



BEXAR COUNTY

Disparity and Availability Study

2

VOLUME

DISPARITY STUDY REPORT

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CHAPTER 1: LEGAL ANALYSIS

I. INTRODUCTION

This chapter discusses the current state of the federal law applicable to local governments' affirmative action contracting programs. Once a disparity study is completed, a jurisdiction can put in place a race-based contracting program only if there is a finding of identified discrimination and the programmatic response is narrowly tailored. The Texas local government code and County policy regulating the procurement process are also discussed.

The standard by which federal courts will review Minority Business Enterprise programs is articulated by the U. S. Supreme Court decisions. One is the *Croson*¹ and the other is *Adarand Construction, Inc. v. Peña*² (*Adarand*). In those decisions, the Court announced that the constitutionality of affirmative action programs that employ racial classifications would be subject to "strict scrutiny." Broad notions of equity or general allegations of historical and societal discrimination against minorities are insufficient to meet the requirements of the Equal Protection Clause of the U.S. Constitution. Instead, governments may adopt race-conscious programs only as a narrowly tailored remedy for identified discrimination found in a disparity study, and this remedy must impose a minimal burden upon unprotected classes. *Croson* established strict scrutiny as the legal standard that must be met in establishing a local Minority Business Enterprise Program that is constitutionally sound. *Adarand*, which followed *Croson* in 1995, applied the strict scrutiny standard to federal programs. The U.S. Department of Transportation (USDOT) amended its regulations to focus on outreach to Disadvantaged Business Enterprises (DBEs). Although the U.S. Supreme Court heard argument in *Adarand* during the October 2001 term, it subsequently decided that it had improvidently granted *certiorari*.

A caveat is appropriate here. The review under strict scrutiny is fact-specific. In addition to the U.S. Supreme Court cases, there are four post-*Croson* federal Court of Appeals opinions which provide guidelines for the evidence a disparity study has to adduce if race-conscious remedies are put in place. The Third, Eleventh, and Tenth Circuits assessed the disparity studies on their merits instead of disposing of the cases on procedural issues.³ The Fifth Circuit, which also includes Texas, also has applied the

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

² *Adarand Constructors, Inc. v. Peña*, 2097 (1995).

³ *Contractors Ass'n of E. Pa. v. City of Phila.*, 6 F.3d 990 (3d Cir. 1993), on remand, 893 F. Supp. 419 (E.D. Pa. 1995), aff'd, 9F.3d 586 (3d Cir. 1996); *Eng'g Contractors of S. Fla. v. Metro. Dade County*, 943 F. Supp. 1546 (S.D. Fla. 1996), aff'd, 122 F.



Croson evidentiary standard in cases involving race. Thus a review of the relevant cases in the Fifth Circuit is also discussed below in Section IV.

II. STANDARDS OF REVIEW

The standard of review represents the measure by which a court evaluates a particular legal issue. This section discusses the standard of review that the U. S. Supreme Court set for race-conscious state and local programs in *Croson*, women-owned businesses, and federal programs in *Adarand*. It also discusses lower courts' interpretations of these two U. S. Supreme Court cases and evaluates the implications for program designs that arise from these decisions. It concludes with the standard of review for local business programs that are not race- or gender-conscious.

A. Race-Conscious Programs

An understanding of *Croson*, which applies to state and local governments, is necessary in developing sound state and locally funded Minority-Owned Business Enterprise (MBE) and Woman-Owned Business Enterprise (WBE) programs. In *Croson*, the U. S. Supreme Court affirmed that, pursuant to the Fourteenth Amendment, the proper standard of review for state and local MBE programs, which are necessarily race-based programs, is strict scrutiny.⁴ Specifically, the government must show that the classification is narrowly tailored to achieve a compelling state interest.⁵ The Court recognized that a state or local entity may take action, in the form of an MBE program, to rectify the effects of *identified, systemic racial discrimination* within its jurisdiction.⁶ Justice O'Connor, speaking for the majority, articulated various methods of demonstrating discrimination and set forth guidelines for crafting MBE programs so that they are "narrowly tailored" to address systemic racial discrimination.⁷ The specific evidentiary requirements are detailed in Section IV.

3d 895(11th Cir. 1997); *Concrete Works of Colo. v. City & County of Denver*, 823 F. Supp 821 (D. Colo. 1993), *rev'd* 36 F.3d 1513 (10th Cir. 1994) ("*Concrete Works I*"), *on remand*, 86 F. Supp 2d 1042 (D. Colo. 2000), *rev'd* 321 F.3d 950 (10th Cir. 2003) ("*Concrete Works IV*"). *Rothe Development Corp. v. Department of Defense*, 545 F. 3d1023 (Fed Cir. 2008) In the federal court system, there are primarily three levels of courts: the U.S. Supreme Court, appellate courts, and district courts. The U. S. Supreme Court is the highest ranking federal court, and its rulings are binding on all other federal courts. Appellate court rulings are binding on all district courts subject to their appellate jurisdiction and are used for guidance in other circuits. District court rulings, while providing insight into an appropriate legal analysis, are not binding on other courts at the district, appellate, or U.S. Supreme Court levels.

⁴ *Croson*, 488 U.S. at 493-95.

⁵ *Id.* at 493.

⁶ *Croson*, 488 U.S. at 509.

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



B. Woman-Owned Business Enterprise

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

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

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

The Third Circuit in *Contractors Association of Eastern Pennsylvania v. City of Philadelphia (Philadelphia)* ruled in 1993 that the standard of review that governs WBE programs is different from the standard imposed upon MBE programs.¹² The Third Circuit held that whereas MBE programs must be “narrowly tailored” to a “compelling state interest,” WBE programs must be “substantially related” to “important governmental objectives.”¹³ 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.¹⁴

⁸ See e.g., *Coral Constr. Co. v. King County*, 941 F.2d 910 (9th Cir. 1991); *Phila.*, 91 F.3d 586; *Dade County*, 122 F.3d 895; accord *Concrete Works II*, 321 F.3d at 959. [ADD: *H.H. Rowe Co., Inc. v. Tippett* (4th Cir. 7/22/10)].

⁹ *Craig v. Boren*, 429 U.S. 190, 198-99 (1976).

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

¹¹ *Id.* at 728.

¹² *Phila.*, 6 F.3d at 1000-01.

¹³ *Id.* at 1009.

¹⁴ *Id.* at 1002.



The Ninth Circuit in *Associated General Contractors of California v. City and County of San Francisco (AGCC I)* held that classifications based on gender require an “exceedingly persuasive justification.”¹⁵ The justification is valid only if members of the gender 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.¹⁶

The Eleventh Circuit also applies intermediate scrutiny.¹⁷ The district court in *Engineering Contractors Association of South Florida. v. Metropolitan Dade County (Dade County)*, which was affirmed by the Eleventh Circuit U.S. Court of Appeals, cited the Third Circuit’s 1993 formulation in *Philadelphia*: “[T]his standard requires the [County] to present probative evidence in support of its stated rationale for the gender preference, discrimination against women-owned contractors.”¹⁸ Although the *Dade County* district court applied the intermediate scrutiny standard, it queried whether the U.S. Supreme Court decision in *United States v. Virginia*,¹⁹ finding the all-male program at Virginia Military Institute unconstitutional, signaled a heightened level of scrutiny. The U. S. Supreme Court held that parties who seek to defend gender-based government action must demonstrate an “exceedingly persuasive justification” for that action.²⁰ While the *Dade County* appellate court 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.”²¹

The *Dade County* appellate court noted that at the time, by articulating the “probative evidence” standard, the Third Circuit in *Philadelphia* was the only federal appellate court that explicitly attempted to clarify the evidentiary requirement applicable to gender-conscious programs.²² *Dade County* went on to interpret that standard to mean that “evidence offered in support of a gender preference must not only be ‘probative’ [but] must also be ‘sufficient.’”²³ It also reiterated two principal guidelines of intermediate scrutiny evidentiary analysis: (1) under this test a local government must demonstrate

¹⁵ *Associated Gen. Contractors of Cal. v. City & County of S. F.*, 813 F.2d 922, 940 (9th Cir. 1987).

¹⁶ *Id.* at 940.

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

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

¹⁹ *United States v. Virginia*, 518 U.S. 515 (1996).

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

²¹ *Id.* at 908.

²² *Id.* at 909.

²³ *Id.*



some past discrimination against women, but not necessarily discrimination by the government itself;²⁴ and (2) the intermediate scrutiny evidentiary review is not to be directed toward mandating that gender-conscious affirmative action is used only as a “last resort”²⁵ but instead ensuring that the affirmative action is “a product of analysis rather than a stereotyped reaction based on habit.”²⁶ This determination turns on whether there is evidence of past discrimination in the economic sphere at which the affirmative action program is directed.²⁷ The court also stated that “a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”²⁸

C. United States Department of Transportation Disadvantaged Business Enterprise Programs

The County manages USDOT funded contracts under a Memorandum of Understanding with the Texas Department of Transportation (TDOT). The Commissioners Court adopted the TDOT Memorandum of Understanding on March 12, 2007. The agreement requires the County to establish a Disadvantaged Business Enterprise (DBE) Program in compliance with the USDOT DBE regulations. The provisions in the Memorandum of Understanding commit the County to ensure that DBEs are provided an equal opportunity to obtain and participate on USDOT-assisted contracts. The County adopted the standards pursuant to the objectives of the Memorandum of Understanding, and the USDOT Regulations 49 CFR, Part 26.

1. Legislative and Regulatory History

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

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

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

²⁶ *Id.* (citing *Phila.*, 6 F3d at 1010) (quoting *Metro Broad., Inc. v. FCC*, 497 U.S. 547, 582-583 (1990)).

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

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



In response to the U. S. Supreme Court’s decision in *Adarand*, which applied the strict scrutiny standard to federal programs, the USDOT revised provisions of the DBE rules effective, March 1999. The goal of promulgating the new rule was to modify the DBE program consistent with the “narrow tailoring” requirement of *Adarand*. The new provisions apply only to the airport, transit, and highway financial assistance programs of the USDOT.

Although the U. S. Supreme Court heard argument in *Adarand* in the October 2001 term, it subsequently decided that it had improvidently granted *certiorari*. Thus, the amended USDOT regulations continue to be in effect and control the federally-funded programs of state DOTs.

There have been challenges to the amended DBE regulations. Two circuit courts, the Seventh and Eighth, approved them.²⁹ The Ninth, did not in *Western States*.³⁰

The Ninth Circuit Analysis

Western States Paving Co. Inc., v. Washington State Department of Transportation, filed in the U.S. District Court in 2000, 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 facially constitutional and the other assessed whether the State of Washington’s application of the DBE regulations was valid.

- **Facial Constitutional Challenge**

In *Western States*, the plaintiff sought a declaratory judgment arguing that TEA-21’s preference program violated the Equal Protection provision under the Fifth and Fourteenth Amendments of the U.S. Constitution. The TEA-21 DBE Program on its face and as applied by the State of Washington were claimed to be unconstitutional. In addressing *Western States’* facial challenge, the court interpreted the issue as to whether Washington State met its burden of demonstrating that the federal statute and regulations satisfied the strict scrutiny’s exacting requirements.

²⁹ *Northern Contracting, Inc. v. Ill. Dep’t of Transp. (NCI)* 473 F.3d 715 (7th Cir. 2007). The court dismissed *NCI’s* argument that IDOT violated 49 C.F.R. Section 26.51 by failing to meet the maximum feasible portion of its overall goal through race-neutral means for DBE participation. IDOT demonstrated that all of the methods described in Section 26.51(b) to maximize the portion of the goal that could be achieved through race-neutral means were utilized by the agency. Additionally, the Court of Appeals noted that IDOT sponsored different types of informational sessions, provided technical and financial training to DBEs and other small businesses, as well as initiating a bond and financial assistance program. Due to these efforts by IDOT, *NCI* failed to demonstrate that IDOT did not maximize the portion of its goal through race-neutral means. In the Eighth Circuit, *Sherbrooke Turf Inc. v. Minnesota Department of Transportation and Gross Seed Co. v. Nebraska Dep’t of Roads* is a 2003 joint decision, 345 F.3d 964 (8th Cir. 2003). (In both cases, the district courts found that the revised DBE Program, as amended in 1999, met the strict scrutiny standard prescribed in *Adarand*.³) On appeal, the Circuit Court held that Congress had a “compelling interest” to enact the legislation because it “had a sufficient evidentiary basis on which to conclude that the persistent racism and discrimination in highway subcontracting warranted a race-conscious procurement program.”

³⁰ *Western States Paving Co. Inc., v. Washington State Dep’t of Transp.*, 407 F.3d 983 (9th Cir. 2005).



The federal government, according to *Croson*, 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.³¹ 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.”³² The Court concluded that a substantial body of statistical and anecdotal evidence was considered by Congress at the time the law was enacted. Therefore, the Court found 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 which hindered minorities’ ability to compete for federally funded contracts.³³

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.³⁴ The court referenced *Sherbrooke*, noting the Eighth Circuit’s holding that the DBE programs of the Minnesota and Nebraska Departments of Transportation independently satisfied the strict scrutiny’s narrow tailoring requirement, by relying upon two disparity studies.

The court notes that the DBE regulations did not establish a mandatory nationwide minority utilization goal in transportation contracting. The court found the ten percent DBE utilization goal in the regulation was only “aspirational,” and the regulation provides that each state must establish a DBE utilization goal that is based upon the proportion of ready, willing, and able DBEs in its transportation contracting industry.³⁵ 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 they were satisfied with TEA-21’s DBE program was narrowly tailored to remedy the effects of race and sex-based discrimination within the transportation contracting industry, and, thus, *Western States*’ facial challenge failed.

- **Washington State’s Application of the Narrowly Tailored Standard**

The second prong of the Court’s analysis considered whether the utilization goals established by the State of Washington were unconstitutional. The State contended its

³¹ *Croson*, 488 U.S. at 492 (1982).

³² *Id.* at 493.

³³ *W. States Paving*, 407 F.3d at 983.

³⁴ *Id.* at 992.

³⁵ *Id.* at 989.



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 9 percent, discrimination was demonstrated.³⁶ The Court disagreed with this rationale. It opined 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. DBE firms may be smaller and less experienced than non-DBE firms, or they may be concentrated in certain geographical areas of the State, rendering them unavailable for a disproportionate amount of work.

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 court held there is insufficient evidence in the record 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.³⁷

The court concluded the lower 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."³⁸

In summary, *Western States* found that Washington's DBE program met the first prong of the test (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 remediate a finding of statistically significant underutilization of the respective minority groups. Therefore, the State's application of the DBE regulations was deemed unconstitutional.

In response to *Western States*, the USDOT issued a Guidance Memorandum titled, *FY 2006 DBE Goal Setting Approval Process and DBE Program Plans - December 21, 2005*. This Memorandum recommended a disparity study as an appropriate methodology for USDOT recipients in the Ninth Circuit to formulate narrowly tailored DBE goals. The USDOT regulations also recommend the use of a disparity study, among other availability sources for setting the DBE goals.

³⁶ *Id.* at 1000.

³⁷ *Id.* at 1001.

³⁸ *Id.* at 1004.



D. Local Business Enterprise

The Ninth Circuit Court of Appeals applied the rational basis standard when evaluating LBE programs, holding that a local entity may give a preference to local businesses to address the economic disadvantages those businesses face in doing business within the city or county.³⁹ In *AGCC I*, a pre-*Croson* case, the City and County of San Francisco conducted a detailed study of the economic disadvantages faced by San Francisco-based businesses versus businesses located outside the City and County boundaries. The study showed a competitive disadvantage in public contracting for businesses located within the City versus businesses from other areas.

San Francisco-based businesses incurred higher administrative costs in doing business within the City. Such costs included higher taxes, rents, wages, insurance rates, and benefits for labor. In upholding the local LBE Ordinance, the Ninth Circuit held that “. . . the city may rationally allocate its own funds to ameliorate disadvantages suffered by local businesses, particularly where the city itself creates some of the disadvantages.”⁴⁰

III. BURDEN OF PROOF

The procedural protocol that *Croson* established 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:⁴¹

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

Thus, a disparity study must be analytically rigorous, if it is to withstand a legal challenge.⁴²

³⁹ *AGCC I*, 813 F.2d at 943.

⁴⁰ *Id.* at 943.

⁴¹ These were the issues on which the district court in Philadelphia reviewed the disparity study before it.

⁴² *Croson*, 488 U.S. 469.



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.⁴³ The issue of whether or not the government has produced a strong basis in evidence is a question of law.⁴⁴ Because the sufficiency of the factual predicate supporting the MBE program is at issue, factual determinations relating to the accuracy and validity of the proffered evidence underlie the initial legal conclusion to be drawn.⁴⁵

The adequacy of the government’s evidence is “evaluated in the context of the breadth of the remedial program advanced by the [jurisdiction].”⁴⁶ The onus is upon the jurisdiction to provide a factual predicate which is sufficient in scope and precision to demonstrate that contemporaneous discrimination necessitated the adoption of the MBE program. The various factors which must be considered in developing and demonstrating a strong factual predicate in support of MBE programs are discussed in Section IV.

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.⁴⁷ 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)*.⁴⁸ 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.”⁴⁹

⁴³ *Concrete Works I*, 36 F.3d 1513 at 1522 (citing *Wygant v. Jackson Bd. of Edu.*, 476 U.S. 267, 292 (1986); see also *Croson* 488 U.S. at 509.

⁴⁴ *Id.* (citing *Associated General Contractors v. New Haven*, 791 F.Supp. 941, 944 (D.Conn 1992).

⁴⁵ *Concrete Works I*, 36 F.3d at 1522.

⁴⁶ *Id.* (citing *Croson* 488 U.S. at 498).

⁴⁷ *Id.* (citing *Wygant*, 476 U.S. at 277-278).

⁴⁸ *Wygant*, 476 U.S. at 293.

⁴⁹ *Id.*



In *Philadelphia*, the Third Circuit Court of Appeals clarified this allocation of the burden of proof and the constitutional issue of whether the facts constitute a “strong basis” in evidence.⁵⁰ That court wrote the allocation of the burden of persuasion depends on the theory of constitutional invalidity that is being considered.⁵¹ 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.⁵²

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 inaccurate. 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.⁵³

Concrete Works IV made clear that the plaintiff’s burden is an evidentiary one; it cannot be discharged simply by argument. The Court cited its opinion in *Adarand*: “[g]eneral criticism of disparity studies, as opposed to particular evidence undermining the reliability of the particular disparity study is of little persuasive value.”⁵⁴

IV. CROSON EVIDENTIARY FRAMEWORK

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

⁵⁰ *Phila.*, 91 F.3d at 597.

⁵¹ *Id.*

⁵² *Id.*

⁵³ 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” that strict scrutiny requires. That court said the inquiry was factual and would be reversed only if it was “clearly erroneous.” However, the difference in formulation may have had to do with the angle from which the question is approached: If one starts with the disparity study — whether a compelling interest has been shown, factual issues are critical. If the focus is the remedy, because the constitutional issue of equal protection in the context of race comes into play, the review is necessarily a legal one.

⁵⁴ *Concrete Works IV*, 321 F.3d at 979.



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.⁵⁵

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.⁵⁶

An entity will be considered to be a "passive" participant in private sector discriminatory practices if it has infused tax dollars into that discriminatory industry.⁵⁷ The *Croson* Court emphasized a government's ability to passively participate in private sector discrimination with monetary involvement, stating, "[I]t is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from tax contributions of all citizens, do not serve to finance the evil of private prejudice."⁵⁸

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 is likely to be a fruitful line of inquiry.⁵⁹ On remand, the district court rejected the three disparity studies offered to support the continuation of Denver's M/WBE program because each focused on purely private sector discrimination. Indeed, Denver's focus on purely private sector discrimination may account for what seemed to be a shift by the court away from the standard *Croson* queries of: (1) whether there was a firm basis in the entity's contracting process to conclude that discrimination existed; (2) whether race-neutral remedies would resolve what was found; and (3) whether any race-conscious remedies had to be narrowly tailored. The court noted that in the City of Denver's disparity studies, the chosen methodologies failed to address the following six questions:

⁵⁵ *Croson*, 488 U.S. at 509.

⁵⁶ *Wygant*, 476 U.S. at 275.

⁵⁷ *Croson*, 488 U.S. at 492; *Coral Constr.*, 941 F.2d at 916.

⁵⁸ *Croson*, 488 U.S. at 492.

⁵⁹ *Concrete Works I*, 36 F.3d at 1529.



- 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

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, it cannot be discerned 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. The court emphasized that its reading of *Crososon*,⁶⁰ and its own precedents, supported that conclusion. Also, the court pointed out that the plaintiff, which had the burden of proof, failed to introduce controverting evidence, merely *arguing* that the private sector was out of bounds and that Denver’s data was flawed.⁶¹

The Tenth Circuit found that the disparities in MBE private sector participation, demonstrated with the rate of business formation and lack of access to credit which affected MBEs’ ability to expand in order to perform larger contracts, gave Denver a firm basis to conclude that there was actionable private sector discrimination. For procedural legal reasons,⁶² however, the court did not examine whether the consequent public sector remedy — 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*,⁶³ 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 strict 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. 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

⁶⁰ See also *Shaw*, 517 U.S. 899.

⁶¹ 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.”

⁶² Plaintiff had not preserved the issue on appeal; therefore, it was no longer part of the case.

⁶³ 298 F.Supp2d 725 (N.D.Ill. 2003).



was a “rigid numerical quota,” and there was no individualized review of MBE beneficiaries, citing Justice O’Connor’s opinion in *Gratz v. Bollinger*.⁶⁴

The question of whether evidence of private sector practices may be used to support governmental MBE programs also arose in *Builders Ass’n of Greater Chicago v. County of Cook*.⁶⁵ In this case the Seventh Circuit cited *Associated General Contractors of Ohio v. Drabik*⁶⁶ in throwing out a 1988 County ordinance under which at least 30 percent of the values of prime contracts were to go to minority subcontractors and at least 10 percent to WBEs. In *Drabik*, the Associated General Contractors of Ohio argued that evidence of purely private sector discrimination justified a public sector program. However, the court pointed out that a program remedying discrimination in the private-sector would necessarily address only private-sector participation. In order to justify the public-sector remedy, the County would have had to demonstrate that it had been at least a passive participant in the discrimination by showing it had infused tax dollars into the discriminatory private industry through its procurement programs.

The issue of private sector participation was also discussed in the Fourth Circuit’s recent opinion in *Rowe*.⁶⁷ The court rejected the use of Private Sector as a justification for including in North Carolina’s remedial programs women-owned businesses who had been overutilized in the State’s contracts. There was no evidence of the extent to which women sought private sector business, or that such businesses discriminated against women in public sector contracts.

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).⁶⁸ Thus, it is essential to demonstrate a

⁶⁴ 539 U.S. 244, 299-300 (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.

⁶⁵ 256 F.3d 642 (7th Cir. 2001).

⁶⁶ 214 F.3d 730 (6th Cir. 2000).

⁶⁷ *Rowe, supra*, 7/22/10.

⁶⁸ *Croson*, 488 U.S. 469. See also *Monterey Mech. I v. Wilson*, 125 F.3d 702 (9th Cir. 1997). The Fifth Circuit Court in *W.H. Scott Constr. Co. v. City of Jackson*, 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,



pattern and practice of such discriminatory exclusion in the relevant market area.⁶⁹ 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.⁷⁰ 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.⁷¹ 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."⁷²

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."⁷³ Subcontracting data is also an important means by which to assess suggested future remedial actions. Since the decision makers are different for the awarding of prime contracts and subcontracts, the remedies for discrimination identified at a prime contractor versus subcontractor level might also be different.

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."⁷⁴ 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.⁷⁵ Once an

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.

⁶⁹ *Id.* at 509.

⁷⁰ *Id.* at 506. As the Court said in *Croson*, "[t]he random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the city's purpose was not in fact to remedy past discrimination." See *North Shore Concrete and Assoc. v. City of New York*, 1998 U.S. Dist. LEXIS 6785 (EDNY 1998), which rejected the inclusion of Native Americans and Alaskan Natives in the City's program, citing *Croson*.

⁷¹ *Id.* at 509.

⁷² *Id.* at 501 (citing *Hazelwood Sch. I Dist. v. United States*, 433 U.S. 299, 307-08 (1977)).

⁷³ *Croson*, 488 U.S. at 502-03.

⁷⁴ *Id.* at 509.

⁷⁵ *Id.*



inference of discriminatory exclusion arises, the entity may act to dismantle the closed business system.

In *Coral Construction*, the Ninth Circuit Court of Appeals further elaborated upon the type of evidence needed to establish the factual predicate that justifies a race-conscious remedy. The court held that both statistical and anecdotal evidence should be relied upon in establishing systemic discriminatory exclusion in the relevant marketplace as the factual predicate for an MBE program.⁷⁶ 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.⁷⁷

Likewise, anecdotal evidence, standing alone, is unlikely to establish a systemic pattern of discrimination.⁷⁸ Nonetheless, anecdotal evidence is important because the individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”⁷⁹

2. 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.”⁸⁰ Conversely, in *Concrete Works I*, the Tenth Circuit Court of Appeals specifically approved the Denver MSA as the appropriate market area since 80 percent of the construction contracts were let there.⁸¹

Read together, these cases support a definition of market area that is reasonable rather than dictated by a specific formula. Because *Croson* and its progeny did not provide a bright line rule for a local market area, the determination should be fact-based. An entity may limit consideration of evidence of discrimination within its own jurisdiction.⁸²

⁷⁶ *Coral Constr.*, 941 F.2d at 919.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* (quoting *Intl. Bhd of Teamsters v. United States*, 431 U.S. 324, 339 (1977)).

⁸⁰ *Coral Constr.*, 941 F.2d at 925.

⁸¹ *Concrete Works*, 823 F.Supp. 821, 835-836 (D.Colo. 1993); *rev'd on other grounds*, 36 F.3d 1513 (10th Cir. 1994).

⁸² 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.



Extra-jurisdictional evidence may be permitted, when it is reasonably related to where the jurisdiction contracts.⁸³

3. 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.⁸⁴ 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.⁸⁵ 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.⁸⁶

Pre-program data regarding an entity's utilization of MBEs prior to enacting the MBE program may be relevant to assessing the need for the agency to keep such a program intact. A 1992 opinion by Judge Henderson of the U.S. District Court for the Northern District of California, *RGW Construction v. San Francisco Bay Area Rapid Transit District (BART)*,⁸⁷ set forth the possible significance of statistical data during an entity's "pre-program" years. Judge Henderson opined that statistics that provides data on a period when no M/WBE goals were operative is often the most relevant data in evaluating the need for remedial action by an entity. Indeed, "to the extent that the most recent data reflect the impact of operative DBE goals, then such data are not necessarily a reliable basis for concluding that remedial action is no longer warranted."⁸⁸ Judge

⁸³ *Cone Corp. v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990); *Associated Gen. Contractors v. Coalition for Econ. Equity*, 950 F.2d 1401 (9th Cir. 1991).

⁸⁴ See *Croson*, 488 U.S. at 509-10.

⁸⁵ *Id.* at 499 (stating that "[i]t is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination").

⁸⁶ See *AGCC II*, 950 F.2d 1401 at 1414 (consultant study looked at City's MBE utilization over a one year period). Also in *Kossmann Contracting Co v. The City of Houston*, No. Civ-H-96-3100 (S.D. Tex., filed 1996), the City of Houston's initial M/WBE program was challenged as unconstitutional and the study upon which the Program was based on was ruled to be invalid. A consultant was retained to conduct a new disparity study which became the factual predicate for the City's M/WBE program. The Judge approved the consultant's study and approved the reinstatement of the City's M/WBE program in January of 2007.

⁸⁷ See Nov. 25, 1992, Order by Judge Thelton Henderson (on file with Mason Tillman Associates).

⁸⁸ *Id.*



Henderson noted this is particularly so when M/WBEs report they are seldom or never used by a majority prime contractor without M/WBE goals. That this may be the case suggests a possibly fruitful line of inquiry: an examination of whether different programmatic approaches in the same market area led to different outcomes in M/WBE participation. The Tenth Circuit came to the same conclusion in *Concrete Works II*. It is permissible for a study to examine programs where there were no goals.

Similarly, the Eleventh Circuit in *Dade County* cautions that using post-enactment evidence (post-program data) may mask discrimination that might otherwise be occurring in the relevant market. However, the court agreed with the lower court that it was not enough to speculate on what MBE utilization would have been in the absence of the program.⁸⁹

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. Even though a government can take remedial action when they possess evidence of discrimination, they must identify that discrimination, public or private, with some specificity before they can use race-conscious relief.⁹⁰

4. Statistical Evidence

To determine whether statistical evidence is adequate to give rise to an inference of discrimination, courts have looked to the “disparity index,” which consists of the percentage of minority or women contractor participation in local contracts divided by the percentage of minority or women contractor availability or composition in the population of available firms in the local market area.⁹¹ Disparity indexes have been found highly probative evidence of discrimination where they ensure that the “relevant statistical pool” of minority or women contractors are being considered

The Third Circuit Court of Appeals, in *Philadelphia*, ruled that the “relevant statistical pool” includes those businesses that not only exist in the marketplace, but those that are qualified and interested in performing the public agency’s work. In that case, the Third Circuit rejected a statistical disparity finding where the pool of minority businesses used

⁸⁹ *Dade County*, 122 F.3d at 912.

⁹⁰ *Shaw*, 517 U.S. 899 (1996). (citing *Crosby*, 488 U.S. 504).

⁹¹ Although the disparity index is a common category of statistical evidence considered, other types of statistical evidence have been taken into account. In addition to looking at Dade County’s contracting and subcontracting statistics, the district court also considered marketplace data statistics (which looked at the relationship between the race, ethnicity, and gender of surveyed firm owners and the reported sales and receipts of those firms), the County’s Wainwright study (which compared construction business ownership rates of M/WBEs to those of non-M/WBEs and analyzed disparities in personal income between M/WBE and non-M/WBE business owners), and the County’s Brimmer Study (which focused only on Black-owned construction firms and looked at whether disparities existed when the sales and receipts of Black-owned construction firms in Dade County were compared with the sales and receipts of all Dade County construction firms). The court affirmed the judgment that declared appellant’s affirmative action plan for awarding county construction contracts unconstitutional and enjoined the plan’s operation because there was no statistical evidence of past discrimination and appellant failed to consider race and ethnic-neutral alternatives to the plan.



in comparing utilization to availability were those that were merely licensed to operate in the City of Philadelphia. The Court concluded this particular statistical disparity did not satisfy *Croson*.⁹² Merely being licensed to do business with the City does not indicate either a willingness or capability to do work for the City.

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 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 could give rise to an inference of discriminatory exclusion.

Second, M/WBE dollar participation can be compared to M/WBE availability. This comparison could show a disparity between the award of contracts by an entity in the relevant locality/market area to available majority contractors and the award of contracts to M/WBEs. Thus, in *AGCC II*, the 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 the available MBEs received far fewer construction contract dollars in proportion to their numbers than their available non-minority counterparts.⁹³

Whether a disparity index supports an inference of discrimination in the market area turns not only on what is being compared, but also on whether any disparity is statistically significant.⁹⁴ 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.”⁹⁵ However, the Court has neither assessed nor attempted to cast bright lines for determining if a disparity index is sufficient to support an inference of discrimination. Rather, the analysis of the disparity index and its significance are judged on a case-by-case basis.⁹⁶

⁹² *Philadelphia*, 91 F.3d 586. The courts have not spoken to the non-M/WBE component of the disparity index. However, if only as a matter of logic, the “availability” of non-M/WBEs requires that their willingness to be government contractors be established. The same measures used to establish the interest of M/WBEs should be applied to non-M/WBEs.

⁹³ *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.

⁹⁴ *H.B. Rowe Company, Incorporated v. W. Lindo Tippet, et. al.*, 589 F. Supp. 2d 587; December 9, 2008, Decided, Affirmed in part and reversed in part by, Remanded by *H.B. Rowe Co. v. Tippet*, 2010 U.S. App. LEXIS 15141 (4th Cir. N.C., July 22, 2010)

⁹⁵ *Croson*, 488 U.S. at 501 (quoting *Hazelwood Sch’l Dist., v. United States*, 433 U.S. at 307-08).

⁹⁶ *Concrete Works I*, 36 F.3d at 1522.



Following the dictates of *Croson*, courts may carefully examine whether there is data showing that MBEs are ready, willing, and able to perform.⁹⁷ *Concrete Works I* made the same point: capacity—i.e., whether the firm is “able to perform”—is a ripe issue when a disparity study is examined on the merits:

[Plaintiff] has identified a legitimate factual dispute about the accuracy of Denver’s data and questioned whether Denver’s reliance on the percentage of MBEs and WBEs available in the 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.⁹⁸

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, the Court focused on the private sector, using census-based data and Dun & Bradstreet statistical extrapolations.

The Sixth Circuit Court of Appeals, in *Associated General Contractors of Ohio v. Drabik*, also concluded that for statistical evidence to meet the legal standard of *Croson*, it must consider the issue of capacity.⁹⁹ The State’s factual predicate study based its statistical evidence on the percentage of M/WBE businesses in the population. The statistical evidence did not take into account the number of minority businesses that were construction firms, let alone how many were qualified, willing, and able to perform state contracts.¹⁰⁰ 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

⁹⁷ The *Philadelphia* study was vulnerable on this issue.

⁹⁸ *Concrete Works I*, 36 F.3d at 1528.

⁹⁹ See 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*, No. 82-3822, 1983 U.S. App. LEXIS 24185 (6th Cir. September 7, 1983), finding the program unconstitutional under *Croson*. It should also be noted that in *Concrete Works I* and *III* the Court stated that smaller size and capacity of M/WBEs may itself be evidence of effects of discrimination. Also, due to the ability to subcontract construction tasks, the difference in capacity among prime contractors is largely of little consequence to obtaining contracts.

¹⁰⁰ *Drabik*, 214 F.3d 730.



particular work or in terms of the number of tasks they have resources to complete.¹⁰¹

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

The appellate opinions in *Philadelphia*¹⁰² and *Dade County*,¹⁰³ 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.¹⁰⁴ The Third Circuit upheld the contractors on the merits on the third appeal, affirming there was no firm basis in the evidence for finding the existence of 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.¹⁰⁵

The Third Circuit reviewed the evidence of discrimination in prime contracting and stated that whether such evidence is strong enough to infer discrimination is a "close call" which the court "chose not to make."¹⁰⁶ 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 no MBEs were used during the study period based upon recollections regarding whether the owners of the utilized firms were MBEs. The court found this evidence as insufficient basis for finding that prime contractors in the market were discriminating against subcontractors.¹⁰⁷

¹⁰¹ *Id.* at 736.

¹⁰² *Phila.*, 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).

¹⁰³ *Dade County*, 943 F.Supp. 1546.

¹⁰⁴ *Phila.*, 91 F.3d 586.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 605.

¹⁰⁷ 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.



The Third Circuit has recognized that consideration of qualifications can be approached at different levels of specificity, and the practicality of the approach also should be weighed. The Court of Appeals found that “[i]t would be highly impractical to review the hundreds of contracts awarded each year and compare them to each and every MBE”; and it was a “reasonable choice” under the circumstances to use a list of certified contractors as a source for available firms.¹⁰⁸ 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.”¹⁰⁹

In addition, the court found that a program certifying MBEs for federal construction projects was a satisfactory measure of ability for MBE firms.¹¹⁰ 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.”¹¹¹ The court found certification to be an adequate process of identifying capable firms, recognizing that the process may even understate the availability of MBE firms.¹¹² Therefore, the court was somewhat flexible in evaluating the appropriate method of determining the availability of MBE firms in the statistical analysis of a disparity.

In *Dade County*, the district court held that the County had not shown the compelling interest required to institute a race-conscious program, because the statistically significant disparities upon which the County relied disappeared when the size of the M/WBEs was taken into account.¹¹³ 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, the results of

¹⁰⁸ *Phila.*, 91 F.3d at 603.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Dade County*, 943 F. Supp. 1546



the bidding process will be biased.¹¹⁴ In addition, a comprehensive count of bidders is dependent on the adequacy of the agency’s record keeping.¹¹⁵

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 evidentiary basis 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.

The continuing analysis of this issue was discussed extensively in *Rothe Development Corp. v. U.S. Department of Defense*,¹¹⁶ decided in 2008, which was in litigation for ten years. On the third round of appeals from the district court, the Federal Circuit Court of Appeals issued a decision in November 2008 holding that the Department of Defense’s (“DOD”) small disadvantaged business program was unconstitutional on its face.

During the last appeal, *Rothe* argued that, in granting summary judgment, the district court erroneously relied on six disparity studies because: (1) the studies analyzed data that was stale by the time of the 2006 reenactment; (2) the studies were not truly “before Congress”; (3) the studies were methodologically flawed and therefore unreliable; and (4) the studies failed to establish that the DOD itself played any role in the discriminatory exclusion of minority-owned contractors.¹¹⁷

The primary basis for the court’s holding was that Congress had insufficient evidence before it to conclude that there was racial discrimination in defense contracting when it reauthorized the program in 2006:

[W]e are hesitant to conclude that the mere mention of a statistical study in a speech on the floor of the House of Representatives or the Senate is sufficient to put the study “before Congress” for purposes of Congress’ obligation to amass a “strong basis in evidence” for race-conscious action. We recognize that there is no dispute that these six studies were completed prior to the 2006 reenactment of Section 1207, and in that sense they were indeed “before” the acting legislature.¹¹⁸

¹¹⁴ Cf. *League of United Latin Am. 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).

¹¹⁵ Cf. *EEOC v. Am. Nat’l Bank*, 652 F.2d 1176, 1196-1197 (4th Cir. 1981), 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).

¹¹⁶ 545 F.3d 1023 (Fed. Cir. 2008).

¹¹⁷ The court declined to adopt a *per se* rule on staleness—appellant’s first contention—noting that other studies had been accepted that were more than five years old. *Id.* at 1039.

¹¹⁸ *Id.* at 1040.



But beyond their mere mention, there is no indication that these studies were debated or reviewed by members of Congress or by any witnesses.¹¹⁹

Although the decision in *Rothe* addressed only the unconstitutionality of 10 U. S. C. Section 2323, the Congressional Research Service, the legal research arm of Congress, in response to the *Rothe* decision reported to Congress that, “[t]he various programs relating to subcontracting on agency prime contracts—the programs under the authority of Sections 8(a) and (d) of the Small Business Act and the Federal Acquisition Regulation (FAR)—are probably the most susceptible to *Rothe*-type challenges of all federal contracting programs for minority-owned small businesses.” *Rothe Development Corporation v. Department of Defense: The Constitutionality of Federal Contracting Programs for Minority-Owned and Other Small Businesses*, Congressional Research Service, March 16, 2009.

The Federal Circuit is a court with special expertise and nationwide jurisdiction in federal government contracting. Its decisions can bind district courts in other circuits if it would have appellate jurisdiction over the subject matter of a case within those district courts. Additionally, as with all circuits, the decision is persuasive, and will be precedent within the circuit from which appeal is taken.

The *Rothe* decision requires further comment because the court discussed the availability methodology of six disparity studies—four of which Mason Tillman Associates, Ltd. (Mason Tillman) performed (New York City, Alameda County, Cuyahoga County, and Dallas).

The court responded favorably to Mason Tillman’s determination of ‘willing and able’ businesses in stating “that this defect [an imperfect enumeration of various lists of businesses] does not substantially undercut the results of the four studies conducted by Mason Tillman Associates, because the bulk of the businesses considered in these studies were identified in ways that would tend to establish their qualifications, such as by their presence on city contract records and bidder lists.”¹²⁰

But the Federal Circuit also noted that “[w]e are even more troubled, however, by the failure of five of the studies to account sufficiently for potential differences in size, or *relative capacity*,” . . . “none of the studies took complementary account of the relative sizes of the *businesses* themselves,” . . . and “while these parameters may have ensured that each minority-owned business in the studies met a capacity threshold-i.e., had the capacity to bid for and to complete any one contract-these parameters simply fail to account for the relative capacities of businesses to bid for *more than one contract at a*

¹¹⁹ *Id.* at 1039-40.

¹²⁰ The court, in its words, “was less confident in this aspect” of the other two studies. The firms either did business within the industry group from which purchases were made; the owner believed the firm was qualified and able; the owner’s action demonstrated an interest in obtaining work; *all* firms in vendor data are ready, willing and able. *Id.* at 1042.



time.” “[T]his failure renders the disparity ratios calculated by the studies substantially less probative, on their own, of the likelihood of discrimination.”¹²¹

The court’s evaluation of the issue of a firm’s capacity is telling. The court acknowledged that Mason Tillman attempted to deal with this issue. For example, the court noted that in “New York City, Mason Tillman limited prime contracts to those for \$1,000,000 and under. And likewise, in Dallas, Mason Tillman limited prime contracts to firms that had a “demonstrated capacity to win large competitively bid contracts.”¹²² Therefore, the firms had the capacity to perform a contract. The sticking point was whether the firms could do *more than one at a time*, otherwise known as ‘relative capacity.’¹²³ As a solution, the court stated that future studies could resolve this problem by employing a regression analysis.¹²⁴ In conclusion, the court “h[e]ld that the defects we have noted detract dramatically from the probative value of these six studies, and, in conjunction with their limited geographic coverage, render the studies insufficient to form the statistical core of the “strong basis in evidence” required to uphold the statute.¹²⁵

Capacity is a function of many subjective, variable factors. While one might assume that current size reflects capacity, it does not follow that smaller firms have less capacity. Most firms have the ability and desire to expand to meet demand. Elasticity is characteristic of most industries and especially in construction and professional services. Moreover, a firm’s ability to divide a contract and subcontract its parts makes the concept of current capacity virtually meaningless in the context of this study.

To place this issue of disparity capacity measurements in proper context, the *Rothe decision must be juxtaposed with the initial guidance on analysis of availability provided in Croson*. There, the U.S. Supreme Court criticized comparisons of MBE utilization as prime contractors in city and state construction projects with the percentage of city and state residents that were minority.

C. Anecdotal Evidence

As will be discussed below, anecdotal evidence will not suffice standing alone to establish the requisite predicate for a race-conscious program. Its great value lies in pointing to remedies that are “narrowly tailored,” the second prong of a *Croson* study. The following types of anecdotal evidence have been presented and relied upon by the

¹²¹ *Id.* at 1042-1043.

¹²² *Id.* at 1044.

¹²³ *Id.*

¹²⁴ In *Concrete Works IV*, 321 F.3d 950 (10th Cir. 2003), the Tenth Circuit Court of Appeals relied, in part, upon a regression analysis of survey results that controlled for various firm characteristics, including indicia of firm size such as level of revenues and numbers of employees to conclude that M/WBE firms experienced disparate treatment in the marketplace on the basis of race and gender that was unrelated to their capacity.

¹²⁵ *Rothe VII*, at 1045.



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*¹²⁶
- Prime contractors showing MBE bids to non-minority subcontractors to find a non-minority firm to underbid the MBEs —*Cone Corporation v. Hillsborough County*¹²⁷
- M/WBEs' inability to obtain contracts for private sector work — *Coral Construction*¹²⁸
- M/WBEs told that they were not qualified, although they were later found to be qualified when evaluated by outside parties — *AGCC* ¹²⁹
- Attempts to circumvent M/WBE project goals — *Concrete Works*
- Harassment of M/WBEs by an entity's personnel to discourage them from bidding on an entity's contracts — *AGCC*¹³⁰

Courts must assess the extent to which relief measures disrupt settled “rights and expectations” when determining the appropriate corrective measures.¹³¹ 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 relate experiences of discrimination in obtaining bonds, they may be sufficient evidence to support a bonding program that assists M/WBEs. However, these accounts would not be evidence of a statistical availability that would justify a racially limited program such as a set-aside.

As noted above, in *Croson*, the U.S. 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.”¹³²

In part, it was the absence of such evidence that proved lethal to the program in the *Croson* case. The U. S. Supreme Court stated that “[t]here was no direct evidence of race

¹²⁶ *Phila.*, 6 F.3d at 1002.

¹²⁷ *Cone Corp.*, 908 F.2d at 916.

¹²⁸ 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 Constr.*, 941 F.2d 910 at 933 (WBE's affidavit indicated that less than 7 percent of the firm's business came from private contracts and that most of its business resulted from gender-based set-asides).

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

¹³⁰ *AGCC II*, 950 F.2d at 1415.

¹³¹ *Wygant*, 476 U.S. at 283.

¹³² *Croson*, 488 U.S. at 509 (citing *Teamsters*, 431 U.S. at 338).



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.”¹³³

This was not the situation confronting the Ninth Circuit in *Coral Construction*. There, the more than 700-plus pages of appellate records contain 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.”¹³⁴

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.”¹³⁵ After noting the U.S. 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.¹³⁶

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.”¹³⁷

Two other circuit courts also suggested that anecdotal evidence might be dispositive, while rejecting it in the specific case before them. For example, in *Philadelphia*, 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*.¹³⁸ The circuit court

¹³³ *Id.* at 480.

¹³⁴ *Coral Construction*, 941 F.2d at 917-18.

¹³⁵ *Id.* at 918 (emphasis added) (additional statistical evidence gathered after the program had been implemented was also considered by the court and the case was remanded to the lower court for an examination of the factual predicate).

¹³⁶ *Id.* at 919.

¹³⁷ *Id.*

¹³⁸ *Phila.*, 6 F.3d at 1002.



disapproved of the district court's actions because in its view the court's rejection of this evidence was contrary to the court's role in disposing of a motion for summary judgment.¹³⁹ "Yet," the circuit court stated:

Given *Croson*'s emphasis on statistical evidence, even had the district court credited the City's anecdotal evidence, we do not believe this amount of anecdotal evidence is sufficient to satisfy strict scrutiny [quoting *Coral*, supra]. Although anecdotal evidence alone may, in an exceptional case, be so dominant or pervasive that it passes muster under *Croson*, it is insufficient here.¹⁴⁰

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*.¹⁴¹ The court found that in the face of conflicting statistical evidence, the anecdotal evidence there was insufficient:

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. Anecdotal evidence is most useful as a supplement to strong statistical evidence—which the Council did not produce in this case.¹⁴²

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."¹⁴³ However, it held that this was not the "exceptional case" where, unreinforced by statistics, the anecdotal evidence was enough.¹⁴⁴

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

¹³⁹ *Id.* at 1003.

¹⁴⁰ *Id.*

¹⁴¹ 963 F.2d 420, 427 (D.C. Cir.1992).

¹⁴² *Id.*

¹⁴³ *Dade County*, 943 F.Supp 1546.

¹⁴⁴ *Id.* at 926.



court recognized that “[w]hile a fact finder should accord less weight to personal accounts of discrimination that reflects isolated incidents, anecdotal evidence of a municipality’s institutional practices carries more weight due to the systemic impact that such institutional practices have on market conditions.”¹⁴⁵ 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*.¹⁴⁶ 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.¹⁴⁷ Based on *AGCC II*, it would appear that the Ninth Circuit’s standard for acceptable anecdotal evidence is more lenient than other Circuits that have considered the issue.

Taken together, these statements constitute a taxonomy of appropriate anecdotal evidence. The cases suggest that, to be optimally persuasive, anecdotal evidence must satisfy six particular requirements.¹⁴⁸ These requirements are that the accounts:

- are gathered from minority contractors, preferably those that are “qualified”¹⁴⁹
- concern specific, verifiable instances of discrimination¹⁵⁰
- involve the actions of governmental officials¹⁵¹
- involve events within the relevant jurisdiction’s market area¹⁵²
- discuss the harm that the improper conduct has inflicted on the businesses in question¹⁵³

¹⁴⁵ *Concrete Works I*, 36 F.3d at 1530.

¹⁴⁶ *AGCC II*, 950 F.2d 1401.

¹⁴⁷ *Id.* at 1415.

¹⁴⁸ *Phila.*, 6 F.3d at 1003. (anecdotal evidence must be “dominant or pervasive”).

¹⁴⁹ *Id.*

¹⁵⁰ *Coral Constr.*, 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.”).

¹⁵¹ *Croson*, 488 U.S. at 509.

¹⁵² *Coral Constr.*, 941 F.2d at 925.

¹⁵³ *O’Donnell, Constr. Co. v. District of Columbia*, 963 F.2d 420, 427 (D.C. Cir. 1992).



- collectively reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic¹⁵⁴

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

Philadelphia makes clear that 14 anecdotal accounts will not suffice.¹⁵⁵ 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 139.¹⁵⁶ It is, of course, a matter of speculation as to how many of these accounts were indispensable to the court’s approval of the Denver M/WBE program.

In addition, as noted above, the quantum of anecdotal evidence that a court would likely find acceptable may depend on the remedy in question. The remedies that are least burdensome to non-targeted groups would likely require a lesser degree of evidence. Those remedies that are more burdensome on the non-targeted groups would require a stronger factual basis likely extending to verification. However, the Fourth Circuit in *Rowe* rejected the need for verification, pointing out that it “is nothing more than a witness’ narrative of an incident told from the witnesses’ perspective and including a witness’ perceptions.” *Concrete Works*, 321 F.3d at 989.

D. Narrow Tailored Remedies and Consideration of Race-Neutral Options

The *Croson* requirement that a race conscious subcontracting remedy be based on a statistical finding of “identified discrimination” by the government was made clear by the

¹⁵⁴ *Coral Constr.*, 941 F.2d at 919.

¹⁵⁵ *Philadelphia*, 6 F.3d. at 1002-03.

¹⁵⁶ 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 Colo. v. Denver*, 823 F.Supp. 821, 833-34 (D. Colo. 1993). The disparity study consultant examined all of this preexisting data, presumably including the anecdotal accounts from the 1983 and 1988 public hearings, as well as the results of its own 69 interviews, in preparing its recommendations. *Id.* at 833-34. Thus, short of analyzing the record in the case, it is not possible to determine a minimum number of accounts because it is not possible to ascertain the number of consultant interviews and anecdotal accounts that are recycled statements or statements from the same people. Assuming no overlap in accounts, however, and also assuming that the disparity study relied on prior interviews in addition to its own, the number of M/WBEs interviewed in this case could be as high as 139, and, depending on the number of new people heard by the Denver Department of Public Works in March 1988 (see *Id.* at 833), the number might have been even greater.



Fourth Circuit Court in *Rowe v. Tippett*.¹⁵⁷ The Court found that the State of North Carolina's race-conscious goals were over reaching. Goals were applied to ethnic groups and Woman-owned businesses that had no disparity. woman-owned businesses, the Court concluded, were in fact overutilized and the private sector analysis used to justify the goals were not directly tied to Woman-owned businesses to meet the constitutional standard Subcontracting race-conscious goals should be limited to the ethnic and gender groups where there is documented statistically significant disparity and solicitations should be limited to such businesses that provide the particular service.

Remedial programs generally 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.¹⁵⁸

On 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.¹⁵⁹ 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.¹⁶⁰ 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 wrote in *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County*:

The U. S. 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[.]" 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.¹⁶¹

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-

¹⁵⁷ *H.B. Rowe Company, Incorporated v. W. Lindo Tippett, et. al.*, 589 F. Supp. 2d 587; December 9, 2008, Decided, Affirmed in part and reversed in part by, Remanded by *H.B. Rowe Co. v. Tippett*, 2010 U.S. App. LEXIS 15141 (4th Cir. N.C., July 22, 2010)

¹⁵⁸ *AGCC II*, 950 F.2d at 1404.

¹⁵⁹ *Croson*, 488 U.S. at 508.

¹⁶⁰ *Id.* at 507.

¹⁶¹ *Hershell Gill*, 333 F.Supp. 2d 1305, 1330 (S.D.Fla. 2004).



conscious program will stand, so long as it also includes race-neutral measures to address the capital and bonding barriers.¹⁶²

The Ninth Circuit Court of Appeals in *Coral Construction* ruled that there is no requirement that an entity exhaust every possible race-neutral alternative.¹⁶³ 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.¹⁶⁴

E. Summary of Fifth Circuit Case Law

The District Court applied the *Croson* evidentiary standard in *Bilbo Freight Lines, Inc. v. Dan Morales*,¹⁶⁵ and entered judgment in favor of the plaintiff ruling that Section 4 of Senate Bill 1313 violated the Equal Protection Clause. The court found that Section 4 gave preferential treatment to minorities and women in the issuance of Certificates of Authority by the Texas Railroad Commission to participate in the intrastate trucking industry. In applying the *Croson* evidentiary standard, the court found that “the State must make specific findings of discrimination within a relevant market under its jurisdiction before engaging in race-conscious relief. A generalized assertion that there has been past discrimination in the intrastate trucking industry is insufficient because it provides no guidance in determining the precise scope of the perceived injury it seeks to remedy. The Texas legislature did not make the requisite findings of identifiable discrimination before enacting Section 4 of S.B. 1313; instead it relied on general assertions of past societal discrimination and economic deprivation.”

In *W.H. Scott Construction Company, Inc. v City of Jackson*,¹⁶⁶ the Fifth Circuit Court of Appeals affirmed the district court’s grant of summary judgment to plaintiff in its equal protection challenge to a policy encouraging minority participation in City construction contracts. The district court found that the City’s Policy created race-based preferences in the City’s construction contracting and therefore applied strict scrutiny to the racial classification. The Court of Appeals held that “the City lack[ed] the factual predicates required under the Equal Protection Clause to support the City’s 15 percent DBE-

¹⁶² *Id.* (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses).

¹⁶³ *Coral Constr. Co. v. King County*, 941 F.2d 910 (9th Cir. 1991).

¹⁶⁴ *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*.

¹⁶⁵ C.A. No. H-93-3808. Dist Ct. S. Dist of Texas Houston District (Feb 3, 1994).

¹⁶⁶ 199 F3d. 206 (5th Cir. 2000).



participation goal” and therefore found the City’s Policy in violation of the Equal Protection Clause.

In *Kossman Contracting v. The City of Houston*,¹⁶⁷ the plaintiff contends that the City's revised ordinance does not accurately reflect the findings of its Disparity Study. *Kossman* does not challenge the disparity study findings which found that disparity existed for African Americans but not for women or other minorities. The City argued on procedural grounds that the Court lacked jurisdiction to enforce the settlement because it does “not have inherent power to resolve disputed settlement agreements.” This case has been decided, and the Court approved the reauthorization of the City’s MBE Program.

V. BEXAR COUNTY PROCUREMENT REGULATIONS

A. Governing Procurement Regulations

The procurement process and procedures for Bexar County are contained in the County’s Purchasing Manual. The Manual adheres to the procurement regulations, laws, and policies for Bexar County and the state of Texas. The pertinent governing procurement regulations include the following:

1. Civil Practice and Remedies Code Section 106.001

Civil Practice and Remedies Code Section 106.001 prohibits discrimination based on race, religion, color, sex, or national origin by an officer or employee of the state of Texas or a political subdivision of the state.

2. Government Code Chapter 2254 Sub-Chapters A and B

Government Code Chapter 2254, Sub-chapters A and B, also known as the Professional Services Procurement Act, describes the regulations for the procurement of professional and consulting services. These services do not require advertising.

3. Government Code Chapter 2251

Government Code Chapter 2251 describes the prompt payment laws for goods and services procurements.



¹⁶⁷ No. Civ-H-96-3100 (S.D. Tex. 1996), (settled June 23, 2006, re-opened April 30, 2007 and is scheduled for a hearing November 14, 2008). (Non-published case, not yet decided).

4. Local Government Code Chapter 262 Sub-Chapter C

Local Government Code Chapter 262, Sub-chapter C describes the regulations for competitive bid procurements for commodities and services.

5. Local Government Code Chapter 262 Sub-Chapter B

Local Government Code Chapter 262, Sub-chapter B describes the standards for purchasing agents.

B. Administrative Policies No. 8.0 and No 8.1

The County's Administrative Policies, 8.0 and 8.1, which define purchasing activities and functions applicable to purchasing goods and services, are also included in the Manual.

- **Administrative Policy No. 8.0**

Administrative Policy 8.0 was revised in October 2004 and the SMWBE targeted goals were applied to all procurements for commodities, equipment, services (non-professional and operations), maintenance and construction made by County offices, departments, funded entities, and facilities. Administrative Policy 8.0 and 8.1 comply with the applicable procurement laws, including the Texas Constitution, Chapters 262, 271, 2252, and 2254 of the Texas Government Code. Administrative Policy 8.0 does not require Bexar County to award a contract to other than the lowest responsible bidder, as required by Local Government Section 262.023(a).

SMWBEs are businesses certified as (1) Historically Underutilized Businesses (HUBs), (2) disadvantaged business enterprises (DBEs), (3) minority business enterprises (MBEs), (3) women business enterprise (WBE) and (4) small business enterprises (SBEs). All certifications must be approved by the Bexar County Commissioners Court.

Bexar County's Administrative Policy 8.0 components include: 1) Targeted Program Goals, which are based on the availability of established SMWBEs and annually reviewed by the SMWBE Program Office and the SMWBE Program Advisory Committee for adjustment; 2) Administrative responsibilities of Bexar County offices, departments, funded entities, and facilities to actively seek and encourage SMWBE participation; 3) SMWBE Program certification requirements; 4) SMWBE availability tracking to provide commodities, equipment, services (non-professional and operations), maintenance and construction services under \$25,000 and commodities, equipment, services (non-professional and operations), maintenance and construction services over \$25,000; 5) Vendor responsibilities under the SMWBE Program; 6) SMWBE Program Office responsibilities; 7) Bexar County's responsibilities regarding the SMWBE Program; 8) Exemptions to the SMWBE policy provisions; 9) Debarment procedures; and 10) Appeal process.



- **Administrative Policy No. 8.1**

Effective September 1, 2009, Bexar County Commissioners Court revised its administrative policy concerning the purchase of goods and services and professional and personal services. Administrative Policy 8.1 was revised to establish the guidelines and accountability for the expenditures of goods and services. Administrative Policy 8.1 consists of guiding principles for use by the County’s departments and offices, including the definitions for the roles and responsibilities of the Bexar County departments, offices and purchasing agent.

VI. CONCLUSION

The 1989 decision of the U.S. Supreme Court in the *Croson* case changed the legal landscape for business affirmative action programs and altered the authority of local governments to institute remedial race-conscious public contracting programs. 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.”¹⁶⁸

Remedial uses of racial classifications can be seen as falling 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 more comprehensive amount of evidence.¹⁶⁹

¹⁶⁸ *Croson*, 488 U.S. at 509 (*Teamsters*, 431 U.S. at 338).

¹⁶⁹ 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.]”).



VII. LIST OF CASES

Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995).

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

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

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

Associated General Contractors of Ohio v. Drabik, 50 F.Supp. 741 (S.D. Ohio 1999), 214 F.3d 730 (6th Cir. 2000).

Bilbo Freight Lines, Inc. v. Dan Morales, C.A. No. H-93-3808. Dist Ct. S. Dist of Texas Houston District (Feb 3, 1994).

Builders Association of Greater Chicago v. City of Chicago, 298 F.Supp 2d 725 (N.D.Ill. 2003).

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

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

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

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

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

Concrete Works of Colorado v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003). (“*Concrete Works II*”).

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

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



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

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

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

EEOC v. American National Bank, 652 F.2d 1176 (4th Cir. 1981).

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

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

Gratz v. Bollinger, 539 U.S. 244 (2003).

Gross Seed Co, v. Nebraska Department of Roads, No. 4:00-CV-3073, 2002 U.S. Dist LEXIS 27125 (D. Neb. May 6, 2002).

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

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

H.B. Rowe Company, Incorporated v. W. Lindo Tippett, et. al., 589 F. Supp. 2d 587; December 9, 2008, Decided, Affirmed in part and reversed in part by, Remanded by *H.B. Rowe Co. v. Tippett*, 2010 U.S. App. LEXIS 15141 (4th Cir. N.C., July 22, 2010)

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

H.H. Rowe Co, Inc. v. Tippett, (4th Cir. 7/22/10)

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

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

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

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

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

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



North Shore Concrete and Associates v. City of New York, No. 94-CV-4017, 1998 U.S. Dist. LEXIS 6785 (E.D.N.Y. April 12, 1998).

Northern Contracting Inc. v. State of Illinois, No. 00-C-4515, 2005 U.S. Dist. LEXIS 19868 (D. Ill. Sept. 8, 2005).

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

Ohio Contractors Association v. Keip, No. 82-3822, 1983 U.S. App. LEXIS 24185 (6th Cir. Sept. 7, 1983).

Parents Involved in Community Schools v. Seattle School District No. 1, 426 F.3d 1162 (9th Cir. 2004).

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

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

Ritchey Produce Co. v. State of Ohio. 707 N.E.2d 871 (Ohio1999).

Rothe Development Corporation, Inc. v. Department of Defense, 324 F.Supp.2d. 840 (Fed. Cir., 2005).

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

Sherbrooke Turf, Inc. v. Minnesota Department of Transportation, No. 00-CV-1026, 2001 U.S. Dist. LEXIS 19565 (D. Minn. Nov. 14, 2001).

United States v. Virginia, 518 U.S. 515 (1996).

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

Western States Paving v. Washington State Department of Transportation, 407 F.3d 983 (9th Cir. 2005).

W.H. Scott Construction Company, Inc. v. City of Jackson, 199 F3d. 206 (5th Cir. 2000).

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



VIII. STATUTES

- 42 U.S.C. § 14000e, *et seq.*
- Civil Practice and Remedies Code Section 106.001
- Government Code Chapter 2254 Sub-Chapters A and B
- Government Code Chapter 2251
- Local Government Code Chapter 262 Sub-Chapter B
- Local Government Code Chapter 262 Sub-Chapter C



CHAPTER 2: CONTRACTING AND PROCUREMENT POLICIES

I. INTRODUCTION

This chapter reviews Bexar County's contracting and procurement policies, the State of Texas government codes, and federal laws and regulations governing the purchase of goods, services, and construction during the fiscal years 2007 through 2009.

Bexar County, established under the State of Texas Constitution, is one of 254 counties in the State of Texas. The major responsibilities of the County include building and maintaining roads, recreational facilities, constructing and operating the County jail; operating the judicial system; maintaining public records; collecting property taxes; issuing vehicle registration and transfers; and registering voters.

The County has 17 departments including the Appellate Public Defender; Auditor; Community Resources; Community Venues Program; Criminal Investigation Laboratory; Dispute Resolution Center; Economic Development; Elections Department Fire Marshal; Forensic Toxicology Lab; Information Services; Infrastructure Services; Medical Examiner's Office; Office of Emergency Management; Planning & Resource Management; Small, Minority and Women-Owned Business Enterprise Program; and Purchasing and Procurement.

The County's Purchasing and Procurement Department (Purchasing Department) is managed by the Purchasing Agent. A requisition is submitted to the Purchasing Department to initiate the procurement except for certain claims that are processed by the Auditor's Office. All vendors are paid by the Auditor's Office.



II. GOVERNING LAWS AND REGULATIONS

The applicable County, State and federal laws governing purchasing in Bexar County are outlined in Table 2.01 below:

Table 2.01: Governing Laws and Regulations

BEXAR COUNTY ADMINISTRATIVE POLICIES
Bexar County Administrative Policy 8.0 Bexar County Administrative Policy 8.1 Bexar County Administrative Policy 8.3
STATE OF TEXAS LAWS
Texas Local Government Code, Chapter 262 Texas Local Government Code, Section 271 Texas Government Code, Section 2151 Texas Government Code, Section 2155.502 Texas Government Code, 791 Texas Local Government Code, Section 262.030 Texas Transportation Code Texas Tax Code Chapter 312
FEDERAL LAWS AND REGULATIONS
Federal Transit Act USDOT, Uniform Administrative Requirements for Grants and Cooperative Agreements Federal Transit Administration Circular 4220.ID Federal Transit Administration Circular 5220.IB USDOT Disadvantaged Business Program



A. Bexar County Administrative Policies

1. Bexar County Administrative Policy 8.0

In April 2001, the Bexar County Commissioners Court established and promulgated the Small, Minority, and Women-Owned Business Enterprise (SMWBE) Program. The Program applies to the procurement of commodities, equipment, services (non-professional and operations), maintenance and construction by all Bexar County offices, departments, funded entities and facilities.¹

The expressed purpose of the Program is to establish SMWBE procurement targeted goals. The targeted goal is that a minimum of 20 percent for the procurement should be spent with minority and women-owned businesses, and a minimum of 30 percent should be spent with small business enterprises. Given the federal law, the MWBE targets in the program could not be implemented without a finding of discrimination in Bexar County contracting and procurement practices. A disparity study is the legal standard required to establish the factual predicate to implement the race and gender provisions of Policy 8.0.

SMWBEs, in Policy 8.0, are defined as businesses certified as (1) women, small, or minority groups, including Historically Underutilized Businesses (HUB), (2) Disadvantaged Business Enterprises (DBE), (3) Minority Business Enterprises (MBE), (4) Women Business Enterprises (WBE), and (5) Small Business Enterprises. Only businesses certified by a certification agency approved by the Bexar County Commissioners Court are recognized as eligible to participate in the SMWBE Program. Responsibility for Program implementation is delegated to the SMWBE Program Manager.

Since targeted MWBE goals could not be implemented in the absence of appropriate findings from a disparity study, the Program has been limited to outreach and data collection.

2. Bexar County Administrative Policy 8.1

Effective September 1, 2009, the Commissioners Court revised the County's Administrative Policy for the purchase of goods and services and the procurement of professional services and personal services. Policy 8.1 replaced Administrative Policy 8.1 promulgated in 1990, Administrative Policy 8.2 promulgated in 2002, and Administrative Policy 8.3 promulgated in 2002.

¹ This Administrative Policy replaced the 1992 Disadvantaged Business Enterprise (DBE) Administrative SMWBE Policy 8.0.



3. Bexar County Administrative Policy 8.3

Effective March 12, 2007, the Commissioners Court adopted the Texas Department of Transportation (TxDOT) Local Area Management Agreement. The TxDOT Memorandum of Understanding (MOU) specifying the adoption of the TxDOT's Federally-approved DBE program by the County of Bexar was executed on June 5, 2007. Under this Agreement, the County is required to establish a Disadvantaged Business Enterprise (DBE) Program in accordance with the U.S. Department of Transportation (DOT), 49 CFR Part 26. The purpose of the Program is to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. The Small, Minority, Women and Disadvantaged Owned Business Enterprise Program Manager is delegated as the DBE Liaison Officer with responsibility for implementing the Agreement.

B. State of Texas Laws

- Texas Local Government Code, Chapter 262, Subchapters B and C
- Texas Local Government Code, Section 271
- Texas Government Code, Section 2151
- Texas Government Code, Section 2155.502
- Texas Government Code, 791
- Texas Local Government Code, Section 262.030; Professional Services Procurement Act, Government Code, Chapter 2254 Subchapters
- Texas Transportation Code Chapter, Texas Transportation Corporation Act 431 Subtitle I, Transportation Corporations
- Texas Tax Code, Chapter 312

C. Federal Laws and Regulations

- Federal Transit Act, amended June 1992, 49 USC Sec. 1601 *et seq.*
- United States Department of Transportation, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18, amended.



- Federal Transit Administration Circular 4220.ID, Third Party Contracting Guidelines, dated April 15, 1996.
- Federal Transit Administration Circular 5220.IB, Project Management Guidelines, dated 1995.
- United States Department of Transportation Disadvantaged Business Program, 49 CFR Part 23 and 26, amended March 1999.

III. DEFINITIONS

Bexar County procurements are classified under three industries which are defined as follows:

- **Goods** are personal property to be purchased, including equipment, supplies, material and component or repair parts.
- **Services** are work or labor performed on an independent contractor basis, including maintenance, construction, manual, clerical, and personal or professional services.
- **Construction Services** are construction, repair or renovation of a structure, road, highway, or other improvements or additions to real property and architectural, engineering, and land surveying services.

IV. PROCUREMENT PROCESS OVERVIEW

The purpose of the Bexar County Purchasing Policy is to establish guidelines and accountability for the expenditure of taxpayer funds to procure goods and services used by all County departments and offices. The process used to procure goods and services should always provide the best value for the County, while providing an open and fair process for vendors. Bexar County is committed to increasing the involvement of SMWBEs in the procurement process and to afford SMWBEs a fair opportunity to compete for all Bexar County contracts. As set forth in the Bexar County Purchasing Manual,² there are 14 procurement methods utilized by Bexar County. The requirements are determined by industry and value of the purchase.

² In 2010 Bexar County's Procurement Manual was revised eliminating the court action requirement prior to advertisement notification of construction bids.



A. Information Solicitations: Goods and Services

1. Purchasing Card Purchases Less Than \$1,000

Purchasing Cards can be used for the purchase of goods or services where the total value of a transaction does not exceed \$1,000.³

The County's Purchasing Agent is authorized to utilize the Purchasing Card. This authorization can be delegated by the Purchasing Agent. The Purchasing Agent may authorize assistants to use a County Purchasing Card while making a County purchase. The assistant must comply with the rules and procedures adopted by the Purchasing Agent.

The Purchasing Agent is authorized to designate a Purchasing Card Program Specialist to handle:

- Processing Purchasing Cardholder applications and agreements;
- Issuing Purchasing Cards;
- Providing training to Purchasing Cardholders;
- Assisting Purchasing Cardholders with inquires;
- Monitoring Purchasing Card usage; and
- Revoking Purchasing Cardholder privileges.

Purchasing Cardholders are encouraged to seek competition when possible, use existing contracts and secure the lowest prices when feasible. The County's Purchasing Department maintains price contracts and vendor lists to identify suppliers. Purchasing Cardholders are required to review the SMWBE database for SMWBEs that provide the particular good or service being purchased. The Purchasing Cardholder is also expected to strive to meet or exceed the County's SWMBE goal.

2. Negotiated or Non-bid Purchases Less Than \$25,000

According to Texas Local Government Code §262.011(d), the Purchasing Agent sets the procedures and is authorized to select and purchase goods and services that are less than \$25,000 to meet the needs of departments and offices. The Purchasing Agent is authorized to select the vendor and to complete all actions necessary to execute a contract without specific Commissioners Court approval. While competition is not required, employees will obtain competitive quotes when deemed necessary. Departments are also encouraged to utilize a list of SMWBEs by contacting the SMWBE Program Office, Purchasing Department or access the vendor list on the County Finance System. The thresholds are:

³ Texas Local Government Code §262.011(l).



- Less Than \$2,500- Departments may use a requisition or the County Purchasing Card for this type of purchase. After researching information for a quote and providing information to the vendor, if an actual quote is received, the requisition number should be provided to the Purchasing Department. The Purchasing Department will contact the vendor representative to verify the pricing, availability, shipping, delivery, transmittal terms, and will document items in the purchase order that is issued.
- Between \$2,500 and \$24,999- The Purchasing Department will attempt to obtain competition, and a minimum of three sources, for items that exceed \$2,500 but are less than \$25,000 by one of the following methods: written, fax, or telephone Request for Quotation, use of local government contracts or cooperative agreements, Invitation Bids/Request for Proposals, and posting notification on the Internet based Purchasing Notification System, or Texas E-Purchasing Group.

3. Professional and Personal Services

The Professional Services Procurement Act⁴ applies to acquisition of the following services: accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraisal, or nursing.

Award of a contract for these professional services may not be on the basis of competitive bids but rather on the basis of demonstrated competence and qualifications, and a fair and reasonable price consistent with the recommended practices and fees published by the applicable professional association. The fees may not exceed any maximum provided by law. There are services not mentioned in the Professional Services Act that the State courts or the Office of State Attorney General have ruled as exempt: (1) tax preparation, (2) coordination of crime investigation, (3) construction manager services, (4) third-party insurance benefits administrator services, (5) auditor services, and (6) plat books and abstracts.

Once the request for the exemption has been determined, the exemption order will be developed in parallel with the contract and is included in the contract document for approval by the Commissioners Court.



⁴ Texas Government Code Chapter 2254 Subchapters A & B (*Professional Services*).

4. Equipment Leases and Maintenance Agreements Renewal

Equipment lease extensions and maintenance agreement renewals are exempt from competition according to the Texas Local Government Code §262.024(b) if the Commissioners Court by order grants the exemption.

5. Brand Name Purchases

Brand name purchases are treated the same as a request for exemption.

B. Formal Solicitations

1. Sealed Bids for Commodities and Services Exceeding \$25,000

Purchasing staff solicits sealed bids using the Invitation For Bid (IFB) process for commodities and services exceeding \$25,000.⁵ Local Government Code §262 describes the requirements for formal sealed bids, for purchases exceeding \$25,000 and includes the following general requirements:

- The bids are advertised based on County specifications and conditions of purchase (outlined in the IFB) at least once a week in a newspaper of general circulation, with the first advertisement date occurring at least 14 days before the specified bid opening date.
- The County's specifications (outlined in the IFB) stipulate the date and hour bids are received. After the due date and time, no further bids are accepted.
- The bids are opened and read aloud at the specified date and hour, evaluated for "best value" and submitted to the Commissioners Court for award. Generally, the bid representing the best value is accepted, but only one bid may be accepted unless the IFB notes that multiple awards may be made.
- If no bid is acceptable, the entire bidding process may be repeated or terminated.

This process provides all bidders the opportunity to bid on the same items on equal terms and have bids judged according to the same standards as set forth in the specifications and required by statute.

Competitive proposals are similar to competitive bids, but are more restricted by statute. In accordance with the requirements in Texas Local Government Code §262.030, competitive proposals are used to procure insurance, high technology items, landscape

⁵ The formal threshold was increased to \$50,000 in Fiscal Year 2010.



maintenance, travel management, and recycling services. Competitive proposals must be solicited through a Request for Proposal (RFP). RFPs must be advertised in the same manner proscribed for competitive bidding.

The major differences between bids and proposals are:

- The RFP uses performance standards rather than the description of the good or service and specifies the relative importance of price and other factors used to evaluate proposals.
- Vendors submit unique proposals to meet the requirements outlined in the RFP. Proposals may incorporate entirely different approaches to accomplish the same service.
- After proposals are received, the County may negotiate with as many vendors that are deemed “responsive” to find the best possible proposal for each vendor and award to that vendor.
- Proposals are often used to procure professional or personal services.

2. Invitation for Bid/ Request for Proposals Process

The processes for IFBs and RFPs are similar and consist of the following: bid/ proposal preparation, authority to advertise and solicitation, receipt and opening, evaluation, negotiation (RFPs only), and contract award.

3. Request for Proposals Processed Outside Purchasing

The Commissioners Court has adopted a policy that allows departments to procure professional and personal services directly if the department reports to and obtains approval of the RFP from the Commissioners Court, and uses the “Standard Request for Proposal” format contained in the Purchasing Department Manual.

4. Request for Proposals Processed By Purchasing

The Purchasing Department processes RFPs for commodities and services. Each department is encouraged to engage the Purchasing Department for processing RFPs for professional and personal services. The difference between this and other RFPs is that if the professional service is one of those defined in the Professional Services Procurement Act, the contract will not be awarded based on cost.



5. Construction Services Valued at More Than \$25,000

The Texas Local Government Code provides that, “The County Purchasing Agent shall supervise all purchases made on competitive bid”⁶ It also reads “. . . to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, and if the contract requires the expenditure of more than \$25,000 . . . bidding on the contract must be accomplished in the manner provided by the subchapter.”⁷ Construction procurements use the IFB format and process; however, emphasis is placed on bonding requirements, safety records, and Prevailing Wage Labor Rates.

According to Local Government Code §271.025, the County must advertise for bids and the advertisement must include a notice that: (1) describes the work, (2) states the location where all relevant documents may be examined, and (3) states the time and place for submitting bids and for opening bids.

6. Architectural, Engineering and Land Surveying Services Valued at More Than \$25,000

The Professional Services Procurement Act requires architectural, engineering and land surveying services to be procured using a two-step process. According to the Act, the County must:

- First select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications;
 - a. Then attempt to negotiate with the provider a contract at a fair and reasonable price, and
 - b. If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the entity should end negotiations, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price.

⁶ Section 262.011 (e).

⁷ Section 271.024.



C. Emergency, Expedited, Exempt, Sole Source, and Auditor's Office Procurements

1. Emergency Purchases Less Than \$25,000

The purchase of goods or services due to an emergency condition must comply with the provisions of the Texas Local Government Code §262.024(a) (1), which allows the Commissioners Court to exempt routine procurement requirements for an emergency. Emergencies are defined as (1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the County; (2) an item necessary to preserve or protect the public health or safety of the residents of the County; or (3) an item necessary because of unforeseen damage to public property. For items less than \$25,000, the Purchasing Agent authorizes the action to be taken.

2. Emergency Purchases More Than \$25,000

For items \$25,000 or more, the Purchasing Agent submits the order and agenda for the Commissioners Court approval in accordance with the provisions which apply to Emergency Purchases less than \$25,000.

All emergency orders must be processed through the Purchasing Department.

3. Expedited Purchases

Goods or services needed sooner than if obtained through the normal purchasing process, either informal or formal, can be purchased as Expedited Purchases. Expedited Purchases are generally used to prevent work stoppage or loss of the County's money. The normal processing time for informal, (Request for Quotation) is less than 30 days, and for formal (IFB or RFP) is less than 65 days. Expedited Purchases are not Emergency Purchases and are subject to all applicable bidding requirements.

There are two types of Expedited Purchases—(1) walk-through purchases for items needed within 10 days to avoid a work interruption or loss of service or where there would be a significant added cost of operations, and (2) work-stoppage requisitions for items needed immediately to prevent work stoppage due to unanticipated requirements. The main difference between the two is in processing time. The Purchasing Department starts the work-stoppage process immediately after telephone notification.

4. Exempt Purchases (Non-Emergency)

According to the Texas Local Government Code §262.024, goods and services can be exempt from the competitive procurement process if the Commissioners Court orders the



purchase exempt. The following is a list of conditions that are non-emergency exemptions:

- Personal or professional service;
- Land or right-of-way;
- Sole Source items as specified in Section 262.024;
- An item of food;
- Personal property sold as specified in Section 262.024;
- Any work performed under Section 381.004; and
- Lease/maintenance renewals or extensions as specific in Section 262.024b.

5. Sole Source Purchases

Texas Local Government Code lists procurements that may be exempted from competitive bidding requirements as Sole Source Purchases.⁸ A Sole Source item is defined as one that can be obtained from only one source, from which competition is precluded because of the existence of patents, copyrights, secret processes or monopolies; films, utility services, or captive replacement parts of components for equipment.

Sole Source goods and services require a signed statement from the Purchasing Agent as to the existence of only one source. The statement must be submitted for the Commissioners Court's approval, and must be recorded in the Court's meeting minutes.

6. Auditor's Office

The Auditor's Office issues payment for all procurements made by the Purchasing Department. Additionally, the Auditor's Office directly handles and makes payments for the following claims, which are not processed by the Purchasing Department:

- Postage;
- Shipping;
- Tort claims;
- Professional membership fees;
- Child care expenses provided through grants;
- Diesel fuel and quarterly taxes;
- Employee reimbursements (e.g. cellular phone bills, employee recognition events, County sponsored meetings, etc.); and
- Refunds (lost books, park facilities, license fees, and taxes).



⁸ Section 262.024.

The Auditor's Office processes manual requisitions using a Request for Payment Form, whereas the majority of the County's purchases are made utilizing an on-line requisition handled by the Purchasing Agent.

D. Cooperative Purchases

State of Texas law allows the County to purchase goods and services using contracts competed by the State or other governments. The County has a number of Cooperative Purchases Agreements:

- The local government purchasing program through the State of Texas Building and Procurement Commission (TBPC) which allows the County to engage in State Term Contracts to purchase from vendors that have entered into contracts with the State as a result of competitive bidding procedures.⁹
- The County can use TBPC's schedule of federal government contracts awarded utilizing a competitive process by the federal government or those of any other governmental entity in the State.¹⁰
- The Interlocal Cooperation Act authorizes the County to purchase using contracts from other local governments, councils of governments, and the State or State agencies that were competitively procured.¹¹ Currently the County has interlocal agreements with Tarrant County and the Houston-Galveston Area Council of Governments. The County also has an interlocal agreement with the City of San Antonio which is limited to the purchase of road materials and fleet maintenance supplies.
- The County may also purchase automated information services from approved vendors based on their catalog prices and negotiations.¹²

⁹ Local Government Code Sections 271.081 through 271.083.

¹⁰ Texas Government Code §2155.502.

¹¹ Texas Government Code Chapter 791.

¹² Texas Government Code Section 2151.



E. Tax Abatement

The County is authorized to abate ad valorem¹³ property taxes on the value of new improvements to real property, tangible personal property, and inventory and supplies.¹⁴ The County must develop guidelines and review them every two years for the eligibility and award of the tax incentive.¹⁵

Applicants for the tax incentive must agree, when prudent, to divide contracted work and procurement opportunities into the smallest feasible portions to allow for maximum SMWBE participation. The applicant must also demonstrate a good faith effort to award at least 20 percent of its contracted work to certified minority and women-owned businesses and at least 30 percent of its contracted work to certified small businesses. The County describes a good faith effort as evidence that the applicant has increased its purchasing of commodities, equipment, professional and personal services, maintenance and construction from SMWBEs.

V. SMALL/ MINORITY/ WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM

1. Bexar County Procurement

The County is committed to ensuring that SMWBEs are afforded a fair opportunity to compete for all County contracts. To fulfill its commitment, the Commissioners Court adopted the SMWBE Program. The Program provides the following:

- A minimum of 20 percent for procurement commodities, equipment, services, professional and personal services, maintenance and construction and a minimum of 30 percent, procurement goal for spending with small business enterprises.
- County departments and offices that purchase commodities and services are required to make an effort to meet the SMWBE goals.
- In an effort to accomplish these goals, the County documents attempts to solicit bids or proposals from a minimum of 1/3 SMWBE for competitive purchases.

¹³ In proportion to the value of something.

¹⁴ Chapter 312 of the Texas Tax Code.

¹⁵ The City of San Antonio is also a taxing jurisdiction under the tax incentive.



- Departments coordinate with the SMWBE Program Office and the Purchasing Department to document efforts to identify and increase participation of SMWBEs in County procurements.
- County departments and offices document attempts to obtain quotes from SMWBEs for competitive purchases that are estimated to cost less than \$1,000 using vendor lists and/or price tabulations.
- Purchasing Department documents attempts to solicit bids or proposals from SMWBEs for competitive purchases that are estimated to cost between \$1,000 and \$25,000 using vendor lists and/or price tabulations.
- Purchasing Department documents attempts to solicit bids or proposals from a minimum of three SMWBEs for competitive purchases that are estimated to cost over \$25,000 using vendor lists and/or price tabulations.
- County departments and offices document attempts to solicit proposals utilizing SMWBEs for the purchase of professional and personal services using vendor lists and/or price tabulations.
- The County offices are required to use good faith efforts to reach the SMWBE Program goals and provide quarterly reports to the County's SMWBE Program Office. Race specific goals, although authorized by the Commissioners Court, cannot be implemented without the appropriate findings from a disparity study.

2. Funded Entities and Facilities

a. Coliseum Advisory Board MWBE Program

The Bexar County Coliseum Advisory Board's (CAB) MWBE Program was created to afford small, minority, and women-owned business enterprises a fair opportunity to compete for CAB contracts. An MWBE is defined as a small, women, or minority owned business certified with a Bexar County Commissioners Court approved agency; however the program's name is MWBE. It is CAB's policy to prevent discrimination on the basis of race, color, religion, national origin, disability, gender or sexual orientation in either the award or performance of its contracts. These non-discrimination provisions apply to prime contractors, and subcontractors that supply CAB with commodities, equipment, professional and personal services, maintenance services, and construction.

CAB established a 20 percent MWBE target for all procurements. CAB encourages its contractors to exercise good faith to meet its MWBE goal. To increase the participation of MWBEs on its contracts, CAB instituted the following procurement procedures:



- Maintain, update, and provide access to a database of MWBE vendors, with information on the businesses' products and expertise;
- Develop and implement an educational and training program to assist buyers with techniques to increase their use of MWBEs;
- Implement and maintain a communication process with MWBE vendors, to utilize them in the procurement process;
- Advertise bids in the local newspapers and online to notify MWBE vendors of contracting opportunities;
- Submit Information for Bids and Request for Proposals to the City of San Antonio's Department of Economic Development Small and Minority Business Enterprise Program, Southern Central Texas Regional Certification Authority, local ethnic chambers of commerce, Texas E-Procurement Group and business advocacy groups;
- Provide semi-annual reports, to the Commissioners Court, through the SMWBE Program Office; and
- Encourage MWBE participation at pre-bid conferences.

b. University Health System Supplier Diversity Program

The County has partnered with the University Health System (UHS) to assist it in meeting its Diversity Supplier Program objectives. The Program was established to inform MWBEs about UHS' procurement opportunities and identify MWBE capacity. UHS' Diversity Supplier Program offers the following services:

- Assist vendors by providing access to UHS procurement opportunities; and,
- Provide the maximum practicable opportunity for small, minority and women-owned businesses to actively participate in UHS contracts.

The County also collaborates with UHS by providing technical assistance training workshops for vendors and subcontractors on contract and diversity management systems.

c. Center for Health Care Services

The County has partnered with the Center for Health Care Services (CHCS) to assist them in identifying and utilizing HUBs and SMWBEs. CHCS is committed to making



positive efforts to utilize local small businesses and MWBEs in the acquisition of supplies and equipment on a competitive basis.

VI. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

On March 12, 2007, the Commissioners Court adopted the Texas Department of Transportation's (TDOT) Memorandum of Understanding. This agreement requires the County to establish a Disadvantaged Business Enterprise (DBE) Program. The provisions in the Memorandum of Understanding commit the County to ensure that DBEs are provided an equal opportunity to obtain and participate on DOT-assisted contracts. The County adopted the following standards pursuant to the objectives of the Memorandum of Understanding, and the U.S. Department of Transportation (USDOT), Regulations 49CFR, Part 26. The regulations require the County to:

- Ensure non-discrimination in the award and administration of DOT-assisted contracts;
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- Ensure that the DBE Program is narrowly tailored in accordance with applicable laws;
- Ensure that only firms that fully meet the eligibility requirements set forth in 49 CFR Part 26 are permitted to participate as DBEs;
- Help remove barriers to the participation of DBEs in DOT-assisted contracts;
- Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
- Designate a DBE Liaison Officer.

The SMWBE Manager is the designated DBE Liaison Officer for the DBE Program. The DBE Liaison Officer is responsible for implementing all aspects of the Program. Specifically, the DBE Liaison's charge is to:

- Gather and report statistical data as required by DOT;
- Review third-party contracts and purchases for Program compliance;



- Coordinate participation with all departments to set overall DBE goals;
- Ensure bid requests and RFPs are received by DBEs timely;
- Identify contracts and procurements to attain DBE goals;
- Analyze the County's progress toward the DBE goal and identify improvements;
- Participate in pre-bid meetings and bid openings;
- Advise the Commissioners Court on DBE matters and achievements;
- Provide DBEs with technical assistance including bid preparation and obtaining bonding and insurance;
- Plan and participate in DBE training seminars;
- Monitor the DBE certification process;
- Provide outreach to DBEs and community organizations regarding contracting opportunities; and
- Maintain the County's updated certified DBE directory.



Table 2.02: Bexar County Procurement Process

PROCUREMENT CATEGORIES	DOLLAR THRESHOLD	ADVERTISING REQUIREMENT	SOLICITATION PROCESS	PROCUREMENT APPROVAL
INFORMAL SOLICITATIONS: GOODS AND SERVICES				
Purchasing Card Purchases	Less than \$1,000	None	Purchasing Department maintains price contracts and vendor lists to identify suppliers.	Purchasing Agent
Negotiated Non-bid Purchases	Less than \$2,500.00	None	Use requisition or County Purchasing Card	Purchasing Department
	\$2,500 to \$24,999	None	Obtain three bids, post notification on System Texas E-Purchasing Group	Purchasing Department

PROCUREMENT CATEGORIES	DOLLAR THRESHOLD	ADVERTISING REQUIREMENT	SOLICITATION PROCESS	PROCUREMENT APPROVAL
Professional and Personal Services	Less than \$24,999	Yes	Selection based on competence, qualifications, and price. Commissioners Court approval.	Purchasing Department
Equipment Leases and Maintenance Agreement Renewals	None	None	Signed statement from purchasing, approval by Commissioners Court	Purchasing Department
Brand Name Purchases	None	None, if ordered by the Commissioners Court	Commissioners Court approval	Purchasing Department
FORMAL SOLICITATIONS				
Sealed Bids for Commodities and Services	Valued at More than \$25,000	Yes, 14 days before specified bid opening date	Bids opened, evaluated for best value	Submitted to the County Commissioners for approval

PROCUREMENT CATEGORIES	DOLLAR THRESHOLD	ADVERTISING REQUIREMENT	SOLICITATION PROCESS	PROCUREMENT APPROVAL
Invitation for Bids/Proposals	More than \$25,000	Yes	Departments procure services outside the Purchasing Department	Requesting Department
Request for Proposals Processed Outside Purchasing (Professional and Personal Services)	More than \$25,000	Yes	RFP approval by Commissioners Court.	Requesting Department
Construction Services	More than \$25,000	Yes	Bid opening process	Purchasing Department
Construction - Architectural, Engineering, and Land Surveying Services	More than \$25,000	Yes	Two-step selection process	Purchasing Department

PROCUREMENT CATEGORIES	DOLLAR THRESHOLD	ADVERTISING REQUIREMENT	SOLICITATION PROCESS	PROCUREMENT APPROVAL
EMERGENCY, EXPEDITED, EXEMPT, SOLE SOURCE PROCUREMENT, AND COOPERATIVE PURCHASES				
Emergency Purchases	\$2,500 to \$24,999	None	Commissioners Court approval	Processed by Purchasing Department
	More than \$25,000	None	Order and agenda for Commissioners Court approval	Purchasing Department
Exempt Purchases (non-emergency)	Less than \$25,000	None, if ordered by the Commissioners Court	None	Purchasing Department
Sole Source Purchases	None	None	Commissioners Court approval	Purchasing Department
Cooperative Purchases	None	None	Utilizes other governments' competitively bid contracts	Purchasing Agent

CHAPTER 3: PRIME CONTRACTOR UTILIZATION ANALYSIS

I. INTRODUCTION

The first step in a disparity study is the analysis of expenditures in the jurisdiction under review. The objective of the prime contractor utilization analysis is to determine the level of minority and woman-owned business enterprise (M/WBE) utilization as prime contractors.

This chapter documents the Bexar County (County) utilization of M/WBE prime contractors by ethnicity for the study period October 1, 2006 to September 30, 2009. The analysis of the County’s expenditures during the study period was classified into three industries—construction, professional services, and goods and other services. Construction included public work for new construction, remodeling, renovation, maintenance, demolition and repair of any public structure or building, and other public improvements. Professional services included construction management, landscape architecture, surveying, mapping service, architecture and engineering, and services provided by attorneys, accountants, medical professionals, technical services, research planning, and consultants. Goods and other services included materials, supplies, equipment, maintenance and other services which could be performed without a professional license, special education, or training.

The data in the Study is disaggregated into nine ethnic and gender groups. The nine groups are listed in Table 3.01.

Table 3.01: Business Ethnic and Gender Groups

Ethnicity and Gender Category	Definition
African American Businesses	Businesses owned by male and female African Americans
Asian American Businesses	Businesses owned by male and female Asian-Pacific and Subcontinent Asian Americans
Hispanic American Businesses	Businesses owned by male and female Hispanic Americans

Ethnicity and Gender Category	Definition
Native American Businesses	Businesses owned by male and female Native Americans
Caucasian Female Business Enterprises	Businesses owned by Caucasian females
Minority Business Enterprises	Businesses owned by African American, Asian American, Hispanic American, and Native American males and females
Women Business Enterprises	Businesses owned by Caucasian females
Minority and Women Business Enterprises	Businesses owned by Minority males, Minority females, and Caucasian females
Non-Minority Male Business Enterprises	Businesses owned by Caucasian males, businesses that did not declare their ethnicity, or businesses that could not be identified as minority- or female-owned ¹

II. PRIME CONTRACT DATA SOURCES

The dataset analyzed for the prime contractor utilization analysis is payment data extracted from the County’s B2Gnow contract and diversity management system. Data was limited to payments that were issued during the October 1, 2006 to September 30, 2009 study period. Payments were grouped by Transaction ID to create unique transactions. In this Study, all unique transactions are referred to as contracts.

Each County contract was classified into one of the three industries. Mason Tillman worked closely with the County to classify the contracts into the appropriate industry by using both Object and Organization codes. Cooperative agreements and contracts with non-profits, government agencies, utilities, and contracts designated as non-competitive purchases were exclusion from the Study. The industry classifications were reviewed and approved by the County.

After the industry classifications were approved by the County, the ethnicity and gender of each prime contractor was verified. The ethnicity and gender information the County maintained for prime contractors was incomplete. Therefore, the ethnicity and gender information for many prime contractors had to be reconstructed. The need for reconstruction is a common problem with government records. Since ethnicity and gender information is central to the validity of the prime contractor utilization analysis, Mason Tillman conducted research to reconstruct the ethnicity and gender for each contract.

¹ See Section II: Prime Contract Data Sources for the methodology employed to identify the ethnicity and gender of the County’s utilized prime contractors.

The prime contractor names were cross-referenced with certification lists, chambers of commerce lists, and trade organization membership directories. Websites were also reviewed for ethnicity and gender of the business owner. Prime contractors whose ethnicity and gender could not be verified through published sources were surveyed. Mason Tillman also submitted the utilized vendor list to the County to review for ethnicity and gender classifications known to the County. Once the contract records were cleaned and the ethnicity and gender verified, the utilization analysis was performed.

III. PRIME CONTRACTOR UTILIZATION THRESHOLDS

Contracts within each of the three industries were analyzed at three dollar levels. One category included all contracts regardless of size. A second category included all contracts under \$500,000. The third category included informal contracts \$25,000 and under that did not require advertising.

The \$500,000 threshold was designated because at this level there was a demonstrated capacity within the pool of M/WBEs willing to perform the County’s contracts. The informal contract threshold was set forth in the County’s procurement manual. As described in Table 3.02, the informal contract threshold for all three industries was \$25,000.

Table 3.02: Informal Contract Thresholds for the County

Industry	Informal Contract Threshold
Construction	\$25,000
Professional Services	\$25,000
Goods and Other Services	\$25,000

IV. PRIME CONTRACTOR UTILIZATION

A. All Prime Contractors

As depicted in Table 3.03, the County issued 26,164 unique transactions during the October 1, 2006 to September 30, 2009 study period. These transactions are referred to as contracts in this Study. The 26,164 contracts included 967 for construction, 2,411 for professional services, and 22,786 for goods and other services.

The payments made by the County during the study period totaled \$290,957,798 for all 26,164 contracts. Payments included \$144,107,293 for construction, \$31,521,701 for professional services, and \$115,328,804 for goods and other services.

**Table 3.03: Total Prime Contracts and Dollars Expended:
All Industries, October 1, 2006 to September 30, 2009**

Industry	Total Number of Contracts	Total Dollars Expended
Construction	967	\$144,107,293
Professional Services	2,411	\$31,521,701
Goods and Other Services	22,786	\$115,328,804
Total Expenditures	26,164	\$290,957,798

B. Highly Used Prime Contractors

As depicted in Table 3.04, the County's 26,164 prime contracts were received by 2,240 unique vendors.

**Table 3.04: Total Prime Contracts, Utilized Vendors, and Dollars Expended:
All Industries, October 1, 2006 to September 30, 2009**

Prime Contracts/ Vendors/Dollars	Number of Contracts/ Vendors/Dollars
Total Prime Contracts	26,164
Total Utilized Vendors	2,240
Total Expenditures	\$290,957,798

Thirteen of the 2,240 vendors received \$145,278,287 or 50 percent of the prime contract dollars. Three vendors representing 0.13 percent of all vendors utilized during the study period received \$66,128,932 or 23 percent of the prime contract dollars. Table 3.05 depicts the distribution of the total prime contracts by number of vendors.

Table 3.05: Distribution of All Prime Contracts by Number of Vendors

Vendors	Total Dollars	Percent of Dollars²	Number of Contracts	Percent of Contracts
3 Vendors Received	\$66,128,932	23%	104	0.40%
13 Vendors Received	\$145,278,287	50%	376	1.44%
24 Vendors Received	\$174,702,344	60%	3,499	13.37%
2,216 Vendors Received	\$116,255,454	40%	22,665	86.63%
2,240 Vendors Received	\$290,957,798	100%	26,164	100.00%

Table 3.06 presents the ethnic and gender profile of the 24 most highly used prime contractors, representing 60 percent of dollars spent. The highly used prime contractors included Non-Minority Male, Asian American, Hispanic American, and Caucasian Female businesses. The majority of the highly used prime contractor expenditures went to Non-Minority Male businesses and Caucasian Female businesses received the fewest dollars and smallest contracts of the highly used vendors. The individual contracts received by these 24 businesses ranged from \$0.14 to \$10,223,758.

² Percentages are rounded to the nearest whole number.

Table 3.06: Top 24 Highly Used Prime Contractors Representing 60% of Dollars Spent, by Ethnicity and Gender

Ethnicity/Gender³	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Non-Minority Males	\$127,815,520	73.16%	3,415	97.60%
Asian Americans	\$33,405,884	19.12%	36	1.03%
Hispanic Americans	\$9,962,177	5.70%	35	1.00%
Caucasian Females	\$3,518,763	2.01%	13	0.37%
Total	\$174,702,344	100.00%	3,499	100.00%

As depicted in Table 3.07, the County's 967 construction prime contracts were received by 260 vendors.

Table 3.07: Construction Prime Contracts, Utilized Vendors, and Dollars Expended: October 1, 2006 to September 30, 2009

Prime Contracts/ Vendors/Dollars	Number of Contracts/ Vendors/Dollars
Total Prime Contracts	967
Total Utilized Vendors	260
Total Expenditures	\$144,107,293

Three of the 260 construction vendors received \$66,128,932 or 46 percent of the construction prime contract dollars. One vendor representing 0.38 percent of all construction vendors utilized during the study period received \$30,547,408 or 21 percent of the construction prime contract dollars. Table 3.08 depicts the distribution of the total construction prime contracts by number of vendors.

³ African Americans and Native Americans were omitted from the table because they were not highly used.

Table 3.08: Distribution of Construction Prime Contracts by Number of Vendors

Vendors	Total Dollars	Percent of Dollars⁴	Number of Contracts	Percent of Contracts
1 Vendor Received	\$30,547,408	21%	31	3.21%
3 Vendors Received	\$66,128,932	46%	104	10.75%
5 Vendors Received	\$89,038,885	62%	112	11.58%
255 Vendors Received	\$55,068,408	38%	855	88.42%
260 Vendors Received	\$144,107,293	100%	967	100.00%

Table 3.09 presents the ethnic and gender profile of the five most highly used construction prime contractors, representing 60 percent of dollars spent. The highly used construction prime contractors included Non-Minority Male, Asian American, and Hispanic American businesses. The majority of the highly used construction prime contractor expenditures went to Non-Minority Male businesses and Hispanic American businesses received the fewest dollars and smallest contracts of the highly used vendors. The individual contracts received by these five businesses ranged from \$732 to \$10,223,758.

Table 3.09: Top Five Highly Used Construction Prime Contractors Representing 60% of Dollars Spent, by Ethnicity and Gender

Ethnicity/Gender⁵	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Non-Minority Males	\$51,157,558	57.46%	76	67.86%
Asian Americans	\$30,547,408	34.31%	31	27.68%
Hispanic Americans	\$7,333,919	8.24%	5	4.46%
Total	\$89,038,885	100.00%	112	100.00%

⁴ Percentages are rounded to the nearest whole number.

⁵ African Americans, Native Americans, and Caucasian Females were omitted from the table because they were not highly used.

As depicted in Table 3.10, the County's 2,411 professional services prime contracts were received by 404 vendors.

Table 3.10: Professional Services Prime Contracts, Utilized Vendors, and Dollars Expended: October 1, 2006 to September 30, 2009

Prime Contracts/ Vendors/Dollars	Number of Contracts/ Vendors/Dollars
Total Prime Contracts	2,411
Total Utilized Vendors	404
Total Expenditures	\$31,521,701

Eleven of the 404 vendors received \$15,831,521 or 50 percent of the professional services prime contract dollars. Three vendors representing 0.74 percent of all professional services vendors utilized during the study period received \$7,941,148 or 25 percent of the professional services prime contract dollars. Table 3.11 depicts the distribution of the total professional services prime contracts by number of vendors.

Table 3.11: Distribution of Professional Services Prime Contracts by Number of Vendors

Vendors	Total Dollars	Percent of Dollars⁶	Number of Contracts	Percent of Contracts
3 Vendors Received	\$7,941,148	25%	40	9.90%
11 Vendors Received	\$15,831,521	50%	133	32.92%
19 Vendors Received	\$19,079,092	61%	163	40.35%
385 Vendors Received	\$12,442,609	39%	241	59.65%
404 Vendors Received	\$31,521,701	100%	404	100.00%

Table 3.12 presents the ethnic and gender profile of the 19 most highly used professional services prime contractors, representing 60 percent of dollars spent. The highly used professional services prime contractors included Non-Minority Male, Hispanic American, Asian American, and Caucasian Female businesses. The majority of the highly used professional services prime contractor expenditures went to Non-Minority Male businesses and Caucasian Female businesses received the fewest dollars of the highly used vendors. The individual contracts received by these 19 businesses ranged from \$128 to \$2,590,790.

⁶ Percentages are rounded to the nearest whole number.

**Table 3.12: Top 19 Highly Used Professional Services Prime Contractors
Representing 60% of Dollars Spent, by Ethnicity and Gender**

Ethnicity/Gender⁷	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Non-Minority Males	\$9,609,163	50.36%	64	39.26%
Hispanic Americans	\$4,312,396	22.60%	67	41.10%
Asian Americans	\$4,258,590	22.32%	11	6.75%
Caucasian Females	\$898,943	4.71%	21	12.88%
Total	\$19,079,092	100.00%	163	100.00%

As depicted in Table 3.13, the County's 22,786 goods and other services prime contracts were received by 1,743 vendors.

Table 3.13: Goods and Other Services Prime Contracts, Utilized Vendors, and Dollars Expended: October 1, 2006 to September 30, 2009

Prime Contracts/ Vendors/Dollars	Number of Contracts/ Vendors/Dollars
Total Prime Contracts	22,786
Total Utilized Vendors	1,743
Total Expenditures	\$115,328,804

Eighteen of the 1,743 vendors received \$58,044,786 or 50 percent of the 22,786 goods and other services prime contract dollars. Two vendors representing 0.11 percent of all goods and other services vendors utilized during the study period received \$25,410,643 or 22 percent of the goods and other services prime contract dollars. Table 3.14 depicts the distribution of the total goods and other services prime contracts by number of vendors.

⁷ African Americans and Native Americans were omitted from the table because they were not highly used.

**Table 3.14: Distribution of Goods and Other Services Prime Contracts
by Number of Vendors**

Vendors	Total Dollars	Percent of Dollars⁸	Number of Contracts	Percent of Contracts
2 Vendors Received	\$25,410,643	22%	184	0.81%
18 Vendors Received	\$58,044,786	50%	5,995	26.31%
32 Vendors Received	\$69,213,908	60%	6,638	29.13%
1,711 Vendors Received	\$46,114,896	40%	16,148	70.87%
1,743 Vendors Received	\$115,328,804	100%	22,786	100.00%

Table 3.15 presents the ethnic and gender profile of the 32 most highly used goods and other services prime contractors, representing 60 percent of dollars spent. The highly used goods and other services prime contractors included Non-Minority Male, Asian American, Hispanic American, and Caucasian Female businesses. The majority of the highly used goods and other services prime contractor expenditures went to Non-Minority Male businesses and Caucasian Female businesses received the fewest dollars and smallest contracts of the highly used vendors. The individual contracts received by these 32 businesses ranged from \$0.14 to \$2,493,254.

**Table 3.15: Top 32 Highly Used Goods and Other Services Prime Contractors
Representing 60% of Dollars Spent, by Ethnicity and Gender**

Ethnicity/Gender⁹	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Non-Minority Males	\$63,278,840	91.43%	4,680	70.50%
Asian Americans	\$3,457,959	5.00%	1,688	25.43%
Hispanic Americans	\$1,629,975	2.35%	259	3.90%
Caucasian Females	\$847,134	1.22%	11	0.17%
Total	\$69,213,908	100.00%	6,638	100.00%

⁸ Percentages are rounded to the nearest whole number.

⁹ African Americans, Native Americans, and Caucasian Females were omitted from the table because they were not highly used.

C. All Prime Contracts by Industry

1. Construction Prime Contractor Utilization: All Contracts

Table 3.16 summarizes all prime contract dollars expended by the County on construction prime contracts. Minority Business Enterprises received 32.156 percent of the construction prime contract dollars; Women Business Enterprises received 2.797 percent; and Non-Minority Male Business Enterprises received 65.047 percent.

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

Asian Americans received 60 or 6.205 percent of the construction contracts during the study period, representing \$30,876,486 or 21.426 percent of the contract dollars.

Hispanic Americans received 243 or 25.129 percent of the construction contracts during the study period, representing \$15,446,375 or 10.719 percent of the contract dollars.

Native Americans received 4 or 0.414 percent of the construction contracts during the study period, representing \$16,241 or 0.011 percent of the contract dollars.

Minority Business Enterprises received 307 or 31.748 percent of the construction contracts during the study period, representing \$46,339,102 or 32.156 percent of the contract dollars.

Women Business Enterprises received 61 or 6.308 percent of the construction contracts during the study period, representing \$4,030,658 or 2.797 percent of the contract dollars.

Minority and Women Business Enterprises received 368 or 38.056 percent of the construction contracts during the study period, representing \$50,369,760 or 34.953 percent of the contract dollars.

Non-Minority Male Business Enterprises received 599 or 61.944 percent of the construction contracts during the study period, representing \$93,737,533 or 65.047 percent of the contract dollars.

**Table 3.16: Construction Prime Contractor Utilization:
All Contracts, October 1, 2006 to September 30, 2009**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.000%	\$0	0.000%
Asian Americans	60	6.205%	\$30,876,486	21.426%
Hispanic Americans	243	25.129%	\$15,446,375	10.719%
Native Americans	4	0.414%	\$16,241	0.011%
Caucasian Females	61	6.308%	\$4,030,658	2.797%
Non-Minority Males	599	61.944%	\$93,737,533	65.047%
TOTAL	967	100.000%	\$144,107,293	100.000%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.000%	\$0	0.000%
African American Males	0	0.000%	\$0	0.000%
Asian American Females	10	1.034%	\$195,244	0.135%
Asian American Males	50	5.171%	\$30,681,242	21.291%
Hispanic American Females	96	9.928%	\$1,719,417	1.193%
Hispanic American Males	147	15.202%	\$13,726,958	9.526%
Native American Females	0	0.000%	\$0	0.000%
Native American Males	4	0.414%	\$16,241	0.011%
Caucasian Females	61	6.308%	\$4,030,658	2.797%
Non-Minority Males	599	61.944%	\$93,737,533	65.047%
TOTAL	967	100.000%	\$144,107,293	100.000%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	106	10.962%	\$1,914,661	1.329%
Minority Males	201	20.786%	\$44,424,441	30.827%
Caucasian Females	61	6.308%	\$4,030,658	2.797%
Non-Minority Males	599	61.944%	\$93,737,533	65.047%
TOTAL	967	100.000%	\$144,107,293	100.000%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	307	31.748%	\$46,339,102	32.156%
Women Business Enterprises	61	6.308%	\$4,030,658	2.797%
Minority and Women Business Enterprises	368	38.056%	\$50,369,760	34.953%
Non-Minority Male Business Enterprises	599	61.944%	\$93,737,533	65.047%
TOTAL	967	100.000%	\$144,107,293	100.000%

2. Professional Services Prime Contractor Utilization: All Contracts

Table 3.17 summarizes all contract dollars expended by the County on professional services prime contracts. Minority Business Enterprises received 33.862 percent of the professional services prime contract dollars; Women Business Enterprises received 6.421 percent; and Non-Minority Male Business Enterprises received 59.716 percent.

African Americans received 102 or 4.231 percent of the professional services contracts during the study period, representing \$296,821 or 0.942 percent of the contract dollars.

Asian Americans received 44 or 1.825 percent of the professional services contracts during the study period, representing \$4,637,622 or 14.712 percent of the contract dollars.

Hispanic Americans received 358 or 14.849 percent of the professional services contracts during the study period, representing \$5,719,703 or 18.145 percent of the contract dollars.

Native Americans received 5 or 0.207 percent of the professional services contracts during the study period, representing \$19,855 or 0.063 percent of the contract dollars.

Minority Business Enterprises received 509 or 21.112 percent of the professional services contracts during the study period, representing \$10,674,002 or 33.862 percent of the contract dollars.

Women Business Enterprises received 301 or 12.484 percent of the professional services contracts during the study period, representing \$2,024,155 or 6.421 percent of the contract dollars.

Minority and Women Business Enterprises received 810 or 33.596 percent of the professional services contracts during the study period, representing \$12,698,157 or 40.284 percent of the contract dollars.

Non-Minority Male Business Enterprises received 1,601 or 66.404 percent of the professional services contracts during the study period, representing \$18,823,545 or 59.716 percent of the contract dollars.

**Table 3.17: Professional Services Prime Contractor Utilization:
All Contracts, October 1, 2006 to September 30, 2009**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	102	4.231%	\$296,821	0.942%
Asian Americans	44	1.825%	\$4,637,622	14.712%
Hispanic Americans	358	14.849%	\$5,719,703	18.145%
Native Americans	5	0.207%	\$19,855	0.063%
Caucasian Females	301	12.484%	\$2,024,155	6.421%
Non-Minority Males	1,601	66.404%	\$18,823,545	59.716%
TOTAL	2,411	100.000%	\$31,521,701	100.000%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	14	0.581%	\$41,130	0.130%
African American Males	88	3.650%	\$255,691	0.811%
Asian American Females	5	0.207%	\$447,315	1.419%
Asian American Males	39	1.618%	\$4,190,308	13.293%
Hispanic American Females	102	4.231%	\$639,620	2.029%
Hispanic American Males	256	10.618%	\$5,080,083	16.116%
Native American Females	3	0.124%	\$16,245	0.052%
Native American Males	2	0.083%	\$3,611	0.011%
Caucasian Females	301	12.484%	\$2,024,155	6.421%
Non-Minority Males	1,601	66.404%	\$18,823,545	59.716%
TOTAL	2,411	100.000%	\$31,521,701	100.000%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	124	5.143%	\$1,144,310	3.630%
Minority Males	385	15.968%	\$9,529,692	30.232%
Caucasian Females	301	12.484%	\$2,024,155	6.421%
Non-Minority Males	1,601	66.404%	\$18,823,545	59.716%
TOTAL	2,411	100.000%	\$31,521,701	100.000%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	509	21.112%	\$10,674,002	33.862%
Women Business Enterprises	301	12.484%	\$2,024,155	6.421%
Minority and Women Business Enterprises	810	33.596%	\$12,698,157	40.284%
Non-Minority Male Business Enterprises	1,601	66.404%	\$18,823,545	59.716%
TOTAL	2,411	100.000%	\$31,521,701	100.000%

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

Table 3.18 summarizes all contract dollars expended by The County on goods and other services prime contracts. Minority Business Enterprises received 9.298 percent of the goods and other services prime contract dollars; Women Business Enterprises received 3.955 percent; and Non-Minority Male Business Enterprises received 86.747 percent.

African Americans received 165 or 0.724 percent of the goods and other services contracts during the study period, representing \$262,010 or 0.231 percent of the contract dollars.

Asian Americans received 2,113 or 9.273 percent of the goods and other services contracts during the study period, representing \$4,728,124 or 4.1 percent of the contract dollars.

Hispanic Americans received 2,071 or 9.089 percent of the goods and other services contracts during the study period, representing \$5,445,513 or 4.722 percent of the contract dollars.

Native Americans received 162 or 0.711 percent of the goods and other services contracts during the study period, representing \$283,232 or 0.246 percent of the contract dollars.

Minority Business Enterprises received 4,511 or 19.797 percent of the goods and other services contracts during the study period, representing \$10,722,879 or 9.298 percent of the contract dollars.

Women Business Enterprises received 1,949 or 8.553 percent of the goods and other services contracts during the study period, representing \$4,561,714 or 3.955 percent of the contract dollars.

Minority and Women Business Enterprises received 6,460 or 28.351 percent of the goods and other services contracts during the study period, representing \$15,284,593 or 13.253 percent of the contract dollars.

Non-Minority Male Business Enterprises received 16,326 or 71.649 percent of the goods and other services contracts during the study period, representing \$100,044,211 or 86.747 percent of the contract dollars.

**Table 3.18: Goods and Other Services Prime Contractor Utilization:
All Contracts, October 1, 2006 to September 30, 2009**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	165	0.724%	\$266,010	0.231%
Asian Americans	2,113	9.273%	\$4,728,124	4.100%
Hispanic Americans	2,071	9.089%	\$5,445,513	4.722%
Native Americans	162	0.711%	\$283,232	0.246%
Caucasian Females	1,949	8.553%	\$4,561,714	3.955%
Non-Minority Males	16,326	71.649%	\$100,044,211	86.747%
TOTAL	22,786	100.000%	\$115,328,804	100.000%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	12	0.053%	\$10,402	0.009%
African American Males	153	0.671%	\$255,608	0.222%
Asian American Females	390	1.712%	\$1,216,261	1.055%
Asian American Males	1,723	7.562%	\$3,511,863	3.045%
Hispanic American Females	906	3.976%	\$2,318,808	2.011%
Hispanic American Males	1,165	5.113%	\$3,126,705	2.711%
Native American Females	136	0.597%	\$175,848	0.152%
Native American Males	26	0.114%	\$107,385	0.093%
Caucasian Females	1,949	8.553%	\$4,561,714	3.955%
Non-Minority Males	16,326	71.649%	\$100,044,211	86.747%
TOTAL	22,786	100.000%	\$115,328,804	100.000%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1,444	6.337%	\$3,721,318	3.227%
Minority Males	3,067	13.460%	\$7,001,561	6.071%
Caucasian Females	1,949	8.553%	\$4,561,714	3.955%
Non-Minority Males	16,326	71.649%	\$100,044,211	86.747%
TOTAL	22,786	100.000%	\$115,328,804	100.000%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	4,511	19.797%	\$10,722,879	9.298%
Women Business Enterprises	1,949	8.553%	\$4,561,714	3.955%
Minority and Women Business Enterprises	6,460	28.351%	\$15,284,593	13.253%
Non-Minority Male Business Enterprises	16,326	71.649%	\$100,044,211	86.747%
TOTAL	22,786	100.000%	\$115,328,804	100.000%

D. Prime Contracts Under \$500,000, by Industry

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

Table 3.19 summarizes all contract dollars expended by the County on construction prime contracts under \$500,000. Minority Business Enterprises received 24.155 percent of the prime contract dollars; Women Business Enterprises received 10.338 percent; and Non-Minority Male Business Enterprises received 65.507 percent.

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

Asian Americans received 41 or 4.591 percent of the construction contracts under \$500,000 during the study period, representing \$2,856,648 or 8.911 percent of the contract dollars.

Hispanic Americans received 236 or 26.428 percent of the construction contracts under \$500,000 during the study period, representing \$4,870,434 or 15.193 percent of the contract dollars.

Native Americans received 4 or 0.448 percent of the construction contracts under \$500,000 during the study period, representing \$16,241 or 0.051 percent of the contract dollars.

Minority Business Enterprises received 281 or 31.467 percent of the construction contracts under \$500,000 during the study period, representing \$7,743,322 or 24.155 percent of the contract dollars.

Women Business Enterprises received 60 or 6.719 percent of the construction contracts under \$500,000 during the study period, representing \$3,314,085 or 10.338 percent of the contract dollars.

Minority and Women Business Enterprises received 341 or 38.186 percent of the construction contracts under \$500,000 during the study period, representing \$11,057,408 or 34.493 percent of the contract dollars.

Non-Minority Male Business Enterprises received 552 or 61.814 percent of the construction contracts under \$500,000 during the study period, representing \$20,999,984 or 65.507 percent of the contract dollars.

**Table 3.19: Construction Prime Contractor Utilization:
Contracts under \$500,000, October 1, 2006 to September 30, 2009**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.000%	\$0	0.000%
Asian Americans	41	4.591%	\$2,856,648	8.911%
Hispanic Americans	236	26.428%	\$4,870,434	15.193%
Native Americans	4	0.448%	\$16,241	0.051%
Caucasian Females	60	6.719%	\$3,314,085	10.338%
Non-Minority Males	552	61.814%	\$20,999,984	65.507%
TOTAL	893	100.000%	\$32,057,391	100.000%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.000%	\$0	0.000%
African American Males	0	0.000%	\$0	0.000%
Asian American Females	10	1.120%	\$195,244	0.609%
Asian American Males	31	3.471%	\$2,661,403	8.302%
Hispanic American Females	96	10.750%	\$1,719,417	5.364%
Hispanic American Males	140	15.677%	\$3,151,017	9.829%
Native American Females	0	0.000%	\$0	0.000%
Native American Males	4	0.448%	\$16,241	0.051%
Caucasian Females	60	6.719%	\$3,314,085	10.338%
Non-Minority Males	552	61.814%	\$20,999,984	65.507%
TOTAL	893	100.000%	\$32,057,391	100.000%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	106	11.870%	\$1,914,661	5.973%
Minority Males	175	19.597%	\$5,828,661	18.182%
Caucasian Females	60	6.719%	\$3,314,085	10.338%
Non-Minority Males	552	61.814%	\$20,999,984	65.507%
TOTAL	893	100.000%	\$32,057,391	100.000%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	281	31.467%	\$7,743,322	24.155%
Women Business Enterprises	60	6.719%	\$3,314,085	10.338%
Minority and Women Business Enterprises	341	38.186%	\$11,057,408	34.493%
Non-Minority Male Business Enterprises	552	61.814%	\$20,999,984	65.507%
TOTAL	893	100.000%	\$32,057,391	100.000%

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

Table 3.20 summarizes all contract dollars expended by the County on professional services prime contracts under \$500,000. Minority Business Enterprises received 26.914 percent of the professional services prime contract dollars; Women Business Enterprises received 10.232 percent; and Non-Minority Male Business Enterprises received 62.853 percent.

African Americans received 102 or 4.248 percent of the professional services contracts under \$500,000 during the study period, representing \$296,821 or 1.5 percent of the contract dollars.

Asian Americans received 42 or 1.749 percent of the professional services contracts under \$500,000 during the study period, representing \$1,210,797 or 6.121 percent of the contract dollars.

Hispanic Americans received 356 or 14.827 percent of the professional services contracts under \$500,000 during the study period, representing \$3,796,654 or 19.193 percent of the contract dollars.

Native Americans received 5 or 0.208 percent of the professional services contracts under \$500,000 during the study period, representing \$19,855 or 0.1 percent of the contract dollars.

Minority Business Enterprises received 505 or 21.033 percent of the professional services contracts under \$500,000 during the study period, representing \$5,324,127 or 26.914 percent of the contract dollars.

Women Business Enterprises received 301 or 12.536 percent of the professional services contracts under \$500,000 during the study period, representing \$2,024,155 or 10.232 percent of the contract dollars.

Minority and Women Business Enterprises received 806 or 33.569 percent of the professional services contracts under \$500,000 during the study period, representing \$7,348,282 or 37.147 percent of the contract dollars.

Non-Minority Male Business Enterprises received 1,595 or 66.431 percent of the professional services contracts under \$500,000 during the study period, representing \$12,433,611 or 62.853 percent of the contract dollars.

**Table 3.20: Professional Services Prime Contractor Utilization:
Contracts under \$500,000, October 1, 2006 to September 30, 2009**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	102	4.248%	\$296,821	1.500%
Asian Americans	42	1.749%	\$1,210,797	6.121%
Hispanic Americans	356	14.827%	\$3,796,654	19.193%
Native Americans	5	0.208%	\$19,855	0.100%
Caucasian Females	301	12.536%	\$2,024,155	10.232%
Non-Minority Males	1,595	66.431%	\$12,433,611	62.853%
TOTAL	2,401	100.000%	\$19,781,893	100.000%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	14	0.583%	\$41,130	0.208%
African American Males	88	3.665%	\$255,691	1.293%
Asian American Females	5	0.208%	\$447,315	2.261%
Asian American Males	37	1.541%	\$763,482	3.859%
Hispanic American Females	102	4.248%	\$639,620	3.233%
Hispanic American Males	254	10.579%	\$3,157,034	15.959%
Native American Females	3	0.125%	\$16,245	0.082%
Native American Males	2	0.083%	\$3,611	0.018%
Caucasian Females	301	12.536%	\$2,024,155	10.232%
Non-Minority Males	1,595	66.431%	\$12,433,611	62.853%
TOTAL	2,401	100.000%	\$19,781,893	100.000%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	124	5.165%	\$1,144,310	5.785%
Minority Males	381	15.868%	\$4,179,818	21.130%
Caucasian Females	301	12.536%	\$2,024,155	10.232%
Non-Minority Males	1,595	66.431%	\$12,433,611	62.853%
TOTAL	2,401	100.000%	\$19,781,893	100.000%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	505	21.033%	\$5,324,127	26.914%
Women Business Enterprises	301	12.536%	\$2,024,155	10.232%
Minority and Women Business Enterprises	806	33.569%	\$7,348,282	37.147%
Non-Minority Male Business Enterprises	1,595	66.431%	\$12,433,611	62.853%
TOTAL	2,401	100.000%	\$19,781,893	100.000%

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

Table 3.21 summarizes all contract dollars expended by the County on goods and other services prime contracts under \$500,000. Minority Business Enterprises received 10.543 percent of the goods and other services prime contract dollars; Women Business Enterprises received 4.485 percent; and Non-Minority Male Business Enterprises received 84.971 percent.

African Americans received 165 or 0.725 percent of the goods and other services contracts under \$500,000 during the study period, representing \$266,010 or 0.262 percent of the contract dollars.

Asian Americans received 2,113 or 9.28 percent of the goods and other services contracts under \$500,000 during the study period, representing \$4,728,124 or 4.649 percent of the contract dollars.

Hispanic Americans received 2,071 or 9.095 percent of the goods and other services contracts under \$500,000 during the study period, representing \$5,445,513 or 5.354 percent of the contract dollars.

Native Americans received 162 or 0.711 percent of the goods and other services contracts under \$500,000 during the study period, representing \$283,232 or 0.278 percent of the contract dollars.

Minority Business Enterprises received 4,511 or 19.811 percent of the goods and other services contracts under \$500,000 during the study period, representing \$10,722,879 or 10.543 percent of the contract dollars.

Women Business Enterprises received 1,949 or 8.56 percent of the goods and other services contracts under \$500,000 during the study period, representing \$4,561,714 or 4.485 percent of the contract dollars.

Minority and Women Business Enterprises received 6,460 or 28.371 percent of the goods and other services contracts under \$500,000 during the study period, representing \$15,284,593 or 15.029 percent of the contract dollars.

Non-Minority Male Business Enterprises received 16,310 or 71.629 percent of the goods and other services contracts under \$500,000 during the study period, representing \$86,418,985 or 84.971 percent of the contract dollars.

**Table 3.21: Goods and Other Services Prime Contractor Utilization:
Contracts under \$500,000, October 1, 2006 to September 30, 2009**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	165	0.725%	\$266,010	0.262%
Asian Americans	2,113	9.280%	\$4,728,124	4.649%
Hispanic Americans	2,071	9.095%	\$5,445,513	5.354%
Native Americans	162	0.711%	\$283,232	0.278%
Caucasian Females	1,949	8.560%	\$4,561,714	4.485%
Non-Minority Males	16,310	71.629%	\$86,418,985	84.971%
TOTAL	22,770	100.000%	\$101,703,578	100.000%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	12	0.053%	\$10,402	0.010%
African American Males	153	0.672%	\$255,608	0.251%
Asian American Females	390	1.713%	\$1,216,261	1.196%
Asian American Males	1,723	7.567%	\$3,511,863	3.453%
Hispanic American Females	906	3.979%	\$2,318,808	2.280%
Hispanic American Males	1,165	5.116%	\$3,126,705	3.074%
Native American Females	136	0.597%	\$175,848	0.173%
Native American Males	26	0.114%	\$107,385	0.106%
Caucasian Females	1,949	8.560%	\$4,561,714	4.485%
Non-Minority Males	16,310	71.629%	\$86,418,985	84.971%
TOTAL	22,770	100.000%	\$101,703,578	100.000%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1,444	6.342%	\$3,721,318	3.659%
Minority Males	3,067	13.469%	\$7,001,561	6.884%
Caucasian Females	1,949	8.560%	\$4,561,714	4.485%
Non-Minority Males	16,310	71.629%	\$86,418,985	84.971%
TOTAL	22,770	100.000%	\$101,703,578	100.000%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	4,511	19.811%	\$10,722,879	10.543%
Women Business Enterprises	1,949	8.560%	\$4,561,714	4.485%
Minority and Women Business Enterprises	6,460	28.371%	\$15,284,593	15.029%
Non-Minority Male Business Enterprises	16,310	71.629%	\$86,418,985	84.971%
TOTAL	22,770	100.000%	\$101,703,578	100.000%

E. Informal Contracts \$25,000 and under, by Industry

1. Construction Prime Contractor Utilization: Contracts \$25,000 and under

Table 3.22 summarizes all contract dollars expended by the County on construction prime contracts \$25,000 and under. Minority Business Enterprises received 41.446 percent of the construction prime contract dollars; Women Business Enterprises received 4.527 percent; and Non-Minority Male Business Enterprises received 54.028 percent.

African Americans received none of the construction contracts \$25,000 and under during the study period.

Asian Americans received 29 or 4.067 percent of the construction contracts \$25,000 and under during the study period, representing \$133,383 or 4.116 percent of the contract dollars.

Hispanic Americans received 197 or 27.63 percent of the construction contracts \$25,000 and under during the study period, representing \$1,193,512 or 36.829 percent of the contract dollars.

Native Americans received 4 or 0.561 percent of the construction contracts \$25,000 and under during the study period, representing \$16,241 or 0.501 percent of the contract dollars.

Minority Business Enterprises received 230 or 32.258 percent of the construction contracts \$25,000 and under during the study period, representing \$1,343,135 or 41.446 percent of the contract dollars.

Women Business Enterprises received 52 or 7.293 percent of the construction contracts \$25,000 and under during the study period, representing \$146,706 or 4.527 percent of the contract dollars.

Minority and Women Business Enterprises received 282 or 39.551 percent of the construction contracts \$25,000 and under during the study period, representing \$1,489,841 or 45.972 percent of the contract dollars.

Non-Minority Male Business Enterprises received 431 or 60.449 percent of the construction contracts \$25,000 and under during the study period, representing \$1,750,882 or 54.028 percent of the contract dollars.

**Table 3.22: Construction Prime Contractor Utilization:
Contracts \$25,000 and under, October 1, 2006 to September 30, 2009**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.000%	\$0	0.000%
Asian Americans	29	4.067%	\$133,383	4.116%
Hispanic Americans	197	27.630%	\$1,193,512	36.829%
Native Americans	4	0.561%	\$16,241	0.501%
Caucasian Females	52	7.293%	\$146,706	4.527%
Non-Minority Males	431	60.449%	\$1,750,882	54.028%
TOTAL	713	100.000%	\$3,240,723	100.000%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.000%	\$0	0.000%
African American Males	0	0.000%	\$0	0.000%
Asian American Females	9	1.262%	\$35,147	1.085%
Asian American Males	20	2.805%	\$98,235	3.031%
Hispanic American Females	76	10.659%	\$471,263	14.542%
Hispanic American Males	121	16.971%	\$722,249	22.287%
Native American Females	0	0.000%	\$0	0.000%
Native American Males	4	0.561%	\$16,241	0.501%
Caucasian Females	52	7.293%	\$146,706	4.527%
Non-Minority Males	431	60.449%	\$1,750,882	54.028%
TOTAL	713	100.000%	\$3,240,723	100.000%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	85	11.921%	\$506,410	15.626%
Minority Males	145	20.337%	\$836,725	25.819%
Caucasian Females	52	7.293%	\$146,706	4.527%
Non-Minority Males	431	60.449%	\$1,750,882	54.028%
TOTAL	713	100.000%	\$3,240,723	100.000%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	230	32.258%	\$1,343,135	41.446%
Women Business Enterprises	52	7.293%	\$146,706	4.527%
Minority and Women Business Enterprises	282	39.551%	\$1,489,841	45.972%
Non-Minority Male Business Enterprises	431	60.449%	\$1,750,882	54.028%
TOTAL	713	100.000%	\$3,240,723	100.000%

2. Professional Services Prime Contractor Utilization: Contracts \$25,000 and under

Table 3.23 summarizes all contract dollars expended by the County on professional services prime contracts \$25,000 and under. Minority Business Enterprises received 30.327 percent of the professional services prime contract dollars; Women Business Enterprises received 12.407 percent; and Non-Minority Male Business Enterprises received 57.266 percent.

African Americans received 101 or 4.511 percent of the professional services contracts \$25,000 and under during the study period, representing \$257,731 or 4.153 percent of the contract dollars.

Asian Americans received 31 or 1.385 percent of the professional services contracts \$25,000 and under during the study period, representing \$101,684 or 1.638 percent of the contract dollars.

Hispanic Americans received 331 or 14.783 percent of the professional services contracts \$25,000 and under during the study period, representing \$1,502,951 or 24.216 percent of the contract dollars.

Native Americans received 5 or 0.223 percent of the professional services contracts \$25,000 and under during the study period, representing \$19,855 or 0.32 percent of the contract dollars.

Minority Business Enterprises received 468 or 20.902 percent of the professional services contracts \$25,000 and under during the study period, representing \$1,882,220 or 30.327 percent of the contract dollars.

Women Business Enterprises received 282 or 12.595 percent of the professional services contracts \$25,000 and under during the study period, representing \$770,054 or 12.407 percent of the contract dollars.

Minority and Women Business Enterprises received 750 or 33.497 percent of the professional services contracts \$25,000 and under during the study period, representing \$2,652,275 or 42.734 percent of the contract dollars.

Non-Minority Male Business Enterprises received 1,489 or 66.503 percent of the professional services contracts \$25,000 and under during the study period, representing \$3,554,208 or 57.266 percent of the contract dollars.

**Table 3.23: Professional Services Prime Contractor Utilization:
Contracts \$25,000 and under, October 1, 2006 to September 30, 2009**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	101	4.511%	\$257,731	4.153%
Asian Americans	31	1.385%	\$101,684	1.638%
Hispanic Americans	331	14.783%	\$1,502,951	24.216%
Native Americans	5	0.223%	\$19,855	0.320%
Caucasian Females	282	12.595%	\$770,054	12.407%
Non-Minority Males	1,489	66.503%	\$3,554,208	57.266%
TOTAL	2,239	100.000%	\$6,206,483	100.000%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	14	0.625%	\$41,130	0.663%
African American Males	87	3.886%	\$216,601	3.490%
Asian American Females	3	0.134%	\$25,196	0.406%
Asian American Males	28	1.251%	\$76,488	1.232%
Hispanic American Females	102	4.556%	\$639,620	10.306%
Hispanic American Males	229	10.228%	\$863,330	13.910%
Native American Females	3	0.134%	\$16,245	0.262%
Native American Males	2	0.089%	\$3,611	0.058%
Caucasian Females	282	12.595%	\$770,054	12.407%
Non-Minority Males	1,489	66.503%	\$3,554,208	57.266%
TOTAL	2,239	100.000%	\$6,206,483	100.000%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	122	5.449%	\$722,190	11.636%
Minority Males	346	15.453%	\$1,160,030	18.691%
Caucasian Females	282	12.595%	\$770,054	12.407%
Non-Minority Males	1,489	66.503%	\$3,554,208	57.266%
TOTAL	2,239	100.000%	\$6,206,483	100.000%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	468	20.902%	\$1,882,220	30.327%
Women Business Enterprises	282	12.595%	\$770,054	12.407%
Minority and Women Business Enterprises	750	33.497%	\$2,652,275	42.734%
Non-Minority Male Business Enterprises	1,489	66.503%	\$3,554,208	57.266%
TOTAL	2,239	100.000%	\$6,206,483	100.000%

3. Goods and Other Services Prime Contractor Utilization: Contracts \$25,000 and under

Table 3.24 summarizes all contract dollars expended by the County on goods and other services prime contracts \$25,000 and under. Minority Business Enterprises received 16.702 percent of the goods and other services prime contract dollars; Women Business Enterprises received 7.195 percent; and Non-Minority Male Business Enterprises received 76.103 percent.

African Americans received 163 or 0.738 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$168,475 or 0.499 percent of the contract dollars.

Asian Americans received 2,083 or 9.432 percent of the good other services contracts \$25,000 and under during the study period, representing \$2,124,046 or 6.287 percent of the contract dollars.

Hispanic Americans received 2,034 or 9.21 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$3,146,225 or 9.313 percent of the contract dollars.

Native Americans received 161 or 0.729 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$203,831 or 0.603 percent of the contract dollars.

Minority Business Enterprises received 4,441 or 20.11 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$5,642,577 or 16.702 percent of the contract dollars.

Women Business Enterprises received 1,917 or 8.68 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$2,430,864 or 7.195 percent of the contract dollars.

Minority and Women Business Enterprises received 6,358 or 28.79 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$8,073,442 or 23.897 percent of the contract dollars.

Non-Minority Male Business Enterprises received 15,726 or 71.21 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$25,710,406 or 76.103 percent of the contract dollars.

**Table 3.24: Goods and Other Services Prime Contractor Utilization:
Contracts \$25,000 and under, October 1, 2006 to September 30, 2009**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	163	0.738%	\$168,475	0.499%
Asian Americans	2,083	9.432%	\$2,124,046	6.287%
Hispanic Americans	2,034	9.210%	\$3,146,225	9.313%
Native Americans	161	0.729%	\$203,831	0.603%
Caucasian Females	1,917	8.680%	\$2,430,864	7.195%
Non-Minority Males	15,726	71.210%	\$25,710,406	76.103%
TOTAL	22,084	100.000%	\$33,783,848	100.000%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	12	0.054%	\$10,402	0.031%
African American Males	151	0.684%	\$158,073	0.468%
Asian American Females	380	1.721%	\$497,898	1.474%
Asian American Males	1,703	7.711%	\$1,626,148	4.813%
Hispanic American Females	895	4.053%	\$1,406,657	4.164%
Hispanic American Males	1,139	5.158%	\$1,739,568	5.149%
Native American Females	136	0.616%	\$175,848	0.521%
Native American Males	25	0.113%	\$27,983	0.083%
Caucasian Females	1,917	8.680%	\$2,430,864	7.195%
Non-Minority Males	15,726	71.210%	\$25,710,406	76.103%
TOTAL	22,084	100.000%	\$33,783,848	100.000%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1,423	6.444%	\$2,090,805	6.189%
Minority Males	3,018	13.666%	\$3,551,773	10.513%
Caucasian Females	1,917	8.680%	\$2,430,864	7.195%
Non-Minority Males	15,726	71.210%	\$25,710,406	76.103%
TOTAL	22,084	100.000%	\$33,783,848	100.000%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	4,441	20.110%	\$5,642,577	16.702%
Women Business Enterprises	1,917	8.680%	\$2,430,864	7.195%
Minority and Women Business Enterprises	6,358	28.790%	\$8,073,442	23.897%
Non-Minority Male Business Enterprises	15,726	71.210%	\$25,710,406	76.103%
TOTAL	22,084	100.000%	\$33,783,848	100.000%

V. SUMMARY

The County's prime contractor utilization analysis examined \$290,957,798 expended on prime contracts awarded between October 1, 2006 and September 30, 2009. The \$290,957,798 expended included \$144,107,293 for construction, \$31,521,701 for professional services, and \$115,328,804 for goods and other services. A total of 26,164 contracts were analyzed, which included 967 for construction, 2,411 for professional services, and 22,786 for goods and other services.

The utilization analysis was performed separately for informal and formal prime contracts. The informal levels included contracts \$25,000 and under for each industry. The analysis of formal contracts was limited to contracts under \$500,000 for each industry. *Chapter 7: Prime Contractor Disparity Analysis* presents the statistical analysis of disparity in each of the three industries.

CHAPTER 4: SUBCONTRACTOR UTILIZATION ANALYSIS

I. INTRODUCTION

As discussed in *Chapter 3: Prime Contractor Utilization Analysis*, a disparity study, as required under *Croson*, documents minority and woman-owned business enterprises' (M/WBEs') contracting history in the market area. The objective of this chapter is to determine the level of M/WBE subcontractor utilization by ethnicity and gender compared to Non-Minority Male subcontractor utilization. A finding of statistically significant disparity is required to implement a race-based M/WBE subcontracting program.

In order to determine whether there is underutilization of M/WBE subcontractors by Bexar County's (County's) construction, professional services, and goods and other services prime contractors, it is imperative to determine the level of M/WBE and non-M/WBE subcontractor utilization on the County's contracts. In this Study, the subcontracts issued by the County prime contractors during the October 1, 2006 to September 30, 2009 study period are analyzed.

II. SUBCONTRACTOR UTILIZATION DATA SOURCES

Extensive research was undertaken to reconstruct the construction and professional services subcontracts issued by the County's prime contractors. Subcontracts for goods and other services contracts were not included in the analysis because prime contractors traditionally do not subcontract out much of their work.

Several different sources were used to compile the subcontract data for the analysis. Mason Tillman identified contracts over \$100,000 and reviewed the Bexar County Commissioner's Court Meeting Minutes and project documents to extract subcontractor information. Subcontractor data was also extracted from the B2Gnow system.

In addition, Mason Tillman conducted a prime contractor expenditure survey to identify subcontractors. A request for subcontractors was mailed to each prime contractor that received at least one purchase order over \$100,000. For each subcontract, the prime

contractor was asked to provide the subcontractor name, contact information, award amount, and total payments. Mason Tillman made three rounds of reminder telephone calls to encourage prime contractors to respond to the survey. After the third round of reminder calls, the County assisted in contacting the large prime contractors in order to encourage them to respond. This effort resulted in many additional prime contractor responses to the survey.

All subcontractors identified from the research were contacted to verify their participation on each prime contract and the amount of their payment.

The extraordinary effort of the County staff made it possible to reconstruct the subcontracts for many prime contracts.

III. SUBCONTRACTOR UTILIZATION

A. All Subcontracts

As depicted in Table 4.01 below, Mason Tillman analyzed 446 subcontracts, which included 315 construction subcontracts and 131 professional services subcontracts for the October 1, 2006 to September 30, 2009 study period.

There were \$100,553,337 total subcontract dollars expended during the October 1, 2006 to September 30, 2009 study period, which included \$93,950,526 for construction subcontracts and \$6,602,811 for professional services subcontracts.

Table 4.01 Total Subcontracts Issued and Dollars, All Industries, October 1, 2006 to September 30, 2009

Industry	Total Number of Subcontracts	Total Amount Expended
Construction	315	\$93,950,526
Professional Services	131	\$6,602,811
Total	446	\$100,553,337

B. All Subcontracts by Industry

1. Construction Subcontracts

Table 4.02 depicts the construction subcontracts issued by the County's prime contractors. Minority Business Enterprises received 10.75 percent of the construction subcontract dollars; Women Business Enterprises received 11.568 percent; and Non-Minority Male Business Enterprises received 77.683 percent. These ethnic and gender groups are defined in Table 3.01 of *Chapter 3: Prime Contractor Utilization Analysis*.

African Americans received 4 or 1.27 percent of the County's construction subcontracts during the study period, representing \$640,897 or 0.682 percent of the subcontract dollars.

Asian Americans received 5 or 1.587 percent of the County's construction subcontracts during the study period, representing \$397,385 or 0.423 percent of the subcontract dollars.

Hispanic Americans received 36 or 11.429 percent of the County's construction subcontracts during the study period, representing \$8,202,387 or 8.731 percent of the subcontract dollars.

Native Americans received 1 or 0.317 percent of the County's construction subcontracts during the study period, representing \$858,873 or 0.914 percent of the subcontract dollars.

Minority Business Enterprises received 46 or 14.603 percent of the County's construction subcontracts during the study period, representing \$10,099,541 or 10.75 percent of the subcontract dollars.

Women Business Enterprises received 35 or 11.111 percent of the County's construction subcontracts during the study period, representing \$10,867,839 or 11.568 percent of the subcontract dollars.

Minority and Women Business Enterprises received 81 or 25.714 percent of the County's construction subcontracts during the study period, representing \$20,967,381 or 22.317 percent of the subcontract dollars.

Non-Minority Male Business Enterprises received 234 or 74.286 percent of the County's construction subcontracts during the study period, representing \$72,983,145 or 77.683 percent of the subcontract dollars.

**Table 4.02 Construction Subcontractor Utilization,
October 1, 2006 to September 30, 2009**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	4	1.270%	\$640,897	0.682%
Asian Americans	5	1.587%	\$397,385	0.423%
Hispanic Americans	36	11.429%	\$8,202,387	8.731%
Native Americans	1	0.317%	\$858,873	0.914%
Caucasian Females	35	11.111%	\$10,867,839	11.568%
Non-Minority Males	234	74.286%	\$72,983,145	77.683%
TOTAL	315	100.000%	\$93,950,526	100.000%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	0.317%	\$380,343	0.405%
African American Males	3	0.952%	\$260,554	0.277%
Asian American Females	0	0.000%	\$0	0.000%
Asian American Males	5	1.587%	\$397,385	0.423%
Hispanic American Females	7	2.222%	\$436,956	0.465%
Hispanic American Males	29	9.206%	\$7,765,431	8.265%
Native American Females	0	0.000%	\$0	0.000%
Native American Males	1	0.317%	\$858,873	0.914%
Caucasian Females	35	11.111%	\$10,867,839	11.568%
Non-Minority Males	234	74.286%	\$72,983,145	77.683%
TOTAL	315	100.000%	93,950,526	100.000%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	8	2.540%	\$817,298	0.870%
Minority Males	38	12.063%	\$9,282,243	9.880%
Caucasian Females	35	11.111%	\$10,867,839	11.568%
Non-Minority Males	234	74.286%	\$72,983,145	77.683%
TOTAL	315	100.000%	\$93,950,526	100.000%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	46	14.603%	\$10,099,541	10.750%
Women Business Enterprises	35	11.111%	\$10,867,839	11.568%
Minority and Women Business Enterprises	81	25.714%	\$20,967,381	22.317%
Non-Minority Male Business Enterprises	234	74.286%	\$72,983,145	77.683%
TOTAL	315	100.000%	\$93,950,526	100.000%

2. Professional Services Subcontracts

Table 4.03 depicts the professional services subcontracts issued by the County's prime contractors. Minority Business Enterprises received 34.619 percent of the professional services subcontract dollars; Women Business Enterprises received 17.777 percent; and Non-Minority Male Business Enterprises received 47.604 percent.

African Americans received 1 or 0.763 percent of the County's professional services subcontracts during the study period, representing \$17,108 or 0.259 percent of the subcontract dollars.

Asian Americans received 8 or 6.107 percent of the County's professional services subcontracts during the study period, representing \$932,877 or 14.128 percent of the subcontract dollars.

Hispanic Americans received 29 or 22.137 percent of the County's professional services subcontracts during the study period, representing \$1,335,824 or 20.231 percent of the subcontract dollars.

Native Americans received none of the County's professional services subcontracts during the study period.

Minority Business Enterprises received 38 or 29.008 percent of the County's professional services subcontracts during the study period, representing \$2,285,809 or 34.619 percent of the subcontract dollars.

Women Business Enterprises received 31 or 23.664 percent of the County's professional services subcontracts during the study period, representing \$1,173,771 or 17.777 percent of the subcontract dollars.

Minority and Women Business Enterprises received 69 or 52.672 percent of the County's professional services subcontracts during the study period, representing \$3,459,580 or 52.396 percent of the subcontract dollars.

Non-Minority Male Business Enterprises received 62 or 47.328 percent of the County's professional services subcontracts during the study period, representing \$3,143,232 or 47.604 percent of the subcontract dollars.

**Table 4.03 Professional Services Subcontractor Utilization,
October 1, 2006 to September 30, 2009**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	1	0.763%	\$17,108	0.259%
Asian Americans	8	6.107%	\$932,877	14.128%
Hispanic Americans	29	22.137%	\$1,335,824	20.231%
Native Americans	0	0.000%	\$0	0.000%
Caucasian Females	31	23.664%	\$1,173,771	17.777%
Non-Minority Males	62	47.328%	\$3,143,232	47.604%
TOTAL	131	100.000%	\$6,602,811	100.000%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.000%	\$0	0.000%
African American Males	1	0.763%	\$17,108	0.259%
Asian American Females	3	2.290%	\$39,878	0.604%
Asian American Males	5	3.817%	\$892,999	13.525%
Hispanic American Females	6	4.580%	\$366,100	5.545%
Hispanic American Males	23	17.557%	\$969,723	14.687%
Native American Females	0	0.000%	\$0	0.000%
Native American Males	0	0.000%	\$0	0.000%
Caucasian Females	31	23.664%	\$1,173,771	17.777%
Non-Minority Males	62	47.328%	\$3,143,232	47.604%
TOTAL	131	100.000%	6,602,811	100.000%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	9	6.870%	\$405,979	6.149%
Minority Males	29	22.137%	\$1,879,830	28.470%
Caucasian Females	31	23.664%	\$1,173,771	17.777%
Non-Minority Males	62	47.328%	\$3,143,232	47.604%
TOTAL	131	100.000%	\$6,602,811	100.000%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	38	29.008%	\$2,285,809	34.619%
Women Business Enterprises	31	23.664%	\$1,173,771	17.777%
Minority and Women Business Enterprises	69	52.672%	\$3,459,580	52.396%
Non-Minority Male Business Enterprises	62	47.328%	\$3,143,232	47.604%
TOTAL	131	100.000%	\$6,602,811	100.000%

CHAPTER 5: MARKET AREA ANALYSIS

I. MARKET AREA DEFINITION

A. Legal Criteria for Geographic Market Area ¹

The Supreme Court's decision in *City of Richmond v. J.A. Croson Co.*² held that programs established by local governments to set goals for the participation of minority and woman-owned firms, must be supported by evidence of past discrimination in the awarding of their contracts.

Prior to the *Croson* decision, many agencies and jurisdictions implementing race-conscious programs did so without developing a detailed public record to document discrimination in their awarding of contracts. Instead, they relied upon common knowledge and what was viewed as widely-recognized patterns of discrimination, both local and national.³

Croson established that a local government could not rely on society-wide discrimination as the basis for a race-based program but, instead, was required to identify discrimination within its own jurisdiction.⁴ In *Croson*, the Court found the City of Richmond's Minority Business Enterprise (MBE) construction program to be unconstitutional because there was insufficient evidence of discrimination in the local construction market.

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

¹ This chapter presents the authors analytical analysis of the salient case law and Bexar County's prime contractor utilization data pertaining to the relevant study period to determine the appropriate geographic market area for the County.

² *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

³ *United Steelworkers v. Weber*, 433 U.S. 193, 198, n. 1 (1979).

⁴ *Croson*, 488 U.S. at 497 (1989).

B. Application to the Croson Standard

While *Croson* emphasized the importance of the local market area, it provided little assistance in defining its parameters.⁵ However, it is informative to review the Court's definition of the City of Richmond's market area. In discussing the scope of the constitutional violation that must be investigated, the Court interchangeably used the terms "relevant market,"⁶ "Richmond construction industry,"⁷ and "city's construction industry"⁸ to define the proper scope of the examination of the existence of discrimination within the City. This interchangeable use of terms lends support to a definition of market area that coincides with the boundaries of a jurisdiction.

In analyzing the cases following *Croson*, a pattern emerges that provides additional guidance. The body of cases examining market area supports a definition of market area that is reasonable—that is, *fact based*—rather than dictated by a specific formula.⁹ In *Cone Corporation v. Hillsborough County*,¹⁰ the Eleventh Circuit Court of Appeals considered a study in support of Florida's Hillsborough County MBE Program, which used minority contractors located in the County as the measure of available firms. The Program was found to be constitutional under the compelling governmental interest element of the strict scrutiny standard.

Hillsborough County's program was based on statistics indicating that specific discrimination existed in the construction contracts awarded by the County, not in the construction industry in general. Hillsborough County had extracted data from within its own jurisdictional boundaries and assessed the percentage of minority businesses available in Hillsborough County. The Court stated that the study was properly conducted within the "local construction industry."¹¹

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,¹² the Ninth Circuit Court of Appeals found the City and County of San Francisco's MBE Program to have the factual predicate necessary to survive strict scrutiny. The San Francisco MBE Program was supported by a study that assessed the number of available MBE contractors within the City and County of San Francisco. The

⁵ *Adarand*, which extended *Croson*'s strict scrutiny standard to federal programs, did not change *Croson*'s approach to market area where federal funds are involved.

⁶ *Croson*, 488 U.S. at 471 (1989).

⁷ *Id.* at 500.

⁸ *Id.* at 470.

⁹ See e.g., *Concrete Works of Colorado v. City of Denver, Colorado*, 36 F.3d 1513, 1528 (10th Cir. 1994).

¹⁰ *Cone Corporation v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990).

¹¹ *Id.* at 915.

¹² *Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991).

Court found it appropriate to use the City and County as the relevant market area within which to conduct a disparity study.¹³

In *Coral Construction v. King County*, the Ninth Circuit Court of Appeals held that “a set-aside program is valid only if actual, identifiable discrimination has occurred within the local industry affected by the program.”¹⁴ In support of its MBE Program, the State of Washington’s King County offered studies compiled by other jurisdictions, including entities completely within the County or coterminous with the boundaries of the County, as well as a separate jurisdiction completely outside of the County. The plaintiffs contended that *Croson* required King County to compile its own data and cited *Croson* as prohibiting data sharing.

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

Concerning data gathered by a neighboring county, the Court concluded that this data could not be used to support King County’s MBE Program. The Court noted, “It is vital that a race-conscious program align itself as closely to the scope of the problem legitimately sought to be rectified by the governmental entity. To prevent overbreadth, the enacting jurisdiction should limit its factual inquiry to the presence of discrimination within its own boundaries.”¹⁵ However, the Court did note that the “world of contracting does not conform itself neatly to jurisdictional boundaries.”¹⁶

There are other situations where courts have approved a definition of market area that extends beyond a jurisdiction’s geographic boundaries. In *Concrete Works v. City and County of Denver*,¹⁷ the 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 Metropolitan Statistical Area (MSA) to support its MBE program. Plaintiffs argued that the federal constitution prohibited consideration of evidence beyond jurisdictional boundaries. The Court of Appeals disagreed.

¹³ *Id.* at 1415.

¹⁴ *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991), *cert. denied*, 112 S.Ct. 875 (1992).

¹⁵ *Id.* at 917.

¹⁶ *Id.*

¹⁷ *Concrete Works*, 36 F.3d 1513, 1528 (10th Cir. 1994).

Critical to the Court's acceptance of the Denver MSA as the relevant local market, was the finding that more than 80 percent of construction and design contracts awarded by Denver were awarded to contractors within the MSA. Another consideration was that Denver's analysis was based on U.S. Census data, which was available for the Denver MSA but not for the city itself. There was no undue burden placed on nonculpable parties, as Denver had conducted a majority of its construction contracts within the area defined as the local market. Citing *AGCCII*,¹⁸ 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."¹⁹

Similarly, New York State conducted a disparity study in which the geographic market consisted of New York State and eight counties in northern New Jersey. The geographic market was defined as the area encompassing the location of businesses which received more than 90 percent of the dollar value of all contracts awarded by the agency.²⁰

State and local governments must pay special attention to the geographical scope of their disparity studies. *Croson* determined that the statistical analysis should focus on the number of qualified minority individuals or qualified minority business owners in the government's marketplace.²¹ The text of *Croson* itself suggests that the geographical boundaries of the government entity comprise an appropriate market area and other courts have agreed with this finding. In addition, other cases have approved the use of a percentage of the dollars spent by an agency on contracting.

It follows then that an entity may limit consideration of evidence of discrimination to discrimination occurring within its own jurisdiction. Under certain circumstances, extra-jurisdictional evidence can be used if the percentage of governmental dollars supports such boundaries.

¹⁸ *AGCCII*, 950 F.2d 1401 (9th Cir. 1991).

¹⁹ *Concrete Works*, 36 F.3d at 1528 (10th Cir. 1994).

²⁰ *Opportunity Denied! New York State's Study*, 26 *Urban Lawyer* No. 3, Summer 1994.

²¹ *Croson*, 488 U.S. at 501 (1989).

II. BEXAR COUNTY MARKET AREA ANALYSIS

Although *Croson* and its progeny do not provide a bright line rule for the delineation of the local market area, taken collectively, the case law supports a definition of market area as within the local geographic area where the jurisdiction spends a majority of its dollars. It is within the local geographical market area where Bexar County (County) may consider evidence of discrimination.

A review of the contracts awarded by the County shows that the one single jurisdiction where the businesses receive most of its 26,164 contracts and the majority of the contract dollars was Bexar County.

1. Summary of the Distribution of All Contracts Awarded

The County awarded 26,164 contracts valued at \$290,957,798 during the October 1, 2006 to September 30, 2009 study period. Businesses based in the County's market area received 57.73 percent of these contracts and 67.82 percent of the dollars. The distribution of all contracts awarded and dollars received by all firms within and outside of the County's market area is depicted below in Table 5.01.

**Table 5.01: Distribution of All Contracts Awarded
October 1, 2006 to September 30, 2009**

County	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Bexar	15,104	57.73%	\$197,332,570.36	67.82%
Travis	387	1.48%	\$24,676,157.09	8.48%
OUT OF STATE – GA	206	0.79%	\$15,203,584.28	5.23%
Dallas	1,614	6.17%	\$5,807,276.04	2.00%
Tarrant	3,063	11.71%	\$5,436,591.07	1.87%
OUT OF STATE – IL	454	1.74%	\$4,022,831.41	1.38%
Remaining*	5,336	20.39%	\$38,478,788.06	13.22%
Total	26,164	100.00%	\$290,957,798.31	100.00%

*Remaining includes other Texas Counties, Out of Texas, and Out of the United States

2. Distribution of Construction Contracts

The County awarded 967 construction contracts valued at \$144,107,293 during the October 1, 2006 to September 30, 2009 study period. Businesses based in the County's construction market area received 85.52 percent of the construction contracts and 80.17 percent of the dollars. The distribution of the construction contracts awarded and dollars received by all firms within and outside of the County's construction market area is depicted below in Table 5.02.

**Table 5.02: Distribution of Construction Contracts Awarded
October 1, 2006 to September 30, 2009**

County	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Bexar	827	85.52%	\$115,524,692.93	80.17%
Travis	32	3.31%	\$21,381,566.92	14.84%
Comal	24	2.48%	\$2,368,630.87	1.64%
Kendall	4	0.41%	\$878,836.29	0.61%
Hidalgo	1	0.10%	\$823,775.30	0.57%
Williamson	5	0.52%	\$670,962.61	0.47%
OUT OF STATE - IL	5	0.52%	\$618,831.67	0.43%
Remaining*	69	7.14%	\$1,839,996.47	1.28%
Total	967	100.00%	\$144,107,293.06	100.00%

*Remaining includes other Texas Counties, Out of Texas, and Out of the United States

3. Distribution of Professional Services Contracts

The County awarded 2,411 professional services contracts valued at \$31,521,701 during the October 1, 2006 to September 30, 2009 study period. Businesses based in the County's professional services market area received 72.75 percent of the professional services contracts and 69.66 percent of the dollars. The distribution of the professional services contracts awarded and dollars received by all firms within and outside of the County's professional services market area is depicted below in Table 5.03.

**Table 5.03: Distribution of Professional Services Contracts Awarded
October 1, 2006 to September 30, 2009**

County	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Bexar	1,754	72.75%	\$21,957,658.28	69.66%
Tarrant	28	1.16%	\$2,463,805.23	7.82%
Travis	110	4.56%	\$2,419,199.75	7.67%
OUT OF STATE - VA	3	0.12%	\$967,856.37	3.07%
OUT OF STATE - IL	5	0.21%	\$866,014.89	2.75%
Kendall	89	3.69%	\$339,087.65	1.08%
OUT OF STATE - MI	9	0.37%	\$320,174.24	1.02%
Remaining*	413	17.13%	\$2,187,904.98	6.94%
Total	2,411	100.00%	\$31,521,701.39	100.00%

*Remaining includes other Texas Counties, Out of Texas, and Out of the United States

4. Distribution of Goods and Other Services Contracts

The County awarded 22,786 goods and other services contracts valued at \$115,328,804 dollars during the October 1, 2006 to September 30, 2009 study period. Businesses based in the County's goods and other services market area received 54.96 percent of the goods and other services contracts and 51.9 percent of the dollars.

The distribution of the goods and other services contracts awarded and dollars received by all firms within and outside of the County's goods and other services market area is depicted below in Table 5.04.

**Table 5.04: Distribution of Goods and Other Services Contracts Awarded
October 1, 2006 to September 30, 2009**

County	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Bexar	12,523	54.96%	\$59,850,219.15	51.90%
OUT OF STATE - GA	198	0.87%	\$15,194,934.28	13.18%
Dallas	1,587	6.96%	\$5,563,128.81	4.82%
Tarrant	3,035	13.32%	\$2,972,785.84	2.58%
OUT OF STATE - MS	55	0.24%	\$2,876,383.94	2.49%
OUT OF STATE - CA	293	1.29%	\$2,616,863.46	2.27%
Jefferson	29	0.13%	\$2,580,032.24	2.24%
Remaining*	5,066	22.23%	\$23,674,456.14	20.53%
Total	22,786	100.00%	\$115,328,803.86	100.00%

*Remaining includes other Texas Counties, Out of Texas, and Out of the United States

Table 5.05 below presents an overview of the number of construction, professional services, and goods and other services contracts the County awarded and the dollars spent during the October 1, 2006 to September 30, 2009 study period.

Table 5.05: Bexar County Market Area by Percent of Contracts Awarded and Dollars Spent, October 1, 2006 to September 30, 2009

Market Area	Amount of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
Combined Industries				
Market Area	15,104	57.73%	\$197,332,570	67.82%
Outside Market Area	11,060	42.27%	\$93,625,228	32.18%
Total	26,164	100.00%	\$290,957,798	100.00%
Construction				
Market Area	827	85.52%	\$115,524,693	80.17%
Outside Market Area	140	14.48%	\$28,582,600	19.83%
Total	967	100.00%	\$144,107,293	100.00%
Professional Services				
Market Area	1,754	72.75%	\$21,957,658	69.66%
Outside Market Area	657	27.25%	\$9,564,043	30.34%
Total	2,411	100.00%	\$31,521,701	100.00%
Goods & Services				
Market Area	12,523	54.96%	\$59,850,219	51.90%
Outside Market Area	10,263	45.04%	\$55,478,585	48.10%
Total	22,786	100.00%	\$115,328,804	100.00%

CHAPTER 6: PRIME CONTRACTOR AND SUBCONTRACTOR AVAILABILITY ANALYSIS

I. INTRODUCTION

Availability is defined, according to *Croson*, as the number of businesses in the jurisdiction's market area that are willing and able to provide goods or services.¹ To determine availability, minority and woman-owned business enterprises (M/WBEs) and non-M/WBEs within the jurisdiction's market area that are ready, willing, and able to provide the goods and services need to be enumerated. The market area for the three industries—construction, professional services, and goods and other services, as defined in *Chapter 5: Market Area Analysis*, is Bexar County (County).

When considering sources for determining the number of willing and able M/WBEs and non-M/WBEs in the market area, the selection must be based on whether two aspects about the population in question can be gauged from the sources. One consideration is a business' interest in doing business with the jurisdiction, as implied by the term "willing," and the other is its ability or capacity to provide a service or good, as implied by the term "able."

The compiled list of available businesses includes M/WBEs and non-M/WBEs in the construction, professional services, and goods and other services industries. County and other government agencies' records, government certification records, and business association membership listings were the sources used to compile a list of available market area businesses. Separate availability lists were compiled by industry for prime contractors and subcontractors. A distribution of the available businesses is presented in this chapter by ethnicity, gender, and industry.

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

II. PRIME CONTRACTOR AVAILABILITY DATA SOURCES

A. Identification of Willing Businesses within the Market Area

Mason Tillman used three types of sources to identify businesses in the market area that provide goods and services that the County procures. One source was the County's utilized businesses, and the County and other government agencies' bidders lists and vendors lists. Another source was government certification lists. The third source was business associations' membership lists. Only businesses that were determined to be willing were added to the availability list. Any business identified as willing from more than one source was counted only once in an industry. A business that was willing to provide goods or services in more than one industry was listed uniquely in each relevant industry's availability list.

The three sources were ranked with the highest rank assigned to the utilized businesses, bidders, and vendors. Government certification lists ranked second and business association membership lists third. Therefore, the first document used to build the availability list was the list of County utilized businesses. To the utilized businesses were added the bidders and vendors. Businesses identified on certification lists were then appended to the list. The certification lists were collected from federal and local government certification agencies. The local certification lists included small, minority, woman, and disadvantaged business enterprises (SMWDBEs). Businesses on association membership lists which affirmed their willingness through a survey of business association members were also added to the availability list. The business associations included trade and professional groups and Chambers of Commerce.

Extensive targeted outreach to business associations in the County's market area was performed to identify and secure business membership lists. Meetings, letters, and telephone contact with the associations garnered a number of membership lists. From the three sources, 3,855 unique market area businesses that provided goods or services in one or more of the three industries were identified. An accounting of the willing businesses derived by source is listed below:

1. County and Other Government Agencies' Records

All of the County-utilized businesses, and the County and other government agencies' bidders and vendors were determined to be willing. There were 7,670 utilized businesses, bidders, and vendors. From these sources 1,766 unique businesses were added to the availability list.

2. Government Certification Lists

All the market area businesses on the government certification lists were considered to be willing. There were 6,130 certified businesses in the market area. From these certification lists, 1,672 unique certified businesses were added to the availability list.

3. Business Association Membership Lists

Membership lists were obtained from six business associations located in the market area. From the business association membership lists, 2,872 unique market area businesses in the three industries were identified. The unique list was queried for businesses with a telephone number. There were 2,748 businesses with telephone numbers. These businesses were surveyed to determine their willingness to contract with the County. There were 420 unique willing businesses added to the availability list.

B. Prime Contractor Sources

Table 6.01 lists the sources from which the list of willing businesses was compiled.

Table 6.01: Prime Contractor Availability Data Sources

Source	Type of Information
County and Other Government Agencies Records	
AT&T Center Community Arena Management Vendors List	M/WBEs and non-M/WBEs
Bexar County Utilized Businesses	M/WBEs and non-M/WBEs
B2GNow Vendors List ²	M/WBEs and non-M/WBEs
BidNet Bexar County Vendors List	M/WBEs and non-M/WBEs
Bexar County Registered Vendors List	M/WBEs and non-M/WBEs
San Antonio Port Authority Vendors List	M/WBEs and non-M/WBEs
State of Texas Centralized Master Bidders List	M/WBEs and non-M/WBEs
City of San Antonio Vendors List	M/WBEs and non-M/WBEs
San Antonio Housing Authority Registered Businesses List	M/WBEs and non-M/WBEs

² B2GNow Vendors List includes the following vendor directories and certification agencies: South Central Texas Regional Certification Agency, North Central Texas Regional Certification Agency, State of Texas Historically Underutilized Businesses, Texas Department of Transportation, City of Houston, Houston Metropolitan Transit Authority, and Corpus Christi Regional Transportation Authority.

Source	Type of Information
Bexar County 2007-2009 SMWBE Annual Conference Attendees	S/M/WBEs
U.S. General Service Administration Service Disabled Veteran Owned Small Business Contractor List	SDVOSB
Government Certification Lists	
State of Texas Historically Underutilized Businesses Directory	M/WBEs and non-M/WBEs
South Central Texas Regional Certification Agency Certification List	M/WBEs and non-M/WBEs
Tarrant County, Tarrant Vendor Online Registration System Certification List	M/WBEs and non-M/WBEs
Texas Unified Certification Program Disadvantaged Business Enterprise Information Directory	DBEs
Central Contractor Registration database: Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, La Salle, Live Oak, Medina, Webb, Zapata	M/WBEs and non-M/WBEs
Business Association Membership Lists	
American Institute of Architects	M/WBEs and non-M/WBEs
Alamo City Black Chamber of Commerce	MBEs
Associated Builders Contractors - South Texas Chapter	M/WBEs and non-M/WBEs
Associated General Contractors - San Antonio Chapter	M/WBEs and non-M/WBEs
Associated General Contractors - San Antonio Chapter-Associated Members	M/WBEs and non-M/WBEs
Associated General Contractors - San Antonio Chapter-General Contractors	M/WBEs and non-M/WBEs
Hispanic Contractors de San Antonio, Inc.	MBEs
National Association of Women Business Owners	WBEs
San Antonio Council of Engineering Companies Membership List	M/WBEs and non-M/WBEs
San Antonio Hispanic Chamber of Commerce	MBEs
San Antonio Women's Chamber of Commerce	WBEs

Source	Type of Information
Women's Business Enterprise Alliance Certification List	WBEs

C. Determination of Willingness

All businesses included in the availability analysis were determined to be willing to contract with the County. Willingness is defined in *Croson* and its progeny as a business' interest in doing government contracting. Businesses identified from the 28 sources listed in Table 6.01 had demonstrated their willingness to perform on public contracts. To be classified as willing, the business either had bid on a government contract, secured government certification, or was listed on a business organization's membership list and affirmed an interest in contracting with the County through the willingness survey.

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

Tables 6.02 through 6.05 present the distribution of willing prime contractors by source. The highest ranked source was the prime contractors utilized by the County. Each ranked business is *counted only once*. For example, a utilized prime contractor counted in the prime contractor utilization source was not counted a second time as a bidder, certified business, or company identified from a business association list.

As noted in Table 6.02, 89.105 percent of the businesses on the unique list of available prime contractors were obtained from County and other government agencies' records, and government certification lists. Companies identified through the business association membership lists represent 10.895 percent of the willing businesses.

Table 6.02: Distribution of Prime Contractor Availability Data Sources, All Industries

Sources	M/WBE Percentage	Non-M/WBE Percentage	Source Percentage
Prime Contractor Utilization	21.406%	33.702%	27.756%
Bidders and Vendors Lists	18.240%	17.730%	17.977%
Government Certification Lists	60.300%	27.524%	43.372%
Subtotal	99.946%	78.955%	89.105%
Business Association Membership Lists	0.050%	21.045%	10.895%
Grand Total*	100.000%	100.000%	100.000%

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

A distribution of available businesses by source also was calculated for each industry. As noted in Table 6.03, 90.728 percent of the construction businesses identified were derived from County and other government agencies' records, and government certification lists. Companies identified through the business association membership lists represent 9.272 percent of the willing businesses.

Table 6.03: Distribution of Prime Contractor Availability Data Sources, Construction

Sources	M/WBE Percentage	Non-M/WBE Percentage	Source Percentage
Prime Contractor Utilization	16.976%	24.691%	20.542%
Bidders and Vendors Lists	20.690%	14.198%	17.689%
Government Certification Lists	62.069%	41.358%	52.496%
Subtotal	99.735%	80.247%	90.728%
Business Association Membership Lists	0.265%	19.753%	9.272%
Grand Total*	100.000%	100.000%	100.000%

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

Table 6.04 depicts the data sources for the available professional services prime contractors. As noted, 81.804 percent of the professional services businesses identified were derived from County and other government agencies' records, and government certification lists. Companies identified through the business association membership lists represent 18.196 percent of the willing businesses.

Table 6.04: Distribution of Prime Contractor Availability Data Sources, Professional Services

Sources	M/WBE Percentage	Non-M/WBE Percentage	Source Percentage
Prime Contractor Utilization	20.000%	27.904%	24.339%
Bidders and Vendors Lists	20.517%	15.156%	17.574%
Government Certification Lists	59.483%	23.796%	39.891%
Subtotal	100.000%	66.856%	81.804%
Business Association Membership Lists	0.000%	33.144%	18.196%
Grand Total*	100.000%	100.000%	100.000%

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

Table 6.05 depicts the data sources for the available goods and other services prime contractors. As noted, 95.414 percent of the goods and other services businesses identified were derived from County and other government agencies' records, and government certification lists. Companies identified through the business association membership lists represent 4.586 percent of the willing businesses.

Table 6.05: Distribution of Prime Contractor Availability Data Sources, Goods and Other Services

Sources	M/WBE Percentage	Non-M/WBE Percentage	Source Percentage
Prime Contractor Utilization	28.850%	46.095%	37.305%
Bidders and Vendors Lists	15.584%	19.961%	17.730%
Government Certification Lists	55.566%	24.590%	40.378%
Subtotal	100.000%	90.646%	95.414%
Business Association Membership Lists	0.000%	9.354%	4.586%
Grand Total*	100.000%	100.000%	100.000%

* 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 awards.³ However, capacity requirements are not delineated in *Croson*. The cases where capacity has been considered has involved large, competitively bid construction prime contracts. The capacity of willing market area businesses to do business with the County was assessed using three approaches.

- The size of all prime contracts awarded by the County was analyzed to determine the capacity needed to perform the average awarded contract.
- The largest contracts awarded to M/WBEs were identified to determine demonstrated ability to win large, competitively bid contracts.
- The Texas Department of Transportation (TxDOT) and South Central Texas Regional Certification Agency (SCTRCA) certification processes were assessed to determine if those processes meet the standard set in *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia (Philadelphia)*,⁴ which found the U.S. Department of Transportation (USDOT) certification sufficient to measure capacity.

A. Size of Contracts Analyzed

In *Associated General Contractors of America v. City of Columbus* and *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade City*, the courts were concerned with the capacity of the enumerated businesses to bid on large, competitively bid contracts. It should also be noted that the focus in both cases was on the bidder's size and ability to perform on large, competitively bid construction contracts.⁵

The County's construction, professional services, and goods and other services contracts were analyzed to determine the size of awarded contracts in order to gauge the capacity required to perform on the County's contracts. The size distribution illustrates the fact that the majority of County's contracts were under \$25,000. The distribution in Table 6.06 illustrates that limited capacity is needed to perform the majority of the County's contracts.

³ *Croson*, 488 U.S. 469.

⁴ *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990 (3d Cir. 1993), on remand, 893 F. Supp. 419 (E.D. Penn. 1995), aff'd, 91 F.3d 586 (3d Cir. 1996).

⁵ *Associated General Contractors of America v. City of Columbus*, 936 F. Supp. 1363 (S.D. Ohio Eastern Division, decided August 26, 1996), and *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade City*, 943 F. Supp. 1546 (S.D. Fla. 1996), aff'd 122 F.3d 895 (11th Cir. 1997). Writ of certiorari denied *Metropolitan Dade County v. Engineering Contrs. Ass'n*, 523 U.S. 1004, 140 L. Ed. 2d 317, 118 S. Ct. 1186, (1998); Related proceeding at *Hershell Gill Consulting Eng'Rs, Inc. v. Miami-Dade County*, 2004 U.S. Dist. LEXIS 17197 (S.D. Fla., Aug. 24, 2004). Decision was vacated by the 6th Circuit Court of Appeals.

For the size analysis, the County's contracts were grouped into eight dollar ranges.⁶ Each industry was analyzed to determine the number and percentage of contracts that fell within the eight size categories. The size distribution of contracts awarded to Non-Minority Males was then compared to the size distribution of contracts awarded to Caucasian Females, Minority Females, and Minority Males.

Table 6.06, which presents the size distribution for contracts awarded within the eight dollar ranges in all industries combined, demonstrates that 95.738 percent of the County's contracts were less than \$25,000; 97.515 percent were less than \$50,000; 98.428 percent were less than \$100,000; and 99.617 percent were less than \$500,000. Only 0.383 percent of the County's contracts were \$500,000 or more.

The percentage of contracts the County awarded to non-minority males, women-owned businesses, and minority male firms was comparable under \$500,000. Therefore the formal prime contract analysis was limited to contracts under \$500,000. This analysis addressed the concern that capping the capacity required to perform larger contracts had not been documented.

1. Construction Contracts by Size

Table 6.07 depicts the County's construction contracts awarded within the eight dollar ranges. Contracts valued at less than \$25,000 were 73.733 percent; those less than \$50,000 were 79.11 percent; those less than \$100,000 were 83.143 percent; and those less than \$500,000 were 92.347 percent.

2. Professional Services Contracts by Size

Table 6.08 depicts professional services contracts within the eight dollar ranges. Contracts valued at less than \$25,000 were 92.783 percent; those less than \$50,000 were 96.309 percent; those less than \$100,000 were 98.051 percent; and those less than \$500,000 were 99.586 percent.

3. Goods and Other Services Contracts by Size

Table 6.09 depicts goods and other services contracts within the eight dollar ranges. Contracts valued at less than \$25,000 were 96.985 percent; those less than \$50,000 were 98.424 percent; those less than \$100,000 were 99.117 percent; and those less than \$500,000 were 99.929 percent.

⁶ The eight dollar ranges are \$1 to \$24,999; \$25,000 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1,000,000 to \$2,999,999; and \$3,000,000 and greater.

Table 6.06: Contracts by Size, All Industries, October 1, 2006 to September 30, 2009

Size	Non-Minority				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$24,999	2258	97.707%	17,652	95.282%	1,629	97.312%	3,510	96.085%	25,049	95.738%
\$25,000 - \$49,999	31	1.341%	368	1.986%	14	0.836%	52	1.423%	465	1.777%
\$50,000 - \$99,999	16	0.692%	176	0.950%	22	1.314%	25	0.684%	239	0.913%
\$100,000 - \$249,999	4	0.173%	183	0.988%	8	0.478%	24	0.657%	219	0.837%
\$250,000 - \$499,999	1	0.043%	78	0.421%	1	0.060%	12	0.328%	92	0.352%
\$500,000 - \$999,999	1	0.043%	35	0.189%	0	0.000%	15	0.411%	51	0.195%
\$1,000,000 - \$2,999,999	0	0.000%	29	0.157%	0	0.000%	13	0.356%	42	0.161%
\$3,000,000 and greater	0	0.000%	5	0.027%	0	0.000%	2	0.055%	7	0.027%
Total	2311	100.000%	18526	100.000%	1674	100.000%	3653	100.000%	26164	100.000%

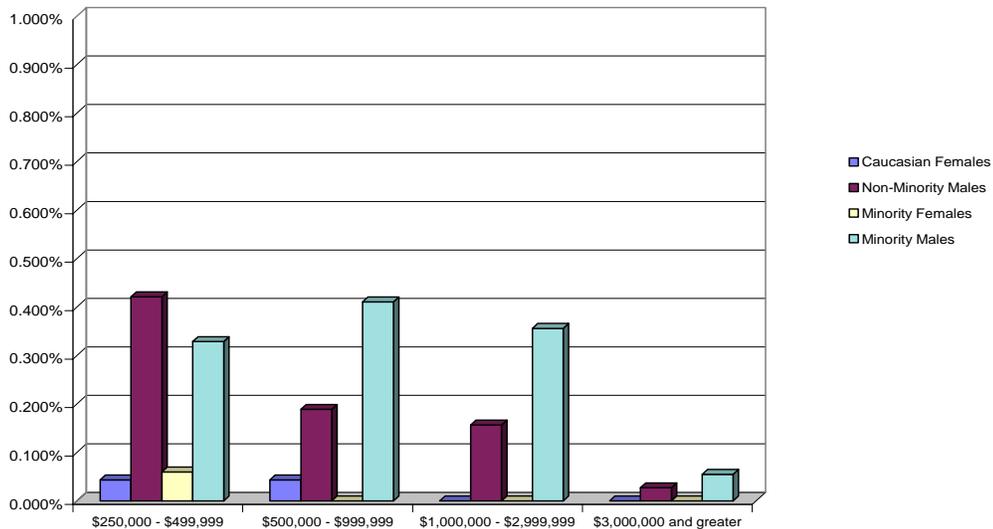
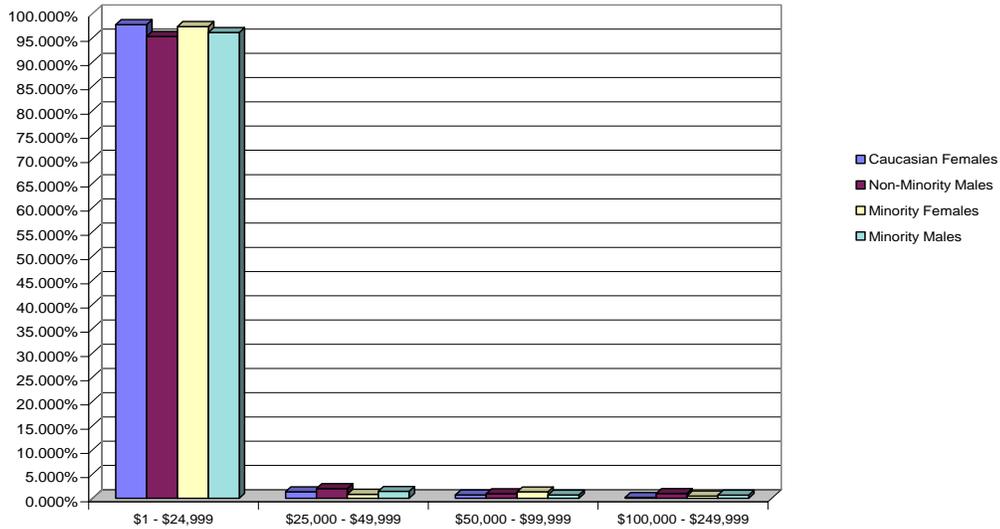


Table 6.07: Construction Contracts by Size, October 1, 2006 to September 30, 2009

Size	Non-Minority				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$1 - \$24,999	52	85.246%	431	71.953%	85	80.189%	145	72.139%	713	73.733%
\$25,000 - \$49,999	3	4.918%	33	5.509%	9	8.491%	7	3.483%	52	5.377%
\$50,000 - \$99,999	2	3.279%	25	4.174%	9	8.491%	3	1.493%	39	4.033%
\$100,000 - \$249,999	2	3.279%	38	6.344%	3	2.830%	12	5.970%	55	5.688%
\$250,000 - \$499,999	1	1.639%	25	4.174%	0	0.000%	8	3.980%	34	3.516%
\$500,000 - \$999,999	1	1.639%	19	3.172%	0	0.000%	13	6.468%	33	3.413%
\$1,000,000 - \$2,999,999	0	0.000%	23	3.840%	0	0.000%	11	5.473%	34	3.516%
\$3,000,000 and greater	0	0.000%	5	0.835%	0	0.000%	2	0.995%	7	0.724%
Total	61	100.000%	599	100.000%	106	100.000%	201	100.000%	967	100.000%

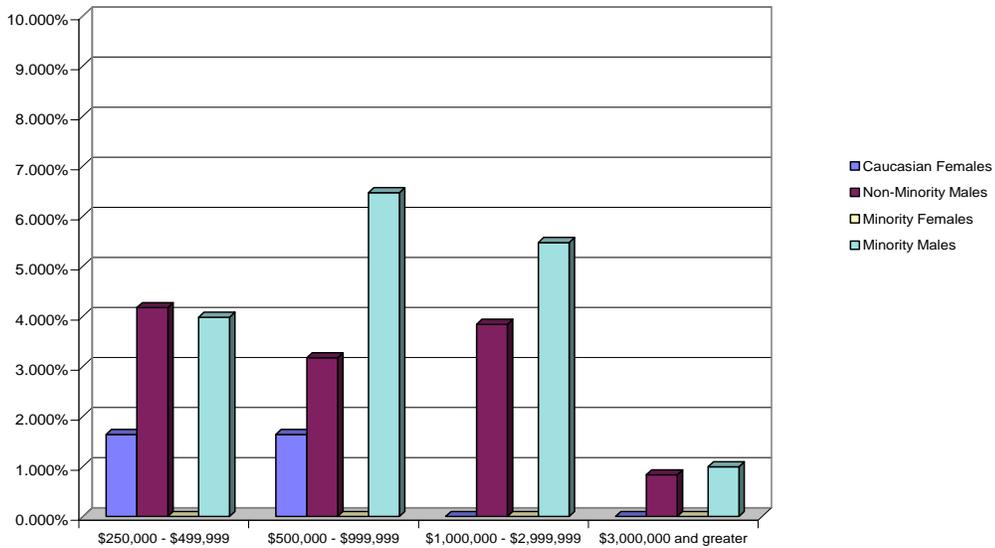
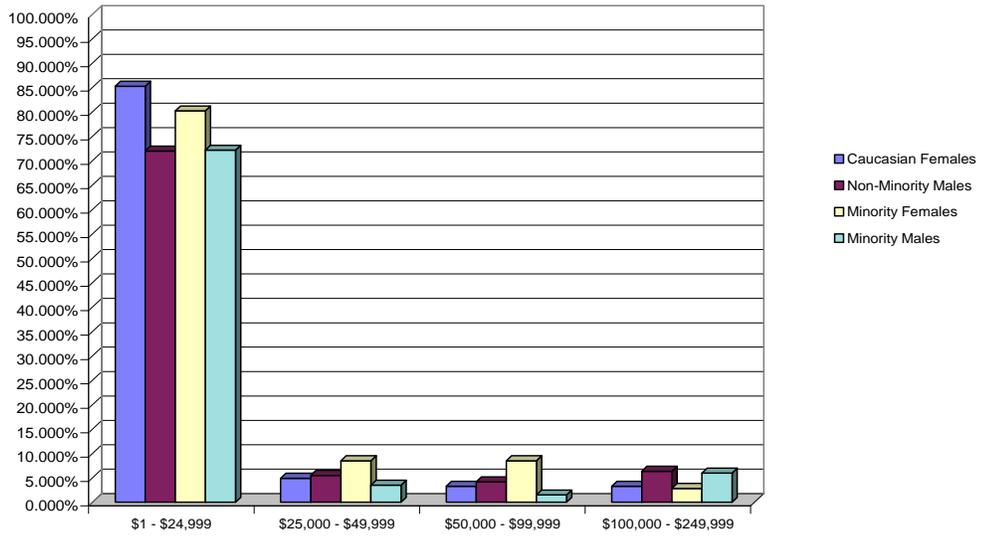
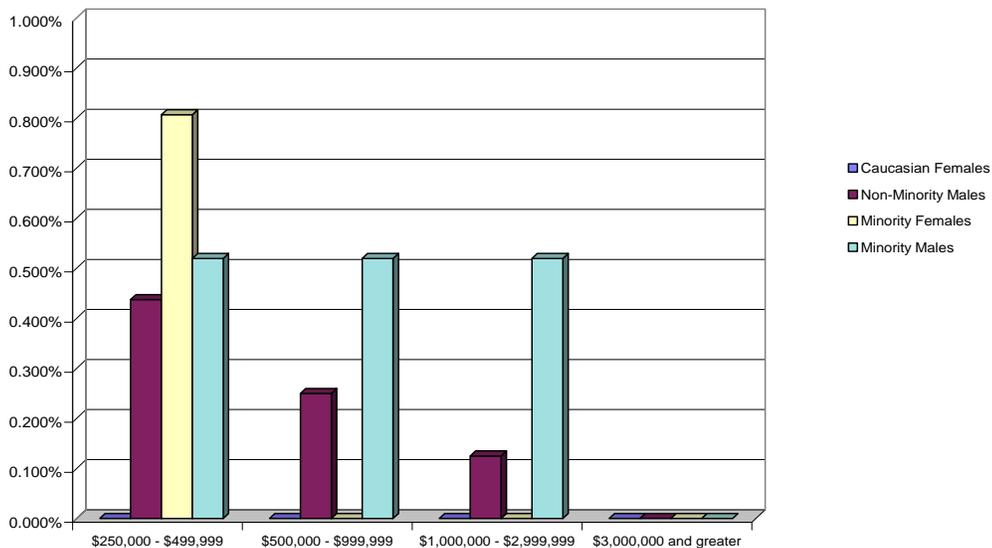
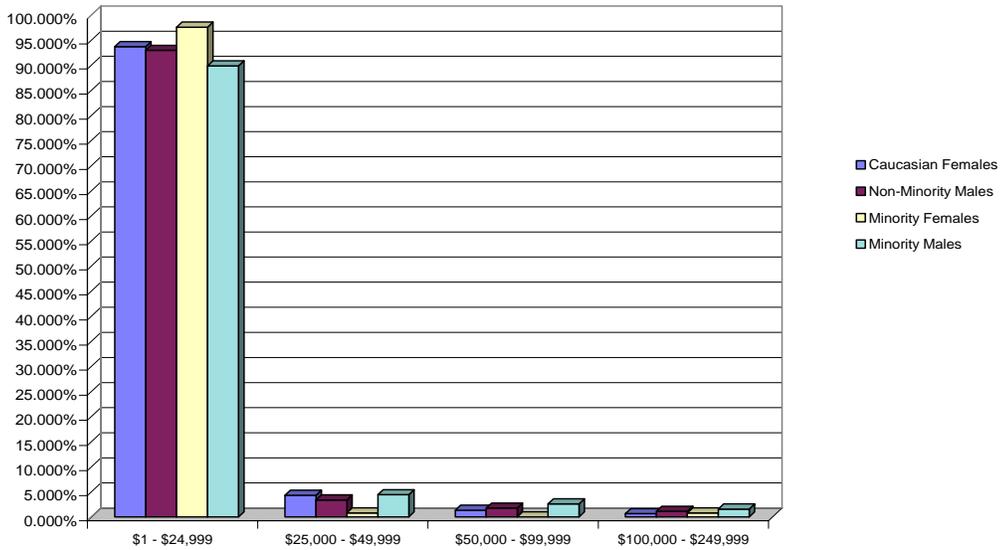


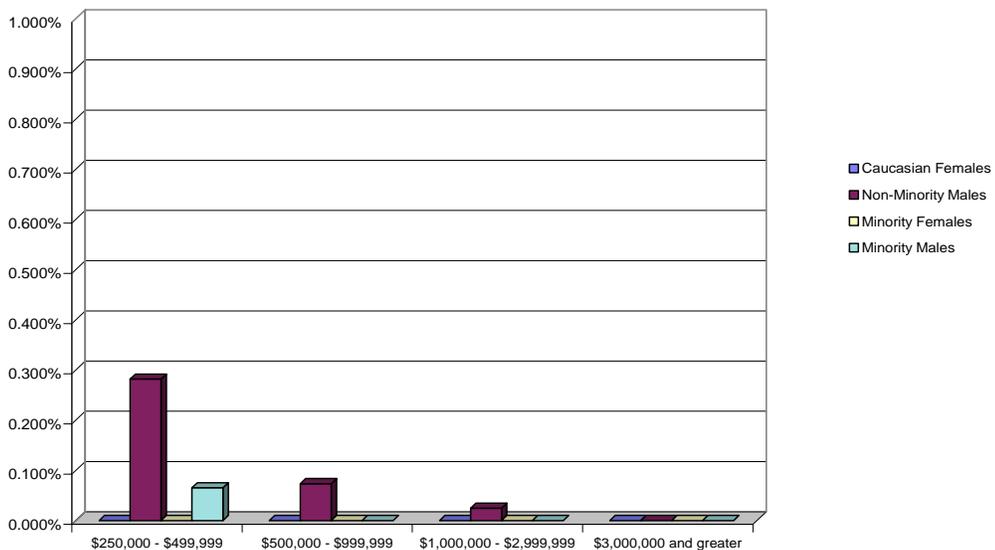
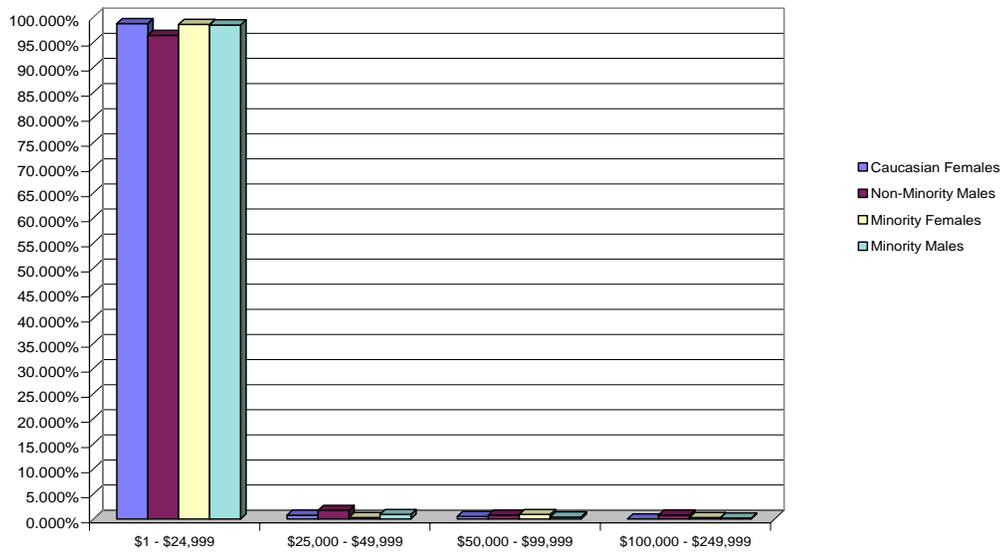
Table 6.08: Professional Services Contracts by Size, October 1, 2006 to September 30, 2009

Size	Non-Minority				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$24,999	282	93.688%	1,488	92.942%	121	97.581%	346	89.870%	2,237	92.783%
\$25,000 - \$49,999	13	4.319%	54	3.373%	1	0.806%	17	4.416%	85	3.526%
\$50,000 - \$99,999	4	1.329%	28	1.749%	0	0.000%	10	2.597%	42	1.742%
\$100,000 - \$249,999	2	0.664%	18	1.124%	1	0.806%	6	1.558%	27	1.120%
\$250,000 - \$499,999	0	0.000%	7	0.437%	1	0.806%	2	0.519%	10	0.415%
\$500,000 - \$999,999	0	0.000%	4	0.250%	0	0.000%	2	0.519%	6	0.249%
\$1,000,000 - \$2,999,999	0	0.000%	2	0.125%	0	0.000%	2	0.519%	4	0.166%
\$3,000,000 and greater	0	0.000%	0	0.000%	0	0.000%	0	0.000%	0	0.000%
Total	301	100.000%	1601	100.000%	124	100.000%	385	100.000%	2411	100.000%



**Table 6.09: Goods and Other Services Contracts by Size,
October 1, 2006 to September 30, 2009**

Size	Non-Minority				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$24,999	1924	98.717%	15,733	96.368%	1,423	98.546%	3,019	98.435%	22,099	96.985%
\$25,000 - \$49,999	15	0.770%	281	1.721%	4	0.277%	28	0.913%	328	1.439%
\$50,000 - \$99,999	10	0.513%	123	0.753%	13	0.900%	12	0.391%	158	0.693%
\$100,000 - \$249,999	0	0.000%	127	0.778%	4	0.277%	6	0.196%	137	0.601%
\$250,000 - \$499,999	0	0.000%	46	0.282%	0	0.000%	2	0.065%	48	0.211%
\$500,000 - \$999,999	0	0.000%	12	0.074%	0	0.000%	0	0.000%	12	0.053%
\$1,000,000 - \$2,999,999	0	0.000%	4	0.025%	0	0.000%	0	0.000%	4	0.018%
\$3,000,000 and greater	0	0.000%	0	0.000%	0	0.000%	0	0.000%	0	0.000%
Total	1949	100.000%	16326	100.000%	1444	100.000%	3067	100.000%	22786	100.000%



B. Largest M/WBE Contract Awarded by the County, by Industry

M/WBEs were awarded large contracts in each industry. The distribution of the largest contracts the County awarded to M/WBEs is depicted in Table 6.10. In each industry, M/WBEs were awarded very large, competitively bid contracts. The utilization analysis shows that M/WBEs demonstrated the capacity to successfully compete for contracts as large as \$7.7 million in construction, \$2.6 million in professional services, and \$387,139 in goods and other services.

Table 6.10: Largest M/WBE Contracts Awarded by the County

Largest Contract Value			
Ethnic/Gender Group	Construction	Professional Services	Goods and Other Services
African American Female	----	\$17,100	\$2,500
African American Male	----	\$39,090	\$54,131
Asian American Female	\$160,097	\$269,044	\$145,200
Asian American Male	\$7,668,123	\$2,590,790	\$387,139
Hispanic American Female	\$224,266	\$25,000	\$188,347
Hispanic American Male	\$3,442,796	\$1,292,440	\$210,805
Native American Female	----	\$10,303	\$18,236
Native American Male	\$13,670	\$1,980	\$79,402
MBEs	\$7,668,123	\$2,590,790	\$387,139
WBEs	\$1,989,008	\$217,358	\$359,994

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

C. Certification Standards

The Court has addressed the merits of certification as a measure of capacity.⁷ *Philadelphia*, an appellate court decision, found that a certification program which was based on USDOT standards satisfied the determination of a business' capability. Thus, a certification program like TxDOT, which adheres to the standards set forth in the USDOT regulations, 49 Code of Federal Regulations Part 26, is considered a documentation of M/WBE capacity. In addition, SCTRCA's certification program offers a measure of capacity as it incorporates many of the USDOT capacity criteria.

IV. PRIME CONTRACTOR AVAILABILITY ANALYSIS

The size of the County's contracts demonstrates that the majority of the contracts are small, requiring limited capacity to perform. Furthermore, the awards the County has made to M/WBEs demonstrate that the capacity of the available businesses is considerably greater than needed to bid on the majority of the contracts awarded in the three industries studied. Nevertheless, given the general concerns with capacity, prime contracts subject to the disparity analysis were limited to those under \$500,000.

The prime contractor availability findings for the County market area are as follows:

⁷ *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990 (3d Cir. 1993), on remand, 893 F. Supp. 419 (E.D. Penn. 1995), affd, 91 F.3d 586 (3d Cir. 1996).

A. Construction Prime Contractor Availability

The distribution of available construction prime contractors is summarized in Table 6.11 below. These ethnic and gender groups are defined in Table 3.01 of *Chapter 3: Prime Contractor Utilization Analysis*.

African Americans account for 2.425 percent of the construction businesses in the County's market area.

Asian Americans account for 1.569 percent of the construction businesses in the County's market area.

Hispanic Americans account for 38.802 percent of the construction businesses in the County's market area.

Native Americans account for 0.713 percent of the construction businesses in the County's market area.

Minority Business Enterprises account for 43.509 percent of the construction businesses in the County's market area.

Women Business Enterprises account for 10.414 percent of the construction businesses in the County's market area.

Minority and Women Business Enterprises account for 53.923 percent of the construction businesses in the County's market area.

Non-Minority Male Business Enterprises account for 46.077 percent of the construction businesses in the County's market area.

Table 6.11: Available Construction Prime Contractors

Ethnicity	Number of Businesses	Percent of Businesses
African Americans	17	2.425%
Asian Americans	11	1.569%
Hispanic Americans	272	38.802%
Native Americans	5	0.713%
Caucasian Females	73	10.414%
Non-Minority Males	323	46.077%
TOTAL	701	100.000%
Ethnicity and Gender	Number of Businesses	Percent of Businesses
African American Females	2	0.285%
African American Males	15	2.140%
Asian American Females	1	0.143%
Asian American Males	10	1.427%
Hispanic American Females	60	8.559%
Hispanic American Males	212	30.243%
Native American Females	2	0.285%
Native American Males	3	0.428%
Caucasian Females	73	10.414%
Non-Minority Males	323	46.077%
TOTAL	701	100.000%
Minority and Gender	Number of Businesses	Percent of Businesses
Minority Females	65	9.272%
Minority Males	240	34.237%
Caucasian Females	73	10.414%
Non-Minority Males	323	46.077%
TOTAL	701	100.000%
Minority and Females	Number of Businesses	Percent of Businesses
Minority Business Enterprises	305	43.509%
Women Business Enterprises	73	10.414%
Minority and Women Business Enterprises	378	53.923%
Non-Minority Male Business Enterprises	323	46.077%
TOTAL	701	100.000%

B. Professional Services Prime Contractor Availability

The distribution of available professional services prime contractors is summarized in Table 6.12 below:

African Americans account for 5.599 percent of the professional services businesses in the County's market area.

Asian Americans account for 2.877 percent of the professional services businesses in the County's market area.

Hispanic Americans account for 23.561 percent of the professional services businesses in the County's market area.

Native Americans account for 1.011 percent of the professional services businesses in the County's market area.

Minority Business Enterprises account for 33.048 percent of the professional services businesses in the County's market area.

Women Business Enterprises account for 14.697 percent of the professional services businesses in the County's market area.

Minority and Women Business Enterprises account for 47.745 percent of the professional services businesses in the County's market area.

Non-Minority Male Business Enterprises account for 52.255 percent of the professional services businesses in the County's market area.

Table 6.12: Available Professional Services Prime Contractors

Ethnicity	Number of Businesses	Percent of Businesses
African Americans	72	5.599%
Asian Americans	37	2.877%
Hispanic Americans	303	23.561%
Native Americans	13	1.011%
Caucasian Females	189	14.697%
Non-Minority Males	672	52.255%
TOTAL	1,286	100.000%
Ethnicity and Gender	Number of Businesses	Percent of Businesses
African American Females	32	2.488%
African American Males	40	3.110%
Asian American Females	14	1.089%
Asian American Males	23	1.788%
Hispanic American Females	89	6.921%
Hispanic American Males	214	16.641%
Native American Females	4	0.311%
Native American Males	9	0.700%
Caucasian Females	189	14.697%
Non-Minority Males	672	52.255%
TOTAL	1,286	100.000%
Minority and Gender	Number of Businesses	Percent of Businesses
Minority Females	139	10.809%
Minority Males	286	22.240%
Caucasian Females	189	14.697%
Non-Minority Males	672	52.255%
TOTAL	1,286	100.000%
Minority and Females	Number of Businesses	Percent of Businesses
Minority Business Enterprises	425	33.048%
Women Business Enterprises	189	14.697%
Minority and Women Business Enterprises	614	47.745%
Non-Minority Male Business Enterprises	672	52.255%
TOTAL	1,286	100.000%

C. Goods and Other Services Prime Contractor Availability

The distribution of available goods and other services prime contractors is summarized in Table 6.13 below:

African Americans account for 4.636 percent of the goods and other services businesses in the County's market area.

Asian Americans account for 1.845 percent of the goods and other services businesses in the County's market area.

Hispanic Americans account for 27.625 percent of the goods and other services businesses in the County's market area.

Native American Businesses account for 0.426 percent of the goods and other services businesses in the County's market area.

Minority Business Enterprises account for 34.532 percent of the goods and other services businesses in the County's market area.

Women Business Enterprises account for 16.982 percent of the goods and other services businesses in the County's market area.

Minority and Women Business Enterprises account for 51.514 percent of the goods and other services businesses in the County's market area.

Non-Minority Male Business Enterprises account for 48.486 percent of the goods and other services businesses in the County's market area.

Table 6.13: Available Goods and Other Services Prime Contractors

Ethnicity	Number of Businesses	Percent of Businesses
African Americans	98	4.636%
Asian Americans	39	1.845%
Hispanic Americans	584	27.625%
Native Americans	9	0.426%
Caucasian Females	359	16.982%
Non-Minority Males	1,025	48.486%
TOTAL	2,114	100.000%
Ethnicity and Gender	Number of Businesses	Percent of Businesses
African American Females	37	1.750%
African American Males	61	2.886%
Asian American Females	18	0.851%
Asian American Males	21	0.993%
Hispanic American Females	197	9.319%
Hispanic American Males	387	18.307%
Native American Females	3	0.142%
Native American Males	6	0.284%
Caucasian Females	359	16.982%
Non-Minority Males	1,025	48.486%
TOTAL	2,114	100.000%
Minority and Gender	Number of Businesses	Percent of Businesses
Minority Females	255	12.062%
Minority Males	475	22.469%
Caucasian Females	359	16.982%
Non-Minority Males	1,025	48.486%
TOTAL	2,114	100.000%
Minority and Females	Number of Businesses	Percent of Businesses
Minority Business Enterprises	730	34.532%
Women Business Enterprises	359	16.982%
Minority and Women Business Enterprises	1,089	51.514%
Non-Minority Male Business Enterprises	1,025	48.486%
TOTAL	2,114	100.000%

V. SUBCONTRACTOR AVAILABILITY ANALYSIS

A. Sources of Potentially Willing and Able Subcontractors and Availability

All available prime contractors were included in the calculation of subcontractor availability. Additional subcontractors in the County's market area were identified using the sources listed in Table 6.14.

Table 6.14: Unique Subcontractor Availability Data Sources

Type of Record	Type of Information
Subcontract records provided by the County	M/WBEs and non-M/WBEs
Identified subcontractors in the prime contractor survey	M/WBEs and non-M/WBEs

B. Determination of Subcontractor Willingness and Capacity

Subcontractor availability was limited to businesses determined to be willing and able to perform as prime contractors and businesses utilized as subcontractors; therefore, the determination of willingness was achieved. It is notable that using this method to identify subcontractors verified the business' capacity, although *Croscon* does not require a measure of subcontractor capacity.

C. Size of Subcontracts Analyzed

The County's construction and professional services subcontracts were analyzed to determine the size of awarded contracts and, therefore, the capacity required to perform on the County's subcontracts. The County's subcontracts were analyzed during the October 1, 2006 to September 30, 2009 study period.

The subcontract size distribution illustrates the fact that the majority of the County's subcontracts were under \$25,000. This distribution also illustrates that limited capacity is needed to perform the overwhelming majority of the County's subcontracts.

The County's subcontracts were grouped into eight dollar ranges.⁸ Each award was analyzed to determine the number and percentage of subcontracts that fall within the eight size categories. The size distribution of subcontracts awarded to Non-Minority Males was then compared to the size distribution of contracts awarded to Caucasian Females, Minority Females, and Minority Males.

- **County Subcontract Size Analysis: October 1, 2006 to September 30, 2009**

The analysis in Table 6.15, which combines the construction and professional services industries, demonstrates that 53.812 percent of the County's subcontracts were less than \$25,000; 76.234 percent were less than \$100,000; and 92.377 percent were less than \$500,000. Only 7.624 percent of the County's subcontracts were \$500,000 or more.

- 1. Construction Subcontracts by Size**

Table 6.16 depicts the County's construction subcontracts awarded within the eight dollar ranges. 54.286 percent of construction subcontracts were valued at less than \$25,000; 72.699 percent were less than \$100,000; and 89.524 percent were less than \$500,000.

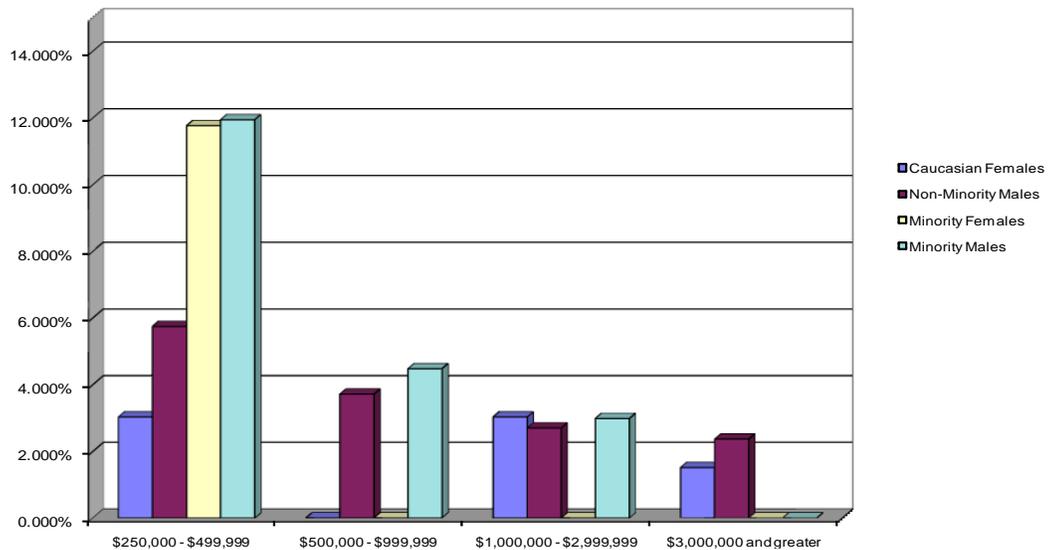
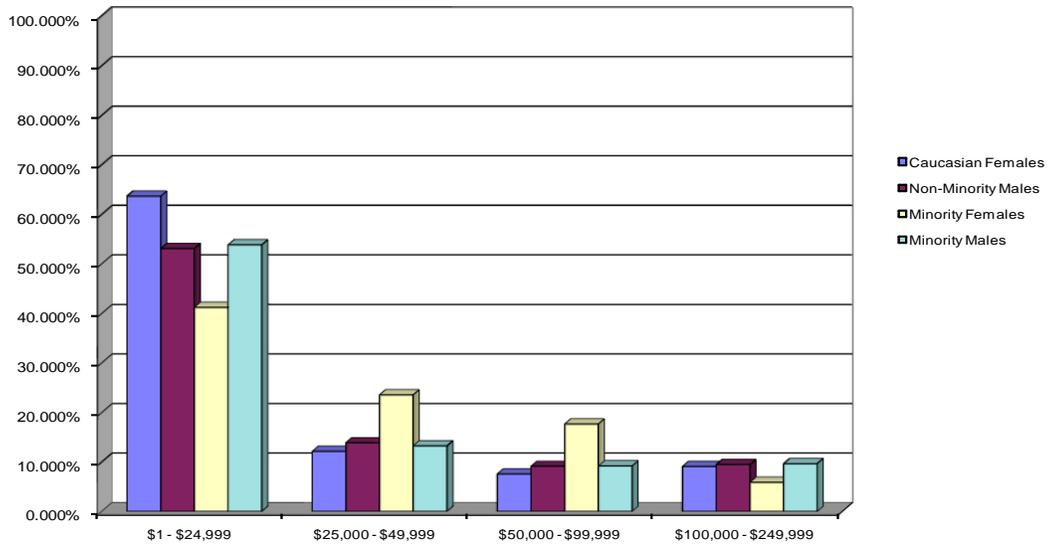
- 2. Professional Services Subcontracts by Size**

Table 6.17 depicts professional services subcontracts within the eight dollar ranges. 52.672 percent of professional services subcontracts were valued at less than \$25,000; 84.733 percent were less than \$100,000; and 99.237 percent were less than \$500,000.

⁸ The eight dollar ranges are \$1 to \$24,999; \$25,000 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1,000,000 to \$2,999,999; and \$3,000,000 and greater.

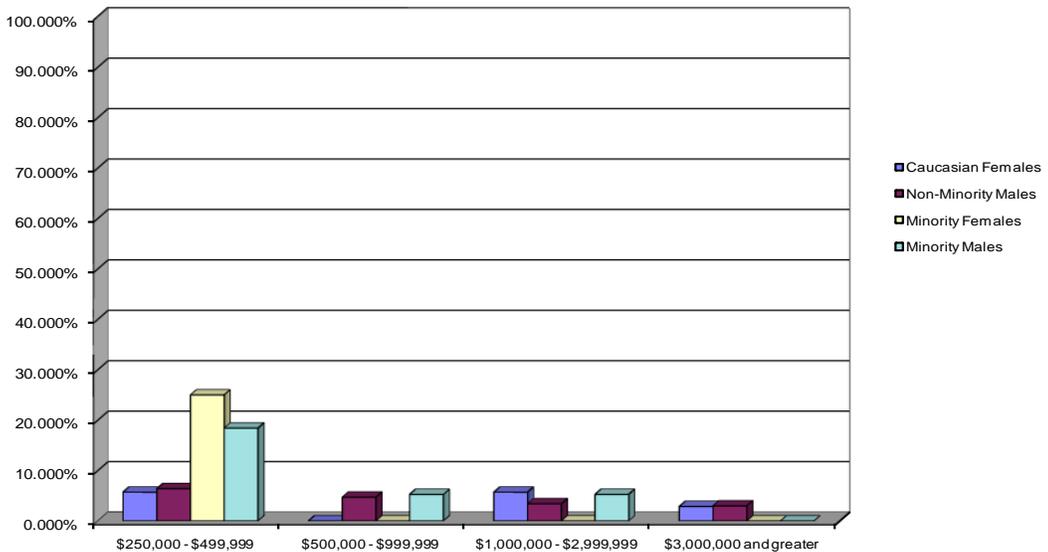
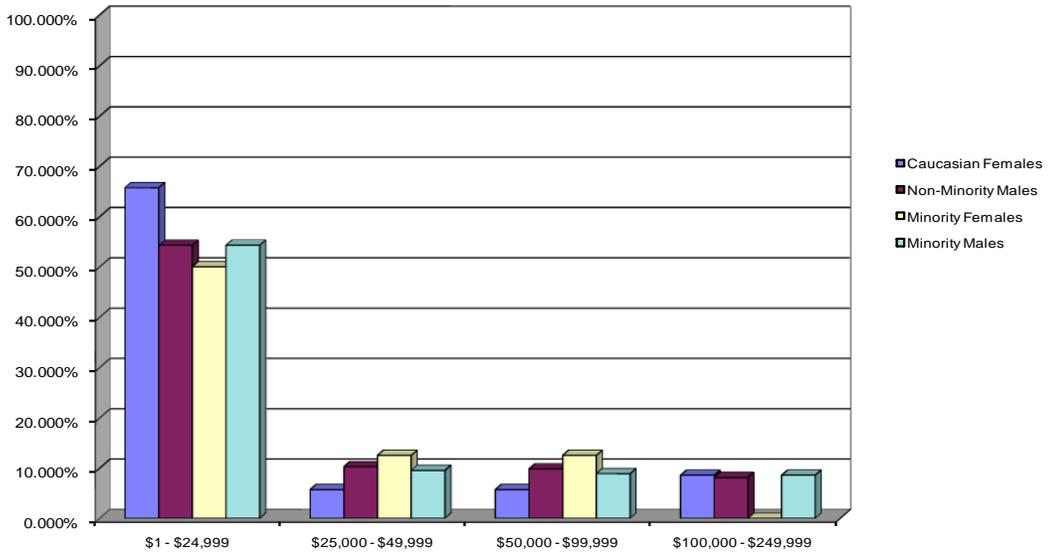
**Table 6.15: Subcontracts by Size: All Industries,
October 1, 2006 to September 30, 2009**

Size	Non-Minority				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$1 - \$24,999	42	63.636%	157	53.041%	7	41.176%	34	50.746%	240	53.812%
\$25,000 - \$49,999	8	12.121%	41	13.851%	4	23.529%	6	8.955%	59	13.229%
\$50,000 - \$99,999	5	7.576%	27	9.122%	3	17.647%	6	8.955%	41	9.193%
\$100,000 - \$249,999	6	9.091%	28	9.459%	1	5.882%	8	11.940%	43	9.641%
\$250,000 - \$499,999	2	3.030%	17	5.743%	2	11.765%	8	11.940%	29	6.502%
\$500,000 - \$999,999	0	0.000%	11	3.716%	0	0.000%	3	4.478%	14	3.139%
\$1,000,000 - \$2,999,999	2	3.030%	8	2.703%	0	0.000%	2	2.985%	12	2.691%
\$3,000,000 and greater	1	1.515%	7	2.365%	0	0.000%	0	0.000%	8	1.794%
Total	66	100.000%	296	100.000%	17	100.000%	67	100.000%	446	100.000%



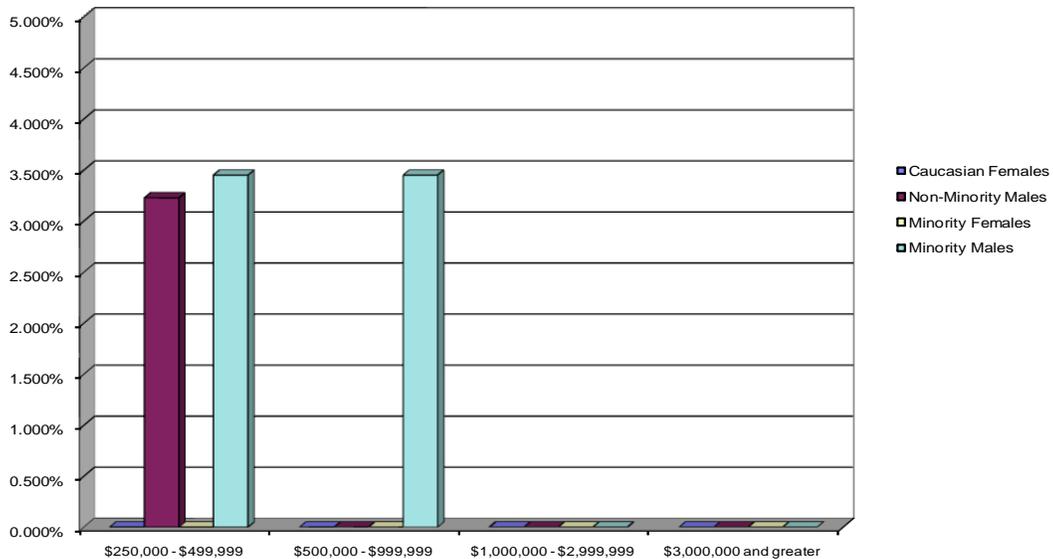
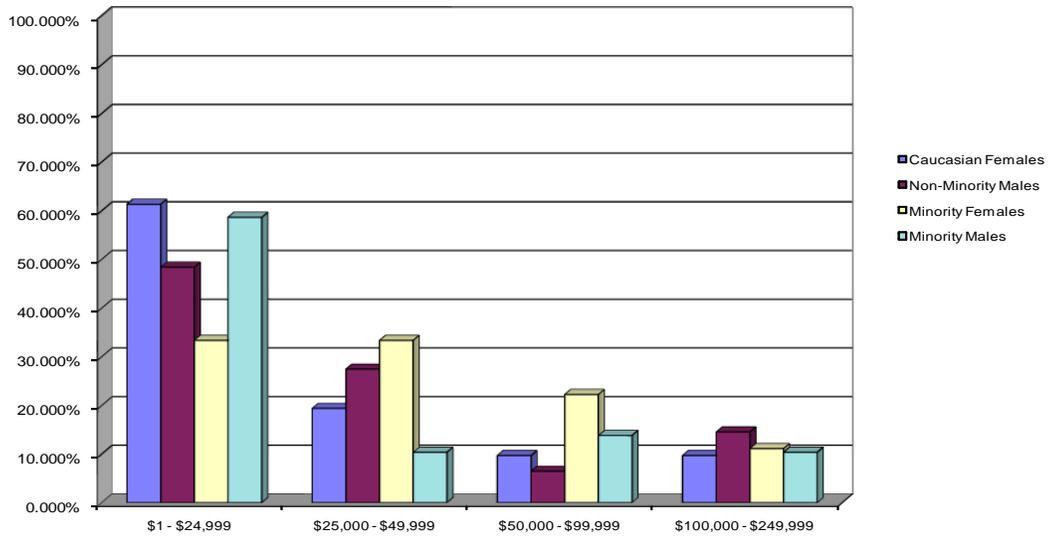
**Table 6.16: Construction Subcontracts by Size:
October 1, 2006 to September 30, 2009**

Size	Non-Minority				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$24,999	23	65.714%	127	54.274%	4	50.000%	17	44.737%	171	54.286%
\$25,000 - \$49,999	2	5.714%	24	10.256%	1	12.500%	3	7.895%	30	9.524%
\$50,000 - \$99,999	2	5.714%	23	9.829%	1	12.500%	2	5.263%	28	8.889%
\$100,000 - \$249,999	3	8.571%	19	8.120%	0	0.000%	5	13.158%	27	8.571%
\$250,000 - \$499,999	2	5.714%	15	6.410%	2	25.000%	7	18.421%	26	8.254%
\$500,000 - \$999,999	0	0.000%	11	4.701%	0	0.000%	2	5.263%	13	4.127%
\$1,000,000 - \$2,999,999	2	5.714%	8	3.419%	0	0.000%	2	5.263%	12	3.810%
\$3,000,000 and greater	1	2.857%	7	2.991%	0	0.000%	0	0.000%	8	2.540%
Total	35	100.000%	234	100.000%	8	100.000%	38	100.000%	315	100.000%



**Table 6.17: Professional Services Subcontracts by Size:
October 1, 2006 to September 30, 2009**

Size	Non-Minority				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$1 - \$24,999	19	61.290%	30	48.387%	3	33.333%	17	58.621%	69	52.672%
\$25,000 - \$49,999	6	19.355%	17	27.419%	3	33.333%	3	10.345%	29	22.137%
\$50,000 - \$99,999	3	9.677%	4	6.452%	2	22.222%	4	13.793%	13	9.924%
\$100,000 - \$249,999	3	9.677%	9	14.516%	1	11.111%	3	10.345%	16	12.214%
\$250,000 - \$499,999	0	0.000%	2	3.226%	0	0.000%	1	3.448%	3	2.290%
\$500,000 - \$999,999	0	0.000%	0	0.000%	0	0.000%	1	3.448%	1	0.763%
\$1,000,000 - \$2,999,999	0	0.000%	0	0.000%	0	0.000%	0	0.000%	0	0.000%
\$3,000,000 and greater	0	0.000%	0	0.000%	0	0.000%	0	0.000%	0	0.000%
Total	31	100.000%	62	100.000%	9	100.000%	29	100.000%	131	100.000%



D. Construction Subcontractor Availability

The distribution of available construction subcontractors is summarized in Table 6.18.

African Americans account for 2.31 percent of the construction firms in the County's market area.

Asian Americans account for 1.54 percent of the construction firms in the County's market area.

Hispanic Americans account for 35.864 percent of the construction firms in the County's market area.

Native Americans account for 0.66 percent of the construction firms in the County's market area.

Minority Business Enterprises account for 40.374 percent of the construction firms in the County's market area.

Women Business Enterprises account for 11.991 percent of the construction firms in the County's market area.

Minority and Women Business Enterprises account for 52.365 percent of the construction firms in the County's market area.

Non-Minority Male Business Enterprises account for 47.635 percent of the construction firms in the County's market area.

Table 6.18: Available Construction Subcontractors

Ethnicity	Number Businesses	Percent of Businesses
African Americans	21	2.310%
Asian Americans	14	1.540%
Hispanic Americans	326	35.864%
Native Americans	6	0.660%
Caucasian Females	109	11.991%
Non-Minority Males	433	47.635%
TOTAL	909	100.000%
Ethnicity and Gender	Number Businesses	Percent of Businesses
African American Females	3	0.330%
African American Males	18	1.980%
Asian American Females	2	0.220%
Asian American Males	12	1.320%
Hispanic American Females	72	7.921%
Hispanic American Males	254	27.943%
Native American Females	2	0.220%
Native American Males	4	0.440%
Caucasian Females	109	11.991%
Non-Minority Males	433	47.635%
TOTAL	909	100.000%
Minority and Gender	Number Businesses	Percent of Businesses
Minority Females	79	8.691%
Minority Males	288	31.683%
Caucasian Females	109	11.991%
Non-Minority Males	433	47.635%
TOTAL	909	100.000%
Minority and Females	Number Businesses	Percent of Businesses
Minority Business Enterprises	367	40.374%
Women Business Enterprises	109	11.991%
Minority and Women Business Enterprises	476	52.365%
Non-Minority Male Business Enterprises	433	47.635%
TOTAL	909	100.000%

E. Professional Services Subcontractor Availability

The distribution of available professional services subcontractors is summarized in Table 6.19.

African Americans account for 5.345 percent of the professional services firms in the County's market area.

Asian Americans account for 2.821 percent of the professional services firms in the County's market area.

Hispanic Americans account for 20.861 percent of the professional services firms in the County's market area.

Native Americans account for 0.891 percent of the professional services firms in the County's market area.

Minority Business Enterprises account for 29.918 percent of the professional services firms in the County's market area.

Women Business Enterprises account for 13.957 percent of the professional services firms in the County's market area.

Minority and Women Business Enterprises account for 43.875 percent of the professional services firms in the County's market area.

Non-Minority Male Business Enterprises account for 56.125 percent of the professional services firms in the County's market area.

Table 6.19: Available Professional Services Subcontractors

Ethnicity	Number of Businesses	Percent of Businesses
African Americans	72	5.345%
Asian Americans	38	2.821%
Hispanic Americans	281	20.861%
Native Americans	12	0.891%
Caucasian Females	188	13.957%
Non-Minority Males	756	56.125%
TOTAL	1,347	100.000%
Ethnicity and Gender	Number of Businesses	Percent of Businesses
African American Females	33	2.450%
African American Males	39	2.895%
Asian American Females	13	0.965%
Asian American Males	25	1.856%
Hispanic American Females	78	5.791%
Hispanic American Males	203	15.071%
Native American Females	3	0.223%
Native American Males	9	0.668%
Caucasian Females	188	13.957%
Non-Minority Males	756	56.125%
TOTAL	1,347	100.000%
Minority and Gender	Number of Businesses	Percent of Businesses
Minority Females	127	9.428%
Minority Males	276	20.490%
Caucasian Females	188	13.957%
Non-Minority Males	756	56.125%
TOTAL	1,347	100.000%
Minority and Females	Number of Businesses	Percent of Businesses
Minority Business Enterprises	403	29.918%
Women Business Enterprises	188	13.957%
Minority and Women Business Enterprises	591	43.875%
Non-Minority Male Business Enterprises	756	56.125%
TOTAL	1,347	100.000%

CHAPTER 7:

PRIME CONTRACTOR COMPARATIVE ANALYSIS

I. STATISTICAL ANALYSIS OF DISPARITY

A. Introduction

The objective of the disparity analysis is to determine the levels at which Minority and Woman-owned Business Enterprises (M/WBEs) are utilized on Bexar County (County) contracts. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs should be relatively close to the corresponding proportion of available M/WBEs¹ in the relevant market area. If the ratio of utilized M/WBE prime contractors 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 or any event which is less probable. This analysis assumes a fair and equitable system.² *Croson* states that an inference of discrimination can be made *prima facie* if the disparity is statistically significant. Under the *Croson* model, Non-Minority Male business enterprises are not subjected to a statistical test.

The first step in conducting the statistical test is to calculate the contract value that each ethnic and gender group is expected to receive. This value is based on each group's availability in the market area, and shall be referred to as the **expected contract amount**. The next step computes the difference between each ethnic and gender group's expected contract amount and the **actual contract amount** received by each group. Then, the **disparity ratio** is computed by dividing the actual contract amount by the expected contract amount.

¹ Availability is defined as the number of ready, willing, and able firms. The methodology for determining willing and able firms is detailed in Chapter 6.

² When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95 percent confidence level is considered by the courts to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analyzed here was done within the 95 percent confidence level.

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.³ All disparity findings less than 1 are subject to analysis, which tests statistical significance. The three methods employed to calculate statistical significance include a parametric analysis,⁴ a non-parametric analysis,⁵ 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 is not skewed. When there are too few contracts⁶ or the contract dollar data is skewed, a simulation analysis is employed. The utility of the simulation analysis is also dependent on the severity of the disparity when there are too few contracts. The simulation analysis utilizes randomization to simulate a distribution for the contracts.⁷ By conducting multiple trials in the simulation, the empirical data can be used to test the distribution of contract awards for significance.

For parametric and non-parametric analyses, the P-value takes into account the number of contracts, amount of contract dollars, and variation in contract dollars. If the difference between the actual and expected number of contracts and total contract dollars has a P-value equal to or less than 0.05, the difference is statistically significant.⁸ In the simulation analysis, the P-value takes into account a combination of the distribution formulated from the empirical data and the contract dollar amounts or contract rank. If the actual contract dollar amount, or actual contract rank, falls below the fifth percentile of the distribution, it denotes a P-value less than 0.05, which is statistically significant.

Our statistical model employs all three methods simultaneously to each industry. 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 “Yes”. If

³ P-value is a measure of statistical significance.

⁴ Parametric analysis is a statistical examination based on the actual values of the variable. In this case, the parametric analysis consists of the actual dollar values of the contracts.

⁵ Non-parametric analysis is a method to make data more suitable for statistical testing by allowing one variable to be replaced with a new variable that maintains the essential characteristics of the original one. In this case, the contracts are ranked from the smallest to the largest. The dollar value of each contract is replaced with its rank order number.

⁶ Note: a relatively small availability population size decreases the reliability of the statistical results; therefore any availability percentage under one percent cannot be labeled as statistically significant.

⁷ The simulation analysis can be conducted using contract dollar amounts or contract rankings.

⁸ A statistical test is not performed for Non-Minority Males or when the ratio of utilized to available is greater than one for M/WBEs.



the P-value is greater than 0.05 or there are too few available firms the finding is reported as “No”.

B. Disparity Analysis

A prime contract disparity analysis was performed on construction, professional services, and goods and other services contracts awarded between October 1, 2006 and September 30, 2009.

As demonstrated in *Chapter 6: Prime and Subcontractor Availability Analysis*, the majority of the County’s contracts were small. Construction prime contracts valued at less than \$25,000 constituted 73.733 percent, and those valued at less than \$500,000 constituted 92.347 percent. Professional services prime contracts valued at less than \$25,000 represented 92.783 percent, and those valued at less than \$500,000 constituted 99.586 percent. Goods and other services prime contracts valued at less than \$25,000 represented 96.985 percent, and those valued at less than \$500,000 constituted 99.929 percent.

The threshold levels for the disparity analysis were set to ensure that within the pool of willing businesses there was documented capacity to perform the formal contracts analyzed. The formal threshold for the three industries: construction, professional services, and goods and other services was limited to the \$500,000 level. The \$500,000 threshold was designated because at this level there was a demonstrated capacity within the pool of M/WBEs willing to perform the County’s contracts.⁹ The informal contract analysis was performed at the \$25,000 threshold stipulated in the County’s procurement policy.

The findings from the three methods employed to calculate statistical significance as discussed on page 7-2 are presented in the following sections. The outcomes of the statistical analyses are presented in the Disparity column of the tables. There are ethnic groups where the statistical test cannot be performed due to too few available firms. A description of the statistical outcomes in the disparity tables are presented below in Table 7.01.

Table 7.01: Statistical Outcome Descriptions

P-Value Outcome	Description of P-Value Outcome
Yes	The analysis is statistically significant
No	The analysis is not statistically significant or there are too few available firms to test statistical significance
N/A	The statistical test is not performed for Non-Minority Males



⁹ See *Chapter 6: Prime and Subcontractor Availability Analysis – Section III* for a discussion of M/WBE capacity.

1. Disparity Analysis: All Prime Contracts under \$500,000, by Industry

a. Construction Prime Contracts under \$500,000

The disparity analysis of all construction prime contracts under \$500,000 is described below and depicted in Table 7.02 and Chart 7.01.

African American Businesses represent 2.425 percent of the available construction businesses and received none of the construction prime contracts under \$500,000. This analysis is statistically significant.

Asian American Businesses represent 1.569 percent of the available construction businesses and received 8.911 percent of the dollars for construction prime contracts under \$500,000. This analysis is not statistically significant.

Hispanic American Businesses represent 38.802 percent of the available construction businesses and received 15.193 percent of the dollars for construction prime contracts under \$500,000. This analysis is statistically significant.

Native American Businesses represent 0.713 percent of the available construction businesses and received 0.051 percent of the dollars for construction prime contracts under \$500,000. There were too few available firms to test statistical significance.

Minority Business Enterprises represent 43.509 percent of the available construction businesses and received 24.155 percent of the dollars for construction prime contracts under \$500,000. This analysis is statistically significant.

Women Business Enterprises represent 10.414 percent of the available construction businesses and received 10.338 percent of the dollars for construction prime contracts under \$500,000. This analysis is not statistically significant.

Minority and Women Business Enterprises represent 53.923 percent of available construction businesses and received 34.493 percent of the dollars for construction prime contracts under \$500,000. This analysis is statistically significant.

Non-Minority Male Business Enterprises represent 46.077 percent of the available construction businesses and received 65.507 percent of the dollars for construction prime contracts under \$500,000. The statistical test is not performed for Non-Minority Males.



**Table 7.02: Disparity Analysis: Construction Prime Contracts under \$500,000,
October 1, 2006 to September 30, 2009**

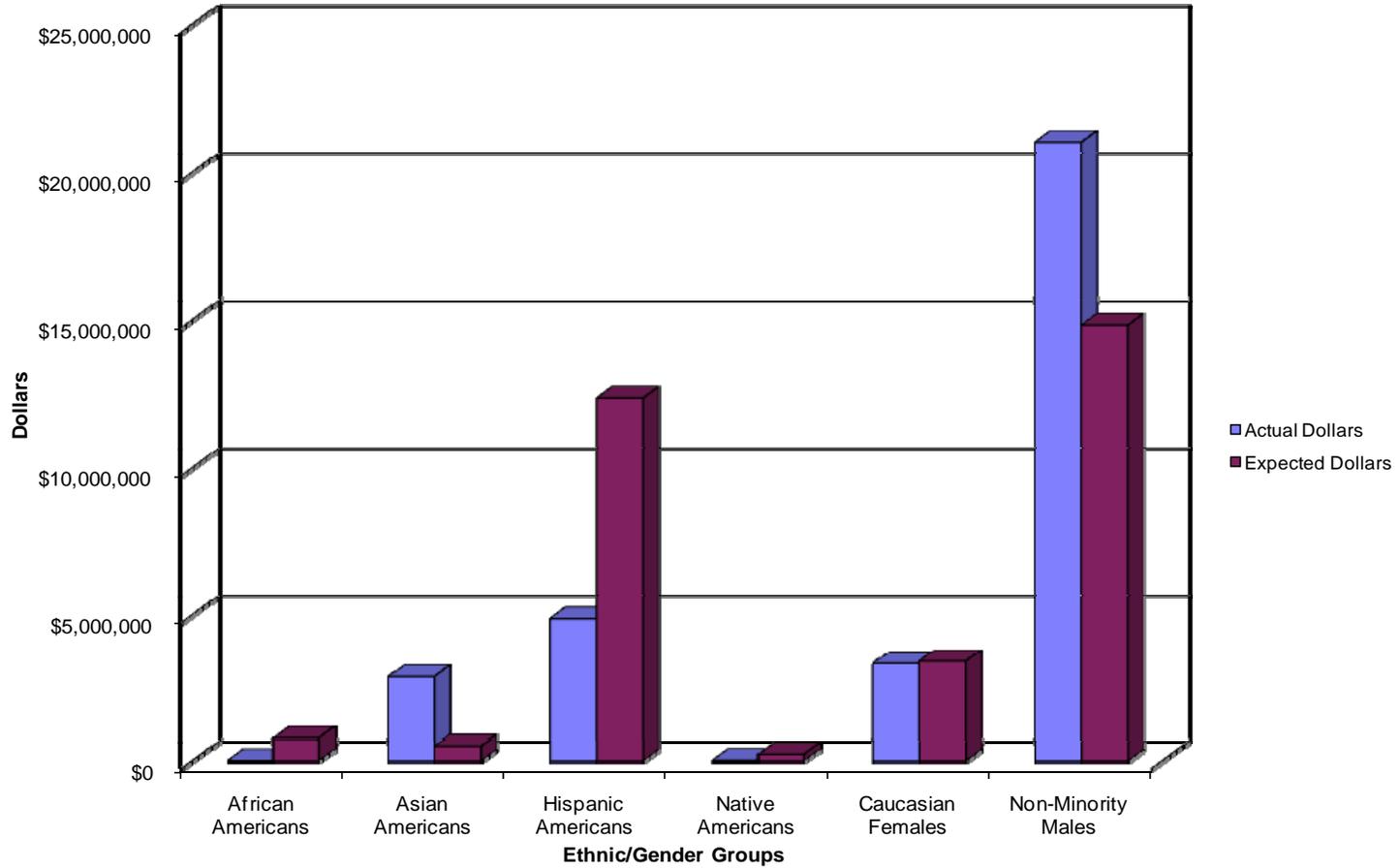
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African Americans	\$0	0.000%	2.425%	\$777,426	-\$777,426	0.000	Yes
Asian Americans	\$2,856,648	8.911%	1.569%	\$503,040	\$2,353,608	5.679	No
Hispanic Americans	\$4,870,434	15.193%	38.802%	\$12,438,817	-\$7,568,383	0.392	Yes
Native Americans	\$16,241	0.051%	0.713%	\$228,655	-\$212,414	0.071	No
Caucasian Females	\$3,314,085	10.338%	10.414%	\$3,338,359	-\$24,274	0.993	No
Non-Minority Males	\$20,999,984	65.507%	46.077%	\$14,771,095	\$6,228,889	1.422	N/A
TOTAL	\$32,057,391	100.000%	100.000%	\$32,057,391			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African American Females	\$0	0.000%	0.285%	\$91,462	-\$91,462	0.000	No
African American Males	\$0	0.000%	2.140%	\$685,964	-\$685,964	0.000	Yes
Asian American Females	\$195,244	0.609%	0.143%	\$45,731	\$149,514	4.269	No
Asian American Males	\$2,661,403	8.302%	1.427%	\$457,309	\$2,204,094	5.820	No
Hispanic American Females	\$1,719,417	5.364%	8.559%	\$2,743,857	-\$1,024,440	0.627	No
Hispanic American Males	\$3,151,017	9.829%	30.243%	\$9,694,960	-\$6,543,943	0.325	Yes
Native American Females	\$0	0.000%	0.285%	\$91,462	-\$91,462	0.000	No
Native American Males	\$16,241	0.051%	0.428%	\$137,193	-\$120,952	0.118	No
Caucasian Females	\$3,314,085	10.338%	10.414%	\$3,338,359	-\$24,274	0.993	No
Non-Minority Males	\$20,999,984	65.507%	46.077%	\$14,771,095	\$6,228,889	1.422	N/A
TOTAL	\$32,057,391	100.000%	100.000%	\$32,057,391			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Females	\$1,914,661	5.973%	9.272%	\$2,972,511	-\$1,057,850	0.644	No
Minority Males	\$5,828,661	18.182%	34.237%	\$10,975,426	-\$5,146,765	0.531	Yes
Caucasian Females	\$3,314,085	10.338%	10.414%	\$3,338,359	-\$24,274	0.993	No
Non-Minority Males	\$20,999,984	65.507%	46.077%	\$14,771,095	\$6,228,889	1.422	N/A
TOTAL	\$32,057,391	100.000%	100.000%	\$32,057,391			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Business Enterprises	\$7,743,322	24.155%	43.509%	\$13,947,938	-\$6,204,615	0.555	Yes
Women Business Enterprises	\$3,314,085	10.338%	10.414%	\$3,338,359	-\$24,274	0.993	No
Minority and Women Business Enterprises	\$11,057,408	34.493%	53.923%	\$17,286,297	-\$6,228,889	0.640	Yes
Non-Minority Male Business Enterprises	\$20,999,984	65.507%	46.077%	\$14,771,095	\$6,228,889	1.422	N/A

Yes - The analysis is statistically significant

No - The analysis is not statistically significant or there are too few available firms to test statistical significance

N/A - The statistical test is not performed for Non-Minority Males

**Chart 7.01: Disparity Analysis: Construction Prime Contracts under \$500,000,
October 1, 2006 to September 30, 2009**



b. Professional Services Prime Contracts under \$500,000

The disparity analysis of professional services prime contracts under \$500,000 is described below and depicted in Table 7.03 and Chart 7.02.

African American Businesses represent 5.599 percent of the available professional services businesses and received 1.5 percent of the dollars for professional services prime contracts under \$500,000. This analysis is statistically significant.

Asian American Businesses represent 2.877 percent of the available professional services businesses and received 6.121 percent of the dollars for professional services prime contracts under \$500,000. This analysis is not statistically significant.

Hispanic American Businesses represent 23.561 percent of the available professional services businesses and received 19.193 percent of the dollars for professional services prime contracts under \$500,000. This analysis is not statistically significant.

Native American Businesses represent 1.011 percent of the available professional services businesses and received 0.1 percent of the dollars for professional services prime contracts under \$500,000. This analysis is statistically significant.

Minority Business Enterprises represent 33.048 percent of the available professional services businesses and received 26.914 percent of the dollars for professional services prime contracts under \$500,000. This analysis is statistically significant.

Women Business Enterprises represent 14.697 percent of the available professional services businesses and received 10.232 percent of the dollars for professional services prime contracts under \$500,000. This analysis is statistically significant.

Minority and Women Business Enterprises represent 47.745 percent of the available professional services businesses and received 37.147 percent of the dollars for professional services prime contracts under \$500,000. This analysis is statistically significant.

Non-Minority Male Business Enterprises represent 52.255 percent of the available professional services businesses and received 62.853 percent of the dollars for professional services prime contracts under \$500,000. The statistical test is not performed for Non-Minority Males.



**Table 7.03: Disparity Analysis: Professional Services Prime Contracts under \$500,000,
October 1, 2006 to September 30, 2009**

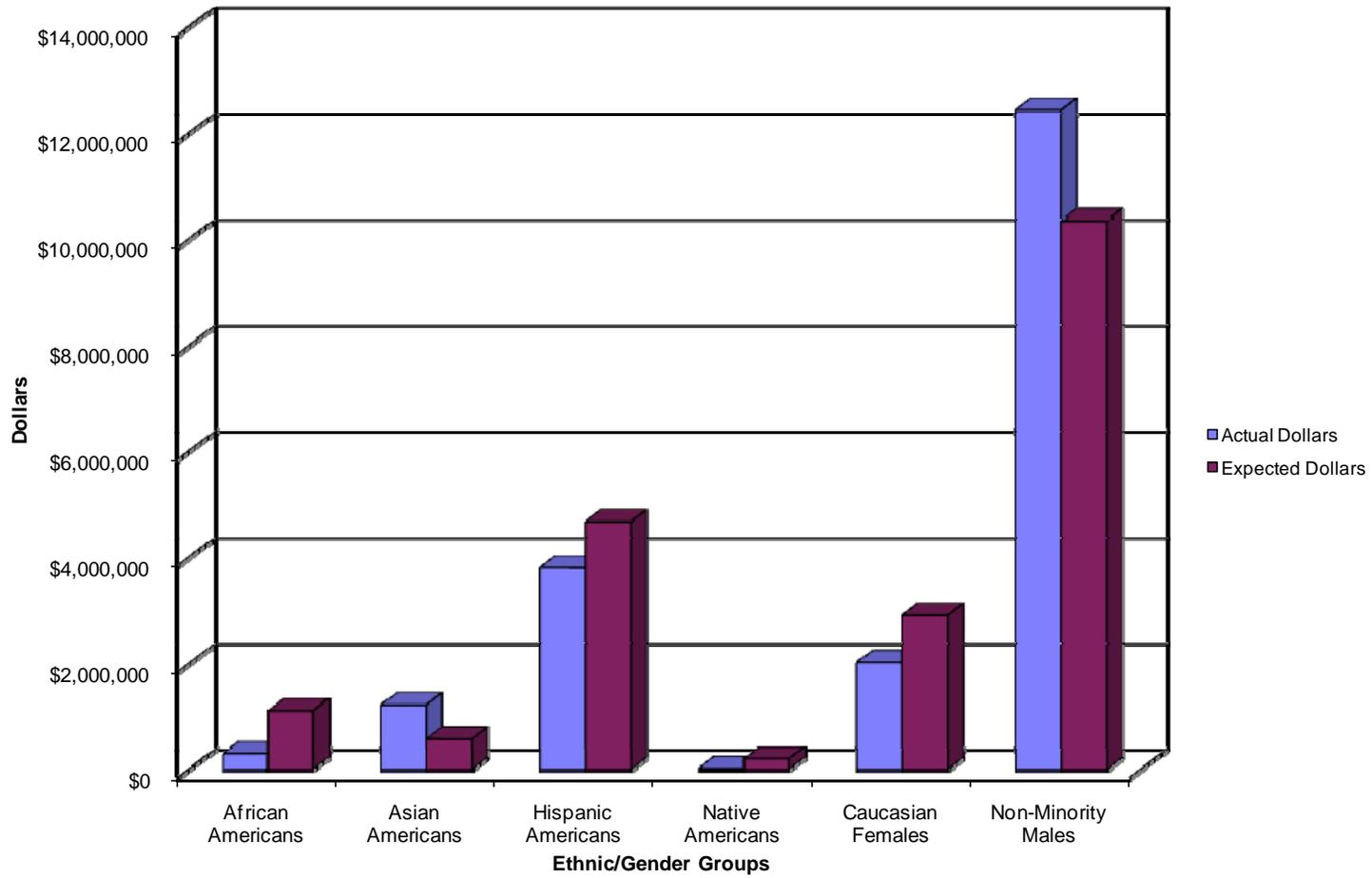
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African Americans	\$296,821	1.500%	5.599%	\$1,107,540	-\$810,719	0.268	Yes
Asian Americans	\$1,210,797	6.121%	2.877%	\$569,152	\$641,644	2.127	No
Hispanic Americans	\$3,796,654	19.193%	23.561%	\$4,660,897	-\$864,243	0.815	No
Native Americans	\$19,855	0.100%	1.011%	\$199,972	-\$180,117	0.099	Yes
Caucasian Females	\$2,024,155	10.232%	14.697%	\$2,907,292	-\$883,137	0.696	Yes
Non-Minority Males	\$12,433,611	62.853%	52.255%	\$10,337,039	\$2,096,572	1.203	N/A
TOTAL	\$19,781,893	100.000%	100.000%	\$19,781,893			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African American Females	\$41,130	0.208%	2.488%	\$492,240	-\$451,110	0.084	Yes
African American Males	\$255,691	1.293%	3.110%	\$615,300	-\$359,609	0.416	No
Asian American Females	\$447,315	2.261%	1.089%	\$215,355	\$231,960	2.077	No
Asian American Males	\$763,482	3.859%	1.788%	\$353,797	\$409,685	2.158	No
Hispanic American Females	\$639,620	3.233%	6.921%	\$1,369,042	-\$729,422	0.467	Yes
Hispanic American Males	\$3,157,034	15.959%	16.641%	\$3,291,855	-\$134,821	0.959	No
Native American Females	\$16,245	0.082%	0.311%	\$61,530	-\$45,285	0.264	No
Native American Males	\$3,611	0.018%	0.700%	\$138,442	-\$134,832	0.026	No
Caucasian Females	\$2,024,155	10.232%	14.697%	\$2,907,292	-\$883,137	0.696	Yes
Non-Minority Males	\$12,433,611	62.853%	52.255%	\$10,337,039	\$2,096,572	1.203	N/A
TOTAL	\$19,781,893	100.000%	100.000%	\$19,781,893			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Females	\$1,144,310	5.785%	10.809%	\$2,138,167	-\$993,858	0.535	Yes
Minority Males	\$4,179,818	21.130%	22.240%	\$4,399,395	-\$219,577	0.950	No
Caucasian Females	\$2,024,155	10.232%	14.697%	\$2,907,292	-\$883,137	0.696	Yes
Non-Minority Males	\$12,433,611	62.853%	52.255%	\$10,337,039	\$2,096,572	1.203	N/A
TOTAL	\$19,781,893	100.000%	100.000%	\$19,781,893			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Business Enterprises	\$5,324,127	26.914%	33.048%	\$6,537,562	-\$1,213,435	0.814	Yes
Women Business Enterprises	\$2,024,155	10.232%	14.697%	\$2,907,292	-\$883,137	0.696	Yes
Minority and Women Business Enterprises	\$7,348,282	37.147%	47.745%	\$9,444,854	-\$2,096,572	0.778	Yes
Non-Minority Male Business Enterprises	\$12,433,611	62.853%	52.255%	\$10,337,039	\$2,096,572	1.203	N/A

Yes - The analysis is statistically significant

No - The analysis is not statistically significant or there are too few available firms to test statistical significance

N/A - The statistical test is not performed for Non-Minority Males

**Chart 7.02: Disparity Analysis: Professional Services Prime Contracts under \$500,000,
October 1, 2006 to September 30, 2009**



c. Goods and Other Services Prime Contracts under \$500,000

The disparity analysis of goods and other services prime contracts under \$500,000 is described below and depicted in Table 7.04 and Chart 7.03.

African American Businesses represent 4.636 percent of the available goods and other services businesses and received 0.262 percent of the dollars for goods and other services prime contracts under \$500,000. This analysis is statistically significant.

Asian American Businesses represent 1.845 percent of the available goods and other services businesses and received 4.649 percent of the dollars for goods and other services prime contracts under \$500,000. This analysis is not statistically significant.

Hispanic American Businesses represent 27.625 percent of the available goods and other services businesses and received 5.354 percent of the dollars for goods and other services prime contracts under \$500,000. This analysis is statistically significant.

Native American Businesses represent 0.426 percent of the available goods and other services businesses and received 0.278 percent of the dollars for goods and other services prime contracts under \$500,000. There were too few available firms to determine statistical significance.

Minority Business Enterprises represent 34.532 percent of the available goods and other services businesses and received 10.543 percent of the dollars for goods and other services prime contracts under \$500,000. This analysis is statistically significant.

Women Business Enterprises represent 16.982 percent of the available goods and other services businesses and received 4.485 percent of the dollars for goods and other services prime contracts under \$500,000. This analysis is statistically significant.

Minority and Women Business Enterprises represent 51.514 percent of the available goods and other services businesses and received 15.029 percent of the dollars for goods and other services prime contracts under \$500,000. This analysis is statistically significant.

Non-Minority Male Business Enterprises represent 48.486 percent of the available goods and other services businesses and received 84.971 percent of the dollars for goods and other services prime contracts under \$500,000. The statistical test is not performed for Non-Minority Males.



**Table 7.04: Disparity Analysis: Goods and Other Services Prime Contracts under \$500,000,
October 1, 2006 to September 30, 2009**

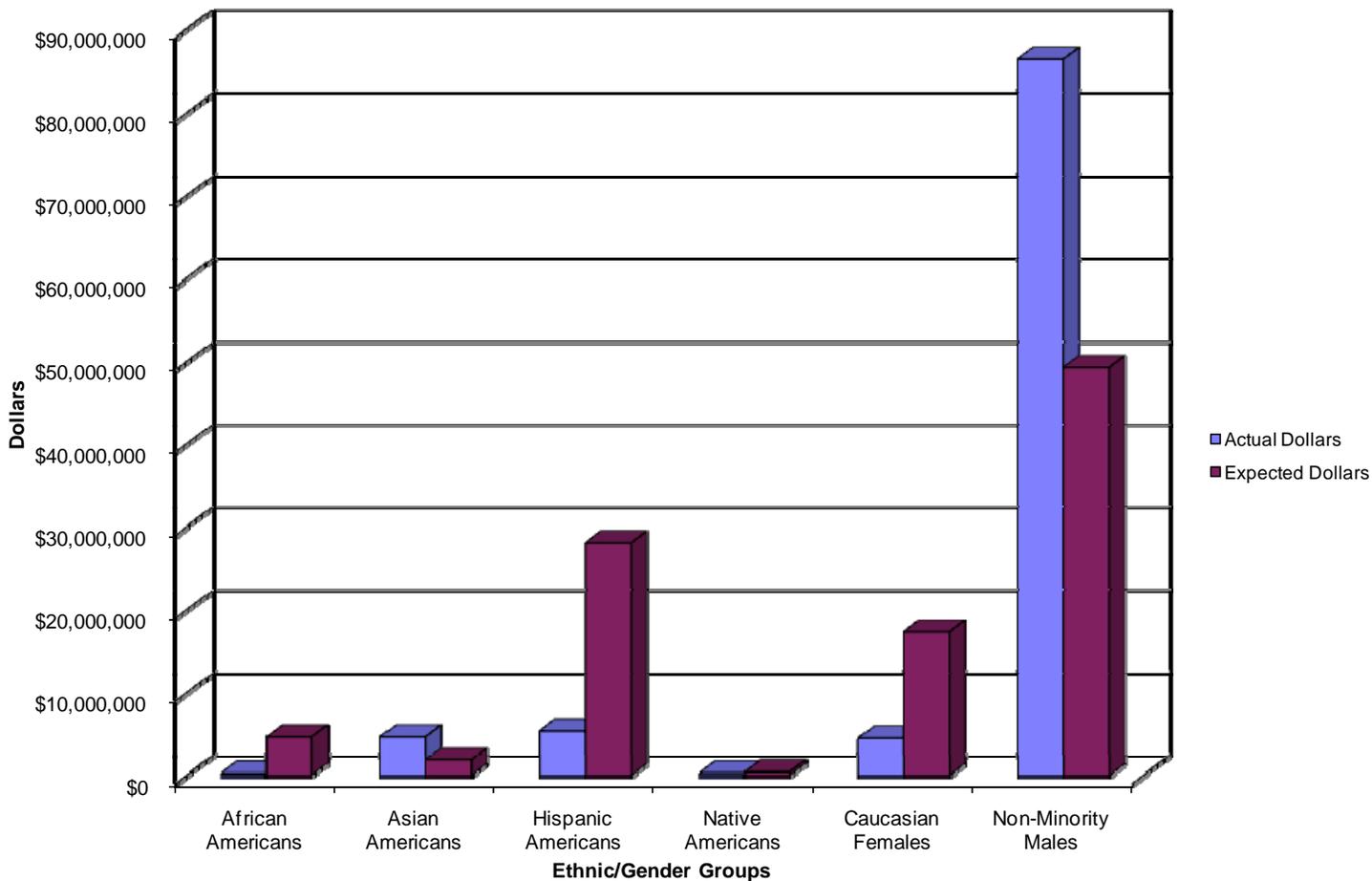
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African Americans	\$266,010	0.262%	4.636%	\$4,714,735	-\$4,448,725	0.056	Yes
Asian Americans	\$4,728,124	4.649%	1.845%	\$1,876,272	\$2,851,851	2.520	No
Hispanic Americans	\$5,445,513	5.354%	27.625%	\$28,095,974	-\$22,650,462	0.194	Yes
Native Americans	\$283,232	0.278%	0.426%	\$432,986	-\$149,754	0.654	No
Caucasian Females	\$4,561,714	4.485%	16.982%	\$17,271,327	-\$12,709,613	0.264	Yes
Non-Minority Males	\$86,418,985	84.971%	48.486%	\$49,312,284	\$37,106,702	1.752	N/A
TOTAL	\$101,703,578	100.000%	100.000%	\$101,703,578			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African American Females	\$10,402	0.010%	1.750%	\$1,780,053	-\$1,769,651	0.006	Yes
African American Males	\$255,608	0.251%	2.886%	\$2,934,682	-\$2,679,074	0.087	Yes
Asian American Females	\$1,216,261	1.196%	0.851%	\$865,972	\$350,289	1.405	No
Asian American Males	\$3,511,863	3.453%	0.993%	\$1,010,300	\$2,501,563	3.476	No
Hispanic American Females	\$2,318,808	2.280%	9.319%	\$9,477,580	-\$7,158,773	0.245	Yes
Hispanic American Males	\$3,126,705	3.074%	18.307%	\$18,618,394	-\$15,491,689	0.168	Yes
Native American Females	\$175,848	0.173%	0.142%	\$144,329	\$31,519	1.218	No
Native American Males	\$107,385	0.106%	0.284%	\$288,657	-\$181,273	0.372	No
Caucasian Females	\$4,561,714	4.485%	16.982%	\$17,271,327	-\$12,709,613	0.264	Yes
Non-Minority Males	\$86,418,985	84.971%	48.486%	\$49,312,284	\$37,106,702	1.752	N/A
TOTAL	\$101,703,578	100.000%	100.000%	\$101,703,578			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Females	\$3,721,318	3.659%	12.062%	\$12,267,934	-\$8,546,616	0.303	Yes
Minority Males	\$7,001,561	6.884%	22.469%	\$22,852,034	-\$15,850,473	0.306	Yes
Caucasian Females	\$4,561,714	4.485%	16.982%	\$17,271,327	-\$12,709,613	0.264	Yes
Non-Minority Males	\$86,418,985	84.971%	48.486%	\$49,312,284	\$37,106,702	1.752	N/A
TOTAL	\$101,703,578	100.000%	100.000%	\$101,703,578			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Business Enterprises	\$10,722,879	10.543%	34.532%	\$35,119,968	-\$24,397,089	0.305	Yes
Women Business Enterprises	\$4,561,714	4.485%	16.982%	\$17,271,327	-\$12,709,613	0.264	Yes
Minority and Women Business Enterprises	\$15,284,593	15.029%	51.514%	\$52,391,295	-\$37,106,702	0.292	Yes
Non-Minority Male Business Enterprises	\$86,418,985	84.971%	48.486%	\$49,312,284	\$37,106,702	1.752	N/A

Yes - The analysis is statistically significant

No - The analysis is not statistically significant or there are too few available firms to test statistical significance

N/A - The statistical test is not performed for Non-Minority Males

**Chart 7.03: Disparity Analysis: Goods and Other Services Prime Contracts under \$500,000,
October 1, 2006 to September 30, 2009**



2. Disparity Analysis: All Prime Contracts \$25,000 and under, by Industry

a. Construction Prime Contracts \$25,000 and under

The disparity analysis of all construction prime contracts \$25,000 and under is described below and depicted in Table 7.05 and Chart 7.04.

African American Businesses represent 2.425 percent of the available construction businesses and received none of the construction prime contracts \$25,000 and under. This analysis is statistically significant.

Asian American Businesses represent 1.569 percent of the available construction businesses and received 4.116 percent of the dollars for construction prime contracts \$25,000 and under. This analysis is not statistically significant.

Hispanic American Businesses represent 38.802 percent of the available construction businesses and received 36.829 percent of the dollars for construction prime contracts \$25,000 and under. This analysis is not statistically significant.

Native American Businesses represent 0.713 percent of the available construction businesses and received 0.501 percent of the dollars for construction prime contracts \$25,000 and under. There were too few available firms to determine statistical significance.

Minority Business Enterprises represent 43.509 percent of the available construction businesses and received 41.446 percent of the dollars for construction prime contracts \$25,000 and under. This analysis is not statistically significant.

Women Business Enterprises represent 10.414 percent of the available construction businesses and received 4.527 percent of the dollars for construction prime contracts \$25,000 and under. This analysis is statistically significant.

Minority and Women Business Enterprises represent 53.923 percent of available construction businesses and received 45.972 percent of the dollars for construction prime contracts \$25,000 and under. This analysis is statistically significant.

Non-Minority Male Business Enterprises represent 46.077 percent of the available construction businesses and received 54.028 percent of the dollars for construction prime contracts \$25,000 and under. The statistical test is not performed for Non-Minority Males.



**Table 7.05: Disparity Analysis: Construction Prime Contracts \$25,000 and under,
October 1, 2006 to September 30, 2009**

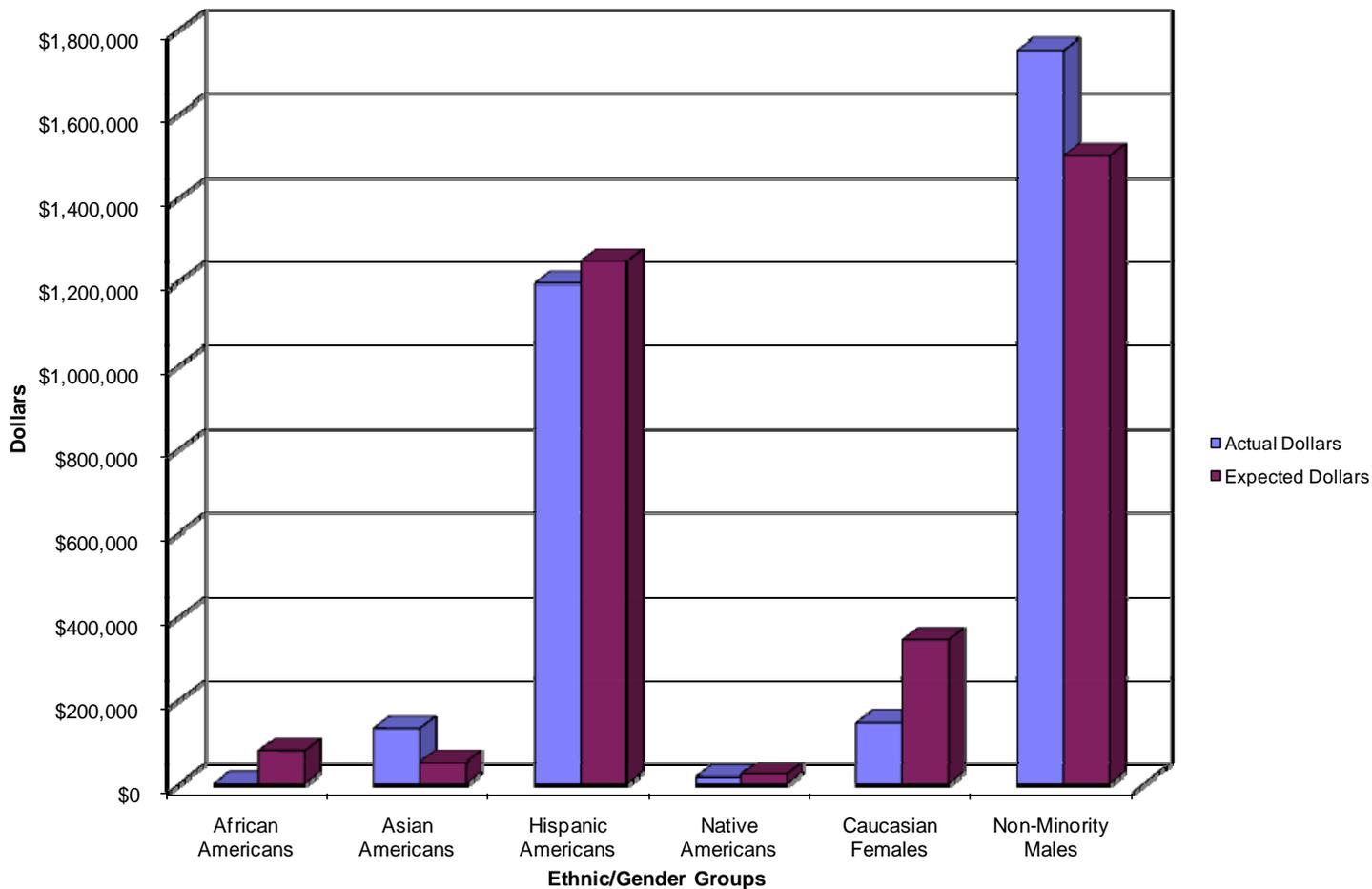
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African Americans	\$0	0.000%	2.425%	\$78,591	-\$78,591	0.000	Yes
Asian Americans	\$133,383	4.116%	1.569%	\$50,853	\$82,530	2.623	No
Hispanic Americans	\$1,193,512	36.829%	38.802%	\$1,257,456	-\$63,944	0.949	No
Native Americans	\$16,241	0.501%	0.713%	\$23,115	-\$6,874	0.703	No
Caucasian Females	\$146,706	4.527%	10.414%	\$337,479	-\$190,773	0.435	No
Non-Minority Males	\$1,750,882	54.028%	46.077%	\$1,493,229	\$257,653	1.173	N/A
TOTAL	\$3,240,723	100.000%	100.000%	\$3,240,723			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African American Females	\$0	0.000%	0.285%	\$9,246	-\$9,246	0.000	No
African American Males	\$0	0.000%	2.140%	\$69,345	-\$69,345	0.000	Yes
Asian American Females	\$35,147	1.085%	0.143%	\$4,623	\$30,524	7.603	No
Asian American Males	\$98,235	3.031%	1.427%	\$46,230	\$52,005	2.125	No
Hispanic American Females	\$471,263	14.542%	8.559%	\$277,380	\$193,883	1.699	No
Hispanic American Males	\$722,249	22.287%	30.243%	\$980,076	-\$257,827	0.737	Yes
Native American Females	\$0	0.000%	0.285%	\$9,246	-\$9,246	0.000	No
Native American Males	\$16,241	0.501%	0.428%	\$13,869	\$2,372	1.171	No
Caucasian Females	\$146,706	4.527%	10.414%	\$337,479	-\$190,773	0.435	Yes
Non-Minority Males	\$1,750,882	54.028%	46.077%	\$1,493,229	\$257,653	1.173	N/A
TOTAL	\$3,240,723	100.000%	100.000%	\$3,240,723			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Females	\$506,410	15.626%	9.272%	\$300,495	\$205,915	1.685	No
Minority Males	\$836,725	25.819%	34.237%	\$1,109,520	-\$272,795	0.754	Yes
Caucasian Females	\$146,706	4.527%	10.414%	\$337,479	-\$190,773	0.435	Yes
Non-Minority Males	\$1,750,882	54.028%	46.077%	\$1,493,229	\$257,653	1.173	N/A
TOTAL	\$3,240,723	100.000%	100.000%	\$3,240,723			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Business Enterprises	\$1,343,135	41.446%	43.509%	\$1,410,015	-\$66,880	0.953	No
Women Business Enterprises	\$146,706	4.527%	10.414%	\$337,479	-\$190,773	0.435	Yes
Minority and Women Business Enterprises	\$1,489,841	45.972%	53.923%	\$1,747,494	-\$257,653	0.853	Yes
Non-Minority Male Business Enterprises	\$1,750,882	54.028%	46.077%	\$1,493,229	\$257,653	1.173	N/A

Yes - The analysis is statistically significant

No - The analysis is not statistically significant or there are too few available firms to test statistical significance

N/A - The statistical test is not performed for Non-Minority Males

**Chart 7.04: Disparity Analysis: Construction Prime Contracts \$25,000 and under,
October 1, 2006 to September 30, 2009**



b. Professional Services Prime Contracts \$25,000 and under

The disparity analysis of professional services prime contracts \$25,000 and under is described below and depicted in Table 7.06 and Chart 7.05.

African American Businesses represent 5.599 percent of the available professional services businesses and received 4.153 percent of the dollars for professional services prime contracts \$25,000 and under. This analysis is not statistically significant.

Asian American Businesses represent 2.877 percent of the available professional services businesses and received 1.638 percent of the dollars for professional services prime contracts \$25,000 and under. This analysis is statistically significant.

Hispanic American Businesses represent 23.561 percent of the available professional services businesses and received 24.216 percent of the dollars for professional services prime contracts \$25,000 and under. This analysis is not statistically significant.

Native American Businesses represent 1.011 percent of the available professional services businesses and received 0.32 percent of the dollars for professional services prime contracts \$25,000 and under. This analysis is statistically significant.

Minority Business Enterprises represent 33.048 percent of the available professional services businesses and received 30.327 percent of the dollars for professional services prime contracts \$25,000 and under. This analysis is not statistically significant.

Women Business Enterprises represent 14.697 percent of the available professional services businesses and received 12.407 percent of the dollars for professional services prime contracts \$25,000 and under. This analysis is not statistically significant.

Minority and Women Business Enterprises represent 47.745 percent of the available professional services businesses and received 42.734 percent of the dollars for professional services prime contracts \$25,000 and under. This analysis is statistically significant.

Non-Minority Male Business Enterprises represent 52.255 percent of the available professional services businesses and received 57.266 percent of the dollars for professional services prime contracts \$25,000 and under. The statistical test is not performed for Non-Minority Males.



**Table 7.06: Disparity Analysis: Professional Services Prime Contracts \$25,000 and under,
October 1, 2006 to September 30, 2009**

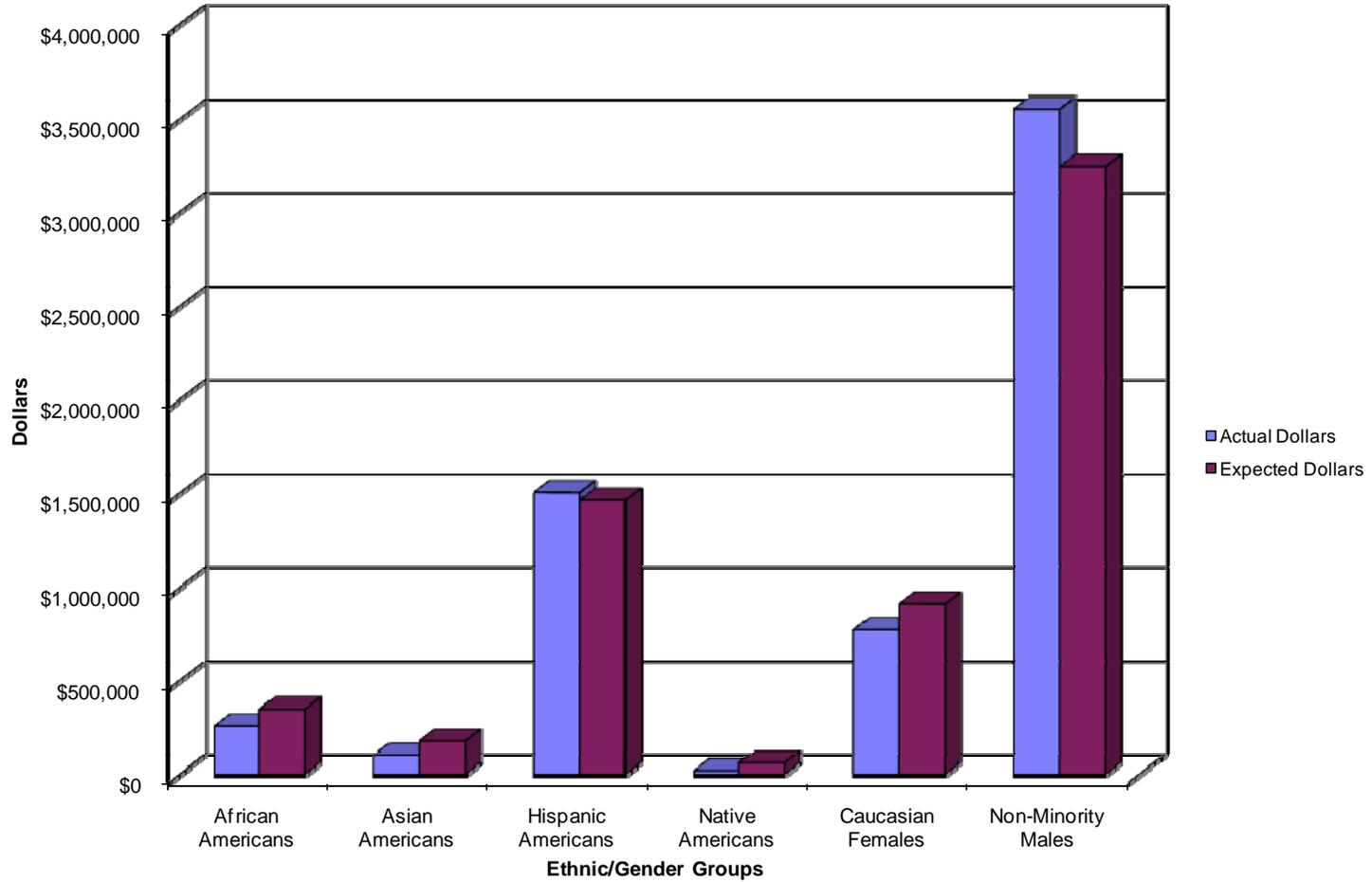
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African Americans	\$257,731	4.153%	5.599%	\$347,486	-\$89,755	0.742	No
Asian Americans	\$101,684	1.638%	2.877%	\$178,569	-\$76,885	0.569	Yes
Hispanic Americans	\$1,502,951	24.216%	23.561%	\$1,462,336	\$40,614	1.028	No
Native Americans	\$19,855	0.320%	1.011%	\$62,741	-\$42,885	0.316	Yes
Caucasian Females	\$770,054	12.407%	14.697%	\$912,150	-\$142,096	0.844	No
Non-Minority Males	\$3,554,208	57.266%	52.255%	\$3,243,201	\$311,007	1.096	N/A
TOTAL	\$6,206,483	100.000%	100.000%	\$6,206,483			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African American Females	\$41,130	0.663%	2.488%	\$154,438	-\$113,308	0.266	Yes
African American Males	\$216,601	3.490%	3.110%	\$193,048	\$23,553	1.122	No
Asian American Females	\$25,196	0.406%	1.089%	\$67,567	-\$42,371	0.373	Yes
Asian American Males	\$76,488	1.232%	1.788%	\$111,002	-\$34,514	0.689	Yes
Hispanic American Females	\$639,620	10.306%	6.921%	\$429,531	\$210,089	1.489	No
Hispanic American Males	\$863,330	13.910%	16.641%	\$1,032,805	-\$169,475	0.836	Yes
Native American Females	\$16,245	0.262%	0.311%	\$19,305	-\$3,060	0.841	No
Native American Males	\$3,611	0.058%	0.700%	\$43,436	-\$39,825	0.083	No
Caucasian Females	\$770,054	12.407%	14.697%	\$912,150	-\$142,096	0.844	No
Non-Minority Males	\$3,554,208	57.266%	52.255%	\$3,243,201	\$311,007	1.096	N/A
TOTAL	\$6,206,483	100.000%	100.000%	\$6,206,483			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Females	\$722,190	11.636%	10.809%	\$670,841	\$51,350	1.077	No
Minority Males	\$1,160,030	18.691%	22.240%	\$1,380,291	-\$220,261	0.840	Yes
Caucasian Females	\$770,054	12.407%	14.697%	\$912,150	-\$142,096	0.844	No
Non-Minority Males	\$3,554,208	57.266%	52.255%	\$3,243,201	\$311,007	1.096	N/A
TOTAL	\$6,206,483	100.000%	100.000%	\$6,206,483			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Business Enterprises	\$1,882,220	30.327%	33.048%	\$2,051,132	-\$168,911	0.918	No
Women Business Enterprises	\$770,054	12.407%	14.697%	\$912,150	-\$142,096	0.844	No
Minority and Women Business Enterprises	\$2,652,275	42.734%	47.745%	\$2,963,282	-\$311,007	0.895	Yes
Non-Minority Male Business Enterprises	\$3,554,208	57.266%	52.255%	\$3,243,201	\$311,007	1.096	N/A

Yes - The analysis is statistically significant

No - The analysis is not statistically significant or there are too few available firms to test statistical significance

N/A - The statistical test is not performed for Non-Minority Males

Chart 7.05: Disparity Analysis: Professional Services Prime Contracts \$25,000 and under, October 1, 2006 to September 30, 2009



c. Goods and Other Services Prime Contracts \$25,000 and under

The disparity analysis of goods and other services prime contracts \$25,000 and under is described below and depicted in Table 7.07 and Chart 7.06.

African American Businesses represent 4.636 percent of the available goods and other services businesses and received 0.499 percent of the dollars for goods and other services prime contracts \$25,000 and under. This analysis is statistically significant.

Asian American Businesses represent 1.845 percent of the available goods and other services businesses and received 6.287 percent of the dollars for goods and other services prime contracts \$25,000 and under. This analysis is not statistically significant.

Hispanic American Businesses represent 27.625 percent of the available goods and other services businesses and received 9.313 percent of the dollars for goods and other services prime contracts \$25,000 and under. This analysis is statistically significant.

Native American Businesses represent 0.426 percent of the available goods and other services businesses and received 0.603 percent of the dollars for goods and other services prime contracts \$25,000 and under. This analysis is not statistically significant.

Minority Business Enterprises represent 34.532 percent of the available goods and other services businesses and received 16.702 percent of the dollars for goods and other services prime contracts \$25,000 and under. This analysis is statistically significant.

Women Business Enterprises represent 16.982 percent of the available goods and other services businesses and received 7.195 percent of the dollars for goods and other services prime contracts \$25,000 and under. This analysis is statistically significant.

Minority and Women Business Enterprises represent 51.514 percent of the available goods and other services businesses and received 23.897 percent of the dollars for goods and other services prime contracts \$25,000 and under. This analysis is statistically significant.

Non-Minority Male Business Enterprises represent 48.486 percent of the available goods and other services businesses and received 76.103 percent of the dollars for goods and other services prime contracts \$25,000 and under. The statistical test is not performed for Non-Minority Males.



**Table 7.07: Disparity Analysis: Goods and Other Services Prime Contracts \$25,000 and under,
October 1, 2006 to September 30, 2009**

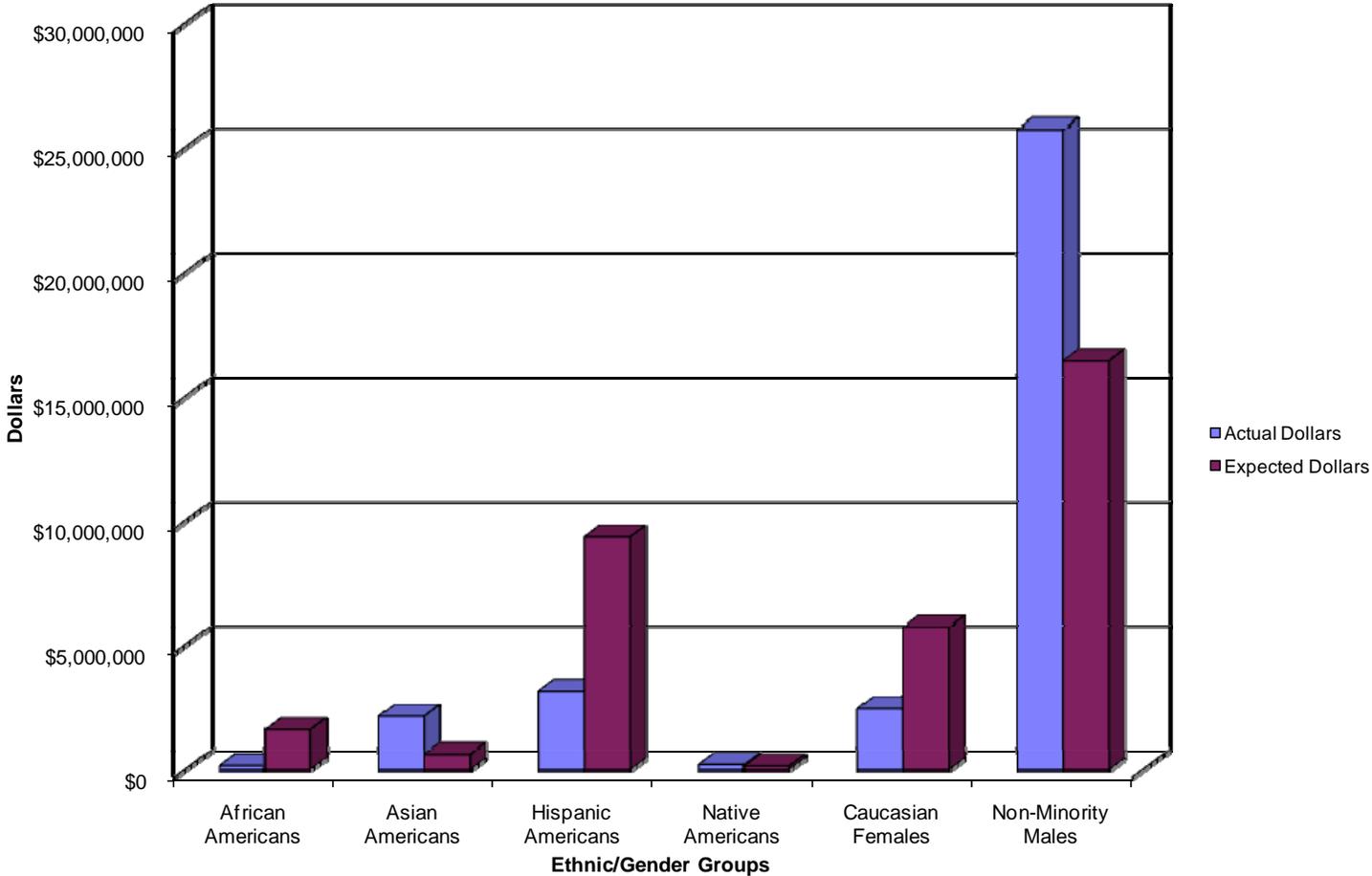
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African Americans	\$168,475	0.499%	4.636%	\$1,566,139	-\$1,397,664	0.108	Yes
Asian Americans	\$2,124,046	6.287%	1.845%	\$623,259	\$1,500,787	3.408	No
Hispanic Americans	\$3,146,225	9.313%	27.625%	\$9,332,908	-\$6,186,683	0.337	Yes
Native Americans	\$203,831	0.603%	0.426%	\$143,829	\$60,002	1.417	No
Caucasian Females	\$2,430,864	7.195%	16.982%	\$5,737,181	-\$3,306,317	0.424	Yes
Non-Minority Males	\$25,710,406	76.103%	48.486%	\$16,380,532	\$9,329,874	1.570	N/A
TOTAL	\$33,783,848	100.000%	100.000%	\$33,783,848			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African American Females	\$10,402	0.031%	1.750%	\$591,297	-\$580,895	0.018	Yes
African American Males	\$158,073	0.468%	2.886%	\$974,841	-\$816,768	0.162	Yes
Asian American Females	\$497,898	1.474%	0.851%	\$287,658	\$210,240	1.731	No
Asian American Males	\$1,626,148	4.813%	0.993%	\$335,601	\$1,290,547	4.845	No
Hispanic American Females	\$1,406,657	4.164%	9.319%	\$3,148,258	-\$1,741,601	0.447	Yes
Hispanic American Males	\$1,739,568	5.149%	18.307%	\$6,184,650	-\$4,445,081	0.281	Yes
Native American Females	\$175,848	0.521%	0.142%	\$47,943	\$127,905	3.668	No
Native American Males	\$27,983	0.083%	0.284%	\$95,886	-\$67,903	0.292	No
Caucasian Females	\$2,430,864	7.195%	16.982%	\$5,737,181	-\$3,306,317	0.424	Yes
Non-Minority Males	\$25,710,406	76.103%	48.486%	\$16,380,532	\$9,329,874	1.570	N/A
TOTAL	\$33,783,848	100.000%	100.000%	\$33,783,848			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Females	\$2,090,805	6.189%	12.062%	\$4,075,157	-\$1,984,352	0.513	Yes
Minority Males	\$3,551,773	10.513%	22.469%	\$7,590,978	-\$4,039,205	0.468	Yes
Caucasian Females	\$2,430,864	7.195%	16.982%	\$5,737,181	-\$3,306,317	0.424	Yes
Non-Minority Males	\$25,710,406	76.103%	48.486%	\$16,380,532	\$9,329,874	1.570	N/A
TOTAL	\$33,783,848	100.000%	100.000%	\$33,783,848			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Business Enterprises	\$5,642,577	16.702%	34.532%	\$11,666,135	-\$6,023,557	0.484	Yes
Women Business Enterprises	\$2,430,864	7.195%	16.982%	\$5,737,181	-\$3,306,317	0.424	Yes
Minority and Women Business Enterprises	\$8,073,442	23.897%	51.514%	\$17,403,316	-\$9,329,874	0.464	Yes
Non-Minority Male Business Enterprises	\$25,710,406	76.103%	48.486%	\$16,380,532	\$9,329,874	1.570	N/A

Yes - The analysis is statistically significant

No - The analysis is not statistically significant or there are too few available firms to test statistical significance

N/A - The statistical test is not performed for Non-Minority Males

Chart 7.06: Disparity Analysis: Goods and Other Services Prime Contracts \$25,000 and under, October 1, 2006 to September 30, 2009



C. Disparity Analysis Summary

1. Construction Prime Contracts

As indicated in Table 7.08, disparity was found for African American and Hispanic American construction prime contractors at the formal contract level. Disparity was found for African American and Women Business Enterprise construction prime contractors at the informal contract level.

Table 7.08: Disparity Summary: Construction Prime Contract Dollars, October 1, 2006 to September 30, 2009

Ethnicity/Gender	Construction	
	Contracts under \$500,000	Contracts \$25,000 and under
African Americans	Yes	Yes
Asian Americans	No	No
Hispanic Americans	Yes	No
Native Americans	No	No
Minority Business Enterprises	Yes	No
Women Business Enterprises	No	Yes
Minority and Women Business Enterprises	Yes	Yes

Yes = The analysis is statistically significant

No = The analysis is not statistically significant or there are too few available firms to test statistical significance



2. Professional Services Prime Contracts

As indicated in Table 7.09 below, disparity was found for African American, Native American, and Women Business Enterprise professional services prime contractors at the formal contract level. Disparity was found for Asian American and Native American professional services prime contractors at the informal contract level.

Table 7.09: Disparity Summary: Professional Services Prime Contract Dollars, October 1, 2006 to September 30, 2009

Ethnicity/Gender	Professional Services	
	Contracts under \$500,000	Contracts \$25,000 and under
African Americans	Yes	No
Asian Americans	No	Yes
Hispanic Americans	No	No
Native Americans	Yes	Yes
Minority Business Enterprises	Yes	No
Women Business Enterprises	Yes	No
Minority and Women Business Enterprises	Yes	Yes

Yes = The analysis is statistically significant

No = The analysis is not statistically significant or there are too few available firms to test statistical significance



3. Goods and Other Services Prime Contracts

As indicated in Table 7.10 below, disparity was found for African American, Hispanic American, and Women Business Enterprise goods and other services prime contractors at both the formal and informal contract levels.

Table 7.10: Disparity Summary: Goods and Other Services Prime Contract Dollars, October 1, 2006 to September 30, 2009

Ethnicity/Gender	Goods and Other Services	
	Contracts under \$500,000	Contracts \$25,000 and under
African Americans	Yes	Yes
Asian Americans	No	No
Hispanic Americans	Yes	Yes
Native Americans	No	No
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	Yes	Yes
Minority and Women Business Enterprises	Yes	Yes

Yes = The analysis is statistically significant

No = The analysis is not statistically significant or there are too few available firms to test statistical significance



II. COMPARISON OF UTILIZATION TO AVAILABILITY FOR ALL PRIME CONTRACTS, BY INDUSTRY

1. Construction Prime Contracts

A comparison of the utilization to availability for all construction prime contracts is depicted in Table 7.11.

African Americans represent 2.425 percent of the available construction firms and received none of the construction prime contracts.

Asian Americans represent 1.569 percent of the available construction firms and received 21.426 percent of the dollars or \$30,876,486 for all construction prime contracts.

Hispanic Americans represent 38.802 percent of the available construction firms and received 10.719 percent of the dollars or \$15,446,375 for all construction prime contracts.

Native Americans represent 0.713 percent of the available construction firms and received 0.011 percent of the dollars or \$16,241 for all construction prime contracts.

Minority Business Enterprises represent 43.509 percent of the available construction firms and received 32.156 percent of the dollars or \$46,339,102 for all construction prime contracts.

Women Business Enterprises represent 10.414 percent of the available construction firms and received 2.797 percent of the dollars or \$4,030,658 for all construction prime contracts.

Minority and Women Business Enterprises represent 53.923 percent of the available construction firms and received 34.953 percent of the dollars or \$50,369,760 for all construction prime contracts.

Non-Minority Male Business Enterprises represent 46.077 percent of the available construction firms and received 65.047 percent of the dollars or \$93,737,533 for all construction prime contracts.



**Table 7.11 Comparison of Utilization to Availability for
All Construction Prime Contracts, October 1, 2006 to September 30, 2009**

Ethnicity	Actual Dollars	Utilization	Availability
African Americans	\$0	0.000%	2.425%
Asian Americans	\$30,876,486	21.426%	1.569%
Hispanic Americans	\$15,446,375	10.719%	38.802%
Native Americans	\$16,241	0.011%	0.713%
Caucasian Females	\$4,030,658	2.797%	10.414%
Non-Minority Males	\$93,737,533	65.047%	46.077%
TOTAL	\$144,107,293	100.000%	100.000%
Ethnicity and Gender	Actual Dollars	Utilization	Availability
African American Females	\$0	0.000%	0.285%
African American Males	\$0	0.000%	2.140%
Asian American Females	\$195,244	0.135%	0.143%
Asian American Males	\$30,681,242	21.291%	1.427%
Hispanic American Females	\$1,719,417	1.193%	8.559%
Hispanic American Males	\$13,726,958	9.526%	30.243%
Native American Females	\$0	0.000%	0.285%
Native American Males	\$16,241	0.011%	0.428%
Caucasian Females	\$4,030,658	2.797%	10.414%
Non-Minority Males	\$93,737,533	65.047%	46.077%
TOTAL	\$144,107,293	100.000%	100.000%
Minority and Gender	Actual Dollars	Utilization	Availability
Minority Females	\$1,914,661	1.329%	9.272%
Minority Males	\$44,424,441	30.827%	34.237%
Caucasian Females	\$4,030,658	2.797%	10.414%
Non-Minority Males	\$93,737,533	65.047%	46.077%
TOTAL	\$144,107,293	100.000%	100.000%
Minority and Females	Actual Dollars	Utilization	Availability
Minority Business Enterprises	\$46,339,102	32.156%	43.509%
Women Business Enterprises	\$4,030,658	2.797%	10.414%
Minority and Women Business Enterprises	\$50,369,760	34.953%	53.923%
Non-Minority Male Business Enterprises	\$93,737,533	65.047%	46.077%



2. Professional Services Prime Contracts

A comparison of the utilization to availability for all professional services prime contracts is depicted in Table 7.12.

African Americans represent 5.599 percent of the available professional services firms and received 0.942 percent of the dollars or \$296,821 for all professional services prime contracts.

Asian Americans represent 2.877 percent of the available professional services firms and received 14.712 percent of the dollars or \$4,637,622 for all professional services prime contracts.

Hispanic Americans represent 23.561 percent of the available professional services firms and received 18.145 percent of the dollars or \$5,719,703 for all professional services prime contracts.

Native Americans represent 1.011 percent of the available professional services firms and received 0.063 percent of the dollars or \$19,855 for all professional services prime contracts.

Minority Business Enterprises represent 33.048 percent of the available professional services firms and received 33.862 percent of the dollars or \$10,674,002 for all professional services prime contracts.

Women Business Enterprises represent 14.697 percent of the available professional services firms and received 6.421 percent of the dollars or \$2,024,155 for all professional services prime contracts.

Minority and Women Business Enterprises represent 47.745 percent of the available professional services firms and received 40.284 percent of the dollars or \$12,698,157 for all professional services prime contracts.

Non-Minority Male Business Enterprises represent 52.255 percent of the available professional services firms and received 59.716 percent of the dollars or \$18,823,545 for all professional services prime contracts.



**Table 7.12 Comparison of Utilization to Availability for
All Professional Services Prime Contracts, October 1, 2006 to September 30, 2009**

Ethnicity	Actual Dollars	Utilization	Availability
African Americans	\$296,821	0.942%	5.599%
Asian Americans	\$4,637,622	14.712%	2.877%
Hispanic Americans	\$5,719,703	18.145%	23.561%
Native Americans	\$19,855	0.063%	1.011%
Caucasian Females	\$2,024,155	6.421%	14.697%
Non-Minority Males	\$18,823,545	59.716%	52.255%
TOTAL	\$31,521,701	100.000%	100.000%
Ethnicity and Gender	Actual Dollars	Utilization	Availability
African American Females	\$41,130	0.130%	2.488%
African American Males	\$255,691	0.811%	3.110%
Asian American Females	\$447,315	1.419%	1.089%
Asian American Males	\$4,190,308	13.293%	1.788%
Hispanic American Females	\$639,620	2.029%	6.921%
Hispanic American Males	\$5,080,083	16.116%	16.641%
Native American Females	\$16,245	0.052%	0.311%
Native American Males	\$3,611	0.011%	0.700%
Caucasian Females	\$2,024,155	6.421%	14.697%
Non-Minority Males	\$18,823,545	59.716%	52.255%
TOTAL	\$31,521,701	100.000%	100.000%
Minority and Gender	Actual Dollars	Utilization	Availability
Minority Females	\$1,144,310	3.630%	10.809%
Minority Males	\$9,529,692	30.232%	22.240%
Caucasian Females	\$2,024,155	6.421%	14.697%
Non-Minority Males	\$18,823,545	59.716%	52.255%
TOTAL	\$31,521,701	100.000%	100.000%
Minority and Females	Actual Dollars	Utilization	Availability
Minority Business Enterprises	\$10,674,002	33.862%	33.048%
Women Business Enterprises	\$2,024,155	6.421%	14.697%
Minority and Women Business Enterprises	\$12,698,157	40.284%	47.745%
Non-Minority Male Business Enterprises	\$18,823,545	59.716%	52.255%



3. Goods and Other Services Prime Contracts

A comparison of the utilization to availability for all goods and other services prime contracts is depicted in Table 7.13.

African Americans represent 4.636 percent of the available goods and other services firms and received 0.231 percent of the dollars or \$266,010 for all goods and other services prime contracts.

Asian Americans represent 1.845 percent of the available goods and other services firms and received 4.1 percent of the dollars or \$4,728,124 for all goods and other services prime contracts.

Hispanic Americans represent 27.625 percent of the available goods and other services firms and received 4.722 percent of the dollars or \$5,445,513 for all goods and other services prime contracts.

Native Americans represent 0.426 percent of the available goods and other services firms and received 0.246 percent of the dollars or \$283,232 for all goods and other services prime contracts.

Minority Business Enterprises represent 34.532 percent of the available goods and other services firms and received 9.298 percent of the dollars or \$10,722,879 for all goods and other services prime contracts.

Women Business Enterprises represent 16.982 percent of the available goods and other services firms and received 3.955 percent of the dollars or \$4,561,714 for all goods and other services prime contracts.

Minority and Women Business Enterprises represent 51.514 percent of the goods and other services firms and received 13.253 percent of the dollars or \$15,284,593 for all goods and other services prime contracts.

Non-Minority Male Business Enterprises represent 48.486 percent of the goods and other services firms and received 86.747 percent of the dollars or \$100,044,211 for all goods and other services prime contracts.



Table 7.13 Comparison of Utilization to Availability for All Goods and Other Services Prime Contracts, October 1, 2006 to September 30, 2009

Ethnicity	Actual Dollars	Utilization	Availability
African Americans	\$266,010	0.231%	4.636%
Asian Americans	\$4,728,124	4.100%	1.845%
Hispanic Americans	\$5,445,513	4.722%	27.625%
Native Americans	\$283,232	0.246%	0.426%
Caucasian Females	\$4,561,714	3.955%	16.982%
Non-Minority Males	\$100,044,211	86.747%	48.486%
TOTAL	\$115,328,804	100.000%	100.000%
Ethnicity and Gender	Actual Dollars	Utilization	Availability
African American Females	\$10,402	0.009%	1.750%
African American Males	\$255,608	0.222%	2.886%
Asian American Females	\$1,216,261	1.055%	0.851%
Asian American Males	\$3,511,863	3.045%	0.993%
Hispanic American Females	\$2,318,808	2.011%	9.319%
Hispanic American Males	\$3,126,705	2.711%	18.307%
Native American Females	\$175,848	0.152%	0.142%
Native American Males	\$107,385	0.093%	0.284%
Caucasian Females	\$4,561,714	3.955%	16.982%
Non-Minority Males	\$100,044,211	86.747%	48.486%
TOTAL	\$115,328,804	100.000%	100.000%
Minority and Gender	Actual Dollars	Utilization	Availability
Minority Females	\$3,721,318	3.227%	12.062%
Minority Males	\$7,001,561	6.071%	22.469%
Caucasian Females	\$4,561,714	3.955%	16.982%
Non-Minority Males	\$100,044,211	86.747%	48.486%
TOTAL	\$115,328,804	100.000%	100.000%
Minority and Females	Actual Dollars	Utilization	Availability
Minority Business Enterprises	\$10,722,879	9.298%	34.532%
Women Business Enterprises	\$4,561,714	3.955%	16.982%
Minority and Women Business Enterprises	\$15,284,593	13.253%	51.514%
Non-Minority Male Business Enterprises	\$100,044,211	86.747%	48.486%



CHAPTER 8: SUBCONTRACTOR DISPARITY ANALYSIS

I. INTRODUCTION

The objective of this chapter is to determine the levels at which minority and woman-owned business enterprise (M/WBE) subcontractors are utilized on Bexar County (County) contracts. A detailed discussion of the statistical procedures for conducting a disparity analysis is set forth in *Chapter 7: Prime Contractor Disparity Analysis*. The same analytical procedures are used to perform the subcontractor disparity analysis. Under a fair and equitable system of awarding subcontracts, the proportion of subcontractors and subcontract dollars awarded to M/WBEs should be relatively close to the proportion of available M/WBEs¹ in the relevant market area. 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.² *Croson* states that an inference of discrimination can be made *prima facie* if the disparity is statistically significant. Under the *Croson* model, Non-Minority Male business enterprises are not subjected to a statistical test.



¹ Availability is defined as the number of willing and able businesses. The methodology for determining willing and able businesses is detailed in Chapter 6.

² When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95 percent confidence level is considered by the courts to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analyzed here was done within the 95 percent confidence level.

II. DISPARITY ANALYSIS

As detailed in *Chapter 4: Subcontractor Utilization Analysis*, extensive efforts were undertaken to obtain subcontractor records for the County’s construction, professional services, and goods and other services contracts. The goods and other services industry subcontractor data was not available and, therefore, not included in the subcontractor analysis. Information on subcontracts for the other two industries was provided by the County, its prime contractors, and its subcontractors. The disparity analysis was performed on construction and professional services subcontracts issued between October 1, 2006 and September 30, 2009.

The subcontract disparity findings in the two industries under consideration are summarized below. The outcomes of the statistical analyses are presented in the “Disparity” column of the tables. There are ethnic groups for which the statistical test could not be performed due to too few available firms. A description of the statistical outcomes in the disparity tables are presented below in Table 8.01.

Table 8.01: Statistical Outcome Descriptions

P-Value Outcome	Description of P-Value Outcome
Yes	The analysis is statistically significant
No	The analysis is not statistically significant or there are too few available firms to test statistical significance
N/A	The statistical test is not performed for Non-Minority Males



III. DISPARITY ANALYSIS: ALL SUBCONTRACTS, BY INDUSTRY

A. Construction Subcontracts

The disparity analysis of construction subcontracts is described below and depicted in Table 8.02 and Chart 8.01.

African American Businesses represent 2.31 percent of the available construction businesses and received 0.682 percent of the dollars for construction subcontracts. The analysis is not statistically significant.

Asian American Businesses represent 1.54 percent of the available construction businesses and received 0.423 percent of the dollars for construction subcontracts. The analysis is not statistically significant.

Hispanic American Businesses represent 35.864 percent of the available construction businesses and received 8.731 percent of the dollars for construction subcontracts. The analysis is statistically significant.

Native American Businesses represent 0.66 percent of the available construction businesses and received 0.914 percent of the dollars for construction subcontracts. The analysis is not statistically significant.

Minority Business Enterprises represent 40.374 percent of the available construction businesses and received 10.75 percent of the dollars for construction subcontracts. The analysis is statistically significant.

Women Business Enterprises represent 11.991 percent of the available construction businesses and received 11.568 percent of the dollars for construction subcontracts. The analysis is not statistically significant.

Minority and Women Business Enterprises represent 52.365 percent of the available construction businesses and received 22.317 percent of the dollars for construction subcontracts. The analysis is statistically significant.

Non-Minority Male Business Enterprises represent 47.635 percent of the available construction businesses and received 77.683 percent of the dollars for construction subcontracts. The statistical test is not performed for Non-Minority Males.



Table 8.02 Disparity Analysis: Construction Subcontracts, October 1, 2006 to September 30, 2009

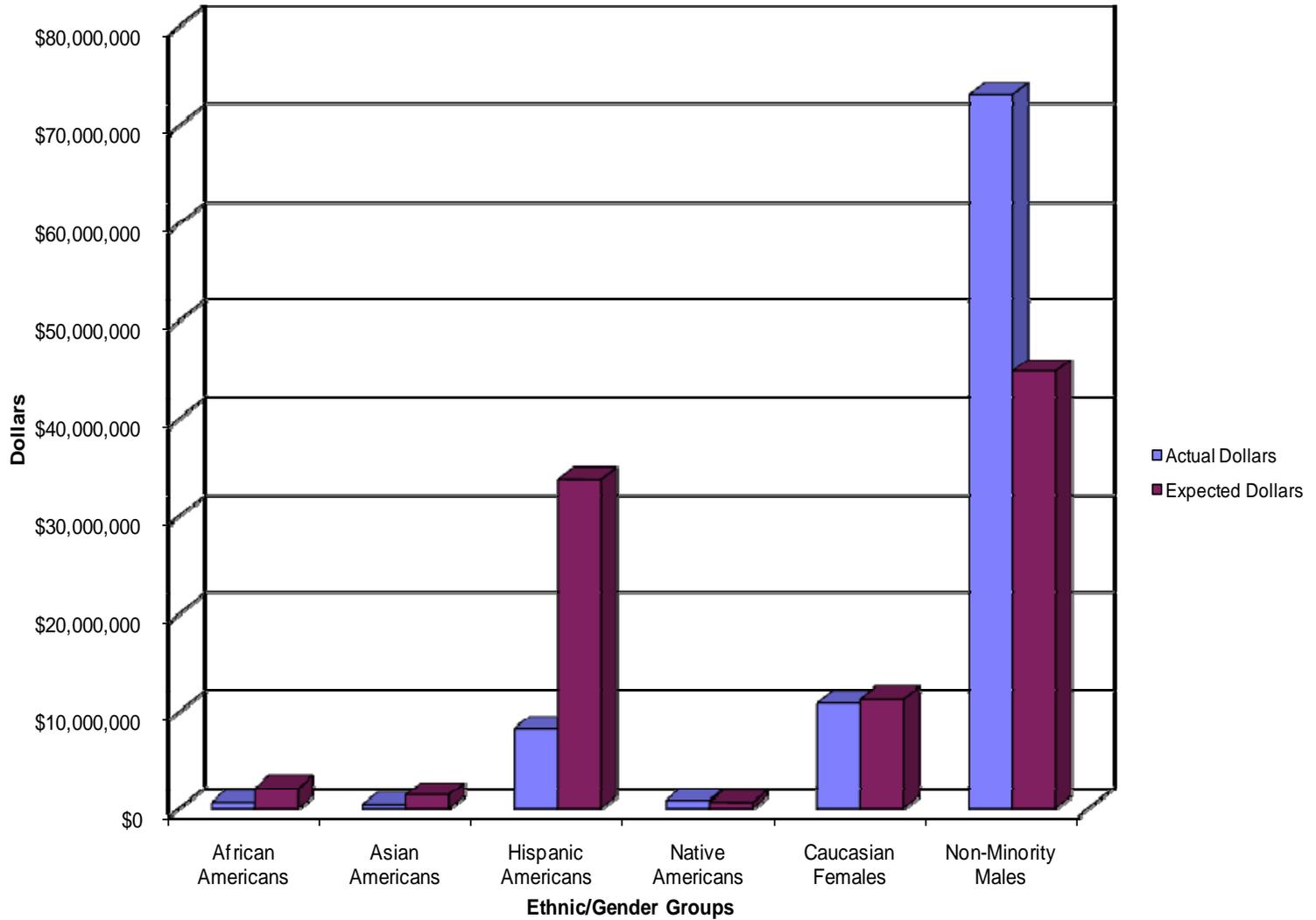
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African Americans	\$640,897	0.682%	2.310%	\$2,170,474	-\$1,529,578	0.295	No
Asian Americans	\$397,385	0.423%	1.540%	\$1,446,983	-\$1,049,598	0.275	No
Hispanic Americans	\$8,202,387	8.731%	35.864%	\$33,694,028	-\$25,491,641	0.243	Yes
Native Americans	\$858,873	0.914%	0.660%	\$620,135	\$238,738	1.385	No
Caucasian Females	\$10,867,839	11.568%	11.991%	\$11,265,795	-\$397,955	0.965	No
Non-Minority Males	\$72,983,145	77.683%	47.635%	\$44,753,111	\$28,230,034	1.631	N/A
TOTAL	\$93,950,526	100.000%	100.000%	\$93,950,526			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African American Females	\$380,343	0.405%	0.330%	\$310,068	\$70,275	1.227	No
African American Males	\$260,554	0.277%	1.980%	\$1,860,406	-\$1,599,852	0.140	No
Asian American Females	\$0	0.000%	0.220%	\$206,712	-\$206,712	0.000	No
Asian American Males	\$397,385	0.423%	1.320%	\$1,240,271	-\$842,886	0.320	No
Hispanic American Females	\$436,956	0.465%	7.921%	\$7,441,626	-\$7,004,670	0.059	Yes
Hispanic American Males	\$7,765,431	8.265%	27.943%	\$26,252,402	-\$18,486,971	0.296	Yes
Native American Females	\$0	0.000%	0.220%	\$206,712	-\$206,712	0.000	No
Native American Males	\$858,873	0.914%	0.440%	\$413,424	\$445,449	2.077	No
Caucasian Females	\$10,867,839	11.568%	11.991%	\$11,265,795	-\$397,955	0.965	No
Non-Minority Males	\$72,983,145	77.683%	47.635%	\$44,753,111	\$28,230,034	1.631	N/A
TOTAL	\$93,950,526	100.000%	100.000%	\$93,950,526			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Females	\$817,298	0.870%	8.691%	\$8,165,117	-\$7,347,819	0.100	Yes
Minority Males	\$9,282,243	9.880%	31.683%	\$29,766,503	-\$20,484,260	0.312	Yes
Caucasian Females	\$10,867,839	11.568%	11.991%	\$11,265,795	-\$397,955	0.965	No
Non-Minority Males	\$72,983,145	77.683%	47.635%	\$44,753,111	\$28,230,034	1.631	N/A
TOTAL	\$93,950,526	100.000%	100.000%	\$93,950,526			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Business Enterprises	\$10,099,541	10.750%	40.374%	\$37,931,620	-\$27,832,079	0.266	Yes
Women Business Enterprises	\$10,867,839	11.568%	11.991%	\$11,265,795	-\$397,955	0.965	No
Minority and Women Business Enterprises	\$20,967,381	22.317%	52.365%	\$49,197,415	-\$28,230,034	0.426	Yes
Non-Minority Male Business Enterprises	\$72,983,145	77.683%	47.635%	\$44,753,111	\$28,230,034	1.631	N/A

Yes - The analysis is statistically significant

No - The analysis is not statistically significant or there are too few available firms to test statistical significance

N/A - The statistical test is not performed for Non-Minority Males

Chart 8.01 Disparity Analysis: Construction Subcontracts, October 1, 2006 to September 30, 2009



*Mason Tillman Associates, Ltd. December 2011
Bexar County Disparity and Availability Study*

B. Professional Services Subcontracts

The disparity analysis of all professional services subcontracts is described below and depicted in Table 8.03 and Chart 8.02.

African American Businesses represent 5.345 percent of the available professional services businesses and received 0.259 percent of the dollars for professional services subcontracts. The analysis is statistically significant.

Asian American Businesses represent 2.821 percent of the available professional services businesses and received 14.128 percent of the dollars for professional services subcontracts. The analysis is not statistically significant.

Hispanic American Businesses represent 20.861 percent of the available professional services businesses and received 20.231 percent of the dollars for professional services subcontracts. The analysis is not statistically significant.

Native American Businesses represent 0.891 percent of the available professional services businesses and received none of the professional services subcontracts. There were too few firms available to determine statistical significance.

Minority Business Enterprises represent 29.918 percent of the available professional services businesses and received 34.619 percent of the dollars for professional services subcontracts. The analysis is not statistically significant.

Women Business Enterprises represent 13.957 percent of the available professional services businesses and received 17.777 percent of the dollars for professional services subcontracts. The analysis is not statistically significant.

Minority and Women Business Enterprises represent 43.875 percent of the available professional services businesses and received 52.396 percent of the dollars for professional services subcontracts. The analysis is not statistically significant.

Non-Minority Male Business Enterprises represent 56.125 percent of the available professional services businesses and received 47.604 percent of the dollars for professional services subcontracts. The statistical test is not performed for Non-Minority Males.



Table 8.03 Disparity Analysis: Professional Services Subcontracts, October 1, 2006 to September 30, 2009

Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African Americans	\$17,108	0.259%	5.345%	\$352,934	-\$335,826	0.048	Yes*
Asian Americans	\$932,877	14.128%	2.821%	\$186,271	\$746,606	5.008	No
Hispanic Americans	\$1,335,824	20.231%	20.861%	\$1,377,424	-\$41,600	0.970	No
Native Americans	\$0	0.000%	0.891%	\$58,822	-\$58,822	0.000	No
Caucasian Females	\$1,173,771	17.777%	13.957%	\$921,551	\$252,221	1.274	No
Non-Minority Males	\$3,143,232	47.604%	56.125%	\$3,705,809	-\$562,578	0.848	N/A
TOTAL	\$6,602,811	100.000%	100.000%	\$6,602,811			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
African American Females	\$0	0.000%	2.450%	\$161,762	-\$161,762	0.000	No
African American Males	\$17,108	0.259%	2.895%	\$191,173	-\$174,065	0.089	No
Asian American Females	\$39,878	0.604%	0.965%	\$63,724	-\$23,846	0.626	No
Asian American Males	\$892,999	13.525%	1.856%	\$122,547	\$770,452	7.287	No
Hispanic American Females	\$366,100	5.545%	5.791%	\$382,345	-\$16,245	0.958	No
Hispanic American Males	\$969,723	14.687%	15.071%	\$995,078	-\$25,355	0.975	No
Native American Females	\$0	0.000%	0.223%	\$14,706	-\$14,706	0.000	No
Native American Males	\$0	0.000%	0.668%	\$44,117	-\$44,117	0.000	No
Caucasian Females	\$1,173,771	17.777%	13.957%	\$921,551	\$252,221	1.274	No
Non-Minority Males	\$3,143,232	47.604%	56.125%	\$3,705,809	-\$562,578	0.848	N/A
TOTAL	\$6,602,811	100.000%	100.000%	\$6,602,811			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Females	\$405,979	6.149%	9.428%	\$622,537	-\$216,558	0.652	No
Minority Males	\$1,879,830	28.470%	20.490%	\$1,352,915	\$526,915	1.389	No
Caucasian Females	\$1,173,771	17.777%	13.957%	\$921,551	\$252,221	1.274	No
Non-Minority Males	\$3,143,232	47.604%	56.125%	\$3,705,809	-\$562,578	0.848	N/A
TOTAL	\$6,602,811	100.000%	100.000%	\$6,602,811			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	Disparity
Minority Business Enterprises	\$2,285,809	34.619%	29.918%	\$1,975,451	\$310,357	1.157	No
Women Business Enterprises	\$1,173,771	17.777%	13.957%	\$921,551	\$252,221	1.274	No
Minority and Women Business Enterprises	\$3,459,580	52.396%	43.875%	\$2,897,002	\$562,578	1.194	No
Non-Minority Male Business Enterprises	\$3,143,232	47.604%	56.125%	\$3,705,809	-\$562,578	0.848	N/A

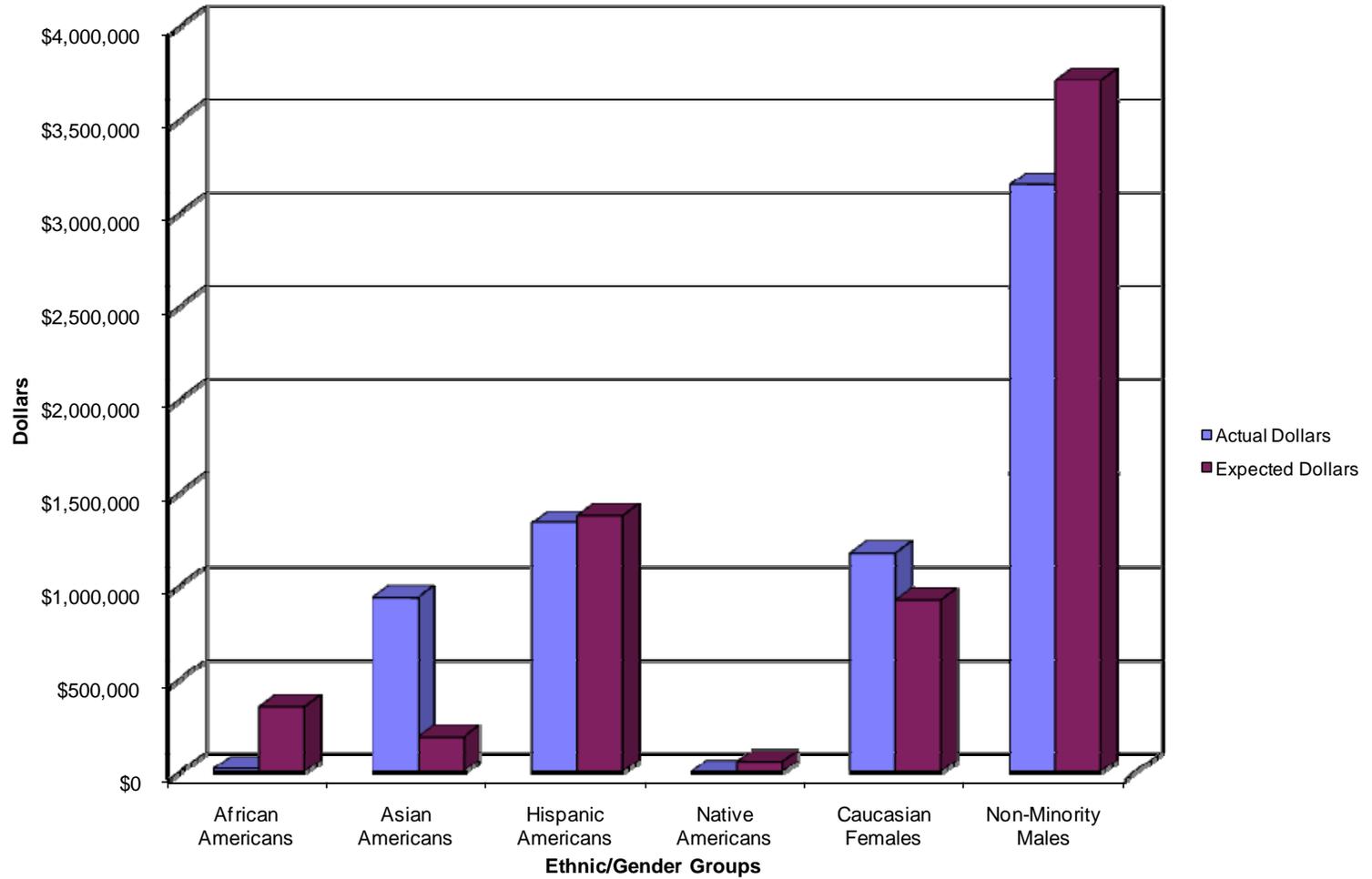
Yes - The analysis is statistically significant

No - The analysis is not statistically significant or there are too few available firms to test statistical significance

N/A - The statistical test is not performed for Non-Minority Males

* - Disparity was found for all African American businesses based on their combined availability. When African American businesses are analyzed separately, there are too few available firms in each gender category to measure the significance of the disparity.

Chart 8.02 Disparity Analysis: Professional Services Subcontracts, October 1, 2006 to September 30, 2009



IV. SUBCONTRACTOR DISPARITY SUMMARY

As indicated in Table 8.04, disparity was found for Hispanic American construction subcontractors. Disparity was also found for African American professional services subcontractors.

**Table 8.04 Subcontractor Disparity Summary,
October 1, 2006 to September 30, 2009**

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

Yes = The analysis is statistically significant.

No = The analysis is not statistically significant or there are too few available firms to test statistical significance.



CHAPTER 9: ANECDOTAL ANALYSIS

I. INTRODUCTION

The United States Supreme Court in its 1989 decision, *City of Richmond v. J.A. Croson Co.*,¹ specified the use of anecdotal testimony as a means to determine whether remedial race-conscious relief may be justified in a particular market area. The Court in *Croson* stated that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proofs, lend support to a [local entity’s] determination that broader remedial relief [is] justified.”²

Anecdotal testimony of individual discriminatory acts can, when paired with statistical data, document the routine practices by which minority and women-owned business enterprises (M/WBEs) are excluded from business opportunities within a given market area. The statistical data can quantify the results of discriminatory practices, while anecdotal testimony provides the human context within which the numbers can be understood. Anecdotal testimony from business owners can provide information on barriers they believe exist within the market area.

A. Anecdotal Evidence of Active or Passive Participation

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

The second line of inquiry examines the government’s passive support of exclusionary practices that occur in the market area into which its funds are infused. Passive exclusion results from government officials knowingly using public monies to contract with companies that discriminate against M/WBEs, or fail to take positive steps to prevent discrimination by contractors who receive public funds.³



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

² *Id.*

³ *Croson*, 488 U.S. at 491-93, 509.

Anecdotal accounts of passive discrimination mainly delve into the activities of private sector entities. The Tenth Circuit Court of Appeals has cautioned that anecdotal accounts of discrimination are entitled to less evidentiary weight when the accounts concern more private than government-sponsored activities.⁴ 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. Anecdotal evidence, in combination with statistical data that is not sufficiently compelling to support a race or gender-conscious program, is not without utility in the *Croson* framework. As *Croson* points out, jurisdictions have at their disposal “a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races.”⁵ Anecdotal accounts can paint a finely detailed portrait of the practices and procedures when they govern the award of public contracts in the relevant market area. These narratives can identify specific generic practices that can be implemented, improved, or eliminated in order to increase contracting opportunities for available businesses.

The purpose of this anecdotal study was to interview 30 businesses domiciled in Bexar County (County). The anecdotal analysis is designed to include: (1) barriers business owners encountered working with or seeking work from the County; (2) positive experiences business owners experienced working with the County; and (3) recommendations to enhance the County’s Small, Minority, Women Business Enterprise Program (SMWBE Program).

B. Anecdotal Methodology

The method routinely used by Mason Tillman is to gather anecdotal testimony through oral history defined by the *American Heritage Dictionary* as “historical information obtained in tape-recorded interviews with individuals having firsthand knowledge.” This in-depth interview technique affords the researcher the opportunity to garner eyewitness accounts to assess the effects of exclusionary practices on minority and women-owned business enterprises and the conditions under which these practices occur. The in-depth interviews are conducted in a manner to preserve the anonymity of the interviewees to encourage candid responses from the business owners.

Allowing interviewees to describe the barriers they have experienced in conducting business informs an understanding of how the conditions occur, who creates them, and their effect on business development. Thus, the information obtained can offer the County vital insights on the potential for program enhancements.



⁴ *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.”

⁵ *Croson*, 488 U.S. at 509.

1. Anecdotal Interviewee Selection Process

The interview selection process involved two steps. The initial step was to determine ethnic and gender targets for the 40 interviews to be performed. The targets for the minority groups and Caucasian woman-owned businesses were determined by the ethnic and gender distribution of each group in the 2000 U.S. Census Survey of Business Owners data. The distributions were reported in the US Census by ethnicity, gender and the industries in the Study. Ten percent of the interviews were allotted to Caucasian male-owned businesses.

To identify the potential interviewees, the list of willing and able businesses compiled for the availability analysis was used. Included in the availability list were those businesses who responded to a business survey which solicited interest in being interviewed. The businesses in the availability list were coded by ethnicity and gender within each of the industries. From each of the industry lists, a random sample was drawn for the four ethnic groups and Caucasian females. In an effort to meet the quota by industry, ethnicity, and gender, the interviewer called each potential interviewee within each industry in the order the business name appeared on the ethnicity and gender list generated by the random sample.

2. Anecdotal Interview Approach

Pursuant to the contract terms, each interview was held in a County office where a video and audio tape was made. A total of 94 businesses were contacted for an interview, but only four businesses agreed to an interview. The other 90 businesses declined to participate in an interview due to the recording and videotaping requirement at a County facility. They expressed concern about possible retaliation or other adverse consequences if they made negative or critical comments about County agencies, agents, or its prime contractors.

The four interviews were less than 30 minutes in length. One interviewee left the interview after five minutes and did not return to complete the interview. The four interviews were transcribed, coded, and analyzed for barriers the interviewees encountered. The interviews did not yield much information regarding the interviewees' experiences working with or seeking work from the County. Albeit limited, excerpts of the interviews are presented in Section II below.



C. Anecdotal Interviewee Profile

Table 9.01 presents a profile of the business owners interviewed for this Study.

Table 9.01: Anecdotal Interviewee Profile

Ethnicity	Number
African American	1
Hispanic American	1
Asian American	0
Native American	1
Caucasian	1
Total	4
Gender	Number
Male	3
Female	1
Total	4
Industry	Number
Construction Services	1
Professional Services	3
Goods and Other Services	0
Total	4

II. ANECDOTAL EXCERPTS

A. Financing

- “I never had problems with obtaining credit, I’m well financed.” *Minority male, engineering firm*
- “[Obtaining financing is] very difficult, I had to live off my credit cards.” *Caucasian female, professional services firm*

B. Bidder Lists

- “I have not had a problem, Bexar County has been helpful. I receive [bid] notices from Ms. Watson.” *Minority male, engineering firm*
- “The County has an office which is run by Renee Watson and she is very helpful in getting [me] on any [bidders’] list.” *Minority male, engineering firm*



C. Bid Notices

- “The County is not consistent in letting people know what project is up for bid. Sometimes project managers let you know, Ms. Watson notif[ies] people. I have not complained [because] it would not do any good; the minority coordinator does not help. As a small business owner, I would have to be on the computer all day and I do not have the time.” *Minority male, engineering firm*
- “When filling out an application on line [for placement on the bidder’s list] there is no way of knowing if the application was received. I never received any response indicating whether they received my application from the City of San Antonio, Bexar County, Brook City Base, as a number of agencies register through South Central Regional Certification Agency. I was unaware that it was necessary for me to follow up. Only the area that I was seeking work did I acquire to see if they received my paperwork or if I needed to take the paperwork directly to them. It’s a double-edged sword, partly on my part and on the County in part. If I did anything on-line that they are requesting, I thought that I would have gotten a response to let me know if they had received my application. Normally they would let you know if you’re on their vendor list and send you information by e-mail. What potential vendors are doing is seeing to that you have an e-mail address or website so they can communicate with you. Up until this year I have not heard from the County.” *Minority male, construction firm*

D. Inadequate Lead Time

- “I have enough [bid] time, but it takes time and money to put a bid together, they require seven copies.” *Minority male, engineering firm*

E. SMWBE Program Comments

- “Bexar County has a systemic discrimination problem, I sa[y] this tongue in cheek. The County has no goals. I worked in Austin, Texas, and they required all SMWBEs become certified through them. They do not accept South Texas Regional Certification Agency’s [certifications]. Austin has good-faith [effort requirements] and they have goals. The general contractor set aside is ten percent for SMWBEs. Bexar County talks about supporting minorities but [they] have no goals. The County needs to develop minority-owned business list and rotate [it every] several projects. [They] should not use same company over and over.” *Minority male, engineering firm*
- “The County’s program produces for small and minority businesses. The fact that I am a small, minority-owned business has helped me to compete with the bigger businesses. Instead of ignoring me they opened the door, looked at us



and our qualification, and based their opinions on that, it's fair." *Minority male engineering firm*

- “All programs can be improved whether it's with the County or the City. Case in point, the good-faith effort [requirements] are only through e-mail or phone call. If you're a small business owner, you may be out in the field and not receive the phone call or you don't go through your e-mail for two to three days because you're trying to work. If you have goals especially minority [goals], they should have a system set-up where the prime contractor comes and speaks to you directly in reference to bidding on a project. [We] should be given the opportunity to know exactly what the process is that is in place. It should be a one-on-one conversation instead of e-mail or phone call. You need to take into consideration that small companies wear several different hats and in doing so something may fall between the cracks. If they were really sincere in helping minorities to be inclusive in major projects, they would make a better effort and not put up barriers that would eliminate us from being a part of the process. When you look at the major companies here in San Antonio, they bid on all the major work because of their relationships. Small companies like myself want to get into the industry to show our capabilities. Our numbers may be high because our suppliers charge us more for our supplies than a company that has year-round work. In addition, we have work situations that are not as good as we would like it to be. We may have good employees working for us, but if we don't have construction work, we lose [those] employees. So, it's business as usual, the good old boy system and we get lost in the process. It's very hurtful when we know that millions of dollars have been spent at the County and COSA and to be almost excluded, and the appear[ance] that we are involved is a slap in our face.”

Minority male construction firm

- “I've applied for the Bexar County Protégé Program. My paperwork has been sent in and I [should] be interviewed in a couple of weeks. Prayerfully, I will be accepted into the Program where I can be on the inside seeing more of what the County is doing, grow my business, and hire employees. I do not want to continue doing the work myself. I need to have consistent work, so when these young men and women come aboard they don't have to worry about having a job or not. If I can get into the program, it will help.”

Minority male construction firm

- “I have been in the construction industry for 38 years the one issue is that [minorities] are not seen in large numbers. Therefore, when we go to seminars and give them our business card and tell them what we do, they are surprised. When I go to Dallas to attend workshops and seminars pertaining to doing business with the private sector, government, or state, and I say I'm from San Antonio, they did not know that there are African-Americans that have been in the industry for a number of years [that] are capable, trained, skilled, and educated in their line of business. Therefore, when we bid on



projects and the company is not familiar with us, they talk to their friends that are also in the construction business and they have not heard of [us]. When you submit your bid to these companies, they ask how many employees you have. If you only have one employee, they are not trying to put you in the mix because they feel like we are not capable of doing the work. I have access to employees that are licensed and have [worked] years in the field, and are capable of doing the work.” *Minority male construction firm*

- “It’s still a man’s world. It’s quite a few women in the business, but when you attend workshops over 90 percent are men.” *Minority male construction firm*

F. SMWBE Certification

- “The paperwork is lengthy [for a SMWBE certification], but when requested, I make sure that I fill out [the forms]. They are lengthy. I have questions concerning some of the questions, [but] when you are a one man show you may not have all your ducks in a row. In that it’s a process it’s irate, because it takes times to complete.” *Minority male construction firm*

G. Recommendation

- “Level the playing field, give us ample time to submit a bid, if we are not bidding the way they think we should, [they should] start an incubator program designed specifically for estimating and bidding work. How to do all [that is required] that make up a bid, insurance [requirements] and the number of months that is needed to complete the job.” *Minority male construction firm*

III. SUMMARY OF FINDINGS

Mason Tillman completed four anecdotal interviews with business owners that were domiciled in Bexar County. The business owners were identified from business surveys, awarded contracts, certification lists, and community meetings.

A total of 94 businesses were contacted to participate in an in-depth anecdotal interview. An overwhelming majority of the business owners would not consent to a taped recorded and videotaped interview at a County office. Therefore, the results of the interviews were insufficient to yield comprehensive personal anecdotes from the interviewees regarding their experiences working with or seeking work from the County.



CHAPTER 10: PRIVATE SECTOR AND 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 which could affect the formation and growth of M/WBEs. A regression analysis was conducted to examine three outcome variables--business ownership rates, business earnings, and business loan denial rates. The three regression models used to study the outcome variables were the Likelihood of Business Ownership Model, the Earnings Disparity Model, and the Likelihood of Business Loan Denial Model. Each regression model compared minorities and women to Caucasian males by controlling for race and gender-neutral explanatory variables such as the business owner's age, education, marital status, home value, disability status, and credit worthiness. The impact of the explanatory variables on the outcome variables is described in this chapter.

The U.S. Census Public Use Micro Sample (PUMS) data was used to compare minorities and women's business ownership probabilities to Caucasian males' business ownership probabilities. Probit regression analysis was used to determine if race and gender have a statistically significant effect on business ownership rates. The PUMS data was also used to compare the business earnings of M/WBEs to Caucasian male-owned businesses. Ordinary least square regression was utilized to analyze the PUMS data for disparities in business earnings after controlling for race and gender-neutral factors. The 2006-2008 State of Texas PUMS dataset was used because the data limited to Bexar County does not contain sufficient observations to perform a regression analysis by industry for all gender and racial groups.¹ The National Survey of Small Business Finances data was used to compare the likelihood of business loan denial for M/WBEs and Caucasian male-owned businesses while controlling for other business explanatory variables.



¹ Detailed explanation on the use of the State of Texas PUMS dataset is provided on page 10-6.

The limits of the application of the findings of private sector discrimination are set forth in *Builders Association of Greater Chicago v. City of Chicago*,² where the Court established that even when the private sector may be discriminatory, the findings cannot be used as the factual basis for a government sponsored race-based M/WBE program. The findings, however, can be used to develop race-neutral programs to address barriers to the formation and development of M/WBEs. Caution, therefore, must be exercised in the interpretation and application of the regression findings. Case law regarding the application of private sector discrimination is discussed in detail in *Section II, Legal Analysis*.

II. LEGAL ANALYSIS

The issue of private sector discrimination M/WBEs encounter in the formation and development of businesses and their consequence for State and local remedial programs³ was addressed in *Concrete Works III*⁴ and *City of Chicago*.⁵ *Concrete Works III* set forth a framework for considering private sector discrimination as a passive participant model for analysis. *City of Chicago* addressed the obligation of presenting an appropriate nexus between the government remedy and the private sector discrimination for there to be a public sector remedy for identified private sector discrimination.

- **Passive Discrimination**

In January 2003, the Tenth Circuit Court decided *Concrete Works of Colorado v. City and County of Denver*⁶ (*Concrete Works III*) where it explicitly held that business activities conducted in the private sector if within the government's marketplace are also appropriate areas to explore the issue of passive participation. However, the Court was not asked in that case to review the appropriateness of the City's remedy but only to examine the facts to determine if the private sector business practices under consideration constituted discrimination. For technical legal reasons⁷ the Court did not examine whether a consequent public sector remedy, i.e., one involving a goal requirement on the

² *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. III. 2003).

³ Such programs are distinct from federally-funded programs pursuant to Department of Transportation regulations. Thus, cases such as the recent Federal District Court opinion in *GEOD v. New Jersey Transit* that examined those regulations are inapposite.

⁴ *Concrete Works of Colo., Inc. v. City of Denver*, 86 F. Supp. 2d 1042, 1073 (D. Colo. 2000), rev'd on other grounds, 321 F.3d 950 (10th Cir. 2003), cert. denied, 540 U.S. 1027 (2003).

⁵ *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. III. 2003).

⁶ *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d 950 (Tenth Circuit, 2003).

⁷ Plaintiff had not preserved the issue on appeal. Therefore, it was no longer part of the case.



City of Denver's contracts, was "narrowly tailored" or otherwise supported by the City's private sector findings of discrimination.

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 in issue in *City of Chicago*. *City of Chicago*, decided ten months after *Concrete Works*, found that certain business practices constituted discrimination against minorities in the Chicago market area. However, the District Court did not find the City of Chicago's M/WBE subcontracting goal to be a remedy "narrowly tailored" to address the documented private discriminatory business practices that had been discovered within the City's market area. The Court explicitly stated that certain discriminatory business practices documented by regression analyses constituted private sector discrimination. It is notable that the documented discriminatory business practices were similar to those reviewed in *Concrete Works*. Notwithstanding the fact that discrimination in market access was documented, the Court determined that the evidence was insufficient to support race-based subcontracting goals. The Court ordered an injunction to invalidate the City of Chicago's goal-based program.

We note the following statements from that opinion:

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 [top of page 10].

Given these distortions of the market and these barriers, is the 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 by 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, and with a graduate degree from MIT, qualifies (and an Iraq immigrant does not). Waivers are rarely or never granted on construction contracts, but "regarding 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,



wiling and able forms but to concepts of how many of those firms there should be. Formulistic points did not survive strict scrutiny in *Gratz v. Bollinger, supra*, and formulistic percentages cannot survive scrutiny [bottom page 13 to top page 14].

III. RATES OF BUSINESS OWNERSHIP

Among labor economists, there is general agreement that self-employment is more likely among men than women and among Caucasians than African Americans. A recent release by the U.S. Census reported that MBEs nationwide increased 45.6 percent between 2002 and 2007 and that WBEs nationwide increased 20.1 percent in the same period, while the total number of U.S. businesses increased only 18 percent.⁸ Still, significant disparities exist in the rates of minority and female business ownership.

Between 1997 and 2002, there was a growth in the number of M/WBEs in Bexar County; however, the ratio of proportional growth has been slight, as seen in Table 10.01. We can see that there was a 0.94 percent increase in the share of African American-owned firms and an increase of 0.46 percent for Asian-Pacific American-owned firms. Year over year, the number of African American-owned firms increased 64.28 percent, but that was a change from 1,789 firms to 2,939 firms, a seemingly smaller impact in real numbers. For Asian-Pacific American firms, the increase of 26.77 percent was actually an increase from 3,011 to 3,817 firms, or only 806 firms. Note that one cannot directly compare female-owned and Hispanic-owned businesses between these two surveys due to differences in the survey's definition of these classifications from 1997 to 2002, but the numbers from each survey have also been reported in Table 10.01 below.

Table 10.01 Changes in the Proportion of M/WBEs in Bexar County, 1997 to 2002

Percent of All Firms, 1997	
African American	1.97%
Asian-Pacific American	3.32%
Hispanic American	35.12%
Female	26.01%

Percent of All Firms, 2002	
African American	2.91%
Asian-Pacific American	3.78%
Hispanic American	33.19%
Female	26.20%

Note: Female and Hispanic are not directly comparable due to changes in the definitions of 'Hispanic' and 'Female'-owned businesses from the 1997 to the 2002 survey.
 Data from the 1997 and 2002 Surveys of Business Owners, U.S. Census
<http://www.census.gov/econ/sbo/index.html>



⁸ Preliminary Estimates of Business Ownership by Gender, Ethnicity, Race and Veteran Status: 2007, www.census.gov/econ/sbo.

In the 2002 Survey of Business Owners, Bexar County had proportionately less African American, Asian-Pacific American, and female-owned firms than Texas as a whole, but had more Hispanic American-owned firms. By comparing the 2000 U.S. Census demographics of Bexar County to the State of Texas, there are proportionally more Hispanic Americans in Bexar County than in the State of Texas. In addition, there are proportionately less African Americans in Bexar County than in other parts of Texas. Although the regression analysis was done at the state level, these demographic differences are important for considering Bexar County-specific conclusions the regression results may suggest.

Table 10.02 Percent of All Firms by Race and Gender, 2002

Race and Gender	Bexar County	Texas
African American	2.90%	5.10%
Asian-Pacific American	3.80%	4.50%
Hispanic American	33.20%	18.40%
Female	26.20%	27.00%

Source: 2002 Survey of Business Owners
<http://quickfacts.census.gov/qfd/states/48/48029.html>

Table 10.03 Population of Bexar County and Texas

Race	Bexar County	Percent	Texas	Percent
Total	1,392,931	---	20,851,820	---
Caucasian	960,283	68.94%	14,797,985	70.97%
African American	97,705	7.01%	2,385,554	11.44%
Asian-Pacific American	23,716	1.70%	568,392	2.73%
Hispanic American	757,004	54.35%	6,670,122	31.99%
Native American	9,547	0.69%	113,755	0.55%
Other Race	301,680	21.66%	2,986,134	14.32%

Source: Census 2000 Summary File 3



1. Dataset Analyzed

For this regression analysis, State of Texas data was used because the Bexar County data did not yield the number of observations necessary to perform a regression analysis for each of the racial groups by industry. The 2006-2008 three-year PUMS, a sample of responses to the American Community Survey (ACS), was used to analyze demographic, educational attainment, and self-employment characteristics of minority, women, and Caucasian males in the construction, goods and other services, and professional services industries of Texas. These industries mirror those used in the 2011 Disparity and Availability Study. Using the North American Industry Classification System (NAICS) 2007 codes, the variable 'NAICSP' from the 2006-08 PUMS dataset was used to identify construction, goods and other services, and professional services data.

The PUMS data is the conventional source of cross-sectional, micro-level data for regression analysis among labor economists primarily due to its large sample size and breadth of variables. It allows researchers to construct a detailed analysis of individual business owners and their associated earnings. The 2006-2008 PUMS data is a three-year estimate based on monthly samples of the ACS to produce annually updated data. The ACS survey, conducted by the U.S. Census Bureau, has annual sample size of about three million addressed. The ACS is an ongoing survey that inquires about age, race, gender, education, income, disability, family and relationships, health education, veteran and disability status, work, and expenditures. The purpose of the ACS is to help communities plan investments and services.

The State of Texas 2006-2008 PUMS dataset was used to make inferences about possible race and gender business ownership and business earnings disparities in the construction, professional services, and goods and other services industries within Bexar County. For the Business Ownership and Business Earnings models, the 2006-2008 PUMS dataset was analyzed at the State level. Although data from Bexar County is included in the State of Texas 2006-2008 PUMS dataset, the data for Bexar County does not contain sufficient observations to perform the regression analysis for African Americans by industry. In addition, using data for Bexar County and 14 surrounding counties did not yield adequate data to perform a regression analysis by industry for all racial and gender groups. Therefore the analysis was broadened to the State of Texas in order to have adequate data to perform a regression by industry for all racial groups. Given that information from the U.S. Census reveals that educational levels, earnings, and race and gender profiles in Bexar County are very similar to those of the State of Texas,⁹ the 2006-2008 Texas PUMS dataset was deemed to be the most relevant for drawing conclusions about Bexar County business ownership and business earnings disparities for all gender and racial groups.



⁹ U.S. Census Bureau American Fact Finder, Bexar County, Texas and State of Texas. <http://factfinder.census.gov>

a. Definition of Race

From the 2006-08 PUMS variables ‘RACAIAN’, ‘RACASN’, ‘RACBLK’, ‘RACNHPI’, ‘RACSOR’, ‘RACWHT’ and ‘HISP’, individuals were classified, respectively, into one of the following groups:

- Caucasian alone
- African American alone
- Asian-Pacific American alone, Native Hawaiian and other Pacific Islander alone
- American Indian and Alaska Native, American Indian alone
- Other minority race (Other race), including individuals of some other race alone and those who identified as having two or more race groups
- Hispanic American alone of any Hispanic origin, and includes combination with other races

Throughout the following analysis, Caucasian and White are used interchangeably. Also of note, because Hispanic Americans may be of any race, they may be double counted; therefore, the percentages of the demographics may not sum to 100, as in Table 10.04. Caucasians and Hispanic Americans are the large majority, with African Americans and the Other race groups each comprising nearly 10 percent of the sample. These results differ from national statistics because of the larger Hispanic American population and lower populations of Asian-Pacific Americans, Native Americans, and people of other races. From the U.S. Department of Commerce’s Survey of Minority-Owned Businesses and Enterprises in 1997, Caucasian-owned firms comprised 85 percent of all firms, while minority-owned firms comprised only 14.6 percent of all firms.

The PUMS sample demographics in Table 10.04 are relatively similar to those reported in Table 10.03 from the 2000 Census, although again, the demographics of Bexar County are slightly different than those of Texas as a whole, which is represented in this data set.

Table 10.04 Percent of Sample by Race, Texas

Race and Gender	Percent
Caucasian	76.98%
Male	42.10%
Female	34.88%
Hispanic American	28.01%
Male	15.84%
Female	12.16%
African American	9.68%
Male	5.34%
Female	4.34%
Asian-Pacific American	3.93%
Male	2.11%
Female	1.82%
Native American	1.12%



Race and Gender	Percent
Male	0.60%
Female	0.52%
Other Race	9.78%
Male	5.59%
Female	4.19%

Data Source: PUMS 2006-2008

b. Citizenship

Using the 'CIT' variable, citizenship includes individuals born in the U.S., Guam, the U.S. Virgin Islands, the Northern Marianas or Puerto Rico, as well as individuals born abroad to U.S. citizen parents. Individuals who are naturalized citizens are included in another dummy variable as well as a variable for non-citizens. These variables help identify any effects of discrimination on immigrants.

As seen in Table 10.05, the largest percentage of immigrants is in the construction industry and the lowest percentage of immigrants is in the professional services industry. As will be seen later, there is a correlation between citizenship status and educational level, where immigrants are less likely to have high educational attainment, and in turn, most construction workers enter the field because educational requirements are very few, and sometimes do not exist.

Table 10.05 Citizenship by Industry

Citizenship Status	All Industries	Construction	Goods and Other Services	Professional Services
U.S. Citizen	82.94%	68.17%	82.40%	87.77%
Naturalized U.S. Citizen	6.43%	5.67%	6.77%	5.35%
Immigrant	10.63%	26.16%	10.83%	6.88%



c. Self-Employment (Business Ownership)

The variable ‘Class of Worker’ (COW) is used to identify self-employment as being either self-employed for a non-incorporated business or for an incorporated business. The terms “self-employed” and “business owner” will be used interchangeably throughout this chapter as well as the terms “firm,” “business,” and “establishment.” There were 35,543 individuals who were self-employed in the Texas sample of the PUMS data, which is about 10.8 percent of the total workforce.

Table 10.06 illustrates that 83.67 percent of the self-employed persons in the sample are Caucasian, with 55.45 percent of them male and 28.22 percent female. Hispanic Americans were the second largest race group of self-employed individuals with 22.7 percent. Native Americans had the smallest percentage of self-employed individuals with 1.04 percent. 34.19 percent of the business owners are females, a little over a third of the total.

Table 10.06 Percent of Self-Employed Individuals by Race & Gender in Texas 2006 to 2008 (All Industries)

Race and Gender	Number of Self-Employed	Percent of Self-Employed
Caucasian	29,740	83.67%
Male	19,709	55.45%
Female	10,031	28.22%
Hispanic American	8,070	22.70%
Male	5,304	14.92%
Female	2,766	7.78%
African American	1,613	4.54%
Male	1,007	2.83%
Female	606	1.70%
Asian-Pacific American	1,424	4.01%
Male	850	2.39%
Female	574	1.61%
Native American	370	1.04%
Male	241	0.68%
Female	129	0.36%
Other Races	2,812	7.91%
Male	1,847	5.20%
Female	965	2.72%
Total Self-Employed	35,543	----
Male All Races	23,390	65.81%
Female All Races	12,153	34.19%



In contrast to Table 10.06, the percent of the workers within each sub-population in Table 10.07 seems less disparate than comparing against Other race groups. For instance, of the Native American workers, 10.05 percent are self-employed, reflecting the impact of demographics that affect the number of minority-owned firms in Texas. As a result, the statistic that 1.04 percent of the self-employed are Native American is less problematic. African Americans have the lowest rate of self-employed laborers than Other race groups at 5.06 percent, and in particular African American females at 3.44 percent.

Table 10.07 Percent of Population Self-Employed

Race and Gender	Percent Self-Employed	Labor Population
Caucasian	11.73%	253,538
Male	14.21%	138,666
Female	8.73%	114,872
Hispanic American	8.75%	92,248
Male	10.16%	52,182
Female	6.90%	40,066
African American	5.06%	31,873
Male	7.05%	14,279
Female	3.44%	17,594
Asian-Pacific American	11.00%	12,946
Male	12.25%	6,941
Female	9.56%	6,005
Native American	10.05%	3,680
Male	12.18%	1,979
Female	7.58%	1,701
Other Race	8.73%	32,205
Male	10.03%	18,416
Female	7.00%	13,789



d. Education

Educational attainment was determined by the variable ‘SCHL’ and was identified by the following categories:

- Less than High School (from persons with no education up to persons in grade 12 without graduating)
- High School (high school graduate)
- Some College (includes persons with some college but no degree and those with an associate’s degree)
- Bachelor’s Degree (diploma from a four-year college)
- Advanced Degree (includes persons with a Master’s Degree, Professional Degree, and Doctorate Degree)

Table 10.08 outlines the breakdown of educational achievement by race and gender, regardless of industry. Asian-Pacific Americans have the highest levels of advanced degrees with 25.14 percent, followed by Caucasians with 10.22 percent. Hispanic Americans have the lowest educational achievement with 32.73 percent with less than or up to grade 12 in high school, but not having graduated. In total, 61.47 percent of Hispanic Americans have no more education than a High School diploma.

Table 10.08 Educational Attainment of Sample by Race and Gender

Race and Gender	< High School	High School	Some College	4-Year College	Advanced Degree
Caucasian	11.71%	24.55%	32.32%	21.19%	10.22%
Hispanic American	32.73%	28.74%	25.28%	9.37%	3.88%
African American	9.74%	30.20%	38.13%	14.99%	6.94%
Asian-Pacific American	8.58%	13.83%	21.80%	30.65%	25.14%
Native American	14.02%	27.01%	36.41%	15.00%	7.55%
Other Races	35.08%	30.00%	24.34%	7.60%	2.98%
Female	11.12%	24.75%	34.25%	20.49%	9.39%
Male	15.89%	25.65%	29.46%	18.89%	10.11%



e. Definition of Construction, Goods and Other Services, and Professional Services Industries

The industries of particular interest in this analysis are the construction industry, the goods and other services industry, and the professional services industry. These are the industries most utilized by governments. Using the North American Industry Classification System (NAICS) 2007 codes, the variable 'NAICSP' from the 2006-08 PUMS dataset identifies the subset of construction, goods and other services, and professional services data.

- The construction industry was the smallest subset of data, using only the NAICS code 23, with 17,786 observations and 8,414 business owners.
- The goods and other services industry was the largest subset of data with 123,605 observations and 20,535 business owners. Goods and other services includes the industries of mining, agriculture, utilities, manufacturing, wholesalers, retailers, transportation providers, information services, entertainment, and other miscellaneous services.
- The professional services industry was the second largest with 41,909 observations and 9,998 business owners. This group of industries includes NAICS codes for managerial, legal, and other administrative services.

The 2003 County Business Patterns data identifying the industry distribution for Bexar County is reported in Table 10.09. As with the Texas PUMS sample, the large majority of firms, 50 percent, are in the goods and other services industry, followed by the professional services industry, which is comprised of 28.9 percent of all firms.



Table 10.09 Firms by Industry, Bexar County, 2003

Industry Code	Industry Code Description	Total Firms	Percent of Total
	Total Firms	30,273	
23	Construction	2,354	7.78%
11	Forestry, Fishing, Hunting, & Agriculture	19	0.06%
21	Mining	147	0.49%
22	Utilities	16	0.05%
31	Manufacturing	1,007	3.33%
42	Wholesale Trade	1,644	5.43%
44	Retail Trade	4,472	14.77%
48	Transportation and Warehousing	729	2.41%
51	Information	619	2.04%
71	Arts, Entertainment, and Recreation	344	1.14%
72	Accommodation and Food Services	2,827	9.34%
81	Other Services (except Public Administration)	3,311	10.94%
	Total Goods and Other Services Firms	15,135	50.0%
52	Finance and Insurance	2,226	7.35%
53	Real Estate and Rental and Leasing	1,461	4.83%
54	Professional, Scientific, and Technical Services	3,374	11.15%
55	Management of Companies and Enterprises	228	0.75%
56	Admin Support/Waste Management/Remediation	1,472	4.86%
	Total Professional Services Firms	8,761	28.9%

Source: 2003 County Business Patterns

Each industry has a different composition of race and gender labor participation (not just self-employment). As seen in Table 10.09, the goods and other services industry is the largest industry. The construction industry is different by having the greatest participation from Hispanics Americans, Caucasians, and Other races, but the least participation from Asian-Pacific Americans and Native Americans. Native American participation is about the same for all industries, but is only about 1 percent.

Table 10.10 Percent of Industry by Race and Gender

Race and Gender	All Industries	Construction	Goods and Other Services	Professional Services
Caucasian	76.98%	77.87%	77.20%	79.24%
Hispanic American	28.01%	44.95%	28.66%	22.13%
African American	9.68%	3.93%	9.01%	10.00%
Asian-Pacific American	3.93%	0.91%	4.13%	3.84%
Native American	1.12%	1.11%	1.10%	1.11%
Other Races	9.78%	17.42%	10.04%	7.30%
Female	46.04%	9.70%	44.15%	47.71%



2. Business Ownership Rates by Industry

Tables 10.11 to 10.13, break down the self-employment rates by race, gender, and industry. These tables give summary statistics of the data underlying the regression analysis in the next section.

Self-employment rates in the construction industry are very small for females with 7.18 percent compared to males with 92.82 percent. Caucasians, with a 60.92 percent construction self-employment rate, comprise the largest proportion of business owners, followed by Hispanic Americans with 25.10 percent. The proportion of Hispanic American business owners in the construction industry is the largest percentage of minority-owned firms in any of the three industry groups. The proportion of Asian-Pacific American business owners is the lowest in the construction industry compared to their participation in the other two industries, and compared to all minority groups in the construction industry.

Table 10.11 Percentage of Self-Employed Workers in the Construction Industry in Texas, 2006 to 2008, by Race and Gender

Race and Gender	Observations	Percent of Self-Employed
Caucasian	5,126	60.92%
Male	4,686	55.69%
Female	440	5.23%
Hispanic American	2,112	25.10%
Male	2,007	23.85%
Female	105	1.25%
African American	212	2.52%
Male	201	2.39%
Female	11	0.13%
Asian-Pacific American	62	0.74%
Male	54	0.64%
Female	8	0.10%
Native American	67	0.80%
Male	61	0.72%
Female	6	0.07%
Other Races	835	9.92%
Male	801	9.52%
Female	34	0.40%
Total Self-Employed	8,414	
Male All Races	7,810	92.82%
Female All Races	604	7.18%



For the goods and other services industry, the proportion of Caucasian business owners is slightly greater than in the construction industry, while the Hispanic Americans have proportionately less goods and other services business owners than in the construction industry. However, African Americans have slightly more goods and other services business owners than in the construction industry.

Table 10.12 Percentage of Self-Employed Workers in the Goods and Other Services Industry, 2006 to 2008, by Race and Gender

Race and Gender	Observations	Percent of Self-Employed
Caucasian	13,732	66.87%
Male	8,535	41.56%
Female	5,197	25.31%
Hispanic American	3,744	18.23%
Male	2,039	9.93%
Female	1,705	8.30%
African American	746	3.63%
Male	482	2.35%
Female	264	1.29%
Asian-Pacific American	887	4.32%
Male	491	2.39%
Female	396	1.93%
Native American	161	0.78%
Male	102	0.50%
Female	59	0.29%
Other Races	1,265	6.16%
Male	670	3.26%
Female	595	2.90%
Total Self-Employed	20,535	
Male Self-Employed	14,105	61.27%
Female Self Employed	6,430	38.73%



Finally, the proportion of Caucasian business owners, 87.31 percent, is the greatest within the professional services industry. The greatest proportion of African American business owners is in this industry with a 4.47 percent self-employment rate. Overall, this greater disparity in the self-employment rates in the professional services industry could be due to the higher education needed for these fields, as will be seen in the breakdown of educational attainment by industry in Table 10.14.

Table 10.13 Percentage of Self-Employed Workers in the Professional Services Industry in Texas, 2006 to 2008, by Race and Gender

Race and Gender	Observations	Percent of Self-Employed
Caucasian	8,729	87.31%
Male	5,603	56.04%
Female	3,126	31.27%
Hispanic American	1,625	16.25%
Male	1,116	11.16%
Female	509	5.09%
African American	447	4.47%
Male	286	2.86%
Female	161	1.61%
Asian-Pacific American	287	2.87%
Male	193	1.93%
Female	94	0.94%
Native American	115	1.15%
Male	67	0.67%
Female	48	0.48%
Other Races	532	5.32%
Male	352	3.52%
Female	180	1.8%
Total Self-Employed	9,998	
Male All Races	6,433	64.34%
Female All Races	3,565	35.66%

In terms of educational attainment levels, the construction industry has the least educated workers compared to the goods and other services and professional services industries. The highest levels are less than or only a high school diploma at a combined 66.08 percent, as well as the lowest levels of any college or advanced educational achievement. The professional services industry, as expected, has the highest levels of education; 12.56 percent of its workers have an advanced degree and 26.41 percent have a four-year



college degree. The goods and other services industry has the highest of the ‘some college’ category at 30.29 percent, most likely because of the vocational training required for many of the jobs in the industry.

Table 10.14 Education Attainment Level by Industry

Educational Level	All Industries	Construction	Goods and Other Services	Professional Services
Less than High School	13.69%	32.72%	14.60%	6.90%
High School	25.24%	33.36%	27.24%	19.37%
Some College	31.67%	23.92%	30.29%	34.77%
4-Year College	19.63%	8.07%	19.09%	26.41%
Advanced	9.78%	1.94%	8.79%	12.56%

3. Multivariate Regression Analysis of Business Ownership

Given the summary statistics outlined above, there can be various reasons why someone decides to or is able to start a business. In order to determine statistically if there is racial and gender discrimination in the rates of business ownership, a multivariate regression analysis is needed to control for all differences between two individuals so as to isolate the effect of their race or gender as the explanatory factor for business ownership. For this analysis, we establish the Likelihood of Business Ownership Model described below.

a. Likelihood of Business Ownership Model

The Likelihood of Business Ownership Model examines the relationship between the likelihood of being a business owner and socio-economic variables. The dependent variable, business owner (including business owners in both incorporated and non-incorporated firms), takes only two values, 1 or 0. A value of “1” indicates that the person is a business owner, whereas a value of “0” indicates that the person is not a business owner. Dependent variables defined this way are called binary variables, and the coefficients of independent variables are the percent of likelihood of the dependent variable equaling 1, which constitutes “success.” The standard Ordinary Least Squares (OLS) regression model cannot be employed with binary dependent variables because it cannot contain the coefficients of the explanatory variables within the range 0 and 1. Instead, a Probit model is utilized to predict the likelihood of business ownership on the basis of independent socio-economic variables and estimates the probability of “success” along a normal standard distribution, to ensure that the explanatory variables estimate probability of success between 0 and 1. In order to contain the predicted values to be between 0 and 1, the Probit model is of the functional form:

$$\text{Prob}(S_i = 1) = \Phi(\beta_0 + \beta_1 X_i + \beta_2 R_i),$$



where S_i represents an indicator variable for self-employment for individual i , X represents socio-economic and race and gender-neutral characteristics of the individual, and R represents the race and gender of the individual. Categories of independent variables, the X_i variables, include educational indicators, citizenship characteristics, employment classifications, personal characteristics, profession, race/gender, and a capital indicator. The results of this model in Tables 10.15 and 10.16 highlight the variables included in this model.

On their own, the results of a Probit regression can only be interpreted as an estimate of the extent to which each variable is positively or negatively related to the likelihood of “success” or not. But when solved for using the equation above, the marginal effects can give the magnitude of change that each explanatory variable is able to affect on the likelihood of success, whether positive or negative. Table 10.15 reports the results of the Probit model itself, while the results in Table 10.16 are the marginal effects of each explanatory variable on the probability of “success,” or business ownership.

It is important to note that in all regression models presented in this chapter, significance at the 99 percent level (denoted by **) indicates that the observed relationship between the dependent variable and independent variable has a 1 percent or less probability of occurring due to random chance. Significance at the 95 (denoted by *) percent level indicates that the observed relationship between the dependent variable and independent variable has a 5 percent or less probability of occurring due to random chance. A relationship that is statistically insignificant indicates that one cannot prove that the observed relationship between the dependent variable and independent variable is non-zero.



Table 10.15 Likelihood of Business Ownership, Probit Model, 2006 to 2008

	All Industries	Construction	Goods and Other Services	Professional Services
Number of Observations	4,3813	4,041	25,747	8,326
Age	0.04399**	0.054139**	0.0425012**	0.041408*
	0.005792	0.0173803	0.007914	0.012693
Age-squared	-0.00037**	-0.0005069	-0.000381**	-0.0002564
	0.0000657	0.0002048	0.00009	0.0001426
Married	0.13158**	0.188820*	0.1550402**	0.0524948
	0.0303204	0.0849561	0.0402838	0.0653713
Children in Household	-0.0204**	-0.0259511	-0.031163**	-0.0067362
	0.0067364	0.0174942	0.0088583	0.0160913
Presence of Senior Citizen in Household	0.017732	0.0708279	0.0374662	-0.0663931
	0.0345655	0.1227075	0.0462672	0.0766907
Home Value (in units of \$1,000)	0.00111**	0.001292**	0.0012075**	0.000992**
	0.0001069	0.0003969	0.0001547	0.0002106
Mortgage (in units of \$1,000)	0.06386**	0.0467781	0.0330941	0.0714424
	0.0219549	0.0854436	0.0310206	0.0439665
English Proficiency	-0.0782**	0.0877831	-0.110879**	-0.0254825
	0.0251801	0.0682906	0.0344806	0.0564317
Less than High School	-0.00461	-0.1019923	-0.0518624	0.2409994
	0.030859	0.0717473	0.0391179	0.083092
Some College	-0.0898**	-0.0371108	0.0021252	-0.1245402
	0.0301305	0.090071	0.0397199	0.0693365
4-Year College	-0.1532**	0.1239592	-0.192446**	0.1203015
	0.0356768	0.1430865	0.0485861	0.0738516
Advanced Degree	-0.1757**	-0.1807568	-0.496642**	0.1347402
	0.041741	0.213645	0.063825	0.0857015
African American Male	-0.06735	0.148335	-0.0206762	-0.0997251
	0.0879616	0.2944738	0.1253896	0.1700645
Hispanic American Male	-0.1726**	-0.0504573	-0.325225**	0.0083605
	0.0421639	0.1240064	0.057845	0.0812184
Asian-Pacific American Male	-0.2011**	0.111993	-0.1491209*	-0.314614**
	0.0514183	0.2090279	0.069072	0.0986366
Native American Male	-0.09724	0.0251917	-0.1009109	-0.1374709
	0.1382003	0.2843342	0.1871116	0.293814
Other Race Male	0.002763	-0.0166019	-0.0306425	0.0731429
	0.0319981	0.0616	0.0457964	0.0750259
Caucasian Female	-0.2732**	-0.2474355	-0.260357**	-0.1610075
	0.0599641	0.3307931	0.0838168	0.1142747
African American Female	-0.225296	(dropped)a	-0.4503417*	0.0909828



	All Industries	Construction	Goods and Other Services	Professional Services
	0.148719		0.2212329	0.2810939
Hispanic American Female	0.0531369	0.5251251	0.2282835*	-0.1110612
	0.0660762	0.365077	0.0917046	0.1289086
Asian-Pacific American Female	0.0937277	-1.195348*	0.2166056*	-0.0046856
	0.0774888	0.5373255	0.1050119	0.1583728
Native American Female	-0.108272	(dropped)a	-0.103211	-0.1682733
	0.2227031		0.3027536	0.4801123
Other Race Female	0.0449432	-0.2871605	0.0586186	-0.1115622
	0.0505114	0.2466449	0.0684479	0.112014
Naturalized U.S. Citizen	0.17132**	-0.0252521	0.2529656**	0.1390766*
	0.028506	0.0871407	0.0394954	0.0572716
Non-U.S. Citizen	0.17039**	0.0047628	0.1973013**	0.1369297*
	0.0285783	0.0754506	0.039413	0.0638518
Interest Income (in units of \$1,000)	0.00384**	0.0077066	0.0050027**	0.0023045
	0.0009577	0.004154	0.0013111	0.0017328

Gray numbers indicate Robust Standard Errors

** Denotes statistical significance at the 99% confidence level

* Denotes statistical significance at the 95% confidence level

Data Source: PUMS, 2006-2008

a = Denotes that the variable was dropped due to too few observations in the data



Table 10.16 Likelihood of Business Ownership, Probit Model, Reporting Marginal Effects, 2006 to 2008

	All Industries	Construction	Goods and Other Services	Professional Services
Number of Observations	43,813	4,041	25,747	8,326
Age	0.0069667** (0.0009143)	0.0145192** (0.0046337)	0.0056831** (0.0010536)	0.0073286** (0.0022273)
Age-squared	-0.000059** (0.0000104)	-0.0001359* (0.0000547)	-0.000051** (0.000012)	-0.0000454 (0.0000251)
Married	0.0200515** (0.0044088)	0.0483395* (0.020546)	0.0197847** (0.0048587)	0.0091475 (0.011193)
Children in Household	-0.003226** (0.0010654)	-0.0069596 (0.0046857)	-0.004167** (0.0011807)	-0.0011922 (0.0028458)
Presence of Senior Citizen in Household	0.0028368 (0.0055822)	0.0195193 (0.0347188)	0.0051246 (0.0064651)	-0.0113472 (0.0126647)
Home value (in units of \$1,000)	0.0001758** (0.000017)	0.0003465** (0.0001068)	0.0001615** (0.0000208)	0.0001756** (0.0000375)
Mortgage (in units of \$1,000)	0.0101167** (0.0034785)	0.012545 (0.0229161)	0.0044252 (0.0041476)	0.0126443 (0.0077832)
English Proficiency	-0.012532** (0.0040796)	0.0237195 (0.0186157)	-0.015071** (0.0047511)	-0.0045445 (0.0101316)
Less than High School	-0.0007285 (0.0048742)	-0.0273961 (0.0193153)	-0.0068206 (0.0050556)	0.0472744** (0.0178869)
Some College	-0.013779** (0.0044921)	-0.0098326 (0.0235814)	0.0002844 (0.0053201)	-0.0214064 (0.0115924)
4-Year College	-0.022517** (0.0048561)	0.0348991 (0.0421734)	-0.023196** (0.0052497)	0.0222868 (0.014271)
Advanced Degree	-0.025134** (0.0053696)	-0.0446689 (0.0483009)	-0.048201** (0.0042965)	0.0254581 (0.0171864)
African American Male	-0.0102097 (0.0127446)	0.0423344 (0.0890092)	-0.0027244 (0.0162784)	-0.0166052 (0.0265699)
Hispanic American Male	-0.029144** (0.0075626)	-0.0137864 (0.0344942)	-0.049645** (0.0099414)	0.001476 (0.014304)
Asian-Pacific American Male	-0.028669** (0.0065526)	0.0314507 (0.0613046)	-0.0183482* (0.007785)	-0.047798** (0.012716)
Native American Male	-0.0144228 (0.0191383)	0.0068306 (0.0779315)	-0.0125298 (0.0215057)	-0.0222749 (0.0433521)
Other Race Male	0.0004381 (0.0050778)	-0.0044428 (0.0164556)	-0.0040532 (0.0059915)	0.0132621 (0.0139428)
Caucasian Female	-0.042207**	-0.0597769	-0.033902**	-0.0282535



	All Industries	Construction	Goods and Other Services	Professional Services
	(0.0090557)	(0.0711437)	(0.010656)	(0.0198853)
African American Female	-0.0306123	(dropped)a	-0.0430061*	0.0170283
	(0.0170443)		(0.0139832)	(0.0554989)
Hispanic American Female	0.008526	0.1683464	0.0324214*	-0.01924
	(0.0107358)	(0.1333313)	(0.0138034)	(0.0218554)
Asian-Pacific American Female	0.0157046	-0.1692023*	0.0333101*	-0.0008271
	(0.0136978)	(0.0259589)	(0.0183303)	(0.0278803)
Native American Female	-0.0159265	(dropped)a	-0.0127831	-0.0267032
	(0.0303034)		(0.0346009)	(0.0677053)
Other Race Female	0.0072912	-0.0674044	0.0081069	-0.0186818
	(0.008388)	(0.0497185)	(0.0097826)	(0.0177525)
Naturalized U.S. Citizen	0.02893**	-0.0067201	0.0374146**	0.0258731**
	(0.0051263)	(0.0230095)	(0.0064387)	(0.0111851)
Non-U.S. Citizen	0.0281907**	0.0012771	0.0278112**	0.0253958**
	(0.0049441)	(0.0202311)	(0.0058468)	(0.0124309)
Interest Income (in units of \$1,000)	0.0006084**	0.0020668	0.0006689**	0.0004079
	(0.000152)	(0.0011133)	(0.0001758)	(0.0003071)

Gray numbers indicate Robust Standard Errors

** Denotes statistical significance at the 99% confidence level

* Denotes statistical significance at the 95% confidence level

Data Source: PUMS, 2006-2008

a = Denotes variable was dropped due to too few observations in the data

b. Interpretation of Results

The results in Tables 10.15 and 10.16 indicate that although there are disparities in business ownership among business owners of different races and genders, most of these disparities are not statistically significant.

For the All industries regression, there are negative values on the race variables African American male, Hispanic American male, Asian-Pacific American male, and Native American male, but not Other race male. The only statistically significant race/gender variables are Hispanic American male, Asian-Pacific American male, and Caucasian female. The female coefficient is also negative and statistically significant, although the interaction variables of female and race variables are not significant. In addition, most other explanatory variables are statistically significant including age, married individuals, naturalized U.S. citizen, non-U.S. citizen, educational attainment level (except less than high school), English proficiency, home value, and mortgage payment. From Table 10.16, for the All industries regressions, minorities are between 1 percent and 3 percent



less likely to be a self-employed, all else being equal, and Caucasian females are 4 percent less likely to be a self-employed. Surprisingly, individuals with higher levels of educational attainment are less likely to be business owners. In general, the results suggest that age has a positive effect on the likelihood of business ownership as does the value of a home and of mortgage payments.

For the industry-specific regressions, the results do not convincingly confirm discrimination within the private sectors of these industries. The goods and other services industry results have race variables that are statistically significant, but in that model, African American males, Native American males and females, and Other race males are negative but not significant. Among the racial and gender variables, Hispanic American males have a highly statistically significant (at the 99 percent level) negative probability in the goods and other services industry. Asian-Pacific American males and African American females are also significantly less likely to own a goods and other services business at the 95 percent level. Caucasian females have lower probability of owning a business that is significant at the 99 percent level. This suggests private sector racial and gender discrimination in this industry against these particular groups.

Because of the fewer number of observations in the construction industry, the African American female and Native American female interaction variables were omitted; however, none of the race and gender variables are significant in this model with the exception of Asian-Pacific American females who are significantly less likely to own a construction business at the 95 percent level. For the professional services industry regression, among the race and gender variables, only the Asian-Pacific American male variable was highly significant and negative. This regression would suggest racial discrimination against Asian-Pacific American males as they are 4.8 percent less likely to be professional services business owners.

A summary of the statistically significant racial and gender disparities in business ownership by industry is provided below:

All industries

- Hispanic American males are less likely to own a business than Caucasian males.
- Asian-Pacific American males are less likely to own a business than Caucasian males.
- Caucasian females are less likely to own a business than Caucasian males.

Construction industry

- Asian-Pacific American females are less likely to own a business than Caucasian males.



Goods and Other Services industry

- Hispanic American males are less likely to own a business than Caucasian males.
- Asian-Pacific American males are less likely to own a business than Caucasian males.
- Caucasian females are less likely to own a business than Caucasian males.
- African American females are less likely to own a business than Caucasian males.

Professional Services industry

- Asian-Pacific American males are less likely to own a business than Caucasian males.

Table 10.17 below illustrates what the percent difference in probability of business ownership would be between each of the following race and gender groups and Caucasian males if all the coefficients from the probit likelihood of business ownership regression model had been statistically significant. Only the coefficients on some of the variables were statistically significant. However, even for those coefficients that are statistically significant, the difference in probability is relatively small in magnitude.

Table 10.17 Percent Difference of Probability of Business Ownership in Comparison to Caucasian Males

	All Industries	Construction	Goods and Other Services	Professional Services
African American Male	-1.021%	4.233%	-0.272%	-1.661%
Hispanic American Male	-2.914%**	-1.379%	-4.965%**	0.148%
Asian-Pacific American Male	-2.867%**	3.145%	-1.835%*	-4.780%**
Native American Male	-1.442%	0.683%	-1.253%	-2.227%
Other Race Male	0.044%	-0.444%	-0.405%	1.326%
Caucasian Female	-4.221%**	-5.978%	-3.390%**	-2.825%
African American Female	-3.061%	(dropped) ^a	-4.301%*	1.703%
Hispanic Female	0.853%	16.835%	3.242%*	-1.924%
Asian-Pacific American Female	1.570%	-16.920%*	3.331%*	-0.083%
Native American Female	-1.593%	(dropped)	-1.278%	-2.670%
Other Race Female	0.729%	-6.740%	0.811%	-1.868%

** Denotes statistical significance at the 99% confidence level

* Denotes statistical significance at the 95% confidence level

a = Denotes that the variable was dropped due to too few observations in the data

Over all, the results in Table 10.17 suggest that there might be racial and gender discrimination in the labor market, but this discrimination can only be suggested for some racial and gender groups in the professional services and goods and other services industries and cannot be statistically proven for the construction industry.



A summary of the racial and gender disparities in business ownership probabilities by industry is provided below:

All industries

- Hispanic American males are 2.91 percent less likely to own a business than Caucasian males. This relationship is significant at the 99 percent level.
- Asian-Pacific American males are 2.87 percent less likely to own a business than Caucasian males. This relationship is significant at the 99 percent level.
- Caucasian females are 4.22 percent less likely to own a business than Caucasian males. This relationship is significant at the 99 percent level.
- African American males and females as well as Native American males and females are less likely to own a business, but not at a statistically significant level.

Construction industry

- Asian-Pacific American females are 16.92 percent less likely to own a business than Caucasian males. This relationship is significant at the 95 percent level.
- Hispanic American males, Other race males and females, and Caucasian female have a lower probability of owning a business compared to Caucasian males, but not at a statistically significant level.

Goods and Other Services industry

- Hispanic American males are 4.97 percent less likely to own a business than Caucasian males. This relationship is significant at the 99 percent level.
- Asian-Pacific American males are 1.84 percent less likely to own a business than Caucasian males. This relationship is significant at the 95 percent level.
- Caucasian females are 3.39 percent less likely to own a business than Caucasian males. This relationship is significant at the 99 percent level.
- African American females are 4.3 percent less likely to own a business than Caucasian males. This relationship is significant at the 95 percent level.
- African American males, Other race males, and Native American females have a lower probability of owning a business than Caucasian males, but not at a statistically significant level.

Professional Services industry

- Asian-Pacific American males are 4.8 percent less likely to own a business than Caucasian males. This relationship is significant at the 99 percent level.
- African American males, Native American males and females, Asian-Pacific American females, Other race females, and Caucasian females are less likely to own a business than Caucasian males, but not at a statistically significant level.



IV. BUSINESS EARNINGS AND SUCCESS

After starting a business, business owners have to earn enough to stay in business. The first four or five years are typically when new businesses fail for numerous reasons. There are many factors determining the success of a business, including access to capital, which will be covered in *Section V, Access to Business Capital*. The focus of this section is to examine the presence of racial and gender discrimination within the construction, goods and other services, and professional services industries that limits the ability of M/WBEs to compete and succeed by analyzing business owner earnings.

A report by the Small Business Administration found that minority-owned employer establishments had lower survival rates than Caucasian-owned employer establishments. Within a surveyed group of businesses from 1997 to 2001, Asian and Pacific Islander American-owned businesses had the highest survival rate of any minority group; Hispanic American-owned businesses had the highest expansion rate; and African American-owned businesses had the highest closure rate.¹⁰ The average four-year survival rate of Caucasian-owned businesses from 1997 to 2001 was 72.6 percent, nationally. The survival rates of minority-owned businesses were lower: 72.1 percent for Asian-Pacific American-owned businesses, 68.6 percent for Hispanic American-owned, 67 percent for Native Americans, and 61 percent for African Americans (an 11.6 percent spread from the Caucasian-owned business success rate). These disparities could indicate racial discrimination in the utilization of minority firms and a preference for Caucasian-owned firms, but without controlling for other factors that could affect these survival rates, discrimination would only be speculative.

Interestingly, the national business expansion rates during this time were actually higher for Hispanic American-owned businesses at 34 percent, Asian-Pacific American-owned businesses at 32.1 percent and Native American-owned businesses at 27.8 percent compared to the rate of Caucasian-owned businesses of 27.4 percent. Only African American-owned firms had a lower expansion rate of 25.7 percent.¹¹ The averages for Texas were a little different; Native American and African American firms had lower average survival rates of 52 percent and 54 percent, respectively. In addition, the expansion rate was lower in Texas than the national averages for all racial groups other than Asian and Pacific Islander Americans and Hispanic Americans. Expansion rates will be discussed in further detail in *Section V, Access to Capital*.

As a major source of funding for the business, and as the main motivating factor for a business owner to be in business, owner earnings is an important indicator of the success



¹⁰ Ying Lowery, Ph.D., "Dynamics of Minority-Owned Employer Establishments," 1997–2001. U.S. Small Business Administration Office of Advocacy. Washington D.C.

¹¹ Ying Lowery, Ph.D., "Dynamics of Minority-Owned Employer Establishments," 1997–2001. U.S. Small Business Administration Office of Advocacy. Washington D.C.

of a business. Because differences in business owner earnings may be at least partially accounted for by race and gender-neutral factors (like age, educational attainment, or marital status), a multivariate regression analysis is again needed to determine statistically if race or gender affect the earnings of business owners when holding all other factors constant. For this, we utilize an Earnings Disparity Model to examine whether disparities in business earnings remain after controlling for these race and gender-neutral factors.

1. Earnings Disparity Model

The Earnings Disparity Model examines the relationship between business owner earnings and socio-economic variables. Business owner earnings are defined as the total dollar income earned by a self-employed individual in the past twelve months. Categories of independent variables analyzed include educational indicators, citizenship characteristics, employment classifications, personal characteristics, and race/gender. These variables are found in the regression results in Table 10.18.

All of the independent explanatory variables are regressed against the natural log of business owner earnings in a standard OLS regression model. This model estimates a linear relationship between the independent variables and the dependent variable. A simple regression model estimates a line similar to the standard slope-intercept equation, $y=mx+b$, where x is the independent explanatory variable and y is the dependent variable predicted. The multivariate regression works the same way, but includes additional independent variables: $(y=b_0+b_1x_1+b_2x_2+\dots+b_mx_m+e)$. The mathematical purpose of a regression analysis is to determine the best estimate of a linear line for all observations and to evaluate through statistical tests whether the coefficients of the explanatory variables (the b_i 's) are statistically significant. If they are not statistically significant, then it cannot be inferred that the independent variable explains or affects the dependent variable. Furthermore, the standard errors of the model must be correctly calculated in order to determine statistical significance. For this regression model, robust standard errors were used to account for any errors in a non-constant variance.

Table 10.18 also indicates the sign of each variable's coefficient from the regression output. A positive sign denotes a direct relationship between the independent variable and the dependent variable. For example, having an advanced degree is positively related to wages. Therefore, individuals with an advanced degree are statistically more likely to have higher earnings than their counterparts, holding all else constant. If the sign for the independent variable is negative, this implies an inverse or indirect relationship between the two variables. For example, individuals achieving a High School diploma as the highest level of education have significantly less business earnings than their counterparts, holding all else constant.



For the Earnings Disparity Model of Texas for 2006-2008, there were 6,455 observations of business owner earnings, as shown in Table 10.18.¹²

Table 10.18 Texas Business Owner Earnings by Industry, 2006 to 2008

	All Industries	Construction	Goods and Other Services	Professional Services
Number of Observations	4,418	828	2,182	1,018
Age	0.0906512** (0.0142691)	0.0214374 (0.0239706)	0.1008638** (0.0181022)	0.137499** (0.0412808)
Age-squared	-0.000938** (0.0001511)	-0.0002063 (0.0002694)	-0.0010298** (0.0001965)	-0.001459** (0.0004205)
Married	0.1113067 (0.0604484)	0.2814628* (0.1197136)	0.0140149 (0.0838727)	0.0706029 (0.1411592)
Children in Household	-0.0376755* (0.0152976)	-0.0129295 (0.0339288)	-0.0310085 (0.0215713)	-0.0347788 (0.036253)
Presence of Senior Citizen in Household	-0.0512217 (0.0752953)	-0.4977649** (0.1804769)	-0.0523198 (0.10642)	0.2525524 (0.1523537)
Home value (in units of \$1,000)	0.0008943** (0.0002128)	0.0006302 (0.0005351)	0.0013239** (0.0002619)	0.0003757 (0.0004142)
Mortgage (in units of \$1,000)	0.1430245** (0.0390496)	0.14856 (0.0916757)	0.0874488 (0.0572136)	0.1679205* (0.0851181)
English Proficiency	0.2034576** (0.049728)	0.1577498 (0.0916757)	0.2062001** (0.0698217)	0.1757536 (0.1156774)
Less than High School	-0.0844136 (0.0600324)	0.027126 (0.1112558)	-0.1391735 (0.0837621)	-0.1478481 (0.1652707)
Some College	0.1489747* (0.0609127)	0.1881805 (0.141988)	-0.0040697 (0.0775198)	0.417695** (0.1614056)
4-Year College	0.2582977** (0.0656451)	0.3927068* (0.1666637)	0.066625 (0.0904532)	0.5257314** (0.1498644)
Advanced Degree	0.5212456** (0.1008219)	0.3952971 (0.3307255)	0.0229872 (0.1149679)	0.6301103** (0.2249707)
African American Male	-0.0711937 (0.1632095)	-0.6280166 (0.434053)	0.178606 (0.1977141)	0.007179 (0.3609534)
Hispanic American Male	-0.0073013 (0.083378)	-0.2889075 (0.1517189)	0.1022281 (0.1145794)	-0.0171994 (0.145303)
Asian-Pacific American Male	-0.1731248* (0.083378)	0.0255225 (0.1517189)	-0.182977 (0.1145794)	-0.1615168 (0.145303)

¹² Note that for this OLS regression, the marginal effects of each variable are synonymous with the coefficients. Therefore, a second table reporting marginal effects is not needed.



	All Industries	Construction	Goods and Other Services	Professional Services
	(0.083378)	(0.2478585)	(0.1223537)	(0.1538862)
Native American Male	-0.1087723	0.1728096	-0.0146282	-0.1755842
	(0.2355715)	(0.5770225)	(0.2819366)	(0.2966087)
Other Race Male	-0.1116711	0.0591837	-0.0826269	-0.4428187*
	(0.0748627)	(0.1044154)	(0.1123101)	(0.2095169)
Caucasian Female	-0.659749**	-0.6886926	-0.895603**	-0.491082**
	(0.1198272)	(0.4033881)	(0.2014084)	(0.1797182)
African American Female	-0.0399132	(dropped)a	0.1250201	-0.4911821
	(0.4711929)		(0.4087655)	(0.9784849)
Hispanic American Female	-0.1018757	0.2925957	0.0180535	-0.0286493
	(0.1344725)	(0.4572471)	(0.2170481)	(0.2087723)
Asian-Pacific American Female	0.1494114	-0.7734998	0.4259382	-0.3441464
	(0.4373036)	(0.697801)	(0.2279766)	(0.2792539)
Native American Female	0.3669364	(dropped)a	0.3422266	0.4712506
	(0.4373036)		(0.5937369)	(0.5938303)
Other Race Female	-0.0473959	-0.1391397	-0.0568587	0.1565801
	(0.1208847)	(0.3520012)	(0.1590175)	(0.3578279)
Naturalized U.S. Citizen	0.075399	0.2607166*	0.0989184	-0.0650319
	(0.0608855)	(0.1249948)	(0.0878388)	(0.1060476)
Non-U.S. Citizen	-0.093183	0.0562046	-0.0490512	-0.2396571
	(0.0608855)	(0.1071127)	(0.0867369)	(0.153469)
Interest Income (in units of \$1,000)	0.0103022**	0.0127944**	0.0096495**	0.0108583**
	(0.0009751)	(0.0030227)	(0.0012524)	(0.0016459)

Gray numbers indicate Robust Standard Errors

** Denotes statistical significance at the 99% confidence level

* Denotes statistical significance at the 95% confidence level

a = Denotes that the variable was dropped due to too few observations in the data

Data Source: PUMS, 2006-2008

2. Interpretation of Results

As expected, the education variables are significant in the All industries regression and indicate that higher levels of education result in higher self-employment earnings, all else equal. Age is significant and positive indicating that earnings increase with age, but age squared, also significant but negative, indicates that the return diminishes over time. English proficiency, as expected, is positive and is statistically significant. Home value and mortgage payment amount are statistically significant in the All industries regression, but not in the construction industry. There is a risk of endogeneity within the model as a result of including these variables, as well as interest and dividend income. Because these can at the same time be used as capital by the business owner, these variables can also reflect the wealth gained from the business and thus be a two-way causation.



The results of this regression do not demonstrate racial discrimination in business owners' earnings across All industries, construction, goods and other services, or the professional services industries. Although the coefficients for the race variables are negative for most of the regressions, these coefficients are not statistically significant. Only the Asian-Pacific American male variable was significant at the 95 percent level for the All industries regression. In addition, only the Other race male variable is significant (at the 95 percent level) in the professional services industry. Also, the Caucasian female variable is statistically significant with a negative coefficient in all industries except the construction industry regression. The coefficient is relatively high starting, as shown in Table 10.19 at 38.8 percent and on up to 59.16 percent less than their male counterparts. These values are obtained using the formula for the exact percentage change in the predicted earnings.¹³ These large numbers could indicate an omitted variable from the regression, perhaps to account for part-time female workers.

The results in Table 10.18 demonstrate that after accounting for race and gender-neutral factors, there are statistically significant earnings disparities for Caucasian female, Asian-Pacific American males, and Other race males in the State of Texas. Although there are also disparities for African American male and female business owners, these disparities are not statistically significant.¹⁴

A summary of the statistically significant racial and gender disparities in business earnings by industry is provided below:

All industries

- Asian-Pacific American males have lower business earnings than Caucasian males.
- Caucasian females have lower business earnings than Caucasian males.

Construction industry

- (No statistically significant racial or gender disparities were found in this industry).

Goods and Other Services industry

- Caucasian females have lower business earnings than Caucasian males.

Professional Services industry

- Other race males have lower business earnings than Caucasian males.
- Caucasian females have lower business earnings than Caucasian males.



¹³ Formula is $100 * (\exp(\beta_i) - 1)$

¹⁴ Note: the small sample size may be limiting the results of this model.

Table 10.19 below illustrates what the percent difference would be between each of the following race and gender groups and Caucasian males if the coefficients from the earnings disparity regression model had been statistically significant. Only the coefficients on the variable Caucasian females and Asian-Pacific American males for the All industries and only the variable Caucasian females and Other race male in the professional and Caucasian females in the goods and other services industries are negative and significant.

Table 10.19 Percent Difference Compared to Caucasian Male Business Owner Earnings

	All	Construction	Goods and Other Services	Professional Services
African American Male	-6.872%	-46.64%	19.55%	0.72%
Hispanic American Male	-0.73%	-25.09%	10.76%	-1.72%
Asian-Pacific American Male	-15.90%*	2.59%	-16.72%	-14.91%
Native American Male	-10.31%	18.86%	-1.45%	-16.10%
Other Race Male	-10.57%	6.09%	-7.93%	-35.78%*
Caucasian Female	-48.30%**	-49.78%	-59.16%**	-38.80%**
African American Female	-3.91%	(dropped)a	13.32%	-38.81%
Hispanic Female	-9.68%	33.99%	1.82%	-2.82%
Asian-Pacific American Female	16.12%	-53.99%	42.59%	-29.12%
Native American Female	36.69%	(dropped)a	34.22%	47.13%
Other Race Female	-4.63%	-12.99%	-5.53%	15.66%

** Denotes statistical significance at the 99% confidence level

* Denotes statistical significance at the 95% confidence level

a= Denotes that the variable was dropped due to too few observations in the data

Overall, there are some signs of gender discrimination, but the results do not present strong findings for racial discrimination in the private sector for the construction, goods and other services, and professional services industries in Texas.

A summary of the racial and gender disparities in business earning amounts by industry is provided below:



All industries

- Asian-Pacific American males have 15.9 percent lower business earnings than Caucasian males. This relationship is significant at the 95 percent level.
- Caucasian females have 48.3 percent lower business earnings than Caucasian males. This relationship is significant at the 99 percent level.
- All other minority group males and females, except Asian-Pacific American females and Native American females, have lower business earnings than Caucasian males but not at a statistically significant level.

Construction industry

- No statistically significant racial or gender disparities were found in this industry.
- African American males, Hispanic American males, Caucasian females, Asian-Pacific American females, and Other race females have lower business earnings than Caucasian males, but not at a statistically significant level.

Goods and Other Services industry

- Caucasian females have 59.16 percent lower business earnings than Caucasian males.
- Asian-Pacific American males, Native American males, and Other race males and females have less business earnings than Caucasian males, but not at a statistically significant level.

Professional Services industry

- Other race males have 35.78 percent lower business earnings than Caucasian males. This relationship is significant at the 95 percent level.
- Caucasian females have 38.8 percent lower business earnings than Caucasian males. This relationship is significant at the 99 percent level.
- All other minority group males and females (except African American males, Native American females, and Other race females) have lower business earnings compared to Caucasian males, but not at a statistically significant level.



V. ACCESS TO BUSINESS CAPITAL

Small business formation, sustainability and expansion are particularly dependent on access to business capital. As a result, barriers to capital markets of any kind will likely impact the success of an enterprise. A recently published study by the Minority Business Development Agency, an agency within the Department of Commerce that promotes growth and competitiveness of minority-owned businesses in the U.S., found that access to capital remained the major barrier to success for minority-owned firms in the U.S.¹⁵

Because bank loans are one of the largest sources of capital for small businesses, any discrimination affecting the approval of these loans and other credit resources could be a determining factor in the success of businesses owned by minorities and women. Studies investigating discrimination based on race and gender in capital markets typically look for discrimination in:

- Loan denial rates
- Loan values
- Relationships between start-up capital and business survival
- Individual assumptions that loan applications will be rejected (and thus, loan application rates)

Estimates from the 1992 Characteristics of Business Owners micro data survey demonstrate that Hispanic American and African American-owned businesses have very low levels of startup capital relative to Caucasian-owned businesses.¹⁶

The percent of African American business owners that reported lack of access to business loans/credit as the reason their business was unsuccessful was 7.3 percent higher than the national average for all businesses, a staggering amount. The average of woman-owned businesses with lack of access to business loans/credit was 1.1 percent higher than the average, and for Hispanic American-owned firms it was a 0.6 percent increase from the average.

On the other hand, business expansion rates of a sample of minority firms from 1982 to 2002 were the highest for Hispanic American-owned businesses ranging from 7 percent to 13.8 percent, with Asian-Pacific American-owned businesses expanding at the second highest rate from 1.9 percent to 4.2 percent. From 1997 to 2001, the business expansion rates of three minority business groups were higher than that for Caucasian-owned businesses.¹⁷ While 27.4 percent of Caucasian-owned establishments expanded during

¹⁵ “Disparities in Capital Access Between Minority and Non-Minority-Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs,” Robert Fairlie and Alicia Robb for MBDA, January, 2010. <http://www.mbda.gov/sites/default/files/DisparitiesinCapitalAccessReport.pdf>

¹⁶ U.S. Census Bureau, 1992 Economic Census: Characteristics of Business Owners. Fairlie and Robb, “Race and Entrepreneurial Success: Black-, Asian-, and White-Owned Businesses in the United States.”

¹⁷ Ying Lowery, Ph.D., “Dynamics of Minority-Owned Employer Establishments,” 1997–2001. U.S. Small Business Administration Office of Advocacy. Washington D.C.



this period, 34 percent of Hispanic American-owned employer establishments expanded, as did 32.1 percent of Asian-Pacific American-owned establishments, and 27.8 percent of American Indian/Alaska Native-owned establishments; 25.7 percent of the African American-owned employer establishments in operation in 1997 expanded their businesses.

1. Dataset Analyzed

The 2003 National Survey of Small Business Finances (NSSBF) conducted a survey of 4,240 firms, and according to the Board of Governors of the Federal Reserve, it is the most comprehensive national survey of finance data from firms with fewer than 500 employees. Sample weights are applied to provide representative estimates. The sample design of the 2003 NSSBF was a systematic stratified random design with oversampling of the larger employment size classes (firms with 20 or more employees). Sample weights have been produced to account for disproportionate sampling and unit non-response. The survey contains information on loan denial and interest rates, as well as anecdotal information from firms. The 2003 sample contains records from 4,240 firms in operation during December 2003 and at the time of the survey interview (between June and December 2004). Only the 4,240 firms in this sample were used and not the imputed observations. Although other studies used the 1998 NSSBF data due to the oversampling of minority business owners, the 2003 data was used for this regression model because it is most current.

Data derived from the 2003 NSSBF was used to compare the likelihood of business loan denial between M/WBEs and Caucasian male-owned businesses. The NSSBF records the geographic location of the firm by Census Division, not city, county, or state. While the NSSBF data is available by Census Division,¹⁸ its data was insufficient to perform an accurate regression analysis by industry. Instead, national data was utilized since it can provide insight regarding the conditions that racial and gender minorities in each industry encounter when attempting to secure a business loan. The results for the Business Loan Denial are used to make inferences about race and gender disparities in Bexar County.

The survey collected the following types of information from each business:

- Demographic information on the owners and characteristics of the firm
- Data on which materials were used by the respondents to complete the questionnaire
- An inventory of the firm's deposit and savings accounts, capital leases, credit lines, mortgages, motor vehicle loans, equipment loans, and other loans



¹⁸ Texas is located within the West Central Census Division

- Experience in the past three years in applying for credit, including the source
- Experience with trade credit or equity injections
- Information on the firm's income statement and balance sheet, recent credit history of the firm and its owners, as well as some information on home-ownership and net worth of the principal owner of the firm

2. Likelihood of Business Loan Denial Model

The Likelihood of Business Loan Denial Model examines the relationship between the likelihood of being denied a loan and the socio-economic variables of the business owner and variables indicating the health of the business. The dependent variable is binary and is coded “1” if the business was sometimes or always denied a loan, and coded “0” if the business was never denied a loan. Independent variable categories include the credit risk and financial health of the firm, education, experience and socio-economic characteristics of the owner, and characteristics of the loan. The results in Table 10.20 highlight the variables in the Likelihood of Business Loan Denial Model.¹⁹

A disparity finding is denoted in the table below when the independent variable is significant at the 95 (*) or 99 (**) percent levels. This indicates that there is a non-random relationship between being denied a business loan and each independent variable. The sign of each variable’s coefficient indicates whether there is a positive or negative relationship between the two variables. For example, the coefficient on the advanced degree is negative, and thus, having a degree is negatively related to the likelihood of being denied a business loan, meaning that business owners with an advanced degree are less likely to be denied a business loan, holding all other variables constant.



¹⁹ Although the model used in this analysis is similar to those used by other firms, there seems to be room for improvement, perhaps in variable construction to reduce the chances of multicollinearity or in methodology to reduce potential effects of endogeneity.

Table 10.20 Likelihood of Loan Denial, Probit Model, 2003

Variable	Construction		Goods and Other Services		Professional Services	
	Number of Observations = 1,455		Number of Observations = 7,674		Number of Observations = 1,155	
	Coefficient	Standard Error	Coefficient	Standard Error	Coefficient	Standard Error
Caucasian Female	0.00027	0.001	-0.00031	0.001	0.00171	0.002
Experience	-0.00190	0.007	0.00109	0.002	-0.0413077**	0.009
Some College	0.00288	0.008	-0.0077778**	0.002	0.066671**	0.009
Four-year Degree	-0.05449	0.097	0.01031	0.046	-2.318967**	0.501
Advanced Degree	-0.2446312*	0.119	-0.06380	0.048	-2.18732**	0.503
Age	-0.01165	0.209	-0.06208	0.058	-1.615284**	0.510
Asian-Pacific American Male	0.0608444**	0.002	-0.00067	0.001	-0.0124654**	0.004
African American Male	-0.0060795*	0.003	-0.00012	0.001	0.00050	0.006
Hispanic American Male	0.0044914*	0.002	-0.00073	0.001	0.012376**	0.003
Other Race Male	0.00040	0.004	-0.013641**	0.002	0.0723366**	0.003
Asian-Pacific American Female	-0.00158	0.000	0.00202	0.002	-0.179453**	0.013
African American Female	0.00005	0.000	0.00227	0.002	-0.00783	0.007
Hispanic American Female	-0.00001	0.000	0.00476	0.003	-0.0466774**	0.010
Other Race Female	-0.00006	0.000	0.0187075**	0.003	0.543833**	0.033
Personal Credit Card Used for Business	0.03853	0.090	-0.1237481**	0.033	0.4634676**	0.122
Log of Net Worth Excluding Home	0.00000	0.000	0.00000	0.000	-0.000000149**	0.000
Negative Worth Indicator	(dropped)a		(dropped)a		-6.173533**	0.339
D&B High Risk	-0.36283	0.192	0.1452192*	0.057	0.01252	0.235
D&B Significant Risk	-0.3610091*	0.142	-0.05763	0.062	0.25838	0.176
D&B Average Risk	-0.4151929**	0.141	0.144814**	0.048	1.204319**	0.231
D&B Moderate Risk	0.4711359**	0.105	0.1068029**	0.041	-0.22019	0.114
Firm Bankruptcy in Past 7 Years	(dropped)a		-0.19864	0.256	-6.299366**	0.424
Firm Delinquency	0.6002071*	0.240	-0.15942	0.089	-2.094957**	0.338

Variable	Construction		Goods and Other Services		Professional Services	
	Number of Observations = 1,455		Number of Observations = 7,674		Number of Observations = 1,155	
	Coefficient	Standard Error	Coefficient	Standard Error	Coefficient	Standard Error
Principal Owned (in units of \$10,000)	0.029**	0.000	0.00001	0.000	-0.01340	0.000
Family Owned	0.01688	0.125	-0.1259149**	0.042	-0.7274334**	0.133
Purchased	0.4566587**	0.158	0.077534*	0.038	0.22371	0.134
Inherited	-0.20904	0.180	0.151021**	0.057	0.6801039*	0.278
Firm Age	-0.00709	0.006	0.0086651**	0.002	-0.0162029**	0.006
Firm Has Checking	-0.16875	0.106	0.1012492**	0.030	-0.05007	0.117
Firm Has Savings Account	0.06171	0.071	0.04669	0.027	-0.07688	0.088
Firm Has Line of Credit	0.7053445**	0.087	0.9050796**	0.035	1.354677**	0.107
Existing Capital Leases	1.916073**	0.356	-0.172086**	0.050	0.8060684**	0.246
Existing Business Mortgage	3.464145**	0.528	0.3446228**	0.076	2.650796*	1.196
Existing Vehicle Loan	0.02438	0.097	0.2206265**	0.037	-0.577582**	0.182
Existing Equipment Loan	0.41409	0.225	0.10560	0.071	-0.3030621**	0.147
Existing Other Loans	-0.72946	0.527	0.06510	0.088	0.63292	0.442
Existing Stockholder	0.13431	0.100	0.197606**	0.035	0.03090	0.120
Used Trade Credit	-0.07586	0.138	0.3585784**	0.042	0.465009**	0.156
Total Employees	-0.00128	0.002	0.0034837**	0.000	0.0030544*	0.001
Sales	0.00000	0.000	0.00000	0.000	0.000000254**	0.000
Cost of Business	0.121**	0.000	-0.00143	0.000	-0.293**	0.000
Assets	0.00000	0.000	0.00000	0.000	-0.000000194**	0.000
Liabilities	0.00000	0.000	0.0000000138**	0.000	0.00000	0.000
Partnership	-1.849424**	0.421	0.10074	0.156	0.42095	0.255
S Corporation	-1.438909**	0.384	-0.00408	0.148	0.5268729*	0.246
C Corporation	-1.897323**	0.392	0.13223	0.150	0.6594345**	0.247
Herfindahl Index= .1 to .18	0.2618715**	0.068	0.0797407**	0.024	-0.2081389*	0.082
Located in MSA	0.13846	0.126	-0.00062	0.047	-0.14309	0.170

Variable	Construction Number of Observations = 1,455		Goods and Other Services Number of Observations = 7,674		Professional Services Number of Observations = 1,155	
	Coefficient	Standard Error	Coefficient	Standard Error	Coefficient	Standard Error
Capital Lease Application	-1.613825**	0.450	0.4924484**	0.083	-0.7093193*	0.318
Mortgage Application	-3.56424**	0.527	-0.10790	0.103	-1.70727	1.143
Vehicle Loan Application	0.18660	0.158	0.10322	0.059	1.543096**	0.280
Equipment Loan Application	0.26465	0.317	0.410377**	0.094	1.21058**	0.226
Other Loan Application	1.631601**	0.591	0.3975282**	0.112	-0.82930	0.528
Number of Financial Institutions	0.05121	0.049	-0.0890389**	0.015	0.02193	0.063

Gray numbers indicate Robust Standard Errors

** Denotes statistical significance at the 99% confidence level

* Denotes statistical significance at the 95% confidence level

a= Denotes that the variable was dropped due to too few observations in the data

Data Source: NSSBF, 2003

Table 10.21 Likelihood of Loan Denial, Probit Model, Reporting Marginal Effects, 2003

Variable	Construction		Goods and Other Services		Professional Services	
	Number of Observations = 1,455		Number of Observations = 7,674		Number of Observations = 1,155	
	Marginal Effect	Standard Error	Marginal Effect	Standard Error	Marginal Effect	Standard Error
Caucasian Female	0.0000443	0.001	-0.0000867	0.001	0.00032690	0.002
Experience	-0.0004431	0.007	0.0003069	0.002	-0.00790680**	0.009
Some College	0.0006705	0.008	-0.0021943**	0.002	0.01276170**	0.009
Four-year Degree	-0.0126903	0.097	0.0029077	0.046	-0.44388000**	0.501
Advanced Degree	-0.0569710*	0.119	-0.0180004	0.048	-0.41868100**	0.503
Age	-0.0027138	0.209	-0.0175147	0.058	-0.30918600**	0.510
Asian-Pacific American Male	0.0076443**	0.002	-0.0001897	0.001	-0.00238600**	0.004
African American Male	-0.0012206*	0.003	-0.0000342	0.001	0.00009660	0.006
Hispanic American Male	0.0010238*	0.002	-0.0002069	0.001	0.00236890**	0.003
Other Race Male	0.0001711	0.004	-0.0038483**	0.002	0.01384610**	0.003
Asian-Pacific American Female	N/A	0.000	N/A	0.002	N/A**	0.013
African American Female	N/A	0.000	N/A	0.002	N/A	0.007
Hispanic American Female	N/A	0.000	N/A	0.003	N/A**	0.010
Other Race Female	N/A	0.000	N/A**	0.003	N/A**	0.033
Personal Credit Card Used for Business	0.008973600	0.090	-0.0349117**	0.033	0.08871360**	0.122
Log of Net Worth Excluding Home	0.000000001	0.000	0.0000000	0.000	-0.00000003**	0.000
Negative Worth Indicator	(dropped)a		(dropped)a		-1.18169300**	0.339
D&B High Risk	-0.084497200	0.192	0.0409691*	0.057	0.00239580	0.235
D&B Significant Risk	-0.084073700*	0.142	-0.0162585	0.062	0.04945780	0.176
D&B Average Risk	-0.096692300**	0.141	0.0408548**	0.048	0.23052200**	0.231

Variable	Construction		Goods and Other Services		Professional Services	
	Number of Observations = 1,455		Number of Observations = 7,674		Number of Observations = 1,155	
	Marginal Effect	Standard Error	Marginal Effect	Standard Error	Marginal Effect	Standard Error
D&B Moderate Risk	0.109720600**	0.105	0.0301312**	0.041	-0.04214790	0.114
Firm Bankruptcy in Past 7 Years	(dropped)a		-0.0560393	0.256	-1.20577900**	0.424
Firm Delinquency	0.139779300*	0.240	-0.0449766	0.089	-0.40100150**	0.338
Principal Owned (in units of \$10,000)	0.006640000**	0.000	0.0000287	0.000	-0.00256000	0.000
Family Owned	0.003932100	0.125	-0.0355230**	0.042	-0.13924000**	0.133
Purchased	0.106349100**	0.158	0.0218738*	0.038	0.04282180	0.134
Inherited	-0.048682500	0.180	0.0426060**	0.057	0.13018060*	0.278
Firm Age	-0.001650700	0.006	0.0024446**	0.002	-0.00310140**	0.006
Firm Has Checking	-0.039298200	0.106	0.0285643**	0.030	-0.00958480	0.117
Firm Has Savings Account	0.014372000	0.071	0.0131715	0.027	-0.01471600	0.088
Firm Has Line of Credit	0.164264300**	0.087	0.2553404**	0.035	0.25930250**	0.107
Existing Capital Leases	0.446225100**	0.356	-0.0485488**	0.050	0.15429180**	0.246
Existing Business Mortgage	0.806748000**	0.528	0.0972247**	0.076	0.50739620*	1.196
Existing Vehicle Loan	0.005678400	0.097	0.0622430**	0.037	-0.11055660**	0.182
Existing Equipment Loan	0.096434600	0.225	0.0297915	0.071	-0.05801000**	0.147
Existing Other Loans	-0.169881400	0.527	0.0183673	0.088	0.12114860	0.442
Existing Stockholder	0.031279800	0.100	0.0557485**	0.035	0.00591450	0.120
Used Trade Credit	-0.017667400	0.138	0.1011619**	0.042	0.08900870**	0.156
Total Employees	-0.000297800	0.002	0.0009828**	0.000	0.00058460*	0.001
Sales	0.000000000	0.000	0.0000000	0.000	0.00000005**	0.000
Cost of Business	0.028100000**	0.000	-0.0004030	0.000	-0.05600000**	0.000
Assets	0.000000018	0.000	0.0000000	0.000	-0.00000004**	0.000
Liabilities	-0.000000005	0.000	0.0000000**	0.000	0.00000002	0.000
Partnership	-0.430703500**	0.421	0.0284195	0.156	0.08057610	0.255

Variable	Construction Number of Observations = 1,455		Goods and Other Services Number of Observations = 7,674		Professional Services Number of Observations = 1,155	
	Marginal Effect	Standard Error	Marginal Effect	Standard Error	Marginal Effect	Standard Error
S Corporation	-0.335100600**	0.384	-0.0011511	0.148	0.10085020*	0.246
C Corporation	-0.441858300**	0.392	0.0373049	0.150	0.12622420**	0.247
Herfindahl Index= .1 to .18	0.060986000**	0.068	0.0224964**	0.024	-0.03984040*	0.082
Located in MSA	0.032245800	0.126	-0.0001756	0.047	-0.02738990	0.170
Capital Lease Application	-0.375836100**	0.450	0.1389292**	0.083	-0.13577280*	0.318
Mortgage Application	-0.830058700**	0.527	-0.0304416	0.103	-0.32679250	1.143
Vehicle Loan Application	0.043455900	0.158	0.0291191	0.059	0.29536840**	0.280
Equipment Loan Application	0.061632900	0.317	0.1157753**	0.094	0.23172040**	0.226
Other Loan Application	0.379975700**	0.591	0.1121504**	0.112	-0.15873910	0.528
Number of Financial Institutions	0.011925100	0.049	-0.0251196**	0.015	0.00419760	0.063

Gray numbers indicate Robust Standard Errors

** Denotes statistical significance at the 99% confidence level

* Denotes statistical significance at the 95% confidence level

a= Denotes that the variable was dropped due to too few observations in the data

Data Source: NSSBF, 2003

N/A denotes an interaction variable whose marginal effect is included in the interaction terms that created it (i.e. the Other race female marginal effect is included in the female marginal effect and the Other race marginal effect).

3. Interpretation of Results

The results in Table 10.20 show a range of results between the construction, goods and other services, and the professional services industries. The professional services regression shows the most discrimination in lending practices with statistically significant coefficients for Hispanic American males, Other race males, and the interaction term with these two race variables and females. The sign on the Asian-Pacific American male coefficient, as well as on the interaction term with female, is negative, indicating that Asian-Pacific Americans in the professional services industry are less likely to be refused a loan than Caucasians, all else being equal. For Hispanic Americans males and Other race males and females, the coefficient is positive, indicating that these business owners are more likely to be refused a loan than their Caucasian equal counterparts.

The Other race female was the only statistically significant variable (with a positive coefficient) in the goods and other services industry. The sign on the variable is positive indicating that a business owner from this group would be more likely to be refused a loan than their Caucasian male counterparts. For the construction industry, Asian-Pacific American male and Hispanic American male business owners are more likely to be denied the loan than their Caucasian counterparts, and these variables are statistically significant. However, from these same results, African American males are more likely to not be denied the loan compared to their Caucasian counterparts.

In general, these results do not indicate a strong case for discrimination practices in loan denial rates. There are suggestions that there could be discrimination against some races in some industries, but these results do not seem conclusive. In fact, other studies have recognized drawbacks of the 2003 NSSBF because of survey methodology used, and underrepresentation of minority business owners.¹ Some of these studies have also found few coefficients that are not statistically significant, but these studies, using the 1998 survey, did find evidence of discrepancies in credit access between Caucasians and minority-owned firms.

A summary of the statistically significant racial and gender disparities in the likelihood of business loan denial by industry is provided below:



¹ National Economic Research Associates, Inc., 2008. "Race, Sex, and Business Enterprise: Evidence from the City of Austin." Prepared for the City of Austin, Texas.

Construction industry

- Asian-Pacific American males have a 0.76 percent higher likelihood of being denied a business loan than Caucasian males. This relationship is significant at the 99 percent level.
- Hispanic American males have a 0.1 percent higher likelihood of being denied a business loan than Caucasian males. This relationship is significant at the 95 percent level.

Professional Services industry

- Hispanic American males have a 0.24 percent higher likelihood of being denied a business loan than Caucasian males. This relationship is significant at the 99 percent level.
- Other race males have a 1.38 percent higher likelihood of being denied a business loan than Caucasian males. This relationship is significant at the 99 percent level.
- Other race females have a higher likelihood of being denied a business loan than Caucasian males. This relationship is significant at the 99 percent level.¹

Goods and Other Services industry

- Other race females have a higher likelihood of being denied a business loan than Caucasian males. This relationship is significant at the 99 percent level.



¹ Percentage cannot be reported for Other race females in the construction and professional services industries since they are interaction variables whose marginal effects are included in the interaction terms that created them (i.e. the Other race female marginal effect is included in the female marginal effect and the Other race marginal effect).

VI. CONCLUSION

This chapter used three regression models to determine whether there are statistically significant disparities between minorities, females, and Caucasian male-owned businesses in the three outcome variables of business ownership, business earnings, and business loan denial. The three regression models used for this analysis were the Likelihood of Business Ownership Model, the Earnings Disparity Model, and the Likelihood of Business Loan Denial Model. The regression analysis examined the effect of race and gender on the three outcome variables. This analysis was performed for the three industries, construction, goods and other services, and professional services which were included in the 2011 Disparity and Availability Study.

The State of Texas 2006-2008 PUMS dataset was used to make inferences about possible race and gender business ownership and business earnings disparities in the construction, professional services, and goods and other services industries within Bexar County. Although data from Bexar County is included in the State of Texas 2006-2008 PUMS dataset, the data for Bexar County does not contain sufficient observations to perform the regression analysis for African Americans by industry. In order to perform the regression analysis by industry for all racial groups, the State of Texas data was used.

The findings of this regression analysis suggest areas of racial and gender discrimination in the construction, goods and other services, and professional services industries after controlling for race and gender-neutral factors. However, neither the Likelihood of Business Ownership Model nor the Earnings Disparity Model demonstrates statistically significant evidence of discrimination for minorities and females across all industries.

The Likelihood of Business Ownership Model results show that when controlling for race and gender-neutral factors, statistically significant disparities exist for Hispanic American males, Asian-Pacific American males, and Caucasian females in all industries. Only Asian-Pacific American females have a statistically significant business ownership disparity in the construction industry. In the professional services industry, only Asian-Pacific American males have a statistically significant business ownership disparity. The goods and other services industry has the most disparity as Hispanic American males, Asian-Pacific American males, Caucasian females, and African American females have significantly lower probabilities of owning a goods and other services business than Caucasian males. The race and gender disparities for the Business Ownership Model are summarized in Table 10.22 by industry.



Table 10.22 Race and Gender Business Ownership Disparities by Industry

Race/Gender	All Industries	Construction	Professional Services	Goods and Other Services
African American Male				
Hispanic American Male	Yes			Yes
Asian-Pacific American Male	Yes		Yes	Yes
Native American Male				
Other Race Male				
Caucasian Female	Yes			Yes
African American Female				Yes
Hispanic American Female				
Asian-Pacific American Female		Yes		
Native American Female				
Other Race Female				

Cells shaded gray denote no statistically significant disparity present.

An inference can be made from the State of Texas data that the specific race and gender groups marked as “Yes” in Table 10.22 encounter private sector business ownership discrimination in Bexar County.



The Earnings Disparity Model regression analysis documented statistically significant disparities in the business earnings of Asian-Pacific American males and Caucasian females in all industries combined. In the professional services industry, Other race males¹ and Caucasian females have statistically significant business earnings disparities. In addition, Caucasian females have significantly lower business earnings in the goods and other services industry. It is important to note that no statistically significant gender or racial business earnings disparities are present in the construction industry. The race and gender disparities for the Business Earnings Model are summarized in Table 10.23 by industry.

Table 10.23 Race and Gender Business Earnings Disparities by Industry

Race/Gender	All Industries	Construction	Professional Services	Goods and Other Services
African American Male				
Hispanic American Male				
Asian-Pacific American Male	Yes			
Native American Male				
Other Race Male			Yes	
Caucasian Female	Yes		Yes	Yes
African American Female				
Hispanic American Female				
Asian-Pacific American Female				
Native American Female				
Other Race Female				

Cells shaded gray denote no statistically significant disparity present.

An inference can be made from the State of Texas data that the specific race and gender groups marked as “Yes” in Table 10.23 encounter private sector business earnings discrimination in Bexar County.



¹ Based on the dataset, Other minority race (Other race) males and females are defined as individuals of some other race alone (non-Caucasian) and individuals who identified as having two or more race groups.

The results for the Business Loan Denial are used to make inferences about race and gender disparities in Bexar County. While the 2003 NSSBF data is available by Census Division,¹ its data was insufficient to perform a regression analysis by industry. Therefore, the 2003 NSSBF national data was used. The results for the Likelihood of Loan Denial Model may be improved if the 1998 NSSBF data is used instead of the 2003 NSSBF data. However, the more current 2003 dataset better reflects the conditions present in the construction, professional services, and goods and other services industries during the October 1, 2006 to September 30, 2009 study period of the Disparity and Availability Study.

The Likelihood of Business Loan Denial Model reveals that even after controlling for race and gender-neutral factors, Hispanic American males and Asian-Pacific American males in the construction industry have a statistically significant higher likelihood of being denied a business loan. The professional services industry has the greatest amount of disparity with Hispanic American males, Other race males, and Other race females experiencing statistically significant higher probabilities of being denied a business loan. In the goods and other services industry, only Other race females have a statistically significant higher probability of being denied a business loan.

The race and gender business loan denial disparities are summarized in Table 10.24 by industry.

Table 10.24 Race and Gender Business Loan Denial Disparities by Industry

Race/Gender	Construction	Professional Services	Goods and Other Services
African American Male			
Hispanic American Male	Yes	Yes	
Asian-Pacific American Male	Yes		
Native American Male			
Other Race Male		Yes	
Caucasian Female			
African American Female			
Hispanic American Female			
Asian-Pacific American Female			
Native American Female			
Other Race Female		Yes	Yes

Cells shaded gray denote no statistically significant disparity present.



¹ Texas is located within the West Central Census Division

An inference can be made from the data that the specific race and gender groups marked as “Yes” encounter private sector discrimination in business loan denial in Bexar County.

This statistically significant disparity documented for M/WBEs points to the presence of race and gender disparity as a factor in the specific groups’ access to business capital. Access to business capital constitutes a major factor in business development and continuity. The disparity in M/WBEs’ access to business capital may have adversely impacted the level of availability in the construction, professional services, and goods and other services industries as documented in the 2011 Disparity and Availability Study.

These analyses of the three outcome variables documented disparities that could adversely affect the formation and growth of M/WBEs within the construction, professional services, and goods and other services industries. In the absence of a race and gender-neutral explanation for the disparities, the regression findings document racial and gender private sector discrimination in business ownership rates, business earnings, and business loan denial rates. Such discrimination creates economic conditions in the private sector that could disadvantage M/WBEs, lower their formation rates, depress their earnings, and impede their access to business capital.

It is important to note there are limitations to the application of the regression findings in that no matter how discriminatory the private sector may be the findings cannot be used as the factual basis for a government sponsored race-based M/WBE program. They can, however, be a formula for developing race-neutral programs to eliminate any identified barriers to the formation and development of M/WBEs. Caution, therefore, must be exercised in the interpretation and application of the regression findings.



CHAPTER 11: RECOMMENDATIONS

I. INTRODUCTION

This chapter provides race and gender-specific recommendations for the groups where the disparity analysis of M/WBE is. In addition race and gender-neutral recommendations for all groups are presented in chapters seven and eight. Mason Tillman's statistical analysis included a review of construction, professional services, and goods and other services contracts awarded during the October 1, 2006 to September 30, 2009 study period. Although the County has had an SMWBE policy since 2001, the policy did not mandate reporting of subcontractor data. Accordingly, aggregating the contracts into the three industry sectors was necessary because of insufficient North American Industry Classification System (NAICS) codes. The Study identified disparities within the three industries with the specificity required in *Croson* and its progeny. However, the data was insufficient to perform the statistical analysis at the NAICS code level. The statistically significant finding contained in the Study as applied to the three industry sectors support a narrowly tailored remedy and provide guidance for management purposes. The race-neutral recommendations include best management practices, revisions to Bexar County's (County) procurement procedures set forth in the County's procurement materials, and an update of the County's website.

This chapter is organized into six sections. The first is an *Introduction* and the second section, *Disparity Findings*, presents the statistical disparity analysis. A review of the County's commitment to Historically Underutilized Businesses is discussed in section three. *Race-Conscious Remedies* are provided in section four, and *Race and Gender-Neutral Recommendations* in section five. Section six presents the *Administrative Recommendations*.

II. DISPARITY FINDINGS

The statistical analysis of M/WBE utilization is a key component of the Study. The objective of the analysis was to determine if M/WBE contractors were utilized at the level they were available in the County's market area. According to the *Croson*, an inference of discrimination can be made *prima facie* if the disparity is statistically significant. The previously identified lack of data to identify statistics for particular industry sectors, as defined by NAICS codes, does not provide the County with the



specificity it requires. For that reason, race- and gender-based remedial procurement programs are recommended for Bexar County’s procurement services.

The findings are presented by ethnicity and gender within each industry at the informal level which was \$25,000 and under. The disparity analysis for each of the three industries was also performed on contracts valued under \$500,000.

A. Prime Contracts

As depicted in Table 11.01 below, the County issued 26,164 prime contracts during the October 1, 2006 to September 30, 2009 study period. The 26,164 contracts included 967 for construction, 2,411 for professional services, and 22,786 for goods and other services.

The payments made by the County during the study period totaled \$290,957,798 for all 26,164 contracts. These expenditures included \$144,107,293 for construction, \$31,521,701 for professional services, and \$115,328,804 for goods and other services.

**Table 11.01 Total Prime Contracts and Dollars Expended,
All Industries, October 1, 2006 to September 30, 2009**

Industry	Total Number of Contracts	Total Dollars Expended
Construction	967	\$144,107,293
Professional Services	2,411	\$31,521,701
Goods and Other Services	22,786	\$115,328,804
Total Expenditures	26,164	\$290,957,798



B. Subcontracts

As depicted in Table 11.02 below, 446 subcontracts were analyzed, which consisted of 315 construction subcontracts and 131 professional services subcontracts. A total of \$100,553,337 dollars were expended on the 446 subcontracts of which \$93,950,526 were for construction subcontracts and \$6,602,811 were for professional services subcontracts.

**Table 11.02 Total Subcontracts and Dollars Expended: All Industries,
October 1, 2006 to September 30, 2009**

Industry	Total Number of Contracts	Total Dollars Expended
Construction	315	\$93,950,526
Professional Services	131	\$6,602,811
Total Expenditures	446	\$100,553,337



C. Prime Contractor MWBE Participation Levels

1. Construction Contracts

As indicated in Table 11.03, the participation of African American and Hispanic American construction prime contractors for contracts under \$500,000 was significantly less than the groups' availability. In addition, at the informal prime contract level, the utilization of African American and Women Business Enterprise construction prime contractors was significantly less than their availability.¹

Table 11.03 Disparity Summary: Construction Prime Contract Dollars, October 1, 2006 to September 30, 2009

Ethnicity/Gender	Construction	
	Contracts under \$500,000	Contracts \$25,000 and under
African American Male	Yes	Yes
African American Female	No	No
Asian American Male	No	No
Asian American Female	No	No
Hispanic American Male	Yes	Yes
Hispanic American Female	No	No
Native American Male	No	No
Native American Female	No	No
Minority Business Enterprises	Yes	No
Women Business Enterprises	No	Yes
Minority and Women Business Enterprises	Yes	Yes

Yes = The analysis is statistically significant

No = The analysis is not statistically significant or there are too few available firms to test statistical significance



¹ There is no disparity for Hispanic Americans at the informal contract level when the genders are combined.

2. Professional Services Contracts

As indicated in Table 11.04, the participation of African American, Native American, and Women Business Enterprise professional services prime contractors on contracts under \$500,000 was significantly less than the groups' availability.² In addition, at the informal prime contract level, the utilization of Asian American and Native American professional services prime contractors was significantly less than their availability.³

Table 11.04 Disparity Summary: Professional Services Prime Contract Dollars, October 1, 2006 to September 30, 2009

Ethnicity/Gender	Professional Services	
	Contracts under \$500,000	Contracts \$25,000 and under
African American Male	No	No
African American Female	Yes	Yes
Asian American Male	No	Yes
Asian American Female	No	Yes
Hispanic American Male	No	Yes
Hispanic American Female	Yes	No
Native American Male	No	No
Native American Female	No	No
Minority Business Enterprises	Yes	No
Women Business Enterprises	Yes	No
Minority and Women Business Enterprises	Yes	Yes

Yes = The analysis is statistically significant

No = The analysis is not statistically significant or there are too few available firms to test statistical significance

² There is no disparity for Hispanic Americans on contracts under \$500,000 when the genders are combined. There is a disparity for Native Americans on contracts under \$500,000 when the genders are combined.

³ There is no disparity for African Americans and Hispanic Americans at the informal contract level when the genders are combined. There is a disparity for Native Americans at the informal contract level when the genders are combined.



3. Goods and Other Services

As indicated in Table 11.05, the participation of African American, Hispanic American, and Women Business Enterprise goods and other services prime contractors for contracts under \$500,000 and informal contracts was significantly less than the groups' availability.

Table 11.05 Disparity Summary: Goods and Other Services Prime Contract Dollars, October 1, 2006 to September 30, 2009

Ethnicity/Gender	Goods and Other Services	
	Contracts under \$500,000	Contracts \$25,000 and under
African American Male	Yes	Yes
African American Female	Yes	Yes
Asian American Male	No	No
Asian American Female	No	No
Hispanic American Male	Yes	Yes
Hispanic American Female	Yes	Yes
Native American Male	No	No
Native American Female	No	No
Minority Business Enterprises	Yes	Yes
Women Business Enterprises	Yes	Yes
Minority and Women Business Enterprises	Yes	Yes

Yes = The analysis is statistically significant

No = The analysis is not statistically significant or there are too few available firms to test statistical significance



D. Subcontractor Disparity Findings

Extensive efforts were undertaken to obtain the County's construction and professional services subcontract records. The County's goods and other services prime contract records were not available and, thus, not considered for a subcontract analysis. The subcontractor disparity findings are summarized below.

As indicated in Table 11.06, the participation of Hispanic American subcontractors in the construction industry and African American subcontractors in the professional services industry was significantly less than their availability.⁴

**Table 11.06 Subcontractor Disparity Summary,
October 1, 2006 to September 30, 2009**

Ethnicity/Gender	Construction	Professional Services
African Americans Male	No	No
African American Female	No	No
Asian American Male	No	No
Asian American Female	No	No
Hispanic American Male	Yes	No
Hispanic American Female	Yes	No
Native American Female	No	No
Native American Male	No	No
Minority Business Enterprises	Yes	No
Women Business Enterprises	No	No
Minority and Women Business Enterprises	Yes	No

Yes = The analysis is statistically significant

No = The analysis is not statistically significant or there are too few available firms to test statistical significance



⁴ There is a disparity for African Americans when the genders are combined.

III. SMALL/MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM

The Commissioners Court in April 2001 established a Small, Minority and Women-owned Business Enterprise (SMWBE) Program with targets for minority, woman-owned and small business enterprises. The SMWBE Program was created to provide small, minority, and women-owned businesses a fair opportunity to compete on the County's contracts. Similarly, the County promotes SMWBE participation in its Tax Phase-in Program to support the growth and diversity of a regional economy. The success of the SMWBE Program depends on cooperation of 44 County offices and departments. It focuses on the purchasing processes that are, of necessity, highly variable because the scope of items purchased by the County is so varied.

A. SMWBE Certification

SMWBEs are businesses certified as Small, Minority and Women-owned. The County accepts certifications from the South Central Texas Regional Certification Agency (SCTRCA), the State of Texas Historically-Underutilized Business (HUB) Program, and other agencies approved by Bexar County Commissioners Court to identify eligible SMWBEs. The SCTRCA certifies Disadvantaged Business Enterprises (DBEs), Minority Business Enterprises (MBEs), Small Business Enterprises (SBEs), Veteran-owned Business Enterprises (VBEs), Disabled Business Enterprises (DIBEs), and Women-owned Business Enterprises (WBEs).

B. SMWBE Targets

The Commissioners Court established the SMWBE Program with targets for minority, woman-owned and small business enterprises. The Program has a minimum goal of 20 percent for all commodities, equipment, services (non-professional and operations), maintenance, and construction procurement dollars to be spent with M/WBEs, and a minimum of 30 percent of the procurement dollars to be spent with small business enterprises. Small MWBE could be counted toward the both goals.

The SMWBE Program's MWBE goals could not be implemented in 2001 because the County did not have the appropriate findings from a disparity study. Therefore the Program, for a decade has been limited to outreach and data collection.

4. Coliseum Advisory Board M/WBE Program

The M/WBE Program was created by the Bexar County Coliseum Advisory Board (CAB) to create fair and realistic contracting opportunities for small, minority, and women-owned business enterprises. M/WBEs are defined as Small, Minority and Women-owned businesses certified with a Bexar County Commissioners Court-approved agency. CAB established a 20 percent M/WBE target for all procurements. CAB encourages its contractors to exercise good faith to meet its M/WBE goal.



5. University Health System Supplier Diversity Program

The County and the University Health System (UHS) established a partnership to assist the UHS in meeting its Diversity Supplier Program objectives. The Program was established to inform M/WBEs about UHS's procurement opportunities and identify M/WBE capacity.

6. Center for Health Care Services

The County and the Center for Health Care Services (CHCS) also established a partnership to assist CHCS in identifying and utilizing HUBs and SMWBEs. CHCS is committed to making positive efforts to utilize local small businesses and M/WBEs in the acquisition of supplies and equipment on a competitive basis.

C. Funded Entities and Facilities

Pursuant to Administrative Policy 8.0, all County funded entities and facilities are required to identify a liaison to assure compliance with the County's goals and to coordinate with the SMWBE Program Office.

The SMWBE Program currently assists and monitors the following funded entities, facilities, and agreements:

- Spurs Sports & Entertainment
- Cibolo Canyon Public Improvement District
- University Health System
- Freeman Coliseum
- Center for Health Care Services
- San Antonio River Authority

D. Tax Abatement - Economic Incentives

The County is authorized to abate ad valorem⁵ property taxes on the value of new improvements to real property, tangible personal property, and inventory and supplies.⁶ Applicants for the tax incentive must agree, when prudent, to divide contracted work and procurement opportunities into the smallest feasible portions to allow for maximum SMWBE participation. The applicant must also demonstrate a good faith effort to award at least 20 percent of its contracted work to certified minority and women-owned businesses and at least 30 percent of its contracted work to certified small businesses. The County describes a good faith effort as evidence that the applicant has increased its purchasing of commodities, equipment, professional and personal services, maintenance and construction from SMWBEs.

⁵ In proportion to the value of something.

⁶ Chapter 312 of the Texas Tax Code.



IV. RACE AND GENDER-NEUTRAL RECOMMENDATIONS

Mason Tillman recommends race and gender-conscious remedies designed to address findings of statistically significant M/WBE disparity when there is evidence of discrimination; however, the County's data set is insufficient to identify disparity in individual industries as required by case law, and there was no evidence of discrimination.

The Study found that there were statistically significant disparities for specific ethnic and gender groups in the three industries. The methodology which produced these findings is based upon the holdings of *Croson* and its progeny. The County requested race neutral recommendations to address the Study findings. The recommendations are set forth below. The race and gender-neutral recommendations apply to all of the County's prime contracts in the three industries.

A. Pre-Award Recommendations

1. Expand Unbundling Policy

The County unbundles large contracts into smaller ones to provide additional opportunities. While the County has implemented measures to unbundle its contracts, 13 of its 2,240 vendors received \$145,278,287 or 50 percent of the prime contract dollars. There is a more diverse pool of ready, willing and able firms to compete on smaller, unbundled projects. Large construction, landscaping, fencing, and traffic control projects could be let to a more diverse group of contractors.

CRITERIA TO BE USED IN UNBUNDLING
Projects with multiple NAICS codes
Size and complexity of the project
Number of project locations
Sequencing and delivery of the work
Similarity of the goods and services procured
Availability of SMWBEs to perform parts of the procurement



2. Adopt the Initiatives in the County's SMWBE Fiscal Year 2010 through 2012 Strategic Plan

On August 24, 2009, the SMWBE Program Office adopted the Fiscal Year 2010 through 2012 Strategic Plan. This plan was to provide economic development for SMWBEs. The County should implement the Plan initiatives which include:

- Increase vendor participation on BidNet via aggressive outreach and strengthening relationships with partner agencies and organizations;
- Establish a Procurement Guideline manual profiling the Annual Small, Minority, Women and Veterans Business Owners Conference entitled, "*How to Get in the Game & Stay in the Game.*" The County should expand its partnerships with other local, state, federal, and private sector contracting entities to promote the conference. The conference attendees should be monitored and tracked to determine their success as well as evaluate the value received by the conference exhibitors and sponsors. The County could maintain communication with the attendees via a link on its website with a *Frequently Asked Page* responding to inquiries, updates regarding SMWBE Program changes affecting prospective bidders, and upcoming contracting opportunities with the County.
- Implement the Technology Program which will be comprised of information technology professionals dedicated to the implementation and advancement of technology solutions that will improve service capabilities and business operations of SMWBEs.

3. Expand the SMWBE Program Certification Designations

The County should expand its SMWBE program by recognizing businesses certified as an African American Business Enterprise (AABE), Asian American Business Enterprise (ABE), Disabled Individual Business Enterprise (DIBE), Emerging Small Business Enterprise (ESBE), Hispanic American Business Enterprise (HABE), Native American Business Enterprise (NABE), or Veteran Business Enterprise (VBE) through the SCTRCA's new certification designations. The SCTRCA is responsible for the certification process for these entities to ensure that only bona fide firms participate in the program.

4. Establish a Business Enterprise Center

The County desires to support business creation and employment in its market area by providing value-added resources and services to SMWBEs. The Business Enterprise Center would provide the following services to SMWBEs:

- Business consulting
- Educational seminars



- Network access
- Funding access

The Business Enterprise Center should include training and conference room rentals, web services such as internet training, business development programs, and a procurement technology kiosk. Information on certification requirements for SMWBE, DBE, and HUB designations will also be included in the services offered at the Business Enterprise Center. ACCION Texas and the Small Business Administration could have satellite offices to provide start-up loans and financing for SMWBEs. And the following agencies would have satellite offices at the center to provide technical assistance for SMWBEs:

- Procurement Technical Assistance Center (Federal Business & Counseling Center)
- SCORE, Counselors to America's Small Business
- University at Texas San Antonio, Minority Business Enterprise Center
- University at Texas San Antonio, Small Business Development Center
- University of Texas Bonding Program

In addition, a construction plan room for general contractors to post bids and conduct research could be set up at the center.

5. Review Cooperative Agreements

The County should review its cooperative agreements for opportunities to increase the participation of SMWBEs. Standard written procedures setting forth the criteria to be used to identify contracting opportunities for SMWBEs should be implemented by the County.

6. Establish a Direct Purchase Program for Construction Contracts

A Direct Purchase Program would reduce the amount of a construction bid subject to a bond. On procurements where the County is statutorily allowed to purchase material supplies directly from vendors, the prime contractor would bid the material and supplies and itemize the cost in their bid, and the County would purchase them directly from the vendor. The cost of material and supplies would be subtracted from the bid for the purpose of establishing the required bond, thereby reducing the amount of the contractor's bond that would be obligated for the job.

A direct purchase program can be beneficial to both the County and prime contractors, especially SMWBEs. The surety bond premium would be reduced by the value of the material cost. In addition more competitive pricing should be available from the supplier because the County would make the payment directly. Savings on the direct cost of supplies would be a benefit to the County and to the contractor. The County's supply costs, which the contractors pass through in their bids, would be reduced, and the contractor's cash flow requirement to pay suppliers in advance of receiving reimbursement from the County would be eliminated. This would create a win-win



situation.

7. Joint Ventures

The County should encourage joint ventures between SMWBEs to create more contracting opportunities at the prime contract level. Joint ventures can benefit SMWBEs by reducing costs, consolidating risks, and obtaining experience working as a prime contractor.

8. Virtual Plan Room

The County should consider purchasing software that would allow bidders to obtain digitized plans and specifications on the County's website. Such software could reduce the need to designate or pay for a space for a plan room and reduce the reproduction cost for contractors.

9. Remove Brand Name Requirements in Solicitations

The County should refrain from specifying brand names in their solicitations in order to avoid restricting competition because the named brands may not be available to SMWBEs or offered at a competitive price.

10. Develop an Expedited Payment Program

Expedited payments should be implemented to remove the major barrier to small businesses—late payments from prime contractors. Payments to prime contractors would be made within 15 days of the County receiving an undisputed invoice, and prime contractors would be required to pay their subcontractors within five days of receipt of their invoice payment. The County should also adopt and implement written measures which encourage prime contractors to quickly resolve disputed invoices between a subcontractor and the prime contractor.

11. Publish Informal Contracts

Informal contract opportunities should be posted on the County's website, and small businesses should be requested to express their interest in performing the small contracts. E-mail notices of contracting opportunities should also be targeted to certified businesses providing the goods or services being solicited.

12. Mandatory Reporting by Contractors of SMWBE Participation

All prime contractors should be required to report SMWBE and non-SMWBE participation in their contracts. This will increase the amount of data available for identifying disparity in individual industries.



13. Conduct a SMWBE Outreach Campaign

There should be a comprehensive outreach campaign to promote the enhancements from the Availability and Disparity Study. The Communication and Marketing Program set forth in the County's FY 2010 through 2012 Strategic Plan should be implemented, including the following initiatives:

- Work with the County Public Information Officer and court offices to disseminate press releases and public service announcements to inform the media and community regarding the SMWBE Program;
- Allow the SMWBE Program Office to pursue quarterly interviews with local radio and television stations and partner with local business organizations to discuss opportunities for collaboration that will benefit SMWBEs;
- Make available printed and online information on the SMWBE Program;
- Draft a business development brochure and manual;
- Provide E-notifications for programs and events;
- Provide E-flyers with hotlinks to SMWBE Program on the County's website;
- Promote cross marketing strategies with other entities; and
- Develop a quarterly newsletter

14. Pay Mobilization to Subcontractors

When a mobilization payment is made to a prime contractor, the subcontractor should be paid its appropriate share of the mobilization payment when directed to mobilize and prior to commencing work. Subcontractors should receive mobilization payments because project start-up costs can also be difficult for a subcontractor who often has limited access to credit.

B. Post-Award Recommendations

1. Publish SMWBE Utilization Reports

The County should publish quarterly utilization reports. Utilization reports should present payment and award data organized by industry, department, ethnicity, gender, and certification status to measure the effectiveness of the SMWBE Program. Change orders and substitutions should be identified in the reports, and any modifications to the listed subcontractors or the subcontract award amount should be tracked.

The utilization reports should be submitted to the County Council on a quarterly basis. The fourth quarter report should also include an assessment of program activities and recommendations for improvement. Exemplary practices and achievements in each department should also be noted in the fourth quarter report. All utilization reports should be posted on the County's website and made available to businesses by e-mail.



2. SMWBE Substitution Requirements

The County should require prime contractors to provide written justification whenever the prime contractor, in performing the contract, does not enter into a subcontract with a listed subcontractor, or substitutes another subcontractor for one already identified in the prime contractor's bidding documents.

The subcontractor substitution provisions should have grounds when the County may consent to a prime contractor's request to substitute a subcontractor listed in its bid. The grounds should establish procedures for the County to authorize substitution of subcontractors. The grounds for which the County may consider allowing a prime contractor to substitute another entity for a listed subcontractor are as follows:

- When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract;
- When the listed subcontractor becomes bankrupt or insolvent;
- When the listed subcontractor fails or refuses to perform its subcontract;
- Inability of the listed subcontractor to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work detailed in the contract, or
- When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and is not in substantial accordance with drawings and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

When a prime contractor's request for substitution or request to perform work for a listed subcontractor is received, the County should give the listed subcontractor prompt, written notice of the prime contractor's request to substitute and the reason for this request. The County should provide the subcontractor in question with a notification letter outlining the prime contractor's allegations. Although additional subjects can be added to the notification letter, the following requirements should be met:

- The notification letter should be sent to the listed subcontractor by certified or registered mail to the last known street address of the listed subcontractor,
- A description of the scope of the work to be performed by the proposed substitute subcontractor should be included in the notification letter,
- A copy of the contractor's request for permission to substitute or remove a listed subcontractor should be enclosed with the notification letter, and
- The notification letter should advise the listed subcontractor that it has 10 working days from the date of receipt of the notice to submit written objections to the substitution, to the department issuing the letter.



The prime contractor's request may be consented if (1) the listed subcontractor consents either expressly in writing or by not objecting within ten working days, or (2) the requested substitution is in accordance to the proposed grounds for substitution listed above.

3. Payment Verification Program

A web-based payment verification program should be instituted. All prime contractor payments would be posted on the County's website on a weekly basis to inform subcontractors when the prime contractor payment was issued. The posting should be scheduled for the same day and time each weekday to simplify the time required for subcontractors to track their prime contractor's payment. Web postings should reduce the time required for the County's staff to address subcontractors' questions regarding their prime contractor's payment.

4. Verify SMWBE Subcontractor Payments

The County's payment verification system should ensure SMWBE subcontractors are timely for their work. Prime contractors should be discouraged from holding the subcontractor's final payment until after the project has been approved by the County.

5. Provide Debriefing Process in Procurement Solicitations

Debriefing sessions for unsuccessful bidders should be timely held by the project manager or the appropriate County department. The process utilized to debrief unsuccessful bidders should be described in the County's bid and proposal solicitations.

V. ADMINISTRATIVE RECOMMENDATIONS

A. Website Enhancements

The County's website was evaluated with the goal of improving its functionality, informational content, and aesthetic for businesses wishing to contract with the County. The County's website should be a user-friendly Internet interface that facilitates navigation by businesses seeking information on the County's contract opportunities and registration on the Centralized Vendor Registration. The following enhancements are offered to improve accessibility to businesses seeking information and contracting opportunities on County projects.

1. Improve Website Structure by Reorganizing Links and Creating a Contracting Portal for Business Users

The County should reorganize the links on its main homepage in order to facilitate improved access to needed information within the first 30 seconds of being on the site.



Reorganization of the site eliminates the need to read through cumbersome links. The County's main homepage includes over 70 hyperlinks directing users to different web pages, which makes the web browsing experience less appealing and more time consuming.

Additionally, the County should identify the information and services that are important to users that visit the main website. These users and their priorities should be the organizing principles of the site. The website should be structured so that users can immediately identify the areas that apply to them and guide them toward their goals.

The County website is very text-heavy with bolded links that are not grouped together and presented in a menu format. The top navigation bar provides direct links to very specific County departments while the rest of the County departments are located towards the middle of the page. The user cannot easily find the link to Purchasing and Procurement or the SMWBE Program due to the array of individual text links that are not grouped by category. The County should consolidate all procurement and contractor information into a contracting portal named "*Doing Business with the County.*" This portal should be a one-stop-shop with all the information a potential bidder would need in order to do business with the County, from getting certified with the SMWBE Program and registering as a vendor in the County's Centralized Vendor Registration to downloading resources, submitting a correctly prepared bid for a County contract, and information on how to comply with procurement standards.

2. Provide Detailed Contact Information for Purchasing Agents

The County's Purchasing Department webpage lists one purchasing agent and the department's general contact information on the top left column, which is easily viewed by the user. Complete contact information for the Procurement Department and SMWBE Program, including purchasing agents and business/diversity compliance officers, should also be listed. The office locations, e-mail addresses, telephone numbers, and fax numbers for key personnel should be published for the convenience of potential bidders wishing to contact a specific person. Listing specific contact names and their information can facilitate access for contractors seeking to establish contact with the County for clarification on bid items, certification, or other inquiries.

3. Clarify and Update Links

The County should clarify and regularly update links provided on the Purchasing and Procurement page to ensure that bidders have access to the most current information. For example, the Bids/Proposals link directs bidders to "Texas Bid System," which includes bid opportunities from the County and a number of Texas agencies. Potential bidders might be confused whether to register with the "Texas Bid System" or the County's Centralized Vendor Registration since there are no clear directions for the registration process. Clarifying and updating links will ensure their functionality, prevent confusion, and make it more efficient for users to obtain information on County bid opportunities.



Therefore, it is recommended that the County list its bid opportunities on its website in addition to providing an external link to the centralized “Texas Bid System” website.

4. Offer Links to Ethnic/Trade Associations Assisting SMWBE Contractors

The County’s website should offer links to its partners that offer SMWBE supportive services. Membership organizations and their services should be listed. There should also be links for ethnic/trade organizations and governmental agency publications for small businesses and minority contractors.

5. Make Compliance Reports Available

The County should post compliance reports on a regular schedule to document its business diversity mission. Making such information public on a regular schedule to businesses not only ensures the integrity of the County’s SMWBE Program but allows businesses in the County’s market area to readily review the results and effects of the Program.

6. Consider the Needs of Visitors with Disabilities

While the web is still a largely visual medium, it is important to take into consideration those who cannot access it in the usual way. Many design decisions affect not only a website's appearance but also how accessible it is to those who depend on alternative technologies to interact with the Internet. Good design practices for accessibility are almost always good design practices in general. A well-designed site will often be an accessible site. Shorter, more direct text would also improve the experience of visually-impaired users employing screen readers.

7. Update the County’s Logo

The County logo on every web page should be made clickable. It is a general web design practice to insert a hotspot on a business/organization’s logo and link it to the homepage so that users can easily navigate back to a home page without having to search the hyperlink "Home" while they are browsing through the web pages.

8. Maintain Navigation to the County’s Purchasing Department Website

Any domain outside of Bexar County should be loaded in a new window or new tab. Currently, the link to “Bids/Proposals,” which directs the user to “Texas Bid System” hosted on govbids.com is loaded on the parent window of the Purchasing Department webpage. The link should open a new window or tab to prevent the user to experience loss of navigation from the County’s page.



9. Provide the Website in Different Languages

It is recommended to provide the County's website in optional languages that are widely used in the County's market area in order to facilitate access for business owners with limited English language skills who are seeking to do business with the County.

10. Provide Downloadable SMWBE Directory

The County's SMWBE directory should be made available in a downloadable format to allow users to download it and save it for future reference. In addition, the date of when the directory was last updated should be provided in order for users to determine if there were any new updates since they last accessed the directory.

It is also recommended that the County's SMWBE directory link be made available via one of the tabs on the Procurement Department's main webpage in order for prime contractors to easily access the County's SMWBE directory.

11. Develop a Mobile-Optimized Website

With the current popularity of small handheld devices, it is recommended that a mobile-optimized County website be implemented for a faster and more efficient experience for handheld device users. Although smartphones, such as the iPhone and Google Android devices, can display full web pages, having features with essential information that can be found in a few seconds can make the mobile web-browsing experience more user-friendly.

12. Set Up a Twitter Feed or Blog

The County's website should incorporate a Twitter feed or blog and place it on the County's main homepage, as well as the Procurement Department and SMWBE Program webpages. A Twitter feed and blog can be an informative tool providing hints and tips for responding to County solicitations. The objective is to have rotating, pertinent information for the site's target user.

B. Data Management Enhancements

1. Compliance, Monitoring, and Reporting

Currently, the County utilizes a monitoring and tracking system that tracks its subcontract and bidder data. However, the County set forth compliance, monitoring, and reporting initiatives in its Fiscal Year 2010 through 2012 Strategic Plan that need to be implemented. Specifically, the initiatives include:



- Develop a set of regularly produced reports from the Advantage Financial System/Contract and Diversity Management System to track the utilization of SMWBEs;
- SMWBE Program staff should collaborate with the Purchasing Department to develop a standardized method, timeline, and strategy to track bidder and award data in a field format that allows for automated extraction;
- Perform automated updates regarding certified SMWBE vendor data in the Advantage Financial System from the Contract and Diversity Management System database on a quarterly basis

2. Develop Department-Wide SMWBE Manager and Staff Training

A department-wide SMWBE training manual should be developed. This manual would provide background on the SMWBE Program, any state or federal regulations which govern the program, and the County's SMWBE policy and objectives and discuss standard methods employed by the County to increase SMWBE participation and administer the Program in accordance with the County, State and federal regulations. Managers and departmental staff would be responsible for attending annual training seminars to ensure they are abreast of current changes in the law to the County's SMWBE Program.





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