CITY OF MILWAUKEE

Study to Determine the Effectiveness of the City's Emerging Business Enterprise Program

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PREFACE

1. Study Purpose

The purpose of the Study is to determine the effectiveness of the City of Milwaukee's (City) Emerging Business Enterprise Program. The Emerging Business Enterprise Program was created under Chapter 360 of the Milwaukee Code of Ordinances. The Study included four industries: construction, architecture and engineering, professional services, and goods and other services. The study period was between January 1, 2005 and December 31, 2005.

This volume is organized into the following ten chapters:

(1) Procurement Analysis

(2) **Certification Comparison Analysis**

(3) **Subcontracting Evaluating**

(4) **Market Area Analysis**

(5) **Availability Analysis**

(6) **Prime Contractor and Subcontractor Utilization Analysis**

(7) **Anecdotal Analysis**

(8) **Identifying Best Management Practices**

(9) **Monitoring and Reporting Enhancements, and**

(10) **Recommendations**

2. Study Team

Mason Tillman Associates, Ltd., (Mason Tillman) a public policy consulting firm based in Oakland, California, was selected to perform the Study. Prism Technical Management & Marketing Services, LLC assisted Mason Tillman in the performance of the Study. The subcontractor performed data collection activities, anecdotal interviews, focus group facilitation and draft report, and business community meeting facilitation.

3. Overview of the Current EBE Program

The Emerging Business Enterprise (EBE) Program was enacted in 1989, through Chapter 360 of the Milwaukee Code of Ordinances. The program was created to assist and protect the interests of individuals who are disadvantaged and small business concerns in order to promote and encourage full and open competition in the City of Milwaukee. Chapter 360 of the Milwaukee Code of Ordinances was revised in 2002 to utilize city-certified EBEs in all contracting activities by approving an annual 18 percent EBE utilization requirement for each contracting department, and all other operating departments.

1

PROCUREMENT ANALYSIS

I. INTRODUCTION

Mason Tillman was commissioned by the City of Milwaukee (City) to conduct a study to determine the effectiveness of the City's Emerging Business Enterprise Program (EBE) in the areas of construction, professional services, and goods and other services.

One of the tasks assigned to Mason Tillman was to develop an understanding of the laws, regulations, procedures, and policies which govern the City's procurement practices. The Study includes an analysis of how those laws, regulations, procedures, and policies impact the participation of City-certified Emerging Business Enterprises and minority and woman-owned businesses.

The salient ordinances[1] governing the City of Milwaukee's procurement practices in the Milwaukee Code of Ordinances are:

- Chapter 7: Commissioner of Public Works
- Chapter 16: Boards and Commissions; Purchasing
- Chapter 81-102.3: Purchasing Appeals
- Chapter 105-65.4: Disposal of Unclaimed Vehicles and Trailers
- Chapter 310: Department of Administration
- Chapter 360: Emerging Business Enterprise Program
- Wisconsin State Statutes, Subchapter IV, Section 16: Purchasing

The time period for this study commences January 1, 2005, through December 31, 2005.

[1] Milwaukee Code of Ordinances.

II. DEFINITIONS

The definitions applicable to the City of Milwaukee's Study to Determine the Effectiveness of the City's Emerging Business Enterprise program are:

- **Emerging Business Enterprise** means a small business concern that is owned, operated, and controlled by one or more individuals who are disadvantaged. The individuals must have day-to-day operational and managerial control, interest in capital, financial risks, and earnings commensurate with the percentage of ownership.

- **Small Business Concern** means a business which is independently owned, operated, and controlled, and which is not dominant in its local field of operation, and which has had annualized gross receipts consistent with the receipts-based size standards set forth by the federal Small Business Administration (SBA). A business which does not meet these requirements may nonetheless be deemed a small business concern if the business establishes by credible evidence that different standards should be applied in its field of endeavor.

- **Owned, Operated, and Controlled** means a business which is one of the following:

  1) A sole proprietorship legitimately owned, operated, and controlled by an individual who is disadvantaged;
  2) A partnership or joint venture legitimately owned, operated, and controlled by individuals who are disadvantaged and who own at least 51 percent of the voting interests of the enterprise;
  3) A corporation legitimately owned, operated and controlled by one or more individuals who are disadvantaged, who own at least 51 percent of the outstanding shares, and who hold at least 51 percent of the voting interests of the corporation.

III. OVERVIEW OF THE PROCUREMENT PROCESS

The City of Milwaukee's Code of Ordinances and the Wisconsin State Statutes delineate the City's procurement regulations and procedures. Small no-bid procurement of goods and other services valued at less than $30,000 are not subject to formal bids or advertisement requirements. In accordance with the advertising requirements, formal bids are required to be advertised in the City's official newspaper at least twice, two days prior to the bid opening date.

Informal bids are conducted for purchases valued between $10,001 and $30,000. Informal bids are not advertised or publicly opened. Procurement for purchases valued at more than $30,000 are procured by formal bid procedures awarded by the Purchasing Director. Formal bids are advertised in the City's official newspaper for at least five days preceding the bid opening date. The formal bids are opened publicly and bidders' names are read into the record.

The Request for Proposal (RFP) process is used when price is not the only factor used to determine the contract award. The RFP process is an exception to the bid process and a Request for Exception to Bidding form is required by the User Department. Formal RFPs are advertised in the City's official newspaper at least five days prior to the opening date. All formal RFPs are opened publicly and the proposers' names are read into the record.

Procurement of the Department of Public Work's (DPW) professional services contracts valued at more than $25,000 is used when the service required is professional, artistic, scientific, or creative. It is also used when its is impossible or impractical for the City to develop precise bidding specifications or if the project is experimental in nature.

Procurement of the DPW's construction services valued at more than $25,000 must be advertised. The bid is advertised at least twice, in two different weeks, in the official City newspaper. The advertisement includes the work to be done and the time period for doing the work. Table 1.01 below summarizes the City's procurement policies and procedures.

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
Goods						
Petty Cash	Commodities and Services valued at less than $100	None	Solicitation is at the discretion of the User Department	None	User Department	User Department
PeopleSoft Voucher	Commodities valued less than $500 from vendors not on the Procard Valued Supplier List or any services valued less than $2,000	None	One or more quotes (recommended written) at the discretion of the User Department	An emphasis on Emerging Business Enterprise (EBE) participation is encouraged	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
PeopleSoft Requisition	All purchases valued at more than $500 (when the Procard cannot be used)	All bids and RFPs are posted on the City's web site. Vendors who registered for E-Notify for the bid category will receive an email notice	Informal bid/RFP for purchases between $10,001 and $30,000 or formal bid/RFP for purchases more than $30,000	None	Procurement Services	Purchasing Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
Procurement Card	Goods and Other Services valued less than $5,000	None	User Department solicits vendors for the needed trades listed in the City's Valued Supplier List	An emphasis on EBE participation is encouraged.	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
PeopleSoft Requisition with Jumpstart Form	Commodities between $500 and $10,000; and Services between $2,000 and $10,000, when the Procard cannot be used	None	None	If the quote provided by the User Department is not from an EBE, the Purchasing Agent forwards the requisition and quote to an EBE Analyst to determine if an lower quote can be obtained from an EBE vendor	Procurement Services issues a purchase order once the User Department completes a Jumpstart form	Procurement Services

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
Piggyback Purchases						
The City piggybacks off of a resulting contract that is conducted by another governmental agency for a particular commodity or service		Advertising requirements are governed by the lead agency	Solicitation requirements are governed by the lead agency	EBE requirements are governed by the lead agency	User Department	City Purchasing Director
Professional and Other Services						
	Services valued at less than $30,000	None	Informal bid/RFP process	Draft bids are forwarded to an EBE Analyst by the Purchasing Agent for appropriate EBE participation	User Department Manager	City Purchasing Director

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
	Services valued at more than $30,000	Bids/RFPs are advertised in the City's newspaper at least twice, two days prior to the bid opening date. The bids/RFPs are publicly opened and the vendors' names are read into the record	Formal bid/RFP process	Draft bids are forwarded to an EBE Analyst by the Purchasing Agent for appropriate EBE participation determination	User Department	City Purchasing Director

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
Other Procurements						
Vendor Contract (formerly Blanket Contract)	Fixed price over a specific period of time	Bids are posted on the City's web site on the Bids pending page	Informal bid process for contracts valued at less than $30,000 Formal bid process for contracts valued at more than $30,000	Bids reviewed for possible EBE participation	User Department	City Purchasing Director
Emergency	None	None	None	None	City's Purchasing Director/User Department	City's Purchasing Director

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
Single/Sole Source	None	None	None	All single/sole source requisitions are forwarded to an EBE Analyst for possible EBE participation determination	User Department	City's Purchasing Director
DEPARTMENT OF PUBLIC WORKS						
Commodities						
Petty Cash	Commodities valued at $100 or less	None	Solicitation is at the discretion of the User Department's Petty Cash Administrator	None	User Department	User Department's Petty Cash Administrator

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
DEPARTMENT OF PUBLIC WORKS						
Small Dollar Purchase	Commodities valued at $500 or less	None	Solicitations are made by one or more price quotes at the discretion of the User Department	None	User Department	User Department
PeopleSoft Requisition	Commodities valued at $500 or more	None	Solicitation is at the discretion of the User Department	None	User Department	User Department
Procurement Card	Commodities valued at $5,000 or less	None	Solicitations are made from the City's Valued Supplier List	None	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
DEPARTMENT OF PUBLIC WORKS						
Services						
Small Dollar Purchase	Services valued at $2,000 or less	None	One or more vendor price quotes Contract goes to the lowest compliant vendor	None	User Department	User Department
Procurement Card	Services valued at $5,000 or less	None	Solicitations are made from the City's Valued Supplier List	None	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
DEPARTMENT OF PUBLIC WORKS						
Purchasing Authority	Services valued at $4,999 or less	None	Solicitations are made by one or more telephone bids, low bid confirmed in writing	None	User Department	User Department
	Services valued between $5,000 and $9,999	None	Solicitations are made by three telephone bids, with low bid confirmed in writing	None	User Department	User Department
	Services valued between $10,000 and $14,999	None	Solicitations are made by a minimum of three written bids	None	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
DEPARTMENT OF PUBLIC WORKS						
	Services valued between $15,000 to $24,999	None	Solicitations are subject to informal procurement procedures	None	User Department	User Department
Purchasing Authority Formal Contract	Services valued at $25,000 or more	Bid/RFPs are advertised in the City's official newspaper at least twice, in two different weeks, prior to bid opening. The bids are publicly opened and the vendors' names are read into record	Formal RFP process	RFPs are given to an EBE analyst for review of possible EBE participation	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
DEPARTMENT OF PUBLIC WORKS						
Service Orders						
	Service Orders valued at less than $5,000	None	Solicitations are made by one or more telephone bids, with low bid in writing	None	User Department	User Department
	Service Orders valued between $5,000 and $24,999	None	Solicitations are made by three telephone bids, with the low bid in writing Service orders over $10,000 are solicited with three written bids	None	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
DEPARTMENT OF PUBLIC WORKS						
Construction						
	Construction Services valued at more than $25,000	The bid/RFP is advertised for at least twice, in two different weeks, in the official City newspapers. The bids/RFPs are opened publicly and the vendor's names are read into the record	All Construction contracts are awarded to the lowest responsible bidder	Prior to the creation of the bid, requests for bids are reviewed by EBE analysts for potential EBE participation	Commissioner of Public Works	Commissioner of Public Works

IV. STANDARDS FOR PROCUREMENT SERVICES' PROCUREMENT CONTRACTS

A. Small No-Bid Procedures

1. Petty Cash - Purchases of goods valued at less than $100

Procurement for purchase of commodities and services valued at less than $100 is made by solicitation of quotes at the discretion of the User Department. No other documentation is required by Procurement Services.

2. PeopleSoft Voucher - Purchases of goods valued at less than $500 or Services Valued at less than $2,000

Procurement for commodities valued at less than $500 from a vendor that is not on the Procard Supplier list, or any service valued at less than $2,000. Solicitations are made by one or more quotes (recommended written) at the discretion of the User Department with an emphasis on EBE participation.

3. PeopleSoft Requisition - Purchases of goods valued at more than $500

Procurement for commodities valued more than $500 when the Procard cannot be used. The User Department must enter a PeopleSoft requisition. If the purchase being requested is for a sole source, single source, or a request for an RFP, the User Department must complete an Exception to Bidding Form.

4. Procurement Card - Purchases of goods and other services valued at less than $5,000

Procurement for commodities and services valued at less than $5,000. Items must be purchased utilizing the City's Valued Supplier List with an emphasis on EBE participation. The list can be viewed on the Procurement Services website under the Procard link.

5. PeopleSoft Requisition with Jumpstart Form - Purchases of goods valued between $500 and $10,000 and services between $2,000 and $10,000

Procurement for commodities between $500 and $10,000 and services between $2,000 and $10,000 when the Procard cannot be used. The User Department must enter a PeopleSoft requisition plus submit a completed Jumpstart form. This form should have a valid price for each item contained on the requisition, delivery times, and a binding signature from the selected vendor. Procurement Services will then create a purchase order with the selected vendor. If the quote provided by the User Department is not from an EBE vendor, the Purchasing Agent forwards the requisition and quote to an EBE Analyst to determine if an lower quote can be obtained from an EBE vendor.

6. Piggyback Purchases - Purchases valued at more than $500

When a competitive bid is conducted by another governmental agency for a particular commodity or service, which include terms and conditions that allow other local governmental agencies to take advantage of the pricing, the City is allowed to piggyback off of the resulting contract.

Piggyback contracts are typically awarded to vendors as distributors for a certain commodity by manufacture or brand. The State of Wisconsin and the University of Wisconsin post their contracts on the Internet. The User Department places an order directly with the vendor without prior approval from the Procurement Services Section for any City wide vendor contract that was established by piggybacking off a State or University contract.

B. Informal Bid Procedures

Informal bids are conducted for purchases valued between $10,001 and $30,000. Informal bids are not advertised or publicly opened. Informal bids are posted on the Procurement Services website and vendors who are registered for E-Notify for the bid category will receive an email notice when the bid is posted to the Bids Pending page.

Informal bids are usually closed seven days after the posting. Awards for informal purchases are made by the Purchasing Agent to the lowest responsible and responsive bidder that is in compliance with the bid specifications and/or drawings, and terms and conditions.

1. Commodity Purchases - Purchases valued at less than $30,000

Procurement for commodity purchases valued less than $30,000. All bids are posted on the City's website. An EBE Bid Analysis Form is completed to determine whether EBE participation will be required on the contract.

2. Services Contracts - Services valued at less than $30,000

Procurement of services valued less than $30,000 for professional, artistic, experimental services, or general services. The Request for Proposal process may be used instead of the bid process to acquire services when price is not the only factor used to determine the contract award. Draft bids are forwarded to an EBE Analyst by the Purchasing Agent for appropriate EBE participation analysis.

C. Formal Bid Procedures

Procurement for purchases valued at more than $30,000 are procured by formal written bid/RFP contract awarded by the Purchasing Director. Formal bids are advertised in the City's official

newspaper for at least five days preceding the bid opening date. All formal bids are opened at a public bid opening where vendor names are read and recorded.

Formal procurement contracts include:

i. Commodity Contract - for the procurement of goods, supplies, materials and equipment at a fixed price with a specified delivery date resulting from an award of a formal bid or exception to bid request.

ii. Service Contract - for the procurement of a service, i.e. maintenance of software and hardware, consulting services, etc., at a fixed price for a specified period of time resulting from award of a formal bid, RFP, or exception to bid request.

iii. Vendor Contract (Commodity or Service) - for the procurement of a commodity or service over a specified period of time at specified prices with an estimated contract value resulting from an award of a formal bid, RFP, or exception to bid request.

iv. City-wide Vendor Contract (Commodity or Service) - for the procurement of a commodity or service over a specified period of time at a specified price with an estimated contract value established for all City departments to purchase from resulting from an award of a formal bid, RFP, or exception to bid request.

A formal contract requires the signature of the contractor, City Purchasing Director and the Comptroller.

1. Services Contracts - Services valued at more than $30,000

Procurement of services valued at more than $30,000 for professional, artistic, experimental services, or general services. The Request for Proposal process may be used to acquire services when price is not the only factor used to determine the contract award. Draft bids are forwarded to an EBE Analyst by the Purchasing Agent for appropriate EBE participation.

D. Request for Proposal Procedures

The Request for Proposal (RFP) process is used when price is not the only factor used to determine the contract award. The following evaluation criterion is established and weighted:

i. Experience of the firm

ii. Experience of personnel assigned to the project

iii. Approach to project

iv. Reporting methods

v. Training

vi. Completeness of the proposal

vii. Ability to meet the City's needs

The RFP process is an exception to the bid process and a Request for Exception to Bidding form is required from the User Department. The City Purchasing Director approves the request to conduct the RFP process.

Formal RFPs are advertised in the City's official newspaper at least five days prior to the opening date and are opened publicly where the vendors names are read into the record. All formal RFPs, the scope of work and any attachments are posted on the Procurement Services website under the Bids Pending link page. Potential proposers who are registered for E-Notify will receive an email notification when the RFP documents are posted and available to download from the City's website.

Formal RFPs are given to the EBE analyst for review of possible EBE participation or extra points. The proposals are reviewed by an evaluation committee. Once the evaluation committee completes its review of the proposals, the purchasing agent tabulates the scores. A letter of award recommendation to the highest ranked proposer is prepared by the evaluation committee. The purchasing agent then prepares an award recommendation for review and approval by the Purchasing Director. There is no appeal process for this solicitation procedure.

E. Exemptions From the Formal Procurement Process

The following purchases are exempt from the City's formal procurement process.

1. Emergency Purchases

Emergency purchases are permitted in situations that threaten life, health, safety or the continuation of work. Emergency procurements are only authorized by the City's Purchasing Director.

2. Single/Sole Source Contracts

Single/sole source procurements are utilized when there are no other known sources of supply for a particular commodity or service. A PeopleSoft requisition must be entered and a Request for Exception to Bidding form must be submitted by the User Department. All single/sole source requisitions are forwarded to an EBE Analyst for possible EBE participation.

V. STANDARDS FOR THE DEPARTMENT OF PUBLIC WORKS' PROCUREMENT CONTRACTS

A. DPW Small No-Bid Procedures for Commodities

1. Petty Cash - Purchase of commodities valued at less than $100

Procurement for purchase of commodities valued at less than $100 is made by solicitation under the authorization of the Division's Petty Cash Administrator. No other documentation is required by the Department of Public Works.

2. Small Dollar Purchase - Purchase of commodities valued at less than $500

Procurement of commodities valued at less than $500 is made by solicitation by one or more price quotes. If the lowest compliant quote exceeds the dollar range for the small dollar purchase option, another option can be chosen. The Small Dollar Purchase option cannot be used for procurement contracts or Procard purchases.

3. PeopleSoft Requisition - Purchase of commodities valued at $500 or more

Procurement of purchase commodities valued at $500 or more are solicited by a PeopleSoft requisition that is electronically forwarded to the DOA - Procurement Service for processing.

4. Procurement Card - Purchase of commodities valued at less than $5000

Procurement of purchase commodities valued less than $5000 are solicited by vendors listed on the City's Valued Supplier list. The procurement card solicitation process cannot be used to purchase inventory items and items on a vendor contract.

B. DPW Small No-Bid Procedures for Services

1. Small Dollar Service Purchases valued at $2,000 or less

Procurement for services valued at $2,000 or less is made by one or more price quotes. If the lowest compliant quote exceeds the dollar range for the small dollar purchase option, another option can be chosen. The Small Dollar Purchase option cannot be used for procurement contracts or Procard purchases.

2. Procurement Card Purchases valued at $5,000 or less

Procurement of services valued at $5000 or less are solicited by vendors listed on the City's Valued Supplier list. The procurement card solicitation process cannot be used to purchase services that are available through a procurement contract.

3. Purchasing Authority valued at $25,000 or less

Procurement of services valued at $4,999 or less are made by the User Department by one or more telephone bids.

Procurement of services valued between $5,000 to $9,000 are made by the User Department by three telephone bids.

Procurement of services valued between $10,000 to $14,999 are made by the User Department by three written bids.

Procurement of services valued between $15,000 to $25,000 are subject to informal contract bidding regulations.

4. Purchasing Authority Formal Contract valued at more than $25,000

Procurement of services valued at more than $25,000 are subject to the DPW Professional Services Contracting Procedures.

C. DPW Procurement Procedures for Service Orders

1. Service Orders valued at $5,000 or less

Procurement of service orders valued at $5,000 or less are obtained by one or more telephone bids, with the low bid in writing.

2. Service Orders valued between $5,000 and $24,000

Procurement of service orders between $5,000 and $24,000 are obtained by three telephone bids, with the low bid in writing. Service orders valued over $10,000 should be solicited by three written bids.

All service orders where the low bid is not the determining fact in awarding the contract, documentation detailing how the vendor was chosen is required.

D. DPW Professional Services Contracting Procedures

Procurement of professional services contracts valued at more than $25,000. Professional services contracting procedures are used when the service required is professional, artistic, scientific, or creative. It is also used when it may be impossible or impractical for the City to develop precise bidding specifications, or if the project is experimental in nature.

Members of a selection panel evaluate the submitted proposals. The selection panel is convened by the Project Manager and confirmed by the Division Director. The evaluation criteria and the weight to be given each criterion is established when the RFP is prepared and is included in the RFP. The following selection criteria are always considered:

i. The quality and completeness of the consultant's proposal;

ii. The experience of the consulting firm (or firms if there will be subconsultants) in doing the kind of work being requested;

iii. The experience of the consultant staff who will be assigned to the project;

iv. The cost of the consultant's proposed services;

v. The level of Emerging Business Enterprise participation in the consulting services.

At least three top-ranking consultants are interviewed for the DPW's professional services contracts exceeding $50,000 or exceeding $100,000. In most cases, the highest ranked consultant is selected. In the event the highest ranked consultant is not selected, the Project Director will prepare a written statement explaining the reasons for the panel's decision. It is recommended that at least three top-ranking consultants are interviewed for DPW's professional services contracts exceeding $50,000. It is required that the three top-ranked consultants are interviewed for DPW's professional services contracts exceeding $100,000.

E. DPW Construction Contracting Procedures

Procurement of construction services valued more than $25,000

Procurement of the DPW's construction services valued at more than $25,000 must be advertised. A plan or profile of the work to be done and specifications must be placed on file in the Office of the Commissioner for the information of bidders and others. The bid is advertised for at least five days in the official City newspapers. The advertisement includes the work to be done and the time period for doing the work.

All bids/proposals are sealed and directed to the Commissioner. The submitted bids/proposals must be accompanied with a bid bond of a surety company licensed to do business in the State of Wisconsin, addressed to the City of Milwaukee in a sum not less than 10 percent of the amount of the bid. A bid bond is not required of a bidder who deposits with the Commissioner of Public Works cash or a certified check equal to 10 percent of the bid.

All construction contracts are awarded to the lowest responsible bidder who is in compliance with all bid requirements. The construction project and its detailed cost estimate are evaluated to determine Emerging Business Enterprise, Residents Preference Program, and apprenticeship requirements.

VI. SPECIAL PROCUREMENT PROGRAMS

A. Emerging Business Enterprise Program

The Emerging Business Enterprise Program (EBE) was created to assist and protect the interests of individuals who are disadvantaged and small business concerns in order to promote and encourage full and open competition in the City of Milwaukee. In 2002, Chapter 360 of the Milwaukee Code of Ordinances was revised to utilize city-certified EBEs in all contracting activities. The revision was approved by the Common Council and signed by former Mayor John

O. Norquist, setting an annual 18 percent EBE utilization requirement for each contracting department, and all other operating departments when contracting based upon authority.

Under the direction of the Department of Administration, the EBE administration is administered by an EBE manager. The manager is appointed by the Mayor and is confirmed by the Common Council. The EBE manager is charged with various responsibilities including:

- Establishing the criteria and procedures for reviewing contract performance and compliance with the requirements of the EBE program
- Developing appropriate rules, procedures and regulations for assuring EBE participation in City contracts
- Developing certification procedures
- Providing management assistance and direction to EBEs to maximize their participation in City contracts
- Developing a reporting and evaluation system
- Reviewing and monitoring all City contracts with EBE requirements for compliance
- Serving as a liaison with economic development organizations
- Coordinating any City-sponsored economic development programs for EBEs
- Reviewing EBE participation progress in City contracts and procurement activities
- Establishing reporting requirements for all City departments to document the percentage of contracts which have been awarded to EBEs
- Developing and monitoring affirmative action criteria for employment of minorities and women by contractors, subcontractors and suppliers.

1. Emerging Business Enterprise Certification

The EBE administration set forth criteria for determining which individuals or businesses are considered disadvantaged. Chapter 360 defines at an economic disadvantage as an inability to compete in the free enterprise system due to diminished capital, credit or bonding opportunities. The following factors are considered in determining whether an individual has been economically disadvantaged:

- Failure to accumulate adequate business capital or obtain sufficient credit to start or support a business concern

- Failure to acquire business-related credit or bonding under terms or circumstances as favorable as those generally experienced by non-disadvantaged individuals

- Failure to receive awards or bids of governmental contracts despite competitive pricing or other similar factors which have disadvantaged the applicant in the development of a business

- Business has no more than 15 employees and its average annual receipts do not exceed $1 million

- Gross annual receipts are 30 percent less than the standards set forth by the United States Small Business Administration (SBA).

2. Emerging Business Enterprise Goals

All City contracting departments and all other contracting authorities must utilize 18 percent of the total dollars through prime contracts or subcontracts, annually expended on:

- Construction contracts

- Purchases of services

- Professional services

- Supplies

The EBE manager annually reviews and adjusts the percentage goals with the approval of the Common Council. Each User Department submits to the Procurement Services Section requisitions that are forwarded to the EBE department for review and recommendation of EBE participation prior to bidding or awarding a contract. This includes Procurement Services' formal bids (in excess of $30,000) and informal bids (less than $30,000), Exception to Bid Requests, Amendment Requests, (including Requests for Proposals and sole source requests), and requisitions with JumpStart quotes less than $10,000. Additionally, it includes DPW's bids/RFPs for services valued at $25,000 or more and construction services valued at $25,000 or more.

VII. SPECIAL PROCUREMENT REQUIREMENTS

A. Living Wage Requirements

The City of Milwaukee adopted Ordinance 310-13 which establishes a living wage requirement for persons employed in the performance of certain service contracts for the City. Additionally, this ordinance requires the City Clerk to annually adjust the minimum hourly wage amount based on the most recent poverty guidelines for family of three as set by the United States Department of Health and Human Services.

B. Residents Preference Requirements

A residents preference hiring is required for all construction contracting activities of the Department of Public Works in accordance with Chapter 309 of the Milwaukee Code of Ordinances.[2] The ordinance requires that a minimum of 21 percent of worker hours be performed by unemployed residents of the Community Development Block Grant Area (CDBG).[3]

Developers are required to prepare and submit accurate and timely resident utilization forms and reports to the Department of Public Works. The report must itemize by job classification the proposed total worker hours, and proposed number of non-CDBG worker hours the contractor plans to utilize to complete the contract.

Failure to submit the required forms and reports to the Department of Public Works can result in disqualification of future bids, delay of payments, or other appropriate sanctions. The developer is required to sign an affidavit of compliance form which certifies that the contractor understands the provisions of the Residents Preference Program. Final contract payments are not be made until

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[2] A resident is defined as a person who maintains his or her place of permanent abode in the CDBG area within the City of Milwaukee. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in the special impact area. Mere ownership of property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes, without limitations, the location where a person votes, pays personal income taxes, or obtains a driver's license.

[3] The CDBG is defined as that portion of the City of Milwaukee designated as such by the Common Council which is identified by census tracts on maps maintained at the offices of the City Clerk and the Commissioner of City Development. Unemployed is defined as a resident that has worked less than 1,200 hours in the preceding 12 months or has not worked in the preceding 30 days or has qualified since the inception of the Residence Preference Program. A CDBG resident will continue to qualify as unemployed for five or ten years from the date he or she first participates in a contract under the Development Agreement for the specified development project.

the summary of hours worked on the back of the Prime Contractor's Affidavit of Compliance is completed and on file with the Department of Public Works.

The Department of Public Works reserves the right to conduct compliance reviews during the performance of the contract. If the developer is not in compliance with the specifications, the Commissioner of Public Works will notify the contractor in writing of the corrective action that will bring the developer into compliance. If the developer fails or refuses to take corrective action as directed, or if the contractor, prime or subcontractor, submits any documents which contain any false, misleading, or fraudulent information, or if the developer or its contractor or subcontractor fail to comply with the Ordinance, the Department of Public Works may withhold payments on the contract, terminate or cancel the contract, in whole or in part, any other remedy available to the City at law or in equity.

C. Slavery Disclosure Requirements

The City of Milwaukee adopted Ordinance 310-14 requiring the disclosure of participation in or profits derived from slavery by contractors. All contractors awarded a contract on behalf of the City are required to complete an affidavit prior to entering into the contract verifying that the contractor searched any and all records of the company and/or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any enslaved persons or slave-holders described in those records must be disclosed in the affidavit.

The Slavery Disclosure affidavit must be completed regardless of the contract dollar amount or whether or not it was subject to a competitive bid. All City awarding authorities must include in their bids/RFPs language informing companies that the successful vendor will be required to submit the Slavery Disclosure affidavit.

D. Clean Clothing Requirements

The City of Milwaukee adopted Ordinance 310-17 which requires all contracts over $5,000 for the purchase, rental, laundering and dry cleaning of apparel, entrance mats and linens are not manufactured in sweatshops.

City contracting departments cannot enter into contracts for purchasing, renting, laundering and dry cleaning of items of apparel unless the lowest responsible bidders first submit to the Purchasing Director affidavits of compliance for procurement of items of apparel from responsible manufacturers.

Any bidder who indicates that they will not comply with Ordinance 310-17 will be rejected as non-complying. If no bidders are in compliance with the Ordinance, the provision may be waived by City Purchasing and/or rebid.

E. Insurance Requirements

The different types of insurance coverage required by the City of Milwaukee include:

- Comprehensive General Liability
- Worker's Compensation and Employer's Liability
- Automotive Liability
- Excess Liability
- Garage Liability/Garage Keeper's Liability
- Professional Liability ($1,000,000 for Errors and Omissions)
- Banker's Blanket Bond
- Employee Dishonesty
- Product Liability
- Pollution

All vendors are required to provide evidence of insurance coverage for most service contracts, which involve installation or work being performed at a City-owned facility and for some commodity contracts for equipment, which involve the installation of accessories or additional equipment on a City-owned vehicle. A notarized Affidavit of No Interest form must be completed and signed by the insurance agent who issues the Certificate of Insurance to be submitted with the Certificate of Insurance.

The City Attorney's office sets the limits for comprehensive general, automobile and professional liability insurance based on the nature of the contract. User departments normally include and/or set the limits for Excess/Umbrella liability, General liability, Pollution liability and Professional liability coverage for certain types of service contracts due to their complexity of the project and/or exposure of the City. The liability coverage limits for worker's compensation and employer's liability insurance is statutory. Garage liability coverage only applies to equipment being assembled, and the insurance coverage must be equal to the equipment value.

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CERTIFICATION COMPARISON ANALYSIS

I. INTRODUCTION

The City of Milwaukee (City) wants to determine the propriety of streamlining its Emerging Business Enterprise (EBEs) certification process. The purpose of this analysis is to determine the feasibility of the City implementing reciprocity procedures by accepting business enterprise certifications issued by other local agencies.

II. METHODOLOGY

The research approach employed in this analysis included an examination of local certifying agencies in the City of Milwaukee area. The examination was conducted in order to assess the EBE Program's certification process effectiveness. A thorough review of local certifying agencies' certification objectives and standards were conducted to determine whether the City's EBE certification procedures can be streamlined in respect to the appropriateness of reciprocity with other local agencies. A comparison of the certification requirements of other local agencies to the City's EBE certification requirements was administered to determine which objectives and standards are closely commensurate with the City's program objectives and criteria. The Emerging Business Enterprise Program certification objectives and standards were compared in a qualitative analysis to seven other certifying agencies in the Milwaukee area, with a total of 15 certification programs in total.

The criteria for the selection of agencies to be examined included certification requirements that were governed by rigorous, uniform and legal regulatory standards. Thus, an examination of the following seven local certifying agencies which included 16 business enterprise programs, was conducted.

Federal Agencies

1. The Small Business Administration

    (a) 8(a) Program

    (b) Small Disadvantaged Business Program

    (c) Historically Underutilized Business Zone Empowerment Contracting Program

State and Local Agencies

1. Wisconsin Department of Transportation

    (a) Disadvantaged Business Enterprise Program

    (b) Minority Business Enterprise Program

2. The City of Madison,

    (a) Small Business Enterprise Program

    (b) Minority Business Enterprise Program

    (c) Women Business Enterprise Program

    (d) Disadvantaged Business Enterprise Program

3. The County of Milwaukee - Disadvantaged Business Enterprise Program

4. The County of Dane

    (a) Emerging Small Business Enterprise Program

    (b) Minority Business Enterprise Program

    (c) Women Business Enterprise Program

    (d) Disadvantaged Business Enterprise Program

5. Wisconsin Department of Commerce - Minority Business Certification

6. Milwaukee Metro Sewerage District - Small Business Enterprise

A. City of Milwaukee Certification Standards

1. Program Background and Objective

The City of Milwaukee established an Emerging Business Enterprise (EBE) Program pursuant to Chapter 360 of the Milwaukee Code of Ordinances. The objective of the EBE Program is to assist and protect the interest of emerging and small business concerns and to encourage full and open competition in the City of Milwaukee. Certification standards for EBEs are specified by the EBE Administration. All City contracting departments and all other contracting authorities must utilize 18 percent of the total dollars through prime contracts or subcontracts annually expended on the following:

- Construction contracts
- Purchases of services
- Professional services
- Supplies

The EBE manager annually reviews and adjusts the percentage goals with the approval of the Common Council.

2. Certification Standards

An EBE is defined as a small business concern[1] that is owned, operated, and controlled by one or more individuals who are at a disadvantage. The individuals must have day-to-day operational and managerial control and interest in capital, financial risks, and earnings commensurate with the percentage of their ownership. The EBE applicant must be a 51 percent business owner who is a citizen or lawful permanent resident of the United States and who has or continues to experience

[1] "Small business concern" means a business which is independently owned, operated, and controlled, which is not dominated in its local field of operation and which has had annualized gross receipts consistent with the receipts based size standards set forth by the Federal Small Business Administration. A business which does not meet these requirements may nonetheless be deemed a small concern if the business establishes by credible evidence that different standards should be applied in its field of endeavor.

substantial difficulty in achieving business-related success. The business owner must also be at an economic disadvantage and meet three out of the five criteria listed below:

1 At a disadvantage with respect to education,

2 At a disadvantage with respect to employment,

3 At a disadvantage with respect to residence or business location,

4 At a social disadvantage, or

5 Lack of business training.

Chapter 360 of the Milwaukee Code of Ordinances defines an economic disadvantage as an inability to compete in the free enterprise system due to diminished capital, credit, or bonding opportunities. The following factors are considered in determining whether an individual has been economically disadvantaged:

- Failure to accumulate adequate business capital or obtain sufficient credit to start or support a business concern
- Failure to acquire business-related credit or bonding under terms or circumstances as favorable as those generally experienced by non-disadvantaged individuals
- Failure to receive awards or bids of governmental contracts despite competitive pricing or other similar factors which have disadvantaged the applicant in the development of a business
- Business has no more than 15 employees and its average annual receipts do not exceed $1 million
- Gross annual receipts are 30 percent less than the standards set forth by the United States Small Business Administration (SBA)

III. EXAMINATION OF LOCAL CERTIFYING AGENCIES

A. The Small Business Administration Certification Standards

On July 30, 1953, the United States Congress established the Small Business Administration (SBA) with the passage of the Small Business Act. The purpose of the SBA is to "aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns." The SBA is also charged the responsibility of ensuring "fair proportion" of government contracts and sales of surplus property to small business.

1. 8(a) Certification

a. Program Background and Objective

The objective of the Small Business Administration's (SBA) 8(a) Business Development Program is to help eligible small, disadvantaged businesses become independently competitive in the federal procurement market. Certified 8(a) firms automatically qualify for Small Disadvantaged Business (SDB) certification. The SBA's enrollment requirements for 8(a) certification are similar to that for SDB certification, with the exception that an applicant's personal net worth is less than $250,000 (excluding the applicants's ownership interest of the business and primary residence).

Certified 8(a) firms are provided technical assistance by the SBA and its resource partner including specialized business training, counseling, marketing assistance, and high-level executive development provided. SBA-guaranteed loans and bonding assistance are available for eligible 8(a) firms as well. Additionally, 8(a) certified firms are eligible to participate in the SBA's Mentor-Protége Program.

b. Certification Requirements

The Program requirements for 8(a) certification include the following:

1. The applicant firm must be a small business

A small business concern is defined as one that is independently owned and operated, organized for profit, and not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on the volume of sales averaged over a three-year period.

Examples of SBA general size standards include the following:

- Manufacturing: Maximum number of employees may range from 500 to 1500, depending on the type of product manufactured.

- Wholesaling: Maximum number of employees may range from 100 to 500 depending on the particular product being provided.

- Services: Annual receipts may not exceed $2.5 to $21.5 million, depending on the particular service being provided.

- Retailing: Annual receipts may not exceed $5 to $21 million, depending on the particular product being provided.

- General and Heavy Construction: General construction annual receipts may not exceed $13.5 to $17 million, depending on the type of construction.

- Special Trade Construction: Annual receipts may not exceed $7 million.

- Agriculture: Annual receipts may not exceed $0.5 to $9 million, depending on the agricultural product.

2. Must be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of he United States

The SBA defines socially disadvantaged individuals as those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group. Social disadvantage must stem from circumstances beyond their control. In the absence of evidence to the contrary, individuals who are members of the following designated groups are presumed to be socially disadvantaged:

- Black Americans,

- Hispanic Americans,

- Native Americans (American Indians, Eskimos, Aleuts, and Native Hawaiians),

- Asian Pacific Americans persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Commonwealth of the Northern Mariana Islands, Laos, Cambodia (Kampuchea), Taiwan;

Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru,

- Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal), and

- Members of other groups designated by the SBA.

The SBA defines economically disadvantaged individuals as socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities.

To determine whether the applicant is economically disadvantaged, the SBA will consider factors such as the individual's net worth, after excluding the individual's equity in the firm and the equity in the primary residence, which may not exceed $250,000. The SBA will also consider the individual's average two-year income, fair market value of all assets, access to credit and capital, and the financial condition of the applicant firm in evaluating economic disadvantage.

The SBA requires that at least 51 percent of the applicant firm is directly and unconditionally owned by socially and economically disadvantaged individuals. Control is not the same as ownership, although both control and ownership may reside in the same person. Control includes both strategic policy setting and the day-to-day management and administration of business operations by disadvantaged individuals.

3. Must demonstrate potential for success

The SBA will evaluate the following factors to determine whether an applicant firm has potential for success:

- The technical and managerial experience of the applicant firm's managers

- The firm's operating history

- Ability of the firm to access credit and capital

- The firm's financial capacity

- The firm's record of performance

- Whether the applicant firm or individuals employed by the firm hold the requisite licenses if the firm is engaged in an industry requiring professional licensing

Additionally, the applicant firm must have been operational for at least two full years, which can be evidenced by business income tax returns for each of the two previous tax years. The SBA will review the tax returns to determine whether the applicant firm had operating revenues in the primary industry in which the applicant firm is seeking 8(a) certification.

2. Small Disadvantaged Business Certification

a. Program Background and Objective

On August 24, 1998, the Small Disadvantaged Business (SDB) Program was implemented where to fulfill its objective of providing equity in contracting with small businesses. The SDB Program encompasses small businesses owned and controlled by individuals that are determined to be socially and economically disadvantaged as well. The program certifies small businesses that meet specific social, economic, ownership, and control eligibility criteria as small disadvantaged businesses.

In *Adarand Contractors, Inc. vs. Pena*[2], the Supreme Court extended strict judicial scrutiny to include federal affirmative action programs that use racial or ethnic criteria as a basis for decision making. The *Adarand* Court held that under strict scrutiny, any Federal program that makes race a basis for contract decision making must be narrowly tailored to serve a compelling government interest. Thus, the SDB Program was designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand*.

The Small Business Administration utilizes the SDB Program as a procurement tool to assist the government in finding firms capable of providing needed procurement services and helping to address the traditional exclusion of minority-owned firms from contracting opportunities.

b. Certification Requirements

The requirements for SDB certification are governed by the Code of Federal Regulations. For a small business to be certified as an SDB, the following requirements must be met:

- Must be a United States citizen

- Must be a small disadvantaged business which qualifies as small business under Chapter 13, Code of Federal Regulation (CFR) Part 121, for the size standard corresponding to the applicable four digit Standard Industrial Classification (SIC) code

- Is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individual(s) as defined by Chapter 13, CFR 124.105, and

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

- The majority of the business' earnings must accrue directly to the socially and economically disadvantaged individual(s) who own the business.

3. HUBZone PROGRAM

a. Program Background and Objective

The Small Business Reauthorization Act of 1997 enacted the Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program. The program is regulated by the SBA which also implemented the program. The objective of the Program is to stimulate economic development and create jobs in urban and rural communities by providing federal contracting preferences to small businesses. The SBA also determines which businesses are eligible to receive HUBZone contracts, maintains a listing of qualified HUBZone small businesses that federal agencies can use to locate vendors, and adjudicates protests of eligibility to receive HUBZone contracts.

The HUBZone Program applies to all federal departments and agencies and has set the government-wide prime contacting goal at three percent. Preferences are given to small businesses that obtain HUBZone certification in part by employing staff who live in a particular HUBZone.

b. Certification Requirements

To qualify as a HUBZone business the following criteria must be met:

- It must be a small business by SBA standards

- It must be owned and controlled at least 51 percent by U.S. citizens, a Community Development Corporation, or an agricultural cooperative, or an Indian tribe

- Its principal office must be located within a Historically Underutilized Business Zone, which includes lands considered as Indian Country and military facilities closed by the Base Realignment and Closure Act

- At least 35 percent of its employees must reside in a HUBZone for at least 180 days or be a currently registered voter in that area.

B. Wisconsin Department of Transportation Certification Standards

1. Disadvantaged Business Enterprise Program

a. Program Background and Objective

The Disadvantaged Business Enterprise (DBE) Program started with the Surface Transportation Assistance Act of 1982. The Wisconsin Department of Transportation (WisDOT) DBE Program's objective is to increase participation of firms owned by disadvantaged individuals in all federal aid and state transportation facility contracts. The act set a national goal of placing at least ten percent of federal highway and transit funds with persons who qualify as disadvantaged small business operators.

b. Certification Requirements

Any small business that is at least 51 percent owned, operated, and fully controlled on a daily basis by a member or members of the following groups qualifies. In the case of publicly held firms, a member or members of the listed groups must own at least 51 percent of the stock issued. These groups include These groups include African Americans, Native Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indian Americans, and women.

WisDOT may determine that individuals who are not members of the above groups may be socially and economically disadvantaged. WisDOT makes such determinations on a case-by-case basis.

2. Minority Business Enterprise Program

a. Program Background and Objective

The WisDOT Minority Business Enterprise (MBE) Program's objective is to provide new or expanded opportunities for qualified minority-owned businesses to sell their goods and services to the department. The MBE Program includes the procurement of supplies and services with state funding, while the federal DBE Program targets highway construction spending to minority and women-owned businesses.

State departments and agencies are required to attempt to ensure that at least five percent of their total spending is paid to certified minority businesses, pursuant to Wisconsin Statute 16.75 (3m) (b). Certified MBEs are eligible for a low-bid preference as long as their bid is no higher than five percent of the lowest qualified responsible bidder. MBEs are also eligible for technical and marketing assistance and are listed in the state of Wisconsin's Directory of Minority-Owned Businesses, which is circulated to corporate buyers throughout the United States and state purchasing agents.

b. Certification Standards

The following criteria must be met to be certified as minority-owned business (sole proprietorship, partnership, corporation, or joint venture):

- Member of an ethnic minority group: Native American, Black, Hispanic, Asian Indian, Asian Pacific, Aleut, Eskimo, or Native Hawaiian. (WisDOT does not recognize women as minorities. Therefore, women-owned businesses are not eligible for minority certification.)

- Be at least 51 percent owned, controlled and actively managed by minority group members.

- Serve a useful business function and have customers other than the state of Wisconsin, and

- Must be at least one year old under current ownership.

C. City of Madison Certification Standards

1. Program Background and Objective

In 1991, the City of Madison implemented its Small Business Enterprise (SBE) Program. The objective of the City's SBE Program is to stimulate economic growth, promote the establishment of new businesses, and provide employment opportunities. An affirmative action plan was adopted by the City of Madison requiring similar efforts from vendors, contractors, and other firms with which it does business. The City of Madison has an overall goal of ten percent of the City's public works funds, which must be expended with certified small business enterprises (SBEs). The City of Madison created the MAD certification Program to certify businesses as SBEs for participation on the City's projects with targeted business goals.

The City's bid documents specify which targeted business (MBE, WBE, DBE, and/or SBE) will be targeted for a specific contract. The targeted business type is determined by the source of funding. Public works contracts estimated to cost $100,000 or more and are funded solely with City dollars have an SBE goal attached. Projects funded by federal dollars have an MBE, WBE, and/or DBE goal attached.

2. Certification Requirements

The City of Madison operates four separately targeted business certification programs. The following are the general eligibility criteria for each targeted business type:

- Small Business Enterprise (SBE): an independently owned and controlled business with annual gross receipts of $750,000 or less when averaged over the past three years.

- Minority Business Enterprise (MBE): an independent business 51 percent or more owned and controlled by racial/ethnic affirmative action group members.

- Woman Business Enterprise (WBE): an independent business 51 percent or more owned and controlled by women.

- Disadvantaged Business Enterprise (DBE): an independent business 51 percent or more owned and controlled by socially and economically disadvantaged individuals. Size restrictions as regulated by the U.S. Small Business Administration in 13 CFR apply.

D. County of Dane Certification Standards

1. Program Background and Objectives

The County of Dane administers its Contract Compliance Program pursuant to Chapter 19, Subchapter 11, section 19.50-19.71 of the Dane County Ordinances. The County's Contract Compliance Program's objective is to enforce and monitor prime contractor's performance regarding the workforce representation of protected groups and/or members. The program also monitors the participation and contracting opportunities for emerging small businesses, minority, women, disadvantaged owned businesses.

2. Certification Requirements

Dane County issues the following business enterprise certifications:

- Emerging Small Businesses (ESB): an independent business concern that has been in business for at least one year. The business must be located within the State of Wisconsin and be comprised of less than 25 employees. The applicant business must not have gross sales in excess of three million dollars over the past three years and not have a history of failing to complete projects.

- Minority Business Enterprise (MBE): an independent and valid business concern that is owned and controlled by minority persons. The minority person must own 51 percent of the business and control the management and daily operation of the business.

- Women Business Enterprise (WBE): an independent and valid business concern that is owned and controlled by women who own 51 percent of the business and control the management and daily operation of the business.

- Disadvantaged Business Enterprises (DBE): a small business concern that is at least 51 percent owned by one or more socially and economically disadvantaged individuals. Or, in the case of any publicly owned business, at least 51 percent of the stock must be owned by one or more

socially and economically disadvantaged individuals. The socially and economically disadvantaged individual must also manage the daily operations of the business.

E. County of Milwaukee Certification Standards

1. Program Background and Objectives

The County of Milwaukee implemented a Disadvantaged Business Enterprise (DBE) Program to fulfill its objective of increasing the overall economic viability for small and disadvantaged businesses in Milwaukee County. The DBE Program is administered by the Community Business Development Partners (CBDP). The CBDP is charged with the responsibility of establishing goals, certifying firms, monitoring and enforcing contract compliance, and promoting business opportunities for DBEs.

2. Certification Requirements

The County's DBE certification requirements are in accordance with the Federal Department of Transportation DBE Program requirements set forth in 49 Code of Federal Regulations, Part 26. The general eligibility requirements include the following criteria:

- Applicant business must be at least 51 percent owned by a socially and economically disadvantaged individual

- The owner must be a part of a disadvantaged group such as women, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian-Pacific Americans, or other minorities found to be disadvantaged by the United States Small Business Administration[3]

- The applicant firm must meet the small business size standards defined by SBA standards. The business must not have annual gross receipts over $19.57 million in the previous three fiscal years,

- The disadvantaged owner must not have a personal net worth of less than $750,000, excluding his or her ownership interest in the applicant firm and equity in his or her primary residence.

- The disadvantaged owner must possess the power to direct or cause the direction of the management and policies of the firm. The owner must also have an overall understanding of the managerial and technical competence of the applicant firm and have the experience directly related to the type of business in which the applicant firm is engaged.

[3] Persons who are not members of one of the above groups and own and control their business may also be eligible if they establish their social and economic disadvantage.

F. Department of Commerce Certifications Standards

1. Program Background and Objective

The Wisconsin Department of Commerce created a Minority Business Certification Program with the objective of increasing the opportunity for minority firms to sell their products and services to the State of Wisconsin. The Wisconsin Department of Administration monitors state agencies' compliance with the purchasing guidelines that have been established for minority business procurement through Wisconsin Act 390. The Act authorizes certified minority businesses to be eligible for a five percent bid preference. Certified bidders must be within five percent of the lowest qualified responsible bidder.

Certified minority-owned firms are eligible for a low-bid waiver as long as their bid is no higher than five percent of the lowest qualified responsible bidder. Certified minority-owned firms are eligible for technical and marketing assistance, including participation in Marketplace, which is a statewide minority business marketing conference sponsored by the Wisconsin Department of Commerce.

2. Certification Standards

The eligibility requirements for minority-owned business certifications (sole proprietorship, partnership, corporation, or joint venture) are the following:

- Must belong to one of the following ethnic minority groups: Native American, Black, Hispanic, Asian Indian, Asian Pacific, Aleut, Eskimo, or Native Hawaiian. (The Department does not currently recognize women as minorities. Therefore, women-owned businesses are not eligible for certification through the Department at this time.)

- Be at least 51 percent owned, controlled, and actively managed by minority group members.

- Serve a "useful business function" and have customers other than the State of Wisconsin.

- Must be at least one year old under current ownership.

G. Milwaukee Metro Sewerage District Certification Standards

1. Program Background and Objectives

The Milwaukee Metro Sewerage District (District) established policies pursuant to Commission Policy 1-78.01 - General Procurement, to meet its objective of maximizing opportunities for small, women, and minority businesses pursuant to its commitment to these business enterprises. The

District established procurement goals of 13 percent for MBEs, five percent for SBEs, and two percent for WBEs. The District certifies qualified applicants as small business enterprises and accepts MBE and WBE certifications from other local agencies.

2. Certification Standards

The District certifies small businesses under its Small Business Enterprise Program. The small business must have a gross income of 2.5 million dollars or less for the prior twelve month period. The District accepts other business enterprise certifications for women or minority business enterprises. Those business enterprise certifications include:

- Joint Certification Program: The District recognizes existing certifications determined by the now defunct program until the certification expiration date.

- Wisconsin Department of Commerce: The District recognizes existing certifications from the Wisconsin Department of Commerce Minority Business Certification Program.

- Wisconsin Department of Transportation: The District recognizes certifications of disadvantaged businesses by the Wisconsin Department of Transportation, provided that they reflect disadvantaged minority or gender status.

- Milwaukee County: The District recognizes certifications of disadvantaged business enterprises by Milwaukee County, provided that they reflect disadvantaged minority and gender status.

- Wisconsin Minority Supplier Development Council: The District recognizes certifications of minority-owned enterprises by the Wisconsin Minority Supplier Development Council.

- Women's Business Educational Consortium, Inc.: The District recognizes certifications of women-owned minority businesses by the Women's Business Educational Consortium, Inc.

- Small Business Administration: The District recognizes certifications of small disadvantaged businesses by the Small Business Administration, provided that they reflect disadvantaged minority and gender status.

IV. SUMMARY OF CERTIFICATION COMPARISON ANALYSIS FINDINGS

The objective of the City's EBE program is to assist and protect the interest of emerging and small business concerns and to encourage full and open competition in the City of Milwaukee. The City's EBE eligibility requirements are governed by Chapter 360 of the Milwaukee Code of Ordinances which authorizes the City to set forth rigorous certification standards. The certification comparison analysis determined that out of the 16 business enterprise programs examined, eight

business enterprise certifications have standards and objectives that are closely commensurate with the City's EBE certification standards and objectives.

The objective of all eight business certifications is to certify small, emerging, and/or economically disadvantaged businesses pursuant to rigorous and uniform legal regulations. Each of the eight programs met the majority of the City's EBE certification requirements as follows:

- Small businesses must be independently owned, operated, and controlled.
- Applicant must be at least a 51 percent business owner, who is a citizen or lawful resident of the United States.
- Applicant business must be at an economic disadvantage which can be met by three out of the five following criteria:
    - Disadvantaged with respect to education
    - Disadvantaged with respect to employment
    - Disadvantaged with respect to residence or business location
    - At a social disadvantage
    - Lack of business training
- Applicant business has no more than 15 employees and average annual receipts that do not exceed $1 million
- Applicant business has gross annual receipts that are 30 percent less than the standards set forth by the United States Small Business Administration

V. PROGRAM RECOMMENDATIONS

In reviewing the federal certification regulations and those of several local certification agencies, the City should consider reciprocity with the following certification programs outlined in Table 2.01 below:

Table 2.01 Recommended Local Certification Agencies

CERTIFYING AGENCY	GOVERNING AUTHORITY FOR CERTIFICATION REQUIREMENT
Small Business Administration - Small Disadvantaged Business Certification	Chapter 13 Code of Federal Regulations
Small Business Administration - Section 8(a) Certification	Chapter 13 Code of Federal Regulations
City of Madison - SBE and DBE Certification	Madison General Ordinance 3.58(8)
County of Dane - Emerging Small Business Certification	Chapter 19, Subchapter 11, section 19.50-19.71 of the Dane County Ordinances
County of Dane - Disadvantaged Business Certification	Chapter 19, Subchapter 11, section 19.50-19.71 of the Dane County Ordinances
County of Milwaukee - Disadvantaged Business Certification	49 Code of Federal Regulations, Part 26
Milwaukee Metro Sewerage District Small Business Enterprise Certification	Commission Administrative Policy 1078.01
Wisconsin Department of Transportation Disadvantaged Business Enterprise Certification	Title 49 of the Federal Regulations, Parts 23 and 26

The certified lists of these agencies represent a readily available pool of small, emerging, and disadvantaged business enterprises to participate on City contracts. Using these already existing lists avoids the time, resources, and cost of extensive outreach efforts to recruit firms to participate in City contracting. In addition, small businesses will not have to expend the resources for obtaining additional certifications.

Furthermore, several of the certification requirements of the recommended agencies have a race and gender-conscious program and size restrictions. To be certified by the City, a business must be economically disadvantaged, which is determined by annual gross revenues. This contingency is similar to the requirements for small business certification in the aforementioned local certification programs.

The City could require firms to provide additional records identifying their official business location at the time of bid opening or proposal submission. The City can also accept the official location listed on the certification, which was verified by the certifying agency.

The standards in the recommended certification programs are rigorous, uniform, and governed by legal authority. The City can be confident that firms certified by the aforementioned agencies are bonafide small, emerging, and disadvantaged business enterprises. The recommended local certifying agencies have comparable certification requirements as delineated in Table 2.02 below.

Table 2.02 Comparisons of Recommended Local Certification Agencies

Agency	Small Business Concern	Owner US Citizen	Economic Disadvantage	Annual Receipts $1 million or less	Gross Annual Receipts Meets US SBA Standards
Small Business Administration - Small Disadvantaged Business Certification	✔	✔	✔		✔
Small Business Administration - Section 8(a) Certification	✔	✔	✔		✔
City of Madison - SBE and DBE Certification	✔	✔	✔	✔	✔
County of Dane - Disadvantaged Business Certification	✔	✔	✔		✔
County of Milwaukee - Disadvantaged Business Certification	✔	✔	✔		✔
Wisconsin Department of Transportation Disadvantaged Business Enterprise Certification	✔	✔	✔		✔

The City's EBE certification standards include requirements aimed at ensuring potential certified businesses bone fide small, emerging, and disadvantaged firms. The program's size and disadvantaged requirements are sufficient to meet this purpose. To enhance the City's EBE certification program it is recommended that the City implement reciprocity with other local agencies to alleviate the costs of business enterprise certifications on small and emerging businesses.

The process to be certified as a small, emerging and disadvantaged business is duplicated at the state, local, and special district levels. The City should amend its certification requirements to allow reciprocity with the recommended governmental agencies to help businesses avoid duplicating paperwork. The City can be assured of offering procurement opportunities to small, emerging and disadvantaged businesses that have already met specifically defined eligibility requirements comparable to the City's certification requirements. Reciprocity partnerships will allow small, emerging, and disadvantaged businesses to participate in multiple small business programs without the cost burdens associated with individual certification requirements.

3

SUBCONTRACTING EVALUATION

I. INTRODUCTION

The purpose of the assessment was to evaluate existing policies to determine if adequate protections exist for businesses that subcontract with prime contractors. The assessment was also a means of formulating recommendations to improve the City of Milwaukee's (City) policies and procedures pertaining to subcontractors.

II. METHODOLOGY

The assessment was undertaken by analyzing the City's policies, procedures and practices concerning subcontracting to examine whether proper controls have been implemented to ensure fair treatment of subcontractors. A comprehensive review of the City's procurement policies, statutes and ordinances was analyzed, which included the following:

- Chapter 7: Commissioner of Public Works
- Chapter 16: Boards and Commissions; Purchasing
- Chapter 81-102.3: Purchasing Appeals
- Chapter 105-65.4: Disposal of Unclaimed Vehicles and Trailers
- Chapter 310: Department of Administration

- Chapter 360: Emerging Business Enterprise Program

- Wisconsin State Statutes, Subchapter IV, Section 16: Purchasing.

The results of the analysis determined that the City does not have uniform policies or procedures for all departments within the City that ensures adequate protection for subcontractors. Some departments had procurement procedures that were aimed to protect the interest of subcontractors while other departments had no procedures in place. Thus, the City should develop uniform procedures aimed at protecting the interest of subcontractors for all City departments with procurement authority. Enhancements to the City's subcontracting procurement procedures is recommended to safeguard subcontractors, which are typically small, minority and woman-owned businesses, from business practices that can be detrimental to the survival of those businesses.

III. ENHANCEMENT OF THE CITY'S SUBCONTRACTING PROCUREMENT PROCEDURES

A. Require Prime Contractors to List Subcontractors on Bid Documents on Department of Public Works Contracts

Every prime contractor should be required to submit as part of the bid, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work.

1. Provisions for Listing Subcontractors on Bid Documents

The Department of Public Work's (DPW) request for bid should include instructions requiring prime contractors to list all subcontractors that will be used for services, equipment, and supplies at the time of bid submittal. The name and business address of each subcontractor who will perform work or render services to the prime contractor on DPW projects should also be included. The prime contractor should list only one subcontractor for each portion as defined by the prime contractor in his or her bid. The prime contractor should specify the price and/or the percentage of contract value associated with each subcontractor identified in the bid documents.

Within three working days of notification or award of the contract, the prime contractor should provide DPW with documentation which specifies the value of each subcontract.

2. Penalties for Failure to List Subcontractors on Bid Documents

If the prime contractor fails to list subcontractors in the bid, presents itself as performing subcontracting work, or names two or more subcontractors to perform the same work, such actions will result in the prime contractor being deemed non-responsive.

B. Substitution of Subcontractors After Award of Contract

Many prime contractors list subcontractors on their bid documents with no real intention of utilizing their services. Substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract should be prohibited.

1. Provisions for Substitution of Subcontractors

The City should require prime contractors to provide written justification whenever the prime contractor, in performing the contract, fails to employ the services of a subcontractor listed in bid documents or substitutes another subcontractor for one already identified in the documents.

2. Grounds for Consenting to a Contractor's Request for Substitution

Grounds for subcontractor substitution should be established by the City. The grounds for which the City 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 subcontract.
- When the listed subcontractor becomes bankrupt or insolvent
- When the listed subcontractor fails or refuses to perform its subcontract
- When the listed subcontractor fails to obtain the necessary licenses, bonding, insurance, or other statutory requirements to perform the work detailed in the contract
- When the awarding authority or its duly authorized officer determines that the work performed by the listed subcontractor is substantially unsatisfactory, not in substantial accordance with drawings and specifications, or substantially delayed or causing the disruption of the progress of work.

3. Notification to Subcontractor Regarding Requested Substitution

When a prime contractor's request for substitution or request to perform work for a listed subcontractor is received, the City should give the listed subcontractor prompt, written notice of the prime contractor's request to substitute and the reason for this request. The City 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

- The notification letter should advise the listed subcontractor that it has ten 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 subcontractor substitution request may be consented if: the listed subcontractor consents in writing; the subcontractor does not submit an objection within ten working days; or the requested substitution is in accordance to the proposed grounds for substitution listed above.

C. Waive Bond Requirements

The City should consider waiving bond requirements for small, minority, women, or EBE subcontractors, since current bonding requirements carry a large financial burden for such businesses, except for the following:

- Projects that are deemed to have exceptional risk in which case a bond is required

- Projects that are required by state or federal statute to be bonded (i.e. public safety projects) in which case a bond is required.

- Projects with a duration of less than 30 days and where the contract does not provide for progress payments.

The prime contractor should be required to give notice to subcontractors and suppliers if the City's bond requirements have been waived on the project.

D. Prompt Payment Procedures for Prime Contractors

The Department of Public Works' standard contract provisions includes prompt payment procedures for construction contracts, however, those provisions should be enhanced to help ease the financial burdens of EBE subcontractors. Currently, payments to prime contractors are deemed timely by the City, if payment is made within 60 days after receipt of the invoice.

The City's construction contracts should include requirements that provide an additional mechanism for subcontractors and suppliers to be paid promptly by prime contractors, for work that is satisfactorily completed, after the prime contractor has received payment from the City. Prompt payments help small businesses to maintain the cash flow necessary for operations.

1. Prompt Payment Provisions

When a prime contractor receives a payment from the City for contractual services, commodities, materials, supplies, or construction contracts, the prime contractor should pay such monies received to each subcontractor in proportion to the percentage of work completed by each subcontractor at the time of receipt. If the prime contractor receives less than full payment, then the prime contractor should be required to disburse only the funds received on a pro rata basis with the subcontractors at a prorated portion based on the amount due on the payment.

The City should strive to make progress payments to prime contractors once a month based on the progress of the work. Subcontractors and material suppliers, in turn, are entitled to be paid by the prime contractor, in proportion to the amount of the subcontractor's work completed, within 15 days after the prime contractor receives payment from the City.

The 15-day requirement should apply throughout the subcontracting chain. If the prime contractor does not receive full payment from the City then the prime contractor should pay its subcontractors and suppliers on a pro rata basis. However, if the prime contractor and not a subcontractor is the reason for the City's withholding, the prime contractor should be liable for more than the pro rata payment.

The prime contractor should submit monthly to the City a report listing all payments made to its subcontractors during the preceding 30 days, as well as any unpaid invoices over 30 days old that were received from the subcontractor. The amount of each invoice and the reason for non-payment should also be noted.

The prime contractor should include in its subcontract agreements a requirement that the subcontractor submit monthly to the City a report that identifies the prime contract and lists all payments received from the prime contractor in the preceding 30 days, as well as any outstanding invoices, and the invoice amounts.

At the option of the City, upon completion of the contract and before final payment and/or release of retainage, the prime contractor should submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from its subcontractors.

The City's prompt payment provisions should also outline specific reasons for prime contractors to withhold a portion of payment. The reasons may include:

- Liquidated damages
- Unsatisfactory job progress
- Defective construction work or material not remedied
- Disputed work
- Failure to comply with other material provisions of the subcontract
- Third party claims filed or reasonable evidence that a claim will be filed

E. Post-Award Contract Compliance Monitoring

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

The following contract compliance methods are recommended:

- Quarterly collection of copies of canceled checks written to subcontractors in order to verify payment information
- Monthly submission of a subcontractor participation report with the prime contractor's payment request
- Notification of prime contractors and subcontractors when there is non-compliance with program requirements
- Tracking contract compliance in an electronic database

F. Complaint Procedures for Subcontractors

The City should establish a telephone line or other electronic means of communication through which any small business identified as a subcontractor may communicate to the City major deviations by City prime contractors from the reduction of the scope of work to payment issues.

IV. SUMMARY

The results of the analysis determined that the City does not have uniform policies or procedures for all City departments that ensures adequate protection for subcontractors. The Procurement Services Department had procurement procedures that were aimed to protect the interest of subcontractors while the Department of Public Works had no procedures in place until after contract award. Thus, the City should develop uniform procedures aimed at protecting the interest of subcontractors for all City departments with procurement authority.

4

MARKET AREA ANALYSIS

I. MARKET AREA DEFINITION

A. Legal Criteria for Geographic Market Area

The Supreme Court's decision in City of Richmond v. J.A. Croson Co.[1] held that programs established by local governments to set goals for the participation of minority and woman-owned firms must be supported by evidence of past discrimination in the awarding of their contracts.

Prior to the *Croson* decision, many agencies and jurisdictions implementing race-conscious programs did so without developing a detailed public record to document discrimination in their awarding of contracts. Instead, they relied upon common knowledge and what was viewed as widely-recognized patterns of discrimination, both local and national.[2]

Croson established that a local government could not rely on society-wide discrimination as the basis for a race-based program, but, instead, was required to identify discrimination within its own jurisdiction.[3] In *Croson*, the Court found the City of Richmond's Minority Business Enterprise (MBE) Construction Program to be unconstitutional because there was insufficient evidence of discrimination in the *local construction market*.

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.

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

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

3 *Croson*, 488 U.S. at 497 (1989).

B. Application of the Croson Standard

While *Croson* emphasized the importance of the local market area, it provided little assistance in defining its parameters. However, it is informative to review the Court's definition of market area in the City of Richmond context. In discussing the scope of the constitutional violation that must be investigated, the Court interchangeably used the terms "relevant market,"[4] "Richmond construction industry,"[5] and "city's construction industry"[6] to define the proper scope of the examination of the existence of discrimination. This substitution of terms lends support to a definition of market area that coincides with the boundaries of a jurisdiction.

In analyzing the cases following *Croson*, a pattern emerges that provides additional guidance. The body of cases examining market area support a definition of market area that is reasonable.[7] In *Cone Corporation v. Hillsborough County*,[8] 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."[9]

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,[10] 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

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4 *Croson*, 488 U.S. at 471 (1989).

5 *Id.* at 500.

6 *Id.* at 470.

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

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

9 *Id*. at 915.

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

and County of San Francisco. The court found it appropriate to use the City and County as the relevant market area within which to conduct a disparity study.[11]

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."[12] 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."[13] However, the court did note that the "world of contracting does not conform itself neatly to jurisdictional boundaries."[14]

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*,[15] the Tenth Circuit Court of Appeals directly addressed the issue of whether extra-jurisdictional evidence of discrimination can be used to determine "local market area" for a disparity study. In *Concrete Works*, the defendant relied on evidence of discrimination in the six-county Denver Metropolitan Statistical Area (MSA) to support its MBE program. Plaintiffs argued that the federal constitution prohibited consideration of evidence beyond jurisdictional boundaries. The Court of Appeals disagreed.

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[11] *Id.* at 1415.

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

[13] *Id.* at 917.

[14] *Id*,

[15] *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*,[16] 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."[17]

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.[18]

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.[19] 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. Taken collectively, the cases support a definition of market area that is reasonable rather than dictating a specific or unreasonably rigid formula. In other words, since *Croson* and its progeny did not provide a bright line rule for local market area, that determination should be fact-based and case-specific.

II. CITY OF MILWAUKEE'S MARKET AREA

The City of Milwaukee awarded 463 construction, professional services, and goods and other services contracts valued at $173,842,842 during the study period of January 1, 2005 to December 31, 2005. A total of 72.57 percent of the contracts and 82.13 percent of the dollars were awarded

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

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

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

19 *Croson*, 488 U.S. at 501 (1989).

to businesses in the market area of the City of Milwaukee. In light of standards articulated by *Croson*, the market area for this Study was determined by the geographic location of the prime contractors who were awarded the majority of the City's 463 contracts. The market area for this study includes the Counties Milwaukee, Ozaukee, Washington, and Waukesha. The analysis of discrimination has been limited to that occurring within this market area.

Table 4.01 below depicts the overall number of construction, professional services, and goods and other services contracts and the dollar value of those contracts awarded by the City between January 1, 2005 and December 31, 2005. Of the 463 contracts awarded by the City during the study period, 336 or 72.57 percent were awarded to market area businesses. The dollar value of contracts awarded to market area businesses was $142,778,952 or 82.13 percent of all contract dollars awarded.

Table 4.01 City of Milwaukee's Market Area:
January 1, 2005 to December 31, 2005
Market Area: Milwaukee County/Ozaukee County/Washington County/Waukesha County

Market Area	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Combined Types of Work				
Market Area	336	72.57%	$142,778,952	82.13%
Outside Market Area	127	27.43%	$31,063,890	17.87%
Total	463	100.00%	$173,842,842	100.00%
Construction				
Market Area	156	92.31%	$110,221,033	98.05%
Outside Market Area	13	7.69%	$2,188,706	1.95%
Total	169	100.00%	$112,409,739	100.00%
Professional Services				
Market Area	48	55.81%	$8,604,241	57.32%
Outside Market Area	38	44.19%	$6,406,956	42.68%
Total	86	100.00%	$15,011,196	100.00%
Goods and Other Services				
Market Area	132	63.46%	$23,953,678	51.60%
Outside Market Area	76	36.54%	$22,468,229	48.40%
Total	208	100.00%	$46,421,907	100.00%

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

Construction Contracts: 156 or 92.31 percent of these contracts were awarded to market area businesses. The dollar value of those contracts was $110,221,033 or 98.05 percent of the total construction dollars.

Professional Services Contracts: 48 or 55.81 percent of these contracts were awarded to market area businesses. The dollar value of those contracts was $8,604,241 or 57.32 percent of the total professional services dollars.

Goods and Other Services Contracts: 132 or 63.46 percent of these contracts were awarded to market area businesses. The dollar value of those contracts was $23,953,678 or 51.60 percent of the total goods and other services dollars.

III. SUMMARY

The market area analysis was utilized in this Study to perform statistical comparisons of business availability and business utilization as described in Chapter 5: *Availability Analysis* and Chapter 6: *Utilization Analysis*. The majority of the City's prime contracts were awarded to businesses within the four county market area—Milwaukee County, Ozaukee County, Washington County, and Waukesha County. Of the 463 contracts awarded by the City during the study period, 336 or 72.57 percent were awarded to market area businesses.

Table 4.02 below depicts the overall number of construction, professional services, and goods and other services contracts and the dollar value of those contracts within each of the four market area counties.

The majority of the City's contract dollars were spent in Milwaukee County for professional services, and goods and other services contracts which positively affects EBEs that are primarily located within Milwaukee County. For construction contracts, the majority of the City's contract dollars were spent in Waukesha County. The City has the ability to increase the capacity of small and emerging businesses by spending its contract dollars in the geographic location in which the EBE program is servicing.

Table 4.02 City of Milwaukee's Market Area by County

Construction				
County	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Milwaukee County, WI	75	44.38%	$25,821,415	22.97%
Washington County, WI	29	17.16%	$9,975,456	8.87%
Waukesha County, WI	52	30.77%	$74,424,162	66.21%
Outside Market Area	13	7.69%	$2,188,706	1.95%
Total	**169**	**100.00%**	**$112,409,739**	**100.00%**
Professional Services				
County	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Milwaukee County, WI	39	45.35%	$5,043,724	33.60%
Ozaukee County, WI	1	1.16%	$2,251,552	15.00%
Washington County, WI	1	1.16%	$365,000	2.43%
Waukesha County, WI	7	8.14%	$943,964	6.29%
Outside Market Area	38	44.19%	$6,406,956	42.68%
Total	**86**	**100.00%**	**$15,011,196**	**100.00%**
Goods and Other Services				
County	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Milwaukee County, WI	85	40.87%	$14,873,832	32.04%
Ozaukee County, WI	2	0.96%	$1,348,525	2.90%
Washington County, WI	12	5.77%	$1,208,341	2.60%
Waukesha County, WI	33	15.87%	$6,522,980	14.05%
Outside Market Area	76	36.54%	$22,468,229	48.40%
Total	**208**	**100.00%**	**$46,421,907**	**100.00%**
Combined Types of Work				
County	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Milwaukee County, WI	199	42.98%	$45,738,971	26.31%
Ozaukee County, WI	3	0.65%	$3,600,077	2.07%
Washington County, WI	42	9.07%	$11,548,798	6.64%
Waukesha County, WI	92	19.87%	$81,891,106	47.11%
Outside Market Area	127	27.43%	$31,063,890	17.87%
Total	**463**	**100.00%**	**$173,842,842**	**100.00%**

5

AVAILABILITY ANALYSIS

I. INTRODUCTION

According to *Croson*, availability is defined as the number of businesses in the jurisdiction's market area that are willing and able to provide goods or services.[1] To determine availability, Emerging Business Enterprises (EBEs) and non-EBEs within the jurisdiction's market area that are willing and able to provide the goods and services need to be enumerated. When considering sources for determining the number of willing and able EBEs and non-EBEs, the selection must be based on whether two significant aspects about the population in question can be gauged from the sources: 1) a firm's interest in doing business with the jurisdiction, as implied by the term "willing;" and 2) a firm's ability or capacity to provide a service or good, as implied by the term "able."

The determination of availability must follow from the definition of the jurisdiction's market area. The market area analysis presented in *Chapter 5*: *Market Area Analysis* defined Milwaukee County, Ozaukee County, Washington County, and Waukesha County as the market area for this Study, because the majority of the utilized businesses are domiciled in those counties.

The compiled list of available businesses includes minority, woman, and Caucasian male- owned businesses in the areas of construction, professional services, and goods and other services. Separate availability lists were compiled for prime contractors and subcontractors within the three industries.

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

II. PRIME CONTRACTOR AVAILABILITY DATA SOURCES

A. Prime Contractor Sources

Market area EBEs and non-EBEs willing and able to do business with the City were identified from various sources. Most sources included businesses that had demonstrated their willingness to provide the goods and services procured by the City. For the other sources, willingness of the listed business had to be determined. Table 5.01 below lists all the sources used.

Table 5.01 Prime Contractor Availability Data Sources

Source	Type of Information
City and Other Government Records	
Utilized Vendors	EBEs and non-EBEs
Certification Lists	
City of Milwaukee Emerging Business Enterprise List	EBEs and non-EBEs
Milwaukee County Disadvantaged Business Enterprise List	EBEs and non-EBEs
Pronet Small Business Administration Certification List	EBEs and non-EBEs
Wisconsin Department of Commerce Minority Business Enterprise List	EBEs and non-EBEs
Wisconsin Department of Transportation Disadvantaged Business Enterprise List	EBEs and non-EBEs
Business Association Membership Lists	
American Indian Chamber of Commerce of Wisconsin	EBEs and non-EBEs
Hispanic Chamber of Commerce of Wisconsin	EBEs and non-EBEs
Milwaukee Metropolitan Association of Commerce	EBEs and non-EBEs
Milwaukee Metropolitan Sewerage District-Small Business Enterprise List	EBEs and non-EBEs
Southeastern Chamber United in Business	EBEs and non-EBEs

B. Determination of Willingness

The term "willingness" refers to a firm's indicated interest in doing government contracting. Companies identified from the City and other government sources listed in Table 5.01 have

demonstrated their willingness to perform on public contracts. These businesses either had bid on City or other government contracts, secured government certification, or responded to the outreach campaign conducted in conjunction with this Study. It is therefore presumed that companies that sought government contracts are willing to provide the goods and services needed by the City.

Companies from the non-government sources listed in Table 5.01 were not presumed to be willing, based on the *Croson* criteria. These companies were surveyed to determine their willingness to bid on City contracts. The surveyed businesses that indicated an interest in contracting with the City were combined with the market area businesses from the government and outreach lists to create a unique list of willing businesses.

III. CAPACITY

The second component of the availability requirement set forth in *Croson* is a firm's capacity or ability to work on the contracts awarded by the jurisdiction.[2] However, capacity requirements are not delineated in *Croson*. In fact, a standard for capacity has only been addressed in a few cases. Each case where capacity has been considered has involved large, competitively bid construction prime contracts. Therefore, in order to assess the capacity of willing market area firms to do business with the City, three approaches were employed:

- The size of all prime contracts awarded by the City was analyzed to determine the capacity needed to perform the average awarded contract
- The largest contracts awarded to EBEs were identified to determine demonstrated ability to win large, competitively bid contracts
- The EBE certification process was assessed to determine if it meets the standard set in *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia (Philadelphia),*[3] which found certification to be a measure of capacity

This methodology was sufficient to determine the capacity of the willing market area firms to do business with the City.

A. Size of Prime Contracts Analyzed

In *Associated General Contractors of California v. City of Columbus* and *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade City*, the courts were primarily concerned with the

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

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

capacity analysis of available businesses to bid on large, competitively bid contracts. It should also be noted that the focus in both cases was on the bidding company's size and ability to perform on large, competitively bid construction contracts.[4]

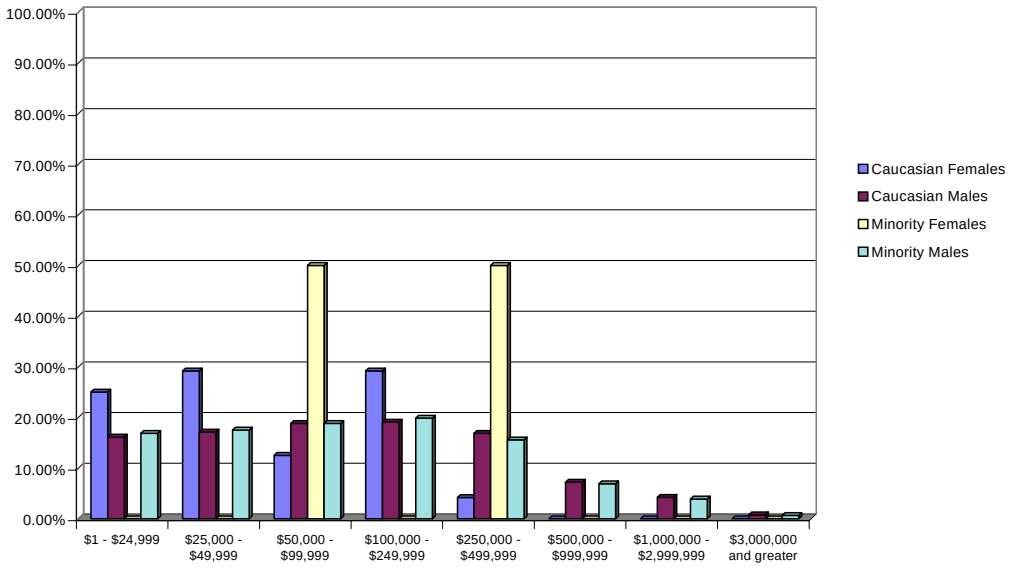
The City's construction, professional services, and goods and other services contracts were analyzed to determine the size of awarded contracts and, therefore, the capacity required to perform the City's contracts. The size distribution illustrates the fact that limited capacity is needed to perform the overwhelming majority of the City's contracts. The analysis in Table 5.02 below, which combines all industries, demonstrates that 16.85 percent of the City's contracts were less than $25,000, 53.13 percent were less than $100,000, and 88.55 percent were less than $500,000. Contracts valued at $500,000 or more make up 11.45 percent of the City's contracts.

[4] *Associated General Contractors of California v. City of Columbus*, 936 F. Supp. 1363 (S.D. Ohio 1996), and *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade City*, 943 F. Supp. 1546 (S.D. Fla. 1996), aff'd 122 F.3d 895 (11th Cir. 1997).

Table 5.02 Prime Contracts by Size: All Industries, January 1, 2005 to December 30, 2005

Size	Caucasian				Minority					
	Females		Males		Females		Males		Total	
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
$1 - $24,999	6	25.00%	65	16.09%	0	0.00%	7	21.21%	78	16.85%
$25,000 - $49,999	7	29.17%	69	17.08%	0	0.00%	5	15.15%	81	17.49%
$50,000 - $99,999	3	12.50%	76	18.81%	1	50.00%	7	21.21%	87	18.79%
$100,000 - $249,999	7	29.17%	77	19.06%	0	0.00%	8	24.24%	92	19.87%
$250,000 - $499,999	1	4.17%	68	16.83%	1	50.00%	2	6.06%	72	15.55%
$500,000 - $999,999	0	0.00%	29	7.18%	0	0.00%	3	9.09%	32	6.91%
$1,000,000 - $2,999,999	0	0.00%	17	4.21%	0	0.00%	1	3.03%	18	3.89%
$3,000,000 and greater	0	0.00%	3	0.74%	0	0.00%	0	0.00%	3	0.65%
Total	24	100.00%	404	100.00%	2	100.00%	33	100.00%	463	100.00%

Insufficient Data



1. Construction Contracts by Size

Table 5.03 below depicts the City's construction contracts awarded within the eight dollar ranges. Contracts valued at less than $25,000 were 12.43 percent of all construction contracts; those less than $100,000 were 39.64 percent; and those less than $500,000 were 85.8 percent.

The P-value [5] could not be calculated because of an insufficient number of construction contracts awarded to EBEs.

Table 5.03 Construction Prime Contracts by Size:
January 1, 2005 to December 31, 2005

Size	Caucasian				Minority					
	Females		Males		Females		Males		Total	
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
$1 - $24,999	4	26.67%	15	10.71%	0	0.00%	2	14.29%	21	12.43%
$25,000 - $49,999	4	26.67%	17	12.14%	0	0.00%	1	7.14%	22	13.02%
$50,000 - $99,999	3	20.00%	18	12.86%	0	0.00%	3	21.43%	24	14.20%
$100,000 - $249,999	4	26.67%	26	18.57%	0	0.00%	4	28.57%	34	20.12%
$250,000 - $499,999	0	0.00%	42	30.00%	0	0.00%	2	14.29%	44	26.04%
$500,000 - $999,999	0	0.00%	17	12.14%	0	0.00%	1	7.14%	18	10.65%
$1,000,000 - $2,999,999	0	0.00%	3	2.14%	0	0.00%	1	7.14%	4	2.37%
$3,000,000 and greater	0	0.00%	2	1.43%	0	0.00%	0	0.00%	2	1.18%
Total	15	100.00%	140	100.00%	0	0.00%	14	100.00%	169	100.00%

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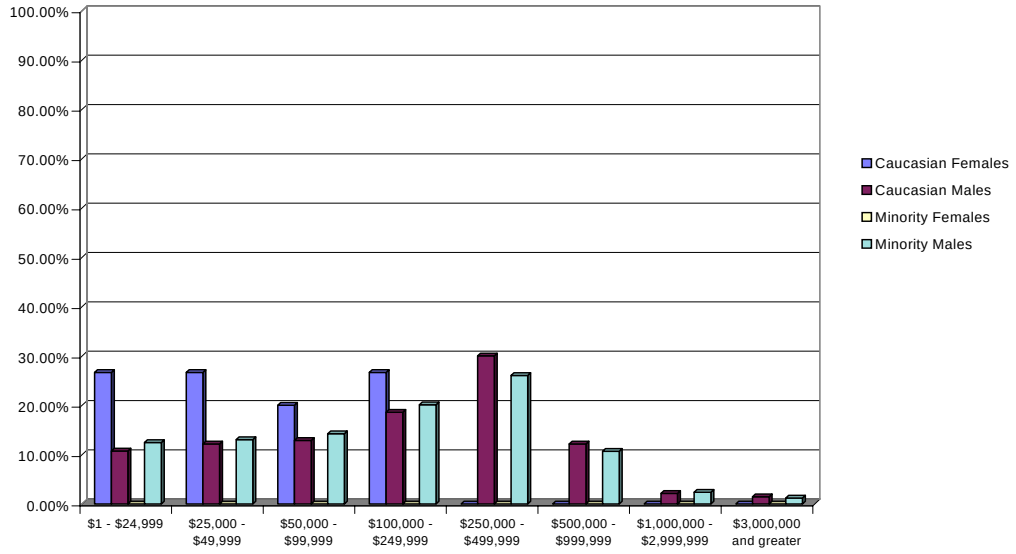

5 P-value is the probability that a given statistical finding is due to chance. When a P-value is very small, it means that the finding is very unlikely to be a chance occurrence and is very likely to represent an existing pattern. The industry standard is that if a P-value is less than 0.05, or in other words, the probability that a given finding is due to chance is less than 5 percent, the finding is considered statistically significant. “P-value<0.001" indicates a very strong statistical significance.

2. Professional Services Contracts by Size

Table 5.04 below depicts professional services contracts within the eight dollar ranges. Contracts valued at less than $25,000 were 20.93 percent of all professional services contracts; those less than $100,000 were 66.28 percent; and those less than $500,000 were 95.35 percent.

The P-value cannot be calculated because of an insufficient number of professional services contracts awarded to EBEs.

Table 5.04 Professional Services Prime Contracts by Size: January 1, 2005 to December 31, 2005

Size	Caucasian				Minority					
	Females		Males		Females		Males		Total	
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
$1 - $24,999	2	33.33%	15	20.83%	0	0.00%	1	16.67%	18	20.93%
$25,000 - $49,999	3	50.00%	12	16.67%	0	0.00%	0	0.00%	15	17.44%
$50,000 - $99,999	0	0.00%	20	27.78%	1	50.00%	3	50.00%	24	27.91%
$100,000 - $249,999	1	16.67%	12	16.67%	0	0.00%	1	16.67%	14	16.28%
$250,000 - $499,999	0	0.00%	10	13.89%	1	50.00%	0	0.00%	11	12.79%
$500,000 - $999,999	0	0.00%	1	1.39%	0	0.00%	1	16.67%	2	2.33%
$1,000,000 - $2,999,999	0	0.00%	1	1.39%	0	0.00%	0	0.00%	1	1.16%
$3,000,000 and greater	0	0.00%	1	1.39%	0	0.00%	0	0.00%	1	1.16%
Total	6	100.00%	72	100.00%	2	100.00%	6	100.00%	86	100.00%

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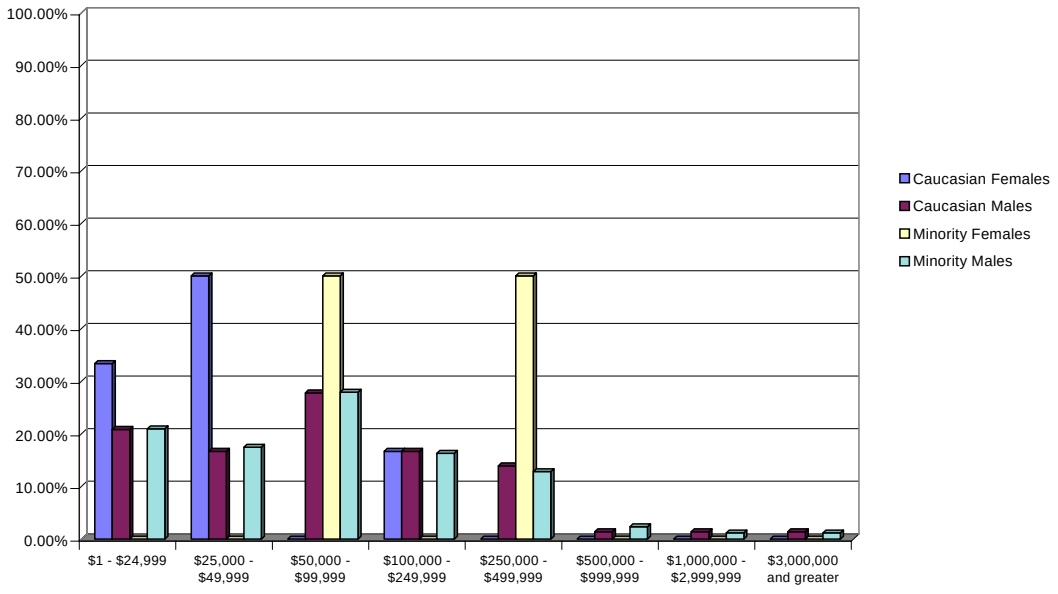


3. Goods and Other Services Contracts by Size

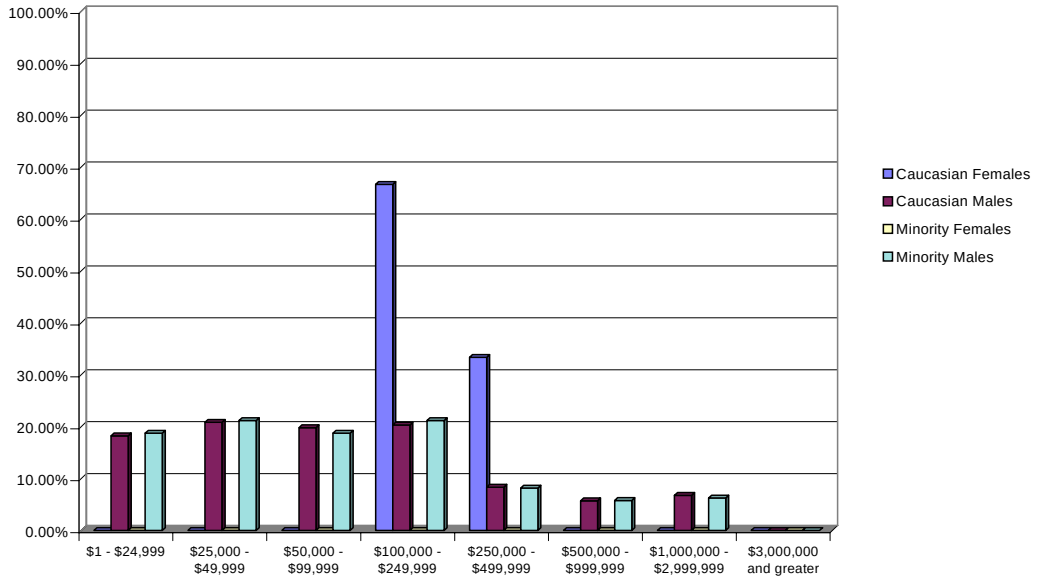
Table 5.05 below depicts goods and other services contracts within the eight dollar ranges. Contracts valued at less than $25,000 were 18.75 percent of all goods and other services contracts; those less than $100,000 were 58.65 percent; and those less than $500,000 were 87.98 percent

The P-value cannot be calculated because of an insufficient number of goods and other services contracts awarded to EBEs.

Table 5.05 Goods and Other Services Prime Contracts by Size: January 1, 2005 to December 31, 2005

Size	Caucasian				Minority					
	Females		Males		Females		Males		Total	
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
$1 - $24,999	0	0.00%	35	18.23%	0	0.00%	4	30.77%	39	18.75%
$25,000 - $49,999	0	0.00%	40	20.83%	0	0.00%	4	30.77%	44	21.15%
$50,000 - $99,999	0	0.00%	38	19.79%	0	0.00%	1	7.69%	39	18.75%
$100,000 - $249,999	2	66.67%	39	20.31%	0	0.00%	3	23.08%	44	21.15%
$250,000 - $499,999	1	33.33%	16	8.33%	0	0.00%	0	0.00%	17	8.17%
$500,000 - $999,999	0	0.00%	11	5.73%	0	0.00%	1	7.69%	12	5.77%
$1,000,000 - $2,999,999	0	0.00%	13	6.77%	0	0.00%	0	0.00%	13	6.25%
$3,000,000 and greater	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Total	3	100.00%	192	100.00%	0	0.00%	13	100.00%	208	100.00%

Insufficient Data



B. Largest EBE Prime Contract Awards by Industry

EBEs were awarded large prime contracts in every industry. The distribution of the largest EBE prime contracts awarded is depicted in Table 5.06 below. In each industry, EBEs were awarded very large, competitively bid contracts. The utilization analysis shows that EBEs demonstrated the capacity to successfully compete for contracts as large as $1.8 million in construction, $1 million in professional services, and $0.6 million in goods and other services.

Table 5.06 Largest EBE Prime Contract Awards by Industry

Largest Prime Contract Value			
Ethnic Group	**Construction**	**Professional Services**	**Goods and Other Services**
EBEs	$1,820,000	$1,073,917	$644,638

C. City Certification Standards

Philadelphia is the only appellate court decision to address the merits of certification as a measure of capacity.[6] The court found that programs certifying MBEs for the City of Philadelphia construction projects funded by the United States Department of Transportation (USDOT) satisfied the determination of a firm's capability. Thus, a certification process which reviews the qualifications of an applicant using the standards set forth in the USDOT regulations, 49 Code of Federal Regulations Part 26, would be sufficient to demonstrate the capability of MBEs.

IV. PRIME CONTRACTOR AVAILABILITY ANALYSIS

The analysis of the size of the City's contracts demonstrates that the capacity needed to perform on most of the contracts is limited. Furthermore, the awards the City has made to EBE firms demonstrate that the capacity of the willing firms is considerably greater than what is needed to bid on the majority of the contracts awarded in each of the industries studied. The prime contractor availability findings are summarized below.

[6] 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 5.07 below:

African Americans account for 18.18 percent of the construction firms in the City's market area.

Asian Americans account for 2.6 percent of the construction firms in the City's market area.

Hispanic Americans account for 12.34 percent of the construction firms in the City's market area.

Native Americans account for 0.65 percent of the construction firms in the City's market area.

Minority Emerging Business Enterprises account for 33.77 percent of the firms in the City's market area.

Caucasian Female Emerging Business Enterprises account for 4.55 percent of the firms in the City's market area.

***Emerging Business Enterprise*s** account for 40.91 percent of the construction firms in the City's market area.

Non-Emerging Business Enterprises account for 59.09 percent of the construction firms in the City's market area.

Table 5.07 Available Construction Prime Contractors

Ethnicity	Percent of Businesses
African American EBEs	18.18%
Asian American EBEs	2.60%
Hispanic American EBEs	12.34%
Native American EBEs	0.65%
Caucasian Female EBEs	4.55%
Caucasian Male EBEs	2.60%
Non-EBEs	59.09%
TOTAL	100.00%
Ethnicity and Gender	**Percent of Businesses**
African American Female EBEs	0.65%
African American Male EBEs	17.53%
Asian American Female EBEs	0.00%
Asian American Male EBEs	2.60%
Hispanic American Female EBEs	0.65%
Hispanic American Male EBEs	11.69%
Native American Female EBEs	0.00%
Native American Male EBEs	0.65%
Caucasian Female EBEs	4.55%
Caucasian Male EBEs	2.60%
Non-EBEs	59.09%
TOTAL	100.00%
Minority and Gender	**Percent of Businesses**
Minority Female EBEs	1.30%
Minority Male EBEs	32.47%
Caucasian Female EBEs	4.55%
Caucasian Male EBEs	2.60%
Non-EBEs	59.09%
TOTAL	100.00%
Minority and Females	**Percent of Businesses**
EBEs	40.91%
Non-EBEs	59.09%
TOTAL	100.00%

B. Professional Services Prime Contractor Availability

The distribution of available professional services prime contractors is summarized in Table 5.08 below:

African Americans account for 7.05 percent of the professional services firms in the City's market area.

Asian Americans account for 3.53 percent of the professional services firms in the City's market area.

Hispanic Americans account for 2.52 percent of the professional services firms in the City's market area.

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

Minority Emerging Business Enterprises account for 13.09 percent of the professional services firms in the City's market area.

Caucasian Female Emerging Business Enterprises account for 3.02 percent of the professional services firms in the City's market area.

Emerging Business Enterprises account for 17.63 percent of the professional services firms in the City's market area.

Non-Emerging Business Enterprises account for 82.37 percent of the professional services firms in the City's market area.

Table 5.08 Available Professional Services Prime Contractors

Ethnicity	Percent of Businesses
African American EBEs	7.05%
Asian American EBEs	3.53%
Hispanic American EBEs	2.52%
Native American EBEs	0.00%
Caucasian Female EBEs	3.02%
Caucasian Male EBEs	1.51%
Non-EBEs	82.37%
TOTAL	100.00%
Ethnicity and Gender	**Percent of Businesses**
African American Female EBEs	1.76%
African American Male EBEs	5.29%
Asian American Female EBEs	1.26%
Asian American Male EBEs	2.27%
Hispanic American Female EBEs	0.25%
Hispanic American Male EBEs	2.27%
Native American Female EBEs	0.00%
Native American Male EBEs	0.00%
Caucasian Female EBEs	3.02%
Caucasian Male EBEs	1.51%
Non-EBEs	82.37%
TOTAL	100.00%
Minority and Gender	**Percent of Businesses**
Minority Female EBEs	3.27%
Minority Male EBEs	9.82%
Caucasian Female EBEs	3.02%
Caucasian Male EBEs	1.51%
Non-EBEs	82.37%
TOTAL	100.00%
Minority and Females	**Percent of Businesses**
EBEs	17.63%
Non-EBEs	82.37%
TOTAL	100.00%

C. Goods and Other Services Prime Contractor Availability

The distribution of available goods and other services prime contractors is summarized in Table 5.09 below.

African Americans account for 13.16 percent of the goods and other services firms in the City's market area.

Asian Americans account for 0.96 percent of the goods and other services firms in the City's market area.

Hispanic Americans account for 3.05 percent of the goods and other services firms in the City's market area.

Native American Businesses account for 0.16 percent of the goods and other services firms in the City's market area.

Minority Emerging Business Enterprises account for 17.33 percent of the goods and other services firms in the City's market area.

Caucasian Female Emerging Business Enterprises account for 4.33 percent of the goods and other services firms in the City's market area.

Emerging Business Enterprises account for 23.11 percent of the goods and other services firms in the City's market area.

Non-Emerging Business Enterprises account for 76.89 percent of the goods and other services firms in the City's market area.

Table 5.09 Available Goods and Other Services Prime Contractors

Ethnicity	Percent of Businesses
African American EBEs	13.16%
Asian American EBEs	0.96%
Hispanic American EBEs	3.05%
Native American EBEs	0.16%
Caucasian Female EBEs	4.33%
Caucasian Male EBEs	1.44%
Non-EBEs	76.89%
TOTAL	100.00%
Ethnicity and Gender	**Percent of Businesses**
African American Female EBEs	3.37%
African American Male EBEs	9.79%
Asian American Female EBEs	0.32%
Asian American Male EBEs	0.64%
Hispanic American Female EBEs	0.64%
Hispanic American Male EBEs	2.41%
Native American Female EBEs	0.00%
Native American Male EBEs	0.16%
Caucasian Female EBEs	4.33%
Caucasian Male EBEs	1.44%
Non-EBEs	76.89%
TOTAL	100.00%
Minority and Gender	**Percent of Businesses**
Minority Female EBEs	4.33%
Minority Male EBEs	13.00%
Caucasian Female EBEs	4.33%
Caucasian Male EBEs	1.44%
Non-EBEs	76.89%
TOTAL	100.00%
Minority and Females	**Percent of Businesses**
EBEs	23.11%
Non-EBEs	76.89%
TOTAL	100.00%

V. SUBCONTRACTOR AVAILABILITY ANALYSIS

A. Sources of Potentially Willing and Able Subcontractors and Availability

All available prime contractors were also included in the calculation of subcontractor availability. Additional subcontractors in the City's market area were identified using sources in Table 5.10 below.

Table 5.10 Unique Subcontractor Availability Data Sources

Type Record	Type Information
• Subcontracting records provided by the City	• EBEs and non-EBEs
• Prime contractor survey which identified subcontractors utilized by the City	• EBEs and non-EBEs

B. Determination of Willingness and Capacity

Subcontractor availability was limited to businesses determined to be willing and able to perform as prime contractors and businesses utilized as subcontractors; therefore, the determination of willingness was achieved. *Croson* does not require a measure of subcontractor capacity; therefore, it is not necessary to address capacity issues in the context of subcontractors.

C. Construction Subcontractor Availability

The distribution of available construction subcontractors is summarized in Table 5.11 below.

African Americans account for 22.1 percent of the construction firms in the City's market area.

Asian Americans account for 2.76 percent of the construction firms in the City's market area.

Hispanic Americans account for 11.6 percent of the construction firms in the City's market area.

Native Americans account for 0.55 percent of the construction firms in the City's market area.

Minority Emerging Business Enterprises account for 37.02 percent of the construction firms in the City's market area.

Caucasian Female Emerging Business Enterprises account for 6.63 percent of the construction firms in the City's market area.

***Emerging Business Enterprise*s** account for 46.41 percent of the construction firms in the City's market area.

Non-Emerging Business Enterprises account for 53.59 percent of the construction firms in the City's market area.

Table 5.11 Available Construction Subcontractors

Ethnicity	Percent of Businesses
African American EBEs	22.10%
Asian American EBEs	2.76%
Hispanic American EBEs	11.60%
Native American EBEs	0.55%
Caucasian Female EBEs	6.63%
Caucasian Male EBEs	2.76%
Non-EBEs	53.59%
TOTAL	100.00%
Ethnicity and Gender	**Percent of Businesses**
African American Female EBEs	1.66%
African American Male EBEs	20.44%
Asian American Female EBEs	0.00%
Asian American Male EBEs	2.76%
Hispanic American Female EBEs	0.55%
Hispanic American Male EBEs	11.05%
Native American Female EBEs	0.00%
Native American Male EBEs	0.55%
Caucasian Female EBEs	6.63%
Caucasian Male EBEs	2.76%
Non-EBEs	53.59%
TOTAL	100.00%
Minority and Gender	**Percent of Businesses**
Minority Female EBEs	2.21%
Minority Male EBEs	34.81%
Caucasian Female EBEs	6.63%
Caucasian Male EBEs	2.76%
Non-EBEs	53.59%
TOTAL	100.00%
Minority and Females	**Percent of Businesses**
EBEs	46.41%
Non-EBEs	53.59%
TOTAL	100.00%

D. Professional Services Subcontractor Availability

The distribution of available professional services subcontractors is summarized in Table 5.12 below.

African Americans account for 7.25 percent of the professional services firms in the City's market area.

Asian Americans account for 3.5 percent of the professional services firms in the City's market area.

Hispanic Americans account for 2.5 percent of the professional services firms in the City's market area.

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

Minority Emerging Business Enterprises account for 13.25 percent of the professional services firms in the City's market area.

Caucasian Female Emerging Business Enterprises account for 3 percent of the professional services firms in the City's market area.

Emerging Business Enterprises account for 17.75 percent of the professional services firms in the City's market area.

Non-Emerging Business Enterprises account for 82.25 percent of the professional services firms in the City's market area.

Table 5.12 Available Professional Services Subcontractors

Ethnicity	Percent of Businesses
African American EBEs	7.25%
Asian American EBEs	3.50%
Hispanic American EBEs	2.50%
Native American EBEs	0.00%
Caucasian Female EBEs	3.00%
Caucasian Male EBEs	1.50%
Non-EBEs	82.25%
TOTAL	100.00%
Ethnicity and Gender	**Percent of Businesses**
African American Female EBEs	2.00%
African American Male EBEs	5.25%
Asian American Female EBEs	1.25%
Asian American Male EBEs	2.25%
Hispanic American Female EBEs	0.25%
Hispanic American Male EBEs	2.25%
Native American Female EBEs	0.00%
Native American Male EBEs	0.00%
Caucasian Female EBEs	3.00%
Caucasian Male EBEs	1.50%
Non-EBEs	82.25%
TOTAL	100.00%
Minority and Gender	**Percent of Businesses**
Minority Female EBEs	3.50%
Minority Male EBEs	9.75%
Caucasian Female EBEs	3.00%
Caucasian Male EBEs	1.50%
Non-EBEs	82.25%
TOTAL	100.00%
Minority and Females	**Percent of Businesses**
EBEs	17.75%
Non-EBEs	82.25%
TOTAL	100.00%

VI. SUMMARY

An availability analysis is a necessary prerequisite to determine whether EBEs were underutilized at a statistically significant level on City contracts. The results from the availability analysis was used to test the level of utilization of EBEs on the City's construction, professional services, and goods and other services contracts as described in Chapter 6: *Utilization Analysis.*

6

PRIME AND SUBCONTRACTOR UTILIZATION

I. INTRODUCTION

As set forth in *Croson* and its progeny, a disparity study must document minority contracting history in the jurisdiction under review. The first step in a disparity study is the statistical analysis of prime contracts. In this study, purchase orders and direct purchases were categorized as prime contracts. The objective of the statistical analysis is to determine the level of emerging business enterprise (EBE) prime and subcontractor utilization compared to non-EBE prime and subcontractor utilization. The contracts awarded by the City during the study period were separated into three industries for purpose of the analysis: Construction, professional services, and goods and other services.

A prime utilization analysis was undertaken on construction, professionals services, and goods and other services contracts awarded by the City of Milwaukee (City) between January 1, 2005 to December 31, 2005. A subcontractor utilization analysis was conducted on construction and professional services contracts during the Study period.

II. PRIME CONTRACT DATA SOURCES

The data from the City's construction, professional services, and goods and other services contracts was compiled by the Department of Emerging Business Enterprise from the contract records of the following departments:

- Department of Neighborhood Services
- Department of Public Works
- Department of Procurement Services

The ethnicity and gender of the prime contractors had to be reconstructed for some of the contracts. Incomplete ethnicity and gender information is a common occurrence in data collected from government agencies for disparity and/or local business enterprise studies. Since ethnicity and gender information is critical to the utilization analysis, research was conducted to secure complete information. Company names were cross-referenced with certification lists, membership directories for chambers of commerce and trade organizations, and web sites in an effort to determine the ethnicity and gender of the contractors. A survey of utilized businesses was also conducted to collect ethnicity and gender information that was not available from published sources. The ethnicity and gender classification of the utilized businesses was determined through this combined effort.

III. PRIME CONTRACTOR UTILIZATION THRESHOLDS

Contracts within each of the three industries were grouped into three size categories. The first category included all contracts regardless of size. The second category included all contracts valued at less than $500,000. This analysis was restricted to a level where there was a demonstrated capacity within the pool of willing EBEs to perform. The third size category included informal contracts valued at less than $25,000 for construction (Department of Public Works), informal contracts valued at less than $25,000 for professional services (Department of Public Works), and informal contracts valued at less than $30,000 for goods and other services (Procurement Services). The informal contract thresholds are depicted in Table 6.01 below.

Chapter 1: Procurement Analysis found that some contracting authority limits and requirements vary by contracting agency in accordance with City of Milwaukee ordinances and applicable state statutes.

Table 6.01 Informal Contract Thresholds for the City of Milwaukee

Industry	Informal Contract Thresholds
Construction	<$25,000
Professional Services	<$25,000
Goods and Other Services	<$30,000

IV. PRIME CONTRACTOR UTILIZATION

A. Total Prime Contracts

As depicted in Table 6.02 below, the City awarded 463 prime contracts during the January 1, 2005 to December 31, 2005 study period. These contracts included 169 for construction, 86 for professional services, and 208 for goods and other services.

The payments made by the City during the study period for all contracts awarded totaled $173,842,842. These expenditures included $112,409,739 for construction, $15,011,196 for professional services, and $46,421,907 for goods and other services.

Table 6.02 Total Prime Contracts and Dollars Expended: All Industries, January 1, 2005 to December 31, 2005

Industry	Total Number of Contracts	Total Dollars Expended
Construction	169	$112,409,739
Professional Services	86	$15,011,196
Goods and Other Services	208	$46,421,907
Total	**463**	**$173,842,842**

1. Construction Prime Contractor Utilization: All Contracts

Table 6.03 summarizes all contract dollars expended by the City on construction prime contracts. Emerging Business Enterprises received 3.8 percent of the construction prime contract dollars; Minority Male Emerging Business Enterprises received 2.91 percent; Minority Women Business Enterprises received none of the contracts; and Non-Emerging Business Enterprises received 96.2 percent.

African Americans received 1 or 0.59 percent of the construction contracts during the study period, representing $105,622 or 0.09 percent of the contract dollars.

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

Hispanic Americans received 11 or 6.51 percent of the construction contracts during the study period, representing $3,171,114 or 2.82 percent of the contract dollars.

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

Minority Emerging Business Enterprises received 12 or 7.1 percent of the construction contracts during the study period, representing $3,276,736 or 2.91 percent of the contract dollars.

Caucasian Female Emerging Business Enterprises received 15 or 8.88 percent of the construction contracts during the study period, representing $1,000,042 or 0.89 percent of the contract dollars.

Emerging Business Enterprises received 27 or 15.98 percent of the construction contracts during the study period, representing $4,276,778 or 3.8 percent of the contract dollars.

Non-Emerging Business Enterprises received 142 or 84.02 percent of the construction contracts during the study period, representing $108,132,961 or 96.2 percent of the contract dollars.

Table 6.03 Construction Prime Contractor Utilization: All Contracts, January 1, 2005 to December 31, 2005

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American EBEs	1	0.59%	$105,622	0.09%
Asian American EBEs	0	0.00%	$0	0.00%
Hispanic American EBEs	11	6.51%	$3,171,114	2.82%
Native American EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	15	8.88%	$1,000,042	0.89%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	142	84.02%	$108,132,961	96.20%
TOTAL	169	100.00%	$112,409,739	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Female EBEs	0	0.00%	$0	0.00%
African American Male EBEs	1	0.59%	$105,622	0.09%
Asian American Female EBEs	0	0.00%	$0	0.00%
Asian American Male EBEs	0	0.00%	$0	0.00%
Hispanic American Female EBEs	0	0.00%	$0	0.00%
Hispanic American Male EBEs	11	6.51%	$3,171,114	2.82%
Native American Female EBEs	0	0.00%	$0	0.00%
Native American Male EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	15	8.88%	$1,000,042	0.89%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	142	84.02%	$108,132,961	96.20%
TOTAL	169	100.00%	$112,409,739	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Female EBEs	0	0.00%	$0	0.00%
Minority Male EBEs	12	7.10%	$3,276,736	2.91%
Caucasian Female EBEs	15	8.88%	$1,000,042	0.89%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	142	84.02%	$108,132,961	96.20%
TOTAL	169	100.00%	$112,409,739	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
EBEs	27	15.98%	$4,276,778	3.80%
Non-EBEs	142	84.02%	$108,132,961	96.20%
TOTAL	169	100.00%	$112,409,739	100.00%

2. Professional Services Prime Contractor Utilization: All Contracts

Table 6.04 below summarizes all contract dollars expended by the City on professional services prime contracts. Emerging Business Enterprises received 13.11 percent of the professional services prime contract dollars; Minority Male Emerging Business Enterprises received 9.21 percent; Minority Women Business Enterprises received 2.92 percent; and Non-Emerging Business Enterprises received 86.89 percent.

African Americans received 2 or 2.32 percent of the professional services contracts during the study period, representing $223,579 or 1.49 percent of the contract dollars.

Asian Americans received 4 or 4.65 percent of the professional services contracts during the study period, representing 1,580,560 or 10.53 percent of the contract dollars.

Hispanic Americans received 1 or 1.16 percent of the professional services contracts during the study period, representing $17,078 or 0.11 percent of the contract dollars.

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

Minority Emerging Business Enterprises received 7 or 8.14 percent of the professional services contracts during the study period, representing $1,821,217 or 12.13 percent of the contract dollars.

Caucasian Female Emerging Business Enterprises received 1 or 1.16 percent of the professional services contracts during the study period, representing $25,000 or 0.17 percent of the contract dollars.

Emerging Business Enterprises received 9 or 10.47 percent of the professional services contracts during the study period, representing $1,967,884 or 13.11 percent of the contract dollars.

Non-Emerging Business Enterprises received 77 or 89.53 percent of the professional services contracts during the study period, representing $13,043,312 or 86.89 percent of the contract dollars.

Table 6. 04 Professional Services Prime Contractor Utilization: All Contracts, January 1, 2005 to December 31, 2005

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American EBEs	2	2.33%	$223,579	1.49%
Asian American EBEs	4	4.65%	$1,580,560	10.53%
Hispanic American EBEs	1	1.16%	$17,078	0.11%
Native American EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	1	1.16%	$25,000	0.17%
Caucasian Male EBEs	1	1.16%	$121,667	0.81%
Non-EBEs	77	89.53%	$13,043,312	86.89%
TOTAL	86	100.00%	$15,011,196	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Female EBEs	1	1.16%	$73,579	0.49%
African American Male EBEs	1	1.16%	$150,000	1.00%
Asian American Female EBEs	1	1.16%	$365,000	2.43%
Asian American Male EBEs	3	3.49%	$1,215,560	8.10%
Hispanic American Female EBEs	0	0.00%	$0	0.00%
Hispanic American Male EBEs	1	1.16%	$17,078	0.11%
Native American Female EBEs	0	0.00%	$0	0.00%
Native American Male EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	1	1.16%	$25,000	0.17%
Caucasian Male EBEs	1	1.16%	$121,667	0.81%
Non-EBEs	77	89.53%	$13,043,312	86.89%
TOTAL	86	100.00%	$15,011,196	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Female EBEs	2	2.33%	$438,579	2.92%
Minority Male EBEs	5	5.81%	$1,382,638	9.21%
Caucasian Female EBEs	1	1.16%	$25,000	0.17%
Caucasian Male EBEs	1	1.16%	$121,667	0.81%
Non-EBEs	77	89.53%	$13,043,312	86.89%
TOTAL	86	100.00%	$15,011,196	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
EBEs	9	10.47%	$1,967,884	13.11%
Non-EBEs	77	89.53%	$13,043,312	86.89%
TOTAL	86	100.00%	$15,011,196	100.00%

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

Table 6.05 summarizes all contract dollars expended by the City on goods and other services prime contracts. Emerging Business Enterprises received 3.8 percent of the goods and other services prime contract dollars; Minority Male Emerging Business Enterprises received 2.58 percent; Minority Women Business Enterprises received none of the contracts; and Non-Emerging Business Enterprises received 96.2 percent.

African Americans received 6 or 2.88 percent of the goods and other services contracts during the study period, representing 454,679 or 0.98 percent of the contract dollars.

Asian Americans received none of the goods and other services contracts during the study period.

Hispanic Americans received 5 or 2.4 percent of the goods and other services contracts during the study period, representing $743,522 or 1.6 percent of the contract dollars.

Native Americans received none of the goods and other services contracts during the study period.

Minority Emerging Business Enterprises received 11 or 5.29 percent of the goods and other services contracts during the study period, representing $1,198,201 or 2.58 percent of the contract dollars.

Caucasian Female Emerging Business Enterprises received 2 or 0.96 percent of the goods and other services contracts during the study period, representing $415,771 or 0.9 percent of the contract dollars.

Emerging Business Enterprises received 14 or 6.73 percent of the goods and other services contracts during the study period, representing $1,763,972 or 3.8 percent of the contract dollars.

Non-Emerging Business Enterprises received 194 or 93.27 percent of the goods and other services contracts during the study period, representing $44,657,935 or 96.2 percent of the contract dollars.

Table 6.05 Goods and Other Services Prime Contractor Utilization: All Contracts, January 1, 2005 to December 31, 2005

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American EBEs	6	2.88%	$454,679	0.98%
Asian American EBEs	0	0.00%	$0	0.00%
Hispanic American EBEs	5	2.40%	$743,522	1.60%
Native American EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	2	0.96%	$415,771	0.90%
Caucasian Male EBEs	1	0.48%	$150,000	0.32%
Non-EBEs	194	93.27%	$44,657,935	96.20%
TOTAL	208	100.00%	$46,421,907	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Female EBEs	0	0.00%	$0	0.00%
African American Male EBEs	6	2.88%	$454,679	0.98%
Asian American Female EBEs	0	0.00%	$0	0.00%
Asian American Male EBEs	0	0.00%	$0	0.00%
Hispanic American Female EBEs	0	0.00%	$0	0.00%
Hispanic American Male EBEs	5	2.40%	$743,522	1.60%
Native American Female EBEs	0	0.00%	$0	0.00%
Native American Male EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	2	0.96%	$415,771	0.90%
Caucasian Male EBEs	1	0.48%	$150,000	0.32%
Non-EBEs	194	93.27%	$44,657,935	96.20%
TOTAL	208	100.00%	$46,421,907	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Female EBEs	0	0.00%	$0	0.00%
Minority Male EBEs	11	5.29%	$1,198,201	2.58%
Caucasian Female EBEs	2	0.96%	$415,771	0.90%
Caucasian Male EBEs	1	0.48%	$150,000	0.32%
Non-EBEs	194	93.27%	$44,657,935	96.20%
TOTAL	208	100.00%	$46,421,907	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
EBEs	14	6.73%	$1,763,972	3.80%
Non-EBEs	194	93.27%	$44,657,935	96.20%
TOTAL	208	100.00%	$46,421,907	100.00%

B. Prime Contracts Under $500,000, by Industry

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

Table 6.06 below summarizes all contracts under $500,000 expended by the City on construction prime contracts. Emerging Business Enterprises received 6.71 percent of the construction prime contract dollars; Minority Male Emerging Business Enterprises received 3.09 percent; Minority Women Business Enterprises received none of the contracts; and Non-Emerging Business Enterprises received 93.29 percent.

African Americans received 1 or 0.69 percent of the construction contracts during the study period, representing $105,622 or 0.38 percent of the contract dollars.

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

Hispanic Americans received 9 or 6.21 percent of the construction contracts during the study period, representing $747,169 or 2.7 percent of the contract dollars.

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

Minority Emerging Business Enterprises received 10 or 6.9 percent of the construction contracts during the study period, representing $852,791 or 3.09 percent of the contract dollars.

Caucasian Female Emerging Business Enterprises received 15 or 10.34 percent of the construction contracts during the study period, representing $1,000,042 or 3.62 percent of the contract dollars.

Emerging Business Enterprises received 25 or 17.24 percent of the construction contracts during the study period, representing $1,852,833 or 6.71 percent of the contract dollars.

Non-Emerging Business Enterprises received 120 or 82.76 percent of the construction contracts during the study period, representing $25,776,392 or 93.29 percent of the contract dollars.

Table 6.06 Construction Prime Contractor Utilization: Contracts under $500,000, January 1, 2005 to December 31, 2005

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American EBEs	1	0.69%	$105,622	0.38%
Asian American EBEs	0	0.00%	$0	0.00%
Hispanic American EBEs	9	6.21%	$747,169	2.70%
Native American EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	15	10.34%	$1,000,042	3.62%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	120	82.76%	$25,776,392	93.29%
TOTAL	145	100.00%	$27,629,225	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Female EBEs	0	0.00%	$0	0.00%
African American Male EBEs	1	0.69%	$105,622	0.38%
Asian American Female EBEs	0	0.00%	$0	0.00%
Asian American Male EBEs	0	0.00%	$0	0.00%
Hispanic American Female EBEs	0	0.00%	$0	0.00%
Hispanic American Male EBEs	9	6.21%	$747,169	2.70%
Native American Female EBEs	0	0.00%	$0	0.00%
Native American Male EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	15	10.34%	$1,000,042	3.62%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	120	82.76%	$25,776,392	93.29%
TOTAL	145	100.00%	$27,629,225	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Female EBEs	0	0.00%	$0	0.00%
Minority Male EBEs	10	6.90%	$852,791	3.09%
Caucasian Female EBEs	15	10.34%	$1,000,042	3.62%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	120	82.76%	$25,776,392	93.29%
TOTAL	145	100.00%	$27,629,225	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
EBEs	25	17.24%	$1,852,833	6.71%
Non-EBEs	120	82.76%	$25,776,392	93.29%
TOTAL	145	100.00%	$27,629,225	100.00%

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

Table 6.07 below summarizes all contracts under $500,000 expended by the City on professional services prime contracts. Emerging Business Enterprises received 10.93 percent of the professional services prime contract dollars; Minority Male Emerging Business Enterprises received 3.78 percent; Minority Women Business Enterprises received 5.36 percent; and Non-Emerging Business Enterprises received 89.07 percent.

African Americans received 2 or 2.44 percent of the professional services contracts during the study period, representing $223,579 or 2.73 percent of the contract dollars.

Asian Americans received 3 or 3.66 percent of the professional services contracts during the reporting period, representing $506,643 or 6.2 percent of the contract dollars.

Hispanic Americans received 1 or 1.22 percent of the professional services contracts during the study period, representing $17,078 or 0.21 percent of the contract dollars.

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

Minority Emerging Business Enterprises received 6 or 7.32 percent of the professional services contracts during the study period, representing $747,300 or 9.14 percent of the contract dollars.

Caucasian Female Emerging Business Enterprises received 1 or 1.22 percent of the professional services contracts during the study period, representing $25,000 or 0.31 percent of the contract dollars.

Emerging Business Enterprises received 8 or 9.76 percent of the professional services contracts during the study period, representing $893,967 or 10.93 percent of the contract dollars.

Non-Emerging Business Enterprises received 74 or 90.24 percent of the professional services contracts during the study period, representing $7,283,105 or 89.07 percent of the contract dollars.

Table 6.07 Professional Services Prime Contractor Utilization: Contracts under $500,000, January 1, 2005 to December 31, 2005

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American EBEs	2	2.44%	$223,579	2.73%
Asian American EBEs	3	3.66%	$506,643	6.20%
Hispanic American EBEs	1	1.22%	$17,078	0.21%
Native American EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	1	1.22%	$25,000	0.31%
Caucasian Male EBEs	1	1.22%	$121,667	1.49%
Non-EBEs	74	90.24%	$7,283,105	89.07%
TOTAL	82	100.00%	$8,177,072	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Female EBEs	1	1.22%	$73,579	0.90%
African American Male EBEs	1	1.22%	$150,000	1.83%
Asian American Female EBEs	1	1.22%	$365,000	4.46%
Asian American Male EBEs	2	2.44%	$141,643	1.73%
Hispanic American Female EBEs	0	0.00%	$0	0.00%
Hispanic American Male EBEs	1	1.22%	$17,078	0.21%
Native American Female EBEs	0	0.00%	$0	0.00%
Native American Male EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	1	1.22%	$25,000	0.31%
Caucasian Male EBEs	1	1.22%	$121,667	1.49%
Non-EBEs	74	90.24%	$7,283,105	89.07%
TOTAL	82	100.00%	$8,177,072	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Female EBEs	2	2.44%	$438,579	5.36%
Minority Male EBEs	4	4.88%	$308,721	3.78%
Caucasian Female EBEs	1	1.22%	$25,000	0.31%
Caucasian Male EBEs	1	1.22%	$121,667	1.49%
Non-EBEs	74	90.24%	$7,283,105	89.07%
TOTAL	82	100.00%	$8,177,072	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
EBEs	8	9.76%	$893,967	10.93%
Non-EBEs	74	90.24%	$7,283,105	89.07%
TOTAL	82	100.00%	$8,177,072	100.00%

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

Table 6.08 below summarizes all contracts under $500,000 expended by the City on goods and other services prime contracts. Emerging Business Enterprises received 6.49 percent of the goods and other services prime contract dollars; Minority Male Emerging Business Enterprises received 3.21 percent; Minority Women Business Enterprises received none of the goods and other services contracts; and Non-Emerging Business Enterprises received 93.51 percent.

African Americans received 6 or 3.28 percent of the goods and other services contracts during the study period, representing $454,679 or 2.64 percent of the contract dollars.

Asian Americans received none of the goods and other services contracts during the study period.

Hispanic Americans received 4 or 2.19 percent of the goods and other services contracts during the study period, representing $98,883 or 0.57 percent of the contract dollars.

Native Americans received none of the goods and other services contracts during the study period.

Minority Emerging Business Enterprises received 10 or 5.46 percent of the goods and other services contracts during the study period, representing $553,562 or 3.21 percent of the contract dollars.

Caucasian Female Emerging Business Enterprises received 2 or 1.09 percent of the goods and other services contracts during the study period, representing $415,771 or 2.41 percent of the contract dollars.

Emerging Business Enterprises received 13 or 7.1 percent of the goods and other services contracts during the study period, representing $1,119,333 or 6.49 percent of the contract dollars.

Non-Emerging Business Enterprises received 170 or 92.9 percent of the goods and other services contracts during the study period, representing $16,132,767 or 93.51 percent of the contract dollars.

Table 6.08 Goods and Other Services Prime Contractor Utilization: Contracts under $500,000, January 1, 2005 to December 31, 2005

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American EBEs	0	0.00%	$0	0.00%
Asian American EBEs	0	0.00%	$0	0.00%
Hispanic American EBEs	2	9.09%	$33,796	11.76%
Native American EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	4	18.18%	$33,185	11.54%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	16	72.73%	$220,497	76.70%
TOTAL	22	100.00%	$287,478	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Female EBEs	0	0.00%	$0	0.00%
African American Male EBEs	0	0.00%	$0	0.00%
Asian American Female EBEs	0	0.00%	$0	0.00%
Asian American Male EBEs	0	0.00%	$0	0.00%
Hispanic American Female EBEs	0	0.00%	$0	0.00%
Hispanic American Male EBEs	2	9.09%	$33,796	11.76%
Native American Female EBEs	0	0.00%	$0	0.00%
Native American Male EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	4	18.18%	$33,185	11.54%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	16	72.73%	$220,497	76.70%
TOTAL	22	100.00%	$287,478	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Female EBEs	0	0.00%	$0	0.00%
Minority Male EBEs	2	9.09%	$33,796	11.76%
Caucasian Female EBEs	4	18.18%	$33,185	11.54%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	16	72.73%	$220,497	76.70%
TOTAL	22	100.00%	$287,478	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
EBEs	6	27.27%	$66,981	23.30%
Non-EBEs	16	72.73%	$220,497	76.70%
TOTAL	22	100.00%	$287,478	100.00%

C. Informal Prime Contracts Under $25,000 and $30,000, by Industry

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

Table 6.09 below summarizes all contracts under $25,000 expended by the City on construction prime contracts. Emerging Business Enterprises received 23.3 percent of the construction prime contract dollars; Minority Male Emerging Business Enterprises received 11.76 percent; Minority Women Business Enterprises received none of the construction contracts; and Non-Emerging Business Enterprises received 76.7 percent.

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

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

Hispanic Americans received 2 or 9.09 percent of the construction contracts during the study period, representing $33,796 or 11.76 percent of the contract dollars.

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

Minority Emerging Business Enterprises received 2 or 9.09 percent of the construction contracts during the study period, representing $33,796 or 11.76 percent of the contract dollars.

Caucasian Female Emerging Business Enterprises received 4 or 18.18 percent of the construction contracts during the study period, representing $33,185 or 11.54 percent of the contract dollars.

Emerging Business Enterprises received 6 or 27.27 percent of the construction contracts during the study period, representing $66,981 or 23.3 percent of the contract dollars.

Non-Emerging Business Enterprises received 16 or 72.73 percent of the construction contracts during the study period, representing $220,497 or 76.7 percent of the contract dollars.

Table 6.09 Construction Services Prime Contractor Utilization: Contracts under $25,000, January 1, 2005 to December 31, 2005

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American EBEs	0	0.00%	$0	0.00%
Asian American EBEs	0	0.00%	$0	0.00%
Hispanic American EBEs	1	5.26%	$17,078	6.11%
Native American EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	1	5.26%	$25,000	8.94%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	17	89.47%	$237,462	84.95%
TOTAL	19	100.00%	$279,540	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Female EBEs	0	0.00%	$0	0.00%
African American Male EBEs	0	0.00%	$0	0.00%
Asian American Female EBEs	0	0.00%	$0	0.00%
Asian American Male EBEs	0	0.00%	$0	0.00%
Hispanic American Female EBEs	0	0.00%	$0	0.00%
Hispanic American Male EBEs	1	5.26%	$17,078	6.11%
Native American Female EBEs	0	0.00%	$0	0.00%
Native American Male EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	1	5.26%	$25,000	8.94%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	17	89.47%	$237,462	84.95%
TOTAL	19	100.00%	$279,540	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Female EBEs	0	0.00%	$0	0.00%
Minority Male EBEs	1	5.26%	$17,078	6.11%
Caucasian Female EBEs	1	5.26%	$25,000	8.94%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	17	89.47%	$237,462	84.95%
TOTAL	19	100.00%	$279,540	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
EBEs	2	10.53%	$42,078	15.05%
Non-EBEs	17	89.47%	$237,462	84.95%
TOTAL	19	100.00%	$279,540	100.00%

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

Table 6.10 summarizes all contracts under $25,000 expended by the City on professional services prime contracts. Emerging Business Enterprises received 15.05 percent of the professional services prime contract dollars; Minority Male Emerging Business Enterprises received 6.11 percent; Minority Women Business Enterprises received none of the contracts; and Non-Emerging Business Enterprises received 84.95 percent.

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

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

Hispanic Americans received 1 or 5.26 percent of the professional services contracts during the study period, representing $17,078 or 6.11 percent of the contract dollars.

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

Minority Emerging Business Enterprises received 1 or 5.26 percent of the professional services contracts during the study period, representing $17,078 or 6.11 percent of the contract dollars.

Caucasian Female Emerging Business Enterprises received 1 or 5.26 percent of the professional services contracts during the study period, representing $25,000 or 8.94 percent of the contract dollars.

Emerging Business Enterprises received 2 or 10.53 percent of the professional services contracts during the study period, representing $42,078 or 15.05 percent of the contract dollars.

Non-Emerging Business Enterprises received 17 or 89.47 percent of the professional services contracts during the study period, representing $237,462 or 84.95 percent of the contract dollars.

Table 6.10 Professional Services Prime Contractor Utilization: Contracts under $25,000, January 1, 2005 to December 31, 2005

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American EBEs	2	3.45%	$40,870	3.77%
Asian American EBEs	0	0.00%	$0	0.00%
Hispanic American EBEs	4	6.90%	$98,883	9.13%
Native American EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	0	0.00%	$0	0.00%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	52	89.66%	$943,190	87.10%
TOTAL	58	100.00%	$1,082,943	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Female EBEs	0	0.00%	$0	0.00%
African American Male EBEs	2	3.45%	$40,870	3.77%
Asian American Female EBEs	0	0.00%	$0	0.00%
Asian American Male EBEs	0	0.00%	$0	0.00%
Hispanic American Female EBEs	0	0.00%	$0	0.00%
Hispanic American Male EBEs	4	6.90%	$98,883	9.13%
Native American Female EBEs	0	0.00%	$0	0.00%
Native American Male EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	0	0.00%	$0	0.00%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	52	89.66%	$943,190	87.10%
TOTAL	58	100.00%	$1,082,943	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Female EBEs	0	0.00%	$0	0.00%
Minority Male EBEs	6	10.34%	$139,753	12.90%
Caucasian Female EBEs	0	0.00%	$0	0.00%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	52	89.66%	$943,190	87.10%
TOTAL	58	100.00%	$1,082,943	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
EBEs	6	10.34%	$139,753	12.90%
Non-EBEs	52	89.66%	$943,190	87.10%
TOTAL	58	100.00%	$1,082,943	100.00%

3. Goods and other Services Prime Contractor Utilization: Contracts under $30,000

Table 6.11 below summarizes all contracts under $30,000 dollars expended by the City on goods and other prime contracts. Emerging Business Enterprises received 12.9 percent of the goods and other services prime contract dollars; Minority Male Emerging Business Enterprises received 12.9 percent; Minority Women Business Enterprises received none of the contracts; and Non-Emerging Business Enterprises received 87.1 percent.

African Americans received 2 or 3.45 percent of the goods and other services contracts during the study period, representing $40,870 or 3.77 percent of the contract dollars.

Asian Americans received none of the goods and other services contracts during the study period.

Hispanic Americans received 4 or 6.9 percent of the goods and other services contracts during the study period, representing $98,883 or 9.13 percent of the contract dollars.

Native Americans received none of the goods and other services contracts during the study period.

Minority Emerging Business Enterprises received 6 or 10.34 percent of the goods and other services contracts during the study period, representing $139,753 or 12.9 percent of the contract dollars.

Caucasian Female Emerging Business Enterprises received none of the goods and other services contracts during the study period.

Emerging Business Enterprises received 6 or 10.34 percent of the goods and other services contracts during the study period, representing $139,753 or 12.9 percent of the contract dollars.

Non-Emerging Business Enterprises received 52 or 89.66 percent of the goods and other services contracts during the study period, representing $943,190 or 87.1 percent of the contract dollars.

Table 6.11 Goods and Other Services Prime Contractor Utilization: under $30,000, January 1, 2005 to December 31, 2005

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American EBEs	2	3.45%	$40,870	3.77%
Asian American EBEs	0	0.00%	$0	0.00%
Hispanic American EBEs	4	6.90%	$98,883	9.13%
Native American EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	0	0.00%	$0	0.00%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	52	89.66%	$943,190	87.10%
TOTAL	58	100.00%	$1,082,943	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Female EBEs	0	0.00%	$0	0.00%
African American Male EBEs	2	3.45%	$40,870	3.77%
Asian American Female EBEs	0	0.00%	$0	0.00%
Asian American Male EBEs	0	0.00%	$0	0.00%
Hispanic American Female EBEs	0	0.00%	$0	0.00%
Hispanic American Male EBEs	4	6.90%	$98,883	9.13%
Native American Female EBEs	0	0.00%	$0	0.00%
Native American Male EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	0	0.00%	$0	0.00%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	52	89.66%	$943,190	87.10%
TOTAL	58	100.00%	$1,082,943	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Female EBEs	0	0.00%	$0	0.00%
Minority Male EBEs	6	10.34%	$139,753	12.90%
Caucasian Female EBEs	0	0.00%	$0	0.00%
Caucasian Male EBEs	0	0.00%	$0	0.00%
Non-EBEs	52	89.66%	$943,190	87.10%
TOTAL	58	100.00%	$1,082,943	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
EBEs	6	10.34%	$139,753	12.90%
Non-EBEs	52	89.66%	$943,190	87.10%
TOTAL	58	100.00%	$1,082,943	100.00%

V. SUBCONTRACTOR UTILIZATION DATA SOURCES

A. Data Sources

Mason Tillman through its subcontractor, Prism Technical Management & Marketing Services, visited the Department of Public Works, Department of City Development, and the Department of Administration (Business Operations) to reconstruct subcontractor data from various documents found in the project/contract files. The documents included, but were not limited to, contract documents, contract compliance status reports, prime contractor and/or subcontractor affidavits for final payment, and contractor utilization plans. Subcontractors were then contacted to verify the contract amounts and payments that were received from the prime contractors.

City staff members from the departments noted above were cooperative and helpful in providing files, answering questions, and obtaining information from prime contractors that may not have been in the file at the time of review. In addition to providing access to their records, they encouraged the prime contractors and subcontractors to respond to surveys. City staff also assisted in locating subcontractor contact information and payment data that were not available in the project files.

Non-professional services and goods contracts traditionally do not include significant subcontracting activity so they were not included in the analysis.

VI. EBE GOAL ATTAINMENT

As depicted in Table 6.12, Emerging Business Enterprises received $25,798,091, representing 22.95 percent of the construction contract dollars awarded by the City during the study period. The EBE utilization goal of 18 percent for all City contracts was attained during the study period.

Table 6.12 Prime Contractor and Subcontractor EBE Utilization Construction Contracts

EBE Status	Amount of Dollars	Percent of Dollars
EBE	$25,798,091	22.95%
Non EBE	$86,611,648	77.05%
Total	$112,409,739	100.00%

Table 6.13 below shows that EBEs received $2,811,110, representing 18.73 percent of the professional services contract dollars awarded by the City during the study period. The EBE utilization goal of 18 percent was attained during the study period.

Table 6.13 Prime Contractor and Subcontractor EBE Utilization Professional Services Contracts

EBE Status	Amount of Dollars	Percent of Dollars
EBE	$2,811,110	18.73%
Non EBE	$12,200,086	81.27%
Total	$15,011,196	100.00%

VII. SUBCONTRACTOR UTILIZATION ANALYSIS

As depicted in Table 6.14 below, Mason Tillman analyzed 309 subcontracts for the 136 prime contracts valued at $100,000 or more, which was awarded during the study period. The 309 subcontracts included 302 construction subcontracts and seven professional services subcontracts.

Of the subcontracts identified, $24,706,803 total dollars were expended, $23,704,577 for construction subcontracts and $1,002,226 for professional services subcontracts.

Table 6.14 Total Subcontract Awards and Dollars: All Industries, January 1, 2005 to December 31, 2005

Industry	Total Number of Subcontracts	Total Dollars Expended
Construction	302	$23,704,577
Professional Services	7	$1,002,226
Total	309	$24,706,803

A. Construction Utilization: All Subcontracts

Table 6.15 below depicts construction subcontracts awarded by prime contractors. Minority Emerging Business Enterprises received 56.58 percent of the construction subcontract dollars; Caucasian Female Emerging Business Enterprises received 15.19 percent; and Non-Emerging Business Enterprises received 19.21 percent.

African Americans received 48 or 15.89 percent of the construction subcontracts during the study period, representing $1,623,616 or 6.85 percent of the subcontract dollars.

Asian Americans received 1 or 0.33 percent of the construction subcontracts during the study period, representing $4,800 or 0.02 percent of the subcontract dollars.

Hispanic Americans received 98 or 32.45 percent of the construction subcontracts during the study period, representing $11,784,029 or 49.71 percent of the subcontract dollars.

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

Minority Emerging Business Enterprises received 147 or 48.68 percent of the construction subcontracts during the study period, representing $13,412,445 or 56.58 percent of the subcontract dollars.

Caucasian Female Emerging Business Enterprises received 67 or 22.19 percent of the construction subcontracts during the study period, representing $3,599,719 or 15.19 percent of the subcontract dollars.

Emerging Business Enterprises received 219 or 72.52 percent of the construction subcontracts during the study period, representing $21,521,313 or 90.79 percent of the subcontract dollars.

Non-Emerging Business Enterprises received 83 or 27.48 percent of the construction subcontracts during the study period, representing $2,183,264 or 9.21 percent of the subcontract dollars.

Table 6.15 Construction Utilization: All Subcontracts, January 1, 2005 to December 31, 2005

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American EBEs	48	15.89%	$1,623,616	6.85%
Asian American EBEs	1	0.33%	$4,800	0.02%
Hispanic American EBEs	98	32.45%	$11,784,029	49.71%
Native American EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	67	22.19%	$3,599,719	15.19%
Caucasian Male EBEs	5	1.66%	$4,509,150	19.02%
Non-EBEs	83	27.48%	$2,183,264	9.21%
TOTAL	302	100.00%	$23,704,577	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Female EBEs	7	2.32%	$107,770	0.45%
African American Male EBEs	41	13.58%	$1,515,846	6.39%
Asian American Female EBEs	0	0.00%	$0	0.00%
Asian American Male EBEs	1	0.33%	$4,800	0.02%
Hispanic American Female EBEs	0	0.00%	$0	0.00%
Hispanic American Male EBEs	98	32.45%	$11,784,029	49.71%
Native American Female EBEs	0	0.00%	$0	0.00%
Native American Male EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	67	22.19%	$3,599,719	15.19%
Caucasian Male EBEs	5	1.66%	$4,509,150	19.02%
Non-EBEs	83	27.48%	$2,183,264	9.21%
TOTAL	302	100.00%	$23,704,577	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Female EBEs	7	2.32%	$107,770	0.45%
Minority Male EBEs	140	46.36%	$13,304,675	56.13%
Caucasian Female EBEs	67	22.19%	$3,599,719	15.19%
Caucasian Male EBEs	5	1.66%	$4,509,150	19.02%
Non-EBEs	83	27.48%	$2,183,264	9.21%
TOTAL	302	100.00%	$23,704,577	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
EBEs	219	72.52%	$21,521,313	90.79%
Non-EBEs	83	27.48%	$2,183,264	9.21%
TOTAL	302	100.00%	$23,704,577	100.00%

B. Professional Services Utilization: All Subcontracts

Table 6.16 below depicts professional services subcontracts awarded by prime contractors. Minority Emerging Business Enterprises received 80.06 percent of the professional services subcontract dollars; Caucasian Female Emerging Business Enterprises received none of the subcontracts; and Non-Emerging Business Enterprises received 15.86 percent.

African Americans received 3 or 42.86 of the professional services subcontracts during the study period, representing $559,055 or 55.78 of the subcontract dollars.

Asian Americans received 1 or 14.29 percent of the professional services subcontracts during the study period, representing $16,310 or 1.63 percent of the subcontract dollars.

Hispanic Americans received 1 or 14.29 percent of the professional services subcontracts during the study period, representing $226,981 or 22.65 percent of the subcontract dollars.

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

Minority Emerging Business Enterprises received 5 or 71.43 percent of the professional services subcontracts during the study period, representing $802,346 or 80.06 percent of the subcontract dollars.

Caucasian Female Emerging Business Enterprises received none of the professional services subcontracts during the study period.

Emerging Business Enterprises received 6 or 85.71 percent of the professional services subcontracts during the study period, representing $843,226 or 84.14 percent of the subcontract dollars.

Non-Emerging Business Enterprises received 1 or 14.29 percent of the professional services subcontracts during the study period, representing $159,000 or 15.86 percent of the subcontract dollars.

Table 6.16 Professional Services Utilization: All Subcontracts, January 1, 2005 to December 31, 2005

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American EBEs	3	42.86%	$559,055	55.78%
Asian American EBEs	1	14.29%	$16,310	1.63%
Hispanic American EBEs	1	14.29%	$226,981	22.65%
Native American EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	0	0.00%	$0	0.00%
Caucasian Male EBEs	1	14.29%	$40,880	4.08%
Non-EBEs	1	14.29%	$159,000	15.86%
TOTAL	7	100.00%	$1,002,226	100.00%
Ethnicity and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
African American Female EBEs	1	14.29%	$8,680	0.87%
African American Male EBEs	2	28.57%	$550,375	54.92%
Asian American Female EBEs	0	0.00%	$0	0.00%
Asian American Male EBEs	1	14.29%	$16,310	1.63%
Hispanic American Female EBEs	0	0.00%	$0	0.00%
Hispanic American Male EBEs	1	14.29%	$226,981	22.65%
Native American Female EBEs	0	0.00%	$0	0.00%
Native American Male EBEs	0	0.00%	$0	0.00%
Caucasian Female EBEs	0	0.00%	$0	0.00%
Caucasian Male EBEs	1	14.29%	$40,880	4.08%
Non-EBEs	1	14.29%	$159,000	15.86%
TOTAL	7	100.00%	$1,002,226	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
Minority Female EBEs	1	14.29%	$8,680	0.87%
Minority Male EBEs	4	57.14%	$793,666	79.19%
Caucasian Female EBEs	0	0.00%	$0	0.00%
Caucasian Male EBEs	1	14.29%	$40,880	4.08%
Non-EBEs	1	14.29%	$159,000	15.86%
TOTAL	7	100.00%	$1,002,226	100.00%
Minority and Gender	**Number of Contracts**	**Percent of Contracts**	**Amount of Dollars**	**Percent of Dollars**
EBEs	6	85.71%	$843,226	84.14%
Non-EBEs	1	14.29%	$159,000	15.86%
TOTAL	7	100.00%	$1,002,226	100.00%

VIII. SUMMARY

The City's prime contractor utilization analysis examined the $173,842,842 expended on the 463 contracts awarded between January 1, 2005 to December 31, 2005. The $173,842,842 expended included 169 contracts for construction, 86 contracts for professional services and 208 contracts for goods and other services.

The utilization analysis was performed separately for informal and formal contracts. The informal levels included contracts under $25,000 for professional services, under $25,000 for construction, and under $30,000 for goods and other services. The analysis of formal contracts was limited to contracts under $500,000 for each industry.

The City's subcontractor utilization analysis examined the $24,706,803 expended on the 309 subcontracts. The 309 subcontracts included 302 construction subcontracts and seven professional services subcontracts.

The objective of the Utilization Analysis was to determine if EBEs were underutilized at a statistically significant level on City contracts. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to EBEs should be approximate to the proportion of available EBEs in the relevant market area.[1]

The City was successful in meeting its 18 percent EBE participation requirement on construction and professional services contracts during the study period. There were certain EBEs that were underutilized based on their availability in the City's market area. For example, African American EBEs were underutilized on the City's construction, and goods and other services contracts when compared to the availability of the businesses in the Study's market area.

For goods and other services contracts, African Americans only received 2.88 percent of the City's prime contracts although they account for 13.16 percent of goods and other services firms in the Study's market area. Recommendations to remedy this underutilization are offered in Chapter 9: *Recommendations*.

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

7

ANECDOTAL ANALYSIS

I. INTRODUCTION

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

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

A. Anecdotal Evidence of Active or Passive Participation

Croson authorizes anecdotal inquiries along two lines. The first approach, which 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 their contracting opportunities.

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

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

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

This chapter presents anecdotal accounts excerpted from interviews with businesses domiciled in the City of Milwaukee (City). The anecdotes are the interviewees' perception of what they believe to be discriminatory practices they have experienced by prime contractors and the City.

B. Anecdotal Methodology

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

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[2] Croson, 488 U.S. at 491-93, 509.

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

[4] 488 U.S. at 509.

which these practices occur. The in-depth interviews are also structured in a manner that affords EBEs a process in which their anonymity can be preserved.

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

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

Generally, the interviews lasted one hour. A set of probes were designed to cover all aspects of business development and both public and private sector experiences. Completed interviews were transcribed and analyzed for barriers EBE businesses encountered. From this analysis, the anecdotal report was completed. The anecdotal report describes general market conditions, prime contractor barriers, and the range of experiences encountered by interviewees attempting to do business with the City.

C. Anecdotal Interviewee Profile

Table 7.01 below presents a profile of the business owners interviewed for this Study.

Table 7.01 Anecdotal Interviewee Profile

Ethnicity	Number
African American	10
Hispanic American	3
Native American	1
Asian American	2
Caucasian	4
Total	**20**
Gender	**Number**
Male	8
Female	12
Total	**20**

Table 7.01 Anecdotal Interviewee Profile

Ethnicity	Number
Industry	**Number**
Construction Services	7
Professional Services	5
Goods and Other Services	8
Total	**20**

II. BARRIERS BASED ON RACE

A. Racial Barriers

Discrimination based on race is a practice that has been prevalent in most aspects of American business—both in the private and public sectors. As a result, many minority business owners' skills and capabilities are not evaluated with the same set of standards as their Caucasian counterparts.

A minority male owner of a construction company for ten years reported that he has been insulted by racial slurs. He also discussed a situation where a prime contractor charged him to use equipment on a City project when a non-minority counterpart was allowed to use the same equipment for free:

> I have been called 'beaniard,' 'wetback,' and a 'spic.' I had two guys sit to the right of me, where one was making arrangements to let the other one use a very expensive piece of equipment on a high-rise building for free. But, that same guy was charging us a very large amount of money per hour to have access to the same equipment. And when they made the agreement, the one guy told the other guy, 'That's very White of you. I appreciate it.' And the other guy told him, 'Don't mention it.' This was a project that had an EBE requirement.

A minority male owner of a construction company for five years reported on an incident where he was subjected to racial slurs from a potential client:

> [When she called me] she did not know that I was Black. She received a business card from us, and she had trouble reading my name. And she asked, 'What nationality are you?' So I told her, and she went on this tirade about how Blacks get all these programs like the EBE [program] and handouts and yet they still [expletive removed] and complain about how White people keep putting them down. I was trying to be as diplomatic as I could, but she felt that Black people shouldn't be American, to put it simply.

A minority male owner of a goods and other services company for five years reported on a incident where racial slurs were used toward his employees:

> On the last contract I worked on I was told to get rid of all the brothers. Also, I had a [male employee] and a White female [employee], and he called her a 'nigger lover' on a Milwaukee Public School project. When we deal with firms like that, we don't have a chance. I have seen things that are unethical. There is no longer affirmative action, and no one has to address those issues anymore. They don't care about minority participation, and they definitely don't care about minority firms. The [prime contractors] feel like they are [forced] to work with minority businesses.

This same business owner explained why he felt that he had to remove the title "President" from his business card:

> I took 'President' off of some of my business cards and replaced it with Chief Operating Officer or Operations Manager because that's what they want to see. I have realized that if I am seen as the president with a minority face, they are uncomfortable because they feel that they need someone else to go tell on me. So, if I am in the field and they think I have an owner over me, they are more likely to give us an opportunity. As long as I'm not the owner, they are happy with that perception. It's based on race, point blank.

A minority male owner of a construction company for 17 years reported that he had to hire a Caucasian employee because the superintendent on a City project would not communicate with his minority workers:

> When I worked at the [City agency name withheld], the superintendent that ran the project really gave us a hard time. He was a difficult person to deal with. He would not communicate with us. I had Black carpenters at the time who he would not talk to. The only way I was able to get through that project was to hire a White carpenter who was able to talk to him and get us through the project.

This same business owner stated that he stopped working on City projects as a subcontractor because he believed his firm was used as a scapegoat when problems arose on the work site:

> As a subcontractor, we end up being the scapegoat when something goes wrong on a project. This is the key reason I am not a big fan of working as a subcontractor for certain prime contractors. They will say, 'We had to use minority contractors. This is why we are having these problems.' I have not done a lot of City work because of my past experience. So I have just not bid on a lot of City work because of that reason. I don't want the troubles.

A minority male owner of a construction company for almost two decades complained that while working on City projects, some City inspectors imposed requirements on his firm that were not asked of majority-owned firms:

> It's always been tough to do business in Milwaukee. [As a minority business owner], I have heard that we are not as educated, and we do not have the resources [to complete the job]. Or, we cost too much money to be on the job. [Inspectors will ask] 'How old is my company? What am I doing? What is my manpower?'

> They never ask these questions of White firms. There is no reason I need to meet with that inspector when I have a project manager right there with 30 years of [experience] who has worked for large contractors here in the City. [But the inspector will say], 'I need to see your owner. I need to talk to him.'

A minority female owner of a professional services firm believes that some minority subcontractors are not provided the same opportunities as non-minority subcontractors:

> Milwaukee is a city that can be very brutal at times and very unforgiving in terms of race. I heard of many instances where [prime contractors] have included minority vendors for decorative value and not to be inclusive or give them opportunities to grow. But to satisfy the EBE requirements.

This minority male owner of a professional services firm believes that African American male business owners are unfairly judged because of their race:

> When you have a company that is solely owned by African American males, there is a perception that we cannot do the job.

III. BARRIERS CREATED BY THE CONTRACTOR COMMUNITY

A. Difficulty Breaking Into the Contractor Community

Many EBEs reported on the difficulties they encountered in trying to break into the contractor community. This minority male owner with 23 years of experience in the construction industry believes that informal relationships are needed to obtain work from prime contractors:

> It is hard to network with some prime contractors, because I am not their neighbor, cousin, or brother. I do not go hunting or fishing with them. I think those type of informal relationships have a great effect on the way deals are made.

A minority male owner of a goods and other services company for ten years believes that more should be done to foster mentoring relationships between EBEs and prime contractors:

> As an emerging business, it's difficult to introduce yourself to [prime contractors] because they don't know you from Adam. I think the City needs to identify the contractors who sincerely have an interest to work in the inner city and who are sincerely interested in fostering working relationships with emerging businesses on a long-term basis.

A minority male owner of a professional services firm reported that his company receives more networking opportunities from the State. This business owner suggested that the City replicate some of the networking services the State provides for its DBEs:

> I think the City should consider what the State is doing, because most of our networking opportunities come from the State. The State [offers] a consultant speed dating networking event where they bring large consultants and small consultants or emerging businesses together and they rotate and talk to these different companies. The City really doesn't provide any opportunities for consultants to meet their staff or larger companies that work with them. If we did not work with them on State contracts, then we would never get a chance to work with them any other time.

This same business owner further explained how he is able to market his services directly to the State:

> The State makes a special effort to match DBEs with prime consultants. We have the opportunity to network with the State whenever we are listed as a subcontractor. We go to the meetings and submit our final draw. This is our chance to pass out our business cards and let the State know what we are capable of doing. The State is a lot more proactive at getting DBEs and prime consultants at the same table to meet each other. But the City does not have anything in place for professional services firms to meet [larger prime consultants].

A minority female owner of a goods and other services company reported that as an EBE contractor, her firm is typically given contracts with a scant amount of work to be performed:

> Since we are on the EBE list, we are thrown some bones. And, when I say bones I mean [very little]. For instance, [a prime contractor] had to auction City trucks and cars. One year he used us to do security on one of his projects on the parking lot where the cars were being gathered to do the auction. We were used for only one day.

This same business owner also believes that she is excluded from networking events in her industry:

> Also, [prime contractor name withheld] held networking meetings for [industry type withheld] for the downtown area. I just found out about these meetings this year. They would meet in certain places downtown, and I did not have a clue.

A minority male owner of a goods and other services company for five years believes that the good old boy network is a significant barrier to EBEs obtaining City contracts:

> The good old boy network feeds each other [business], they keep each other in the loop. They will also create companies [to keep work within their circles]. For example, if a stadium project is almost done that they are working on, they will create a cleaning company to keep all the money in-house. If it goes out to bid, they make sure their uncle or cousin gets it. There is so much of that stuff going on, it is swept underneath the rug.

IV. DIFFICULTIES IN THE CONTRACTING PROCESS

A. Difficulty Navigating the Bid Process

Navigating through a government agency's bid process can be a substantial barrier for minority and small businesses. The interviewees described a number of barriers they encountered with the City in trying to secure information for contract opportunities.

A minority female owner of a construction company for 30 years reported that she typically hears about the City's bid notices through the *Daily Reporter* or through an exchange service rather than from the City itself:

> The City does not send out notices for bids. We mainly [learn about them] from the *Daily Reporter*. We also belong to an exchange, and contractors will notify us because they know us. We do not have any contact from the City. The exchange sends a letter for every bid that has your area of work on it. The City of Milwaukee does not do that.

A minority male owner of a construction company for five years does not believe the City's vendor list is beneficial for minority EBEs if the project does not require EBE participation:

> I am on the City's vendor list, but they don't take me seriously. They only take my bid seriously if it's a job that requires minority participation. I'm only good to them if the participation [requirement] arises. If there is no participation, they won't even look at my numbers.
>
> We read the *Daily Reporter* every day, and there is a woman who works for [City employee name withheld] who will call periodically and say, 'Hey, we have a roofing project coming up and we would like you to bid on it.' So, at least there is somebody out there looking out for me.

A minority male owner of a goods and other services company for five years does not believe the City's e-Notify system is helpful in informing him of upcoming job opportunities:

> The City has e-Notify, which I signed up for three years ago and I have not [received] an email yet. Now they have become sticklers because this e-Notify [system] has 'Business Sense,' which is supposed to make it more accessible. I have not heard anything from Business Sense since they made me go through their extreme application process.

A Caucasian female owner of a construction company reported that bids for some small projects are only solicited from a select group of prime contractors:

> As a prime contractor with the City, I found that there are small projects that are out for bid that are attached to bigger contracts. The City will solicit those [small contracts] to the [prime contractors] that already have outstanding contracts. Let's say you have a $500,000 job, there might be a $20,000 job that they want to get done and they will only solicit the companies that have existing prime contracts.
>
> So, if you are not the prime contractor, you would not be aware of these [smaller] jobs. Even though we are capable of doing that kind of work. You have to hold a prime contract at the time to be solicited, because they want to add it as a change order onto the contract.

B. Inadequate Lead Time

Inadequate lead time can destroy a company's opportunity to submit a competitive bid or proposal. Some EBEs believe that there are some prime contractors that purposely give subcontractors bid opening deadlines that are impossible to meet.

A minority male owner of a goods and other services firm for five years reported that it is common for his company to have inadequate lead time to prepare a bid request:

> Usually when the bid request comes to us, it's late or when the rubber meets the road, so to speak.

A minority male owner of a construction firm for 17 years believes that some prime contractors purposely give subcontractors inadequate lead time to avoid EBE participation requirements:

> Inadequate lead time is another barrier in the market that circumvents minority contractors from participating on City contracts. Prime contractors will say they want a bid within the next two days. If not you can't respond they say, 'Sorry we missed you, but we'll try some other time.' When in reality it takes a year to get a project going, and for them to give us a day or two to bid is ridiculous.

This same business owner reported on a situation where he was not given a fair opportunity to reply to a bid request from a prime contractor:

> Once a general contractor called me on December 23rd, and he wanted the bid done by the end of the week which was the 26th or 27th which was ridiculous. So he had a good excuse to say, 'We tried to contact this company to get them to bid, but they didn't bid.' Ironically, I still got those numbers together and bid on the work within the time frame, and I still didn't get the job.

A minority male owner of a construction company for five years also reported that oftentimes he is unable to provide a bid response because of the short turnaround time he is given:

> A general contractor that we frequently work with may call and say, 'Hey, we need a quick number. Can you help us out?' I do not have an issue with this necessarily, but I think it impedes my ability to give an accurate number when I am only given one day to do it. This just happened recently, and I had to pass on it.

A minority male owner of a goods and other services company for ten years reported that he frequently is given very little time to respond to bid requests:

> Oftentimes prime contractors will say, 'We gotta have a number from you.' They have known about the project for 30 days, but I have to respond in a few days. And I have to review 200 plan sheets and three specification books. This happens all the time. I imagine some contractors are unorganized, and other contractors use this as a device to limit their participation with emerging businesses. It's unfair for prime contractors to pitch bid request against unfair deadlines.

This same business owner described one situation where he was given only one week to provide a bid response:

> Last Thursday, two large rolls of blueprints showed up at our office with several specification books and a transmittal form that says the bid was due the following Friday. Unfortunately for us, we can't make that

> deadline so we did not price that project. I never complain out of fear of being blackballed by the contracting community. A prime contractor once told me to take my lumps like a big boy and keep my mouth shut, and there will be other work for me.

A minority female owner of a construction company for three decades reported that she has also been given one day to respond to a bid request:

> It happened the other day with [prime contractor name withheld] at the City of Milwaukee. This contractor realized he needed 18 percent EBE participation, so he called us the day before the bid was due. We prefer to have at least two or three days notice.

A Caucasian female owner of a construction company for 13 years reported that she is given as little as a few hours to respond to a bid request:

> I may get a call from a prime contractor asking if we are interesting in bidding as a subcontractor. Sometimes the call will come at eight in the morning when the bid is due at 10:30 a.m. the same day. Sometimes we will provide a quote and fax it later. Otherwise, we just won't quote.

C. Prime Contractors Avoiding EBE Program Requirements

Historically, prime contractors have used various tactics to circumvent business enterprise participation requirements for small, minority, and women-owned businesses. Several interviewees described situations where they believe prime contractors have engaged in such behavior.

A representative of a minority business association reported on an incident where a prime contractor tried to avoid EBE requirements:

> [I know of a situation] where a subcontractor believed that he was released from a project because of his race. The prime contractor wanted to use someone else for the services [his company was providing]. Due to the EBE requirement, they hired him and then got rid of him. Subsequently, they satisfied the EBE participation

> requirement through a female EBE that was not African American like the initial EBE subcontractor.

A minority male owner of a construction company for close to two decades reported that some prime contractors use tactics to prevent subcontractors from submitting a bid:

> We have sought jobs that required EBE participation and asked the generals for plans, and we never received them. Or they would send us the plans at the last minute. Sometimes we might get the plans after the bid due date.

A minority male owner of a construction company reported that some prime contractors refuse to return his calls and then report to the City that they were unable to secure a bid from an EBE:

> In 2005 a company that won an award would not return my calls. But it happens all the time where they will lie and say we could not get a hold of the EBE subcontractor.

A Caucasian female owner of a construction company for 13 years reported on an incident where a prime contractor listed her firm as an EBE subcontractor but did not provide them with any work:

> I recall when a prime contractor listed us as their subcontractor. We submitted a bid to them, and they used our numbers and signed off on the form that we would be their EBE. However, when it came time to do the work, they called us and said we could work in a couple of weeks. And when we checked back after a couple of weeks, the work was done. And this was a significant sized job.

A minority male owner of a goods and other services company also reported on a situation where a prime contractor listed his company without providing any business opportunities:

> A firm called [company name withheld] listed us for their EBE participation. I gave them my approval to list us. But once they were given the contract, we did not get any work. They have consistently listed us [as their EBE subcontractor], and we never learn the outcome of the award.

V. FINANCIAL BARRIERS

A. Difficulty Obtaining Financing

According to many interviewees, limited access to capital limits their growth potential. They reported that they faced many barriers in trying to obtain business loans from financial institutions and credit from suppliers.

A minority male owner of a construction company reported on the difficulties he has experienced in trying to get credit from suppliers, even though his business is almost two decades old:

> We did four jobs with EBE requirements, and we could not get any credit from supply houses or banks. We applied at three [service type withheld] wholesale houses, and we were rejected by all three. The cards were stacked against us, so it's hard to say that we were treated fairly. They would not give us financing based on our past history. In the construction industry if you don't have a line of credit or a cash flow, you are done. If I was a different nationality, they may have taken some other things into consideration.

This same business owner reported that he hired a contractor with decades of experience because of difficulties obtaining financing forced him out of business:

> I know of another [service type withheld] contractor that recently went out business, and he now works for me. He [was seasoned in his field] but his biggest problem was cash flow. He could not obtain financing at the supply houses, so he was not able to get the same pricing that the other contractors could get, and this is an issue for me too. You can't be competitive if you're buying products that are priced 20 percent higher than your competitors. So, he went out of business because he could not maintain the cash flow.

This minority male owner of a goods and other services company for ten years also reported that obtaining financing for his business has been a constant struggle:

> Years ago when we were starting up, obtaining credit was very difficult. Even now that we are stronger financially, the [banks] still maintain first and second positions on [my] collateral, and they will not increase my credit lines. The property value has increased significantly, but they still have not increased our credit line. I do not feel like I was treated fairly at all. I feel like I have to go through more processes, provide more information, and I am scrutinized a little closer than other contractor's. The inability to obtain financing limits your growth and creates a ceiling cap for growth. If you don't have access to capital, you can't add positions, purchase equipment, or purchase materials.

A minority male owner of a professional services firm described his frustration at maintaining financing for his small business:

> We had trouble when we applied for an SBA loan last year when our bank was hedging on renewing our current loan. Every year we have to renew our loan with this bank, and we have to jump through unnecessary hoops each year in order for them to decide whether they want to lend us money.

A minority male owner of a construction company for almost two decades reported that he has not been able to secure bonding since 1997:

> I have not received a bond since 1997. When I did get a bond, I probably paid ten times more than what some of the bigger companies pay. When I went to the City of Milwaukee to use their bonding program, they said it would take six weeks to process. And when I went to my prime contractor and told them it would take about six weeks to get the bond, they said, 'We can't do the job with you. We can't wait six weeks for you to get your bonding.'

A minority male owner of a construction company reported that his inability to obtain bonding limits his ability to bid on projects:

> We are able to work on some projects, but the bonding has a huge effect on what we can and can't do. We can't bid on every job that is out there, because we can't get bonded.

This minority male owner of a construction company for a decade reported that recently he was able to obtain bonding, but he pays a higher rate than his competitors:

> I have been denied bonds several times. I thought my financials were strong enough to apply for bonding. It was made real clear to me that I wasn't a company that sureties were interested in working with. It wasn't until two years ago when we finally got over the hump and was able to acquire bonding. However, we are paying a higher rate. Where most companies are paying a percent or more less.

A Caucasian female owner of a construction company believes that the good old boy network is a major barrier for woman-owned businesses seeking bonding:

> I do not feel we were treated fairly by bonding companies. I think that the good old boy factor is a barrier to obtaining bonds because the [bonding companies] are owned by White males.

B. Late Payments by Prime Contractors and the City

Lack of access to capital causes most EBEs to operate their businesses under limited financial conditions. This problem is compounded when prime contractors pay their EBE subcontractors in a untimely manner. This issue causes a myriad of problems for EBEs, ranging from cash flow restraints, difficulty paying employees and creditors, and personal financial hardships.

A minority male owner of a construction company for close to two decades described two occasions where he was paid late by a prime contractor. In one case he had not received the final payment from his retainer, even though the project was completed a year earlier:

> I worked as an EBE on a project in 2005. My contract required payment in 30 days. After 75 days with no payment, I called the City because the prime contractor was not giving me any kind of response. When they finally paid me, they did not pay me all the money, and it was over 100 days late. Right now, as second-tier subcontractors we have projects that we are waiting for money on. We have a project that we completed in September 2006, and we never received our last payment on our retainer as of February 2007. This is a huge issue for us, because all of our people are paid and all of our materials have been paid.

A minority male owner of a construction company reported that he has waited over a year to receive payment from a prime contractor:

> In 2005 we had several jobs that were related to the Milwaukee Public Schools where we were subcontractors, and one prime contractor took over a year to pay us. It was terrible. We could not get paid on time to save our lives. I can't think of one instance in 2005 when I was paid in a timely fashion. Without proper financing our capital depleted very quickly.

This same business owner spoke about the impact of late payments on his small business:

> If your profit margins aren't such that can help you in rough times like that, it's hard to survive. That's why I'm glad [name withheld] is around. There have been times when I couldn't make it, and he had to step in and give me money.

A minority male owner of a construction company also reported waiting a year for final payment on a project that was completed eight months ago:

> We currently have retainage out for 376 days on a City of Milwaukee project that was a [value withheld] contract that we did as a second tier. We have completed that work and have been gone from there for eight months.

This same business owner reported on another project where he worked as a subcontractor and received late payments:

> We have worked as a second tier subcontractor on a Housing Authority project, and the payment cycles were very difficult. They required a lot of documents, and that was not the first time we worked for the Housing Authority. I have never seen another entity that scrutinized payroll like that agency.

A minority female owner of a construction company reported that she typically waits up to 90 days before receiving payments from prime contractors:

> We're mainly subcontractors on most projects, so we are always waiting for the contractor to issue payments. It has become acceptable to get paid 60 to 90 days after the work has been completed.

This minority male owner of a professional services firm also reported waiting over 90 days to receive payment from prime contractors:

> On a City project it usually takes over 90 days before a prime contractor pays us. Once I called a City project mangers and asked if the prime contractor had been paid, and he thought they had been paid. This puts us in a tough spot because we want to continue to do work with the City and with the prime contractor, but it's important to be paid timely. It really affects our bottom line when we don't get paid, because we have bills to pay and we have to meet payroll just like everyone else.

A Caucasian female owner of a construction company for 13 years reported that she is frequently paid late by prime contractors:

> It always happens where a prime contractor will get paid and then they pay us late. I don't know if the City has any requirements for prime contractors to pay their subcontractors within a certain period of time. I know other agencies do and there's some teeth in it where you can go after the prime contractor if they don't. But, I don't know if the City's program has any prompt

> payment requirements. You just get paid whenever the prime contractor gets around to paying you.

A minority male owner of a construction firm for nearly two decades reported that he has contacted the City several times because a prime contractor was late with payments:

> A couple times I had to call the City to find out if a prime contractor has been paid, and in a couple cases I found that they were paid and did not pay me.

Several EBEs reported receiving late payments from the City. A Caucasian female owner of a construction company for over a decade reported that the City is slow to pay, especially if a change order is involved:

> The City as a whole is slow in paying people. Sometimes it due to change orders. If the change order process was handled [more efficiently], we would have been paid a lot more promptly. If we were waiting on a $20,000 payment, it would not have been as big of a deal. But when you have a $700,000 payment that is 30 to 45 days late, that is significant for a small firm like ours.

A minority female owner of a construction firm reported that some departments within the City pay their prime contractors quicker than other departments:

> Milwaukee Public Schools is horrible with their payments. We do not have that many problems with the City of Milwaukee if we are the prime contractor.

VI. PUBLIC SECTOR VS. PRIVATE SECTOR BUSINESS EXPERIENCES

The interviewees compared their experiences seeking contracting opportunities in the public and private sectors. This minority female owner of a construction company reported that she receives more job opportunities in the public sector because of EBE participation requirements:

> We have better opportunities with public work because of the City of Milwaukee's 18 percent EBE participation requirement. But there is more opportunities to negotiate in the private sector.

A minority male owner of a construction company for over two decades reported that obtaining payment for services rendered is a greater risk in the private sector:

> I have more comfort working in the public sector, because I know the government will pay its bills. Working in the private sector and dealing with developers is more of risk. But there is much more work in the private sector. Right now I'm [waiting for] payments for private sector work, and I am fearful that I won't get paid.

A Caucasian female owner of a construction company for 13 years believes that the good old boy network is a significant barrier in the private sector:

> I feel like the good old boy network controls the private sector where they will only solicit bids from certain companies. And we are never on that list. Whereas in the public sector, anyone can take on plans and bid on jobs.

A minority male owner of a construction firm for 17 years believes that the public sector is too bureaucratic:

> On private sector projects we only have to deal with [negotiating a] contract, and then you can do the work. City projects requires a report, certified payroll, and there are various other documentation that they want.

A minority male owner of a construction company for five years prefers the private sector, because he believes his services are judged on merit and not race:

> It's easier to get paid in the private sector. I also think my race plays less of a factor in the private market than it does in the public market. In the private sector I can compete based on merit. In the public arena I have to compete based on my race and based on my certifications. And that diminishes the ability of my company.

A minority male owner of goods and other services company for a decade also prefers the private sector. He reported that he is able to negotiate his contract in a manner that is not available in the public sector:

> In the public sector is it hard to [negotiate] a bid. There are no opportunities for negotiating contracts. In a private market, I can offer a variety of suggestions that will affect the client's choice and the cost of the project. Also, in the public market, it's a lot harder because there are tougher time lines, more competition, and it's dominated by majority-owned firms.

VII. COMMENTS REGARDING THE CITY'S EBE PROGRAM

The criteria for determining EBE certification requirements are set forth in Chapter 360 of the City of Milwaukee's ordinance. Chapter 360 defines an economic disadvantage as an inability to compete in the free enterprise system due to diminished capital, credit, or bonding opportunities. The City requires that all of its contracting departments and all other operating departments spend 18 percent of the total dollars with EBEs on prime contracts or subcontracts. The 18 percent is an annual goal and applies to all construction contracts, purchases of services, professional services, and supplies.

A minority male owner of a goods and other services company for ten years explained how the EBE program has served to grow and develop his small business:

> I absolutely believe the City's program is valuable. If we were not certified, I sincerely believe that some of the contractors that we have worked with would have never offered us an opportunity to perform for them. It is because of the program that we have worked with small general contractors and as then was able to work with medium-sized general contractors. Now we work for very large general contractors.

A minority male owner of a professional services firm for five years believes that the City's EBE participation requirement is the major factor for his company receiving contracts:

> The program is valuable because I don't think we would get any work if the EBE program was not in place. The larger firms would do much of the work themselves. If the EBE program wasn't in place, I don't think the opportunities would be there for minority businesses. In fact, I know the opportunities would not be there.

Even though this minority male has owned a construction company for over two decades, he fears that his company would suffer greatly without the City's EBE program:

> I think the EBE program creates opportunities for DBEs or minority contractors to access City contracts. It also creates an atmosphere where at the very least we know that prime contractors have to seek out EBEs to meet the goals. And it appears that the City strongly enforces the goal. So, it is a needed tool. I would be afraid to see what things would look like without it. I am afraid of what that would do to my business.

A minority male owner of a professional services agency for 15 years does not believe the City's EBE program is valuable for minority businesses because it "has no teeth":

> I think Milwaukee County's program has more teeth in their business enterprise program than the City. I think the City's program deliberately discourages participation by minorities because it has no teeth. It's useless. It has not been of any help to me as an individual, and many other people that I have talked to feel the same way. They should also require a diversity percentage on every consultant contract.

This Caucasian female owner of a construction firm for over a decade believes that the City's race and gender-neutral program is effective:

> The City's EBE certification is more difficult to obtain than other certifications because it's gender and race-neutral. It's difficult for outsiders to get in since they really have to prove that they are disadvantaged. It's not just about being a certain race or sex. I would say we probably get 25 percent of our work from the City, because we are an EBE. It's a huge portion of our market.

A Caucasian male owner of a goods and other services company for 20 years reported that the City's EBE program provides him with the opportunity to get work without being the lowest bidder:

> The program gives businesses like mine an opportunity where we don't have to bid so low that we almost have to do the work for free.

A minority male owner of a goods and other services company for five years believes that the City's program is valuable, but minority businesses can be subjected to retaliation if they complain:

> If the program did not have a participation requirement, prime contractors would not bother with EBEs. They would not engage a minority firm. And with Milwaukee, if you make enough noise they will make you an ornament because then you are a part of the problem. But outside of that, it gets your foot in the door and it gives you an opportunity to participate in projects that would otherwise not be available.

VIII. EXEMPLARY BUSINESS PRACTICES

Although interviewees were solicited for information on barriers they experienced with the City of Milwaukee, many business owners recounted positive experiences and relationships they have developed with City managers and staff.

A minority female owner of a professional services company reported on several networking events that have helped her obtain business opportunities:

> A meeting held at the Wisconsin Supply Council was very rewarding and engaging. I also have found the Governor's Market Place to be of great value as well. I have consistently received business opportunities from participating in that program.

A minority male owner of a professional services company for five years spoke of positive relationships he had with a City inspector and a City engineer:

> [City inspector name withheld] who worked with us on the Fond Du Lac Avenue project, he was very helpful, and I could tell he wanted to see us do well. He gave us a lot of tips and extra assistance. [City employee name withheld] was on the City's engineering staff, and he was really helpful also.

A minority male owner of a construction company for 18 years spoke highly of a City employee who assisted his small business. But he also believed that the EBE office is limited in the assistance it can provide for small emerging businesses:

> The lady in the City's EBE office was pretty helpful, but she was kind of limited because of the people above her program. I also let her know when we were not getting paid, and she spoke to a couple of folks. It didn't do a whole lot of good, but she stayed on it. And she made us aware of a couple other projects that were coming down the pipes. But again, she was limited in assisting us by some of the general contractors or City officials.

A Caucasian female owner of a construction company for over a decade also reported on the assistance her firm received from several City employees:

> One inspector assisted us in getting paid on a project. I don't know what we would have done if she did not help us. Also, the head person with the City of Milwaukee's EBE program has helped us numerous times when we call with questions. He has always been helpful, but I think it's because he respects our work and our company.

A minority female owner of a goods and other services company for five years reported that she is often given helpful information from several City employees:

> [City employee in the EBE office and representative from the Alderman's office names withheld] usually give us good advice. Even though they give good advice, their hands are tied by the bigger people that are their bosses. They can only do so much as representatives of the EBE program.

A minority male owner of a construction company for several decades reported that City employees informed him about upcoming contracting opportunities:

> There are people with the City who have been helpful in trying to identify projects for us. A specific person who was very helpful to my company was [City employee name withheld]. She used to work with the MBE program.

> Now, in the EBE program [employee name withheld] has been very helpful too. She has called up and pointed out a few projects for us to look at.

A minority male owner of a goods and other services company applauded the help he received from an EBE staff person:

> We have a huge advocate at the program, who has been a hidden angel. [Name withheld] has just been an angel. When she learns of an business opportunity, she let us know about it. She is always advocating for EBEs.

IX. RECOMMENDATIONS

The interviewees described recommendations that they believe will help grow and maintain EBE businesses. Some suggested that the City's program should include race-specific requirements while another interviewee recommended a graduation component.

This minority female owner of a construction company for two decades believes that the City's EBE program should reinstate its previous race-specific requirements:

> I understand why the City of Milwaukee changed its program to one that is race-neutral. But I believe that it should still be for minority businesses because we have definitely experienced a great disadvantage in relation to race, because I think there is a huge disparity because of race in this City and mostly this country. Programs like the City's business enterprise program are very important to the longevity and vitality of minority businesses.

A minority male owner of a construction company for several decades also believes that the City's program should be race-specific:

> The City's program is not race-based, and I think they should have a race-based program. Right now it is watered down. I think that people are expecting this Study to come up with real minority goals. Not this EBE crap.

A minority male owner of a construction company for five years recommended that the City integrate a graduation component in its program for EBEs that obtain a certain yearly revenue:

> I think the Emerging Business program is almost counterproductive the way it now operates. They have multi-million dollars companies that are certified as EBEs. I don't think that's right. It's clear that the status of that company is dramatically different from mine. They are taking in tens of millions of dollars. I did two million, yet we have the same certification. To me that does not make sense.

A minority male owner of a goods and other services company for a decade recommended that a mentor/protégé program for EBEs be implemented . He also suggests stricter monitoring procedures for EBE subcontractors:

> Education is needed to help new businesses grow. They need help in sustaining growth. I think a mentor/protégé relationship would be beneficial. There also needs to be more monitoring to scrutinize second-tier subcontracts. I don't think there is enough opportunities for smaller firms. There should be more controls to monitor subcontractors.

A minority female owner of a professional services firm suggested that the City should create opportunities for EBEs to meet City procurement managers:

> I would recommend more events for EBEs to meet key decision makers with the City. The [managers] that really make the decisions. This would enable a lot of small businesses to present their services to the decision makers that may one day need our services.

A minority male owner of a professional services firm recommends that the City unbundle its contracts to create smaller prime contracting opportunities for EBEs:

> I would like to suggest that the City create smaller job opportunities for their EBEs, similar to some State programs. The City should develop small projects that an EBE could work on as a prime contractor. If they want to develop a more professional relationship with their EBE companies, they should let us do something small so we can develop a working relationship from a

> prime contractor's perspective. Right now our relationship with the City is from a subcontractor's perspective. I would like to see them breakup some of the projects so we can do more work as a prime contractor. We have higher goals than just being a subcontractor on all of our projects. We need to have more balanced projects where we are the subcontractor and in some instances the prime contractor.

This same business owner also recommended a tracking system to determine if subcontractors have been paid in a timely fashion:

> I would suggest a tracking system to make sure that EBEs and subcontractors are getting paid in a timely manner. Cash flow is very critical for small companies.

This minority female owner of a goods and other services company believes that the City could do more to inform EBEs about upcoming job opportunities:

> The City should let the disadvantaged businesses know firsthand what RFPs are coming out. There are a lot of projects going on for the City of Milwaukee that EBEs know nothing about them. Nothing.

A minority male owner of a goods and other services company for five years suggested more accountability on the part of prime contractors to pay their subcontractors promptly:

> I think the City should review all contracts and contractor agreements to make sure that subcontractors payment terms are being met by prime contractors. They should also follow-up with the subcontractors to see if there are any problems during the term of the contract. Most subcontractors don't realize that there are resources or people who can help them. Right now they go back and forth with the prime contractor. If no one holds these prime contractors accountable, they are going to continue to run all over us. They are making a mockery of the EBE program, and they are definitely making fools of all the subcontractors who are EBE-certified.

A minority male owner of a professional services firm suggested that the City ensure that the website is updated to reflect changing proposal due dates:

> There was a City project in late 2006 where they changed the proposal due date but did not update their website to show that the due date had been moved to January. We did not submit a proposal because we thought we had to submit it right away in December. So, I think updating the information on the City's website in a timely manner would be beneficial.

X. SUMMARY

There were several disturbing accounts of racial barriers reported by the interviewees. Some were confronted with racial slurs, while other EBEs' work performances were held to higher standards than their non-minority competitors which caused additional economic hardships on their small businesses.

Unscrupulous tactics by prime contractors seeking to avoid EBE program requirements were reported by many interviewees. Inadequate lead time to respond to prime contractors' bid requests was reported as a tactic prime contractors utilized to prevent EBE subcontractors from submitting timely bids. Some interviewees complained that prime contractors listed them on bid documents for their EBE certification status with no intent of working with them.
Most of the interviewees favored an EBE Program in the City of Milwaukee, although some considered it ineffectual because the enforcement regulations or penalties offered were lacking. The EBE office was credited with sustaining many EBEs. Recommendations offered to improve the EBE program included a race-specific requirements and a graduation component.

It should also be noted that some business owners described positive relationships that they have had with City employees. City managers were given accolades by the business owners for their hard work and dedication to supporting and sustaining small, minority and women businesses. Table 7.02 lists a summary of the identified barriers.

Table 7.02 Summary of Findings Concerning Current Barriers Against Ethnic/Gender Groups

Type of Evidence	African Americans	Hispanic Americans	Asian American	Caucasian Females
BUSINESS BARRIERS				
Barriers Based on Race	✔	✔	✔	
BARRIERS CREATED BY THE CONTRACTOR COMMUNITY				
Difficulty Breaking into Contracting Network	✔			✔
DIFFICULTIES IN BID PROCESS				
Difficulty Navigating the Bid Process Information	✔			✔
Inadequate Lead Time	✔	✔		✔
Prime Contractors Avoiding EBE Program Requirements	✔			✔
FINANCIAL BARRIERS				
Difficulty Obtaining Financing or Bonds	✔	✔		✔

Table 7.02 Summary of Findings Concerning Current Barriers Against Ethnic/Gender Groups

Type of Evidence	African Americans	Hispanic Americans	Asian American	Caucasian Females
Late Payment by the City	✔			✔
Late Payment by Prime Contractors	✔	✔		✔

8

IDENTIFYING BEST MANAGEMENT PRACTICES

I. RESEARCH METHODS

The purpose of this chapter is to identify best management practices implemented by other to enhance contracting opportunities for emerging business enterprises (EBEs). Various methods were used to craft best management practices suitable for the City of Milwaukee (City). These included qualitative research, policy analysis, and a review of regulations.

A. Qualitative Research

Qualitative research was undertaken to identify aspects of the City's procurement process that could be enhanced. Mason Tillman conducted several one-one-one interviews with City managers which elicited information about the City's procurement practices and barriers that EBEs face with the City. The information garnered was used to develop the best management practices that might be useful in fulfilling the City's EBE program objectives.

B. Policy Analysis

Mason Tillman identified four governmental entities that had progressive procurement strategies aimed to increase the participation of M/WBEs on public contracts. The M/WBE utilization rate for these agencies increased as result of their procurement policies. Thus, the procurement policies of the four public agencies were examined to identify best management practices that the City could adopt. The programs were selected because of the significant increase in M/WBE utilization achieved under the programs. The programs were:

- **City of Baltimore, Maryland - Minority Business Inclusion Plan**

A Disparity Study was conducted for the City of Baltimore in 2000 which determined that M/WBEs were underutilized on the City's contracts. In 2001, the City of Baltimore instituted a five-year action Minority Business Inclusion Plan to reinforce the City's commitment to minority businesses in the areas of management, accountability, contracting, retail, new business development, outreach, workforce training, and employment. The Plan had four major objectives:

1) To measure the City's accountability to M/WBEs by increasing the number, magnitude, and success rate of minority businesses in the City of Baltimore,

2) To increase the procurement dollars spent with minority businesses,

3) To facilitate a greater involvement of minority businesses in identified growth sectors of the City's economy, tourism, technology, and real estate investment, and

4) To Establish the overall goal mandated by the Baltimore City Residents First Executive Order which set a 35 percent target for M/WBE inclusion in City contracts.

In 2006, the utilization of M/WBEs on Baltimore City contracts had increased to 36 percent, representing $9,863,868. The largest award to an MBE prime contractor in 2006 was a construction contract valued at $3,869,265. Since 2000, $626,700,000 in contract dollars was awarded to M/WBEs as a result of the Minority Business Inclusion Plan.

- **Commonwealth of Massachusetts' Affirmative Market Program**

The Affirmative Market Program was established in 1991 by Executive Order 390 to increase business opportunities for M/WBEs. The program was implemented to achieve equity in the contracting market by ensuring the full participation of minority and women-owned business enterprises in all areas of state contracting including construction, design, goods, and services.

The Affirmative Action Plan program objectives are as follows:

1) Stimulates economic growth for M/WBEs

2) M/WBE capacity building

3) Job creation for the local community

4) Assists small and disadvantaged businesses

5) Supports Massachusetts vendors

6) Educate and empower M/WBEs to ensure their participation in public contracting

7) Provide outreach and training to local communities and businesses

8) Promote M/WBEs with executive branch departments and other state entities

9) Publish the Affirmative Market Plan Annual Report, tracking and highlighting M/WBE participation in the state procurement system

In Fiscal Year 2005, the M/WBE combined statewide spending in the area of goods and services totaled $391,672,667, an increase of $23,946,967 or 6.51 percent over Fiscal Year 2004 statewide spending. The Commonwealth's Fiscal Year 2004 spending with M/WBEs had decreased 1.38 percent over Fiscal Year 2003.

- **Montgomery County, Maryland - MFD Program**

Montgomery County's procurement procedures and practices are geared to ensuring that minority, female, and disabled businesses (MFD) receive a fair share of the County's contracting opportunities. All negotiated contracts valued at $50,000 or more are MFD designated. All non-minority prime contractors are obligated to satisfy a predetermined percentage of the contract dollar value for subcontractor participation. The goals for the MFD program are as follows:

1) Encourage economic development for minorities

2) Increase business opportunities for minorities

3) Notify minority-owned businesses of procurement opportunities

4) Provide information to minority business owners about the procurement process

5) Provide referrals for technical assistance, sureties, and financing information

6) Review procurement procedures to remove artificial barriers to competition

For Fiscal Year 2006, MFD utilization was 19.09 percent, representing $76,986,963.

- **Cities of Tacoma/Seattle, Washington Small Business Roster**

The Cities of Tacoma and Seattle implemented a Small Business Roster in accordance to the Revised Code of Washington Sections 39.04.155 and 35.22.620. The Small Business Roster program is an efficient method of equitably awarding work from a pre-qualified roster. One

benefit of the Roster is it allows for a faster process for awarding small projects. The City of Tacoma's Small Business Roster is used for public works projects valued at $25,000 or less.

The objective of the City of Seattle's Small Construction Contract Roster was to increase bidding opportunities for public works projects or improvements, that are valued up to $200,000. Approximately, one-third of the contractors on the roster are certified M/WBEs. Since the end of last year, two of 12 executed contracts were awarded to M/WBEs, representing $118,000 of $581,000 awarded. Earlier this year, the City of Seattle eliminated bonding and retainage requirements on projects valued less than $35,000 to further increase contracting opportunities for small, minority, and women businesses. This progressive initiative provides another avenue for small companies to compete for small construction projects, who otherwise would be burdened by retainage or the cost of securing a performance bond.

C. Regulatory Analysis

Executive Orders from city and State governments were also reviewed to identify best management practices that the City could replicate[1]. Those orders include:

- Baltimore City Residents First Executive Order, March 6, 2007
- Commonwealth of Massachusetts Executive Order 478, January 30, 2007
- Commonwealth of Massachusetts Executive Order 390, August 6, 1996

II. CONTRACTING BEST MANAGEMENT PRACTICES

A. Uniform Procurement Manual

It is the City's policy to use sound procurement practices to increase the participation of EBEs on its contracts. Uniform procurement procedures can establish standards to eliminate inconsistencies in the contracting process.

A uniform procurement manual is an excellent tool for establishing and maintaining fixed standards in the way procurement is conducted by all City departments. It can also be used as a curriculum tool for training staff and new hires. Currently, the City does not employ a uniform procurement manual for all of its departments. Each agency has its own procurement manual and procedures.

[1] Copies of the Executive Orders can be found in the Appendix.

1. Essential Components of a Uniform Procurement Manual

Mason Tillman has determined that the following constitute essential components of a uniform procurement manual:

- Each method of authorized source selection (i.e. informal, formal, sole source, etc.)
- Clear and concise contract language
- A dispute resolution process
- EBE participation requirements
- Payment and monitoring process for EBEs
- Subcontractor substitution requirements for EBEs subcontractors
- Prompt payment provisions for prime contractors

Procurement practices delineated in the manual should:

- Simplify and clarify the City's procedures concerning the solicitation and evaluation of competitive sealed bids, proposals and quotations, small purchases, sole source procurements and emergency procurements.
- In addition, they should ensure the fair and equitable treatment of all businesses and persons who deal with the City's procurement system.
- Finally, a revamped procurement manual should include a process to maximize the use of emerging business enterprises and a process to improve contractor and City contracting accountability.

2. Executing Uniform Procurement Procedures

All City procurement managers should receive training to comply with uniform procurement procedures relating to the following:

- Drafting contracts that will assist the City in achieving its EBE goals and protect taxpayers' interests
- Monitoring and addressing issues relating to the performance of parties to City contracts
- Termination of City contracts in a manner permitted or required by contract or applicable law

B. Dispute Resolution Process

The City should establish an uniform dispute resolution process. It should incorporate procedures that address the needs and concerns of prime contractors, EBEs, subcontractors, and suppliers. Specifically, the process should require the contractor to attempt to resolve the matter through the project manager before filing a written dispute. If the dispute is not resolved with the project manager, a written claim should be submitted to a designated procurement official and the claim should include the following information:

The contract number and the contractor's name, address, and telephone number; the factual allegations contained in the dispute, supported by an affidavit based on the claimant's personal knowledge; and the specification of all grounds supporting the contractor's requested relief.

The EBE Office should be authorized to mediate an alternative dispute resolution process to resolve contract and compliance related disputes between a prime contractor and EBE subcontractors because the EBE office is charged with the responsibility of protecting the interest of those businesses.

C. Staff Training

Implementation of a uniform procurement process requires an informed staff. Once the procedures have been formalized, staff training will be needed to efficiently implement the new standards. Agency-wide training should be undertaken for current staff, and the curriculum should be incorporated into the new employee orientation training.

Additionally, the City should develop staff evaluation criteria to assess whether its staff is meeting the requirements of the City's EBE Program.

D. Training Objectives For New Hires

New hires responsible for contracting and procurement should be provided with an EBE orientation program. This training could consist of a one-on-one meeting with the relevant City managers or other designated staff as well as a slide or video presentation about the program.

E. Small Contracts Roster

The City should develop a small contracts roster. Such a roster would be used in the award of contracts below the informal threshold so that qualified firms would all have a chance to participate in City contracting. A list of firms would be rotated among all firms able to provide the services. This list would include EBEs and non-EBEs interested in participating in the rotation. Contracts for which the City cannot identify a fixed-unit price would be competitively bid.

A contractor would pre-qualify based on the size of the business. Firms in the roster would provide labor rates for pre-qualification in the program. The City would invite bids from a minimum of three contractor names selected in a fixed rotation from the small contracts roster when a project meets the small project criteria. The procedures for rotating the selection of firms would ensure that the opportunity to submit proposals is equitably distributed among the listed firms.

Admission to the program would require that the participants take part in business, financial, and technical assistance programs with the goal of enhancing business skills. A size threshold should be established at which point businesses would graduate from the program when their gross annual receipts over a three-year period exceed a certain size threshold.

III. EBE PROGRAM BEST MANAGEMENT PRACTICES

The EBE Program best management practices are specifically designed to improve City contracting with EBE businesses.

A. Solicitation Of EBEs On All City Procurement Solicitations

Mason Tillman reviewed the laws, regulations, procedures, and policies which govern the City's procurement practices to determine how they impact the participation of EBEs in City contracting. It was discovered that the some of the Department of Public Work' procurement solicitation methods did not require EBE participation. Thus, best management practices were developed to increase EBE participation on those particular procurement solicitation methods.

1. Department of Public Works - Goods

The Department of Public Works procures commodities at three different informal threshold levels, ranging from $500 to $5,000. There are no EBE participation requirements on these procurements. The following solicitation strategies should be employed to increase EBE participation:

- Small Dollar Purchases valued at $500 or less - Currently, solicitations are made by one or more price quotes at the discretion of the User Department. At least one EBE should be included in the price quote solicitations.

- PeopleSoft Requisitions valued at $500 or more - Currently, solicitations are at the discretion of the User Department. At least two EBEs should be included in the price quote solicitations.

- Procurement Card Purchases valued at $5,000 or less - Currently, solicitations are made from the City's Valued Supplier List. At least three EBEs should be solicited in addition to the vendors from the City's Valued Supplier List.

2. Department of Public Works - Services

The Department of Public Works procures services at six informal threshold levels, ranging from $2,000 to $25,000. There are no EBE participation requirements on informal procurements. The following strategies should be employed to increase EBE participation:

- Small Dollar Purchases valued at $2,000 or less - Currently, one or more vendor price quotes are solicited. At least one EBE should be included in the price quote solicitations.

- Procurement Card Purchases valued at $5,000 or less - Currently, solicitations are made from the City's Valued Supplier List. At least three EBEs should be solicited in addition to the vendors from the City's Valued Supplier List.

- Purchasing Authority Purchases valued at $4,999 or less - Currently, solicitations are made by one or more telephone bids, with the low bid confirmed in writing. At least one EBE should be included in the telephone bid solicitations.

- Purchasing Authority Purchases valued between $5,000 and $9,999 - Currently, solicitations are made by three telephone bids, with the low bid confirmed in writing. At least one EBE should be included in the telephone bid solicitation.

- Purchasing Authority Purchases valued between $10,000 and $14,999 - Currently, bids are solicited by a minimum of three written bids. At least one EBE should be included in the bid solicitation process.

- Purchasing Authority Purchases valued between $15,000 to $25,000 - Currently, solicitations are subject to informal procurement procedures. An EBE analyst should review the bid/RFP for possible EBE participation.

B. Modifications to EBE Participation Requirements

The City requires prime contractors to complete "Form A", which lists its EBE subcontractors and participation percentages at the time the response is submitted. When changes or modifications are made to the prime contract during the negotiation process, the initial EBE subcontractor participation percentage stated on "Form A" can be subsequently reduced. If the EBE participation requirement is reduced as a result of the negotiations between the prime contractor and the City, the EBE analyst should contact the EBE subcontractor to inform the

business owner that the total value of the prime contract was reduced which may affect the business' EBE participation. This practice can avoid delays to the project start time by encouraging the prime contractor and the EBE subcontractor to renegotiate their subcontract in a timely fashion.

C. Solicitation of EBE Contractors

The following are recommendations where the City can communicate with EBEs to encourage their participation on the City's construction, professional services, and goods and other services contracts.

1) One-Stop Shop Forum

A One-Stop Shop forum should be established so that local organizations that provide technical and business start-up support services for small companies can gather in one place bi-annually to meet with City officials and staff concerning EBE opportunities with the City. The City could begin this process by reaching out to the local business and trade organizations that are listed on the City's website.

2) Advertise on Web sites

The City should advertise contracting opportunities on web sites that reach EBEs.

3) Trade association notifications

The City should send requests for proposals, invitations for bids, plans, and specifications to EBE-targeted trade associations for distribution and posting. A list of trade associations should be currently maintained, as well.

4) Contracts register

The City should publish and distribute a detailed contracts register on the City's website. The register should include contract award information, such as prime contractor name, subcontracting opportunities, and EBE requirements.

5) Telephone hotlines

The City should consider developing a telephone hotline so that businesses interested in working with the City can obtain information about contracting opportunities, including emergency contracts.

6) Print media

The City should consider including information about its EBE policy in its routine advertisements in print media sources. The City could develop advertisements explaining the City's EBE policy, include EBE goals, encourage EBEs to bid, and provide the name of the contact person.

7) Minority Chambers of Commerce

The City should publish information about contracting opportunities through ethnic chambers of commerce through their newsletters and/or web sites.

D. Reduce Contract Size

Most EBEs are small to medium-sized businesses that typically are unable to perform large contracts. To increase EBE participation, the City should reduce contract size whenever feasible by breaking down larger projects into smaller tasks or quantities. The City should divide projects during the design phase. The projects can be divided in three ways:

1. Divide Projects into Stages

The City can reduce project size by dividing projects into stages. Then contracts can be awarded by phase to different entities. For example, the City could separate a project to remediate a polluted site into two phases: investigation and remediation. Each phase could have different prime contractors and subcontractors.

2. Dividing Multiple-Site Work

The City can divide projects with multiple sites according to individual sites, with different prime contractors and subcontractors used at each site. For example, a project involving two or more neighboring properties can be divided, one with separate awards for each property.

3. Divide by Task

The City can break down a large project by task. For example, in a building construction project, elements like signage, landscaping, and painting can be performed by separate contractors, rather than having one contractor perform all tasks.

E. Limit Brand Name Requirements

Many manufacturers allow only a limited number of contractors to represent their products. As a result, this limited pool of contractors may not include many EBEs. Eliminating brand name requirements from contracts whenever possible and allowing equivalent products to be used can increase EBE participation.

F. Multiple Item Bids

Where multiple types of items are to be purchased with a single bid announcement, the City should allow bidding on one or more item and select the lowest bidder for each, rather than require one bidder for the entire procurement.

G. Establish Delivery Schedules to Encourage EBE Participation

To increase competition and give EBEs a more competitive chance, the City should set contract schedules that provide as much notice as economically feasible. Short delivery schedules limit the number of companies that can bid on a project to those that have the manpower and materials readily available through established connections.

Specific recommendations include the following:

1) Adopt a policy requiring all projects with subcontracting opportunities to be advertised at least 30 days before bid opening, if possible.

In most cases, a 30 day notice gives EBEs and non-EBEs enough time to put together their bids and identify subcontractors.

2) For large or complex contracts, adopt a policy requiring more than a 30 day published notice, if possible.

Evaluate large or complicated contracts to determine if more than a 30 day notice should be given before bid opening. If so, provide additional time for these contracts.

3) Encourage prime contractors to give their vendors 20 days notice to respond to their bid request.

Incentive points could be given to prime contractors who can confirm that adequate notice was given to EBEs solicited for subcontracts.

4) Allow enough time to complete projects and perform tasks

EBEs often have fewer employees to complete projects. Allowing adequate time to complete projects gives EBEs better opportunities to compete against larger, more established contractors.

5) Require authorization for shortened delivery schedules

Shortened delivery schedules can decrease EBE competitive chances. The City should establish administrative procedures for the request of shortened delivery schedules. It should also establish standards for scrutinizing such requests.

H. Promote Low-Cost and No-Cost Supportive Services

The City utilizes various outreach methods to inform EBEs of upcoming contracting opportunities. The City can expand its outreach effort to EBEs by informing them of low-cost and no-cost assistance services. The City should also document the measures it takes to inform EBEs about the low-cost and no-cost services. Listed below are a number of federal programs that provide low-cost and no-cost services to small, minority, and women-owned businesses which can be promoted to EBEs on the City's solicitation list:

- SBA's 7(j) Management and Technical Assistance Program gives small companies assistance in preparing proposals and bids, regardless of the owners' race or gender.

- SBA's Service Corps of Retired Executives is a 13,000-member volunteer association that provides in-depth counseling and training to small businesses in almost every area of business management, regardless of the owner's race or gender.

- Women's Business Centers are sponsored by the SBA and give financial management, marketing, and technical assistance to women business enterprises.

- The Minority Business Development Agency provides funding for Minority Business Development Centers (MBDCs), Native American Business Development Centers (NABDCs), Business Resource Centers (BRCs), and Minority Business Opportunity Committees (MBOCs).

I. EBE Graduation Component

The City's EBE Program should include a graduation component for businesses to exit the program to ensure parity among program participants. For example, a clause could provide that EBEs should graduate once their annual sales exceed the average sales for the industry for three

consecutive years, as determined by federal tax returns and the four digit SIC Code U.S. Economic Census data. If an EBE is engaged in more than one industry, then its graduation level should be determined by a weighted average of sales for all industries in which the EBE is engaged.

IV. SUMMARY

A number of best management practices were identified to enhance the City's procurement practices and increase contracting opportunities for EBEs. Uniform procurement standards are needed to ensure that the procedures in place to increase EBE participation are being employed by all City procurement managers. The EBE program objectives should be included in the City's bids/RFPs as a productive tool to inform bidders about the City's commitment to the EBE Program.

Uniform EBE participation standards for all City solicitation methods can also increase the participation of EBEs on its contracts. Additionally, such standards can foster the staff's ability to build capacity for EBEs. With improved capabilities, EBE firms will improve in quality and competitiveness.

9

MONITORING AND REPORTING ENHANCEMENTS

I. INTRODUCTION

Mason Tillman assessed the EBE monitoring and reporting mechanisms in recommending enhancements to ensure the efficiency, consistency, and validity of the EBE Program. Rigorous contract compliance monitoring should be routinely conducted to ensure that the EBE subcontractor participation listed in the bids, proposals, and statements of qualification is achieved throughout the duration of the contract and to ensure that the businesses are paid.

II. EMERGING BUSINESS ENTERPRISE TRACKING RECOMMENDATIONS

A. Track All Subcontract Bidders

A comprehensive list of all subcontract bidders should be tracked electronically on a centralized database system. Electronically recording subcontract bidders is a comprehensive means of tracking ready, willing and able firms.

The subcontract bidders list should include the following information:

- Subcontractor names
- Subcontractor contact information
- Subcontractor certification status

- Service provided by each subcontractor

- Subcontractor bid amounts

The subcontractor data collected by the City should be stored in a relational database. Prime contractors should be required to complete monthly compliance reports that would state payment information for EBE and non-EBE subcontractors. Prime contractors should have the option of submitting a paper version of this report or a web-based digital form. The data from these reports should then be uploaded to the relational database.

III. ENHANCEMENTS TO THE CITY'S EMERGING BUSINESS ENTERPRISE DATA TRACKING SYSTEM

1. Track Payments Made To Prime Contractors

The BusinesSense database is a useful and informative tool for EBE contractors. The database is a comprehensive tracking and monitoring system for City contracts with EBE participation. The BusinesSense system tracks EBE utilization by Department and City-wide. All contracts with EBE participation are captured in the BusinesSense database providing the user with pertinent information on the status of the project and payments made to EBEs.

However, payments made to the City's prime contractors are not reported on the BusinesSense database. The database should be linked to the City's Financial Management Information System to allow the EBE office to routinely report payments made to the City's prime contractors on projects with EBE participation.

IV. COMPLIANCE MONITORING PROCEDURES ENHANCEMENTS

Consistent contract compliance should minimize the hardships experienced by EBEs due to unauthorized substitutions and late payments. Such compliance efforts would verify the prime contractor's commitments prior to and after the award of the contract. In considering the following contract compliance methods the City could obtain a more accurate and complete picture of its utilization of EBEs in its contracting and procurement practices.

- On a quarterly basis collect copies of canceled checks written to subcontractors in order to verify payment information

- Require the monthly submission of subcontractor participation reports by prime contractors with payment request

- Notify prime contractors and subcontractors when there is non-compliance with program requirements

- Publish the prime contractor payments on the City's website to inform subcontractors of payments made to prime contractor

- Require subcontractor certification of prompt payment on invoices at each request for payment

- Impose a late fee on prime contractors that fail to make timely payments to subcontractors

- Track chronically late-paying prime contractors, and bar offenders from contracting with the City

- Establish a toll-free hotline for subcontractors to report nonpayment

V. MONITORING PROCEDURES FOR NONCOMPLIANT PRIME CONTRACTORS

Penalties for prime contractors who fail to comply with the City's EBE program requirements should be implemented and strictly enforced before and during contract award. EBE participation requirements do not have to be met at the time of bid submittal for the Department of Public Works contracts. Instead, contractors are allowed three days after award to meet EBE participation requirements.

Prime contractors who fail to meet EBE program requirements should be subject to the following penalties:

- All bids and proposals should be deemed nonresponsive if the EBE participation requirements are not met at the time of bid submission.

- Withhold from the prime contractor ten percent of all future payments under the existing contract until it is determined that the contractor is in compliance

- Exclude repeat offenders from submitting a bid for a period not to exceed one year

10

RECOMMENDATIONS

I. INTRODUCTION

The recommendations contained in this chapter are a compilation of the program enhancement strategies proffered in the previous chapters—Procurement, Certification Comparison Analysis, Evaluation of Subcontracting Practices, and Monitoring and Reporting. This report also contains recommendations that are unique to this chapter. Additionally, the Best Management Practices Chapter contains detailed strategies from a comprehensive review of several governmental agencies' procurement procedures and relevant regulations.

This chapter is organized into five sections. The introduction is the first section. Strategies to streamline the City of Milwaukee's (City) certification process resulting from the *Certification Comparison Analysis* are contained in section two. Section three includes subcontracting recommendations from the *Evaluation of Subcontracting Practices and Procedures.* Comprehensive *Monitoring and Reporting Mechanisms* are presented in section four. The fifth section, *Additional Program Enhancements*, concludes this chapter.

II. CERTIFICATION COMPARISON ANALYSIS

The City wants to determine the propriety of streamlining its Emerging Business Enterprise (EBEs) certification process. Research was conducted on eight local certifying agencies to determine the feasibility of the City accepting certifications issued by one or more of these local agencies.

A. EBE Certification Recommendations

The City's EBE eligibility requirements are governed by Chapter 360 of the Milwaukee Code of Ordinances, which authorizes the City to set forth certification standards.

Certifying agencies exist within the City of Milwaukee that employ certification standards comparable to the City's EBE certification standards. The City can be confident that firms certified by local agencies are bonafide small, emerging, and disadvantaged business enterprises. The certified list from these agencies represents a readily available pool of small, emerging, and disadvantaged business enterprises. To accept certifications from any one of these agencies would alleviate the cost of extensive outreach to recruit firms to participate in City contracting.

To be certified as an EBE by the City, a business must be economically disadvantaged, which is determined by annual gross revenues. Similar to the City, the certification requirements of the recommended agencies have race and gender-neutral programs and size restrictions concerning annual gross revenue requirements. Table 10.01 below lists the recommended local certification agencies.

Table 10.01 Recommended Local Certification Agencies

CERTIFYING AGENCY
City of Madison - Small Business Enterprise Certification
County of Dane - Emerging Small Business Certification
County of Dane - Disadvantaged Business Certification
Milwaukee Metro Sewer District Small Business Enterprise Standard
Wisconsin Department of Transportation Disadvantaged Business Enterprise Program

The eligibility standards for these certification agencies are discussed in Chapter 2.

III. EVALUATION OF SUBCONTRACTING PRACTICES

An examination of the City's subcontracting policies and procedures was undertaken to evaluate controls which have been implemented to ensure fair treatment of subcontractors. The assessment was also a means of formulating recommendations to improve the City's policies and procedures pertaining to subcontractors.

A. Recommended Subcontracting Procedures

The results of the analysis determined that the City does not have uniform subcontracting policies and procedures that ensure adequate protection for subcontractors by all City

departments. Uniform subcontracting procedures are recommended to protect the interest of subcontractors on all City contracts.

1. Penalties for Failure to List Subcontractors on Bid Documents

Failure of the prime contractor to submit as part of the bid the names of subcontractors, name itself as performing such work, or name two or more subcontractors as performing the same work should render the prime contractor's bid as nonresponsive and therefore void.

2. Substitution of Subcontractors After Award of Contract

The City should require prime contractors to provide written justification whenever they do not utilize a listed subcontractor or substitutes another subcontractor for the one already identified in the prime contractor's bidding documents.

a. Grounds for Consenting to a Contractor's Request for Substitution

Strict subcontractor substitution provisions should be instated to address prime contractors' requests to substitute a subcontractor listed in their bids. The grounds for which the City 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 that written contract based upon the general terms, conditions, and drawings and specifications for the project involved or the terms of that subcontractor's written bid is presented to the subcontractor by the contractor
- 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
- 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

b. Notification to Subcontractor Regarding Requested Substitution

When a prime contractor's request for substitution or request to perform work for a listed subcontractor is received, the City should give the listed subcontractor prompt, written notice

of the prime contractor's request for substitution and the reason for the request. The City 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.

- 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.

3. Waiver of Bond Requirements

Providing assistance to subcontractors to overcome limitations such as the inability to obtain bonding is a benefit the City should provide subcontractors to reduce the operating costs of small, minority, women and EBEs.

a. Provisions for Bond Waiver Requirements

The City should reserve the right to waive the requirement for payment and performance bonds on informal construction projects. The City can also consider exempting bond waiver provisions from certain projects, such as:

1) Projects that are deemed to have exceptional risk in which case a bond is required,

2) Projects that are required by state or federal statute to be bonded (i.e. public safety projects) in which case a bond is required, and

3) Projects with durations of less than 30 days and where the contract does not provide for progress payments.

The prime contractor should be required to give notice to its subcontractors and suppliers that the City's bond requirements have been waived on the project.

4. Prompt Payment Procedures for Prime Contractors

The Department of Public Works has prompt payment procedures for construction contracts, however, they should be enhanced to help ease the financial burdens of EBE subcontractors. Currently, payments to prime contractors are deemed timely if payment is made within 60 days after receipt of the invoice.

The City should strive to make progress payments to prime contractors at least once a month based on the progress of the work. Subcontractors and material suppliers, in turn, should be entitled to payment by the prime contractor, in proportion to the amount of the subcontractor's work completed, within 15 days after the prime contractor receives payment from the City.

The 15 day requirement should apply throughout the subcontracting chain. If the prime contractor does not receive full payment from the City then the prime contractor should pay its subcontractors and suppliers on a pro rata basis. However, if the prime contractor and not a subcontractor is the reason for the City's withholding, the prime contractor should be liable for more than the pro rata payment.

The prime contractor should submit monthly to the City a report listing all payments made to its subcontractors during the preceding 30 days, as well as any unpaid invoices over 30 days old that were received from the subcontractor. The amount of each invoice and the reason for non-payment should also be noted.

The prime contractor should include in its subcontract agreements a requirement that the subcontractor submit monthly to the City a report that identifies the prime contract and lists all payments received from the prime contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.

At the option of the City, upon completion of the contract and before final payment and/or release of retainage, the prime contractor should submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from its subcontractors.

The City's prompt payment provisions should also outline specific reasons for prime contractors to withhold a portion of payment. The reasons may include:

1) Liquidated damages

2) Unsatisfactory job progress

3) Defective construction work or material not remedied

4) Disputed work

5) Failure to comply with other material provisions of the subcontract

6) Third party claims filed or reasonable evidence that a claim will be filed

5. Complaint Procedures for Subcontractors

The City should establish a telephone line or other electronic means of communication through which any small business identified as a subcontractor may communicate to the City regarding major deviations by City prime contractors from reduction of the scope of work to payment issues.

IV. MONITORING AND REPORTING MECHANISM

A. Pre-Award Contract Compliance Monitoring

1. Track All Subcontract Bidders

A comprehensive list of all subcontract bidders should be tracked electronically on a centralized database. The City's E-Notify database allows vendors to register their businesses with the City in order to receive email notification of bids/RFPs. However, the E-Notify database only contains email addresses of the registered vendors. Electronically recording subcontract bidders is a comprehensive means of tracking ready, willing, and able firms. The subcontract bidders list should include the following information:

- Subcontractor names
- Subcontractor contact information
- Subcontractor certification status
- Service provided by each subcontractor

2. Good Faith Effort Requirements

The City should develop concise and detailed good faith effort requirements for its prime contractors, to ensure they are making a bonafide attempt to meet the City's EBE participation requirements. Documentation of good faith efforts should include, but not be limited to, the following:

- Attendance at pre-bid conference, if held

- Copies of written notification sent to all EBEs that perform the type of work to be subcontracted, in sufficient time to allow the EBE to participate effectively

- Advising the EBE of the specific work the prime contractor intends to subcontract, that their interest in the project is being solicited, and how to obtain information for the review and inspection of the plans, specifications and requirements of the bid.

- A written statement that economically feasible portions of work were selected to be performed by EBEs, including, where appropriate, segmenting or combining elements of work into economically feasible units.

- A statement of the efforts made to negotiate with EBEs, including the name, address, and telephone number of the EBE that was contacted, the date the negotiations took place, and a description of the information provided to the EBE regarding the plans, specifications, and requirements for the portions of the work to be performed.

The ability of the prime contractor to perform the work with its own work force should not in itself excuse the contractor from making good faith efforts to meet the EBE participation goals. The good faith effort requirements should include penalties and sanctions for non-compliance.

B. Post-Award Contract Compliance Monitoring

1. Payment Monitoring

Monitoring should be conducted after contract award to ensure that the subcontractor participation stated in the prime contractor's contract was achieved. This type of monitoring would verify the prime contractor's commitments prior to and after the award of the contract. Consistent contract compliance monitoring should minimize the hardships experienced by subcontractors due to unauthorized substitutions and late payments.

The following contract compliance methods are recommended:

- Quarterly collection of copies of canceled checks written to subcontractors in order to verify payment information

- Monthly submission of a subcontractor participation report with the prime contractor's payment request

- Notification of prime contractors and subcontractors when there is non-compliance with program requirements

- The publication of prime contractor payments on the City's website to inform subcontractors when the City has paid prime contractors

- Subcontractor certification of prompt payment on invoices at each request for payment

- Establishment of a toll-free hotline for subcontractors to report nonpayment

V. ADDITIONAL PROGRAM ENHANCEMENTS

In addition to improvements for specific aspects of the EBE Program, further program enhancements are offered to assist the City in its commitment to increasing the equity of EBEs in the City's procurement practices.

A. Implementation Of A Disparity Study

In addition to improvements for specific aspects of the EBE Program, further program enhancements are offered to assist the City in meeting its commitment to achieve equity in the award of contracts to EBEs. Equity in the award of public contracts can best be described as a fair and equitable system of awarding contracts where the proportion of contract dollars awarded to EBEs would be approximate to the proportion of available EBEs[1] in the relevant market area. This analysis is required by *Croson*[2] as a legal basis for implementing race-specific goals to address the underutilization identified in this report.

The utilization analysis described in the *Prime and Subcontractor Utilization Analysis Chapter* was conducted to determine the level of EBE participation on the City's construction, professional services, and goods and other services contracts. The EBE 18 percent participation requirement was met on the City's construction and professional services contracts during the study period. However, specific EBEs were underutilized on construction and professional services contracts based on their availability in the City's market area.

According to *Croson*, the percentage of minority/women-owned business participation in the City's contracts divided by the percentage of minority/women-owned businesses available in the City's market area is the method used to determine if the underutilization of an ethnic or gender group is statistically significant. Such underutilization is a disparity and can be corrected using race-specific goals.

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

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

The utilization analysis conducted for this Study did not test for disparity. But it did determine an underutilization of African American EBEs on the City's construction and goods and other services contracts when compared to the availability of the businesses in the City's market area. Table 10.02 below describes the underutilization of African American EBEs on construction contracts.

Table 10.02 African American EBE and Non-EBE Utilization Contracts

African American EBE Construction Utilization	Availability of African American Construction Firms
1 or 0.59 percent *(Formal Contracts)* Or 0.09 percent *(Construction Dollars*)	18.18 percent
0.00 percent (Informal contracts)	
Non-EBE Construction Utilization	**Availability of Non-EBE Construction Firms**
142 or 84.02 percent (*Formal Contracts*) Or 96.2 percent (*Construction Dollars*)	59.09 percent
16 or 72.73 percent (*Informal Contracts*) Or 76.7 percent (*Construction Dollars*)	

Additionally, African Americans EBEs only received 2.88 percent of the goods and other services prime contracts although they account for 13.16 percent of goods and other services firms in the City's market area.

This underutilization of African Americans when compared to their availability suggests that there may be a disparity if the data were subjected to a statistical test. Given the documented utilization pattern, it is recommended that the City conduct a statistical analysis of disparity. A confirmed statistical underutilization from a disparity study would allow the City to utilize race-conscious remedies to increase the utilization of African American EBEs.

1. Organizational Structure of the EBE Program

Currently, the EBE Manager directly reports to the Procurement Services Department. Both the EBE Department and the Procurement Services Department are committed to the objectives of the EBE program. Chapter 360 of Milwaukee Code of Ordinances delineates the responsibilities of the EBE Manager and requires autonomy from the purchasing function, since the EBE office is required to ensure that the Procurement Services Department complies with the EBE program goals and objectives.

It is recommended that the EBE Office be moved from the Procurement Services Department and report to the Chief Executive Office instead. This move would facilitate the fulfillment of the Ordinance and eliminate potential conflicts between the responsibilities of the EBE Office, to ensure compliance with the EBE program goals and the Procurement Services Department.

B. Procurement Strategies

1. Pre-Bid

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

a. Assess the Use of Sole Source Contracts

Sole source provisions of the City's procurement process allow for the award of contracts without a competitive bid to businesses that are the sole providers of a given commodity or service. Sole source contracts should be tracked by industry. Contracts that are proposed to be awarded as sole source procurements should be posted on the City's website to allow providers of the goods or services to make themselves known to the City.

b. Unbundle Large Procurements into Smaller Contracts Where Feasible

Bundling occurs when small purchases are consolidated into one contract, or when goods or services previously purchased individually are grouped together in a single solicitation.

The federal government has made contract unbundling a key element of its small business agenda.[3] Large contracts should be unbundled to maximize small business participation. Unbundling large procurements would increase the opportunities for EBEs and other small businesses to compete for City contracts.

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

- Whether or not the project takes place in more than one location
- Size and complexity of the procurement

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

- Similarity of the goods and services procured
- Sequencing and delivery of the work
- Public safety issues and convenience
- Procurement division options

c. Use Direct Contracting to Award Small Prime Contracts

Direct contracting occurs when separate contracts are awarded for specialty or non-license services which might otherwise be included as an item of work in a construction contract or within the scope of an architecture and engineering contract. Direct contracting would increase the opportunities for, and build the capacity of, small firms by allowing them to work as prime contractors. The practice of direct contracting should be common to all City construction and architecture and engineering contracting.

As an addition to the categories of work presently identified by the City, construction support services, including trucking, demolition, and surveying when feasible, should be awarded as direct contracts and not as items of work in the general construction contract.

Design services, which are not required to be performed by a licensed engineer, architect, or registered surveyor, should be awarded as direct contracts. These services include planning, environmental assessments, ecological services, cultural resource services, and testing services.

d. Establish a Direct Purchase Program for Construction Contracts

Under a direct purchase program, the City purchases construction supplies directly from EBEs. The prime contractor includes the cost of construction supplies as well as the supplier's name, quantities, and quotes in the bid. The City would produce a purchase order to pay the supplier directly, and the supplier would deliver the materials to the job site according to the contractor's schedule.

A direct purchase program would reduce the amount of the construction bid subject to a bond. For the purpose of bonding a job, the cost of supplies could be subtracted from the bid price, thereby reducing the amount of the contractor's bond.

This program can be beneficial to construction contractors, especially EBEs, because the cost of the contract, and in turn the amount that has to be bonded, is reduced by the material costs included in the direct purchase. The cash flow required to pay the supplier in advance of receiving reimbursement for the materials from the prime contractor is also eliminated. Additionally, the supplier, knowing that it would receive direct payment from the City, may also give the EBE a more competitive price, thereby reducing the overall bid price.

e. Revise Insurance Requirements

Insurance requirements should be evaluated to ensure that smaller contracts do not carry a disproportionately high level of coverage. As a general practice, the City should implement standard insurance provisions applicable to all City departments. The insurance requirements on small contracts should be eliminated; for all other contracts they should be set in relation to the actual contract liability amount. Prohibitive insurance requirements can be a disincentive to bidders, constitute a barrier to EBEs, and increase the City's costs to procure construction services. Revised insurance requirements would attract more bidders, thus increasing competition and reducing costs. Any revisions to the insurance provisions should comply with statutory requirements.

f. Phase Retainage Requirements

Retainage is the percentage of the contract value withheld from each payment until the successful completion of a contract. Retainage should be eliminated for small contracts and reduced for all certified EBE prime contractors. Moreover, the subcontractors' portion of the retainage should be released once its work has been completed and accepted. This practice would reduce the cash flow burden experienced by smaller construction prime and subcontractors. Increased cash flow would allow EBEs to build capacity.

2. Post-Award

Post-award remedies are applicable to the procurement process after a contract has been awarded.

a. Pay Mobilization to Subcontractors

Mobilization is the initial payment made to a prime contractor when work commences on a construction project to reimburse the prime contractor for the cost of starting the job. A mobilization payment should be made by the using agency to EBE prime contractors and all other contractors meeting the EBE goal. The subcontractors should be paid an amount equal to their participation level on the prime contract prior to commencing their work. Project start-up costs can be significant, and a firm that has limited resources and access to credit may find that the delay in receiving the initial progress payment could inhibit its ability to bid. Payment for mobilization could mitigate the start-up costs and late payment from prime contractors and the City.

b. Publish EBE Utilization Reports

EBE utilization reports measure the success of the City's EBE Program and determine if the program requires modification. These reports should include verified payment and award data

organized by industry and department. They should also include change orders and substitutions.

Reports should be submitted to the City Council on a quarterly basis. The fourth quarter report should include an assessment of the program activities and recommendations for improvement. Exemplary practices and achievements of each department should also be noted in the fourth quarter report. All reports should be posted on the City's website.

C. Administrative Recommendations

1. Website Enhancements

The following recommendations are intended to enhance the City's Internet presence and make the City's website more accessible to firms interested in performing work on the City's contracts.

a. Post Prime Contract Awards on the Internet

Prime contract awards should be posted on the City's website. The awards should be posted within 24 hours of the department head's approval and recommendation to award and no later than the start of the bid protest period. Posting contract awards would inform the business community of the results of the City's solicitations and inform the bidders of the start of the bid protest period for every contract.

b. Consolidate All Bid Information onto a Single Webpage

The EBE Program web page is embedded in the City's website. It can only be found as a hyperlink on the Business Resource web page which is located on the "Seek Bid/Contract Opportunities" web page. The EBE Program web page contains information on loan assistance, certification application, procurement forms and related services. Such valuable information on EBE resources should be more easily accessible, without having to conduct a search through various index features.

c. Publicize EBE Outreach Efforts

The City engages in various routine outreach efforts to promote its EBE Program throughout the Milwaukee community. However, the City's website does not publish this information. An *EBE Newsletter* link could provide a vital means for informing EBEs about upcoming outreach events. Information regarding mentor-protégé workshops hosted by prime contractors in conjunction with the City and ethnic or trade events hosted by the City could also be posted thus ensuring that vendors who are interested in obtaining work with the City have the opportunity to meet with relevant staff and individuals.

APPENDIX

EXECUTIVE ORDER

WHEREAS, the Mayor and City Council of Baltimore ("City") wishes to encourage all contractors awarded City contracts to agree to employ skilled and qualified Baltimore City residents who meet the contractor's employment needs created as a result of the award of a City contract; and

WHEREAS, the City of Baltimore and the Mayor's Office of Employment Development ("MOED") have established the **BALTIMORE CITY RESIDENTS FIRST** program designed to create opportunities for businesses that receive City contracts to meet their workforce needs; to access qualified City job seekers; and to ensure that City dollars contribute to the local economy; and

WHEREAS, MOED has direct access to Baltimore City residents, who are skilled and qualified for immediate employment by City contractors; and

WHEREAS, MOED wishes to establish and maintain an ongoing relationship with City contractors in an effort to address their current and future employment and/or training needs; and

WHEREAS, increasing employment participation of City residents is good business and a means to improve Baltimore City's employment rate.

NOW, THEREFORE, I, Sheila Dixon, Mayor of the City of Baltimore, by virtue of the authority vested in me by the Charter of Baltimore City, do hereby promulgate the following **EXECUTIVE ORDER:**

1. This Executive Order shall apply to all contracts awarded by the City, except professional service contracts, emergency contracts and contracts for $ 24,999.00 or less.

2. Bidders on all City contracts, except professional service contracts, emergency contracts and contracts for $24,999.00 or less shall complete the **Baltimore City Residents First Certification Statement** contained in the Bid Document and submit it with their bids.

3. Within two (2) weeks of receiving the award of a City contract, the contractor shall schedule a meeting with MOED to: (a) assess its employment needs, and (b) discuss other services provided by MOED. If applicable, MOED will then tailor specific hiring and/or training programs to benefit the contractor. The contractor will not receive its first payment under the contract, unless and until the said meeting has been scheduled.

4. Each contractor shall submit a **Baltimore City Residents First** Employment Report to MOED on June 30th and December 31st during each and every year of its contract, and at the end of the contract, indicating the number of City residents on its payroll. The submission of the Employment Reports as required shall be a condition precedent to the City's release of a final payment or any and all retainage held by the City, pursuant to the contract.

5. A copy of this **Executive Order** shall be included in all bids, requests for proposals and/or contracts.

6. This **Executive Order** applies to all applicable City contracts entered into sixty (60) days after the date of its promulgation by the Mayor of Baltimore City.

7. This **Executive Order** supersedes the Resolution of the Board of Estimates for First Source Hiring that was adopted by the Board on June 9, 1997, and shall take effect immediately.

IN WITNESS HEREOF, I HAVE HEREUNTO PLACED MY HAND AND THE GREAT SEAL OF THE CITY OF BALTIMORE THIS sixth DAY OF March, 2007.

SHEILA DIXON, MAYOR

Approved As To Form and Legal Sufficiency By The Law Department Of Baltimore City:

Leslie S. Winner
Chief Solicitor

ATTEST:

Alternate Custodian of City Seal

COMMITMENT TO MINORITY INCLUSION IN THE DEVELOPMENT OF THE DIGITAL HARBOR AND THE WEST SIDE

*"It is essential to our city - and to my administration - that the wealth-creating opportunities made possible by public investment in the Digital Harbor and the West Side are open to **all** citizens."*
- Mayor Martin O'Malley

During the O'Malley Administration, Baltimore has an opportunity to increase participation by minority businesses within the City of Baltimore to the highest levels in the City's history. This growth will create new opportunities for an often forgotten sector of the workforce, and help create wealth in every city neighborhood.

Supporting and empowering minority business is a priority for this administration. The passage of Ordinance 211, the signing of the Mayor's Executive Order in September of 2000, and the creation of the Mayor's Office of Minority Business Development make this clear. In the immediate future, enormous potential exists for a significant increase in the inclusion of minority businesses.

Each year, over 8,000 technology jobs go unfilled in our region. This creates an opportunity for the City to team up with employers, universities and nonprofits to ensure that Baltimore's workforce is fully prepared to participate in the new economy. These jobs range from lab technicians in biotech companies to programming and computer repair positions at information technology companies.

There are two major development initiatives underway in Baltimore City, which will leverage significant private funds to empower entrepreneurs and employ residents:

The **West Side** redevelopment project will create a new urban neighborhood where people will live, work, play and entertain. The current legislative request for acquisition and park space would make possible an additional $80 million dollars in private investment and development. The total private investment in the West Side is

expected to exceed $300 million.

The **Digital Harbor** development project will help retain and attract tech and tech-driven businesses to the City, while preparing Baltimore City residents to participate fully in our increasingly knowledge-based economy. The public infrastructure request to the State Legislature has the potential to leverage over $4 billion in private investment by building 18.2 million square feet of new office/retail space and 7,000 housing units, which would create 22,000 construction/contracting jobs and 57,000 permanent jobs.

This document outlines the five-year plan for the Office of Minority Business Development, and states the City's commitment to minority business in the following areas: management accountability, the contracting process, retail and new business opportunities, outreach, and workforce training/employment.

Management Accountability

Objective: In order to ensure compliance with the Mayor's commitment, we must have clear accountability, persistent follow-up and measurement and reporting of progress.

The Administration will create an Office of Minority Business Development with the resources necessary to implement this plan, whose director will be a cabinet-level position reporting directly to Mayor O'Malley. The Director's responsibilities will include advising the Mayor on how to implement effective compliance with Ordinance 211 and the Mayor's Executive Order.

The primary objectives of the Mayor's Office of Minority Business Development are to:

- Dramatically increase the number, magnitude and success rate of minority businesses in Baltimore City;
- Dramatically increase contracting and procurement dollars spent with minority businesses; and
- Facilitate greater involvement of minority businesses in identified growth sectors of the City's economy (e.g. tourism, technology, real estate development).

We will empower the new Director of Minority Business Development to oversee the Mayor's Minority Business Development Team (consisting of Dir., Office of Employment Development, the Minority/Women's Business Opportunity Office, MWBE coordinator from the Bureaus of Purchases and DPW, senior officials from BDC, HCD/Housing Authority, CEO of Empower Baltimore and the Executive Vice President of CDFC).

We will appoint the Director of Minority Business Development as an ex-officio member of the board of directors for BDC.

The Director shall give the Mayor a bi-annual report on the City's compliance with the goals and objectives of the Executive Order and Ordinance 211, particularly as it relates to the Digital Harbor and West Side developments.

Contracting Process

Objective: As one of the primary means through which City government can invest in and empower minority businesses, we will be vigilant in meeting our commitments.

The Administration will establish overall goals as mandated by the Executive Order setting 30/5 MBE/WBE as our target for City contracts.

These goals will be negotiated as a condition for developers receiving public financial assistance for on-site infrastructure/site improvements.

Taking into consideration the results of the 2000 Disparity Study, the goals by category shall be:

- Construction MBE 30.5% WBE 7%
- Architectural/Engineering MBE 17% WBE 9%
- Services MBE 13.5% WBE 3.5%
- Commodities MBE 9% WBE 4%

For all City government RFPs, developers must commit in writing to meeting the requirements of Ordinance #211 and the Mayor's **Executive Order** during the pre-development and construction phase of the project.

For all City Government RFPs, the selection criteria shall include the extent to which the proposal includes minority participation in all aspects of the development project, including equity/ownership and on-going operations/management of the project. These criteria will be given 20% weight in the scoring process.

All things equal, bonus consideration will be given to those developers and contractors who have an effective partnership with community or faith-based organizations (i.e. for employment, training and social service opportunities), and/or the minority business community.

First Source Hiring Initiative: The Administration will direct contractors who are awarded City contracts to work with the Mayor's Office of Employment Development's Employ Baltimore to interview City residents, first, to fill jobs created by the award.

The Administration will give added consideration in favor of those Board of Estimates contracts that have higher minority participation levels, or conversely, rejecting the lowest offer at the Board of Estimates in favor of those with high participation levels.

Equity Ownership

Objective: Within the Digital Harbor and West Side developments, the potential exists for equity ownership in office buildings, housing projects, retail and other redevelopment projects. The goal is to increase minority equity participation in those development projects that receive public financial

assistance.

The City shall encourage developers, and developers should agree, to make "shares" available to minority investors, with return provided to investors commensurate with their risk.

The Director of Minority Business Development will help establish and broker connections between majority and minority-owned businesses.

For property acquired through funding from the State Legislature, proposals that include significant minority participation in ownership will be given even greater weight.

Retail and New Business Opportunities

Objective: There is close to 550,000 square feet of retail space proposed for projects that include a request for public infrastructure funding. Our goal is to increase the number of minority-owned retail businesses serving the Digital Harbor and West Side.

City government will recruit and assist minorities in owning and operating at least 5 significant retail establishments within Digital Harbor and West Side projects. To ensure that there are opportunities in the 500,000 square feet retail/business space on the West Side, breaking ground within the next 18 months, BDC will market and make available low-interest loans to eligible minority entrepreneurs.

City government will actively seek out and place at least one significant minority-owned restaurant/entertainment establishment in the project area.

City government will identify at least 5 minority-owned high-tech/biotech companies that have an interest in starting or relocating a business, and will actively recruit at least 2 of those companies for placement in the project area.

Outreach

Objective: The Administration will help minority entrepreneurs take advantage of the economic development initiatives underway, as well as future initiatives, by providing a user-friendly point of contact for information and ensuring access to relevant agencies. It is City government's responsibility to facilitate effective outreach to the minority business community.

City government will reach out to established minority business people in the community for assistance in building capacity, so that minority entrepreneurs can take advantage of these development opportunities.

City government will sponsor several Digital Harbor development forums, to provide information on business opportunities, as well as networking opportunities for minority investors, developers and contractors to interact with their non-minority counterparts.

Neighborhood Development Through Workforce Training And Employment

Objective: Growth aided by public investments from City government must create employment opportunities for Baltimore's residents.

The Mayor's Office of Employment Development has taken the lead in ensuring that City government, employers, universities and nonprofits team up to ensure that Baltimore's workforce is prepared to participate fully in the New Economy.

Over $22 million in training funds now are available to help current employees, dislocated workers, emerging job seekers and recent graduates enter or advance in jobs and industries that depend on technology.

OED's One Stop Career Centers will offer training in computer repair, programming, web design, software support, manufacturing design, multimedia technology, graphic design and software development.

Youth Opportunity Centers across the City make technology and learning accessible to young people. Each site is equipped with state-of-the-art computer literacy labs that provide continuous basic computer instruction and advanced computer skills training to all 14-21 year-olds residing in the Empowerment Zone.

OED is accessing two new sources of IT training funds to address skill shortages in high-tech industries by training Baltimore residents for unfilled jobs. Employers involved in both the Metro Tech Project and Greater Baltimore Technology Training Council describe their immediate hiring needs. Job seekers are then recruited and trained to meet those specifications.

City government will spearhead partnerships with local universities, including Morgan State, Coppin State, The University of Maryland system and UMBI to create training programs that will prepare Baltimore City residents for careers in knowledge-based companies. We will foster partnerships with developers to create a direct pipeline to jobs.

The Deputy Mayor for Economic and Neighborhood Development and the Minority Business Development Director shall encourage and facilitate partnerships between developers, faith-based and community-based organizations for investment, community development and workforce initiatives.

Our Administration is absolutely committed to helping build and sustain a strong minority business community - because in Baltimore the minority is the majority. If our city is to move forward, we must empower entrepreneurs, generate jobs, build our tax base and create wealth in every neighborhood in our city.

This document describes how business will be done in Baltimore in the months and years ahead. And companies that are willing to fully utilize all that our citizens have to offer and find that Baltimore is a great place to do business. We will succeed in expanding the winner's circle.

Martin O'Malley, Mayor of Baltimore March 2001

Revised Code of Washington - Chapter 39.04.155

Small works roster contract procedures -- Limited public works process.

1. (1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of two hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter **43.19** RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW **43.19.1911**. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred thousand dollars to two hundred thousand dollars, a state agency or local government, other than a port district, that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement project [projects] estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW **39.04.010**.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW **43.19.1911**. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local

government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter **39.08** RCW and the retainage requirements of chapter **60.28** RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title **82** RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW **28B.10.016**, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

[2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.]

NOTES:

Purpose -- 2000 c 138: "The purpose of this act is to establish a common small works roster procedure that state agencies and local governments may use to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property." [2000 c 138 § 1.]

Part headings not law -- 2000 c 138: "Part headings used in this act are not any part of the law." [2000 c 138 § 302.]

Purpose -- Captions not law -- 1991 c 363: See notes following RCW **2.32.180**.

Competitive bids -- Contract procedure: RCW **36.32.250**.

EXECUTIVE ORDER 390

AFFIRMATIVE MARKET

PROGRAM IN PUBLIC CONTRACTING

THE COMMONWEALTH OF MASSACHUSETTS
Executive Department
State House Boston 02133
(617) 727-3600

ARGEO PAUL CELLUCCI
GOVERNOR

CHARLES D. BAKER
SECRETARY

By His Excellency

WILLIAM F. WELD
GOVERNOR

EXECUTIVE ORDER NO. ***390***

ESTABLISHING AN AFFIRMATIVE MARKET PROGRAM
IN PUBLIC CONTRACTING

WHEREAS, The Commonwealth has an affirmative responsibility to develop and maintain equitable practices and policies in the public marketplace;

WHEREAS, a diverse business community strengthens the state economy and is beneficial to all of the citizens of the Commonwealth;

WHEREAS, in 1990, the Massachusetts Commission Against Discrimination conducted hearings and investigations which documented a history of discrimination against minorities and women in the Commonwealth, and in 1994, the Executive Office of Transportation and Construction produced a Disparity Study which documented a history of discrimination against minority and women owned businesses, in which the Commonwealth's agencies were participants;

WHEREAS, this discrimination against minorities and women currently affects the utilization of minority and women owned businesses in state contracting;

WHEREAS, the Commonwealth has a compelling interest in redressing the effects of past discrimination through the utilization of the available and qualified pool of minority and women owned businesses;

NOW, THEREFORE, I, WILLIAM F. WELD, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me as Supreme Executive Magistrate, and Lieutenant Governor ARGEO PAUL CELLUCCI, do hereby order as follows:

Section 1. **Declaration of Policy .** It is the policy of the Commonwealth to promote equality in the market and, to that end, to encourage full participation of minority and women owned businesses in all areas of state contracting, including contracts for construction, design, goods and services.

Section 2. **Affirmative Market Plans**. The Commonwealth has a compelling interest in using racial and gender based classifications for the purposes of remedying past discrimination and promoting other, non-remedial objectives such as the delivery of effective human services in the areas of public health, safety and welfare.

Subject to the approval and direction of the Secretary of Administration and Finance, all executive offices, agencies, departments, boards and commissions of the Commonwealth (hereinafter referred to as "Agency" or "Agencies") are hereby directed to implement the narrowly tailored affirmative market program set forth in this Executive Order which shall include race and gender conscious goals where necessary to eliminate disparity between minority or women owned businesses (M/WBEs) and other business entities in the relevant market, defined as the Commonwealth of Massachusetts.

For purposes of this Executive Order, "minority" shall be defined as a permanent resident of the U.S. operating a business .within the Commonwealth who is black, Western Hemisphere Hispanic, Asian, American Indian, or Cape Verdean, and a "Minority Business Enterprise" (MBE) as a minority business certified by the-State Office of Minority and women Business Assistance (SOMWBA) or another state Agency. A "Woman Business Enterprise" (WBE) shall be a business certified as such by SOMWBA or another state Agency.

Goals for M/WBE participation in state funded contracts shall be based upon the broadest and most inclusive pool of available M/WBEs capable of performing the contracts and interested in doing business with the Commonwealth in the-areas of construction, design, goods and services. SOMWBA, or its successor, shall create and maintain a current directory of certified M/WBEs which will serve as one source of information in determining the pool of available M/WBEs. Goals shall be established by the Secretary of Administration and Finance, or his/her designee, and shall be expressed as overall annual program goals, applicable to the total dollar amount of an Agency's contracts awarded during the fiscal year for each of the Agency's types of contracts. The goals established in Section 1.2 of Executive Order 237 shall remain in effect until revised goals are developed pursuant to this Executive order, which shall occur promptly, but in no event later than January 1, 1997. Goals developed pursuant to this Executive Order shall be revised as necessary for the fiscal year beginning July 1, 1997 and at least every two years thereafter.

The Secretary of Administration and Finance, or his/her designee, shall develop a procedure by which Agencies may, for an individual contract, adjust the goals for M/WBE participation (whether the goals are established pursuant to Executive Order 237 or pursuant to this Executive Order) based upon actual availability, geographic location of the project, the contractual scope of work or other relevant factors.

The Secretary of Administration and Finance, or his/her designee, shall develop a good faith efforts waiver procedure by which Agencies may determine, at any time prior to the award of the contract, that compliance with the goals is not feasible and by which Agencies may reduce or waive the goals for an individual contract.

Recognizing the importance of joint ventures and partnerships involving M/WBEs in increasing the participation of M/WBEs in state contracting, the Secretary of Administration and Finance, or his/her designee, shall develop guidelines and procedures for Agencies to follow in contracting with such entities. Such guidelines and procedures shall seek to encourage the development of joint ventures and partnerships for the purpose of contracting with the Commonwealth.

In connection with the affirmative market program, SOMWBA shall regularly review and, where necessary, modify its certification process to ensure that it operates effectively, and shall report annually to the Secretary of Administration and Finance.

Section 3. **Capacity Development.** The Massachusetts Office of Business Development **(MOBD),** or its successor, is hereby designated the state Agency responsible for providing a capacity development program to M/WBEs and other interested businesses seeking to do business with the Commonwealth. The capacity development program shall include, but is not limited to, the following core areas of business development: strategic planning, financial management planning, human resource-management and planning, information technology access and management, and . marketing.

MOBD shall report annually to the Secretary of Administration and Finance on its progress in assisting M/WBEs and other businesses.

Contracting Agencies of the Commonwealth shall supplement the capacity development program provided by MOBD with industry specific assistance, training, education and procurement information.

Section 4. **Program Oversight, Enforcement and Reporting Requirements.** The Secretary of Administration and Finance shall be responsible for the overall management, monitoring and enforcement of the program established pursuant to this Executive Order. A Program Director shall be designated within the Executive Office of Administration and Finance to assist in program development, coordination and compliance. A Director of Enforcement shall be designated within the Executive Office of Administration and Finance with responsibility for monitoring contract compliance across all Agencies, addressing potential program violations and coordinating Agency enforcement activities with SOMWBA and the Attorney General.

Each Secretary and Agency head shall designate a highly placed individual charged with management of this program. Each Secretary and Agency head may designate such other personnel as they deem necessary to support the implementation, monitoring and enforcement of this program and the coordination of those functions. Each Secretariat shall ensure that Agencies establish, subject to guidelines developed by the Secretary of Administration and Finance or his/her designee, special provisions that serve as governing standards for contract compliance. It is the intention of this Executive Order that the principles underlying the affirmative market program be incorporated into the fabric of general management in state government.

Each Secretariat shall report annually to the Secretary of Administration and Finance on the effectiveness of the program, including a report of the total dollar amounts awarded and actually paid to M/WBEs in all areas of state contracting. The Secretary of Administration and Finance shall report annually, within ten weeks of the issuance of the Annual Financial Report by the Office of the Comptroller, to the Minority and Women Business Enterprise Oversight Committee established by this Executive order and to the Governor.

Section 5. **Minority and Women Business Enterprise Oversight Committee**. The Secretary of Administration and Finance shall appoint a Minority and Women Business Enterprise Oversight Committee, not to exceed twenty members, which shall assist the Secretary in the implementation of this Executive order. Oversight Committee members shall serve for two year terms, except that in the initial appointments, one half shall be appointed to one year terms, and one half shall be appointed to two year terms. Members may serve a maximum of three (3) full two year terms.

Section 6. **Independent Authorities and Public Institutions of Higher Learning**. Independent authorities and public institutions of higher learning are encouraged to adopt M/WBE policies and programs consistent with this Executive Order.

Section 7. **Sunset Provision.** The Executive Office for Administration and Finance shall review the program described in this Executive Order at least every five years. The review shall determine: whether the objectives are being met; whether the conditions giving rise to the Order continue to exist; whether race and gender neutral measures are capable of addressing the effects of discrimination without the other measures specified in the order; and whether the program described in the Order should be modified or sunsetted.

Section 8. Effective Date. With the exception of the goal component of the affirmative market program, as set forth in Section 2 of this Executive order, all provisions of this Executive Order are effective immediately. The goal component of Order 237, as set forth in Section 1.2 of Executive Order 237, shall remain in effect until revised goals - are developed pursuant to Section 2 of this Executive Order, but in no event shall it remain in effect beyond January 1, 1997. All other provisions of Executive Order 237 are hereby immediately revoked.

Given at the Executive Chamber in Boston this 6th day of August in the year one thousand nine hundred and ninety-six.

_____
William F. Weld, Governor
Commonwealth of Massachusetts

_____
Argeo Paul Cellucci, Lieutenant Governor
Commonwealth of Massachusetts

_____
William Francis Galvin
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE. BOSTON 02133
(617) 725-4000

By His Excellency

DEVAL L. PATRICK
GOVERNOR

EXECUTIVE ORDER NO. 478

ORDER REGARDING NON-DISCRIMINATION. DIVERSITY. EQUAL OPPORTUNITY. AND AFFIRMATIVE ACTION

(Revoking Executive Order 452)

WHEREAS, the Constitution of the Commonwealth of Massachusetts is based on a belief in freedom and equality for all individuals and in the duty of Government to safeguard and foster these rights;

WHEREAS, the Executive Branch of the Commonwealth of Massachusetts recognizes the importance of non-discrimination, diversity, and equal opportunity in all aspects of state employment, programs, and activities;

WHEREAS, creating a culture of inclusion that values and promotes diversity and equal opportunity for all individuals is the central objective of this Executive Order and the goal of my administration;

WHEREAS, while acknowledging the many efforts and accomplishments of the past, the Commonwealth can and must do more to ensure that non-discrimination, diversity and equal opportunity are safeguarded, promoted, and reflected in state workplaces, decisions, programs, activities, services, and contracts;

NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § I, Art. I, do hereby revoke Executive Order 452 and order as follows:

Section 1. This Executive Order shall apply to all state agencies in the Executive Branch. As used in this Order, "state agencies" shall include all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established.

Section 2. Non-discrimination, diversity, and equal opportunity shall be the policy of the Executive Branch of the Commonwealth of Massachusetts in all aspects of state employment, programs, services, activities, and decisions. Each executive officer and agency head serving under the Governor, and all state employees, shall take immediate, affirmative steps to ensure compliance with this policy and with applicable federal and state laws in connection with both the internal operations of state government as well as their external relations with the public, including those persons and organizations doing business with the Commonwealth. Each agency, in discharging its duties, shall consider the likely effects that its decisions, programs, services, and activities will have on achieving non-discrimination, diversity, and equal opportunity.

Section 3. All state agencies shall develop and implement affirmative action and diversity plans to identify and eliminate discriminatory barriers in the workplace; remedy the effects of past discriminatory practices; identify, recruit, hire, develop, promote, and retain employees who are members of under-represented groups; and ensure diversity and equal opportunity in all facets, terms, and conditions of state employment. Such plans shall set forth specific goals and timetables for achievement, shall comply with all applicable state and federal laws, and shall be updated, at a minimum, every two years.

Section 4. All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. Equal opportunity and diversity shall be protected and affirmatively promoted in all state, state-assisted, and state-regulated programs, activities, and services. Non-compliance shall subject violators to such disciplinary or remedial actions as permitted by law. This provision applies, but is not limited to, the use and operation of facilities owned, leased, funded or subject to control by the Commonwealth; the sale, lease, rental, financing, construction, or development of housing; state-licensed or chartered health care facilities, educational institutions, and businesses; education, counseling, and training programs; and public schools.

Section 5. All Executive Branch contracts entered into after the effective date of this Order shall contain provisions prohibiting contractors and subcontractors from engaging in discriminatory employment practices; certifying that they are in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices;

and committing to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. Such provisions shall be drafted in consultation with the Office of the Comptroller and the Operational Services Division, which shall develop and implement uniform language to be incorporated into all Executive Branch contracts. The provisions shall be enforced through the contracting agency, the Operational Services Division, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

Section 6. All state agencies shall exclude from any forms requesting information any item or inquiry expressing or soliciting specifications as to race, color, creed, religion, national origin, ethnicity, gender, age, sexual orientation, or disability, unless the item or inquiry is expressly required by statute or is deemed by the Massachusetts Commission Against Discrimination, the Massachusetts Office on Disability, the Human Resources Division, or the Office of Diversity and Equal Opportunity to be a bona fide qualification or otherwise required in good faith for a proper purpose.

Section 7. The Office of Diversity and Equal Opportunity ("ODEO"), as presently established within the Human Resources Division of the Administration and Finance Secretariat, shall be responsible for ensuring compliance with this Executive Order and with all applicable state and federal laws. ODEO shall have a Director (the "Director"), who shall be selected by and serve at the pleasure of the Governor. The Director shall report to the Commonwealth's Chief Human Resources Officer and submit periodic written reports to the Governor. The Director shall have the authority to:

- Establish guidelines for agency affirmative action and diversity plans ("plans");
- Review all such plans and either approve, return for amendment, or reject them;
- Establish periodic reporting requirements for agencies concerning the implementation of their plans and all actions taken to ensure compliance with this Executive Order and applicable state and federal laws;
- Provide assistance to agencies in achieving compliance with their plans and with applicable federal and state laws;
- Monitor and assess the status of agency compliance and investigate instances of non-compliance; and
- Where appropriate, determine and impose remedial courses of action, including the potential imposition of a freeze on all personnel requisitions and appointment forms submitted by any non-compliant agency to the Chief Human Resources Officer.

Section 8. Each Secretariat shall appoint a Diversity Director. Each agency shall appoint a Diversity Officer. Diversity Directors and Officers shall have a direct reporting relationship to their Secretary or Agency head; shall also report to the Director of ODEO; and shall coordinate their component's compliance with the requirements of this Order and applicable federal and state laws. Through the Diversity Directors and Officers, and in compliance with the reporting guidelines and requirements established by ODEO, all state agencies shall submit periodic reports to the Director of ODEO concerning the . status and implementation of their affirmative action and diversity plans.

Section 9. The Massachusetts Office on Disability ("MOD"), through its Director, shall be responsible for advising, overseeing and coordinating compliance with federal and state laws protecting the rights of persons with disabilities, including but not limited to the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§12131-12134; Section 504 ("504") of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Article CXIV of the Massachusetts Constitution; and Chapter 6, §§ 185-87; Chapter 93, § 103; Chapter 151B; and Chapter 272, §§ 92, 98, and 98A of the Massachusetts General Laws. MOD shall serve as the Executive Branch's designated ADA and Rehabilitation Act Coordinator, and shall provide information, training, and technical assistance and promulgate guidelines reflecting best practices, policies and procedures concerning persons with disabilities. Each agency shall appoint an ADA/504 Coordinator who shall report directly to the agency head and work with MOD concerning issues involving persons with disabilities. Notification of such appointment shall be made to MOD's Director.

Section 10. Pursuant to guidelines established by ODEO and MOD, all agency heads, managers, supervisors, and employees shall attend mandatory diversity training within one year of the effective date of this Order. For future hires, such training shall be part of the standardized orientation provided to new employees.

Section 11. ODEO and MOD shall promulgate guidelines establishing a complaint resolution process for individuals who allege non-compliance by state agencies with applicable federal and state laws prohibiting discrimination. In instances where this process does not resolve the complaint, the Director of ODEO may refer to the Massachusetts Commission Against Discrimination ("MCAD") or to MOD any information concerning conduct that the Director believes may constitute a violation of the law. The MCAD shall initiate investigations and, where necessary, file complaints against those agencies and persons whom it has reason to believe are in violation of the laws of the Commonwealth or the United States. .

Section 12. In performing their responsibilities under this Order, ODEO, MOD, and the MCAD shall have the full cooperation of all state agencies, including compliance with all requests for information.

Section 13. The Governor's Non-discrimination, Diversity and Equal Opportunity Advisory Council ("Advisory Council") is hereby established to advise the Governor concerning policies, practices, and specific actions that the Commonwealth should implement to ensure that the objectives of this Executive Order are accomplished.

13.1 The Advisory Council shall consist of fifteen persons, including a Chair, each of whom shall be appointed by the Governor. All members shall serve without compensation at the pleasure of the Governor in a solely advisory capacity. .

13.2 The Advisory Council's work shall include, but need not be limited to, making written recommendations to the Governor concerning actions, policies, and practices that the Commonwealth should implement to ensure that the objectives of this Executive Order are accomplished.

13.3 The Advisory Council shall meet at such times and places as determined by the Chair and shall submit an initial report containing its written recommendations to the Governor no later than 60 days following the appointment of the Council's 15 members. Thereafter, the Advisory Council shall meet at least semi-annually and submit supplemental reports to the Governor no less than once per-year.

Section 14. Nothing in this Executive Order shall be construed to preclude or otherwise limit the continuation or implementation of any lawful affirmative action programs or other programs that support the objectives of this Executive Order.

Section 15. This Executive Order shall take effect immediately and shall continue in effect until amended, superseded or revoked by subsequent Executive Order.

Given at the Executive Chamber in Boston
This 30th day of January in the year of
our Lord two thousand and seven, and of the
Independence of the United States of
America two hundred and thirty-one.

DEVAL L. PATRICK, GOVERNOR
Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

Montgomery County Code Article XIV Section 11B-57

Article XIV. Purchases from Minority Owned Businesses.

Sec. 11B-57. Legislative findings and policy.

(a) Minority owned businesses have experienced the effects of discrimination in the awarding of County contracts and subcontracts. The effect has been to:

(1) make a smaller percentage of contract and subcontract awards to minority owned businesses than the percentage of qualified minority owned businesses in the County's relevant geographic market area would indicate as reasonable;

(2) impede the economic development and expansion of minority owned businesses in the County's relevant geographic market area;

(3) impair the competitive position of minority owned businesses; and

(4) generally harm minority owned businesses.

(b) Adoption of the minority owned business purchasing program is intended to remedy the effects of discrimination on minority owned businesses.

(c) A goal of awarding an appropriate percentage of the dollar value of County contracts to minority owned businesses in proportion to their availability to perform work under County contracts is a reasonable and appropriate means to remedy discrimination against minority owned businesses.

(d) The County should actively recruit all minority owned businesses to provide goods, construction, and services to the County. To help achieve this goal, the County should:

(1) notify all businesses of procurement opportunities;

(2) provide information to all business owners about the procurement system;

(3) provide referrals for technical assistance, sureties, and financing; and

(4) review procurement procedures to remove artificial barriers to competition.

(e) A four-year period is a reasonable time to continue the minority owned business purchasing program before evaluating it.

(f) This article does not give any person, including a minority owned business, any right or status, including standing, to challenge the award of a contract or subcontract under the County procurement system. The provisions of this article are enforceable only through the oversight function of the Chief Administrative Officer and the County Council. (1994 L.M.C., ch. 30, § 1;

1997, L.M.C., ch. 38, § 1; 2006 L.M.C., ch. 3, § 1.)

Editor's note-Section 2 of Ch. 30 LMC 1997 states:

"Transition. Any certification as a minority owned business remains valid until April 1, 1998, if:

(a) the County certified the entity as a minority owned business before this Act took effect [December 10, 1997]; and

(b) the entity continues through March 31, 1998, to meet the criteria for a minority owned business in effect before this Act took effect [December 10, 1997].

The goal of awarding 20 percent of the total dollar value of County contracts to minority owned businesses remains in effect until the Chief Administrative Officer sets new goals under regulations adopted to implement this Act. This Act does not affect the validity of any minority, female, disabled subcontractor performance plan entered into before this Act took effect [December 10, 1997]."

Sec. 11B-58. Definitions.

(a) *Minority owned business* means, unless the context indicates otherwise, any legal entity that:

(1) Is a minority business enterprise as defined under the State procurement law; and

(2) Does not exceed a ceiling set by regulation on the number and value of contracts or subcontracts awarded during the first 5 years after it is certified under this article, or during the next 3 years if it did not exceed the ceiling during the first 5 years after it is certified.

However, a not for profit entity organized to promote the interests of persons with a disability is a minority owned business only if at least 51 percent of the individuals used by the nonprofit entity to perform the services or manufacture the goods contracted for by the County are persons with a disability.

(b) *Relevant geographic market area* means the geographic market area identified by the County Executive in a report dated July 1, 2005 that evaluates the need to continue the program and is issued in accordance with Section 11B-61(b).

(c) *Socially or economically disadvantaged group* means a group expressly identified as eligible to control a minority business enterprise under the State procurement law. For purposes of this Article, disabled owned businesses and not-for-profit entities organized to promote the interests of persons with a disability are a single group. (1994 L.M.C., ch. 30, § 1; 1997 L.M.C., ch. 38, § 1; 2006 L.M.C., ch. 3, § 1.)

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[December 10, 1997]; and

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The goal of awarding 20 percent of the total dollar value of County contracts to minority owned businesses remains in effect until the Chief Administrative Officer sets new goals under regulations adopted to implement this Act. This Act does not affect the validity of any minority, female, disabled subcontractor performance plan entered into before this Act took effect [December 10, 1997]."

Sec. 11B-59. Goals; applicability.

(a) The Chief Administrative Officer must structure the County's purchasing program to attempt to achieve the goal so that the percentages of the dollar value of purchases identified in subsection (b) from minority owned businesses who have been discriminated against are proportional to the availability of those businesses to perform work under County contracts in the County's relevant geographic market area as determined by the most recent report that the County Executive must submit to the County Council under Section 11B-6(b).

(b) The purchases subject to the minority owned business goals are any formal or informal procurement, including any contract modification or renewal, valued over $5,000.

(c) The minority owned business goals do not apply to:

(1) grants that are appropriated by the County Council to specific grantees;

(2) utilities;

(3) intragovernmental procurements; or

(4) intergovernmental procurements, including a bridge contract, under Sections 11B-41 and 11B-42 if the Director determines in writing that compliance with this Article is impractical or is outweighed by the benefits to the County of entering into the intergovernmental procurement. (1997 L.M.C., ch. 38, § 1; 2006 L.M.C., ch. 3, § 1)

Editor's note-Section 2 of Ch. 30 LMC 1997 states:

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The goal of awarding 20 percent of the total dollar value of County contracts to minority owned businesses remains in effect until the Chief Administrative Officer sets new goals under

regulations adopted to implement this Act. This Act does not affect the validity of any minority, female, disabled subcontractor performance plan entered into before this Act took effect [December 10, 1997]."

Sec. 11B-60. Procedures.

(a) By September 30 of each year, the Chief Administrative Officer must set for the following calendar year percentage goals of the dollar value of purchases subject to this Article for each socially or economically disadvantaged group. The goals must correspond to the availability of that group by source selection method and purchasing category in the relevant geographic market area as determined by the most recent report that the County Executive must submit to the County Council under Section 11B-61(b) to perform work under County contracts. The Chief Administrative Officer must set separate goals for each socially or economically disadvantaged group in the County's purchases of goods, construction, professional services, and other services. The Chief Administrative Officer must not set goals for a socially or economically disadvantaged group unless the Chief Administrative Officer determines that the value of purchases made during the previous fiscal year from that group in each category of purchases under a particular source selection method, compared with the availability of that group to perform work in that category, shows a significant under-utilization of the group.

(b) The Chief Administrative Officer must adopt procedures to certify and decertify minority owned businesses.

(c) The Office of Procurement must publicly notify businesses of prospective procurement opportunities.

(d) For those procurements where a goal has been set under subsection (a), the Office of Procurement must encourage minority owned business participation in procurement. These activities should include:

(1) distribution to potential contractors for whom a goal has not been set of a list of potential minority owned business contractors for whom a goal has been set with a requirement that one or more be contacted if any work subject to a goal is being subcontracted;

(2) a provision in all solicitations for procurements in excess of $50,000 that requires, subject to the waiver provisions of subsection (h), businesses for whom a goal has not been set acting as prime contractors to subcontract to minority owned businesses for whom a goal has been set a percentage of the total dollar value of the contract that is consistent with the numerical goals established under subsection (a);

(3) a requirement that a contractor for whom a goal has not been set:

(A) agree to a plan showing how the contractor proposes to meet its minority owned business procurement subcontracting goal; and

(B) identify, before a notice to proceed is issued or performance of a contract begins, whichever occurs first, each minority owned business that the contractor intends to subcontract with and the

projected dollar amount of each subcontract, and promptly notify the using department of any change in either item; and

(4) contract requirements that minority owned business participation goals be maintained by prime contractors throughout the life of the contract, including modifications and renewals, subject to the waiver provisions of subsection (h). Contract requirements:

(A) may include obligating contractors subject to the minority owned business procurement goals to provide in each subcontract with a minority owned business a provision requiring the use of binding arbitration to resolve disputes between the contractor and the minority owned business subcontractor; and

(B) must make failure to submit documentation showing compliance with a minority owned business subcontracting plan under paragraph (3) grounds for withholding any remaining payment or imposing liquidated damages unless failure to comply with the plan is the result of an arbitration decision under subparagraph (A) or a waiver granted under subsection (h). Liquidated damages under this provision must equal the difference between all amounts the contractor has agreed under its plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors under the contract, considering any relevant waiver or arbitrator's decision. Failure to show compliance with a minority owned business subcontracting plan must also result in finding the contractor non-responsible for purposes of future procurements with the County during the next 3 years.

(e) The Office of Procurement must offer procurement system education and information to minority owned businesses for whom a goal has been set under subsection (a).

(f) The Office of Procurement must offer referrals to resources such as technical consultants, sureties, and financing sources.

(g) The Director must review procurement requirements to remove artificial barriers to competition.

(h) The Director may waive, or exempt a business from, minority owned business contracting requirements under appropriate circumstances described in regulations.

(i) The Director may require each contractor and minority owned business that participates in the minority owned business purchasing program to provide information concerning utilization by the contractor of minority owned businesses in private and government contracts.

(j) The Chief Administrative Officer must ensure that all contract administrators receive appropriate guidance in implementing this article. (1994 L.M.C., ch. 30, § 1; 1997 L.M.C., ch. 38, § 1; 2006 L.M.C., ch. 3, § 1.)

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The goal of awarding 20 percent of the total dollar value of County contracts to minority owned businesses remains in effect until the Chief Administrative Officer sets new goals under regulations adopted to implement this Act. This Act does not affect the validity of any minority, female, disabled subcontractor performance plan entered into before this Act took effect [December 10, 1997]."

Sec. 11B-61. Reports.

(a) The Chief Administrative Officer must report to the County Council, by September 30 of each year for the previous fiscal year:

(1) the total number and value of all procurements;

(2) the total number and value of all procurements subject to the minority owned business procurement goal;

(3) the total number and value of purchases from minority owned businesses;

(4) the total number and value of purchases of construction, goods, professional services, and other services from each socially or economically disadvantaged group;

(5) the percentage which those purchases are of the total number and value of purchases subject to the minority owned business procurement goal;

(6) the percentage of availability that each socially or economically disadvantaged group represents in each category of purchases in the County's relevant geographic market area;

(7) the percentage of each socially or economically disadvantaged group that submits a proposal in response to each request for proposals, and the percentage of contracts by dollar volume and number of awards made under each request for proposals to each socially or economically disadvantaged group;

(8) information required in paragraphs (1) through (4) for each Using Department that, for procurements subject to the minority owned business procurement goal, has had either;

(A) procurements of any type exceeding $5,000,000, in the aggregate; or

(B) procurements for professional services exceeding $1,000,000, in the aggregate;

(9) the total number and value of all procurements excluded from the minority owned business goals by Section 11B-59(c);

(10) the total number and value of all waivers or exemptions granted under section 11-60(h), with a brief description of the reasons for each waiver or exemption;

(11) any other information that the County Council requests; and

(12) any other information that a regulation requires to be submitted.

(b) By July 1, 2009, the County Executive must submit a report to the County Council evaluating the need to extend the minority owned business purchasing program. (1994 L.M.C., ch. 30, § 1; 1997 L.M.C., ch. 38, §1; 2000 L.M.C., ch. 33, § 1; 2001 L.M.C., ch. 35, § 1; 2003 L.M.C., ch. 14, § 1; 2006 L.M.C., ch. 3, § 1.)

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Sec. 11B-62. Monitoring.

The Chief Administrative Officer must develop monitoring procedures that will enable a contract administrator and the minority procurement officer of the Office of Procurement to ascertain compliance by prime contractors with the minority participation requirements of this article. Monitoring requirements may include the submission of copies of invoices from the minority subcontractor to the prime contractor relative to County contracts. (1994 L.M.C., ch. 30, § 1; 1997 L.M.C., ch. 38, §1.)

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The goal of awarding 20 percent of the total dollar value of County contracts to minority owned businesses remains in effect until the Chief Administrative Officer sets new goals under regulations adopted to implement this Act. This Act does not affect the validity of any minority, female, disabled subcontractor performance plan entered into before this Act took effect

[December 10, 1997]."

Sec. 11B-63. Penalty.

(a) A person must not:

(1) fraudulently obtain or retain, attempt to obtain or retain, or aid another person in fraudulently obtaining or retaining or attempting to obtain or retain certification as a minority owned business for the purpose of this article;

(2) willfully make a false statement to a County official or employee for the purpose of influencing the certification or denial of certification of an entity as a minority owned business;

(3) fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under this article; or

(4) willfully make false statements that any entity is or is not certified as a minority owned business for purposes of this article.

(b) A violation of this Section:

(1) is a class A violation; and

(2) disqualifies the violator from doing business with the County for 3 years. (1994 L.M.C., ch. 30, § 1; 1997 L.M.C., ch. 38, § 1; 2006 L.M.C., ch. 3, § 1.)

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