Final Report

For the project entitled:

Disparity Study for the City of Milwaukee

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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

D. Wilson Consulting Group conducted a study to determine whether a disparity exists for minority and women owned emerging business enterprises (EBEs) working on City of Milwaukee construction, professional services and goods & services contracts. A disparity exists when there are more available EBEs ready, willing and able to conduct work on City of Milwaukee contracts than are utilized. The study included four years of procurement activity from January 2005 through December 2008. All data analyses components of the study are applicable only to the City of Milwaukee with the exception of the Anecdotal Analysis. The Milwaukee Metropolitan Sewerage District participated with the City in this component of the study.

On March 29, 1983, the City of Milwaukee (City) adopted Ordinance 2-291, creating the Minority Business Enterprise Committee (MBEC). The creation of the MBEC was the City's first M/WBE initiative. In 1985, Charter Ordinance Chapter 37 created a combination set-aside and outreach program. The goal of the program was to have each contracting department utilize MBEs and WBEs on 28% of total dollars expended on construction services, professional services, and the purchase of supplies. In addition, a 5% bid preference was also established. The ordinance creating this program was submitted to the voters in Referendum 555 in April 1987 and defeated. The MBEC continued to certify MBEs, consider waivers, and enforce compliance with the program. In 1986, an inter-agency agreement was established, creating the Joint Certification Program to certify businesses as disadvantaged, minority and women-owned. Then in November 1987, Chapter 360 of the Milwaukee Code of Ordinances was created and the City expanded its combination set-aside and outreach program. The program was changed from MBEC to the Equal Opportunities Enterprise Committee (EOEC). EOEC was responsible for creating, monitoring, and enforcing procedures. In addition, the City adjusted its existing 28% goal to be phased in over a seven-year period.

After the Croson decision, the City passed a revised ordinance on September 1, 1989, which authorized fundamental changes to the D/M/WBE combination set-aside and outreach program. The program became a race/gender neutral program, targeting businesses controlled by one or more disadvantaged individuals. In addition, the goal was to have DBE's utilized for 18% of the dollars annually expended on construction services, professional services, and supplies.

In 1989, the City enacted the Emerging Business Enterprise (EBE) Program, through Chapter 360 of the Milwaukee Code of Ordinances. The EBE Program, formerly known as the

DBE 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.

The City of Milwaukee's Emerging Business Enterprise Program name positively reflects and promotes small businesses that strive to become competitive in the mainstream marketplace. Eliminating the reference to small businesses as disadvantaged eliminates any pre-conceived notions that small businesses are unable to perform or provide superior products and quality services.

MMSD has a long standing policy goal that the contractors, engineering firms, vendors and workers that do business with MMSD should reflect the diversity of the region. To that end, MMSD Procurement Policy 2-78.01 was created to establish an annual goal of spending 20% of its total procurement with Small, Women, and Minority Owned Businesses (SWMBE). This participation goal further specifies that 13% of the purchase order or contract awards should be with certified minority owned businesses, 5% with certified small businesses, and 2% with certified women owned businesses.

BACKGROUND

The 1989 U.S. Supreme Court decision in *City of Richmond v. J.A. Croson Company* established the standard of review for state and local governments that take race into account when awarding contracts. In *Croson*, the Court ruled that the strict scrutiny standard be applied to race-conscious programs. The strict scrutiny standard requires minority business programs to be predicated upon two factors.

First, an owner must establish a "compelling governmental interest", as evidenced by ongoing effects of past or present discrimination against minority-owned businesses. Second, race-conscious programs must be "narrowly tailored" to remedy the effects of such discrimination. In other words, programs must not be overly broad; rather, they should be narrowly designed to address the specific forms of discrimination identified by the agency.

SCOPE

- Legal analysis of relevant court decisions on minority business programs;
- Analysis of construction, professional services and goods & services contract data to determine EBE participation by SIC code in the relevant market area for each business category during the study period;
- Utilization Analysis of construction, professional services and goods & services prime and contract data;
- Availability Analysis of prime and subcontractors ready, willing and able to provide construction services, professional services and goods & services to the City of Milwaukee;
- Disparity Analysis to determine if a statistically significant disparity exists between the number of minority-owned and women-owned business enterprises that are ready, willing, and able to provide goods and services to the City and the number of minority-owned and women-owned businesses that were actually providing goods and services to the City;
- Regression Analysis to determine the extent to which identified disparities may be attributable to various factors including race, gender, and other factors that appear to be neutral i.e., length of time in business and size of firm;
- Anecdotal data and analysis of any specific instances of discrimination and/or patterns and practices of the City and MMSD in the procurement of goods and services; and
- Findings and Recommendations.

UTILIZATION DATA

Construction Contracts

- Of the total dollars paid to Prime Contractors, EBE firms received 14.78 percent;
- Of the total dollars paid to Subcontractors, EBE firms received 16.82 percent;
- Of the total dollars paid to Prime and Subcontractors, EBE firms received 31.60 percent; and
- 92.60 percent of the prime contracts were for less than $750,000 and EBE firms received 16.44 percent of those prime contracts; and
- 87.33 percent of subcontracts were for less than $50,000 and EBE firms received 82.08 percent of those subcontracts.

Professional Services Contracts

- Of the total dollars paid to Prime Contractors, EBE firms received 4.08 percent;
- Of the total dollars paid to Subcontractors, EBE firms received 0.32 percent;
- Of the total dollars paid to Prime and Subcontractors, EBE firms received 4.40 percent; and

- 67.33 percent of the prime contracts were for less than $50,000 and EBE firms received 2.94 percent of those prime contracts; and
- Only one (1) subcontractor was awarded a professional services subcontract; this subcontract in the amount of $31,226 was awarded to an EBE owned firm.

Goods & Services

- Of the total dollars paid to Prime Contractors, EBE firms received 7.55 percent;
- Of the total dollars paid to Subcontractors, EBE firms received 8.48 percent;
- Of the total dollars paid to Prime and Subcontractors, EBE firms received 16.03 percent; and
- 70.00 percent of the prime contracts were for less than $100,000 and EBE firms received 9.88 percent of those prime contracts; and
- Regardless of the size of the subcontracts, EBE firms received 100 percent of those subcontracts.

AVAILABILITY DATA

The available firms were established using a master database and secondary data relying on the following sources:

- City of Milwaukee Vendor List,
- City of Milwaukee Emerging Business Enterprise Vendor List,
- Dun & Bradstreet Data,
- City of Milwaukee Prime and Subcontractor Data
- Subcontractor Verification Mail-out,
- Central Contractor Registry (CCR),
- Wisconsin Department of Transportation (WisDOT),
- Wisconsin Small Business Development Centers,
- Regional Chambers of Commerce, and
- Local Business and Community Organizations.

After the master database was compiled, the data was filtered to extract a subset of qualified, willing and able firms from the overall pool of firms. Key elements used to evaluate firm eligibility for further analysis included:

- Willingness to work on City of Milwaukee projects;
- Firm capability based on available resources; and
- Past performance on similar size and type projects.

Based on the above analysis, 941 prime contractors, 903 subcontractors were identified as available for construction contracts, 249 prime and 324 subcontractor professional services

firms were identified as available for professional services contracts and 624 prime and 603 subcontractor goods & services firms were identified as available to provide goods & services. These firms represent the universe of all firms available to perform work for the City of Milwaukee, regardless of race, ethnicity, or gender.

DISPARITY ANALYSIS

Availability and utilization data were analyzed to determine if EBEs received a fair and equitable share of the subcontracting dollars. A disparity analysis was conducted by dividing the percent of utilization by the percent of availability and multiplying the result by 100. A disparity index of 100 indicates parity, a balance between utilization and availability.

Courts have held that a disparity index of less than 80 indicates significant underutilization and that project specific EBE goals should only be used to address significant underutilization. In construction subcontracting, African American, Asian American and nonminority Women owned firms were significantly underutilized. Native American, Hispanic American and nonminority Women owned firms were significantly underutilized in goods and services subcontracting. The following are the disparity analysis results for construction, professional services and goods & services subcontracts with the City of Milwaukee for calendar years 2005 through 2008:

- Construction – **Table ES-1** shows:
  - African American owned firms were significantly underutilized as subcontractors with a disparity index of 52.86
  - Asian American owned firms were significantly underutilized as subcontractors with a disparity index of 0.00
  - Nonminority Women owned firms were significantly underutilized as subcontractors with a disparity index of 30.95
- Goods & Services **– Table ES-2** shows:
  - Native American owned firms were significantly underutilized as subcontractors with a disparity index of 0.00
  - Hispanic American owned firms were significantly underutilized as subcontractors with a disparity index of 17.18
  - Nonminority Women owned firms were significantly underutilized as subcontractors with a disparity index of 0.72
  - African American owned firms were underutilized but not significantly with a disparity index of 86.97
- Professional Services - Professional Services is not included in the analysis because there was only one subcontract awarded during the study period in the amount of $31,226, which represents 0.32 percent of the total contract dollars.

Table ES-1
Subcontractor Disparity Analysis
Construction
Calendar Years 2005 – 2008

Ethnicity Classifications	# of Awarded Contracts[1]	Contract Dollars[2]	% of Dollars[3]	% of Firms Available[4]	Disparity Index[5]	Disparity Impact Under/Over Utilization
OVERALL						
African Americans	117	$2,412,724	2.94%	5.57%	52.86	* Under
Native Americans	57	$1,627,153	1.99%	0.10%	1,985.60	Over
Asian Americans	0	$0	0.00%	0.07%	0.00	* Under
Hispanic Americans	250	$6,653,631	8.12%	3.41%	238.10	Over
Nonminority Women	97	$1,854,140	2.26%	7.31%	30.95	* Under
Other EBEs	34	$1,233,684	1.51%	0.01%	15,054.52	Over

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008
Note: Total dollars awarded may not equal the total due to rounding
[1] The number of contracts awarded to subcontractors
[2] The dollars awarded to subcontractors
[3] The percentage of dollars from the prime contractor utilization
[4] The percentage of available firms
[5] The disparity index is % utilization divided by % availability multiplied by 100
[5] The disparity index of less than 100 indicates underutilization or overutilization if greater than 100
* Significantly underutilized

Table ES-2
Subcontractor Disparity Analysis
Goods & Services
Calendar Years 2005 – 2008

Ethnicity Classifications	# of Awarded Contracts[1]	Contract Dollars[2]	% of Dollars[3]	% of Firms Available[4]	Disparity Index[5]	Disparity Impact Under/Over Utilization
OVERALL						
African Americans	5	$1,285,615	6.25%	7.19%	86.97	Under
Native Americans	0	$0	0.00%	0.17%	0.00	* Under
Asian Americans	1	$245,629	1.19%	0.63%	189.64	Over
Hispanic Americans	3	$114,104	0.55%	3.23%	17.18	* Under
Nonminority Women	1	$25,273	0.12%	17.09%	0.72	* Under
Other EBEs	3	$72,607	0.35%	0.17%	207.74	Over

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008
Note: Total dollars awarded may not equal the total due to rounding
[1] The number of contracts awarded to subcontractors
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[3] The percentage of dollars from the prime contractor utilization
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[5] The disparity index is % utilization divided by % availability multiplied by 100
[5] The disparity index of less than 100 indicates underutilization or overutilization if greater than 100
* Significantly underutilized

REGRESSION ANALYSIS

The overall results of the Regression Analysis show that race and gender do not have a consistent statistically significant impact on winning a contract with the exception of being African American. Overall, the results show a negative relationship with the variables White Female, Native American, African American and Hispanic American.

The analysis also shows that Native Americans are 1.5 times less likely to be awarded a contract with the City of Milwaukee than white males, while African Americans are 1.7 times less likely to be awarded a contract with the City of Milwaukee than white males.

ANECDOTAL ANALYSIS

Several methods were utilized to collect anecdotal data from individuals representing both M/WBE and non-M/WBE businesses. The anecdotal data collected were a result of:

- Personal Interviews – Sixty-two (62) personal interviews were conducted with business owners who conducted business with or attempted to conduct business with the City or the Milwaukee Metropolitan Sewerage District (MMSD). An interview guide was developed that covered a range of questions concerning a firm's experiences in conducting or attempting to conduct business with the City or MMSD, experiences contracting with general contractors on projects and firm's business operations and instances of discrimination experienced by the firm.

- Business Demographics Survey – An online Business Demographics Survey of firms located within the identified statistically relevant market area was conducted. A total of 5,045 email invitations were sent to prime and subcontractors within the relevant market area. A total of 743 individuals participated in the survey. The survey included 39 questions, many of them open-ended, which allowed some qualitative data to be obtained, in addition to the quantitative business information. The questions were divided into four (4) categories:

  General demographic and availability/capacity questions were asked about the business, goods and services, ownership, and bonding and insurance levels

  Questions related specifically to the WisDOT DBE and City of Milwaukee's EBE programs

  Questions that addressed possible barriers that business owners may have encountered attempting to do business with the City or MMSD

  Questions that addressed possible discriminatory practices by prime contractors and the City

- Public Meetings – A total of three (3) public meetings were conducted; one on June 26, 2009, one on July 19, 2010 and one on December 20, 2010. The meetings provided information regarding:

  The purpose and process of the Disparity Study;

  The Preliminary Findings of Phase I of the Disparity Study; and

  The Findings and Recommendations of Phase I and Phase II of the Disparity Study

FINDINGS AND RECOMMENDATIONS

The findings are based on the analyses of the data represented in Chapters 2.0 through 9.0. In summary, the data supports the continuation of the City of Milwaukee Emerging Business Enterprise (EBE) program with modifications. The statistical analyses documents disparity in utilizing EBE firms in comparison to their availability. For purposes of this report, EBE firms are all minority and women owned firms that are ready, capable and willing to perform work for the City. EBE firms are not limited to the City's certified EBEs.

The primary objectives of the study were to determine and/or identify:

1. If a statistically significant disparity exists between the number of minority-owned and women-owned business enterprises that are ready, willing, and able to provide goods and services to the City and the number of minority-owned and women-owned businesses that were actually providing goods and services to the City during calendar years 2005, 2006, 2007 and 2008;
2. The extent to which minority and women owned businesses participate in the procurement of contracts with the City of Milwaukee in construction services, professional services and goods and services;
3. Whether minority and women owned business participation is representative of the availability of minority and women owned businesses ready, willing and able to participate in contracts within the City of Milwaukee's market area;
4. The effectiveness of any race/gender neutral initiatives that have been used by the City and MMSD in eliminating discrimination and/or increasing minority and women participation in public procurement;
5. If discrimination exists, does anecdotal evidence show specific instances of discrimination and/or patterns and practices of the City and MMSD in the procurement of goods and services;
6. If discrimination exists, recommend and/or identify narrowly tailored race/gender based activities to remedy the effects of any discrimination identified.

FINDING 1: Relevant Market Area

The Relevant Market Areas for the City are:

Construction

County, State	# of Contracts	% of Contracts	# of Firms	% of Firms	Dollars	% of Dollars	Cum%
MILWAUKEE, WI	119	45.95%	36	52.17%	$37,731,556.40	40.12%	40.12%
WAUKESHA, WI	90	34.75%	19	27.54%	$31,974,730.55	34.00%	74.12%
WASHINGTON, WI	34	13.13%	2	2.90%	$12,241,457.05	13.02%	87.14%

Professional Services

County, State	# of Contracts	% of Contracts	# of Firms	% of Firms	Dollars	% of Dollars	Cum%
MILWAUKEE, WI	65	52.85%	46	48.42%	$3,705,760.25	32.99%	32.99%
WAUKESHA, WI	10	8.13%	8	8.42%	$2,188,211.30	19.48%	52.47%
WASHINGTON, WI	1	0.81%	1	1.05%	$365,000.00	3.25%	55.72%
COOK, IL	7	5.69%	5	5.26%	$169,040.20	1.50%	57.22%
DANE, WI	4	3.25%	4	4.21%	$196,399.10	1.75%	58.97%
DU PAGE, IL	2	1.63%	2	2.11%	$387,118.30	3.45%	62.41%
KANE, IL	3	2.44%	2	2.11%	$262,300.00	2.33%	64.75%
SAN DIEGO, CA	2	1.63%	2	2.11%	$212,503.40	1.89%	66.64%
LOS ANGELES, CA	2	1.63%	2	2.11%	$68,009.00	0.61%	67.25%
DALLAS, TX	2	1.63%	2	2.11%	$35,724.24	0.32%	67.56%
PIMA, AZ	2	1.63%	2	2.11%	$32,955.00	0.29%	67.86%
SPOKANE, WA	1	0.81%	1	1.05%	$2,000,000.00	17.80%	85.66%

Goods & Services

County, State	# of Contracts	% of Contracts	# of Firms	% of Firms	Dollars	% of Dollars	Cum%
MILWAUKEE, WI	78	53.79%	59	50.86%	$14,645,545.50	55.88%	55.88%
WAUKESHA, WI	28	19.31%	24	20.69%	$3,937,131.85	15.02%	70.90%
OZAUKEE, WI	1	0.69%	1	0.86%	$139,085.00	0.53%	71.43%
COOK, IL	9	6.21%	7	6.03%	$1,837,823.47	7.01%	78.44%

RECOMMENDATION 1.1:

The City should limit its EBE program to the Metropolitan Statistical Area.

Prime and Subcontractor EBE Utilization
City of Milwaukee

Utilization Summary	Dollars Awarded	% of Dollars
Total EBE Dollars	$423,724	4.40%
Total Non-EBE Dollars	$9,199,297	95.60%
Total	$9,623,021	100.00%

FINDING 2: Disparity Analysis - Construction

The statistical analysis identified disparity for several EBE groups as follows:

Construction

- African Americans – 52.86 disparity index
- Asian Americans – 0.00 disparity index
- Nonminority Women – 30.95 disparity index

Subcontractor Disparity Analysis
Construction
Calendar Years 2005 – 2008
City of Milwaukee

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Note: EBEs include certified and non-certified minority and women owned businesses
[1] The percentage of dollars from the prime utilization.
[2] The percentage of available firms.
[3] The disparity index is % utilization divided by % availability multiplied by 100.
* Significantly underutilized - disparity index below 80.00.

RECOMMENDATION 2.1:

The City of Milwaukee should amend its EBE Program to set race/gender-specific annual participation goals for construction subcontracts for the following EBE-owned firms:

- African American-owned firms
- Asian American-owned firms
- Nonminority Women-owned firms

RECOMMENDATION 2.2:

The City of Milwaukee should closely monitor on a quarterly basis the utilization of all EBEs to ensure that their utilization on construction contracts does not fall below their availability. If the situation occurs, the City should adjust its annual participation goals by including only the groups who continue to be underutilized.

RECOMMENDATION 2.3:

The City should review the utilization of EBE firms on a quarterly basis and report to the Common Council.

FINDING 3: Disparity Analysis – Goods & Services

The statistical analysis identified disparity for several EBE groups as follows:

<u>Goods & Services</u>

- Native Americans – 0.00 disparity index
- Hispanic Americans – 17.18 disparity index
- Nonminority Women – 0.72 disparity index
- African Americans – 86.97 disparity index

Subcontractor Disparity Analysis
Goods & Services
Calendar Years 2005 – 2008
City of Milwaukee

Ethnicity Classifications	# of Awarded Contracts	Contract Dollars	% of Dollars[1]	% of Firms Available[2]	Disparity Index[3]	Disparity Impact Under/Over Utilization
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RECOMMENDATION 3.1:

The City of Milwaukee should amend its EBE Program to set race/gender-specific annual participation goals for goods & services subcontracts for the following EBE-owned firms:

- Native American-owned firms
- Hispanic American-owned firms
- Nonminority Women-owned firms

RECOMMENDATION 3.2:

The City of Milwaukee should closely monitor on a quarterly basis the utilization of all EBEs to ensure that their utilization on goods & services contracts does not fall below their availability. If the situation occurs, the City should adjust its annual participation goals by including only the groups who continue to be underutilized.

FINDING 4: Professional Services Contracts

- 101 Professional Services contracts were included in the sample analyzed
- Prime Contractor EBE participation included African American, Asian American and nonminority Women owned firms
- Subcontractor EBE participation included an African American owned firm
- There is a large availability pool of Professional Services subcontractors

Professional Services Subcontractors
Availability

Business Category	African American	Asian American	Hispanic American	Native American	Other EBEs	Nonminority Women	Subtotal EBE	Nonminority	Total EBE and Nonminority
Professional Services	37	7	10	0	2	71	**128**	196	**324**

RECOMMENDATION 4.1:

All City Departments should review professional service contracts to identify subcontracting opportunities prior to advertising.

RECOMMENDATION 4.2:

The City should implement an Outreach Program to make women and minority-owned businesses aware of subcontracting opportunities.

FINDING 5: Data Collection and Tracking

The City of Milwaukee utilizes the following methodologies/processes to track procurement activity:

- City's Financial Management Information System (Prime Contractor payments)
- BusinessSense System (EBE tracking)

RECOMMENDATION 5.1:

The City should track **all** contract awards and payments to prime and subcontractors. All records should be maintained in a database that captures the data variables requested during the data collection process of the study. This process should include all business categories.

RECOMMENDATION 5.2:

The City of Milwaukee should implement the following:

- Identify one (1) tracking system to collect and monitor all procurement activity including contractors and subcontractors for all projects awarded;
- Establish and implement strict guidelines by type of procurement activity that includes pertinent information from requisition to final payment or completion of project;
- The tracking system should be maintained for accuracy with quality control checks; and
- The tracking system must include all awards and payments to all (EBE and non-EBE) contractors/vendors.

FINDING 6: Contract Compliance – Verification and Follow-up

During many personal interviews with M/WBEs, business owners noted lack of verification and follow up of reported EBE participation. Prime contractors reported payments to the City that were never made to EBE firms. EBE firms reported that they did not participate or know that they were listed as subcontractors on certain contracts with the City. EBE firms agreed upon levels of participation are not verified.

RECOMMENDATION 6.1

The City should conduct random audits of prime contractors payments to EBE owned firms that require documented proof of payments. Additionally, the City should follow-up periodically with EBE firms to ensure that they have been paid and participated in the contracting process.

FINDING 7: Contract Compliance – Payment Practices

Numerous M/WBE owned firms voiced concerns regarding delayed payments or a reduction in the negotiated and agreed upon price for work performed. M/WBE businesses are generally small and nonpayment and/or late payment produces significant cash flow issues. They often do not have the cash reserves or access to capital necessary to maintain their business operations when they do not receive payments timely. Therefore, M/WBEs are disparately impacted by a prime contractor's failure to make prompt payments.

The City currently requires that prime contractors make payment to subcontractors for work performed within ten (10) days of receipt of their payment from the City; MMSD currently requires that prime contractors make payment to subcontractors for work performed within seven (7) days of receipt of their payment from MMSD. Prime contractors invoices that are submitted to the City must be paid within sixty (60) days of receipt, this timeframe could ultimately result in a subcontractor receiving payment seventy (70) days after completion of work. MMSD must pay prime contractor invoices within thirty (30) days of receipt, resulting in the possibility of a subcontractor receiving payment thirty-seven (37) days after completion of work.

RECOMMENDATION 7.1

The City and MMSD should ensure that prime contractors are making timely and accurate subcontractor payments to M/WBE and non-M/WBE owned firms. This can be accomplished by reviewing and enhancing the current process for tracking payments made by primes to subcontractors.

RECOMMENDATION 7.2

The City should consider adopting MMSDs payment policies for both prime contractors and subcontractors.

FINDING 8: Barriers to Contract Bidding

There are several barriers to contract participation that exist because the procedures in place to ensure compliance with M/WBE requirements are not strictly enforced or monitored. During the interviews, several M/WBE firms reported that prime contractors do not allow sufficient time for submission of subcontracting quotes. This bidding practice allows prime contractors to submit the required documentation showing that they attempted to obtain M/WBE participation, without actually providing a meaningful opportunity. This results in the prime contractor obtaining a waiver of the City's and MMSDs M/WBE requirements. Another barrier to contract participation is bid shopping. M/WBEs will submit bid quotes to a prime contractor; the prime will pressure them to lower their bid because they have shopped around and indicate that they can get the job done for a specific lower price or the prime will submit a bid with a specific subcontractor, win the bid and try to pressure the subcontractor to lower the original bid.

FINDING/COMMENDATION:

The City's EBE Program and MMSD's SMWBE Program have participation requirements that must be submitted at the time of bid submission. Prime contractor reporting requirements are also in place after contract award. Some of these include:

- EBE Participation Form that must be submitted at time of bid submission
- EBE Monthly Report Form that must be submitted by the 20th of the Month
- EBE Subcontractor Payment Certification
- MMSD provides administrative and on-site monitoring to ensure that promised participation is achieved

RECOMMENDATION 8.1:

The City and MMSD should conduct an audit of their current compliance processes to determine their effectiveness and make modifications based on the findings. The audit should include validation of the information received from both prime and subcontractors.

CHAPTER 1.0 – INTRODUCTION

CHAPTER 1.0 – INTRODUCTION

In June 2009, the City of Milwaukee engaged D. Wilson Consulting Group, LLC to conduct a two phase Disparity Study within the legal framework established by the United States Supreme Court in *City of Richmond v. J.A. Croson*, and *Adarand Constructors, Inc. v. Pena* and any other decisions that bears on the rights and abilities of state or local governments to implement race-or gender-based business preference programs. In addition to D. Wilson Consulting Group, the research team included Fields & Brown, LLC.

The primary objectives of the study were to determine and/or identify:

1. If a statistically significant disparity exists between the number of minority-owned and women-owned business enterprises that are ready, willing, and able to provide goods and services to the City and the number of minority-owned and women-owned businesses that were actually providing goods and services to the City during calendar years 2005, 2006, 2007 and 2008.
2. The extent to which minority and women owned business, participate in the procurement of contracts with the City of Milwaukee in construction services, professional services and goods and services.
3. Whether minority and women owned business participation is representative of the availability of minority and women owned businesses ready, willing and able to participate in contracts within the City of Milwaukee.
4. The effectiveness of any race/gender neutral initiatives that have been used by the City and MMSD in eliminating discrimination and/or increasing minority and women participation in public procurement;
5. If discrimination exists, does anecdotal evidence show specific instances of discrimination and/or patterns and practices of the City and MMSD in the procurement of goods and services;
6. If discrimination exists, recommend and/or identify narrowly tailored race/gender based activities to remedy the effects of any discrimination identified.

The study was conducted in 9 stages:

1. Reviewed the impact of relevant court decisions on Minority and Woman Owned Business programs, including *City of Richmond v. J.A. Croson Company*; *Adarand Constructor v. Pena*; *Western States Paving Co. v. Washington Department of Transportation; Contractors Ass'n. of Eastern Pennsylvania v. City of Philadelphia; Engineering Contractors of South Florida v. Metropolitan Dade County; Coral Construction v. King County; Concrete Works of Colorado v. City and County of Denver (Concrete Works IV); Northern Contracting, Inc. v. State of Illinois, et al. and Rothe Development Corp. v. US Department of Defense*.
2. Determined the relevant geographic market area for the City's construction, professional services and goods and services business categories.

   a. The relevant geographic market area was determined in two steps. The first step took into consideration the political jurisdiction. The second step took into consideration where the City of Milwaukee spent at least 75 percent of its contracting dollars.

3. Determined the availability of non-minority, minority and woman owned businesses in the relevant market area by business category.
   a. The availability of minority Emerging Business Enterprises (EBEs) and non-EBEs were identified within the City of Milwaukee. Through a business survey, demographic and capability data were collected and analyzed. Data parameters from the survey were then applied to the firms to determine if they were ready, willing and able.
4. Determined what percentage of the contracts and contract dollars were paid to minority and women-owned businesses.
   a. Contract award and payment data were provided from the City of Milwaukee to The Wilson Group in electronic format.
   b. The utilization was calculated by dividing the dollars paid to minority, women-owned and non-minority-owned EBE businesses by the total dollars paid.
   c. Utilization analyses were performed for each minority, ethnic and gender group.
5. Determined if a disparity exists between the utilization of EBE firms versus the available EBE firms and if so, determined if the disparity is statistically significant.
   a. Compared the availability data to the utilization data to determine if disparity exists; and, if the disparity is statistically significant.
   b. Analyzed and determined if disparity exists for the City of Milwaukee's construction, professional services and goods and services contracts independently.
6. Conducted a Business Demographics Analysis – developed an online business survey
   a. Key areas addressed in the online survey asked about line of business, number of bid attempts, contracts won and largest contract secured during the study period.
   b. The online survey also distinguished between public sector and private sector experiences.
   c. Open ended questions allowed for the collection of qualitative and quantitative data.
7. Conducted a Regression Analysis – assessed the impact of race, ethnicity or gender list of available firms on the availability of businesses to bid and win business with the City of Milwaukee.
8. Conducted an Anecdotal Analysis – Sixty-two (62) personal interviews and 743 online business surveys were conducted with business owners who conducted business with or attempted to conduct business with the City or the Milwaukee Metropolitan Sewerage District (MMSD). Developed an interview guide and an online business survey that covered a range of questions concerning:
   a. A firm's experiences in conducting or attempting to conduct business with the City or the MMSD.

b. A firm's experiences contracting with general contractors on projects.

c. Firm's business operations and instances of discrimination experienced by business owners.

9. Findings and Recommendations.

The results of the Disparity Study are presented in the following Chapters:

- Chapter 2 – Legal Analysis
- Chapter 3 – Data Collection and Relevant Market Area
- Chapter 4 – Availability Analysis
- Chapter 5 – Utilization Analysis
- Chapter 6 – Disparity Analysis
- Chapter 7 – Business Demographics Analysis
- Chapter 8 – Regression Analysis
- Chapter 9 – Anecdotal Analysis
- Chapter 10 – Findings and Recommendations

CHAPTER 2.0 – LEGAL ANALYSIS

CHAPTER 2.0 - LEGAL ANALYSIS

2.1 Introduction

This chapter provides legal background for the study. The material that follows in this chapter does not constitute legal advice to the City of Milwaukee on minority business programs, affirmative action, or any other matter. Instead, the chapter provides a context for the statistical and anecdotal analysis that follows in subsequent chapters of this report.

The Supreme Court decision in *City of Richmond v. J.A. Croson Company* (*Croson*)[1] and later cases have established and applied the Constitutional standards for an affirmative action program. This chapter identifies and analyzes those decisions, summarizing how courts evaluate the constitutionality of race-specific and gender-specific programs. Decisions of the Seventh Circuit, which includes Wisconsin, offer the most directly binding authority; but where those decisions leave issues unsettled, the review considers decisions from other circuits.

By way of a preliminary outline, the courts have determined that an affirmative action program involving governmental procurement of goods or services must meet the following standards:

- A remedial race-conscious program is subject to strict judicial scrutiny under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
  - Strict scrutiny has two basic components: a compelling governmental interest in the program and narrow tailoring of the program.
  - To survive the strict scrutiny standard, a remedial race-conscious program must be based on a compelling governmental interest.
    - "Compelling interest" means the government must prove past or present racial discrimination requiring remedial attention.
    - There must be a specific "strong basis in the evidence" for the compelling governmental interest.
    - Both statistical and anecdotal evidence are preferred and possibly necessary as a practical matter.
  - Program(s) designed to address the compelling governmental interest must be narrowly tailored to remedy the identified discrimination.
    - "Narrow tailoring" means the remedy must fit the findings.

[1] 488 U.S. 469 (1989).

- The evidence showing compelling interest must guide the tailoring very closely.
- Race-neutral alternatives must be considered first.

- A lesser standard, intermediate judicial scrutiny, applies to programs that establish gender preferences.
  - To survive the intermediate scrutiny standard, the remedial gender-conscious program must serve important governmental objectives and be substantially related to the achievement of those objectives.
  - The evidence does not need to be as strong and the tailoring does not need to be as specific under the lesser standard.

2.2 Standards of Review for Race-Specific and Gender-Specific Programs

2.2.1 Race-Specific Programs: The Croson Decision

Croson established the framework for testing the validity of programs based on racial discrimination. In 1983, the Richmond City Council adopted a Minority Business Utilization Plan (the Plan) following a public hearing in which seven citizens testified about historical societal discrimination. In adopting the Plan, the Council also relied on a study indicating that "while the general population of Richmond was 50 percent African American, only 0.67 percent of the city's prime construction contracts had been awarded to minority businesses in the five-year period from 1978 to 1983."[2]

The evidence before the Council also established that a variety of state and local contractor associations had little or no minority business membership. The Council relied on statements by a Council member whose opinion was that "the general conduct of the construction industry in this area, the state, and around the nation, is one in which race discrimination and exclusion on the basis of race is widespread."[3] There was, however, no direct evidence of race discrimination on the part of the city in its contracting activities and no evidence that the city's prime contractors had discriminated against minority-owned subcontractors.[4]

The Plan required the city's prime contractors to subcontract at least 30 percent of the dollar amount of each contract to one or more minority-owned business enterprises (MBEs). The Plan did not establish any geographic limits for eligibility. Therefore, an otherwise qualified MBE from anywhere in the United States could benefit from the 30 percent set-aside.

[2] Id. at 479-80.
[3] Id. at 480.

J.A. Croson Company, a non-MBE mechanical plumbing and heating contractor, filed a lawsuit against the City of Richmond alleging that the Plan was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment. After a considerable record of litigation and appeals, the Fourth Circuit struck down the Richmond Plan and the Supreme Court affirmed this decision.[5] The Supreme Court determined that strict scrutiny is the appropriate standard of judicial review for MBE programs, so that a race-conscious program must be based on a compelling governmental interest and be narrowly tailored to achieve its objectives. This standard requires a firm evidentiary basis for concluding that the under-utilization of minorities is a product of past discrimination.[6]

2.2.2 Gender-Specific Programs

The Supreme Court has not addressed the specific issue of a gender-based classification in the context of a woman-owned business enterprise (WBE) program. *Croson* was limited to the review of an MBE program. In evaluating gender-based classifications, the Court has used "intermediate scrutiny," a lower standard of review less stringent than the "strict scrutiny" applied to race-based classifications. Intermediate scrutiny requires the government to demonstrate an important governmental objective and develop a program that bears a direct and substantial relation to achieving that objective.[7] Some federal courts have required that classifications based on gender satisfy an "exceedingly persuasive justification" test,[8] and in other contexts the Supreme Court may be inclined to raise the standard of review on matters of gender discrimination.[9] The intermediate scrutiny standard still applies to gender classifications in government contracting legislation.

The Seventh Circuit has not addressed whether a more permissive standard applies to contracting programs that involve gender classifications. The opportunity to address this question has been before the Circuit on three separate occasions. However, in all three occasions the enacting agency did not argue for a different standard for the gender-based program. Therefore,

[4] Id.
[5] Id. at 511.
[6] Id. at 472,
[7] *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982); See also *Ensley Branch, NAACP v. Seibels*, 31 F.3d 1548, 1580 (11th Cir. 1994).
[8] *Mississippi University for Women*, 458 U.S. at 724 (1982); *Associated General Contractors of California v. City and County of San Francisco*, 813 F. 2d. 922 (9th Cir. 1987), petition dismissed, 493 U.S. 928 (1989). (*AGCC I*); *Michigan Road Builders Ass'n., Inc. v. Milliken*, 834 F. 2d. 583 (6th Cir. 1987).
[9] See, e.g., *United States v. Virginia*, 518 U.S. 515 (1996).

the Seventh Circuit evaluated the constitutionality of the gender-based program using the strict scrutiny standard applied to the raced based programs.[10]

Despite the fact that the Seventh Circuit has not addressed this question, other courts have applied intermediate scrutiny to WBE programs and yet have found the programs to be unconstitutional.[11] Nevertheless, in *Coral Construction v. King County*, the Ninth Circuit upheld a WBE program under the intermediate scrutiny standard.[12] Even using intermediate scrutiny, the court in *Coral Construction* noted that some degree of discrimination must be demonstrated in a particular industry before a gender-specific remedy may be instituted in that industry. As the court stated, "The mere recitation of a benign, compensatory purpose will not automatically shield a gender-specific program from constitutional scrutiny."[13]

More recently, the Tenth Circuit, on the second appeal in *Concrete Works of Colorado v. City of Denver* (*Concrete Works IV*),[14] approved the constitutionality of a WBE program based on evidence comparable to that supporting an MBE program that the court also upheld in the same decision. Unlike *Coral Construction*, then, *Concrete Works IV* offers no independent guidance to the level of evidence required to support a WBE program.

2.2.3 An Overview of the Applicable Case Law

Unfortunately, *Croson* did not find a compelling justification for a complete MBE program, and the Seventh Circuit has not had to address the question squarely. *Croson* found the City of Richmond's evidence to be inadequate as a matter of law. Further, state appellate courts and federal trial courts in Wisconsin have not published opinions applying *Croson* locally to affirmative action in government contracting. Nevertheless, more recent cases in other federal circuits have addressed applications of the law that were not considered in *Croson*. Thus, it becomes necessary to look to the decisions of other federal circuits to predict what level of evidence might be required to establish an affirmative action program.

The discussion in this review will also attend closely to the most relevant decisions in this exact area of government contracting. Justice O'Connor, distinguishing her majority opinion on

[10] See e.g. *Builders Ass'n of Greater Chicago v. County of Cook*, 256 F.3d 642,644-645 (7th Cir 2001)(Another unresolved issue is whether a different, and specifically a more permissive standard is applicable to preferential treatment on the basis of sex rather than race or ethnicity. . . But since here, as in Milwaukee County Pavers, the County doesn't argue for a different standard for the minority and women's set aside programs, the women's program must clear the same four hurdles as the minority program.) ; *Northern Contracting, Inc., v. State of Illinois*, 473 F.3d 715, 720 (7th Cir 2007); Milwaukee County Pavers Ass'n v. Fiedler, 922 F. 2d 419, 422 (7th Cir 1991).
[11] See, e.g., *Engineering Contractors Ass'n of South Florida, Inc. v. Dade County*, 122 F.3d 895 (11th Cir 1997);
[12] 941 F.2d 910 (9th Cir 1991), cert. denied, 502 U.S. 1033 (1992).
[13] Id. at 932.
[14] 321 F.3d 950 (10th Cir. 2003).

affirmative action in law school admissions from her opinions in government contracting cases, wrote:

> *Context matters when reviewing race-based governmental action under the Equal Protection Clause. . . . Not every decision influenced by race is equally objectionable and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decision maker for the use of race in that particular context.*[15]

The legal standard for affirmative action in government contracting has remained settled since the *Croson* decision, despite several notable developments in the application of that standard. Thus, it is best to follow the authoritative cases related to government contracting and not get drawn into extensive comparisons with other kinds of affirmative action cases.

Further, some caution must apply to relying upon opinions of the federal district courts. The district courts make both findings of fact and holdings of law. As to holdings of law, the district courts are ultimately subject to rulings by their circuit courts. As to matters of fact, their decisions depend heavily on the precise record before them, in these cases frequently including matters such as evaluations of the credibility and expertise of witnesses. Such findings are not binding precedents outside their districts, even if they may indicate the kind of evidence and arguments that might succeed elsewhere. Since there are no published opinions of the District Courts of Wisconsin applying *Croson* principles to M/WBEs in the contracting industry, reference to district court opinions will be carefully limited in this review.

Finally, the ways in which municipalities participate in national DBE programs is a specialized issue quite distinct from that of supporting municipal programs, even if the same kinds of evidence and same levels of review apply. In *Adarand Constructors, Inc. v. Peña,*[16] the Supreme Court did decide that federal DBE programs should be examined by the same strict scrutiny standard that *Croson* mandated for state and local programs. Nevertheless, cases considering national DBE programs have many important distinctions from cases considering municipal programs, particularly when it comes to finding a compelling governmental interest.[17] The national DBE cases have somewhat more application in determining whether a local program is narrowly tailored, to be discussed in Section 2.6 below.

Thus, the majority of this review will be based on decisions of the federal circuit courts

[15] *Grutter*, 539 U.S. at 327.
[16] *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).
[17] See, e.g., *Adarand v. Slater*, 228 F.3d 1147 (10th Cir. 2000), cert. granted in part sub nom. *Adarand Constructors, Inc. v. Mineta*, 532 U.S. 941 (2001); cert. dismissed as improvidently granted, 534 U.S. 103 (2001); *Northern Contracting*, 473 F.3d 715 (7th Cir 2007); *Western States Paving Co., v. Washington D.O.T.* 407 F.3d 983 (9th Cir 2005); *Sherbrooke Turf v. Minnesota D.O.T.,* 345 F.3d 963 (8th Cir. 2003).

applying *Croson* to city or county programs designed to increase participation by M/WBEs in government contracting. That is not a large body of case law. While other cases are useful as to particular points, only three circuit court cases have reviewed strictly local M/WBE programs and given clear, specific, and binding guidance about the adequacy of a complete factual record including thorough, local disparity studies with at least some statistical analysis. Further, in one of the three directly applicable circuit court cases, the Third Circuit evaded the issue of compelling justification after lengthy discussion, holding that the Philadelphia M/WBE program was unconstitutional because the plan was not narrowly tailored.[18]

Ultimately, only two circuit court decisions since *Croson* have passed definitively on thorough, strictly local disparity studies: *Engineering Contractors Ass'n of South Florida, Inc.*,[19] and *Concrete Works IV*.[20] In *Engineering Contractors*, the Eleventh Circuit ultimately upheld the district court finding that Dade County's disparity studies were not adequate to support an M/WBE program, at least in the face of rebuttal evidence.[21] By contrast, in *Concrete Works IV* the Tenth Circuit, after holding that the district court had used an improper standard for weighing the evidence, went on to evaluate the evidence and determine that it was adequate as a matter of law to establish a compelling justification for Denver's program. The Supreme Court refused to hear the appeal in *Concrete Works IV*,[22] which refusal in itself has no precedential effect. The dissent to that denial, written by Justice Scalia with the Chief Justice joining, argues that these cases may mark a split in approach among the circuits that will need to be reconciled. While that may be so, the discussion of the issues below will reveal that for the most part the distinctions among these key cases are mostly matters related to the thoroughness of the factual record. On the whole, the cases provide fairly specific advice for conducting disparity studies and using them to implement affirmative action programs.

[18] *Contractors Association of Eastern Pennsylvania, Inc.*, 91 F.3d at 605.
[19] 122 F.3d 895.
[20] 321 F.3d 950.
[21] Compare *Cone Corp. v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990), an earlier decision of the Eleventh Circuit reversing summary judgment against an MBE program where more limited statistical evidence was found adequate to require a trial on the merits in the face of a relatively weak challenge.
[22] (Case No. 02-1673, Nov. 17, 2003).

2.3 To Withstand Strict Scrutiny an MBE Program Must be Based on Thorough Evidence Showing a Compelling Governmental Interest in Remedying Discrimination

For government contracting programs, courts have yet to find a compelling governmental interest other than remedying discrimination in the relevant marketplace. This result flows from settled law:

> *In practice, the interest that is alleged in support of racial preferences is almost always the same—remedying past or present discrimination. That interest is widely accepted as compelling. . . . [T]he true test of an affirmative action program is usually not the nature of the government's interest, but rather the adequacy of the evidence of discrimination offered to show that interest.*[23]

The holding that other compelling interests may support affirmative action does not yet appear to have any application outside academic admissions cases.[24]

Croson identified two necessary factors for establishing racial discrimination sufficiently to demonstrate a compelling governmental interest in establishing an M/WBE program. First, there needs to be identified discrimination in the relevant market.[25] Second, "the governmental actor enacting the set-aside program must have somehow perpetuated the discrimination to be remedied by the program,"[26] either actively or at least passively with "the infusion of tax dollars into a discriminatory industry."[27]

Although the Supreme Court in *Croson* did not specifically define the methodology that should be used to establish the evidentiary basis required by strict scrutiny, the Court did outline governing principles. Lower courts have expanded the Supreme Court's *Croson* guidelines and have applied or distinguished these principles when asked to decide the constitutionality of state, county, and city programs that seek to enhance opportunities for minorities and women. The applications of the *Croson* standard increasingly require very thorough disparity studies.

[23] *Engineering Contractors Ass'n of South Florida, Inc.*, 122 F.3d at 906 (citing *Ensley Branch NAACP v. Seibels*, 31 F.3d 1548, 1564 (11th Cir. 1994) (citations and internal quotation marks omitted)).
[24] *Grutter v. Bollinger*, 539 U.S. 306 (2003).
[25] *Croson*, 488 U.S. at 492, 509-10.
[26] *Coral Construction*, 941 F.2d at 918.
[27] Id. at 922.

2.4 Sufficiently Strong Evidence of Significant Statistical Disparities Between Qualified Minorities Available and Minorities Utilized Will Satisfy Strict Scrutiny and Justify a Narrowly Tailored M/WBE Program

The Supreme Court in *Croson* stated that "where gross statistical disparities can be shown, they alone in a proper case may constitute *prima facie* proof of a pattern or practice of discrimination."[28] But the statistics must go well beyond comparing the rate of minority presence in the general population to the rate of prime construction contracts awarded to MBEs. The Court in *Croson* objected to such a comparison, indicating that the proper statistical evaluation would compare the percentage of qualified MBEs in the relevant market with the percentage of total municipal construction dollars awarded to them.[29]

To meet this more precise requirement, courts have accepted the use of a disparity index.[30] The Supreme Court in *Croson* recognized statistical measures of disparity that compared the number of qualified and available M/WBEs with the rate of municipal construction dollars actually awarded to M/WBEs in order to demonstrate discrimination in a local construction industry.[31] The Ninth Circuit has stated, "In our recent decision [*Coral Construction*] we emphasized that such statistical disparities are 'an invaluable tool' in demonstrating the discrimination necessary to establish a compelling interest."[32]

2.4.1 Determining Availability

To perform proper disparity analysis, the government must determine "availability"—the number of qualified minority contractors willing and able to perform a particular service for the municipality. In *Croson*, the Court stated:

> *Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise.*[33]

An accurate determination of availability also permits the government to meet the requirement that it "determine the precise scope of the injury it seeks to remedy" by its program.[34] Following *Croson's* statements on availability, lower courts have considered how legislative bodies

[28] *Croson*, 488 U.S. at 501, quoting *Hazelwood School Division v. United States*, 433 U.S. 299, 307-308 (1977).
[29] Id. at 501.
[30] See e.g., *Engineering Contractors Ass'n of South Florida, Inc., 122 F.3d at 914; Concrete Works IV, 321 F.3d at 964-69.*
[31] *Croson*, 488 U.S. at 503-504.
[32] *Associated General Contractors of California, Inc*. v. *Coalition*, 950 F.2d 1401 (9th Cir. 1991) (*AGCC II*) (Citing *Coral Construction*, 941 F.2d at 918; see also, *Croson*, 488 U.S. at 509).
[33] *Croson*, 488 U.S. at 509 (emphasis added).
[34] Id., 488 U.S. at 498.

may determine the precise scope of the injury sought to be remedied by an MBE program. Availability statistics must be collected accurately and evaluated carefully. If the availability determination is too narrow, potential discrimination might be understated or dismissed as not significant enough to justify an affirmative action program. If the availability determination is too broad, disparities would be exaggerated, threatening the ability of the study to withstand rebuttal. Nevertheless, the federal courts have not provided clear guidance on the best data sources or techniques for measuring M/WBE availability.

Different forms of data used to measure availability give rise to particular controversies. Census data has the benefit of being accessible, comprehensive, and objective in measuring availability. In *Contractors Ass'n of Eastern Pennsylvania, Inc.,* the Third Circuit, while noting some of the limitations of census data, acknowledged that census data could be of some value in disparity studies. In that case the City of Philadelphia's consultant calculated a disparity using data showing the total amount of contract dollars awarded by the city, the amount that went to MBEs, and the number of African American construction firms. The consultant combined these data with data from the Census Bureau on the number of construction firms in the Philadelphia Standard Metropolitan Statistical Area.[35] Despite the district court's reservations about mixing data sources, the Third Circuit appeared prepared to accept such data had it ruled on the showing of a compelling interest.

At least one commentator has suggested the use of bidder data to measure M/WBE availability,[36] but *Croson* does not require the use of bidder data to determine availability. In *Concrete Works,* in the context of plaintiffs' complaint that the City of Denver had not used such information, the Tenth Circuit noted that bid information also has its limits. Firms that bid may not be qualified or able, and firms that do not bid may be qualified and able to undertake agency contracts.[37]

Moreover, not all contracts are let by competitive bids. Thus, there can be greater advantages in the use of vendor data, which is determined by identifying MBEs that have actually performed work for the governmental entity or who have expressed an interest in securing contracts by affirmatively registering with a local agency. Vendor data excludes firms that lack ability or interest to provide goods or services to the governmental entity, while including firms that seek public contracting opportunities other than contracts that are competitively bid.

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[35] *Contractors Association of Eastern Pennsylvania, Inc.*, 91 F.3d at 604.
[36] G. LaNoue, "Who Counts? Determining the Availability of Minority Businesses for Contracting After *Croson*," 21 *Harvard Journal of Law and Public Policy* 793, 833 (1998).
[37] *Concrete Works II*, 36 F.3d at 89-90; *Concrete Works IV*, 321 F.3d at 983-84.

The most recent discussion regarding the determination of availability was provided by the Federal Circuit in *Roth Development Corporation v. Department of Defense*[38]. While this case evaluates the constitutionality of a federal DBE program, the Court's discussion on availability is the most extensive discussion provided in recent years.

By way of background, Rothe Development Corporation (RDC) brought action against the DOD alleging that the grant of an evaluation preference to a small disadvantaged business violated its equal protection rights. The Federal Circuit, applying Fifth Circuit law, agreed. The DOD relied on six disparity studies conducted as part of its evidentiary basis for the race based preference. RDC contended that the six disparity studies contain methodological defects relating primarily to the studies' availability analyses, which render their conclusions about the existence of certain disparities unreliable. The Federal Circuit considered whether the studies were sufficiently probative to show a strong basis in evidence. The Court acknowledged that disparity studies can be relevant to the compelling interest analysis.[39] RDC argued on appeal that the studies were methodologically flawed and therefore unreliable.

RDC's primary objection to the disparity studies involved their availability analyses. Specifically, the objection was to the steps taken to ensure that only those minority-owned contractors who are qualified, willing and able to perform the prime contracts were considered when forming the denominator of a disparity ratio. The complete discussion regarding *Rothe* will be found in sections 2.4.4 and 2.4.6.

2.4.2 Racial Classifications

In determining availability, choosing the appropriate racial groups to consider becomes an important threshold interest.[40] In *Croson*, the Supreme Court criticized the City of Richmond's inclusion of "Spanish-speaking, Oriental, Indian, Eskimo, or Aleut persons" in the city's affirmative action program.[41] These groups had not previously participated in city contracting, and "the random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the city's purpose was not in fact to remedy past discrimination."[42] To evaluate availability properly, data must be gathered for each

[38] *Roth Development Corporation v. Department of Defense,* 545 F.3d 1023 (Fed. Cir. 2008)
[39] Id. at 1037
[40] Racial groups, as the term is used herein, include both racial and ethnic categories.
[41] Id., 488 U.S. at 506.
[42] Id.

racial group in the marketplace. The Federal Circuit has also required that evidence as to the inclusion of particular groups must be kept reasonably current.[43]

2.4.3 Relevant Market Area

Another central issue in availability analysis is the definition of the relevant market area. Specifically, the question is whether the relevant market area should be defined as the area from which a specific percentage of purchases are made, the area in which a specific percentage of willing and able contractors may be located, or the area determined by a fixed geopolitical boundary. If the relevant market area is not properly defined, it can artificially inflate or deflate M/WBE availability.

The Supreme Court has not yet established how the relevant market area should be defined, but some circuit courts have done so, including the Tenth Circuit in *Concrete Works II*, the first appeal in the City of Denver litigation.[44] Concrete Works of Colorado, a non-M/WBE construction company, argued that *Croson* precluded consideration of discrimination evidence from the six-county Denver Metropolitan Statistical Area (MSA), so that Denver should use data only from within the City and County of Denver. The Tenth Circuit, interpreting *Croson*, concluded, "The relevant area in which to measure discrimination . . . is the local construction market, but that is not necessarily confined by jurisdictional boundaries."[45] The court further stated:

> *It is important that the pertinent data closely relate to the jurisdictional area of the municipality whose program we scrutinize, but here Denver's contracting activity, insofar as construction work is concerned, is closely related to the Denver MSA.*[46]

The Tenth Circuit ruled that over 80 percent of Denver Department of Public Works construction and design contracts were awarded to firms located within the Denver MSA; therefore, the appropriate market area should be the Denver MSA, not the City and County of Denver alone.[47] Accordingly, data from the Denver MSA was "adequately particularized for strict scrutiny purposes."[48] The current study is using an area that includes 75% or more of the City of Milwaukee contracts.

[43] *Rothe*, 262 F.3d at 1323.
[44] *Concrete Works IV*, 36 F.3d at 1520.
[45] Id.
[46] Id.
[47] Id.
[48] Id.

2.4.4 Firm Qualifications

Another availability consideration is whether M/WBE firms are qualified to perform the required services. In *Croson*, the Supreme Court noted that although gross statistical disparities may demonstrate *prima facie* proof of discrimination, "when special qualifications are required to fill particular jobs, comparisons to the general population (rather than to the smaller group of individuals who possess the necessary qualifications) may have little probative value."[49] The Court, however, did not define the test for determining whether a firm is qualified.

Considering firm qualifications is important not only to assess whether M/WBEs in the relevant market area can provide the goods and services required, but also to ensure proper comparison between the number of qualified M/WBEs and the total number of similarly qualified contractors in the marketplace.[50] In short, proper comparisons ensure the required integrity and specificity of the statistical analysis. For instance, courts have specifically ruled that the government must examine prime contractors and subcontractors separately when the M/WBE program is aimed primarily at one or the other.[51]

The most recent discussion regarding whether the firms included in the availability analysis are qualified was provided by the Federal Circuit in *Rothe*.[52] RDC argued that the six studies erroneously included any MBE that was deemed willing or potentially willing and able without regard to whether the firm was qualified. RDC further argued against the use of lists compiled by local business associations and of community outreach to identify MBEs.

The Court concluded that the studies conducted by one consultant did not suffer from this flaw because the majority of the businesses considered in their studies were identified in ways that would tend to establish their qualifications, such as by their presence on city contract records and bidder lists.[53] The Court was less confident with the results of the studies conducted by the other consultants because the availability methodology used in those studies failed to adequately address a firm's qualifications such as requiring only that a firm does business within an industry group from which the agency makes certain purchases.[54] For example, the Court cited as inadequate the owner of the firm's declaration that *he or she believed* the firm was qualified and able to perform the work and that by the owner's actions he demonstrated an interest in obtaining work from the

[49] *Croson*, 488 U.S. at 501, citing *Hazelwood School Dist. v. United States*, 433 U.S. 299, 388, n.13 (1977).
[50] *Hazelwood School Dist.*, 433 U.S. 299.
[51] *Scott v. City of Jackson*, 199 F.3d 206, 218 (1999); *Contractors Association.*, 91 F.3d at 603.
[52] *Roth Development Corporation v. Department of Defense,* 545 F.3d 1023 (Fed. Cir. 2008)
[53] *Id.* at 1042
[54] *Id.*

agency.[55] In another flawed study the consultant used vendor data as the basis of the availability component and assumed that all firms in the relevant market area were ready, willing and able to do work for the agency at the prime or sub level.[56]

A conservative approach is used in this study to establish availability. This is done because a common litigation strategy used in challenging disparity studies is to target the availability analysis. In determining available firms, this study will use bidders list, M/WBE certification lists and lists of firms that have worked on City of Milwaukee contracts as the primary basis for deriving available firms. It is only secondarily that trade association membership lists will be used to confirm business characteristics and ethnicity of firms included from our primary sources.

2.4.5 Willingness

Croson requires that an "available" firm must not only be qualified but also be willing to provide the required services. In this context, it can be difficult to determine whether a business is willing. Courts have approved including businesses in the availability pool that may not be on the government's certification list. In *Concrete Works II*, Denver's availability analysis indicated that while most MBEs and WBEs had never participated in city contracts, "almost all firms contacted indicated that they were interested in municipal work."[57] In *Contractors Association of Eastern Pennsylvania, Inc.*, the Third Circuit explained, "In the absence of some reason to believe otherwise, one can normally assume that participants in a market with the ability to undertake gainful work will be 'willing' to undertake it."[58] The court went on to note:

> *Past discrimination in a marketplace may provide reason to believe the minorities who would otherwise be willing are discouraged from trying to secure the work. . . . [I]f there has been discrimination in City contracting, it is to be expected that African American firms may be discouraged from applying, and the low numbers [of African American firms seeking to prequalify for City-funded contracts] may tend to corroborate the existence of discrimination rather than belie it.*[59]

Even so, the strongest possible disparity study would also present information about the willingness of M/WBEs to perform the required services.

2.4.6 Ability

Another availability consideration is whether the firms being considered are able to perform a

[55] *Id.*
[56] *Id.*
[57] *Concrete Works II*, 36 F.3d at 1529.
[58] *Contractors Association of Eastern Pennsylvania, Inc.*, 91 F.3d at 603.
[59] Id. at 603-04.

particular service. Those who challenge affirmative action often question whether M/WBE firms have the "capacity" to perform particular services.

The Eleventh Circuit accepted a series of arguments that firm size has a strong impact on "ability" to enter contracts, that M/WBE firms tend to be smaller, and that this smaller size, not discrimination, explains the resulting disparity.[60] By contrast, the Tenth Circuit in *Concrete Works II and IV* recognized the shortcomings of this treatment of firm size.[61] *Concrete Works IV* noted that the small size of such firms can itself be a result of discrimination.[62] The Tenth Circuit acknowledged the City of Denver's argument that a small construction firm's precise capacity can be highly elastic.[63] Under this view, the relevance of firm size may be somewhat diminished. Further, the Eleventh Circuit was dealing with a statute which itself limited remedies to M/WBEs that were smaller firms by definition.[64]

The Federal Circuit in *Rothe* most recently addressed the question of capacity. The Court expressed concern that five of the studies analyzed did not account sufficiently for potential differences in size, or relative capacity of the businesses included in those studies. RDC's expert indicted "qualified firms may have substantially different capacities, and thus might be expected to bring in substantially different amounts of business even in the absence of discrimination" [65] The Court noted that it previously criticized a statistic offered by DOD because it did not take into account the fact that the sheer number of businesses owned by minorities may not be significantly correlated with the volume of business conducted by minority- owned businesses.[66]

Each of the six studies accounted for the relative sizes of contracts awarded to minority-owned businesses by measuring the utilization of minority owned contractors in terms of contract dollars directed to minority-owned businesses rather than in the raw number of contracts awarded. However, none of the studies took account of the relative sizes of the businesses themselves. The Court criticized the measure of availability of MBEs in a disparity ratio by the percentage of firms in the market owned by minorities instead of by the percentage of total marketplace capacity those firms could provide.

The Court acknowledged that the studies did not completely ignore the question of firm size. For example, one study was restricted to an examination of the prime contract awards of

[60] Id. at 917-18, 924.
[61] *Concrete Works II*, 36 F.3d at 1528-29; *Concrete Works IV*, 321 F.3d at 980-92.
[62] *Concrete Works IV*, 321 F.3d at 980-84.
[63] *Concrete Works IV*, 321 F.3d at 981
[64] *Engineering Contractors Ass'n of South Florida, Inc.*, 122 F.3d at 917.
[65] *Rothe*, 262 F.3d at 1043
[66] *Id.*

$1,000,000 and under to limit the capacity required to perform the contracts. [67] However, the Court indicated that "while these parameters may have ensured that each minority-owned business in the studies met a capacity threshold i.e. had the capacity to bid for and to complete any one contract-these parameters simply fail to account for the relative capacities of the businesses to bid for more than one contract at a time."[68]

The Court further indicated that the studies could have accounted for firm size even without changing their disparity ratio methodologies by employing regression analysis to determine whether there was a statistically significant correlation between the size of a firm and the share of contract dollars awarded to it. [69]

Given the discussion by the various federal circuits, any disparity study should address the issue of firm size as it affects capacity. It would currently seem imperative to perform regression analysis adjusting for the size of contracting businesses and to investigate further should the regression for size—or any other factors other than discrimination—seem to explain the disparities.

In compliance with the requirements outlined in *Croson,* and the federal circuit courts, a database of the available firms for inclusion in the analysis will be developed by implementing a modified census approach using "real" firms. The primary data sources that we will include are:

- Firms that have worked on City contracts as prime and/or subcontractors
- Bidders lists
- Registered vendors
- Certified M/WBE Firms
- Certified DBE Firms

Great care will be taken to identify existing firms in the market area, remove duplicate firms, validate the ethnic or gender classification and determine any program requirements that may impact the analysis. A comprehensive database of all potentially available firms will be produced. Based on this "universe" of organizations, a multi-faceted approach will be utilized that determines relative availability by measuring individual components of ready, willing and able. Finally, regression analysis will be conducted adjusting for the size of contracting businesses as well as for other factors that may account for the disparities.

2.4.7 Statistical Evidence of Discrimination in Disparity Studies

While courts have indicated that anecdotal evidence may suffice without statistical evidence,

[67] *Id.* at 1044
[68] *Id.*
[69] *Id.*

no case without statistical evidence has been given serious consideration by any circuit court. In practical effect, courts require statistical evidence. Further, the statistical evidence needs to be held to appropriate professional standards.[70] For instance, the Eleventh Circuit in the Dade County case noted that disparity indices could be discounted by proper analysis of standard deviation.[71] Further, the interpretations of the studies must not assume discrimination has caused the disparities, but must account for alternative explanations of the statistical patterns.[72] The Third Circuit also indicated that statistics about prime contracting disparity had little if any weight when the eventual M/WBE program offered its remedies solely to subcontractors.[73]

The Eleventh Circuit addressed the role of statistical significance in assessing levels of disparity. Generally, disparity indices of 80 percent or higher—indicating close to full participation—are not considered significant.[74] The court referenced the Equal Employment Opportunity Commission's disparate impact guidelines, which establish the 80 percent test as the threshold for determining a *prima facie* case of discrimination.[75] According to the Eleventh Circuit, no circuit that has explicitly endorsed using disparity indices has held that an index of 80 percent or greater is probative of discrimination, but they have held that indices below 80 percent indicate "significant disparities."[76] The current study is using an index of 80 percent as the threshold for significant disparity.

In support of the use of standard deviation analyses to test the statistical significance of disparity indices, the Eleventh Circuit observed that "social scientists consider a finding of two standard deviations significant, meaning there is about one chance in 20 that the explanation for the deviation could be random and the deviation must be accounted for by some other factor than chance."[77] With standard deviation analyses, the reviewer can determine whether the disparities are substantial or statistically significant, lending further statistical support to a finding of discrimination. On the other hand, if such analysis can account for the apparent disparity, the study will have little if any weight as evidence of discrimination.

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[70] *Contractors Ass'n of Eastern Pennsylvania, Inc.*, 91 F.3d at 599-601.
[71] Id. at 910-17.
[72] Id. at 922.
[73] Id. at 599.
[74] *Engineering Contractors Ass'n of South Florida, Inc.*, 122 F.3d at 914.
[75] Id. at 914 (citing 29 C.F.R. § 1607.4D concerning the disparate impact guidelines and threshold used in employment cases).
[76] *Engineering Contractors Ass'n of South Florida, Inc.,* 122 F.3d at 914 (referencing the first appeal in *Contractors Ass'n of Eastern Pennsylvania, Inc.*, 6 F.3d at 1005, crediting disparity index of 4 percent; and *Concrete Works II*, 36 F.3d at 1524, crediting disparity indices ranging from 0 percent to 3.8 percent).
[77] *Engineering Contractors Ass'n of South Florida, Inc.*, 122 F.3d at 914 (citing *Peightal v. Metropolitan Dade County*, 26 F.3d 1545, 1556 n.16 (11th Cir. 1994) (quoting *Waisome v. Port Authority*, 948 F.2d 1370, 1376 (2d Cir. 1991)).

2.4.8 Anecdotal Evidence of Discrimination in Disparity Studies

Most disparity studies present anecdotal evidence along with statistical data. The Supreme Court in *Croson* discussed the relevance of anecdotal evidence and explained: "Evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified."[78]

Lower courts have relied on anecdotal evidence to demonstrate the existence of past and present discrimination. Both the Ninth and Tenth Circuits (e.g., in *AGCC II* and *Concrete Works IV*) have indicated that while anecdotal evidence alone is generally not sufficient to prove discrimination, the combination of specific incidents of discrimination in conjunction with significant statistical disparities provides a strong basis in evidence for establishing discrimination sufficiently to justify a narrowly tailored race-conscious and gender-conscious program.

Although *Croson* did not expressly consider the form or level of specificity required for anecdotal evidence, the Ninth Circuit has addressed both issues. The Ninth Circuit Court of Appeals in *Western States Paving Co., Inc. v. Washington State Department of Transportation* noted that "both statistical and anecdotal evidence of discrimination are relevant in identifying the existence of discrimination."[79] In applying *Croson*, the Ninth Circuit has addressed the adequacy of anecdotal evidence in constitutionally supporting the need for race-based remedial programs. The court decisions within the Ninth Circuit provide examples of both acceptable and unacceptable forms of anecdotal evidence.

The Ninth Circuit in *Coral Construction Company v. King County* provides an example of anecdotal evidence that the court found sufficient to withstand constitutional scrutiny. While the Court ultimately found the evidentiary record was not sufficient to meet the strict scrutiny requirement of *Croson,* the Court noted that its decision was based upon the fact that the record did not contain statistical evidence to support King County's findings and that while the "[W]ritten testimony of the numerous affiants suggests that there *may* be systemic discrimination within the King County construction industry. Without a statistical foundation, the picture is incomplete."[80]

The record presented by King County included 700 plus pages including at least 57 affidavits from minority or women contractors each complaining, in varying degrees of specificity, about discrimination within the local contracting industry. The ethnic breakdown of the affiants included 23 African American contractors, 13 Hispanic contractor, 10 Asian contractors, 6 Native

[78] *Croson*, 488 U.S. at 509.
[79] *Western States Paving Co., Inc. v. Washington State Department of Transportation,* 407 F.3d 983, 992 (9th Cir. 2005) (citing *Adarand Constructors, Inc. v. Slater ("Adarand VII"),* 228 F.3d 1147, 1166 (10th Cir. 2000))
[80] *Coral Construction Company v. King County*, 941 F.2d 910, 919 (9th Cir. 1991) (emphasis supplied)

American contractors, 3 women contractors and 2 contractors who identified themselves as "other". The Court stated "these affidavits certainly suggest that ongoing discrimination may be occurring in much of the King County business community."[81] In support of this determination the Court provided examples of quotations from business owners regarding their experience.

Also, in *AGCC II*, the Ninth Circuit discussed the specificity of anecdotal evidence required by *Croson*.[82] Seeking a preliminary injunction, the contractors contended that the evidence presented by the City of San Francisco lacked the specificity required by both an earlier appeal in that case[83] and by *Croson*. The court held that the city's findings were based on substantially more evidence than the anecdotes in the two prior cases, and "they [were] clearly based upon dozens of specific instances of discrimination that are laid out with particularity in the record, as well as significant statistical disparities in the award of contracts."[84]

The court also ruled that the city was under no burden to identify specific practices or policies that were discriminatory.[85] Reiterating the city's perspective, the court stated that the city "must simply demonstrate the existence of past discrimination with specificity; there is no requirement that the legislative findings specifically detail each and every instance that the legislative body had relied upon in support of its decision that affirmative action is necessary."[86]

Not only have courts found that a municipality does not have to specifically identify all the discriminatory practices impeding M/WBE utilization, the Tenth Circuit in *Concrete Works IV* also held that anecdotal evidence collected by a municipality did not have to be verified. The Court stated:

> *There is no merit to the [plaintiff's] argument that witnesses' accounts must be verified to provide support for Denver's burden. Anecdotal evidence is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions…Denver was not required to present corroborating evidence and [the plaintiff] was free to present its own witnesses to either refute the incidents described by Denver's witnesses or to relate their own perceptions on discrimination in the Denver construction industry.*[87]

By contrast, the Ninth Circuit Court of appeals in *Western States Paving* held that the anecdotal evidence provided by the Washington State Department of Transportation (WSDOT) was not sufficient. The Ninth Circuit criticized the WSDOT for not introducing any anecdotal evidence of

[81] *Id.* at 918.
[82] *AGCC II*, 950 F.2d at 1414.
[83] *AGCC I*, 813 F.2d 922.
[84] *AGCC II, 950 F.2d*. at 1416. This evidence came from ten public hearings and "numerous written submissions from the public."
[85] Id. at 1410.
[86] Id. at 1416.
[87] *Concrete Works IV*, 321 F.3d at 989.

discrimination. During oral argument before the Ninth Circuit, WSDOT contended that the affidavits signed by applicants applying for DBE status provided evidence of discrimination within Washington. Addressing this evidence, the Court stated that the affidavits "do not provide any evidence of discrimination within Washington's transportation contracting industry … these affidavits do not require prospective DBEs to certify that they have been victims of discrimination in the contracting industry."[88] The Court also noted that the affidavits signed by the applicants for DBE status only required the business owners to certify that they had been subject to racial or ethnic prejudice or cultural bias or that they had suffered the effects of discrimination because they were a member of a minority group. Relying upon *Croson*, the Ninth Circuit stated, "Such claims of general societal discrimination—and even generalized assertions about discrimination in an entire industry—cannot be used to justify race-conscious remedial measures.[89] The Court went on to state "the record is therefore devoid of any evidence suggesting that minorities currently suffer—or have ever suffered—discrimination in the Washington Transportation contracting industry."[90]

In *Coral Construction*, the Ninth Circuit addressed the use of anecdotal evidence alone to prove discrimination. Although King County's anecdotal evidence was extensive, the court noted the absence in the record of any statistical data in support of the program. Additionally, the court stated, "While anecdotal evidence may suffice to prove individual claims of discrimination, rarely, if ever, can such evidence show a *systemic pattern of discrimination necessary for the adoption of an affirmative action plan*."[91] The court concluded, by contrast, that "the combination of convincing anecdotal and statistical evidence is potent."[92]

In keeping with the legal precedent discussed above, the current study includes 60 personal interviews with business owners within the relevant market area for the City of Milwaukee, one public hearing, and a substantial telephone survey.

2.5 The Governmental Entity or Agency Enacting an MBE Program Must Be Shown to Have Actively or Passively Perpetuated the Discrimination

In *Croson*, the Supreme Court stated, "It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that *public* dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of *private* prejudice."[93] *Croson* provided that the

[88] *Western States Paving Co,* 407 F.3d at 1002 (9th Cir. 2005)
[89] *Id.* (citing *Croson*, 488 U.S. at 498).
[90] *Id.*
[91] *Coral Construction*, 941 F.2d at 919 (emphasis added).
[92] Id.
[93] *Coral Construction*, 941 F.2d at 922 (citing *Croson*, 488 U.S. at 492) (emphasis added).

government "can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment."[94] The government agency's active or passive participation in discriminatory practices in the marketplace may show the compelling interest. Defining passive participation, *Croson* stated:

> *Thus, if the city could show that it had essentially become a "passive participant" in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the city could take affirmative steps to dismantle such a system*.[95]

The Tenth Circuit decision in *Adarand* concluded that evidence of private sector discrimination provided a compelling interest for a DBE program.[96] Later cases have reaffirmed that the government has a compelling interest in avoiding the financing of private discrimination with public dollars.[97]

Relying on this language in *Croson* a number of local agencies have increased their emphasis on evidence of discrimination in the private sector. This strategy has not always succeeded. In the purest case, Cook County did not produce a disparity study but instead presented anecdotal evidence that M/WBEs were not solicited for bids in the private sector. Cook County lost the trial and the resulting appeal.[98] Similarly, evidence of private sector discrimination presented in litigation was found inadequate in the Fulton County, Philadelphia, and Dade County cases.[99] The Third Circuit has stated, in discussing low MBE participation in a local contractors association in the City of Philadelphia that "racial discrimination can justify a race-based remedy only if the city has somehow participated in or supported that discrimination."[100] Nevertheless, recently in *Concrete Works IV* the Tenth Circuit upheld the relevance of data from the private marketplace to establish a factual predicate for M/WBE programs.[101] That is, courts mainly seek to ensure that M/WBE programs are based on findings of active or passive discrimination in the government contracting marketplace, and not simply attempts to remedy general societal discrimination.

Courts also seek to find a causal connection between a statistical disparity and actual

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[94] See *Croson*; see generally I. Ayres and F. Vars, "When Does Private Discrimination Justify Public Affirmative Action?" 98 *Columbia Law Review* 1577 (1998).
[95] *Croson*, 488 U.S. at 492.
[96] *Adarand* v. *Slater*, 228 F.3d 1147 (10th Cir 2000).
[97] *Associated General Contractors of Ohio, Inc. v. Drabik,* 214 F.3d 730, 734-35 (6th Cir. 2000). See also *Concrete Works II*, 36 F.3d at 1529. *Coral Construction*, 941 F.2d at 916; *AGC v. New Haven*, 791 F.Supp. 941, 947 (D.Conn. 1992).
[98] *Builders Association of Greater Chicago v. County of Cook*, 123 F. Supp. 2d 1087 (ND IL 2000); 256 F.3d 642 (7th Cir. 2001).
[99] *Webster v. Fulton County*, 51 F. Supp. 2d 1354 (ND GA 1999); *Contractors Ass'n of Eastern Pennsylvania, Inc.,* 91 F.3d at 602.; *Engineering Contractors Ass'n of South Florida, Inc*., 122 F.3d at 914.
[100] *Contractors Ass'n of Eastern Pennsylvania, Inc.*, 91 F.3d at 602; see also *Webster*, 51 F. Supp. 2d 1354.
[101] *Concrete Works IV,* 321 F.3d at 69.

underlying discrimination. In *Engineering Contractors* one component of the factual predicate was a study comparing entry rates into the construction business for M/WBEs and non-M/WBEs.[102] The analysis provided statistically significant evidence that minorities and women entered the construction business at rates lower than would be expected, given their numerical presence in the population and human and financial capital variables. The study argued that those disparities persisting after the application of appropriate statistical controls were most likely the result of current and past discrimination. Even so, the Eleventh Circuit criticized this study for reliance on general census data and for the lack of particularized evidence of active or passive discrimination by Dade County, holding that the district court was entitled to find that the evidence did not show compelling justification for an M/WBE program.[103]

The Seventh Circuit has perhaps set a higher bar for connecting private discrimination with government action. The trial court in the Cook County case extensively considered evidence that prime contractors simply do not solicit M/WBEs as subcontractors and considered carefully whether this evidence on solicitation served as sufficient evidence of discrimination, or whether instead it was necessary to provide further evidence that there was discrimination in hiring M/WBE subcontractors.[104] The Seventh Circuit held that this evidence was largely irrelevant.[105] Beyond being anecdotal and partial, evidence that contractors failed to solicit M/WBEs on Cook County contracts was not the same as evidence that M/WBEs were denied the opportunity to bid.[106] Furthermore, such activities of contractors did not necessarily implicate the County as even a passive participant in such discrimination as might exist because there was no evidence the County knew about it.[107]

Interestingly, courts have been willing to see capital market discrimination as part of the required nexus between private and public contracting discrimination, even if capital market discrimination could arguably be seen as simply part of broader societal discrimination. In *Adarand v. Slater* the Tenth Circuit favorably cited evidence of capital market discrimination as relevant in establishing the factual predicate for the federal DBE program.[108] The same court in *Concrete Works IV* found that barriers to business formation were relevant insofar as this evidence demonstrated that M/WBEs are "precluded from the outset from competing for public construction

[102] *Engineering Contractors Ass'n of South Florida, Inc.*, 122 F.3d at 921-22.
[103] Id. at 922.
[104] *Builders Assn of Chicago v. Cook County*, 123 F.Supp. 1087 (ND IL 2000).
[105] *Builders Ass'n of Greater Chicago*, 256 F.3d at 645.
[106] Id.
[107] Id.
[108] *Adarand v. Slater*, 228 F.3d at 1169-70 (10th Cir 2000).

contracts."[109] Along related lines, the court also found a regression analysis of census data to be relevant evidence showing barriers to M/WBE formation.[110]

Finally, courts have come to different conclusions about the effects of M/WBE programs on the evidence itself. For instance, is M/WBE participation in public sector projects higher than on private sector projects simply because the M/WBE program increases M/WBE participation in the public sector, or is such a pattern evidence of private sector discrimination? The Seventh Circuit raised the former concern in the Cook County litigation.[111] *Concrete Works IV*, on the other hand, expressly cited as evidence of discrimination that M/WBE contractors used for business with the City of Denver were not used by the same prime contractors for private sector contracts.[112] Is evidence of a decline in M/WBE utilization following a change in or termination of an M/WBE program relevant and persuasive evidence of discrimination? The circuit courts in *Concrete Works IV* and *Sherbrooke Turf* did find that such a decline in M/WBE utilization is evidence that prime contractors are not willing to use M/WBEs in the absence of legal requirements.[113] Other courts have not arrived at the same conclusion.[114]

2.6 To Withstand Strict Scrutiny, an MBE Program Must Be Narrowly Tailored to Remedy Identified Discrimination

The discussion of compelling interest in the court cases has been extensive, but narrow tailoring may be the more critical issue. As David Strauss, a law professor at the University of Chicago noted when the Supreme Court first ruled on *Adarand* in 1995:

> *The requirement that an interest be "compelling" is seldom what defeats a statute; over the years, the Supreme Court has found an enormous range of government interests to be "Compelling." It is the requirement that a measure be "necessary" or "narrowly tailored" that has proved difficult to satisfy. States seldom have a difficult time advancing some obviously important interest that is arguably or plausibly promoted by a challenged law. What makes strict scrutiny effective is that it is difficult to show that the measure is an especially good way of promoting that objective.*[115]

[109] *Concrete Works IV*, 321 F.2d at 977. The district court had rejected evidence of credit market discrimination as adequate to provide a factual predicate for an M/WBE program. *Concrete Works v. Denver*, 86 F.Supp. 2d 1042 (D Co. 2000) (*Concrete Works I*).
[110] Id. at 977.
[111] *Builders Ass'n of Greater Chicago*, 256 F.3d at 645.
[112] *Concrete Works IV*, 321 F.3d at 984-85.
[113] *Concrete Works IV*, 321 F.3d at 985; *Sherbrooke Turf*, 345 F.3d at 973.
[114] See, e.g., *AGC v. Columbus*, 936 F. Supp. 1363 (SD Ohio 1996).
[115] David Strauss, "Affirmative Action and the Public Interest," *Supreme Court Review* (1995), at 29-30.

While Professor Strauss may understate the difficulty of showing a compelling interest in these cases, certainly many courts have held that even if a compelling interest for the M/WBE program can be found, the program has not been narrowly tailored.[116] Further, *Concrete Works IV,*[117] one of the most helpful cases in determining compelling interest, did not consider the issue of narrow tailoring. Instead, the Tenth Circuit held that the plaintiffs had waived any challenge to the original ruling of the district court[118] that the program was narrowly tailored.

Nevertheless, there are other sources of guidance on narrow tailoring. For instance, the federal courts have found that the DBE program established pursuant to federal regulations (49 CFR, Part 26) issued under The Transportation Equity Act (TEA-21) (1998) has been narrowly tailored to serve a compelling interest.[119] The federal courts had previously ruled that there was a factual predicate for the federal DOT DBE program, but that in its earlier versions the program was not narrowly tailored.[120] The more recent rulings provide some guidance as to what program configurations the courts will judge to be narrowly tailored.

Further, in *Coral Construction* the Ninth Circuit provided a relatively thorough analysis of narrow tailoring. Indeed, a number of cases that have not found programs to be narrowly tailored have nevertheless discussed carefully what would be required to prove narrow tailoring. Unfortunately, the courts have not agreed upon a single, specific and unique test for the narrow tailoring of government contracting programs.

Nevertheless, in a wider range of affirmative action cases, courts have identified the following elements of narrow tailoring:[121]

- the utilization of race-neutral alternatives;
- the relationship between remedial goals and availability;
- program flexibility;
- the relationship between the remedies and the beneficiaries of those remedies;
- the impact on innocent third parties; and
- limited duration.

[116] *Contractors Ass'n of Eastern Pennsylvania, Inc.*, 91 F.3d at 605; *Engineering Contractors Ass'n of South Florida, Inc.*, 122 F.3d at 926-929.
[117] *Concrete Works IV*, 321 F.3d at 992-93.
[118] *Concrete Works v. City of Denver,* 823 F.Supp. 821 (D.Colo. 1993).
[119] *Adarand v. Slater*, 228 F.3d 1147; *Sherbrooke Turf*, 345 F.3d 963.
[120] In 1998 in *Sherbrooke I* the Minnesota district court had ruled that while there was a compelling interest for the DBE program the program was not narrowly tailored. In 1996, before the new DBE regulations, the district court in Colorado, upon remand from the 1995 U.S. Supreme Court, had made a similar ruling in *Adarand v. Peňa*.
[121] See Rothe, 545 F.3d at 1036; *U.S. v. Paradise*, 480 U.S. 149, 171 (1987); *Rothe*, 262 F.3d at 1331 (citing *Paradise*).

In the interest of thoroughness, the discussion below will be arranged under these more general points.

2.6.1 Race-Neutral Alternatives

Concerning race-neutral alternatives, the Supreme Court in *Croson* concluded that a governmental entity must demonstrate that it has evaluated the use of race-neutral means to increase minority business participation in contracting or purchasing activities. The Ninth Circuit stated in *Coral Construction*, "Among the various narrow tailoring requirements, there is no doubt that consideration of race-neutral alternatives is among the most important."[122] There is little if any chance for a plan to succeed without addressing this requirement.

For example, the Eleventh Circuit criticized Dade County for assuming that race-based solutions were necessary to address race-based problems.[123] Certainly, strict scrutiny does not mandate that every race-neutral measure be considered and found wanting. As the Ninth Circuit stated in *Coral Construction*, "While strict scrutiny requires serious, good faith consideration of race-neutral alternatives, strict scrutiny does not require exhaustion of every possible such alternative."[124] For instance, in that case King County was not required to challenge state laws restricting its ability to alter bonding requirements. Nevertheless, in *Coral Construction* the Ninth Circuit found it important that King County had adopted a number of race-neutral measures to help overcome discrimination.[125]

In upholding the narrow tailoring of federal DBE regulations, the Tenth Circuit noted that under those regulations, "if a recipient can meet its overall goal through race-neutral means, it must implement its program without the use of race-conscious contracting measures, and enumerate a list of race-neutral measures."[126] Those measures included "helping overcome bonding and financing obstacles, providing technical assistance, [and] establishing programs to assist start-up firms."[127]

The current study will evaluate the race-neutral measures the City of Milwaukee uses to assist small businesses throughout the relevant market area.

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[122] *Coral Construction*, 941 F.2d at 922.
[123] *Engineering Contractors Ass'n of South Florida, Inc.*, 122 F.3d at 927-28. See also *Contractors Ass'n of Eastern Pennsylvania, Inc.,* 91 F.3d at 609; *AGC v. Drabik*, 214 F.3d at 738.
[124] *Coral Construction*, 941 F.2d at 923; see also *AGCC II*, 950 F.2d at 1417; Western States Paving, , .
[125] *Coral Construction*, 941 F.2d at 923.
[126] *Adarand v. Slater*, 228 F.3d. at 1179.
[127] Id.

2.6.2 Relationship of Goals to Availability

Narrow tailoring under the *Croson* standard requires that remedial goals be in line with measured availability. Merely setting percentages without a carefully selected basis in statistical studies, as the City of Richmond did in Croson itself, has played a strong part in decisions finding other programs unconstitutional.[128]

By contrast, the courts have approved the goal setting process for the DOT DBE program, as revised in 1999.[129] The approved DOT DBE regulations required that goals be based on one of several methods for measuring DBE availability.[130] Moreover, the approved regulations used built-in mechanisms to ensure that DBE goals are not set excessively high relative to DBE availability. For example, the approved DBE goals were to be set aside if the overall goal has been met for two consecutive years by race-neutral means. The approved DBE contract goals also were required to be reduced if overall goals have been exceeded with race-conscious means for two consecutive years. Circuit courts found these provisions to be narrowly tailored, particularly when implemented according to thorough local disparity studies that carefully calculate the applicable goals.[131]

Coral Construction also noted with approval that King County set its percentages individually on large contracts according to the number of available MBEs and had chosen a relatively low percentage (5%) for contracts of under $10,000—which percentage in turn was not absolute, but subject to further fact-specific considerations under a “bid preference” plan. Further, King County had carefully limited preferences for instances where it had evidence of discrimination against particular racial groups.[132]

2.6.3 Flexibility

Programs achieve flexibility by using waivers and variable project goals to avoid merely setting a quota. *Croson* favorably mentioned the contract-by-contract waivers in the federal DBE DOT program.[133] Virtually all successful MBE programs have this waiver feature in their enabling legislation. For instance, King County's program permitted prime contractors to request a waiver of the MBE participation requirement when a non-MBE was the sole source of a good or service, or if no MBE was otherwise available or competitively priced. In addition, under the preference method, if no MBE was within 5 percent of the lowest bidder, a non-MBE was awarded the contract.

[128] See, e.g., *Builders Ass’n of Greater Chicago*, 256 F.3d at 647.
[129] *Adarand v. Slater*, 228 F.3d at 1182; *Sherbrooke Turf*, 345 F.3d at 972.
[130] 49 CFR, Section 26, Part 45.
[131] *Sherbrooke Turf*, 345 F.3d at 973, 974.
[132] *Coral Construction*, 941 F.2d at 924.
[133] *Croson*, 488 U.S. at 489.

Therefore, the Ninth Circuit concluded, "King County's MBE program is not facially unconstitutional for want of flexibility."[134]

Similarly, it is important that project goals are not set rigidly. For example, the DOT DBE program, as approved by federal circuit courts, has provided for extensive flexibility.[135] The approved DBE provisions set aspirational, not mandatory, goals, expressly forbade quotas, and used overall goals as simply a framework for setting local contract goals, if any, based on local data.[136] All of these factors have impressed the courts that upheld the constitutionality of the revised DOT DBE program.[137]

2.6.4 Overinclusion

Narrow tailoring also involves limiting the number and type of beneficiaries of the program. As noted above there has to be evidence of discrimination to justify a group-based remedy and over-inclusion of uninjured individuals or groups can endanger the entire program.[138] Federal DBE programs have succeeded in part because regulations covering DBE certification do not provide blanket protection to minorities.[139]

Critically, the MBE program must be limited in its geographical scope to the boundaries of the enacting government's marketplace. The Supreme Court indicated in *Croson* that a local agency has the power to address discrimination only within its own marketplace. One fault of the Richmond MBE programs was that minority firms were certified from around the United States.[140]

In *Coral Construction*, the Ninth Circuit concluded that the King County MBE program failed this part of the narrow tailoring test because the definition of MBEs eligible to benefit from the program was overbroad. The definition included MBEs that had no prior contact with King County if the MBE could demonstrate that discrimination occurred "in the particular geographic areas in which it operates."[141] This MBE definition suggested that the program was designed to eradicate discrimination not only in King County but also in the particular area in which a nonlocal MBE conducted business. In essence, King County's program focused on the eradication of society-wide discrimination, which is outside the power of a state or local government. Since "the County's

[134] *Coral Construction*, 941 F.2d at 925.
[135] *Adarand v. Slater*, 228 F.3d at 1182; *Sherbrooke Turf*, 345 F.3d at 972.
[136] Id.
[137] Id.
[138] See, e.g., *Builders Ass'n of Greater Chicago*, 256 F.3d at 647.
[139] *Sherbrooke Turf v. Minnesota D.O.T.*, 345 F.3d 963, 972-73 (8th Cir. 2003).
[140] *Croson*, 488 U.S. at 508.
[141] Coral Construction (insert cite)

interest is limited to the eradication of discrimination within King County, the only question that the County may ask is whether a business has been discriminated against in King County."[142]

In clarifying an important aspect of the narrow tailoring requirement, the court defined the issue of eligibility for MBE programs as one of participation, not location. For an MBE to reap the benefits of an affirmative action program, the business must have been discriminated against in the jurisdiction that established the program.[143] As a threshold matter, before a business can claim to have suffered discrimination, it must have attempted to do business with the governmental entity.[144] It was found significant that "if the County successfully proves malignant discrimination within the King County business community, an MBE would be presumptively eligible for relief if it had previously sought to do business in the County."[145]

To summarize, according to the Ninth Circuit, the presumptive rule requires that the enacting governmental agency establish that systemic discrimination exists within its jurisdiction and that the MBE is, or attempted to become, an active participant in the agency's marketplace.[146] Since King County's definition of an MBE permitted participation by those with no prior contact with King County, its program was overbroad. By useful contrast, *Concrete Works II* held that the more extensive but still local designation of the entire Denver MSA constitutes the marketplace to which the programs may apply.[147]

2.6.5 Burden on Third Parties

Narrow tailoring also requires minimizing the burden of the program on third parties. Waivers are one tool that serves this purpose. Another tool is the good faith compliance provisions in the DBE regulations, by which prime contractors may avoid a goal if they attempted to comply in good faith.[148] The DOT DBE regulations have also sought to reduce the program burden on non-DBEs by avoiding DBE concentration in certain specialty areas,[149] and by allowing for the inclusion of nonminority DBEs in the DBE program. These features have gained the approval of the only circuit court to have discussed them at length as measures lowering impact on third parties.[150]

[142] Id.
[143] Id.
[144] Id.
[145] Id.
[146] Id.
[147] *Concrete Works II,* 36 F.3d at 1520.
[148] 49 CFR, Section 26, Part 53.
[149] 49 CFR, Section 26, Part 33.
[150] *Adarand v. Slater*, 228 F.3d at 1182

2.6.6 Program Duration

Narrow tailoring requires some form of limit on program duration. In *Adarand v. Peña*, the Supreme Court wrote that a program should be "appropriately limited such that it will not last longer than the discriminatory effects it is designed to eliminate."[151] In *Webster v. Fulton County* the district court noted that the program it disapproved had been in place for 20 years with no contemplation of expiration.[152] There is yet no strong guidance on the nature of qualifying provisions for ending a program, but presumably the duration of the program must be narrowly tailored to fit the evidence of discrimination, which evidence in turn should be revised periodically.

Appellate courts have noted several possible mechanisms for limiting program duration such as “sunset” provisions, required periodic review and reauthorization, required termination if goals have been met,[153] decertification of MBEs who achieve certain levels of success, or mandatory review of MBE certification at regular, relatively brief periods.[154] Governments thus have some duty to ensure that they update their evidence of discrimination regularly enough to review the need for their programs and to revise programs by narrowly tailoring them to fit the fresh evidence.[155]

The DOT DBE program has had a variety of provisions limiting duration. First, DBEs could participate in the program for only limited periods. Second, annual certification involving personal net worth and business size limitations have been required to ensure continued eligibility for the program. Third, a local program would be terminated if it should meet annual DBE goals for two years entirely through race-neutral means. Finally, the DBE program has been subject to periodic reauthorization. On the whole, these provisions satisfied the appellate courts in *Sherbrooke Turf*[156] and *Adarand v. Slater*[157] that the DOT DBE program was narrowly tailored as to duration, at least as of its 1999 version.[158] It is still an open question whether all of these provisions are necessary in every case. Governments must take care to limit the duration of M/WBE programs and of M/WBE contractor certifications along all these lines.

2.6.7 Summary

Carefully reading the *Croson* decision, the Ninth Circuit in *Coral Construction* concisely identified the pertinent concerns in government contracting programs:

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[151] Id., 515 U.S. at 238 (internal quotations and citations omitted).
[152] *Webster v. Fulton County*, 51 F.Supp.2d 1354, 1382 (N.D.Ga. 1999).
[153] *Sherbrooke*, 354 F.3d at 972
[154] *Adarand v. Slater*, 228 F.3d at 1179, 1180.
[155] *Rothe,* 262 F.3d at 1324 (commenting on the possible staleness of information after 7, 12, and 17 years).
[156] *Sherbrooke Turf*, 354 F.3d at 971-73.
[157] *Adarand v. Slater*, 228 F.3d at 1179-80.
[158] Id.

> *The Supreme Court has identified several characteristics of a set-aside program which would suggest that a program was adequately restricted to remedying only prior discrimination within the jurisdiction. First, an MBE program should be instituted either after, or in conjunction with, race-neutral means of increasing minority business participation in public contracting. The second characteristic of a narrowly-tailored program is the use of minority utilization goals set on a case-by-case basis, rather than upon a system of rigid numerical quotas. Finally, an MBE program must be limited in its effective scope to the boundaries of the enacting jurisdiction.*[159]

While this statement may not directly indicate all of the detail required by the full analysis contained in this section, it clearly indicates at least the minimum guidelines which any program must meet in the Ninth Circuit.

2.7 Small Business Procurement Preferences

Small business procurement preferences have existed since the 1940s. The first small business program had its origins in the Smaller War Plants Corporation (SWPC) established during World War II.[160] The SWPC was established to channel war contracts to small business. In 1947, Congress passed the Armed Forces Procurement Act, declaring that "[i]t is the policy of Congress that a fair proportion of the purchases and contracts under this chapter be placed with small business concerns."[161] Continuing this policy, the 1958 Small Business Act requires that government agencies award a “fair proportion” of procurement contracts to small business concerns.[162] The regulations are designed to implement this general policy.[163]

Section 8(b)(11) of the Small Business Act authorizes the SBA to set aside contracts for placement with small business concerns. The SBA has the power:

> *to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share materials, supplies, and equipment to small-business concerns.*[164]

[159] *Coral Construction*, 941 F.2d at 922 (internal citations omitted).
[160] See, generally, Thomas J. Hasty III, “Minority Business Enterprise Development and the Small Business Administrations 8(a) Program: Past, Present, and (Is There a) Future?” *Military Law Review* 145 (Summer 1994): 1-112.
[161] 10 U.S.C. § 2301 (1976).
[162] 15 USC 631(a).
[163] See 32 C.F.R. §§ 1-701.1 to 1-707.7.
[164] 15 U.S.C. § 637(b)(11).

Every acquisition of goods and services anticipated to be between $2,500 and $100,000 is set aside exclusively for small business unless the contracting officer has a reasonable expectation of fewer than two bids by small businesses.[165]

There has been only one constitutional challenge to the long-standing federal SBE programs. In *J.H. Rutter Rex Manufacturing v. United States*,[166] a federal vendor unsuccessfully challenged the Army's small business set-aside as in violation of the due process clause of the Fifth Amendment to the U.S. Constitution, as well as the Administrative Procedures Act and the Armed Forces Procurement Act.[167] The court held that classifying businesses as small was not a "suspect classification" subject to strict scrutiny. Instead the court ruled:

> *Since no fundamental rights are implicated, we need only determine whether the contested socioeconomic legislation rationally relates to a legitimate governmental purpose… Our previous discussion adequately demonstrates that the procurement statutes and the regulations promulgated there under are rationally related to the sound legislative purpose of promoting small businesses in order to contribute to the security and economic health of this Nation.*[168]

A large number of state and local governments have maintained small business preference programs for many years.[169] No state or district court cases were found overturning a state and local small business preference program. One reason for the low level of litigation in this area is that there is not significant organizational opposition to SBE programs. There are no reported cases of AGC litigation against local SBE programs. And the legal foundations that have typically sued M/WBE programs have actually promoted SBE procurement preference programs as a race-neutral substitute for M/WBE programs.

2.8 Conclusion

As summarized earlier, when governments develop and implement a contracting program that is sensitive to race and gender, they must understand the case law that has developed in the federal courts. These cases establish specific requirements that must be addressed so that such programs can withstand judicial review for constitutionality and prove to be just and fair. Under the developing trends in the application of the law, local governments must engage in specific fact-finding processes to compile a thorough, accurate and specific evidentiary foundation to determine

[165] *Federal Acquisition Regulations* 19.502-2.
[166] 706 F.2d 702 (5th Cir 1983), cert denied, 464 U.S. 1008 (1983).
[167] Administrative Procedures Act, 5 U.S.C. §§ 552(a)(1)(E) (1976) and the "fair proportion" language of the Armed Forces Procurement Act, 10 U.S.C. § 2301 et seq. (1976), and the Small Business Act, 15 U.S.C. § 631 et seq. (1976).
[168] *J. H. Rutter Rex Manufacturing,* at 706 F.2d at 730 *(emphasis added)*. See also *Dandridge v. Williams*, 397 U.S. 471 (1970).
[169] For example, Florida started a small business preference program in 1985 (FL St Sec. 287), Minnesota in 1979 (Mn

whether there is in fact discrimination sufficient to justify an affirmative action plan. Further, local governments must continue to update this information and revise their programs accordingly.

While the Supreme Court has yet to return to this exact area of law to sort out some of the conflicts, the circuit courts have settled on the core standards. While there are differences among the circuits in the level of deference granted to the finder of fact, these differences do not appear to be profound. The differences in the individual outcomes have been overwhelmingly differences in the level of evidence, mostly concerning the rigor with which disparity studies have been conducted and then used as the foundation for narrowly tailored remedies. Ultimately, MBE and WBE programs can withstand challenges if local governments comply with the requirements outlined by the courts.

Stat 137.31), New Jersey in 1993 (N.J.S.A 52:32-17).

CHAPTER 3.0 – DATA COLLECTION AND RELEVANT MARKET AREA

CHAPTER 3.0 – CITY OF MILWAUKEE DATA COLLECTION AND RELEVANT MARKET AREA

This Chapter provides an overview of our analysis of the contracting activity occurring for calendar years January 1, 2005 through December 31, 2008 for the City of Milwaukee. We will also define the City's relative market areas.

3.1 Data Collection and Management

This section describes the data parameters and the process utilized to collect and manage the data used in this study.

Business Categories

This study analyzed the spending patterns of the City to determine the business categories of purchases made during the study period and the relevant market area. To define each business category the Wilson Group utilized the Standard Industrial Classification (SIC) codes. Procurements were generally assigned to one of the following business categories for the City (**Table 3-1**).

Table 3-1. City of Milwaukee SIC Codes Utilized

Construction	
SIC CODES	**SIC CODE DESCRIPTION**
1521	General Contractors - Single Family Houses
1542	General Contractors - Nonresidential Buildings, Other than Industrial Buildings and Warehouses
1622	Bridge, Tunnel, and Elevated Highway Construction (bridge and elevated highway construction
1623	Water, Sewer, Pipeline, and Communications and Power Line Construction (water and sewer pipelines and related construction
1711	Plumbing, Heating, and Air-Conditioning (except environmental controls installation; and septic tank, cesspool, and dry well construction); Plumbing, Heating, and Air-Conditioning (environmental control installation contractors); Plumbing, Heating and Air
1721	Painting and Paper Hanging
1752	Floor Laying and Other floor work, not elsewhere classified
1761	Roofing, Siding, and Sheet Metal Work (except roofing and siding work); Roofing, Siding, and Sheet Metal Work (roofing contractors); Roofing, Siding, and Sheet Metal Work (siding contractors)
1771	Concrete Work (asphalt, brick, and concrete paving)
1799	Special Trade Contractors, not elsewhere classified
Professional Services	
SIC CODES	**SIC CODE DESCRIPTION**
0781	Landscape Counseling and Planning
6411	Insurance Agents, Brokers, and Service (insurance claims adjusters)
7371	Computer Programming Services
7373	Computer Integrated Systems Design
7374	Computer Processing and Data Preparation and Processing Services
7379	Computer Related Services, NEC (computer systems consultants); Computer Related Services, NEC (disk conversion services); Computer Related Services, NEC (except computer systems consultants and disk conversion services)
7389	Business Services, NEC (fashion, furniture, and other design services) ; Business Services, NEC (telephone answering services)

Professional Services (Continued)

SIC CODES	SIC CODE DESCRIPTION
7629	Electrical and Electronic Repair Shops, NEC (business and office machine repair, electrical)
8111	Legal Services
8299	Schools and Educational Services, NEC (professional and management development training)
8399	Social Services, NEC (except human rights, environment, conservation and wildlife advocacy organizations, grantmaking and giving, and voluntary health organizations)
8713	Surveying Services (except geophysical surveying)
8721	Accounting, Auditing, and Bookkeeping Services (auditing accountants); Accounting, Auditing, and Bookkeeping Services (other accounting services)
8742	Management Consulting Services (administrative management and general management consulting); Management Consulting Services (human resources and personnel management consulting); Management Consulting Services (manufacturing management, physical distribution
8748	Business Consulting Services, NEC (except educational testing and consulting, economic consulting, safety and security, agriculture consulting, environmental consulting firms, urban planning and industrial development organizations)
8999	Services, NEC (environmental consultants); Services, NEC (scientific and related consulting services)
9511	Air and Water Resource and Solid Waste Management

Goods & Services

SIC CODES	SIC CODE DESCRIPTION
0782	Lawn and Garden Services
1422	Crushed and Broken Limestone
2273	Carpets and Rugs
2326	Men's and Boys' Work Clothing (except contractors)
2353	Hats, Caps, and Millinery (except contractors)
2677	Envelopes
2676	Sanitary Paper Products
2741	Miscellaneous Publishing (miscellaneous Internet publishing)
2819	Industrial Inorganic Chemicals, NEC (alumina)
2836	Biological Products, Except Diagnostic Substances
2842	Specialty Cleaning, Polishing, and Sanitation Preparations
2851	Paints, Varnishes, Lacquers, Enamels and Allied Products
2873	Nitrogenous Fertilizers
2879	Pesticides and Agricultural Chemicals, NEC
2899	Chemicals and Chemical Preparations, NEC (except frit, fatty acids, plastic wood fillers, and table salt)
2951	Asphalt Paving Mixtures and Blocks
2992	Lubricating Oils and Greases
3069	Fabricated Rubber Products, NEC (rubber toys, except dolls)
3089	Plastics Products, NEC (inflatable plastic life jackets)
3272	Concrete Block and Brick ; Concrete Products, Except Block and Brick (dry mixture concrete)
3273	Ready-Mixed Concrete
3296	Mineral Wool
3423	Hand and Edge Tools, Except Machine Tools and Handsaws
3429	Hardware, NEC (sleep sofa mechanisms and chair glides)
3494	Valves and Pipe Fittings, NEC (metal pipe hangers and supports)
3498	Fabricated Pipe and Pipe Fittings
3572	Computer Storage Devices
3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment (motor vehicle air-conditioning)
3599	Industrial and Commercial Machinery and Equipment, NEC (gasoline, oil, and intake filters for internal combustion engines, except for motor vehicles)
3621	Motors and Generators
3648	Lighting Equipment, NEC
3691	Storage Batteries
3699	Electrical Machinery, Equipment, and Supplies, NEC (other electrical industrial apparatus)
3714	Motor Vehicle Parts and Accessories; Motor Vehicle Parts and Accessories (except truck and bus bodies, trailers, engine and engine parts, motor vehicle electrical and electronic equipment, motor vehicle steering and suspension components, motor vehicle brake systems, and motor vehicle transmission)

Goods & Services (Continued)	
SIC CODES	**SIC CODE DESCRIPTION**
3829	Measuring and Controlling Devices, NEC (medical thermometers)
3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies (anatomical models)
3851	Ophthalmic Goods (except intraocular lenses)
3861	Photographic Equipment and Supplies (except photographic film, paper, plates, and chemicals
3949	Sporting and Athletic Goods, NEC
4212	Local Trucking Without Storage (other waste collection without disposal)
4959	Sanitary Services, NEC (all but remediation services, malaria control, mosquito eradication, snow plowing, street weeping, and airport runway vacuuming)
5013	Motor Vehicle Supplies and New Parts (auto parts sold via retail method)
5021	Furniture (furniture sold via the retail method)
5032	Brick, Stone, and Related Construction Materials (brick, stone, and related construction materials sold via retail method)
5033	Roofing, Siding, and Insulation Materials (roofing, siding, and insulation materials sold via retail method)
5044	Office Equipment (office equipment sold via retail method)
5047	Medical, Dental, and Hospital Equipment and Supplies (medical, dental, and hospital equipment and supplies sold via retail method)
5049	Professional Equipment and Supplies, NEC (religious and teacher's school supplies sold via retail method)
5082	Construction and Mining (Except Petroleum) Machinery and Equipment (agents and brokers); Construction and Mining (Except Petroleum) Machinery and Equipment (merchant wholesalers)
5099	Durable Goods, NEC (prerecorded audio and video tapes and discs sold via retail method)
5112	Stationery and Office Supplies (stationery and office supplies sold via retail method)
5169	Chemicals and Allied Products, NEC (agents and brokers)
5198	Paints, Varnishes, and Supplies (agents and brokers)
5999	Miscellaneous Retail Stores, NEC (except art dealers, pet and pet supplies, hearing aids, artificial limbs, osmetics, telephones, sunglasses, manufacture of orthopedic devices to prescription in a retail environment, and typewriters)
7342	Disinfecting and Pest Control Services (except exterminating and pest control)
7349	Building Cleaning and Maintenance Services, NEC (services to buildings and dwellings, except janitorial services)
7359	Equipment Rental and Leasing, NEC (portable toilet rental)
7389	Business Services, NEC;; Miscellaneous Business Services (bail bonding)
7534	Tire Retreading and Repair Shops (tire repair)
7539	Automotive Repair Shops, NEC (automotive air-conditioning repair)
7542	Carwashes
7629	Electrical and Electronic Repair Shops, NEC (electrical appliance repair, washing machine repair, electric razor repair)
7699	Repair Shops and Related Services, NEC (except industrial, electronic, home and garden, appliance, and leather goods)

Emerging Business Enterprises (EBEs)

Chapter 360 of the Milwaukee Code of Ordinance defines Emerging Business Enterprises as follows:

- **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.

However, for the analysis of a disparity study, EBE firms include firms that are certified and non-certified minority and women-owned businesses. EBE business owner firm classification included six subgroups: African Americans, Native Americans, Asian Americans, Hispanic Americans, Nonminority Women and Nonminority EBE owned firms. Firm classification was determined based on data provided by the City of Milwaukee to The Wilson Group.

The Wilson Group used data from the City's electronic files to develop and initially classify firms into business owner classifications. Subsequently, representatives from the City served as resources to review the classifications and identify firms that should be reclassified to another category. Where firm ownership was undetermined, the firms were considered to be non-minority owned and therefore classified as non-EBEs for the analytical purpose of this study.

Data Collection

During the months of September 2009 through January 2010 the City of Milwaukee provided in electronic format contract award and payment data to The Wilson Group.

Relevant data collected from the above vendor and contract sources included but are not limited to the following:

Vendors

- Vendor Name
- Geographic County/Region
- Owner's Ethnicity
- EBE Certification
- Primary SIC Codes
- Primary Services

Contract/Subcontract Data

- Prime Contractor
- Subcontractor
- Contract ID
- Bid ID

- Contract Award Date
- Contract Award Amount
- Subcontract Amount
- Winning Bid Amount
- Payment to Prime Contractor
- EBE Goal
- SIC Code
- Contract Type
- Division
- Project Description
- Primary Service

Vendor Data

The Wilson Group collected company records from multiple sources to create a Master Vendor table. Data sources included in the study are shown in **Table 3-2**.

Table 3-2. City of Milwaukee Vendor Data Sources

MASTER VENDOR DATA SOURCES
City of Milwaukee Vendor List
City of Milwaukee Emerging Business Enterprise Vendor List
Dun & Bradstreet Data
City of Milwaukee Prime and Subcontractor Data
Subcontractor Verification Mail-out

From the vendor sources, a total of 15,555 individual vendors were included in the Master Vendor Table. In order to limit the vendors to the type of services contracted by the City, below is a list of the types of vendors that were excluded (**Table 3-3**). The final Master Vendor Table included 10,462 vendors in the relevant market area.

Table 3-3. Types of Vendors excluded from Study

VENDORS EXCLUDED		
Air Transportation/Airlines	Farming/Cattle Feed	Personal Care Services
Amusement and Recreation	Fitness/Sports Centers	Pharmacies
Apartment/Rental Complex	Fisheries	Radio/TV Broadcasting
Associations/Nonprofits	Florists/Novelty/Gift Shops	Real Estate Agency
Banking/Financial Institutes	Food Services/Processing	Schools and Instruction
Bars/Lounges/Clubs	Gambling/Gaming	Sporting Goods/Supplies
Barber/Beauty Shops	Gas Stations/Convenience Stores	Touring/Sightseeing
Breweries/Wineries	Government Agencies	Transit Vehicle Dealers
Car Rentals	Grocery/Supermarkets	Travel Agency
Catering/Restaurants	Ground Transportation	US Postal Services
Cemeteries/Funeral Services	Hotels/Motels/Resorts	Union/Labor Groups
Childcare/Daycare	Insurance	University/Schools/Colleges
Clothing Stores	Museums/National Parks/Zoo	Unknown Data (address, services provided, etc.)
Duplicates	Nonprofit Organizations	Utilities
Employee/Individual	Nursing Home/Hospice	
Entertainment/Theatres	Pet Care/Grooming	

Contract and Subcontract Data Collection

Electronic data was provided by the City for contracts awarded for calendar years January 1, 2005 through December 31, 2008. The Wilson Group created a contract table, which included prime contractor and subcontractor data.

A contract database was compiled for each business category; construction, professional services and goods and services.

Table 3-4 shows the actual number of prime contracts and subcontracts for each business category analyzed for the study:

Table 3-4. City of Milwaukee prime contracts and subcontracts by Business Category

City of Milwaukee Prime Contracts		
Business Category	**Contract Amounts**	**# of Contracts**
Construction	$81,947,744	243
Professional Services	$9,623,021	101
Goods and Services	$20,559,586	116
Total	**$112,130,351**	**460**
City of Milwaukee Subcontracts		
Business Category	**Amount of Payments**	**# of Contracts**
Construction	$17,084,951	671
Professional Services	$ 31,226	1
Goods & Services	$ 1,743,228	13
Total	**$18,859,405**	**685**

3.2 Market Area Analysis

The geographic market area methodology was initially established through anti-trust case law and has been required by Court decisions, beginning with *Richmond v. Croson,* for business disparity studies.

The accepted methodology for determining the geographic market area is the area that includes the location of prime contractors who received 75 percent of the City's contract dollars.

The significance of the relevant market area is that further analysis within the context of this study will focus primarily on activity occurring within the respective relevant market areas. The relevant market areas are defined for the following business categories:

- Construction
- Professional Services
- Good and Services

3.2.1 Construction

During the study period, the City expended over $81.9 million on Construction contracts with businesses in the relevant market area, utilizing 57 individual firms on 243 contracts. Firms located in Milwaukee, Waukesha and Washington County, Wisconsin received over 87 percent of the total Construction contract dollars awarded and over 93 percent of the contracts awarded during the study period. **Table 3-5** presents dollar amounts and percentage of contracts for the City's relevant market area. The utilization, availability and disparity analyses will use only the contracts included in the relevant market area.

Table 3-5
Relevant Market Area
Calendar Years 2005 – 2008
Construction
City of Milwaukee

	Milwaukee County, WI	Waukesha County, WI	Washington County, WI	Totals
Total Dollars	$37,731,556	$31,974,731	$12,241,457	$81,947,744
Percent of Dollars	40.12%	34.00%	13.02%	87.14%
Percent of Contracts	45.95%	34.75%	13.13%	93.82%
Percent of Firms Utilized	52.17%	27.54%	2.90%	82.61%

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008

3.2.2 Professional Services

During the study period, the City expended over $9.6 million on Professional Services contracts with businesses in the relevant market area, utilizing 77 individual firms on 101 contracts. Firms located in the counties of Milwaukee, Waukesha, Washington and Dane, Wisconsin; Cook County, Du Page County and Kane County, Illinois; San Diego County and Los Angeles County, California; Dallas County. Texas; Pima County, Arizona and Spokane County, Washington received over 85 percent of the total Professional Services contract dollars awarded and over 82 percent of the contracts awarded during the study period. **Table 3-6** presents dollar amounts and percentage of contracts for the City's relevant market area. The utilization, availability and disparity analyses will use only the contracts included in the relevant market area.

Table 3-6
Relevant Market Area
Fiscal Years 2005 – 2008
Professional Services
City of Milwaukee

	Milwaukee County, WI	Waukesha County, WI	Washington County, WI	Cook County, IL	Dane County, WI	Du Page County, IL	Kane County, IL	San Diego County, CA	Los Angeles County, CA	Dallas County, TX	Pima County, AZ	Spokane County, WA	Totals
Total Dollars	$3,705,760	$2,188,211	$365,000	$169,040	$196,399	$387,118	$262,300	$212,503	$68,009	$35,724	$32,955	$2,000,000	$9,623,021
Percent of Dollars	32.99%	19.48%	3.25%	1.50%	1.75%	3.45%	2.33%	1.89%	0.61%	0.32%	0.29%	17.80%	85.66%
Percent of Contracts	52.85%	8.13%	0.81%	5.69%	3.25%	1.63%	2.44%	1.63%	1.63%	1.63%	1.63%	0.81%	82.11%
Percent of Firms Utilized	48.42%	8.42%	1.05%	5.26%	4.21%	2.11%	2.11%	2.11%	2.11%	2.11%	2.11%	1.05%	81.05%

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008

3.2.3 Goods and Services

During the study period, the City expended over $20.5 million on Goods and Services contracts with businesses in the relevant market area, utilizing 91 individual firms on 116 contracts. Firms located in the counties of Milwaukee, Waukesha and Ozaukee, Wisconsin and Cook County, Illinois received over 78 percent of the total Good and Services contract dollars awarded and over 79 percent of the contracts awarded during the study period. **Table 3-7** presents dollar amounts and percentage of contracts for the City's relevant market area. The utilization, availability and disparity analyses will use only the Goods and Services contracts included in the relevant market area.

Table 3-7
Relevant Market Area
Fiscal Years 2005 – 2008
Goods and Services
City of Milwaukee

	Milwaukee County, WI	Waukesha County, WI	Ozaukee County, WI	Cook County, IL	Totals
Total Dollars	$14,645,546	$3,866,539	$139,085	$1,837,823	$20,488,993
Percent of Dollars	55.88%	14.75%	0.53%	7.01%	78.17%
Percent of Contracts	53.79%	18.62%	0.69%	6.21%	79.31%
Percent of Firms Utilized	50.86%	19.83%	0.86%	6.03%	77.59%

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008

CHAPTER 4.0 – AVAILABILITY ANALYSIS

CHAPTER 4.0 – AVAILABILITY ANALYSIS

Availability provides one of the most critical elements for assessing how equitable public contracting has been in the past. In essence, availability analysis predicts the number of firms in the relevant market area and the capacity of those firms to provide the services needed by public organizations.

This section of the report discusses the results of our analysis of firm availability. By utilizing primary data extrapolation in conjunction with secondary data for verification purposes, the characteristics of firms in the marketplace is surmised. Based on evidence of past success in performing work at certain levels, firms are judged to be qualified, willing and able for future contract and bid opportunities. Specifically, our analysis includes a discussion of our approach and methodology, results of our estimations by relevant category, and impact of various characteristics on the ability of firms to win contracts.

4.1 Approach

Current case law provides little direct guidance on how to measure the degree of availability of a firm. As the courts weighed in more on the availability issue, the emphasis has been more of what was not right with the current methodologies rather than a tutorial discussion of methodologies that would pass legal muster.

Social scientists have developed several approaches to attempt to meet the threefold criterion: qualified, willing, and able. The most prevalent practices occupy the extremes of the analytical spectrum. At the most conservative extreme, only firms that are included in bidder, vendor, and certification records of the reviewed organization represent all available firms. The most liberal estimates would include all firms that are recognized by the US Census or a similar estimating organization as being present within the relevant market area regardless of size, interest, workload, or even status.

More recently, most disparity study methodologies have sought “middle ground” between the two extremes with varying degrees of success. A variety of secondary data sources have been utilized to estimate the population of the firms working in the relevant market and industry segment areas and based on this data a sample of primary data has been collected. The move away from bidder, vendor, and certification data created opportunities for additional analysis as well as challenges. Another issue that has grown in importance relates to the impact of business relationships as it relates to working as a prime contractor or subcontractor. In essence, if a firm is available to work as a subcontractor, at what point does it become available to work as a prime contractor.

On December 16, 2005, the United States Commission on Civil Rights conducted a "briefing to gather facts so that it could better evaluate the methodological and empirical strength and quality of these seminal efforts and subsequent disparity studies, which in part form the foundation of affirmative action in federal contracting."[1] As a result of the briefing, several recommendations were made regarding disparity studies and the methodologies used to gather empirical evidence. Of particular note with regard to availability analysis are the following points:

- Recommendation 3: Researchers must develop explicit rationale for including businesses in the availability measure as qualified, willing and able to carry out contract work. Their work should compare only businesses that are able to perform the same services. Analysts should remove from the pool of available businesses any companies offering services that a government does not purchase or that are distinctively different.
- Recommendation 6: Analysts should use measures of available firms that account for the businesses' capacity to perform work. At a minimum, they should examine disparity ratios by size of business. For example, instead of contrasting small minority businesses with all other firms, researchers should compare them to other small businesses. Yet, categorizing businesses as small, medium, and large is only a weak measure of capacity. The research should attempt to include additional and more fine-tuned measures of capacity, such as revenue, number of employees, or the firm's payroll.
- Recommendation 8: Similarly, utilization and availability measures, that are numerators and denominators, must represent the same time period to avoid any distortion from changes in the composition of the business community.

4.2 Methodology

Several major data collection and analysis efforts were undertaken based on our approach to develop the list of available firms. First, an assessment of secondary data was completed to identify potential data sources. The following databases were collected:

- City of Milwaukee Vendor List
- City of Milwaukee Emerging Business Enterprise Vendor List
- City of Milwaukee Prime and Subcontractor Data
- Subcontractor Verification Mail-out
- Dun and Bradstreet Data
- Central Contractor Registry (CCR)
- Wisconsin Department of Transportation (WisDOT)
- University of Wisconsin – Milwaukee Small Business Development Center
- Regional Chambers of Commerce
- Local Business and Community Organizations

[1] *Disparity Studies as Evidence of Discrimination in Federal Contracting*, A Briefing Before the United States Commission on Civil Rights Held in Washington, D.C. December 16, 2005, published May 2006, pg. 77.

Based on these sources, a master database was created of 15,555 firms that indicated an interest in performing work for the City of Milwaukee by registering their firm with one or more of the source agencies listed on the preceding page. The database was further verified by comparisons to other databases and found to be representative of the results from the 2002 Economic Census and other secondary data sources.

The source agencies do not maintain time-phased lists of registrants. Therefore, the availability analysis in this report assumes that firms included in the master database were viable businesses that continued operations in the same line(s) of business throughout the study period as indicated in the database.

An argument could reasonably be made that other businesses not listed in the source agency registration lists were actually available to provide goods and services. In other words, the overall pool of firms should be higher than reflected herein and there is some validity to that argument. However, concern about unduly inflating the basis for availability precluded an upward adjustment in our methodology to determine available firms.

Subsequent to compiling the list of firms, filtering criteria were developed in order to extract a subset of qualified, willing and able firms from the overall pool of firms. This process provided a means to move from an analysis based solely on headcount to one that considered a firm's capability to perform work on contracts like those awarded by the City of Milwaukee. Ideally, each firm in the pool would be contacted to confirm the firm's continued operations and willingness to do business with the agency but that is not practical. However, a suitable alternative for the purposes of this study was to extract data from the business survey upon which to base assumptions about the availability pool.

Questions in the business survey generated responses about firm experiences with public sector work and interest in continuing to work in the public sector. There were also inquiries into past contracting successes. Answers to these questions provided one way to infer responses that might have been received if the entire availability pool was polled. (See Chapter 7 - Business Demographic Survey Analysis. In addition, the business survey was used for the private sector and regression analyses).

At the prime contracting level, the analysis focused on firms that indicated past success winning bids in the public sector. The basis for that assumption was that firms that won contracts in the past must have met the respective criteria associated with the public sector bids and proposals. At the subcontracting level, the approach considered all firms that submitted bids and proposals in the public sector without regard to success in the process. The premise here was that firms that submitted bids and proposals not only had an interest in doing work but

took the next steps to express their interest in being considered. For the purposes of this study, these firms were deemed available subcontractors.

A business survey of over 700 participants provided additional empirical evidence to assess not only firm qualifications, willingness and availability; but also provided a means to determine firm capacity. Key assumptions in the filtering processes were that the business survey respondents were representative of the firms in the overall database therefore patterns of revenue generation and business patterns evident in the survey were similar to those of firms in the master vendor database; firm capacity to perform future work was sufficiently demonstrated by past revenue generation which adequately demonstrated available resources to satisfactorily complete contracts; and the residual of firms excluded from further analysis using the above criteria (not all survey participants responded to all questions used in the above process) was immaterial and equal to the level database limitations (incorrect contact information, lack of firm interest in performing work, etc.) that procurement officials might encounter in seeking firms for contract opportunities.

4.3 Results

The relevant market area for the City of Milwaukee included the following business categories and counties of domicile:

- Construction – Milwaukee, WI; Waukesha, WI and Washington, WI
- Professional Services – Milwaukee, WI; Waukesha, WI; Washington, WI; Dane, WI; Cook, IL; DuPage, IL; Kane, IL; San Diego, CA; Los Angeles, CA; Dallas, TX; Pima, AZ and Spokane, WA
- Goods and Services – Milwaukee, WI; Waukesha, WI; Ozaukee, WI; Cook, IL

Only firms meeting the relevant market area criteria were considered for further analysis for this section of the chapter. **Table 4-1** shows the number of firms in the relevant market area that provide services like those procured by the City of Milwaukee is 10,462.

Table 4-2 shows the distribution of firms in the relevant market area by percentage. Approximately ninety-two percent of the firms were owned by nonminority males. Woman-owned firms represented over three percent of all firms in the database. African Americans owned over two percent of the firms and Hispanic Americans owned roughly one percent of the firms. All other minority groups owned less than one-half percent of the total firms in the relevant market area. The analysis by individual business category shows that there were higher percentages of minority and woman-owned firms in professional service and goods and services than the construction business category analyzed in this study.

Table 4-1
Total Firms by Business Category
and Owner Classification
Relevant Market Area
City of Milwaukee

Business Category	African American	Asian American	Hispanic American	Native American	Other Minority	Nonminority Women	Subtotal EBE	Nonminority	Total EBE and Nonminority
Construction	91	5	47	4	0	95	**242**	4,823	**5,065**
Goods and Services	77	8	25	4	1	165	**280**	3,340	**3,620**
Professional Services	67	15	16	1	2	110	**211**	1,566	**1,777**
Total	235	28	88	9	3	370	**733**	9,729	**10,462**

Table 4-2
Distribution of Firms by Business Category
and Owner Classification
Relevant Market Area
City of Milwaukee

Business Category	African American	Asian American	Hispanic American	Native American	Other Minority	Nonminority Women	Subtotal EBE	Nonminority	Total EBE and Nonminority
Construction	1.80%	0.10%	0.93%	0.08%	0.00%	1.88%	**4.78%**	95.22%	**100.00%**
Goods and Services	2.13%	0.22%	0.69%	0.11%	0.03%	4.56%	**7.73%**	92.27%	**100.00%**
Professional Services	3.77%	0.84%	0.90%	0.06%	0.11%	6.19%	**11.87%**	88.13%	**100.00%**
Total	2.25%	0.27%	0.84%	0.09%	0.03%	3.54%	**7.01%**	92.99%	**100.00%**

The analysis by business category shows the following highlights:

- There were over 5,000 firms represented in the construction business category. Nonminority males owned 95 percent of the firms providing these services. Nonminority Women and African Americans owned just under two percent of the firms.

- In goods and services, nonminority males owned over 92 percent of the firms. Woman-owned firms represented a larger proportion of goods and services firms than was seen in construction, owning approximately five percent of the firms. Hispanic Americans owned two percent of the firms. The goods and services business category was approximately 34 percent of the firms in the relevant market area.

- Women and minority-owned firms represented approximately 12 percent of firms in the professional services category. This business category had the strongest minority and woman-owned business representation of the three business categories in the relevant market area.

Data from the online Business Survey was extrapolated to estimate the number of firms in the relevant market area that were available to perform work as prime contractors. We estimate that 17 percent of firms in the relevant market area were qualified, willing and able to perform work for the City of Milwaukee as prime contractors (1,815 of 10,462). The breakdown of the firms by business owner classification and business category is presented in **Table 4-3.**

As shown in **Table 4-4,** nonminority males were the dominant business owner construction firm group accounting for over 95 percent of prime contractors in the relevant market area. Nonminority Women owned three percent of the firms. The data shows that there was a significant gap between the proportion of firms owned by nonminority males and firms owned by other race/ethnicity/gender groups.

Tables 4-3 and 4-4 also shows that there were over two hundred firms that satisfied our criteria for professional services prime contractors with over 82 percent of firms owned by nonminority males. Woman-owned firms represented approximately 16 percent of the firms available.

Approximately six hundred or 34 percent of the prime contractor firms in the relevant market area were available to provide goods and services to the City of Milwaukee. Once again, nonminority males were the dominant business owner accounting for over 89 percent of prime contractors in the relevant market area. Woman-owned firms represented approximately ten percent of the firms available. The results of the analysis are shown in **Table 4-3** and **Table 4-4**.

Table 4-3
Adjusted Prime Contractors in the Relevant Market Area
City of Milwaukee

Business Category	African American	Asian American	Hispanic American	Native American	Other Minority	Nonminority Women	Subtotal EBE	Nonminority	Total EBE and Nonminority
Construction	6	2	6	0	0	29	**44**	897	**941**
Professional Services	2	0	1	0	0	39	**43**	207	**249**
Goods and Services	2	1	0	0	0	62	**65**	559	**624**
									0
Total	10	3	8	1	0	130	**151**	**1,663**	**1,815**

Table 4-4
Adjusted Prime Contractor Distribution in the Relevant Market Area
City of Milwaukee

Business Category	African American	Asian American	Hispanic American	Native American	Other Minority	Nonminority Women	Subtotal EBE	Nonminority	Total EBE and Nonminority
Construction	0.64%	0.21%	0.67%	0.04%	0.00%	3.08%	**4.64%**	95.36%	**100.00%**
Professional Services	0.75%	0.18%	0.51%	0.00%	0.00%	15.64%	**17.09%**	82.91%	**100.00%**
Goods and Services	0.36%	0.08%	0.00%	0.05%	0.00%	9.93%	**10.42%**	89.58%	**100.00%**
Total	0.56%	0.16%	0.42%	0.04%	0.00%	7.16%	**8.34%**	91.66%	**100.00%**

The results of the availability analysis at the subcontractor level are shown in **Table 4-5 and Table 4-6**. The data shows that the larger number of construction subcontractors with the capacity to perform work for the City of Milwaukee were nonminority owned firms, accounting for approximately 84 percent of the construction subcontractors. Nonminority Women and African American owned firms were the minority subcontractor groups with the highest representation in the construction sector. Their proportionate representation of total subcontractors was 7.31 percent and 5.57 percent respectively.

The analysis of professional services shows that:

- This category included the fewest number of overall firms, 324 or 18 percent.
- Minority owned firms were approximately 39 percent of qualified, willing and able firms in this business category.
- Woman-owned firms represented approximately 22 percent of subcontractors capable of providing services on City subcontracts; followed by African American owned firms, representing approximately 11 percent; followed by Hispanic American owned firms representing three percent and Asian American owned firms representing over two percent.
- All other minority owned firms accounted for less than one percent of qualified, willing and able firms in this business category.

In goods and services, minority and woman-owned firms were 28 percent of the subcontractors with the capacity to perform work on City contracts. The higher showing was the result of the number of Woman-owned and African American-owned firms with the capacity to perform work as subcontractors. The relative percentage representation for Woman-owned firms was 17 percent; African American-owned firms representation was seven percent and Hispanic American-owned firms was approximately three percent. All other minority owned firms percentage representation was less than one percent.

Table 4-5
Adjusted Subcontractors in the Relevant Market Area
City of Milwaukee

Business Category	African American	Asian American	Hispanic American	Native American	Other Minority	Nonminority Women	Subtotal EBE	Nonminority	Total EBE and Nonminority
Construction	50	1	31	1	0	66	**149**	754	**903**
Professional Services	37	7	10	0	2	71	**128**	196	**324**
Goods and Services	43	4	19	1	1	103	**172**	431	**603**
Total	131	12	60	2	3	240	**448**	1,381	**1,829**

Table 4-6
Adjusted Subcontractor Distribution in the Relevant Market Area
City of Milwaukee

Business Category	African American	Asian American	Hispanic American	Native American	Other Minority	Nonminority Women	Subtotal EBE	Nonminority	Total EBE and Nonminority
Construction	5.57%	0.07%	3.41%	0.10%	0.00%	7.31%	**16.46%**	83.54%	**100.00%**
Professional Services	11.42%	2.26%	3.06%	0.12%	0.62%	21.94%	**39.42%**	60.58%	**100.00%**
Goods and Services	7.19%	0.63%	3.23%	0.17%	0.17%	17.09%	**28.48%**	71.52%	**100.00%**
Total	7.14%	0.64%	3.29%	0.12%	0.16%	13.12%	**24.48%**	75.52%	**100.00%**

CHAPTER 5.0 – UTILIZATION ANALYSIS

CHAPTER 5.0 – CITY OF MILWAUKEE UTILIZATION ANALYSIS

This Chapter provides the results of the utilization analysis for the contracting activity occurring for calendar years January 1, 2005 through December 31, 2008 for the City of Milwaukee.

5.1 Prime Contractor Utilization Analysis

For each business category the Wilson Group conducted utilization analyses of all EBE and non-EBE prime and subcontractors during the study period. The definition of EBE firms includes **all minority or woman-owned business whether or not they are certified as an EBE.**

5.1.1 Construction

The utilization analysis of prime contractors for Construction projects is shown in **Table 5-1**. During calendar years 2005 through 2008, EBEs were awarded over $12.1 million or 14.78 percent of the total prime contract dollars expended by the City for Construction projects. The most utilized EBEs were owned by African Americans, receiving over $3.9 million, or 4.88 percent of the contracts dollars awarded; followed by nonminority Women owned firms, receiving over $3.4 million or 4.15 percent of the total contract dollars awarded; followed by Native American owned firms, receiving over $2.7 million or 3.34 percent of the total contract dollars awarded, followed by Hispanic American owned firms, receiving over $1.0 million or 1.33 percent of the total contract dollars awarded, followed by Asian American owned firms, receiving $569,075 or 0.69 percent of the total contract dollars awarded; followed by nonminority EBE owned firms, receiving $314,832 or 0.38 percent of the total contract dollars awarded.

5.1.2 Professional Services

The utilization analysis of prime contractors for Professional Services projects is shown in **Table 5-2**. During the four-year study period, EBEs were awarded $392,498 or 4.08 percent of the total prime contract dollars expended by the City for Professional Services projects. The most utilized EBEs were an Asian American owned firm, receiving one (1) contract in the amount of $365,000, or 3.79 percent of the contracts dollars awarded; followed by a nonminority Woman owned firm, receiving one (1) contract in the amount of $25,000 or 0.26 percent of the contract dollars awarded; followed by an African American owned firm, receiving one (1) contract in the amount of $2,498 or 0.03 percent of the contract dollars awarded. Native American and Hispanic American owned firms did not receive any of the professional services contract dollars awarded.

Table 5-1
Construction
Prime Contractor Utilization
City of Milwaukee
Calendar Years 2005 – 2008

	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Nonminority EBEs	Total EBEs	Non- EBEs	TOTALS
Total Prime Contractor Dollars	$3,999,238	$2,734,812	$569,075	$1,091,198	$3,401,693	$314,832	$12,110,849	$69,836,895	$81,947,744
Percent of Dollars	**4.88%**	**3.34%**	**0.69%**	**1.33%**	**4.15%**	**0.38%**	**14.78%**	**85.22%**	**100.00%**
Total Number of Contracts	11	9	2	2	14	3	41	202	243
Percent of Contracts	**4.53%**	**3.70%**	**0.82%**	**0.82%**	**5.76%**	**1.23%**	**16.87%**	**83.13%**	**100.00%**
Individual Firms Utilized	4	2	1	2	5	3	17	40	57
Percent of Firms	**7.02%**	**3.51%**	**1.75%**	**3.51%**	**8.77%**	**5.26%**	**29.82%**	**70.18%**	**100.00%**

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008
Note: Total dollars awarded may not equal the total due to rounding
EBEs include certified and non-certified minority and women owned businesses.

Table 5-2
Professional Services
Prime Contractor Utilization
City of Milwaukee
Calendar Years 2005 – 2008

	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Total EBEs	Non- EBEs	TOTALS
Total Prime Contractor Dollars	$2,498	$0	$365,000	$0	$25,000	$392,498	$9,230,523	$9,623,021
Percent of Dollars	**0.03%**	**0.00%**	**3.79%**	**0.00%**	**0.26%**	**4.08%**	**95.92%**	**100.00%**
Total Number of Contracts	1	0	1	0	1	3	98	101
Percent of Contracts	**0.99%**	**0.00%**	**0.99%**	**0.00%**	**0.99%**	**2.97%**	**97.03%**	**100.00%**
Individual Firms Utilized	1	0	1	0	1	3	74	77
Percent of Firms	**1.30%**	**0.00%**	**1.30%**	**0.00%**	**1.30%**	**3.90%**	**96.10%**	**100.00%**

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008
Note: Total dollars awarded may not equal the total due to rounding
EBEs include certified and non-certified minority and women owned businesses.

5.1.3 Goods and Services

The utilization analysis of prime contractors for Goods and Services provided to the City is shown in **Table 5-3.** During the four-year study period, EBEs were awarded over $1.5 million or 7.55 percent of the total prime contract dollars expended by the City for Goods & Services. The most utilized EBE owned firms were Hispanic Americans, receiving over $1.2 million or 6.21 percent of the total contract dollars awarded; followed by African American owned firms, receiving $249,360 or 1.21 percent of the total contract dollars awarded; followed by a nonminority EBE owned firm, receiving one (1) contract in the amount of $18,270 or 0.09 percent of the total contract dollars awarded; followed by a nonminority Women owned firm, receiving one (1) contract in the amount of $8,533 or 0.04 percent of the contract dollars awarded. Native American and Asian American owned firms did not receive any of the goods and services subcontract dollars awarded.

Table 5-3
Goods and Services
Prime Contractor Utilization
City of Milwaukee
Calendar Years 2005 – 2008

	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Nonminority EBEs	Total EBEs	Non- EBEs	TOTALS
Total Prime Contractor Dollars	$249,360	$0	$0	$1,275,912	$8,553	$18,270	$1,552,095	$19,007,491	$20,559,586
Percent of Dollars	**1.21%**	**0.00%**	**0.00%**	**6.21%**	**0.04%**	**0.09%**	**7.55%**	**92.45%**	**100.00%**
Total Number of Contracts	6	0	0	2	1	1	10	106	116
Percent of Contracts	**5.17%**	**0.00%**	**0.00%**	**1.72%**	**0.86%**	**0.86%**	**8.62%**	**91.38%**	**100.00%**
Individual Firms Utilized	3	0	0	2	1	1	7	84	91
Percent of Firms	**3.30%**	**0.00%**	**0.00%**	**2.20%**	**1.10%**	**1.10%**	**7.69%**	**92.31%**	**100.00%**

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008
Note: Total dollars awarded may not equal the total due to rounding
EBEs include certified and non-certified minority and women owned businesses.

5.2 Subcontractor Utilization Analysis

Subcontractor utilization data were provided by the City in electronic format. From the data, the Wilson Group conducted the subcontractor utilization analyses for each business category of subcontracts awarded by prime contractors during the study period.

5.2.1 Construction

The utilization analysis of subcontractors for Construction projects is shown in **Table 5-4**. During the four-year study period, EBEs were awarded over $13.7 million or 16.82 percent of the total contract dollars expended by the City for Construction projects. The most utilized EBEs firms were owned by Hispanic Americans, receiving over $6.6 million, or 8.12 percent of the total contract dollars awarded; followed by African American owned firms, receiving over $2.4 million or 2.94 percent of the total contract dollars awarded; followed by nonminority Women owned firms, receiving over $1.8 million or 2.26 percent of the contract dollars awarded, followed by Native American owned firms, receiving over $1.6 million or 1.99 percent of the contract dollars awarded. Asian American owned firms did not receive any of the subcontract dollars awarded.

5.2.2 Professional Services

The utilization analysis of subcontractors for Professional Services shows that only one (1) subcontract in the amount of $31,226 was awarded to an African American EBE owned firm.

5.2.3 Goods & Services

The utilization analysis of subcontractors for Goods & Services is shown in **Table 5-5**. During the four-year study period, EBEs were awarded over $1.7 million or 8.48 percent of the total contract dollars expended by the City for Goods & Services. The most utilized EBEs firms were owned by African Americans, receiving over $1.2 million, or 6.25 percent of the total contract dollars awarded; followed by Asian American owned firms, receiving $245,629 or 1.19 percent of the total contract dollars awarded; followed by Hispanic American owned firms, receiving $114,104 or 0.55 percent of the total contract dollars awarded, followed by nonminority Women owned firms, receiving $25,273 or 0.12 percent of the total contract dollars awarded. Native American owned firms did not receive any of the subcontract dollars awarded.

Table 5-4
Construction
Subcontractor Utilization
City of Milwaukee
Calendar Years 2005 – 2008

	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Total EBE Dollars	Non- EBEs	Subcontractor Totals
All Subs Utilized	$2,412,724	$1,627,153	$0	$6,653,631	$1,854,140	$13,781,332	$3,303,619	$17,084,951
Percent of EBE Subcontract Dollars	**14.12%**	**9.52%**	**0.00%**	**38.94%**	**10.85%**	**80.66%**	**19.34%**	**100%**
Percent of Total Contract Dollars	**2.94%**	**1.99%**	**0.00%**	**8.12%**	**2.26%**	**16.82%**	**4.03%**	**20.85%**
SubContracts Total	117	57	0	250	97	555	116	671
Percent of Contracts	**17.44%**	**8.49%**	**0.00%**	**37.26%**	**14.46%**	**82.71%**	**17.29%**	**100%**
Individual Firms Utilized	23	4	0	15	18	65	59	124
Percent of Firms	**18.55%**	**3.23%**	**0.00%**	**12.10%**	**14.52%**	**52.42%**	**47.58%**	**100%**

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008.
Note: Total dollars awarded may not equal the total due to rounding
EBEs include certified and non-certified minority and women owned businesses.

Table 5-5
Goods & Services
Subcontractor Utilization
City of Milwaukee
Calendar Years 2005 – 2008

	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Total EBE Dollars	Non- EBEs	Subcontractor Totals
All Subs Utilized	$1,285,615	$0	$245,629	$114,104	$25,273	$1,743,228	$0	$1,743,228
Percent of EBE Subcontract Dollars	**73.75%**	**0.00%**	**14.09%**	**6.55%**	**1.45%**	**100.00%**	**0.00%**	**100%**
Percent of Total Contract Dollars	**6.25%**	**0.00%**	**1.19%**	**0.55%**	**0.12%**	**8.48%**	**0.00%**	**8.48%**
SubContracts Total	5	0	1	3	1	13	0	13
Percent of Contracts	**38.46%**	**0.00%**	**7.69%**	**23.08%**	**7.69%**	**100.00%**	**0.00%**	**100%**
Individual Firms Utilized	5	0	1	3	1	12	0	12
Percent of Firms	**41.67%**	**0.00%**	**8.33%**	**25.00%**	**8.33%**	**100.00%**	**0.00%**	**100%**

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008.
Note: Total dollars awarded may not equal the total due to rounding
EBEs include certified and non-certified minority and women owned businesses.

5.3 Prime Contractor Utilization Threshold Analyses

For further comparison of EBE utilization, the Wilson Group conducted a threshold analysis of Construction prime contractor contracts awarded by the City. This was accomplished by evaluating the contracts awarded based on the following dollar ranges:

- Contracts in the amount of $100,000 or less
- Contracts in the amount of $100,001 to $350,000
- Contracts in the amount of $350,001 to $750,000
- Contracts in the amount of $750,001 to $1,000,000
- Contracts over $1,000,000

5.3.1 Construction

Table 5-6 shows the threshold analysis conducted of the 243 Construction prime contracts awarded by the City. EBEs received 41 or 16.87 percent of the prime contracts awarded and 14.78 percent of the contract dollars. The most successful groups were nonminority Women owned firms receiving 14 or 5.76 percent of the contracts and 4.15 percent of the dollars; followed by African American owned firms, receiving 11 or 4.53 percent of the contracts and 4.88 percent of the dollars; followed by Native American owned firms, receiving nine (9) or 3.70 percent of the contracts and 3.34 percent of the dollars; followed by nonminority EBE owned firms, receiving three (3) or 1.24 percent of the contracts and 0.38 percent of the dollars; followed by Hispanic American owned firms, receiving two (2) or 0.82 percent of the contracts and 1.33 percent of the dollars; followed by Asian American owned firms, receiving two (2) or 0.82 percent of the contracts and 0.69 percent of the dollars. The following is a breakdown of EBE participation:

- A total of 44 prime contracts were awarded in the dollar range of $100,000 or less. EBEs received 10 or 22.73 percent of the contracts and 19.45 percent of the dollars. The successful groups were nonminority Women owned firms, receiving eight (8) or 18.18 percent of the contracts and 14.30 percent of the dollars; followed by Native American owned firms, receiving one (1) or 2.27 percent of the contracts and 3.72 percent of the dollars; followed by nonminority EBE owned firms, receiving one (1) or 2.27 percent of the contracts and 1.43 percent of the dollars. African American, Asian American and Hispanic American owned firms did not receive any of the construction prime contracts awarded.
- A total of 117 prime contracts were awarded in the dollar range of $100,001 to $350,000. EBEs received 20 or 17.09 percent of the contracts awarded in this dollar range and 16.92 percent of the dollars. The most successful groups were African American owned firms, receiving eight (8) or 6.84 percent of the contracts and 6.36 percent of the dollars; followed by Native American owned firms, receiving four (4) or 3.42 percent of the contracts and 3.40 percent of the dollars; followed by nonminority Women owned firms, receiving three (3) or 2.56 percent of the contracts and 3.11 percent of the dollars; followed by Asian American owned firms, receiving two (2) or 1.71 percent of the contracts and 2.32 percent of the dollars; followed by Hispanic American owned firms, receiving one (1) or 0.85 percent of the contracts and 0.58 percent of the dollars.

Table 5-6
Construction
Fiscal Years 2005 - 2008
Prime Contractor Utilization Threshold
Percentage of Total Dollars
Ethnicity Classification
City of Milwaukee

Threshold	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Nonminority EBEs	Total EBEs	Non- EBEs	Total Dollars Awarded
$100,000 or Less	$0	$83,339	$0	$0	$320,321	$31,920	$435,579	$1,804,281	$2,239,860
# of Contracts	0	1	0	0	8	1	10	34	44
Percent of Dollars	**0.00%**	**3.72%**	**0.00%**	**0.00%**	**14.30%**	**1.43%**	**19.45%**	**80.55%**	
Percent of Contracts	**0.00%**	**2.27%**	**0.00%**	**0.00%**	**18.18%**	**2.27%**	**22.73%**	**77.27%**	
$100,001 to $350,000	$1,563,607	$835,476	$569,075	$141,757	$764,164	$282,912	$4,156,991	$20,412,207	$24,569,199
# of Contracts	8	4	2	1	3	2	20	97	117
Percent of Dollars	**6.36%**	**3.40%**	**2.32%**	**0.58%**	**3.11%**	**1.15%**	**16.92%**	**83.08%**	
Percent of Contracts	**6.84%**	**3.42%**	**1.71%**	**0.85%**	**2.56%**	**1.71%**	**17.09%**	**82.91%**	
$350,001 to $750,000	$529,285	$1,815,997	$0	$0	$1,254,509	$0	$3,599,791	$27,186,160	$30,785,951
# of Contracts	1	4	0	0	2	0	7	57	64
Percent of Dollars	**1.72%**	**5.90%**	**0.00%**	**0.00%**	**4.07%**	**0.00%**	**11.69%**	**88.31%**	
Percent of Contracts	**1.56%**	**6.25%**	**0.00%**	**0.00%**	**3.13%**	**0.00%**	**10.94%**	**89.06%**	
$750,001 to $1,000,000	$846,402	$0	$0	$949,441	$0	$0	$1,795,843	$7,804,992	$9,600,835
# of Contracts	1	0	0	1	0	0	2	9	11
Percent of Dollars	**8.82%**	**0.00%**	**0.00%**	**9.89%**	**0.00%**	**0.00%**	**18.71%**	**81.29%**	
Percent of Contracts	**9.09%**	**0.00%**	**0.00%**	**9.09%**	**0.00%**	**0.00%**	**18.18%**	**81.82%**	
Above $1,000,000	$1,059,945	$0	$0	$0	$1,062,699	$0	$2,122,644	$12,629,255	$14,751,899
# of Contracts	1	0	0	0	1	0	2	5	7
Percent of Dollars	**7.19%**	**0.00%**	**0.00%**	**0.00%**	**7.20%**	**0.00%**	**14.39%**	**85.61%**	
Percent of Contracts	**14.29%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**28.57%**	**71.43%**	
Total	$3,999,238	$2,734,812	$569,075	$1,091,198	$3,401,693	$314,832	$12,110,849	$69,836,895	$81,947,744

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008.
Note: Total dollars awarded may not equal the total due to rounding
EBEs include certified and non-certified minority and women owned businesses.

- A total of 64 prime contracts were awarded in the dollar range of $350,001 to $750,000. EBEs received seven (7) or 10.94 percent of the contracts awarded in this dollar range and 11.69 percent of the dollars. The most successful groups were Native American owned firms, receiving four (4) or 6.25 percent of the contracts and 5.90 percent of the dollars; followed by nonminority Women owned firms, receiving two (2) or 3.13 percent of the contracts and 4.07 percent of the dollars; followed by African American owned firms, receiving one (1) or 1.56 percent of the contracts and 1.72 percent of the dollars. Asian American, Hispanic American and nonminority EBE owned firms did not receive any of the contracts awarded in this dollar range.
- A total of 11 prime contracts were awarded in the dollar range of $750,001 to $1 million. EBEs received two (2) or 18.18 percent of the contracts in this dollar range and 18.71 percent of the dollars. The successful groups were Hispanic American owned firms, receiving one (1) or 9.09 percent of the contracts and 9.89 percent of the dollars; followed by African American owned firms, receiving one (1) or 9.09 percent of the contracts and 8.82 percent of the dollars. Native American, Asian American, nonminority Women and nonminority EBE owned firms did not receive any of the contracts awarded in this dollar range.
- A total of 7 prime contracts were awarded in the dollar range of over $1 million. EBEs received two (2) or 28.57 percent of the contracts in this dollar range and 14.39 percent of the dollars. The successful groups were nonminority Women owned firms, receiving one (1) or 14.29 percent of the contracts and 7.20 percent of the dollars; followed by African American owned firms, receiving one (1) or 14.29 percent of the contracts and 7.19 percent of the dollars. Native American, Asian American, Hispanic American and nonminority EBE owned firms did not receive any of the contracts awarded in this dollar range.

5.3.2 Professional Services

For further comparison of EBE utilization, the Wilson Group conducted a threshold analysis of Professional Services prime contractor contracts awarded by the City. This was accomplished by evaluating the contracts awarded based on the following dollar ranges:

- Contracts in the amount of $5,000 or less
- Contracts in the amount of $5,001 to $10,000
- Contracts in the amount of $10,001 to $20,000
- Contracts in the amount of $20,001 to $50,000
- Contracts in the amount of $50,001 to $100,000
- Contracts over $100,000

Table 5-7 shows the threshold analysis conducted of the 101 Professional Services prime contracts awarded by the City. EBEs received 3 or 2.97 percent of the prime contracts awarded and 4.08 percent of the contract dollars. The most successful groups were Asian Americans receiving one (1) or 0.99 percent of the contracts and 3.79 percent of the dollars; followed by nonminority Women, receiving one (1) or 0.99 percent of the contracts and 0.26 percent of the dollars; followed by African Americans, receiving one (1) or 0.99 percent of the contracts and 0.03 percent of the dollars. Native American, Asian American, Hispanic American

Table 5-7
Professional Services
Fiscal Years 2005 - 2008
Prime Contractor Utilization Threshold
Percentage of Total Dollars
Ethnicity Classification
City of Milwaukee

Threshold	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Nonminority EBEs	Total EBEs	Non- EBEs	Total Dollars Awarded
$5,000 or Less	$2,498	$0	$0	$0	$0	$0	$2,498	$42,742	$45,239
# of Subcontracts	1	0	0	0	0	0	1	13	14
Percent of Dollars	**5.52%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**5.52%**	**94.48%**	
Percent of Subcontracts	**7.14%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**7.14%**	**92.86%**	
$5,001 to $10,000	$0	$0	$0	$0	$0	$0	$0	$99,712	$99,712
# of Subcontracts	0	0	0	0	0	0	0	13	13
Percent of Dollars	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	
Percent of Subcontracts	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	
$10,001 to $20,000	$0	$0	$0	$0	$0	$0	$0	$295,642	$295,642
# of Subcontracts	0	0	0	0	0	0	0	20	20
Percent of Dollars	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	
Percent of Subcontracts	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	
$20,001 to $50,000	$0	$0	$0	$0	$25,000	$0	$25,000	$634,715	$659,715
# of Subcontracts	0	0	0	0	1	0	1	20	21
Percent of Dollars	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**3.79%**	**0.00%**	**3.79%**	**96.21%**	
Percent of Subcontracts	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**4.76%**	**0.00%**	**4.76%**	**95.24%**	
$50,001 to $100,000	$0	$0	$365,000	$0	$0	$0	$365,000	$1,235,808	$1,600,808
# of Subcontracts	0	0	1	0	0	0	1	17	18
Percent of Dollars	**0.00%**	**0.00%**	**22.80%**	**0.00%**	**0.00%**	**0.00%**	**22.80%**	**77.20%**	
Percent of Subcontracts	**0.00%**	**0.00%**	**5.56%**	**0.00%**	**0.00%**	**0.00%**	**5.56%**	**94.44%**	
Above $100,000	$0	$0	$0	$0	$0	$0	$0	$6,921,905	$6,921,905
# of Subcontracts	0	0	0	0	0	0	0	15	15
Percent of Dollars	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	
Percent of Subcontracts	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	
Total	$2,498	$0	$365,000	$0	$25,000	$0	$392,498	$9,230,523	$9,623,021

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008.
Note: Total dollars awarded may not equal the total due to rounding
EBEs include certified and non-certified minority and women owned businesses.

and nonminority EBE owned firms did not receive any of the professional services prime contracts awarded. The following is a breakdown of EBE participation:

- A total of 14 prime contracts were awarded in the dollar range of $5,000 or less. EBEs received one (1) or 7.14 percent of the contracts and 5.52 percent of the dollars. The only successful EBE was an African American owned firm, receiving one (1) contract in the amount of $2,498.
- A total of 13 prime contracts were awarded in the dollar range of $5,001 to $10,000. EBE owned firms did not receive any of the contracts awarded in this dollar range.
- A total of 20 prime contracts were awarded in the dollar range of $10,001 to $20,000. EBE owned firms did not receive any of the contracts awarded in this dollar range.
- A total of 21 prime contracts were awarded in the dollar range of $20,001 to $50,000. The only successful EBE was a nonminority Woman owned firm, receiving one (1) contract in the amount of $25,000.
- A total of 18 prime contracts were awarded in the dollar range of $50,001 to $100,000. The only successful EBE was an Asian American owned firm, receiving one (1) contract in the amount of $365,000.
- A total of 15 prime contracts were awarded in the dollar range of over $100,000. EBE owned firms did not receive any of the contracts awarded in this dollar range.

5.3.3 Goods & Services

For further comparison of EBE utilization, the Wilson Group conducted a threshold analysis of Goods & Services prime contractor contracts awarded by the City. This was accomplished by evaluating the contracts awarded based on the following dollar ranges:

- Contracts in the amount of $10,000 or less
- Contracts in the amount of $10,001 to $50,000
- Contracts in the amount of $50,001 to $100,000
- Contracts in the amount of $100,001 to $500,000
- Contracts over $500,000

Table 5-8 shows the threshold analysis conducted of the 116 Goods & Services prime contracts awarded by the City. EBEs received 10 or 8.62 percent of the prime contracts awarded and 7.55 percent of the contract dollars. The most successful groups were African Americans receiving six (6)or 5.17 percent of the contracts and 1.21 percent of the dollars; followed by Hispanic American owned firms, receiving two (2) or 1.72 percent of the contracts and 6.21 percent of the dollars; followed by a nonminority EBE owned firm, receiving one (1) or 0.86 percent of the contracts and 0.09 percent of the dollars; followed by a nonminority Woman owned firm, received one (1) or 0.86 percent of the contracts and 0.04 percent of the dollars. Native American and Asian American owned firms did not receive any of the goods & services prime contracts awarded.

Table 5-8
Goods & Services
Fiscal Years 2005 - 2008
Prime Contractor Utilization Threshold
Percentage of Total Dollars
Ethnicity Classification
City of Milwaukee

Threshold	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Nonminority EBEs	Total EBEs	Non- EBEs	Total Dollars Awarded
$10,000 or Less	$0	$0	$0	$0	$8,553	$0	$8,553	$135,125	$143,677
# of Contracts	0	0	0	0	1	0	1	22	23
Percent of Dollars	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**5.95%**	**0.00%**	**5.95%**	**94.05%**	
Percent of Contracts	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**4.35%**	**0.00%**	**4.35%**	**95.65%**	
$10,001 to $50,000	$55,125	$0	$0	$0	$0	$18,270	$73,395	$1,038,309	$1,111,704
# of Contracts	3	0	0	0	0	1	4	38	42
Percent of Dollars	**4.96%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**1.64%**	**6.60%**	**93.40%**	
Percent of Contracts	**7.14%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**2.38%**	**9.52%**	**90.48%**	
$50,001 to $100,000	$194,236	$0	$0	$0	$0	$0	$194,236	$963,550	$1,157,786
# of Contracts	3	0	0	0	0	0	3	13	16
Percent of Dollars	**16.78%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**16.78%**	**83.22%**	
Percent of Contracts	**18.75%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**18.75%**	**81.25%**	
$100,001 to $500,000	$0	$0	$0	$0	$0	$0	$0	$5,822,102	$5,822,102
# of Contracts	0	0	0	0	0	0	0	26	26
Percent of Dollars	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	
Percent of Contracts	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	
Above $500,000	$0	$0	$0	$1,275,912	$0	$0	$1,275,912	$11,048,405	$12,324,317
# of Contracts	0	0	0	2	0	0	2	7	9
Percent of Dollars	**0.00%**	**0.00%**	**0.00%**	**10.35%**	**0.00%**	**0.00%**	**10.35%**	**89.65%**	
Percent of Contracts	**0.00%**	**0.00%**	**0.00%**	**22.22%**	**0.00%**	**0.00%**	**22.22%**	**77.78%**	
Total	$249,360	$0	$0	$1,275,912	$8,553	$18,270	$1,552,095	$19,007,491	$20,559,586

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008.
Note: Total dollars awarded may not equal the total due to rounding
EBEs include certified and non-certified minority and women owned businesses.

The following is a breakdown of EBE participation:

- A total of 23 prime contracts were awarded in the dollar range of $10,000 or less. EBEs received one (1) or 4.35 percent of the contracts and 5.95 percent of the dollars. The only successful EBE was a nonminority Woman owned firm, receiving one (1) contract in the amount of $8,553.
- A total of 42 prime contracts were awarded in the dollar range of $10,001 to $50,000. EBE owned firms received four (4) or 9.52 percent of the contracts and 6.60 percent of the dollars. The most successful groups were African Americans, receiving three (3) or 7.14 percent of the contracts and 4.96 percent of the dollars; followed by a nonminority EBE owned firm, receiving one (1) contract in the amount of $18,270. Native Americans, Asian Americans and Hispanic Americans did not receive any of the contracts awarded in this dollar range.
- A total of 16 prime contracts were awarded in the dollar range of $50,001 to $100,000. EBE owned firms received three (3) or 18.75 percent of the contracts and 16.78 percent of the dollars. The only successful EBE firms were owned by African Americans, receiving three (3) contracts totaling $194,236.
- A total of 26 prime contracts were awarded in the dollar range of $100,001 to $500,000. EBE owned firms did not receive any of the contracts in this dollar range.
- A total of nine (9) prime contracts were awarded in the dollar range above $500,000. The only successful EBEs were Hispanic American owned firms, receiving 2 contracts totaling $1,275,912.

5.4 Subcontractor Utilization Threshold Analyses

For further comparison of EBE utilization, the Wilson Group conducted a threshold analysis of Construction subcontracts awarded by the City. This was accomplished by evaluating the contracts awarded based on the following dollar ranges:

- Contracts in the amount of $5,000 or less
- Contracts in the amount of $5,001 to $10,000
- Contracts in the amount of $10,001 to $20,000
- Contracts in the amount of $20,001 to $50,000
- Contracts in the amount of $50,0001 to $100,000
- Contracts over $100,000

5.4.1 Construction

Table 5-9 shows the threshold analysis conducted of the 671 Construction subcontracts awarded during the study period. EBEs received 555 or 82.71 percent of the subcontracts and 80.66 percent of the dollars. The most successful groups were Hispanic American owned firms, receiving 250 or 38.94 percent of the contracts and 38.94 percent of the dollars; followed by African American owned firms, receiving 117 or 17.44 percent of the contracts and 14.12 percent of the dollars; followed by nonminority Women owned firms, receiving 97 or 14.46 percent of the contracts and 10.85 percent of the dollars; followed by Native American owned firms, receiving 57 or 8.49 percent of the contracts and 9.52 percent of the dollars; followed by nonminority EBE owned firms, receiving 34 or 5.07 percent of the contracts and 7.22 percent of the dollars. The following is a breakdown of EBE participation:

- A total of 209 subcontracts were awarded in the dollar range of $5,000 or less. EBEs received 147 or 70.33 percent of the subcontracts and 89.50 percent of the dollars. The most successful EBE groups were Hispanic American owned firms, receiving 58 or 27.75 percent of the subcontracts and 47.27 percent of the dollars; followed by nonminority Women owned firms, receiving 40 or 19.14 percent of the subcontracts and 10.16 percent of the dollars; followed by African American owned firms, receiving 32 or 15.31 percent of the subcontracts and 16.43 percent of the dollars; followed by Native American owned firms, receiving 14 or 6.70 percent of the contracts and 8.21 percent of the dollars; followed by nonminority EBE owned firms, receiving three (3)or 1.44 percent of the subcontracts and 7.43 percent of the dollars. Asian American owned firms did not receive any of the subcontracts awarded in this dollar range.
- A total of 117 subcontracts were awarded in the dollar range of $5,001 to $10,000. EBEs received 101 or 86.32 percent of the subcontracts and 90.22 percent of the dollars. The most successful EBE groups were Hispanic American owned firms, receiving 39 or 33.33 percent of the subcontracts and 43.86 percent of the dollars; followed by African American owned firms, receiving 29 or 24.79 percent of the contracts and 15.86 percent of the dollars; followed by nonminority Women owned firms, receiving 20 or 17.09 percent of the subcontracts and 10.62 percent of the dollars; followed by Native American owned firms, receiving 8 or 6.84 percent of the contracts and 12.73 percent of the dollars; followed by nonminority EBE owned firms, receiving five (5) or 4.27 percent of the subcontracts and 7.15 percent of the dollars. Asian American owned firms did not receive any of the subcontracts awarded in this dollar range.

Table 5-9
Construction
Fiscal Years 2005 - 2008
Subcontractor Utilization Threshold
Percentage of Total Dollars
Ethnicity Classification
City of Milwaukee

Threshold	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Other EBEs	Total EBEs	Non- EBEs	Total Dollars Awarded
$5,000 or Less	$246,807	$123,269	$0	$709,971	$152,629	$111,660	$1,344,336	$157,750	$1,502,086
# of Subcontracts	32	14	0	58	40	3	147	62	209
Percent of Dollars	**16.43%**	**8.21%**	**0.00%**	**47.27%**	**10.16%**	**7.43%**	**89.50%**	**10.50%**	
Percent of Subcontracts	**15.31%**	**6.70%**	**0.00%**	**27.75%**	**19.14%**	**1.44%**	**70.33%**	**29.67%**	
$5,001 to $10,000	$785,861	$630,483	$0	$2,172,839	$525,970	$354,011	$4,469,163	$484,519	$4,953,682
# of Subcontracts	29	8	0	39	20	5	101	16	117
Percent of Dollars	**15.86%**	**12.73%**	**0.00%**	**43.86%**	**10.62%**	**7.15%**	**90.22%**	**9.78%**	
Percent of Subcontracts	**24.79%**	**6.84%**	**0.00%**	**33.33%**	**17.09%**	**4.27%**	**86.32%**	**13.68%**	
$10,001 to $20,000	$84,744	$26,462	$0	$170,747	$83,286	$7,598	$372,837	$130,291	$503,129
# of Subcontracts	17	8	0	48	11	8	92	11	103
Percent of Dollars	**16.84%**	**5.26%**	**0.00%**	**33.94%**	**16.55%**	**1.51%**	**74.10%**	**25.90%**	
Percent of Subcontracts	**16.50%**	**7.77%**	**0.00%**	**46.60%**	**10.68%**	**7.77%**	**89.32%**	**10.68%**	
$20,001 to $50,000	$223,530	$48,272	$0	$279,253	$140,998	$35,744	$727,797	$118,431	$846,227
# of Subcontracts	26	20	0	70	15	10	141	16	157
Percent of Dollars	**26.41%**	**5.70%**	**0.00%**	**33.00%**	**16.66%**	**4.22%**	**86.00%**	**14.00%**	
Percent of Subcontracts	**16.56%**	**12.74%**	**0.00%**	**44.59%**	**9.55%**	**6.37%**	**89.81%**	**10.19%**	
$50,001 to $100,000	$756,308	$356,435	$0	$1,871,904	$545,234	$393,349	$3,923,230	$359,372	$4,282,601
# of Subcontracts	10	5	0	28	8	5	56	5	61
Percent of Dollars	**17.66%**	**8.32%**	**0.00%**	**43.71%**	**12.73%**	**9.18%**	**91.61%**	**8.39%**	
Percent of Subcontracts	**16.39%**	**8.20%**	**0.00%**	**45.90%**	**13.11%**	**8.20%**	**91.80%**	**8.20%**	
Above $100,000	$315,475	$442,231	$0	$1,448,917	$406,023	$331,323	$2,943,969	$2,053,257	$4,997,226
# of Subcontracts	3	2	0	7	3	3	18	6	24
Percent of Dollars	**6.31%**	**8.85%**	**0.00%**	**28.99%**	**8.12%**	**6.63%**	**58.91%**	**41.09%**	
Percent of Subcontracts	**12.50%**	**8.33%**	**0.00%**	**29.17%**	**12.50%**	**12.50%**	**75.00%**	**25.00%**	
Total	$2,412,724	$1,627,153	$0	$6,653,631	$1,854,140	$1,233,684	$13,781,332	$3,303,619	$17,084,951

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008.
Note: Total dollars awarded may not equal the total due to rounding
EBEs include certified and non-certified minority and women owned businesses.

- A total of 103 subcontracts were awarded in the dollar range of $10,001 to $20,000. EBEs received 92 or 89.32 percent of the subcontracts and 74.10 percent of the dollars. The most successful EBE groups were Hispanic American owned firms, receiving 48 or 46.60 percent of the subcontracts and 33.94 percent of the dollars; followed by African American owned firms, receiving 17 or 16.50 percent of the subcontracts and 16.84 percent of the dollars; followed by nonminority Women owned firms, receiving 11 or 10.68 percent of the subcontracts and 16.55 percent of the dollars; followed by Native American owned firms, receiving eight (8) or 7.77 percent of the subcontracts and 5.26 percent of the dollars; followed by nonminority EBE owned firms, receiving eight (8) or 7.77 percent of the subcontracts and 1.51 percent of the dollars. Asian American owned firms did not receive any of the subcontracts awarded in this dollar range.
- A total of 157 subcontracts were awarded in the dollar range of $20,001 to $50,000. EBEs received 141 or 89.81 percent of the subcontracts and 86.00 percent of the dollars. The most successful EBE groups were Hispanic American owned firms, receiving 70 or 44.59 percent of the subcontracts and 33.00 percent of the dollars; followed by African American owned firms, receiving 26 or 16.56 percent of the subcontracts and 26.41 percent of the dollars; followed by Native American owned firms, receiving 20 or 12.74 percent of the subcontracts and 5.70 percent of the dollars; followed by nonminority Women owned firms, receiving 15 or 9.55 percent of the subcontracts and 16.66 percent of the dollars; followed by nonminority EBE owned firms, receiving 10 or 6.37 percent of the subcontracts and 4.22 percent of the dollars. Asian American owned firms did not receive any of the subcontracts awarded in this dollar range.
- A total of 61 subcontracts were awarded in the dollar range of $50,001 to $100,000. EBEs received 56 or 91.80 percent of the subcontracts and 91.61 percent of the dollars. The most successful EBE groups were Hispanic American owned firms, receiving 28 or 45.90 percent of the subcontracts and 43.71 percent of the dollars; followed by African American owned firms, receiving 10 or 16.39 percent of the subcontracts and 17.66 percent of the dollars; followed by nonminority Women owned firms, receiving eight (8) or 13.11 percent of the subcontracts and 12.73 percent of the dollars; followed by nonminority EBE owned firms, receiving five (5) or 8.20 percent of the subcontracts and 9.18 percent of the dollars; followed by Native American owned firms, receiving five (5) or 8.20 percent of the subcontracts and 8.32 percent of the dollars. Asian American owned firms did not receive any of the subcontracts awarded in this dollar range.
- A total of 24 subcontracts were awarded in the dollar range of above $100,000. EBEs received 18 or 75 percent of the subcontracts and 58.91 percent of the dollars. The most successful EBE groups were Hispanic American owned firms, receiving seven (7) or 29.17 percent of the subcontracts and 28.99 percent of the dollars; followed by nonminority Women owned firms, receiving three (3) or 12.50 percent of the subcontracts and 8.12 percent of the dollars; followed by nonminority EBE owned firms, receiving three (3) or 12.50 percent of the subcontracts and 6.63 percent of the dollars; followed by African American owned firms, receiving three (3) or 12.50 percent of the subcontracts and 6.31 percent of the dollars; followed by Native American owned firms, receiving two (2) or 8.33 percent of the subcontracts and 8.85 percent of the dollars. Asian American owned firms did not receiving any of the subcontracts awarded in this dollar range.

5.4.2 Professional Services

As stated previously, there was only one (1) Professional Services subcontract awarded to an African American EBE owned firm in the amount of $31,226.

5.4.3 Goods & Services

Table 5-10 shows the threshold analysis conducted of the 13 Goods & Services subcontracts awarded during the study period. All of the Goods & Services subcontracts were awarded to EBE owned firms. The most successful groups were African American owned firms, receiving five (5) or 38.46 percent of the subcontracts and 73.75 percent of the dollars; followed by Hispanic American owned firms, receiving three (3) or 23.08 percent of the subcontracts and 6.55 percent of the dollars; followed by nonminority EBE owned firms, receiving three (3) or 23.08 percent of the subcontracts and 4.17 percent of the dollars; followed by Asian American owned firms, receiving one (1) or 7.69 percent of the subcontracts and 14.09 percent of the dollars; followed by nonminority Women owned firms, receiving one (1) or 7.69 percent of the subcontracts and 1.45 percent of the dollars. Native American owned firms did not receive any of the Goods & Services subcontracts awarded. The following is a breakdown of EBE participation:

- A total of one (1) subcontract was awarded in the dollar range of $5,000 or less. This contract in the amount of $2,167 was awarded to an African American owned firm.
- A total of one (1) subcontract was awarded in the dollar range of $5,001 to $10,000. This contract in the amount of $5,788 was awarded to a nonminority EBE owned firm.
- A total of three (3) subcontracts were awarded in the dollar range of $10,001 to $20,000. The only successful EBE groups were an African American owned firm, receiving one (1) subcontract in the amount of $16,198 or 40.58 percent of the dollars; followed by a Hispanic American owned firm, receiving one (1) subcontract in the amount of $12,383 or 31.02 percent of the dollars; followed by a nonminority EBE owned firm, receiving one (1) contract in the amount of $11,333 or 28.39 percent of the dollars.
- A total of three (3) subcontracts were awarded in the dollar range of $20,001 to $50,000. The only successful EBE groups were an African American owned firm, receiving one (1) subcontract in the amount of $37,524 or 37.43 percent of the dollars; followed by a Hispanic American owned firm, receiving one (1) subcontract in the amount of $37,445 or 37.35 percent of the dollars; followed by a nonminority Women owned firm, receiving one (1) subcontract in the amount of $25,273 or 25.21 percent of the dollars.
- A total of two (2) subcontracts were awarded in the dollar range of $50,001 to $100,000. The only successful EBE groups were a Hispanic American owned firm, receiving one (1) subcontract in the amount of $64,276 or 53.67 percent of the dollars; followed by a nonminority EBE owned firm, receiving one (1) subcontract in the amount of $55,486 or 46.33 percent of the dollars.
- A total of three (3) subcontracts were awarded in the dollar range of over $100,000. The only successful EBE groups were African Americans, receiving two (2) subcontracts totaling over $1.2 million or 83.35 percent of the dollars; followed by an Asian American owned firm, receiving one (1) subcontract in the amount of $245,629 or 16.65 percent of the dollars.

Table 5-10
Goods & Services
Fiscal Years 2005 - 2008
Subcontractor Utilization Threshold
Percentage of Total Dollars
Ethnicity Classification
City of Milwaukee

Threshold	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Nonminority EBEs	Total EBEs	Non- EBEs	Total Dollars Awarded
$5,000 or Less	$2,167	$0	$0	$0	$0	$0	$2,167	$0	$2,167
# of Subcontracts	1	0	0	0	0	0	1	0	1
Percent of Dollars	**100.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	**0.00%**	
Percent of Subcontracts	**100.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	**0.00%**	
$5,001 to $10,000	$0	$0	$0	$0	$0	$5,788	$5,788	$0	$5,788
# of Subcontracts	0	0	0	0	0	1	1	0	1
Percent of Dollars	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	**100.00%**	**0.00%**	
Percent of Subcontracts	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	**100.00%**	**0.00%**	
$10,001 to $20,000	$16,198	$0	$0	$12,383	$0	$11,333	$39,914	$0	$39,914
# of Subcontracts	1	0	0	1	0	1	3	0	3
Percent of Dollars	**40.58%**	**0.00%**	**0.00%**	**31.02%**	**0.00%**	**28.39%**	**100.00%**	**0.00%**	
Percent of Subcontracts	**33.33%**	**0.00%**	**0.00%**	**33.33%**	**0.00%**	**33.33%**	**100.00%**	**0.00%**	
$20,001 to $50,000	$37,524	$0	$0	$37,445	$25,273	$0	$100,242	$0	$100,242
# of Subcontracts	1	0	0	1	1	0	3	0	3
Percent of Dollars	**37.43%**	**0.00%**	**0.00%**	**37.35%**	**25.21%**	**0.00%**	**100.00%**	**0.00%**	
Percent of Subcontracts	**33.33%**	**0.00%**	**0.00%**	**33.33%**	**33.33%**	**0.00%**	**100.00%**	**0.00%**	
$50,001 to $100,000	$0	$0	$0	$64,276	$0	$55,486	$119,762	$0	$119,762
# of Subcontracts	0	0	0	1	0	1	2	0	2
Percent of Dollars	**0.00%**	**0.00%**	**0.00%**	**53.67%**	**0.00%**	**46.33%**	**100.00%**	**0.00%**	
Percent of Subcontracts	**0.00%**	**0.00%**	**0.00%**	**50.00%**	**0.00%**	**50.00%**	**100.00%**	**0.00%**	
Above $100,000	$1,229,726	$0	$245,629	$0	$0	$0	$1,475,355	$0	$1,475,355
# of Subcontracts	2	0	1	0	0	0	3	0	3
Percent of Dollars	**83.35%**	**0.00%**	**16.65%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	**0.00%**	
Percent of Subcontracts	**66.67%**	**0.00%**	**33.33%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**	**0.00%**	
Total	$1,285,615	$0	$245,629	$114,104	$25,273	$72,607	$1,743,228	$0	$1,743,228

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008.
Note: Total dollars awarded may not equal the total due to rounding
EBEs include certified and non-certified minority and women owned businesses.

CHAPTER 6.0 – DISPARITY ANALYSIS

CHAPTER 6.0 – DISPARITY ANALYSIS

The objective of this Chapter is to determine if Emerging Business Enterprises (EBEs) were underutilized or overutilized on the contracts awarded by the City of Milwaukee based upon their availability.

The Wilson Group conducted a disparity analysis for each business category to determine the differences between the utilization of EBEs and the availability of such firms within the relevant market area. The data presented in the Availability and Utilization Analyses was used as the basis to determine if EBEs received a fair and equitable share of the contracts awarded by the City. This is determined through the disparity index calculation that results in a comparison of the availability of EBEs with the utilization of such firms.

The disparity index is obtained by dividing the percent of utilization by the percent of availability and multiplying the result by 100. A disparity index of 100 indicates a balance between utilization and availability. A disparity index of less than 100 indicates that firms are underutilized or overutilized if greater than 100. An index of less than 80 indicates significant underutilization and an index of 0.00 indicates zero utilization.

This section provides the results of the disparity analyses for each business category based on the utilization and availability of EBEs in the City of Milwaukee's relevant market area.

6.1 Construction

The disparity analysis for all Construction subcontracts is shown in **Table 6-1**. During the four year study period, African American, Asian American and nonminority Women owned firms were significantly underutilized with disparity indices of 52.86, 0.00 and 30.95 respectively. Hispanic American owned firms received the largest total contract dollars, receiving over $6.6 million or 8.12 percent; they were the third highest group in availability. African American owned firms were the second highest group in availability and total contract dollars, receiving over $2.4 million or 2.94 percent of the total contract dollars spent by the City. The following is a summary of the analysis for the overall study period:

African Americans

- FY2005 through FY2008 – significantly underutilized as a subcontractor with a disparity index of 52.86. The availability analysis indicates that 5.57 percent of the firms available were owned by African Americans.

Native Americans

- FY2005 through FY2008 – overutilized as a subcontractor with a disparity index of 1985.60. The availability analysis indicates that 0.10 percent of the firms available were owned by Native Americans.

Table 6-1
Construction
Fiscal Years 2005 - 2008
Subcontractor Disparity Analysis
Ethnicity Classification
City of Milwaukee

Ethnicity Classifications	# of Awarded Contracts	Contract Dollars	% of Dollars[1]	% of Firms Available[2]	Disparity Index[3]	Disparity Impact Under/Over Utilization
2005						
African Americans	56	$1,081,837	2.92%	5.57%	52.44	* Underutilization
Native Americans	27	$625,702	1.69%	0.10%	1,689.41	Overutilization
Asian Americans	0	$0	0.00%	0.07%	0.00	* Underutilization
Hispanic Americans	109	$2,164,841	5.85%	3.41%	171.41	Overutilization
Nonminority Women	47	$1,091,697	2.95%	7.31%	40.32	* Underutilization
Other EBEs	12	$205,913	0.56%	0.01%	5,559.70	Overutilization
2006						
African Americans	23	$626,242	2.33%	5.57%	41.78	* Underutilization
Native Americans	18	$693,612	2.58%	0.10%	2,577.76	Overutilization
Asian Americans	0	$0	0.00%	0.07%	0.00	* Underutilization
Hispanic Americans	69	$2,602,389	9.67%	3.41%	283.62	Overutilization
Nonminority Women	23	$551,968	2.05%	7.31%	28.06	* Underutilization
Other EBEs	12	$609,669	2.27%	0.01%	22,657.89	Overutilization
2007						
African Americans	33	$605,941	3.63%	5.57%	65.18	* Underutilization
Native Americans	12	$307,838	1.84%	0.10%	1,844.35	Overutilization
Asian Americans	0	$0	0.00%	0.07%	0.00	* Underutilization
Hispanic Americans	65	$1,691,660	10.14%	3.41%	297.22	Overutilization
Nonminority Women	25	$205,209	1.23%	7.31%	16.82	* Underutilization
Other EBEs	9	$404,530	2.42%	0.01%	24,236.55	Overutilization
2008						
African Americans	5	$98,704	7.52%	5.57%	135.01	Overutilization
Native Americans	0	$0	0.00%	0.10%	0.00	* Underutilization
Asian Americans	0	$0	0.00%	0.07%	0.00	* Underutilization
Hispanic Americans	7	$194,741	14.84%	3.41%	435.09	Overutilization
Nonminority Women	2	$5,266	0.40%	7.31%	5.49	* Underutilization
Other EBEs	1	$13,571	1.03%	0.01%	10,339.45	Overutilization
OVERALL						
African Americans	117	$2,412,724	2.94%	5.57%	52.86	* Underutilization
Native Americans	57	$1,627,153	1.99%	0.10%	1,985.60	Overutilization
Asian Americans	0	$0	0.00%	0.07%	0.00	* Underutilization
Hispanic Americans	250	$6,653,631	8.12%	3.41%	238.10	Overutilization
Nonminority Women	97	$1,854,140	2.26%	7.31%	30.95	* Underutilization
Other EBEs	34	$1,233,684	1.51%	0.01%	15,054.52	Overutilization

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008.
Note: EBEs include certified and non-certified minority and women owned businesses.
[1] The percentage of dollars from the prime utilization.
[2] The percentage of available firms.
[3] The disparity index is % utilization divided by % availability multiplied by 100.
* Significantly underutilized - disparity index below 80.00.

Asian Americans

- FY2005 through FY2008 – significantly underutilized as a subcontractor with a disparity index of 0.00. The availability analysis indicates that 0.07 percent of the firms available were owned by Asian Americans.

Hispanic Americans

- FY2005 through FY2008 – overutilized as a subcontractor with a disparity index of 238.10. The availability analysis indicates that 3.41 percent of the firms available were owned by Hispanic Americans.

Nonminority Women

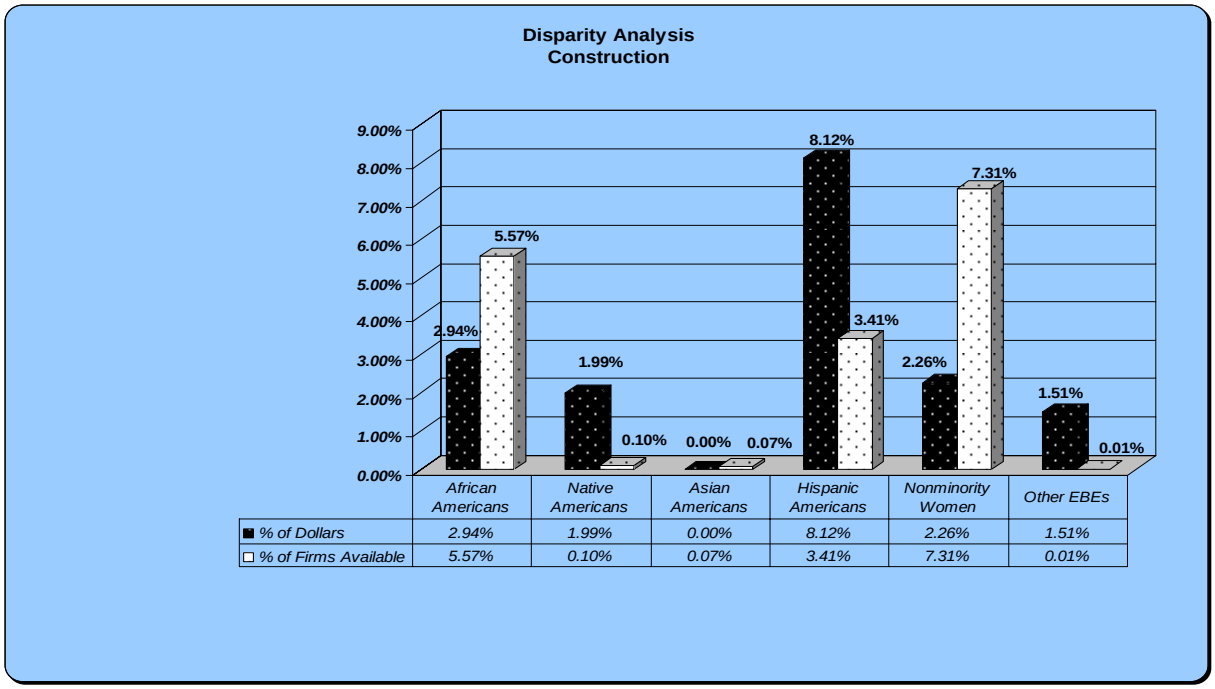
- FY2005 through FY2008 – significantly underutilized as a subcontractor with a disparity index of 30.95. The availability analysis indicates that 7.31 percent of the firms available were owned by nonminority Women.

Other EBEs

- FY2005 through FY2008 – overutilized as a subcontractor with a disparity index of 15,054.52. The availability analysis indicates that 0.01 percent of the firms available were owned by Other EBEs.

Table 6-2 presents a comparison of each EBE group's utilization compared to their availability.

Table 6-2 Construction – Comparison of EBE Utilization vs. Availability



	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Other EBEs
% of Dollars	2.94%	1.99%	0.00%	8.12%	2.26%	1.51%
% of Firms Available	5.57%	0.10%	0.07%	3.41%	7.31%	0.01%

6.2 Professional Services

Professional Services is not included in the analysis because there was only one subcontract during the study period in the amount of $31,226 which represents 0.32 percent of the total contract dollars.

6.3 Goods and Services

The disparity analysis for all Goods and Services subcontracts is shown in **Table 6-3**. During the four year study period, Native Americans, Hispanic Americans and nonminority Women owned firms were significantly underutilized with disparity indices of 0.00, 17.18 and 0.72 respectively; African American owned firms were underutilized with a disparity index of 86.97. African American owned firms received the largest total contract dollars, receiving over $1.2 million or 6.25 percent; they were the second highest group in availability. The following is a summary of the analysis for the overall study period:

African Americans

- FY2005 through FY2008 – underutilized as a subcontractor with a disparity index of 86.97. The availability analysis indicates that 7.19 percent of the firms available were owned by African Americans.

Native Americans

- FY2005 through FY2008 – significantly underutilized as a subcontractor with a disparity index of 0.00. The availability analysis indicates that 0.17 percent of the firms available were owned by Native Americans.

Asian Americans

- FY2005 through FY2008 – overutilized as a subcontractor with a disparity index of 189.64. The availability analysis indicates that 0.63 percent of the firms available were owned by Asian Americans.

Hispanic Americans

- FY2005 through FY2008 – significantly underutilized as a subcontractor with a disparity index of 17.18. The availability analysis indicates that 3.23 percent of the firms available were owned by Hispanic Americans.

Nonminority Women

- FY2005 through FY2008 – significantly underutilized as a subcontractor with a disparity index of 0.72. The availability analysis indicates that 17.09 percent of the firms available were owned by nonminority Women.

Other EBEs

- FY2005 through FY2008 – overutilized as a subcontractor with a disparity index of 207.74. The availability analysis indicates that 0.17 percent of the firms available were owned by Other EBEs.

Table 6-3
Goods and Services
Fiscal Years 2005 - 2008
Subcontractor Disparity Analysis
Ethnicity Classification
City of Milwaukee

Ethnicity Classifications	# of Awarded Contracts	Contract Dollars	% of Dollars[1]	% of Firms Available[2]	Disparity Index[3]	Disparity Impact Under/Over Utilization
2005						
African Americans	0	$0	0.00%	7.19%	0.00	* Underutilization
Native Americans	0	$0	0.00%	0.17%	0.00	* Underutilization
Asian Americans	0	$0	0.00%	0.63%	0.00	* Underutilization
Hispanic Americans	2	$49,828	2.84%	3.23%	87.94	Underutilization
Nonminority Women	1	$25,273	1.44%	17.09%	8.43	* Underutilization
Nonminority EBEs	1	$5,788	0.33%	0.17%	194.09	Overutilization
2006						
African Americans	1	$2,167	0.17%	7.19%	2.32	* Underutilization
Native Americans	0	$0	0.00%	0.17%	0.00	* Underutilization
Asian Americans	0	$0	0.00%	0.63%	0.00	* Underutilization
Hispanic Americans	0	$0	0.00%	3.23%	0.00	* Underutilization
Nonminority Women	0	$0	0.00%	17.09%	0.00	* Underutilization
Nonminority EBEs	0	$0	0.00%	0.17%	0.00	* Underutilization
2007						
African Americans	1	$16,198	1.19%	7.19%	16.56	* Underutilization
Native Americans	0	$0	0.00%	0.17%	0.00	* Underutilization
Asian Americans	0	$0	0.00%	0.63%	0.00	* Underutilization
Hispanic Americans	0	$0	0.00%	3.23%	0.00	* Underutilization
Nonminority Women	0	$0	0.00%	17.09%	0.00	* Underutilization
Nonminority EBEs	0	$0	0.00%	0.17%	0.00	* Underutilization
2008						
African Americans	3	$1,267,250	7.85%	7.19%	109.17	Overutilization
Native Americans	0	$0	0.00%	0.17%	0.00	* Underutilization
Asian Americans	1	$245,629	1.52%	0.63%	241.51	Overutilization
Hispanic Americans	1	$64,276	0.40%	3.23%	12.33	* Underutilization
Nonminority Women	0	$0	0.00%	17.09%	0.00	* Underutilization
Nonminority EBEs	2	$66,819	0.41%	0.17%	243.47	Overutilization
OVERALL						
African Americans	5	$1,285,615	6.25%	7.19%	86.97	Underutilization
Native Americans	0	$0	0.00%	0.17%	0.00	* Underutilization
Asian Americans	1	$245,629	1.19%	0.63%	189.64	Overutilization
Hispanic Americans	3	$114,104	0.55%	3.23%	17.18	* Underutilization
Nonminority Women	1	$25,273	0.12%	17.09%	0.72	* Underutilization
Nonminority EBEs	3	$72,607	0.35%	0.17%	207.74	Overutilization

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008.
Note: EBEs include certified and non-certified minority and women owned businesses.

[1] The percentage of dollars from the prime utilization.

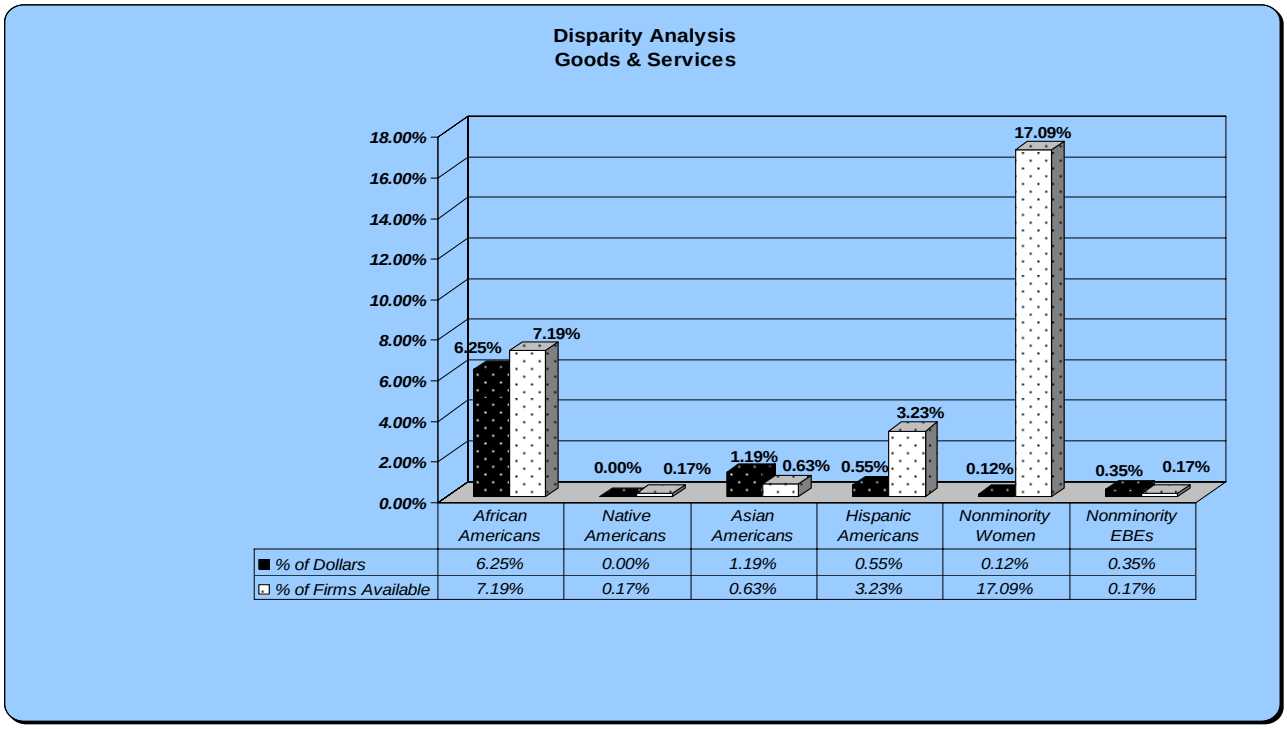
[2] The percentage of available firms.

[3] The disparity index is % utilization divided by % availability multiplied by 100.

* Significantly underutilized - disparity index below 80.00.

Table 6-4 presents a comparison of each EBE group's utilization compared to their availability.

Table 6-4 Goods and Services – Comparison of EBE Utilization vs. Availability



	African Americans	Native Americans	Asian Americans	Hispanic Americans	Nonminority Women	Nonminority EBEs
% of Dollars	6.25%	0.00%	1.19%	0.55%	0.12%	0.35%
% of Firms Available	7.19%	0.17%	0.63%	3.23%	17.09%	0.17%

CHAPTER 7.0 – BUSINESS DEMOGRAPHIC SURVEY ANALYSIS

CHAPTER 7.0 – BUSINESS DEMOGRAPHIC SURVEY ANALYSIS

7.1 Introduction

This section describes the results of business information collected from an online survey of firms located within the identified statistically relevant market area. The collection of quantitative data and personal comments related to the City of Milwaukee EBE Program, contracting practices and instances of discrimination are important components of the City of Milwaukee Disparity Study (Study). This information and analytical data provide a better understanding of the availability and contracting culture within the City of Milwaukee.

7.2 Methodology

7.2.1 Online Survey of Firms

The online business survey was launched on May 4, 2010 and remained open to collect responses until June 9, 2010. Best practice procedures were followed in developing, testing and collecting the online survey data.

The Disparity Study Team researched public and private resources having databases containing contact information on businesses located in Wisconsin and surrounding relevant market areas. A Master Vendor Table of firms was supplemented using an email append process gathered from various Internet sources. Additionally, key agencies, such as the U.S. Small Business Administration, State of Wisconsin Department of Transportation (WisDOT), City of Milwaukee, Milwaukee Metropolitan Sewerage District (MMSD), University of Wisconsin-Milwaukee Small Business Development Center, regional Chambers of Commerce, and local business and community organizations were contacted for email lists and as a distribution channel to members. The total number of email contacts collected for notification of the survey was 5,045.

A draft survey instrument was developed by the project team and minor changes were made to accommodate an online survey format. Additional changes were recommended after comments were received by small businesses in the first two weeks after the survey launched. These included small adjustments that clarified the required and non-required questions to facilitate more participation by a wider audience. The online survey was developed using SurveyMonkey.com, a commercially-available software application. This tool allowed for flexible online collection methods, advanced filtering, and analysis. A printed PDF copy of the online survey is included in Appendix B.

An email invitation was created to invite small business owners to participate in the online business survey. SurveyMonkey was used to develop, distribute, track and manage bounces. The first email was distributed on May 4, 2010 and included an overview of the Study with a link to the survey. A reminder email was sent on May 13, 2010 to all contacts that had not yet responded. In an effort to gather additional business information, an email invitation was sent on May 19, 2010 to open email lists of Wisconsin businesses that were not matched to the Master Vendor Table. On June 1, 2010, a final email was delivered to local business and community organizations requesting that they forward the information to their members and colleagues. The survey was closed to responses on June 9, 2010.

The survey included 39 questions, many of them open-ended, which allowed some qualitative data to be obtained, in addition to the quantitative business information. The questions were divided into four categories. First, general demographic and availability/capacity questions were asked about the business, goods and services, ownership, and bonding and insurance levels. This provided a basic business profile for the businesses that were surveyed and helped to determine how many of the businesses surveyed had the ability to do business with the City of Milwaukee.

The next set of questions related specifically to the WisDOT DBE and City of Milwaukee EBE programs. Business owners were asked if their firm was certified and their opinion of the programs. This provided insight into the perceptions of Federal and City programs, and the benefits received. The third set of questions addressed possible barriers that business owners may have encountered attempting to do business with the City. Participants were provided with a list of possible barriers and asked if they had experienced any barriers that might have prevented them from doing work with the City. The last set of questions addressed possible discriminatory practices by prime contractors and the City. If the respondent indicated that they had submitted a bid or received a contract as a subcontractor/subconsultant, they were asked whether they had experienced certain business practices with prime contractors.

Once the survey was implemented, responses were automatically collected and stored in an online database. The Disparity Study Team managed all email and phone questions related to the survey. In some cases, a hard copy of the survey was emailed to individuals who made a request to complete it on paper before entering the information online. General comments were also fielded and retained for the record.

A total of 743 individuals took part in the survey. Only one survey per ISP address was allowed to eliminate duplicates. The survey was anonymous and did not require that the individual provide contact information. However, respondents were asked to provide contact information if they were interested in participating in the anecdotal information process.

Additionally, not all questions were required, which allowed respondents to skip questions and only complete required business information. Lastly, respondents were able to leave the survey at any time without completing to the end. A total of 466 of the 743 (62.7%) who initiated the survey completed the entire survey.

7.3 Business Analysis

The business survey captured general characteristics about relevant market area businesses and asked questions related to contracting barriers, opinions relative to City of Milwaukee contracting and EBE programs, discrimination, and business practices that may have prevented the business from obtaining work with the City.

Representatives from 743 firms participated in the survey and 466 completed the survey to the end (63 percent). Of the total number of participants (743), 316 (43 percent) firms had submitted a bid or proposal or received a contract with the City of Milwaukee during the past five years. Of the 508 firms that responded to the question asking whether they were interested in doing business with the City of Milwaukee, 97 percent (492) indicated “yes.”

Because not all questions in the survey were required, some respondents did not answer certain questions and therefore the total respondents values vary in the exhibits below. In some cases, the total value reflects a number much lower than the total number of firms represented in the survey. Also, one of the areas of interest in this analysis was the level of similarity and difference between business owner groups categorized by race/ethnicity/gender. In that regard, responses from survey participants who provided insufficient information for race/ethnicity/gender categorization were excluded from analysis.

7.3.1 Business Characteristics

The following tables summarize the questions designed to establish a business profile for the businesses surveyed. These questions focused on the following areas: primary line of business, number of years in business, organizational structure, race/ethnicity of controlling partner or owner, gender of controlling partner or owner; years of experience of owner, highest level of education completed by owner, total number of employees and gross receipts.

Primary Line of Business

Participants were given the option to select from three subgroups of SIC codes to describe their respective lines of business. These groups were construction services, professional services and general goods and services. The individual choices are shown in the survey instrument included in Appendix B.

Table 7-1. Primary Line of Business.

Type of Work	Total
Construction	474
Professional Services	427
Goods & Services	410
Total	**1,311**

The tally of frequencies (1,311) reflects a total greater than the actual number of firms that completed the survey because many firms indicated an ability to provide services in multiple categories. In total, there were slightly more responses from firms providing construction services than those providing professional services or general goods and services. The overlap in services and lack of major distinction between business categories precludes in-depth discussion of the unique characteristics of firms by line of business.

Another way to look at the primary line of business is to evaluate the number of respondents categorizing themselves as contractors versus consultants. **Table 7-2** below shows that there were significantly more contractors (nearly 70 percent combined prime and sub) responding than consultants. It is significant to note that Black and Hispanic firms primarily categorized themselves as subcontractors, while the majority (46.3 percent) of White male-owned firms were categorized as prime contractors. Meanwhile, White woman-owned firms were fairly equal in representation between contractor and consultant.

There were 98 participants that provided “Other” comments in response to this question. The majority indicated that the firm had not yet received a contract from the City and therefore they could not classify themselves. There were 16 firms that indicated they were a supplier/distributor and also did not fit the traditional prime and sub categories.

Table 7-2. Contractors vs. Consultants.

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Prime Contractor	37.5% (12)	30.6% (23)	27.5% (11)	42.8% (9)	40.0% (2)	36.2% (29)	46.0% (88)	39.3% (174)
Sub Contractor	25.0% (8)	34.6% (26)	32.5% (13)	23.8% (5)	60.0% (3)	32.5% (26)	28.3% (54)	30.2% (134)
Prime Consultant	3.1% (1)	5.3% (4)	7.5% (3)	0.0% (0)	0.0% (0)	3.7% (3)	6.3% (12)	5.2% (23)
Sub Consultant	18.7% (6)	12.0% (9)	17.5% (7)	0.0% (0)	0.0% (0)	6.2% (5)	2.6% (5)	7.2% (32)
Other	15.6% (5)	17.3% (13)	15.0% (6)	33.3% (7)	0.0% (0)	21.2% (17)	16.8% (32)	18.1% (80)
Total	**32**	**75**	**40**	**21**	**5**	**80**	**191**	**443**

Business Structure

As reflected in **Table 7-3** below, a large majority of the firms interviewed were either corporations or limited liability corporations.

Table 7-3. Business Structure.

Business Structure	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Sole Proprietorship	7.7% (3)	13.8% (11)	11.4% (5)	0.0% (0)	20.0% (1)	5.1% (5)	11.1% (24)	9.7% (49)
Partnership	5.1% (2)	0.0% (0)	0.0% (0)	5.0% (1)	0.0% (0)	3.0% (3)	1.4% (3)	1.8% (9)
Corporation	53.8% (21)	41.3% (33)	56.8% (25)	75.0% (15)	60.0% (3)	62.6% (62)	68.7% (149)	61.1% (308)
Limited Liability Partnership	0.0% (0)	2.5% (2)	6.8% (3)	5.0% (1)	0.0% (0)	4.0% (4)	2.8% (6)	3.2% (16)
Limited Liability Corporation	33.3% (13)	42.5% (34)	25.0% (11)	15.0% (3)	20.0% (1)	25.3% (25)	16.1% (35)	24.2% (122)
Joint Venture	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)
Total	**39**	**80**	**44**	**20**	**5**	**99**	**217**	**504**

Years in Business

As **Table 7-4** shows, firms represented in the survey tended to be in operation for 20 years or less. Nearly 60 percent of all firms were in this group and more than 35 percent had been in business for less than 10 years.

It is important to note that only the White male-owned firms had any significant presence in the group with over 30 years in business. Very few of the Black, Hispanic or Native American firms responding had been in business longer than 30 years. There was a fairly significant number (23 percent) of White male-owned firms that had been in business more than 50 years as compared to other ethnic groups.

Table 7-4. Years in Business.

Years in Business	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
0-5	12.8% (5)	43.8% (35)	25.0% (11)	35.0% (7)	16.7% (1)	17.8% (18)	13.8% (30)	21.1% (107)
6-10	17.9% (7)	23.8% (19)	18.2% (8)	5.0% (1)	33.3% (2)	16.8% (17)	11.1% (24)	15.4% (78)
11-20	30.8% (12)	21.3% (17)	31.8% (14)	25.0% (5)	16.7% (1)	23.8% (24)	20.3% (44)	23.1% (117)
21-30	20.5% (8)	10.0% (8)	15.9% (7)	20.0% (4)	16.7% (1)	16.8% (17)	15.7% (34)	15.6% (79)
31-40	5.1% (2)	0.0% (0)	4.5% (2)	10.0% (2)	0.0% (0)	5.0% (5)	9.7% (21)	6.3% (32)
41-50	5.1% (2)	0.0% (0)	2.3% (1)	0.0% (0)	0.0% (0)	5.0% (5)	6.9% (15)	4.5% (23)
51+	7.7% (3)	1.3% (1)	2.3% (1)	5.0% (1)	16.7% (1)	14.9% (15)	22.6% (49)	14.0% (71)
Total	**39**	**80**	**44**	**20**	**6**	**101**	**217**	**507**

Years of Experience

For all ethnic groups, the largest percentage of owners had between 11 – 20 years of experience. As a result, the majority of owners were very familiar with the industry in which they worked. When comparing this result to responses concerning years in business, it is apparent that some of the respondents formed businesses recently but have been working in their individual industries for a sustained period. Only White male-owned firms had the highest respondent rate in the 31 – 40 years of experience category.

Table 7-5 below provides a breakdown by race/ethnicity of the level of work experience accumulated by the majority owner of each responding business.

Table 7-5. Business Owner Years of Experience.

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
0-10	17.9% (7)	24.1% (19)	7.1% (3)	26.3% (5)	20.0% (1)	13.1% (13)	7.0% (15)	12.7% (63)
11-20	28.2% (11)	25.3% (20)	45.2% (19)	21.1% (4)	40.0% (2)	27.3% (27)	22.0% (47)	26.2% (130)
21-30	28.2% (11)	24.1% (19)	33.3% (14)	21.1% (4)	20.0% (1)	35.4% (35)	27.1% (58)	28.6% (142)
31-40	12.8% (5)	17.7% (14)	11.9% (5)	21.1% (4)	0.0% (0)	15.2% (15)	28.5% (61)	20.9% (104)
41-50	7.7% (3)	1.3% (1)	0.0% (0)	10.5% (2)	0.0% (0)	3.0% (3)	7.0% (15)	4.8% (24)
50+	2.6% (1)	7.6% (6)	2.4% (1)	0.0% (0)	0.0% (0)	6.1% (6)	7.9% (17)	6.2% (31)
Don't Know	2.6% (1)	0.0% (0)	0.0% (0)	0.0% (0)	20.0% (1)	0.0% (0)	0.5% (1)	0.6% (3)
Total	**39**	**79**	**42**	**19**	**5**	**99**	**214**	**497**

Highest Level of Education Completed by the Firm's Owner

College graduates and post graduates had the highest number of responses for the owner's level of education. Together these made up nearly 64 percent of the total responses. By ethnic group, the analysis shows that African American and Asian American firm owners were more likely to have post-graduate degrees. Asian-owned firms had the highest percentage of post-graduates. Only 12 percent of respondents never attended college. This is evidence that a majority of business owners have advanced degrees and this level of education may contribute to a company's success.

Table 7-6 below provides a breakdown by race/ethnicity of the education level acquired by the majority owner of each responding business.

Table 7-6. Business Owner Education Level.

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Some High School	5.3% (2)	6.3% (5)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.9% (2)	1.8% (9)
High School graduate	0.0% (0)	11.4% (9)	14.0% (6)	26.3% (5)	0.0% (0)	10.2% (10)	9.4% (20)	10.1% (50)
Some College	5.3% (2)	22.8% (18)	20.9% (9)	31.6% (6)	0.0% (0)	19.4% (19)	19.7% (42)	19.4% (96)
College Graduate	34.2% (13)	27.8% (22)	37.2% (16)	15.8% (3)	80.0% (4)	34.7% (34)	42.7% (91)	36.9% (183)
Post Graduate	52.6% (20)	29.1% (23)	23.3% (10)	15.8% (3)	20.0% (1)	30.6% (30)	21.6% (46)	26.8% (133)
Trade or Technical Certificate	0.0% (0)	2.5% (2)	4.7% (2)	10.5% (2)	0.0% (0)	5.1% (5)	3.8% (8)	3.8% (19)
Don't Know	2.6% (1)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	1.9% (4)	1.0% (5)
Total	**38**	**79**	**43**	**19**	**5**	**98**	**213**	**495**

Firm Size

Regardless of race/ethnicity or gender of the business owner, the vast majority of firms that completed the survey were small businesses with more than half of all businesses reporting having 10 or less full time employees and 85 percent of the total having less than 50 full time employees. These statistics are not surprising since small businesses are the most occurring size of business establishment. According to the latest data from the U.S. Census Bureau's Statistics of U.S. Businesses (SUSB), 90 percent of all firms in the U.S. have less than 20 employees and 99 percent of U.S. firms have less than 100 employees. **Table 7-7** below shows a breakdown of firm size by race/ethnicity.

Table 7-7. Size of Firms.

Total Number of Employees	Full-time	Part-time
0-10	315	171
11-50	161	24
51-100	36	11
101-250	26	3
251-500	9	1
More than 500	10	5
Total	**557**	**215**

Gross Receipts

Table 7-8 below summarizes the gross receipts of respondent firms for FY 2008. Although the highest reporting category were those firms earning between $1 million and $3 million, nearly half of all firms earned less than $1 million in 2008.

Table 7-8. Gross Receipts.

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
$50,000 or less	7.7% (3)	36.3% (29)	22.7% (10)	15.0% (3)	33.3% (2)	9.9% (10)	10.6% (23)	15.7% (80)
$50,001 - $100,000	2.6% (1)	7.5% (6)	6.8% (3)	10.0% (2)	0.0% (0)	5.0% (5)	4.1% (9)	5.1% (26)
$100,001 - $300,000	12.8% (5)	16.3% (13)	15.9% (7)	25.0% (5)	33.3% (2)	12.9% (13)	9.2% (20)	12.8% (65)
$300,001 - $500,000	5.1% (2)	5.0% (4)	2.3% (1)	5.0% (1)	0.0% (0)	7.9% (8)	4.6% (10)	5.1% (26)
$500,001 - $1,000,000	15.4% (6)	12.5% (10)	11.4% (5)	5.0% (1)	0.0% (0)	13.9% (14)	8.7% (19)	10.8% (55)
$1,000,001 - $3,000,000	12.8% (5)	8.8% (7)	25.0% (11)	10.0% (2)	16.7% (1)	27.7% (28)	17.4% (38)	18.1% (92)
$3,000,001 - $5,000,000	7.7% (3)	10.0% (8)	2.3% (1)	15.0% (3)	0.0% (0)	8.9% (9)	11.5% (25)	9.6% (49)
$5,000,001 to $10,000,000	7.7% (3)	3.8% (3)	6.8% (3)	15.0% (3)	0.0% (0)	5.0% (5)	11.9% (26)	8.5% (43)
$10,000,001 to $20,000,000	17.9% (7)	0.0% (0)	4.5% (2)	0.0% (0)	0.0% (0)	5.0% (5)	11.9% (26)	7.9% (40)
More than $20,000,000	10.3% (4)	0.0% (0)	2.3% (1)	0.0% (0)	16.7% (1)	4.0% (4)	10.1% (22)	6.3% (32)
Total	**39**	**80**	**44**	**20**	**6**	**101**	**218**	**508**

All ethnic groups other than Asian were most likely to be the lowest revenue earners. White male-owned firms and Asian-owned firms topped the revenue list as those in the highest revenue earning category of more than $20 million. Native American and Pacific Islander-owned firms were fairly equally spread between all revenue categories. White women-owned firms had the greatest percentage of firms earning less than $5 million. Hispanic-owned firms and Black-owned firms were most likely to earn $50,000 or less.

7.3.2 Comparison of Minority and Woman-owned Firm Demographics vs. White Male-owned Firms

Even though the majority of firms surveyed were small businesses with less than 10 full-time employees, White male-owned firms generally had higher gross revenues and had been in business longer than minority and woman-owned firms. It is evident that minority and woman-owned firms are younger, on average, than their non-minority male-owned counterparts. While nearly 40 percent of the White male-owned firms had been in business more than 30 years, less than 20 percent of all minority and woman-owned firms had been in business that long.

Across the board, the firms with higher gross revenues were White male-owned firms. Other than Asian-owned firms, minority and woman-owned firms had gross revenues lower than White male-owned firms. Although the majority of all firms tended to fall into the revenue category of $1 million to $3 million, 41 percent of minority and woman-owned firms reported gross revenues of less than $300,000 as compared to 24 percent of White male-owned firms. Overall, Black-owned firms had the lowest reported gross revenues. At the upper end of the gross revenue scale, the reverse is true – only 14 percent of minority and woman-owned firms earned more than $5 million versus 34 percent of White male-owned firms. As mentioned previously Asian-owned firms did have better representation in higher revenue categories. However, there was a fairly low sample representation in this demographic that provided gross revenue numbers. The same situation existed for firms owned by Native Americans and Native Hawaiian or Pacific Islanders.

Although it has been suggested that lack of qualifications, rather than discrimination, is the reason for observed adverse disparities facing minority and woman-owned firms, the findings related to the highest level of education reached by the firm's primary owner provides evidence to the contrary. Minority and woman-owned firms were, on average, equally as educated as White male-owned firms. Asian-owned firms were the most educated with 87 percent having obtained college or post-graduate degrees. Woman-owned firms also had a high percentage (65 percent) reporting secondary education at almost the same rate (64 percent) as White male-owned firms. Nearly 57 percent of Black business owners had secondary degrees. Only Native American-owned firms fell slightly behind but the majority still had some college or advanced degrees. The low number of Pacific-Islanders reporting on owner education does not provide enough data for a comparative analysis.

7.3.3 Willingness of Firms to Contract in the Public Sector

The value of anecdotal evidence of discrimination increases when it comes from firms that have actually worked or attempted to work for the public sector. On the business survey,

firms were asked how many public and private projects they had submitted a bid for and how many contracts they received. A total of 460 firms responded.

Table 7-9 below shows that 67 percent of firms had bid for government work as a prime contractor five times or less. Given the comments from many firms that they had not yet worked with the City, it is likely that many of the 231 firms showing 0-5 bids had not submitted a bid at all. This corresponds to the relatively low number of public contracts that had been received. Conversely, there were a significantly higher percentage of firms that had submitted bids and received contracts in the private sector. This trend was seen especially for those that submitted more than 50 bids (32.4 percent).

Table 7-9. Public and Private Prime Contracting.

Prime	0-5	6-10	11-20	21-30	31-50	> 50	Totals
Number of public (government) bids	67.0% (231)	11.3% (39)	7.5% (26)	2.3% (8)	1.7% (6)	10.1% (35)	345
Number of public contracts	82.0% (246)	7.0% (21)	3.7% (11)	1.3% (4)	1.0% (3)	5.0% (15)	300
Number of private sector bids	37.7% (122)	13.9% (45)	9.3% (30)	4.3% (14)	2.5% (8)	32.4% (105)	324
Number of private contracts	43.7% (124)	15.1% (43)	10.2% (29)	4.2% (12)	3.9% (11)	22.9% (65)	284

Overall, there were a slightly smaller percentage of firms that had submitted bids on a public sector project as a subcontractor. As shown in **Table 7-10**, the numbers again reveal that most submitted less than five bids. In general, there were a higher percentage of firms that had attempted to prime and received contracts in the private sector than in the public sector. The ratio of bids to contracts was also better in the private sector than in the public sector.

Table 7-10. Public and Private Subcontracting.

Subcontractor	0-5	6-10	11-20	21-30	31-50	> 50	Totals
Number of public (government) bids	64.6% (164)	7.9% (20)	5.1% (13)	6.3% (16)	3.5% (9)	12.6% (32)	254
Number of public contracts	76.8% (195)	7.1% (18)	7.9% (20)	2.8% (7)	1.6% (4)	3.9% (10)	254
Number of private sector bids	46.8% (108)	16.0% (37)	9.1% (21)	3.9% (9)	1.7% (4)	22.5% (52)	231
Number of private contracts	59.5% (138)	15.5% (36)	3.9% (9)	4.3% (10)	1.3% (3)	15.5% (36)	232

As shown in **Tables 7-11** and **7-12**, a majority of firms that responded to the survey typically earned more revenue in the private sector than in the public sector. Generally, the split was approximately 85 percent private and 15 percent public. Aligning with the number of firms responding that had not done business with the City, almost 18 percent of firms had not received any revenue from public contracts during the Study period. This correlates to the nearly 25 percent of all firms that reported they received 100 percent of their revenue from the private sector.

Table 7-11. Percentage of Gross Receipts from Public Sector.

Public Sector % of Gross Receipts	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
0	11.4% (4)	25.4% (18)	26.3% (10)	12.5% (2)	20.0% (1)	15.4% (14)	16.0% (31)	17.8% (80)
5-15	28.6% (10)	15.5% (11)	18.4% (7)	25.0% (4)	20.0% (1)	36.3% (33)	43.3% (84)	33.3% (150)
20-30	14.3% (5)	9.8% (7)	7.9% (3)	0.0% (0)	0.0% (0)	18.7% (17)	14.0% (27)	13.1% (59)
35-45	11.4% (4)	8.4% (6)	7.9% (3)	0.0% (0)	0.0% (0)	7.7% (7)	2.6% (5)	5.5% (25)
50-60	5.7% (2)	7.0% (5)	18.4% (7)	18.7% (3)	0.0% (0)	3.3% (3)	9.8% (19)	8.7% (39)
65-75	11.4% (4)	8.4% (6)	13.2% (5)	0.0% (0)	0.0% (0)	6.6% (6)	6.7% (13)	7.5% (34)
80-95	17.1% (6)	12.7% (9)	7.9% (3)	43.7% (7)	20.0% (1)	5.5% (5)	6.2% (12)	9.5% (43)
100	0.0% (0)	12.7% (9)	0.0% (0)	0.0% (0)	40.0% (2)	6.6% (6)	1.5% (3)	4.4% (20)
total	35	71	38	16	5	91	194	450

Table 7-12. Percentage of Gross Receipts from Private Sector.

Private Sector % of Gross Receipts	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
0	0.0% (0)	8.5% (6)	4.9% (2)	5.0% (1)	25.0% (1)	4.2% (4)	1.8% (4)	3.7% (18)
5-15	11.1% (4)	11.3% (8)	4.9% (2)	25.0% (5)	25.0% (1)	4.2% (4)	2.8% (6)	6.2% (30)
20-30	11.1% (4)	11.3% (8)	12.2% (5)	1.0% (2)	0.0% (0)	6.3% (6)	7.0% (15)	8.3% (40)
35-45	8.3% (3)	2.8% (2)	2.4% (1)	15.0% (3)	0.0% (0)	1.0% (1)	6.5% (14)	4.9% (24)
50-60	11.1% (4)	8.5% (6)	19.5% (8)	0.0% (0)	0.0% (0)	8.3% (8)	5.6% (12)	7.9% (38)
65-75	11.1% (4)	12.7% (9)	4.9% (2)	0.0% (0)	0.0% (0)	10.4% (10)	7.0% (15)	8.3% (40)
80-95	33.3% (12)	16.9% (12)	21.9 % (9)	20.0% (4)	25.0% (1)	41.7% (40)	44.4% (95)	35.9% (173)
100	13.9% (5)	28.2% (20)	29.3% (12)	25.0% (5)	25.0% (1)	23.9% (23)	34.8% (53)	24.7% (119)
total	36	71	41	20	4	96	214	482

With relatively little difference in the revenue split of all ethnic groups, with the exception of Black-owned firms that earned the lowest, it is important to review the level of contracting activity in the public and private sectors to determine if the size of contracts relate to a particular ethnic group.

After removing those reporting that they had not received a public prime contract (103) or subcontracts (124), **Table 7-13** below shows that the majority of all government prime contracts were valued between $100,000 and $500,000. This was consistent regardless of race/ethnicity with the exception of Woman-owned firms which had a slightly higher number of respondents indicating that the largest contract they had received was between $50,000 and $1,000,000.

Subcontracts in the public sector tended to have a similar overall dollar value to prime contracts for all ethnic groups. A majority of subcontracts for Asian, Black, and Hispanic-owned firms fell within the range of $100,000 to $500,000. This pattern was also reflected in the numbers for White male-owned firms. Only White woman-owned firms had lower average subcontract values between $10,000 and $100,000.

Table 7-13. Size of Public Contracts.

Value of Largest Public Prime Contract	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
$0	11.5% (3)	35.1 % (20)	37.0% (10)	15.4% (2)	0.0% (0)	25.7% (18)	30.7 % (50)	28.6% (103)
$1 - $5,000	15.4% (4)	10.5 % (6)	7.4% (2)	15.4% (2)	25.0% (1)	7.1% (5)	10.4 % (17)	10.3% (37)
$5,001 - $10,000	0.0% (0)	3.5% (2)	0.0% (0)	0.0% (0)	25.0% (1)	5.7% (4)	6.7% (11)	5.0% (18)
$10,001 - $50,000	23.1% (6)	10.5 % (6)	11.1% (3)	0.0% (0)	0.0% (0)	14.3% (10)	16.0 % (26)	14.2% (51)
$50,001 - $100,000	7.7% (2)	7.0% (4)	11.1% (3)	0.0% (0)	25.0% (1)	18.6% (13)	9.2% (15)	10.5% (38)
$100,001 - $500,000	23.1% (6)	26.3 % (15)	11.1% (3)	38.5% (5)	25.0% (1)	14.3% (10)	12.9 % (21)	16.9% (61)
$500,001 - $1,000,000	3.8% (1)	3.5% (2)	3.7% (1)	15.4% (2)	0.0% (0)	4.3% (3)	2.5% (4)	3.6% (13)
More than $1,000,000	15.4% (4)	3.5% (2)	18.5% (5)	15.4% (2)	0.0% (0)	10.0% (7)	11.7 % (19)	10.8% (39)
total	26	57	27	13	4	70	163	360

Value of Largest Public Sub Contract	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
$0	20.8% (5)	36.2 % (21)	16.7% (5)	36.4% (4)	100.0% (1)	37.3% (19)	52.7 % (69)	40.5% (124)
$1 - $5,000	4.2% (1)	8.6% (5)	6.7% (2)	0.0% (0)	0.0% (0)	9.8% (5)	3.8% (5)	5.9% (18)
$5,001 - $10,000	4.2% (1)	1.7% (1)	6.7% (2)	0.0% (0)	0.0% (0)	7.8% (4)	3.8% (5)	4.2% (13)
$10,001 - $50,000	4.2% (1)	13.8 % (8)	20.0% (6)	27.3% (3)	0.0% (0)	13.7% (7)	9.2% (12)	12.1% (37)
$50,001 - $100,000	8.3% (2)	8.6% (5)	10.0% (3)	9.1% (1)	0.0% (0)	13.7% (7)	9.9% (13)	10.1% (31)
$100,001 - $500,000	25.0% (6)	17.2 % (10)	16.7% (5)	9.1% (1)	0.0% (0)	9.8% (5)	9.9% (13)	13.1% (40)
$500,001 - $1,000,000	16.7% (4)	10.3 % (6)	10.0% (3)	9.1% (1)	0.0% (0)	7.8% (4)	6.9% (9)	8.8% (27)
More than $1,000,000	16.7% (4)	3.4% (2)	13.3% (4)	9.1% (1)	0.0% (0)	0.0% (0)	3.8% (5)	5.2% (16)
Total	24	58	30	11	1	51	131	306

There was a significant difference in the dollar value of prime and subcontracts in the private sector versus those in the public sector. **Table 7-14** below shows that more than 25 percent of prime contracts for White male-owned firms were more than $1 million. This group was also more likely to be a prime as nearly 33 percent of this group did not do any work as a subcontractor. The majority of minority and woman-owned firms had prime contracts of less than $50,000 while their subcontracts were higher in the range of $100,000 - $500,000. Only Asian-owned and Woman-owned firms tended to have higher prime contract values as compared to other minority-owned firms. Overall, Black-owned firms had the lowest prime and subcontract values.

Table 7-14. Size of Private Contracts.

Value of Largest Private Prime Contract	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
$0	6.7% (2)	11.3 % (6)	10.0% (3)	8.3% (1)	25.0% (1)	18.4% (14)	11.2 % (19)	12.3% (46)
$1 - $5,000	3.3% (1)	20.8 % (11)	10.0% (3)	16.7% (2)	25.0% (1)	3.9% (3)	5.3% (9)	8.0% (30)
$5,001 - $10,000	10.0% (3)	7.5% (4)	3.3% (1)	8.3% (1)	0.0% (0)	6.6% (5)	5.9% (10)	6.4% (24)
$10,001 - $50,000	23.3% (7)	13.2 % (7)	10.0% (3)	25.0% (3)	25.0% (1)	19.7% (15)	14.2 % (24)	16.0% (60)
$50,001 - $100,000	10.0% (3)	11.3 % (6)	23.3% (7)	8.3% (1)	25.0% (1)	9.2% (7)	7.1% (12)	9.9% (37)
$100,001 - $500,000	16.7% (5)	13.2 % (7)	13.3% (4)	16.7% (2)	0.0% (0)	19.7% (15)	23.1 % (39)	19.3% (72)
$500,001 - $1,000,000	6.7% (2)	9.4% (5)	13.3% (4)	8.3% (1)	0.0% (0)	3.9% (3)	7.7% (13)	7.5% (28)
More than $1,000,000	23.3% (7)	13.2 % (7)	16.7% (5)	8.3% (1)	0.0% (0)	18.4% (14)	25.4 % (43)	20.6% (77)
total	30	53	30	12	4	76	169	374

Table 7-14. Size of Private Contracts. (continued)

Value of Largest Private Sub Contract	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
$0	16.0% (4)	35.7 % (15)	14.8% (4)	45.5% (5)	50.0% (1)	31.9% (15)	32.8% (44)	30.5% (88)
$1 - $5,000	4.0% (1)	9.5% (4)	11.1% (3)	9.1% (1)	0.0% (0)	6.4% (3)	8.2% (11)	7.9% (23)
$5,001 - $10,000	8.0% (2)	2.4% (1)	7.4% (2)	9.1% (1)	0.0% (0)	4.3% (2)	3.7% (5)	4.5% (13)
$10,001 - $50,000	20.0% (5)	21.4 % (9)	7.4% (2)	9.1% (1)	0.0% (0)	10.6% (5)	11.9% (16)	13.2% (38)
$50,001 - $100,000	12.0% (3)	7.1% (3)	11.1% (3)	9.1% (1)	0.0% (0)	14.9% (7)	8.2% (11)	9.7% (28)
$100,001 - $500,000	12.0% (3)	11.9 % (5)	29.6% (8)	9.1% (1)	50.0% (1)	14.9% (7)	16.4% (22)	16.3% (47)
$500,001 - $1,000,000	8.0% (2)	4.8% (2)	14.8% (4)	0.0% (0)	0.0% (0)	10.6% (5)	7.5% (10)	7.9% (23)
More than $1,000,000	20.0% (5)	7.1% (3)	3.7% (1)	9.1% (1)	0.0% (0)	6.4% (3)	11.2% (15)	9.7% (28)
total	25	42	27	11	2	47	134	288

7.3.4 Availability of Firms to Perform on City of Milwaukee Contracts

The value of anecdotal evidence also increases when it comes from firms that have the financial, management and workforce resources to do work for the City of Milwaukee either as a prime contractor, subcontractor or both. As shown in **Table 7-15**, the majority of respondents (54 percent) indicated that they could be both a prime and subcontractor. Nearly 30 percent said that they could be a prime contractor which highlights the perception that most businesses (a combined 84 percent) feel they are willing and able to perform as a prime on a contract with the City.

Although all firms tended to categorize themselves as both a prime and sub contractor, minority-owned firms had a fairly equal distribution between those that said they could either perform as a prime and those that would be more comfortable as a subcontractor. White female and male-owned firms were more apt to say that they could perform primarily as a prime contractor.

Interestingly, 14 firms that responded to this question indicated that they would not be qualified to perform as either. The format of the survey did not facilitate probing into the basis for this feeling.

Table 7-15. Ability to Prime or Subcontract.

Prime or Subcontractor	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Totals
Prime Contractor	25.0% (9)	16.9% (13)	22.0% (9)	40.0% (8)	20.0% (1)	28.7% (27)	33.0% (67)	28.2% (134)
Subcontractor	13.9% (5)	13.0% (10)	17.1% (7)	15.0% (3)	0.0% (0)	17.0% (16)	15.3% (31)	15.1% (72)
Both	58.3% (21)	68.8% (53)	61.0% (25)	45.0% (9)	80.0% (4)	50.0% (47)	47.8% (97)	53.8% (256)
Neither	2.8% (1)	1.3% (1)	0.0% (0)	0.0% (0)	0.0% (0)	4.3% (4)	3.9% (8)	2.9% (14)
total	36	77	41	20	5	94	203	476

CHAPTER 8.0 – SURVEY REGRESSION ANALYSIS

CHAPTER 8.0 – SURVEY REGRESSION ANALYSIS

8.1 Logistic Regression Summary for Survey Data

Model Development

Dependent variable

For the following analyses, the dependent variable (the variable to be explained) is winning a contract as a prime or sub contractor in the State of Wisconsin. In this case the dependent variable is dichotomous. In other words, an organization has either won at least 11 contracts in the state or has not (response of blank, 0-5, or 6-10 in the survey). In developing such a model, a value is assigned to each scenario or outcome. In this model, 0 is assigned to those cases where an organization is determined to have won between zero and ten contracts and 1 is assigned in those cases where an organization has won over ten contracts.

Independent Variables

Independent variables are those variables that explain the dependent variable. The independent variables and the coding schemes are shown in **Table 8-1** below. The primary variables of interest are the variables related to race and gender. Due to the coding schemes established, a negative B coefficient would indicate that that factor would be less likely to increase the chancing of winning. Conversely, a positive B coefficient signifies an increased chance of winning. For example, a negative B coefficient for minorities or white females means they are less likely to win a contract than the base category of white males. The other variables serve as control variables and are included to account for other possible reasons for likelihood of winning a contract. Generally, it would be expected that owners with high levels of experience, the number of years an organization has been in business, and the organization's DBE status are generally good indicators if an organization is likely to win contracts in the state.

Table 8-1
Independent Variables and Coding
Logistic Regression Models

Variable	Coding
White Female	1 if White Female, 0 otherwise
Native American	1 if Native American, 0 otherwise
Asian American	1 if Asian American, 0 otherwise
African American	1 if African American, 0 otherwise
Hispanic American	1 if Hispanic American, 0 otherwise
Firm Structure	1 if Corporation, 2 if LLC, 3 if LLP, 4 if Partnership, and 5 if Sole Partnership
Business Experience	1 if business is over ten years old, 0 otherwise
Owner Experience	1 if owner has over ten years experience, 0 otherwise
Owner's Degree	1 if person holds Bachelor degree or higher, 0 otherwise
DBE Business	1 if business is DBE in Wisconsin, 0 otherwise

Four different models were run. The first model is for the entire data set. The second model is for those engaged in construction, the third model is for those engaged in professional services, and the fourth model is for those engaged in goods and services.

Logistic Regression Results for Total Data Set

Table 8-2 shows the results for the logistic regression model for the total data set.

Table 8-2
Logistic Regression Results
State of Wisconsin
Total Data Set

Variable	B	Sig	Exp(B)
White Female	0.014	0.940	1.014
Native American	**-1.251**	**0.009**	**0.286**
Asian American	**0.508**	**0.074**	**1.663**
African American	**-1.402**	**0.000**	**0.246**
Hispanic American	-0.414	0.142	0.661
Firm Structure	-0.035	0.528	0.966
Business Experience	0.235	0.138	1.265
Owner Experience	**1.923**	**0.000**	**6.844**
Owner Degree	**0.256**	**0.090**	**1.292**
DBE Business	**0.552**	**0.008**	**1.737**

*White males are not included in the model since they serve as the base group.

The model contained 1,312 cases and has an estimated R-square value of .226. Basically, 22 percent of the probability or odds of success is predicted by the model. Although this number may not seem high, there are a variety of factors that lead to organizational success and data limitations prevent all but the most common being included. The B value captures the direction and value of the model coefficient for that variable. In the significance column (sig), the value is based on the Wald statistic and helps determine what the important variables in the model are. The bolded variables are statistically significant at .10. As a result, race (Native American, Asian American, and African American), owner characteristics (Owner Experience and Owner Degree), and business status (DBE Business) all significantly impact the chance of winning contracts. The Exp(B) is the exponentiation of the B coefficient, which is an odds ratio. This value is given because odds ratios can be easier to interpret than the coefficient, which is in log-odds units. When considering these values, the larger or smaller the magnitude of the number, the greater the impact on the tested outcome. For example, Owner Experience has the greatest impact on the odds of winning more than 10 contracts.

Of particular interest is that the coefficients for the race/gender variables Native American and African American are statistically significant and negative. Using the inverse

ratio, it is possible to calculate the impact of race on the probability of winning a contract in the state. In this case, Native Americans are 1.5 times less likely to win a contract than white males. African Americans are 1.7 times less likely to win a contract than white males. As for the controls, the only three statistically significant variables were Owner Experience, Owner Degree, and DBE Business which all showed positive relationships with winning a contract.

Logistic Regression Results for Construction Services

Table 8-3 shows the results for the logistic regression model for construction services.

Table 8-3
Logistic Regression Results
State of Wisconsin
Construction Services

Variable	B	Sig	Exp(B)
White Female	0.000	1.000	1.000
Native American	-0.948	0.196	0.387
Asian American	0.708	0.163	2.031
African American	**-1.281**	**0.008**	**0.278**
Hispanic American	-0.297	0.529	0.743
Firm Structure	-0.076	0.399	0.927
Business Experience	0.304	0.237	1.356
Owner Experience	**2.122**	**0.000**	**8.351**
Owner Degree	0.104	0.672	1.109
DBE Business	0.504	0.145	1.655

*White males are not included in the model since they serve as the base group.

The number of cases for the construction services model is 474. The estimated R-square value is .262. Like **Table 8-2**, the model explains about 25 percent of the chance or odds of winning ten or more contracts. Bolded variables are statistically significant at .10.

The results indicate that only one of the race variables (African American) had a statistically significant impact on the odds of winning a contract. For this variable, the coefficient is statistically significant and negative meaning African Americans are 1.3 times less likely to win a contract than White Males. The only positive relationship was for the variable Asian Americans but was statistically insignificant. The relationship between Owner Experience and winning a contract is positive in this case and statistically significant.

Logistic Regression Results for Professional Services

Table 8-4 shows the results for the logistic regression model for professional services.

Table 8-4
Logistic Regression Results
State of Wisconsin
Professional Services

Variable	B	Sig	Exp(B)
White Female	0.235	0.488	1.265
Native American	-1.666	0.128	0.189
Asian American	0.495	0.273	1.640
African American	**-1.475**	**0.014**	**0.229**
Hispanic American	-0.485	0.330	0.616
Firm Structure	-0.053	0.605	0.949
Business Experience	0.185	0.519	1.203
Owner Experience	**1.720**	**0.000**	**5.583**
Owner Degree	0.513	0.087	1.671
DBE Business	0.694	0.054	2.001

*White males are not included in the model since they serve as the base group.

The number of cases for the professional services model is 427. The estimated R-square value is .020 which is very small and indicates a relatively weak fit between the variables and the odds of winning ten or more contracts. This is more than likely due to the lack of a subset of firms winning more than ten on a consistent basis. Bolded variables are statistically significant at .10.

The results of this model (for the variables that are significant) mirror the results from the construction data set. The coefficients for the race/gender variables African American (significant) and Native American (insignificant) are negative. As with the construction data set, Owner Experience is the only variable that was statistically significant among the controls.

Logistic Regression Results for Goods & Services

Table 8-5 shows the results for the logistic regression model for goods and services.

Table 8-5
Logistic Regression Results
State of Wisconsin
Goods and Services

Variable	B	Sig	Exp(B)
White Female	-0.120	0.725	0.887
Native American	-1.242	0.134	0.289
Asian American	0.516	0.357	1.675
African American	**-1.516**	**0.008**	**0.220**
Hispanic American	-0.429	0.408	0.651
Firm Structure	0.028	0.775	1.028
Business Experience	0.182	0.532	1.199
Owner Experience	**1.871**	**0.000**	**6.498**
Owner Degree	0.347	0.186	1.414
DBE Business	0.392	0.313	1.479

*White males are not included in the model since they serve as the base group.

The number of cases for the professional services model is 409. The estimated R-square value is .217. Bolded variables are statistically significant at .10.

The results indicate the same distribution among Construction and Professional Services, with African American and Owner Experience being the only statistically significant variables. Among the race/ethnicity variables, all of them had negative relationships with the exception of Asian American.

8.2 Summary

The overall results of the Regression Analysis show that race and gender do not have a consistent statistically significant impact on winning a contract with the exception of being African American. Overall, the results show a negative relationship with the variables White Female, Native American, African American and Hispanic American.

The analysis also shows that Native Americans are 1.5 times less likely to be awarded a contract with the City of Milwaukee than white males, while African Americans are 1.7 times less likely to be awarded a contract with the City of Milwaukee than white males.

CHAPTER 9.0 - ANECDOTAL ANALYSIS

CHAPTER 9.0 - ANECDOTAL ANALYSIS

9.1 Introduction

This chapter describes the results of anecdotal information collected from personal interviews and the business demographic survey. The collection of personal accounts of incidents of discrimination and the analysis of this anecdotal information are important components of this Disparity Study (in brief reference, the "Study"). This information and analytical data in the Study provides a better understanding of the contracting culture within the City of Milwaukee ("City") and the Milwaukee Metropolitan Sewerage District ("MMSD").

The City of Milwaukee's Emerging Business Enterprise Program was enacted in 1989 under Chapter 360 of the Milwaukee Code of Ordinances. The purpose of the program is to assist and protect the interests of individuals who are disadvantaged and to promote and encourage 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 by approving an annual 18 percent EBE utilization requirement for all contracting departments and all other operating departments. In 2009, another revision to Chapter 360 of the Milwaukee Code of Ordinances occurred which increased the annual EBE participation requirement for Construction to 25 percent. The annual participation requirement for all other business categories remained the same, at 18 percent.

MMSD has a long standing policy goal that the contractors, engineering firms, vendors and workers that do business with MMSD should reflect the diversity of the region. To that end, MMSD Procurement Policy 2-78.01 was created to establish an annual goal of spending 20% of its total procurement with Small, Women, and Minority Owned Businesses (SWMBE). This participation goal further specifies that 13% of the purchase order or contract awards should be with certified minority owned businesses, 5% with certified small businesses, and 2% with certified women owned businesses.

Courts have relied on anecdotal data in disparity studies as evidence of the existence of past and present discrimination. Regarding the use of anecdotal evidence, the Supreme Court explains, "Evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified." *City of Richmond v. J.A. Croson Co*, 488 U.S. 469, 509, 109 S.Ct. 706, 730 (1989).[1] Courts have acknowledged that while anecdotal evidence alone is generally not

[1] In *Builders Association of Greater Chicago* v. County of Cook, 256 F.3d 642 (7th Cir. 2001), the Seventh Circuit specifically stated that a public agency must have a strong evidentiary basis for thinking that a discriminatory remedy

sufficient to prove discrimination, combining accounts of specific incidents of discrimination with strong evidence of statistical disparities can provide a strong evidentiary basis to support race and gender conscious programs.

The sufficiency of anecdotal evidence has not been addressed by the Seventh Circuit; however, the adequacy of such evidence has been addressed by the Ninth Circuit. In *Western States Paving Co., Inc. v. Washington State Department of Transportation* the Ninth Circuit Court of Appeals noted that "both statistical and anecdotal evidence of discrimination are relevant in identifying the existence of discrimination." 407 F.3d 983, 992 (9th Cir. 2005) (citing *Adarand Constructors, Inc. v. Slater ("Adarand VII"),* 228 F.3d 1147, 1166 (10th Cir. 2000)).[2] In applying *Croson*, the Ninth Circuit has addressed the adequacy of anecdotal evidence in constitutionally supporting the need for race-based remedial programs. The court decisions in the Ninth Circuit provide examples of both acceptable and unacceptable forms of anecdotal evidence. The Ninth Circuit Court of appeals in *Western States Paving* held that the anecdotal evidence provided by the Washington State Department of Transportation (WSDOT) was not sufficient. The Ninth Circuit criticized the WSDOT for not introducing any anecdotal evidence of discrimination. During oral argument before the Ninth Circuit, WSDOT contended that the affidavits signed by applicants applying for DBE status provided evidence of discrimination within Washington. Addressing this evidence, the Court stated that the affidavits "do not provide any evidence of discrimination within Washington's transportation contracting industry … these affidavits do not require prospective DBEs to certify that they have been victims of discrimination in the contracting industry." *Id.* at 1002. The Court also noted that the affidavits signed by the applicants for DBE status only required the business owners to certify that they had been subject to racial or ethnic prejudice or cultural bias or that they had suffered the effects of discrimination because they were a member of a minority group. Relying upon *Croson*, the Ninth Circuit stated, "Such claims of general societal discrimination and even generalized assertions about discrimination in an entire industry cannot be used to justify race-conscious remedial measures. *Id.* (citing *Croson*, 488 U.S. at 498). The Court went on to state "the record is therefore devoid of any evidence suggesting that minorities currently suffer or have ever suffered discrimination in the Washington Transportation contracting industry." *Id.*

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is appropriate before it adopts the remedy. Moreover, the remedy it ultimately adopts must be narrowly tailored for a minority set-aside program to withstand constitutional challenge.

[2] In *Builders Association*, the Court held that: (1) a study NERA conducted for Metra 1; (2) expert reports; (3) anecdotal information gathered at public hearings; (4) data on DBE involvement in construction projects in markets without DBE goals; and (5) IDOT's own data on the past use of DBEs was sufficient statistical and anecdotal data to arrive at the stated goals.

By contrast, *Coral Construction Company v. King County*, 941 F.2d 910 (9th Cir. 1991) provides an example of anecdotal evidence that the court found sufficient to withstand constitutional scrutiny. While the Court ultimately found the evidentiary record was not sufficient to meet the strict scrutiny requirement of *Croson,* the Court noted that its decision was based upon the fact that the record did not contain statistical evidence to support King County's findings. The Court stated that while the "[W]ritten testimony of the numerous affiants suggests that there *may* be systemic discrimination within the King County construction industry, without a statistical foundation the picture is incomplete." (emphasis supplied) *Id.* at 919.

The record presented by King County included 700 plus pages and at least 57 affidavits from minority or women contractors, each complaining in varying degrees of specificity, about discrimination within the local contracting industry. The ethnic breakdown of the affiants included 23 African American contractors, 13 Hispanic contractors, 10 Asian contractors, 6 Native American contractors, 3 women contractors and 2 contractors who identified themselves as "other". The Court stated "these affidavits certainly suggests that ongoing discrimination may be occurring in much of the King County business community." *Id.* at 918. In support of this determination the Court provided examples of quotations from business owners regarding their experience.

Nowhere in the *Coral Construction* opinion did the Court address the need to ensure that the information provided by the affiants be verified for accuracy. The Court accepted the examples provided as evidence that discrimination may have occurred within the King County construction industry. However, the Tenth Circuit in *Concrete Works of Colorado, Inc., v City and County of Denver*, 321 F. 3d 950 (10th Cir. 2003), addressed Concrete Works of Colorado's (CWC) argument that the City and County of Denver must verify witnesses' anecdotal accounts to meet their burden of proof. The Court stated "There is no merit to CWC's argument that the witnesses' accounts must be verified to provide support for Denver's burden. Anecdotal evidence is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions. In this case, the anecdotal evidence was not subject to rigorous cross-examination…Denver was not required to present corroborating evidence and CWC was free to present its own witnesses to either refute the incidents described by Denver's witnesses or to relate their own perceptions on discrimination in the Denver construction industry." *Id.* at 989. Therefore, the anecdotal evidence taken in this Study was not verified.

9.2 Methodology

In keeping with the legal precedent discussed above, the anecdotal evidence of discrimination presented in this Chapter is compiled from sixty-two one-on-one personal interviews with business owners who have done business with or attempted to do business with the City and/or MMSD as a prime contractor or as a subcontractor. In addition to the personal interviews, additional anecdotal evidence was collected during the Business Demographic Survey. The record established through the anecdotal evidence obtained for this study exceeds the record the court found acceptable in *Coral Construction.*

Personal Interviews

The goal for this portion of the Study was to conduct a total of sixty personal interviews. The team began conducting interviews during the week of September 27, 2010 and the interviews were completed the week of November 29, 2010. A total of sixty-two interviews were conducted. A total of sixty-six interviews were scheduled. The team had four cancelations.

The interviewer asked each business owner to comment upon contracting experiences or attempted contracting experiences with the City or MMSD during the Study period. All interviewees attested by affidavit to the experiences they described in the interviews. Similar to the evidence the Ninth Circuit found acceptable in *Coral Construction,* the evidence included in this Chapter was obtained from the racial, ethnic and gender groups most prevalent in the relevant City of Milwaukee/MMSD market area. When quotations are provided to support examples of discrimination, at least two individuals complained of the problem and at least two examples are provided.

Each business that participated in the interview process was located in the City's relevant market area, and when required, maintained a Wisconsin business license. The interviews were conducted to elicit examples of specific incidents of discrimination on the basis of race, ethnicity and gender. D. Wilson Consulting Group utilized an interview guide designed to obtain the business owners' organizational structure, business history, experiences in attempting to conduct business with the City/MMSD, and contracting/subcontracting experiences on City/MMSD projects.

In collecting anecdotal evidence relevant to the existence of discriminatory practices, the participants were randomly selected from a master list of 286 business owners. The list included firms from the following: City of Milwaukee Vendor List, City of Milwaukee Emerging Business Enterprise List, Central Contractor Registry, U.S. Small Business Administration, State of Wisconsin Department of Transportation, University of Wisconsin-Milwaukee Small Business

Development Center, Dun & Bradstreet, Regional Chambers of Commerce, and local business and community organizations. The list included the name of the business, business classification, contact name, e-mail address, telephone number, facsimile number and mailing address. In addition to the master list of firms, D. Wilson was provided with a list of business owners who previously expressed an interest in participating in the personal interviews. Also, MMSD provided D. Wilson with a targeted list of prime contractors and subcontractors who regularly conduct business with MMSD, and a list of seventy-five small, women and minority owned businesses that have completed or are currently enrolled in the MMSD business development program.

D. Wilson subsequently contacted businesses by telephone requesting that the business owners participate in the personal interviews.[3] Once a business owner agreed to an interview, a letter was sent confirming the interview date and time. Additionally, a second letter, signed by Ossie Kendrix, Manager of the City's Emerging Business Enterprise Program, was forwarded to each business owner, explaining the purpose of the Study and the importance of participating in the personal interviews.

The contacted firms represented a cross section of firms in the construction, professional services and other goods and services. A total of sixty-two businesses were interviewed from the following racial/ethnic groups: Asian American (3), African-American (31), Native American (4), Hispanic American (7), Caucasian Women (10) and Caucasian Men (7).

The interviews were conducted at each business owner's office or at a location selected by the owner. They averaged slightly more than one hour in length. Each interview was recorded on tape and later transcribed (due to a tape recorder malfunction three interviews were not recorded). Before each interview, business owners were assured that every effort would be made to keep their responses confidential. The business owners interviewed in the construction area included prime contractors and subcontractors in the following Construction and Construction Related Services: building, highway, bridge and rail. Interviews of additional lines of business included Professional Services and Goods and Services. At the conclusion of each interview, the business owner was asked to sign an affidavit attesting that the information provided during the interview process was freely given, true and not coerced, and that it reflected the firms' procurement experiences with the participating Agencies.

Online Survey of Firms

The online business survey was launched on May 4, 2010 and remained open to collect

[3] All interviews were conducted by subcontractors Fields & Brown and Gonzalez Saggio & Harlan on behalf of D. Wilson.

responses until June 9, 2010. Best practice procedures were followed in developing, testing and collecting the online survey data.

The Disparity Study Team researched public and private resources having databases containing contact information on businesses located in Wisconsin and surrounding relevant market areas. A Master Vendor Table of firms was supplemented using an e-mail append process gathered from various Internet sources. Additionally, key agencies, such as the Milwaukee Metropolitan Sewerage District, U.S. Small Business Administration, State of Wisconsin Department of Transportation (WisDOT), City of Milwaukee, University of Wisconsin-Milwaukee Small Business Development Center, regional Chambers of Commerce, and local business and community organizations were contacted for e-mail lists and as a distribution channel to members. The total number of e-mail contacts collected for notification of the survey was 5,045.

A draft survey instrument was developed by the project team and minor changes were made to accommodate an online survey format. Additional changes were recommended after comments were received by small businesses in the first two weeks after the survey launched. These included small adjustments that clarified the required and non-required questions to facilitate more participation by a wider audience. The online survey was developed using SurveyMonkey.com, a commercially-available software application. This tool allowed for flexible online collection methods, advanced filtering, and analysis. A printed PDF copy of the online survey is included in Appendix B.

An e-mail invitation was created to invite small business owners to participate in the online business survey. SurveyMonkey was used to develop, distribute, track and manage bounces. The first e-mail was distributed on May 4, 2010 and included an overview of the Study with a link to the survey. A reminder e-mail was sent on May 13, 2010 to all contacts that had not yet responded. In an effort to gather additional business information, an e-mail invitation was sent on May 19, 2010 to open e-mail lists of Wisconsin businesses that were not matched to the Master Vendor Table. On June 1, 2010, a final e-mail was delivered to local business and community organizations requesting that they forward the information to their members and colleagues. The survey was closed to responses on June 9, 2010.

The survey included 39 questions, many of them open-ended, which allowed some qualitative data to be obtained, in addition to the quantitative business information. The questions were divided into four categories. First, general demographic and availability/capacity questions were asked about the business, goods and services, ownership, and bonding and insurance levels. This provided a basic business profile for the businesses that were surveyed

and helped to determine how many of the businesses surveyed had the ability to do business with the City of Milwaukee.

The next set of questions related specifically to the WisDOT DBE and City of Milwaukee EBE programs. Business owners were asked if their firm was certified and their opinion of the programs. This provided insight into the perceptions of Federal and City programs, and the benefits received. The third set of questions addressed possible barriers that business owners may have encountered attempting to do business with the City and/or MMSD. Participants were provided with a list of possible barriers and asked if they had experienced any barriers that might have prevented them from doing work with the City and/or MMSD.. The last set of questions addressed possible discriminatory practices by prime contractors and the City and/or MMSD. If the respondent indicated that they had submitted a bid or received a contract as a subcontractor/subconsultant, they were asked whether they had experienced certain business practices with prime contractors.

Once the survey was implemented, responses were automatically collected and stored in an online database. The Disparity Study Team managed all e-mail and phone questions related to the survey. In some cases, a hard copy of the survey was e-mailed to individuals who made a request to complete it on paper before entering the information online. General comments were also fielded and retained for the record.

A total of 743 individuals took part in the survey. Only one survey per ISP address was allowed to eliminate duplicates. The survey was anonymous and did not require that the individual provide contact information. However, respondents were asked to provide contact information if they were interested in participating in the anecdotal information process. Additionally, not all questions were required, which allowed respondents to skip questions and only complete required business information. Lastly, respondents were able to leave the survey at any time without completing to the end. A total of 466 of the 743 (62.7%) who initiated the survey completed the entire survey.

The following findings are the results of the sixty-two personal interviews and the anecdotal data obtained from the 743 firms that participated on the online survey.

9.3 Results from Sixty-Two Personal Interviews

Business Characteristics

The City of Milwaukee & Milwaukee Metropolitan Sewerage District Disparity Study Personal Interview Guide included questions designed to ascertain the organizational structure, background, experience and capacity of each business examined. Information was gathered

concerning the primary lines of business, number of years in business, experience of the principals, gross revenues, number of full time and part time employees and business locations. The information charted below includes Asian American, African American, Native American, Hispanic American, Caucasian Women and Caucasian male owned firms.

Primary Line of Business

Table 9-1 summarizes data concerning the primary lines of business for the firms interviewed. The categories are: (i) construction (which included general contractors and all subcontractors that perform services related to the following areas: building, highway, bridge and rail); (ii) professional services; and (iii) goods and services.

Table 9-1. Summary of Primary Line of Business.

Survey Question	Race/Ethnicity or Gender Category of Business Owner					
Primary Line of Business	Asian American	African American	Native American	Hispanic American	Caucasian Women	Caucasian Men
Construction		10	4	4	2	4
Professional Services	3	12		1	3	2
Goods & Services		9		2	5	1

Of the firms interviewed, thirty-nine percent were in the construction category; thirty-four percent in the professional services category; and twenty-seven percent in the goods and services category. As a result, the foregoing chart shows that a good cross section of the various lines of business were included in the interview process. The largest number of interviews occurred in the Construction area, which is also the area where the largest number of dollars was spent.

Years in Business

Table 9-2 represents the number of years in business specified by ethnicity and gender of the firms interviewed.

Table 9-2. Years in Business by Ethnicity.

Survey Question	Race/Ethnicity or Gender Category of Business Owner					
Number of Years in Business	Asian American	African American	Native American	Hispanic American	Caucasian Women	Caucasian Men
0-10	2	20	3	3	7	1
11-20	1	6	1	2	1	1
21-30		4		1	1	1
31-40		1				
41-50						
50+				1	1	4

The chart above reflects of those firms interviewed, the Asian American owned companies have been in businesses twenty years or less. The majority of African American owned companies have been in business ten years or less. The majority of Native American owned companies have been in business ten years or less. The majority of Hispanic American owned companies have been in business twenty years or less. The majority of Women owned companies have been in business ten years or less. Finally, the majority of Caucasian Men owned companies have been in business more than fifty years.

One of the non-M/WBE firms interviewed acknowledged the importance of years in business in terms of the perception of experience, stability and capacity to perform. This company has been in business for sixty four years. The business has served as both a prime and subcontractor on City and MMSD projects. During the personal interview, the interviewer prompted the following discussion:

Q: Let me just give you an example. How long has your business been around?

A: Since 1946

Q: How many MBE's do you think have been around that long?

A: Not many

Q: Do you think that gives you an advantage?

A: No because it has nothing to do with length of time. Well I guess it could. I was just thinking of the two [businesses] starting at the same time.

Q: But that isn't the landscape. Your company has been around a long time. Generally, M/WBE's haven't been around long.

A: Well okay so length of existence does mean experience, so yes.

Q: The M/WBEs would have to overcome the fact that they have not been around long. Generally speaking MBEs and WBEs do not have the longevity.

A: I would agree that the longevity thing is out there.

Organizational Structure

As reflected in **Table 9-3** below, a large majority of the firms interviewed were either corporations or limited liability companies.

Table 9-3. Company Formation.

Survey Question	Race/Ethnicity or Gender Category of Business Owner					
Business Structure	Asian American	African American	Native American	Hispanic American	Caucasian Women	Caucasian Men
Sole Proprietorship		2			1	
Partnership						
Corporation	2	13	2	3	6	6
Limited Liability Partnership						
Limited Liability Corporation	1	16	2	4	3	1
Joint Venture						
Non-Profit						
Franchise						

Gross Revenues

Table 9-4 summarizes data obtained regarding gross revenues for 2009.

Table 9-4. Gross Revenues by Ethnicity/Gender.

Survey Question	Race/Ethnicity or Gender Category of Business Owner					
Gross Revenues for 2009	Asian American	African American	Native American	Hispanic American	Caucasian Women	Caucasian Men
$50,000 or less		2	1		2	2
$50,001-$100,000		3				
$100,001-$300,000		6	1	1	2	
$300,001-$500,000		3			1	
$500,001-$1,000,000	1	6				
$1,000,001-$3,000,000	1	5	1	4	2	
$3,000,001-$5,000,000	1	1	1		1	1
$5,000,001-$10,000,000		1		1		
over $10,000,000				1		1
No Response		2			1	

Of the M/WBE firms interviewed, the majority of Asian American owned companies Gross Revenues exceeded $1,000,000. The majority of African American owned companies had Gross Revenues of less than $1,000,000. The majority of Native American owned companies had Gross Revenues of less than $1,000,000. The majority of Hispanic owned companies Gross Revenues exceeded $1,000,000. The majority of Women owned companies had Gross Revenues of less than $1,000,000. Finally, the majority of Caucasian men owned companies Gross Revenues exceeded $3,000,000.

Firm Size

Table 9-5 shows that regardless of the race/ethnicity or gender of the business owner, the majority of the businesses interviewed had fifty or fewer employees.

Table 9-5. Firm Size by Ethnicity/Gender.

Survey Question	Race/Ethnicity or Gender Category of Business Owner					
Excluding self, number of Employees	Asian American	African American	Native American	Hispanic American	Caucasian Women	Caucasian Men
0-10	1	23	2	2	6	3
11-50	2	8	2	4	4	2
51-75				1		
Over 75						2
No Response						

Specific Incidents of Discrimination

The Disparity analysis reflects that there is overutilization of Native American, Hispanic American and non-minority owned businesses in construction and construction related services. There is underutilization of Asian American, African American and Women owned businesses in construction and construction related services. With regard to Goods and Services, the Disparity Analysis reflects overutilization of Asian American and nonminority owned businesses. Whereas, there is underutilization of African American, Native American, Hispanic American and women owned businesses. The anecdotal evidence supports the conclusion that the City's race neutral Emerging Business Enterprise Program goals do not appear to adequately address the underutilization of specific race/ethnic and gender groups in the areas of construction and goods and services.

During the personal interviews, business owners were provided a series of situations and asked whether they had experienced any of them. The situations related to potential discriminatory practices by either the City or MMSD or prime contractors on City or MMSD projects. If a business owner indicated that they experienced any of the situations, they were asked to explain the circumstances in detail. **Table 9-6** is the result of the questions recorded by race and gender.

Table 9-6. Barriers to Contracting.

Survey Question	Race/Ethnicity or Gender Category of Business Owner					
Has your company ever been faced with any of the following situations?	**Asian American**	**African American**	**Native American**	**Hispanic American**	**Caucasian Women**	**Caucasian Men**
Submitted as a subcontractor and dropped by the prime after the prime was awarded the contract.	1	9	2	3	3	
Placed on a contract to do one job and ended up doing another.	1	8	2	1	2	
Did a job that required less work and pay than was contracted for	2	13	2	2	2	2
Paid less than the negotiated amount in the contract after completing the job	1	8	1		2	1
Prime contractor held your company to higher performance standards than other contractors on the job	1	9		2		
Agency personnel held your company to higher performance standards than other contractors on the job	1	10		1		
Completed a job and never received payment	2	5	1			
Asked to be a front for a majority firm	1	9		1	1	
Pressured to lower quotes on a bid because of bid peddling or bid shopping by prime contractor	1	12	1	3	2	2
Frequently contacted by prime contractors for inclusion in a bid, and after providing the quotes, never heard from the prime again	3	19	2	4	4	1
Dropped from the contract because a EBE goal was not required or already met	2	9	2	2	2	1
Followed any unwritten rules that you must follow in order to win contracts		5		1		
Failed to attend mandatory pre-bid conference		4		1		1
Asked to sign a form stating you had been paid when you had not been	1	4			1	1
Had problems with prime paying you on time	2	19	2	2	3	2
Had prime use your firm name in bid without permission		8				
Prime changed your bid without permission		6		1	1	
Asked to do more work than in bid without increase in fees	2	10	1	1	2	1
Failure to timely release retainage	1	8	2	1	1	2
Design-Build format puts project out of reach for my company	1	8			3	2

Business owners were also provided a series of factors and asked whether any of the factors interfered with the company's ability to bid on a project with the City or MMSD. The factors related to potential barriers to contracting with either the City or MMSD or prime contractors on City or MMSD projects. If a business owner indicated that any of the problems were barriers they were asked to explain in detail how the problems operated as barriers. **Table 9-7** present the results of the questions asked by race and gender.

Table 9-7. Barriers to Contract Bidding.

Survey Question	Race/Ethnicity or Gender Category of Business Owner					
Have any of the following factors interfered with your company's ability to bid on a project with the Agencies?	**Asian American**	**African American**	**Native American**	**Hispanic American**	**Caucasian Women**	**Caucasian Men**
Performance bond requirements		15		2	2	1
Insurance requirements		2		1	2	1
Non-competitive supplier prices	1	12		2	3	1
Bid specifications	1	20		2	1	2
Pre-qualification requirements	1	8	1	3	1	1
Limited time to prepare bid package or quote		16	2	4	2	
Limited information on pending projects	2	12	2	2	4	1
Knowledge and understanding of purchasing/contracting policies, procedures or processes	1	8		2	3	1
Lack of experience	2	11	2	1	2	1
Lack of personnel	1	10	1	2	2	1
Lack of equipment	1	7	1	1	3	1
Lack of resources to compete in the public & private markets simultaneously	1	13	2	3	3	
Lack of relationships with larger firms that you could partner with	2	17	3	2	7	3
Contract is too large	2	18	3	2	2	3
Contract is too expensive	1	16	3	2	1	1
Unfair contracting practices	1	18	2		2	
Cost of buying plans for each proposal	1	9	2		2	2
Agency procurement managers tend to maintain a preferred list of vendors to the exclusion of your firm	1	17	1	3	6	1

The impact of several of these situations and barriers will be discussed in greater detail below. The above charts produced anecdotal testimony that supports the conclusion that minority and women businesses enterprise owners experience conditions that cause or contribute to the above referenced underutilization:

(i) The inadequate verification and follow up practices of the City and MMSD contributes to the underutilization of certain racial/ethnic minority and women businesses.

(ii) Majority prime contractors use Fronts to Avoid contraction with legitimate minority and women owned businesses

(iii) Majority prime contractors have been allowed to engage in unfair bidding practices that avoid utilization of minority and women owned businesses

(iv) Majority Prime contractors show favoritism to certain subcontractors. There is a "good old boy" network.

(v) Majority prime contractors create economic hardships for minority and women owned businesses by late payments.

Inadequate Verification And Follow Up Practices Of The City And MMSD Contribute To The Underutilization Of Certain Ethnic Minority And Women Businesses.

An African American consulting company provided the most blatant example of the lack of follow up and verification of reported EBE participation. Prime contractors reported payments to the owner's company that the owner maintains were not made. In the following example, the interviewee produced a document that she received via facsimile from the City as its record of the amounts reported by prime contractors as actually paid to the company. (See Exhibit A, page 9-56). In each instance the company was paid less than the amount reported, received no payment or was not aware that the prime contractor had the company listed on the job. During the personal interview, the owner stated:

> A: I have this documentation here; I have a company that does quite a bit of business with both the sewage district and the City. So I can speak to both of them. I was given this [document (Exhibit A) presented during the interview] by the City saying that these prime contractors all put me down for these amounts of money, and I was to verify that these primes put me down for EBE participation in these amounts that were just totally lies, bogus. And then I had to verify the actual amounts and the date that the amount was paid. This is equivalent to a certain percentage of a contract that they had with the City that they were supposed to do this amount of volume of business with me, but they never did. You may have a copy.
>
> Q: Let me make sure I understand this right. These figures don't represent the amounts you were actually paid, they told the City that's what you were paid?
>
> A: Right.
>
> Q: And for example, this one that says $21,080.00, you were actually paid $5,219.22?

> A: That's right. And this one here where they put down $146,000, they actually paid zero.

In a similar incident, an African American business owner stated that the company had worked on a number of projects for MMSD, but on one occasion, the company was hired on a City Contract and the owner inadvertently discovered the following:

> My firm was hired on a project by the City, and as part of my responsibility, I was given access to certain records and noticed that my firm was listed as the subcontractor on certain contracts as the EBE participant. However, my firm did not participate on those contracts. I would not have known of the erroneous use of my firm's name as an EBE participant on contracts to which we had no connection.

An African American business owner cited the following as an example of how the City failed to follow up on the performance of a contract to insure that the designated minority owned business was participating in the contract to the level reported.

> There is an IT preferred vendor list that just went out with the City and we bidded with 17 of the companies that were bidding, of the 17, there were 12 successful companies, of those 12, we partner with 7. So the top 4, in terms of pricing, we are their partners and we are supposed to have 40% of this IT business now, there are 7 of these companies that we're with, but the top 4, we're with the top 4 of those 7. So we're supposed to have 40% of the IT business that they get with the City. Now, we'll see what happens. That's been in place 2 months now, we've not received one call or anything in terms of, here we got this project and we're going to do 60% and here's 40% for you. Because there's no way of us knowing what 40% we're missing out on.

Another African American business owner commented on the attitude of City/MMSD personnel with regard to enforcement, and stated as follows:

> I believe enforcement of the rules is probably the number one thing because there is an attitude that has developed that it just doesn't matter and you don't have to do it.

Prime Contractors Use Fronts to Avoid Contracting with Legitimate Minority and Women Owned Businesses.

Another practice that is apparently well known by minority business owners is the use of illegitimate companies to satisfy EBE goals. Minority owned business owners complained the agencies do not do enough follow up to verify the legitimacy of some alleged women owned businesses.

An African American construction related subcontracting firm discussed the existence of fronts in his subcontracting industry. The firm has served as a subcontractor on more than 100 City and MMSD contracts. He stated:

A: Honestly, there aren't that many majority [subcontracting industry] contractors out there. The way things have moved in the industry, it is one of those places where so many contractors have gone to get their DBE or EBE dollars, that there aren't as many majority companies left in the industry, which is a problem, because unfortunately, a lot of what now are considered minority companies, really is just a face for a white guy.

Q: So many of the contract MBE/DBE/WBE goals are fulfilled by (subcontracting industry).

A: White women, who are now considered minorities, just like any black or Hispanic person, who really is a stand in for her white boyfriend or her husband. There are countless examples of that.

Q: So you would say, that's really an unfair practice, isn't it?

A: I believe it is. There are several contractors that I know exclusively do business with them, and I have even given them what I would consider ridiculously low quotes, and they still don't give us the business.

Q: So they use white contractors?

A: Yes, white females.

Q: Are any of those white females basically fronts for males?

A: Yes. I have a very good example of one. There is a business. He has been in business for probably over 50 years. Then all of the sudden this DBE stuff comes up, so you know what he does, he sets his wife up to do the (subcontracting industry) side of his business and then gives her the work.

Q: This is a prime contractor?

A: Right, so instead of giving that business to what I would consider more of a legitimate DBE, he set his wife up in the (subcontracting industry) business and now that portion of the business goes to her. So how she is disadvantaged being married to the guy she is getting the work from is beyond me.

Q: And you said you have given a real low ball price to this prime contractor and he has repeatedly refused to use you? Now, is he a contractor for the MMSD?

A: He does work for City of Milwaukee, MMSD, State of Wisconsin, Milwaukee County; he does business everywhere, all of the state. His reach is beyond the Milwaukee market.

An African American service subcontracting company also discussed the creation of front companies to avoid using legitimate M/WBE firms. The interviewee has served as a prime and subcontractor on several City projects and as a prime contractor on several MMSD projects. During the interview when asked "Is your firm aware of any practices or procedures

utilized by the Agencies or prime contractors to avoid the utilization of minority-owned firms on projects?", the business owner provided the following example:

> A: They (prime contractors) hire their relatives or hire their friends and they're under the status or umbrella of minority contractors. To me, all they do is, the city and state makes the laws and the primes find loopholes in the laws. It's just the way it is.
>
> Q: So are you saying that the primes will create fronts to avoid doing business with you?
>
> A: Yes
>
> Q: The City makes laws that prime contractors find loopholes in?
>
> A: Yes.

In discussing actions taken by prime contractors to avoid doing business with minority business owners, this Hispanic construction related services business owner responded to the following questions:

> Q: Are there are a lot of companies where the woman is the guys wife or girlfriend or daughter and…
>
> A: Yeah, they're just a front.
>
> Q: Is that an issue?
>
> A: Yes, that is an issue. It happens all the time. Yes and a lot of legitimate women owned businesses suffer from that.
>
> Also in the trucking business it's prevalent, in hauling. If you go to the State of Wisconsin, look at the number of trucking companies that are women owned, it's disproportionate.

A Hispanic construction related services business owner discussed how minority contractors are solicited by majority prime contractors to become front businesses. In a personal interview the business owner stated:

> The minority program came here in the 70's and we were one of the first. Now everyone is a minority firm. You aren't special anymore. Everybody wants some how to get their company certified as minority so they will go out in the field and they will pluck their African American roofing contractor and say how bout we put you in business. And there you go, there is a new minority firm, but behind them is the real majority contractor. I don't think they (the City and MMSD) figure out who is who and where the backers come from.

Majority Prime Contractors Are Allowed To Engage In Unfair Bidding Practices That Avoid Utilization Of Women And Minority Owned Businesses.

One of the most pervasive and widespread complaints found among M/WBE's was that majority prime contractors used unfair methods to comply with the City's and/or MMSD bidding procedures. These M/WBEs allege that the bidding policies for construction contracts, as implemented by majority contractors, have a disparate and discriminatory impact on M/WBEs. The practice of bid shopping is one such area that has a disparate impact on M/WBE subcontractors who attempt to contract on projects administered by the City or MMSD. M/WBEs complained that their bids are regularly shopped by the prime contractor.

Two of the questions asked on the above chart relate to bid shopping. Business owners were asked if they were pressured to lower quotes on a bid because of bid peddling or bid shopping by prime contractors. Business owners were also asked if they were frequently contacted by prime contractors for inclusion in a bid and after providing quotes, never hearing from the prime again.

Several business owners discussed the impact bid shopping has on small minority and women owned businesses.

The owner of an African American owned commodity company discussed how prime contractors intentionally provided M/WBE businesses with inadequate time to submit quotes.

> A: A lot of times, primes will wait to the last minute and not give you enough time to solicit numbers for certain items, then you don't have enough time to turn around and get your pricing to the prime. It's almost like an intended delay in terms of information.
>
> Q: So you think that's, in many instances it is intentional?
>
> A: Oh yeah, because they can give you the stuff at the last minute, knowing that you can't get your bid back to them and then they say, "oh I asked for a quote, but they wouldn't give me quote." But they didn't give me time to give them a quote.

This same business owner further discussed how the bids are shopped by prime contractors. Regarding bid shopping this business owner stated:

> They'll [prime contractors] try to see if they can get bids lower or they'll say there is another contractor who will do the job for this amount, well, that's not the contractor you put down. You put me down. You won with me, so now you can't go back and substitute.

In another instance a Hispanic business owner gave the following answer to the following question:

> Q: Have you had the situation where you give the prime contractor a bid and the prime comes back to tell you I can get that job for a lower price and he pressures you to lower your bid?
>
> A: Yes. I can say that. I want to answer these questions very cautiously because I don't want this to come back on us. It does happen quite often that we will bid a job and then we are asked to adjust our prices.

An African American construction related subcontracting firm described the company's frustration with bid shopping. The firm has been in business for over 25 years and has served as a subcontractor on more than 100 City and MMSD contracts. The owner stated that prime contractors often asked for subcontracting quotes with a short response window to avoid using minority and women owned businesses and still report that it attempted to solicit bids from M/WBE firms. This allows prime contractors to continue the good old boy network. The owner stated:

> I hate it when they [prime contractors] call me up on Tuesday and want a quote on Wednesday. Prime contractors do that and it can be problematic because you have less time to do any investigation if need be.

An African American service subcontracting company explained the problem bid shopping causes his company. The company has been in business for over 20 years and has served as a prime and subcontractor on several City projects and as a prime contractor on several MMSD projects.

> Q: When you say a limited amount of time to prepare a bid package or quote, tell me what you are talking about.
>
> A: Well, one example is, as a small business, the primes will call you 2-3 days before the bid is due or even the day before the bid is due and most small companies don't have the resources or the time to put a bid together, at least I'm speaking for myself, in such short notice.

A Hispanic owned construction contractor discussed the problem having a short amount of time to prepare the bid causes the small company. In a personal interview the owner stated.

> The problem that we have ran into is that sometimes the bid is requested with a short window to bid in, and for a smaller firm, you don't have 8 estimators, you have one estimator.

A Hispanic owned construction related contracting company discussed the process used by prime contractors to limit the time provided to M/WBE subcontractors to submit bids. The contractor suggested that prime contractors engage in this unfair bidding practice so they can obtain a waiver of the City's and MMSD's M/WBE participation requirements.

> What happens at times is primes, in order to waive the minority participation requirements, they have to make so many phone calls and solicit so many minority subcontractors. I guess a good example is we could get a call on Friday afternoon at 4 and the bid is due Monday at 2 and they ask if we would like to bid the job. It could be any size job and most of the time it does not fit into our bid calendar but they can check the box and say they called us and we said we couldn't.

A Caucasian female business owner indicated during a personal interview that the greatest factor preventing her firm from being awarded City and MMSD projects was the limited time prime contractors provide her to submit a quote.

> A: Some of the construction projects that we bid as a subcontractor, there was a very short window to get the bids in to the prime, who then gets in to the City. This is a problem because we have to go out and get prices from our suppliers in order to provide the quote.
>
> Q: In other words, you would get the notice in those cases from the prime contractor and they would give you a very small window to respond.
>
> A: Right, correct.

Majority Prime Contractors Show Favoritism To Certain Subcontractors. There Is A "Good Old Boy" Network.

Another contracting barrier indicated by M/WBE business owners is the existence of an informal network, commonly referred to as a "good old boy network," that gives advantages to firms selected for City and MMSD contracts. In interviews, many M/WBE business owners indicated that the existence of this good old boy network operated to exclude their businesses and that their inability to be a part of this network had a disparate impact on their ability to obtain business.

Table 9-8 below summarizes the responses of business owners to the question whether they are aware of informal networking that gives advantages to firms selected for City's and MMSD's contracts?

Table 9-9 below summarizes the responses of business owners to the question whether they were aware of informal networking that gives advantages to firms selected for City and MMSD contracts.

Table 9-8. Favoritism by Prime Contractors.

Survey Question	Race/Ethnicity or Gender Category of Business Owner					
Do you think prime contractors show favoritism to some firms on projects?	Asian American	African American	Native American	Hispanic American	Caucasian Women	Caucasian Men
Yes	3	27	2	4	5	4
No		1		1	2	1
No Response		3	2	2	3	2

Table 9-9. Informal Networking.

Survey Question	Race/Ethnicity or Gender Category of Business Owner					
Is your firm aware of informal networking that gives advantages to firms selected for City's contracts?	Asian American	African American	Native American	Hispanic American	Caucasian Women	Caucasian Men
Yes	1	18	2	2	4	
No	1	11	2	3	4	6
No Response	1	2		2	2	1

Survey Question	Race/Ethnicity or Gender Category of Business Owner					
Is your firm aware of informal networking that gives advantages to firms selected for MMSD's contracts?	Asian American	African American	Native American	Hispanic American	Caucasian Women	Caucasian Men
Yes	1	12	1		3	1
No	1	11	2	4	4	5
No Response	1	8	1	3	3	1

An African American construction related subcontracting firm described how the good old boy network operates to the disadvantage of his company. When asked about the existence of a good old boy network with City and MMSD contracting, the business owner answered:

> A. I believe there are some informal things that may go on, that's my perception.
>
> Q: Why do you believe that? Give me an example of some of the things that you've heard people speak about?
>
> A: I think people talk about there being relationships away from the professional, meaning that there are people in authority within the bid structure who have personal relationships with other contractors. And there is a belief that informal information passes back and forth through those channels. There has been talk about people taking other people to baseball games and football games and those sorts of things.
>
> Q: So would you say that you have heard that information that may be helpful to a particular contractor or competitor of yours is passed back and forth between agency representatives and contractors, who they have personal relationships with?

> A: Correct
>
> Q: Do you recall who may have said something to you about that?
>
> A: Well at one point I was intimately involved with National Association of Minority Contractors. So in some meetings, we've had discussions about it.
>
> Q: In as much as you mention that they are members of the National Association of Minority Contractors, would you say that these advantages run on an ethic basis or to majority contractors and that's the kind of relationship you are talking about?
>
> A: Yes.
>
> Q: In other words, there are personal relationships between agency officials who happen to be white and they have a personal relationship with contractors who are also white, and this information is passed back and forth, that is helpful to majority contractors to the exclusion of minority contractors.
>
> A: Yes.
>
> Q: Do you know any minority contractors that have expressed that to you?
>
> A: For example, (M/WBE company name), I've heard them speak of this.
>
> Q: Are they Hispanic owned or African American?
>
> A: African American.

Another African American-owned firm that has contracted with City as both a prime contractor and a subcontractor responded to the following question:

> Q: The lack of relationships, you said is a big problem, how is that a problem for you?
>
> A. The larger firms that tend to get the work more often usually has a relationship with the city so they have their go to person pretty much in mind and because there's no forum where the prime and DBE can get acquainted, I think that if the primes really wanted to help the smaller companies, they would take a couple or take a DBE under their wing so to speak and kind of help them out and help build a relationship.

An Asian business owner made the following observation:

> The two biggest issues I have is, if I'm asked to go to a prime, if we go talk to somebody and they say, well you know what, that's being handled by a prime, I feel the door is shut. Because when I go talk to the prime, he already has comfort level with 1, 2 or whomever, and realistically the opportunities for us to even provide a proposal are very limited.

When asked whether there is a good old boy network that operates to the detriment of the company the owner of an African American Professional service firm responded.

> Oh absolutely, and not necessarily good old boy, maybe a gender, but good ol current clients. So if you've got people who are working, particularly in the IT area, and you have people working on projects and staff helping to augment the City or MMSD, you're in there and working with their staff so you have an unfair advantage of knowing the projects that are coming up, how they're doing with their projects, and sometimes stuff is not put out to the public because the incumbent is going to do the work.
>
> Q: Are you aware or have you heard where there are personal relationships established, for example, between people in the procurement department of the City and those vendors that have done work for them over a period of time, going to dinner, football and baseball games together, just you know, establishing a social relationship that operates to the exclusion of let's say firms like yours?
>
> A: Oh absolutely. The bigger firms continue with their good old boy networks or their preferred vendor networks and if it wasn't for mandatory participations of either women or minorities or EBE's, you would not have an opportunity to partner with the bigger firms.

The same owner noted how the same firms seem to continue to get contracts:

> They tend to repeatedly get the contracts. And once you're embedded, particularly on the IT side, when you're embedded into their operations and their systems, it's hard to overcome that because they want people who are familiar with their system and projects. Well I'll never be familiar if I don't get my foot in the door.

Majority Prime Contractors Create Economic Hardships for Minority and Women Owned Businesses by Late Payments.

Another area that produced significant complaints by M/WBE business owners was unfair payment practices. Several questions in the above chart relate to unfair payment practices. Business owners were if asked they ever completed a job that required less work and less pay than contracted for. They were also asked if they were ever paid less than the negotiated amount after completing a job. Finally business owners were asked if they ever had problems with prime contractors paying them on time. Fifty percent of the owners interviewed stated they had problems with prime contractors paying them on time, and twenty-three percent stated that they were paid less than the negotiated amount after completing a job.

Because M/WBE businesses are generally small, nonpayment produces significant cash flow issues. As M/WBEs have generally been in business for less time than non-M/WBE prime and subcontractors, they often do not have the cash reserves or access to capital necessary to

maintain their business operations when they do not receive payments timely. Therefore, M/WBEs are disparately impacted by a prime contractor's failure to make prompt payments.

African American business owners complained that the City makes no effort to assist them with obtaining payment from the prime contractors or resolving other payment issues.

The following are comments from African American business owners regarding payment problems on City and MMSD projects:

A service subcontracting company explained the problem his company has had with receiving the amount contracted for on a job. In the example below, the prime contractor won a contract with the interviewee's bid and before work began advised the interviewee that he was not going to pay the amount contracted for. The interviewee discussed how the City would not provide his company assistance with resolving this problem. The interviewee has been in business for over 20 years and has served as a prime and subcontractor on several City projects and as a prime contractor on several MMSD projects. During the interview he stated:

> I've experienced that once you win a job as a sub and when you need help working with that prime, there's no help for you. The City doesn't want to get involved because their contract is with the prime and once you win a bid with the prime, they [the prime] can pay you what they want. There's no recourse but to either hire a lawyer or fight it toe to toe with the prime trying to get your money and once you do that, it can be just as damaging because now, the word is out that you're not one they can just take advantage of.
>
> A prime contractor told me "I don't know you from Adam, and I'm not going to pay you this amount. So you can get up and leave or accept what I am going to pay you."
>
> Q: When did this occur? Before you started doing any work?
>
> A: This was before I did any work.

An African American service company discussed the impact slow payment has on her business operations. During a personal interview she stated:

> Sometimes when you get a bigger dollar amount account, it takes a little bit longer for payment, but I never really knew that until I was making some decent money, and it took awhile for payment. Some of that was my fault too though, because I actually invoiced them late. But sometimes it's just that the payment takes awhile and if you don't have a real good line of credit built up it becomes an issue when you have to pay people and pay all these bills for payroll and everything, it can cause a problem for me.

When asked whether slow payments by prime contractors was a function of the current economic times or was slow payment an abuse by the primes, a Hispanic business owner responded as follows:

> Q: Do you think that operates in some respects, primes do that to discourage you from doing work or is that a function of the market place?
>
> A: I think it is function of the market place especially with the recession. These primes use that as an excuse not to pay for 90 to 100 or more days.
>
> Q: The larger you are the more significant your cash flow demand are. Would you cut them some slack based on that or do you think that they could do better or are they just abusing the situation?
>
> A: I think they abuse the situation

Another African American service company, when asked what obstacles present the most significant issues in contracting on City and MMSD projects responded:

> The lack of timeliness of payments and not being able to receive payments in shorter intervals of time.

9.4 Results from 743 Online Survey of Firms

General Opinions of the EBE Program

One of the research objectives of the anecdotal study was to gather public opinion about the City of Milwaukee's current Emerging Business Enterprise (EBE) small business program. Less than 30 percent of survey respondents were aware of the City's EBE program. Of the total 165 individuals who shared comments, 106 had participated in the EBE Program at some point during the Study period. Of those, 80 were also Wisconsin DBE-certified.

Almost half of the firms that provided comments responded that it was good to excellent and said that the EBE Program helped their firm "get a foot in the door." It has opened up opportunities for small businesses that would not have been available to them otherwise. One small business owner commented, "The program has been excellent for my business. It is essential." This was reiterated many times by EBE firms that said it helps disadvantaged businesses and they greatly appreciate the Program. Although several said that there was room for improvement, overall it was perceived as a very positive initiative. Many of the positive comments included praise for the support provided by EBE staff in terms of their helpfulness and responsiveness. In the words of one EBE firm that provides construction management services:

> "The City is to be commended to have established this program. It provides much needed assistance to companies that are good in what they do but that need assistance in their management."

The following information summarizes the general perceptions about the EBE program and areas identified for improvement.

Qualification Criteria

The City has five eligibility criteria used to determine EBE certification. An EBE applicant must meet three of the five criteria plus be at an Economic Disadvantage. The five eligibility criteria are: at a disadvantage with respect to education, at a disadvantage with respect to employment, at a disadvantage with respect to lack of business training, at a disadvantage with respect to residence or business location, and at a social disadvantage.

There was a general perception that the qualification criteria for becoming EBE certified is too restrictive and promotes the use of lesser qualified firms. Several comments related to the Program "only being as good as the contractors that are certified" and the feeling that it was essentially a "quota program for underperforming firms to get work without merit." Of particular concern, was the criteria related to the level of owner education. Not only did this raise concerns for firms that would like to become certified but it also limited the pool of qualified EBE firms to work with prime contractors.

> "The education requirement that an owner/manager NOT have a high school diploma in order to qualify makes no sense at all. I like the gender/race neutral component, since there are so many life circumstances that create a "disadvantaged" environment, even for white males."
>
> "The criteria used to certify as an EBE means the contractor would have to certify to being incompetent to doing the work as it relates to accounting."
>
> "It is too restrictive and makes no sense for certain types of contracting. Does the City really want someone with no education and who nobody else will hire to work on their computer systems?"
>
> "In general the program has the right intentions and our firm is happy to comply. However, there are too few minority/EBE participants who perform audit services in accordance with government auditing standards, and essentially, only one firm has sufficient staff and experience to fulfill the requirements. As such, if that firm does not agree to participate with all potential primary contractors, the consequences are 1) the city does not receive competitive bids, 2) unfair advantage exists to one firm, 3) the goals of the program are not met."
>
> "As I understand it, the EBE program offers opportunities to businesses that don't have the capability, staff or financial support in place to actually complete a project to win projects. So, I don't have a very favorable opinion of the program."

There were also a few firms that believed the EBE Program criteria supported larger more established EBE firms rather than promoting newer "emerging" small businesses. The issue for these EBE-certified firms was difficulty in competing against other successful EBE's

that consistently do work with the City. The general consensus was that there should be a graduation point for EBE firms based upon firm size or revenues. Below are two comments that are in support of the Program but suggest graduation criteria.

> "Think the program is working well for some and not so for others. Like anything it's had its flaws. The biggest thing is that there should be a graduation point. How big should you get and still be considered an emerging business. Even by definition one can't always be considered emerging. Large firms that have been in the program for years hinder others from opportunities and only left to pick up scraps after the larger firms are booked up for the year. And in bad times the small will get nothing at all."

> "We understand and are in favor of the program as a way for emerging small businesses to receive opportunities. Large established companies have had a monopoly on the market for too long. However the personnel running the program need to make sure that the companies in the EBE program are truly "Emerging" (there are several companies on the EBE list that are over 10 years old and fairly well established), actually have the licensing and experience to do the work, and are actually completing the work, not acting as a pass-thru for a large company unless they are teamed as a Mentor-Protégé."

Application Process

For many small businesses, the paperwork and cost associated with the EBE application were prohibitive or perceived as not equal in value to the return. One small business owner said, "I've heard it's very hard to get certified, so I don't bother." The EBE application process was perceived as being even more difficult to fill out than either the County or State DBE applications. Because several EBE firms had not yet received a contract, they were undecided about continuing their certification. In the words of one small business owner:

> "The application process is too tedious and encumbered with paperwork. Being certified does not guarantee work, even if you are the best bidder."

Enforcement

One area of concern that was commented on with some frequency was the enforcement of EBE goals on City projects. Although EBE firms did seem to be receiving requests for bids from prime contractors, there was a general feeling that the work would not be guaranteed even if the prime contractor won the contract. One EBE firm indicated that,

> "The non EBE companies make half hearted attempts to use EBEs. The companies send out a few emails and say look I tried. In the end they wind up using a non EBE and say they could not find any."

The enforcement of EBE utilization and accountability of prime contractors was perceived as lacking. In fact, one firm said that prime contractors often self-perform promised

subcontract work which can negatively impact a small business' ability to manage resources and cash flow. The owner of the firm said,

> "In general we think that there needs to be more enforcement of the rules of the EBE Program. On numerous occasions we have signed a Form A and the work was taken away from us and completed by the prime contractor "because they needed the work". It is hard enough trying to manage when your projects are to be completed as a subcontractor but when you think you have a project and it is taken away from you it makes things even more difficult."

Another Hispanic business owner shared his perception related to the lack of accountability in EBE contracting and enforcement. The owner of the firm said,

> "We have seen EBE certified Prime contractors subcontracting out the majority of the work to non-EBE firms and the City allows the entire expense to be considered EBE spending. This is a front operation and the City allows it and argues their point that is not really a front. Bottom line is that the EBE firm does not build capacity and the EBE program reporting methods become distorted. Also, more follow up is required to be sure that EBE's working as a lower tier subcontractor is actually performing the work reported with their own workforce and that front operations are not going on. As an EBE subcontractor we see this situation happening on occasion however there is little the EBE program can and or will do about this issue."

A few firms mentioned that prime contractors will often switch EBE participants or change the scope of work after contract award. Because primes are only required to meet the total EBE goal at the end of the project, there is no guarantee that a proposed EBE will be utilized. There also seemed to be a lack of accountability on prime contractors reporting work with EBE firms.

> "I think it's a great program if based on helping small EBE certified firms with contracting opportunities and building its capacity. When the prime contractor request quotes from small EBE certified companies the quote scope of work should not be allowed to change once the prime is awarded the project. It under minds the program and circumvents the participation goals."

> "The program needs work to make sure EBEs are given every opportunity to bid as a prime or subcontractor. There have been quite a few IT contracts that were not put out to bid to all companies only a select few companies were invited to bid on the IT services. There should also be prebid conferences to make sure Prime contractors are able to me potential EBE subcontractors. The reporting of EBE dollars should be done on a monthly basis with all contracts. Prime Contractors should not be able to change EBE once they have won a contract."

> "Prime Contractors report that they are doing business with my company and they don't do the dollar amount that they have reported to the City. The City not holding the prime contractor to the percentage of the contract that was supposed to be subcontracted to my company."

Outreach and Networking

Many EBE firms commented that they had difficulty identifying opportunities and obtaining contracts with the City, even with certification. The most requested solution was for the City to add resources to enable more frequent communication and outreach regarding upcoming contracts, introductions to prime contractors and guidance on how to find opportunities.

> "I find it very hard to break in. I feel disconnected most of the time. For example, I understand the city hires contractors to do interpreting and translation, something my communications company does, but I have never received any information on how to bid on these opportunities."

> "Needs more resources to effectively reach within the City departments and outside to EBEs. For a service firm like myself, there is almost nothing that comes through the EBE office to me."
> "Lack of communications with EBE firms. Good intentions but the program needs more employees and greater strength within the City contracting."

> "I think it means well but the EBE's should be brought in more for larger opportunities. There should be a monthly meeting where the opportunities coming to the market are presented and offered with the non EBE firms. I guarantee the involvement would increase exponentially."

> "Technology is purchased by the organizations internal technology departments, not just RFP and bids. With limited accessibility we have not been successful in developing relationship into these contacts, would love to see the city ebe event focus on introducing outside vendors into internal department with one-to-one sessions."

Goal Setting

Not surprisingly, EBE firms felt that goals should be higher overall and expanded to more contract opportunities, especially in professional services.

> "It is a very useful Program for Minority Business owners and these businesses should be encouraged to participate in a larger scale. 18% should be increased to 25%."

> "We have proposed for several City contracts, however professional services contracts RARELY require EBE participation. We have NEVER been awarded any City work and question how valuable the certification actually is, considering time and effort to write proposals, EBE renewals, etc. Our firm is highly qualified and with decades of experience. Is there some way to require an EBE component on all City professional services scope of work?"

Conversely, many prime contractors felt the EBE goals were too high to effectively achieve. Overall, the opinion was that the Program seemed fair and supportive of small business. However, the comments tended toward goal setting that was on a sliding scale versus a general percentage. One prime contractor said,

> "A program that requires a smaller EBE commitment and is scalable based on the award value would be much easier to work with."

Another prime contractor that provides Information Technology services had a stronger opinion based upon a specific experience. The prime contractor said,

> "The current program does not work well at all for the type of service provided to the city by our firm (IT services). Our current contract requires 40% EBE participation for engagements. Contracts from the city tend to be small dollar awards requiring 1 - 2 consultants. It is very challenging to carve out EBE participation on these types of projects. In order to be competitive and procure the work there is little or no mark up on EBE resources when utilized. In most cases with city contracts the EBE share of revenue exceeds the prime's share due to the city's current diversity requirements. More frustrating the EBE partner produces little value and shares in no risk on the project."

In summary, the EBE Program has had a positive affect on a variety of small and minority-owned businesses. Most firms feel that it has helped them make contacts and obtain work with the City. However, there is a perception that the application process is tedious and the qualification criteria are too low to support quality vendor selection. Firms that are already EBE certified would like more outreach from the EBE office and information regarding upcoming procurements and how to connect with prime contractors. The City should also have more transparency related to the enforcement of EBE rules for prime contractors so that small businesses understand why they are getting work or not. Overall, the goals set for EBE subcontracts are fair but it may be worth considering a scalable model for different size projects.

Analysis of Minority and Woman-Owned Business Issues

The online survey uncovered several issues that were specific to minority and woman business owners in the relevant market area for the City of Milwaukee. Based upon quantitative results and qualitative comments, minority and woman business owners felt that some prejudice and sexism still exists in the Milwaukee contracting community. These attitudes have created feelings of frustration among minority and woman owners and serve as barriers to EBE and small business participation in contracting.

Specific Instances of Discrimination

The survey included several questions related to potential discriminatory practices toward small businesses by either the City of Milwaukee or prime contractors. Business owners were provided with a series of situations and asked whether they had experienced any of them. If business owners indicated that they experienced any of the situations, they were included on

a list for a personal interview to provide more detail about the specific circumstances. **Table 9-21** on page 9-46 shows the results of these questions specified by race and gender. The varying totals for each of the questions are due to individuals electing to leave some of the categories blank. Below is a summary of the most prevalent issues.

Attitudes toward Minority and Woman Business Owners

The survey included an open-ended question that asked respondents to describe any instances of discrimination that their firm had experienced while contracting or attempting to work with the City of Milwaukee. Both minority and women business owners alleged that they have encountered prejudice and sexism from some City managers and prime contractors. Although some commented that it is often hard to know whether certain behaviors can be attributed to race or gender bias, there is an underlying feeling that this is the case. As seen in the comments below, the business owners described hostile experiences that made completing a project difficult.

One Hispanic business owner said that, "An employee made a comment that minorities shouldn't be allowed to work because they always do crappy work."

Another Hispanic business owner pointed out that most discriminatory practices are subtle rather than overt. However, he believes the underlying issues in many cases have to do with his race. The business owner said,

> "Often the City will have closed bidding for smaller projects. After our firm learns of these projects we will then have a chance to bid the jobs but rarely do we win the contract. Almost always a non-EBE firm is awarded the project and it is told that this is due to price however there are little details provided beyond that explanation. Not the best example as it is hard to point out discrimination these days as the non-minority individuals are very savvy in their methods of communicating as to not expose their true reasons for not making an award. But as a minority individual you have very little doubt of the true intent of the person's feelings. Also there seems to be a lack of Hispanic involvement at the City EBE level and has been for almost a decade. There should be a diverse group if City individuals working in the City EBE program to create a better harmony among the certified EBE firms."

One Black Woman business owner conveyed that discrimination seemed to be particularly targeted toward African Americans. She said,

> "It is a belief by the owners of the company that we don't get work because of relationships the prime or sub already have with other minority firms and that we don't get asked to serve as sub on projects by primes because we are AA owned. The Primes typically use women-owned firms to meet EBE requirements for the City of Milwaukee. Also, while working on a project, the city manager seemed to hold us to a different standard than the prime was. Almost as if he was waiting for us to make a mistake so he could jump all over us."

A White Woman business owner related a brief story about how she is treated by City employees when attending pre-bid meetings,

> "Working on City of Milwaukee work, as a women owned business, if I bring my estimator or project manager to a precon or prebid meeting, it was told to me by the engineer that the EBE officer thought it was my husband but clearly it was not if he had looked at the sign in sheet."

Bid Shopping

One widespread complaint found among small businesses of almost every race/ethnic and gender group was that prime contractors use unfair methods to comply with the City's bidding procedures. Minority and woman-owned firms alleged that the bidding policies for contracts, as implemented by prime contractors, have a negative impact on small businesses because their bids are regularly shopped prior to the contractor's bid submission.

Specifically, two of the questions asked on the survey relate to bid shopping. Business owners were asked if they were pressured to lower quotes on a bid because of bid peddling or bid shopping by prime contractors. Business owners were also asked if they were frequently contacted by prime contractors for inclusion in a bid and after providing quotes, never hearing from the prime again. **Table 9-10** below shows the results of these questions.

Table 9-10. Bid Shopping.

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Pressured to lower quotes on a bid because prime contractor was bid peddling or bid shopping							
Yes	15.4% (2)	50.0% (11)	57.1% (4)	50.0% (2)	39.1% (9)	16.3% (8)	36
No	46.2% (6)	31.8% (7)	42.9% (3)	50.0% (2)	39.1% (9)	63.3% (31)	58
N/A	38.5% (5)	18.2% (4)	0.0% (0)	0.0% (0)	21.7% (5)	20.4% (10)	24
total	13	22	7	4	23	49	118
Frequently contacted by prime contractors for inclusion in a bid and, after providing the quotes, never heard from the prime again							
Yes	15.4% (2)	50.0% (11)	57.1% (4)	50.0% (2)	30.4% (7)	18.4% (9)	35
No	46.2% (6)	31.8% (7)	42.9% (3)	50.0% (2)	43.5% (10)	61.2% (30)	58
N/A	38.5% (5)	18.2% (4)	0.0% (0)	0.0% (0)	26.1% (6)	20.4% (10)	25
total	13	22	7	4	23	49	118

Fifty percent or more of Black, Hispanic and Native American-owned firms, indicated that they had been pressured to lower bids because of bid shopping and 39 percent of Women business owners experienced the same. Only Asian-owned and White male-owned firms indicated with more frequency that this was not a problem. In virtually the same numbers, Black, Hispanic and Native American-owned firms had also been contacted by primes for quotes but never heard from them again. There was less of an incidence (30 percent) of this happening with Women-owned firms.

Prompt Payment

Another area that produced significant complaints from minority and woman business owners was the fact that prime contractors do not pay subcontractors in a timely fashion. Minority and woman owners complained that after they completed their portion of the contract, prime contractors would unreasonably and unfairly withhold payment. This practice is pervasive and severely impacts minority and woman-owned business operations because these companies are small and nonpayment produces significant cash flow issues. Minority and woman-owned firms often do not have the cash reserves available to maintain their business operations when they do not receive timely payment for work completed. Therefore, minority and woman-owned firms are disparately impacted by a prime contractor's failure to issue prompt payment.

Table 9-11. Late Payment by Primes.

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Had problems with the prime contractor paying on time							
Yes	15.4% (2)	45.5% (10)	57.1% (4)	66.7% (2)	30.4% (7)	20.4% (10)	35
No	46.2% (6)	36.4% (8)	42.9% (3)	33.3% (1)	47.8% (11)	59.2% (29)	58
N/A	38.5% (5)	18.2% (4)	0.0% (0)	0.0% (0)	21.7% (5)	20.4% (10)	24
total	13	22	7	3	23	49	117

As noted in **Table 9-11** above, subcontractors were asked if they had problems with prime contractors paying them on time. Nearly half (45 percent) of Black-owned firms and more than half of Hispanic (57 percent) and Native American (66 percent) firms had experienced a delay in payment from a prime contractor. Although this was also a problem for 30 percent of Women-owned firms, a greater majority had not experienced delays with payment. Again, Asian-owned and White male-owned firms seemed less susceptible to problems with prompt

payment by primes. For White male-owned firms, this could be attributed to the fact that they are more often a prime contractor on public and private contracts than a subcontractor.

A Woman business owner of an engineering firm provided the following comment regarding issues with prompt payment.

> "Very long payment process as sub. Most IDIQs/projects go to LARGE businesses who pay very poorly and slowly to their subs. Often very poor definition of scope resulting in cost overruns for subs, as a result - we make no money on the projects."

The perception that vendors do not get paid on time for City projects has spread through the contracting community through word-of-mouth which has prevented some qualified firms from even attempting to bid. As one Hispanic business owner commented,

> "I have talked to others that have done business with the City of Milwaukee and they complained about getting paid on time. I cannot afford that issue with my business. I would consider doing business with the city and could in fact tailor my business to an extent, to help the city in areas they need help. The issue for me is getting paid."

Another example shared by a Native American business owner conveyed frustration with getting paid directly by the City. The business owner said,

> "By not having our quantities turned in by the City of Milwaukee inspectors to be paid we think this is because we are a minority owned firm. As of 5/5/10 we are still waiting to be paid for work we completed in 2008 because the inspector's supervisor has not turned in the quantities to get our payment processed. We were told it is because he has moved into another department and he's too busy to do the work. Meanwhile we wait over 18 months to be paid for our work with no idea of when the payment will be processed."

Favoritism by Prime Contractors and the City

On the survey, business owners were asked what level of agreement they had with the statement that there is an overall informal network of prime and subcontractors that has purposely excluded their firm from City projects. They were also asked if they believed that City procurement managers maintained a preferred list of vendors to the exclusion of their company.

As noted in **Table 9-12** below, the majority of business owners in all categories of race, gender and ethnicity were neutral about the idea that there is an overall information network. However, 30 percent of Hispanic-owned firms and 22 percent of Woman-owned and Asian-owed firms believe that this type of "good ole' boy" network does exist in the City contracting climate.

Table 9-12. Informal Network.

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
There is an overall informal network of prime and subcontractors that has purposely excluded your firm.							
Strongly Disagree	11.1% (2)	9.8% (4)	17.4% (4)	0.0% (0)	10.1% (11)	18.9% (7)	11.8% (28)
Disagree	27.8% (5)	17.1% (7)	8.7% (2)	22.2% (2)	19.3% (21)	13.5% (5)	17.7% (42)
Neither Agree nor Disagree	27.8% (5)	46.3% (19)	26.1% (6)	55.6% (5)	45.9% (50)	40.5% (15)	42.2% (100)
Agree	22.2% (4)	14.6% (6)	30.4% (7)	22.2% (2)	22.0% (24)	18.9% (7)	21.1% (50)
Strongly Agree	11.1% (2)	12.2% (5)	17.4% (4)	0.0% (0)	2.8% (3)	8.1% (3)	7.2% (17)
total	18	41	23	9	109	37	237

As noted in **Table 9-13** below, the majority of minority business owners and almost 60 percent of Black-owned firms believed that City procurement managers maintain a list of preferred vendors and, in most cases, this benefited White male-owned firms. There is a perception that "The city seems to always contract with the same contractors," and that "Milwaukee GC's have the good old boy mentality," as commented by two Black woman business owners.

Table 9-13. Preferred Vendor List.

		Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
City procurement department maintained a preferred list of vendors to the exclusion of your company								
Yes	30.3% (10)	43.8% (28)	59.5% (22)	38.5% (5)	33.3% (1)	21.4% (18)	18.4% (35)	28.1% (119)
No	33.3% (11)	31.3% (20)	13.5% (5)	30.8% (4)	33.3% (1)	39.3% (33)	47.9% (91)	38.9% (165)
N/A	36.4% (12)	25.0% (16)	27.0% (10)	30.8% (4)	33.3% (1)	39.3% (33)	33.7% (64)	33.0% (140)
total	33	64	37	13	3	84	190	424

While many of the firms indicated that favoritism was based upon established working relationships, the following discussion shows examples of the notion that a "good 'ole boy"

network plays a role in the disparate treatment by prime contractors toward minority and women subcontractors. There were numerous comments related to the perception that the City maintains a preferred list of vendors that gives advantages to certain firms. Below are a few selected comments along with the race and gender of the respondent.

Table 9-14. Preferred Vendor List Comments.

Comment	Race	Gender
Every one should be able to participate. The city should not keep preferred vendors who are big boys and there is no chance to get contract for small companies.	Asian	Male
While there is a tremendous amount of publicity and fan fair regarding the program, the actual day to day decision makers have their relationships. It is almost impossible to break in. Even when competing against a non-EBE company.	Hispanic	Male
Went to pick up plans and the city worker was asking questions who are you and why are bidding this I have not heard of you before. Direct questions asked in my opinion to intimidate.	Hispanic	Male
Sometimes it seems like the City has a vendor selected ahead of time. The RFP's are purposefully written to the exact specifications of the vendor's products/services/ staff. Other vendors are expending resources to prepare proposals when they really have no chance of being awarded the contract.	Native American	Male
Sometimes the decision-makers hire who they know. Or other firms seem to be in the loop more so than others.	Black	Male
There seems to be a good old boys network and preferred vendors that have most of the business at the City and it is hard to break up that network.	Black	Female
I can't say conclusively that my firm has experienced discrimination, but I can say I've had to jump through too many hoops and faced too many barriers despite having high qualifications for projects I've bid on with the City and Milwaukee Public Schools. Often, projects are awarded to larger agencies and small/micro businesses are excluded or not given an opportunity. It's been frustrating overall because it seems the same organizations continue to be selected for projects.	Black	Female

Many small businesses also felt that there was a bias toward larger firms. This may be attributed to the fact that many larger primes are White male-owned as shown in the analysis of business characteristics. There is a general perception that larger firms tend to be favored for City projects over smaller firms. As one Black female business owners said, “Small firms are not taken as seriously for the work.” Smaller firms may be seen as less qualified although they believe their niche skills could be greatly beneficial to the City if contracts were broken down

into smaller pieces.

A White male small business owner shared an experience he had when contacting the City about contracting opportunities. The business owner said,

> "I called to find out if the city even uses staffing agencies. I was asked how big is my company and was told too small, and that I'm not a minority company. I told the person my company is Vet owned and operated and I was told, not to waste the city's time."

A Black female owner of another small business shared a similar perception when bidding as a subcontractor teamed with a small business prime. She said,

> "We were on a bid to sub for the Compliance Monitor role on a Client Services RFP. The contractor that was bidding for the prime position for the Client Services RFP was a small firm that is not one of the well known firms. There was evidence that they were "overlooked" due to their size and they had not done business with the City even though they had bid many times and had the skills and experience."

Barriers to Contracting

On the business survey, business owners were provided a series of factors and asked whether any factors interfered with the company's ability to bid on a City of Milwaukee project. The factors outlined potential barriers to contracting with the City or prime contractors. The following is a summary of the most prevalent issues for minority and woman-owned firms. The results of all survey questions are provided in Table 8-14 on page 8-28. The varying totals for each of the questions were due to individuals choosing to leave some of the categories blank.

Limited Information

The survey asked respondents whether having limited information about a bid or project prevented them from bidding or obtaining work with the City. As shown in **Table 9-15** below, 53 percent of minority-owned firms believed they were not given enough information regarding the opportunities available to them. It is significant to note that only White-owned firms had a higher percentage of "no" responses.

Table 9-15. Limited Information.

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Limited information about the bid or project								
Yes	61.8% (21)	43.5% (30)	62.5% (25)	46.7% (7)	75.0% (3)	33.7% (29)	38.1% (74)	42.8% (189)
No	32.4% (11)	42.0% (29)	25.0% (10)	33.3% (5)	0.0% (0)	45.3% (39)	41.8% (81)	39.6% (175)
N/A	5.9% (2)	14.5% (10)	12.5% (5)	20.0% (3)	25.0% (1)	20.9% (18)	20.1% (39)	17.6% (78)
total	34	69	40	15	4	86	194	442

Several comments on the survey supported the common problem that small businesses have with identifying opportunities for contracting with the City. Some indicated that a lack of centralized bid information and networking opportunities prevented them from participating in the procurement process. Below are several comments collected survey participants when asked what barriers they faced in contracting with the City.

Table 9-16. Limited Information Comments.

Comment	Race	Gender
The big one is lack of information regarding appropriate bid opportunities and contracts for my particular services and company.	Hispanic	Female
Well, we really haven't been kept in the loop regarding information on new contracting opportunities with the city. Therefore, we haven't been able to bid on projects most recently. My colleagues express their concern with contracts that are awarded to the same firms without any consideration for other competent companies to perform the work. There is also some belief of racial bias as well as other factors.	Hispanic	Male
Often smaller contracting opportunities are not advertised well and the EBE program has limited or no knowledge of what projects are currently being bid. This may be due to the lack of enough employees in the program.	Hispanic	Male
A better effort needs to be made to include qualified vendors in the process, even if it's only a small part, so that new EBE vendors can learn the process and get some experience, so that they can bid on bigger contracts/projects in the future.	Black	Male
We don't have knowledge of what services we offer that the City purchases from outside contractors and if/when the contracts are up for renewal so that we could participate in the RFP process.	Black	Male
We have been searching on the City site, but we have not seen any available contracts needing transportation service for commercial goods. There could	Asian	Female

Comment	Race	Gender
be opportunities for trucking when another company wins the bid that can use a trucking firm like us, but how do we go about finding those winning bidders? Are there networking meetings or project meetings that we can participate? We do believe that virtually everything has to be "trucked" from point A to point B. We are just having a difficult time locating the work.		

Limited Knowledge and Understanding of Processes

As shown in **Table 9-17** below, all minority and woman-owned firms responded with higher frequency that their limited knowledge of City procurement processes was a barrier to contracting. As a whole, more than 52 percent of minority and woman-owned firms indicated this was a problem compared to 38 percent of White male-owned firms. Small businesses may be otherwise qualified, willing and able to provide goods or services but lack an understanding of the proper methods and mechanisms to promote the firm to procurement decision makers. This lack of knowledge could preclude firm participation in the procurement process.

Table 9-17. Limited Knowledge of City Processes.

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Limited knowledge and understanding of City purchasing/contracting policies, procedures or processes								
Yes	61.8% (21)	52.2 % (36)	57.9% (22)	53.8% (7)	75.0% (3)	44.3% (39)	37.8% (74)	202
No	29.4% (10)	39.1 % (27)	31.6% (12)	23.1% (3)	25.0% (1)	39.8% (35)	46.4% (91)	179
N/A	8.8% (3)	8.7% (6)	10.5% (4)	23.1% (3)	0.0% (0)	15.9% (14)	15.8% (31)	61
total	34	69	38	13	4	88	196	442

Pre-qualification Requirements Too Stringent

The survey also probed into owner sentiments about the ability of their firm to meet specifications in requests for quotes, bids and proposals. Stringent pre-qualification requirements can be advantageous for procurement officials as a filtering mechanism to sort out firms in the selection process but those same stringent requirements can also be a barrier that discourages newer and smaller firms seeking to develop business relationships with procurement agents. As shown in **Table 9-18** below, this was an issue particularly for Black-

owned firms (52 percent). Although 100 percent of Pacific Islander-owned firms said this was a problem the sample size is too small for inclusion and adequate analysis.

Table 9-18. Stringent Pre-qualification Requirements.

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Pre-qualification requirements are too stringent								
Yes	24.2% (8)	44.3% (31)	33.3% (12)	20.0% (3)	100.0% (4)	12.8% (11)	23.6% (45)	26.2% (114)
No	54.5% (18)	40.0% (28)	44.4% (16)	33.3% (5)	0.0% (0)	53.5% (46)	49.7% (95)	47.8% (208)
N/A	21.2% (7)	15.7% (11)	22.2% (8)	46.7% (7)	0.0% (0)	33.7% (29)	26.7% (51)	26.0% (113)
total	33	70	36	15	4	86	191	435

Oftentimes, it was felt that the requirements in the actual bid document precluded firms from competing. Although pre-qualification requirements may have been met, stringent RFP requirements made it difficult for small firms. Below are several comments relating to this issue.

A White male business owner of a lift truck equipment company said,

> "As Bids are quite frequently written around a specific piece of equipment and disqualifies others that may have a superior product, bid doesn't give you the chance to show your equipment, and if you have the opportunity, the bids are generally not changed to give the bidders a fair shot."

An Asian male owner of a Professional Services company made a business decision to not bid on City projects because the bidding process is too arduous. When asked to provide comments on the survey regarding barriers to contracting the business owner said,

> "a) Preparing bids is a long and arduous task for small businesses. We have to run lean to survive, and literally, I can not put the hours in to complete a bid, because most bid situations in Marketing Communications/Advertising require me to actually complete the work to put it in the bid. For example, there is usually a question like, "Please state the media schedule and its costs to achieve the results." Creating a media schedule and cost schedule requires me to DO THE WORK I AM BIDDING ON without having the contract. b) Even if I DID make a bid and win a project, the project fees are too small for me to create quality materials and still make a profit. I believe city and state contracting systems and procedures are not set up to create or acquire Marketing Communications, Advertising, PR and the like. They probably work well for road paving or building painting or tree trimming ..."

A Native American-owned company questioned specific bid requirements and indicated that it not only prevents fair competition but artificially raises the bid price. The business owner said,

> "Our first opportunity to bid Milwaukee work was for MPS. The requirements for some of the projects are rather questionable. Whoever thought that student participation is a good learning experience needs to reevaluate their motives. The whole concept is commendable but not practical. The only thing it accomplishes is increasing the overall bid price. Now go and include the coin requirements and educational hours and the bid gets really out of whack with what it should cost. Very frustrating."

Lack of Relationships

Because there is a perception that the City is not comfortable using small businesses as prime contractors, highly capable minority and woman-owned firms are persuaded to team with other larger firms. However, a lack of relationships often hinders their ability to obtain contracts. Small business owners may feel disadvantaged if they lack the business network with mentors, project managers and procurement officials to help them ferret through procurement processes. Business owners who have access to these networks may feel more confident in their ability to win contracts because they are able to vet ideas and issues with knowledgeable people.

As shown in **Table 9-19**, a lack of relationships and networking was a common problem for most minority-owned firm (52 percent), especially for Black, Hispanic and Asian-owned firms. White male-owned firms had much less (20 percent) of a problem with obtaining partnerships and building relationships.

Table 9-19. Lack of Relationships.

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Lack of relationships with larger firms that you could partner with								
Yes	48.5% (16)	55.2% (37)	55.3% (21)	38.5% (5)	33.3% (1)	35.6% (31)	19.8% (38)	149
No	39.4% (13)	35.8% (24)	34.2% (13)	38.5% (5)	66.7% (2)	42.5% (37)	56.8% (109)	203
N/A	12.1% (4)	9.0% (6)	10.5% (4)	23.1% (3)	0.0% (0)	21.8% (19)	23.4% (45)	81
total	33	67	38	13	3	87	192	433

Local Preference

One fairly consistent barrier that was discovered in the survey comments related to the City's local bid preference program. Although this was not posed as a specific question on the

survey, several respondents indicated that being located outside the City limits put them at an unfair disadvantage. One firm said that it was "Ok to give preference to firms within the city limits, but outside firms should be allowed to bid." When there are requirements for labor or workforce from a specific area or zip code, this can be perceived as a discriminatory practice. A Native-American business owner said,

> "The Local Bid Preference program inadvertently discriminates against Native American Contractors as there are none domiciled in the City of Milwaukee. The Local bid preference program has cost our company, we lost jobs when we were the low bid."

Another owner of a Native-American construction firm said that the local bid preference program has made it impossible for them to compete for City projects. The business owner said,

> "We are a union company located in Milwaukee County but not the City of Milwaukee. This makes it difficult to compete with the non-union companies located in the City of Milwaukee because of the new local bid preference program where they are awarded the project if they are 5% higher than the lowest bidder as long as the difference is less than $25,000. This basically means we can no longer compete on bids in the City of Milwaukee and will no longer bid City of Milwaukee work as a prime contractor."

A Hispanic business owner in a similar heavy construction trade shared that the bidding requirement for using local residents puts an undue burden on their employment and hiring practices. Many small businesses without a large number of human resources are not able to compete against larger firms. The business owner said,

> "The mandatory target area resident requirements preclude us from bidding any more work then we do at this time because, identifying, competent, dependable, experienced, and most importantly, productive employees is very rare. Of the numerous interviews we conduct to identify potential candidates along with the passing of our mandatory pre-employment drug screening we would be fortunate to find one person out of forty. There is an expense to our company to conduct both the interview phase and the drug screen that we are exposed to, therefore we can only pursue a limited amount of projects that we can man presently with the manpower we have on hand. Should the city modify the resident requirements that are currently in place, we believe are efforts to obtain more city work would be warranted."

Reverse Discrimination

Several White male-owned firms that responded to the survey indicated that they experienced reverse discrimination. The majority of the complaints regarding this issue came from small specialty contractors who found it difficult to compete against EBE certified firms when there was a significant EBE goal or restricted procurement. These contractors felt that the existence of the EBE goals operated to the disadvantage of White male small business owners in a discriminatory way. A common sentiment shared in the comments was if the owner was not a minority or female, the firm could not get work with the City. Although the survey did not

facilitate more in-depth analysis, these firms will be contacted for personal interviews to follow up. Below are a few selected comments that were collected on the survey.

> "Landscape Architecture portion of projects are held for MBA, DBE, EBE, WBE's...If you're a firm owned by a white male you will not be seriously considered, or get the job....Regardless of capability, experience and, or production capability."
> "Capable Caucasian owned firms suffer from reverse discrimination by virtue of City of Milwaukee policy of contract set asides for so called minority/women/disadvantaged/ emerging owned businesses, many of which are shell firms."

> "We rarely attempt to bid City of Milwaukee projects because of minority requirements. If there is any discrimination it is our company is primarily owned and operated by a male who is not a member of any minority group. Unless we work with a MBE or DBE contractor we don't fulfill the requirements set out by the City."

> "We can handle any wood floor project big or small from a home to a large gymnasium or commercial project; however, our company is owned by a white individual and is more time then not put in a position where other ethnicities are given percent preference so it almost isn't worth it in some cases."

> "I have submitted as a subcontractor roll, repeatedly MBA, EBE, DBE or WBE's get the job because they increase the prime's potential to get the job...not because the firms were competing on capabilities. Also, 2 1/2 months past, the city listed the position of Parks Dir. The listing stated that a court order allowed the city to only consider Women and minority applicants only....If that isn't discrimination what is?"

9.5 Summary

In summary, minorities and woman reported that they still encounter significant barriers to doing business in the public sector due to discrimination and unfair contracting practices. In most cases, race/ethnicity and/or gender appear to be a factor, especially for African American and Hispanic-owned firms. Minority and woman-owned firms often suffer from stereotypes about their suspected lack of competence and are subject to higher performance standards than their White male counterparts. They encounter discrimination in the bidding process when dealing with prime contractors and City officials. While achieving some success in being awarded City contracts and subcontracts because of contracting goals, minority and woman-owned firms report that it is still unusual for them to receive prime contracts.

A majority of minority and woman business owners feel that they would not receive City and/or MMSD work at all if there were no EBE goals because the prime contractor would self-perform the work or use preferred subcontractors. Minorities and women attributed this market failure to active and passive discrimination. Whether this would also hold true for small White male-owned firms is difficult to quantify because the current goal system has encouraged minority and woman subcontracting but not for White male-owned firms. Without

encouragement to use minority and woman subcontractors, these firms will most likely suffer.

In general, minority and woman-owned firms questioned whether contract awards are the result of objective, non-biased bidding and purchasing procedures by the City and/or MMSD and whether favoritism affects the outcome. There is concern among small businesses about purchasing and contracting practices and outcomes, which many businesses feel are the result of long standing practices, traditions, preferences, and patterns which limit participation.

Prompt payment and bid shopping were also seen as significant barriers to contracting with the City and/or MMSD. Many small businesses regardless of race/ethnicity do not have the financial capacity to carry project costs when there are long delays in payment. This often prevents small businesses from participating in competitive procurements. And, when small businesses expend significant time and resources to provide bids to prime contractors that are only trying to comply with regulations or to create a bidding war among subcontractors, small businesses suffer the consequences.

Additionally, limited information about bids and projects as well as a general lack of knowledge about City and/or MMSD policies and procedures has hindered minority and woman-owned firms from obtaining contracts. For African Americans, stringent pre-qualification requirements have also been a barrier to contracting. The lack of relationships with larger firms was an issue for all minority and woman-owned firms while not much of a problem for White male-owned firms. Finally, there were a number of comments from White male-owned firms that bidding is slanted toward minority-owned firms and White male-owned firms are “cast aside in the bidding process.”

9.6 Appendix

Table 9-20. Experiences of Discrimination.

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
There is an overall informal network of prime and subcontractors that has purposely excluded your firm from City projects.							
Strongly Disagree	11.1% (2)	9.8% (4)	17.4% (4)	0.0% (0)	10.1% (11)	18.9% (7)	28
Disagree	27.8% (5)	17.1% (7)	8.7% (2)	22.2% (2)	19.3% (21)	13.5% (5)	42
Neither Agree nor Disagree	27.8% (5)	46.3% (19)	26.1% (6)	55.6% (5)	45.9% (50)	40.5% (15)	100
Agree	22.2% (4)	14.6% (6)	30.4% (7)	22.2% (2)	22.0% (24)	18.9% (7)	50
Strongly Agree	11.1% (2)	12.2% (5)	17.4% (4)	0.0% (0)	2.8% (3)	8.1% (3)	17
total	18	41	23	9	109	37	237
Qualifications and performance double standards make it difficult for minority-owned firms to win projects.							
Strongly Disagree	3.6% (1)	6.3% (4)	2.6% (1)	6.3% (1)	27.2% (46)	13.0% (10)	63
Disagree	14.3% (4)	9.5% (6)	7.9% (3)	12.5% (2)	21.3% (36)	23.4% (18)	69
Neither Agree nor Disagree	50.0% (14)	28.6% (18)	55.3% (21)	56.3% (9)	45.0% (76)	54.5% (42)	180
Agree	28.6% (8)	28.6% (18)	26.3% (10)	12.5% (2)	4.1% (7)	3.9% (3)	48
Strongly Agree	3.6% (1)	27.0% (17)	7.9% (3)	12.5% (2)	2.4% (4)	5.2% (4)	31
total	28	63	38	16	169	77	391
During the past 5 years, has your firm experienced discrimination from the City of Milwaukee due to:							
Owner's Ethnicity/Race	16.1% (5)	8.7% (6)	13.5% (5)	11.8% (2)	1.1% (1)	6.1% (12)	7.1% (31)
Owner's Gender	6.5% (2)	2.9% (2)	2.7% (1)	0.0% (0)	4.5% (4)	4.1% (8)	3.9% (17)
Age of Firm	3.2% (1)	5.8% (4)	5.4% (2)	0.0% (0)	1.1% (1)	1.5% (3)	2.5% (11)
Size of Firm	6.5% (2)	14.5% (10)	16.2% (6)	5.9% (1)	4.5% (4)	2.6% (5)	6.4% (28)
None of the above	83.9% (26)	79.7% (55)	81.1% (30)	82.4% (14)	90.9% (80)	91.3% (179)	87.7% (384)
total	31	69	37	17	88	196	438

Table 9-21. Subcontractor Potential Instances of Discrimination.

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Submitted bid as a subcontractor and then dropped by the prime after the prime was awarded the contract							
Yes	15.4% (2)	41.7% (10)	42.9% (3)	50.0% (2)	21.7% (5)	13.7% (7)	29
No	46.2% (6)	45.8% (11)	57.1% (4)	50.0% (2)	56.5% (13)	64.7% (33)	69
N/A	38.5% (5)	12.5% (3)	0.0% (0)	0.0% (0)	21.7% (5)	21.6% (11)	24
total	13	24	7	4	23	51	122
Placed on a contract to do one job and ended up doing another							
Yes	7.7% (1)	18.2% (4)	28.6% (2)	0.0% (0)	4.3% (1)	5.9% (3)	11
No	53.8% (7)	63.6% (14)	71.4% (5)	75.0% (3)	73.9% (17)	70.6% (36)	82
N/A	38.5% (5)	18.2% (4)	0.0% (0)	25.0% (1)	21.7% (5)	23.5% (12)	27
total	13	22	7	4	23	51	120
Did a job that required less work and pay than was contracted for							
Yes	23.1% (3)	31.8% (7)	42.9% (3)	25.0% (1)	17.4% (4)	2.0% (1)	19
No	38.5% (5)	54.5% (12)	57.1% (4)	50.0% (2)	65.2% (15)	76.0% (38)	76
N/A	38.5% (5)	13.6% (3)	0.0% (0)	25.0% (1)	17.4% (4)	22.0% (11)	24
total	13	22	7	4	23	50	119
Prime contractor held your company to higher performance standards than other contractors on the job							
Yes	7.7% (1)	22.7% (5)	14.3% (1)	0.0% (0)	0.0% (0)	2.0% (1)	8
No	53.8% (7)	59.1% (13)	85.7% (6)	75.0% (3)	78.3% (18)	75.5% (37)	84
N/A	38.5% (5)	18.2% (4)	0.0% (0)	25.0% (1)	21.7% (5)	22.4% (11)	26
total	13	22	7	4	23	49	118

Table 9-21. Subcontractor Potential Instances of Discrimination. (continued)

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
City personnel held your company to higher performance standards than other contractors on the job							
Yes	0.0% (0)	27.3% (6)	14.3% (1)	25.0% (1)	4.3% (1)	2.0% (1)	10
No	61.5% (8)	59.1% (13)	85.7% (6)	50.0% (2)	73.9% (17)	79.6% (39)	85
N/A	38.5% (5)	13.6% (3)	0.0% (0)	25.0% (1)	21.7% (5)	18.4% (9)	23
total	13	22	7	4	23	49	118
Asked to be a front for a large business or non-EBE firm							
Yes	15.4% (2)	19.0% (4)	42.9% (3)	0.0% (0)	0.0% (0)	0.0% (0)	9
No	46.2% (6)	66.7% (14)	57.1% (4)	75.0% (3)	82.6% (19)	79.6% (39)	85
N/A	38.5% (5)	14.3% (3)	0.0% (0)	25.0% (1)	17.4% (4)	20.4% (10)	23
total	13	21	7	4	23	49	117
Pressured to lower quotes on a bid because prime contractor was bid peddling or bid shopping							
Yes	15.4% (2)	50.0% (11)	57.1% (4)	50.0% (2)	39.1% (9)	16.3% (8)	36
No	46.2% (6)	31.8% (7)	42.9% (3)	50.0% (2)	39.1% (9)	63.3% (31)	58
N/A	38.5% (5)	18.2% (4)	0.0% (0)	0.0% (0)	21.7% (5)	20.4% (10)	24
total	13	22	7	4	23	49	118
Frequently contacted by prime contractors for inclusion in a bid and, after providing the quotes, never heard from the prime again							
Yes	15.4% (2)	50.0% (11)	57.1% (4)	50.0% (2)	30.4% (7)	18.4% (9)	35
No	46.2% (6)	31.8% (7)	42.9% (3)	50.0% (2)	43.5% (10)	61.2% (30)	58
N/A	38.5% (5)	18.2% (4)	0.0% (0)	0.0% (0)	26.1% (6)	20.4% (10)	25
total	13	22	7	4	23	49	118

Table 9-21. Subcontractor Potential Instances of Discrimination. (continued)

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Dropped from the contract because an EBE goal was not required or it was already met							
Yes	30.8% (4)	45.5% (10)	71.4% (5)	25.0% (1)	31.8% (7)	10.2% (5)	32
No	30.8% (4)	45.5% (10)	28.6% (2)	75.0% (3)	50.0% (11)	67.3% (33)	63
N/A	38.5% (5)	9.1% (2)	0.0% (0)	0.0% (0)	18.2% (4)	22.4% (11)	22
total	13	22	7	4	22	49	117
Lost a contract because there were unknown and unwritten rules required in order to win							
Yes	15.4% (2)	13.6% (3)	28.6% (2)	25.0% (1)	17.4% (4)	2.0% (1)	13
No	46.2% (6)	68.2% (15)	71.4% (5)	75.0% (3)	60.9% (14)	75.5% (37)	80
N/A	38.5% (5)	18.2% (4)	0.0% (0)	0.0% (0)	21.7% (5)	22.4% (11)	25
total	13	22	7	4	23	49	118
Failed to attend a mandatory pre-bid conference							
Yes	7.7% (1)	0.0% (0)	0.0% (0)	25.0% (1)	0.0% (0)	0.0% (0)	2
No	61.5% (8)	85.7% (18)	100.0% (7)	50.0% (2)	78.3% (18)	79.6% (39)	92
N/A	30.8% (4)	14.3% (3)	0.0% (0)	25.0% (1)	21.7% (5)	20.4% (10)	23
total	13	21	7	4	23	49	117
Had problems with the prime contractor paying on time							
Yes	15.4% (2)	45.5% (10)	57.1% (4)	66.7% (2)	30.4% (7)	20.4% (10)	35
No	46.2% (6)	36.4% (8)	42.9% (3)	33.3% (1)	47.8% (11)	59.2% (29)	58
N/A	38.5% (5)	18.2% (4)	0.0% (0)	0.0% (0)	21.7% (5)	20.4% (10)	24
total	13	22	7	3	23	49	117
Paid less than the negotiated amount after completing a job							
Yes	15.4% (2)	13.6% (3)	14.3% (1)	50.0% (2)	13.0% (3)	6.1% (3)	14
No	46.2% (6)	72.7% (16)	85.7% (6)	50.0% (2)	69.6% (16)	75.5% (37)	83
N/A	38.5% (5)	13.6% (3)	0.0% (0)	0.0% (0)	17.4% (4)	18.4% (9)	21
total	13	22	7	4	23	49	118

Table 9-21. Subcontractor Potential Instances of Discrimination. (continued)

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
Completed a job and never received payment							
Yes	23.1% (3)	13.6% (3)	14.3% (1)	25.0% (1)	4.3% (1)	4.1% (2)	11
No	46.2% (6)	72.7% (16)	85.7% (6)	50.0% (2)	78.3% (18)	77.6% (38)	86
N/A	30.8% (4)	13.6% (3)	0.0% (0)	25.0% (1)	17.4% (4)	18.4% (9)	21
total	13	22	7	4	23	49	118
Asked to sign a form stating you had been paid when you had not been							
Yes	7.7% (1)	0.0% (0)	42.9% (3)	25.0% (1)	0.0% (0)	8.2% (4)	9
No	53.8% (7)	81.0% (17)	57.1% (4)	50.0% (2)	82.6% (19)	73.5% (36)	85
N/A	38.5% (5)	19.0% (4)	0.0% (0)	25.0% (1)	17.4% (4)	18.4% (9)	23
total	13	21	7	4	23	49	117
Prime contractor failed to release retainage in a timely manner							
Yes	15.4% (2)	27.3% (6)	57.1% (4)	25.0% (1)	17.4% (4)	18.4% (9)	26
No	46.2% (6)	54.5% (12)	28.6% (2)	50.0% (2)	56.5% (13)	63.3% (31)	66
N/A	38.5% (5)	18.2% (4)	14.3% (1)	25.0% (1)	26.1% (6)	18.4% (9)	26
total	13	22	7	4	23	49	118
Prime contractor used your firm name in bid without permission							
Yes	15.4% (2)	22.7% (5)	28.6% (2)	25.0% (1)	13.0% (3)	0.0% (0)	13
No	46.2% (6)	59.1% (13)	71.4% (5)	75.0% (3)	69.6% (16)	75.5% (37)	80
N/A	38.5% (5)	18.2% (4)	0.0% (0)	0.0% (0)	17.4% (4)	24.5% (12)	25
total	13	22	7	4	23	49	118
Prime contractor changed your bid without permission							
Yes	0.0% (0)	0.0% (0)	14.3% (1)	25.0% (1)	0.0% (0)	0.0% (0)	2
No	61.5% (8)	81.8% (18)	71.4% (5)	75.0% (3)	82.6% (19)	75.5% (37)	90
N/A	38.5% (5)	18.2% (4)	14.3% (1)	0.0% (0)	17.4% (4)	24.5% (12)	26
total	13	22	7	4	23	49	118

Table 9-21. Subcontractor Potential Instances of Discrimination. (continued)

	Asian	Black	Hispanic	Native American	White Woman	White Male	Totals
You were asked to do more work than what was stated in the bid without an increase in fees							
Yes	23.1% (3)	22.7% (5)	28.6% (2)	50.0% (2)	13.0% (3)	8.2% (4)	19
No	38.5% (5)	63.6% (14)	71.4% (5)	50.0% (2)	69.6% (16)	73.5% (36)	78
N/A	38.5% (5)	13.6% (3)	0.0% (0)	0.0% (0)	17.4% (4)	18.4% (9)	21
total	13	22	7	4	23	49	118
Design-Build format put the project out of reach for your company							
Yes	7.7% (1)	14.3% (3)	28.6% (2)	25.0% (1)	0.0% (0)	10.4% (5)	12
No	53.8% (7)	71.4% (15)	57.1% (4)	75.0% (3)	61.9% (13)	70.8% (34)	76
N/A	38.5% (5)	14.3% (3)	14.3% (1)	0.0% (0)	38.1% (8)	18.8% (9)	26
total	13	21	7	4	21	48	114

Table 9-22. Barriers to Contracting With the City of Milwaukee.

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Limited information about the bid or project								
Yes	61.8% (21)	43.5% (30)	62.5% (25)	46.7% (7)	75.0% (3)	33.7% (29)	38.1% (74)	189
No	32.4% (11)	42.0% (29)	25.0% (10)	33.3% (5)	0.0% (0)	45.3% (39)	41.8% (81)	175
N/A	5.9% (2)	14.5% (10)	12.5% (5)	20.0% (3)	25.0% (1)	20.9% (18)	20.1% (39)	78
total	34	69	40	15	4	86	194	442
Pre-qualification requirements are too stringent								
Yes	24.2% (8)	44.3% (31)	33.3% (12)	20.0% (3)	100.0% (4)	12.8% (11)	23.6% (45)	114
No	54.5% (18)	40.0% (28)	44.4% (16)	33.3% (5)	0.0% (0)	53.5% (46)	49.7% (95)	208
N/A	21.2% (7)	15.7% (11)	22.2% (8)	46.7% (7)	0.0% (0)	33.7% (29)	26.7% (51)	11304 35
total	33	70	36	15	4	86	191	
Unable to meet bid specifications								
Yes	15.2% (5)	29.4% (20)	24.2% (8)	14.3% (2)	33.3% (1)	15.5% (13)	18.3% (35)	84
No	60.6% (20)	51.5% (35)	51.5% (17)	35.7% (5)	66.7% (2)	53.6% (45)	56.0% (107)	231
N/A	24.2% (8)	19.1% (13)	24.2% (8)	50.0% (7)	0.0% (0)	31.0% (26)	25.7% (49)	111
total	33	68	33	14	3	84	191	426
Limited time to complete bid package or quote								
Yes	21.2% (7)	33.3% (22)	42.9% (15)	42.9% (6)	66.7% (2)	22.4% (19)	17.0% (32)	103
No	63.6% (21)	45.5% (30)	42.9% (15)	21.4% (3)	33.3% (1)	51.8% (44)	59.6% (112)	226
N/A	15.2% (5)	21.2% (14)	14.3% (5)	35.7% (5)	0.0% (0)	25.9% (22)	23.4% (44)	95
total	33	66	35	14	3	85	188	424

Table 9-22. Barriers to Contracting with the City of Milwaukee. (continued)

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Too many other pending projects to take on additional work								
Yes	6.1% (2)	10.6% (7)	17.1% (6)	15.4% (2)	25.0% (1)	9.5% (8)	9.9% (19)	45
No	75.8% (25)	68.2% (45)	62.9% (22)	46.2% (6)	75.0% (3)	63.1% (53)	64.9% (124)	278
N/A	18.2% (6)	21.2% (14)	20.0% (7)	38.5% (5)	0.0% (0)	27.4% (23)	25.1% (48)	103
total	33	66	35	13	4	84	191	426
Performance bond requirements are too high								
Yes	11.8% (4)	24.6% (16)	20.0% (7)	7.7% (1)	75.0% (3)	9.4% (8)	11.5% (22)	61
No	52.9% (18)	41.5% (27)	51.4% (18)	46.2% (6)	0.0% (0)	44.7% (38)	54.5% (104)	211
N/A	35.3% (12)	33.8% (22)	28.6% (10)	46.2% (6)	25.0% (1)	45.9% (39)	34.0% (65)	155
total	34	65	35	13	4	85	191	427
Insurance requirements are too high								
Yes	12.1% (4)	21.5% (14)	5.7% (2)	8.3% (1)	50.0% (2)	5.9% (5)	6.8% (13)	41
No	72.7% (24)	58.5% (38)	71.4% (25)	50.0% (6)	50.0% (2)	57.6% (49)	66.7% (128)	272
N/A	15.2% (5)	20.0% (13)	22.9% (8)	41.7% (5)	0.0% (0)	36.5% (31)	26.6% (51)	113
total	33	65	35	12	4	85	192	426
Limited knowledge and understanding of City purchasing/ contracting policies, procedures or processes								
Yes	61.8% (21)	52.2% (36)	57.9% (22)	53.8% (7)	75.0% (3)	44.3% (39)	37.8% (74)	202
No	29.4% (10)	39.1% (27)	31.6% (12)	23.1% (3)	25.0% (1)	39.8% (35)	46.4% (91)	179
N/A	8.8% (3)	8.7% (6)	10.5% (4)	23.1% (3)	0.0% (0)	15.9% (14)	15.8% (31)	61
total	34	69	38	13	4	88	196	442

Table 9-22. Barriers to Contracting with the City of Milwaukee. (continued)

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Lack of experience in the required scope of work or deliverables								
Yes	17.6% (6)	13.4% (9)	8.6% (3)	15.4% (2)	25.0% (1)	7.1% (6)	8.4% (16)	43
No	67.6% (23)	68.7% (46)	74.3% (26)	53.8% (7)	75.0% (3)	67.9% (57)	69.1% (132)	294
N/A	14.7% (5)	17.9% (12)	17.1% (6)	30.8% (4)	0.0% (0)	25.0% (21)	22.5% (43)	91
total	34	67	35	13	4	84	191	428
Lack of personnel								
Yes	17.6% (6)	13.6% (9)	17.1% (6)	7.7% (1)	25.0% (1)	8.3% (7)	4.7% (9)	39
No	64.7% (22)	71.2% (47)	74.3% (26)	61.5% (8)	75.0% (3)	66.7% (56)	74.2% (141)	303
N/A	17.6% (6)	15.2% (10)	8.6% (3)	30.8% (4)	0.0% (0)	25.0% (21)	21.1% (40)	84
total	34	66	35	13	4	84	190	426
Lack of equipment								
Yes	11.8% (4)	10.8% (7)	11.4% (4)	7.7% (1)	0.0% (0)	2.4% (2)	3.1% (6)	24
No	64.7% (22)	67.7% (44)	77.1% (27)	53.8% (7)	100.0% (3)	69.0% (58)	71.7% (137)	298
N/A	23.5% (8)	21.5% (14)	11.4% (4)	38.5% (5)	0.0% (0)	28.6% (24)	25.1% (48)	103
total	34	65	35	13	4	84	191	425
Lack of relationships with larger firms that you could partner with								
Yes	48.5% (16)	55.2% (37)	55.3% (21)	38.5% (5)	33.3% (1)	35.6% (31)	19.8% (38)	149
No	39.4% (13)	35.8% (24)	34.2% (13)	38.5% (5)	66.7% (2)	42.5% (37)	56.8% (109)	203
N/A	12.1% (4)	9.0% (6)	10.5% (4)	23.1% (3)	0.0% (0)	21.8% (19)	23.4% (45)	81
total	33	67	38	13	3	87	192	433

Table 9-22. Barriers to Contracting with the City of Milwaukee. (continued)

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Contract is too large								
Yes	17.6% (6)	18.2% (12)	20.0% (7)	15.4% (2)	75.0% (3)	16.9% (14)	10.5% (20)	64
No	64.7% (22)	62.1% (41)	68.6% (24)	53.8% (7)	25.0% (1)	56.6% (47)	64.9% (124)	266
N/A	17.6% (6)	19.7% (13)	11.4% (4)	30.8% (4)	0.0% (0)	26.5% (22)	24.6% (47)	96
total	34	66	35	13	3	83	191	426
Contract is too small								
Yes	8.8% (3)	7.7% (5)	11.4% (4)	7.7% (1)	33.3% (1)	3.6% (3)	3.2% (6)	23
No	73.5% (25)	69.2% (45)	71.4% (25)	53.8% (7)	66.7% (2)	69.0% (58)	72.1% (137)	299
N/A	17.6% (6)	23.1% (15)	17.1% (6)	38.5% (5)	0.0% (0)	27.4% (23)	24.7% (47)	102
total	34	65	35	13	3	84	190	424
Unable to identify competitively priced suppliers								
Yes	11.8% (4)	26.6% (17)	22.9% (8)	28.6% (4)	33.3% (1)	7.2% (6)	6.8% (13)	53
No	64.7% (22)	51.6% (33)	60.0% (21)	42.9% (6)	66.7% (2)	57.8% (48)	65.8% (125)	257
N/A	23.5% (8)	21.9% (14)	17.1% (6)	28.6% (4)	0.0% (0)	34.9% (29)	27.4% (52)	113
total	34	64	35	14	3	83	190	423
Contracting practices seemed unfair								
Yes	17.6% (6)	47.1% (32)	26.5% (9)	38.5% (5)	33.3% (1)	13.1% (11)	18.4% (35)	99
No	55.9% (19)	29.4% (20)	52.9% (18)	15.4% (2)	33.3% (1)	53.6% (45)	53.7% (102)	207
N/A	26.5% (9)	23.5% (16)	20.6% (7)	46.2% (6)	33.3% (1)	33.3% (28)	27.9% (53)	120
total	34	68	34	13	3	84	190	426

Table 9-22. Barriers to Contracting with the City of Milwaukee. (continued)

	Asian	Black	Hispanic	Native American	Pacific Islander	White Woman	White Male	Total
Cost of buying plans for bid/proposal is too high								
Yes	23.5% (8)	24.6% (16)	20.6% (7)	7.7% (1)	50.0% (2)	8.2% (7)	11.1% (21)	62
No	47.1% (16)	47.7% (31)	52.9% (18)	38.5% (5)	25.0% (1)	54.1% (46)	56.8% (108)	225
N/A	29.4% (10)	27.7% (18)	26.5% (9)	53.8% (7)	25.0% (1)	37.6% (32)	32.1% (61)	138
total	34	65	34	13	4	85	190	425
City procurement managers maintained a preferred list of vendors to the exclusion of your company								
Yes	30.3% (10)	43.8% (28)	59.5% (22)	38.5% (5)	33.3% (1)	21.4% (18)	18.4% (35)	119
No	33.3% (11)	31.3% (20)	13.5% (5)	30.8% (4)	33.3% (1)	39.3% (33)	47.9% (91)	165
N/A	36.4% (12)	25.0% (16)	27.0% (10)	30.8% (4)	33.3% (1)	39.3% (33)	33.7% (64)	140
total	33	64	37	13	3	84	190	424

Exhibit A

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EXHIBIT A

EBE CONTRACT AND PAYMENT CONFIRMATION

STUDY PERIOD: 2005

From EBE: Phone: Fax:

PLEASE FAX BACK TO: 414.847.0992

	Prime Contract	Prime Contract Date	Your Contract Value	Date of Your Contract	Description of Service You Provided	Check if Paid in full	How long to get paid (in days)? <30	30	60	90	>90
1	Prime Contractor	18-Apr-05	$146,000.00	1-May-05	IT Professional Services						
2	Prime Contractor	18-Apr-05	not on file 8,680.00	1-May-05 Nov 1-31-06	IT Services, Apps Devel, P.M. Network	Paid 12/18/06	15 days				
3	Prime Contractor	18-Apr-05	not on file	Nov 1-Nov 30 Nov 31-06	Client/Server Dev./Support People Soft Dev. /Support, GIS						
4	Prime Contractor	04-Aug-05	$21,080.00 5219.22	6-06 to 10-06	Electrical Supplies (213,848.)			32			
5											
6											
7											
8											
9											
10											

Line	If you were not paid in full or timely for services rendered; or if you want to comment concerning any issue, please use the space below. Enter the line no.

[ ] Check if you want someone to contact you. [ ] Check if your experiences have been mostly positive. [ ] Check if mostly negative

Please rank your best experiences (1-3): *Note: 1 =Best*

[ ] City of Milwaukee. [ ] Other City _____ [ ] County of Milwaukee [ ] Other County _____ [ ] State of WI [ ] Other State _____ [ ] DOT [ ] Federal [ ] Private Sector

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CHAPTER 10.0 – FINDINGS AND RECOMMENDATIONS

CHAPTER 10.0 – FINDINGS AND RECOMMENDATIONS

The findings and recommendations included in this chapter are based on the analyses of the data represented in Chapters 2.0 through 9.0. In summary, the data supports the continuation of the City of Milwaukee Emerging Business Enterprise (EBE) program with modifications. The statistical analyses documents disparity in utilizing EBE firms in comparison to their availability. For purposes of this report, EBE firms are all minority and women owned firms that are ready, capable and willing to perform work for the City. EBE firms are not limited to the City's certified EBEs.

The primary objectives of the study were to determine:

1. If a statistically significant disparity exists between the number of minority-owned and women-owned business enterprises that are ready, willing, and able to provide goods and services to the City and the number of minority-owned and women-owned businesses that were actually providing goods and services to the City during calendar years 2005, 2006, 2007 and 2008.
2. The extent to which minority and women owned businesses participate in the procurement of contracts with the City of Milwaukee in construction services, professional services and goods and services.
3. Whether minority and women owned business participation is representative of the availability of minority and women owned businesses ready, willing and able to participate in contracts within the City of Milwaukee's market area.
4. The effectiveness of any race/gender neutral initiatives that have been used by the City and MMSD in eliminating discrimination and/or increasing minority and women participation in public procurement.
5. If discrimination exists, does anecdotal evidence show specific instances of discrimination and/or patterns and practices of the City and MMSD in the procurement of goods and services;
6. If discrimination exists, recommend and/or identify narrowly tailored race/gender based activities to remedy the effects of any discrimination identified.

FINDING 1: Relevant Market Area

The Relevant Market Areas for the City are:

Construction

County, State	# of Contracts	% of Contracts	# of Firms	% of Firms	Dollars	% of Dollars	Cum%
MILWAUKEE, WI	119	45.95%	36	52.17%	$37,731,556.40	40.12%	40.12%
WAUKESHA, WI	90	34.75%	19	27.54%	$31,974,730.55	34.00%	74.12%
WASHINGTON, WI	34	13.13%	2	2.90%	$12,241,457.05	13.02%	87.14%

Professional Services

County, State	# of Contracts	% of Contracts	# of Firms	% of Firms	Dollars	% of Dollars	Cum%
MILWAUKEE, WI	65	52.85%	46	48.42%	$3,705,760.25	32.99%	32.99%
WAUKESHA, WI	10	8.13%	8	8.42%	$2,188,211.30	19.48%	52.47%
WASHINGTON, WI	1	0.81%	1	1.05%	$365,000.00	3.25%	55.72%
COOK, IL	7	5.69%	5	5.26%	$169,040.20	1.50%	57.22%
DANE, WI	4	3.25%	4	4.21%	$196,399.10	1.75%	58.97%
DU PAGE, IL	2	1.63%	2	2.11%	$387,118.30	3.45%	62.41%
KANE, IL	3	2.44%	2	2.11%	$262,300.00	2.33%	64.75%
SAN DIEGO, CA	2	1.63%	2	2.11%	$212,503.40	1.89%	66.64%
LOS ANGELES, CA	2	1.63%	2	2.11%	$68,009.00	0.61%	67.25%
DALLAS, TX	2	1.63%	2	2.11%	$35,724.24	0.32%	67.56%
PIMA, AZ	2	1.63%	2	2.11%	$32,955.00	0.29%	67.86%
SPOKANE, WA	1	0.81%	1	1.05%	$2,000,000.00	17.80%	85.66%

Goods & Services

County, State	# of Contracts	% of Contracts	# of Firms	% of Firms	Dollars	% of Dollars	Cum%
MILWAUKEE, WI	78	53.79%	59	50.86%	$14,645,545.50	55.88%	55.88%
WAUKESHA, WI	28	19.31%	24	20.69%	$3,937,131.85	15.02%	70.90%
OZAUKEE, WI	1	0.69%	1	0.86%	$139,085.00	0.53%	71.43%
COOK, IL	9	6.21%	7	6.03%	$1,837,823.47	7.01%	78.44%

RECOMMENDATION 1.1:

The City should limit its EBE program to the Metropolitan Statistical Area.

FINDING 2: Disparity Analysis - Construction

The statistical analysis identified disparity for several EBE groups as follows:

Construction

- African Americans – 52.86 disparity index
- Asian Americans – 0.00 disparity index
- Nonminority Women – 30.95 disparity index

Subcontractor Disparity Analysis
Construction
Calendar Years 2005 – 2008
City of Milwaukee

Ethnicity Classifications	# of Awarded Contracts	Contract Dollars	% of Dollars[1]	% of Firms Available[2]	Disparity Index[3]	Disparity Impact Under/Over Utilization
OVERALL						
African Americans	117	$2,412,724	2.94%	5.57%	52.86	* Under
Native Americans	57	$1,627,153	1.99%	0.10%	1,985.60	Over
Asian Americans	0	$0	0.00%	0.07%	0.00	* Under
Hispanic Americans	250	$6,653,631	8.12%	3.41%	238.10	Over
Nonminority Women	97	$1,854,140	2.26%	7.31%	30.95	* Under
Other EBEs	34	$1,233,684	1.51%	0.01%	15,054.52	Over

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008
Note: EBEs include certified and non-certified minority and women owned businesses
[1] The percentage of dollars from the prime utilization.
[2] The percentage of available firms.
[3] The disparity index is % utilization divided by % availability multiplied by 100.
* Significantly underutilized - disparity index below 80.00.

RECOMMENDATION 2.1:

The City of Milwaukee should amend its EBE Program to set race/gender-specific annual participation goals for construction subcontracts for the following EBE-owned firms:

- African American-owned firms
- Asian American-owned firms
- Nonminority Women-owned firms

RECOMMENDATION 2.2:

The City of Milwaukee should closely monitor on a quarterly basis the utilization of all EBEs to ensure that their utilization on construction contracts does not fall below their availability. If the situation occurs, the City should adjust its annual participation goals by including only the groups who continue to be underutilized.

RECOMMENDATION 2.3:

The City should review the utilization of EBE firms on a quarterly basis and report to the Common Council.

FINDING 3: Disparity Analysis – Goods & Services

The statistical analysis identified disparity for several EBE groups as follows:

<u>Goods & Services</u>

- Native Americans – 0.00 disparity index
- Hispanic Americans – 17.18 disparity index
- Nonminority Women – 0.72 disparity index
- African Americans – 86.97 disparity index

Subcontractor Disparity Analysis
Goods & Services
Calendar Years 2005 – 2008
City of Milwaukee

Ethnicity Classifications	# of Awarded Contracts	Contract Dollars	% of Dollars[1]	% of Firms Available[2]	Disparity Index[3]	Disparity Impact Under/Over Utilization
OVERALL						
African Americans	5	$1,285,615	6.25%	7.19%	86.97	Under
Native Americans	0	$0	0.00%	0.17%	0.00	* Under
Asian Americans	1	$245,629	1.19%	0.63%	189.64	Over
Hispanic Americans	3	$114,104	0.55%	3.23%	17.18	* Under
Nonminority Women	2	$25,273	0.12%	17.09%	0.72	* Under
Other EBEs	3	$72,607	0.35%	0.17%	207.74	Over

Source: City of Milwaukee for the period of January 1, 2005 through December 31, 2008
Note: EBEs include certified and non-certified minority and women owned businesses
[1] The percentage of dollars from the prime utilization.
[2] The percentage of available firms.
[3] The disparity index is % utilization divided by % availability multiplied by 100.
* Significantly underutilized - disparity index below 80.00.

RECOMMENDATION 3.1:

The City of Milwaukee should amend its EBE Program to set race/gender-specific annual participation goals for goods & services subcontracts for the following EBE-owned firms:

- Native American-owned firms
- Hispanic American-owned firms
- Nonminority Women-owned firms

RECOMMENDATION 3.2:

The City of Milwaukee should closely monitor on a quarterly basis the utilization of all EBEs to ensure that their utilization on goods & services contracts does not fall below their availability. If the situation occurs, the City should adjust its annual participation goals by including only the groups who continue to be underutilized.

FINDING 4: Professional Services Contracts

- 101 Professional Services contracts were included in the sample analyzed
- Prime Contractor EBE participation included African American, Asian American and nonminority Women owned firms
- Subcontractor EBE participation included an African American owned firm
- There is a large availability pool of Professional Services subcontractors

Professional Services Subcontractors
Availability

Business Category	African American	Asian American	Hispanic American	Native American	Other EBEs	Nonminority Women	Subtotal EBE	Nonminority	Total EBE and Nonminority
Professional Services	37	7	10	0	2	71	**128**	196	**324**

RECOMMENDATION 4.1:

All City Departments should review professional service contracts to identify subcontracting opportunities.

RECOMMENDATION 4.2:

The City should implement an Outreach Program to make women and minority-owned businesses aware of subcontracting opportunities.

FINDING 5: Data Collection and Tracking

The City of Milwaukee utilizes the following methodologies/processes to track procurement activity:

- City's Financial Management Information System (Prime Contractor payments)
- BusinessSense System (EBE tracking)

RECOMMENDATION 5.1:

The City should track **all** contract awards and payments to prime and subcontractors. All records should be maintained in a database that captures the data variables requested during the data collection process of the study. This process should include all business categories.

RECOMMENDATION 5.2:

The City of Milwaukee should implement the following:

- Identify one (1) tracking system to collect and monitor all procurement activity including contractors and subcontractors for all projects awarded;
- Establish and implement strict guidelines by type of procurement activity that includes pertinent information from requisition to final payment or completion of project;
- The tracking system should be maintained for accuracy with quality control checks; and
- The tracking system must include all awards and payments to all (EBE and non-EBE) contractors/vendors.

FINDING 6: Contract Compliance – Verification and Follow-up

During many personal interviews with M/WBEs, business owners noted lack of verification and follow up of reported EBE participation. Prime contractors reported payments to the City that were never made to EBE firms. EBE firms reported that they did not participate or know that they were listed as subcontractors on certain contracts with the City. EBE firms agreed upon levels of participation are not verified.

RECOMMENDATION 6.1

The City should conduct random audits of prime contractors payments to EBE owned firms that require documented proof of payments. Additionally, the City should follow-up periodically with EBE firms to ensure that they have been paid and participated in the contracting process.

FINDING 7: Contract Compliance – Payment Practices

Numerous M/WBE owned firms voiced concerns regarding delayed payments or a reduction in the negotiated and agreed upon price for work performed. M/WBE businesses are generally small and nonpayment and/or late payment produces significant cash flow issues. They often do not have the cash reserves or access to capital necessary to maintain their business operations when they do not receive payments timely. Therefore, M/WBEs are disparately impacted by a prime contractor's failure to make prompt payments.

The City currently requires that prime contractors make payment to subcontractors for work performed within ten (10) days of receipt of their payment from the City; MMSD currently requires that prime contractors make payment to subcontractors for work performed within seven (7) days of receipt of their payment from MMSD. Prime contractors invoices that are submitted to the City must be paid within sixty (60) days of receipt, this timeframe could ultimately result in a subcontractor receiving payment seventy (70) days after completion of work. MMSD must pay prime contractor invoices within thirty (30) days of receipt, resulting in the possibility of a subcontractor receiving payment thirty-seven (37) days after completion of work.

RECOMMENDATION 7.1

The City and MMSD should ensure that prime contractors are making timely and accurate subcontractor payments to M/WBE and non-M/WBE owned firms. This can be accomplished by reviewing and enhancing the current process for tracking payments made by primes to subcontractors.

RECOMMENDATION 7.2

The City should consider adopting MMSDs payment policies for both prime contractors and subcontractors.

FINDING 8: Barriers to Contract Bidding

There are several barriers to contract participation that exist because the procedures in place to ensure compliance with M/WBE requirements are not strictly enforced or monitored. During the interviews, several M/WBE firms reported that prime contractors do not allow sufficient time for submission of subcontracting quotes. This bidding practice allows prime contractors to submit the required documentation showing that they attempted to obtain M/WBE participation, without actually providing a meaningful opportunity. This results in the prime contractor obtaining a waiver of the City's and MMSDs M/WBE requirements. Another barrier to contract participation is bid shopping. M/WBEs will submit bid quotes to a prime contractor; the prime will pressure them to lower their bid because they have shopped around and indicate that they can get the job done for a specific lower price or the prime will submit a bid with a specific subcontractor, win the bid and try to pressure the subcontractor to lower the original bid.

FINDING/COMMENDATION:

The City's EBE Program and MMSD's SMWBE Program both have participation requirements that must be submitted at the time of bid submission. Prime contractor reporting requirements are also in place after contract award. Some of these include:

- EBE Participation Form that must be submitted at time of bid submission
- EBE Monthly Report Form that must be submitted by the 20th of the Month
- EBE Subcontractor Payment Certification
- MMSD provides administrative and on-site monitoring to ensure that promised participation is achieved

RECOMMENDATION 8.1:

The City and MMSD should conduct an audit of their current compliance processes to determine their effectiveness and make modifications based on the findings. The audit should include validation of the information received from both prime and subcontractors.