispanic Americans received 2, or 3.13% of the architectural and engineering subcontracts awarded during the study period, representing \$37,000, or 0.74% of the architectural and engineering subcontract dollars.

Native Americans received none of the architectural and engineering subcontracts awarded during the study period.

Caucasian Females received 10, or 15.63% of the architectural and engineering subcontracts awarded during the study period, representing \$440,579, or 8.77% of the architectural and engineering subcontract dollars.

Non-minority Males received 44, or 68.75% of the architectural and engineering subcontracts awarded during the study period, representing \$4,045,016, or 80.49% of the architectural and engineering subcontract dollars.

Minority Females received 2, or 3.13% of the architectural and engineering subcontracts awarded during the study period, representing \$115,000, or 2.29% of the architectural and engineering subcontract dollars.

Minority Business Enterprises received 10, or 15.63% of the architectural and engineering subcontracts awarded during the study period, representing \$540,134, or 10.75% of the architectural and engineering subcontract dollars.

Woman Business Enterprises received 12, or 18.75% of the architectural and engineering subcontracts awarded during the study period, representing \$555,579, or 11.05% of the architectural and engineering subcontract dollars.



Table 2.3: Architectural and Engineering Subcontractor Utilization
July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	3	4.69%	\$117,815	2.34%
Asian Americans	5	7.81%	\$385,319	7.67%
Hispanic Americans	2	3.13%	\$37,000	0.74%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	10	15.63%	\$440,579	8.77%
Non-minority Males	44	68.75%	\$4,045,016	80.49%
TOTAL	64	100.00%	\$5,025,729	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	1.56%	\$90,000	1.79%
African American Males	2	3.13%	\$27,815	0.55%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	5	7.81%	\$385,319	7.67%
Hispanic American Females	1	1.56%	\$25,000	0.50%
Hispanic American Males	1	1.56%	\$12,000	0.24%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	10	15.63%	\$440,579	8.77%
Non-minority Males	44	68.75%	\$4,045,016	80.49%
TOTAL	64	100.00%	\$5,025,729	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	2	3.13%	\$115,000	2.29%
Minority Males	8	12.50%	\$425,134	8.46%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	10	15.63%	\$540,134	10.75%
Woman Business Enterprises	12	18.75%	\$555,579	11.05%



3. Professional Services Subcontracts

Table 2.4 lists the professional services subcontracts awarded by the City's prime contractors. MBEs received 13.11%, WBEs received 26.26%, and non-M/WBEs received 61.94% of the professional services subcontract dollars during the study period.

African Americans received 1, or 1.67% of the professional services subcontracts awarded during the study period, representing \$6,376, or 0.31% of the professional services subcontract dollars.

Asian Americans received 7, or 11.67% of the professional services subcontracts awarded during the study period, representing \$175,620, or 8.61% of the professional services subcontract dollars.

Hispanic Americans received 3, or 5.00% of the professional services subcontracts awarded during the study period, representing \$85,500, or 4.19% of the professional services subcontract dollars.

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

Caucasian Females received 14, or 23.33% of the professional services subcontracts awarded during the study period, representing \$508,855, or 24.95% of the professional services subcontract dollars.

Minority Females received 3, or 5.00% of the professional services subcontracts awarded during the study period, representing \$26,716, or 1.31% of the professional services subcontract dollars.

Non-minority Males received 35, or 58.33% of the professional services subcontracts awarded during the study period, representing \$1,263,275, or 61.94% of the professional services subcontract dollars.

Minority Business Enterprises received 11, or 18.33% of the professional services subcontracts awarded during the study period, representing \$267,496, or 13.11% of the professional services subcontract dollars.

Woman Business Enterprises received 17, or 28.33% of the professional services subcontracts awarded during the study period, representing \$535,571, or 26.26% of the professional services subcontract dollars.



Table 2.4: Professional Services Subcontractor Utilization
July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	1	1.67%	\$6,376	0.31%
Asian Americans	7	11.67%	\$175,620	8.61%
Hispanic Americans	3	5.00%	\$85,500	4.19%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	14	23.33%	\$508,855	24.95%
Non-minority Males	35	58.33%	\$1,263,275	61.94%
TOTAL	60	100.00%	\$2,039,626	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	1.67%	\$6,376	0.31%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	1	1.67%	\$20,000	0.98%
Asian American Males	6	10.00%	\$155,620	7.63%
Hispanic American Females	1	1.67%	\$340	0.02%
Hispanic American Males	2	3.33%	\$85,160	4.18%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	14	23.33%	\$508,855	24.95%
Non-minority Males	35	58.33%	\$1,263,275	61.94%
TOTAL	60	100.00%	\$2,039,626	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	3	5.00%	\$26,716	1.31%
Minority Males	8	13.33%	\$240,780	11.81%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	11	18.33%	\$267,496	13.11%
Woman Business Enterprises	17	28.33%	\$535,571	26.26%



V. Conclusion

A total of 489 subcontracts, valued at \$42,937,441, were analyzed. Most of the subcontracts were awarded by the 27 prime contractors that received 50% of the prime contract dollars the City of Oakland awarded. The subcontract utilization findings show that most subcontracts were awarded to non-M/WBE subcontractors that were not located in Oakland.

The City has no policy requiring prime contractors to use subcontractors. When subcontractors are used, prime contractors are required to report the award amount on one of two schedules—Schedule R for construction and Schedule E for professional services contracts. While the schedules require listing subcontractor award amounts, there is no process to ensure that each subcontractor's award amounts are listed. Furthermore, there is no process to track the actual utilization of the listed subcontractors. There is a requirement for the City to withhold prime contractor payments if a subcontractor has not been paid; however, no process tracks subcontractor payments.

Most governments with an interest in maximizing the participation of businesses in their jurisdiction encourage and require the utilization of subcontractors. Best practices have been employed by these entities to increase prime contractors' utilization of local, small, minority and woman-owned subcontractors.

1. Establish Subcontractor Utilization Policy

A subcontractor utilization policy is a standard used by local governments throughout the country to encourage the utilization of subcontractors within their jurisdictions. While the scope of the policies varies, the minimal standard usually includes setting subcontracting goals on solicitations for construction and professional services contracts. Governments that have completed a disparity study, as a rule, set the goals based on documented availability of the ethnic and gender groups with a disparity. The City of Columbus, Ohio, for example, in its *Minority and Women-Owned Business Enterprise & Small Local Business Enterprise Program Manual*, sets contract-specific goals based on step-by-step instructions.¹⁵ The set goals are then monitored through the reporting requirements set forth in the general contract terms and conditions.

2. Subcontract Goal Attainment Documentation at Bid Opening

Requiring documentation of subcontracting goal attainment at bid opening is a best practice to ensure the integrity of the subcontracting policy. Compliance with the subcontract goal requirement is enhanced when the requirement is a factor in determining a bidder's responsiveness.

3. Subcontractors' Commercially Useful Function Verification

The determination that the subcontractors can perform a commercially useful function at the time of bid opening is another best practice used to ensure the integrity of the subcontractor contracting program. Subcontractors must perform a distinct element of work and possess the

¹⁵ Minority and Women-owned Business Enterprise and Small Local Business Enterprise Program Manual, April 2022, Office of Diversity and Inclusion, City of Columbus, Ohio, page 27.

skills, expertise, and responsibility for managing and supervising the work to deem it commercially useful. The commercially useful function requirement usually applies to all procurement activity, including change orders, substitutions, and task orders.

4. Subcontractor Substitution Standards Process

The use of a subcontractor substitution policy is a standard employed in most government contracts, although frequently it does not involve a due process clause and is generally not applied uniformly across the contracting units. For example, subcontractor substitution standards have been established by the City of Columbus in its *Minority and Women-Owned Business Enterprise & Small Local Business Enterprise Program Manual*.¹⁶ The policy includes a due process provision for both prime contractors and subcontractors.

Under the City of Columbus program, substituting an M/WBE listed on a prime contract requires written approval of the awarding department and Office of Diversity and Inclusion. The subcontractor must be afforded a hearing to present its written or oral statement of the facts. The hearing should be held within 48 hours of receiving a written request for substitution. Attempts to mediate the dispute prior to the hearing could be made as well. If the substitution is granted, the substituted M/WBE could be replaced with another M/WBE with approval.

5. Subcontractor Mobilization Payments

Mobilization payments constitute a standard practice used by agencies to mitigate the adverse impact of the costs contractors incur to mobilize. Several governmental entities have extended their mobilization policy to include subcontractors, so that start-up costs for equipment, supplies, and other operations that must be performed in order to begin work on the project site are covered.

The *Oakland Municipal Code* under Section 2.06.050.A¹⁷ authorizes mobilization payments to subcontractors on construction projects. The mobilization payment is intended to cover site location costs, including equipment, supplies, trailers, and other operations that must be performed or costs incurred prior to beginning work on the project site. The *Code*, however, does not address procedures to pay mobilization fees to subcontractors nor does it include monitoring provisions to ensure that mobilization payments have been processed.

Procedures to pay mobilization fees to subcontractors are outlined in the City of Columbus' *Minority and Women-Owned Business Enterprise & Small Local Business Enterprise Program Manual*.¹⁸ The policy requires prime contractors to release mobilization costs incurred by subcontractors when the subcontractor is directed to commence work.



¹⁶ Id., page 52.

¹⁷ Oakland Municipal Code, Section 2.06.050.A.

¹⁸ Minority and Women-owned Business Enterprise and Small Local Business Enterprise Program Manual, April 2022, Office of Diversity and Inclusion, City of Columbus, Ohio, page 52.

6. Subcontractor Tracking

All subcontractor awards and payments should be tracked in a cloud-based system. The prime contractor should be required to set up a subcontractor profile in a web form before receiving the notice to proceed. The system should require the prime contractor to report subcontractor payments and upload them to the system on a monthly basis. The system should require the subcontractor to verify receipt of the payment.

7. Subcontractor Monitoring

Monitoring subcontractor participation on prime contracts is a vital process for ensuring the integrity of the subcontractor utilization policy. A comprehensive subcontracting policy requires rigorous monitoring procedures to ensure that the participation of subcontractors is properly maintained.

The City of Columbus' *Minority and Women-Owned Business Enterprise & Small Local Business Enterprise Program Manual* provides monitoring and compliance procedures to ensure that prime contractors maintain the participation of listed subcontractors.¹⁹ The City's Office of Diversity and Inclusion is authorized to monitor the prime contractors, subcontractors, suppliers, truckers, and vendors performing the contract and make site visits at any time, with or without notice.



¹⁹ Id., page 49.

CHAPTER 3: Geographic Market Area Analysis

I. Market Area Definition

A. Legal Criteria for Geographic Market Area

The Supreme Court's decision in *City of Richmond v. J.A. Croson Co. (Croson)*²⁰ held that programs established by local governments to set goals for the participation of minority-owned business enterprises (MBEs) in public contracting must be supported by evidence of past discrimination in the award of their contracts. Prior to the *Croson* decision, local agencies could implement race-conscious programs without developing a detailed public record to document the underutilization of MBEs in their award of contracts. Instead, they relied on widely recognized societal patterns of discrimination.²¹

Croson established that a local government could not rely on society-wide discrimination as the basis for a race-based program. Instead, a local government was required to identify discrimination within its own contracting jurisdiction.²² In *Croson*, the United States Supreme Court found the City of Richmond, Virginia's MBE construction program to be unconstitutional because there was insufficient evidence of discrimination in the local construction market.

Croson was explicit in stating that the local construction market was the appropriate geographical area within which to perform the statistical comparisons of the availability of minority businesses to their utilization. The identification of the geographic market area is therefore particularly important because it establishes the parameters within which to conduct a disparity study.

B. Application of the Croson Standard

While *Croson* emphasized the importance of the geographic market area, it provided little assistance in defining its parameters. However, it is informative to review the Court's definition of the City of Richmond, Virginia's market area in the case. In discussing the geographic parameters within which the City of Richmond should have investigated the constitutional violation, the Court interchangeably used the terms "relevant market," "Richmond construction industry,"²³ and "city's construction industry."²⁴ These terms were used to define the proper market for examining the existence of discrimination within the City. The Court's interchangeable use of these terms lends support to a definition of geographic market area that coincides with the boundaries of a contracting jurisdiction.

²⁰ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

²¹ *United Steelworkers v. Weber*, 433 U.S. 193, 198, n. 1 (1979).

²² *Croson*, 488 U.S. at 497.

²³ *Id.* at 500.

²⁴ *Id.* at 470.



An analysis of the cases following *Croson* reveals a pattern that provides additional guidance for defining the geographic market area. The body of cases examining a reasonable geographic market area definition employs a fact-based method, rather than one dictated by a specific formula.²⁵ For example, in *Cone Corporation v. Hillsborough County*,²⁶ the United States Eleventh Circuit Court of Appeals considered a study in support of Hillsborough County, Florida's MBE Program, which used minority contractors located in Hillsborough County as the measure of available businesses. The program was found to be constitutional under the compelling governmental interest element of the strict scrutiny standard.

Hillsborough County's program was based on statistics indicating that specific discrimination existed in the award of construction contracts by Hillsborough County, not in the construction industry in general. Hillsborough County extracted data from businesses within its own jurisdictional boundaries and assessed the percentage of minority construction businesses available in the county. The Court stated that the disparity study was properly conducted within the "local construction industry."²⁷

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCII)*,²⁸ the United States Ninth Circuit Court of Appeals found the City and County of San Francisco, California's MBE Program to have the factual predicate necessary to survive strict scrutiny. The San Francisco MBE Program was supported by a study that assessed the number of available MBE contractors within the City and County of San Francisco. The Court found it appropriate to use the City and County of San Francisco's jurisdictional boundaries as the relevant market area within which to conduct a disparity study.²⁹

In *Coral Construction v. King County*, the United States Ninth Circuit Court of Appeals held that "a set-aside program is valid only if actual, identifiable discrimination has occurred within the local industry affected by the program."³⁰ In support of its MBE program, King County, Washington, offered studies compiled by other jurisdictions, including entities completely within the county, others coterminous with the boundaries of the county, as well as a jurisdiction completely outside of the county. The plaintiffs contended that *Croson* required King County to compile its own data and cited *Croson* as prohibiting data sharing.

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

²⁵ See e.g., *Concrete Works of Colorado v. City of Denver, Colorado*, 36 F.3d 1513, 1528 (10th Cir. 1994) ("Concrete Works").

²⁶ *Cone Corporation v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990).

²⁷ *Cone*, 908 F.2d at 915.

²⁸ *Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991).

²⁹ *AGCII*, 950 F.2d at 1415.

³⁰ *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991).

The Court concluded that data gathered by a neighboring county could not be used to support King County's MBE program. The Court noted, "It is vital that a race-conscious program align itself as closely to the scope of the problem sought to be rectified by the governmental entity. To prevent overbreadth, the enacting jurisdiction should limit its factual inquiry to the presence of discrimination within its own boundaries."³¹ However, the Court did note that the "world of contracting does not conform itself neatly to jurisdictional boundaries."³²

Courts have approved a market area definition that extended beyond a jurisdiction's geographic boundaries in other cases as well. In *Concrete Works v. City and County of Denver (Concrete Works)*,³³ the United States Tenth Circuit Court of Appeals directly addressed the issue of whether extra-jurisdictional evidence of discrimination can be used to determine the "local market area" for a disparity study. In *Concrete Works*, the defendant relied on evidence of discrimination in the six-county Denver, Colorado Metropolitan Statistical Area (Denver MSA) to support its MBE program. Plaintiffs argued that the federal constitution prohibited consideration of evidence beyond jurisdictional boundaries. The Court of Appeals disagreed.

Critical to the Court's acceptance of the Denver MSA as the relevant local market was the finding that more than 80% of construction and design contracts awarded by the City and County of Denver were awarded to contractors within the Denver MSA. Another consideration was that the City and County of Denver's analysis was based on United States Census data, which was available for the Denver MSA but not for the City of Denver itself. The Court concluded that there was no undue burden placed on nonculpable parties, as the City and County of Denver had expended a majority of its construction contract dollars within the area defined as the local market. Citing *AGCCII*,³⁴ the Court noted "that any plan that extends race-conscious remedies beyond territorial boundaries must be based on very specific findings that actions that the city has taken in the past have visited racial discrimination on such individuals."³⁵

State and local governments must pay special attention to the geographical scope of their disparity studies. *Croson* determined that the statistical analysis should focus on the number of qualified minority business owners in the government's marketplace.³⁶ The text of *Croson* itself suggests that the geographical boundaries of a government entity comprise an appropriate market area, and other courts have agreed with this finding.

It follows then that an entity may limit consideration of discrimination to evidence occurring within its own jurisdiction.

II. Geographic Market Area Analysis

Although *Croson* and its progeny do not provide a bright line rule for the delineation of the geographic market area, taken collectively, the case law supports a definition of the market

³¹ *Coral Construction Co. v. King County*, 941 F.2d at 917.

³² *Id.*

³³ *Concrete Works*, 36 F.3d at 1528.

³⁴ *AGCC II*, 950 F.2d at 1401.

³⁵ *Concrete Works*, 36 F.3d at 1528.

³⁶ *Croson*, 488 U.S. at 501.

area as the geographical boundaries of the government entity. A total of 58.15% of the City of Oakland's total prime contract spending was within the City. More than 50% of the City's total expenditures were spent on construction, and 91.91% of prime contract construction dollars were concentrated in the City. Thus, the Study's market area based upon the underlying facts is determined to be the jurisdictional boundaries of the City of Oakland. The determination of the market area mirrors the economic realities of the City's overall high percentage of the City's expenditures concentrated within the jurisdictional boundaries of the City of Oakland.

A. Summary of the Distribution of All Prime Contracts Awarded

The City awarded 2,264 prime contracts valued at \$486,705,907 during the July 1, 2016 to June 30, 2021 study period. The distribution of all prime contracts awarded, and dollars received by all firms domiciled inside and outside of the geographic market area is depicted below in Table 3.1.

Table 3.1: Distribution of All Contracts Awarded

City	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Oakland	791	34.94%	\$283,032,890	58.15%
San Ramon	23	1.02%	\$12,689,103	2.61%
San Francisco	71	3.14%	\$10,313,935	2.12%
San Leandro	49	2.16%	\$10,124,251	2.08%
Pleasanton	32	1.41%	\$9,031,937	1.86%
Livermore	41	1.81%	\$8,033,945	1.65%
San Jose	38	1.68%	\$6,511,829	1.34%
Hayward	46	2.03%	\$6,145,380	1.26%
Berkeley	34	1.50%	\$3,932,325	0.81%
Foster City	13	0.57%	\$3,857,598	0.79%
Walnut Creek	12	0.53%	\$3,808,431	0.78%
Mountain View	3	0.13%	\$2,151,237	0.44%
Dixon	7	0.31%	\$2,109,238	0.43%
Cotati	2	0.09%	\$1,875,942	0.39%
Antioch	6	0.27%	\$1,699,850	0.35%
Alameda	24	1.06%	\$1,647,979	0.34%
Concord	23	1.02%	\$1,511,796	0.31%
Fairfield	5	0.22%	\$1,445,774	0.30%
Santa Clara	24	1.06%	\$1,384,132	0.28%
Milpitas	8	0.35%	\$1,270,759	0.26%
Fremont	19	0.84%	\$1,216,049	0.25%
Sunnyvale	13	0.57%	\$1,171,663	0.24%
Benicia	11	0.49%	\$1,136,107	0.23%
Emeryville	5	0.22%	\$1,042,356	0.21%
Richmond	15	0.66%	\$805,059	0.17%
Campbell	9	0.40%	\$529,432	0.11%



City	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
El Sobrante	3	0.13%	\$487,726	0.10%
Newark	5	0.22%	\$467,932	0.10%
San Bruno	4	0.18%	\$368,814	0.08%
Martinez	2	0.09%	\$316,700	0.07%
Mill Valley	2	0.09%	\$312,968	0.06%
Vacaville	2	0.09%	\$307,063	0.06%
San Mateo	5	0.22%	\$303,368	0.06%
Burlingame	8	0.35%	\$301,215	0.06%
Stanford	2	0.09%	\$264,585	0.05%
Vallejo	8	0.35%	\$259,114	0.05%
Cupertino	10	0.44%	\$253,500	0.05%
Discovery Bay	6	0.27%	\$198,061	0.04%
Dublin	5	0.22%	\$182,644	0.04%
Union City	7	0.31%	\$146,532	0.03%
Petaluma	5	0.22%	\$131,195	0.03%
Lafayette	4	0.18%	\$125,057	0.03%
Danville	3	0.13%	\$122,731	0.03%
Brisbane	5	0.22%	\$117,275	0.02%
Los Gatos	2	0.09%	\$113,127	0.02%
Santa Rosa	3	0.13%	\$86,012	0.02%
Palo Alto	2	0.09%	\$54,755	0.01%
Albany	1	0.04%	\$49,900	0.01%
Castro Valley	3	0.13%	\$39,089	0.01%
Pittsburg	3	0.13%	\$32,741	0.01%
Redwood City	2	0.09%	\$31,600	0.01%
San Rafael	1	0.04%	\$18,545	0.00%
San Carlos	1	0.04%	\$13,273	0.00%
So. San Francisco	1	0.04%	\$11,450	0.00%
Hercules	2	0.09%	\$10,000	0.00%
Pleasant Hill	1	0.04%	\$8,986	0.00%
Pt Richmond	1	0.04%	\$8,603	0.00%
Out-of-Bay Area	397	17.54%	\$61,511,846	12.64%
Out-of-State	419	18.51%	\$40,465,115	8.31%
Out-of-Country	15	0.66%	\$1,105,387	0.23%
Total	2,264	100.00%	\$486,705,907	100.00%



III. Summary

During the study period, the City awarded 2,264 prime contracts valued at \$486,705,907. The City awarded 58.15% of prime contract dollars to businesses domiciled within the geographic market area.

Table 3.2 below presents an overview of the number of prime contracts the City awarded, and the dollars spent in the geographic market area.

Table 3.2: City of Oakland Contract Distribution

County	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Combined Industries				
Market Area	791	34.94%	\$283,032,890	58.15%
Outside Market Area	1,473	65.06%	\$203,673,017	41.85%
Total	2,264	100.00%	\$486,705,907	100.00%



CHAPTER 4: Prime Contractor and Subcontractor Availability Analysis

I. Introduction

According to *City of Richmond v. J.A. Croson Co. (Croson)*, availability is defined as the number of businesses in the jurisdiction's market area that are ready, willing, and able to provide the goods or services procured by the jurisdiction.³⁷ To determine the availability of minority and woman-owned business enterprises³⁸ (M/WBEs) and non-minority male-owned businesses (non-M/WBEs) within the jurisdiction's market area, businesses domiciled within the market area need to be enumerated. As defined in *Chapter 3: Geographic Market Area Analysis*, the market area is the City of Oakland.

When considering sources to determine the number of available M/WBEs and non-M/WBEs in the market area, the selection must be based on whether two aspects about the businesses can be gauged from the sources. One consideration is a business's interest in contracting with the jurisdiction, as implied by the term "willing." The other is the business's ability or capacity to provide a service or good, as implied by the term "able." The businesses available within the City met these criteria.

This study also required an identification of available M/WBEs and non-M/WBEs by six-digit North American Industry Classification System (NAICS) codes. As discussed in *Chapter 1: Prime Contractor Utilization Analysis*, the classification of businesses by a six-digit NAICS code requires relevant descriptive information about the businesses' primary good or service. The utilization data determines the type of business needed to enumerate in this availability analysis. The NAICS code limitations in the utilization data render the availability analysis of prime contractors and subcontractors by six-digit NAICS codes impractical.

II. Prime Contractor Availability Data Sources

A. Identification of Willing Market Area Businesses

To identify willing businesses in the City that provide construction, architectural and engineering, professional services, and goods and services the City procures, three main sources of information were used: (1) the City's contract records including vendors lists, (2) government certification lists, and (3) association membership lists. The enumerated businesses determined to be willing and able were added to the availability database. Businesses that provide goods or services in more than one industry are listed separately in each industry.



³⁷ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

³⁸ Hereinafter referred to as Minority and Caucasian female-owned businesses in the statistical tables.

The three sources were ranked according to their reliability in determining a business's willingness to contract with the City. The highest rank was assigned to utilized businesses from the City's Oracle database including vendors lists. The government certification lists ranked second, and association membership lists ranked third.

The first source used to build the availability database was the City's utilized businesses and the vendors registered on the City's B2Gnow and iSupplier platforms. The second source was businesses identified from federal and local government certification agencies. The third source was the list of businesses identified from trade organizations, professional organizations, and chambers of commerce that affirmed their willingness to do business with the City.

B. Prime Contractor Sources

Extensive targeted outreach to business associations in the market area was performed to identify and secure business membership directories. Table 4.1 lists the sources from which at least one willing market area business was identified.

Table 4.1: Prime Contractor Availability Data Sources

Source	Type of Information
City of Oakland Sources	
PO Detail Report 2016	M/WBE and Non-minority Male
PO Detail Report 2017-2021	M/WBE and Non-minority Male
B2GNow cloud-based application_2023-05-24	M/WBE and Non-minority Male
iSupplier_2023-06-20	M/WBE and Non-minority Male
SLBE Certification Program_2022-09-09	M/WBE and Non-minority Male
Government Certification Lists	
Alameda County Small, Local and Emerging Business Program	M/WBE and Non-minority Male
California Department of Transportation Office of Business & Economic Opportunity DBE Program	M/WBE
City and County of San Francisco, Directory of LBE, LBE-PUC, and NPE-Certified Firms	M/WBE and Non-minority Male
Contra Costa County SBE Directory	M/WBE and Non-minority Male
Port of Oakland Small Local Business Certification	M/WBE and Non-minority Male
U.S. Small Business Administration, Alameda County, Service-Disabled Veteran-Owned Businesses	M/WBE and Non-minority Male
U.S. Small Business Administration, Alameda County, Small Disadvantaged Businesses	M/WBE
U.S. Small Business Administration, Alameda County, Woman-owned Businesses	M/WBE
U.S. Small Business Administration, Alameda County, 8(a) Business Development Program	M/WBE
U.S. Small Business Administration, Alameda County, HUBzone Program	M/WBE and Non-minority Male



Source	Type of Information
Association Membership Lists	
Alameda Chamber of Commerce	M/WBE and Non-minority Male
Albany Chamber of Commerce	M/WBE and Non-minority Male
American Council of Engineering Companies, East Bay Chapter	M/WBE and Non-minority Male
American Institute of Architects	M/WBE and Non-minority Male
Association of Environmental Contractors	M/WBE and Non-minority Male
Association of Professional Landscape Designers, Bay Area District	M/WBE and Non-minority Male
Bay Area Business Women	M/WBE
Bay Area Organization of Black Owned Businesses Business Directory	M/WBE
Bay Area Sheet Metal & Air Conditioning Contractors	M/WBE and Non-minority Male
Berkeley Chamber of Commerce	M/WBE and Non-minority Male
Builders Exchange of Alameda County	M/WBE and Non-minority Male
California Association of General Contractors	M/WBE and Non-minority Male
California Land Surveyors Association	M/WBE and Non-minority Male
California Landscape Contractors Association, East Bay Chapter	M/WBE and Non-minority Male
California Precast Concrete Association	M/WBE and Non-minority Male
Castro Valley Chamber of Commerce	M/WBE and Non-minority Male
Concrete Masonry Association of California and Nevada	M/WBE and Non-minority Male
Danville Area Chamber of Commerce	M/WBE and Non-minority Male
Dimond Business and Professional Association	M/WBE and Non-minority Male
Dublin Chamber of Commerce	M/WBE and Non-minority Male
Finishing Contractors Association	M/WBE and Non-minority Male
Floor Covering Institute	M/WBE and Non-minority Male
Fremont Chamber of Commerce	M/WBE and Non-minority Male
Golden Gate Business Association	M/WBE and Non-minority Male
Greater Concord Chamber of Commerce	M/WBE and Non-minority Male
Heartland Merchants Association	M/WBE and Non-minority Male
Hispanic Chamber of Commerce Alameda County	M/WBE
Koreatown North Gate	M/WBE
Livermore Chamber of Commerce	M/WBE and Non-minority Male
Martinez Chamber of Commerce	M/WBE and Non-minority Male
Masonry Institute of America	M/WBE and Non-minority Male
Moraga Chamber of Commerce	M/WBE and Non-minority Male
National Association of Landscape Professionals	M/WBE and Non-minority Male
National Association of Women Business Owners	M/WBE
National Electrical Contractors Association	M/WBE and Non-minority Male
National Fire Sprinkler Association, San Francisco Bay Chapter	M/WBE and Non-minority Male
Newark Chamber of Commerce	M/WBE and Non-minority Male
Northern California Engineering Contractors Association	M/WBE and Non-minority Male



Northern California Mechanical Contractors Association	M/WBE and Non-minority Male
Source	Type of Information
Association Membership Lists	
Oakland African Chamber of Commerce	M/WBE
Oakland Business Services Organizations Listing	M/WBE and Non-minority Male
Oakland Chinatown Chamber of Commerce	M/WBE
Oakland Vietnamese Chamber of Commerce - Little Saigon Directory	M/WBE
Pleasanton Chamber of Commerce	M/WBE and Non-minority Male
Plumbing Heating Cooling Contractors Association	M/WBE and Non-minority Male
Roofing Contractors Association of California	M/WBE and Non-minority Male
San Francisco Electrical Contractors Association, Inc.	M/WBE and Non-minority Male
San Leandro Chamber of Commerce	M/WBE and Non-minority Male
Sealant Waterproofing and Restoration Institute	M/WBE and Non-minority Male
South Asian Alameda County Business List	M/WBE
Western Dredging Association	M/WBE and Non-minority Male
Western Suppliers Association	M/WBE and Non-minority Male

C. Determination of Willingness

From the three categories of sources listed in Table 4.1, 2,837 unique market area businesses that provide goods or services in one or more of the four industries were identified. A total of 1,173 unique market area businesses were added to the availability database from the City's records, 887 out of 1,173 were added from the vendor lists; 1,632 were added from the government certification lists; and 32 were added from the association membership lists.

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

Tables 4.2 through 4.5 present the distribution of willing prime contractors according to the three sources. The distribution of available businesses by source was also calculated for each industry. As noted in Table 4.2, 99.29% of the construction businesses identified were derived from the City's contract records, government certification lists, and vendors lists. The remaining 0.71% percent was derived from the business association membership lists.

Table 4.2: Distribution of Prime Contractor Availability Data Sources: Construction

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	10.82%	10.33%	10.54%
Government Certification Lists	25.54%	47.42%	38.39%
Vendors Lists	62.34%	41.95%	50.36%
Subtotal	98.70%	99.70%	99.29%
Association Membership Lists	1.30%	0.30%	0.71%
Subtotal	1.30%	0.30%	0.71%
Grand Total*	100.00%	100.00%	100.00%

*The percentages may not total 100 percent due to rounding

4-4



Table 4.3 lists the data sources for the available architectural and engineering prime contractors. As noted, 99.80% of the architectural and engineering businesses identified were derived from the City's records, government certification lists, and vendors lists. The remaining 0.20% percent was derived from the business association membership lists.

**Table 4.3: Distribution of Prime Contractor Availability Data Sources:
Architectural & Engineering**

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	15.24%	15.75%	15.54%
Government Certification Lists	34.76%	45.55%	41.04%
Vendors Lists	50.00%	38.36%	43.23%
Subtotal	100.00%	99.66%	99.80%
Association Membership Lists	0.00%	0.34%	0.20%
Subtotal	0.00%	0.34%	0.20%
Grand Total*	100.00%	100.00%	100.00%

*The percentages may not total 100 percent due to rounding

Table 4.4 lists the data sources for the available professional services prime contractors. As noted, 98.49% of the professional services businesses identified were derived from the City's records, government certification lists, and vendors lists. The remaining 1.51% percent was derived from the business association membership lists.

**Table 4.4: Distribution of Prime Contractor Availability Data Sources:
Professional Services**

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	13.99%	8.97%	10.80%
Government Certification Lists	44.80%	68.00%	59.56%
Vendors Lists	38.37%	22.27%	28.13%
Subtotal	97.16%	99.24%	98.49%
Association Membership Lists	2.84%	0.76%	1.51%
Subtotal	2.84%	0.76%	1.51%
Grand Total*	100.00%	100.00%	100.00%

*The percentages may not total 100 percent due to rounding

Table 4.5 lists the data sources for the available goods and services prime contractors. As noted, 99.33% of the goods and services businesses identified were derived from the City's records, government certification lists, and vendors lists. The remaining 0.67% percent was derived from the business association membership lists.



**Table 4.5: Distribution of Prime Contractor Availability Data Sources:
Goods and Services**

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	14.29%	11.75%	12.56%
Government Certification Lists	45.45%	63.53%	57.74%
Vendors Lists	38.70%	24.48%	29.03%
Subtotal	98.44%	99.76%	99.33%
Association Membership Lists	1.56%	0.24%	0.67%
Subtotal	1.56%	0.24%	0.67%
Grand Total*	100.00%	100.00%	100.00%

*The percentages may not total 100 percent due to rounding

III. Capacity

The second component of the availability requirement set forth in *Croson* is the capacity or ability of a business to perform the contracts the jurisdiction awarded.³⁹ Capacity requirements are not delineated in *Croson*, but capacity has been considered in subsequent cases. Specifically, the Third Circuit held certification to be a valid method of defining availability.⁴⁰ In *Contractors Association of Eastern Pennsylvania v. City of Philadelphia (Philadelphia)*, the court held that utilizing a list of certified contractors was a rational approach to identify qualified and willing firms.⁴¹ The court stated “[a]n analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach [of qualification].”⁴²

Capacity was also a subject of review in *North Shore Concrete and Assoc., Inc. v. City of New York (North Shore)*.⁴³ The plaintiff, North Shore Concrete and Associates, challenged the constitutionality of a New York City M/WBE program. Although the plaintiff made several arguments in challenging the disparity study, which was the predicate for the City’s race and gender-conscious program, an argument of note to the discussion of availability is the Court’s consideration of the plaintiff’s challenge regarding the capacity of available M/WBE firms. The plaintiff asserted the disparity study considered all M/WBE construction firms with one employee other than the owner qualified to perform any type of construction work, thus overstating the number of qualified M/WBEs. *North Shore* rejected the plaintiff’s argument that the study overstated the number of available M/WBE firms because it did not take into consideration the number of employees to determine capacity. The *North Shore* court concluded that firm size was not a proper indicator of capacity in determining the pool of

³⁹ *Croson*, 488 U.S. 469.

⁴⁰ *Contractors Ass’n of E. Pa.*, 91 F.3d at 603.

⁴¹ *Contractors Ass’n of E. Pa.*, 91 F.3d at 603.

⁴² *Id.* at 603; see also, *Concrete Works IV*, 321 F.3d at 966 (noting a less sophisticated method to calculate availability does not render a disparity study flawed).

⁴³ *North Shore Concrete and Assoc., Inc. v. City of New York*, No. 94-CV-4017, 1998 WL 273027 (E.D.N.Y. April 12, 1998).

available firms. The district court accepted the defendant's argument that in construction it is easy to obtain "qualifications" by hiring additional employees. The court noted that the plaintiff, North Shore, is a small construction firm with an owner, one employee, and a secretary, that had bid on construction projects worth more than one million dollars.⁴⁴

As noted in *Philadelphia*, "[t]he issue of qualifications can be approached at different levels of specificity[.]"⁴⁵ Researchers have attempted to define capacity using census data by profiling the age of the business, education of the business owner, business revenue, number of employees, and bonding limits. However, these conventional indices are themselves impacted by race and gender-based discrimination.⁴⁶ Furthermore, not only are the indices difficult to measure, but capacity should not be artificially capped due to discrimination.

Given the requirement to assess capacity and the challenges to measure it, Mason Tillman uses five methods to compare the capacity of M/WBEs to similarly situated non-M/WBE businesses. These measures also control for the impact of race and gender discrimination on the capacity findings. The capacity measures as applied in this study include: (1) a review of the distribution of contracts to determine the size of the contracts that the City awarded, (2) the identification of the largest prime contracts the City awarded to M/WBEs, (3) an analysis of the frequency distribution of the City contracts awarded to M/WBEs and non-M/WBE firms, and (4) a threshold set on the size of the formal prime contracts in the disparity analysis in order to remove outliers that would skew the disparity findings. A capacity survey was conducted to produce a socioeconomic profile of M/WBEs and similarly situated non-minority male-owned businesses in the pool of available businesses. This survey solicited the age of the business, education of the business owner, business revenue, number of employees, and bonding limits. However, the capacity survey did not yield a sufficient response rate to draw any statistically valid conclusions.

A. Prime Contract Size Distribution

The City's prime contracts were ordered according to the size of the award to determine the distribution of the awarded contracts. The distribution gauged the capacity required to perform the City's contracts. In Table 4.6 and Chart 4.1, the distribution of the contract awards in the four industries were grouped into nine ranges⁴⁷ and are presented under the groupings of non-minority females, non-minority males, minority females, and minority males.

The distribution revealed that 70.94% of all the prime contracts the City awarded were less than \$100,000. Additionally, 85.16% were less than \$250,000; 91.65% were less than \$500,000; 95.54% were less than \$1,000,000; and 99.16% were less than \$3,000,000. Only 0.84% of the awarded prime contracts were valued at \$3,000,000 and greater.

⁴⁴ *North Shore Concrete and Assoc., Inc. v. City of New York*, No. 94-CV-4017, 1998 WL 273027 at *25 (E.D.N.Y. April 12, 1998).

⁴⁵ *Contractors Ass'n of E. Pa.*, 91 F.3d at 610.

⁴⁶ Blanchflower, D.G., Levine, P.B., and Zimmerman, D.J. (2003). "Discrimination in the Small-Business Credit Market." In: *The Review of Economics and Statistics*, 85(4). Cambridge, MA: MIT Press. Mason Tillman Associates also conducted a business capacity survey that is a statistical analysis of the socioeconomic profile of MWBE businesses in the market area. The capacity survey did not elicit a sufficient response rate to draw any statistically valid conclusions.

⁴⁷ The nine-dollar ranges are \$0 - \$4,999, \$5,000 - \$24,999, \$25,000 - \$49,999, \$50,000 - \$99,999, \$100,000 - \$249,999, \$250,000 - \$499,999, \$500,000 - \$999,999, \$1,000,000 - \$2,999,999, and \$3,000,000 and greater.

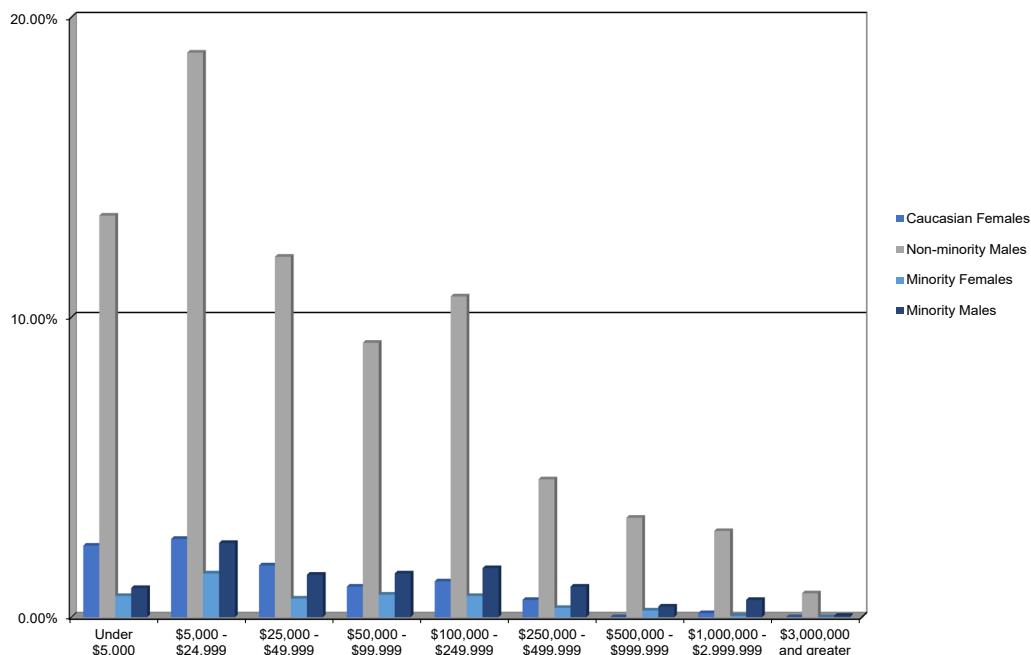


Table 4.6: All Industry Contracts by Size
July 1, 2016 to June 30, 2021

Size	Non-minority				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
Under \$5,000	54	2.39%	303	13.38%	16	0.71%	22	0.97%	395	17.45%
\$5,000 - \$24,999	59	2.61%	426	18.82%	33	1.46%	56	2.47%	574	25.35%
\$25,000 - \$49,999	39	1.72%	272	12.01%	14	0.62%	32	1.41%	357	15.77%
\$50,000 - \$99,999	23	1.02%	207	9.14%	17	0.75%	33	1.46%	280	12.37%
\$100,000 - \$249,999	27	1.19%	242	10.69%	16	0.71%	37	1.63%	322	14.22%
\$250,000 - \$499,999	13	0.57%	104	4.59%	7	0.31%	23	1.02%	147	6.49%
\$500,000 - \$999,999	0	0.00%	75	3.31%	5	0.22%	8	0.35%	88	3.89%
\$1,000,000 - \$2,999,999	3	0.13%	65	2.87%	1	0.04%	13	0.57%	82	3.62%
\$3,000,000 and greater	0	0.00%	18	0.80%	0	0.00%	1	0.04%	19	0.84%
Total	218	9.63%	1,712	75.62%	109	4.81%	225	9.94%	2,264	100.00%

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

Chart 4.1: All Industry Contracts by Size
July 1, 2016 to June 30, 2021



The size of the City's prime contracts is a determinant of the capacity that a willing business needs to be competitive as a prime contractor. The finding that 70.94% of the City's contracts are less than \$100,000 illustrates that the capacity needed to perform a significant number of the City's prime contracts is not considerable.

B. Largest M/WBE Prime Contracts Awarded by Industry

Table 4.7 shows that M/WBEs demonstrated capacity to perform contracts as large as \$3,701,555 in construction, \$2,540,000 in architectural and engineering, \$2,486,666 in professional services, and \$1,674,357 in goods and services. The size of the largest prime contract that the City awarded to M/WBEs illustrates there are M/WBEs with the capacity to perform substantial prime contracts.



Table 4.7: Largest Prime Contracts Awarded by City of Oakland to M/WBEs

Ethnic/Gender Group	Construction	Architectural and Engineering	Professional Services	Goods and Services
African American Female	\$338,000	\$948,191	----	\$180,000
African American Male	\$121,183	\$316,140	\$31,000	\$449,715
Asian American Female	\$973,197	\$53,832	\$371,474	\$796,124
Asian American Male	\$1,495,038	\$2,540,000	\$1,800,000	\$790,305
Hispanic American Female	----	\$435,169	\$15,000	\$1,674,357
Hispanic American Male	\$3,701,555	\$32,200	\$250,000	\$495,489
Native American Female	----	----	----	\$14,994
Native American Male	----	----	----	----
Caucasian Female	\$83,028	\$456,746	\$2,486,666	\$1,263,955
Largest Dollar Amounts MBEs	\$3,701,555	\$2,540,000	\$1,800,000	\$1,674,357
Largest Dollar Amounts WBEs	\$973,197	\$948,191	\$2,486,666	\$1,674,357

(----) Denotes a group that was not awarded any contracts within the respective industry.

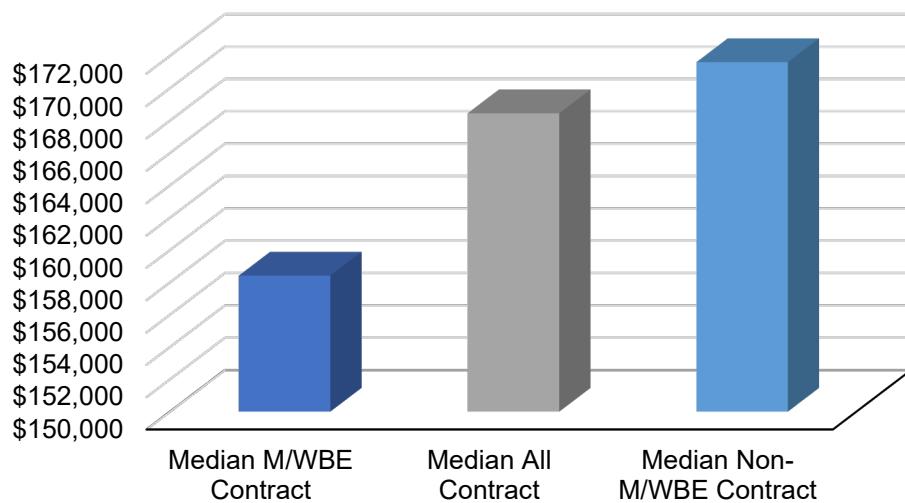
C. Frequency Distribution

The City's formal contracts range from \$50,044 to \$25,220,897. A frequency distribution was calculated for the City's prime contracts to illustrate the median, where the size of a contract marks the midpoint between the smallest and largest contracts. The same distribution was calculated separately for M/WBEs and non-M/WBEs. Within each frequency distribution, the median, or center point, of the dataset was determined. As shown in Chart 4.2, the median of the City's prime contracts for all industries was \$168,445. This median marks the value at which 50% of contracts were above and 50% were below \$168,445. The median prime contract awarded to M/WBEs was \$158,412 while the median awarded to non-M/WBEs was \$171,604. Mood's Median Test⁴⁸ was conducted to determine that these differences are not statistically significant.



⁴⁸ Mood's Median Test is a nonparametric test that tests the null hypothesis that the medians of the populations from which two or more samples are drawn are identical.

Chart 4.2: Median Contract Value



These statistics show only a \$13,192 difference between the median of contracts performed by non-M/WBEs and by M/WBEs. These data illustrate that M/WBEs have comparable capacity to perform a significant number of the prime contracts awarded by the City.

D. Formal Contract Threshold Analysis

An additional capacity measure was applied to ensure that available businesses have the ability to perform the contracts analyzed in the disparity analysis. The prime contracts subject to the statistical analysis of disparity were defined by removing the outliers. As discussed in *Chapter 1: Prime Contractor Utilization Analysis*, the prime contract disparity analysis included all prime contracts except the outliers. The decision to eliminate outliers was made in order to reduce the business capacity requirements and to increase the reliability of the statistical findings.

E. Business Capacity Assessment

A capacity survey was administered to compile relevant measures to profile the available businesses and to determine the percentage of the M/WBEs that are similarly situated to non-M/WBEs. The survey included questions on the business owner's ethnicity, gender, education, and years in business. A profile of the company was solicited with questions on gross revenue, bonding limits, number of employees, and maximum number of contracts performed at one time.

The survey was sent to the 2,837 market area prime contractors and subcontractors in the availability database. Only 39 businesses responded, which represented less than two percent of the surveyed population. The response was less than the number needed for a meaningful analysis.

In addition to the demonstration that M/WBEs have the capacity to perform very large contracts, there are other methods commonly used by prime contractors to increase capacity in



the presence of contracting opportunities. These methods include subcontracting, joint ventures, and staff augmentation. The capacity of M/WBEs to perform the City prime contracts analyzed in the disparity chapter is clearly documented in this chapter.

IV. Prime Contractor Availability Analysis

The prime contractor availability analysis is based on the 2,837 willing market area businesses enumerated from the availability sources described above. The availability of willing market area businesses is presented by ethnicity, gender, and industry in the sections below.

A. Construction Prime Contractor Availability

The distribution of available construction prime contractors is summarized in Table 4.8 below.

African Americans account for 19.11% of the construction prime contractors in the City's market area.

Asian Americans account for 7.32% of the construction prime contractors in the City's market area.

Hispanic Americans account for 8.93% of the construction prime contractors in the City's market area.

Native Americans account for 0.18% of the construction prime contractors in the City's market area.

Caucasian Females account for 5.71% of the construction prime contractors in the City's market area.

Minority Females account for 5.18% of the construction prime contractors in the City's market area.

Non-minority Males account for 58.75% of the construction prime contractors in the City's market area.

Minority Business Enterprises account for 35.54% of the construction prime contractors in the City's market area.

Woman Business Enterprises account for 10.89% of the construction prime contractors in the City's market area.



Table 4.8: Available Construction Prime Contractors
July 1, 2016 to June 30, 2021

Ethnicity	Percent of Businesses
African Americans	19.11%
Asian Americans	7.32%
Hispanic Americans	8.93%
Native Americans	0.18%
Caucasian Females	5.71%
Non-minority Males	58.75%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	3.21%
African American Males	15.89%
Asian American Females	1.07%
Asian American Males	6.25%
Hispanic American Females	0.71%
Hispanic American Males	8.21%
Native American Females	0.18%
Native American Males	0.00%
Caucasian Females	5.71%
Non-minority Males	58.75%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	5.18%
Minority Males	30.36%
Minority and Females	Percent of Businesses
Minority Business Enterprises	35.54%
Woman Business Enterprises	10.89%



B. Architectural and Engineering Prime Contractor Availability

The distribution of available architectural and engineering prime contractors is summarized in Table 4.9 below.

African Americans account for 8.96% of the architectural and engineering prime contractors in the City's market area.

Asian Americans account for 14.94% of the architectural and engineering prime contractors in the City's market area.

Hispanic Americans account for 5.18% of the architectural and engineering prime contractors in the City's market area.

Native Americans account for none of the architectural and engineering prime contractors in the City's market area.

Caucasian Females account for 12.75% of the architectural and engineering prime contractors in the City's market area.

Minority Females account for 7.57% of the architectural and engineering prime contractors in the City's market area.

Non-minority Males account for 58.17% of the architectural and engineering prime contractors in the City's market area.

Minority Business Enterprises account for 29.08% of the architectural and engineering prime contractors in the City's market area.

Woman Business Enterprises account for 20.32% of the architectural and engineering prime contractors in the City's market area.



Table 4.9: Available Architectural and Engineering Prime Contractors
July 1, 2016 to June 30, 2021

Ethnicity	Percent of Businesses
African Americans	8.96%
Asian Americans	14.94%
Hispanic Americans	5.18%
Native Americans	0.00%
Caucasian Females	12.75%
Non-minority Males	58.17%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	1.79%
African American Males	7.17%
Asian American Females	3.78%
Asian American Males	11.16%
Hispanic American Females	1.99%
Hispanic American Males	3.19%
Native American Females	0.00%
Native American Males	0.00%
Caucasian Females	12.75%
Non-minority Males	58.17%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	7.57%
Minority Males	21.51%
Minority and Females	Percent of Businesses
Minority Business Enterprises	29.08%
Woman Business Enterprises	20.32%



C. Professional Services Prime Contractor Availability

The distribution of available professional services prime contractors is summarized in Table 4.10 below.

African Americans account for 12.59% of the professional services prime contractors in the City's market area.

Asian Americans account for 8.46% of the professional services prime contractors in the City's market area.

Hispanic Americans account for 3.92% of the professional services prime contractors in the City's market area.

Native Americans account for 0.21% of the professional services prime contractors in the City's market area.

Caucasian Females account for 11.21% of the professional services prime contractors in the City's market area.

Minority Females account for 10.59% of the professional services prime contractors in the City's market area.

Non-minority Males account for 63.62% of the professional services prime contractors in the City's market area.

Minority Business Enterprises account for 25.17% of the professional services prime contractors in the City's market area.

Woman Business Enterprises account for 21.80% of the professional services prime contractors in the City's market area.



Table 4.10: Available Professional Services Prime Contractors
July 1, 2016 to June 30, 2021

Ethnicity	Percent of Businesses
African Americans	12.59%
Asian Americans	8.46%
Hispanic Americans	3.92%
Native Americans	0.21%
Caucasian Females	11.21%
Non-minority Males	63.62%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	5.36%
African American Males	7.22%
Asian American Females	3.16%
Asian American Males	5.30%
Hispanic American Females	1.93%
Hispanic American Males	1.99%
Native American Females	0.14%
Native American Males	0.07%
Caucasian Females	11.21%
Non-minority Males	63.62%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	10.59%
Minority Males	14.58%
Minority and Females	Percent of Businesses
Minority Business Enterprises	25.17%
Woman Business Enterprises	21.80%



D. Goods and Services Prime Contractor Availability

The distribution of available goods and services prime contractors is summarized in Table 4.11 below.

African Americans account for 13.31% of the goods and services prime contractors in the City's market area.

Asian Americans account for 6.91% of the goods and services prime contractors in the City's market area.

Hispanic Americans account for 4.74% of the goods and services prime contractors in the City's market area.

Native Americans account for 0.42% of the goods and services prime contractors in the City's market area.

Caucasian Females account for 6.66% of the goods and services prime contractors in the City's market area.

Minority Females account for 8.57% of the goods and services prime contractors in the City's market area.

Non-minority Males account for 67.97% of the goods and services prime contractors in the City's market area.

Minority Business Enterprises account for 25.37% of the goods and services prime contractors in the City's market area.

Woman Business Enterprises account for 15.22% of the goods and services prime contractors in the City's market area.



Table 4.11: Available Goods and Services Prime Contractors
July 1, 2016 to June 30, 2021

Ethnicity	Percent of Businesses
African Americans	13.31%
Asian Americans	6.91%
Hispanic Americans	4.74%
Native Americans	0.42%
Caucasian Females	6.66%
Non-minority Males	67.97%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	4.83%
African American Males	8.49%
Asian American Females	2.00%
Asian American Males	4.91%
Hispanic American Females	1.50%
Hispanic American Males	3.24%
Native American Females	0.25%
Native American Males	0.17%
Caucasian Females	6.66%
Non-minority Males	67.97%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	8.57%
Minority Males	16.81%
Minority and Females	Percent of Businesses
Minority Business Enterprises	25.37%
Woman Business Enterprises	15.22%



V. Subcontractor Availability Analysis

A. Source of Willing and Able Subcontractors

The calculation of subcontractor availability included the unique subcontractors identified in the subcontractor utilization analysis and the prime contractors that offer the type of services provided by the utilized subcontractors. The sources are presented in Table 4.12.

Subcontractor analysis was not performed for goods and services contracts. Thus, there was no availability calculated for the industry.

Table 4.12: Subcontractor Availability Data Sources

Record Type	Information Type
Utilized subcontractors	M/WBEs and non-M/WBEs
Prime contractors providing the same type of services as utilized subcontractors	M/WBEs and non-M/WBEs

B. Determination of Willingness and Capacity

Subcontractor availability was limited to the utilized prime contractors and the unique businesses utilized as subcontractors. Thus, there was no need for further assessment of willingness or capacity. It is noteworthy that *Croson* does not require a measure of capacity in the analysis of subcontractor availability.



C. Construction Subcontractor Availability

The distribution of available construction subcontractors is summarized in Table 4.13 below.

African Americans account for 14.86% of the construction subcontractors in the City's market area.

Asian Americans account for 8.98% of the construction subcontractors in the City's market area.

Hispanic Americans account for 5.72% of the construction subcontractors in the City's market area.

Native Americans account for 0.32% of the construction subcontractors in the City's market area.

Caucasian Females account for 10.42% of the construction subcontractors in the City's market area.

Minority Females account for 9.41% of the construction subcontractors in the City's market area.

Non-minority Males account for 59.70% of the construction subcontractors in the City's market area.

Minority Business Enterprises account for 29.88% of the construction subcontractors in the City's market area.

Woman Business Enterprises account for 19.83% of the construction subcontractors in the City's market area.



Table 4.13: Available Construction Subcontractors
July 1, 2016 to June 30, 2021

Ethnicity	Percent of Businesses
African Americans	14.86%
Asian Americans	8.98%
Hispanic Americans	5.72%
Native Americans	0.32%
Caucasian Females	10.42%
Non-minority Males	59.70%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	4.86%
African American Males	9.99%
Asian American Females	2.89%
Asian American Males	6.09%
Hispanic American Females	1.50%
Hispanic American Males	4.22%
Native American Females	0.16%
Native American Males	0.16%
Caucasian Females	10.42%
Non-minority Males	59.70%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	9.41%
Minority Males	20.47%
Minority and Females	Percent of Businesses
Minority Business Enterprises	29.88%
Woman Business Enterprises	19.83%



D. Architectural and Engineering Subcontractor Availability

The distribution of available architectural and engineering subcontractors is summarized in Table 4.14 below.

African Americans account for 13.67% of the architectural and engineering subcontractors in the City's market area.

Asian Americans account for 9.15% of the architectural and engineering subcontractors in the City's market area.

Hispanic Americans account for 5.42% of the architectural and engineering subcontractors in the City's market area.

Native Americans account for 0.18% of the architectural and engineering subcontractors in the City's market area.

Caucasian Females account for 11.50% of the architectural and engineering subcontractors in the City's market area.

Minority Females account for 9.75% of the architectural and engineering subcontractors in the City's market area.

Non-minority Males account for 60.08% of the architectural and engineering subcontractors in the City's market area.

Minority Business Enterprises account for 28.42% of the architectural and engineering subcontractors in the City's market area.

Woman Business Enterprises account for 21.25% of the architectural and engineering subcontractors in the City's market area.



Table 4.14: Available Architectural and Engineering Subcontractors
July 1, 2016 to June 30, 2021

Ethnicity	Percent of Businesses
African Americans	13.67%
Asian Americans	9.15%
Hispanic Americans	5.42%
Native Americans	0.18%
Caucasian Females	11.50%
Non-minority Males	60.08%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	4.82%
African American Males	8.85%
Asian American Females	3.19%
Asian American Males	5.96%
Hispanic American Females	1.63%
Hispanic American Males	3.79%
Native American Females	0.12%
Native American Males	0.06%
Caucasian Females	11.50%
Non-minority Males	60.08%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	9.75%
Minority Males	18.66%
Minority and Females	Percent of Businesses
Minority Business Enterprises	28.42%
Woman Business Enterprises	21.25%



E. Professional Services Subcontractor Availability

The distribution of available professional services subcontractors is summarized in Table 4.15 below.

African Americans account for 14.72% of the professional services subcontractors in the City's market area.

Asian Americans account for 9.84% of the professional services subcontractors in the City's market area.

Hispanic Americans account for 5.56% of the professional services subcontractors in the City's market area.

Native Americans account for 0.34% of the professional services subcontractors in the City's market area.

Caucasian Females account for 12.28% of the professional services subcontractors in the City's market area.

Minority Females account for 11.13% of the professional services subcontractors in the City's market area.

Non-minority Males account for 57.26% of the professional services subcontractors in the City's market area.

Minority Business Enterprises account for 30.46% of the professional services subcontractors in the City's market area.

Woman Business Enterprises account for 23.41% of the professional services subcontractors in the City's market area.



Table 4.15: Available Professional Services Subcontractors
July 1, 2016 to June 30, 2021

Ethnicity	Percent of Businesses
African Americans	14.72%
Asian Americans	9.84%
Hispanic Americans	5.56%
Native Americans	0.34%
Caucasian Females	12.28%
Non-minority Males	57.26%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	5.43%
African American Males	9.29%
Asian American Females	3.53%
Asian American Males	6.31%
Hispanic American Females	1.90%
Hispanic American Males	3.66%
Native American Females	0.27%
Native American Males	0.07%
Caucasian Females	12.28%
Non-minority Males	57.26%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	11.13%
Minority Males	19.34%
Minority and Females	Percent of Businesses
Minority Business Enterprises	30.46%
Woman Business Enterprises	23.41%



VI. Summary

This chapter presents the enumeration of willing and able market area businesses by ethnicity, gender, and industry. In compliance with the *Croson* standard, the capacity of the enumerated businesses was assessed. Four methods were successfully employed: (1) a review of the City's contract size distribution to identify the capacity needed to perform most of the City contracts, (2) a determination of the largest contracts the City awarded to M/WBEs, (3) a frequency distribution to define the median size of contracts awarded to both M/WBEs and non-M/WBEs, and (4) a formal prime contract threshold set for each industry by the removal of outliers that would skew the disparity findings.

The findings from these analyses illustrate that M/WBEs and non-M/WBEs have comparable capacity. The City awarded large prime contracts to non-M/WBEs and M/WBEs. Furthermore, the statistics show the difference between the median value of the contracts awarded to M/WBEs and non-M/WBEs was less than \$15,000.

While these data illustrate that M/WBEs and non-M/WBEs have comparable capacity to perform a considerable number of the prime contracts awarded by the City, business capacity is elastic. The elasticity of prime contractors is an important principle when assessing capacity because, as *North Shore*⁴⁹ found, businesses have various methods to increase capacity in the presence of contracting opportunities, including subcontracting, joint ventures, and staff augmentation.



⁴⁹ *North Shore Concrete and Assoc., Inc. v. City of New York*, No. 94-CV-4017, 1998 WL 273027 (E.D.N.Y. April 12, 1998).

CHAPTER 5: Prime Contract Disparity Analysis

I. Introduction

The objective of this chapter is to determine if minority and woman-owned business enterprises (M/WBEs) available to perform the City of Oakland's prime contracts were underutilized during the July 1, 2016 to June 30, 2021 study period. The four industries in this analysis are construction, architectural and engineering, professional services, and goods and services. The City requested an industry analysis by the six-digit North American Industry Classification System (NAICS) codes.⁵⁰ However, the City's prime contract data did not uniformly classify the utilized businesses by six-digit NAICS codes. Consequently, the industries for the prime disparity analysis were determined at the two-digit level.⁵¹

Under a fair and equitable system of awarding prime contracts, the proportion of prime contract dollars awarded to M/WBEs should be relatively close to the corresponding proportion of available M/WBEs⁵² in the relevant market area. If the ratio of utilized M/WBE prime contractors compared to available M/WBE prime contractors is less than one, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio. The analysis assumes a fair and equitable system.⁵³ *City of Richmond v. J.A. Croson Co. (Croson)*⁵⁴ states that an inference of discrimination can be made if the disparity is statistically significant. Woman-owned businesses were not the subject of legal review in *Croson*. Therefore, the legal standard of review for woman-owned businesses is the intermediate scrutiny, which for a gender-based remedy only requires a finding of underutilization. Non-minority males, on the other hand, are not subject to a disparity analysis.

The first step in conducting the statistical test is to calculate the contract amount each ethnic and gender group is expected to receive based on their relative availability in the market

⁵⁰ The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was adopted in 1997 by the Office of Management and Budget to replace the Standard Industrial Classification System.

⁵¹ The data limitations that precluded the classification of the prime contract records by six-digit NAICS codes are described in *Chapter 3: Prime Contractor Utilization Analysis*.

⁵² Availability is defined as the number of ready, willing, and able firms. The methodology for determining willing and able firms is detailed in *Chapter 5: Prime Contractor and Subcontractor Availability Analysis*.

⁵³ 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 the statistical standard used in physical and social sciences, and is thus used in the present report to determine if an inference of discrimination can be made.

⁵⁴ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).



area. This statistic is referred to as the **expected contract amount**. The next step is to compute the difference between each ethnic and gender group's expected contract amount and the **actual contract amount** each group received. The **disparity ratio** is then computed by dividing the actual contract amount by the expected contract amount. The statistical significance of the disparity ratio is measured by the p-value.

In practice, a disparity ratio of less than 0.80 indicates a relevant degree of disparity. To test the significance of a disparity ratio, a P-value must be calculated. All disparity ratios less than one are subject to a statistical test of significance. The three methods employed to calculate statistical significance are a parametric analysis, a non-parametric analysis, and a simulation analysis. A parametric analysis is most commonly used when the number of contracts is sufficiently large, and the variation of the contract dollar amounts is not too large. When the variation in contract dollar amounts is large, a disparity may not be detectable using a parametric analysis. Therefore, a non-parametric analysis would be employed to analyze the contracts ranked by dollar amount. Both parametric and non-parametric analyses are effective due to the central limit theorem, which is strongest when the number of contracts is large, and the data are not skewed. When there are too few contracts or the contract dollar data are skewed, a simulation analysis is employed. The utility of the simulation analysis is also dependent on the severity of the disparity when there are too few contracts. The simulation analysis utilizes randomization to simulate a distribution for the contracts. By conducting multiple trials in the simulation, the empirical data can be used to test the distribution of contract awards for significance. Findings from one of the three methods are reported. If the p-value from any one of the three methods is less than 0.05, the finding is reported in the disparity tables as statistically significant. If the p-value is greater than 0.05, the finding is reported as not statistically significant.

II. Disparity Analysis

A prime contract disparity analysis was performed on informal and formal construction, architectural and engineering, professional services, and goods and services contracts awarded from July 1, 2016 to June 30, 2021. The informal thresholds defined in the City's procurement policy are listed in Table 5.1.

Table 5.1: Informal Thresholds by Industry

Industry	Informal Contract Threshold
Construction	\$50,000 and under
Architectural and Engineering	\$50,000 and under
Professional Services	\$50,000 and under
Goods and Services	\$50,000 and under



The City's procurement policy has no upper limits on the formal contract levels. However, upper limits were derived from a statistical calculation to avoid including outliers in the formal contract disparity analysis. The calculation determined the contract values that were outliers and could skew the disparity analysis. The statistical analysis performed to define the outliers is discussed in *Chapter 1: Prime Contractor Utilization Analysis*. The formal contract thresholds for each industry with the outliers removed are listed in Table 5.2.

Table 5.2: Formal Contract Thresholds by Industry without Outliers

Industry	Formal Contract Threshold
Construction	Between \$50,000 and \$3,730,000
Architectural and Engineering	Between \$50,000 and \$790,000
Professional Services	Between \$50,000 and \$700,000
Goods and Services	Between \$50,000 and \$590,000

Statistical findings in each industry, for informal and formal prime contracts with outliers removed, are presented by ethnicity and gender below. The groups are defined in Table 1.2 in *Chapter 1: Prime Contractor Utilization Analysis*. The outcomes from the statistical analyses are presented in the “P-Value” column of each table. A description of these statistical outcomes, as shown in the disparity tables, is presented in Table 5.3.

Table 5.3: Statistical Outcome Descriptions

P-Value Outcome	Definition of P-Value Outcome
< 0.05 *	This underutilization is statistically significant.
not significant	M/WBEs: This underutilization is not statistically significant. Non-minority males: This overutilization is not statistically significant.
< 0.05 †	This overutilization is statistically significant.
----	While this group was underutilized, there were no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.
**	This study does not statistically test the overutilization of M/WBEs or the underutilization of non-minority males.



A. Disparity Analysis: Informal Prime Contracts by Industry

1. Construction Prime Contracts Valued at \$50,000 and under

The disparity analysis of informal construction prime contracts valued at \$50,000 and under is described below in Table 5.4 and shown in Chart 5.1.

African Americans represented 19.11% of the available construction businesses and received 2.45% of the dollars on construction prime contracts valued at \$50,000 and under. This underutilization is statistically significant.

Asian Americans represented 7.32% of the available construction businesses and received 10.88% of the dollars on construction prime contracts valued at \$50,000 and under. This study does not statistically test the overutilization of M/WBEs.

Hispanic Americans represented 8.93% of the available construction businesses and received 10.65% of the dollars on construction prime contracts valued at \$50,000 and under. This study does not statistically test the overutilization of M/WBEs.

Native Americans represented 0.18% of the available construction businesses and received no construction prime contracts valued at \$50,000 and under. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Caucasian Females represented 5.71% of the available construction businesses and received 1.90% of the dollars on construction prime contracts valued at \$50,000 and under. This underutilization is not statistically significant.

Minority Females represented 5.18% of the available construction businesses and received no construction prime contracts valued at \$50,000 and under. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Non-minority Males represented 58.75% of the available construction businesses and received 74.13% of the dollars on construction prime contracts valued at \$50,000 and under. This overutilization is statistically significant.

Minority Business Enterprises represented 35.54% of the available construction businesses and received 23.97% of the dollars on construction prime contracts valued at \$50,000 and under. This underutilization is not statistically significant.

Woman Business Enterprises represented 10.89% of the available construction businesses and received 1.90% of the dollars on construction prime contracts valued at \$50,000 and under. This underutilization is statistically significant.



**Table 5.4: Disparity Analysis: Construction Prime Contracts Valued at \$50,000 and under
July 1, 2016 to June 30, 2021**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$23,326	2.45%	19.11%	\$182,208	-\$158,882	0.13	< .05 *
Asian Americans	\$103,731	10.88%	7.32%	\$69,818	\$33,913	1.49	**
Hispanic Americans	\$101,515	10.65%	8.93%	\$85,144	\$16,371	1.19	**
Native Americans	\$0	0.00%	0.18%	\$1,703	-\$1,703	0.00	----
Caucasian Females	\$18,094	1.90%	5.71%	\$54,492	-\$36,398	0.33	not significant
Non-minority Males	\$706,946	74.13%	58.75%	\$560,247	\$146,699	1.26	< .05 †
TOTAL	\$953,612	100.00%	100.00%	\$953,612			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	3.21%	\$30,652	-\$30,652	0.00	----
African American Males	\$23,326	2.45%	15.89%	\$151,556	-\$128,230	0.15	< .05 *
Asian American Females	\$0	0.00%	1.07%	\$10,217	-\$10,217	0.00	----
Asian American Males	\$103,731	10.88%	6.25%	\$59,601	\$44,130	1.74	**
Hispanic American Females	\$0	0.00%	0.71%	\$6,812	-\$6,812	0.00	----
Hispanic American Males	\$101,515	10.65%	8.21%	\$78,332	\$23,183	1.30	**
Native American Females	\$0	0.00%	0.18%	\$1,703	-\$1,703	0.00	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$18,094	1.90%	5.71%	\$54,492	-\$36,398	0.33	not significant
Non-minority Males	\$706,946	74.13%	58.75%	\$560,247	\$146,699	1.26	< .05 †
TOTAL	\$953,612	100.00%	100.00%	\$953,612			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$0	0.00%	5.18%	\$49,383	-\$49,383	0.00	----
Minority Males	\$228,572	23.97%	30.36%	\$289,489	-\$60,917	0.79	not significant
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$228,572	23.97%	35.54%	\$338,873	-\$110,301	0.67	not significant
Woman Business Enterprises	\$18,094	1.90%	10.89%	\$103,876	-\$85,782	0.17	< .05 *

(*) denotes a statistically significant underutilization.

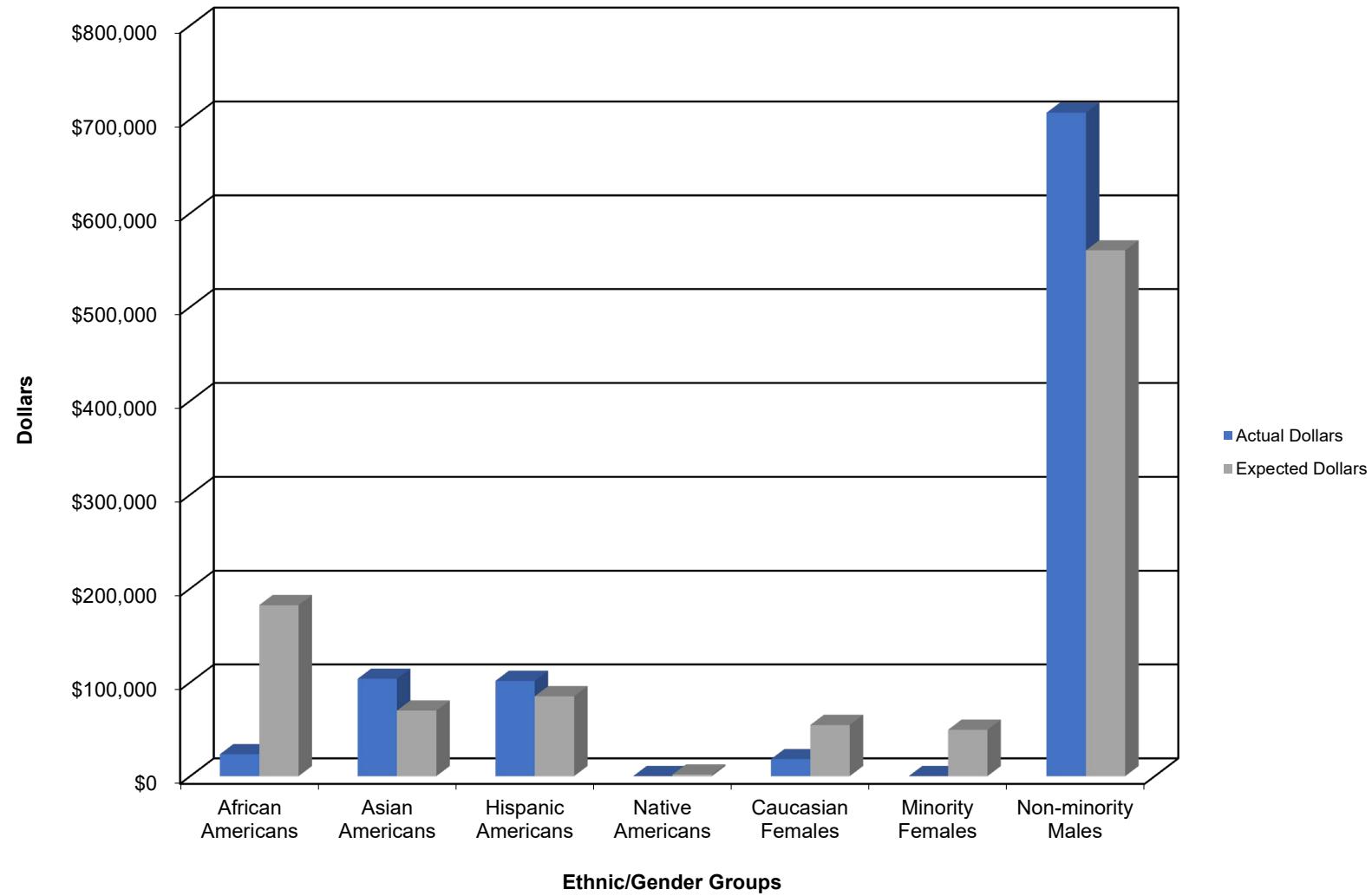
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 5.1: Disparity Analysis: Construction Prime Contracts Valued at \$50,000 and under
July 1, 2016 to June 30, 2021**



2. Architectural and Engineering Prime Contracts Valued at \$50,000 and under

The disparity analysis of informal architectural and engineering prime contracts valued at \$50,000 and under is described below in Table 5.5 and shown in Chart 5.2.

African Americans represented 8.96% of the available architectural and engineering businesses and received 2.96% of the dollars on architectural and engineering prime contracts valued at \$50,000 and under. This underutilization is not statistically significant.

Asian Americans represented 14.94% of the available architectural and engineering businesses and received 18.03% of the dollars on architectural and engineering prime contracts valued at \$50,000 and under. This study does not statistically test the overutilization of M/WBEs.

Hispanic Americans represented 5.18% of the available architectural and engineering businesses and received 11.23% of the dollars on architectural and engineering prime contracts valued at \$50,000 and under. This study does not statistically test the overutilization of M/WBEs.

Native Americans represented none of the available architectural and engineering businesses and received no architectural and engineering prime contracts valued at \$50,000 and under. The statistical significance of utilization could not be tested because there were no available businesses and no contracts awarded.

Caucasian Females represented 12.75% of the available architectural and engineering businesses and received 16.71% of the dollars on architectural and engineering prime contracts valued at \$50,000 and under. This study does not statistically test the overutilization of M/WBEs.

Minority Females represented 7.57% of the available architectural and engineering businesses and received 1.73% of the dollars on architectural and engineering prime contracts valued at \$50,000 and under. This underutilization is not statistically significant.

Non-minority Males represented 58.17% of the available architectural and engineering businesses and received 51.07% of the dollars on architectural and engineering prime contracts valued at \$50,000 and under. This study does not statistically test the underutilization of non-minority males.

Minority Business Enterprises represented 29.08% of the available architectural and engineering businesses and received 32.22% of the dollars on architectural and engineering prime contracts valued at \$50,000 and under. This study does not statistically test the overutilization of M/WBEs.

Woman Business Enterprises represented 20.32% of the available architectural and engineering businesses and received 18.44% of the dollars on architectural and engineering prime contracts valued at \$50,000 and under. This underutilization is not statistically significant.



**Table 5.5: Disparity Analysis: Architectural and Engineering Prime Contracts Valued at \$50,000 and under
July 1, 2016 to June 30, 2021**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$31,000	2.96%	8.96%	\$93,854	-\$62,854	0.33	not significant
Asian Americans	\$188,793	18.03%	14.94%	\$156,424	\$32,369	1.21	**
Hispanic Americans	\$117,577	11.23%	5.18%	\$54,227	\$63,350	2.17	**
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$174,924	16.71%	12.75%	\$133,482	\$41,443	1.31	**
Non-minority Males	\$534,701	51.07%	58.17%	\$609,009	-\$74,308	0.88	**
TOTAL	\$1,046,996	100.00%	100.00%	\$1,046,996			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	1.79%	\$18,771	-\$18,771	0.00	----
African American Males	\$31,000	2.96%	7.17%	\$75,083	-\$44,083	0.41	not significant
Asian American Females	\$3,119	0.30%	3.78%	\$39,627	-\$36,508	0.08	not significant
Asian American Males	\$185,674	17.73%	11.16%	\$116,796	\$68,878	1.59	**
Hispanic American Females	\$15,000	1.43%	1.99%	\$20,856	-\$5,856	0.72	not significant
Hispanic American Males	\$102,577	9.80%	3.19%	\$33,370	\$69,207	3.07	**
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$174,924	16.71%	12.75%	\$133,482	\$41,443	1.31	**
Non-minority Males	\$534,701	51.07%	58.17%	\$609,009	-\$74,308	0.88	**
TOTAL	\$1,046,996	100.00%	100.00%	\$1,046,996			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$18,119	1.73%	7.57%	\$79,255	-\$61,135	0.23	not significant
Minority Males	\$319,251	30.49%	21.51%	\$225,250	\$94,001	1.42	**
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$337,370	32.22%	29.08%	\$304,505	\$32,866	1.11	**
Woman Business Enterprises	\$193,043	18.44%	20.32%	\$212,736	-\$19,693	0.91	not significant

(*) denotes a statistically significant underutilization.

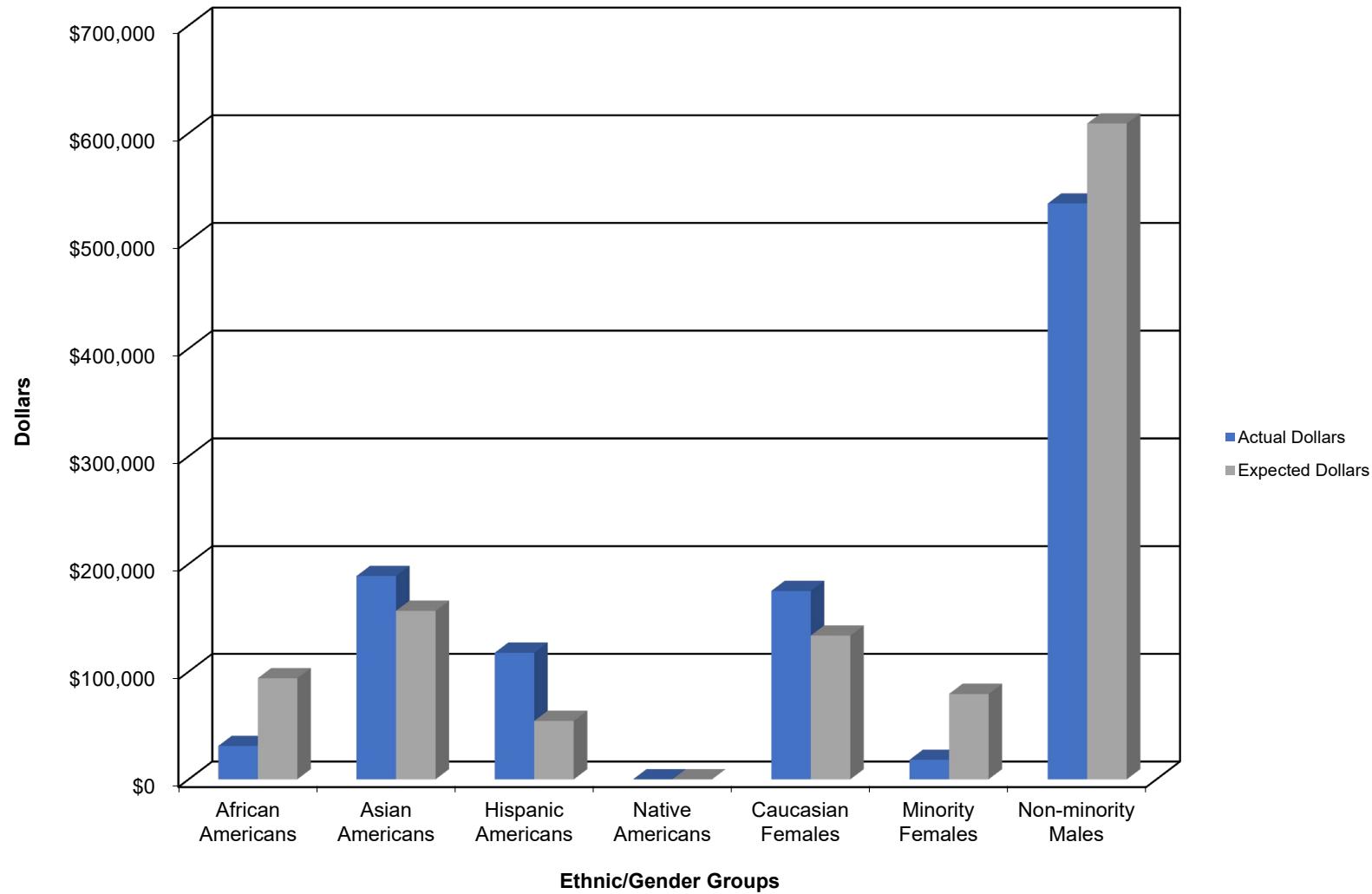
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 5.2: Disparity Analysis: Architectural and Engineering Prime Contracts Valued at \$50,000 and under
July 1, 2016 to June 30, 2021**



3. Professional Services Prime Contracts Valued at \$50,000 and under

The disparity analysis of professional services prime contracts valued at \$50,000 and under is described below and shown in Table 5.6 and Chart 5.3.

African Americans represented 12.59% of the available professional services businesses and received 8.65% of the dollars on professional services prime contracts valued at \$50,000 and under. This underutilization is not statistically significant.

Asian Americans represented 8.46% of the available professional services businesses and received 5.62% of the dollars on professional services prime contracts valued at \$50,000 and under. This underutilization is not statistically significant.

Hispanic Americans represented 3.92% of the available professional services businesses and received 3.72% of the dollars on professional services prime contracts valued at \$50,000 and under. This underutilization is not statistically significant.

Native Americans represented 0.21% of the available professional services businesses and received no professional services prime contracts valued at \$50,000 and under. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Caucasian Females represented 11.21% of the available professional services businesses and received 18.97% of the dollars on professional services prime contracts valued at \$50,000 and under. This study does not statistically test the overutilization of M/WBEs.

Minority Females represented 10.59% of the available professional services businesses and received 9.90% of the dollars on professional services prime contracts valued at \$50,000 and under. This underutilization is not statistically significant.

Non-minority Males represented 63.62% of the available professional services businesses and received 63.04% of the dollars on professional services prime contracts valued at \$50,000 and under. This study does not statistically test the underutilization of non-minority males.

Minority Business Enterprises represented 25.17% of the available professional services businesses and received 17.99% of the dollars on professional services prime contracts valued at \$50,000 and under. This underutilization is statistically significant.

Woman Business Enterprises represented 21.80% of the available professional services businesses and received 28.87% of the dollars on professional services prime contracts valued at \$50,000 and under. This study does not statistically test the overutilization of M/WBEs.



**Table 5.6: Disparity Analysis: Professional Services Prime Contracts Valued at \$50,000 and under
July 1, 2016 to June 30, 2021**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$518,722	8.65%	12.59%	\$754,357	-\$235,635	0.69	not significant
Asian Americans	\$336,642	5.62%	8.46%	\$507,027	-\$170,385	0.66	not significant
Hispanic Americans	\$222,885	3.72%	3.92%	\$234,964	-\$12,079	0.95	not significant
Native Americans	\$0	0.00%	0.21%	\$12,367	-\$12,367	0.00	----
Caucasian Females	\$1,137,044	18.97%	11.21%	\$671,914	\$465,130	1.69	**
Non-minority Males	\$3,778,345	63.04%	63.62%	\$3,813,009	-\$34,664	0.99	**
TOTAL	\$5,993,637	100.00%	100.00%	\$5,993,637			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$287,869	4.80%	5.36%	\$321,529	-\$33,661	0.90	not significant
African American Males	\$230,854	3.85%	7.22%	\$432,828	-\$201,974	0.53	< .05 *
Asian American Females	\$173,930	2.90%	3.16%	\$189,620	-\$15,690	0.92	not significant
Asian American Males	\$162,711	2.71%	5.30%	\$317,407	-\$154,696	0.51	not significant
Hispanic American Females	\$131,423	2.19%	1.93%	\$115,421	\$16,003	1.14	**
Hispanic American Males	\$91,461	1.53%	1.99%	\$119,543	-\$28,082	0.77	not significant
Native American Females	\$0	0.00%	0.14%	\$8,244	-\$8,244	0.00	----
Native American Males	\$0	0.00%	0.07%	\$4,122	-\$4,122	0.00	----
Caucasian Females	\$1,137,044	18.97%	11.21%	\$671,914	\$465,130	1.69	**
Non-minority Males	\$3,778,345	63.04%	63.62%	\$3,813,009	-\$34,664	0.99	**
TOTAL	\$5,993,637	100.00%	100.00%	\$5,993,637			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$593,222	9.90%	10.59%	\$634,814	-\$41,592	0.93	not significant
Minority Males	\$485,026	8.09%	14.58%	\$873,900	-\$388,874	0.56	< .05 *
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$1,078,249	17.99%	25.17%	\$1,508,715	-\$430,466	0.71	< .05 *
Woman Business Enterprises	\$1,730,266	28.87%	21.80%	\$1,306,728	\$423,538	1.32	**

(*) denotes a statistically significant underutilization.

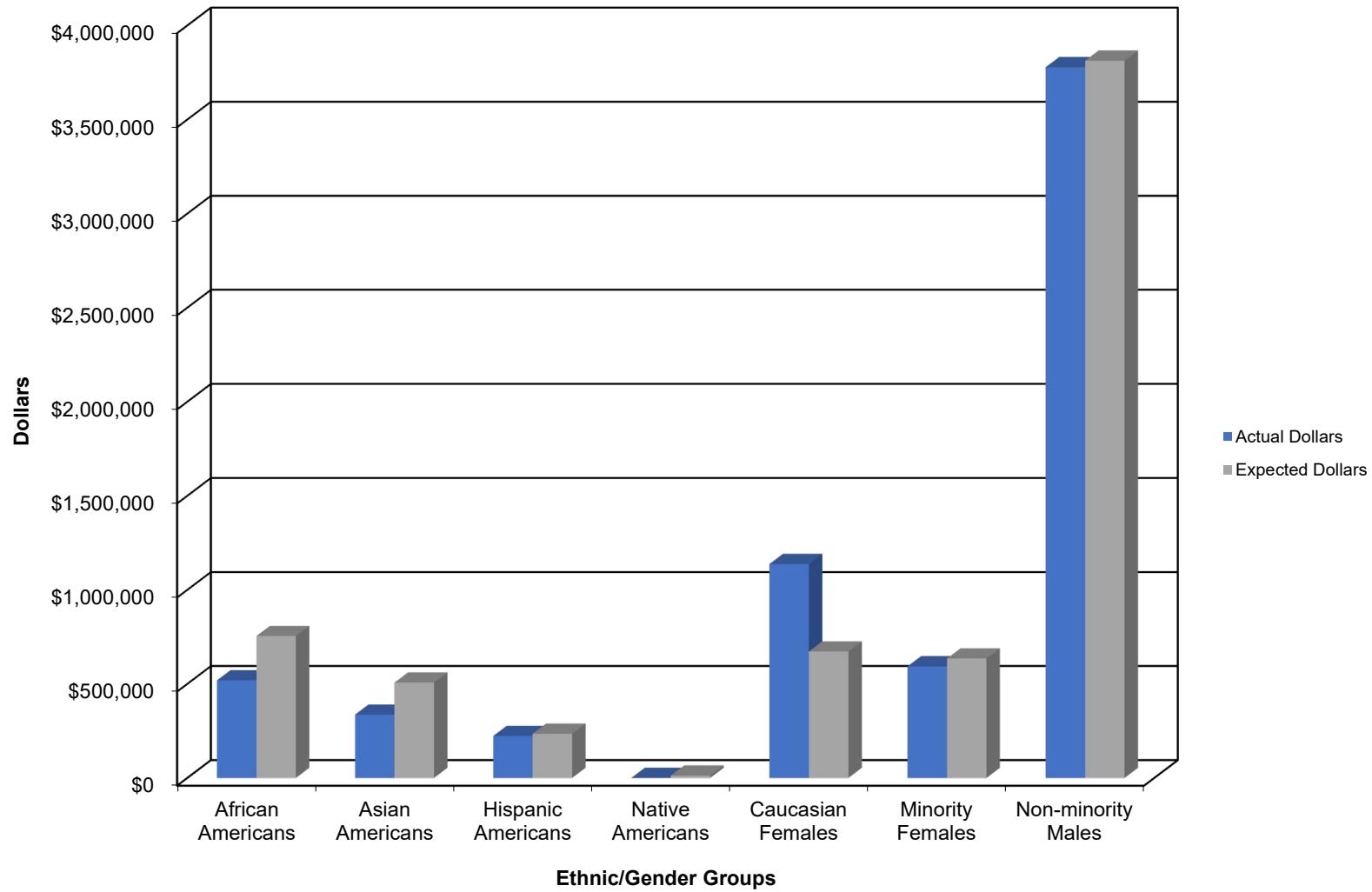
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 5.3: Disparity Analysis: Professional Services Prime Contracts Valued at \$50,000 and under
July 1, 2016 to June 30, 2021**



4. Goods and Services Prime Contracts Valued at \$50,000 and under

The disparity analysis of goods and services prime contracts valued at \$50,000 and under is described below and shown in Table 5.7 and Chart 5.4.

African Americans represented 13.31% of the available goods and services businesses and received 1.35% of the dollars on goods and services prime contracts valued at \$50,000 and under. This underutilization is statistically significant.

Asian Americans represented 6.91% of the available goods and services businesses and received 5.23% of the dollars on goods and services prime contracts valued at \$50,000 and under. This underutilization is statistically significant.

Hispanic Americans represented 4.74% of the available goods and services businesses and received 3.11% of the dollars on goods and services prime contracts valued at \$50,000 and under. This underutilization is statistically significant.

Native Americans represented 0.42% of the available goods and services businesses and received 0.33% of the dollars on goods and services prime contracts valued at \$50,000 and under. This underutilization could not be tested because there were too few businesses and too few contracts awarded.

Caucasian Females represented 6.66% of the available goods and services businesses and received 7.62% of the dollars on goods and services prime contracts valued at \$50,000 and under. This study does not statistically test the overutilization of M/WBEs.

Minority Females represented 8.57% of the available goods and services businesses and received 2.61% of the dollars on goods and services prime contracts valued at \$50,000 and under. This underutilization is statistically significant.

Non-minority Males represented 67.97% of the available goods and services businesses and received 82.36% of the dollars on goods and services prime contracts valued at \$50,000 and under. This overutilization is statistically significant.

Minority Business Enterprises represented 25.37% of the available goods and services businesses and received 10.02% of the dollars on goods and services prime contracts valued at \$50,000 and under. This underutilization is statistically significant.

Woman Business Enterprises represented 15.22% of the available goods and services businesses and received 10.23% of the dollars on goods and services prime contracts valued at \$50,000 and under. This underutilization is statistically significant.



**Table 5.7: Disparity Analysis: Goods and Services Prime Contracts Valued at \$50,000 and under
July 1, 2016 to June 30, 2021**

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$191,836	1.35%	13.31%	\$1,887,461	-\$1,695,625	0.10	< .05 *
Asian Americans	\$740,919	5.23%	6.91%	\$979,120	-\$238,201	0.76	< .05 *
Hispanic Americans	\$440,741	3.11%	4.74%	\$672,408	-\$231,667	0.66	< .05 *
Native Americans	\$47,232	0.33%	0.42%	\$58,983	-\$11,751	0.80	----
Caucasian Females	\$1,080,954	7.62%	6.66%	\$943,730	\$137,224	1.15	**
Non-minority Males	\$11,677,866	82.36%	67.97%	\$9,637,845	\$2,040,021	1.21	< .05 †
TOTAL	\$14,179,547	100.00%	100.00%	\$14,179,547			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$69,637	0.49%	4.83%	\$684,204	-\$614,568	0.10	< .05 *
African American Males	\$122,199	0.86%	8.49%	\$1,203,256	-\$1,081,057	0.10	< .05 *
Asian American Females	\$97,072	0.68%	2.00%	\$283,119	-\$186,048	0.34	< .05 *
Asian American Males	\$643,847	4.54%	4.91%	\$696,001	-\$52,154	0.93	not significant
Hispanic American Females	\$156,176	1.10%	1.50%	\$212,339	-\$56,164	0.74	not significant
Hispanic American Males	\$284,565	2.01%	3.24%	\$460,068	-\$175,504	0.62	< .05 *
Native American Females	\$47,232	0.33%	0.25%	\$35,390	\$11,842	1.33	**
Native American Males	\$0	0.00%	0.17%	\$23,593	-\$23,593	0.00	----
Caucasian Females	\$1,080,954	7.62%	6.66%	\$943,730	\$137,224	1.15	**
Non-minority Males	\$11,677,866	82.36%	67.97%	\$9,637,845	\$2,040,021	1.21	< .05 †
TOTAL	\$14,179,547	100.00%	100.00%	\$14,179,547			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$370,116	2.61%	8.57%	\$1,215,053	-\$844,937	0.30	< .05 *
Minority Males	\$1,050,611	7.41%	16.81%	\$2,382,919	-\$1,332,308	0.44	< .05 *
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$1,420,727	10.02%	25.37%	\$3,597,972	-\$2,177,244	0.39	< .05 *
Woman Business Enterprises	\$1,451,070	10.23%	15.22%	\$2,158,783	-\$707,713	0.67	< .05 *

(*) denotes a statistically significant underutilization.

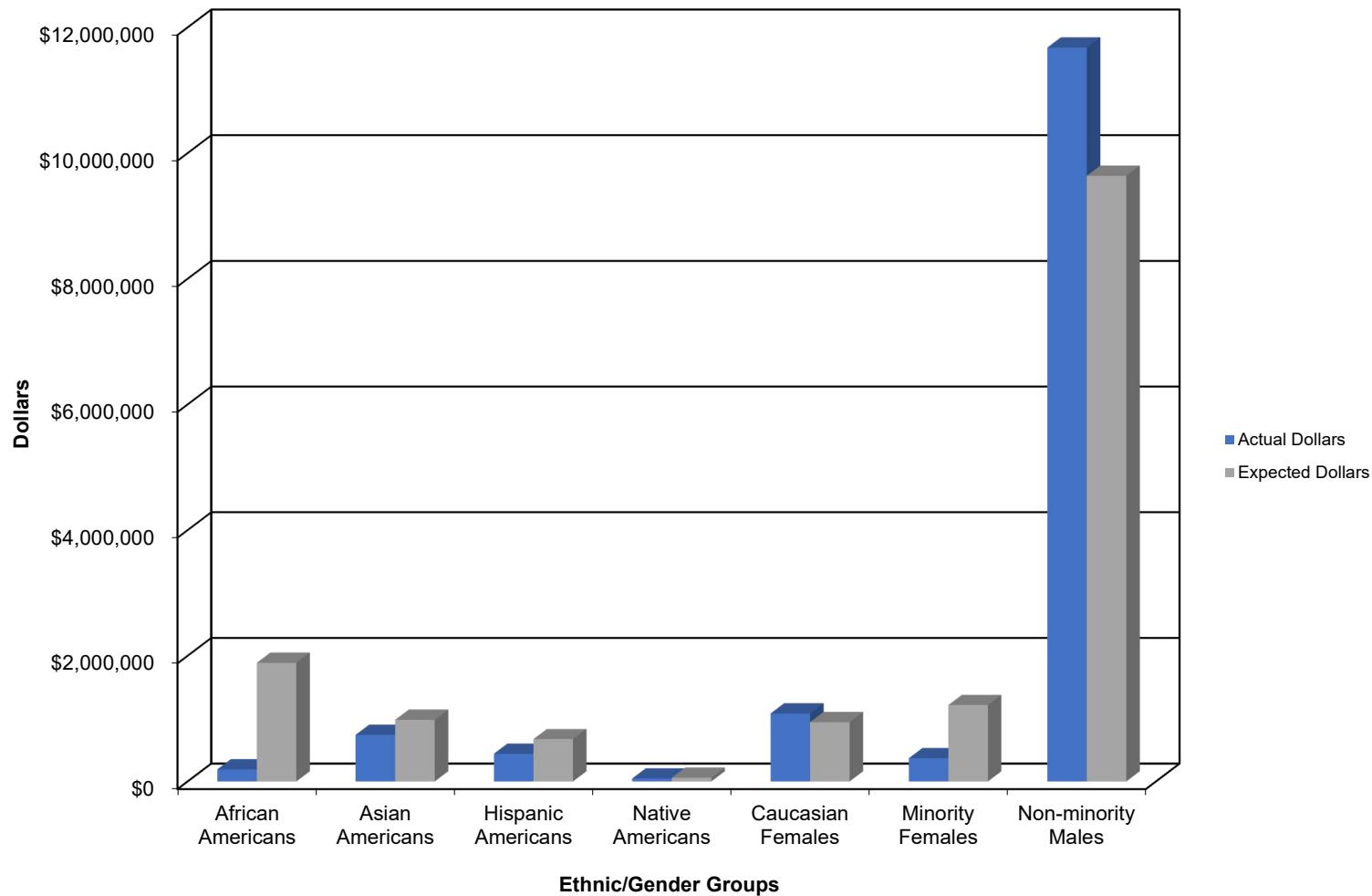
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 5.4: Disparity Analysis: Goods and Services Prime Contracts Valued at \$50,000 and under
July 1, 2016 to June 30, 2021**



B. Disparity Analysis: Formal Prime Contracts by Industry

1. Construction Prime Contracts Valued between \$50,000 and \$3,730,000

The disparity analysis of formal construction prime contracts valued between \$50,000 and \$3,730,000 is described below in Table 5.8 and Chart 5.5.

African Americans represented 19.11% of the available construction businesses and received 0.54% of the dollars on construction prime contracts valued between \$50,000 and \$3,730,000. This underutilization is statistically significant.

Asian Americans represented 7.32% of the available construction businesses and received 3.89% of the dollars on construction prime contracts valued between \$50,000 and \$3,730,000. This underutilization is not statistically significant.

Hispanic Americans represented 8.93% of the available construction businesses and received 24.43% of the dollars on construction prime contracts valued between \$50,000 and \$3,730,000. This study does not statistically test the overutilization of M/WBEs.

Native Americans represented 0.18% of the available construction businesses and received no construction prime contracts valued between \$50,000 and \$3,730,000. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Caucasian Females represented 5.71% of the available construction businesses and received 0.07% of the dollars on construction prime contracts valued between \$50,000 and \$3,730,000. This underutilization is statistically significant.

Minority Females represented 5.18% of the available construction businesses and received 1.71% of the dollars on construction prime contracts valued between \$50,000 and \$3,730,000. This underutilization is not statistically significant.

Non-minority Males represented 58.75% of the available construction businesses and received 71.07% of the dollars on construction prime contracts valued between \$50,000 and \$3,730,000. This overutilization is statistically significant.

Minority Business Enterprises represented 35.54% of the available construction businesses and received 28.86% of the dollars on construction prime contracts valued between \$50,000 and \$3,730,000. This underutilization is not statistically significant.

Woman Business Enterprises represented 10.89% of the available construction businesses and received 1.78% of the dollars on construction prime contracts valued between \$50,000 and \$3,730,000. This underutilization is statistically significant.



Table 5.8: Disparity Analysis: Construction Prime Contracts Valued between \$50,000 and \$3,730,000
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$628,658	0.54%	19.11%	\$22,173,158	-\$21,544,499	0.03	< .05 *
Asian Americans	\$4,511,277	3.89%	7.32%	\$8,496,257	-\$3,984,980	0.53	not significant
Hispanic Americans	\$28,347,537	24.43%	8.93%	\$10,361,289	\$17,986,248	2.74	**
Native Americans	\$0	0.00%	0.18%	\$207,226	-\$207,226	0.00	----
Caucasian Females	\$83,028	0.07%	5.71%	\$6,631,225	-\$6,548,197	0.01	< .05 *
Non-minority Males	\$82,475,933	71.07%	58.75%	\$68,177,280	\$14,298,654	1.21	< .05 †
TOTAL	\$116,046,433	100.00%	100.00%	\$116,046,433			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$338,000	0.29%	3.21%	\$3,730,064	-\$3,392,064	0.09	not significant
African American Males	\$290,658	0.25%	15.89%	\$18,443,094	-\$18,152,435	0.02	< .05 *
Asian American Females	\$1,642,836	1.42%	1.07%	\$1,243,355	\$399,481	1.32	**
Asian American Males	\$2,868,441	2.47%	6.25%	\$7,252,902	-\$4,384,461	0.40	not significant
Hispanic American Females	\$0	0.00%	0.71%	\$828,903	-\$828,903	0.00	----
Hispanic American Males	\$28,347,537	24.43%	8.21%	\$9,532,386	\$18,815,151	2.97	**
Native American Females	\$0	0.00%	0.18%	\$207,226	-\$207,226	0.00	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$83,028	0.07%	5.71%	\$6,631,225	-\$6,548,197	0.01	< .05 *
Non-minority Males	\$82,475,933	71.07%	58.75%	\$68,177,280	\$14,298,654	1.21	< .05 †
TOTAL	\$116,046,433	100.00%	100.00%	\$116,046,433			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$1,980,836	1.71%	5.18%	\$6,009,547	-\$4,028,712	0.33	not significant
Minority Males	\$31,506,636	27.15%	30.36%	\$35,228,382	-\$3,721,745	0.89	not significant
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$33,487,472	28.86%	35.54%	\$41,237,929	-\$7,750,457	0.81	not significant
Woman Business Enterprises	\$2,063,864	1.78%	10.89%	\$12,640,772	-\$10,576,908	0.16	< .05 *

(*) denotes a statistically significant underutilization.

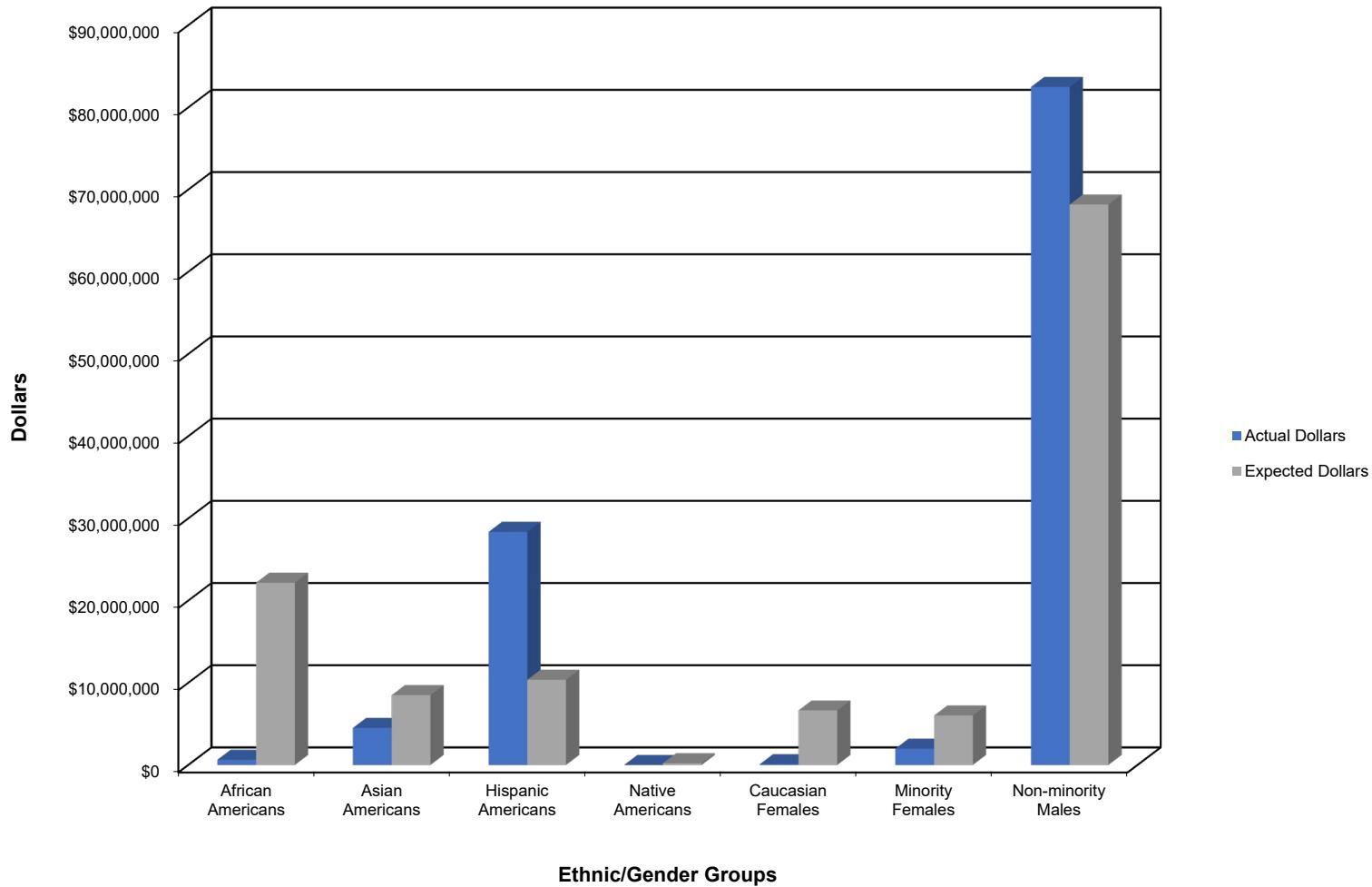
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



Chart 5.5: Disparity Analysis: Construction Prime Contracts Valued between \$50,000 and \$3,730,000
July 1, 2016 to June 30, 2021



2. Architectural and Engineering Prime Contracts Valued between \$50,000 and \$790,000

The disparity analysis of architectural and engineering prime contracts valued between \$50,000 and \$790,000 is described below and shown in Table 5.9 and Chart 5.6.

African Americans represented 8.96% of the available architectural and engineering businesses and received none of the dollars on architectural and engineering prime contracts valued between \$50,000 and \$790,000. This underutilization is statistically significant.

Asian Americans represented 14.94% of the available architectural and engineering businesses and received 16.56% of the dollars on architectural and engineering prime contracts valued between \$50,000 and \$790,000. This study does not statistically test the overutilization of M/WBEs.

Hispanic Americans represented 5.18% of the available architectural and engineering businesses and received 4.06% of the dollars on architectural and engineering prime contracts valued between \$50,000 and \$790,000. This underutilization is not statistically significant.

Native Americans represented none of the available architectural and engineering businesses and received no architectural and engineering prime contracts valued between \$50,000 and \$790,000. The statistical significance of utilization could not be tested because there were no available businesses and no contracts awarded.

Caucasian Females represented 12.75% of the available architectural and engineering businesses and received 13.70% of the dollars on architectural and engineering prime contracts valued between \$50,000 and \$790,000. This study does not statistically test the overutilization of M/WBEs.

Minority Females represented 7.57% of the available architectural and engineering businesses and received 8.73% of the dollars on architectural and engineering prime contracts valued between \$50,000 and \$790,000. This study does not statistically test the overutilization of M/WBEs.

Non-minority Males represented 58.17% of the available architectural and engineering businesses and received 65.68% of the dollars on architectural and engineering prime contracts valued between \$50,000 and \$790,000. This overutilization is not statistically significant.

Minority Business Enterprises represented 29.08% of the available architectural and engineering businesses and received 20.62% of the dollars on architectural and engineering prime contracts valued between \$50,000 and \$790,000. This underutilization is not statistically significant.

Woman Business Enterprises represented 20.32% of the available architectural and engineering businesses and received 22.43% of the dollars on architectural and engineering prime contracts valued between \$50,000 and \$790,000. This study does not statistically test the overutilization of M/WBEs.



Table 5.9: Disparity Analysis: Architectural and Engineering Prime Contracts Valued between \$50,000 and \$790,000
July 1, 2016 to July 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$0	0.00%	8.96%	\$1,015,484	-\$1,015,484	0.00	< .05 *
Asian Americans	\$1,876,170	16.56%	14.94%	\$1,692,473	\$183,698	1.11	**
Hispanic Americans	\$460,130	4.06%	5.18%	\$586,724	-\$126,594	0.78	not significant
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$1,551,600	13.70%	12.75%	\$1,444,243	\$107,357	1.07	**
Non-minority Males	\$7,440,384	65.68%	58.17%	\$6,589,361	\$851,023	1.13	not significant
TOTAL	\$11,328,284	100.00%	100.00%	\$11,328,284			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	1.79%	\$203,097	-\$203,097	0.00	----
African American Males	\$0	0.00%	7.17%	\$812,387	-\$812,387	0.00	< .05 *
Asian American Females	\$989,110	8.73%	3.78%	\$428,760	\$560,350	2.31	**
Asian American Males	\$887,060	7.83%	11.16%	\$1,263,713	-\$376,653	0.70	not significant
Hispanic American Females	\$0	0.00%	1.99%	\$225,663	-\$225,663	0.00	----
Hispanic American Males	\$460,130	4.06%	3.19%	\$361,061	\$99,069	1.27	**
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$1,551,600	13.70%	12.75%	\$1,444,243	\$107,357	1.07	**
Non-minority Males	\$7,440,384	65.68%	58.17%	\$6,589,361	\$851,023	1.13	not significant
TOTAL	\$11,328,284	100.00%	100.00%	\$11,328,284			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$989,110	8.73%	7.57%	\$857,520	\$131,590	1.15	**
Minority Males	\$1,347,190	11.89%	21.51%	\$2,437,161	-\$1,089,971	0.55	not significant
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$2,336,300	20.62%	29.08%	\$3,294,680	-\$958,380	0.71	not significant
Woman Business Enterprises	\$2,540,710	22.43%	20.32%	\$2,301,763	\$238,947	1.10	**

(*) denotes a statistically significant underutilization.

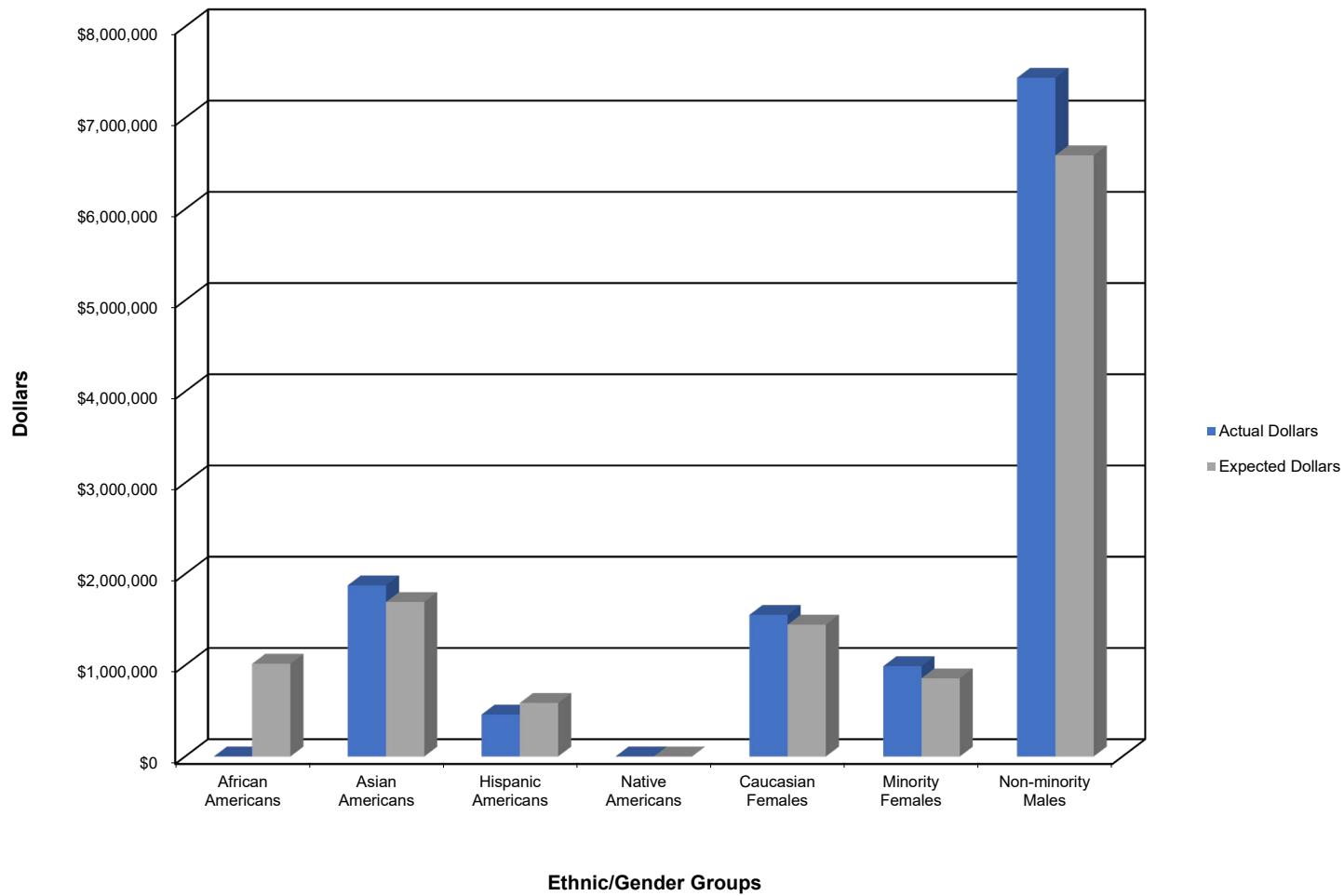
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



Chart 5.6: Disparity Analysis: Architectural and Engineering Prime Contracts Valued between \$50,000 and \$790,000
July 1, 2016 to June 30, 2021



3. Professional Services Prime Contracts Valued between \$50,000 and \$700,000

The disparity analysis of professional services prime contracts valued between \$50,000 and \$700,000 is described below and shown in Table 5.10 and Chart 5.7.

African Americans represented 12.59% of the available professional services businesses and received 8.69% of the dollars on professional services prime contracts valued between \$50,000 and \$700,000. This underutilization is not statistically significant.

Asian Americans represented 8.46% of the available professional services businesses and received 7.25% of the dollars on professional services prime contracts valued between \$50,000 and \$700,000. This underutilization is not statistically significant.

Hispanic Americans represented 3.92% of the available professional services businesses and received 2.96% of the dollars on professional services prime contracts valued between \$50,000 and \$700,000. This underutilization is not statistically significant.

Native Americans represented 0.21% of the available professional services businesses and received no professional services prime contracts valued between \$50,000 and \$700,000. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Caucasian Females represented 11.21% of the available professional services businesses and received 14.40% of the dollars on professional services prime contracts valued between \$50,000 and \$700,000. This study does not statistically test the overutilization of M/WBEs.

Minority Females represented 10.59% of the available professional services businesses and received 8.40% of the dollars on professional services prime contracts valued between \$50,000 and \$700,000. This underutilization is not statistically significant.

Non-minority Males represented 63.62% of the available professional services businesses and received 66.70% of the dollars on professional services prime contracts valued between \$50,000 and \$700,000. This overutilization is not statistically significant.

Minority Business Enterprises represented 25.17% of the available professional services businesses and received 18.90% of the dollars on professional services prime contracts valued between \$50,000 and \$700,000. This underutilization is statistically significant.

Woman Business Enterprises represented 21.80% of the available professional services businesses and received 22.81% of the dollars on professional services prime contracts valued between \$50,000 and \$700,000. This study does not statistically test the overutilization of M/WBEs.



Table 5.10: Disparity Analysis: Professional Services Contracts Valued between \$50,000 and \$700,000
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$3,407,173	8.69%	12.59%	\$4,937,258	-\$1,530,086	0.69	not significant
Asian Americans	\$2,844,687	7.25%	8.46%	\$3,318,485	-\$473,798	0.86	not significant
Hispanic Americans	\$1,161,556	2.96%	3.92%	\$1,537,835	-\$376,279	0.76	not significant
Native Americans	\$0	0.00%	0.21%	\$80,939	-\$80,939	0.00	----
Caucasian Females	\$5,650,294	14.40%	11.21%	\$4,397,667	\$1,252,626	1.28	**
Non-minority Males	\$26,164,563	66.70%	63.62%	\$24,956,088	\$1,208,475	1.05	not significant
TOTAL	\$39,228,272	100.00%	100.00%	\$39,228,272			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$2,081,180	5.31%	5.36%	\$2,104,405	-\$23,225	0.99	not significant
African American Males	\$1,325,993	3.38%	7.22%	\$2,832,853	-\$1,506,860	0.47	< .05 *
Asian American Females	\$53,832	0.14%	3.16%	\$1,241,059	-\$1,187,227	0.04	< .05 *
Asian American Males	\$2,790,855	7.11%	5.30%	\$2,077,426	\$713,429	1.34	**
Hispanic American Females	\$1,161,556	2.96%	1.93%	\$755,428	\$406,128	1.54	**
Hispanic American Males	\$0	0.00%	1.99%	\$782,407	-\$782,407	0.00	< .05 *
Native American Females	\$0	0.00%	0.14%	\$53,959	-\$53,959	0.00	----
Native American Males	\$0	0.00%	0.07%	\$26,980	-\$26,980	0.00	----
Caucasian Females	\$5,650,294	14.40%	11.21%	\$4,397,667	\$1,252,626	1.28	**
Non-minority Males	\$26,164,563	66.70%	63.62%	\$24,956,088	\$1,208,475	1.05	not significant
TOTAL	\$39,228,272	100.00%	100.00%	\$39,228,272			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$3,296,568	8.40%	10.59%	\$4,154,851	-\$858,283	0.79	not significant
Minority Males	\$4,116,848	10.49%	14.58%	\$5,719,666	-\$1,602,818	0.72	< .05 *
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$7,413,416	18.90%	25.17%	\$9,874,517	-\$2,461,101	0.75	< .05 *
Woman Business Enterprises	\$8,946,862	22.81%	21.80%	\$8,552,519	\$394,343	1.05	**

(*) denotes a statistically significant underutilization.

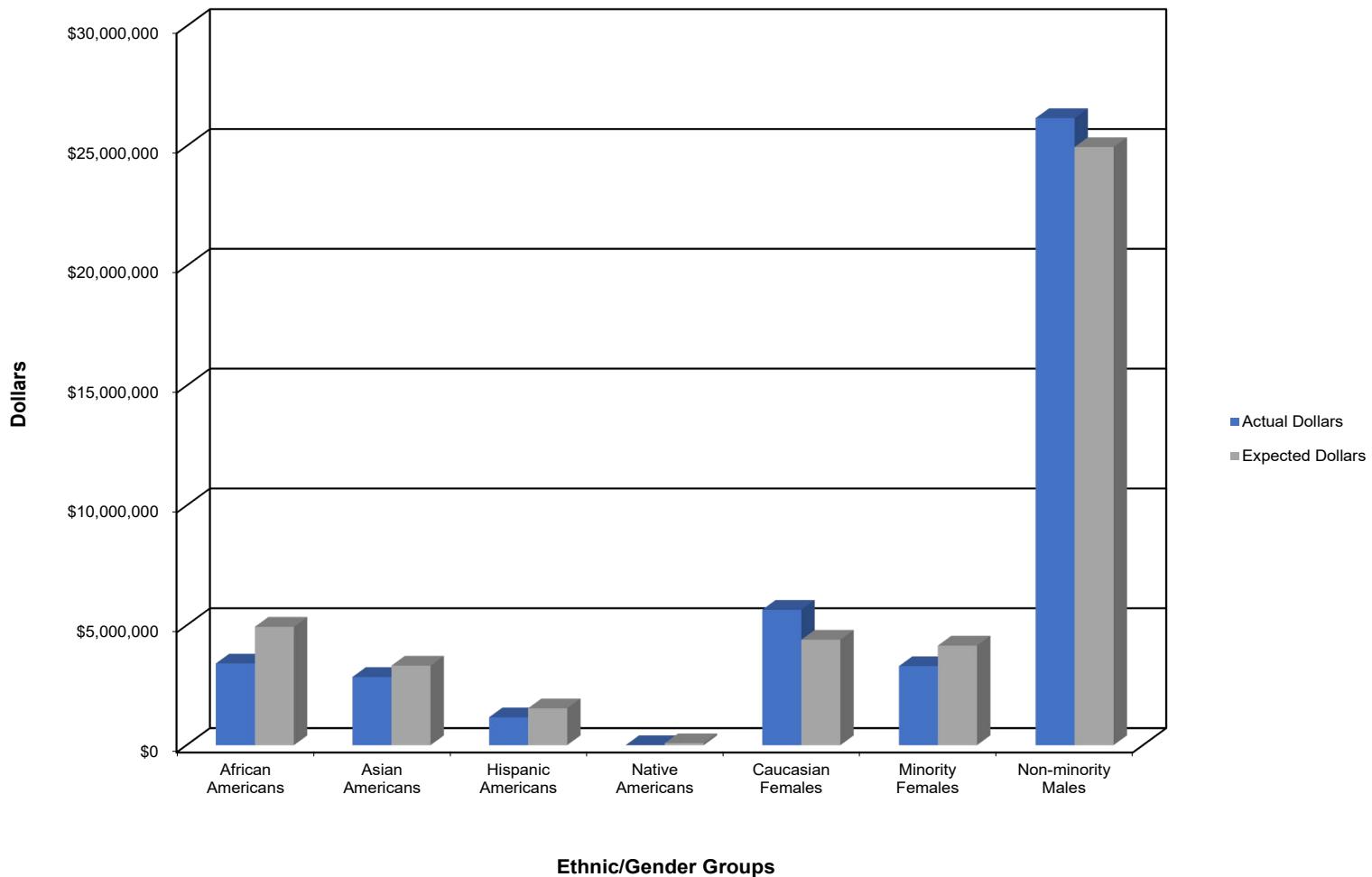
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



**Chart 5.7: Disparity Analysis: Professional Services Contracts Valued between \$50,000 and \$700,000
July 1, 2016 to July 1, 2021**



4. Goods and Services Prime Contracts Valued between \$50,000 and \$590,000

The disparity analysis of goods and services prime contracts valued between \$50,000 and \$590,000 is described below and shown in Table 5.11 and Chart 5.8.

African Americans represented 13.31% of the available goods and services businesses and received 1.49% of the dollars on goods and services prime contracts valued between \$50,000 and \$590,000. This underutilization is statistically significant.

Asian Americans represented 6.91% of the available goods and services businesses and received 6.48% of the dollars on goods and services prime contracts valued between \$50,000 and \$590,000. This underutilization is not statistically significant.

Hispanic Americans represented 4.74% of the available goods and services businesses and received 3.46% of the dollars on goods and services prime contracts valued between \$50,000 and \$590,000. This underutilization is not statistically significant.

Native Americans represented 0.42% of the available goods and services businesses and received no goods and services prime contracts valued between \$50,000 and \$590,000. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Caucasian Females represented 6.66% of the available goods and services businesses and received 4.60% of the dollars on goods and services prime contracts valued between \$50,000 and \$590,000. This underutilization is not statistically significant.

Minority Females represented 8.57% of the available goods and services businesses and received 2.42% of the dollars on goods and services prime contracts valued between \$50,000 and \$590,000. This underutilization is statistically significant.

Non-minority Males represented 67.97% of the available goods and services businesses and received 83.97% of the dollars on goods and services prime contracts valued between \$50,000 and \$590,000. This overutilization is statistically significant.

Minority Business Enterprises represented 25.37% of the available goods and services businesses and received 11.43% of the dollars on goods and services prime contracts valued between \$50,000 and \$590,000. This underutilization is statistically significant.

Woman Business Enterprises represented 15.22% of the available goods and services businesses and received 7.02% of the dollars on goods and services prime contracts valued between \$50,000 and \$590,000. This underutilization is statistically significant.



Table 5.11: Disparity Analysis: Goods and Services Prime Contracts Valued between \$50,000 and \$590,000
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$1,089,921	1.49%	13.31%	\$9,739,886	-\$8,649,966	0.11	< .05 *
Asian Americans	\$4,737,914	6.48%	6.91%	\$5,052,566	-\$314,652	0.94	not significant
Hispanic Americans	\$2,531,970	3.46%	4.74%	\$3,469,834	-\$937,864	0.73	not significant
Native Americans	\$0	0.00%	0.42%	\$304,371	-\$304,371	0.00	----
Caucasian Females	\$3,368,223	4.60%	6.66%	\$4,869,943	-\$1,501,720	0.69	not significant
Non-minority Males	\$61,442,867	83.97%	67.97%	\$49,734,294	\$11,708,573	1.24	< .05 †
TOTAL	\$73,170,896	100.00%	100.00%	\$73,170,896			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$482,223	0.66%	4.83%	\$3,530,709	-\$3,048,486	0.14	< .05 *
African American Males	\$607,698	0.83%	8.49%	\$6,209,177	-\$5,601,480	0.10	< .05 *
Asian American Females	\$345,890	0.47%	2.00%	\$1,460,983	-\$1,115,093	0.24	< .05 *
Asian American Males	\$4,392,024	6.00%	4.91%	\$3,591,583	\$800,441	1.22	**
Hispanic American Females	\$940,889	1.29%	1.50%	\$1,095,737	-\$154,849	0.86	not significant
Hispanic American Males	\$1,591,082	2.17%	3.24%	\$2,374,097	-\$783,016	0.67	not significant
Native American Females	\$0	0.00%	0.25%	\$182,623	-\$182,623	0.00	----
Native American Males	\$0	0.00%	0.17%	\$121,749	-\$121,749	0.00	----
Caucasian Females	\$3,368,223	4.60%	6.66%	\$4,869,943	-\$1,501,720	0.69	not significant
Non-minority Males	\$61,442,867	83.97%	67.97%	\$49,734,294	\$11,708,573	1.24	< .05 †
TOTAL	\$73,170,896	100.00%	100.00%	\$73,170,896			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$1,769,001	2.42%	8.57%	\$6,270,052	-\$4,501,051	0.28	< .05 *
Minority Males	\$6,590,804	9.01%	16.81%	\$12,296,606	-\$5,705,802	0.54	< .05 *
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$8,359,805	11.43%	25.37%	\$18,566,658	-\$10,206,853	0.45	< .05 *
Woman Business Enterprises	\$5,137,224	7.02%	15.22%	\$11,139,995	-\$6,002,771	0.46	< .05 *

(*) denotes a statistically significant underutilization.

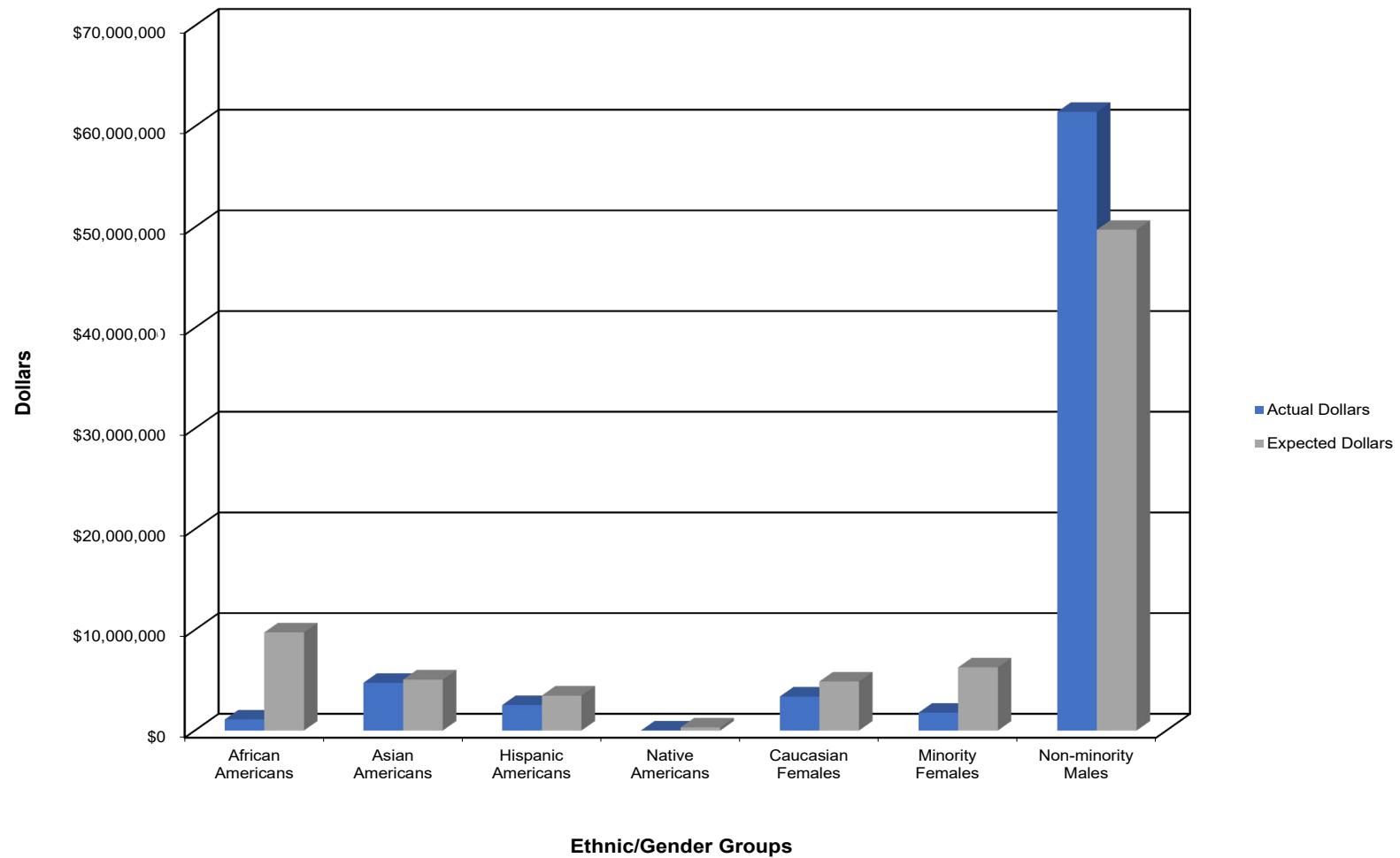
(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



Chart 5.8: Disparity Analysis: Goods and Services Prime Contracts Valued between \$50,000 and \$590,000
July 1, 2016 to June 30, 2021



III. Conclusion

This chapter documents the City of Oakland's active participation in purposeful and intentional discrimination in the award of its prime contracts to minorities and women. The State of California's Constitution prohibits the use of race and gender remedies to address disparities in public contracting. Nevertheless, in *Coral Construction v. San Francisco*,⁵⁵ the State Supreme Court found purposeful and intentional discrimination as a condition under which the Federal Constitution trumps the State Constitution. Given the *Coral Construction* decision, the City of Oakland's purposeful and intentional discrimination against M/WBEs documented in this study and the three previous studies conducted between 2004 and 2017 should be remedied using race- and gender-based measures as defined under federal law.

A. Disparity Findings

The City of Oakland's purposeful and intentional discrimination in the award of prime contracts was documented in the four industries examined in this study. Intentional discrimination against M/WBEs was also documented in the City's award of federally assisted prime contracts and the contracts awarded under the Local and Small Local Business Enterprise Program.⁵⁶

As indicated in the tables below, the City was an active participant in discrimination against African Americans in each of the four industries examined. Females were mostly underutilized in all four industries, although not at a statistically significant level.⁵⁷

As indicated in Table 5.12, disparity was found for African American male prime contractors on construction contracts valued at \$50,000 and under. Caucasian female prime contractors were also underutilized on these contracts. Disparity was also found for African American male and Caucasian female prime contractors on construction contracts valued between \$50,000 and \$3,730,000. African American female prime contractors were underutilized on these contracts.

⁵⁵ *Coral Construction v. San Francisco*, 113 Cal.Rptr. 3d 279 (2010).

⁵⁶ *Chapter 1: Local and Small Local Business Enterprise Program* and *Chapter 2: Federally Funded Contracts Analysis*, City of Oakland Disparity Study, Part II, 2024.

⁵⁷ Women-owned businesses were not the subject of legal review in *Crosen*. Therefore, the legal standard of review for woman-owned businesses is the intermediate scrutiny, which for a gender-based remedy only requires a finding of underutilization.



Table 5.12: Disparity Summary: Construction Prime Contract Dollars
July 1, 2016 to June 30, 2021

Ethnicity/Gender	Construction	
	Contracts Valued at \$50,000 and under	Contracts Valued between \$50,000 and \$3,730,000
African American Females	Insufficient Data	Underutilization
African American Males	<i>Disparity</i>	<i>Disparity</i>
Asian American Females	Insufficient Data	No Disparity
Caucasian Females	Underutilization	<i>Disparity</i>

As indicated in Table 5.13, disparity was found for African American male prime contractors on architectural and engineering contracts valued between \$50,000 and \$790,000. Asian American female and Hispanic American female prime contractors were underutilized on architectural and engineering contracts valued at \$50,000 and under.

Table 5.13: Disparity Summary: Architectural and Engineering Prime Contract Dollars
July 1, 2016 to June 30, 2021

Ethnicity/Gender	Architectural and Engineering	
	Contracts Valued at \$50,000 and under	Contracts Valued between \$50,000 and \$790,000
African American Males	No Disparity	<i>Disparity</i>
Asian American Females	Underutilization	No Disparity
Hispanic American Females	Underutilization	Insufficient Data

As indicated in Table 5.14, disparity was found for African American male prime contractors on professional services contracts valued at \$50,000 and under. African American female and Asian American female prime contractors were underutilized on these contracts. Disparity was also found for African American male, Asian American female, and Hispanic American male prime



contractors on professional services contracts valued between \$50,000 and \$700,000. African American female prime contractors were underutilized on these contracts.

Table 5.14: Disparity Summary: Professional Services Prime Contract Dollars
July 1, 2016 to June 30, 2021

Ethnicity/Gender	Professional Services	
	Contracts Valued at \$50,000 and under	Contracts Valued between \$50,000 and \$700,000
African American Females	Underutilization	Underutilization
African American Males	<i>Disparity</i>	<i>Disparity</i>
Asian American Females	Underutilization	<i>Disparity</i>
Hispanic American Males	No Disparity	<i>Disparity</i>
Caucasian Females	No Disparity	No Disparity

As indicated in Table 5.15, disparity was found for African American female, African American male, Asian American female, and Hispanic American male prime contractors on goods and services contracts valued at \$50,000 and under. Hispanic American female prime contractors were underutilized on these contracts. Disparity was also found for African American female, African American male, and Asian American female prime contractors on goods and services contracts valued between \$50,000 and \$590,000. Hispanic American female and Caucasian female prime contractors were underutilized on these contracts.



Table 5.15: Disparity Summary: Goods and Services Prime Contract Dollars
July 1, 2016 to June 30, 2021

Ethnicity/Gender	Goods and Services	
	Contracts Valued at \$50,000 and under	Contracts Valued between \$50,000 and \$590,000
African American Females	<i>Disparity</i>	<i>Disparity</i>
African American Males	<i>Disparity</i>	<i>Disparity</i>
Asian American Females	<i>Disparity</i>	<i>Disparity</i>
Hispanic American Females	Underutilization	Underutilization
Hispanic American Males	<i>Disparity</i>	No Disparity
Caucasian Females	No Disparity	Underutilization

As reported in *Chapter 2: Federally Funded Contracts Analysis, Part II*, intentional discrimination was also found in the award of federally assisted contracts. Title VI prohibits discrimination in the award of federally assisted contracts. Thus, the disparity documented in the award of the federally assisted prime contracts is evidence that the City did not comply with the federal regulations prohibiting discrimination in contracting.

As indicated in Table 5.16, disparity was found for African Americans and Asian American female prime contractors on federally assisted contracts. Hispanic American female and Caucasian female prime contractors were underutilized on these contracts.



Table 5.16: Disparity Summary: Federally Assisted Prime Contract Dollars
July 1, 2016 to June 30, 2021

Ethnicity/Gender	Federally Assisted Contracts
African American Females	Disparity
African American Males	Disparity
Asian American Females	Disparity
Hispanic American Females	Underutilization
Caucasian Females	Underutilization

The contracts awarded with USDOT financial assistance had a specific provision requiring 17.6% disadvantaged business enterprise (DBE) participation. This goal was not achieved either.

As indicated in Table 5.17, of 66 contracts the City awarded with USDOT financial assistance, DBEs received only 4, or 6.06% of contracts with a total award amount of \$697,489. These dollars represented 2.16% of the total dollars awarded. Non-DBEs received 62 of the 66 prime contracts awarded and 97.84% of the total \$44,879,298 awarded.

Table 5.17: Caltrans Federally Assisted Prime Contracts by DBE Status

Certified Status	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
DBE	4	6.06%	\$967,489	2.16%
Non-DBE	62	93.94%	\$43,911,809	97.84%
TOTAL	66	100.00%	\$44,879,298	100.00%

The City has institutionalized active discrimination using non-competitive procurement methods that have perpetuated purposeful and intentional discrimination against African Americans and women. These methods include on-call contracts, emergency contracts, and cooperative agreements. Active discrimination was documented in the award of non-competitive prime contracts. These procurement methods are described in *Chapter 1: Local and Small Local Business Enterprise Program* included in *Part II* of this report.



As indicated in Table 5.18, disparity was found for African Americans, Asian American female, and Caucasian female prime contractors on on-call, emergency, and cooperative agreement contracts which were non-competitive awards. Hispanic American female prime contractors were underutilized on these contracts.

Table 5.18: Disparity Analysis: On-Call, Emergency, and Cooperative Agreements
July 1, 2016 to June 30, 2021

Ethnicity/Gender	On-Call, Emergency, and Cooperative Agreements
African American Females	<i>Disparity</i>
African American Males	<i>Disparity</i>
Asian American Females	<i>Disparity</i>
Hispanic American Females	Underutilization
Caucasian Females	<i>Disparity</i>

The existence of disparity in the City's procurement of prime contracts and its prime contractors' award of subcontracts has been documented every five years for nearly two decades. The active and passive discrimination documented in this report through a statistical analysis of contracts funded with both local and federal dollars is clearly purposeful, intentional, and long-standing.

Every five years for two decades, the City has commissioned a disparity study. Each study has found the City to be both an active and passive participant in a system of egregious discrimination against M/WBEs. The City's longstanding procurement policies and practices undergird the discrimination. Any meaningful change in the City's active or passive role in discrimination will require a systemic overhaul of the procurement policies, practices, and staff responsible for the award and management of the City's contracts.

In accordance with State law, the documented purposeful and intentional discrimination should be remedied by the application of remedial measures provided in federal law. The mitigating measures discussed below are best practices widely utilized by local governments to eliminate evidence of active discrimination in the award of contracts to M/WBEs.



B. Best Practices in Public Contracting

1. Minority and Woman-owned Business Enterprise Program

For nearly three decades, a longstanding best practice of local governments upon completing a disparity study is to enact a Minority and Woman-owned Business Enterprise Program (M/WBE Program) with policies to address documented discrimination and to authorize and fund a department to oversee the process. Although the policies enacted by local governments over the last 30 years have varied, there are several components that are frequently included in an M/WBE program. These common policies include M/WBE contract-specific subcontract goals, bid discounts, and preference points for prime contractors; monitoring and reporting criteria; and targeted outreach. These components have been effective in increasing M/WBE participation on public contracts for various municipalities across the country.

The City of Columbus, Ohio, for example, established its Minority and Women-Owned Business Enterprise Program in 2022 to eradicate the statistically significant disparity in its utilization of M/WBEs documented in its 2022 Disparity Study.⁵⁸ In pursuit of promoting business and economic development for minority and woman-owned businesses, the City of St. Petersburg, Florida, authorized its M/WBE Program predicated on its 2021 Disparity Study. An Office of Supplier Diversity was created to implement the program.⁵⁹

2. M/WBE Certification

Certification is critical to ensuring the integrity of an M/WBE program intended to benefit eligible M/WBEs. Thus, a best practice is for the certification program to have processes to verify the business' ownership, control, and location. The more rigorous certification programs conduct both a desk and site audit to verify the applicant's eligibility.

3. Contract Compliance Reviews

Contract compliance reviews constitute another best practice used to protect a program's integrity and the viability of subcontractors listed by the prime contractor to perform contract work. Monetary penalties are levied by some governments on prime contractors who fail to use the subcontractors listed on their bids.

⁵⁸ Minority and Women-owned Business Enterprise and Small Local Business Enterprise Program Manual, April 2022, Office of Diversity and Inclusion, City of Columbus, Ohio, Section I: Overview, page 1.

⁵⁹ Minority & Women Business Enterprise Program (stpete.org).

CHAPTER 6: Subcontract Disparity Analysis

I. Introduction

The objective of this chapter is to determine if available minority and woman-owned business enterprises (M/WBEs) were underutilized in the award of the City of Oakland's subcontracts during the July 1, 2016 to June 30, 2021 study period. A detailed discussion of the statistical procedures for conducting a disparity analysis is set forth in *Chapter 5: Prime Contract Disparity Analysis*. These same statistical procedures are used to perform the subcontract disparity analysis.

The City requested that this analysis be undertaken according to six-digit North American Industry Classification System (NAICS) codes.⁶⁰ However, the work descriptions of the utilized and available subcontractors and datasets were insufficient to classify records in either dataset by a six-digit NAICS code.⁶¹ Consequently, the disparity analysis of the awarded subcontracts was performed at the industry level defined by the two-digit NAICS code. The three industries in this analysis are construction, architectural and engineering, and professional services.

The assumption in the disparity analysis is that the proportion of subcontracts and subcontract dollars awarded to M/WBE subcontractors, under a fair and equitable system, should be relatively close to the proportion of available M/WBE subcontractors in the City's market area. Availability is defined as the number of willing and able businesses in the market area. The methodology for determining willing and able businesses is detailed in *Chapter 4: Prime Contractor and Subcontractor Availability Analysis*.

If the ratio of utilized M/WBE subcontractors to available M/WBE subcontractors is less than one, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event which is less probable.⁶² *Croson* states that an inference of discrimination can be made *prima facie* if the observed disparity in the award of contracts to minority-owned businesses is statistically significant. Woman-owned businesses are not subject to the strict scrutiny standard set forth in *Croson*. Furthermore,

⁶⁰ The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was adopted in 1997 by the Office of Management and Budget to replace the Standard Industrial Classification System.

⁶¹ The data limitations that precluded the classification of the subcontract records and the available subcontractors by six-digit NAICS codes are described in *Chapter 2: Subcontractor Utilization Analysis*.

⁶² 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 the statistical standard used in physical and social sciences and is thus used in the present report to determine if an inference of discrimination can be made.



under the *Croson* standard, non-minority male-owned businesses (non-M/WBEs) are also not subjected to a statistical test of underutilization.⁶³

II. Disparity Analysis

As detailed in *Chapter 2: Subcontractor Utilization Analysis*, the City provided subcontractor records for construction, architectural and engineering, and professional services prime contracts issued during the July 1, 2016 to June 30, 2021 study period. Mason Tillman also collected additional subcontracts directly from the prime contractors. The disparity analysis was performed on the compiled subcontracts.

The underutilized ethnic groups are subject to a test of statistical significance to determine if the underutilization is due to chance. A p-value of 0.05 is a measure of statistical significance and is reported in the disparity tables as a disparity. WBE programs were not under review in *Croson*; therefore, female groups are only subject to intermediate scrutiny, a lesser legal standard than strict scrutiny. In this study, each female group with a disparity is also subject to the statistical significance test. When there is a finding of disparity for a female group that is statistically significant, the outcome is reported as *disparity*. When the underutilization is not statistically significant, the outcome is reported as *underutilization*. If the group is not underutilized, the finding is reported as *no disparity*.

The subcontract disparity findings in the three industries are detailed in *Section III. Disparity Analysis: All Subcontracts by Industry*. The outcomes of the test of statistical significance are presented in the “p-value” column of the tables. Descriptions of the statistical outcomes in the disparity tables are listed in Table 6.1. Where there is insufficient data to test the statistical significance of the disparity, there is no reported p-value.

Table 6.1: Statistical Outcome Descriptions

P-Value Outcome	Definition of P-Value Outcome
< .05 *	This underutilization is statistically significant.
not significant	M/WBEs: This underutilization is not statistically significant. Non-minority males: This overutilization is not statistically significant.
< .05 †	This overutilization is statistically significant.
----	While this group was underutilized, there were no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.
**	This study does not test the statistical significance of the overutilization of M/WBEs or the underutilization of non-minority males.



⁶³ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

III. Disparity Analysis: All Subcontracts by Industry

A. Construction Subcontracts

The disparity analysis of construction subcontracts is described below and listed in Table 6.2 and Chart 6.1.

African Americans represented 14.86% of the available construction businesses and received 2.11% of construction subcontract dollars. This underutilization is statistically significant.

Asian Americans represented 8.98% of the available construction businesses and received 11.59% of the dollars on construction subcontracts. This study does not statistically test the overutilization of M/WBEs.

Hispanic Americans represented 5.72% of the available construction businesses and received 18.72% of the dollars on construction subcontracts. This study does not statistically test the overutilization of M/WBEs.

Native Americans represented 0.32% of the available construction businesses and received 0.94% of the dollars on construction subcontracts. This study does not statistically test the overutilization of M/WBEs.

Caucasian Females represented 10.42% of the available construction businesses and received 10.08% of the dollars on construction subcontracts. This underutilization is not statistically significant.

Minority Females represented 9.41% of the available construction businesses and received 4.02% of the dollars on construction subcontracts. This underutilization is statistically significant.

Non-minority Males represented 59.70% of the available construction businesses and received 56.56% of the dollars on construction subcontracts. This study does not statistically test the underutilization of non-minority males.

Minority Business Enterprises represented 29.88% of the available construction businesses and received 33.36% of the construction subcontract dollars. This study does not statistically test the overutilization of M/WBEs.

Woman Business Enterprises represented 19.83% of the available construction businesses and received 14.09% of the dollars on construction subcontracts. This underutilization is statistically significant.



Table 6.2: Disparity Analysis: Construction Subcontracts
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$755,675	2.11%	14.86%	\$5,330,005	-\$4,574,330	0.14	< .05 *
Asian Americans	\$4,156,875	11.59%	8.98%	\$3,221,010	\$935,865	1.29	**
Hispanic Americans	\$6,716,937	18.72%	5.72%	\$2,051,477	\$4,665,460	3.27	**
Native Americans	\$337,564	0.94%	0.32%	\$115,036	\$222,528	2.93	**
Caucasian Females	\$3,615,420	10.08%	10.42%	\$3,738,673	-\$123,253	0.97	not significant
Non-minority Males	\$20,289,615	56.56%	59.70%	\$21,415,885	-\$1,126,270	0.95	**
TOTAL	\$35,872,086	100.00%	100.00%	\$35,872,086			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$675	0.00%	4.86%	\$1,744,714	-\$1,744,039	0.00	< .05 *
African American Males	\$755,000	2.10%	9.99%	\$3,585,291	-\$2,830,291	0.21	< .05 *
Asian American Females	\$800,000	2.23%	2.89%	\$1,035,325	-\$235,325	0.77	< .05 *
Asian American Males	\$3,356,875	9.36%	6.09%	\$2,185,686	\$1,171,189	1.54	**
Hispanic American Females	\$579,922	1.62%	1.50%	\$536,835	\$43,086	1.08	**
Hispanic American Males	\$6,137,016	17.11%	4.22%	\$1,514,642	\$4,622,374	4.05	**
Native American Females	\$60,000	0.17%	0.16%	\$57,518	\$2,482	1.04	**
Native American Males	\$277,564	0.77%	0.16%	\$57,518	\$220,046	4.83	**
Caucasian Females	\$3,615,420	10.08%	10.42%	\$3,738,673	-\$123,253	0.97	not significant
Non-minority Males	\$20,289,615	56.56%	59.70%	\$21,415,885	-\$1,126,270	0.95	**
TOTAL	\$35,872,086	100.00%	100.00%	\$35,872,086			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$1,440,597	4.02%	9.41%	\$3,374,392	-\$1,933,795	0.43	< .05 *
Minority Males	\$10,526,455	29.34%	20.47%	\$7,343,137	\$3,183,318	1.43	**
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$11,967,051	33.36%	29.88%	\$10,717,529	\$1,249,523	1.12	**
Woman Business Enterprises	\$5,056,017	14.09%	19.83%	\$7,113,065	-\$2,057,048	0.71	< .05 *

(*) denotes a statistically significant underutilization.

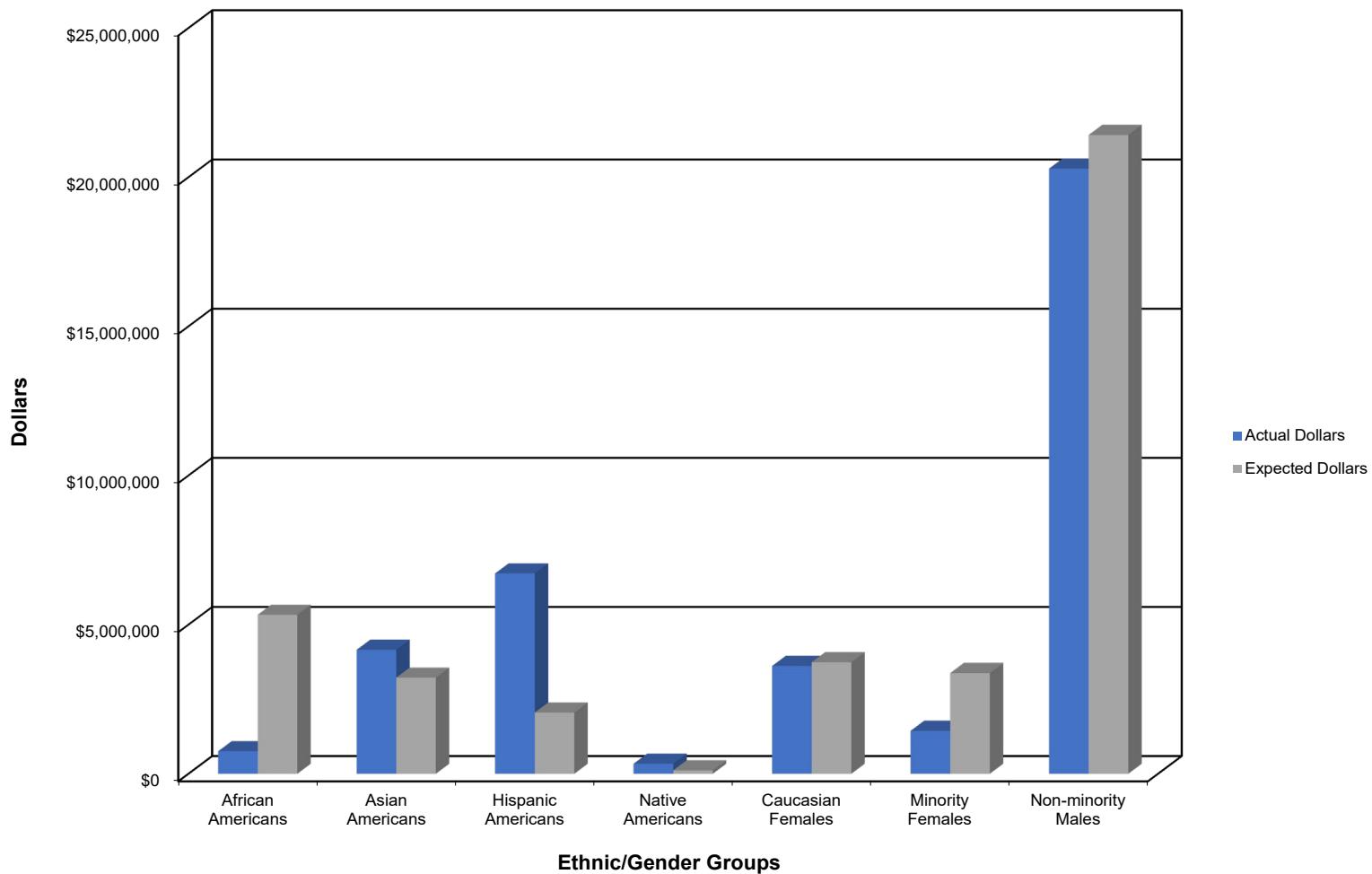
(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



Chart 6.1: Disparity Analysis: Construction Subcontracts
July 1, 2016 to June 30, 2021



B. Architectural and Engineering Subcontracts

The disparity analysis of architectural and engineering subcontracts is described below and listed in Table 6.3 and Chart 6.2.

African Americans represented 13.67% of the available architectural and engineering businesses and received 2.34% of the dollars on architectural and engineering subcontracts. This underutilization is statistically significant.

Asian Americans represented 9.15% of the available architectural and engineering businesses and received 7.67% of the dollars on architectural and engineering subcontracts. This underutilization is not statistically significant.

Hispanic Americans represented 5.42% of the available architectural and engineering businesses and received 0.74% of the dollars on architectural and engineering subcontracts. This underutilization is not statistically significant.

Native Americans represented 0.18% of the available architectural and engineering businesses and received no architectural and engineering subcontracts. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Caucasian Females represented 11.50% of the available architectural and engineering businesses and received 8.77% of the dollars on architectural and engineering subcontracts. This underutilization is not statistically significant.

Minority Females represented 9.75% of the available architectural and engineering businesses and received 2.29% of the dollars on architectural and engineering subcontracts. This underutilization is not statistically significant.

Non-minority Males represented 60.08% of the available architectural and engineering businesses and received 80.49% of the dollars on architectural and engineering subcontracts. This overutilization is statistically significant.

Minority Business Enterprises represented 28.42% of the available architectural and engineering businesses and received 10.75% of the dollars on architectural and engineering subcontracts. This underutilization is statistically significant.

Woman Business Enterprises represented 21.25% of the available architectural and engineering businesses and received 11.05% of the dollars on architectural and engineering subcontracts. This underutilization is not statistically significant.



Table 6.3: Disparity Analysis: Architectural and Engineering Subcontracts
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$117,815	2.34%	13.67%	\$686,840	-\$569,025	0.17	< .05 *
Asian Americans	\$385,319	7.67%	9.15%	\$459,910	-\$74,591	0.84	not significant
Hispanic Americans	\$37,000	0.74%	5.42%	\$272,315	-\$235,315	0.14	not significant
Native Americans	\$0	0.00%	0.18%	\$9,077	-\$9,077	0.00	----
Caucasian Females	\$440,579	8.77%	11.50%	\$577,913	-\$137,334	0.76	not significant
Non-minority Males	\$4,045,016	80.49%	60.08%	\$3,019,674	\$1,025,343	1.34	< .05 †
TOTAL	\$5,025,729	100.00%	100.00%	\$5,025,729			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$90,000	1.79%	4.82%	\$242,058	-\$152,058	0.37	not significant
African American Males	\$27,815	0.55%	8.85%	\$444,782	-\$416,967	0.06	< .05 *
Asian American Females	\$0	0.00%	3.19%	\$160,363	-\$160,363	0.00	----
Asian American Males	\$385,319	7.67%	5.96%	\$299,547	\$85,772	1.29	**
Hispanic American Females	\$25,000	0.50%	1.63%	\$81,695	-\$56,695	0.31	not significant
Hispanic American Males	\$12,000	0.24%	3.79%	\$190,621	-\$178,621	0.06	not significant
Native American Females	\$0	0.00%	0.12%	\$6,051	-\$6,051	0.00	----
Native American Males	\$0	0.00%	0.06%	\$3,026	-\$3,026	0.00	----
Caucasian Females	\$440,579	8.77%	11.50%	\$577,913	-\$137,334	0.76	not significant
Non-minority Males	\$4,045,016	80.49%	60.08%	\$3,019,674	\$1,025,343	1.34	< .05 †
TOTAL	\$5,025,729	100.00%	100.00%	\$5,025,729			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$115,000	2.29%	9.75%	\$490,167	-\$375,167	0.23	not significant
Minority Males	\$425,134	8.46%	18.66%	\$937,975	-\$512,841	0.45	not significant
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$540,134	10.75%	28.42%	\$1,428,142	-\$888,008	0.38	< .05 *
Woman Business Enterprises	\$555,579	11.05%	21.25%	\$1,068,081	-\$512,502	0.52	not significant

(*) denotes a statistically significant underutilization.

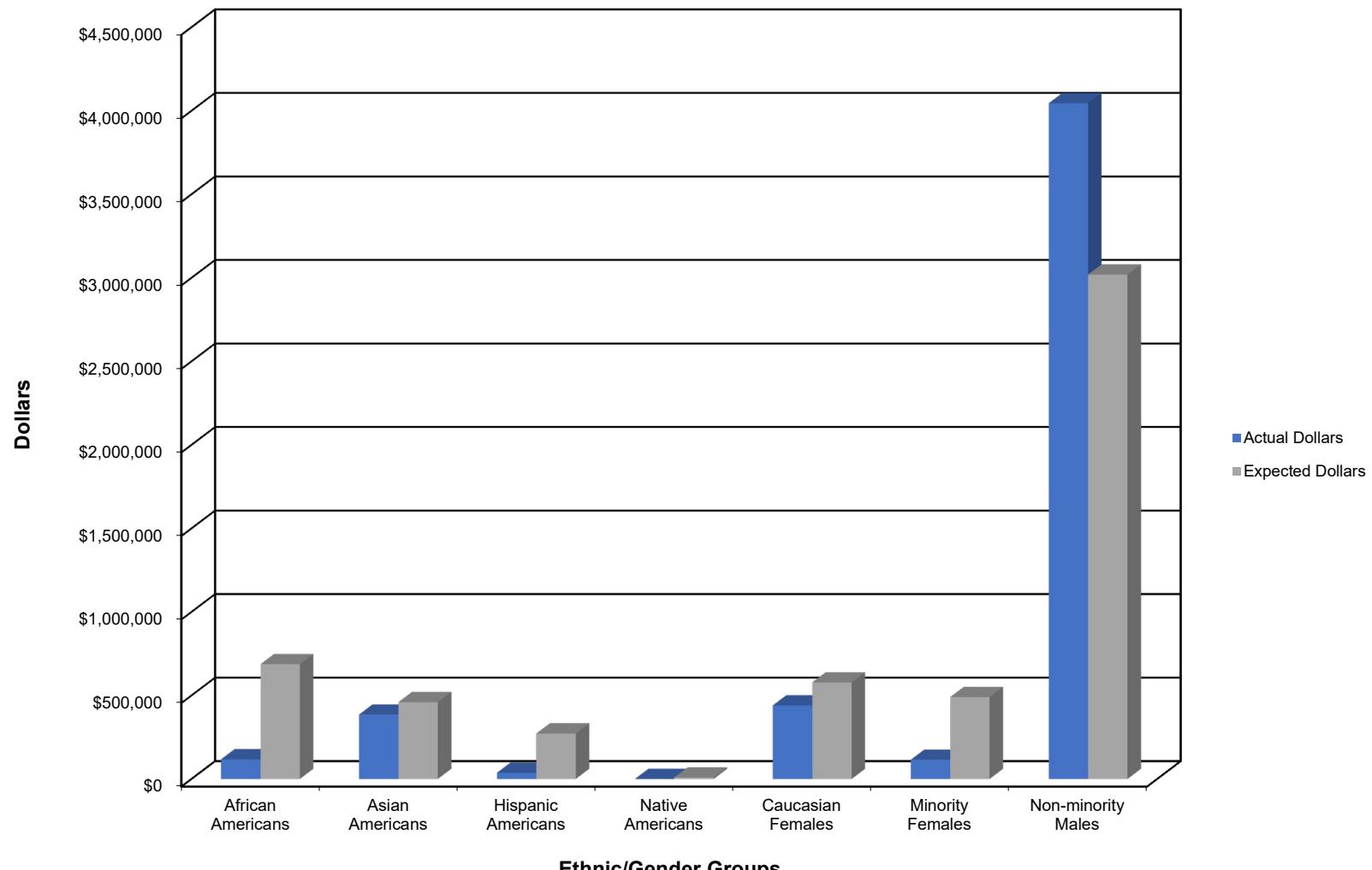
(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



Chart 6.2: Disparity Analysis: Architectural and Engineering Subcontracts
July 1, 2016 to June 30, 2021



C. Professional Services Subcontracts

The disparity analysis of professional services subcontracts is described below and listed in Table 6.4 and Chart 6.3.

African Americans represented 14.72% of the available professional services businesses and received 0.31% of the dollars on professional services subcontracts. This underutilization is statistically significant.

Asian Americans represented 9.84% of the available professional services businesses and received 8.61% of the dollars on professional services subcontracts. This underutilization is not statistically significant.

Hispanic Americans represented 5.56% of the available professional services businesses and received 4.19% of the dollars on professional services subcontracts. This underutilization is not statistically significant.

Native Americans represented 0.34% of the available professional services businesses and received no professional services subcontracts. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Caucasian Females represented 12.28% of the available professional services businesses and received 24.95% of the dollars on professional services subcontracts. This study does not statistically test the overutilization of M/WBEs.

Minority Females represented 11.13% of the available professional services businesses and received 1.31% of the dollars on professional services subcontracts. This underutilization is statistically significant.

Non-minority Males represented 57.26% of the available professional services businesses and received 61.94% of the dollars on professional services subcontracts. This overutilization is not statistically significant.

Minority Business Enterprises represented 30.46% of the available professional services businesses and received 13.11% of the dollars on professional services subcontracts. This underutilization is statistically significant.

Woman Business Enterprises represented 23.41% of the available professional services businesses and received 26.26% of the dollars on professional services subcontracts. This study does not statistically test the overutilization of M/WBEs.



Table 6.4: Disparity Analysis: Professional Services Subcontracts
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$6,376	0.31%	14.72%	\$300,271	-\$293,894	0.02	< .05 *
Asian Americans	\$175,620	8.61%	9.84%	\$200,642	-\$25,022	0.88	not significant
Hispanic Americans	\$85,500	4.19%	5.56%	\$113,466	-\$27,966	0.75	not significant
Native Americans	\$0	0.00%	0.34%	\$6,919	-\$6,919	0.00	----
Caucasian Females	\$508,855	24.95%	12.28%	\$250,456	\$258,399	2.03	**
Non-minority Males	\$1,263,275	61.94%	57.26%	\$1,167,873	\$95,402	1.08	not significant
TOTAL	\$2,039,626	100.00%	100.00%	\$2,039,626			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$6,376	0.31%	5.43%	\$110,699	-\$104,323	0.06	not significant
African American Males	\$0	0.00%	9.29%	\$189,572	-\$189,572	0.00	< .05 *
Asian American Females	\$20,000	0.98%	3.53%	\$71,954	-\$51,954	0.28	not significant
Asian American Males	\$155,620	7.63%	6.31%	\$128,687	\$26,933	1.21	**
Hispanic American Females	\$340	0.02%	1.90%	\$38,745	-\$38,405	0.01	not significant
Hispanic American Males	\$85,160	4.18%	3.66%	\$74,722	\$10,438	1.14	**
Native American Females	\$0	0.00%	0.27%	\$5,535	-\$5,535	0.00	----
Native American Males	\$0	0.00%	0.07%	\$1,384	-\$1,384	0.00	----
Caucasian Females	\$508,855	24.95%	12.28%	\$250,456	\$258,399	2.03	**
Non-minority Males	\$1,263,275	61.94%	57.26%	\$1,167,873	\$95,402	1.08	not significant
TOTAL	\$2,039,626	100.00%	100.00%	\$2,039,626			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$26,716	1.31%	11.13%	\$226,933	-\$200,216	0.12	< .05 *
Minority Males	\$240,780	11.81%	19.34%	\$394,365	-\$153,584	0.61	not significant
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$267,496	13.11%	30.46%	\$621,297	-\$353,801	0.43	< .05 *
Woman Business Enterprises	\$535,571	26.26%	23.41%	\$477,389	\$58,182	1.12	**

(*) denotes a statistically significant underutilization.

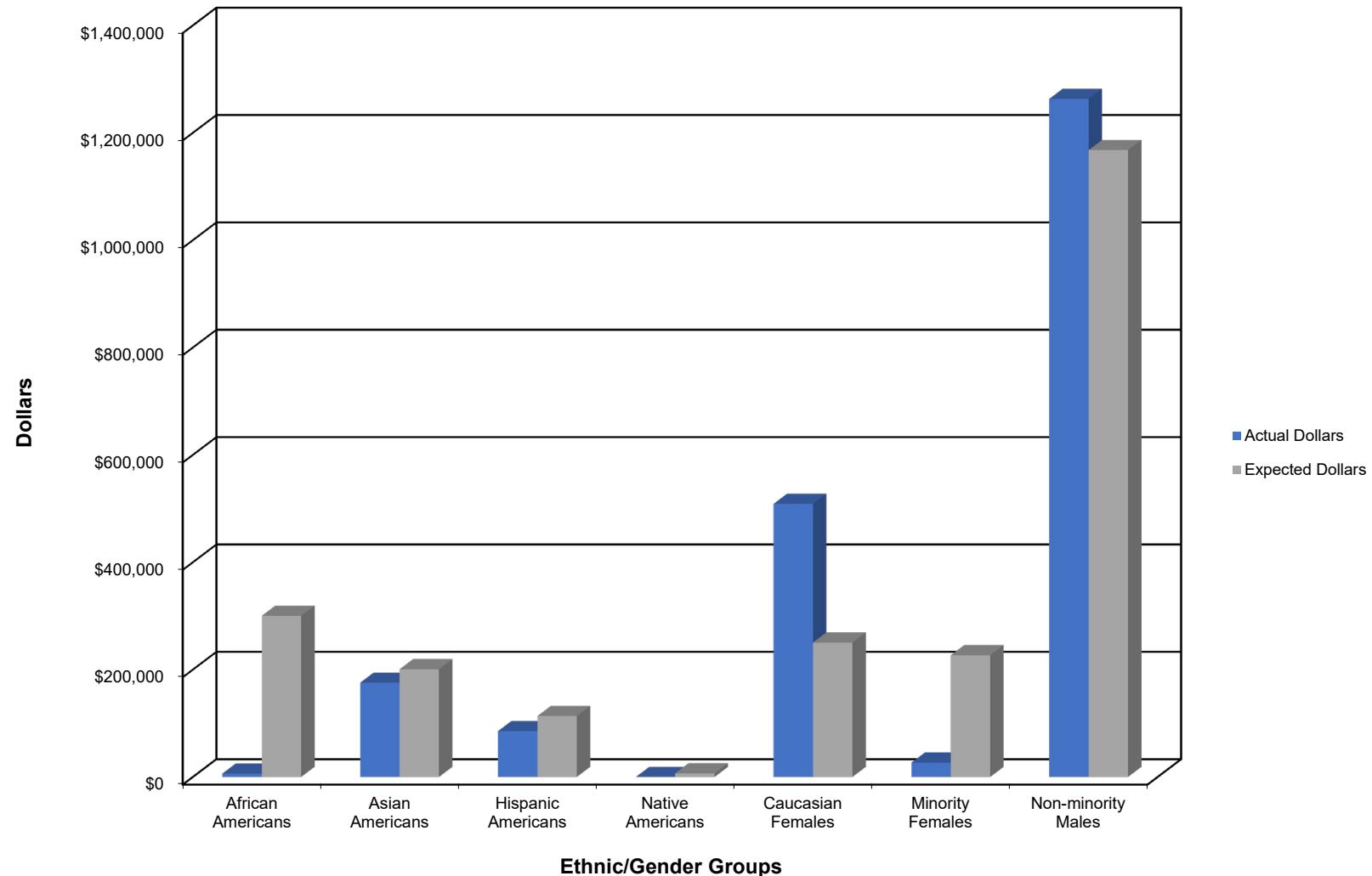
(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



Chart 6.3: Disparity Analysis: Professional Services Subcontracts
July 1, 2016 to June 30, 2021



IV. Conclusion

A. Disparity findings

As shown in Table 6.5, disparity was found for African American female, African American male, and Asian American female subcontractors in the award of construction contracts. Caucasian female subcontractors were underutilized on these contracts, but the underutilization was not statistically significant. On architectural and engineering contracts, disparity was found for African American male subcontractors. African American female, Hispanic American female, and Caucasian female subcontractors were underutilized on these contracts, but the underutilization was not statistically significant. In the award of professional services contracts, disparity was found for African American male subcontractors. African American female, Asian American female, and Hispanic American female subcontractors were underutilized on these contracts, but the underutilization was not statistically significant.

Table 6.5: Subcontract Disparity Summary, July 1, 2016 to June 30, 2021

Ethnicity/Gender	Construction	Architectural and Engineering	Professional Services
African American Females	Disparity	Underutilization	Underutilization
African American Males	Disparity	Disparity	Disparity
Asian-American Females	Disparity	Insufficient Data	Underutilization
Hispanic American Females	No Disparity	Underutilization	Underutilization
Caucasian Females	Underutilization	Underutilization	No Disparity

As noted in *Chapter 5: Prime Contract Disparity Analysis*, these findings of purposeful and intentional discrimination obligate the City to take affirmative steps to eliminate the conditions that account for the statistically significant disparity. Given the City's passive participation in its prime contractors' discrimination in the award of subcontracts for nearly two decades, the City should remove the structural barriers that limit certain ethnic groups' access to its prime contracts and subcontracts.



B. Summary of Policies and Practices to Remedy Statistical Disparities on Subcontracts

Municipal and other local governments utilize a number of best practices that the City could implement to eliminate the purposeful and intentional discrimination of subcontractors by their prime contractors.

1. M/WBE Subcontracting Goals

Various government agencies establish M/WBE subcontracting goals on their prime contracts. This practice promotes equity and inclusion in contracting and procurement, since M/WBEs, due to their business size, are often involved as subcontractors on prime contracts.

The utilization of contract-specific goals targeting M/WBEs based upon their availability has been proven to be an effective remedy. The solicitation specifies the subcontract goals and requirements for compliance with the goals. A good faith effort provision included in each solicitation allows bidders who could not meet the goals to document specific efforts. The determination of responsiveness could be based on meeting the goals or the submission of the documents.

2. DBE Subcontracting Goals

To comply with USDOT DBE Program requirements, local governments across the country establish DBE subcontracting goals on their prime contracts with USDOT financial assistance. This practice ensures fair competition and equal opportunity for DBEs and compliance with federal nondiscrimination requirements.

Ensuring compliance with DBE goals necessitates rigorous monitoring and enforcement procedures. DBE participation requirements should be included in contract provisions. Conducting regular compliance reviews would ensure the achievement of DBE goals. This would also require regular reporting from prime contractors on their DBE participation holding them accountable for meeting the goals.



CHAPTER 7: Regression Analysis

I. Introduction

Private sector business practices that are not subject to government Minority and Woman-owned Business Enterprise (M/WBE) requirements are indicators of marketplace conditions that could adversely affect the formation and growth of M/WBEs. The adverse marketplace conditions thereby could depress the current availability of M/WBEs. *Concrete Works of Colorado v. City and County of Denver (Concrete Works III)*⁶⁴ sets forth a framework for considering a passive participant model for an analysis of discrimination in private sector business practices. In accordance with *Concrete Works III*, regression analyses were conducted to examine two outcome variables—business ownership rates and business earnings—to determine if the City of Oakland is passively participating in ethnic and gender discrimination. These two regression analyses examined possible impediments to minority and woman business ownership, as well as factors affecting M/WBE business earnings. Further details are provided in the current chapter under *Section IV: Datasets Analyzed*.

Each regression analysis compared minority group members⁶⁵ and Caucasian females to non-minority male-owned business enterprises by controlling for race and gender-neutral explanatory variables, such as age, education, marital status, and access to capital. The impact of the explanatory variables on the outcome variables is described in this chapter. These findings elucidate the socioeconomic conditions in the City's market area that could adversely affect the measuring of relative availability of M/WBEs and Non-minority Male-owned Business Enterprises. Statistically significant findings for lower M/WBE business earnings and lower likelihoods of minority and Caucasian female Business ownership could indicate patterns of discrimination that might result in disproportionately smaller numbers of willing and capable M/WBEs.

The United States Census Public Use Microdata Sample (PUMS) data were used to compare a minority male's, minority female's, and Caucasian female's probability of owning a business to the probability of a non-minority male owning a business. Logistic regression was used to determine if race and gender have a statistically significant effect on the probability of business ownership. The PUMS data were also used to compare the business earnings of M/WBEs to non-minority male-owned businesses. An Ordinary Least Squares (OLS) regression was utilized to analyze the PUMS data for disparities in owner-reported incomes when controlling for race and gender-neutral factors.

The applicable limits of the private sector discrimination findings are set forth in *Builders Association of Greater Chicago v. City of Chicago*⁶⁶ (*City of Chicago*), in which the court

⁶⁴ *Concrete Works of Colo., Inc. v. Denver*, 86 F. Supp. 2d 1042, 1057-61 (D. Colo. 2000), *rev'd on other grounds*, 321 F.3d 950 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027 (2003) ("Concrete Works II").

⁶⁵ Minority group members include both males and females.

⁶⁶ *Builders Ass'n of Greater Chicago v. Chicago*, 298 F. Supp. 2d 725 (N.D. Ill. 2003).



established that even when there is evidence of private sector discrimination, the findings cannot be used as the factual predicate for a government-sponsored, race-conscious M/WBE program unless there is a nexus between the private sector data and the public agency actions. The private sector findings, however, can be used to develop race-neutral programs to address barriers to the formation and development of M/WBEs. Given the case law, caution must be exercised in the interpretation and application of the regression findings. Case law regarding the application of private sector discrimination is discussed below in detail.

II. Legal Analysis

A. Passive Discrimination

The controlling legal precedent set forth in the 1989 *City of Richmond v. J.A. Croson Co.*⁶⁷ decision authorized state and local governments to remedy discrimination in the awarding of subcontracts by its prime contractors on the grounds that the government cannot be a “passive participant” in such discrimination. In January 2003, *Concrete Works IV*⁶⁸ and *City of Chicago*⁶⁹ extended the private sector analysis to the investigation of discriminatory barriers that M/WBEs encountered in the formation and development of businesses and their consequence for state and local remedial programs. *Concrete Works IV* set forth a framework for considering such private sector discrimination as a passive participant model for analysis. However, the obligation of presenting an appropriate nexus between the government remedy and the private sector discrimination was first addressed in *City of Chicago*.

The Tenth Circuit Court decided in *Concrete Works IV* that business activities conducted in the private sector, if within the government’s market area, are also appropriate areas to explore the issue of passive participation.⁷⁰ However, the appropriateness of the City’s remedy, given the finding of private sector discrimination, was not at issue before the court. The question before the court was whether sufficient facts existed to determine if the private sector business practices under consideration constituted discrimination. For technical legal reasons,⁷¹ the court did not examine whether a consequent public sector remedy, i.e., one involving a goal requirement on the City of Denver’s contracts, was “narrowly tailored” or otherwise supported by the City’s private sector findings of discrimination.

B. Narrow Tailoring

The question of whether a particular public sector remedy is narrowly tailored when it is based solely on business practices within the private sector was at issue in *City of Chicago*. The case, decided ten months after *Concrete Works IV*, found that certain private sector business practices

⁶⁷ 488 U.S. 469 (1989).

⁶⁸ *Concrete Works of Colo., Inc. v. Denver*, 321 F.3d 950, 965-69 (10th Cir. 2003) (“*Concrete Works IV*”).

⁶⁹ *City of Chicago*, 298 F. Supp. 2d at 738-39.

⁷⁰ *Concrete Works IV*, 321 F.3d at 966-67.

⁷¹ Plaintiff had not preserved the issue on appeal. Therefore, it was no longer part of the case.

constituted discrimination against minorities in the Chicago market area. However, the district court did not find the City of Chicago's M/WBE subcontracting goal to be a remedy "narrowly tailored" to address the documented private sector discriminatory business practices that had been discovered within the City's market area.⁷² The court explicitly stated that certain discriminatory business practices documented by regression analyses constituted private sector discrimination.⁷³ It is also notable that the documented discriminatory business practices reviewed by the court in *City of Chicago* were similar to those reviewed in *Concrete Works IV*. Notwithstanding the fact that discrimination in the City of Chicago's market area was documented, the court determined that the evidence was insufficient to support the city's race-based subcontracting goals.⁷⁴ The court ordered an injunction to invalidate the City of Chicago's race-based program.⁷⁵

The following statements from that opinion are noteworthy:

Racial preferences are, by their nature, highly suspect, and they cannot be used to benefit one group that, by definition, is not either individually or collectively the present victim of discrimination. There may well also be (and the evidence suggests that there are) minorities and women who do not enter the industry because they perceive barriers to entry. If there is none, and their perception is in error, that false perception cannot be used to provide additional opportunities to M/WBEs already in the market to the detriment of other firms who, again by definition, neither individually nor collectively, are engaged in discriminatory practices.⁷⁶

Given these distortions of the market and these barriers, is City's program narrowly tailored as a remedy? It is here that I believe the program fails. There is no "meaningful individualized review" of M/WBEs. *Gratz v. Bollinger*, 539 U.S. 244, 156 L. Ed. 2d 257, 123 S.Ct. 2411, 2431 (2003) (Justice O'Connor concurring). Chicago's program is more expansive and more rigid than plans that have been sustained in the courts. It has no termination date, nor has it any means for determining a termination date. The "graduation" revenue amount is very high, \$27,500,000, and very few have graduated. There is no net worth threshold. A third-generation Japanese American from a wealthy family, with a graduate degree from MIT, qualifies (and an Iraqi immigrant does not). Waivers are rarely or never granted on construction contracts, but "regarding flexibility, 'the availability of waivers' is of particular importance a 'rigid numerical quota' particularly disserves the cause of narrow tailoring." *Adarand Constructors v. Slater, supra*, at 1177. The City's program is "rigid numerical quota," a quota not related to the number of available, willing, and able firms but to concepts of how many of those firms there

⁷² *City of Chicago*, 298 F. Supp. 2d at 739.

⁷³ *Id.* at 731-32.

⁷⁴ *Id.* at 742.

⁷⁵ *Id.*

⁷⁶ *Id.* at 734-35.

should be. Formalistic points did not survive strict scrutiny in *Gratz v. Bollinger*, *supra*, and formalistic percentages cannot survive scrutiny.⁷⁷

C. Conclusion

As established in *City of Chicago*, private sector discrimination cannot be used as the factual basis for a government-sponsored, race-based M/WBE program without a nexus to the government's actions. Therefore, the discrimination that might be revealed in the regression analysis is not a sufficient factual predicate for the City to establish a race-based M/WBE program unless a nexus is established between the City and the private sector data. These economic indicators, albeit not a measure of passive discrimination, are illustrative of private sector discrimination and can support the City-sponsored, race-neutral programs.

III. Regression Analysis Methodology

A regression analysis is the methodology employed to ascertain whether there are private sector economic indicators of discrimination in the City's market area that could impact the formation and development of M/WBEs. The two regression analyses focus on the construction, architectural and engineering, professional services, and goods and services industries. The datasets used for the regression analyses did not allow for an exact match of the industries used in the City's Disparity Study. Therefore, the four industries were selected to most closely mirror the industries used in the City's Study.

As noted, two separate regression analyses were conducted—Business Ownership Analysis and Earnings Disparity Analysis. Both take into consideration race and gender-neutral factors, such as age, education, and creditworthiness in assessing whether the explanatory factors examined are disproportionately affecting minorities and females compared to similarly situated non-minority males.

IV. Datasets Analyzed

The 2016 through 2021 PUMS dataset produced by the United States Census Bureau was used to analyze business ownership and earnings disparities within the City of Oakland. The dataset represented the most recent data that most closely matched the July 1, 2016 to June 30, 2021 study period. The data for the City of Oakland was identified using Public Use Microdata Areas (PUMA), a variable within the PUMS dataset that reports data for counties and cities within states. The dataset includes information on personal profile, industry, work characteristics, and family structure. The PUMS data enabled an analysis by an individual's ethnicity and gender.

Unemployment rates by ethnicity within the State of California were examined using the 2021 2Q EPI analysis of Bureau of Labor Statistics Local Area Unemployment Statistics (LAUS) data and Current Population Survey (CPS) data. These data represent the most recent information within the study period available on access to observations for unemployment status by an individual's

⁷⁷ *City of Chicago*, 298 F.Supp.2d at 739-40.

ethnicity. The dataset uses a defining variable that can specify the geographical boundaries and the area variable was used to determine the unemployment rates within the State of California. Table 7.1 lists the percentage of unemployed individuals by ethnicity.

Table 7.1: Unemployment Rate by Ethnicity

Ethnicity	Unemployment Rate
All Ethnicity	7.8%
Caucasian American	6.3%
African American	11.9%
Asian American	7.4%
Hispanic American	8.7%

In the State of California, 6.3% of Caucasian Americans were unemployed, while 7.8% of all ethnicities in the State were unemployed. 7.4% of Asian Americans were unemployed, which is also lower than the state average. Meanwhile, 11.9% of African Americans and 8.7% of Hispanic Americans were unemployed, which is higher than the state average.

V. Regression Models Defined

A. Business Ownership Analysis

The Business Ownership Analysis examines the relationship between the likelihood of being a business owner and independent socioeconomic variables. Business ownership, the dependent variable, includes business owners of incorporated and non-incorporated firms. The business ownership variable utilizes two values. A value of “1” indicates that a person is a business owner, whereas a value of “0” indicates that a person is not a business owner. When the dependent variable is defined this way, it is called a binary variable. In this case, a logistic regression model is utilized to predict the likelihood of business ownership using independent socioeconomic variables. Four logistic models are run to predict the probability of business ownership in each of the four industries examined in the City’s Study. Categories of the independent variables analyzed include educational level, citizenship status, personal characteristics, and race/gender.

In the table below, a finding of disparity is denoted by an asterisk (*) when the independent variable is statistically significant at or above the 95% confidence level. A finding of disparity indicates that there is a non-random relationship between the probability of owning a business and the independent variable. Tables of regression results indicate the sign of each variable’s coefficient from the regression output. If the coefficient sign is positive, it indicates that there is a positive relationship between the dependent variable and that independent variable. For example, having an advanced degree is positively related to the likelihood of being a business owner, holding all other variables constant. If the coefficient sign for the independent variable is negative, this implies an inverse relationship between the dependent variable and that independent variable. For instance, an individual with children under the age of 6 has a lower likelihood of owning a business, holding all other variables constant.



For each of the four industries, the logistic regression is used to identify the likelihood that an individual owns a business given his or her background, including race, gender, and race and gender-neutral factors. The dependent variables in all regressions are binary variables coded as “1” for individuals who are self-employed and “0” for individuals who are not self-employed.⁷⁸ Table 7.2 presents the independent variables used for the Business Ownership Analysis.

Table 7.2: Independent Variables Used in the Business Ownership Analysis

Personal Characteristics	Educational Attainment	Ethnicity	Gender
<ol style="list-style-type: none"> 1. Age 2. Age Squared 3. Home Ownership 4. Home Value 5. Monthly Mortgage Payments 6. Interest and Dividends 7. Speaks English at Home 8. Children Under the Age of Six in the Household 9. Marital Status 	<ol style="list-style-type: none"> 10. Bachelor's Degree 11. Advanced Degree 	<ol style="list-style-type: none"> 12. Caucasian American 13. African American 14. Asian American 15. Hispanic American 16. Native American 17. Other Minority Group⁷⁹ 	<ol style="list-style-type: none"> 18. Female

B. The Earnings Disparity Analysis

The Earnings Disparity Analysis examines the relationship between the annual self-employment income and independent socioeconomic variables. “Wages” are defined as the individual’s total dollar income earned in the previous 12 months. Categories of independent socioeconomic variables analyzed include educational level, citizenship status, personal characteristics, business characteristics, ethnicity, and gender.

All the independent variables are regressed against wages in an Ordinary Least Squares (OLS) regression model. The OLS model estimates a linear relationship between the independent variables and the dependent variable. This multivariate regression model estimates a line similar to the standard $y = mx+b$ format, but with additional independent variables. The mathematical purpose of a regression analysis is to estimate the best-fit line for the model and assess which findings are statistically significant.

In the table below, a finding of disparity is denoted by an asterisk (*) when an independent variable is statistically significant at or above the 95% confidence level. A finding of disparity indicates that there is a non-random relationship between wages and the independent variable. If the coefficient sign is positive, it means there is a positive relationship between the dependent variable

⁷⁸ Note: The terms “business owner” and “self-employed” are used interchangeably throughout the chapter.

⁷⁹ Other Minority Group includes individuals who belong to two or more racial groups.

and that independent variable. If the coefficient sign for the independent variable is negative, this implies an inverse relationship between the dependent variable and that independent variable.

An OLS regression analysis is used to assess the presence of business earning disparities. OLS regressions have been conducted separately for each industry. Table 7.3 presents the independent variables used for the Earnings Disparity Analysis.⁸⁰

Table 7.3: Independent Variables Used for the Earnings Disparity Analysis

Personal Characteristics	Educational Attainment	Ethnicity	Gender
<ol style="list-style-type: none"> 1. Age 2. Age Squared 3. Incorporated Business 4. Home Ownership 5. Home Value 6. Monthly Mortgage Payments 7. Interest and Dividends 8. Speaks English at Home 9. Children Under the Age of Six in the Household 10. Marital Status 	<ol style="list-style-type: none"> 11. Bachelor's Degree 12. Advanced Degree 	<ol style="list-style-type: none"> 13. Caucasian American 14. African American 15. Asian American 16. Hispanic American 17. Native American 18. Other Minority Group 	<ol style="list-style-type: none"> 19. Female

VI. Findings

A. Business Ownership Analysis

The business ownership variable is defined by the number of self-employed individuals in each of the four industries. The analysis considered incorporated and non-incorporated businesses. The data in this section come from the City of Oakland, which was specified using PUMA, a variable within the PUMS dataset that can specify the different counties and cities within states.⁸¹ As noted in Section IV, because each PUMA is determined by the United States Census, the region analyzed in the regression analyses could be limited to the City of Oakland.

Previous studies have shown that many non-discriminatory factors, such as education, age, and marital status, are associated with self-employment. In this analysis, race and gender-neutral factors are combined with race and gender-specific factors in a logistic regression model. The purpose of this model is to determine whether observed race or gender disparities are independent

⁸⁰ If an independent variable is a binary variable, it will be coded as “1” if the individual has that variable present and “0” if otherwise (i.e., for the Hispanic American variable, it is coded as “1” if the individual is Hispanic American and “0” if otherwise). If an independent variable is a continuous variable, a value will be used (i.e., one’s age can be labeled as 35).

⁸¹ The PUMS data were collected by the United States Census Bureau from a five-percent sample of United States households. The observations were weighted to preserve the representative nature of the sample in relation to the population as a whole.



of the race and gender-neutral factors known to be associated with self-employment. It must be noted that many of these variables, such as having an advanced degree, while seeming to be race and gender-neutral, may be correlated with race and gender. For example, if Caucasian females are less likely to have advanced degrees and the regression results show that individuals with advanced degrees are significantly more likely to own a business, Caucasian females may be disadvantaged in multiple ways. First, Caucasian females may have statistically significantly lower business ownership rates, so they face a direct disadvantage as a group. Secondly, they are indirectly disadvantaged, as fewer of them tend to have advanced degrees, which significantly increases one's chances of owning a business.

1. Logistic Model Results for Construction Business Ownership

Table 7.4 presents the logistic regression results for the likelihood of owning a business in the construction industry based on the 23 variables analyzed in this model.

Table 7.4: Construction Industry Logistic Model

Business Ownership Model	Coefficient	Significance	Standard Error	Z-score	P> z
Age	0.107896		0.086839	1.24	0.214
Age-squared	-0.000459		0.000841	-0.55	0.585
Bachelor's Degree (a)	-0.469322		0.465358	-1.01	0.313
Advanced Degree (a)	-0.343568		0.470932	-0.73	0.466
Home Owner	-0.628540		0.475191	-1.32	0.186
Home Value	0.000000		0.000000	1.16	0.248
Monthly Mortgage Payment	-0.000071		0.000119	-0.60	0.550
Interest and Dividends	0.000010		0.000013	0.79	0.428
Speaks English at Home	0.223783		0.397356	0.56	0.573
Has a Child under the Age of Six	-0.252323		0.844431	-0.30	0.765
Married	0.292729		0.354162	0.83	0.408
Caucasian Female (b)	0.804558		0.510147	1.58	0.115
African American (b)	-0.763788		0.758458	-1.01	0.314
Asian American (b)	-0.953786		0.603876	-1.58	0.114
Hispanic American (b)	0.292448		0.472281	0.62	0.536
Native American (b)	-		-	-	-
Other Minority (b)	0.689701		0.940544	0.73	0.463
Year 2017 (c)	0.003479		0.545136	0.01	0.995
Year 2018 (c)	-0.008663		0.499349	-0.02	0.986
Year 2019 (c)	0.324438		0.534530	0.61	0.544
Year 2020 (c)	0.409598		0.488376	0.84	0.402
Year 2021 (c)	0.825013		0.430546	1.92	0.055
Constant	-5.938016	*	2.135033	-2.78	0.005

(a) For the variables Bachelor's Degree and Advanced Degree, the baseline variable is high school.

(b) For the Ethnicity variables, the baseline variable is Caucasian males.

(c) For the Year variables, the baseline variable is Year 2016.

(P>|z|) of less than 0.05 denotes findings of statistical significance.

(*) denotes a statistically significant variable with 95% confidence.

(-) denotes an omitted variable due to insufficient observations.



The construction industry logistic regression results do not indicate significant findings in relation to personal characteristics and ethnicity/gender variables.

2. Logistic Model Results for Architectural and Engineering Business Ownership

Table 7.5 presents the logistic regression results for the likelihood of owning a business in the architectural and engineering industry based on the 23 variables analyzed in this model.

Table 7.5: Architectural and Engineering Industry Logistic Model

Business Ownership Model	Coefficient	Significance	Standard Error	Z-score	P> z
Age	-0.027014		0.045675	-0.59	0.554
Age-squared	0.000722		0.000475	1.52	0.129
Bachelor's Degree (a)	-0.183084		0.258646	-0.71	0.479
Advanced Degree (a)	-0.890573		0.529113	-1.68	0.092
Home Owner	-0.252010		0.283625	-0.89	0.374
Home Value	0.000000		0.000000	1.12	0.264
Monthly Mortgage Payment	-0.000087		0.000101	-0.86	0.388
Interest and Dividends	-0.000002		0.000003	-0.65	0.518
Speaks English at Home	0.452477		0.440192	1.03	0.304
Has a Child under the Age of Six	-0.726880		0.987985	-0.74	0.462
Married	0.207192		0.245577	0.84	0.399
Caucasian Female (b)	-0.518877		0.484181	-1.07	0.284
African American (b)	-0.480817		0.452830	-1.06	0.288
Asian American (b)	0.433365		0.477473	0.91	0.364
Hispanic American (b)	0.272982		0.456557	0.60	0.550
Native American (b)	0.010955		0.964217	0.010	0.991
Other Minority (b)	0.139650		0.672099	0.21	0.835
Year 2017 (c)	-0.032512		0.295193	-0.11	0.912
Year 2018 (c)	-0.187957		0.286140	-0.66	0.511
Year 2019 (c)	-0.543568		0.307972	-1.76	0.078
Year 2020 (c)	-0.273249		0.321651	-0.85	0.396
Year 2021 (c)	-0.361329		0.283762	-1.27	0.203
Constant	-1.486548		1.172784	-1.27	0.205

(a) For the variables Bachelor's Degree and Advanced Degree, the baseline variable is high school.

(b) For the Ethnicity variables, the baseline variable is Caucasian males.

(c) For the Year variables, the baseline variable is Year 2016.

(P>|z|) of less than 0.05 denotes findings of statistical significance.

(*) denotes a statistically significant variable with 95% confidence.

(-) denotes an omitted variable due to insufficient observations.



The architectural and engineering industry logistic regression results do not indicate significant findings in relation to personal characteristics and ethnicity/gender variables.

3. Logistic Model Results for Professional Services Business Ownership

Table 7.6 presents the logistic regression results for the likelihood of owning a business in the professional services industry based on the 23 variables analyzed in this model.

Table 7.6: Professional Services Industry Logistic Model

Business Ownership Model	Coefficient	Significance	Standard Error	Z-score	P> z
Age	0.107664	*	0.030913	3.48	0.000
Age-squared	-0.000465		0.000305	-1.52	0.128
Bachelor's Degree (a)	0.010476		0.233754	0.04	0.964
Advanced Degree (a)	-0.061933		0.235058	-0.26	0.792
Home Owner	-0.342084		0.193837	-1.76	0.078
Home Value	0.000000	*	0.000000	2.82	0.005
Monthly Mortgage Payment	0.000004		0.000050	0.07	0.944
Interest and Dividends	0.000007	*	0.000002	2.81	0.005
Speaks English at Home	0.390104		0.215539	1.81	0.070
Has a Child under the Age of Six	0.747495	*	0.314099	2.38	0.017
Married	-0.091023		0.162751	-0.56	0.576
Caucasian Female (b)	0.378990	*	0.164601	2.30	0.021
African American (b)	0.487808		0.312371	1.56	0.118
Asian American (b)	0.018036		0.234811	0.08	0.939
Hispanic American (b)	0.270594		0.267124	1.01	0.311
Native American (b)	-		-	-	-
Other Minority (b)	-0.376945		0.318760	-1.18	0.237
Year 2017 (c)	-0.074570		0.188415	-0.40	0.692
Year 2018 (c)	0.034792		0.195782	0.18	0.859
Year 2019 (c)	-0.481879	*	0.215412	-2.24	0.025
Year 2020 (c)	-0.445638	*	0.199616	-2.23	0.026
Year 2021 (c)	-0.273432		0.191379	-1.43	0.153
Constant	-5.453376	*	0.797121	-6.84	0.000

(a) For the variables Bachelor's Degree and Advanced Degree, the baseline variable is high school.

(b) For the Ethnicity variables, the baseline variable is Caucasian males.

(c) For the Year variables, the baseline variable is Year 2016.

(P>|z|) of less than 0.05 denotes findings of statistical significance.

(*) denotes a statistically significant variable with 95% confidence.

(-) denotes an omitted variable due to insufficient observations.



The professional services industry logistic regression results indicate the following:

- The likelihood of professional services business ownership is positively associated with increased age. Older individuals are significantly more likely to be business owners in the professional services industry.
- Individuals who have a higher-valued home are significantly more likely to be business owners in the professional services industry.
- Individuals who have higher interest and dividends income are significantly more likely to be business owners in the professional services industry.
- Individuals who have a child under the age of six are significantly more likely to be business owners in the professional services industry.
- Caucasian females are significantly more likely to be business owners in the professional services industry.
- In 2019 and 2020, individuals were significantly less likely to be business owners in the professional services industry than in 2016.



4. Logistic Model Results for Goods and Services Business Ownership

Table 7.7 presents the logistic regression results for the likelihood of owning a business in the goods and services industry based on the 23 variables analyzed in this model.

Table 7.7: Goods and Services Industry Logistic Model

Business Ownership Model	Coefficient	Significance	Standard Error	Z-score	P> z
Age	0.115603	*	0.042853	2.70	0.007
Age-squared	-0.000936	*	0.000433	-2.16	0.030
Bachelor's Degree (a)	-0.198067		0.286182	-0.69	0.489
Advanced Degree (a)	-0.561887		0.417750	-1.35	0.179
Home Owner	-0.426715		0.259983	-1.64	0.101
Home Value	0.000000	*	0.000000	2.09	0.037
Monthly Mortgage Payment	-0.000080		0.000114	-0.70	0.483
Interest and Dividends	0.000013		0.000009	1.50	0.133
Speaks English at Home	-0.094164		0.303512	-0.31	0.756
Has a Child under the Age of Six	-0.320780		0.589591	-0.54	0.586
Married	0.077836		0.216093	0.36	0.719
Caucasian Female (b)	0.396689		0.370787	1.07	0.285
African American (b)	-0.415590		0.399156	-1.04	0.298
Asian American (b)	-0.283322		0.407828	-0.69	0.487
Hispanic American (b)	-0.032162		0.372727	-0.09	0.931
Native American (b)	-2.165729		1.260650	-1.72	0.086
Other Minority (b)	-0.741235		0.586867	-1.26	0.207
Year 2017 (c)	0.325196		0.334510	0.97	0.331
Year 2018 (c)	0.592729		0.309511	1.92	0.055
Year 2019 (c)	0.223384		0.355402	0.63	0.530
Year 2020 (c)	0.073246		0.354919	0.21	0.836
Year 2021 (c)	0.473778		0.298140	1.59	0.112
Constant	-4.622217	*	1.039237	-4.45	0.000

(a) For the variables bachelor's degree and advanced degree, the baseline variable is high school.

(b) For the ethnicity variables, the baseline variable is Caucasian males.

(c) For the year variables, the baseline variable is Year 2016.

(P>|z|) of less than 0.05 denotes findings of statistical significance.

(*) denotes a statistically significant variable with 95% confidence.

(-) denotes an omitted variable due to insufficient observations.

The goods and services industry logistic regression results indicate the following:

- The likelihood of goods and services business ownership is positively associated with increased age. Older individuals are significantly more likely to be business owners in the goods and services industry. However, as individuals reach advanced age, the likelihood of being a business owner significantly decreases in the goods and services industry.
- Individuals who have a higher-valued home are significantly more likely to be business owners in the goods and services industry.



B. Business Ownership Analysis Conclusion

The Business Ownership Analysis examined the impact of different explanatory variables on an individual's likelihood of owning a business in the construction, architectural and engineering, professional services, and goods and services industries. Controlling for race and gender-neutral factors, the Business Ownership Analysis results show the model that can find statistically significant disparities in the likelihood of owning a business, which exist for minorities compared to similarly situated non-minority males.

The business ownership regression analysis results do not indicate significant disparities in relation to industry and ethnicity/gender variables. Table 7.8 shows the business ownership regression analysis results by ethnicity, gender, and industry.

Table 7.8: Statistically Significant Business Ownership Disparities

Ethnicity/Gender	Construction	Architectural and Engineering	Professional Services	Goods and Services
Caucasian Female	Not Significant	Not Significant	Not Significant	Not Significant
African American	Not Significant	Not Significant	Not Significant	Not Significant
Asian American	Not Significant	Not Significant	Not Significant	Not Significant
Hispanic American	Not Significant	Not Significant	Not Significant	Not Significant
Native American	Not Significant	Not Significant	Not Significant	Not Significant
Other Minority	Not Significant	Not Significant	Not Significant	Not Significant

C. Business Earnings Analysis

The business earnings variable is identified by self-employment income⁸² from 2016 to 2021 for the four industries: construction, architectural and engineering, professional services, and goods and services. The analysis considered incorporated and non-incorporated businesses.

Previous studies have shown that many non-discriminatory factors, such as education, age, and marital status, are associated with self-employment income. In this analysis, race and gender-neutral factors are combined with race and gender groups in an OLS regression model to determine whether observed race or gender disparities were independent of the race and gender-neutral factors known to be associated with self-employment income.



⁸² The terms "business earnings" and "self-employment income" are used interchangeably.

1. OLS Regression Results in the Construction Industry

Table 7.9 shows the results of the OLS regression for business earnings in the construction industry based on the 24 variables analyzed in this model.

Table 7.9: Construction Industry OLS Regression

Business Earnings Model	Coefficient	Significance	Standard Error	t-value	P> t
Age	5365.64	*	1215.522	4.41	0.000
Age-squared	-52.82	*	13.558	-3.90	0.000
Incorporated Business	6833.62		21817.690	0.31	0.754
Bachelor's Degree (a)	37104.88	*	7908.609	4.69	0.000
Advanced Degree (a)	29755.73	*	10747.220	2.77	0.006
Home Owner	18045.42		10599.840	1.70	0.089
Home Value	-0.01		0.013	-0.80	0.422
Monthly Mortgage Payment	8.92	*	3.928	2.27	0.024
Interest and Dividends	0.65		0.467	1.40	0.162
Speaks English at Home	17459.10	*	7581.404	2.30	0.022
Has a Child under the Age of Six	8340.66		13898.140000	0.60	0.549
Married	6968.40		6486.536	1.07	0.283
Caucasian Female (b)	-20049.99	*	9025.071000	-2.22	0.027
African American (b)	-49662.27	*	12968.570	-3.83	0.000
Asian American (b)	-15654.70		9228.294	-1.70	0.091
Hispanic American (b)	-31145.81	*	11103.040	-2.81	0.005
Native American (b)	74230.64	*	12183.510	6.09	0.000
Other Minority (b)	-10041.43		15252.300	-0.66	0.511
Year 2017 (c)	20059.71		10699.460000	1.87	0.062
Year 2018 (c)	3081.86		5853.521000	0.53	0.599
Year 2019 (c)	-4581.91		8325.709000	-0.55	0.582
Year 2020 (c)	12453.72		7711.471000	1.61	0.107
Year 2021 (c)	-1672.67		7632.394000	-0.22	0.827
Constant	-90257.40	*	29649.750	-3.04	0.002

(a) For the variables Bachelor's Degree and Advanced Degree, the baseline variable is high school.

(b) For the Ethnicity variables, the baseline variable is Caucasian males.

(c) For the Year variables, the baseline variable is Year 2016.

(P>|z|) of less than 0.05 denotes findings of statistical significance.

(*) denotes a statistically significant variable with 95% confidence.

(-) denotes an omitted variable due to insufficient observations.



The OLS regression results for business earnings in the construction industry indicate the following:

- Older business owners have significantly higher business earnings in the construction industry. However, as business owners reach an advanced age, they have significantly lower business earnings in the construction industry.
- Business owners with a bachelor's degree or an advanced degree have significantly higher business earnings in the construction industry.
- Business owners with a higher monthly mortgage payment have significantly higher business earnings in the construction industry.
- Business owners who speak English at home have significantly higher business earnings in the construction industry.
- Caucasian female, African American, and Hispanic American business owners have significantly lower business earnings than do non-minority males in the construction industry.
- Native American business owners have significantly higher business earnings than non-minority males in the construction industry.



2. OLS Regression Results in the Architectural and Engineering Industry

Table 7.10 shows the results of the OLS regression for business earnings in the architectural and engineering industry based on the 24 variables analyzed in this model.

Table 7.10: Architectural and Engineering Industry OLS Regression

Business Earnings Model	Coefficient	Significance	Standard Error	t-value	P> t
Age	1926.246		1640.119	1.17	0.241
Age-squared	-11.963		20.692	-0.58	0.563
Incorporated Business	4412.694		12187.620	0.36	0.717
Bachelor's Degree (a)	26615.850	*	6931.892	3.84	0.000
Advanced Degree (a)	63531.760	*	14706.330	4.32	0.000
Home Owner	915.415		7992.147	0.11	0.909
Home Value	0.007		0.011	0.61	0.544
Monthly Mortgage Payment	8.989	*	2.866	3.14	0.002
Interest and Dividends	0.843	*	0.366	2.31	0.021
Speaks English at Home	5460.501		7688.345	0.71	0.478
Has a Child under the Age of Six	5323.626		12669.950000	0.42	0.674
Married	4918.017		4854.962	1.01	0.311
Caucasian Female (b)	-8270.422		16201.990000	-0.51	0.610
African American (b)	-13003.660		11682.180	-1.11	0.266
Asian American (b)	-21673.780		11574.220	-1.87	0.061
Hispanic American (b)	-21642.160		11926.540	-1.81	0.070
Native American (b)	-12790.210		18991.700	-0.67	0.501
Other Minority (b)	-6786.844		15751.520	-0.43	0.667
Year 2017 (c)	-2692.271		7385.658000	-0.36	0.716
Year 2018 (c)	1886.584		6886.118000	0.27	0.784
Year 2019 (c)	-6090.646		8145.240000	-0.75	0.455
Year 2020 (c)	3345.226		7123.369000	0.47	0.639
Year 2021 (c)	3440.151		6904.016000	0.50	0.618
Constant	-14784.440		29300.630	-0.50	0.614

(a) For the variables Bachelor's Degree and Advanced Degree, the baseline variable is high school.

(b) For the Ethnicity variables, the baseline variable is Caucasian males.

(c) For the Year variables, the baseline variable is Year 2016.

(P>|z|) of less than 0.05 denotes findings of statistical significance.

(*) denotes a statistically significant variable with 95% confidence.

(-) denotes an omitted variable due to insufficient observations.



The OLS regression results for business earnings in the architectural and engineering industry indicate the following:

- Business owners with a bachelor's degree or an advanced degree have significantly higher business earnings in the architectural and engineering industry.
- Business owners with a higher monthly mortgage payment have significantly higher business earnings in the architectural and engineering industry.
- Business owners who have higher interest and dividend income have significantly higher business earnings in the architectural and engineering industry.



3. OLS Regression Results in the Professional Services Industry

Table 7.11 shows the results of the OLS regression for business earnings in the professional services industry based on the 24 variables analyzed in this model.

Table 7.11: Professional Services Industry OLS Regression

Business Earnings Model	Coefficient	Significance	Standard Error	t-value	P> t
Age	10110.07	*	1247.700	8.10	0.000
Age-squared	-103.80	*	14.307	-7.25	0.000
Incorporated Business	-18068.20		13345.870	-1.35	0.176
Bachelor's Degree (a)	30257.70	*	6806.669	4.45	0.000
Advanced Degree (a)	62421.48	*	8273.365	7.54	0.000
Home Owner	-2965.51		8387.143	-0.35	0.724
Home Value	0.02	*	0.007	3.01	0.003
Monthly Mortgage Payment	14.38	*	2.605	5.52	0.000
Interest and Dividends	0.42	*	0.198	2.13	0.033
Speaks English at Home	-847.24		6798.206	-0.12	0.901
Has a Child under the Age of Six	-6310.31		10577.970000	-0.60	0.551
Married	10687.46		5717.530	1.87	0.062
Caucasian Female (b)	-28963.84	*	7393.321000	-3.92	0.000
African American (b)	-18798.61		14733.230	-1.28	0.202
Asian American (b)	-26092.90	*	8214.169	-3.18	0.002
Hispanic American (b)	-23523.77	*	9039.872	-2.60	0.009
Native American (b)	-90884.34	*	9873.993	-9.20	0.000
Other Minority (b)	-36648.34	*	10680.070	-3.43	0.001
Year 2017 (c)	11217.03		7665.464000	1.46	0.144
Year 2018 (c)	18505.78	*	6954.360000	2.66	0.008
Year 2019 (c)	15946.01	*	6954.759000	2.29	0.022
Year 2020 (c)	22382.55	*	7172.083000	3.12	0.002
Year 2021 (c)	16494.70	*	6686.728000	2.47	0.014
Constant	-178559.00	*	27485.430	-6.50	0.000

(a) For the variables Bachelor's Degree and Advanced Degree, the baseline variable is high school.

(b) For the Ethnicity variables, the baseline variable is Caucasian males.

(c) For the Year variables, the baseline variable is Year 2016.

(P>|z|) of less than 0.05 denotes findings of statistical significance.

(*) denotes a statistically significant variable with 95% confidence.

(-) denotes an omitted variable due to insufficient observations.



The OLS regression results for business earnings in the professional services industry indicate the following:

- Older business owners have significantly higher business earnings in the professional services industry. However, as business owners reach an advanced age, they have significantly lower business earnings in the professional services industry.
- Business owners with a bachelor's degree or an advanced degree have significantly higher business earnings in the industry.
- Business owners who have a higher-valued home have significantly higher business earnings in the professional services industry.
- Business owners with a higher monthly mortgage payment have significantly higher business earnings in the professional services industry.
- Business owners who have higher interest and dividend income have significantly higher business earnings in the professional services industry.
- Caucasian female, Asian American, Hispanic American, Native American and other minority business owners have significantly lower business earnings than do non-minority males in the professional services industry.
- In 2018, 2019, 2020, and 2021, business owners had significantly higher business earnings in the professional services industry than in 2016.



4. OLS Regression Results in the Goods and Services Industry

Table 7.12 shows the results of the OLS regression for business earnings in the goods and services industry based on the 24 variables analyzed in this model.

Table 7.12: Goods and Services Industry OLS Regression

Business Earnings Model	Coefficient	Significance	Standard Error	t-value	P> t
Age	3390.23	*	648.705	5.23	0.000
Age-squared	-36.57	*	6.972	-5.24	0.000
Incorporated Business	-12008.40	*	5431.255	-2.21	0.027
Bachelor's Degree (a)	24229.75	*	5005.380	4.84	0.000
Advanced Degree (a)	35069.57	*	10128.560	3.46	0.001
Home Owner	7959.23	*	3815.279	2.09	0.037
Home Value	0.00		0.003	1.48	0.139
Monthly Mortgage Payment	9.52	*	1.649	5.77	0.000
Interest and Dividends	0.14		0.279	0.49	0.624
Speaks English at Home	8208.06		4891.447	1.68	0.094
Has a Child under the Age of Six	-9199.18		5752.065000	-1.60	0.110
Married	6020.95		3646.096	1.65	0.099
Caucasian Female (b)	-22281.09	*	10712.780000	-2.08	0.038
African American (b)	-34672.07	*	7498.095	-4.62	0.000
Asian American (b)	-29470.54	*	8799.452	-3.35	0.001
Hispanic American (b)	-26427.51	*	8491.972	-3.11	0.002
Native American (b)	-14752.04		8920.869	-1.65	0.099
Other Minority (b)	-28668.98	*	12408.230	-2.31	0.021
Year 2017 (c)	1467.17		3932.928000	0.37	0.709
Year 2018 (c)	7357.94		4372.427000	1.68	0.093
Year 2019 (c)	7735.87		4750.828000	1.63	0.104
Year 2020 (c)	7725.38		5159.338000	1.50	0.135
Year 2021 (c)	4006.40		3892.533000	1.03	0.304
Constant	-34541.96	*	15208.800	-2.27	0.023

(a) For the variables Bachelor's Degree and Advanced Degree, the baseline variable is high school.

(b) For the Ethnicity variables, the baseline variable is Caucasian males.

(c) For the Year variables, the baseline variable is Year 2016.

(P>|z|) of less than 0.05 denotes findings of statistical significance.

(*) denotes a statistically significant variable with 95% confidence.

(-) denotes an omitted variable due to insufficient observations.



The OLS regression results for business earnings in the goods and services industry indicate the following:

- Older business owners have significantly higher business earnings in the goods and services industry. However, as business owners reach an advanced age, they have significantly lower business earnings in the goods and services industry.
- Incorporated business owners have significantly lower business earnings in the goods and services industry.
- Business owners with a bachelor's degree or an advanced degree have significantly higher business earnings in the goods and services industry.
- Business owners who own a home have significantly higher business earnings in the goods and services industry.
- Business owners with a higher monthly mortgage payment have significantly higher business earnings in the goods and services industry.
- Caucasian female, African American, Asian American, Hispanic American, and other minority business owners have significantly lower business earnings than do non-minority males in the goods and services industry.



D. Business Earnings Analysis Conclusion

Controlling for race and gender-neutral factors, the Business Earnings Analysis documented statistically significant disparities in business earnings for minorities and Caucasian females compared to similarly situated non-minority males. Caucasian female and Hispanic American business owners experience the greatest disparity, as they have significantly lower business earnings in the construction, professional services, and goods and services industries than do similarly situated non-minority males. African American business owners have significantly lower business earnings in the construction and goods and services industries. Asian American and other minority business owners have significantly lower business earnings in the professional services and goods and services industries. Native American business owners have significantly lower business earnings in the professional services industry. Table 7.13 shows the earnings disparity regression results by ethnicity, gender, and industry.

Table 7.13: Statistically Significant Business Earnings Disparities

Ethnicity/Gender	Construction	Architectural and Engineering	Professional Services	Goods and Services
Caucasian Female	Significant	Not Significant	Significant	Significant
African American	Significant	Not Significant	Not Significant	Significant
Asian American	Not Significant	Not Significant	Significant	Significant
Hispanic American	Significant	Not Significant	Significant	Significant
Native American	Not Significant	Not Significant	Significant	Not Significant
Other Minority	Not Significant	Not Significant	Significant	Significant



VII. Conclusion

Two regression analyses were conducted to determine whether there were factors in the private sector that may help explain the current levels of M/WBE availability and any statistical disparities between M/WBE availability and utilization identified in the Study. The analyses examined the following outcome variables: business ownership and business earnings.

These analyses were performed for the four industries—construction, architectural and engineering, professional services, and goods and services—included in the Study. The regression analyses examined the effect of race and gender on the two outcome variables. The Business Ownership Analysis and the Earnings Disparity Analysis used data from the 2016 through 2021 PUMS datasets for the City and compared business ownership rates and earnings for M/WBEs to those of similarly situated non-minority males.

The analyses of the two outcome variables document disparities that could adversely affect the formation and growth of M/WBEs within the construction, architectural and engineering professional services, and goods and services industries. In the absence of a race and gender-neutral explanation for the disparities, the regression findings point to racial and gender discrimination that depressed business ownership and business earnings. Such discrimination is a manifestation of economic conditions in the private sector that impede minorities and Caucasian females' efforts to own, expand, and sustain businesses. It can be inferred that these private sector conditions are manifested in the current M/WBEs' experiences and likely contributed to lower levels of willing and able M/WBEs.

It is important to note there are limitations to using the regression findings in order to access disparity between the utilization and availability of businesses. No matter how discriminatory the private sector may be, the findings cannot be used as the factual basis for a government-sponsored race-conscious M/WBE program. Therefore, caution must be exercised in the interpretation and application of the regression findings in a disparity study. Nevertheless, the findings can be used to enhance the race-neutral recommendations to eliminate identified statistically significant disparities in the City's use of available M/WBEs.



CHAPTER 8: Anecdotal Analysis

I. Introduction

This chapter presents anecdotal evidence from a focus group, in-depth one-on-one interviews, and other current anecdotal data provided by the City of Oakland. The anecdotal evidence is presented to highlight actions that may have prevented minority and woman-owned business enterprises (M/WBEs) from accessing contract opportunities from the City. The anecdotal data is also intended to supplement the statistical findings of the Study.

The value of anecdotal testimony in a disparity study was discussed in the landmark case, *City of Richmond v. J.A. Croson Co. (Croson)*⁸³ in 1989. In this decision, the United States Supreme Court considered anecdotal testimony to determine whether remedial, race-conscious relief may be justified in a market area. The Court opined that “evidence of a pattern of individual discriminatory acts can if supported by appropriate statistical proof, lend support to a [local entity's] determination that broader remedial relief [be] justified.”⁸⁴ However, the Court found anecdotal evidence alone cannot provide the predicate for a race-based remedy.

The anecdotal data provides information on the types of barriers perceived within the market area and their effect on the development of M/WBEs. When paired with statistical data, anecdotal data can document the routine practices involving M/WBEs’ access to contracting opportunities. The statistical data can quantify the results of discriminatory practices, while anecdotal data provides the human context to understand the numbers.

A. Anecdotal Evidence of Active and Passive Discrimination

Croson authorizes anecdotal inquiries along two lines of inquiry. The first line investigates active government discrimination as reflected in the award of prime contracts or acts of exclusion committed by contractors working on behalf of a governmental entity. The second line of anecdotal inquiry examines the government’s passive support of exclusionary practices in the market area where its funds are infused.

Anecdotal evidence of passive exclusion pertains to the discriminatory activities of private sector entities. Passive exclusion results from government officials who knowingly use public funds to contract with companies that discriminate against M/WBEs or fail to take positive steps to prevent discrimination by contractors who receive public contracts.⁸⁵

The Court has cautioned that anecdotal evidence of discrimination is entitled to less evidentiary weight than statistical findings because the evidence concerns more private than government-sponsored activities. Less weight should be afforded to personal accounts of discrimination that

⁸³ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 509 (1989).

⁸⁴ *Id.*

⁸⁵ *Croson*, 488 U.S. at 491-93, 509.



reflect isolated incidents compared to anecdotal evidence of a municipality's institutional practices because of the impact that institutional practices have on market conditions.⁸⁶ Nonetheless, when paired with appropriate statistical data, anecdotal evidence of either active or passive forms of discrimination can support the imposition of a race or gender-conscious remedial program.⁸⁷

As *Croson* points out, jurisdictions have at their disposal "a whole array of race-neutral devices to increase the accessibility of contracting opportunities to small entrepreneurs of all races."⁸⁸ Nevertheless, the Court found that anecdotal evidence has value because it can paint a portrait of the practices and procedures that generally govern the award of public contracts in the relevant market area. According to *Croson*, these narratives can identify specific generic practices that the governmental entity can implement, improve, or eliminate to increase contracting opportunities for businesses owned by all citizens. In this study, the utility of anecdotal evidence is considered within the parameters of the law.

B. Anecdotal Methodology

The methods used to collect the anecdotal information include public comments solicited from: 1) a focus group discussion; 2) anecdotal data provided by the City, including print and social medial articles and judicial complaints; and 3) one-on-one interviews with business owners located in the City's market area. The boundaries of the market area are described in *Chapter 3: Geographic Market Area Analysis*.

1. Focus Group Discussion

A focus group discussion with local business owners was held on October 9, 2023, to explore and understand the issues and challenges experienced by M/WBEs related to possible discrimination in the City's procurement process. The focus group discussion sought anecdotal accounts of discrimination or biased treatment in the awarding of the City's contracts at the prime contract or subcontract level, based on factors such as race, gender, or ethnicity, rather than merit, qualifications, or competitive bidding.

a. Discussion Probes

The focus group discussion delved into the complex issue of discrimination in public contracting and sought to disclose the business owners' experiences and the root causes, as well as potential recommendations by:



⁸⁶ *Concrete Works of Colorado v. City and County of Denver*, 36 F.3d at 1530 (10th Cir. 1994): "while a fact finder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality's institutional practices carry more weight due to the systemic impact that such institutional practices have on market conditions."

⁸⁷ *Croson*, 488 U.S. at 509.

⁸⁸ *Id.*

- Providing a platform for M/WBEs who have experienced or witnessed discrimination while navigating the City's contracting process.
- Identifying and analyzing patterns and practices within the City's procurement process, including bias, favoritism, and exclusionary practices.
- Investigating the root causes of discrimination in public contracting, including systemic issues.
- Understanding the economic implications of discrimination in public contracting and its impact on M/WBEs.
- Soliciting policy recommendations and best practices to mitigate discrimination and promote fair and transparent procurement policies, procedures, and practices.

b. Participants

A total of 19 business owners participated in the focus group discussion. In order to foster a candid conversation, a diverse group of participants was selected to represent various stakeholder perspectives. The discussion was led by an experienced facilitator with extensive knowledge of government contracting practices. The participants in the focus group include:

- Business owners headquartered in the City of Oakland who have bid on or been awarded a City prime contract or subcontract, with a focus on those who have encountered discrimination.
- Community leaders who can speak to the broader societal impact of contracting discrimination, including its effects on marginalized communities.

In addition to anecdotal probes, an open discussion was allowed for questions and candid dialogue among all participants. Testimony from the focus group is incorporated in this chapter.

2. Print and Social Media News Articles

The anecdotal data presenting instances of public contracting discrimination in local print and social media articles offers another method to present patterns and practices that may impede the participation of M/WBEs on the City's contracts. The local news articles describe instances of inequality in the City's market area. Shedding light on instances of public contracting discrimination in the City's market area can promote transparency, accountability, and drive positive change in the contracting process.

3. Judicial Complaints

Administrative hearings are an essential part of the legal process by offering a forum for business owners to seek resolution when they believe they have experienced discrimination in public contracting. The administrative hearings discuss possible public contracting discrimination and the role they play in upholding fairness and justice in the City's market area. An effective complaint mechanism can provide business owners the opportunity to be heard and hold government agencies accountable for their actions.



Complaints filed with the Superior Court of the State of California, Alameda County and the Court of Appeal of the State of California, First Appellate District in Division Five during the study period were analyzed. The complaints were reviewed to identify possible systemic issues that may highlight recurring problems or patterns within the City's procurement process and procedures.

The judicial review also allows for a thorough examination of evidence—including documentation, testimony, and expert witnesses—to determine whether discrimination occurred. Following the hearings, the judge may issue a decision that may include recommendations the City could adopt to address any identified bias or discrimination.

4. One-on-One Interviews

The final phase of the anecdotal process included 54 one-on-one interviews. Business owners were screened for their interest in being interviewed. The screener collected basic demographic data and specific information to determine the relevant experiences of the business owners. The screener also captured information regarding the interviewee's experiences with public contracting and willingness to recount experiences to a trained interviewer.

In the one-on-one interviews, anecdotal probes were used to solicit information from the interviewees. The questions sought to determine if the business owner encountered or had specific knowledge of instances where the City's formal or informal contracting practices positively or adversely impacted them during the study period of July 1, 2016 to June 30, 2021.

II. Anecdotal Findings

Croson held that anecdotal evidence can breathe life into the findings of statistically significant underutilization of M/WBEs on government contracts. Dating back 33 years, disparity studies commissioned by the City have documented statistical evidence demonstrating preferential treatment toward non-minority males on the City's competitively bid contracts. This evidence was presented in the City's 1991, 2007, 2017, and 2024 disparity studies.

The obstacles reported in the 2017 anecdotal analysis mirrored the barriers to participation that are reported in the 2024 Disparity Study. Interviewees continue to report discriminatory practices by the City, including the use of preferred contracts. Non-minority males continue to be overutilized in the City's construction, architectural and engineering, professional services, and goods and services contracts. The 2017 anecdotal barriers are presented in Chart 8.1.



Chart 8.1: 2019 Anecdotal Barriers



Many of the anecdotes are corroborated with statistical data which found that minority and woman-owned businesses were statistically underutilized in the City's construction, architectural and engineering, professional services, and goods and services projects at the prime contract and subcontract levels.

A. Focus Group Responses

1. Barriers

The business owners who participated in the focus group discussion were asked what barriers, if any, prevented them from being a successful bidder or effectively completing their scope of work. Their responses focused on the failure by City officials to enforce policies that were intended to ensure fair and transparent contracting practices.

A minority male construction contractor thinks that the City's selection process is subjective:

I think the process is highly subjective; it is so bad we can't buy a bid. When I went through the bidding process, I learned that the deck was stacked against us. I knew that as a minority-owned business we have to do more than our counterparts. So, we came with a complete plan including letters of support. Our competitor came with nothing and still got the gig. Then, they sat on the project for seven years. If it was a Black company, the developers would not have allowed them to sit on a project and not perform for seven years.

Seven of the 60 prime contractors received \$152,425,256, or 71% of the total construction prime contract dollars during the study period.



A minority female professional services consultant believes that being certified with the City of Oakland has not benefited her business:

When I first started my business many years ago, we received certifications from several agencies including Alameda County and the City of Oakland. But I never heard a thing from the City of Oakland. To this day, I am not certified with the City of Oakland, and I have no plans to be certified with them. It seems like there is a lot of favoritism within the City. They only work with specific individuals that they have a history with.

A minority male construction contractor has not received work from the City even though he invested in insurance to meet the City's requirements:

I shelled out thousands of dollars on insurance to meet the City's requirements. Oakland has a gray area regarding cleaning and dumping services, and I have not received work. I am trying to find people that will support me in getting work.

A minority male construction contractor believes that the City needs to provide more oversight on prime contractors' utilization of subcontractors:

The City of Oakland unfortunately does not have enough oversight to make sure general contractors are utilizing certified subcontractors. I have been in business for 13 years now. I had one project opportunity with [contractor name withheld], and they and a subcontractor who was also my competitor basically just tried to squish me out. They required that I get a bond for a brick project for a scope of work that was only \$145,000. I have done bigger projects and never needed a bond. It was just a bad contract. They were adding work to the scope of work, basically trying to make me do work that was not in my bid. So, I do not respond to the City's bids anymore. They need to make sure their prime contractors are doing the right thing.



A minority male construction contractor also believes that the City needs to make sure that contract terms are being met:

I have had trouble with prime contractors not abiding by what is in our contract, but the City does not either. The City needs to abide by their own policies, and their contractors should be forced to abide by the contract terms.

I worked on a project where the prime contractor removed the concrete portion and had us credit them back that portion of the contract. Then, they had another subcontractor do that portion of the work. We told the City, but they got a whole bunch of dogs with no teeth, so nothing happened. At the end of the day, it cost us too much money to go after the lost work. They need more dogs with teeth.

A minority male construction contractor thinks the City should do a better job in keeping general contractors accountable to contract terms in their effort to support small businesses:

The City should hold general contractors accountable. Not just through policies, but monetary penalties so they have a price to pay for wrongdoing. If they are subjected to penalties, they will follow policy. A lot of prime contractors know that micro small companies will allow their business to be listed and then dumped. They do not have the money to fight, so they just walk away. This is very discouraging as a micro small company. The City should make sure micro small companies get actual work on their projects because they are the backbones of the community. It is somewhat of a disconnect because they are part of the good old network. But they are still playing that game.

A minority male construction contractor suggests that the City enforce its prompt payment and mobilization payment policies:

We did our research on prompt payment and how it works to be educated about the City's prompt payment policy. It's sad because they do not enforce the ordinance. We put in a complaint because the general contractor violated the prompt payment policy, and the City did not know how to enforce it. And not only that, but there is also a mobilization clause included in the prompt payment ordinance. If the prime contractor receives mobilization funding, they owe the subcontractor mobilization for their portion of the work within five days of receipt of their payment. Sometimes the contractors hold the mobilization for a whole year.



A minority male construction contractor recommends that the City monitor subcontractor payments:

They also need to monitor whether subcontractors were paid. If not, there should be penalties. The City should include terms in their contract requiring subcontractors to be paid within a certain timeframe of the prime contractor's receipt of payment.

A minority male professional services consultant wishes that the playing field was made equal so that minority-owned companies can receive the same opportunities as others:

A lot of times as an African-American company or a brown company, we don't get the same opportunities. We want to figure out how to make the playing field equal. When the math is done at the end of the day, the scales of justice are skewed. Not just a little but in a big way.

A minority male construction contractor recommends that the City consult with the City of San Francisco to learn how they run their small business program:

I suggest that the City of Oakland meet with the City of San Francisco to discuss how they run their program. They have a good program for small businesses.

A minority male professional services consultant also recommends that the City better enforce rules that support small businesses:

There seems to be no one enforcing the rules that support small businesses. If they enforced the rules that are in place, small businesses could experience a lot more advancements. The mayor and the City Council's leadership need to understand that they were not elected to do favors for a select group of rich small business owners. They should do their best for all citizens and take better care of the local construction and professional services companies.



2. Community Workforce Agreement

Several focus group participants discussed the Community Workforce Agreement (CWA) Taskforce Report. In October 2021, by unanimous vote, the Oakland City Council commissioned the report by directing staff to “create a task force to address inclusion of social and racial equity provisions in the community workforce agreement.” In January 2022, Davillier-Sloan, Inc. (DSI) was contracted to facilitate the task force meetings and prepare a report on findings.⁸⁹ Some of the key recommendations from the report are presented below in Tables 8.1 and 8.2.

Table 8.1: Key Recommendations from the DSI Report to Address Barriers in the Construction Industry

Recommendations to Address Barriers in Construction	
Include language such as “best value” or “most responsible bidder,” as opposed to “lowest bidder” in bid solicitations.	Incorporate anti-bias training by unions to educate their workforces on the benefits of having a diverse set of contractors and take affirmative action to make a workplace welcoming to all workers, especially to Black workers and women.
Establish committees open to public participation for contractors to present complaints about union actions.	Require unions to create measurable programs that address the challenges minority and non-union businesses face when becoming a union signatory.
Enact policies that encourage justice, diversity, and sexual harassment training for union business agents and pension trust administrators.	Require unions to host workshops to assist small local businesses, including tours of training facilities.
Offer technical assistance for: <ul style="list-style-type: none">• Access to non-traditional financing options.• Prevailing wages compliance.• Workers’ compensation compliance.• Bonding.• Competitive bidding.• Managing progress payments.• Accounting and auditing preparation.	Mandate the unions and the trusts to post board positions.
Require unions and prime contractors to pay benefits into a Social Justice Trust fund to help with legal fees, accounting, childcare, transportation, union dues, access to capital, etc.	Allow local contractors to cancel a union relationship in a relatively easy manner without facing legal duress unless a worker is owed wages or benefits.

⁸⁹ *Community Workforce Agreement Task Force Report*, Davillier-Sloan, Inc., June 2022.



Table 8.2: Key Suggestions for Compliance and Monitoring from the DSI Report

Suggestions for Compliance and Monitoring in Local Hiring and Local Business	
Require adequate monitoring and compliance oversight by independent, outside, third-party consultant(s) working in close coordination with designated City staff.	Require that City staff or third-party consultant(s) conduct regular field site visits on each CWA-covered project.
Establish committees open to public participation to work with City or third-party consultant(s) on compliance oversight for both contractors and unions.	Establish strong, enforceable financial penalties for both non-compliant parties.
Include clear language that lays out good faith efforts steps contractors are to make in hiring locally.	Provide off-site credit for Oakland apprentices working on other projects concurrently.

Comments regarding the Community Workforce Agreement Taskforce are presented below:

A minority male construction contractor described how he served on the CWA Taskforce:

About a year ago, myself and a bunch of other contractors and professional services consultants served on the Community Workforce Agreement Task Force. We gave a host of recommendations that should be incorporated into this Study.

A minority male construction contractor believes that the City is not heeding the recommendations developed by the task force:

The CWA Task Force developed 10 to 15 pages of recommendations. The recommendations were from a variety of different people and organizations with different experiences. It is a really nice piece of work. But, in my opinion, the City is trying to kill it. They have this Project Labor Agreement that will destroy contractors because it includes residential work. In fact, the union shouldn't include residential work.



Several business owners discussed the need to enforce the City's procurement policies that are intended to support SLBEs. This minority male construction contractor offered his opinion:

The City officials need to be held accountable for their own policies. Every time the City Council meets, we should attend to make sure our issues are being addressed.

A minority female construction contractor believes more enforcement is needed as well:

There are policies in place. The problem is the people who are responsible to enforce them do not know that they are in place.

B. Print and Social Media News Articles

Several news articles the City provided highlighted obstacles that M/WBEs experienced that raise the issue of more accountability from the City's leaders and procurement decision-makers. One article discussed the City's reluctance to release the 2017 Disparity Study. The City withheld the study for approximately eight months.⁹⁰ Representatives from the City reported that the 2017 Race and Gender Disparity Study was incomplete and needed to be updated and supplemented. The business community hoped the Study release would yield new policies to address the documented disparities.

1. “City Releases Long-Awaited Study of Contracting Disparity Following Public Outcry”

The Study revealed that African American-certified L/SLBEs lost \$42.9 million in City contracts during the 2001 to 2016 study period. They were expected to be awarded \$42.9 million during the study period to achieve parity based on their availability in the City's market area. The 2017 Study reported that “despite the L/SLBE Program's rigorous and aggressive race and gender-neutral goals, there is still a statistically significant disparity in the award of prime contracts to L/SLBE-certified African American businesses.”

City Releases Long-Awaited Study of Contracting Disparity Following Public Outcry

Despite the L/SLBE Program's rigorous and aggressive race and gender-neutral goals, there is still a statistically significant disparity in the award of prime contracts to L/SLBE-certified African American businesses.

SF Gate, November 24, 2020

Oakland City Councilmember Loren Taylor lamented, “The public outcry has been loud and clear, and it is absolutely critical that we learn from this experience and that we, as City government, listen and not be forced to respond.” The Study was released shortly after the release of the news article.



⁹⁰ <https://www.sfgate.com/news/bayarea/article/City-Releases-Long-Awaited-Study-Of-Contracting-15752676.php>.

2. “Oakland Adopts New Rules to Help Local Small Businesses Compete for City Contracts”

The disparity findings reported in the 2017 Study were the impetus for a new City ordinance, *Local Business Empowerment through Contracting*, according to the *Oaklandsider Newspaper*.⁹¹ In 2021, a City Ordinance was enacted to increase access for M/WBEs and other small local businesses on the City’s contracts. The Ordinance includes set-asides on the City’s public works projects and professional service contracts valued at \$50,000 and under to local small businesses. The City’s Contracts Compliance Office was also required to review and analyze companies doing business with the City thoroughly.

Councilperson Loren Taylor’s office hosted a virtual town hall attended by local African American contractors and City employees. The attendees supported the proposed legislation and hoped it would increase revenue to the City’s Black community. Councilperson Taylor said, “We have a long way to go to reverse systemic racism and structural barriers that have long plagued Black-owned businesses and woman-owned businesses when it comes to accessing their fair share of contracting opportunities.”

3. “Oakland City Council to Take Aim at Equity in City Contracting”

The *CBS News Bay Area Newspaper* reported on the second reading of the *Local Business Empowerment through Contracting Ordinance* on February 16, 2021.⁹² The second reading focused on the cost implications for the City based on implementing the new ordinance. The City representatives reported that the cost would be negligible compared to the impact on African American businesses due to the disparities they experience in the award of the City’s contracts, as reported in the 2017 Disparity Study.

The Ordinance includes a total of eight changes to the City’s procurement policies. One significant change consists of a new business certification category, the Small Business Administration – Local Oakland Business

Oakland adopts new rules to help local small businesses compete for City contracts.

Across each of the four industries examined in the study—construction, professional services, goods, and services—Black contractors, and female contractors of all races, were shown to receive a disproportionately low share of city contracts. White men received a disproportionately higher share of contracts than they would have under a fair system.

The *Oaklandsider*, February 17, 2021

Oakland City Council to Take Aim at Equity in City Contracting

African American businesses certified as Local/Small Local Business Enterprises lost \$42.9 million in City contracts over the study period. In other words, African American businesses were expected to be awarded \$42.9 million more, given their eligibility.

CBS News Bay Area, January 28, 2021

⁹¹ <https://oaklandsider.org/2021/02/17/oakland-adopts-new-rules-to-help-local-small-businesses-compete-for-city-contracts/>.

⁹² <https://www.cbsnews.com/sanfrancisco/news/oakland-city-council-to-take-aim-at-equity-in-city-contracting/>.



Enterprise, that expands the meaning of a “substantial business presence” and “local manufacturer” as evidence of a business’s presence in the City.

African American contractors were urged to get certified with the City to take advantage of the components of the new Ordinance. However, some business owners reported that they struggled to remain solvent because of COVID’s impact on their businesses.

4. “Black Contractors Say That Oakland’s New Business Initiative Leaves Them Out of City Contracts”

In 2021 the *Ark Republic* reported on a new City initiative that was intended to support local businesses. According to a 2013 report by City Auditor Courtney Ruby, high-ranking officials are willing to look the other way when councilmembers break the law.⁹³ The Oakland City Council routinely waived legally mandated competitive bid requirements for awarding construction contracts worth more than \$50,000 by negotiating contracts directly with firms of its choice.

For example, a bid was awarded to a contractor that failed to meet the City’s L/SLBE goals, and another contractor was deemed the successful bidder despite over-bidding the project. It was noted that the City’s procurement procedures did not render a bid nonresponsive if it failed to meet the small business goals or if the bid was over the project price.

The article also highlighted that the City was known for “awarding fraudulent contracts and routinely sole sourcing its projects, which signals entrenched problems in how Oakland does business and how that affects residents.” The City Council improperly awarded a \$1.5 billion trash collection contract to an unqualified recycler. The 2014 award resulted in garbage collection fees skyrocketing to exorbitant heights.

The City Auditor’s report also provided, “For many years, there have been signs that problems exist with councilmember interference, and there is a general culture of interference within the City that appears to be felt across many City departments and is perceived to come from multiple councilmembers.”

After implementing the new ordinance to improve equity in the City’s contracting, a City council member reported that there had been relatively little change in two and a half years.⁹⁴ City

Black contractors say that Oakland’s new business initiative leaves them out of City contracts

The City Council unanimously passed the Local Business Empowerment Through Contracting ordinance in February, but Black contractors have not received any of the available contracts. In the report, a minority male contractor described why African American contractors received less than 1 percent of the City’s contracts from findings in a study during July 1, 2011 to June 301, 2016.

Ark Republic, June 28, 2021



⁹³ <https://www.arkrepublic.com/2021/06/28/black-contractors-say-that-oaklands-new-business-initiative-leaves-them-out-of-city-contracts/>.

⁹⁴ <https://sfbayview.com/2021/05/black-contractors-getting-little-if-any-more-city-contracts-since-new-law/>.

Councilmember Loren Taylor said, “Anecdotal evidence suggests improvement, but there are no numbers to back it up.” Additionally, contractors reported that they had attended numerous meetings with City officials, and nothing had changed, leaving them frustrated.

5. “Black Contractors Getting Few if Any More City Contracts Since New Law”

In this article, a prominent business owner expressed frustration that many City townhall meetings were held, but African American businesses were unable to get the answers they needed to do business with the City of Oakland. A former president of the Black Chamber of Commerce reported that an entire community is being left behind,” fearing that Black contractors are going extinct.

The City’s informal solicitations are not required to be publicly advertised. Thus, the City’s staff has discretion to award contracts valued up to \$50,000. Additionally, the former president of the Oakland Black Board of Trade and Commerce agreed that the City’s procurement process is not contractor-friendly, and businesses typically do not learn about contracts until shortly before the bid is due.

Black contractors getting few if any more City contracts since new law

Frustration comes after the City Council passed the Local Business Empowerment Through Contracting ordinance in February, and after the City’s seemingly reluctant decision to release a study showing racial disparities in contracting in Oakland.

San Francisco Bay View National Black Newspaper, May 7, 2021

C. Judicial Complaints

Judicial complaints provided by the City were reviewed to identify patterns and practices alleged by the complainants against the City of Oakland. Each of the complaints alleged failure to pay for work performed on behalf of the City:

1. Bay Construction, et al.

v.

City of Oakland

Bay Construction alleged that the City failed to compensate them for the extra work it performed despite submitted change order requests.

Relief sought:

Monetary damages

Complaint filed:

July 21, 2016



*2. Horizon
Project
Consulting*

*v.
City of
Oakland*

Horizon Project Consulting alleged that the City failed to pay for work performed under the contract. The complaint also alleged that the City violated the prompt payment statute and the implied covenant of good faith and fair dealing, which prohibits doing anything that would deprive a party of the contract.

Relief:

Monetary damages

Complaint Filed:

December 27, 2018

*3. Flatiron
West, Inc.,*

*v.
City of
Oakland*

Flatiron West Inc. alleged that the City breached the contract for failing to fully pay for the work performed on the project and also refused to pay for changes to the contract that impacted and delayed work.

Relief:

Monetary Damages

Complaint Filed:

October 29, 2019

*4. AEKO
Consulting,*

*v.
City of
Oakland, et.
al.*

AEKO Consulting alleged that the City violated the prompt payment ordinance and participated in trade libel by claiming the plaintiff refused and failed to complete the subcontracted work.

Relief:

Monetary damages

Complaint Filed:

December 14, 2018, amended



D. One-on-One Interviews

1. Preferential Treatment

Interviewees reported being excluded from certain City contracts due to preferential treatment being given to some contractors. The Study's size analysis demonstrated that most of the City's contracts were small, with 70.87% of all the prime contracts valued at less than \$100,000. Additionally, 85.13% were valued at less than \$250,000; 91.62% were less than \$500,000; 95.50% were less than \$1,000,000; and 99.12% were less than \$3,000,000. Only 0.88% of the awarded prime contracts were valued at \$3,000,000 and greater. Therefore, the available firms only required minimal capacity to perform on most City contracts, even competitively bid construction projects.

Interviewees reported that they experienced barriers to obtaining work from the City because of preferential treatment of certain contractors.

A minority female owner of a professional services company has not secured work from the City despite her exceptional reputation and years of experience:

We are recognized as a topnotch competitive [industry withheld] on a national basis. We have won every award. I'm in the Hall of Fame. There is absolutely no company in Oakland that compares to who we are. But I have never gotten a piece of business from the City of Oakland. Never. [Local agency name withheld] hired me to do a large project, and we worked with Southwest Airlines. It was very successful. We have worked with the United States Army, United States Census, Disney, Michael Kors, General Motors, and nobody in Oakland has ever awarded us a contract. And I don't mind if they know I say that. In my opinion, they give their friends contracts. It doesn't matter the expertise of their friends or the knowledge.

A minority female owner of a construction company explained that being an African American female is a barrier to achieving success in her field:

It hurts when a certification program does not serve its certified firms. The program equates to being non-certified, since it does not serve its purpose. I want to be clear, if the certification program is not serving the needs of the certified firms, it's almost the same as not being certified. I am certified and I live in the City of Oakland, and I make under a certain amount to meet the threshold. So, I am qualified to be a small local business. But what challenges me is that I am a Black, African

African American females represent 5.57% of the available professional services businesses and received 0.31% of the dollars on professional services subcontracts during the study period.



American woman running this company. And the equity is not there for us. We are underrepresented. We also have small business challenges such as cash flow. It is not a matter of manpower; we have enough men, but the opportunities are not there. We are overlooked and passed over. Not sometimes, a lot of times we are passed over and overlooked. And those are challenges that I think a lot of African American firms face in the City of Oakland, in the State of California, and in the nation. But for me, what really sets me back is that I am a Black woman in this field. I know a general contractor that does not look like me, who gets a lot of business from the City. I am not going to name them, but they have told me, "We do not like working with small local business enterprises. They always have issues, meaning cash flow problems and different things like that." But they do not mind coming here cleaning up and getting the contracts.

A minority male owner of a construction company believes his inability to secure contracts with the City is due to systemic discrimination:

Oftentimes, the RFP process is used to justify a decision that has already been made. There are very few African American development companies. It seems like they are always held to a different and higher standard. Or they are cast in a different light, meaning that they have to prove they have the capacity, whereas the White organizations do not have to do that. The White firms are given a much longer leash, in terms of extensions, etc. Black firms are not given that same courtesy. As far as Black developers, winning an opportunity with the City of Oakland is not good. One of the most prolific Oakland developers, a White guy, told me, "You are not going to get the project. The other guy is going to get it because the system was set up for them to win for a number of reasons."

A minority male owner of a construction company described a tactic used by prime contractors to exclude minority contractors from receiving subcontracting opportunities:

Prime contractors are now making it even harder to get subcontracts because we have to be pre-qualified in order to bid with them. Now, we have to give them our tax forms and everything that we had to submit to the City of Oakland in order to submit a quote to the contractor. This practice has got to stop. This is the reason why the City of Oakland, BART, Port of Oakland are not meeting their goals.

African American males represented 15.78% of the available construction businesses and received 2.45% of the dollars on construction prime contracts valued at \$50,000 and under during the study period.



These prime contractors know how we can prevent minority contractors from participating. We will tell them to give us the same information that the City of Oakland or the Port of Oakland or BART wants to be qualified. Some of them ask for this for every job. This is why prime contractors, like Turner Construction, Swinerton, all these big boys, come to Oakland and get all these prime contracts.

A minority male owner of a construction company reported that he is unable to secure trucking contracts from the City despite the local trucking requirements:

I am aware that the City has a 50% small local trucking requirement on their construction projects. But from the truckers that I know, we haven't seen many minorities working on too many projects. The big firms have firms that they use as fronts, which in turn cuts us out. We are a small company, and I don't want to name any large companies, but the reality is they have more buying power and labor than we do. When we bid on projects, our labor is slim to none. It doesn't matter where we go or who we bid against. Even if we sharpen our numbers, we continuously get beat out because of the price of materials. I should not have to compete against a \$200 million company as an L/SLBE on small local projects. It doesn't make sense. They are going to win every time. The program has no competitive advantage. If I am an L/SLBE, I should be competing against companies within my revenue, which would make more sense. We continue to get recertified in hopes that we get our share of whatever piece of the pie that is left.

A minority female owner of a construction company believes that the City's contracting opportunities are not disseminated fairly:

We have not received anything from the City of Oakland. We sought work from the City to get construction contracts. We recently attended a City of Oakland meeting where they mentioned available contracting opportunities. We tried to find out where they are. We know that they exist. The number one challenge is we have difficulties finding out about the City's

Non-minority males represent 58.87% of the available construction businesses and received 74.13% of the dollars on construction prime contracts valued at \$50,000 and under during the study period.

African Americans represent 15% of the available construction businesses and received 2.11% of the dollars on construction subcontracts during the study period.



projects. Since we don't know about their projects, we cannot show up for them. When we do find out about them, we have two or three days to put together a proposal. Then, we reach out to our suppliers, but of course the larger companies get preferential pricing. We also have encountered workforce issues. If the prime contractors don't pay or abide by the local ordinance regarding payments, we don't have the funds to float an entire project or wait for payments like they can do. Additionally, the prime contractors will pretend like they don't have to pay mobilization. We had to use our own resources. In reality, we have to fight them to pay us on time. We went to the City and complained. Those are dollars lost as a small company.

This same business owner also believe that City's master agreements favor majority-owned firms:

The reality is if a contractor is awarded a master contract over and over again, it is preventing participation. If you are going to be fair, make it fair. They could award those contracts from a rotational pool. But to award contracts solely to a contractor over and over again is not fair to the community or local businesses.

A minority female owner of a construction company explained why she believes the lowest bidder requirement is detrimental to small minority firms:

I understand there are certain credits that the general contractor receives for using local business enterprises. I am not sure how that works or what are the prime contractor's responsibilities. But, I believe the system is designed to make it hard for small minority businesses to win contracts because of the lowest bid requirement. Minority businesses typically do not have the capacity, relationships with suppliers, etc. to be the lowest bidder.

A minority male owner of a goods and services company reported that despite the City's L/SLBE Program, he still competes against large national companies:

I submitted a proposal for an RFP that the City of Oakland issued. I'm a local company, and we made it to the first interview and the second interview. My company and a national company were invited for a final interview. The national company is a \$20+ billion company. I am unable to compete at that level, but if am invited to a final interview, that means I can do the job. From the conversation during the interview, we thought that we got it. We are a very



solid and responsive company. I thought I was going to receive this great opportunity. But we did not.

2. Difficulty Navigating the City's Bid Process

Several interviewees described barriers they encountered trying to understand the City's solicitation process or gathering information for bids.

A minority male owner of a construction company described how the subcontractor pre-qualification requirements by prime contractors act as a barrier for small minority contractors:

Prime contractors know how to weed us out as subcontractors. They know that we do not have the time and money to get pre-qualified by them. The prime contractors require us to provide the same financial information to them that we had to send to the City of Oakland, BART, or Alameda County. This is why I don't see Blacks doing work on certain public work jobs. I am letting it be known that these big contractors are asking for something else other than a quote. They put another hurdle in front of us in order to win a bid. The City should let these prime contractors know that is not allowed. They should be told to look on the City's website to search hundreds of local certified businesses and leave it at that. They need to let those people know that. Now we have to go through another qualification process with the prime contractors. But to ask for tax records, profit and loss statements, and all my business data is not right.

A minority male owner of a construction contract described the volume of information they have to submit to meet the prime contractor's pre-qualification requirements:

Prime contractors generally ask us to pre-qualify with them. Recently, they have asked us to pre-qualify with a third party. Their pre-qualification process requires us to submit a lot of information about our company including the kind of projects we have worked on, our safety records. We have to provide our last three years of OSHA reports. They also ask for financial information, the volume completed in the last three years, and references.

African American males represent 10.02% of the available construction businesses and received 2.10% of the dollars on construction subcontracts during the study period.



A minority male owner of a professional services company explained that many small businesses do not have the resources to respond to the City's complex proposals.

A big company that has 100+ employees can manage bids that are very complicated. They have staff dedicated to working a couple of weeks to respond to bids.

A minority female owner of a construction company reported that her firm has received some subcontracting opportunities on the City's projects, but not as a prime contractor:

Since being certified six years ago, we have worked on City of Oakland-funded projects. But we have not been able to participate as a prime contractor. We had issues finding information for flooring contracts. When we contact them, they say, "Oh, we haven't done flooring in so long." Really, the City does not do any flooring?

Yes, they do. But we cannot find information on when the projects coming out, and who are they going to.

Nobody knows. So, over the last four years, we reached out to general contractors. We have not sought work directly from the City of Oakland.

Caucasian females represent 12.30% of the available professional services businesses and received 24.95% of the dollars on construction subcontracts during the study period.

A Caucasian male owner of a professional services company reported that many of the opportunities he receives from the City is based on relationships:

We have a sales staff who looks on the City's website for opportunities. Occasionally, I get a direct request from the City to do work. But most of our opportunities are now based on relationships, and we continue to get work.

African American females represent 3.37% of the available construction businesses and received none of the construction subcontracts during the study period.

A representative of a Caucasian female-owned professional services company reported on how their firm identify subcontractors for City projects:

I don't want to say exclusively, but we mostly find subcontractors based on our existing relationships and people that we have worked with. I personally don't recall going to the City's directory to search for a subcontractor.



A minority male owner of a construction company described the various methods his firm utilizes to identify subcontractors:

We post subcontracting opportunities in the Daily Pacific Builder, which is a trade publication that public entities advertise in. So that's the major outlet that we use. There are a couple more that we use including our own program called Procore where we send out invitations. During our decades in business, we have built a big database of businesses that we send invitation to. When our projects are local, we try to advertise locally. Subcontractors tend to focus on those projects a little bit more. So, we get better results from local companies.

A minority female owner of a construction company believes the City's mentor-protégé programs are not structured to benefit the protégé:

As far as the City's mentor-protégé program, we had to develop our own mentor agreement. As a small company, we did not know what to do. There should be at least a starting platform describing how to assess or determine what is beneficial to the protégé. General contractors or prime contractors negotiate the most lenient mentor-protégé agreements, because the protégé is not educated on what they need. So, we are exploited.

A minority male owner of a goods and services company believes the mentor-protégé program should be better structured to advance the protégé to become a prime contractor:

The process to become a protégé should be more transparent. It should be designed for small companies to get prime contracting opportunities. If we cannot receive that type of mentorship, it is not beneficial.

3. Late Payments

Many business owners reported that they are not paid in accordance with the City's prompt payment policy.



A minority female owner of a construction company reported that the City's payment process is burdensome for small businesses:

After we go through the competitive bidding process, we have to wait on late payments. Most of the time their payments are paid late. They are supposed to pay on 30-day net terms, but we would normally get paid within 40 days or later. It is a burden on our business because we never really knew when we were going to get paid. They also pay via check, never direct deposit. Other cities pay by direct deposit, no one else pay by checks. So, we have to wait for the check to come. So, in terms of working with the City, payments are a challenge.

A minority male owner of a goods and services company discusses the impact of late payments on small businesses:

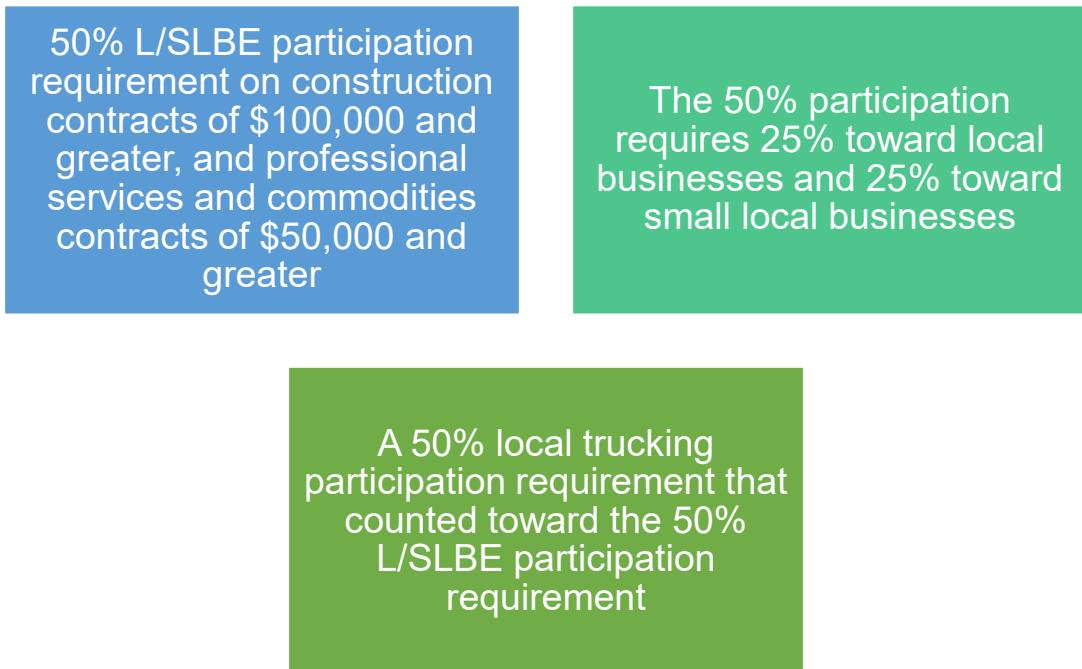
Bigger guys are able to carry on with late payments. But for smaller guys, it is not easy. For one, we cannot operate with late payments. It's not something smaller companies can handle, so our growth is limited. And, banks do not provide credit if we are unable to show a history of growth.

4. Effectiveness of the City's Local/Small Local Business Enterprise Program

Respondents commented on the City's Local and Small Local Business Enterprise Program (L/SLBE Program) which was enacted in 1993 to stimulate the local business community's growth. The key components of the L/SLBE Program, approved by the City Council's *Ordinance No. 13647 C.M.S* on May 4, 2021, are shown in Chart 8.2.



Chart 8.2: The L/SLBE Program's Key Components



The 50% L/SLBE participation requirement may be waived prior to the solicitation being advertised, depending on the availability of L/SLBEs to perform the items in the contract scope of work. Waivers may be issued if the City's Department of Workplace and Employment Standards (DWES) determines that there is no certified business that offers the specific goods or services or there are no certified L/SLBEs in the industry.

The following business owners commented on the City's L/SLBE Program.

A minority female owner of a construction company believes the L/SLBE Program is needed to help address systemic racism:

If it was not for the program, we would not get any contracts. There is a history of small and especially minority Black-owned firms not getting contract opportunities from the City. We were always pushed out by larger or Caucasian-owned firms. Historically, that is how the game went, which is still the case today. I have tried to get contracts for years that we were qualified for and never got them.

Non-minority males received 128, or 68.82% of all construction prime contracts awarded during the study period, representing \$180,023,480, or 84.31% of all construction prime contract dollars.



A representative of a Caucasian male-owned professional services company explained why the modified L/SLBE Program requirements prevent them from pursuing work from the City as a local small business:

They changed the certification criteria for L/SLBEs where now businesses have to be headquartered in Oakland. A lot of small consultants have multiple offices. Some of them have an office in Oakland but are headquartered in a nearby city. But they are disqualified from participating in the City's program. We stopped submitting proposals to Oakland because we did not want to waste that effort. We employ five local residents, and we live in the City of Oakland.

Now, we cannot pursue contracts as a local, small business.

A minority female owner of a construction company also expressed uncertainty regarding the advantages of the City's Program:

I am still trying to figure out what are the benefits of the City's program. I am on a selected list along with other contractors bidding for projects. One would think that would help level the playing field for Oakland-based businesses. But I am not sure of that. It is supposed to give us opportunities, but I cannot determine if it's truly a program that benefits minority construction contractors. So, I could not say it has 100% benefited me.

A minority male owner of a construction company described why he believes the L/SLBE goal process does not create capacity building opportunities for small businesses:

I do not believe the program is advantageous for minority contractors. It just means that we are competing for the small portion of any project amongst each other. We are competing for a small percentage instead of a large percentage of the overall project. That's just reality. We may get part of a 10% or 15% goal, but the percentage is split over three firms. So, it is not an advantage to be a small business unless it's only one firm and not three or four small businesses with a majority firm. Something is wrong with that scenario. Even though smaller firms like mine will get some work, it's a very small amount.



A minority male owner of a construction firm explained the important link between thriving local businesses and a healthy economy:

In order to have a healthy economy, we must have a healthy small business pool that is constantly growing and thriving. And those that survive go to the next level. Then, those that survive at that level go to the next level. And those that survive the next level become multi-billion-dollar companies. So, there should be any argument as to why we should promote small businesses because they are a tenant of capitalism. The best at employing our local labor are local small businesses. And local businesses in urban environments are overwhelmingly people of color. My point is that local leaders are not using one of the best tools to promote local hires, which is the promotion of local businesses. So, I think it's foolish for local leaders not to recognize one of the most powerful tools and resources they have available to them. They are not pushing more aggressively for Oakland-based businesses.

A minority male owner of a goods and services company reported he has not received any work as a certified L/SLBE:

It took a long time to get certified with the City of Oakland. After going through that process, it has not generated one nickel from the City of Oakland. I had to submit a lot of documentation, and then there were hoops that I had to jump through. It wasn't horrible, but I remember it was arduous.

Non-minority males received 1,229, or 80.54% of all goods and services prime contracts awarded during the study period, representing \$155,673,057, or 81.51% of the goods and services prime contract dollars during the study period.

A Caucasian male owner of a professional services company reported that the lowered revenue requirements for L/SLBEs exclude his business from being certified, but he has been able to obtain a waiver:

We are no longer a small business because the City of Oakland uses crazy low limits instead of the federal limits like every other jurisdiction. I would suggest they use the federal limits to define a small business. Now, to get an L/SLBE certification, you must be headquartered in Oakland. They will waive the requirements for professional services because there are not enough engineers that meet the requirements.

A representative of a Caucasian female-owned professional services firm believes the credits provided to L/SLBEs have benefited her company:



Most of the City's recent proposals allow for extra points if you are a local business. We love being able to work in the City where we are located. It's been incredibly helpful and important for us to maintain our certification so that we can continue working with the City. When we worked as a subconsultant with a non-local prime consultant, they were able to receive credit for us being local.

A Caucasian female owner of a professional services company reported that her firm has received several subcontracting opportunities as a certified SLBE:

The City's program has definitely benefited our business. We have worked as a subcontractor on three of the City's as-needed contracts for prime consultants that needed a local Oakland business. The prime contractor that we currently work with has the capability to do all of the work, so they are only working with us to get the local participation points. We probably would not have gotten the work if it was not for that.

A minority female owner of a construction company expressed mixed feelings regarding the City's L/SLBE Program:

I am having a hard time trying to determine the benefits of the City's program. It seems like the benefits only come into play when a contractor is in a crunch to meet the goals. If they are not trying to meet a goal, they are not interested in utilizing us. I guess the program has a benefit because prime contractors are not able to just bypass us since they have goals to meet. But it definitely needs some improvement when it comes to the incentives for smaller contractors to participate. There is a learning component that should accompany the certification, such as education about being a certified L/SLBE versus just getting certified. Small business owners could learn how to grow their business because there is a lot of red tape and cost in order to participate.

African American females represent 3.37% of the available construction businesses and received 0.27% of the construction prime contract dollars valued between \$50,000 and \$4,080,000 during the study period.



5. Recommendations

Many interviewees offered recommendations to improve access for L/SLBEs and M/WBEs on the City's contracts.

A minority female owner of a construction company explained why the City's small business directory could be discriminatory toward minority and woman-owned businesses:

I am an African American woman who owns a [industry type withheld] in the City of Oakland. When I search the City's website for firms to fulfill my participation requirement on a project, there are codes that can be used to find a company. The website also provides the owner's ethnicity. So, what aggravates me is that the certifications have no African American, minority, or gender requirements. This unneeded information allows general contractors to discriminate based on race or gender. Because a general contractor could say, "I don't want to use a Black company. Thank you for letting me know that they are a Black company."

This same business owner further elaborated:

African American women are underrepresented on the City's contracts. We need to be separated from the small local business enterprises. We should not be in a pot with everyone else. I would like to be recognized as a minority woman. And I think that would really help. I am always fighting and seeking equity. It is disappointing that my business is based in Oakland, and there is no equity in the City. It dampens things, but I still keep going. I hope the City does something to close the gaps. I do not want to fight for equity for women forever.

A Caucasian female owner of a professional services company recommends a more streamlined proposal process that requires less paperwork:

The excess paperwork to respond to proposals should be reduced to help small businesses. Bigger companies have an advantage because they have an expert dedicated to filling out paperwork, and they know all the tricks of the trade.

A minority female owner of a professional services company recommends a directory of businesses that operate in the City of Oakland:



I think a directory, or some sort of public dashboard, is needed to search for different types of businesses in Oakland. Especially professional services companies like mine. Also, there are a ton of companies in Oakland that people do not know about. So, some sort of directory of local businesses would be awesome.

A minority female owner of a professional services company explains why the City should consider reducing its insurance requirements:

My biggest beef working for the City is their insurance requirements. They require prime contractors and subcontractors to have more insurance than any of our other clients. The requirements cause a significant increase in our premium. They also require that the insurance be maintained for three years after the work is completed. So, it ends up being quite a burden. To the point where I am not sure the contract is worth it. I suppose theoretically, we could try to pass on the extra costs in our billing rates, but that does not work in a competitive bid environment, so there is pressure to keep the billing rates reasonable. Also, since it may be an as-needed contract, we do not know when or even if we will get any work. For example, we had a contract stretch out to five years. There is less work per year. And yet, we have to maintain this elevated insurance throughout the whole term. I wonder if the City could require prime contractors to carry the subcontractor under their insurance, especially for very small contractors.

A minority female owner of a construction company offered several recommendations to support small struggling businesses:

There needs to be an educational component to make sure the company has the resources that they need in order to carry the L/SLBE to the next level. Next, there needs to be more oversight over prime contractors to make sure that they are in compliance with the programs' requirements. All too often, we deal with issues on a regular basis with prime contractors who do not follow the rules. There needs to be a component of compliance. Finally, we do not know where the projects are. So, we can't bid on work that is not equitably shared. They need to hold quarterly meetings, forecast what projects are coming out, and engage more with the local community. They also should host events with their prime contractors so smaller contractors can formulate relationships and learn about opportunities to be taken advantage of.



A minority male owner of a goods and service company recommends listening sessions with small business owners:

I think they should host town hall meetings with small businesses where they can be informed on the issues that matter to them. It can be financial issues, bonding, etc. They can hear from smaller minority guys.

A minority female owner of a professional services company described the unique challenges that African American women encounter as a small business:

We are definitely underfunded. African American women business owners always have to work lean. We have to make a dollar stretch. I feel like as a Black woman, the City benefits from underfunding us. We are underfunded every step of the way. There was never a time where we paid enough for what we are being asked and accountable to do. We continued to do the work, having to respond to an RFP, not get the work, wait for another RFP, then reapply. If we are awarded a contract, then there is months of not knowing when we will be paid. The rules should be designed to level the playing field for businesses like us. They break the rules because I know of two firms that were not certified but were used to meet the goal.

This same business owner suggests that they City pay vendors through direct deposit and display more adherence to the prompt payment ordinance:

Also, they should pay vendors through direct deposit. They have a prompt payment ordinance, and it means nothing to them. They should stick to the prompt payment ordinance and update their payment system and move into the 21st century. There is no complaint form, only a form for invoice disputes. But there is no dispute process if your contract was wrongly terminated or if there are other issues.

A minority male owner of a professional services company recommends more community engagement when negotiating with developers regarding community benefits agreements:



There needs to be more transparency between the staff, councilmembers, and the mayor to include community involvement. If you look at the developments happening in Oakland, the community benefit agreements are typically negotiated between the developer and whoever shows up representing the community. The City typically abdicates its responsibility in that process. The only items discussed are project labor agreements but not permanent jobs. The community is most concerned about permanent jobs. Project labor agreements serve the unions but not necessarily the local minority populations.

A minority male owner of a construction firm suggests more events so small, local business owners can meet the City's prime contractors:

I think the City needs more outreach meetings that reveal upcoming projects. This would give us insight into what opportunities are available. Since the prime consultants get the bigger portion of the projects, a "Meet the Prime" event would allow them to meet us as small local business owners. They can learn what services we provide.

African Americans received 7, or 3.76% of all construction prime contracts awarded during the study period, representing \$313,985, or 0.15% of the construction prime contract dollars during the study period.

A representative of a Caucasian male-owned professional services company recommends a small business program that is not focused on minority participation:

If they really want to spread the workaround, they should do more outreach to find new, up-and-coming quality small businesses. Not just a racial composition of small businesses. That seemed to be the main criteria, starting about 15 years ago. So, they should figure out their talents and assign them work using those criteria.



III. Summary

The anecdotal data included an engaging focus group discussion which helped gain a deeper understanding of the barriers impacting L/SLBEs. The participants were afforded an opportunity to collaboratively discuss solutions towards creating a more equitable and transparent procurement process that benefits all local businesses headquartered in the City. Many of the business owners were frustrated by the City's failure to enforce policies that are meant to support L/SLBEs. They reported that the prompt payment policy was not being effectively enforced to lessen the hardship on L/SLBEs based on the receipt of late payments by the City and prime contractors. The CWA Taskforce Report was referenced as a great resource to increase the participation of minority and woman-owned businesses on the City's contracts.

A summary of the news articles provided by the City reported on the significant barriers minority and woman-owned businesses have continually faced navigating the City's procurement process. The same barriers were reported in the City's previous disparity studies, as well as the current Study. The news articles can be used as sources to identify barriers and thereby promote accountability by encouraging the City's leadership to reevaluate their procurement practices and implement measures to reduce the underutilization of minority and woman-owned businesses. The judicial complaints focused on allegations by business owners asserting that the City has engaged in a pattern of failing to pay for work that was completed pursuant to contractual obligations and change orders. If the allegations are confirmed by the courts, the City should take appropriate remedial actions to ensure L/SLBEs are compensated for all work satisfactorily completed.

During the one-on-one interviews, an overwhelming majority of the interviewees reported a preference by the City to utilize the same few contractors, especially on construction and professional services projects. There were mixed responses regarding the efficacy of the City's L/SLBE Program. Some reported that they have not received any contracts despite being certified as an L/SLBE. Finally, the failure by the City to adhere to the prompt payment policy was an issue raised by several business owners.

The recommendations primarily focused on improving access to L/SLBEs, addressing the underutilization of minority and woman-owned businesses, and assisting small businesses with developing effective mentor-protégé agreements. The barriers reported by the interviewees are listed in Table 8.3.

Table 8.3: Barriers Reported by the Interviewees

Barriers Reported by the Interviewees
Preferential treatment given to certain contractors
Difficulty navigating the bid process
Late payments
Ineffective L/SLBE Program



City of Oakland Disparity Study Final Report

Part II



Table of Contents

CHAPTER 1: LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM ANALYSIS	1-1
I. INTRODUCTION.....	1-1
II. METHODOLOGY.....	1-1
A. LEGISLATIVE HISTORY OF THE LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM	1-1
B. CURRENT LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM.....	1-3
III. PROCUREMENT AND CONTRACTING STANDARDS	1-9
A. OAKLAND MUNICIPAL CODE.....	1-9
B. ADMINISTRATIVE INSTRUCTIONS	1-10
C. STANDARD OPERATIONS PROCEDURES.....	1-10
IV. PROCUREMENT PROCESS.....	1-10
A. CONSTRUCTION.....	1-10
B. PROFESSIONAL SERVICES	1-13
C. ARCHITECTURE AND ENGINEERING	1-14
D. EMERGENCY CONTRACTS.....	1-16
V. BUSINESS COMMUNITY'S ASSESSMENT OF THE L/SLBE PROGRAM	1-16
A. IMPEDIMENTS TO L/SLBE PROGRAM IMPLEMENTATION	1-17
B. BARRIERS TO CONTRACTING OPPORTUNITIES.....	1-24
VI. CITY STAFF'S PERCEPTIONS OF THE L/SLBE PROGRAM	1-30
A. WAIVER OF L/SLBE REQUIREMENTS	1-31
B. COOPERATIVE AGREEMENTS CIRCUMVENT THE COMPETITIVE PROCESS	1-36
VII. EFFICACY OF THE LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM	1-37
A. ATTAINMENT OF L/SLBE PARTICIPATION GOALS.....	1-37
B. L/SLBE PARTICIPATION BY ETHNICITY AND GENDER	1-40
C. COMPARISON OF THE 2017 L/SLBE DISPARITY STUDY FINDINGS TO THE CURRENT STUDY	1-43



D. DISCRETIONARY PROCUREMENT METHODS.....	1-44
VIII. CONCLUSION	1-53
A. MEASURES TO REVAMP THE L/SLBE PROGRAM.....	1-54
CHAPTER 2: FEDERALLY FUNDED CONTRACTS ANALYSIS	2-1
I. INTRODUCTION	2-1
II. FEDERALLY ASSISTED PRIME CONTRACTS.....	2-1
III. BUSINESS AFFIRMATIVE ACTION REQUIREMENTS FOR FEDERAL ASSISTANCE GRANTS.....	2-3
A. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964.....	2-3
B. USDOT DBE PROGRAM	2-4
IV. AFFIRMATIVE ACTION PROGRAM COMPLIANCE.....	2-6
A. COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT	2-6
B. COMPLIANCE WITH THE CALTRANS DBE PROGRAM REQUIREMENTS.....	2-7
C. STATISTICAL FINDINGS OF DBE GOAL ATTAINMENT.....	2-8
D. UTILIZATION OF PRIME CONTRACTORS ON CONTRACTS WITH USDOT FINANCIAL ASSISTANCE.....	2-9
E. DISPARITY ANALYSIS OF PRIME CONTRACTS WITH USDOT FINANCIAL ASSISTANCE	2-19
V. STATISTICAL FINDINGS OF FEDERALLY ASSISTED PRIME CONTRACTS	2-23
A. M/WBE UTILIZATION ON ALL FEDERALLY ASSISTED PRIME CONTRACTS	2-23
B. DISPARITY ANALYSIS OF FEDERALLY ASSISTED PRIME CONTRACTS	2-33
VI. SUMMARY	2-43
CHAPTER 3: COVID-19 M/WBE IMPACT ANALYSIS.....	3-1
I. INTRODUCTION	3-1
II. STUDY METHODOLOGY.....	3-2
A. CITY OF OAKLAND GRANTS FUNDED WITH CARES ACT FINANCIAL ASSISTANCE	3-2
B. CITY OF OAKLAND CONTRACTS FUNDED WITH CARES ACT FINANCIAL ASSISTANCE	3-3



C. UNITED STATES SMALL BUSINESS ADMINISTRATION PAYCHECK PROTECTION PROGRAM LOANS AND GRANTS	3-3
D. AMERICAN RESCUE PLAN ACT FINANCIAL ASSISTANCE.....	3-3
E. COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION ASSISTANCE.....	3-4
F. CITY OF OAKLAND BUSINESS LICENSE RECORDS.....	3-4
 III. STUDY FINDINGS.....	 3-4
A. CITY OF OAKLAND ADMINISTERED CARES ACT FINANCIAL ASSISTANCE GRANTS....	3-4
B. CITY OF OAKLAND ADMINISTERED CARES ACT FINANCIALLY ASSISTED CONTRACTS	3-5
C. UNITED STATES SMALL BUSINESS ADMINISTRATION PAYCHECK PROTECTION PROGRAM LOANS AND GRANTS	3-7
D. THE AMERICAN RESCUE PLAN ACT FINANCIAL ASSISTANCE.....	3-9
E. COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION ASSISTANCE.....	3-9
F. CITY OF OAKLAND BUSINESS LICENSE CHANGE RATE	3-10
 IV. CONCLUSION	 3-11



List of Tables

TABLE 1.1: L/SLBE PROGRAM DOCUMENTS.....	1-2
TABLE 1.2: L/SLBE PROGRAM CERTIFICATION CATEGORIES AND CRITERIA	1-5
TABLE 1.3: ARCHITECTURAL AND ENGINEERING PRIME CONTRACTS VALUED AT LESS THAN \$250,000 BY CERTIFICATION CATEGORY	1-22
TABLE 1.4: PRIME CONTRACTS AWARDED TO L/SLBES AND NON-L/SLBES	1-38
TABLE 1.5: SUBCONTRACTS AWARDED TO L/SLBES AND NON-L/SLBES.....	1-38
TABLE 1.6: PRIME CONTRACTS AWARDED BY CERTIFICATION CATEGORY	1-39
TABLE 1.7: SUBCONTRACTS AWARDED BY CERTIFICATION CATEGORY	1-39
TABLE 1.8: L/SLBE WAIVER REQUESTS	1-40
TABLE 1.9: STATISTICAL OUTCOME DESCRIPTIONS	1-40
TABLE 1.10: DISPARITY ANALYSIS: ALL PRIME CONTRACTS AWARDED TO L/SLBES JULY 1, 2016 TO JUNE 30, 2021	1-42
TABLE 1.11: COMPARISON OF THE 2017 L/SLBE DISPARITY STUDY FINDINGS TO THE CURRENT STUDY	1-43
TABLE 1.12: ON-CALL, EMERGENCY, AND COOPERATIVE AGREEMENTS BY ETHNICITY AND GENDER	1-46
TABLE 1.13: ON-CALL, EMERGENCY, AND COOPERATIVE AGREEMENTS BY CERTIFICATION CATEGORY	1-47
TABLE 1.14: ON-CALL, EMERGENCY, AND COOPERATIVE AGREEMENTS AWARDED TO L/SLBES BY ETHNICITY AND GENDER.....	1-49
TABLE 1.15: DISPARITY ANALYSIS: ON-CALL, EMERGENCY, AND COOPERATIVE AGREEMENTS JULY 1, 2016 TO JUNE 30, 2021	1-51
TABLE 1.16: PRIME CONTRACTS AWARDED BY PUBLIC WORKS DEPARTMENT WITHOUT COMPETITIVE BIDDING, JULY 1, 2016 TO JUNE 30, 2021.....	1-52
TABLE 1.17: PRIME CONTRACTS AWARDED USING COMPETITIVE BID WAIVER BY ETHNICITY JULY 1, 2016 TO JUNE 30, 2021	1-53



TABLE 2.1: FEDERAL ASSISTANCE FUNDING SOURCES	2-2
TABLE 2.2: FEDERAL ASSISTANCE FUNDED PRIME CONTRACTS.....	2-2
TABLE 2.3: CALTRANS FEDERALLY ASSISTED PRIME CONTRACTS BY DBE STATUS.....	2-6
TABLE 2.4: CALTRANS FEDERALLY ASSISTED PRIME CONTRACTS AWARDED BY DBE STATUS.....	2-8
TABLE 2.5: ALL PRIME CONTRACTS WITH USDOT FINANCIAL ASSISTANCE AWARDED BY ETHNICITY AND GENDER, JULY 1, 2016 TO JUNE 30, 2021.....	2-10
TABLE 2.6: CONSTRUCTION PRIME CONTRACTS WITH USDOT FINANCIAL ASSISTANCE AWARDED BY ETHNICITY AND GENDER, JULY 1, 2016 TO JUNE 30, 2021.....	2-12
TABLE 2.7: ARCHITECTURAL AND ENGINEERING PRIME CONTRACTS WITH USDOT FINANCIAL ASSISTANCE AWARDED BY ETHNICITY AND GENDER, JULY 1, 2016 TO JUNE 30, 2021	2-14
TABLE 2.8: PROFESSIONAL SERVICES PRIME CONTRACTS WITH USDOT FINANCIAL ASSISTANCE AWARDED BY ETHNICITY AND GENDER, JULY 1, 2016 TO JUNE 30, 2021	2-16
TABLE 2.9: GOODS AND SERVICES PRIME CONTRACTS WITH USDOT FINANCIAL ASSISTANCE AWARDED BY ETHNICITY AND GENDER, JULY 1, 2016 TO JUNE 30, 2021	2-18
TABLE 2.10: DISPARITY ANALYSIS: ALL PRIME CONTRACTS WITH USDOT FINANCIAL ASSISTANCE JULY 1, 2016 TO JUNE 30, 2021	2-20
TABLE 2.11: DISPARITY ANALYSIS: CONSTRUCTION PRIME CONTRACTS WITH USDOT FINANCIAL ASSISTANCE JULY 1, 2016 TO JUNE 30, 2021	2-22
TABLE 2.12: ALL FEDERALLY ASSISTED PRIME CONTRACTS AWARDED BY ETHNICITY AND GENDER JULY 1, 2016 TO JUNE 30, 2021.....	2-24
TABLE 2.13: FEDERALLY ASSISTED CONSTRUCTION PRIME CONTRACTS AWARDED BY ETHNICITY AND GENDER, JULY 1, 2016 TO JUNE 30, 2021	2-26
TABLE 2.14: FEDERALLY ASSISTED ARCHITECTURAL AND ENGINEERING PRIME CONTRACTS AWARDED BY ETHNICITY AND GENDER, JULY 1, 2016 TO JUNE 30, 2021	2-28
TABLE 2.15: FEDERALLY ASSISTED PROFESSIONAL SERVICES PRIME CONTRACTS AWARDED BY ETHNICITY AND GENDER, JULY 1, 2016 TO JUNE 30, 2021	2-30



TABLE 2.16: FEDERALLY ASSISTED GOODS AND SERVICES PRIME CONTRACTS AWARDED BY ETHNICITY AND GENDER, JULY 1, 2016 TO JUNE 30, 2021	2-32
TABLE 2.17: DISPARITY ANALYSIS: ALL FEDERALLY ASSISTED PRIME CONTRACTS JULY 1, 2016 TO JUNE 30, 2021	2-34
TABLE 2.18: DISPARITY ANALYSIS: FEDERALLY ASSISTED CONSTRUCTION PRIME CONTRACTS JULY 1, 2016 TO JUNE 30, 2021	2-36
TABLE 2.19: DISPARITY ANALYSIS: FEDERALLY ASSISTED ARCHITECTURAL AND ENGINEERING PRIME CONTRACTS JULY 1, 2016 TO JUNE 30, 2021	2-38
TABLE 2.20: DISPARITY ANALYSIS: FEDERALLY ASSISTED PROFESSIONAL SERVICES PRIME CONTRACTS JULY 1, 2016 TO JUNE 30, 2021	2-40
TABLE 2.21: DISPARITY ANALYSIS: FEDERALLY ASSISTED GOODS AND SERVICES PRIME CONTRACTS JULY 1, 2016 TO JUNE 30, 2021	2-42
TABLE 3.1: CARES ACT FINANCIALLY ASSISTED CONTRACTS AWARDED BY ETHNICITY AND GENDER	3-6
TABLE 3.2: CARES ACT FINANCIALLY ASSISTED CONTRACTS AWARDED BY GEOGRAPHIC AREA	3-7
TABLE 3.3: BUSINESS LICENSE RATE OF CHANGE BY OAKLAND ZIP CODE	3-11



CHAPTER 1: Local and Small Local Business Enterprise Program Analysis

I. Introduction

In 1993, the Oakland City Council adopted Resolution No. 69687 C.M.S., establishing the Local and Small Local Business Enterprise Program (L/SLBE Program) to stimulate the local business community's growth. Over the last 30 years, the policy has been modified on several occasions to maximize the utilization of small local businesses on the City of Oakland's construction, professional services, and goods and services prime contracts. The most recent modification was made in 2021. However, this modification was not a substantive change to the policy in place during the July 1, 2016 to June 30, 2021 study period.

This chapter assesses, from the perspectives of City staff and the L/SLBE community, the L/SLBE policy and its impact on minority and women-owned business enterprise (M/WBE) utilization on the City's prime contracts and subcontracts during the study period. The perspectives of City staff and L/SLBEs were gathered through a series of one-on-one interviews. The scope of work also required the presentation of recommendations to maximize the benefits from the policy.

II. Methodology

The chapter includes eight sections: (1) Introduction, (2) Methodology, (3) Procurement and Contracting Standards, (4) Procurement Process, (5) Business Community's Assessment of the L/SLBE Program, (6) City Staff's Perceptions of the L/SLBE Program, (7) Efficacy of the L/SLBE Program, and (8) Conclusion. The legislative history covers the period from 1993, when the L/SLBE policy was initially enacted, to the 2021 amendment. Managers from eight departments participated in the interviews. Managers of departments that were awarded the most contract dollars during the study period volunteered to be interviewed. The local businesses provided their accounts as part of the anecdotal interview phase of the disparity study.

The staff interviews focused on the departments' application of the L/SLBE procurement policy and procedures. The local businesses were queried about their perceptions of L/SLBE policy and program implementation.

A. Legislative History of the Local and Small Local Business Enterprise Program

The legislative history of the L/SLBE Program dates back to 1993 when the City Council approved the City's first L/SLBE policy. Over the 30 years since that time, the ordinance has been amended at least four times. The City Council approved the most recent amendment in May 2021.



The legislative record reviewed is published on the City of Oakland website in the City of Oakland Legistar portal at <https://oakland.legistar.com/Legislation.aspx>. Table 1.1 lists each document reviewed.

Table 1.1: L/SLBE Program Documents

Document Number	City Council Approval Date	The Legislative History of L/SLBE Program
Resolution No. 69687	February 2, 1993	<ul style="list-style-type: none"> Adopted a Local Employment Program and Small Local Business Enterprise Program and applied them to public works contracts.
Ordinance No. 12389 C.M.S.	December 18, 2001	<ul style="list-style-type: none"> Added prevailing wage requirements and apprenticeship program for construction contracts. Required all construction contracts, regardless of tier, to pay prevailing wages. Utilization of the City of Oakland apprentices count toward the 50% new hire goals and the 50% workforce hour goals.
Ordinance No. 13101 C.M.S.	December 20, 2011	<ul style="list-style-type: none"> Added new size categories of Very Small Local Business Enterprise (VSLBE) and Local Produced Goods Local Business Enterprise (LPG-LBE). Established Small Local Business Enterprise (SLBE) 5% bid discounts and 5% preference points. Waived SLBE subcontracting requirements for Oakland-certified local businesses that apply for professional services contracts.¹
Ordinance No. 13640 C.M.S.	February 24, 2021	<ul style="list-style-type: none"> Modified local and small local trucking 50% participation requirements, limiting participation goal to trucking companies certified through the L/SLBE trucking program and removing the requirement that companies house or store trucks within the City's geographic region. Added new local business category of Small Business Administration- Local Oakland Business Enterprise (SBA-LBE) with certification criteria. Changed the definition of residence requirement to (a) business conducted in a residence complies with Oakland zoning regulations relating to home occupations, and (b) the residence is the primary location of the business and contributes not less than 51% of its gross receipts. Modified the application of bid discounts to 5% for a VSLBE prime contractor during construction bid evaluation and a bid discount of 5% for professional services contract bids where the VSLBE meets a 50% subcontractor goal. Applied the L/SLBE Program requirements to disposition and development agreements.



¹ The policy is silent on the construction contracts.

Document Number	City Council Approval Date	The Legislative History of L/SLBE Program
Ordinance No. 13647 C.M.S.	May 4, 2021	<ul style="list-style-type: none"> Removed the provision regarding waiver of SLBE subcontracting requirements for certified local businesses that apply for professional services contracts as the prime contractor. Clarified the application of bid discounts and preference points for VSLBE participation. Clarified program certification criteria for added categories. Removed the definition of sheltered market program.

B. Current Local and Small Local Business Enterprise Program

The current ordinance, No. 13647 C.M.S., which the City Council approved on May 4, 2021, modified the waiver provisions, certification requirements, and program incentives. The new provisions in the L/SLBE Program under the current ordinance include the following changes to the code:

1. Participation Requirements

a. L/SLBE Participation Requirements

The 50% participation requirement of local and small local businesses applies to construction contracts of \$100,000 and greater and professional services and commodities contracts of \$50,000 and greater. All contracts below these thresholds must include outreach to certified local firms, if available, to request responses to the solicitation from a minimum of three local firms.

The 50% local business participation requirement must be met with a minimum participation of 25% for Local Business Enterprises (LBEs)/Local Not-for-Profit Business Enterprises (L/NFPBEs) and 25% for SLBEs/Small Local Not-for-Profit Business Enterprises (S/LNFPBEs). SLBEs and SLNFPBEs may meet the full 50% requirement. Where Very Small Local Business Enterprise (VSLBE) participation is evident, the level of participation will be double-counted towards meeting the requirement.

b. L/SLBE Trucking Requirements

The local trucking requirement is 50% of the total trucking dollars. The total L/SLBE trucking dollars can count toward the overall 50% L/SLBE participation requirement, and the participation of each trucker certified as a VSLBE is double-counted.

2. SLBE Waiver Provisions and Availability Analyses

The 50% L/SLBE participation requirement may be reduced prior to the solicitation being advertised, depending on the availability of L/SLBEs to perform the work in the contract scope. The awarding department must request an availability analysis from the Department of Workplace and Employment Standards (DWES) to determine if one or more L/SLBEs are available to perform the scope of work set forth in the solicitation. The request must be made prior to advertising the



solicitation. The requirement can be reduced from 50% to 0% if DWES finds that no business offering the specific goods or services is certified with the City. If there is at least one certified L/SLBE that performs the scope of work stipulated in the solicitation, the requirement cannot be reduced by more than 20%.

a. Availability Analysis Request

To request a waiver, the awarding department submits a form to DWES to perform an availability analysis. DWES performs the availability analysis based on the description of the scope of services stated on the form. The awarding department also may provide DWES with NAICS codes to search for available L/SLBEs.

3. Verification of Compliance with the L/SLBE Participation Goal

The prime contractor is required to report the level of L/SLBE participation at the time of bid opening on Schedule R for construction projects and Schedule E for professional services projects. The appropriate schedule must be submitted with each bid and proposal. The subcontractor awards listed on Schedule R are calculated to determine the bid's compliance with the L/SLBE requirements. Compliance with the reporting requirement is considered a condition of a responsive and responsible bid. Schedule R cannot be modified after the bid opening without the City's approval. The substitution of a subcontractor must be approved by DWES.

Failure to maintain the participation throughout the duration of a construction contract may result in a penalty of one-and-one-half times the amount that should have been paid to the L/SLBE and/or termination of the contract.

To ensure compliance with the participation levels listed on Schedule R, the City requires the prime contractor to provide a copy of subcontractor agreements. Verification of the total amount to be paid to each subcontractor, supplier, or trucker is also required prior to the commencement of work.

A subcontractor's progress payment application must be submitted with each of the prime contractor's requests for payment. Prime contractors must also report, with each progress payment application, payments made to L/SLBEs. In addition, an exit report and affidavit form must be attached to the final progress payment application.

Schedule E must be submitted with the proposal, and some L/SLBE participation must be listed in order to satisfy the requirement. If zero participation is presented, the proposal will not be accepted. If the proposal with minimum participation is selected, the proposer shall be able to adjust the participation level up in order to meet the 50% requirement.

4. Verification of Compliance with the Participation Requirements

Construction prime contractors and all subcontractors, including truckers, are required by California Labor Code Section 1776 to submit weekly certified payroll records five days after each



pay period. Failure to submit weekly certified payroll records can result in withholding the prime contractor's progress payment.

A penalty of 1% of the contract amount or \$1,000 per day, whichever is less, may be applied if the required payroll documents are not provided within the specified time. Failure to submit the required payroll records may be considered a material breach of contract, in which case the contract could be terminated or a stop-work order issued until compliance is met. In addition, the contractor or subcontractors may be debarred from participating in future City contracts for a period of six months to five years and may lose certification.

To ensure compliance with the L/SLBE requirements, the contractor is required to provide requested records within ten calendar days and allow the City to review pertinent records and documents. There is no other compliance provision to monitor the L/SLBE utilization on professional services or goods and services prime contracts.

5. Local Small Business Size Criteria

The program has Local Business Enterprise, Small Local Business Enterprise, Very Small Local Business Enterprise, and Locally Produced Goods certification categories. Table 1.2 lists the criteria for each of these certification categories. The certification criteria apply to both for-profit and not-for-profit organizations.

Table 1.2: L/SLBE Program Certification Categories and Criteria

Certification Category	Certification Eligibility Criteria
LBE Local Business Enterprise	<ol style="list-style-type: none">1. Must have a substantial presence in the City of Oakland as defined by:<ol style="list-style-type: none">a. Headquartered (primary office location) within the City of Oakland; orb. Twenty percent of the total company workforce or a minimum of 50 employees work in the Oakland headquarters; orc. Headquarters located in a commercial office with a lease agreement signed 12 months prior to the closing date of a competitive process; ord. Home-based office is in place 12 months prior to the closing date of a competitive process, and the office is the owner(s) residence and the business' sole headquarters.2. Fully operational with a valid business tax certificate for at least 12 consecutive months.3. Operations and employees in a fixed office space.4. Current permits, fines, and fees.5. Valid documents certifying business operations (i.e., contracts, bills, etc.).6. Registration in the iSupplier system.



Certification Category	Certification Eligibility Criteria
SLBE Small Local Business Enterprise	1. Three-year average gross receipts in the most recent three federal tax returns must fall at or below 20% of the SBA's size standard for the relevant industry sector. 2. Headquartered in Oakland commercial site or home-based office whereby a valid certification is in place 12 months prior to the closing date of a competitive process. (Additional minimum certification criteria: home-based office should be the owner(s)' residence and the business' sole headquarters.) 3. Fully operational with a valid business tax certificate for at least 12 consecutive months. 4. Operations and employees in a fixed office space. 5. Current permits, fines, and fees. 6. Valid documents certifying business operations (e.g., contracts, bills). 7. Registration in the iSupplier system.
VSLBE Very Small Local Business Enterprise	SLBE certification criteria, plus: 1. Fully operational for six consecutive months. 2. Average annual gross receipts at or below \$375,000. 3. Oakland headquarters in a commercial or home-based office.
LPG²/LBE Locally Produced Goods/LBE	Same as LBE certification criteria, plus: 1. Business must manufacture goods within the City of Oakland. 2. Business must present proof of sales. 3. Business must possess the current permit and license(s) required to conduct a manufacturing operation in an area zoned as industrial.
NFP/LBE: Not-for-Profit Local Business Enterprise	Same as LBE certification criteria, and business must produce documentation of non-profit status.
NFP/SLBE³ Not-for-Profit Small Local Business Enterprise	Same as SLBE certification criteria, and business must produce documentation of non-profit status.
SBA-LBE Small Business Administration- Local Business Enterprise	Same as LBE certification criteria, plus: 1. Satisfies the size standard published by the Small Business Administration's (SBA's) definition of a "small business." 2. Headquartered in Oakland.



² Eligible for goods and services contracts.

³ Not-for-profit organizations can fulfill the requirements of L/SLBE Program.

a. Certification Approval Process

i. Application

The certification application must be submitted online through B2Gnow. Prior to B2Gnow, applications were submitted through the City's iSupplier portal, which was used until December 2022. An application for small business certification must also include the applicant's three most recent business tax returns to verify the size, location, and other certification criteria.

ii. Application Review

Applications are reviewed by DWES. Site visits and desk audits are conducted for all first-time certification applications. The site visits are scheduled within ten working days of the receipt of the required documents. Pending no further questions or changes in status or conditions, a determination is rendered within ten working days of the site visit.

All applicants are asked to fully participate in the certification process. Failure or refusal to furnish requested information or to participate in the process will void the application. During the certification process, the City may review any documentation or information necessary to determine eligibility.

b. Certification Denial Appeal Standard

If an applicant does not agree with a certification determination, the applicant may file an appeal in writing within ten working days of the written determination.

c. Re-Certification

Certification is valid for a period of two years unless otherwise specified. At the end of the certification period, the business must apply for re-certification. Upon the expiration of certification, the business must repeat the certification process to recertify as an L/SLBE.

d. Third-Party Certification Challenges

A third party with reason to believe that a business had been wrongfully denied or granted certification may advise the City in writing. When warranted, an investigation is conducted. Both the third party and the affected party are informed of the findings.

6. L/SLBE Program Incentives



The Program offers incentives for businesses to certify as L/SLBEs. The incentives include bid discounts and preference points for mentor-protégé and joint venture agreements, City-assisted private developments, and a Mandatory Preferred Small Local Business Program for certified small businesses.

a. Bid Discounts for Construction Projects

Prime contractors can earn bid discounts based on L/SLBE participation. No more than a 5% bid discount can be earned for L/SLBE participation, and no more than a 10% bid discount can be earned for VSLBE participation.

b. Preference Points for Professional Services Projects

Prime contractors may earn up to five preference points for local business participation. No more than five preference points may be earned for L/SLBE participation, and no more than ten preference points may be earned for VSLBE participation.

c. Mentor-Protégé Agreements

On a case-by-case basis, the City will allow a 10% preference for mentor-protégé teams on construction and professional services contracts. If a prime contractor develops a mentor-protégé relationship with a certified LBE or SLBE, the mentor will enjoy the benefit of credits against City requirements, particularly under circumstances where availability is zero.

d. Joint Venture Agreements

Joint ventures receive bid discounts depending upon the LBE or SLBE percentage of participation as set forth in the program. On a case-by-case basis, the City will allow an additional 5% of preference points for joint ventures where the junior partner is a certified SLBE or VSLBE. To be eligible for a bid discount, each joint venture partner must possess the license appropriate for the project.

The LBE/SLBE joint-venture partner must share in the ownership, control, management responsibilities, risks, and profits of the joint venture in proportion to the level of participation in the project. The LBE/SLBE partner must perform work that is commensurate with its experience.

The LBE/SLBE partner must also use its own employees and equipment to perform its portion of the project. For construction contracts only, the joint venture must perform bid item work that equals or exceeds 25% of the total value of the contract, excluding the cost of manufactured items, in order to be eligible for a joint venture discount.

e. City-Assisted Private Developments

For City-assisted private developments, the prime contractor is required to seek competitive bids from subcontractors and comply with L/SLBE Program goals and objectives, as set forth in the L/SLBE Program document. Prime contractors must give SLBE contractors a 5% bid discount and LBE contractors a 2% bid discount. Prime contractors are required to award to the lowest responsible bidder.



f. Mandatory Preferred Small Local Business Program for Pre-Construction Professional and Construction Services

The Mandatory Preferred Small Local Business (MPSLB) Program established pre-qualification lists for Oakland-certified small businesses in the pre-construction professional services (architecture and engineering) and construction services industries for contracts valued at \$250,000 and less.

L/SLBEs must be included in the pre-qualified list to participate. Responses to contracts under \$250,000 will be solicited from at least three prequalified businesses. Pre-construction and other professional services awards shall be based on demonstrated competence and qualifications to perform the services set forth in the solicitation at a fair and reasonable price, in addition to preference points and compliance with the City's purchasing programs. Construction contracts should be awarded to the lowest, responsible, and responsive bidder.

The City Administrator may solicit proposals on the open market without advertising if fewer than three proposals for pre-construction and other professional services are submitted by pre-qualified firms.

7. L/SLBE Program Compliance Analysis

Bids and proposals are evaluated by DWES to determine compliance with the L/SLBE Program. The participation of L/SLBEs is calculated, and the results are sent to the awarding department. The applicable bid discounts and preference points are applied during the compliance analysis.

III. Procurement and Contracting Standards

The Oakland Municipal Code and the Administrative Instructions define the standards that govern the procurement process from requisition to contract award. The standard operating procedures (SOPs) interpret the policy for the end user. The procurement and contracting process is reviewed to determine its intersections with the L/SLBE Program and to identify standards that support the program policy.

A. Oakland Municipal Code

Policies governing procurement are set forth in *Chapter 2.04 – Purchasing System, Section 2.04 of the Municipal Code*. The code authorized the City Administrator to establish administrative instructions to implement the procurement and contracting policy in Chapter 2.04.



B. Administrative Instructions

Administrative instructions are the procurement procedures established by the City administrator, as authorized under *Chapter 2.04 of the Municipal Code*. The administrative instructions provided by the City Administrator's Office for this analysis are listed below:

- Administrative Instruction, No. 4313, Contracts for Public Works, May 24, 1977.
- Administrative Instruction No. 4315, Contracts for Procurement from State, County, or Cooperative Governmental Agencies, August 6, 1979.
- Administrative Instruction No. 4311, Contracts for Formal Purchases, June 22, 1983.
- Administrative Instruction No. 150, Professional or Specialized Service Contracts, August 1, 2000.
- Administrative Instruction No. 24, Newspaper Advertisement/City Administrator's Office, January 1, 2014.

C. Standard Operations Procedures

The standard operating procedures provide standards for implementing the *Oakland Municipal Code* and administrative instructions when procuring goods and services. The SOPs are written by the departments to implement the procurement and contracting policies. Only two departments provided their SOPs for review. The Capital Contracts Division (CCD) provided the SOPs used by both the Public Works Department (OPW) and the Department of Transportation.

IV. Procurement Process

The *Municipal Code* authorizes the procurement of supplies and services using both formal and informal solicitation processes.⁴ The code authorized the City Administrator to establish formal and informal solicitation procedures as administrative instructions. The initial set of administrative instructions was published in June 1983 for formal purchases. There are no administrative instructions for informal purchases. *Administrative Instruction 4311 for Contracts for Formal Purchases* lists procedural steps after the steps leading up to the award of a contract are complete.⁵

A. Construction

1. Informal Procurement of Construction Contracts

The *Municipal Code* authorizes the procurement of construction services valued between \$500 and \$50,000 using informal procedures.⁶



⁴ Chapter 2.04 - PURCHASING SYSTEM | Code of Ordinances | Oakland, CA | Municode Library.

⁵ *Administrative Instruction 4311*, Contracts for Formal Purchases, June 22, 1983.

⁶ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.40. B.1.

a. Advertising Requirements

Informal construction solicitations do not require advertisement in a legal publication or posting on iSupplier. Informal construction solicitations may be emailed to potential bidders.⁷ Quotes must be solicited from at least three local, certified businesses.⁸

b. Evaluation and Award

A contract is awarded to the lowest responsive and responsible bidder. The award of construction contracts shall be made to the contractor that submits the lowest bid and provides all the necessary information and documentation to meet the requirements of a responsible bidder in the manner requested.⁹

In addition to price in determining the lowest responsible bidder, consideration is given to:

- The quality and performance of the supplies to be purchased or services to be provided by the seller.
- The ability, capacity, and skill of the bidder to perform the contract or provide the supplies or services required.
- The ability of the bidder to provide the supplies or services promptly or within the time specified without delay.
- The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- The quality of the bidder's performance on previous purchases or contracts with the City.
- The ability of the bidder to provide future maintenance, repair parts, and services for the supplies purchased.
- As permitted by law, a certified bidder's affirmative action hiring plan should be submitted with all sealed bids for supplies and commodities over \$5,000.

- To be considered responsible and as permitted by law, the bidder shall submit certification that it is in compliance with all provisions of Executive Order No. 11246 (as amended by Executive Order No. 11375), and
- To be considered responsible and as permitted by law, the bidder must have a current workforce racially and ethnically proportionate to the population parity for the area from which the bidder's workforce is drawn (national, state, or local), must comply with Subsection (G)(1) of Section 2.04.60, or must have an affirmative action plan to achieve population parity for the area in which the bidder does business. The plan should include all aspects of employment recruiting, hiring, promotions, and layoff.¹⁰

⁷ Bureau of Design & Construction, Capital Contracts Division, Standard Operation Procedure, January 2023.

⁸ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.10.

⁹ Bureau of Design & Construction, Capital Contracts Division, Standard Operation Procedure, January 2023.

¹⁰ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.60.



c. Approval and Authorization of the Award

If the lowest responsive and responsible bid is \$50,000 and below, then the requesting department may initiate the award process. The project manager from the requesting department submits a request to the Capital Contracts Division to award the contract.¹¹ The City Administrator authorizes the contract award.¹²

2. Formal Procurement of Construction Contracts

Formal solicitation is required to procure construction services in excess of \$50,000.¹³ Formal solicitations must be reviewed by DWES for compliance with the L/SLBE requirements prior to being published.¹⁴

a. Advertising Requirements

The solicitation must be advertised by the City Clerk at least once in the City's official newspaper not less than ten calendar days before the bid opening date. The City Administrator may deem it advisable to require more than one posting of the solicitation.¹⁵ The public notice should also be published on iSupplier.¹⁶ The notice should describe the specifics of a product or service needed, the contract requirements, the estimated value of the service, and the terms, deadlines, and other pertinent information.¹⁷

b. Evaluation and Award

The award should be made to the lowest responsive and responsible bidder. The award of construction contracts shall be made to the bidder who submits the lowest bid and is "responsive," meaning all the necessary information and documentation to meet all requirements in the manner requested are provided.¹⁸

¹¹ Bureau of Design & Construction, Capital Contracts Division, Standard Operation Procedure, January 2023.

¹² *Oakland Municipal Code*, Chapter 2.04, Section 2.04.20.A.1.

¹³ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.40.B.2.

¹⁴ Bureau of Design & Construction, Capital Contracts Division, Standard Operation Procedure, January 2023.

¹⁵ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.50.A.

¹⁶ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.10.

¹⁷ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.10.

¹⁸ Bureau of Design & Construction, Capital Contracts Division, Standard Operation Procedure, January 2023.



c. Approval and Authorization of the Award

The City Administrator has the authority to authorize the award of construction contracts valued up to \$250,000.¹⁹ Construction contracts exceeding \$250,000 must be awarded by the City Council.²⁰

B. Professional Services

Professional services contracts are defined in Administrative Instruction 150. This instruction also describes the policy for the procurement of professional services. Procurement of both informal and formal professional services is made through either a request for qualifications or a request for proposals.

1. Informal Procurement of Professional Services Contracts

Informal advertising and solicitation of proposals/qualifications are required for professional services contracts involving expenditures of \$50,000 or less.²¹

a. Advertising Requirements

Informal solicitation of professional services only requires seeking a minimum of three quotes, which should first be solicited from L/SLBEs.²²

b. Evaluation and Award

The quotes are evaluated by the requesting department by applying the following criteria:

- Proposer's understanding of the project.
- Adequacy of the proposers' organization, resources, and experience to perform the project.
- Proposer's experience performing similar projects.
- Proposer's requisite professional qualifications to complete the project.
- The written proposal's demonstration of a cost-effective means to complete the project.
- The written proposal's demonstration of a reasonable and feasible means of completing the project.

Administrative Instruction 150 for Professional or Specialized Service Contracts does not provide information on the award of a contract.

¹⁹ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.20.A.1.

²⁰ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.30.A.1.a.

²¹ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.040.B.3.

²² *Oakland Municipal Code*, Chapter 2.04, Section 2.04.10.



c. Approval and Authorization of the Award

The City Administrator may award contracts that have been procured through the information proposal/qualification process.²³

2. Formal Professional Services Contracts

Formal solicitation of proposals/qualifications is required for professional services contracts valued at over \$50,000.²⁴

a. Advertising Requirements

Formal solicitation of professional services contracts requires publication in the City's official newspaper or on iSupplier.²⁵

b. Evaluation and Award

The selection and award of contracts for professional services shall be based on demonstrated competence and qualifications for the types of services to be performed at a fair and reasonable price to the City.²⁶

c. Approval and Authorization of the Award

Professional services contracts valued at \$250,000 and under are awarded by the City Administrator. Professional services contracts exceeding \$250,000 are awarded by the City Council.²⁷

C. Architecture and Engineering

The Capital Contracts Division (CCD) administers the procurement of architecture and engineering services along with requesting departments. Architecture and engineering services are professional services associated with research, planning, development, and design for the construction, alteration, or repair of real property.²⁸

²³ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.20.A.2.

²⁴ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.10.

²⁵ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.10.

²⁶ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.51.A.1.

²⁷ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.30.A.1.a.

²⁸ Bureau of Design & Construction, Capital Contracts Division, Standard Operation Procedure, January 2023.



1. Informal Architecture and Engineering Services Contracts

In accordance with *Oakland Municipal Code Chapter 2.04*, informal bidding is required for architecture and engineering services up to \$50,000. The informal procurement policy for architecture and engineering services shall be governed by the California Mini-Brooks Act and California Public Contract Code, with additional guidance from the *Oakland Municipal Code*.

a. Advertising Requirements

Informal solicitation for architecture and engineering services does not require formal advertisement in legal publications (e.g., newspapers) and posting on iSupplier. Solicitation of three quotes or responses required from local, certified businesses shall be the minimum number solicited.²⁹

b. Evaluation and Award

The solicitation is subject to qualification-based selection of contractors/consultants performing architecture and engineering services, as qualification-based selection is required by both the Federal Brooks Act and the California Mini-Brooks Act. Price is not a criterion for evaluation. Proposed prices or billing rates are subject to negotiation after the evaluation of proposals and the ranking of proposers. The award shall be made to the most qualified firm at a price that is fair and reasonable and less than \$50,000.³⁰

c. Approval and Authorization of the Award

The City Administrator is authorized to award the informal contract.

2. Formal Architecture and Engineering Services Contracts

Contracts exceeding \$50,000 must follow the formal solicitation process.

a. Advertising Requirements

Solicitations for architecture and engineering services must be advertised at least once in the City's official newspaper, not less than ten calendar days before the proposal due date. Solicitations shall allow for submission of proposals for a period of at least 30 calendar days starting from the advertisement date unless an exception is granted by the CCD.

b. Evaluation and Award

The CCD performs a review of all proposals and prepares a preliminary determination of responsiveness to the RFP requirements. Copies of the proposals are forwarded to DWES for a

²⁹ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.010.

³⁰ Bureau of Design & Construction, Capital Contracts Division, Standard Operation Procedure, January 2023.

responsiveness review, and DWES makes a final determination of the responsiveness to the L/SLBE requirements.

All responsive proposals are forwarded to the selection committee for evaluation. The evaluation criteria are published in the solicitation. The selection committee scores and/or rates the proposals and establishes a final ranking. DWES's finding is communicated to the requesting department. The requesting department conducts the proposal price/billing rate negotiations with the highest-ranked proposer. A written analysis of the negotiated price/billing rates is prepared and included with the request to award submitted to the City Council for approval.

c. Approval and Authorization of the Award

The City Administrator can award architecture and engineering contracts up to \$250,000. The City Council must approve the award of architecture and engineering contracts exceeding \$250,000.

D. Emergency Contracts

An emergency purchase is a procurement deemed by the City Administrator to be necessary for the immediate preservation of the public peace, health, or safety.³¹ In a situation deemed by the City Administrator to be an emergency, a contract or purchase order exceeding the City Administrator's \$250,000 authority may be awarded without advertising or previous City Council approval. All emergency contracts awarded by the City Administrator shall be presented for informational purposes to the City Council within a reasonable time of contract execution.³²

Under the L/SLBE Program, local businesses are the first priority in the performance of emergency work, as defined in Ordinance No. 7937 C.M.S, as amended.

The City's goal is to spend 75% of emergency contract dollars with local businesses. At least two-thirds must be spent on small local businesses. User agencies are required to solicit from certified local firms for all informally bid emergency work whenever feasible.³³

V. Business Community's Assessment of the L/SLBE Program

Owners of large and small Oakland businesses assessed the L/SLBE Program and its impact on their access to City contracts through one-on-one interviews. The profile of these business owners is presented in *Chapter 8: Anecdotal Analysis, Part I* of this report. It was the general consensus of the business owners that the City's L/SLBE policy was comprehensive, but its implementation failed to promote the utilization of L/SLBEs on City contracts as either prime contractors or subcontractors during the July 1, 2016 to June 30, 2021 study period.



³¹ *Oakland Municipal Code*, Chapter 2.04, Section 2.04.010.

³² *Oakland Municipal Code*, Chapter 2.04, Section 2.04.020.F.

³³ L/SLBE Program Guidelines, revised as of May 4, 2021.

A. Impediments to L/SLBE Program Implementation

1. Certification Process and Requirements

Business owners acknowledged that the certification process should include eligibility criteria to limit the benefits of the L/SLBE Program to local and small local businesses. Concern was expressed that the application process was complicated, time-consuming, cumbersome, and performed without a reliable timeframe.

To submit the certification application, a company must register in the iSupplier portal,³⁴ fill out an application form, and submit appropriate supporting documents. The registration allows access to a certification application. To submit the application, the required questions must be addressed, and the supporting documents must be attached. Navigating the platform was described as difficult. Even seasoned contractors with years of experience working with the City of Oakland described iSupplier as not user-friendly.

The iSupplier interface is one of the most difficult that I've worked with in my 30-year career.... It's just not very intuitive, and it's really kind of difficult to figure out even if our certification is coming up for renewal ... Eventually, I figured it out, but I find it very difficult and frustrating to work with.

Business owners also reported that the certification review process was slow and unpredictable. According to the L/SLBE Program guidelines, the certification process should be completed within a 20-day timeframe. Within ten days of DWES's receipt of the complete application, a site visit should be scheduled. Pending no further questions or changes in status or conditions, the determination should be rendered by day 20.

Business owners reported the process of reviewing the documents and determining qualifications takes more than 20 days. In fact, some reported that the certification process took months to complete, and the guidelines do not provide for expedited certification.

We have actually applied to be registered as a small business, but it's been several months. Haven't heard back. I know it's a process. We've applied with the City; we are awaiting a response.

Business owners also expressed concern that DWES does not have an expedited certification process or the staff to perform such certifications. Some complained that they have missed contract opportunities because there is no expedited certification process. It was noted that in the past, there was a process to expedite the certification if the business was pursuing a specific contract.

³⁴ iSupplier Portal was in use until December 2022.

Initially, it was great. It was quick, and they even made caveats. So, if you had a job bidding in the near future, they'd help you get certified quicker, that type of thing, so you had the certification prior to the bid. But nowadays... something that used to take a month now takes six months. And sometimes it disappears, and I have to prod them to say, "Where's my certification?" That type of thing. It was a farce because I just went through a bid that we got the certification the day of the bid, and it was the wrong certification, and the second bidder protested because of it.

Several interviewees commented that the City is short-staffed, and inadequate staffing levels impact the certification turnaround time. Business owners also asserted that the City's certification team has fewer staff members than other Bay Area certifying agencies.

The staffing levels in DWES have been identified as an impediment to timely L/SLBE certification.

As described by one interviewee:

The problem we have is very simple. We don't have enough enforcement of the rules and regulations. The City of Oakland has, in its possession, the rules and the regulations to move these certification processes and help small businesses take on larger contractors in the field, but the problem you have is a constant downsizing in the certification staff and the Small Business Program. So, when you have a small business program with about 150 applications in the pipeline, and you don't have staff to process the applications, you're already killing the program.

Lack of adequate staffing was also cited as a factor in maintaining the integrity of the L/SLBE Program. The availability of certified businesses was identified as a consideration when DWES reviews a department's request for a waiver of the L/SLBE goals.

If you can't go out to the project sites and do what I call oversight over your public policy, even though it's all been implemented, and the larger companies are utilizing it, but there's no enforcement.



The certification application process was also described as cumbersome. Business owners asserted that the application is complex, confusing, and burdensome for small and very small business applicants. This small business owner shared the following experience.

So, it's always confusing as to exactly what they're doing and then why they need all this information. For small businesses, it's just a hassle keeping up with all this stuff and producing all this paperwork.

The availability of certified businesses was identified as the number one consideration when DWES reviews a department's request for a waiver of the L/SLBE goals.

The program can't deliver the small local businesses to perform the services in the advertised contracts.

2. Verification of L/SLBE Payments

According to the L/SLBE Program, the prime contractor must submit a subcontractor progress payment report with each invoice. The subcontractor progress payment report must stipulate the amount paid to each subcontractor listed on Schedules R and E. The release of the prime contractor's payment is contingent on the submission of the subcontractor progress payment report.

Business owners reported that the subcontractor progress payment reports are not being submitted by prime contractors. A certified business worked as a subcontractor for more than a year and was only aware of one progress payment report being submitted.

It was one report that we were able to review and weigh in, and I was able to make my edits...that was it. And we were on the project for over a year.... That's not good. So, that's an affront to me. And it hurts. It hurts because that's something that is listed that we participated in, but we didn't really reap the benefits.... I think that it just wasn't enforced.

Business owners considered the failure to enforce the L/SLBE payment requirement as having an adverse impact on their business operations. Departments are required to review the pay application and invoice to verify that the subcontractor receives payment. One business owner under contract with the City for many years received payment as much as 12 months late.

The City owed us money for a year.... We resolved the issue because the City wanted to do more business with us, and we just said we can't until we get paid.



The City has a prompt payment policy that requires payment to its prime contractors within 20 business days of receiving an approved invoice and the prime contractor to pay its subcontractors within 20 business days of receiving an approved invoice. The City's contract template presents the prime contractors' prompt payment obligations but does not mention the City's obligation to the prime contractor.

Prime contractors expressed concern that the City requires them to submit progress payment reports verifying the payments made to L/SLBEs as a condition of receiving payment. Yet, the prime contractor's payment is not made promptly. The City's failure to pay invoices in a timely manner makes the requirement to pay the subcontractors unattainable.

Most of the time, the payments were paid late. They were on 30-day net terms, but we would normally get paid within maybe 25 to 40. So, sometimes, on time at the very end, or sometimes late.

The internal checks and balances associated with project management and compliance were described as multi-level and commonly managed sequentially without a definite time period for the review. The process, as described by one prime contractor, delays invoice payments and change order approval that is required to invoice for out-of-scope work.

Our monthly invoices have to be processed by a resident engineer. And on top of that, the resident engineer has to process change orders for extra work. The change order must be approved before we can even bill for the work performed. Payment is dependent on how fast the resident engineer processes all that paperwork. That's one thing that stalls payments....

The approved invoice then has to go to DWES, where they review it to ensure the prime contractor is meeting the local business and employment requirements, which is fine. But, sometimes, the invoice can sit on a desk for a couple months.

3. Application of L/SLBE Incentives

The L/SLBE Program allows for bid discounts and preference points for a mentor-protégé relationship to ensure that L/SLBEs are awarded prime contracts. A mentor prime contractor with an L/SLBE protégé is eligible for a 10% preference for construction bids and professional services proposals. Preference points are assigned during the evaluation of bids and proposals when the proposer or bidder is an L/SLBE.



For a mentor-protégé relationship to be eligible for the preference, there must be a written agreement at the time of award. The terms of the agreement must have provisions for a genuine opportunity to build the protégé's capacity and include at least 30% participation of the protégé. The agreement must also provide for a third-party review of its effectiveness. The term of the relationship must be the duration of the contract.

A certified business owner described a mentor-protégé relationship he had with a prime contractor. He reports that it was not productive, and the City did not conduct a third-party review.

It was not productive. It was a waste of City money, if you ask me, because they didn't teach us anything we already knew or we didn't know.... It was a waste of time.

Business owners assert that mentor-protégé agreements have been used to secure preference points in the evaluation but do not achieve the objectives set forth in the agreements. Despite the stipulations to adhere to the written mentor-protégé agreement, there were cases in which prime contractors did not fulfill the provisions of such agreements. A female owner of a company providing construction services reported about her experience working under a mentor-protégé agreement. She expressed her dissatisfaction with this relationship.

There was an agreement in place. And with that agreement, this general contractor never had time to meet those agreement terms. And this was brought up to the City of Oakland several times, and it was as if the City of Oakland was the father and they were the son, disciplining them, but nothing ever transpired after that. So, that made me give up. That was another part-time job trying to enforce the agreement. And so, we came away without the training. We told the mentor, "If you're not going to train us, can you at least purchase the program?" And that took a while to do that. So, I didn't gain much from them.

4. Failure to Implement the Mandatory Preferred Small Local Business Program

Departments that award pre-design and pre-construction services with budget estimates of less than \$250,000 are required to have a Mandatory Preferred Small Local Business (MPSLB) Program. The department must establish a list of prequalified small business enterprises and limit competition for contracts valued at \$250,000 and less to businesses in the MPSLB Program.

Businesses expressed concern that the departments either do not have an MPSLB Program or the manner in which it is operated adversely affects them. An architecture firm prequalified to be included in the MPSLB Program was required to submit additional prequalification documents



when issued a solicitation to respond to a task order. The owner pointed out that the redundancy was both costly and a deterrent.

So, we're currently a part of that program. And it's a lot of work to respond to the request for proposal given the size of the projects that the city awards under the MPSLBP. So, for instance, we're about to get a notice to proceed on a project.

And that involved going on a site walk with the consultant, with our sub-consultant, preparing a qualifications package. Despite the fact I've proved already that I'm a qualified architect to participate on this pre-approved architect's list. Now, I have to prove that I'm qualified to do this...project.

One prequalified L/SLBE owner expressed concern that his firm is not issued task orders after being successfully prequalified.

I think there's been maybe a dozen task order requests, and we have submitted on most. There is one task order we now expect to receive, but only because we were the only bidder.

The architectural and engineering prime contracts valued at less than \$250,000 were reviewed to determine the number of contracts awarded to SLBEs. The City awarded 85 architectural and engineering prime contracts valued at less than \$250,000 during the study period. Table 1.3 shows that SLBEs received only 19, or 22.35%, of these contracts with a dollar value of \$1,260,883, 21.52% of the total dollars awarded on architectural and engineering prime contracts valued at less than \$250,000. LBEs received 32, or 37.65%, of these contracts with a total value of \$2,488,597, or 42.47%. Non-certified contractors received 34, or 40% of the architectural and engineering prime contracts valued at less than \$250,000 with the total value of \$2,110,118, or 36.01%.

Table 1.3: Architectural and Engineering Prime Contracts Valued at Less than \$250,000 by Certification Category

Certification	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
LBE	32	37.65%	\$2,488,597	42.47%
SLBE	19	22.35%	\$1,260,883	21.52%
Non-certified	34	40.00%	\$2,110,118	36.01%
Total	85	100.00%	\$5,859,598	100.00%



5. Contracts Awarded without Goal Attainment

The L/SLBE subcontract participation requirement applies to construction contracts valued at \$100,000 and over and professional services and goods and services contracts valued at \$50,000 and over. During most of the study period, the threshold was \$50,000 and over for the three industries. To be recommended for an award, contracts at these thresholds must meet the 50% L/SLBE participation requirement unless DWES reduces or waives the goal before the solicitation is advertised in response to an availability analysis.

Business owners believe construction, professional services, and goods and services contracts have been awarded without compliance with the 50% participation requirement. The owner of a minority-owned professional services company describes how she was denied the opportunity to compete for a contract she held for several years before the City received significant grant funding. When she was the prime contractor, and the contract was bid annually, there would be extensive lag time between the end of one contract and authorization for the next one. She was expected to continue working, anticipating being paid months later when the new contract was signed. Several years later, after fulfilling three low-budget contracts, the City received substantial grant funding. The requirements for the new funding were modified so she could not bid, although the scope of work did not change. Moreover, the City awarded the contract without L/SLBE participation. The contract also went from annual renewals to a three-year term.

So, the white firm that never was certified now has the contracts, the technical assistance contracts. As of last year, that we had, only now it's a three-year contract. It was never a three-year contract. It was always one year. Now, all of a sudden, it's a three-year contract, and they break the rules and let them have it. And now it's even more money. So, it was okay to underfund us. It was okay to make us repeat the bidding process. It was okay to make us go through all of the rules and check every "t" and dot every "i." So, they gave it to them, and they followed none of the rules.

The owner of the company attempted to contact the compliance unit in the City, but the issue has not been resolved.

I contacted compliance, they were aware. I told the firms, "This isn't right." They said there was nothing that they could do. So, it was intentional. It was not an accident. It was intentional.



B. Barriers to Contracting Opportunities

Businesses reported a number of procurement procedures that were barriers to their effort to contract with the City.

1. Lack of Notices of Intent to Award

Businesses complained that the City does not publicize the intent to award or the award of contracts even to the businesses that responded to the solicitation.

A business owner shared his experience when he lost a bid and learned about the selection at the time the City Council awarded the contract to a competitor.

It's just because I'm actively asking questions. But, if I am someone who just took the interview and sitting over here at my office waiting for the results, I might not be able to know it until these guys start the contract. They have to communicate whether I am successful or not.

Another interviewee from an architecture and engineering company shared a concern that unsuccessful proposers receive no information about the award or the competition.

I've never really seen a scoresheet.... If we're not chosen, we don't see the final results.... It would be helpful if you could see where you stand amongst your peers in different excellent categories and things.

2. L/SLBEs Listed but Not Used

A business owner recounted her experience being included as a subcontractor in a bid that the City awarded and being told by the City's project manager that her participation as a subcontractor would not be included in the contract.

So, they all signed an agreement to subcontract us. They submitted the RFP, we all got interviews. I was part of the interview process. And then they selected the firm, and then the project manager emailed me and said we are not going to include you on any of those contracts.



Another certified L/SLBE firm owner recalled that her company was a subcontractor to a prime contractor who was awarded the contract, but she never received a subcontract or performed any work.

I submitted my qualifications in 2019, and the prime told me that we were selected and we're negotiating. And then I've been asked to submit paperwork to support the negotiations, but I never got a contract.... My team was selected, but then it was radio silence for three years. Then, I got a notice that the contract is being extended; you have to send the paperwork again. But I never got a contract. Nobody ever came to me and said, "Here we have work for you." Maybe the prime got a contract, but I didn't. And so, there's a lot of submitting things, but then that doesn't actually lead to business.... I was on a team that was selected, and the prime got a contract, but they never gave me a subcontract.

3. Failure to Investigate L/SLBE Complaints

Services or standards to address L/SLBEs' concerns and complaints regarding issues with the failure of prime contractors and the departments to adhere to the L/SLBE policy may not exist. Businesses described filing protests concerning contract awards, non-payment of invoices, unauthorized substitution, and being listed as an L/SLBE and not being utilized. Yet, their complaints were not addressed or even acknowledged.

A company listed as an L/SLBE-certified subcontractor was not included in the contract. The business owner attempted to protest the decision but could not secure assistance from DWES staff or any other department.

I did protest through Contracts and Compliance division. I spoke to the person who was responsible for putting that contract out. She was nonresponsive; I went over her head. I talked to her supervisor.... She was more responsive, but then it started to sound like she wasn't going to do anything about it because I was explaining to her, if you allow them to continue, then they're going to do it. If you don't step in and intervene. Then she said, "Well, it has to go through us." But I asked her if they have the contract, so if you don't say something, then what's to stop them? She couldn't give me an answer.



There were also expressed concerns that the City has no formal processes for businesses to file their complaints or standards for where, when, or how complaints should be addressed.

A business owner pointed out that the City has no complaint forms, procedures, or timeline for complaint management.

There's only one form. There's not even a real complaint form. There's only one form available for a dispute. And that's like your invoice; there's an issue with your invoice or something. There's a dispute form for that. But there's no dispute form if your contract was wrongly terminated.

Another certified company was a subcontractor for a prime contractor who received preference points through a mentor-protégé agreement. However, according to the subcontractor, the prime contractor never met the terms of that agreement. The prime contractor did not submit monthly reports to DWES, although it is a requirement according to the L/SLBE Program.

The general contractor is supposed to submit a report to the City of Oakland monthly on the progress. It was one report that we were able to review, weigh in, and I was able to make my edits, but that was it. And we were on the project for over a year. So, one out of a year. That's not good.

Businesses expressed an urgency to have the City establish standard procedures to protect the integrity of the L/SLBE Program and the certification process.

There probably needs to be some advocacy. It's a shame that I had nobody else to turn to. I'm still being retaliated against...and there's nobody to help me.

4. Procurement and Contracting Process

Chapter 2.04 of the OMC (Purchasing Ordinance)³⁵ requires the City to formally advertise all contracts for supplies, construction services, and professional services involving expenditures over \$50,000. For professional services contracts involving expenditures of \$50,000 or less, informal advertising and solicitation of requests for proposals/qualifications (RFP/Qs) are required. Similarly, informal advertising and bidding procedures are required for contracts for supplies and/or construction services involving expenditures between \$500 and \$50,000.

However, the Purchasing Ordinance also authorizes the City Administrator to waive RFP/Q requirements for professional services contracts up to \$50,000 “[u]pon a finding by the City Administrator that it is in the best interests of the City.” Similarly, the City Council may waive RFP/Q requirements for contracts in any amount “[u]pon a finding by the City Council or its designee that it is in the best interests of the City.” Competitive bidding, as outlined in the Purchasing Ordinance, is not required upon certain findings by the City Council, including when



³⁵ *Oakland Municipal Code, Chapter 2.04 – Purchasing System.*

calling for bids on a competitive basis is impracticable, unavailing, or impossible, or after a finding and determination that it is in the best interests of the City.

The City Administrator is authorized to contract for supplies, services, and/or professional services up to \$250,000 without City Council approval, subject to prior appropriation and allocation of the funds by the City Council. Additionally, in any situation “deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety,” the City Administrator may authorize purchases exceeding non-emergency purchase authority without advertising or prior specific action by the City Council. All emergency contracts must be presented for informational purposes to the City Council within a reasonable time of contract execution.

Some businesses characterize the award of contracts without Council approval as “staff discretionary spending.” In the City staff interviews, managers referred to this practice as a “blank check.”

I think there's a recurring theme that the staff has an outsized influence on the contracting and the selection process. There was a particular panel member who is outspoken.... I had discussed the project with her before submitting it, long before. And she said that she opposed the idea and that she was not going to support it under any circumstances.

Knowing that, the staffer then put that person on the selection committee and her influence on the selection committee, because she is so outspoken, then influenced that selection committee to pick the developer with no plan as opposed to the one with a complete plan.

When the determination was made, the developer was given a one-year exclusive negotiating agreement with a six-month extension. That's 18 months. And at the end of 18 months, there was no project.... He was allowed to then resubmit a totally new proposal outside of the 18 months without rebidding. And then he got another bite at the apple.

He submitted a whole new proposal. They didn't go back to us after his had been denied. They didn't go back to us. They didn't rebid the whole process. They just let him submit a brand new proposal, which they then finally approved, which nobody supported.



Staff expressed concern that contracts over the \$250,000 threshold have been awarded by the City Council without a named contractor or specified contract term.³⁶

An example of this practice was identified in a resolution approved by the City Council. Resolution 87519 states:

Oakland Public Works to purchase master lease and non-master lease vehicles and related equipment, without returning to Council, through (a) agreements with one or more vendors selected through a competitive request for proposal/qualifications process.³⁷

A trucking company owner expressed a concern that there is a practice of awarding contracts that allows non-certified companies to win City contracts.

They're not certified, but they win the contracts, and contracts are supposed to have a certain percentage that you utilize a certified company certified with Oakland. I'm saying they are not doing that, even though they're reaching out, they're saying, "We reached out to them, but we didn't accept... They didn't win the bid." So, it shows that they did their due diligence but that they're actually not working with anyone from Oakland; they're working with people that they normally work with.

³⁶ Per the Office of City Attorney, when a resolution awards a contract without the vendor name, amount, term and/or nature of the services, it is usually for a reason—such as specific issues with the contracting process, or the nature of the project or funds. In practice, this contextual information is generally provided to Council in the resolution or report accompanying the resolution, and Council can determine whether to approve the award based on the information provided and whether to grant staff discretion to move forward.

Regardless, there is no requirement in the *Charter* or *OMC* that a Council resolution authorizing a contract must include specific or all contract terms. The *OMC* provides that Council authority is required to award purchases or contracts in excess of the City Administrator's purchasing limits for amounts above \$250,000 (*OMC Section 2.04.030.A.*). *Section 504 of the Charter* gives the City Administrator broad authority to "prepare...contracts for work which the Council may order" and "to see that all City contracts under the City Administrator's direction or that of the Council are faithfully performed." The final, executed contract will have all legally required terms, but the resolution itself is simply the Council authorization, the scope of which can be directed by Council.

³⁷ Oakland City Council Resolution No. 87519 passed on February 5, 2019.



A business owner stated the City Council does not ensure that the procurement policy is implemented accordingly.

The accountability is that the Council does not make sure staff carries out their wishes. Council does not make sure that what they say as far as policy goes. You have all these too many "This is so-and-so." They've been in the department for 40, 34 years. That's the blocker right there. They've been in the position so long. Now, they [staff] have this ability to direct financing and direct funding to organizations based on their ideas and wins and not on how policy goes.

5. Redundant Prequalification and Certification Requirements

The amount of paperwork required by prime contractors to be considered a subcontractor can be an obstacle for small local businesses. Some paperwork required by contractors for a business to be prequalified to work for their company is duplicative of the City's certification paperwork requirement.

An owner of a plumbing company with 19 years of experience believes prime contractors bidding to the City should not be allowed to require SLBEs to prequalify with their company as a condition of accepting a subcontract bid.

So, what contractors have done now, I'm letting you know, this is how they weed us out because they know we don't have the money to sit down and send all this information to them just like we sent it to the City of Oakland.... They put another hurdle in front of us in order for us to put in a bid.... And now we have to go through another qualification with the primes.

Just give them a project list of jobs that we've completed, and that should be that qualification. But, to ask for tax records, profit-and-loss, and all my business information and other stuff, I don't think that's right.

A business owner explained that the prime contractor's prequalification process deprives small businesses of contracting opportunities since L/SLBEs are reluctant to share confidential and sensitive financial information with private companies.



I've gotten to the point where I'm not doing that anymore. I'm not bidding. So, if I don't bid it, that means I'm not getting those jobs. And this is the reason why SBE, DBEs, and all the other certified firms are not bidding on these jobs. It is because of this.

6. Late Payments

The City's prime contractor prompt payment policy authorizes penalties for the City's failure to pay its prime contractors and its prime contractors' failure to pay its subcontractors. Subcontractors expressed concern that they could not secure information about the status of their prime contractor's payment from the City. Without a means of verifying the prime contractor's receipt of payment, the subcontractor cannot exercise its right to apply for compensation under the prompt payment provision.

In addition, no requirement exists for the inclusion of the prompt payment provision in subcontract agreements. Nor is there a requirement to include in the prime contract agreement the provision requiring the City to pay a late fee when a prime contractor is not paid promptly.

The L/SLBE policy requires monthly reporting of construction subcontractor payments. There are no procedures for verifying prime contractors' reporting of subcontractor payments.

Yes, the prime pays us, but the City of Oakland...they do not let the subs know when the contractor gets paid. So, if I don't know if the prime didn't get paid, then how do I know he's seven days late? It doesn't do any good if we don't know when the contractor gets paid.

So, the City of Oakland's not even helping us, making sure we getting paid on time. Because if you got paid and the people who work for you don't know that you got paid, you can hold that check for another two months.

VI. City Staff's Perceptions of the L/SLBE Program

Interviews conducted with managers in eight City departments provided another perspective on the L/SLBE Program's implementation. Staff interviewed had responsibility for various phases of the procurement and contracting process, from drafting the solicitation to the execution of the contract. There were many similarities across the departments in the managers' perceptions of the L/SLBE Program and its implementation.



There was a consensus that L/SLBE Program implementation was the responsibility of DWES, although most interviewees were unfamiliar with the program's participation requirements and

compliance standards. The one exception was the waiver provision. All departments reported routinely requesting an availability analysis to authorize advertising procurements valued at \$250,000 and greater without the L/SLBE requirements.

A. Waiver of L/SLBE Requirements

DWES is responsible for performing the availability analysis and making the determination if a full or partial waiver is warranted. The waiver may be granted for all or a percentage of the L/SLBE participation. The departments each reported routinely requesting an availability analysis before publishing their solicitations.

Mason Tillman reviewed 241 availability analysis request forms submitted to DWES during the study period of July 1, 2016 to June 30, 2021. The requested waivers were granted for all but 17 requests. Two additional waivers requested only received a partial reduction in participation.

The estimated values of the 222 contracts that received a waiver ranged from \$100,000 to \$4,200,000. The scope of most of the 222 availability analysis applications reviewed included subcontracting opportunities. However, they were not listed in the form or referenced in the DWES decision to grant a waiver.

1. Insufficient Information in Availability Analysis Form

Departments acknowledged that the availability analysis form does not provide adequate information for DWES to conduct a meaningful examination of the certification database to determine the availability of certified L/SLBEs to perform prime contracts and no information to determine subcontract opportunities. One interviewee stated:

*The form is extremely basic.... You're just conveying a few sentences here and there....
It's not a detailed document.*

When department staff were asked about their assessment of the adequacy of the information provided to DWES in the availability analysis request form, one interviewee stated:

They don't have enough information.... You would have to send an email, give me a call, something of that nature...but they've never conveyed whether that they don't have enough information to be able to discern that.



Incomplete information about the scope of work and subcontracting opportunities in the availability analysis request form compromises the validity of DWES' availability analysis and the legitimacy of the waiver.

2. Full Participation Attainment is Required for Contract Award

A project manager explained she routinely seeks a waiver for the entire L/SLBE participation requirement before releasing a solicitation because, in her experience, the bidder who fails to meet the published participation requirement will be found to be non-responsive by DWES.

It happens periodically.... You have to waive the requirement. There's no "We want to partially waive it." So, either you meet the ordinance, or you don't. And if you don't meet the ordinance, it's a hundred percent you didn't meet the ordinance.... You have to formally waive the requirement, even if you are meeting 99% of the requirement, in order for Council to award the contract to a bidder who has not met the requirement.... Staff cannot make a determination on how much to accept.

Most department staff recognized that their application of the L/SLBE requirements is not governed by written standard operating procedures. There were only two departments that reported having written standard operating procedures to govern their application of the L/SLBE requirement. No department reported having training on program requirements. Yet, all interviewees were familiar with the program's availability analysis request form and the waiver provision, and each reported routinely using the form to advertise solicitations without the L/SLBE requirements.

Department staff did report having requested training on procurement and contracting procedures. None of the interviewees reported being offered training.

No. No, there's nothing in writing that has been provided as guidance.... I've requested formal training for the procurement process as outlined by the City. I believe there are some administrative instructions, but they are outdated and no longer valid. The City does not offer formalized contracting or procurement training at this time.

3. Discretionary Contracting Process

a. Incomplete Resolutions Presented to City Council for Award

To award a contract greater than \$250,000, a department must submit an agenda report to the City Clerk to have the item placed on the City Council agenda. A resolution number is assigned to the item by the City Clerk if the resolution is approved by the City Council.

Some interviewees described resolutions presented to the City Council as “blank checks.” The blank check was described as an agenda item without a named vendor or duration of the contract. Some blank checks may specify the name of the contractor but not the amount. As described by



one interviewee, the resolution may simply request authorization to award one or more unnamed vendors for an unspecified term or unspecified dollar amount.

A review of resolutions in Legistar, the City's legislation platform, identified resolutions illustrating the blank check process. One resolution to award a prime contract to a named prime contractor authorized the prime to select at some unspecified date additional vendors to be paid under the not-to-exceed prime contract amount. Another example was a resolution that approved an amount to several additional unnamed prime contractors and an amount to a single contractor without a specified term.

One staff member expressed concern that the blank check method was not a procurement best practice. The interviewee stated:

So, this practice is very problematic. This type of resolution is very problematic. When the project managers bring the approved resolution to the fiscal manager, they are not wrong that they can issue a contract as long as they follow the resolution. But, the problem is there is no way to tell if the Council actually approved the contract the project manager wants to award.... Sometimes, the agenda report will give you more detail... but if it is still very vague, it's impossible to know if the requested contract is valid or no good. If you go by the Council resolution, it says that it is approved. But a valid resolution needs a vendor name, even if you don't have a vendor name, because a lot of times, we are up against a grant deadline. Somebody needs to provide a supplemental report to provide a vendor name, to close the loop and comply with best practices. But, there is no close the loop; it's a blank check because the resolution says, "Awarded direct service to deliver the 2019 three-year prioritization plan, for a total amount not to exceed \$35 million." Is it one contract for \$35 million, or is it ten contracts of \$35 million? We don't know; we have no idea what this is... and there's no expiration date. This grant is approved in May, 2019, and says, after three years, whether or not you issue all \$35 million or not, it will expire. Therefore, the resolution is no longer good.

Department staff reported that the blank check contracting practice is sometimes used because the department has not expeditiously procured the services authorized by the grant. Confronted with the pending expiration of the grant deadline, the department secures a resolution number by requesting Council authorization to award the value of the grant to an unnamed contractor at some undefined future date. The resolution number can thereafter be used to set up the contract in the financial system when the department makes the award. The department might request the Council to award a sole-source contract due to insufficient time to procure the services using the competitive process. When a vendor name, term, amount, or scope of services is not included in a resolution, a justification or rationale is generally provided in the agenda report presented to the Council for approval.



No, no, there's no written policy and there are no guidelines to project managers what can or cannot be done.... This is an open checkbook. There is no boundary to it. But this is not a contract issue. This is a project delivery issue. Now, where is it in the City guideline that says that the City can't enter into a blanket agreement with no boundaries, and under what circumstances we can enter into a blanket agreement? If we do, what is the boundary? What is the expiration date? It cannot be like the one that you share with me; if a project manager came to me three years later, five years later, ten years later, I don't have any teeth to go back and say, "No, I'm not going to issue any contract because this Council resolution is no longer good." But there's nothing in the Council resolution that says this approval expired. There's nothing.

It is drafted by the project manager, reviewed by the director, and then it went to the Council. But there is no other review for compliance with procurement best practices.

The staff's comments are a reference to Resolution No. 87704, passed on May 21, 2019. The resolution authorizes the City Administrator or designee to award an unspecified number of paving and concrete construction contracts for a total amount not to exceed \$35 million. This City Administrator is granted the authority to make the awards without returning to the City Council for approval of the contractors or their award amounts. The Resolution No. 87704 states:

... the City Administrator or designee to award all paving and concrete curb construction contracts that follow all City advertising and competitive bidding requirements and are awarded in direct service of delivering the 2019 three-year prioritization plan in a total amount not to exceed thirty-five million dollars, without return to council³⁸

b. Resolutions Authorize Prime Contractors to Award Contracts

According to Chapter 2.04, *Purchasing System of the City of Oakland Municipal Code*, the authority to award contracts belongs to the City Administrator and the City Council. The City Administrator is entitled to authorize contracts up to \$250,000, whereas the City Council must approve the award of contracts that exceed the City Administrator's authority.

The analysis of the City Council agenda authorizing contract awards revealed resolutions for which the prime contractor was awarded a contract and the authority to subsequently award subcontracts to unnamed businesses.



³⁸ City Council Resolution No. 87704 passed on May 21, 2019.

Resolution No. 86785, passed on June 20, 2017, states:

The City Council hereby authorizes the City Administrator to award a contract(s) to Accela, inc. or Accela authorized vendors and to waive the competitive request for proposal requirements for these contracts.³⁹

This resolution authorized Accela to award several contracts to their authorized vendors, thereby waiving the request for competitive proposal requirements. Oracle shows two vendors were awarded contracts against this resolution after June 20, 2017. The contracts were awarded to Truepoint Solutions, LLC and Gray Quarter, Inc.

c. Resolutions Grant Authority to Departments to Award Contracts to Unnamed Vendors

The administrative instructions governing the City's procurement and contracting procedures require contracts valued at over \$50,000 to be awarded through a competitive process. Several board letters in Legistar indicate that the vendor awarded the contract had not been specified in the resolutions. Departments have secured the City Council's approval to award funds without naming a contractor or undertaking the solicitation process.

We did put together an agenda report and submit a resolution, and Council approved that we receive the funds, and then Council approved that we award the funds to contractors identified at the end of our procurement.

d. Resolutions Award Contracts to Vendors without a Competitive Process

Pursuant to Chapter 2.04, *Purchasing System of the City of Oakland Municipal Code*, all contracts must be awarded through a competitive process. The competitive process is defined by the *Municipal Code* as advertising and bidding or solicitation, depending on the type of contract and the dollar value.

The *Municipal Code* also provides exceptions to the competitive process. The exceptions include the pursuit of the best interests of the City. Depending on the value of the contracts, the City Administrator and the City Council can waive the competitive process upon finding that it is in the best interest of the City.

Staff noted there are no required procedures for informing the City Council about the award after the competitive process has been waived.

³⁹ City Council Resolution No. 86785 passed on June 20, 2017.

If the Council approves that resolution that avoided the competitive bidding process, we have no say to it.... What does that mean? As a Council, I'm giving you an approval to award contract, but I'm also giving you that every time you approve a contract, award a contract, you, as a project manager, have an obligation to submit a supplemental report to the Council to report back to the Council that it's indeed gone through a competitive bidding process. It met the 50% LSLBE compliance. It has everybody under the sun that's supposed to sign off on it. That it will come to this point where you have awarded the contract. It's after the fact, but it has accountability that you have to still report and provide transparency as a public document to everyone that what you have done and how you have selected the contractor. This is what is missing right now that there is...a blanket approval. There is no accountability after work.

B. Cooperative Agreements Circumvent the Competitive Process

A cooperative agreement allows the City to award a contract using a contract awarded by another public agency pursuant to a competitive process consistent with the procurement standards used by the City of Oakland. When using a cooperative agreement, there is no requirement for the City to use a competitive process; however, the agency that awards the contract used by the City must have used a competitive process.

The decision to use a cooperative agreement is at the discretion of the department. There is no standard requirement as to when to use such agreements, nor is there a provision in the L/SLBE policy to apply the L/SLBE requirements to cooperative agreements. There is a view among staff that cooperative agreements are or should be subject to L/SLBE Program requirements.

It's really up to the project manager if they want to pursue a co-op agreement. Co-op agreements, though, do not waive anything other than the solicitation process, as you probably know, because they are still subject to the LBE Program unless expressly waived.

There were 123 cooperative agreements with a total value of \$26,519,591 awarded during the study period. The total value of all cooperative agreements represents 5.08% of the total dollars the City awarded in the four industries during the study period. The contracts awarded using a cooperative agreement were awarded to non-local contractors without a competitive bidding process.



VII. *Efficacy of the Local and Small Local Business Enterprise Program*

The race-neutral Local and Small Local Business Enterprise Program (L/SLBE Program) has been a procurement standard for at least two decades. Several indicators have been used to assess the effectiveness of the L/SLBE Program in achieving equity in the awarding of City contracts to Oakland businesses. The measures include: 1) attainment of L/SLBE participation requirements, 2) ethnicity and gender parity in the contracts awarded to L/SLBE prime contractors and subcontractors, 3) the ethnicity and gender of the prime contractors selected to receive prime contracts awarded without competitive bid, 4) the ethnicity and gender of the prime contractors awarded federally assisted contracts, and 5) the utilization of Disadvantaged Business Enterprises (DBEs) on contracts with financial assistance from the United States Department of Transportation (USDOT).

The statistical findings of disparity were documented during a period when the City's procurement policy included a comprehensive race-neutral L/SLBE Program and several discretionary procurement methods.

A. Attainment of L/SLBE Participation Goals

The effectiveness of the L/SLBE Program has been evaluated against the program's requirements and provisions. Three criteria used for this evaluation were: 1) the minimum 50% L/SLBE participation, 2) the combination of 25% LBE and 25% SLBE participation, and 3) the L/SLBE requirement waiver provision.

1. Minimum 50% L/SLBE Participation

The minimum L/SLBE participation requirement is applied to all construction contracts valued at \$100,000 or over and all professional services and goods and services contracts valued at \$50,000 or over during the study period. The requirement could be fulfilled with either 25% of the contract dollars awarded to LBEs and 25% to SLBEs, or the total amount awarded to SLBEs.

The award of contracts to L/SLBE-certified prime contractors compared to non-certified prime contractors is presented in Table 1.4. As shown in the table, certified L/SLBEs received only 15.81% of all prime contracts awarded during the study period, with a total value of \$227,255,496, or 46.69% of prime contract dollars. Non-certified companies received 84.19% of the prime contracts awarded, with a total value of \$259,450,411, or 53.31% of prime contract dollars. Thus, the 50% L/SLBE participation goal was not met with SLBEs or a combination of L/SLBEs.



Table 1.4: Prime Contracts Awarded to L/SLBEs and Non-L/SLBEs
July 1, 2016 to June 30, 2021

Industry	L/SLBE Certified Firms				Non-certified Firms				TOTAL	
	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars	Number of Contracts	Amount of Dollars
Construction	137	71.73%	\$183,447,504	85.47%	54	28.27%	\$31,189,344	14.53%	191	\$214,636,848
Architectural and Engineering	68	60.71%	\$16,692,444	58.39%	44	39.29%	\$11,894,151	41.61%	112	\$28,586,595
Professional Services	101	22.10%	\$17,615,545	22.33%	356	77.90%	\$61,267,800	77.67%	457	\$78,883,345
Goods and Services	52	3.46%	\$9,500,002	5.77%	1,452	96.54%	\$155,099,116	94.23%	1,504	\$164,599,118
TOTAL	358	15.81%	\$227,255,496	46.69%	1,906	84.19%	\$259,450,411	53.31%	2,264	\$486,705,907

At the industry-specific level, the award of construction and architectural and engineering prime contracts to L/SLBEs exceeded the minimum 50% participation requirement. However, L/SLBE participation was not achieved on professional services and goods and services prime contracts.

L/SLBE-certified prime contractors received 101, or 22.10% of professional services contracts valued at \$17,615,545, or 22.33% of all prime contract dollars. In contrast, non-certified businesses received 356, or 77.90% of professional services prime contracts with a total value of \$61,267,800, or 77.67% of prime contract dollars.

While non-certified businesses can fulfill the 50% participation requirement by subcontracting with L/SLBEs, Table 1.5 shows that most subcontracts (64.21%) were awarded to non-certified firms located outside of Oakland. L/SLBEs received only 175, or 35.79% of the subcontracts valued at \$16,695,231, or 38.88% of subcontract dollars.

Table 1.5: Subcontracts Awarded to L/SLBEs and Non-L/SLBEs
July 1, 2016 to June 30, 2021

Industry	L/SLBE Certified Firms				Non-certified Firms				TOTAL	
	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars	Number of Contracts	Amount of Dollars
Construction	120	32.88%	\$12,863,334	35.86%	245	67.12%	\$23,008,752	64.14%	365	\$35,872,086
Architectural and Engineering	34	53.13%	\$2,948,671	58.67%	30	46.88%	\$2,077,058	41.33%	64	\$5,025,729
Professional Services	21	35.00%	\$883,226	43.30%	39	65.00%	\$1,156,400	56.70%	60	\$2,039,626
TOTAL	175	35.79%	\$16,695,231	38.88%	314	64.21%	\$26,242,210	61.12%	489	\$42,937,441

As shown in Table 1.6, 144, or 6.36% of prime contracts were awarded to LBEs; 214, or 9.45% of prime contracts were awarded to SLBEs; and 1,906, or 84.19% of prime contracts were awarded to non-certified contractors. The dollar values received on these prime contracts were \$114,827,200, or 23.59%; \$112,428,296, or 23.10%; and \$259,450,411, or 53.31% of the total prime contract dollars, respectively.



Table 1.6: Prime Contracts Awarded by Certification Category
July 1, 2016 to June 30, 2021

Certification	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
LBE	144	6.36%	\$114,827,200	23.59%
SLBE	214	9.45%	\$112,428,296	23.10%
Non-certified	1,906	84.19%	\$259,450,411	53.31%
Total	2,264	100.00%	\$486,705,907	100.00%

The minimum 25% LBE and 25% SLBE participation requirement was not met on construction, professional services, and goods and services contracts at the prime contract or subcontract level. While the objective of the program is to increase the circulation of the dollars within the City, this analysis reveals that less than 50% of the prime contract dollars awarded were spent in the City.

2. Combination of 25% LBE and 25% SLBE Participation

The 50% local business participation requirement must be met with a minimum participation of 25% for LBEs and 25% for SLBEs. SLBEs may meet the full 50% requirement.

Mason Tillman reviewed and analyzed prime contracts from the City and determined that the combination of 25% LBE and 25% SLBE participation requirements were not met by the majority of contracts. The L/SLBE requirement was determined as fulfilled only by participation of LBEs or with the SLBE participation of less than 25% on those contracts.

Table 1.7 presents the award of subcontracts during the study period by certification category. LBEs received 87 subcontracts, which comprised 17.79% of all subcontracts with a total dollar value of \$7,463,280, or 17.38% of subcontract dollars. SLBEs received 88, or 18.00% of the subcontracts with a dollar amount of \$9,231,951, or 21.50% of subcontract dollars.

Table 1.7: Subcontracts Awarded by Certification Category
July 1, 2016 to June 30, 2021

Certification	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
LBE	87	17.79%	\$7,463,280	17.38%
SLBE	88	18.00%	\$9,231,951	21.50%
Non-certified	314	64.21%	\$26,242,210	61.12%
Total	489	100.00%	\$42,937,441	100.00%

The award of prime contracts has not achieved the mandated L/SLBE participation for either LBEs or SLBEs. This finding highlights the failure of the race and gender-neutral L/SLBE Program to achieve its stated goal of increasing economic opportunities for Oakland businesses, which has been the procurement standard for three decades.



3. L/SLBE Prime Contract Waivers

The L/SLBE Program has a waiver provision that can be applied when the absence of a certified business to perform the contract requirements is documented. A waiver authorizes a department to advertise a contract without the L/SLBE requirement.

As indicated in Table 1.8, the departments requested 128 waivers during the study period. A total of 24, or 18.75%, were denied, and the L/SLBE requirement was waived for 99, or 77.34%. For five, or 3.9%, of the waivers, the L/SLBE requirement was reduced.

Table 1.8: L/SLBE Waiver Requests

Waiver Actions	Number of Waivers	Percent of Waivers
L/SLBE Waiver Request Denied	24	18.75%
L/SLBE Waiver Granted	99	77.34%
L/SLBE Requirement Reduced	5	3.9%
Total	128	100%*

*The percentages may not total 100 percent due to rounding

B. L/SLBE Participation by Ethnicity and Gender

Statistical disparity findings for prime contracts awarded to L/SLBEs are presented by ethnicity and gender below. A description of these statistical outcomes, as shown in the disparity tables, is presented in Table 1.9.

Table 1.9: Statistical Outcome Descriptions

P-Value Outcome	Definition of P-Value Outcome
< 0.05 *	This underutilization is statistically significant.
not significant	M/WBEs: This underutilization is not statistically significant. Non-minority males: This overutilization is not statistically significant.
< 0.05 †	This overutilization is statistically significant.
----	While this group was underutilized, there were no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.
**	This study does not statistically test the overutilization of M/WBEs or the underutilization of non-minority males.



The disparity analysis of all prime contracts awarded to Oakland businesses certified as either an LBE or SLBE is described below in Table 1.10.

African Americans represented 16.95% of the certified businesses and received 1.34% of the dollars on all prime contracts. This underutilization is statistically significant.

Asian Americans represented 11.22% of the certified businesses and received 2.91% of the dollars on all prime contracts. This underutilization is not statistically significant.

Hispanic Americans represented 8.35% of the certified businesses and received 13.31% of the dollars on all prime contracts. This study does not statistically test the overutilization of M/WBEs.

Native Americans represented 0.24% of the certified businesses and received no prime contracts. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Caucasian Females represented 15.27% of the certified businesses and received 4.18% of the dollars on all prime contracts. This underutilization is statistically significant.

Non-minority Males represented 47.97% of the certified businesses and received 78.25% of the dollars on all prime contracts. This overutilization is statistically significant.

Minority Females represented 10.02% of the certified businesses and received 2.09% of the dollars on all prime contracts. This underutilization is not statistically significant.

Minority Business Enterprises represented 36.75% of the certified businesses and received 17.56% of the dollars on all prime contracts. This underutilization is statistically significant.

Women Business Enterprises represented 25.30% of the certified businesses and received 6.27% of the dollars on all prime contracts. This underutilization is statistically significant.



Table 1.10: Disparity Analysis: All Prime Contracts Awarded to L/SLBEs
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$3,043,051	1.34%	16.95%	\$38,508,688	-\$35,465,636	0.08	< .05 *
Asian Americans	\$6,612,726	2.91%	11.22%	\$25,491,667	-\$18,878,940	0.26	not significant
Hispanic Americans	\$30,252,691	13.31%	8.35%	\$18,983,156	\$11,269,535	1.59	**
Native Americans	\$0	0.00%	0.24%	\$542,376	-\$542,376	0.00	---
Caucasian Females	\$9,509,734	4.18%	15.27%	\$34,712,057	-\$25,202,322	0.27	< .05 *
Non-minority Males	\$177,837,293	78.25%	47.97%	\$109,017,553	\$68,819,740	1.63	< .05 †
TOTAL	\$227,255,496	100.00%	100.00%	\$227,255,496			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$2,373,575	1.04%	4.06%	\$9,220,390	-\$6,846,816	0.26	not significant
African American Males	\$669,477	0.29%	12.89%	\$29,288,298	-\$28,618,821	0.02	< .05 *
Asian American Females	\$1,874,851	0.82%	3.58%	\$8,135,638	-\$6,260,787	0.23	not significant
Asian American Males	\$4,737,875	2.08%	7.64%	\$17,356,028	-\$12,618,153	0.27	not significant
Hispanic American Females	\$498,669	0.22%	2.15%	\$4,881,383	-\$4,382,714	0.10	not significant
Hispanic American Males	\$29,754,022	13.09%	6.21%	\$14,101,773	\$15,652,249	2.11	**
Native American Females	\$0	0.00%	0.24%	\$542,376	-\$542,376	0.00	---
Native American Males	\$0	0.00%	0.00%	\$0	\$0	---	---
Caucasian Females	\$9,509,734	4.18%	15.27%	\$34,712,057	-\$25,202,322	0.27	< .05 *
Non-minority Males	\$177,837,293	78.25%	47.97%	\$109,017,553	\$68,819,740	1.63	< .05 †
TOTAL	\$227,255,496	100.00%	100.00%	\$227,255,496			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$4,747,094	2.09%	10.02%	\$22,779,787	-\$18,032,693	0.21	not significant
Minority Males	\$35,161,374	15.47%	26.73%	\$60,746,099	-\$25,584,725	0.58	< .05 *
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$39,908,469	17.56%	36.75%	\$83,525,886	-\$43,617,418	0.48	< .05 *
Woman Business Enterprises	\$14,256,829	6.27%	25.30%	\$57,491,844	-\$43,235,015	0.25	< .05 *

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(---) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



C. Comparison of the 2017 L/SLBE Disparity Study Findings to the Current Study

As shown in Table 1.11, a statistical disparity was found for L/SLBE-certified African American, Caucasian female, MBE, and WBE prime contractors in the 2011-2016 Disparity Study conducted in 2017 and this disparity study. Although a statistical disparity was found for L/SLBE-certified minority female prime contractors in the previous study, the current study does not show the statistical significance of their underutilization. Non-minority males were statistically overutilized in these studies. Over the last 13 years, the L/SLBE Program has not been able to eliminate the disparity in the participation of L/SLBEs in the awarding of City contracts.

Table 1.11: Comparison of the 2017 L/SLBE Disparity Study Findings to the Current Study

Ethnicity and Gender	2017 Study	Current Study
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	No Disparity	No Disparity
Hispanic Americans	No Disparity	No Disparity
Native Americans	Insufficient Data	Insufficient Data
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>
Minority Females	<i>Disparity</i>	Underutilization
Minority Business Enterprises	<i>Disparity</i>	<i>Disparity</i>
Women Business Enterprises	<i>Disparity</i>	<i>Disparity</i>



D. Discretionary Procurement Methods

Two procurement methods that allow the award of formal prime contracts without competitive bidding are emergency contracts and cooperative agreements. A third procurement method uses a competitive process to select on-call contractors while the award of task orders authorized by the contract is discretionary.

There is also a provision in the procurement code that allows the City Council to award formal contracts over \$250,000 without competitive bidding when in the best interest of the City. Contracts awarded using these three procurement methods were disproportionately awarded to non-M/WBEs.

The City Administrator may authorize an emergency contract. Emergency contracts are awarded without advertising or authorization by the City Council. An emergency is a situation deemed by the City Administrator to require the immediate preservation of the public peace, health, or safety.

Cooperative agreements are used when it is advantageous for the City, with the City Administrator to purchase goods or services through legal contracts of other governmental jurisdictions or public agencies without further contracting, solicitation, or formal bidding. Cooperative agreements are subject to the City of Oakland purchasing and other applicable policies and requirements set forth in the City's standard contracts and insurance requirements.



1. On-Call, Emergency, and Cooperative Agreements

Table 1.12 lists the on-call contracts, emergency contracts, and cooperative agreements awarded by the City during the study period. MBEs received 11.68%, WBEs received 5.04%, and non-M/WBEs received 84.84% of the contract dollars.

African Americans received 12, or 1.32% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$870,706, or 0.44% of the contract dollars.

Asian Americans received 44, or 4.85% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$10,312,627, or 5.19% of the contract dollars.

Hispanic Americans received 48, or 5.29% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$12,040,389, or 6.06% of the contract dollars.

Native Americans received 1, or 0.11% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$8,622, or less than 1% of the contract dollars.

Caucasian Females received 66, or 7.27% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$6,901,883, or 3.47% of the contract dollars.

Minority Females received 21, or 2.31% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$3,120,425, or 1.57% of the contract dollars.

Non-minority Males received 737, or 81.17% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$168,692,490, or 84.84% of the contract dollars.

Minority Business Enterprises received 105, or 11.56% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$23,232,344, or 11.68% of the contract dollars.

Women Business Enterprises received 87, or 9.58% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$10,022,308, or 5.04% of the contract dollars.



Table 1.12: On-Call, Emergency, and Cooperative Agreements by Ethnicity and Gender

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	12	1.32%	\$870,706	0.44%
Asian Americans	44	4.85%	\$10,312,627	5.19%
Hispanic Americans	48	5.29%	\$12,040,389	6.06%
Native Americans	1	0.11%	\$8,622	0.00%
Caucasian Females	66	7.27%	\$6,901,883	3.47%
Non-minority Males	737	81.17%	\$168,692,490	84.84%
TOTAL	908	100.00%	\$198,826,717	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	12	1.32%	\$870,706	0.44%
Asian American Females	4	0.44%	\$451,888	0.23%
Asian American Males	40	4.41%	\$9,860,739	4.96%
Hispanic American Females	16	1.76%	\$2,659,915	1.34%
Hispanic American Males	32	3.52%	\$9,380,474	4.72%
Native American Females	1	0.11%	\$8,622	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	66	7.27%	\$6,901,883	3.47%
Non-minority Males	737	81.17%	\$168,692,490	84.84%
TOTAL	908	100.00%	\$198,826,717	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	21	2.31%	\$3,120,425	1.57%
Minority Males	84	9.25%	\$20,111,920	10.12%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	105	11.56%	\$23,232,344	11.68%
Women Business Enterprises	87	9.58%	\$10,022,308	5.04%



2. On-Call, Emergency, and Cooperative Agreements Awarded to L/SLBEs

Table 1.13 shows the on-call, emergency, and cooperative agreements awarded to L/SLBEs. The City awarded 908 prime contracts using these procurement methods and 767, or 84.47% of these contracts were awarded to non-certified businesses with a total value of \$139,356,751. LBEs received 73, or 8.04% of these contracts valued at \$42,810,503, or 21.53% of the contract dollars. SLBEs were awarded 68, or 7.49% of the contracts valued at \$16,659,463, or 8.38% of the contract dollars.

Table 1.13: On-Call, Emergency, and Cooperative Agreements by Certification Category

Certification	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
LBE	73	8.04%	\$42,810,503	21.53%
SLBE	68	7.49%	\$16,659,463	8.38%
Non-certified	767	84.47%	\$139,356,751	70.09%
Total	908	100.00%	\$198,826,717	100.00%



Table 1.14 lists the on-call contracts, emergency contracts, and cooperative agreements awarded to L/SLBEs by the City during the study period. MBEs received 19.13%, WBEs received 6.08%, and non-M/WBEs received 75.57% of the contract dollars.

African Americans received 7, or 4.96% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$300,847, or 0.51% of the contract dollars.

Asian Americans received 17, or 12.06% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$2,434,289, or 4.09% of the contract dollars.

Hispanic Americans received 17, or 12.06% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$8,641,715, or 14.53% of the contract dollars.

Native Americans received none of the on-call contracts, emergency contracts, and cooperative agreements during the study period.

Caucasian Females received 17, or 12.06% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$3,150,777, or 5.30% of the contract dollars.

Minority Females received 5, or 3.55% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$466,888, or 0.79% of the contract dollars.

Non-minority Males received 83, or 58.87% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$44,942,339, or 75.57% of the contract dollars.

Minority Business Enterprises received 41, or 29.08% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$11,376,851, or 19.13% of the contract dollars.

Woman Business Enterprises received 22, or 15.6% of the on-call contracts, emergency contracts, and cooperative agreements during the study period, representing \$3,617,664, or 6.08% of the contract dollars.



**Table 1.14: On-Call, Emergency, and Cooperative Agreements Awarded to L/SLBEs
by Ethnicity and Gender**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	7	4.96%	\$300,847	0.51%
Asian Americans	17	12.06%	\$2,434,289	4.09%
Hispanic Americans	17	12.06%	\$8,641,715	14.53%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	17	12.06%	\$3,150,777	5.30%
Non-minority Males	83	58.87%	\$44,942,339	75.57%
TOTAL	141	100.00%	\$59,469,966	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	7	4.96%	\$300,847	0.51%
Asian American Females	4	2.84%	\$451,888	0.76%
Asian American Males	13	9.22%	\$1,982,401	3.33%
Hispanic American Females	1	0.71%	\$15,000	0.03%
Hispanic American Males	16	11.35%	\$8,626,715	14.51%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	17	12.06%	\$3,150,777	5.30%
Non-minority Males	83	58.87%	\$44,942,339	75.57%
TOTAL	141	100.00%	\$59,469,966	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	5	3.55%	\$466,888	0.79%
Minority Males	36	25.53%	\$10,909,963	18.35%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	41	29.08%	\$11,376,851	19.13%
Women Business Enterprises	22	15.60%	\$3,617,664	6.08%



3. Disparity Analysis: On-Call, Emergency, and Cooperative Agreements Awarded by Ethnicity and Gender

The award of the on-call, emergency, and cooperative agreements to the available contractors by ethnicity and gender are described below in Table 1.15.

African Americans represented 12.05% of the available businesses and received 0.44% of the dollars on on-call, emergency, and cooperative agreements. This underutilization is statistically significant.

Asian Americans represented 7.30% of the available businesses and received 5.19% of the dollars on on-call, emergency, and cooperative agreements. This underutilization is statistically significant.

Hispanic Americans represented 4.62% of the available businesses and received 6.06% of the dollars on on-call, emergency, and cooperative agreements. This study does not statistically test the overutilization of M/WBEs.

Native Americans represented 0.21% of the available businesses and received no on-call, emergency, and cooperative agreements. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Caucasian Females represented 8.64% of the available businesses and received 3.47% of the dollars on on-call, emergency, and cooperative agreements. This underutilization is statistically significant.

Non-minority Males represented 67.18% of the available businesses and received 84.84% of the dollars on on-call, emergency, and cooperative agreements. This overutilization is statistically significant.

Minority Females represented 8.14% of the available businesses and received 1.57% of the dollars on on-call, emergency, and cooperative agreements. This underutilization is statistically significant.

Minority Business Enterprises represented 24.18% of the available businesses and received 11.68% of the dollars on on-call, emergency, and cooperative agreements. This underutilization is statistically significant.

Women Business Enterprises represented 16.78% of the available businesses and received 5.04% of the dollars on on-call, emergency, and cooperative agreements. This underutilization is statistically significant.



Table 1.15: Disparity Analysis: On-Call, Emergency, and Cooperative Agreements
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$870,706	0.44%	12.05%	\$23,968,536	-\$23,097,830	0.04	< .05 *
Asian Americans	\$10,312,627	5.19%	7.30%	\$14,507,272	-\$4,194,645	0.71	< .05 *
Hispanic Americans	\$12,040,389	6.06%	4.62%	\$9,180,931	\$2,859,458	1.31	**
Native Americans	\$8,622	0.00%	0.21%	\$420,501	-\$411,879	0.02	---
Caucasian Females	\$6,901,883	3.47%	8.64%	\$17,170,443	-\$10,268,560	0.40	< .05 *
Non-minority Males	\$168,692,490	84.84%	67.18%	\$133,579,035	\$35,113,455	1.26	< .05 †
TOTAL	\$198,826,717	100.00%	100.00%	\$198,826,717			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	4.19%	\$8,339,929	-\$8,339,929	0.00	< .05 *
African American Males	\$870,706	0.44%	7.86%	\$15,628,607	-\$14,757,901	0.06	< .05 *
Asian American Females	\$451,888	0.23%	2.40%	\$4,765,674	-\$4,313,786	0.09	< .05 *
Asian American Males	\$9,860,739	4.96%	4.90%	\$9,741,598	\$119,141	1.01	**
Hispanic American Females	\$2,659,915	1.34%	1.41%	\$2,803,338	-\$143,423	0.95	not significant
Hispanic American Males	\$9,380,474	4.72%	3.21%	\$6,377,593	\$3,002,881	1.47	**
Native American Females	\$8,622	0.00%	0.14%	\$280,334	-\$271,712	0.03	---
Native American Males	\$0	0.00%	0.07%	\$140,167	-\$140,167	0.00	---
Caucasian Females	\$6,901,883	3.47%	8.64%	\$17,170,443	-\$10,268,560	0.40	< .05 *
Non-minority Males	\$168,692,490	84.84%	67.18%	\$133,579,035	\$35,113,455	1.26	< .05 †
TOTAL	\$198,826,717	100.00%	100.00%	\$198,826,717			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$3,120,425	1.57%	8.14%	\$16,189,274	-\$13,068,850	0.19	< .05 *
Minority Males	\$20,111,920	10.12%	16.04%	\$31,887,965	-\$11,776,045	0.63	< .05 *
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$23,232,344	11.68%	24.18%	\$48,077,239	-\$24,844,895	0.48	< .05 *
Woman Business Enterprises	\$10,022,308	5.04%	16.78%	\$33,359,717	-\$23,337,410	0.30	< .05 *

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(---) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



4. Contracts Awarded without Competitive Bidding

Section 2.04.050.I.5 of the *Municipal Code* authorizes the City Council to award contracts over the \$250,000 formal contract threshold without competitive bidding, when it is in the best interest of the City. There were 62 prime contracts over the \$250,000 threshold among the contracts the City's Public Works Department provided to Mason Tillman for the study. These contracts were not competitively bid.

Table 1.16 presents the formal prime contracts awarded by the Public Works Department without competitive bids by ethnicity and gender. Non-minority males were awarded 51, or 82.26% of these contracts with a total value of \$29,526,470, or 83.78% of the dollars. MBEs received nine, or 14.52% of the contracts and \$5,369,574, or 15.24% of the dollars. WBEs were awarded only six, or 9.68% of the contracts and \$2,248,981, or 6.38% of the dollars awarded. It is noteworthy that African American business owners did not receive any contracts over \$250,000 awarded without competitive bidding.

Table 1.16: Prime Contracts Awarded by Public Works Department without Competitive Bidding, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	7	11.29%	\$2,580,952	7.32%
Hispanic Americans	1	1.61%	\$2,780,000	7.89%
Native Americans	1	1.61%	\$8,622	0.02%
Caucasian Females	2	3.23%	\$347,523	0.99%
Non-minority Males	51	82.26%	\$29,526,470	83.78%
TOTAL	62	100.00%	\$35,243,567	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	3	4.84%	\$1,892,836	5.37%
Asian American Males	4	6.45%	\$688,117	1.95%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	1	1.61%	\$2,780,000	7.89%
Native American Females	1	1.61%	\$8,622	0.02%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	2	3.23%	\$347,523	0.99%
Non-minority Males	51	82.26%	\$29,526,470	83.78%
TOTAL	62	100.00%	\$35,243,567	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	4	6.45%	\$1,901,458	5.40%
Minority Males	5	8.06%	\$3,468,117	9.84%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	9	14.52%	\$5,369,574	15.24%
Woman Business Enterprises	6	9.68%	\$2,248,981	6.38%



Table 1.17 shows the ethnicity of the prime contractors awarded the 62 contracts without competitive bids. The 62 contracts were received by 47 non-minority males, four Asian Americans, two Caucasian Females, one Hispanic American, and one Native American business. The 47 non-minority businesses received 211 prime contracts during the study period with a total value of \$71,055,885, or 14.6% of the total dollars awarded during the study period.

Table 1.17: Prime Contracts Awarded Using Competitive Bid Waivers by Ethnicity
July 1, 2016 to June 30, 2021

Businesses	Number of Prime Contracts	Dollar Value
47 Non-minority Males	211	\$71,055,885
4 Asian Americans	20	\$6,301,398
2 Caucasian Females	9	\$1,461,794
1 Hispanic American	14	\$19,270,238
1 Native American	5	\$47,232

The City's use of the four discretionary procurement policies provides compelling evidence of preferential treatment afforded to non-minority males when awards are made without competitive bidding. This pattern mirrors the contractor selection made by staff when the contracts were competitively awarded.

VIII. Conclusion

The perceptions of both Oakland business owners and City staff regarding the effectiveness of the L/SLBE Program reveal significant similarities. There was consensus that the goals of fostering economic growth, creating job opportunities, and advancing equity and inclusivity are commendable, but the implementation was found lacking in promoting the utilization of L/SLBEs on City contracts.

Business owners identified several practices that hinder their participation in the program. These include a complicated and slow certification process, inadequate enforcement of payment requirements, ineffective implementation of incentives, failure to implement the MPSLB Program, and non-compliance with participation requirements. These conditions have created barriers for L/SLBEs seeking to benefit from the program.

On the other hand, interviews with City staff have shed light on policies that impede the effective implementation of the L/SLBE Program. The use of waivers to circumvent program goals, discretionary award practices, and the use of cooperative agreements that bypass competitive processes and L/SLBE requirements were identified as key concerns. Additionally, the absence of written standard operating procedures and training on the L/SLBE Program requirements, procurement, and contracting procedures has further hindered the successful implementation of the L/SLBE Program.

Both business owners and City staff have highlighted the need for improvement in aspects of the program. Enhanced communication, clearer procedures, stronger enforcement, streamlined processes, and increased transparency in the contracting system are a few standards identified to



address perceived barriers to contracting opportunities. While modifications to these policies and practices might improve L/SLBEs' access to City contracts, there is no evidence that they would eliminate the documented statistically significant disparity in the award of prime contracts and subcontracts to minority and women-owned businesses.

This efficacy analysis of the race and gender-neutral L/SLBE Program highlighted that the program failed to achieve its stated goal of increasing economic opportunities for Oakland businesses, which has been the procurement standard for three decades. Furthermore, the disparity findings on the contracts awarded to L/SLBE-certified firms are consistent with the findings from the two previous disparity studies. Over the last 13 years, the L/SLBE Program has not been able to eliminate the disparity in the participation of L/SLBEs in the awarding of City contracts.

Statistical disparity was also found in the award of on-call, emergency, cooperative agreements, and contracts awarded without a competitive bid process. The City's use of the four discretionary procurement policies provides compelling evidence of preferential treatment afforded to non-minority males when awards are made without competitive bidding.

A. Measures to Revamp the L/SLBE Program

The City staff and business community offered several recommendations to remediate the City's current L/SLBE Program's shortfalls in achieving the stated objectives and ensuring fair and equitable distribution of City contracts. The proposed remedies to improve the existing L/SLBE Program and mitigate the documented discrimination against minority and women-owned businesses include the following.

1. Structure the Certification Process

Business owners have expressed concerns regarding the complexities associated with the L/SLBE certification process. Small businesses have reported challenges in navigating the platform, compiling the necessary documentation, and the timeliness of the City's processing of the application, resulting in delays in the certification process. To address these issues, it is crucial for the City to provide tailored administrative support and streamline the certification process to improve efficiency and reduce wait times. By implementing measures to expedite the certification process, such as dedicated staff and improved online navigation, the City can ensure that small businesses receive their certifications in a timely manner. Timely certification will enhance their ability to participate in public contracting opportunities and contribute to more inclusive contracting policies.

2. Enhance the B2Gnow Certification Application Process

The L/SLBE certification system was migrated from iSupplier to B2Gnow in 2022. The current certification standard is a two-step process. The first step requires an applicant to register on iSupplier to receive an identification number by email. The second step requires completing a digital application on B2Gnow and uploading supporting documents.

The application has four sections: General Information, Business Information, Ownership and Financial Information, and Goods/Services and Equipment. The documents that must be uploaded



include a current Oakland Business Tax Certificate, Form W-9, Federal Tax Returns, and Current Lease/Rental Agreement. Upon completing the application and uploading the documents, the applicant is not provided with any information regarding the status of the application.

The site does not specify the subsequent steps in the certification process. Nor is there any information regarding the timeline for the certification application review or approval process.

There is a Help & Support tab on B2Gnow for the applicant to submit a customer support request while completing the application. There is, however, no alternative method to seek needed information or clarification regarding the submitted application.

Recommendations to improve the application process include the following. Certification review should include both a desk audit and a site visit. The review should be conducted in a timely manner in accordance with a published schedule. Incomplete applications should be flagged within seven days of receipt and returned. Complete desk audits and site visits should be performed within ten days, and the decision should be issued within ten days of receipt of a complete application. Expedited certification should be available in the event the applicant is bidding on a contract.

3. Enhance the Notification Function of the iSupplier System

Solicitations for formal contracts are required to be posted on iSupplier. Informal solicitations, emergency contracts, and solicitations slated to be awarded as cooperative agreements should also be posted.

All formal solicitations should be posted at least 45 days before the due date. Emergency solicitations should be posted within 24 hours of declaring the emergency. The intent to award a cooperative agreement should be posted at least ten days before the intended award date to allow certified businesses that offer the goods or services to compete.

There is a filter to allow the visitor to review the phases of activity on each listed solicitation from publication to award. The system should be expanded to provide additional information on the procurement phase. In addition to the buyer's name, the project manager's name should be posted with an email address and deadline to submit questions.

Information should also be published on the contracting phase. The intent to award should be posted at the time the contract is placed on the City Council agenda for award. The evaluators' score sheet, winning proposal, and bid ranking sheet should be posted 24 hours after the City Council approves the contract.

4. Include Subcontracting Provisions in the L/SLBE Program

While Small Local Business Enterprises (SLBEs) may meet the full 50% L/SLBE participation requirement, Local Business Enterprises (LBEs) must meet this requirement with a minimum participation of 25% for LBEs and 25% for SLBEs. Businesses observed that there are no provisions in the L/SLBE Program to subcontract with SLBEs. Since a prime contractor would have to meet 25% of the required participation with a subcontractor, the program should include the subcontracting provisions to make the 50% participation requirement attainable for LBEs.



5. Establish Standard Operating Procedures

Standard Operating Procedures (SOPs) provide guidelines to ensure uniformity in departments' procurement and contracting processes. However, only two departments had an SOP and used the same one. The managers suggested that each department should create an SOP to standardize their adherence to the requirements for procuring goods and services as specified in *Chapter 2.04 – Purchasing System of the Oakland Municipal Code*. The SOP should include guidance for implementing the L/SLBE and M/WBE programs.

In addition, the Department of Business and Economic Development (DBED) should prepare an SOP to standardize the implementation of the L/SLBE and M/WBE program requirements. The DBED's SOP should be included in each department's SOP to ensure the L/SLBE and M/WBE programs are uniformly implemented across the City departments.

The DBED's SOP should define the program requirements and the timeline for implementation within the procurement and contracting process. Staff with responsibility for executing the requirements should be named in the SOP. The SOP should serve as a reference point for staff members involved in procurement and contracting to consistently adhere to the L/SLBE and M/WBE program requirements.

6. Eliminate the L/SLBE Waiver

A waiver provision allows a department to advertise contracts without including the L/SLBE participation requirements, thus exempting a significant number of contracts from the program requirements. The L/SLBE waiver provision should be eliminated.

7. Modify the Schedule R Subcontractor, Supplier, Trucking Listing Form

Schedule R must be submitted with each bid. The City staff suggested that the form should be modified to include a listing of every subcontractor, regardless of contract value, and the NAICS code(s) for the type of work each subcontractor is to perform. In addition, the timeline for performing the subcontractor, supplier, or trucker's item(s) of work should be stated by month or phase of the scope of work.

8. Modify the Schedule E Project Consultant Team Listing Form

Schedule E must be submitted with each proposal and statement of qualifications. The form should be modified to require the listing of each subcontractor to meet the L/SLBE participation requirement and include the NAICS code for the type of work each subcontractor is proposed to perform. The timeline for the subcontract work to be performed should be stated for each subcontractor by month or phase of the work.

9. Institute a Subcontractor Payment Verification Program

Subcontractors highlighted concerns about payments. Payments that prime contractors make to subcontractors should be verified by the subcontractors to substantiate the L/SLBE Program and



enhance the current prompt payment policy, which requires undisputed invoices to be paid within 20 business days. DBED should ensure that any tracking system that is implemented has the capability to monitor compliance with Schedules R and E and the prompt payment policy. An effective tool should allow subcontractors to notify the City of late payments or non-payments in real time. In addition, each subcontractor listed as paid for the previous billing cycle should be contacted electronically to verify that payment was received. This verification procedure should eliminate reliance on self-reporting by the prime contractors.

If a subcontractor reports a discrepancy in the amount received from the prime contractor, the discrepancy should be resolved before any additional payments are made to the prime contractor. The simplest resolution would be to have the prime contractor submit proof of payment with each invoice, such as an image of the canceled check written to the subcontractor to pay for the relevant invoice. The particulars of the payment verification program should be published on the DBED webpage, solicitation documents, and the contract. The prime contractor's compliance with the payment verification program should be a mandatory provision of the prime contract.

10. Establish Complaint and Protest Procedures

Establishing complaint and protest procedures for L/SLBEs was identified by both City staff and businesses as crucial to ensure fairness and transparency in the L/SLBE Program. At present, the program lacks a mechanism for businesses to voice their concerns or challenge City decisions related to L/SLBE certification, contract solicitations, award decisions, and other pertinent issues. Developing a comprehensive process with written standards and clearly defined procedures is recommended for businesses to submit complaints or protests. This standard should include guidelines for documentation submission, a designated review board or entity to impartially assess complaints, a timeline for resolution, and provisions for appeals if necessary.

11. Enhance Requirements for the Mandatory Preferred Small Local Business Program

The Mandatory Preferred Small Local Business Program (MPSLBP) is supposed to limit competition on construction and professional pre-construction services under \$250,000 to pre-qualified small local businesses. It is reported that this standard is not being applied. Per the businesses and City managers' recommendation, the requirement should be extended to professional services contracts under \$250,000.

The current process assumes that each department will identify solicitations with an estimated value of under \$250,000 that should be advertised through the MPSLBP. To ensure that pre-qualified L/SLBEs are presented with the opportunity to bid on solicitations through the MPSLBP, the contracts valued at \$250,000 and under should be identified in sufficient time to allow bids to be solicited from SLBEs.

Each department should prepare a quarterly list of solicitations for construction, architectural and engineering, and professional services projects with an estimated value of \$250,000 and under. The list should be submitted to the DBED at least 60 days before the proposed advertisement date. The list should minimally include an annotated summary of the scope of work and an estimated cost. The DBED should notify the SLBEs in the relevant industry and request a letter of interest.



If two or more SLBEs in the relevant industry, trade, or profession are present on the L/SLBE certified list and express an interest, the solicitation must be advertised under the MPSLBP.

12. Apply L/SLBE Participation Requirements to Cooperative Agreements

The 50% L/SLBE participation requirement is mandatory for all construction contracts at or over \$100,000, all professional services contracts at or over \$50,000, and all purchases of commodities, goods, and associated services at or over \$50,000. Yet, this requirement, as the contractors noted, has not been applied to cooperative agreements the City awards. The L/SLBE participation requirement should be applied to cooperative agreements to eliminate the possibility of circumventing this requirement.

13. Conduct Targeted Outreach to L/SLBEs

There is a consensus among businesses and City staff that the number of L/SLBEs awarded both prime contracts and subcontracts should reflect the availability of Oakland small businesses. Increases in the number of contracts awarded to L/SLBEs require both an increase in the number of bidders and modifications to the procurement practices. Standardized solicitation practices were singled out as one of several strategies that might increase the number of Oakland businesses bidding. Adherence to the following steps by City departments was suggested to increase the number of bids received from Oakland businesses were recommended:

- Request lists of certified businesses from the DBED when soliciting responses to solicitations.
- Ensure that L/SLBEs with statistically significant underutilization are invited to respond to solicitations.
- Perform targeted outreach to L/SLBEs before releasing the solicitation to notify the business community of the upcoming opportunity.
- Where economically and technically feasible, encourage the formation of joint ventures, partnerships, and other similar arrangements among the L/SLBEs with a statistically significant underutilization.
- Unbundle large contracts to create more opportunities for L/SLBEs.
- Limit the practice of extending contracts through no-bid change orders to conditions where the modification is necessary to complete the original scope of work.

14. Monitor L/SLBE Participation after the Contract Award

For the integrity of the program, businesses suggested that the DBED should approve any proposed change in the participation of L/SLBEs. A contractor that reduces a certified business's scope of work without adhering to the City's substitution provision should be subject to liquidated damages equal to the value of the scope reduction. If the reduction of participation is approved, the DBED should assist the department to find another certified business to maintain the participation listed on Schedules R and E.

Each prime contract should contain a project work plan or schedule of values that stipulates the phase of the work and the item of work to be performed or supplies to be delivered by each L/SLBE listed in Schedules R and E. In each invoice or request for payment, the prime contractor should



report the L/SLBE year-to-date invoice amount and percentage of participation. The subcontractor should verify payment. Utilizing an electronic tracking system would allow the reporting to occur in real time and enable the DBED to monitor participation through the payments to L/SLBE in accordance with the project delivery schedule.

15. Track and Verify Subcontractor Participation with Each Payment Application

Tracking subcontractors' participation with each payment application submitted by the prime contractor was considered a necessary best practice. The participation tracking process should require prime contractors to submit a monthly L/SLBE utilization report with their payment application through an electronic compliance monitoring module.

16. Publish Quarterly L/SLBE Utilization Reports

Publication of utilization reports was considered an effective method to measure compliance with the L/SLBE Program. Findings should be published quarterly and at a minimum include year-to-date payments made to L/SLBEs, the original award amounts, and contract modifications. For each awarding department, the report should include the number of awards to L/SLBEs.

The fourth-quarter report should include an assessment of program activities as well as the departments' exemplary practices and achievements. The utilization report should be posted on the DBED's webpage and provided to the City Council.

17. Create a Business Advisory Task Force

To support the City's efforts in meeting its L/SLBE prime contract and subcontract goals, the businesses proposed that the City establish a Business Advisory Council, appointed by the Mayor and the City Council, to advocate for the L/SLBE Program. The Business Advisory Council would serve as advisors to DBED and be responsible for:

- Increasing access to contracting opportunities for L/SLBEs.
- Reviewing and advancing initiatives that impact L/SLBE participation.
- Enhancing the notification process regarding prospective contract opportunities.

The Business Advisory Council membership and guidelines should be published on the DBED webpage. The Business Advisory Council should include 10 members, but not more than 15, and one member should not serve more than two terms. Members should serve for staggered terms of three years.

18. Conduct an Analysis of Contracts on an Annual Basis

 Transparency in contract reporting was of paramount importance to the businesses. As proposed, there should be an L/SLBE Program analysis of the previous year's contracts. The analysis should cover the contracts awarded to L/SLBEs, waivers granted, and other program components. The analysis should be presented before the City Council.

CHAPTER 2: Federally Funded Contracts Analysis

I. Introduction

This chapter analyzed the contracts awarded during the study period that were funded in whole or part by a federal grant received directly from the United States government or as a subrecipient to either a California State department or local agency. The City's compliance with the affirmative action requirements associated with the federal assistance was assessed. This review did not consider the City's spend of its federal assistance funding with not-for-profit entities.

The review of the prime contracts in the Oracle database revealed 13 federal funding sources and 442 federally assisted contracts awarded during the study period from July 1, 2016 to June 30, 2021. These federally assisted prime contracts totaled \$112,049,675 and represented 23.02% of the total prime contract dollars the City awarded during the study period.

Each federally assisted contract had an affirmative action requirement under the provisions of Title VI of the Civil Rights Act of 1964. The Act prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives federal funds. Contracts with the United States Department of Transportation (USDOT) funding assistance had an additional regulatory requirement to contract with disadvantaged business enterprises (DBE).

II. Federally Assisted Prime Contracts

Several approaches were employed to identify the 442 federally assisted prime contracts awarded to for-profit entities. This analysis did not assess agreement awards the City made to non-profit organizations. The initial method required the departments to identify their federally assisted contracts. The 28 departments with the largest contracts and highest total spend were asked to provide a list of their federally assisted prime contracts. A total of 125 contracts were identified by nine departments. Eighteen departments reported having no federally assisted prime contracts. Given the responses, an alternative approach was employed when it was determined that the Oracle financial system coded the funding source for each prime contract in a field entitled "Fund Desc." There were 141 funding sources noted in the "Fund Desc" field. Twelve were federal agencies/departments, ten were State of California departments, and 119 were local funding sources. The California Department of Transportation (Caltrans) was the only state department the City identified as a source of federally assisted funding.

Table 2.1 lists the ten federal agencies and one state department that provided federally assisted funding.



Table 2.1: Federal Assistance Funding Sources

Direct Federal Government Funding Sources
CARES Act Relief Fund
Department of Agriculture
Department of Health and Human Services
Department of Homeland Security
Department of Justice
Department of Labor
Department of Transportation
Federal Action Agency
Federal Emergency Management Agency
Housing and Urban Development Department - Community Development Block Grants, Emergency Solutions Grants, and Supportive Housing Program/Housing Opportunities for Persons with AIDS
State and Local Government Funding Sources
California Department of Transportation
Metropolitan Transportation Commission

The number of federally assisted prime contracts awarded and the total value of the prime contracts awarded are presented in Table 2.2.⁴⁰ The federally assisted prime contracts represent 19.52% of all prime contracts the City awarded during the study period and 23.02% of all prime contract dollars awarded.

Table 2.2: Federal Assistance Funded Prime Contracts

Contracts	Number of Contracts Awarded	Percent of All Contracts Awarded	Amount of All Dollars Awarded	Percent of All Dollars Awarded
Federally Assisted Prime Contracts	442	19.52%	\$112,049,675	23.02%
Non-Federally Assisted Prime Contracts	1,822	80.48%	\$374,656,232	76.98%
Total Prime Contract Awards	2,264	100.00%	\$486,705,907	100.00%

⁴⁰ The federally assisted prime contracts awarded to non-profit entities are not included in this analysis.

III. Business Affirmative Action Requirements for Federal Assistance Grants

All federal assistance grants for the procurement of goods and services require compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d). This law precludes recipients of federal assistance from discriminating on the basis of race, color, and national origin in funded programs and activities. Recipients of federal assistance grants from the USDOT and Department of Housing and Urban Development regulations are required to comply with additional affirmative action requirements that stipulate contracting goals for DBEs on their federally assisted contracts.

A. Title VI of the Civil Rights Act of 1964

To demonstrate compliance with the contracting provisions of Title VI, recipients must establish clear procedures for monitoring and addressing complaints of discrimination. This includes promptly investigating any allegations of non-compliance with the provisions of Title VI and taking appropriate corrective actions when necessary. Additionally, recipients are required to maintain records and reports related to their compliance efforts, which may be subject to review by the federal agency granting the funds.

Failure to comply with Title VI can have consequences for recipients. These may include the termination or suspension of federal funding and potential legal action. Recipients are expected to prioritize Title VI compliance to ensure fair and equitable treatment of all businesses involved in federally assisted prime contracts.

1. The City's Responsibilities under Title VI

Under Title VI, the City of Oakland, as a local public agency (LPA) recipient of federal funds, has specific responsibilities to ensure compliance with Title VI regulations and promote equal access to federally assisted prime contracts and services. The responsibilities and obligations include the following:

a. Employ a Title VI Coordinator

A Title VI Coordinator shall be designated and have a responsible position in the City of Oakland. The Title VI Coordinator must have easy access to the chief executive officer, who in a municipality is the mayor. The Title VI Coordinator shall be known to the public via postings in public areas or on the City's website.

b. Title VI Nondiscrimination Statement

The City must develop a Title VI policy statement signed by the mayor. The statement must give a reasonable guarantee that the programs administered are conducted in compliance with Title VI nondiscrimination requirements. The signed statement must be easily accessible to the public via postings in public areas and/or on the City's website.

c. Dissemination of Title VI Information

Title VI information must be developed for dissemination to the public and, where appropriate, in languages other than English. The information minimally should include posters, brochures, flyers, “frequently asked questions” documents, and a web page.

d. Title VI Training for City Staff

Title VI training must be provided for managers, supervisors, and staff with frequent public contact. Employees must comply with Title VI in their day-to-day activities and shall minimally complete comprehensive Title VI training every two years.

The City must develop procedures for the collection of statistical data by race, color, and national origin for the participants in, and beneficiaries of, federally assisted prime contracts. The City shall analyze the data collected to determine the effectiveness of outreach methods in order to ensure that every group is included in the decision-making process and given an opportunity to voice their opinions or concerns with no exclusions.

e. Title VI Complaint Procedures

The City is required to adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging discrimination based on race, color, or national origin.

B. USDOT DBE Program

The USDOT DBE Program requirements are set forth in the DBE regulations, 49 Code of Federal Regulations Part 26 and Part 23. The DBE regulations require local governments that receive federal assistance directly from the USDOT or as a subrecipient to a grantee to establish goals for the participation of DBEs in all federally assisted transportation contracts. The City, as a subrecipient of USDOT funding from Caltrans, is obligated to comply with the terms of the California Department of Transportation Disadvantaged Business Enterprise Implementation Agreement to Implement the State of California, Department of Transportation DBE Program Plan (DBE Program Plan). The Agreement, which must be signed annually, stipulates the DBE requirements that the City must adhere to as a subrecipient of USDOT financial assistance.

The Agreements during the study period from July 1, 2016 to June 30, 2021, required meeting the maximum feasible portion of the overall Annual Statewide DBE Goal using race-neutral and race-conscious means.

Between the July 1, 2016, and June 30, 2021 study period the City awarded 66 contracts valued at \$44,879,298 dollars with its federal assistance funds received as a subrecipient to the California Department of Transportation and the Metropolitan Transportation Commission. Caltrans and



each of its subrecipients, including the Metropolitan Transportation Commission, were obligated to comply with the DBE regulations.

1. Caltrans' Recipients DBE Requirements

a. Nondiscrimination

The City should never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any federally assisted contract on the basis of race, color, sex, or national origin.

b. Annual DBE Submittal Form

The City must provide the Caltrans District Local Assistance Engineer (DLAE) with a completed Local Agency DBE Annual Submittal Form annually. The form must include the name, telephone number, and email address of the designated DBE Liaison Officer (DBELO) and specify the Prompt Pay Provision to be used by the City for the subsequent fiscal year.

c. Race-Neutral Means of Meeting Caltrans Overall Statewide Annual DBE Goal

The City must meet the 17.6% Caltrans Overall Statewide Annual DBE Goal. The maximum feasible portion of the overall Annual DBE Goal must be met through race-neutral means of facilitating DBE participation. Race-neutral means minimally must include the following:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate the participation of DBE and other small businesses.
- Providing assistance in overcoming limitations such as the inability to obtain bonding or financing.
- Providing technical assistance and other services.
- Carrying out information and communication programs on contracting procedures and specific contract opportunities.
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses.
- Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency.
- Establishing a program to assist new start-up firms, particularly in fields in which DBE participation has historically been low.
- Ensuring distribution of the DBE directory through print and electronic means to the widest feasible universe of potential prime contractors, and



- Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

2. Race-Conscious Means of Meeting the Caltrans Overall Statewide Annual DBE Goal

The City must establish DBE contract goals to meet any portion of the Caltrans Overall 17.6% Statewide Annual DBE Goal that cannot be achieved through race-neutral means. As shown in Table 2.3, four of the 66 prime contracts with Caltrans funding assistance were awarded to DBE-certified firms. These contracts had a total value of \$967,489, which was only 2.16% of the total value of the contracts awarded with Caltrans federally assisted contract dollars. Non-DBE firms received 62 of these contracts with a total value of \$43,911,809, or 97.84% of the total value of awarded contracts.

Table 2.3: Caltrans Federally Assisted Prime Contracts by DBE Status

Certified Status	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
DBE	4	6.06%	\$967,489	2.16%
Non-DBE	62	93.94%	\$43,911,809	97.84%
Total	66	100.00%	\$44,879,298	100.00%

IV. *Affirmative Action Program Compliance*

A number of steps were undertaken to assess the City's compliance with the Title VI program requirements and the terms of the DBE Implementation Agreement for Local Agencies. Since there were no official Title VI procedures or DBE program provisions, the assessment of compliance was discerned from a review of various sources.

A. Compliance with Title VI of the Civil Rights Act

In compliance with the Title VI requirement to have a nondiscrimination statement, there is a webpage on the City's website entitled [City of Oakland | Title VI Policies & Procedures \(oaklandca.gov\)](http://oaklandca.gov). The webpage sets forth the City's policy of nondiscrimination in its programs and activities on the basis of race, color, national origin, disability, age, or sex. This statement is provided in English, Spanish, and Chinese. The signed statement must be posted on the City's website. However, the signed statement about following the Title VI requirements is not posted on the City's website.

There are several required provisions of Title VI omitted from the webpage. The Title VI Coordinator is not named, nor is the position even referenced. The City is required to designate a Title VI Coordinator with a responsible position in the City. The Title VI Coordinator shall be known to the public via postings in public areas or on the City's website and report to the City



Administrator. Comprehensive training must be conducted for City staff members every two years with public involvement. The Title VI webpage contains a reference to a City of Oakland Title VI brochure with basic information on the subject. However, there are no educational materials posted nor any information about Title VI training sessions for staff or the public.

Title VI also requires the City to develop procedures for collecting statistical data on prime contractors awarded federally assisted contracts by the contractors' race, color, and national origin. In addition, the compiled data should be adequate to evaluate the effectiveness of outreach strategies to ensure the inclusion of every group in the decision-making process. The Title VI resources provided on the City's webpage do not contain procedures for collecting such information, nor does it provide information about Title VI outreach strategies.

The City has a nondiscrimination statement published on its website. However, the statement has not been signed as required by Title VI. The webpage clearly states the City's policy of nondiscrimination in its programs and activities. However, there are certain key provisions of Title VI that are missing from the webpage. These include the signed nondiscrimination statement posted, the name of the Title VI Coordinator, and the acknowledgment that comprehensive training is provided to City staff members and the public. There is also no reference to procedures for collecting statistical data on prime contracts awarded to contractors based on race, color, and national origin.

B. Compliance with the Caltrans DBE Program Requirements

The DBE Implementation Agreement for Local Agencies sets forth the DBE Program requirements for Caltrans subrecipients. Subrecipients are required to sign the agreement annually. The City signed an agreement during the study period for 2018 through 2020. Apparently, there was no DBE Implementation Agreement for Local Agencies signed in 2016, 2017, and 2021.

The signed agreements required the City to meet the maximum feasible portion of 17.6% Caltrans Overall Statewide Annual DBE Goal through race-neutral means of facilitating DBE participation in all USDOT-assisted prime contracts. In addition, the City must establish DBE contract goals to meet any portion of the 17.6% Overall Statewide Annual DBE Goal that cannot be achieved through race-neutral means.

There were no DBE goals placed on the contracts with USDOT funding assistance. Nor was there a designated DBE Liaison Officer responsible for developing, implementing, and monitoring the City's obligations under the Caltrans DBE Program. Furthermore, there was no statistical data on DBE utilization compiled, no DBE contract goals set, and no outreach to DBEs about the contracting opportunities with the City. The City provided no evidence that its obligations under the DBE Implementation Agreement for Local Agencies were fulfilled.



C. Statistical Findings of DBE Goal Attainment

The statistical data on the utilization of DBE-certified companies on prime contracts with USDOT financial assistance are presented in this section. Table 2.4 shows that the City used USDOT financial assistance during the study period to award 66 contracts with a total value of \$44,879,298. Oakland-based DBEs received only 4, or 6.06%, of contracts with a dollar value of \$967,489, which represents only 2.16% of all USDOT-assisted contract dollars. Non-DBE contractors, on the other hand, received 62, or 93.94%, of these contracts with a value of \$43,911,809, or 97.84%, of all USDOT-assisted contract dollars. It is noteworthy that DBEs located outside of Oakland did not receive any of these contracts.

Table 2.4: Caltrans Federally Assisted Prime Contracts Awarded by DBE Status

Certification Category	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Oakland DBEs	4	6.06%	\$967,489	2.16%
DBEs outside of Oakland	0	0.00%	\$0	0.00%
Non-DBEs	62	93.94%	\$43,911,809	97.84%
Total	66	100.00%	\$44,879,298	100.00%

According to the DBE Implementation Agreement for Local Agencies, the City, when awarding USDOT financially assisted contracts, was obligated to award DBEs the maximum feasible portion of Caltrans' USDOT-approved DBE goal of 17.6%. The data in Table 2.4 shows that only 2.16% of all dollars awarded on contracts with USDOT financial assistance were received by certified DBEs.



D. Utilization of Prime Contractors on Contracts with USDOT Financial Assistance

1. All Prime Contracts Awarded by Ethnicity and Gender

Table 2.5 lists all prime contracts with USDOT financial assistance awarded by the City. Non-minority male-owned business enterprises (non-M/WBEs) received 96.01%, minority business enterprises (MBEs) received 3.56%, and women business enterprises (WBEs) received 0.92% of the contract dollars.

African Americans received 2, or 3.03% of all prime contracts with USDOT financial assistance during the study period, representing \$203,169, or 0.45%, of the contract dollars.

Asian Americans received 4, or 6.06% of all prime contracts with USDOT financial assistance during the study period, representing \$949,376, or 2.12%, of the contract dollars.

Hispanic Americans received 4, or 6.06% of all prime contracts with USDOT financial assistance during the study period, representing \$445,941, or 0.99%, of the contract dollars.

Native Americans received none of the prime contracts with USDOT financial assistance during the study period.

Caucasian Females received 1, or 1.52% of all prime contracts with USDOT financial assistance during the study period, representing \$193,208, or 0.43% of the contract dollars.

Minority Females received 2, or 3.03% of all prime contracts with USDOT financial assistance during the study period, representing \$219,853, or 0.49% of the contract dollars.

Non-minority Males received 55, or 83.33% of all prime contracts with USDOT financial assistance during the study period, representing \$43,087,604, or 96.01% of the contract dollars.

Minority Business Enterprises received 10, or 15.15% of all prime contracts with USDOT financial assistance during the study period, representing \$1,598,486, or 3.56% of the contract dollars.

Women Business Enterprises received 3, or 4.55% of all prime contracts with USDOT financial assistance during the study period, representing \$413,061, or 0.92% of the contract dollars.



Table 2.5: All Prime Contracts with USDOT Financial Assistance Awarded by Ethnicity and Gender, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	2	3.03%	\$203,169	0.45%
Asian Americans	4	6.06%	\$949,376	2.12%
Hispanic Americans	4	6.06%	\$445,941	0.99%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	1	1.52%	\$193,208	0.43%
Non-minority Males	55	83.33%	\$43,087,604	96.01%
TOTAL	66	100.00%	\$44,879,298	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	1.52%	\$149,985	0.33%
African American Males	1	1.52%	\$53,184	0.12%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	4	6.06%	\$949,376	2.12%
Hispanic American Females	1	1.52%	\$69,867	0.16%
Hispanic American Males	3	4.55%	\$376,073	0.84%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	1	1.52%	\$193,208	0.43%
Non-minority Males	55	83.33%	\$43,087,604	96.01%
TOTAL	66	100.00%	\$44,879,298	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	2	3.03%	\$219,853	0.49%
Minority Males	8	12.12%	\$1,378,633	3.07%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	10	15.15%	\$1,598,486	3.56%
Women Business Enterprises	3	4.55%	\$413,061	0.92%



2. Construction Prime Contracts Awarded by Ethnicity and Gender

Table 2.6 lists the construction prime contracts with USDOT financial assistance awarded by the City. Non-M/WBEs received 98.03% and MBEs received 1.97% of the construction prime contract dollars. WBEs received no construction prime contract dollars.

African Americans received 1, or 3.85% of all construction prime contracts with USDOT financial assistance during the study period, representing \$53,184, or 0.16% of the construction prime contract dollars.

Asian Americans received 2, or 7.69% of all construction prime contracts with USDOT financial assistance during the study period, representing \$262,830, or 0.78% of the construction prime contract dollars.

Hispanic Americans received 2, or 7.69% of all construction prime contracts with USDOT financial assistance during the study period, representing \$349,548, or 1.03% of the construction prime contract dollars.

Native Americans received none of the construction prime contracts with USDOT financial assistance during the study period.

Caucasian Females received none of the construction prime contracts with USDOT financial assistance during the study period.

Minority Females received none of the construction prime contracts with USDOT financial assistance during the study period.

Non-minority Males received 21, or 80.77% of all construction prime contracts with USDOT financial assistance during the study period, representing \$33,115,003, or 98.03% of the construction prime contract dollars.

Minority Business Enterprises received 5, or 19.23% of all construction prime contracts with USDOT financial assistance during the study period, representing \$665,562, or 1.97% of the construction prime contract dollars.

Women Business Enterprises received none of the construction prime contracts with USDOT financial assistance during the study period.



Table 2.6: Construction Prime Contracts with USDOT Financial Assistance Awarded by Ethnicity and Gender, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	1	3.85%	\$53,184	0.16%
Asian Americans	2	7.69%	\$262,830	0.78%
Hispanic Americans	2	7.69%	\$349,548	1.03%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Non-minority Males	21	80.77%	\$33,115,003	98.03%
TOTAL	26	100.00%	\$33,780,565	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	1	3.85%	\$53,184	0.16%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	2	7.69%	\$262,830	0.78%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	2	7.69%	\$349,548	1.03%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Non-minority Males	21	80.77%	\$33,115,003	98.03%
TOTAL	26	100.00%	\$33,780,565	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	5	19.23%	\$665,562	1.97%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	5	19.23%	\$665,562	1.97%
Women Business Enterprises	0	0.00%	\$0	0.00%



3. Architectural and Engineering Prime Contracts with USDOT Financial Assistance Awarded by Ethnicity and Gender

Table 2.7 lists the architectural and engineering prime contracts with USDOT financial assistance awarded by the City. Non-M/WBEs received 96.05% and WBEs received 3.95% of the architectural and engineering prime contract dollars. MBEs received no architectural and engineering prime contract dollars.

African Americans received none of the architectural and engineering prime contracts with USDOT financial assistance during the study period.

Asian Americans received none of the architectural and engineering prime contracts with USDOT financial assistance during the study period.

Hispanic Americans received none of the architectural and engineering prime contracts with USDOT financial assistance during the study period.

Native Americans received none of the architectural and engineering prime contracts with USDOT financial assistance during the study period.

Caucasian Females received 1, or 6.25% of all architectural and engineering prime contracts with USDOT financial assistance during the study period, representing \$193,208, or 3.95% of the architectural and engineering prime contract dollars.

Minority Females received none of the architectural and engineering prime contracts with USDOT financial assistance during the study period.

Non-minority Males received 15, or 93.75% of all architectural and engineering prime contracts with USDOT financial assistance during the study period, representing \$4,698,213, or 96.05% of the architectural and engineering prime contract dollars.

Minority Business Enterprises received none of the architectural and engineering prime contracts with USDOT financial assistance during the study period.

Women Business Enterprises received 1, or 6.25% of all architectural and engineering prime contracts with USDOT financial assistance during the study period, representing \$193,208, or 3.95% of the architectural and engineering prime contract dollars.



Table 2.7: Architectural and Engineering Prime Contracts with USDOT Financial Assistance Awarded by Ethnicity and Gender, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	1	6.25%	\$193,208	3.95%
Non-minority Males	15	93.75%	\$4,698,213	96.05%
TOTAL	16	100.00%	\$4,891,421	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	1	6.25%	\$193,208	3.95%
Non-minority Males	15	93.75%	\$4,698,213	96.05%
TOTAL	16	100.00%	\$4,891,421	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	0	0.00%	\$0	0.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	0	0.00%	\$0	0.00%
Women Business Enterprises	1	6.25%	\$193,208	3.95%



4. Professional Services Prime Contracts with USDOT Financial Assistance Awarded by Ethnicity and Gender

Table 2.8 lists the professional services prime contracts with USDOT financial assistance awarded by the City. Non-M/WBEs received 67.83%, MBEs received 32.17%, and WBEs received 5.59% of the professional services prime contract dollars.

African Americans received 1, or 11.11% of all professional services prime contracts with USDOT financial assistance during the study period, representing \$149,985, or 5.59% of the professional services prime contract dollars.

Asian Americans received 2, or 22.22% of all professional services prime contracts with USDOT financial assistance during the study period, representing \$686,546, or 25.59% of the professional services prime contract dollars.

Hispanic Americans received 1, or 11.11% of all professional services prime contracts with USDOT financial assistance during the study period, representing \$26,525, or 0.99% of the professional services prime contract dollars.

Native Americans received none of the professional services prime contracts with USDOT financial assistance during the study period.

Caucasian Females received none of the professional services prime contracts with USDOT financial assistance during the study period.

Minority Females received 1, or 11.11% of all professional services prime contracts with USDOT financial assistance during the study period, representing \$149,985, or 5.59% of the professional services prime contract dollars.

Non-minority Males received 5, or 55.56% of all professional services prime contracts with USDOT financial assistance during the study period, representing \$1,819,370, or 67.83% of the professional services prime contract dollars.

Minority Business Enterprises received 4, or 44.44% of all professional services prime contracts with USDOT financial assistance during the study period, representing \$863,056, or 32.17% of the professional services prime contract dollars.

Women Business Enterprises received 1, or 11.11% of all professional services prime contracts with USDOT financial assistance during the study period, representing \$149,985, or 5.59% of the professional services prime contract dollars.



**Table 2.8: Professional Services Prime Contracts with USDOT Financial Assistance
Awarded by Ethnicity and Gender, July 1, 2016 to June 30, 2021**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	1	11.11%	\$149,985	5.59%
Asian Americans	2	22.22%	\$686,546	25.59%
Hispanic Americans	1	11.11%	\$26,525	0.99%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Non-minority Males	5	55.56%	\$1,819,370	67.83%
TOTAL	9	100.00%	\$2,682,426	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	11.11%	\$149,985	5.59%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	2	22.22%	\$686,546	25.59%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	1	11.11%	\$26,525	0.99%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Non-minority Males	5	55.56%	\$1,819,370	67.83%
TOTAL	9	100.00%	\$2,682,426	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1	11.11%	\$149,985	5.59%
Minority Males	3	33.33%	\$713,071	26.58%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	4	44.44%	\$863,056	32.17%
Women Business Enterprises	1	11.11%	\$149,985	5.59%



5. Goods and Services Prime Contracts with USDOT Financial Assistance Awarded by Ethnicity and Gender

Table 2.9 lists the goods and services prime contracts with USDOT financial assistance awarded by the City. Non-M/WBEs received 98.02% and MBEs and WBEs received 1.98% of the goods and services prime contract dollars.

African Americans received none of the goods and services prime contracts with USDOT financial assistance during the study period.

Asian Americans received none of the goods and services prime contracts with USDOT financial assistance during the study period.

Hispanic Americans received 1, or 6.67% of all goods and services prime contracts with USDOT financial assistance during the study period, representing \$69,867, or 1.98% of the goods and services prime contract dollars.

Native Americans received none of the goods and services prime contracts with USDOT financial assistance during the study period.

Caucasian Females received none of the goods and services prime contracts with USDOT financial assistance during the study period.

Minority Females received 1, or 6.67% of all goods and prime contracts with USDOT financial assistance during the study period, representing \$69,867, or 1.98% of the goods and services prime contract dollars.

Non-minority Males received 14, or 93.33% of all goods and services prime contracts with USDOT financial assistance during the study period, representing \$3,455,019, or 98.02% of the goods and services prime contract dollars.

Minority Business Enterprises received 1, or 6.67% of all goods and services prime contracts with USDOT financial assistance during the study period, representing \$69,867, or 1.98% of the goods and services prime contract dollars.

Women Business Enterprises received 1, or 6.67% of all goods and services prime contracts with USDOT financial assistance during the study period, representing \$69,867, or 1.98% of the goods and services prime contract dollars.



**Table 2.9: Goods and Services Prime Contracts with USDOT Financial Assistance
Awarded by Ethnicity and Gender, July 1, 2016 to June 30, 2021**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	1	6.67%	\$69,867	1.98%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Non-minority Males	14	93.33%	\$3,455,019	98.02%
TOTAL	15	100.00%	\$3,524,886	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	1	6.67%	\$69,867	1.98%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Non-minority Males	14	93.33%	\$3,455,019	98.02%
TOTAL	15	100.00%	\$3,524,886	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1	6.67%	\$69,867	1.98%
Minority Males	0	0.00%	\$0	0.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	1	6.67%	\$69,867	1.98%
Women Business Enterprises	1	6.67%	\$69,867	1.98%



E. Disparity Analysis of Prime Contracts with USDOT Financial Assistance

1. All Prime Contracts with USDOT Financial Assistance

The disparity analysis of all prime contracts with USDOT financial assistance is described below in Table 2.10.

African Americans represented 42.74% of the available businesses in all industries and received 0.45% of the dollars on all prime contracts with USDOT financial assistance. This underutilization is statistically significant.

Asian Americans represented 22.65% of the available businesses in all industries and received 2.12% of the dollars on all prime contracts with USDOT financial assistance. This underutilization is statistically significant.

Hispanic Americans represented 11.11% of the available businesses in all industries and received 0.99% of the dollars on all prime contracts with USDOT financial assistance. This underutilization is not statistically significant.

Native Americans represented 2.56% of the available businesses in all industries and received no prime contracts with USDOT financial assistance. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Caucasian Females represented 20.94% of the available businesses in all industries and received 0.43% of the dollars on all prime contracts with USDOT financial assistance. This underutilization is statistically significant.

Minority Females represented 25.64% of the available businesses in all industries and received 0.49% of the dollars on prime contracts with USDOT financial assistance. This underutilization is statistically significant.

Non-minority Males represented none of the available businesses in all industries and received 96.01% of the dollars on all prime contracts with USDOT financial assistance. This overutilization could not be tested because there were no businesses available.

Minority Business Enterprises represented 79.06% of the available businesses in all industries and received 3.56% of the dollars on all prime contracts with USDOT financial assistance. This underutilization is statistically significant.

Women Business Enterprises represented 46.58% of the available businesses in all industries and received 0.92% of the dollars on all prime contracts with USDOT financial assistance. This underutilization is statistically significant.



Table 2.10: Disparity Analysis: All Prime Contracts with USDOT Financial Assistance
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$203,169	0.45%	42.74%	\$19,179,187	-\$18,976,018	0.01	< .05 *
Asian Americans	\$949,376	2.12%	22.65%	\$10,164,969	-\$9,215,593	0.09	< .05 *
Hispanic Americans	\$445,941	0.99%	11.11%	\$4,986,589	-\$4,540,648	0.09	not significant
Native Americans	\$0	0.00%	2.56%	\$1,150,751	-\$1,150,751	0.00	----
Caucasian Females	\$193,208	0.43%	20.94%	\$9,397,802	-\$9,204,594	0.02	< .05 *
Non-minority Males	\$43,087,604	96.01%	0.00%	\$0	\$43,087,604	----	----
TOTAL	\$44,879,298	100.00%	100.00%	\$44,879,298			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$149,985	0.33%	13.68%	\$6,137,340	-\$5,987,355	0.02	< .05 *
African American Males	\$53,184	0.12%	29.06%	\$13,041,847	-\$12,988,663	0.00	< .05 *
Asian American Females	\$0	0.00%	6.84%	\$3,068,670	-\$3,068,670	0.00	----
Asian American Males	\$949,376	2.12%	15.81%	\$7,096,299	-\$6,146,923	0.13	< .05 *
Hispanic American Females	\$69,867	0.16%	2.99%	\$1,342,543	-\$1,272,676	0.05	not significant
Hispanic American Males	\$376,073	0.84%	8.12%	\$3,644,046	-\$3,267,972	0.10	not significant
Native American Females	\$0	0.00%	2.14%	\$958,959	-\$958,959	0.00	----
Native American Males	\$0	0.00%	0.43%	\$191,792	-\$191,792	0.00	----
Caucasian Females	\$193,208	0.43%	20.94%	\$9,397,802	-\$9,204,594	0.02	< .05 *
Non-minority Males	\$43,087,604	96.01%	0.00%	\$0	\$43,087,604	----	----
TOTAL	\$44,879,298	100.00%	100.00%	\$44,879,298			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$219,853	0.49%	25.64%	\$11,507,512	-\$11,287,660	0.02	< .05 *
Minority Males	\$1,378,633	3.07%	53.42%	\$23,973,984	-\$22,595,351	0.06	< .05 *
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$1,598,486	3.56%	79.06%	\$35,481,496	-\$33,883,010	0.05	< .05 *
Women Business Enterprises	\$413,061	0.92%	46.58%	\$20,905,314	-\$20,492,254	0.02	< .05 *

(*) denotes a statistically significant underutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



2. Construction Prime Contracts with USDOT Financial Assistance

The disparity analysis of construction prime contracts with USDOT financial assistance awarded by the City is described below in Table 2.11.

African Americans represented 51.28% of the available construction businesses and received 0.16% of the dollars on construction prime contracts with USDOT financial assistance. This underutilization is statistically significant.

Asian Americans represented 14.10% of the available construction businesses and received 0.78% of the dollars on construction prime contracts with USDOT financial assistance. This underutilization is not statistically significant.

Hispanic Americans represented 15.38% of the available construction businesses and received 1.03% of the dollars on construction prime contracts with USDOT financial assistance. This underutilization is not statistically significant.

Native Americans represented 1.28% of the available construction businesses and received no construction prime contracts with USDOT financial assistance. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Caucasian Females represented 17.95% of the available construction businesses and received no construction prime contracts with USDOT financial assistance. This underutilization is statistically significant.

Minority Females represented 8.97% of the available construction businesses and received no construction prime contracts with USDOT financial assistance. This underutilization could not be tested because there were no contracts awarded.

Non-minority Males represented none of the available construction businesses and received 98.03% of the dollars on construction prime contracts with USDOT financial assistance. This overutilization could not be tested because there were no businesses available.

Minority Business Enterprises represented 82.05% of the available construction businesses and received 1.97% of the dollars on construction prime contracts with USDOT financial assistance. This underutilization is statistically significant.

Women Business Enterprises represented 26.92% of the available construction businesses and received no construction prime contracts with USDOT financial assistance. This underutilization is statistically significant.



Table 2.11: Disparity Analysis: Construction Prime Contracts with USDOT Financial Assistance
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$53,184	0.16%	51.28%	\$17,323,367	-\$17,270,183	0.00	< .05 *
Asian Americans	\$262,830	0.78%	14.10%	\$4,763,926	-\$4,501,096	0.06	not significant
Hispanic Americans	\$349,548	1.03%	15.38%	\$5,197,010	-\$4,847,462	0.07	not significant
Native Americans	\$0	0.00%	1.28%	\$433,084	-\$433,084	0.00	----
Caucasian Females	\$0	0.00%	17.95%	\$6,063,178	-\$6,063,178	0.00	< .05 *
Non-minority Males	\$33,115,003	98.03%	0.00%	\$0	\$33,115,003	----	----
TOTAL	\$33,780,565	100.00%	100.00%	\$33,780,565			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	6.41%	\$2,165,421	-\$2,165,421	0.00	----
African American Males	\$53,184	0.16%	44.87%	\$15,157,946	-\$15,104,762	0.00	< .05 *
Asian American Females	\$0	0.00%	1.28%	\$433,084	-\$433,084	0.00	----
Asian American Males	\$262,830	0.78%	12.82%	\$4,330,842	-\$4,068,012	0.06	not significant
Hispanic American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic American Males	\$349,548	1.03%	15.38%	\$5,197,010	-\$4,847,462	0.07	not significant
Native American Females	\$0	0.00%	1.28%	\$433,084	-\$433,084	0.00	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$0	0.00%	17.95%	\$6,063,178	-\$6,063,178	0.00	< .05 *
Non-minority Males	\$33,115,003	98.03%	0.00%	\$0	\$33,115,003	----	----
TOTAL	\$33,780,565	100.00%	100.00%	\$33,780,565			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$0	0.00%	8.97%	\$3,031,589	-\$3,031,589	0.00	----
Minority Males	\$665,562	1.97%	73.08%	\$24,685,798	-\$24,020,236	0.03	< .05 *
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$665,562	1.97%	82.05%	\$27,717,387	-\$27,051,825	0.02	< .05 *
Women Business Enterprises	\$0	0.00%	26.92%	\$9,094,768	-\$9,094,768	0.00	< .05 *

(*) denotes a statistically significant underutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



V. Statistical Findings of Federally Assisted Prime Contracts

The statistical data on the utilization of federally assisted prime contracts by ethnicity and gender and the disparity analysis of the utilization of all available M/WBEs are presented in this section. The City awarded 442 federally assisted construction, architectural and engineering, professional services, and goods and services prime contracts. Financial assistance was received from 13 federal agencies.

A. M/WBE Utilization on All Federally Assisted Prime Contracts

1. All Federally Assisted Prime Contracts Awarded by Ethnicity and Gender

Table 2.12 lists all federally assisted prime contracts awarded by the City. MBEs received 9.87%, WBEs received 7.55%, and non-M/WBEs received 85.31% of the federally assisted prime contract dollars.

African Americans received 13, or 2.94% of all federally assisted prime contracts awarded during the study period, representing \$1,082,103, or 0.97% of all contract dollars.

Asian Americans received 22, or 4.98% of all federally assisted prime contracts awarded during the study period, representing \$4,044,095, or 3.61% of all contract dollars.

Hispanic Americans received 21, or 4.75% of all federally assisted prime contracts awarded during the study period, representing \$5,890,663, or 5.26% of all contract dollars.

Native Americans received 5, or 1.13% of all federally assisted prime contracts awarded during the study period, representing \$47,232, or 0.04% of all contract dollars.

Caucasian Females received 41, or 9.28% of all federally assisted prime contracts awarded during the study period, representing \$5,398,201, or 4.82% of all contract dollars.

Minority Females received 29, or 6.56% of all federally assisted prime contracts awarded during the study period, representing \$3,063,224, or 2.73% of all contract dollars.

Non-minority Males received 340, or 76.92% of all federally assisted prime contracts awarded during the study period, representing \$95,587,381, or 85.31% of all contract dollars.

Minority Business Enterprises received 61, or 13.80% of all federally assisted prime contracts awarded during the study period, representing \$11,064,093, or 9.87% of all contract dollars.

Women Business Enterprises received 70, or 15.84% of all federally assisted prime contracts awarded during the study period, representing \$8,461,425, or 7.55% of all contract dollars.



Table 2.12: All Federally Assisted Prime Contracts Awarded by Ethnicity and Gender
July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	13	2.94%	\$1,082,103	0.97%
Asian Americans	22	4.98%	\$4,044,095	3.61%
Hispanic Americans	21	4.75%	\$5,890,663	5.26%
Native Americans	5	1.13%	\$47,232	0.04%
Caucasian Females	41	9.28%	\$5,398,201	4.82%
Non-minority Males	340	76.92%	\$95,587,381	85.31%
TOTAL	442	100.00%	\$112,049,675	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	9	2.04%	\$692,009	0.62%
African American Males	4	0.90%	\$390,094	0.35%
Asian American Females	4	0.90%	\$952,041	0.85%
Asian American Males	18	4.07%	\$3,092,054	2.76%
Hispanic American Females	11	2.49%	\$1,371,941	1.22%
Hispanic American Males	10	2.26%	\$4,518,721	4.03%
Native American Females	5	1.13%	\$47,232	0.04%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	41	9.28%	\$5,398,201	4.82%
Non-minority Males	340	76.92%	\$95,587,381	85.31%
TOTAL	442	100.00%	\$112,049,675	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	29	6.56%	\$3,063,224	2.73%
Minority Males	32	7.24%	\$8,000,870	7.14%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	61	13.80%	\$11,064,093	9.87%
Women Business Enterprises	70	15.84%	\$8,461,425	7.55%



2. Federally Assisted Construction Prime Contracts Awarded by Ethnicity and Gender

Table 2.13 lists the federally assisted construction prime contracts awarded by the City. MBEs received 12.69%, WBEs received 1.52%, and non-M/WBEs received 87.31% of the federally assisted construction prime contract dollars.

African Americans received 2, or 4.65% of the federally assisted construction prime contracts awarded during the study period, representing \$58,184, or 0.13% of the construction prime contract dollars.

Asian Americans received 4, or 9.30% of the federally assisted construction prime contracts awarded during the study period, representing \$1,302,985, or 2.96% of the construction prime contract dollars.

Hispanic Americans received 5, or 11.63% of the federally assisted construction prime contracts awarded during the study period, representing \$4,224,766, or 9.60% of the construction prime contract dollars.

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

Caucasian Females received none of the federally assisted construction prime contracts awarded during the study period.

Minority Females received 1, or 2.33% of the federally assisted construction prime contracts awarded during the study period, representing \$669,638, or 1.52% of the construction prime contract dollars.

Non-minority Males received 32, or 74.42% of the federally assisted construction prime contracts awarded during the study period, representing \$38,443,383, or 87.31% of the construction prime contract dollars.

Minority Business Enterprises received 11, or 25.58% of the federally assisted construction prime contracts awarded during the study period, representing \$5,585,935, or 12.69% of the construction prime contract dollars.

Women Business Enterprises received 1, or 2.33% of the federally assisted construction prime contracts awarded during the study period, representing \$669,638, or 1.52% of the construction prime contract dollars.



Table 2.13: Federally Assisted Construction Prime Contracts Awarded by Ethnicity and Gender, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	2	4.65%	\$58,184	0.13%
Asian Americans	4	9.30%	\$1,302,985	2.96%
Hispanic Americans	5	11.63%	\$4,224,766	9.60%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Non-minority Males	32	74.42%	\$38,443,383	87.31%
TOTAL	43	100.00%	\$44,029,318	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	2	4.65%	\$58,184	0.13%
Asian American Females	1	2.33%	\$669,638	1.52%
Asian American Males	3	6.98%	\$633,347	1.44%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	5	11.63%	\$4,224,766	9.60%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Non-minority Males	32	74.42%	\$38,443,383	87.31%
TOTAL	43	100.00%	\$44,029,318	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1	2.33%	\$669,638	1.52%
Minority Males	10	23.26%	\$4,916,297	11.17%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	11	25.58%	\$5,585,935	12.69%
Women Business Enterprises	1	2.33%	\$669,638	1.52%



3. Federally Assisted Architectural and Engineering Prime Contracts Awarded by Ethnicity and Gender

Table 2.14 lists the federally assisted architectural and engineering prime contracts awarded by the City. WBEs received 11.07%, non-M/WBEs received 88.93%, and MBEs received none of the federally assisted architectural and engineering prime contract dollars.

African Americans received none of the federally assisted architectural and engineering prime contracts awarded during the study period.

Asian Americans received none of the federally assisted architectural and engineering prime contracts awarded during the study period.

Hispanic Americans received none of the federally assisted architectural and engineering prime contracts awarded during the study period.

Native Americans received none of the federally assisted architectural and engineering prime contracts awarded during the study period.

Caucasian Females received 3, or 15.00% of the federally assisted architectural and engineering prime contracts awarded during the study period, representing \$596,212, or 11.07% of the architectural and engineering prime contract dollars.

Minority Females received none of the federally assisted architectural and engineering prime contracts awarded during the study period.

Non-minority Males received 17, or 85.00% of the federally assisted architectural and engineering prime contracts awarded during the study period, representing \$4,790,073, or 88.93% of the architectural and engineering prime contract dollars.

Minority Business Enterprises received none of the federally assisted architectural and engineering prime contracts awarded during the study period.

Women Business Enterprises received 3, or 15.00% of the federally assisted architectural and engineering prime contracts awarded during the study period, representing \$596,212, or 11.07% of the architectural and engineering prime contract dollars.



Table 2.14: Federally Assisted Architectural and Engineering Prime Contracts Awarded by Ethnicity and Gender, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	3	15.00%	\$596,212	11.07%
Non-minority Males	17	85.00%	\$4,790,073	88.93%
TOTAL	20	100.00%	\$5,386,284	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	3	15.00%	\$596,212	11.07%
Non-minority Males	17	85.00%	\$4,790,073	88.93%
TOTAL	20	100.00%	\$5,386,284	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	0	0.00%	\$0	0.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	0	0.00%	\$0	0.00%
Women Business Enterprises	3	15.00%	\$596,212	11.07%



4. Federally Assisted Professional Services Prime Contracts Awarded by Ethnicity and Gender

Table 2.15 lists the federally assisted professional services prime contracts awarded by the City. MBEs received 40.11%, WBEs received 42.51%, and non-M/WBEs received 42.05% of the federally assisted professional services prime contract dollars.

African Americans received 9, or 15.79% of the federally assisted professional services prime contracts awarded during the study period, representing \$1,013,904, or 14.12% of the professional services prime contract dollars.

Asian Americans received 4, or 7.02% of the federally assisted professional services prime contracts awarded during the study period, representing \$694,111, or 9.67% of the professional services prime contract dollars.

Hispanic Americans received 11, or 19.30% of the federally assisted professional services prime contracts awarded during the study period, representing \$1,171,770, or 16.32% of the professional services prime contract dollars.

Native Americans received none of the federally assisted professional services prime contracts awarded during the study period.

Caucasian Females received 11, or 19.30% of the federally assisted professional services prime contracts awarded during the study period, representing \$1,281,298, or 17.84% of the professional services prime contract dollars.

Minority Females received 17, or 29.82% of the federally assisted professional services prime contracts awarded during the study period, representing \$1,770,858, or 24.66% of the professional services prime contract dollars.

Non-minority Males received 22, or 38.60% of the federally assisted professional services prime contracts awarded during the study period, representing \$3,019,187, or 42.05% of the professional services prime contract dollars.

Minority Business Enterprises received 24, or 42.11% of the federally assisted professional services prime contracts awarded during the study period, representing \$2,879,785, or 40.11% of the professional services prime contract dollars.

Women Business Enterprises received 28, or 49.12% of the federally assisted professional services prime contracts awarded during the study period, representing \$3,052,156, or 42.51% of the professional services prime contract dollars.



Table 2.15: Federally Assisted Professional Services Prime Contracts Awarded by Ethnicity and Gender, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	9	15.79%	\$1,013,904	14.12%
Asian Americans	4	7.02%	\$694,111	9.67%
Hispanic Americans	11	19.30%	\$1,171,770	16.32%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	11	19.30%	\$1,281,298	17.84%
Non-minority Males	22	38.60%	\$3,019,187	42.05%
TOTAL	57	100.00%	\$7,180,270	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	7	12.28%	\$681,994	9.50%
African American Males	2	3.51%	\$331,911	4.62%
Asian American Females	2	3.51%	\$7,565	0.11%
Asian American Males	2	3.51%	\$686,546	9.56%
Hispanic American Females	8	14.04%	\$1,081,299	15.06%
Hispanic American Males	3	5.26%	\$90,470	1.26%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	11	19.30%	\$1,281,298	17.84%
Non-minority Males	22	38.60%	\$3,019,187	42.05%
TOTAL	57	100.00%	\$7,180,270	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	17	29.82%	\$1,770,858	24.66%
Minority Males	7	12.28%	\$1,108,927	15.44%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	24	42.11%	\$2,879,785	40.11%
Women Business Enterprises	28	49.12%	\$3,052,156	42.51%



5. Federally Assisted Goods and Services Prime Contracts Awarded by Ethnicity and Gender

Table 2.16 lists the federally assisted goods and services prime contracts awarded by the City. MBEs received 4.69%, WBEs received 7.47%, and non-M/WBEs received 88.97% of the federally assisted goods and services prime contract dollars.

African Americans received 2, or 0.62% of the federally assisted goods and services prime contracts awarded during the study period, representing \$10,015, or 0.02% of the goods and services prime contract dollars.

Asian Americans received 14, or 4.35% of the federally assisted goods and services prime contracts awarded during the study period, representing \$2,046,999, or 3.69% of the goods and services prime contract dollars.

Hispanic Americans received 5, or 1.55% of the federally assisted goods and services prime contracts awarded during the study period, representing \$494,127, or 0.89% of the goods and services prime contract dollars.

Native Americans received 5, or 1.55% of the federally assisted goods and services prime contracts awarded during the study period, representing \$47,232, or 0.09% of the goods and services prime contract dollars.

Caucasian Females received 27, or 8.39% of the federally assisted goods and services prime contracts awarded during the study period, representing \$3,520,692, or 6.35% of the goods and services prime contract dollars.

Minority Females received 11, or 3.42% of the federally assisted goods and services prime contracts awarded during the study period, representing \$622,727, or 1.12% of the goods and services prime contract dollars.

Non-minority Males received 269, or 83.54% of the federally assisted goods and services prime contracts awarded during the study period, representing \$49,334,738, or 88.97% of the goods and services prime contract dollars.

Minority Business Enterprises received 26, or 8.07% of the federally assisted goods and services prime contracts awarded during the study period, representing \$2,598,372, or 4.69% of the goods and services prime contract dollars.

Women Business Enterprises received 38, or 11.80% of the federally assisted goods and services prime contracts awarded during the study period, representing \$4,143,419, or 7.47% of the goods and services prime contract dollars.



Table 2.16: Federally Assisted Goods and Services Prime Contracts Awarded by Ethnicity and Gender, July 1, 2016 to June 30, 2021

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	2	0.62%	\$10,015	0.02%
Asian Americans	14	4.35%	\$2,046,999	3.69%
Hispanic Americans	5	1.55%	\$494,127	0.89%
Native Americans	5	1.55%	\$47,232	0.09%
Caucasian Females	27	8.39%	\$3,520,692	6.35%
Non-minority Males	269	83.54%	\$49,334,738	88.97%
TOTAL	322	100.00%	\$55,453,803	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	2	0.62%	\$10,015	0.02%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	1	0.31%	\$274,838	0.50%
Asian American Males	13	4.04%	\$1,772,161	3.20%
Hispanic American Females	3	0.93%	\$290,642	0.52%
Hispanic American Males	2	0.62%	\$203,485	0.37%
Native American Females	5	1.55%	\$47,232	0.09%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	27	8.39%	\$3,520,692	6.35%
Non-minority Males	269	83.54%	\$49,334,738	88.97%
TOTAL	322	100.00%	\$55,453,803	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	11	3.42%	\$622,727	1.12%
Minority Males	15	4.66%	\$1,975,645	3.56%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	26	8.07%	\$2,598,372	4.69%
Women Business Enterprises	38	11.80%	\$4,143,419	7.47%



B. Disparity Analysis of Federally Assisted Prime Contracts

1. All Federally Assisted Prime Contracts

The disparity analysis of all federally assisted prime contracts is described below in Table 2.17.

African Americans represented 12.05% of the available businesses in all industries and received 0.97% of the dollars on all federally funded prime contracts. This underutilization is statistically significant.

Asian Americans represented 7.30% of the available businesses in all industries and received 3.61% of the dollars on all federally funded prime contracts. This underutilization is not statistically significant.

Hispanic Americans represented 4.62% of the available businesses in all industries and received 5.26% of the dollars on all federally funded prime contracts. This study does not statistically test the overutilization of M/WBEs.

Native Americans represented 0.21% of the available businesses in all industries and received 0.04% of the dollars on all federally funded prime contracts. This underutilization could not be tested because there were too few businesses and too few contracts awarded.

Caucasian Females represented 8.64% of the available businesses in all industries and received 4.82% of the dollars on all federally funded prime contracts. This underutilization is not statistically significant.

Minority Females represented 8.14% of the available businesses in all industries and received 2.73% of the dollars on all federally funded prime contracts. This underutilization is statistically significant.

Non-minority Males represented 67.18% of the available businesses in all industries and received 85.31% of the dollars on all federally funded prime contracts. This overutilization is statistically significant.

Minority Business Enterprises represented 24.18% of the available businesses in all industries and received 9.87% of the dollars on all federally funded prime contracts. This underutilization is statistically significant.

Women Business Enterprises represented 16.78% of the available businesses in all industries and received 7.55% of the dollars on all federally funded prime contracts. This underutilization is statistically significant.



Table 2.17: Disparity Analysis: All Federally Assisted Prime Contracts
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$1,082,103	0.97%	12.05%	\$13,507,575	-\$12,425,471	0.08	< .05 *
Asian Americans	\$4,044,095	3.61%	7.30%	\$8,175,637	-\$4,131,542	0.49	not significant
Hispanic Americans	\$5,890,663	5.26%	4.62%	\$5,173,954	\$716,709	1.14	**
Native Americans	\$47,232	0.04%	0.21%	\$236,975	-\$189,743	0.20	----
Caucasian Females	\$5,398,201	4.82%	8.64%	\$9,676,479	-\$4,278,278	0.56	not significant
Non-minority Males	\$95,587,381	85.31%	67.18%	\$75,279,056	\$20,308,325	1.27	< .05 †
TOTAL	\$112,049,675	100.00%	100.00%	\$112,049,675			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$692,009	0.62%	4.19%	\$4,700,004	-\$4,007,995	0.15	< .05 *
African American Males	\$390,094	0.35%	7.86%	\$8,807,571	-\$8,417,476	0.04	< .05 *
Asian American Females	\$952,041	0.85%	2.40%	\$2,685,717	-\$1,733,675	0.35	< .05 *
Asian American Males	\$3,092,054	2.76%	4.90%	\$5,489,921	-\$2,397,867	0.56	not significant
Hispanic American Females	\$1,371,941	1.22%	1.41%	\$1,579,833	-\$207,892	0.87	not significant
Hispanic American Males	\$4,518,721	4.03%	3.21%	\$3,594,121	\$924,601	1.26	**
Native American Females	\$47,232	0.04%	0.14%	\$157,983	-\$110,751	0.30	----
Native American Males	\$0	0.00%	0.07%	\$78,992	-\$78,992	0.00	----
Caucasian Females	\$5,398,201	4.82%	8.64%	\$9,676,479	-\$4,278,278	0.56	not significant
Non-minority Males	\$95,587,381	85.31%	67.18%	\$75,279,056	\$20,308,325	1.27	< .05 †
TOTAL	\$112,049,675	100.00%	100.00%	\$112,049,675			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$3,063,224	2.73%	8.14%	\$9,123,537	-\$6,060,314	0.34	< .05 *
Minority Males	\$8,000,870	7.14%	16.04%	\$17,970,604	-\$9,969,734	0.45	< .05 *
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$11,064,093	9.87%	24.18%	\$27,094,141	-\$16,030,048	0.41	< .05 *
Women Business Enterprises	\$8,461,425	7.55%	16.78%	\$18,800,016	-\$10,338,591	0.45	< .05 *

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



2. Federally Assisted Construction Prime Contracts

The disparity analysis of the federally assisted construction prime contracts is described below in Table 2.18.

African Americans represented 19.11% of the available construction businesses and received 0.13% of the dollars on federally assisted construction prime contracts. This underutilization is statistically significant.

Asian Americans represented 7.32% of the available construction businesses and received 2.96% of the dollars on federally assisted construction prime contracts. This underutilization is not statistically significant.

Hispanic Americans represented 8.93% of the available construction businesses and received 9.60% of the dollars on federally assisted construction prime contracts. This study does not statistically test the overutilization of M/WBEs.

Native Americans represented 0.18% of the available construction businesses and received no federally assisted construction prime contracts. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Caucasian Females represented 5.71% of the available construction businesses and received no federally assisted construction prime contracts. This underutilization could not be tested because there were too few businesses and no contracts awarded.

Minority Females represented 5.18% of the available construction businesses and received 1.52% of the dollars on federally assisted construction prime contracts. This underutilization is not statistically significant.

Non-minority Males represented 58.75% of the available construction businesses and received 87.31% of the dollars on federally assisted construction prime contracts. This overutilization is statistically significant.

Minority Business Enterprises represented 35.54% of the available construction businesses and received 12.69% of the dollars on federally assisted construction prime contracts. This underutilization is statistically significant.

Women Business Enterprises represented 10.89% of the available construction businesses and received 1.52% of the dollars on federally assisted construction prime contracts. This underutilization is not statistically significant.



Table 2.18: Disparity Analysis: Federally Assisted Construction Prime Contracts
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$58,184	0.13%	19.11%	\$8,412,745	-\$8,354,561	0.01	< .05 *
Asian Americans	\$1,302,985	2.96%	7.32%	\$3,223,575	-\$1,920,590	0.40	not significant
Hispanic Americans	\$4,224,766	9.60%	8.93%	\$3,931,189	\$293,577	1.07	**
Native Americans	\$0	0.00%	0.18%	\$78,624	-\$78,624	0.00	----
Caucasian Females	\$0	0.00%	5.71%	\$2,515,961	-\$2,515,961	0.00	----
Non-minority Males	\$38,443,383	87.31%	58.75%	\$25,867,224	\$12,576,158	1.49	< .05 †
TOTAL	\$44,029,318	100.00%	100.00%	\$44,029,318			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	3.21%	\$1,415,228	-\$1,415,228	0.00	----
African American Males	\$58,184	0.13%	15.89%	\$6,997,517	-\$6,939,333	0.01	< .05 *
Asian American Females	\$669,638	1.52%	1.07%	\$471,743	\$197,896	1.42	**
Asian American Males	\$633,347	1.44%	6.25%	\$2,751,832	-\$2,118,485	0.23	not significant
Hispanic American Females	\$0	0.00%	0.71%	\$314,495	-\$314,495	0.00	----
Hispanic American Males	\$4,224,766	9.60%	8.21%	\$3,616,694	\$608,072	1.17	**
Native American Females	\$0	0.00%	0.18%	\$78,624	-\$78,624	0.00	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$0	0.00%	5.71%	\$2,515,961	-\$2,515,961	0.00	----
Non-minority Males	\$38,443,383	87.31%	58.75%	\$25,867,224	\$12,576,158	1.49	< .05 †
TOTAL	\$44,029,318	100.00%	100.00%	\$44,029,318			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$669,638	1.52%	5.18%	\$2,280,090	-\$1,610,451	0.29	not significant
Minority Males	\$4,916,297	11.17%	30.36%	\$13,366,043	-\$8,449,746	0.37	not significant
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$5,585,935	12.69%	35.54%	\$15,646,133	-\$10,060,197	0.36	< .05 *
Women Business Enterprises	\$669,638	1.52%	10.89%	\$4,796,051	-\$4,126,412	0.14	not significant

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



3. Federally Assisted Architectural and Engineering Prime Contracts

The disparity analysis of the federally assisted architectural and engineering prime contracts is described below in Table 2.19.

African Americans represented 17.44% of the available architectural and engineering businesses and received no federally assisted architectural and engineering prime contracts. This underutilization is statistically significant.

Asian Americans represented 18.60% of the available architectural and engineering businesses and received no federally assisted architectural and engineering prime contracts. This underutilization is statistically significant.

Hispanic Americans represented 5.81% of the available architectural and engineering businesses and received no federally assisted architectural and engineering prime contracts. This underutilization could not be tested because there were no contracts awarded.

Native Americans represented none of the available architectural and engineering businesses and received no federally assisted architectural and engineering prime contracts. This underutilization could not be tested because there were no businesses and no contracts awarded.

Caucasian Females represented 9.30% of the available architectural and engineering businesses and received 11.07% of the dollars on federally assisted architectural and engineering prime contracts. This study does not statistically test the overutilization of M/WBEs.

Minority Females represented 10.47% of the available architectural and engineering businesses and received no federally assisted architectural and engineering prime contracts. This underutilization could not be tested because there were no contracts awarded.

Non-minority Males represented 48.84% of the available architectural and engineering businesses and received 88.93% of the dollars on federally assisted architectural and engineering prime contracts. This overutilization is statistically significant.

Minority Business Enterprises represented 41.86% of the available architectural and engineering businesses and received no federally assisted architectural and engineering prime contracts. This underutilization is statistically significant.

Women Business Enterprises represented 19.77% of the available architectural and engineering businesses and received 11.07% of the dollars on federally assisted architectural and engineering prime contracts. This underutilization is not statistically significant.



Table 2.19: Disparity Analysis: Federally Assisted Architectural and Engineering Prime Contracts
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$0	0.00%	17.44%	\$939,468	-\$939,468	0.00	< .05 *
Asian Americans	\$0	0.00%	18.60%	\$1,002,099	-\$1,002,099	0.00	< .05 *
Hispanic Americans	\$0	0.00%	5.81%	\$313,156	-\$313,156	0.00	----
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$596,212	11.07%	9.30%	\$501,050	\$95,162	1.19	**
Non-minority Males	\$4,790,073	88.93%	48.84%	\$2,630,511	\$2,159,562	1.82	< .05 †
TOTAL	\$5,386,284	100.00%	100.00%	\$5,386,284			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	4.65%	\$250,525	-\$250,525	0.00	----
African American Males	\$0	0.00%	12.79%	\$688,943	-\$688,943	0.00	----
Asian American Females	\$0	0.00%	3.49%	\$187,894	-\$187,894	0.00	----
Asian American Males	\$0	0.00%	15.12%	\$814,206	-\$814,206	0.00	< .05 *
Hispanic American Females	\$0	0.00%	2.33%	\$125,262	-\$125,262	0.00	----
Hispanic American Males	\$0	0.00%	3.49%	\$187,894	-\$187,894	0.00	----
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$596,212	11.07%	9.30%	\$501,050	\$95,162	1.19	**
Non-minority Males	\$4,790,073	88.93%	48.84%	\$2,630,511	\$2,159,562	1.82	< .05 †
TOTAL	\$5,386,284	100.00%	100.00%	\$5,386,284			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$0	0.00%	10.47%	\$563,681	-\$563,681	0.00	----
Minority Males	\$0	0.00%	31.40%	\$1,691,043	-\$1,691,043	0.00	< .05 *
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$0	0.00%	41.86%	\$2,254,724	-\$2,254,724	0.00	< .05 *
Women Business Enterprises	\$596,212	11.07%	19.77%	\$1,064,731	-\$468,519	0.56	not significant

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



4. Federally Assisted Professional Services Prime Contracts

The disparity analysis of the federally assisted professional services prime contracts is described below in Table 2.20.

African Americans represented 20.59% of the available professional services businesses and received 14.12% of the dollars on federally assisted professional services prime contracts. This underutilization is not statistically significant.

Asian Americans represented 15.69% of the available professional services businesses and received 9.67% of the dollars on federally assisted professional services prime contracts. This underutilization is statistically significant.

Hispanic Americans represented 7.84% of the available professional services businesses and received 16.32% of the dollars on federally assisted professional services prime contracts. This study does not statistically test the overutilization of M/WBEs.

Native Americans represented none of the available professional services businesses and received no federally assisted professional services prime contracts. This underutilization could not be tested because there were no businesses and no contracts awarded.

Caucasian Females represented 11.76% of the available professional services businesses and received 17.84% of the dollars on federally assisted professional services prime contracts. This study does not statistically test the overutilization of M/WBEs.

Minority Females represented 10.78% of the available professional services businesses and received 24.66% of the dollars on federally assisted professional services prime contracts. This study does not statistically test the overutilization of M/WBEs.

Non-minority Males represented 44.12% of the available professional services businesses and received 42.05% of the dollars on federally assisted professional services prime contracts. This study does not statistically test the underutilization of non-minority males.

Minority Business Enterprises represented 44.12% of the available professional services businesses and received 40.11% of the dollars on federally assisted professional services prime contracts. This underutilization is not statistically significant.

Women Business Enterprises represented 22.55% of the available professional services businesses and received 42.51% of the dollars on federally assisted professional services prime contracts. This study does not statistically test the overutilization of M/WBEs.



Table 2.20: Disparity Analysis: Federally Assisted Professional Services Prime Contracts
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$1,013,904	14.12%	20.59%	\$1,478,291	-\$464,387	0.69	not significant
Asian Americans	\$694,111	9.67%	15.69%	\$1,126,317	-\$432,205	0.62	< .05 *
Hispanic Americans	\$1,171,770	16.32%	7.84%	\$563,158	\$608,611	2.08	**
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$1,281,298	17.84%	11.76%	\$844,738	\$436,560	1.52	**
Non-minority Males	\$3,019,187	42.05%	44.12%	\$3,167,766	-\$148,579	0.95	**
TOTAL	\$7,180,270	100.00%	100.00%	\$7,180,270			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$681,994	9.50%	5.88%	\$422,369	\$259,625	1.61	**
African American Males	\$331,911	4.62%	14.71%	\$1,055,922	-\$724,012	0.31	< .05 *
Asian American Females	\$7,565	0.11%	2.94%	\$211,184	-\$203,619	0.04	not significant
Asian American Males	\$686,546	9.56%	12.75%	\$915,133	-\$228,586	0.75	not significant
Hispanic American Females	\$1,081,299	15.06%	1.96%	\$140,790	\$940,510	7.68	**
Hispanic American Males	\$90,470	1.26%	5.88%	\$422,369	-\$331,899	0.21	not significant
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$1,281,298	17.84%	11.76%	\$844,738	\$436,560	1.52	**
Non-minority Males	\$3,019,187	42.05%	44.12%	\$3,167,766	-\$148,579	0.95	**
TOTAL	\$7,180,270	100.00%	100.00%	\$7,180,270			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$1,770,858	24.66%	10.78%	\$774,343	\$996,515	2.29	**
Minority Males	\$1,108,927	15.44%	33.33%	\$2,393,423	-\$1,284,496	0.46	< .05 *
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$2,879,785	40.11%	44.12%	\$3,167,766	-\$287,981	0.91	not significant
Women Business Enterprises	\$3,052,156	42.51%	22.55%	\$1,619,081	\$1,433,075	1.89	**

(*) denotes a statistically significant underutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



5. Federally Assisted Goods and Services Prime Contracts

The disparity analysis of the federally assisted goods and services prime contracts is described below in Table 2.21.

African Americans represented 22.54% of the available goods and services businesses and received 0.02% of the dollars on federally assisted goods and services prime contracts. This underutilization is statistically significant.

Asian Americans represented 10.98% of the available goods and services businesses and received 3.69% of the dollars on federally assisted goods and services prime contracts. This underutilization is statistically significant.

Hispanic Americans represented 5.20% of the available goods and services businesses and received 0.89% of the dollars on federally assisted goods and services prime contracts. This underutilization is statistically significant.

Native Americans represented none of the available goods and services businesses and received 0.09% of the dollars on federally assisted goods and services prime contracts. This study does not statistically test the overutilization of M/WBEs.

Caucasian Females represented 4.62% of the available goods and services businesses and received 6.35% of the dollars on federally assisted goods and services prime contracts. This study does not statistically test the overutilization of M/WBEs.

Minority Females represented 5.20% of the available goods and services businesses and received 1.12% of the dollars on federally assisted goods and services prime contracts. This underutilization is statistically significant.

Non-minority Males represented 56.65% of the available goods and services businesses and received 88.97% of the dollars on federally assisted goods and services prime contracts. This overutilization is statistically significant.

Minority Business Enterprises represented 38.73% of the available goods and services businesses and received 4.69% of the dollars on federally assisted goods and services prime contracts. This underutilization is statistically significant.

Women Business Enterprises represented 9.83% of the available goods and services businesses and received 7.47% of the dollars on federally assisted goods and services prime contracts. This underutilization is not statistically significant.



Table 2.21: Disparity Analysis: Federally Assisted Goods and Services Prime Contracts
July 1, 2016 to June 30, 2021

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$10,015	0.02%	22.54%	\$12,501,146	-\$12,491,131	0.00	< .05 *
Asian Americans	\$2,046,999	3.69%	10.98%	\$6,090,302	-\$4,043,303	0.34	< .05 *
Hispanic Americans	\$494,127	0.89%	5.20%	\$2,884,880	-\$2,390,753	0.17	< .05 *
Native Americans	\$47,232	0.09%	0.00%	\$0	\$47,232	----	**
Caucasian Females	\$3,520,692	6.35%	4.62%	\$2,564,338	\$956,354	1.37	**
Non-minority Males	\$49,334,738	88.97%	56.65%	\$31,413,137	\$17,921,602	1.57	< .05 †
TOTAL	\$55,453,803	100.00%	100.00%	\$55,453,803			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$10,015	0.02%	4.62%	\$2,564,338	-\$2,554,323	0.00	< .05 *
African American Males	\$0	0.00%	17.92%	\$9,936,809	-\$9,936,809	0.00	< .05 *
Asian American Females	\$274,838	0.50%	0.58%	\$320,542	-\$45,704	0.86	----
Asian American Males	\$1,772,161	3.20%	10.40%	\$5,769,760	-\$3,997,599	0.31	< .05 *
Hispanic American Females	\$290,642	0.52%	0.00%	\$0	\$290,642	----	**
Hispanic American Males	\$203,485	0.37%	5.20%	\$2,884,880	-\$2,681,395	0.07	< .05 *
Native American Females	\$47,232	0.09%	0.00%	\$0	\$47,232	----	**
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$3,520,692	6.35%	4.62%	\$2,564,338	\$956,354	1.37	**
Non-minority Males	\$49,334,738	88.97%	56.65%	\$31,413,137	\$17,921,602	1.57	< .05 †
TOTAL	\$55,453,803	100.00%	100.00%	\$55,453,803			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$622,727	1.12%	5.20%	\$2,884,880	-\$2,262,153	0.22	< .05 *
Minority Males	\$1,975,645	3.56%	33.53%	\$18,591,448	-\$16,615,803	0.11	< .05 *
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$2,598,372	4.69%	38.73%	\$21,476,328	-\$18,877,956	0.12	< .05 *
Women Business Enterprises	\$4,143,419	7.47%	9.83%	\$5,449,218	-\$1,305,799	0.76	not significant

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

(----) denotes an underutilized group with no contracts awarded, too few contracts awarded, or too few available firms to test statistical significance.



VI. Summary

During the July 1, 2016 to June 30, 2021 study period, the City of Oakland awarded 442 federally assisted prime contracts. The total value of the federally assisted prime contracts was \$112,049,675. These contracts represented 23.02% of the contract dollars the City awarded during the five-year period.

Application of the strict scrutiny standard in *Adarand v. Pena* to the City's federally assisted contracts establishes an evidentiary basis for a *prima facie* case of a pattern or practice of discrimination. The disparity analysis presented in this chapter documented a statistically significant disparity in the City's award of federally assisted prime contracts to minority and women-owned businesses.

As a recipient of federal financial assistance, the City is also obligated to comply with the affirmative action provisions of Title VI. Title VI prohibits the recipients of federal funds from discriminating on the basis of race, color, and national origin. The disparity findings provide a strong basis in evidence that the City discriminated in its award of federally assisted prime contracts. There is further evidence of the City's violation of Title VI in its passive participation in the discrimination perpetrated by its prime contractors in their award of subcontracts.

Finally, there is even statistical evidence that the City, as a subrecipient of USDOT financial assistance from Caltrans and two local agencies, failed to meet its Caltrans Overall Statewide DBE Goal of 17.6% and the documented underutilization was statistically significant.



CHAPTER 3: Covid-19 M/WBE Impact Analysis

I. Introduction

Minority and woman-owned business enterprises (M/WBEs) and residents of inner-city communities nationwide experienced disproportionate impacts from the COVID-19 pandemic. This analysis examines the immediate and latent effects of COVID-19 on M/WBEs in the City of Oakland and the allocation of resources to mitigate them. Two federal programs provided the primary funding to mitigate the impact of COVID-19 on small businesses. One was the CARES Act, officially known as the Coronavirus Aid, Relief, and Economic Security Act, a \$2.2 trillion stimulus bill signed into federal law on March 27, 2020. The other was the American Rescue Plan Act (ARPA), a \$1.9 trillion stimulus bill signed by the President on March 11, 2021. In addition to the federal pandemic financial relief programs, the City partnered with community development financial institutions (CDFIs) that distributed direct grants, loans, and technical assistance to small business owners located in underrepresented communities. This analysis specifically examines M/WBEs' access to federal funding, both directly from the government and through other channels, to understand the extent of support provided and the challenges faced by these businesses.

The City of Oakland received \$36.9 million in CARES Act funding from the State of California. The funds were earmarked to provide financial and technical assistance to address the impacts of COVID-19 on City of Oakland businesses and residents. A significant portion of this assistance came from the Paycheck Protection Program (PPP), funded by the CARES ACT with \$800 billion and administered by the United States Small Business Administration (SBA). The PPP provided direct loans and grants to eligible businesses, with the aim of preserving jobs and sustaining small businesses by providing forgivable loans for payroll and operational expenses. This program played a crucial role in supporting M/WBEs during the pandemic.

Two waves of loans and grants were administered. The first wave, authorized in April 2020, required an eligible business to have at least one employee, and therefore did not include sole proprietors without employees. The second wave, authorized in January 2021, expanded eligibility to businesses without employees and independent contractors. However, it was not approved until 10 months after Governor Newsom issued a Stay-At-Home order for the state of California on March 19, 2020.

The ARPA economic stimulus package aimed to provide relief to individuals, families, businesses, and state and local governments adversely affected by the pandemic. Provisions in the bill targeted minority businesses and workers. Key provisions included direct stimulus payments to eligible individuals, extended unemployment benefits, aid to small businesses, and support to address shortfalls in state and local government budgets due to the economic downturn.



The City of Oakland was allocated \$188,081,700 under the ARPA. The funds were earmarked to address pandemic revenue losses and support general government services. The United States Department of the Treasury prioritized equity in its ARPA spending guidelines to encourage local governments to target minority businesses and workers disproportionately impacted by the pandemic.

CDFIs also played a significant role in mitigating the impact of COVID-19 on small and minority businesses in Oakland. CDFIs, such as Working Solutions and Main Street Launch, provided crucial financial support and technical assistance to underserved communities during the pandemic. Their grants were underwritten by CARES Act funds, the Oakland COVID-19 Relief Fund, Union Bank, and individual donors.

Funding provided under the CARES Act and ARPA were the most crucial resources available to local governments to mitigate COVID-19's impact on minority and woman-owned businesses. While financial assistance provided to small businesses by CDFIs was another important part of the effort to mitigate the impact of the pandemic on M/WBEs, its funding source was primarily from the CARES Act as well.

The methodology employed to assess the efficacy of the available funding in mitigating the impact of COVID-19 on minority and woman-owned businesses in the City of Oakland involved several strategies. However, it is important to note that the analytical framework was constrained by the limited available data quantifying both the immediate and latent effects of COVID-19. Some data was available detailing the administration of the federal funding. However, even less information quantified the funding's impact on mitigating COVID-19's adverse impacts on the City of Oakland's minority and woman-owned businesses.

II. Study Methodology

While there has not been significant scholarly research on the impact of federal funding, there are several COVID-19-related government reports available. The City of Oakland published a report on its COVID-19-related grants and also tracked data in Oracle, its financial system, on awarded contracts with COVID-19 funding assistance. The City of Oakland's business license data available during and after the pandemic was another source for measuring COVID-19's impact. Consequently, the methodology applied to address COVID-19's impact on minority and woman-owned businesses in Oakland was defined by the available data mentioned below.

A. City of Oakland Grants Funded with CARES Act Financial Assistance

The City Administrator's Office issued a report on April 2, 2021 entitled *Overview of CARES Act Expenditures and Launch of CARES Act Website*.⁴¹ The report describes the grants the

⁴¹ Overview of CARES Act Expenditures and Launch of CARES Act Website. https://cao-94612.s3.amazonaws.com/documents/21-0402-CARES-Act-Info-Memo-with-attachments_2021-04-03-004652.pdf.

Mayor issued between March 1, 2020 and December 30, 2020, using CARES Act funds. The grantees were selected by the City departments.

The description of the scope of work for each grant, the grantee's profile, and the grant amount were assessed to determine the goods and services funded with financial assistance from the CARES Act. In addition, an attempt was made using the available data to determine if the scope of the grant complied with the provisions of the CARES Act.

B. City of Oakland Contracts Funded with CARES Act Financial Assistance

In the Oracle financial system, contracts funded by the CARES Act were coded in either the Fund Description or the Item Description field. Contracts in Oracle were reviewed to identify the prime contractor, goods and services procured, amount of the contract, ethnicity, gender, and business location of the contractor. An attempt was also made to determine if the scope of the contract complied with the provisions of the CARES Act.

C. United States Small Business Administration Paycheck Protection Program Loans and Grants

Government reports were the primary data on Paycheck Protection Program (PPP) grants and loans. The PPP data made available by the Small Business Administration includes, for most records, the business type, zip code, race/ethnicity, number of employees, gender, and North American Industry Classification System (NAICS) code. Recipients' grants and loans were coded by industry, Employee Identification Number (EIN), and business size.

The demographic data profiled PPP grant recipients and included industry, zip code, and loan amount. However, the PPP loan data only identified race if the recipient answered the optional demographic question. The demographic data was analyzed to identify trends and patterns in the distribution of funds according to the business owner's NAICS code, ethnicity, and gender.

Since the recipient's ethnicity and gender were self-reported and disclosure was optional, any disparities reported by ethnicity needed to be cautiously interpreted. Furthermore, the ethnicity and gender of most recipients were missing.

D. American Rescue Plan Act Financial Assistance

Research was conducted on Legistar, the City's legislative platform containing all legislative agenda information, to identify the goods and services procured with the ARPA funds. There were no contracts identified in Legistar as funded by the ARPA.



E. Community Development Financial Institution Assistance

A CDFI report entitled *The Working Solutions 2020 Social Impact Report*⁴² provided an overview of the organization's support of small businesses in the Bay Area, including Oakland. The report highlighted the impact of Working Solutions' CDFI program, which provided loans and technical assistance to small businesses that might not qualify for traditional bank loans.

F. City of Oakland Business License Records

The City of Oakland's business license records were examined to quantify the business closure rate during the pandemic. Changes in the business registration rate during and after the mandatory shutdown were analyzed using business license data from 2019 to 2022, maintained by the City's Finance Department.

III. Study Findings

The federal government's financial assistance was the primary resource available to the City of Oakland to mitigate the immediate impact of COVID-19 on its business community. Below are the study findings organized by the City's sources of relief funding, as well as an analysis of the rate of change in the business licenses the City of Oakland Business Tax Office issued.

A. City of Oakland Administered CARES Act Financial Assistance Grants

There were \$17.5 million in CARES Act funds that supported 27 grants and contracts awarded by the Office of the Mayor between March 1, 2020 and December 30, 2020. According to the April 2, 2021 report entitled, "Overview of CARES Act Expenditures and Launch of CARES Act Website" issued by the City Administrator's Office, these CARES-funded grants primarily targeted community-based organizations that offered services to residents and small businesses.

The grants were grouped into four categories: 1) displacement prevention (financial and technical assistance), 2) food security and health, 3) workforce support, and 4) enhanced access and resiliency improvements. While only a few of the grants were awarded to small businesses, some grantees provided technical assistance and economic development services to small businesses. Over \$12 million was expended on business displacement prevention and financial and technical assistance services. Grants were also provided to support entrepreneurs transitioning to an e-commerce platform, negotiating commercial leases, and building more resilient business models. According to the April 2021 report, the grants did direct the COVID-19 funds to mitigate the effect of the pandemic on the business community.



⁴² "Believe in small business." Accessed December 2023. 2020 Social Impact Report.

B. City of Oakland Administered CARES Act Financially Assisted Contracts

The CARES Act funds were also used as financial assistance for contracts the City Council awarded to for-profit and non-profit businesses between March 1, 2020 and December 30, 2020. A total of 48 contracts in Oracle indicated “CARES Act Relief Fund” in the Fund Segment Description field. The analysis revealed that these 48 contracts were valued at \$7,139,071 and awarded to 42 vendors. Ten additional contracts were found with “CARES Act” indicated as a funding source in the Item Description field in Oracle. These contracts totaled \$552,882.

As detailed in Table 3.1, most of the 58 contracts were awarded to non-minority males and non-profits. Minority businesses received 10.34% of contracts; women-owned businesses received 12.07%; and non-minority male-owned businesses received 81.03% of the contracts. In addition, the majority of the dollars were awarded to businesses located outside the City of Oakland. Oakland business received 24 contracts valued at \$2,600,368, and businesses outside of Oakland received 34 contracts valued at \$5,091,586 as detailed in Table 3.2.



Table 3.1: CARES Act Financially Assisted Contracts Awarded by Ethnicity and Gender

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	2	3.45%	\$17,000	0.22%
Asian Americans	1	1.72%	\$82,000	1.07%
Hispanic Americans	3	5.17%	\$8,525	0.11%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	5	8.62%	\$364,066	4.73%
Non-minority Males	47	81.03%	\$7,220,363	93.87%
TOTAL	58	100.00%	\$7,691,954	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	2	3.45%	\$17,000	0.22%
Asian American Females	1	1.72%	\$82,000	1.07%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	1	1.72%	\$4,760	0.06%
Hispanic American Males	2	3.45%	\$3,765	0.05%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	5	8.62%	\$364,066	4.73%
Non-minority Males	47	81.03%	\$7,220,363	93.87%
TOTAL	58	100.00%	\$7,691,954	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	2	3.45%	\$86,760	1.13%
Minority Males	4	6.90%	\$20,765	0.27%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	6	10.34%	\$107,525	1.40%
Woman Business Enterprises	7	12.07%	\$450,826	5.86%



Table 3.2 below presents the distribution of the CARES Act financially assisted contracts by geographic area. The largest number of contracts were awarded to Oakland businesses, although the majority of the dollars were awarded to businesses outside of Oakland.

Table 3.2: CARES Act Financially Assisted Contracts Awarded by Geographic Area

City	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
San Jose	3	5.17%	\$2,836,191	36.87%
Oakland	24	41.38%	\$2,600,368	33.81%
Pleasanton	3	5.17%	\$1,125,748	14.64%
Cotati	1	1.72%	\$288,360	3.75%
Hayward	2	3.45%	\$102,525	1.33%
San Leandro	1	1.72%	\$90,000	1.17%
San Mateo	2	3.45%	\$63,175	0.82%
Milpitas	1	1.72%	\$55,254	0.72%
Dublin	1	1.72%	\$49,500	0.64%
Brisbane	1	1.72%	\$48,970	0.64%
Concord	1	1.72%	\$27,703	0.36%
Alameda	1	1.72%	\$26,483	0.34%
San Francisco	2	3.45%	\$22,860	0.30%
Livermore	2	3.45%	\$13,067	0.17%
Fremont	1	1.72%	\$6,606	0.09%
Newark	2	3.45%	\$4,786	0.06%
Fairfield	1	1.72%	\$108	0.00%
Out-of-Bay Area	5	8.62%	\$255,333	3.32%
Out-of-State	4	6.90%	\$74,918	0.97%
Total	58	100.00%	\$7,691,954	100.00%

C. United States Small Business Administration Paycheck Protection Program Loans and Grants

Three sources of published data described the recipients of PPP loans and grants. The Investigative Reporting Workshop, a non-profit newsroom based at American University in Washington, D.C, compiled and published Small Business Administration data on PPP loans distributed in each state according to zip code.⁴³ PPP loan amounts were calculated based on the average number of employees, the average monthly cost of the employer, employees' salaries, and the gross income of sole proprietors. PPP loans for payroll taxes were subsequently forgiven.

Non-profit organizations comprised 7.2% of the nation's PPP recipients, yet they received the largest sum of PPP loans. At the national level, non-minority businesses received the highest percentage of PPP loans at 52.21%. Asian American businesses received the second-highest

⁴³ Download state-by-state PPP loan data. <https://archive.investigativereportingworkshop.org/news/download-state-by-state-ppp-loan-data/>.

percentage of loans at 33.49%. African American firms received 7.51% of loans, and Hispanic American firms received 6.73%.

The analysis of the zip codes in the City of Oakland revealed that non-minority sole proprietorships received an average of \$27,517 per PPP loan; Asian American businesses received \$25,641; and Hispanic American businesses received an average of \$18,912. African American businesses received an average of \$15,785, and Native American businesses received an average of \$3,033. A sole proprietorship is a business owned by one individual who is personally liable for the company's debts and obligations. Being self-employed refers to anyone who works for themselves, which includes sole proprietors as well as other independent workers like freelancers.

Over 38% of the total loans to businesses in the City of Oakland were awarded to sole proprietorships, self-employed individuals, and independent contractors. Sole proprietorships and corporations, including S-corporations and limited liability companies, received the highest percentages of approved loans by the City.

An article published by Adhiti Bandlamudi and Mathew Green entitled “Unequal distribution: How Businesses in East Oakland and other Communities of Color Missed Out on PPP Loans”⁴⁴ used SBA data to identify a disparity in the distribution of PPP loans between communities of color and majority-owned businesses. The data was analyzed to determine why there was an ethnic disparity in the award of the PPP loans in East Oakland. The area between 42nd and 83rd avenues is home to many sole proprietors in the hospitality and service industries. Mexican panaderias, Vietnamese nail salons, Black barber shops, auto repair shops, restaurants, and convenience stores owned by minorities are located in this corridor, which is defined as East Oakland.

The pandemic disproportionately impacted sole proprietors in the hospitality and service industry because they were mandated to close their businesses. Those without employees were ineligible for the PPP loans and grants during the first round of loans between April and December 2020. The article reported that only about 5% of the sole proprietors in East Oakland received PPP loans, while 49% of comparable businesses in Montclair, a predominantly Caucasian business district in the Oakland Hills, received PPP loans.

Another article published by Mohamed Al Elew entitled “Map: Which Neighborhoods Were Neglected by the Paycheck Protection Program?”⁴⁵ also used SBA data and found disparities in PPP loans made to proprietors in several Oakland business districts. In this article, mapped loan data indicated the number of loans issued per location but not the number of applicants. As a result, the approval/denial rate in the two areas could not be reliably compared. An explanation for the lower loan approval rates in the East Oakland business district which is home to more minority proprietors may have resulted from a larger percentage of businesses not applying for PPP loans when the second round opened to sole proprietors and self-

⁴⁴ Adhiti Bandlamudi and Mathew Green. *Unequal distribution: How businesses in East Oakland and other communities of color missed out on PPP loans*, May 11, 2021.

⁴⁵ Mohamed Al Elew. “Map: Which Neighborhoods Were Neglected by The Paycheck Protection Program?” *Reveal*, March 3, 2023.



employed individuals, as opposed to a higher applications rejection rate occurring for East Oakland business owners.⁴⁶ The data, however, does not report the denial rate.

D. The American Rescue Plan Act Financial Assistance

According to Council Resolution 88721,⁴⁷ passed on June 24, 2021, the City received \$188,081,700 in ARPA funds. According to the American Rescue Plan Act State and Local Fiscal Recovery Funds (SLFRF) 2023 Report, published on the City's website,⁴⁸ the funds were granted to the City to replace revenue losses experienced during the pandemic. The report does not provide any information regarding the distribution of funds to support small and minority businesses. Thus, the impact analysis on these funds could not be conducted.

E. Community Development Financial Institution Assistance

During the pandemic, the City partnered with several CDFIs to fund loans to small businesses under Grant #1005392.⁴⁹ Working Solutions, a San Francisco-based CDFI, provided \$9.3 million in loans and relief grants to small businesses in the Bay Area from March 2020 to September 2021, and \$1.375 million was dispersed to 275 low-income small business owners in Oakland according to the Working Solutions 2020 Social Impact Report.⁵⁰ In addition to loans and grants, Working Solutions provided technical assistance to small businesses in areas such as marketing and financial management.

The report provides a detailed assessment of the organization's continuing impact in the East Bay. In 2021, Working Solutions allocated 34% of their loans to small businesses in the East Bay, including the City of Oakland, which contributed to job creation and business retention. The loans were provided to businesses in various industries, including food services, education, and commerce.

The City also partnered with Main Street Launch, an Oakland-based CDFI. Under the City of Oakland CARES Act Small Business Grant Program, Main Street Launch distributed direct grants to Oakland small businesses to help them address the negative economic impacts of COVID-19. Grants could be used to cover day-to-day operating costs, such as worker payroll, rent, and fixed debts.

The program provided 402 small businesses with grants of \$10,000 each. Of the small business grants provided, 80% were given to businesses owned by people of color, including 25% to African American businesses and 20% to Hispanic American businesses.⁵¹

⁴⁶ Adhiti Bandlamudi and Matthew Green. Unequal distribution: How businesses in East Oakland and other communities of color missed out on PPP loans, May 11, 2021.

⁴⁷ Oakland City Council Resolution No. 88721. <https://cao-94612.s3.amazonaws.com/documents/88721-CMS-ARPA-Amendment.pdf>.

⁴⁸ The American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds (SLFRF) 2023 Report.

⁴⁹ "Attachment A: CARES Act Relief Fund Status." City of Oakland Accessed January 2024. City of Oakland | CARES Act Informational Reports (oaklandca.gov).

⁵⁰ "Believe in small business." Accessed December 2023. 2020 Social Impact Report.

⁵¹ Memorandum on Overview of CARES Act Expenditures and Launch of CARES Act Website, the City Administrator Edward D. Reiskin, April 2, 2021.



These two organizations, which were designated to jointly support business communities, provided outreach to more than 1,200 businesses in Oakland, 28.24% of which were African American businesses and 30.78% of which were Hispanic American; 23% of those receiving outreach were restaurants/food services.

Overall, the analysis suggests that CDFIs positively impacted small businesses in Oakland during the COVID-19 pandemic, providing financial support and technical assistance to underserved communities and helping the businesses with grants and technical assistance to mitigate the impact of COVID-19.

F. City of Oakland Business License Change Rate

An attempt was made to quantify the rate of change in the business licenses the City of Oakland Business Tax Office issued before, during, and immediately after the pandemic as a measure of business stability. Businesses issued a business license in 2019 were tracked to determine if their license was renewed in 2020, 2021, or 2022. The data was examined by the Council District.

The 2019 data was used as the baseline since annual business licenses must be renewed in January, and Governor Newsom did not issue the Stay-At-Home order for the State until March 19, 2020. The Business Tax Office provided the data by year. Each record included a business name, NAICS code, and business address. While the data was adequate to report the change in the number of licensed businesses, it was insufficient to describe the change in the number of licensed businesses by the City Council district. However, it was possible to track the change in the number of licensed businesses by zip codes. The data revealed that business licenses decreased over four years from 62,456 licenses in 2019 to 55,977 licenses in 2022.

Table 3.3 shows the rate of change in the number of business licenses issued by zip code in 2019 and 2022. The decrease in the number of business licenses issued ranged from 8% in zip code 94619 to 15% in zip code 94621. According to “ZIP-Code.com,”⁵² an online source of US census data, over 30% of residents in zip code 94619, which has the lowest rate of change, are non-minorities. Meanwhile, 94% of the residents in zip code 94621 are identified as a minority.



⁵² ZIP Code 94621 Info, Map, Demographics for Oakland, CA (zip-codes.com).

Table 3.3: Business License Rate of Change by Oakland Zip Code

Zip Code	No. of Business Licenses		Rate of Change	% Non-Minority
	2019	2022		
94601	5642	5109	-9%	10%
94602	3360	2974	-11%	41%
94603	3341	2940	-12%	5%
94605	4160	3563	-14%	16%
94606	4453	3997	-10%	19%
94607	5566	4923	-12%	26%
94608	2945	2568	-13%	37%
94609	3777	3411	-10%	47%
94610	3750	3368	-10%	54%
94611	4037	3547	-12%	63%
94612	3776	3369	-11%	31%
94618	2374	2093	-12%	70%
94619	2348	2154	-8%	31%
94621	4382	3710	-15%	6%
94705	115	99	-14%	70%

The data indicate that the largest decrease in the number of business licenses issued during the four-year period occurred in the zip codes populated predominantly by minorities. The areas with mostly non-minority residents witnessed the lowest non-renewal rate of business licenses issued during the same period. The table above presents the percentage of the residents in each zip code that is primarily non-minority as defined by “ZIP-Codes.com.”

IV. Conclusion

Federal financial assistance from the CARES Act and the American Rescue Plan Act were the primary sources of technical assistance funding available to the City of Oakland to mitigate the impact of the COVID-19 pandemic on the City’s minority and women-owned businesses. The review of the City’s allocation of federal financial assistance funds reveals shortcomings in the effort to mitigate the adverse impact of the pandemic on the minority and woman-owned business community through the award of contract dollars. A similar pattern was evident in the City’s award of contracts to African American and women-owned businesses, examined in the statistical analysis of disparity analysis for the study period of July 1, 2016 to June 30, 2021.

This COVID-19 impact assessment documents ethnic disparities in the City’s award of contracts with federal financial assistance from CARES Act and American Rescue Plan Act funds, as well as businesses’ access to PPP loans. The City’s financial records indicate that most contracts awarded with financial assistance from the CARES Act were disproportionately awarded to non-Oakland businesses and primarily to non-minority businesses.

Furthermore, there is evidence that during the COVID-19 pandemic, there was a significant decrease in the number of licensed businesses in the City of Oakland. The highest rate of



decline in the number of licensed businesses occurred in zip codes populated primarily by minority residents. The lingering effects of the COVID-19 pandemic on the minority business community are also evident in the slow rate of recovery indicated by the business licenses issued by the zip code in the years since the 2020 shutdown.

Overall, the findings underscore the economic necessity for the City of Oakland to be deliberate and intentional in addressing the presence of policies and practices that have sustained the underutilization of minority businesses, which has been only exasperated during the pandemic. In the aftermath of COVID-19, the City of Oakland should be more deliberate in eliminating the disparities in the distribution of its prime contracts and subcontracts. The City should commit to continue funding programs such as the displacement prevention (financial and technical assistance) program that used the CARES Act funds to mitigate the lingering effects of the COVID-19 pandemic. In addition, targeted and unbiased contracting with minority and woman-owned businesses should be an integral step toward building a more resilient and inclusive business community in Oakland after the COVID-19 pandemic.



City of Oakland Disparity Study Final Report

Appendix



Table of Contents

APPENDIX: LEGAL REVIEW	1
I. INTRODUCTION	1
II. STANDARD OF REVIEW	2
A. RACE-CONSCIOUS PROGRAMS	3
B. GENDER-CONSCIOUS PROGRAMS	4
III. BURDEN OF PROOF	7
A. STRONG BASIS IN EVIDENCE	7
B. ULTIMATE BURDEN OF PROOF.....	8
IV. CROSON EVIDENTIARY FRAMEWORK.....	10
A. ACTIVE OR PASSIVE PARTICIPATION	10
B. SYSTEMIC DISCRIMINATORY EXCLUSION.....	13
C. ANECDOTAL EVIDENCE	20
V. CONSIDERATION OF RACE-NEUTRAL OPTIONS.....	25
VI. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT	27
A. ANALYSIS OF THE NINTH CIRCUIT CHALLENGES.....	27
VII. TITLE VI.....	31
VIII. SECTION 31 OF THE CALIFORNIA CONSTITUTION	32
IX. CONCLUSION	36
X. LIST OF AUTHORITIES	38
A. CASES.....	38
B. STATUTES.....	42



Appendix: Legal Review

I. Introduction

This legal analysis summarizes the constitutional standards that the federal and state courts have applied to review local governments' affirmative action contracting programs. The United States Supreme Court decision of *City of Richmond v. J.A. Croson Co. (Croson)*¹ raised the standard by which lower courts review both local and state affirmative action contracting programs. The United States Supreme Court also adopted strict scrutiny as the standard of review for the federal Disadvantaged Business Enterprise program in *Adarand Constructors, Inc. v. Fredrico Pena (Adarand)*.²

The City of Oakland Disparity Study was commissioned to examine the City's procurement activities and identify any statistical disparities in the award of contracts to available local, small, emerging, minority, and woman-owned business enterprises. Contracting policies, procedures, goals, or new programs recommended to remediate the results of the Study's statistical findings will be narrowly tailored in compliance with *Croson* and the California Constitution.

The United States Supreme Court decision in *Croson* sets forth the strict scrutiny constitutional analysis applicable to race-based remedies for public contracting programs. Since the City of Oakland is located within California, the California Constitution and the United States Court of Appeals for the Ninth Circuit decisions including *Western States Paving v. Washington Department of Transportation*,³ constitute binding legal precedent and are discussed herein. Since 1989, courts in several circuits, including the Ninth Circuit, have decided cases involving challenges to affirmative action programs. Case laws pertaining to Minority and Woman-owned Business Enterprise (M/WBE) programs adjudicated outside of the Ninth Circuit are discussed because they are instructive, albeit not binding, when implementing race-based public contracting programs.

The legal review also summarizes the state constitutional standard and relevant case law for applying race and gender conscious measures in California. The California Constitution, amended in November 1996 by Proposition 209,⁴ prohibits the application of preferences in contracting programs based on race or gender. The California Supreme Court articulated the standard for the application of race conscious measures in public contracting under Article I, section 31 of the California Constitution in *Coral Construction, Inc. v. City and County of San Francisco et al.*⁵ In another seminal decision, the Ninth Circuit Court of Appeals in *Coalition for Economic Equity v.*

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

² *Adarand Constructors, Inc. v. Fredrico Pena*, 515 U.S. 200 (1995).

³ *Western States Paving Co. v. State of Washington Dept. of Transportation*, 407 F.3d 983 (9th Cir. 2005).

⁴ California Constitution, Art 1, Section 31.

⁵ *Coral Construction Inc. v. City and County of San Francisco, et. al.*, 50 Cal.4th 315 (2010).



Pete Wilson et. al.,⁶ considered the constitutionality of Proposition 209 in a challenge under the equal protection clause of the Fourteenth Amendment.

II. Standard of Review

The standard of review represents the measure by which a court evaluates whether a legal claim meets a certain statute, rule, or precedent. The standard of review that the Supreme Court set in *Croson* for race-specific programs is applicable to meet constitutional muster. *Croson*, decided in 1989, dealt with non-federally funded programs and established an evidentiary standard of review for race-based programs. The Court announced that programs employing racial classification would be subject to “strict scrutiny,” the highest form of judicial review. Broad notions of equity or general allegations of historical and societal discrimination against minorities fail to meet the requirements of strict scrutiny. Local governments, as set forth in *Croson*, have a compelling interest in addressing both active and passive discrimination. A governmental entity may adopt race-conscious programs only as a remedy for identified statistically significant evidence of disparity. The remedy must be narrowly tailored to ensure a minimal burden is imposed upon unprotected classes.

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

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

In reaching this conclusion, the Supreme Court reasoned that first, the colleges’ and universities’ compelling interest is not subject to meaningful judicial review.¹⁰ Second, the Supreme Court

⁶ *Coalition for Economic Equity v. Pete Wilson, et al.*, 122 F.3d 692 (9th Cir. 1997).

⁷ 143 S.Ct. 2141 (2023).

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

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

¹⁰ 143 S.Ct. at 2166-2167.

concluded that there must be a meaningful connection between the means and the goal.¹¹ Third, the Court held that race conscious programs must not use race as a negative.¹² Fourth, the Court also opined that race conscious admissions programs must not use race in a manner that reinforces racial stereotypes.¹³ Finally, the Court concluded that race conscious admission programs must have a logical end point.¹⁴ The Court found the Harvard and UNC college admission programs were deficient on each of these points and therefore unconstitutional.

Although the *Harvard* decision addresses the use of race conscious measures in college and university admissions, the implication of the opinion raises fundamental questions about the future of affirmative action and the use of the race conscious measures in public contracting. To be constitutional, a race conscious affirmative action program must meet the compelling interest prong of the strict scrutiny standard, with the clear goal of eliminating disparities attributed to *discrimination* in public contracting. The *Harvard* Court is clear that the only constitutional justification to use race is to address specific, identified past discrimination. The *Croson*¹⁵ Court recognized availability/disparity studies and the statistical evidence as a means of establishing the evidentiary predicate for race conscious measures. The heightened scrutiny and analytical framework in *Harvard* mandates that any governmental entity relying upon an availability/disparity study must ensure that the predicate evidence establishing a compelling interest is based upon identified past discrimination that violates the Constitution or a statute.

Availability/disparity must address discrimination, the predicate evidence must be clear that any use of race conscious measures is to address discrimination either by the governmental entity or that it is a passive participant in private discrimination, i.e., prime contractors. *Harvard* reaffirmed that racial balancing, general assertions of industry discrimination or societal discrimination will not satisfy the compelling interest prong.¹⁶ Any race based contracting program must be measurable and capable of judicial review. Eliminating discrimination in public contracting, however, unlike the goal of diversity, is both objectively measurable and capable of meaningful judicial review. Further, unlike the goal of achieving diversity, which is much more subjective, the goal of eliminating a statistically significant disparity in public contracting provides an objective measure to implement race conscious affirmative relief and an end date for the race conscious public contracting.

A. Race-Conscious Programs

In *Croson*, the United States Supreme Court affirmed that pursuant to the Fourteenth Amendment, the proper standard of review for state and local Minority Business Enterprise (MBE) programs,

¹¹ 143 S.Ct. at 2167 -2168.

¹² 143 S.Ct. at 2168 - 2169.

¹³ 143 S.Ct. at 2169-2170.

¹⁴ 143 S.Ct. at 2170.

¹⁵ *City of Richmond v. JA Croson*, 488 U.S. 469, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989).

¹⁶ *Harvard*, 143 S.Ct. at 2173.



which are necessarily race-based, is strict scrutiny.¹⁷ Specifically, the government must show that the classification is narrowly tailored to achieve a compelling state interest.¹⁸ The Court recognized that a state or local entity may take action, in the form of an MBE program, to rectify the effects of *identified, systemic racial discrimination* within its jurisdiction.¹⁹ Speaking for the majority, Justice O'Connor articulated various methods of demonstrating discrimination and set forth guidelines for crafting MBE programs so that they are “narrowly tailored” to address systemic racial discrimination.²⁰

B. Gender-Conscious Programs

Since *Croson*, the Supreme Court has remained silent with respect to the appropriate standard of review for Women Business Enterprises (WBE) programs. *Croson* was limited to race-conscious measures and did not consider gender conscious measures. In other situations, the Supreme Court has ruled that gender classifications are not subject to the rigorous strict scrutiny standard applied to racial classifications. Instead, the federal courts have applied “intermediate scrutiny” to gender conscious classifications.

Notwithstanding the Supreme Court’s failure thus far to rule on a WBE program, the consensus among the federal courts of appeals is that the classifications are subject to a lesser standard of review than the more exacting standard of review applied to race conscious programs, which is intermediate scrutiny. Intermediate scrutiny requires the governmental entity to demonstrate that the action taken furthers an *important governmental objective*, employing a method that bears a fair and substantial relation to the goal.²¹ The courts have also described the test as requiring an *exceedingly persuasive justification* for classifications based on gender.²² The Court acknowledged that in “limited circumstances a gender-based classification favoring one sex can be justified if it intentionally and directly assists the members of that sex who are disproportionately burdened.”²³ Circuit courts vary in the application of Court precedent as it relates to gender-based programs.

The Ninth Circuit in *Associated General Contractors of California v. City and County of San Francisco* held that classifications based on gender require an “exceedingly persuasive

¹⁷ *Croson*, 488 U.S. at 493-95.

¹⁸ *Id.* at 493.

¹⁹ *Croson*, 488 U.S. at 509.

²⁰ *Croson*, 488 U.S. at 501-02. Cases involving education and employment frequently refer to the principal concepts applicable to the use of race in government contracting—compelling interest and narrowly tailored remedies. The Supreme Court in *Croson* and subsequent cases provides detailed guidance on how those concepts are to be treated in contracting. In *Harvard* a college admissions case, the Supreme Court rejected the goal of diversity in college admissions as a “compelling governmental interest.” The Supreme Court’s analysis is much restrictive and may have serious implications for in determining the appropriate methodology for disparity studies and the application of statistical evidence to establish a presumption of discrimination.

²¹ *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 726 (1982); *see also United States v. Virginia*, 518 U.S. 515, 524 (1996).

²² *Hogan*, 458 U.S. at 751; *see also Michigan Rd. Builders Ass’n v. Milliken*, 834 F.2d 583, 595 (6th Cir. 1987).

²³ *Id.* at 728; *see also Ballard*, 419 U.S. at 508.



justification.”²⁴ The Court noted that mere recitation of a benign compensatory purpose does not shield judicial inquiry into the actual purpose of the underlying statutory scheme. The city may invoke a compensatory purpose only if members of the gender benefitted by the classification actually suffer a disadvantage related to the classification and the classification does not reflect or reinforce archaic and stereotyped notions of the roles and abilities of women.

The Fourth Circuit in *H.B. Rowe Co. v. Tippett* stated that the defender of a gender classification statute must demonstrate that the classification “serves important governmental objectives and that the discriminatory means are substantially related to the achievement of those objectives.” In applying this standard, the appellate court held that the public sector classifications based on gender require an *exceedingly persuasive justification*.²⁵ The justification is valid only if members of the gender benefited by the classification actually suffer a disadvantage related to the classification, and the classification does not reflect or reinforce archaic and stereotyped notions of the roles and abilities of women.²⁶

Consistent with the Court’s finding with regard to gender classification, the United States Court of Appeals for the Third Circuit (Third Circuit) in *Contractors Association of Eastern Pennsylvania v. City of Philadelphia (Philadelphia IV)* ruled in 1993 that the standard of review governing WBE programs is different from the standard imposed upon MBE programs.²⁷ The Third Circuit held that, whereas MBE programs must be *narrowly tailored to a compelling state interest*, WBE programs must be *substantially related to important governmental objectives*.²⁸ In contrast, an MBE program would survive constitutional scrutiny only by demonstrating a pattern and practice of systemic racial exclusion or discrimination in which a state or local government was an active or passive participant.²⁹

The United States Court of Appeals for the Sixth Circuit (Sixth Circuit) applies both the strict scrutiny standard and the intermediate standard of review to WBE programs depending on the application of the program’s policies. In *Brunet v. City of Columbus (Brunet)*, the Sixth Circuit held that the strict scrutiny standard of review is applied to an affirmative action plan based on gender classification when challenged under the Equal Protection Clause.³⁰ The court made a distinction between “gender-conscious” plans and “gender-preference” plans. Pursuant to Sixth Circuit precedent, “gender-conscious” plans are subject to the intermediate standard of review, while “gender-preference” plans are subject to the strict scrutiny standard of review.³¹ The court classifies a program as “gender-conscious” if its policies utilize gender as a factor but are gender

²⁴ *Coalition for Economic Equity v. Pete Wilson*, 122 F.3d 692, 702 (9th Cir. 1997).

²⁵ *H.B. Rowe Co., v. Tippett*, 615 F.3d 233, 255, (4th Cir. 2010).

²⁶ *Schlesinger v. Ballard*, 419 U.S. 498, 508 (1975).

²⁷ *Contrs. Ass’n of E. Pennsylvania v. City of Philadelphia (Philadelphia IV)*, 6 F. 3d 990, 1001 (3rd Cir. 1993).

²⁸ *Philadelphia IV*, 6 F.3d at 1009-10.

²⁹ *Id.* at 1002.

³⁰ *Brunet v. City of Columbus*, 1 F.3d 390, 404 (6th Cir. 1993).

³¹ *Brunet*, 1 F.3d at 404.



neutral in their application, and have no disparate impact on individuals based on gender when the policies are applied equally to both men and women.³² The court classifies a program as “gender-preference” if its policies contain gender-based criteria that are applied directly as a preference.³³

The United States Court of Appeals for the Eleventh Circuit (Eleventh Circuit) also applied intermediate scrutiny.³⁴ In its review and affirmation of the district court’s holding, in *Engineering Contractors Association of South Florida v. Metropolitan Dade County (Dade County II)*, the Eleventh Circuit cited the Third Circuit’s 1993 formulation in *Philadelphia IV*: “[T]his standard requires the [County] to present probative evidence in support of its stated rationale for the gender preference, discrimination against women-owned contractors.”³⁵ Although the *Dade County II* appellate court ultimately applied the intermediate scrutiny standard, it queried whether the United States Supreme Court decision in *United States v. Virginia (Virginia)*,³⁶ finding the all-male program at Virginia Military Institute unconstitutional, signaled a heightened level of scrutiny.³⁷ In the case of *Virginia*, the Court held that parties who seek to defend gender-based government action must demonstrate an *exceedingly persuasive justification* for that action.³⁸ While the Eleventh Circuit echoed that speculation, it concluded that “[u]nless and until the U.S. Supreme Court tells us otherwise, intermediate scrutiny remains the applicable constitutional standard in gender discrimination cases, and a gender preference may be upheld so long as it is substantially related to an important governmental objective.”³⁹

In *Dade County II*, the Eleventh Circuit Court noted that the United States Court of Appeals for the Third Circuit in *Philadelphia IV* was the only federal appellate court that explicitly attempted to clarify the evidentiary requirement applicable to WBE programs.⁴⁰ *Dade County II* interpreted that standard to mean that “evidence offered in support of a gender preference must not only be ‘probative’ [but] must also be ‘sufficient.’⁴¹

It also reiterated two principal guidelines of intermediate scrutiny evidentiary analysis: (1) under this test, a local government must demonstrate some past discrimination against women, but not necessarily discrimination by the

³² *Id.* (citing *Jacobsen v. Cincinnati Bd. of Educ.*, 961 F.2d 100, 102 (6th Cir. 1992)).

³³ *Id.*

³⁴ *Ensley Branch, N.A.A.C.P. v. Seibels*, 31 F. 3d 1548, 1579-80 (11th Cir. 1994).

³⁵ *Dade County II*, 122 F.3d at 909 (citing *Philadelphia IV*, 6 F.3d at 1010; *see also Saunders v. White*, 191 F. Supp. 2d 95, 134 (D. D.C. 2002) (stating “[g]iven the gender classifications explained above, the initial evaluation procedure must satisfy intermediate scrutiny to be constitutional.”)).

³⁶ *United States v. Virginia*, 518 U.S. 515, 534 (1996).

³⁷ *Dade County II*, 122 F.3d at 907-08.

³⁸ *Virginia*, 518 U.S. at 534.

³⁹ *Dade County II*, 122 F.3d at 908.

⁴⁰ *Id.* at 909.

⁴¹ *Id.* at 910.



government itself;⁴² and (2) the intermediate scrutiny evidentiary review is not to be directed toward mandating that gender-conscious affirmative action is used only as a “last resort”⁴³ but instead ensuring that the affirmative action is “a product of analysis rather than a stereotyped reaction based on habit.”⁴⁴

This determination requires “evidence of past discrimination in the economic sphere at which the affirmative action program is directed.”⁴⁵ The court also stated that “a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”⁴⁶

III. Burden of Proof

The procedural protocol established by *Croson* imposes an initial burden of proof upon the government to demonstrate that the challenged MBE program is supported by a strong factual predicate, i.e., documented evidence of past discrimination. Notwithstanding this requirement, the plaintiff bears the ultimate burden of proof to persuade the court that the MBE program is unconstitutional. The plaintiff may challenge a government’s factual predicate on any of the following grounds:⁴⁷

- Disparity exists due to race-neutral reasons.
- Methodology is flawed.
- Findings from data analysis are statistically insignificant.
- Conflicting data exists.

Thus, a disparity study must be analytically rigorous, at least to the extent that the data permits, if it is to withstand legal challenge.⁴⁸

A. Strong Basis in Evidence

Croson requires defendant jurisdictions to produce a “strong basis in evidence” that the objective of the challenged MBE program is to rectify the effects of discrimination.⁴⁹ The issue of whether or not the government has produced a strong basis in evidence is a question of law.⁵⁰ Because the

⁴² *Id.* (quoting *Ensley Branch*, 31 F.3d at 1580).

⁴³ *Id.* (quoting *Hayes v. N. State Law Enf’t Officers Ass’n*, 10 F.3d 207, 217 (4th Cir. 1993) (racial discrimination case)).

⁴⁴ *Id.* (quoting *Philadelphia IV*, 6 F.3d at 1010).

⁴⁵ *Id.* (quoting *Ensley Branch*, 31 F.3d at 1581).

⁴⁶ *Id.* at 929; cf. *Builders Ass’n of Greater Chicago v. City. of Cook*, 256 F. 3d 642, 644 (7th Cir. 2001) (questioned why there should be a lesser standard where the discrimination was against women rather than minorities).

⁴⁷ These were the issues on which the district court in Philadelphia reviewed the disparity study before it.

⁴⁸ *Croson*, 488 U.S. 469.

⁴⁹ *Concrete Works of Colorado v. City and County of Denver*, 36 F.3d 1513 at 1522 (10th Cir. 1994), (citing *Wygant v. Jackson Board of Education*, 476 U.S. 267, 292 (1986); see *Croson* 488 U.S. at 509 (1989)).

⁵⁰ *Id.* (citing *Associated General Contractors v. New Haven*, 791 F.Supp. 941, 944 (D. Conn 1992)).



sufficiency of the factual predicate supporting the MBE program is at issue, factual determinations relating to the accuracy and validity of the proffered evidence underlie the initial legal conclusion to be drawn.⁵¹

The adequacy of the government's evidence is "evaluated in the context of the breadth of the remedial program advanced by the [jurisdiction]."⁵² The onus is upon the jurisdiction to provide a factual predicate that is sufficient in scope and precision to demonstrate that current disparity in utilization necessitated the adoption of the MBE program.

B. Ultimate Burden of Proof

The party challenging an MBE program will bear the ultimate burden of proof throughout the course of the litigation—despite the government's obligation to produce a strong factual predicate to support its program.⁵³ The plaintiff must persuade the court that the program is constitutionally flawed by challenging the government's factual predicate for the program or by demonstrating that the program is overly broad.

Justice O'Connor explained the nature of the plaintiff's burden of proof in her concurring opinion in *Wygant v. Jackson Board of Education (Wygant)*.⁵⁴ She stated that following the production of the factual predicate supporting the program:

[I]t is incumbent upon the non-minority [plaintiffs] to prove their case; they continue to bear the ultimate burden of persuading the court that the [government's] evidence did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently "narrowly tailored."⁵⁵

In *Philadelphia*, the Third Circuit Court of Appeals clarified this allocation of the burden of proof and the constitutional issue of whether facts constitute a "strong basis" in evidence.⁵⁶ That court wrote that the allocation of the burden of persuasion depends on the theory of constitutional invalidity that is being considered.⁵⁷ If the plaintiff's theory is that an agency has adopted race-based preferences with a purpose other than remedying past discrimination, the plaintiff has the burden of convincing the court that the identified remedial motivation is a pretext and that the real motivation was something else.⁵⁸

⁵¹ *Concrete Works I*, 36 F.3d at 1522.

⁵² *Concrete Works I*, 36 F.3d at 1522. (citing *Croson* 488 U.S. at 498).

⁵³ *Id.* (citing *Wygant*, 476 U.S. at 277-278).

⁵⁴ *Wygant v. Jackson Board of Education*, 476 U.S. 267, 293 (1986).

⁵⁵ *Wygant*, 476 U.S. at 293.

⁵⁶ *Contractors Ass'n of Eastern Pennsylvania* 91 F.3d 586, 596 (3rd Cir. 1996).

⁵⁷ *Id.* at 597.

⁵⁸ *Contractors Association of Eastern Pennsylvania*, 893 F. Supp. 419, 597 (E.D. Pa 1995) (*Philadelphia V*).



The situation differs if the plaintiff's theory is that an agency's conclusions as to the existence of discrimination and the necessity of the remedy chosen have no strong basis in evidence. In such a situation, once the agency comes forward with evidence of facts alleged to justify its conclusions, the plaintiff has the burden of persuading the court that those facts are not accurate. However, the ultimate issue of whether a strong basis in evidence exists is an issue of law, and the burden of persuasion in the traditional sense plays no role in the court's resolution of that ultimate issue.⁵⁹

In *Concrete Works II*, the Tenth Circuit clearly stated that as the plaintiff's burden is an evidentiary one, it cannot be discharged simply by argument. The court cited its opinion in *Adarand Constructors Inc. v. Slater*, 228 F.3d 1147 (2000): “[g]eneral criticism of disparity studies, as opposed to particular evidence undermining the reliability of the particular disparity study, is of little persuasive value.”⁶⁰

The Supreme Court's disposition of the plaintiff's petition for *certiorari* strongly supports the conclusion that the plaintiff has the burden of proof. Supreme Court review of appellate decisions is discretionary in that four justices must agree, so normally little can be inferred from its denial. However, *Concrete Works* is not the typical instance. Justice Scalia concurred in *Croson* that strict scrutiny was required of race-conscious contracting programs. However, his antagonism there and over the years to the use of race is clear. Justice Scalia's view is that governmental remedies should be limited to provable individual victims. That view is at the base of his written dissent, on which only Chief Justice Rehnquist joined, to the Court's November 17, 2003, decision not to grant *certiorari* in *Concrete Works*.⁶¹

The change in the composition of the Supreme Court to a six-three conservative majority has shifted Justice Scalia's minority opinion to the prevailing majority.⁶² Justice Scalia would place the burden of proof squarely on the defendant jurisdiction when a plaintiff pleads unequal treatment. Pursuant to Justice Scalia's argument, the Tenth Circuit was simply wrong, because the defendant should have to *prove* that there was discrimination. He takes this position despite the case law in equal employment cases, from which *Croson* was derived, that the defendant has the burden of *production*. Once the defendant satisfies that, the burden of *proof* shifts to the plaintiff.

Contrary to Justice Scalia's dissenting opinion, the Tenth Circuit in *Concrete Works II* held that the defendant must show “a strong basis” for concluding that MBEs are being discriminated against. Additionally, the plaintiff must put in evidence that negates its validity.

⁵⁹ At first glance, the position of the Third Circuit does not square with what the Eleventh Circuit announced as its standard in reviewing whether a jurisdiction has established the “compelling interest” required by strict scrutiny. The Eleventh Circuit said the inquiry was factual and would be reversed only if it was “clearly erroneous.” However, the difference in formulation may have had to do with the angle from which the question was approached: If one starts with the disparity study—whether a compelling interest has been shown—factual issues are critical. If the focus is the remedy, because the constitutional issue of equal protection in the context of race comes into play, the review is necessarily a legal one.

⁶⁰ *Concrete Works of Colorado, Inc. v. City and County of Denver, Colorado*, 321 F.3d 950, 979 (10th Cir. 2003) (quoting *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (2000)).

⁶¹ *Concrete Works of Colorado, Inc. v. City and County of Denver, Colorado*, 321 F.3d 950 (10th Cir. 2003), *petition for cert. denied*, (U.S. Nov. 17, 2003) (No. 02-1673) (“*Concrete Works IV*”).

⁶² *Harvard*, 143 S.Ct. at 2173.

IV. *Croson* Evidentiary Framework

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

A. Active or Passive Participation

Croson requires that the local entity seeking to adopt an MBE program must have perpetuated the discrimination to be remedied by the program. However, the local entity need not be an active perpetrator of such discrimination. Passive participation will satisfy this part of the Court’s strict scrutiny review.⁶³

An entity will be considered an “active” participant if the evidence shows that it has created barriers that actively exclude MBEs from its contracting opportunities. In addition to examining the government’s contracting record and process, MBEs who have contracted or attempted to contract with that entity can be interviewed to relay their experiences in pursuing that entity’s contracting opportunities.⁶⁴

An entity is considered to be a “passive” participant in private sector discriminatory practices if it has infused tax dollars into that discriminatory industry.⁶⁵ The *Croson* Court emphasized a government’s ability to passively participate in private sector discrimination with monetary involvement, stating:

[I]t is beyond dispute that any public entity, state or federal, has a compelling interest in assuring those public dollars, drawn from tax contributions of all citizens, do not serve to finance the evil of private prejudice.⁶⁶

Until *Concrete Works I*, the inquiry regarding passive discrimination was limited to the subcontracting practices of government prime contractors. In *Concrete Works I*, the Tenth Circuit considered a purely private sector definition of passive discrimination. Since no government funds were involved in the contracts analyzed in the case, the court questioned whether purely private sector discrimination was likely to be a fruitful line of inquiry.⁶⁷ On remand the district court

⁶³ *Croson*, 488 U.S. at 509.

⁶⁴ *Wygant v. Jackson Board of Education*, 476 U.S. 267 at 275 (1985).

⁶⁵ *Croson*, 488 U.S. at 492; *Coral Construction*, 941 F.2d at 916.

⁶⁶ *Croson*, 488 U.S. at 492.

⁶⁷ *Concrete Works I*, 36 F.3d at 1529. “What the Denver MSA data does not indicate, however, is whether there is any linkage between Denver’s award of public contracts and the Denver MSA evidence of industry-wide discrimination. That is, we cannot tell whether Denver indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against MBE and/or WBE subcontractors in other private portions of their business or whether the private discrimination was practiced by firms who did not receive any public contracts.



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

- Was there pervasive discrimination throughout the Denver Metropolitan Statistical Area (MSA)?
- Were all designated groups equally affected?
- Was discrimination intentional?
- Would Denver's use of such firms constitute "passive" participation?
- Would the proposed remedy change industry practices?
- Was the burden of compliance—which was on white male prime contractors in an intensely competitive, low profit margin business—a fair one?

The district court concluded that the City of Denver had not documented a firm basis of identified discrimination derived from the statistics submitted.⁶⁸ However, the Tenth Circuit on appeal of that decision completely rejected the district court's analysis. The district court's queries required Denver to prove the existence of discrimination. Moreover, the Tenth Circuit explicitly held that "passive" participation included private sector discrimination in the marketplace. Relying on *Shaw v. Hunt*,⁶⁹ a post-*Croson* Supreme Court decision, the court wrote as follows:

The *Shaw* Court did not adopt any requirement that only discrimination by the governmental entity, either directly or by utilizing firms engaged in discrimination on projects funded by the entity, was remediable. The Court, however, did set out two conditions which must be met for the governmental entity to show a compelling interest. "First, the discrimination must be identified discrimination." *Id.* at 910. The City can satisfy this condition by identifying the discrimination "public or private, with some specificity." *Id.* (quoting *Croson*, 488 U.S. at 504 (emphasis added)). The governmental entity must also have a "strong basis in evidence to conclude that remedial action was necessary." *Id.*⁷⁰

Neither *Croson* nor its progeny clearly state whether private discrimination that is in no way funded with public tax dollars can, by itself, provide the requisite strong basis in evidence necessary to justify a municipality's affirmative action program. A plurality in *Croson* simply suggested that remedial measures could be justified upon a municipality's showing that 'it had essentially become "a passive participant" in a system of racial exclusion practiced by elements of the local construction industry' [citing *Croson*]. Although we do not read *Croson* as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination, such evidence would at least enhance the municipality's factual predicate for a race- and gender-conscious program. The record before us does not explain the Denver government's role in contributing to the underutilization of MBEs and WBEs in the private construction market in the Denver MSA, and this may well be a fruitful issue to explore at trial."

⁶⁸ *Id.* at 61.

⁶⁹ *Shaw v. Hunt*, 517 U.S. at 519.

⁷⁰ *Concrete Works IV*, 321 F.3d at 975-76.

The Tenth Circuit therefore held that the City was correct in its attempt to show that it “indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against M/WBE subcontractors in other private portions of their business.”⁷¹ The court emphasized that its reading of *Croson*⁷² and its own precedents supported that conclusion. Also, the court pointed out that the plaintiff, which had the burden of proof, failed to introduce conflicting evidence, and merely *argued* that the private sector was out of bounds and that Denver’s data were flawed.⁷³

The courts found that the disparities in MBE private sector participation, demonstrated with the rate of business formation and lack of access to credit that affected MBEs’ ability to expand in order to perform larger contracts, gave Denver a firm basis to conclude that there was actionable private sector discrimination. For technical legal reasons,⁷⁴ however, the court did not examine whether the consequent public-sector remedy—i.e., one involving a goal requirement on the City of Denver’s contracts—was “narrowly tailored.” The court took this position despite the plaintiff’s contention that the remedy was inseparable from the findings and that the court should have addressed the issue of whether the program was narrowly tailored.

Ten months later, in *Builders Association of Greater Chicago v. City of Chicago*,⁷⁵ the question of whether a public-sector remedy is “narrowly tailored” when it is based on purely private sector discrimination was at issue. The district court reviewed the remedies derived from private sector practices with more stringent scrutiny. It found that there was discrimination against minorities in the Chicago construction industry. However, it did not find the City of Chicago’s MBE subcontracting goal an appropriate remedy, because it was not “narrowly tailored” to address the lack of access to credit for MBEs, which was the documented private discrimination. The court also criticized the remedy because it was a “rigid numerical quota,” and there was no individualized review of MBE beneficiaries, citing Justice O’Connor’s opinion in *Gratz v. Bollinger*.⁷⁶

The question of whether evidence of private sector practices met the Court standard also arose in *Builders Ass’n of Greater Chicago v. County of Cook*.⁷⁷ In this case, the Seventh Circuit cited

⁷¹ Slip opinion, pg. 20.

⁷² See also *Shaw v. Hunt*, 517 U.S. 899 (1996), which it cited.

⁷³ Whether Denver had the requisite strong basis to conclude that there was discrimination was a question of law; it was for the Tenth Circuit to decide. The standard by which the factual record before it was reviewed was “clearly erroneous.”

⁷⁴ Plaintiff had not preserved the issue on appeal; therefore, it was no longer part of the case.

⁷⁵ 298 F. Supp2d 725 (N.D. Ill. 2003).

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

⁷⁷ 256 F.3d 642 (7th Cir. 2001).



*Associated General Contractors of Ohio v. Drabik*⁷⁸ in throwing out a 1988 County ordinance under which at least 30 percent of the value of prime contracts was to go to minority subcontractors and at least ten percent to woman-owned businesses. Appellants argued that evidence of purely private sector discrimination justified a public-sector program. The Court found that the County, in order to justify the public-sector remedy, had to demonstrate that it had been at least a passive participant in the private discrimination by showing that it had infused tax dollars into the discriminatory private industry.

B. Systemic Discriminatory Exclusion

Croson clearly established that an entity enacting a business affirmative action program must demonstrate identified, systemic discriminatory exclusion on the basis of race or any other illegitimate criteria (arguably gender).⁷⁹ Thus, it is essential to demonstrate a pattern and practice of such discriminatory exclusion in the relevant market area.⁸⁰ Using appropriate evidence of the entity's active or passive participation in the discrimination, as discussed above, the showing of discriminatory exclusion must cover each racial group to whom a remedy would apply.⁸¹ Mere statistics and broad assertions of purely societal discrimination will not suffice to support a race or gender-conscious program.

Croson enumerates several ways an entity may establish the requisite factual predicate. First, a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by an entity or by the entity's prime contractors may support an inference of discriminatory exclusion.⁸² In other words, when the relevant statistical pool is used, a showing of gross statistical disparity alone "may constitute *prima facie* proof of a pattern or practice of discrimination."⁸³

⁷⁸ 214 F.3d 730 (6th Cir. 2000).

⁷⁹ *Croson*, 488 U.S. at 469. See also *Monterey Mechanical v. Pete Wilson*, 125 F.3d 702 (9th Cir. 1997). The Fifth Circuit Court in *W.H. Scott Construction Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (1999) found that the City's MBE program was unconstitutional for construction contracts because minority participation goals were arbitrarily set and not based on any objective data. Moreover, the Court noted that had the City implemented the recommendations from the disparity study it commissioned, the MBE program may have withstood judicial scrutiny (the City was not satisfied with the study and chose not to adopt its conclusions). "Had the City adopted particularized findings of discrimination within its various agencies and set participation goals for each accordingly, our outcome today might be different. Absent such evidence in the City's construction industry, however, the City lacks the factual predicates required under the Equal Protection Clause to support the Department's 15% DBE-participation goal."

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

⁸⁰ *Croson*, 488 U.S. at 509.

⁸¹ *Croson*, 488 U.S. at 506. As the Court said in *Croson*, "[t]he random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the city's purpose was not in fact to remedy past discrimination." See *North Shore Concrete and Assoc. v. City of New York*, 1998 U.S. Dist. LEXIS 6785 (EDNY 1998), which rejected the inclusion of Native Americans and Alaskan Natives in the City's program, citing *Croson*.

⁸² *Croson*, 488 U.S. at 509.

⁸³ *Id.* at 501 (citing *Hazelwood School District v. United States*, 433 U.S. 299, 307-08 (1977)).



The *Croson* Court made clear that both prime contract and subcontracting data were relevant. The Court observed that “[w]ithout any information on minority participation in subcontracting, it is quite simply impossible to evaluate overall minority representation in the city’s construction expenditures.”⁸⁴ Subcontracting data are also important means by which to assess suggested future remedial actions. Since the decision makers are different for the awarding of prime contracts and subcontracts, the remedies for discrimination identified at a prime contractor versus subcontractor level may also be different.

Second, “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”⁸⁵ Thus, if an entity has statistical evidence that non-minority contractors are systematically excluding minority businesses from subcontracting opportunities, it may act to end the discriminatory exclusion.⁸⁶ Once an inference of discriminatory exclusion arises, the entity may act to dismantle the closed business system.

In *Coral Construction v. King County*, the Ninth Circuit Court of Appeals further elaborated upon the type of evidence needed to establish the factual predicate that justifies a race-conscious remedy. The court held that both statistical and anecdotal evidence should be relied upon in establishing systemic discriminatory exclusion in the relevant marketplace as the factual predicate for an MBE program.⁸⁷ The court explained that statistical evidence, standing alone, often does not account for the complex factors and motivations guiding contracting decisions, many of which may be entirely race-neutral.⁸⁸

Likewise, anecdotal evidence, standing alone, is unlikely to establish a systemic pattern of discrimination.⁸⁹ Nonetheless, anecdotal evidence is important because the individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”⁹⁰

1. Geographic Market

Croson did not speak directly to how the geographic market is to be determined. In *Coral Construction*, the Court of Appeals held that “an MBE program must limit its geographical scope to the boundaries of the enacting jurisdiction.”⁹¹ Conversely, in *Concrete Works I* the Tenth Circuit

⁸⁴ *Croson*, 488 U.S. at 502-03.

⁸⁵ *Id.* at 509.

⁸⁶ *Id.*

⁸⁷ *Coral Construction Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991).

⁸⁸ *Id.*

⁸⁹ *Id.* at 919.

⁹⁰ *Id.* (quoting *International Brotherhood of Teamsters v. United States (Teamsters)*, 431 U.S. 324, 339 (1977)).

⁹¹ *Coral Construction*, 941 F.2d at 925.



Court of Appeals specifically approved the Denver MSA as the appropriate market area, since 80 percent of the construction contracts were let there.⁹²

Taken together, these cases support a definition of market area that is reasonable rather than dictated by a specific formula. *Croson* and its progeny did not provide a bright line rule for local market area, which determination should be fact-based. An entity may limit consideration of evidence of discrimination within its own jurisdiction.⁹³ Extra-jurisdictional evidence may be permitted when it is reasonably related to where the jurisdiction contracts.⁹⁴

2. Current Versus Historical Evidence

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

On the one hand, *Croson* requires that an MBE program be "narrowly tailored" to remedy current evidence of discrimination.⁹⁵ Thus, goals must be set according to the evidence of disparity found. For example, if there is a current disparity between the percentage of an entity's utilization of Hispanic construction contractors and the availability of Hispanic construction contractors in that entity's marketplace, then that entity can set a goal to bridge that disparity.

It is not mandatory to examine a long history of an entity's utilization to assess current evidence of discrimination. In fact, *Croson* indicates that it may be legally fatal to justify an MBE program based upon outdated evidence.⁹⁶ Therefore, the most recent two or three years of an entity's utilization data would suffice to determine whether a statistical disparity exists between current M/WBE utilization and availability.⁹⁷

Pre-program data regarding an entity's utilization of MBEs prior to enacting the MBE program may be relevant to assessing the need for the agency to keep such a program intact. A 1992 unpublished opinion by Judge Henderson of the U.S. District Court for the Northern District of

⁹² *Concrete Works of Colorado v. City and County of Denver*, 823 F.Supp. 821, 835-836 (D.Colo. 1993); rev'd on other grounds, 36 F.3d 1513 (10th Cir. 1994); 86 F. Supp. 2d 1042 (D. Colo. 2000) (*Concrete Works III*).

⁹³ *Cone Corporation V. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990); *Associated General Contractors v. Coalition for Economic Equity*, 950 F.2d 1401 (9th Cir. 1991).

⁹⁴ There is a related question of which firms can participate in a remedial program. In *Coral Construction*, the Court held that the definition of "minority business" used in King County's MBE program was over-inclusive. The Court reasoned that the definition was overbroad because it included businesses other than those who were discriminated against in the King County business community. The program would have allowed, for instance, participation by MBEs who had no prior contact with the County. Hence, location within the geographic area is not enough. An MBE had to have shown that it previously sought business, or is currently doing business, in the market area.

⁹⁵ See *Croson*, 488 U.S. at 509-10.

⁹⁶ See *Croson*, 488 U.S. at 499 (stating that "[i]t is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination").

⁹⁷ See *Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991) (*AGCC II*). (Consultant study looked at City's MBE utilization over a one-year period).

California, *RGW Construction v. San Francisco Bay Area Rapid Transit District (BART)*,⁹⁸ set forth the possible significance of statistical data during an entity’s “pre-program” years. Judge Henderson opined that statistics that provide data for a period when no M/WBE goals were operative are often the most relevant data in evaluating the need for remedial action by an entity. Indeed, “to the extent that the most recent data reflect the impact of operative DBE goals, then such data are not necessarily a reliable basis for concluding that remedial action is no longer warranted.”⁹⁹ Judge Henderson noted that this is particularly so given the fact that M/WBEs report that they are seldom or never used by a majority prime contractor without M/WBE goals, which suggests a possibly fruitful line of inquiry—an examination of whether different programmatic approaches in the same market area led to different outcomes in M/WBE participation. The Tenth Circuit came to the same conclusion in *Concrete Works II*: It is permissible for a study to examine programs where there were no goals.

Similarly, the Eleventh Circuit in *Dade County II* cautions that using post-enactment evidence (post-program data) may mask discrimination that might otherwise be occurring in the relevant market. Still, the court agreed with the district court that it was not enough to speculate on what MBE utilization would have been in the absence of the program.¹⁰⁰ Thus, an entity should look both at pre-program and post-program data in assessing whether discrimination exists currently and analyze whether it would exist in the absence of an M/WBE program.

3. Statistical Evidence

To determine whether statistical evidence is adequate to infer discrimination, courts have looked to the “disparity index,” which consists of the percentage of minority or women contractor participation in local contracts divided by the percentage of minority or women contractor availability or composition in the population of available firms in the local market area.¹⁰¹ Disparity indexes have been found highly probative evidence of discrimination where they ensure that the “relevant statistical pool” of minority or women contractors is being considered.

In *Philadelphia*, the Third Circuit Court of Appeals ruled that the “relevant statistical pool” includes those businesses that not only exist in the marketplace but that are qualified and interested in performing the public agency’s work. In that case, the Third Circuit rejected a statistical

⁹⁸ See November 25, 1992, Order by Judge Thelton Henderson (on file with Mason Tillman Associates).

⁹⁹ *Id.*

¹⁰⁰ *Dade County II*, at 912.

¹⁰¹ Although the disparity index is a common category of statistical evidence considered, other types of statistical evidence have been taken into account. In addition to looking at Dade County’s contracting and subcontracting statistics, the district court also considered marketplace data statistics (which looked at the relationship between the race, ethnicity, and gender of surveyed firm owners and the reported sales and receipts of those firms), the County’s Wainwright study (which compared construction business ownership rates of M/WBEs to those of non-M/WBEs and analyzed disparities in personal income between M/WBE and non-M/WBE business owners), and the County’s Brimmer Study (which focused only on Black-owned construction firms and looked at whether disparities existed when the sales and receipts of Black-owned construction firms in Dade County were compared with the sales and receipts of all Dade County construction firms).

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



disparity finding in which the pool of minority businesses used in comparing utilization to availability were those that were merely licensed to operate in the City of Philadelphia. Merely being licensed to do business with the City does not indicate either a willingness or capability to do work for the City. As such, the court concluded this statistical disparity did not satisfy *Croson*.¹⁰²

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

Second, M/WBE dollar participation can be compared to M/WBE availability. This comparison could show a disparity between the award of contracts by an entity in the relevant locality/market area to available majority contractors and the award of contracts to M/WBEs. Thus, in *AGCC II*, an independent consultant’s study compared the number of available MBE prime contractors in the construction industry in San Francisco with the amount of contract dollars awarded to San Francisco-based MBEs over a one-year period. The study found that available MBEs received far fewer construction contract dollars in proportion to their numbers than their available non-minority counterparts.¹⁰³

Whether a disparity index supports an inference that there is discrimination in the market depends not only on what is being compared, but also on whether any disparity is statistically significant. In *Croson*, Justice O’Connor opined, “[w]here the gross statistical disparities can be shown, they alone, in a proper case, may constitute a *prima facie* proof of a pattern or practice of discrimination.”¹⁰⁴

However, the Court has not assessed nor attempted to cast bright lines for determining if a disparity index is enough to support an inference of discrimination. Rather, the analysis of the disparity index and the finding of its significance are judged on a case-by-case basis.¹⁰⁵

Following the dictates of *Croson*, courts may carefully examine whether there are data that show that MBEs are ready, willing, and able to perform.¹⁰⁶ *Concrete Works I* made the same point:

¹⁰² *Philadelphia VI*, 91 F.3d 586, 586. The courts have not spoken to the non-M/WBE component of the disparity index. However, if only as a matter of logic, the “availability” of non-M/WBEs requires that their willingness to be government contractors be established. The same measures used to establish the interest of M/WBEs should be applied to non-M/WBEs.

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

¹⁰⁴ *Croson*, 488 U.S. at 501 (quoting *Hazelwood School District v. United States*, 433 U.S. 299, 307-308 (1977)).

¹⁰⁵ *Concrete Works*, 36 F.3d at 1522.

¹⁰⁶ The *Philadelphia* study was vulnerable on this issue.



Capacity—i.e., whether the firm is “able to perform”—is a ripe issue when a disparity study is examined on the merits:

[Plaintiff] has identified a legitimate factual dispute about the accuracy of Denver’s data and questioned whether Denver’s reliance on the percentage of MBEs and WBEs available in the marketplace overstates “the ability of MBEs or WBEs to conduct business relative to the industry as a whole because M/WBEs tend to be smaller and less experienced than non-minority owned firms.” In other words, a disparity index calculated on the basis of the absolute number of MBEs in the local market may show greater underutilization than does data that takes into consideration the size of MBEs and WBEs.¹⁰⁷

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

The Sixth Circuit Court of Appeals in *Drabik* concluded that for statistical evidence to meet the legal standard of *Croson*, it must consider the issue of capacity.¹⁰⁸ The State’s factual predicate study based its statistical evidence on the percentage of M/WBE businesses in the population.

The statistical evidence did not consider the number of minority businesses that were construction firms, let alone how many were qualified, willing, and able to perform state contracts.¹⁰⁹ The court reasoned as follows:

Even statistical comparisons that might be apparently more pertinent, such as with the percentage of all firms qualified in some minimal sense, to perform the work in question, would also fail to satisfy the Court’s criteria. If MBEs comprise 10% of the total number of contracting firms in the State, but only get 3% of the dollar value of certain contracts that does not alone show discrimination, or even disparity. It does not account for the relative size of the firms, either in terms of their ability to do particular work or in terms of the number of tasks they have resources to complete.¹¹⁰

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

¹⁰⁷ *Concrete Works*, 36 F.3d at 1528.

¹⁰⁸ See *Contractors of Ohio v. Drabik*, 214 F.3d 730 (6th Cir. 2000). The Court reviewed Ohio’s 1980, pre-*Croson*, program, which the Sixth Circuit found constitutional in *Ohio Contractors Ass’n v. Keip*, 1983 U.S. App. LEXIS 24185 (6th Cir. 1983), finding the program unconstitutional under *Croson*.

¹⁰⁹ *Drabik*, 214 F.3d at 730.

¹¹⁰ *Drabik*, 214 F.3d at 736.



The appellate opinions in *Philadelphia*¹¹¹ and *Dade County*¹¹² regarding disparity studies involving public sector contracting are particularly instructive in defining availability. First, in *Philadelphia*, the earlier of the two decisions, contractors' associations challenged a city ordinance that created set-asides for minority subcontractors on city public works contracts. Summary judgment was granted for the contractors.¹¹³ The Third Circuit upheld the third appeal, affirming that there was no firm basis in evidence for finding that race-based discrimination existed to justify a race-based program and that the program was not narrowly tailored to address past discrimination by the City.¹¹⁴

The Third Circuit reviewed the evidence of discrimination in prime contracting and stated that whether it is strong enough to infer discrimination is a "close call" which the court "chose not to make."¹¹⁵ It was unnecessary to make this determination because the court found that even if there was a strong basis in evidence for the program, a subcontracting program was not narrowly tailored to remedy prime contracting discrimination.

When the court looked at subcontracting, it found that a firm basis in evidence did not exist. The only subcontracting evidence presented was a review of a random 25 to 30 percent of project engineer logs on projects more than \$30,000. The consultant determined that no MBEs were used during the study period based on recollections regarding whether the owners of the utilized firms were MBEs. The court found this evidence insufficient as a basis for finding that prime contractors in the market were discriminating against subcontractors.¹¹⁶

The Third Circuit has recognized that consideration of qualifications can be approached at different levels of specificity, and the practicality of the approach also should be weighed. The Court of Appeals found that "[i]t would be highly impractical to review the hundreds of contracts awarded each year and compare them to each and every MBE" and that it was a "reasonable choice" under the circumstances to use a list of certified contractors as a source for available firms.¹¹⁷ Although, theoretically, it may have been possible to adopt a more refined approach, the court found that using the list of certified contractors was a rational approach to identifying qualified firms. Furthermore, the court discussed whether bidding was required in prime construction contracts as the measure of "willingness" and stated, "[p]ast discrimination in a marketplace may provide reason to believe the minorities who would otherwise be willing are discouraged from trying to secure work."¹¹⁸

¹¹¹ *Philadelphia IV*, 6 F.3d 990 (3rd Cir. 1993), on remand, 893 F. Supp. 419 (E.D. Penn. 1995), aff'd, 91 F.3d 586 (3rd Cir. 1996).

¹¹² *Dade County*, 122 F.3d 895 (11th Cir. 1997).

¹¹³ *Philadelphia*, 91 F.3d at 586.

¹¹⁴ *Id.* at 586.

¹¹⁵ *Id.* at 605.

¹¹⁶ Another problem with the program was that the 15 percent goal was not based on data indicating that minority businesses in the market area were available to perform 15 percent of the City's contracts. The court noted, however, that "we do not suggest that the percentage of the preferred group in the universe of qualified contractors is necessarily the ceiling for all set-asides." The court also found the program flawed because it did not provide sufficient waivers and exemptions, as well as consideration of race-neutral alternatives.

¹¹⁷ *Philadelphia*, 91 F.3d at 603.

¹¹⁸ *Id.*



In addition, the court found that a program certifying MBEs for federal construction projects was a satisfactory measure of capability of MBE firms.¹¹⁹ In order to qualify for certification, the federal certification program required firms to detail their bonding capacity, size of prior contracts, number of employees, financial integrity, and equipment owned. According to the court, “the process by which the firms were certified [suggests that] those firms were both qualified and willing to participate in public work projects.”¹²⁰ The court found certification to be an adequate process of identifying capable firms, recognizing that the process may even underestimate the availability of MBE firms.¹²¹ Therefore, the court was somewhat flexible in evaluating the appropriate method of determining the availability of MBE firms in the statistical analysis of a disparity.

In *Dade County*, the District Court held that the County had not shown the compelling interest required to institute a race-conscious program, because the statistically significant disparities upon which the County relied disappeared when the size of the M/WBEs was considered.¹²² The *Dade County* district court accepted the disparity study’s limiting of “available” prime construction contractors to those that had bid at least once in the study period. However, it must be noted that relying solely on bidders to identify available firms may have limitations. If the solicitation of bidders is biased, then the results of the bidding process will be biased.¹²³ In addition, a comprehensive count of bidders is dependent on the adequacy of the agency’s record keeping.¹²⁴

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

C. Anecdotal Evidence

In *Croson*, Justice O’Connor opined that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”¹²⁵ Anecdotal evidence should be gathered to determine if minority contractors are systematically being excluded from contracting

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Engineering Contractors Association of South Florida, Inc. et al. v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Florida 1996).

¹²³ Cf. *League of United Latin American Citizens v. Santa Ana*, 410 F.Supp. 873, 897 (C.D. Cal. 1976); *Reynolds v. Sheet Metal Workers, Local 102*, 498 F.Supp 952, 964 n. 12 (D. D.C. 1980), aff’d, 702 F.2d 221 (D.C. Cir. 1981) (Involving the analysis of available applicants in the employment context).

¹²⁴ Cf. *EEOC v. American Nat’l Bank*, 652 F.2d 1176, 1196-1197 (4th Cir.), cert. denied, 459 U.S. 923 (1981) (In the employment context, actual applicant flow data may be rejected where race coding is speculative or nonexistent).

¹²⁵ *Croson*, 488 U.S. at 509. The Court specifically cited to *Teamsters*, 431 U.S. at 338.



opportunities in the relevant market area. Remedial measures fall along a sliding scale determined by their intrusiveness on non-targeted groups. At one end of the spectrum are race-neutral measures and policies, such as outreach to the M/WBE community, which are accessible to all segments of the business community, regardless of race. They are not intrusive and, in fact, require no evidence of discrimination before implementation. Conversely, race-conscious measures, such as set-asides, fall at the other end of the spectrum and require a larger amount of evidence.¹²⁶

As discussed below, anecdotal evidence alone will not suffice to establish the requisite predicate for a race-conscious program. Its great value lies in pointing to remedies that are “narrowly tailored,” which is the second prong of a *Croson* study.

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

- M/WBEs denied contracts despite being the low bidders—*Philadelphia*¹²⁷
- Prime contractors showing MBE bids to non-minority subcontractors to find a non-minority firm to underbid the MBEs—*Cone Corporation v. Hillsborough County*¹²⁸
- M/WBEs’ inability to obtain contracts for private sector work—*Coral Construction*¹²⁹
- M/WBEs told that they were not qualified, although they were later found to be qualified when evaluated by outside parties—*AGCC*¹³⁰
- Attempts to circumvent M/WBE project goals—*Concrete Works I*¹³¹
- Harassment of M/WBEs by an entity’s personnel to discourage them from bidding on an entity’s contracts—*AGCC*¹³²

Courts must assess the extent to which relief measures disrupt settled “rights and expectations” when determining the appropriate corrective measures.¹³³ Presumably, courts would look more favorably upon anecdotal evidence, which supports a less intrusive program than a more intrusive one. For example, if anecdotal accounts related experiences of discrimination in obtaining bonds, they may be sufficient evidence to support a bonding program that assists M/WBEs. However,

¹²⁶ Cf. *AGCC II*, 950 F.2d at 1417-18 (In finding that an ordinance providing for bid preferences was narrowly tailored, the Ninth Circuit stated that the program encompassed the required flexibility and stated that “the burdens of the bid preferences on those not entitled to them appear relatively light and well distributed. In addition, in contrast to remedial measures struck down in other cases, those bidding have no settled expectation of receiving a contract. [Citations omitted.]”).

¹²⁷ *Philadelphia*, 6 F.3d at 1002.

¹²⁸ *Cone Corporation v. Hillsborough County*, 908 F.2d at 916 (11th Cir.1990).

¹²⁹ For instance, where a small percentage of an MBE or WBE’s business comes from private contracts and most of its business comes from race or gender-based set-asides, this would demonstrate exclusion in the private industry. *Coral Construction*, 941 F.2d 910 at 933 (WBE’s affidavit indicated that less than seven percent of the firm’s business came from private contracts and that most of its business resulted from gender-based set-asides).

¹³⁰ *AGCC II*, 950 F.2d at 1415.

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

¹³² *AGCC II*, 950 F.2d at 1415.

¹³³ *Wygant*, 476 U.S. at 283.



these accounts would not be evidence of a statistical availability that would justify a racially limited program such as a set-aside.

As noted above, in *Croson*, the Supreme Court found that the City of Richmond's MBE program was unconstitutional, because the City lacked proof that race-conscious remedies were justified. However, the Court opined that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”¹³⁴

In part, it was the absence of such evidence that proved lethal to the program. The Supreme Court stated that “[t]here was no direct evidence of race discrimination on the part of the City in letting contracts or any evidence that the City’s prime contractors had discriminated against minority-owned subcontractors.”¹³⁵

This was not the situation confronting the Ninth Circuit in *Coral Construction*. There, the 700-plus page appellate records contained the affidavits of “at least 57 minorities or women contractors, each of whom complain, in varying degrees of specificity, about discrimination within the local construction industry. These affidavits certainly suggest that ongoing discrimination may be occurring in much of the King County business community.”¹³⁶

Nonetheless, this anecdotal evidence, standing alone, was insufficient to justify King County’s MBE program since “[n]otably absent from the record, however, is *any* statistical data in support of the County’s MBE program.”¹³⁷ After noting the Supreme Court’s reliance on statistical data in Title VII employment discrimination cases and cautioning that statistical data must be carefully used, the Court elaborated on its mistrust of pure anecdotal evidence:

Unlike the cases resting exclusively upon statistical deviations to prove an equal protection violation, the record here contains a plethora of anecdotal evidence. However, anecdotal evidence, standing alone, suffers the same flaws as statistical evidence. Indeed, anecdotal evidence may even be less probative than statistical evidence in the context of proving discriminatory patterns or practices.¹³⁸

The Court concluded its discourse on the potency of anecdotal evidence in the absence of a statistical showing of disparity by observing that “rarely, if ever, can such evidence show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan.”¹³⁹

¹³⁴ *Croson*, 488 U.S. at 509, citing *Teamsters*, 431 U.S. at 338.

¹³⁵ *Croson*, 488 U.S. at 480.

¹³⁶ *Coral Construction*, 941 F.2d at 917-18.

¹³⁷ *Coral Construction*, 941 F.2d at 918 (emphasis added) (additional statistical evidence gathered after the program had been implemented was also considered by the court and the case was remanded to the lower court for an examination of the factual predicate).

¹³⁸ *Coral Construction*, 941 F.2d at 919.

¹³⁹ *Id.*



Two other circuit courts also suggested that anecdotal evidence might be dispositive, while rejecting it in the specific case before them. For example, in *Contractors Ass'n* the Third Circuit Court of Appeals noted that the Philadelphia City Council had “received testimony from at least fourteen minority contractors who recounted personal experiences with racial discrimination,” which the district court had “discounted” because it deemed this evidence to be “impermissible” for consideration under *Croson*.¹⁴⁰ The circuit court disapproved of the district court’s actions because, in its view, the court’s rejection of this evidence betrayed the court’s role in disposing of a motion for summary judgment.¹⁴¹ The circuit court stated:

Yet, [g]iven *Croson*’s emphasis on statistical evidence, even had the district court credited the City’s anecdotal evidence, we do not believe this amount of anecdotal evidence is sufficient to satisfy strict scrutiny [quoting *Coral, supra*]. Although anecdotal evidence alone may, in an exceptional case, be so dominant or pervasive that it passes muster under *Croson*, it is insufficient here.¹⁴²

The District of Columbia Circuit Court echoed the Ninth Circuit’s acknowledgment of the rare case in which anecdotal evidence is singularly potent in *O’Donnell Construction v. District of Columbia*.¹⁴³ The court found that, in the face of conflicting statistical evidence, the anecdotal evidence there was not sufficient:

It is true that in addition to statistical information, the Committee received testimony from several witnesses attesting to problems they faced as minority contractors. Much of the testimony related to bonding requirements and other structural impediments any firm would have to overcome, no matter what the race of its owners. The more specific testimony about discrimination by white firms could not in itself support an industry-wide remedy [quoting *Coral*]. Anecdotal evidence is most useful as a supplement to strong statistical evidence—which the Council did not produce in this case.¹⁴⁴

The Eleventh Circuit is also in accord. In applying the “clearly erroneous” standard to its review of the district court’s decision in *Dade County*, it commented that “[t]he picture painted by the anecdotal evidence is not a good one.”¹⁴⁵ However, it held that this was not the “exceptional case” where, unreinforced by statistics, the anecdotal evidence was enough.¹⁴⁶

¹⁴⁰ *Philadelphia*, 6 F.3d at 1002.

¹⁴¹ *Id.* at 1003.

¹⁴² *Philadelphia*, 6 F.3d at 1003.

¹⁴³ 963 F.2d at 427 (D.C. Cir.1992).

¹⁴⁴ *Id.*

¹⁴⁵ *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade County*, 943 F. Supp 1546 (S.D. Fla. 1996), aff'd, 122 F.3d 895 (11th Cir. 1997).

¹⁴⁶ *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade County*, 943 F.Supp. at 926.



In *Concrete Works I*, the Tenth Circuit Court of Appeals described the type of anecdotal evidence that is most compelling evidence within a statistical context. In approving of the anecdotal evidence marshaled by the City of Denver in the proceedings below, the court recognized that

[w]hile a fact finder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality’s institutional practices carries more weight due to the systemic impact that such institutional practices have on market conditions.¹⁴⁷

The court noted that the City had provided such systemic evidence.

The Ninth Circuit Court of Appeals has articulated what it deems to be permissible anecdotal evidence in *AGCC II*.¹⁴⁸ There, the court approved a “vast number of individual accounts of discrimination,” which included numerous reports of MBEs denied contracts despite being the low bidder; MBEs told they were not qualified, although they were later found qualified when evaluated by outside parties; MBEs refused work even after they were awarded the contracts as low bidder; and MBEs being harassed by city personnel to discourage them from bidding on city contracts. On appeal, the City points to numerous individual accounts of discrimination to substantiate its findings that discrimination exists in the City’s procurement processes; an “old boy’s network” still exists; and racial discrimination is still prevalent within the San Francisco construction industry.¹⁴⁹

Taken together, these statements constitute a taxonomy of appropriate anecdotal evidence. The cases suggest that, to be optimally persuasive, anecdotal evidence must satisfy six requirements.¹⁵⁰ These requirements are that the accounts:

¹⁴⁷ *Concrete Works I*, 36 F.3d at 1530.

¹⁴⁸ *AGCC II*, 950 F.2d at 1401.

¹⁴⁹ *AGCC II*, 950 F.2d at 1415.

¹⁵⁰ *Philadelphia*, 6 F.3d at 1003. The anecdotal evidence must be “dominant or pervasive.”



- Are gathered from minority contractors, preferably those that are “qualified.”¹⁵¹
- Concern specific, verifiable instances of discrimination.¹⁵²
- Involve the actions of governmental officials.¹⁵³
- Involve events within the relevant jurisdiction’s market area.¹⁵⁴
- Discuss the harm that the improper conduct has inflicted on the businesses in question.¹⁵⁵
- Collectively reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic.¹⁵⁶

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

Philadelphia makes clear that 14 anecdotal accounts will not suffice.¹⁵⁷ While the matter is not free of countervailing considerations, 57 accounts, many of which appeared to be of the type referenced above, were insufficient to justify the program in *Coral Construction*. The number of anecdotal accounts relied upon by the district court in approving Denver’s M/WBE program in *Concrete Works I* is unclear but, by one count, the number might have exceeded 139.¹⁵⁸ It is, of course, a matter of speculation as to how many of these accounts were indispensable to the court’s approval of the Denver M/WBE program.

V. Consideration of Race-Neutral Options

A remedial program must address the source of the disadvantage faced by minority businesses. If it is found that race discrimination places MBEs at a competitive disadvantage, an MBE program may seek to counteract the situation by providing MBEs with a counterbalancing advantage.¹⁵⁹ On

¹⁵¹ *Philadelphia*, 91 F.3d at 603.

¹⁵² *Coral Construction*, 941 F.2d at 917-18. But see *Concrete Works II*, 321 F.3d at 989. “There is no merit to [plaintiff’s] argument that the witnesses’ accounts must be verified to provide support for Denver’s burden.”

¹⁵³ *Croson*, 488 U.S. at 509.

¹⁵⁴ *Coral Construction*, 941 F.2d at 925.

¹⁵⁵ *O’Donnell*, 963 F.2d at 427.

¹⁵⁶ *Coral Construction*, 941 F.2d at 919.

¹⁵⁷ *Philadelphia*, 6 F.3d. at 1002-03.

¹⁵⁸ The Denver City Council enacted its M/WBE ordinance in 1990. The program was based on the results of public hearings held in 1983 and 1988 at which numerous people testified (approximately 21 people and at least 49 people, respectively), and on a disparity study performed in 1990. See *Concrete Works of Colorado v. Denver*, 823 F.Supp. 821, 833-34. The disparity study consultant examined all these preexisting data, presumably including the anecdotal accounts from the 1983 and 1988 public hearings, as well as the results of its own 69 interviews, in preparing its recommendations. *Id.* at 833-34. Thus, short of analyzing the record in the case, it is not possible to determine a minimum number of accounts because it is not possible to ascertain the number of consultant interviews and anecdotal accounts that are recycled statements or statements from the same people. Assuming no overlap in accounts, however, and also assuming that the disparity study relied on prior interviews in addition to its own, the number of M/WBEs interviewed in this case could be as high as 139, and, depending on the number of new people heard by the Denver Department of Public Works in March 1988 (see *id.* at 833), the number might have been even greater.

¹⁵⁹ *AGCC II*, 950 F.2d at 1404.



the other hand, an MBE program cannot stand if the sole barrier to minority or woman-owned business participation is a barrier that is faced by all new businesses, regardless of ownership.¹⁶⁰ If the evidence demonstrates that the sole barrier to M/WBE participation is that M/WBEs disproportionately lack capital or cannot meet bonding requirements, then only a race-neutral program of financing for all small firms would be justified.¹⁶¹ In other words, if the barriers to minority participation are race-neutral, then the program must be race-neutral or contain race-neutral aspects.

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

The Supreme Court has recently explained that although “narrow tailoring does not require exhaustion of every conceivable race-neutral alternative” it “does require serious, good faith consideration of workable race-neutral alternatives that will achieve... diversity[.]” *Gratz*, 123 S.Ct. at 2344, 2345. The County has failed to show the necessity for the relief it has chosen, and the efficacy of alternative remedies has not been sufficiently explored.¹⁶²

If the barriers appear race-related but are not systemic, then the remedy should be aimed at the specific arena in which exclusion or disparate impact has been found. If the evidence shows that, in addition to capital and bonding requirements, which are race-neutral, MBEs also face race discrimination in the awarding of contracts, then a race-conscious program will stand, as long as it also includes race-neutral measures to address the capital and bonding barriers.¹⁶³

The Ninth Circuit Court of Appeals in *Coral Construction* ruled that there is no requirement that an entity exhaust every possible race-neutral alternative.¹⁶⁴ Instead, an entity must make a serious, good faith consideration of race-neutral measures in enacting an MBE program. Thus, in assessing MBE utilization, it is imperative to examine barriers to MBE participation that go beyond “small business problems.” The impact on the distribution of contracts programs that have been implemented to improve MBE utilization should also be measured.¹⁶⁵

¹⁶⁰ *Croson*, 488 U.S. at 508.

¹⁶¹ *Id.* at 507.

¹⁶² *Hershell Gill*, 333 F.Supp. 2d 1305, 1330 (S.D.Fla. 2004) (quoting *Gratz v. Bollinger*, 123 S. Ct 2411 (2003)); *Grutter v. Bollinger*, 539 U.S. 306 (2003).

¹⁶³ *Hershell Gill*, 333 F.Supp. 2d at 1330 (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses).

¹⁶⁴ *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991).

¹⁶⁵ *Dade County*, 122 F.3d at 927. At the same time, the Eleventh Circuit’s caveat in *Dade County* should be kept in mind: “Supreme Court decisions teach that a race-conscious remedy is not merely one of many equally acceptable medications that a government may use to treat race-based problems. Instead, it is the strongest of medicines, with many potentially harmful side-effects, and must be reserved to those severe cases that are highly resistant to conventional treatment.” For additional guidance, see *supra* the discussion of narrow tailoring in *Concrete Works, Adarand, County of Cook, and City of Chicago*.



VI. *United States Court of Appeals for the Ninth Circuit*

The United States Court of Appeals for the Ninth Circuit defines the legal standards applied to public agencies implementing race-conscious affirmative action programs. Although the Ninth Circuit cases that adjudicate this issue apply to federally funded Disadvantaged Business Enterprise (DBE) programs, the Ninth Circuit's analysis is instructive on the methodology that will be accepted as the legal predicate for race-conscious programs in the jurisdiction.

There have since been several challenges to the DBE regulations. A major decision was adjudicated in the Ninth Circuit, and the decision acts as binding precedent for the City, particularly as it relates to federally funded grants. The relevant decisions are discussed herein.

A. Analysis of the Ninth Circuit Challenges

The landmark Ninth Circuit cases challenging the constitutionality of race-based elements of a DBE program, *Western States Paving Co. v. Washington State Department of Transportation*,¹⁶⁶ and *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation (AGC)* are discussed below.

1. Western States

Western States, decided in 2005, subjected the State of Washington's Department of Transportation DBE Program to a two-pronged analysis. One aspect of the analysis determined whether the USDOT DBE legislation was constitutional, and the other assessed whether the State of Washington's application of the DBE regulations was valid.

a. Facial Constitutional Challenge

In *Western States*, the plaintiff sought a declaratory judgment, arguing that the 1998 Transportation Equity Act for the 21st Century's (TEA-21) preference program was in violation of the equal protection provision under the Fifth and Fourteenth Amendments of the U.S. Constitution. As applied by the State of Washington, the TEA-21 DBE Program was claimed to be unconstitutional. In addressing *Western States*' facial challenge, the Court interpreted the issue as to whether the United States met its burden of demonstrating that the federal statute and regulations satisfied the strict scrutiny's exacting requirements.

According to *Croson*, the federal government has a compelling interest in ensuring that its funding is not distributed in a manner that perpetuates the effects of either public or private discrimination within the transportation contracting industry.¹⁶⁷ Thus, the Court evaluated the evidence that Congress considered in enacting the DBE statute to ensure it had a "strong basis in evidence for its conclusion that remedial action was necessary."¹⁶⁸ The Court concluded that a substantial body

¹⁶⁶ *Western States Paving Co., v. Washington State Department of Transportation*, 407 F.3d 983 (9th Cir. 2005).

¹⁶⁷ *Croson*, 488 U.S. 469, 492 (1982).

¹⁶⁸ *Id.* at 493.

of statistical and anecdotal evidence was considered by Congress at the time the law was enacted. Therefore, the Court found that Congress had a strong basis in evidence for concluding that, at least in some parts of the country, there was discrimination within the transportation contracting industry that hindered minorities' ability to compete for federally funded contracts.¹⁶⁹

Next, the Court considered whether the DBE regulation's racial classification was narrowly tailored as represented in the State of Washington's DBE goals. Citing *Croson*, *Western States* decided that a minority preference program must establish utilization goals that bear a close relationship to minority firms' availability in a particular market in order to be narrowly tailored.¹⁷⁰ The Court referenced *Sherbrooke Turf Inc. v. Minnesota Department of Transportation*, noting the Eighth Circuit holding that the DBE programs of the Minnesota and Nebraska Departments of Transportation independently satisfied the strict scrutiny's narrow tailoring requirement by relying on two disparity studies.¹⁷¹

The Minnesota Department of Transportation (MnDOT) offered statistical evidence of the highway contracting market in Minnesota. Following the goal setting methodology set forth in 49 CFR Section 26.45(c), MnDOT formulated a factual predicate that illustrated the DBE availability in MnDOT's relevant market area. Findings from the statistical analysis of business formation statistics were used to adjust the base figure upward based on the rationale that the number of participating minority-owned businesses would be higher in a race-neutral market.

MnDOT implemented good faith efforts to encourage prime contractors to meet the DBE goal. The availability of DBEs and the extent of subcontracting opportunities for each project were considered when setting the race-conscious portion of the overall DBE goal. The Eighth Circuit court agreed with the district court that MnDOT's revised DBE Program served a compelling government interest and was narrowly tailored on its face and as applied in Minnesota. Similarly, the Nebraska Department of Transportation (NDOT) also set an overall DBE goal pursuant to the DBE regulations for the Nebraska highway construction market. Like Minnesota, the Eighth Circuit found that NDOT's DBE Program was narrowly tailored. The Court notes that the DBE regulations did not establish a mandatory nationwide minority utilization goal in transportation contracting. The Court found that the ten percent DBE utilization goal in the regulation was only "aspirational" and that the regulation provides that each state must establish a DBE utilization goal based on the proportion of ready, willing, and able DBEs in its transportation contracting industry.¹⁷² Because the regulations require each state to set minority utilization goals that reflect the contractor availability in its own labor market, the Court found the DBE regulations to be narrowly tailored to remedy the effects of race- and sex-based discrimination within the transportation contracting industry. The Court ultimately held that it was satisfied that TEA-21's DBE program was narrowly tailored to remedy the effects of race- and sex-based discrimination

¹⁶⁹ *Western States Paving Co., v. Washington State Department of Transportation*, 407 F.3d at 983 (9th Cir. 2005).

¹⁷⁰ *Western States*, 407 F.3d at 983.

¹⁷¹ See generally *Gross Seed Co. v. Nebraska Department of Roads, et. al.*, 345 F.3d 964 (8th Cir. 2003); *Sherbrooke Turf Inc. v. Minnesota Department of Transportation*, 345 F.3d 964 (8th Cir. 2003).

¹⁷² *Western States*, 407 F.3d at 983.

within the transportation contracting industry, and thus *Western States*' facial challenge failed.

b. Application of the Narrowly Tailored Standard in Overall Goal Setting

The second prong of the Court's analysis considered whether the utilization goals established by the State of Washington "as applied" were unconstitutional, because there is no evidence of discrimination within the State's transportation industry. The State contended that its implementation of the DBE Program was constitutional, because it comported with the federal statute and regulations. The State also proffered that since the proportion of DBEs in the state was 11.17 percent and the percentage of contracting funds awarded to them on race-neutral contracts was only nine percent, discrimination was demonstrated.¹⁷³ The Court disagreed with the rationale. It found that this oversimplified statistical evidence is entitled to little weight, because it does not account for factors that may affect the relative capacity of DBEs to undertake contracting work. The Ninth Circuit opined that the only other circuit to consider an applied challenge to the federal DBE program was the Eighth Circuit in *Sherbrook*. In discussing the Eighth Circuit's opinion in *Sherbrook*, the Ninth Circuit reasoned that both Minnesota and Nebraska had hired outside consulting firms to conduct statistical analyses of the availability and capacity of DBEs in their local market. Accordingly, *Western States* concluded that the Eighth Circuit had relied on the statistical evidence in the studies to hold that the State's DBE program was narrowly tailored and satisfied strict scrutiny.

Citing *Croson*, the Court opined that recipients of federal funds could not use race-conscious methods to meet their DBE goals without a finding of discrimination. The Ninth Circuit also concluded that, in order to satisfy the narrowly tailored requirement, even when discrimination is present, the State may only implement a remedial race-conscious program, including those minority groups that have suffered discrimination. The Ninth Circuit found insufficient evidence, suggesting that minorities currently or previously suffered discrimination in the Washington transportation contracting industry. Further, the Court found that the State of Washington failed to provide evidence of discrimination within its own contracting market and thus failed to meet its burden of demonstrating that its DBE program was narrowly tailored to further Congress's compelling remedial interest.¹⁷⁴

The Court concluded that the District Court erred when it upheld the State's DBE program simply because the State complied with the federal program's requirement. Washington's DBE program was categorized as an "unconstitutional windfall to minority contractors solely on the basis of their race or sex."

In sum, *Western States* found that Washington's DBE program met the first prong of the test and was held facially constitutional, but it did not pass the second prong because the State's application of the DBE regulations was not narrowly tailored to a finding of statistically significant underutilization of the respective minority groups. Therefore, the State's application of the DBE

¹⁷³ *Western States Paving Co., v. Washington State Department of Transportation*, 407 F.3d at 983 (9th Cir. 2005).

¹⁷⁴ *Western States*, 407 F.3d at 983.



regulations was deemed unconstitutional.

c. Evidentiary Requirements for Overall Goal Setting

In response to *Western States*, the USDOT issued a Memorandum in 2005, recommending a disparity study that adheres to the evidentiary standards set forth in *Croson* as the appropriate method for USDOT recipients in the Ninth Circuit to formulate narrowly tailored DBE goals.¹⁷⁵

2. Associated General Contractors

Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation (AGC), filed in 2011 in the District Court, cited civil rights violations in the application of California Department of Transportation's (Caltrans) 2009 DBE Program.¹⁷⁶ AGC charged that the Equal Protection Clause, federal DBE program regulations, and the U.S. Constitution generally require that Caltrans' DBE Program be predicated on evidence showing intentional discrimination. AGC argued that the remedial scheme regarding various groups based on Caltrans' statistical evidence violates the nondiscrimination mandate of Title VI of the 1964 Civil Rights Act. Additionally, AGC argued that Caltrans, as a federal grantee, did not demonstrate that it would lose its federal funds if it did not implement the 2009 DBE program.

Specifically, AGC challenged the 2005 congressionally enacted “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” as applied by Caltrans. The Act requires that a minimum of ten percent of federal dollars be expended with disadvantaged business enterprises (DBEs).

AGC sought an injunction against Caltrans' DBE program, declaring the program unconstitutional. AGC asserted that Caltrans must identify intentional acts of discrimination and that failing to identify specific acts of intentional discrimination renders its program unconstitutional. The program was also attacked on the grounds that some of the categories included in the DBE goal did not include sufficient specific statistical evidence pertaining to minority women. The statistical evidence in the disparity study found disparities for minorities, but the findings were not broken down by gender.

To rebut AGC's claim, Caltrans argued that its program met the requirements set forth in *Western States*' two-prong test for narrow tailoring. The presence or absence of discrimination in the State's transportation contracting industry and the narrowly tailored remedy limited to minority groups that had suffered discrimination were the two prongs.

The court compared the probative evidence presented in *Western States* and AGC. It was determined that in *Western States* there was insufficient evidence of discrimination within the

¹⁷⁵ We note that the USDOT regulations, as demanded in 1992 recommends the use of a disparity study among other availability sources for setting the DBE goals.

¹⁷⁶ California Department of Transportation (Caltrans) in the matter, *Associated General Contractors of California, San Diego Chapter v. Caltrans* (2:09-CV-01622-JAM-GGH) March 23, 2011.

department's own contracting market. Thus, Washington failed to meet its burden of demonstrating that its DBE program was narrowly tailored to further Congress's compelling remedial interest. To calculate a disparity in *Western States*, the proportion of DBE firms in the state was compared with the percentage of contracts awarded to DBEs on race-neutral contracts. This methodology was found to be oversimplified by the Appellate Court. In contrast, the evidence Caltrans proffered was characterized by the District Court as extensive statistical and anecdotal evidence of discrimination in the California contracting industry.

On March 23, 2011, the District Court granted summary judgment in the *AGC* case in favor of Caltrans. The Court found that Caltrans met the standard set forth in *Croson* by identifying discrimination with "specificity," and showing a pattern of "deliberate exclusion."¹⁷⁷

AGC appealed the District Court's decision to the Ninth Circuit Court of Appeals. On April 16, 2013, Judge Jerome Harris delivered the opinion for the Ninth Circuit, dismissed *AGC*'s appeal, and upheld Caltrans' DBE Program, ruling that it survived the strict scrutiny standard.¹⁷⁸ Judge Harris opined that Caltrans presented sufficient evidence of discrimination in the California transportation contracting industry, and that the DBE Program was narrowly tailored to remedy the identified discrimination.¹⁷⁹ The Ninth Circuit dismissed the appeal for lack of standing, and held that *AGC* did not establish that any of its members had suffered or will suffer harm as a result of Caltrans' program.¹⁸⁰

VII. Title VI

Title VI of the 1964 Civil Rights Act, 42 U.S.C. Section 2000(d), provides in the relevant section that "[n]o person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial aid."¹⁸¹ Federal financial assistance to any program effectuates the provisions of Title VI to any program receiving financial assistance. The Secretary of Transportation has issued regulations forbidding discrimination in federally funded projects and requiring affirmative action in certain circumstances.¹⁸²

The City of Oakland received Federal financial assistance from 13 federal spending sources and 442 federally assisted contracts awarded during the study period July 1, 2016, to June 30, 2021. To state a claim for damages under Title VI, a plaintiff must allege that (1) the entity is engaging in intentional racial discrimination; and (2) the entity is receiving federal assistance.¹⁸³ A Plaintiff

¹⁷⁷ *Croson*, 488 U.S. at 509.

¹⁷⁸ *AGC II*, 713 F.3d at 1200.

¹⁷⁹ *Id.*

¹⁸⁰ *Associated General Contractors of California, San Diego Chapter v. Caltrans*, Case No. 11-16228 (9th Cir. April 16, 2013).

¹⁸¹ Title VI of the 1964 Civil Rights Act of 1964, 42 U.S.C. 2000(d).

¹⁸² *Coral Construction Inc. v. City and County of San Francisco, et. al.*, 50 Cal.4th 315 (2010).

¹⁸³ *Denard M. Fobbs v. Holy Cross Health Systems*, 29 F.3d 1439, 1447 (9th Cir. 1994).



may allege intentional claim of discrimination under Title VI if the Plaintiff can show that the actions of the Defendant had a discriminatory impact and that the defendant act with an intent or purpose to discriminate against an individual in the protected class.¹⁸⁴ A finder of fact should consider all of the evidence and look to the “totality of the relevant facts” to determine whether the governmental entity defendant has engaged in intentional discrimination.¹⁸⁵

The Title VI caselaw also recognizes that a governmental entity’s race neutral practices may have a disparate impact upon a protected class. The federal case-law guidance provides that a plaintiff may establish a *prima facie* case if the defendant’s facially neutral practice causes a disproportionate adverse impact on a protected class. A defendant may rebut this inference by justifying the challenged practice. If the defendant can justify the challenged practice, the plaintiff may still prevail by establishing a less discriminatory alternative.¹⁸⁶

VIII. Section 31 of the California Constitution

California Constitution, Section 31, is a constitutional amendment that precludes discrimination and the use of preferences based on race, sex, color, ethnicity, or national origin in the award of public contracts.¹⁸⁷ Although the amendment allows for the affirmative action requirements of a federal grant, the question of the appropriate application of a DBE program by a USDOT grantee in California has not been reviewed by the Ninth Circuit. The question of the appropriate application of the DBE program by a USDOT grantee in California was reviewed by the Ninth Circuit in *AGC*, and the court determined that Caltrans was required to comply with the DBE regulations.¹⁸⁸

The U.S. Constitution requires governmental agencies to treat all individuals and groups equally in the operation of public employment, public education, and public contracting. Section 31 does state that “if any parts are found to conflict with federal law or the U.S. Constitution, the section shall be implemented to the maximum extent that federal law and the U.S. Constitution permit.”

The leading California cases concerning Section 31 are *Hi-Voltage v. City of San Jose*,¹⁸⁹ *Ward Connerly v. State Personnel Board and Coral Construction, Inc. v. City and County of San Francisco et al.*¹⁹⁰ In *Hi-Voltage*, the California Supreme Court held that Section 31 prohibited the City of San Jose from requiring construction contractors to document their efforts to solicit M/WBEs as subcontractors. The court noted two fatal flaws: (1) Contractors were required to request bids from

¹⁸⁴ *Darensburg v. Metropolitan Transportation Commission*, 636 F.3d 511, 522 (9th Cir. 2011).

¹⁸⁵ *Jun Yu v. Idaho State University*, 15 F.4th 1236, 1242 (9th Cir. 2021).

¹⁸⁶ *Id.* at 519.

¹⁸⁷ Proposition 16, a California ballot proposition sought to amend the California Constitution to repeal Section 31, formerly Proposition 209. On November 3, 2020, California voters rejected Proposition 16 and it failed to pass.

¹⁸⁸ *AGC II*, 713 F.3d at 1200.

¹⁸⁹ 24 Cal. 4th 537 (Cal. 2000).

¹⁹⁰ 92 Cal. App. 4th 16 (Cal. 2001).



at least four M/WBEs, which the court considered a preference in favor of M/WBEs and (2) the program also failed because the extent to which M/WBEs were chosen would be measured against the City's statistical expectation.

Ward Connerly, a subsequent appellate court opinion, determined that Section 31 applied to the five California statutory programs before that court.¹⁹¹ However, neither *Hi-Voltage* nor *Ward Connerly* speak directly to what would happen should the findings of the local government's disparity study point to discrimination and implementation of a race-conscious remedy.

Hi-Voltage addressed the impact of Section 31 on a targeted outreach program by the City of San Jose. The California Supreme Court wrote:

...if it were determined the City had violated federal constitutional or statutory law, the supremacy clause as well as the express terms of Proposition 209 would dictate federal law prevails...¹⁹²

Crucially, it went on:

The disparity study is not part of the record in this case. Without it, the court has no basis for measuring the fit between the Program and the goal of eliminating a disparity in the amount of contract dollars awarded MBEs in comparison to non-MBEs.¹⁹³

The Supreme Court offered no guidance, however, upon the perimeters of Section 31 and whether the inclusion of a disparity study in this case may have permitted a race-conscious remedy.

In *Coral Construction v. San Francisco*,¹⁹⁴ the California Superior Court determined that Proposition 209 barred San Francisco's race-conscious program.¹⁹⁵ On April 18, 2007, the First District Court of Appeals affirmed that judgment but remanded the case for a determination of whether the defendant's evidence met the majority opinion's test that the discrimination was intentional.¹⁹⁶

In a subsequent appeal following remand, the California Supreme Court weighed in on Article I, section 31 of the California Constitution in *Coral Construction, Inc. v. City and County of San Francisco et al.*¹⁹⁷ The Supreme Court considered a challenge to the City and County of San

¹⁹¹ State Lottery, Professional Bond Services, State Civil Service, Community Colleges, State Contracting (reporting requirements).

¹⁹² *Hi-Voltage*, 24 Cal. 4th 537 at 569.

¹⁹³ *Id.*

¹⁹⁴ *Coral Construction, Inc. v. City & County of San Francisco*, See 116 Cal. App. 4th 6 (2004).

¹⁹⁵ Coral Construction also challenged the procedural propriety of the court granting plaintiff summary judgment because the factual record did not support one.

¹⁹⁶ 149 Cal.App.4th 1218 (2007).

¹⁹⁷ *Coral Construction Inc. v. City and County of San Francisco, et. al.*, 50 Cal.4th 315 (2010).



Francisco (“City”) M/WBE program. The Supreme Court interpreted section 31 to prohibit race and gender conscious programs permitted, but not required, by the federal equal protection clause. Citing *Hi-Voltage*, the Supreme Court wrote that “section 31 categorically prohibits discrimination and preferential treatment.”¹⁹⁸ Further, the Supreme Court wrote that the literal language of section 31 “admits no compelling interest exception. [and] we find nothing to suggest the voters intended to include one sub silentio.”¹⁹⁹ The California Supreme Court rejected the City’s argument that section 31 violates the political structure doctrine relying upon the reasoning in the Ninth Circuit’s decision in *Wilson*. The Supreme Court, however, recognized that there may be rare circumstances in which racial preferences are required by the Fourteenth Amendment’s equal protection clause. The Supreme Court opined:

Accordingly, even in the rare case in which racial preferences are required by equal protection as a remedy for discrimination, the government body adopting such remedies must undertake an extraordinary burden of justification to assure all citizens that the deviation from the norm of equal treatment of all racial and ethnic groups is a temporary measure, a measure taken in the service of the goal of equality itself.²⁰⁰

The California Supreme Court also rejected the City’s argument that the federal funding exception compelled the adoption of race conscious measures. The *Coral* Court concluded federal regulations permits not requires the use of race conscious measures if not prohibited by other law.²⁰¹ Finally, the California Supreme Court also considered the City’s argument in *Coral Construction* that the Fourteenth Amendment’s equal protection clause mandates that the City adopt an M/WBE program as a remedy for its’ own discrimination. The Supreme Court reasoned that the federal compulsion argument is largely a factual dispute and hinges upon the Board’s decision to adopt race conscious legislation and remanded the matter back to the trial court for further proceedings.²⁰²

In remanding the case to the trial court, the California Supreme Court provided guidance in reviewing the summary judgment evidence. To defeat the Plaintiff’s motion for summary judgment the City must establish triable issues of fact for the federal compulsion claim. The City must show the following:

- The City has purposely or intentionally discriminated against MBEs and WBEs.
- The purpose of the City’s 2003 Ordinance is to provide a remedy for such discrimination.
- The Ordinance is narrowly tailored to achieve that purpose.

¹⁹⁸ *Id.* at 327.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 332.

²⁰¹ *Id.* at 335.

²⁰² *Id.* at 336. See also *Hi-Voltage Wire Works Inc. v. City of San Jose*, 24 Cal.4th 537 (2000) (The California Supreme Court held that the governmental entity may adopt race conscious remedies as a remedy for that entity’s intentional discrimination).



- A race and gender conscious remedy is necessary as the only, or at least the most likely means of rectifying the resulting injury.²⁰³

The application of Title VI to the Sacramento Municipal Utility District was also raised in *C&C Construction v. Sacramento Municipal Utility District (SMUD)*.²⁰⁴ The majority Court of Appeals opinion began with the point that race-neutral programs are the only ones Proposition 209 permits in California, but also acknowledged that its provisions were subject to federal law. It viewed the regulations of the U.S. Departments of Energy, Defense, and Transportation as not *requiring* recipients of federal funds to use race-conscious remedial programs for identified discrimination. Moreover, its reading of the regulations themselves was that SMUD's actions had to be consistent with Proposition 209.²⁰⁵ Also, both SMUD's 1993 disparity study and its 1998 update found *Croson*-level discrimination against MBEs, but they did not look at whether race-neutral remedies would suffice to meet its federal nondiscrimination obligations.²⁰⁶ Indeed, the majority observed that the disparity study update was specifically instructed not to consider this factor. Finally, the Court found that SMUD, under its reading of the federal regulations, had a burden to show that it would *lose* funds if it did not put in place the race-conscious program. Citing *S.J. Groves & Sons v. Fulton County*,²⁰⁷ the dissent's view of the regulations was that, properly read, a race-conscious program is not an *option* where a race-neutral one will suffice. The required "affirmative action" did not refer only to race-neutral programs; it also included race-conscious programs.²⁰⁸ The Department Secretary determined SMUD's compliance with the federal regulations. What the majority did in affirming the trial court decision to enjoin the use of race interfered with that authority and SMUD's obligation to comply with the regulations.

As such, SMUD violated the Supremacy Clause. However, the majority held that a cogent argument was raised too late to be considered during the appeal. The dissent summarized its position as follows:

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

²⁰³ *Id.* at 337 -338. The Trial Court on remand dismissed the litigation as moot and the decision was affirmed by the Court of Appeals for the California First Appellate District Division Four.

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

²⁰⁵ SMUD offers no argument or authority that the Department of Energy requires race-based discrimination [a violation of Proposition 209], either in general or specifically, in SMUD's case, as an "appropriate remedial step." It would appear that the Department of Energy, by using the general term "'appropriate,' meant for the funding recipient to consider the state laws and regulations relevant to that recipient when determining what action to take. In SMUD's case, such consideration includes the limitations of [Proposition 209]." The opinion interpreted the Department of Transportation's regulations as also not *requiring* race conscious responses.

²⁰⁶ By implication, we note if SMUD had, it could have move to a race-conscious program.

²⁰⁷ 920 F.2d 752 (11th Cir. 1991).

²⁰⁸ The applicable regulation "condone[s], and in some cases *require[s]*, race-conscious regulations and/or action." (*italics added*), *S.J. Groves*, 920 F.2d at 764-765.



conscious remedial plan to eliminate the effects of its own discriminatory practices.²⁰⁹

Finally, in *Coalition for Economic Equity v. Pete Wilson et. Al.*,²¹⁰ the Ninth Circuit Court of Appeals also considered a challenge to Proposition 209. Following the adoption of Proposition 209, a challenge was initiated in federal court seeking to enjoin the implementation of Proposition 209. The Plaintiffs, a coalition of individuals and civil rights organizations filed suit alleging that Proposition 209 violated the equal protection clause of the Fourteenth Amendment and that the proposition is void under the Supremacy Clause because it conflicts with several federal statutes. The lower court granted a preliminary injunction enjoining the State of California from implementing or enforcing Proposition 209 in public employment, public education or contracting.²¹¹

The *Wilson* Court vacated the preliminary injunction and remanded the case to the lower court. In reaching this decision, the Ninth Circuit concluded that “as a matter of conventional equal protection analysis, there is simply no doubt that Proposition 209 is constitutional.”²¹² The Court for the Ninth Circuit rejected the argument that Proposition 209 violated the political structure doctrine, equal protection clause or was preempted by the Civil Rights Act of 1964.²¹³

IX. Conclusion

The decisions of the United States Supreme Court in *Croson* and *Adarand* changed the legal landscape for business affirmative action programs. These United States Supreme Court decisions imposed the highest legal standard on the government’s use of local and federal funds to institute remedial race-conscious public contracting programs.

This chapter has examined what *Croson*, and its progeny require for a local government to institute a constitutional race or gender-conscious public contracting program. In addition to the rigorous standard of review required under *Croson*, the California constitution also places restrictions on the use of race and gender in public contracting. Article 1, Section 31 of the California constitution prohibits discrimination or preferential treatment on the basis of race and gender in public contracting. Although Section 31 prohibits race and gender conscious measures, the California Supreme Court²¹⁴ acknowledged that the federal equal protection clause may, under rare circumstances, compel the use of race and gender conscious measures to remedy a public entities intentional discrimination.

²⁰⁹ 122 Cal. App. 4th 284 at 324.

²¹⁰ *Coalition for Economic Equity v. Pete Wilson, et al*, 122 F.3d 692 (9th Cir. 1997).

²¹¹ *Id.* at 697.

²¹² *Id.* at 701.

²¹³ *Id.* at 710. The Ninth Circuit Court of Appeals held that Proposition 209 is not preempted by the preemption provisions of Title VII or Title IX.

²¹⁴ *Hi-Voltage*, 24 Cal. 4th at 675.



In assessing the probative value of a disparity study, the Supreme Court stated, at best, the disparity study creates an inference of discrimination against M/WBE subcontractors by prime contractors but does not establish intentional acts by the City.²¹⁵ The California Supreme Court, however, concurs that any race conscious measure, even remedial laws must survive strict scrutiny. Further, the California Supreme Court agrees that in rare circumstances providing a remedy for the government's own discriminatory conduct may be appropriate. Under these circumstances the federal equal protection clause, notwithstanding Section 31 of the State constitution, may compel the use of race and gender conscious measures as a remedy for the City's own discrimination. If the City has intentionally discriminated against minority and women owned businesses, it may fashion a remedy utilizing race and gender conscious measures.

The Supreme Court in *Harvard* did not overrule the precedent established by *Croson* or *Adarand* and it is far too early to determine the legal impact of the *Harvard* case on public contracting. There is no doubt that the *Harvard* decision, however, will trigger additional challenges to public contracting affirmative action programs. Future federal cases and decisions applying the *Harvard* decision to race conscious affirmative action in public contracting will provide the road map by which to judge race and ethnicity-based classifications. The Court's disposition of these cases as they develop will provide guidance on the evidence required to establish if "extraordinary circumstances"²¹⁶ exist that justify the use of race conscious measures. Relying on the language in *Harvard*, litigation has already been filed in the Eastern District of Kentucky challenging the Disadvantaged Business Enterprise Program and other challenges have also been asserted against private sector Diversity Equity and Inclusion programs.²¹⁷

This study will examine the City's contracting process to determine if there is a strong basis in evidence to conclude the City has intentionally engaged in discriminatory conduct. In the event the findings document intentional discrimination and meet the strict scrutiny standard, race and gender conscious measures are the only or most likely means of addressing the injury, race and gender conscious measures may be appropriate under both federal and state law.



²¹⁵ *Id.* at 675-676. The California Supreme Court stated in *Hi-Voltage* that the disparity study was not part of the record, and the Court made no comment on the impact of the disparity study on the analysis. *Id.* at 676.

²¹⁶ 143 S. Ct at 2162.

²¹⁷ *Mid-America Milling Company, LLC et al. v. U.S. Department of Transportation, et al.*, Case No. 23-CV. 00072, filed October 26, 2023.

X. List of Authorities

A. Cases

Cases	Pages
<i>Adarand Constructors, Inc. v. Federico Peña</i> , 115 S.Ct. 2097 (1995)	1, 36, 37
<i>Adarand Constructors, Inc. v. Slater</i> , 228 F.3d 1147 (10th Cir. 2000)	9
<i>Associated Gen. Contractors of Cal., San Diego Chapter v. Caltrans</i> , Case No. 11-16228 (9th Cir. April 16, 2013)	31
<i>Associated Gen. Contractors of Cal., San Diego Chapter v. Caltrans</i> , 2:09-CV-01622-JAM-GGH (March 23, 2011)	30, 31
<i>Associated Gen. Contractors v. Coal. for Econ. Equity (“AGCC I”)</i> , 950 F.2d 1401 (9th Cir. 1991)	<i>passim</i>
<i>Associated Gen. Contractors of Ohio, Inc. v. Drabik</i> , 214 F.3d 730 (6th Cir. 2000)	13, 18
<i>Associated Gen. Contractors v. New Haven</i> , 791 F. Supp. 941 (D. Conn. 1992)	7
<i>Builders Ass’n of Greater Chi. v. City of Chi.</i> , 298 F. Supp. 2d 725 (N.D. Ill. 2003)	12
<i>C & C Construction v. Sacramento Municipal Utility District (SMUD)</i> , 122 Cal. App. 4th 284 (Cal. App. 2004)	35
<i>City of Richmond v. J.A. Croson Co.</i> , 488 U.S. 469 (1989)	<i>passim</i>
<i>Coalition for Economic Equity v. Pete Wilson, et al</i> , 122 F.3d 692 (9 th Cir. 1997)	2, 35
M T A	
<i>Concrete Works of Colo., Inc. v. City & Cnty. of Denver (“Concrete Works I”)</i> , 823 F. Supp. 821 (D. Colo. 1993)	<i>passim</i>
<i>Concrete Works of Colo., Inc. v. City & Cnty. of Denver (“Concrete Works II”)</i> , 36 F.3d 1513 (10th Cir. 1994)	9, 16, 25

<i>Concrete Works of Colo., Inc. v. City & Cnty. of Denver</i> (“Concrete Works III”), 86 F. Supp. 2d 1042 (D. Colo. 2000)	15
<i>Concrete Works of Colo., Inc. v. City & Cnty. of Denver</i> (“Concrete Works IV”), 321 F.3d 950 (10th Cir. 2003)	9, 11
<i>Cone Corp. v. Hillsborough Cnty.</i> , 908 F.2d 908 (11th Cir. 1990)	15, 21
<i>Contractors Ass’n of E. Pa. v. City of Philadelphia</i> (“Philadelphia IV”), 6 F.3d 990 (3d Cir. 1993)	5, 6, 7, 19
<i>Contractors Ass’n of E. Pa. v. City of Philadelphia</i> (“Philadelphia V”), 893 F. Supp. 419 (E.D. Pa. 1995)	8
<i>Contractors Ass’n of E. Pa v. City of Philadelphia</i> (“Philadelphia VI”), 91 F.3d 586 (3rd Cir. 1996)	<i>passim</i>
<i>Coral Constr. Co. v. King County</i> , 941 F.2d 910 (9th Cir. 1991)	<i>passim</i>
<i>Coral Constr. Inc. v. City and Cnty of San-Francisco, et. al.</i> , 50 Cal.4 th 315 (2010)	1, 31, 33
<i>Darensburg v. Metropolitan Transportation Commission</i> , 636 F.3d 511, 522 (9 th Cir. 2011)	32
<i>Denard M. Fobbs v. Holy Cross Health Systems</i> , 29 F.3d 1439, 1447 (9 th Cir. 1994)	31
<i>EEOC v. Am. Nat'l Bank</i> , 652 F.2d 1176 (4th Cir. 1981)	20
<i>Eng’g Contractors Ass’n v. Metro. Dade Cnty.</i> (“Dade County I”), 943 F.Supp. 1546 (S.D. Florida 1996)	<i>passim</i>
<i>Eng’g Contractors Ass’n v. Metro. Dade Cnty.</i> (“Dade County II”), 122 F.3d 895 (11th Cir. 1997)	<i>passim</i>
<i>Gratz v. Bollinger</i> , 123 S. Ct. 2411 (2003)	12, 26
<i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003)	26



<i>Gross Seed Co. v. Nebraska Department of Roads, et. al.,</i> 345 F.3d 964 (8th Cir. 2003)	28
<i>Hazelwood Sch. Dist. v. United States,</i> 433 U.S. 299 (1977)	13, 17
<i>H.B. Rowe Co. v. Tippett,</i> 615 F.3d 233 (4th Cir. 2010)	5
<i>Hershell Gill Consulting Eng'rs, Inc. v. Miami-Dade Cnty.,</i> 333 F. Supp. 2d 1305 (S.D. Fla. 2004)	26
<i>Hi-Voltage Wire Works Inc. v. City of San Jose,</i> 24 Cal.4 th 537 (2000)	32, 33, 34, 37
<i>Int'l Bhd. of Teamsters v. United States,</i> 431 U.S. 324 (1977)	14, 21, 22
<i>Jun Yu v. Idaho State University,</i> 15 F.4th 1236, 1242 (9th Cir. 2021)	32
<i>League of United Latin Am. Citizens v. Santa Ana,</i> 410 F. Supp. 873 (C.D. Cal. 1976)	20
<i>Monterey Mech. Co. v. Pete Wilson et al.,</i> 125 F.3d 702 (9th Cir. 1997)	13
<i>O'Donnell Constr. Co. v. D.C.,</i> 963 F.2d 420 (D.C. Cir. 1992)	23
<i>Ohio Contractors Ass'n v. Keip,</i> 1983 U.S. App. LEXIS 24185 (6th Cir. 1983)	18
<i>Reynolds v. Sheet Metal Workers, Local 102,</i> 498 F. Supp. 952 (D.C. Cir. 1980)	20
<i>RGW Construction v. San Francisco Bay Area Rapid Transit District,</i> No. C92-2938 THE (N.D. Cal. Sept. 18, 1992)	16
<i>Shaw v. Hunt,</i> 517 U.S. 899 (1996)	11, 12
<i>Sherbrooke Turf Inc. v. Minnesota Department of Transportation,</i> 345 F.3d 964 (8th Cir. 2003)	28



<i>Students for Fair Admissions, Inc. (“SFFA”) v. President and Fellows of Harvard College and University of North Carolina et. al. (Harvard),</i> 143 S.Ct. 2141 (2023)	<i>passim</i>
<i>W.H. Scott Constr. Co. v. City of Jackson,</i> 199 F.3d 206 (5th Cir. 1999)	13
<i>Western States Paving Co. v. State of Washington Dept. of Transportation,</i> 407 F.3d 983 (9th Cir. 2005)	<i>passim</i>
<i>Wygant v. Jackson Bd. of Educ.,</i> 476 U.S. 267 (1986)	7, 8, 10, 21



B. Statutes

42 U.S.C. Section 2000d et seq.

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

49 CFR Part 26.

Cal. Const., Article I, Section 31.

Cal. Public Contracting Code, Section 2002.





MASON TILLMAN
ASSOCIATES, LTD

www.masontillman.com