

# city of st. petersburg final report



## DISPARITY STUDY



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# CHAPTER 1: Legal Review

## I. Introduction

The standard for measuring evidence of disparity in public contracting is set forth in the 1989 United States Supreme Court decision of *City of Richmond v. J.A. Croson Co.* (“*Croson*”). This chapter summarizes the legal standard decided in *Croson* and its progeny as applied to contracting programs for minority, woman, local, and small-owned business enterprises. The Disparity Study applies this legal standard to the examination of the utilization of available minority and women-owned business enterprises (M/WBEs) on the City of St. Petersburg’s (City) contracts awarded during the October 1, 2014 through September 30, 2018 study period.

This chapter is organized into eight sections. This first section is the Introduction. Section II: Overview of the Eleventh Circuit Court Decisions summarizes the legal framework that local governments in the Eleventh Circuit must adhere to satisfy the *Croson* standard. Section III: Standard of Review provides an overview of the constitutional parameters applicable to race and gender-conscious programs and race and gender-neutral programs. A factual predicate is set forth in Section IV: Burden of Proof, which describes the documented evidence of past discrimination that must be demonstrated by the City of St. Petersburg before the implementation of race and gender remedial measures. The *Croson* Evidentiary Framework is discussed in Section V. The framework must include a strong basis in evidence of past discrimination and “narrowly tailored” race-conscious remedies. A Consideration of Race-Neutral Options, described in Section VI, references remedial initiatives to be considered in addition to race and gender-conscious remedies. The Conclusion and List of Authorities are contained in Section VII and Section VIII, respectively.

## II. Overview of the Eleventh Circuit Court Decisions

The Eleventh Circuit decisions constitute binding judicial authority governing the City’s equity and inclusion contracting programs. The Eleventh Circuit has consistently held that there is a compelling governmental interest in remedying documented disparity. Since 1994, courts in the Eleventh Circuit have reviewed several challenges to M/WBE programs enacted by the State of Florida and its local governments. The courts have abided by *Croson*’s requirement that a government’s race-conscious program must establish a factual predicate with statistical evidence of discrimination. And the program’s race-conscious remedies must be narrowly tailored to the statistical findings.

*Engineering Contractors Association of South Florida Inc. v. Metropolitan Dade County*<sup>1</sup> was the first Eleventh Circuit appellate decision to apply the *Croson* legal standard. Dade County had relied on census data to compare the proportion of Black-owned construction firms in the Standard Industrial Classification (SIC) codes to majority firms relative to the proportion of their overall revenue. The court concluded that there was not a strong basis in evidence to justify the program because the census data did not account for firms that were actually qualified to perform the

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<sup>1</sup> 122 F.3d 895 (11th Cir. 1997).



contract requirements nor the size of the identified firms. The court decided that company size would impact the dollar value of contracts the businesses could perform. In 1999, the Eleventh Circuit also weighed in on availability in *Webster v. Fulton County*.<sup>2</sup> It rejected the bidding data relied on, pointing out that it overstated availability because of the “unavailability of minority firms to bid on and obtain large construction contracts.”<sup>3</sup>

The most recent Eleventh Circuit case, *Florida AGC Council, Inc. v. Florida (AGC)*, was decided in 2004.<sup>4</sup> The issue before the court in *AGC* was whether the statute’s race and gender-conscious goals were narrowly tailored to further a compelling governmental interest. The AGC challenged the State’s M/WBE program, enacted as Florida Statute, Title XIX, Chapter 287.09451, authorized race and gender-conscious remedial measures to increase the participation of MWBEs on the State’s contracts. State agencies were encouraged to spend 21% of their total dollars with M/WBEs on construction contracts, 25% on architecture and engineering contracts, 24% on commodities, and 50.5% on contractual services contracts. The AGC argued that the statute violated the Equal Protection Clause of the Fourteenth Amendment. The Northern District Court held that the State failed to establish the requisite factual predicate, demonstrating statistical evidence of discrimination within its relevant market area. The State was required to discontinue the application of race and gender-conscious remedial measures without first establishing a factual predicate pursuant to the legal standards set forth in *Croson* and its progeny.

Table 1.1 presents the Eleventh Circuit cases that have reviewed the application of race in public contracting following the *Croson* decision. The holdings in these cases are discussed in detail within this chapter.

**Table 1.1: Key Eleventh Circuit Court Decisions**

Eleventh Circuit Florida, Georgia, Alabama	
Case Name	Holding
<i>Cone Corporation v. Hillsborough County</i> , 908 F.2d 908 (11 <sup>th</sup> Cir. 1990).	The Eleventh Circuit held that the County’s program was constitutional because the evidence demonstrated that the County’s program was based on statistics showing prior discrimination in the construction industry by the County, and the County had unsuccessfully tried less restrictive measures for remedying such discrimination.
<i>Engineering Contractors Assoc. of South Florida Inc., v. Metropolitan Dade County</i> , 122 F.3d 895 (11 <sup>th</sup> Cir. 1997).	The Eleventh Circuit agreed with the trial court that the disparities documented in the study were better explained by the size of the companies rather than by discrimination. The Eleventh Circuit ruled that the studies had limited probative value and failed to account for other non-discriminatory factors. The anecdotal evidence did indicate discrimination, but it was not sufficient in the absence of probative statistical evidence.

<sup>2</sup> *Daniel Webster v. Fulton County*, 51 F.Supp.2d 1354 (N.D. Georgia, Atlanta Division 1999).

<sup>3</sup> *Id.*

<sup>4</sup> *Florida AGC Council, Inc. v. Florida*, 303 F. Supp. 2d 1307 (N.D. Fla. 2004).



Eleventh Circuit	
Florida, Georgia, Alabama	
Case Name	Holding
<i>Phillips Engineering Contractors Assn. v. Metro. Dade County</i> , 122 F.3d 895 (11 <sup>th</sup> Cir. (Fla. 1997).	The Eleventh Circuit ruled that the County's program was unconstitutional because the documented disparities failed to take firm size into account.
<i>Phillips &amp; Jordan, Inc. v. Watts</i> , 13 F. Supp. 2d 1308 (N.D. Fla. 1998).	The Northern District Court in Florida held that the program was unconstitutional because the disparity study "assumed" all minority firms included were willing or able to bid on road maintenance. and the identity of the wrongdoers was unknown. The court enjoined the department from setting aside State funded highway maintenance contracts for competing solely among minority businesses.
<i>Webster v. Fulton County</i> , 51 F. Supp. 2d 1354 (N.D. GA 1999).	The Northern District Court in Georgia held the County's affirmative action program was unconstitutional because the methodology was "novel" and lacked the accepted statistical and scientific methodology to withstand scrutiny. The court enjoined the County from further application of the minority enterprise program.
<i>Engineering Contractors Ass'n v. Metropolitan Dade County</i> , 943 F.Supp. 1546 (S.D.Fla.1996), aff'd, 122 F.3d 895 (11th Cir.1997)	The Eleventh Circuit upheld the district court ruling that Miami-Dade County's Minority and Women Business Enterprise program violated the Fourteenth Amendment's equal protection clause as applied to the construction contracting industry.
<i>Florida AGC Council, Inc. v. Florida</i> , 303 F. Supp. 2d 1307 (N.D. Fla. 2004).	The Northern District Court in Florida held that the State's MWBE program was unconstitutional because they failed to establish the requisite factual predicate demonstrating statistical evidence of discrimination within its relevant market area.

### III. Standard of Review

*Croson* examined the City of Richmond's Minority Business Enterprise (MBE) Program and decided that programs employing racial classifications would be subject to "strict scrutiny," the highest legal standard. Broad notions of equity or general allegations of historical and societal discrimination against minorities fail to meet the requirements of strict scrutiny. Where there are identified statistical findings of discrimination sufficient to warrant remediation, the remedy must also impose a minimal burden upon unprotected classes. In this section, the standard of review refers to the level of scrutiny a court applies during its analysis of whether or not a particular law is constitutional.

#### 1. Minority Business Enterprise Programs

In *Croson*, the United States Supreme Court affirmed that, pursuant to the Fourteenth Amendment, the proper standard of review for state and local race-based MBE programs is strict scrutiny.<sup>5</sup> Specifically, the government must show that the race-conscious remedies are narrowly tailored to achieve a compelling state interest.<sup>6</sup> The Court recognized that a state or local entity may take

<sup>5</sup> *Croson*, 488 U.S. at 493-95.

<sup>6</sup> *Id.* at 493.



action, in the form of an MBE program, to rectify the effects of *identified, systemic racial discrimination* within its jurisdiction.<sup>7</sup> Justice O'Connor, speaking for the majority, articulated various methods of demonstrating discrimination and set forth guidelines for crafting MBE programs that are “narrowly tailored” to address systemic racial discrimination.<sup>8</sup>

## 2. Women Business Enterprise Programs

Since *Croson*, which dealt exclusively with the review of race-conscious plans, the United States Supreme Court has remained silent with respect to the appropriate standard of review for geographically based Women Business Enterprise (WBE) programs and Local Business Enterprise (LBE) programs. In other contexts, however, the United States Supreme Court has ruled that gender classifications are not subject to the rigorous strict scrutiny standard applied to racial classifications. Instead, gender classifications have been subject only to an “intermediate” standard of review, regardless of which gender is favored.

Notwithstanding the fact that the United States Supreme Court has not ruled on a WBE program, the consensus among the federal circuit courts of appeals is that WBE programs are subject to intermediate scrutiny, rather than the more exacting strict scrutiny standard to which race-conscious programs are subject.<sup>9</sup> Intermediate scrutiny requires the governmental entity to demonstrate that the action taken furthers an “important governmental objective,” employing a method that bears a fair and substantial relation to the goal.<sup>10</sup> The courts have also described the test as requiring an “exceedingly persuasive justification” for classifications based on gender.<sup>11</sup> The United States Supreme Court acknowledged that in “limited circumstances a gender-based classification favoring one sex can be justified if it intentionally and directly assists the members of that sex who are disproportionately burdened.”<sup>12</sup>

Consistent with the United States Supreme Court’s finding with regard to gender classification, the Third Circuit in *Contractors Association of Eastern Pennsylvania v. City of Philadelphia* (“*Philadelphia IV*”) ruled in 1993 that the standard of review governing WBE programs is different from the standard imposed upon MBE programs.<sup>13</sup> The Third Circuit held that, whereas

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<sup>7</sup> *Id.* at 509.

<sup>8</sup> *Id.* at 501-2. Cases involving education and employment frequently refer to the principal concepts applicable to the use of race in government contracting: compelling interest and narrowly tailored remedies. The Supreme Court in *Croson* and subsequent cases provides fairly detailed guidance on how those concepts are to be treated in contracting. In education and employment, the concepts are not explicated to nearly the same extent. Therefore, references in those cases to “compelling governmental interest” and “narrow tailoring” for purposes of contracting are essentially generic and of little value in determining the appropriate methodology for disparity studies.

<sup>9</sup> See *Coral Constr. Co. v. King Cnty.*, 941 F.2d 910, 930 (9th Cir. 1991); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“*Philadelphia VI*”), 91 F.3d 586, 596-98 (3d Cir. 1996); *Eng’g Constr. Ass’n v. Metro. Dade Cnty.* (“*Dade County II*”), 122 F.3d 895, 907-08 (11th Cir. 1997); see also *Concrete Works of Colo. v. City & Cnty. of Denver*, 321 F.3d 950, 960 (10th Cir. 2003) (“*Concrete Works IV*”); and *H.B. Rowe Co. v. N.C. Dep’t of Transp.*, 615 F.3d 233, 236 (4th Cir. 2010) (“*Rowe*”).

<sup>10</sup> *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 726 (1982); see also *United States v. Virginia*, 518 U.S. 515, 524 (1996) (“*Virginia*”).

<sup>11</sup> *Hogan*, 458 U.S. at 751; see also *Mich. Rd. Builders Ass’n, Inc. v. Milliken*, 834 F.2d 583, 595 (6th Cir. 1987).

<sup>12</sup> *Hogan*, 458 U.S. at 728; see also *Schlesinger v. Ballard*, 419 U.S. 498, 508 (1975) (“*Ballard*”).

<sup>13</sup> *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“*Philadelphia IV*”), 6 F. 3d 990, 1001 (3d Cir. 1993).



MBE programs must be “narrowly tailored” to a “compelling state interest,” WBE programs must be “substantially related” to “important governmental objectives.”<sup>14</sup> In contrast, an MBE program would survive constitutional scrutiny only by demonstrating a pattern and practice of systemic racial exclusion or discrimination in which a state or local government was an active or passive participant.<sup>15</sup>

The Ninth Circuit in *Associated General Contractors of California v. City and County of San Francisco* (“AGCC I”) held that classifications based on gender require an “exceedingly persuasive justification.”<sup>16</sup> The justification is valid only if members of the gender benefited by the classification actually suffer a disadvantage related to the classification, and the classification does not reflect or reinforce archaic and stereotyped notions of the roles and abilities of women.<sup>17</sup>

The Eleventh Circuit United States Court of Appeals (Eleventh Circuit) also applied intermediate scrutiny.<sup>18</sup> In its review and affirmation of the district court’s holding, in *Engineering Contractors Association of South Florida v. Metropolitan Dade County* (“Dade County II”), the Eleventh Circuit cited the Third Circuit’s 1993 formulation in *Philadelphia IV*: “[T]his standard requires the [County] to present probative evidence in support of its stated rationale for the gender preference, discrimination against women-owned contractors.”<sup>19</sup> Although the *Dade County II* appellate court ultimately applied the intermediate scrutiny standard, it queried whether the United States Supreme Court decision in *United States v. Virginia*,<sup>20</sup> finding the all-male program at Virginia Military Institute unconstitutional, signaled a heightened level of scrutiny.<sup>21</sup> In the case of *United States v. Virginia*, the U.S. Supreme Court held that parties who seek to defend gender-based government action must demonstrate an “exceedingly persuasive justification” for that action.<sup>22</sup> While the Eleventh Circuit United States Court of Appeals echoed that speculation, it concluded that “[u]nless and until the U.S. Supreme Court tells us otherwise, intermediate scrutiny remains the applicable constitutional standard in gender discrimination cases, and a gender preference may be upheld so long as it is substantially related to an important governmental objective.”<sup>23</sup>

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<sup>14</sup> *Philadelphia IV*, 6 F.3d at 1009-10.

<sup>15</sup> *Id.* at 1002.

<sup>16</sup> *Associated Gen. Contractors of Cal. v. City & Cnty. of San Francisco*, 813 F.2d 922, 940 (9th Cir. 1987) (“AGCC I”).

<sup>17</sup> *Ballard*, 419 U.S. at 508.

<sup>18</sup> *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F. 3d 1548, 1579-80 (11th Cir. 1994).

<sup>19</sup> *Dade County II*, 122 F.3d at 909 (citing *Philadelphia IV*, 6 F.3d at 1010; see also *Saunders v. White*, 191 F. Supp. 2d 95, 134 (D.D.C. 2002) (stating “[g]iven the gender classifications explained above, the initial evaluation procedure must satisfy intermediate scrutiny to be constitutional.”).

<sup>20</sup> *Virginia*, 518 U.S. at 534.

<sup>21</sup> *Dade County II*, 122 F.3d at 907-08.

<sup>22</sup> *Virginia*, 518 U.S. at 534.

<sup>23</sup> *Dade County II*, 122 F.3d at 908.



In *Dade County II*, the Eleventh Circuit court noted that the Third Circuit in *Philadelphia IV* was the only federal appellate court that explicitly attempted to clarify the evidentiary requirement applicable to WBE programs.<sup>24</sup> *Dade County II* interpreted that standard to mean that “evidence offered in support of a gender preference must not only be ‘probative’ [but] must also be ‘sufficient.’”<sup>25</sup>

It also reiterated two principal guidelines of intermediate scrutiny evidentiary analysis: (1) under this test, a local government must demonstrate some past discrimination against women, but not necessarily discrimination by the government itself;<sup>26</sup> and (2) the intermediate scrutiny evidentiary review is not to be directed toward mandating that gender-conscious affirmative action is used only as a “last resort”<sup>27</sup> but instead ensuring that the affirmative action is “a product of analysis rather than a stereotyped reaction based on habit.”<sup>28</sup>

This determination requires “evidence of past discrimination in the economic sphere at which the affirmative action program is directed.”<sup>29</sup> The court also stated that “a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”<sup>30</sup>

### 3. Local Business Enterprise Programs

In *AGCC I*, a pre-*Croson* case, the Ninth Circuit Court of Appeals applied the rational basis standard when evaluating the City and County of San Francisco’s Local Business Enterprise (LBE) program, holding that a local government may give a preference to local businesses to address the economic disadvantages those businesses face in doing business within the City and County of San Francisco.<sup>31</sup>

To survive a constitutional challenge under a rational basis review, the government entity need only demonstrate that the governmental action or program is rationally related to a legitimate government interest.<sup>32</sup> The Supreme Court cautioned government agencies seeking to meet the rational basis standard by advising that, if a race- and gender-neutral program is subjected to a

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<sup>24</sup> *Id.* at 909.

<sup>25</sup> *Id.* at 910.

<sup>26</sup> *Id.* (quoting *Ensley Branch*, 31 F.3d at 1580).

<sup>27</sup> *Id.* (quoting *Hayes v. N. State Law Enforcement Officers Ass’n.*, 10 F.3d 207, 217 (4th Cir. 1993) (racial discrimination case)).

<sup>28</sup> *Id.* (quoting *Philadelphia IV*, 6 F.3d at 1010).

<sup>29</sup> *Id.* (quoting *Ensley Branch*, 31 F.3d at 1581).

<sup>30</sup> *Id.* at 929; cf. *Builders Ass’n of Greater Chi. v. Cnty. of Cook*, 256 F. 3d 642, 644 (7th Cir. 2001) (questioned why there should be a lesser standard where the discrimination was against women rather than minorities.).

<sup>31</sup> *AGCC I*, 813 F.2d at 943; *Lakeside Roofing Company v. State of Missouri*, et al., 2012 WL 709276 (E.D.Mo. Mar. 5, 2012) (Note that federal judges will generally rule the way that a previous court ruled on the same issue following the doctrine of *stare decisis* – the policy of courts to abide by or adhere to principles established by decisions in earlier cases; however, a decision reached by a different circuit is not legally binding on another circuit court, it is merely persuasive and instructional on the issue).

<sup>32</sup> *Armour v. City of Indianapolis, Ind.*, 132 S. Ct. 2073, 2080 (2012) (quoting *Heller v. Doe*, 509 U.S. 312, 319–320 (1993)).



constitutional attack, the facts upon which the program is predicated will be subject to judicial review.<sup>33</sup> The rational basis standard of review does not have to be the government's actual interest. Rather, if the court can merely hypothesize a legitimate interest served by the challenged action, it will withstand the rational basis review.<sup>34</sup> The term rational must convince an impartial lawmaker that the classification would serve a legitimate public purpose that transcends the harm to the members of the disadvantaged class.<sup>35</sup>

San Francisco conducted a detailed study of the economic disadvantages faced by San Francisco-based businesses as compared to businesses located in other jurisdictions. The study showed a competitive disadvantage in public contracting for businesses located within the City as compared to businesses from other jurisdictions.

San Francisco-based businesses incurred higher administrative costs in doing business within the City. Such costs included higher taxes, rents, wages, insurance rates, and benefits for labor. In upholding the LBE Ordinance, the Ninth Circuit held “. . . the city may rationally allocate its own funds to ameliorate disadvantages suffered by local businesses, particularly where the city itself creates some of the disadvantages.”<sup>36</sup>

#### **4. Small Business Enterprise Programs**

A government entity may implement a Small Business Enterprise (SBE) program predicated upon a rational basis to ensure adequate small business participation in government contracting. Rational basis is the lowest level of scrutiny and the standard the courts apply to race- and gender-neutral public contracting programs.<sup>37</sup>

### ***IV. Burden of Proof***

The procedural protocol established by *Croson* imposes an initial burden of proof upon the government to demonstrate that the challenged MBE program is supported by a strong factual predicate, i.e., documented evidence of past discrimination. Notwithstanding this requirement, the plaintiff bears the ultimate burden of proof to persuade the court that the MBE program is unconstitutional. The plaintiff may challenge a government's factual predicate on any of the following grounds:<sup>38</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *Lakeside Roofing*, 2012 WL 709276; see KATHLEEN M. SULLIVAN & GERALD GUNTHER, CONSTITUTIONAL LAW FOUNDATION PRESS Chapter 9 (16th ed. 2007).

<sup>35</sup> *Croson*, 488 U.S. at 515.

<sup>36</sup> *AGCCI*, 813 F.2d at 943.

<sup>37</sup> *Doe 1 v. Lower Merion Sch. Dist.*, 689 F. Supp. 2d 742, 748 (E.D. Pa. 2010).

<sup>38</sup> *Contractors Ass'n v. City of Philadelphia*, 893 F. Supp. 419, 430, 431, 433, 437 (E.D. Pa. 1995) (“*Philadelphia V*”) (These were the issues on which the district court in Philadelphia reviewed the disparity study before it).





- Disparity exists due to race-neutral reasons
- Methodology is flawed
- Data are statistically insignificant
- Controverting data exist

### **A. Initial Burden of Proof**

*Croson* requires defendant jurisdictions to produce a “strong basis in evidence” that the objective of the challenged MBE program is to rectify the effects of past identified discrimination.<sup>39</sup> Whether the government has produced a strong basis in evidence is a question of law.<sup>40</sup> The defendant in a constitutional claim against a disparity study has the initial burden of proof to show that there was past discrimination.<sup>41</sup> Once the defendant meets this initial burden, the burden shifts to the plaintiff to prove that the program is unconstitutional. Because the sufficiency of the factual predicate supporting the MBE program is at issue, factual determinations relating to the accuracy and validity of the proffered evidence underlie the initial legal conclusion to be drawn.<sup>42</sup>

The adequacy of the government’s evidence is “evaluated in the context of the breadth of the remedial program advanced by the [jurisdiction].”<sup>43</sup> The onus is upon the jurisdiction to provide a factual predicate that is sufficient in scope and precision to demonstrate that contemporaneous discrimination necessitated the adoption of the MBE program.<sup>44</sup>

### **B. Ultimate Burden of Proof**

The party challenging an MBE program will bear the ultimate burden of proof throughout the course of the litigation—despite the government’s obligation to produce a strong factual predicate to support its program.<sup>45</sup> The plaintiff must persuade the court that the program is constitutionally flawed either by challenging the government’s factual predicate for the program or by demonstrating that the program is overly broad.

Joining the majority in stating that the ultimate burden rests with the plaintiff, Justice O’Connor explained the nature of the plaintiff’s burden of proof in her concurring opinion in *Wygant v. Jackson Board of Education* (“*Wygant*”):<sup>46</sup>

<sup>39</sup> *Philadelphia VI*, 91 F.3d at 586 (citing *Concrete Works of Colo. v. Denver*, 36 F.3d 1513, 1522 (10th Cir. 1994)(“*Concrete Works II*”)); see *Croson*, 488 U.S. at 510.

<sup>40</sup> *Id.* (citing *Associated Gen. Contractors v. New Haven*, 791 F. Supp. 941, 944 (D. Conn. 1992)).

<sup>41</sup> *Concrete Works II*, 36 F.3d at 1521-22 (citing *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 292 (1986)).

<sup>42</sup> *Id.* at 1522.

<sup>43</sup> *Id.* (citing *Croson*, 488 U.S. at 498).

<sup>44</sup> See *Croson*, 488 U.S. at 488.

<sup>45</sup> See *Wygant*, 476 U.S. at 277-78, 293.

<sup>46</sup> *Id.* (O’Connor, S., concurrence).



[I]t is incumbent upon the nonminority [plaintiffs] to prove their case; they continue to bear the ultimate burden of persuading the court that the [government's] evidence did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently "narrowly tailored."<sup>47</sup>

In *Philadelphia VI*, the Third Circuit Court of Appeals clarified this allocation of the burden of proof and the constitutional issue of whether facts constitute a "strong basis" in evidence for race-based remedies.<sup>48</sup> That Court wrote that the allocation of the burden of persuasion is dependent upon the plaintiff's argument against the constitutionality of the program. If the plaintiff's theory is that an agency has adopted race-based preferences with a purpose other than remedying past discrimination, the plaintiff has the burden of convincing the court that the identified remedial motivation is a pretext and that the real motivation was something else.<sup>49</sup> If, on the other hand, the plaintiff argues there is no existence of past discrimination within the agency, the plaintiff must successfully rebut the agency's evidentiary facts and prove their inaccuracy.<sup>50</sup>

However, the ultimate issue of whether sufficient evidence exists to prove past discrimination is a question of law. The burden of persuasion in the traditional sense plays no role in the court's resolution of that ultimate issue.<sup>51</sup>

*Concrete Works VI* made clear that the plaintiff's burden is an evidentiary one; it cannot be discharged simply by argument. The court cited its opinion in *Adarand Constructors Inc. v. Slater*, 228 F.3d 1147, 1173 (10th Cir. 2000): "[g]eneral criticism of disparity studies, as opposed to particular evidence undermining the reliability of the particular disparity study, is of little persuasive value."<sup>52</sup> The requisite burden of proof needed to establish a factual predicate for race- and gender-conscious goals as set forth by *Croson* and its progeny is described below in *Section IV*.

The Tenth Circuit and the Eleventh Circuit present alternative approaches to the legal evidentiary requirements of the shifting burden of proof in racial classification cases. This split among the circuits pertains to the allocation of the burden of proof once the initial burden of persuading the court is met, that persisting vestiges of discrimination exist.<sup>53</sup>

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<sup>47</sup> *Wygant*, 476 U.S. at 277-78.

<sup>48</sup> *Philadelphia VI*, 91 F.3d at 597.

<sup>49</sup> *Id.* at 597.

<sup>50</sup> *Id.* at 597-598.

<sup>51</sup> At first glance, the Third Circuit and the Eleventh Circuit positions appear to be inconsistent as to whether the issue at hand is a legal issue or a factual issue. However, the two courts were examining the issues in different scenarios. For instance, the Third Circuit was examining whether enough facts existed to determine if past discrimination existed, and the Eleventh Circuit was examining whether the remedy the agency utilized was the appropriate response to the determined past discrimination. Therefore, depending upon the Plaintiff's arguments, a court reviewing an MBE program is likely to be presented with questions of law and fact.

<sup>52</sup> *Concrete Works VI*, 321 F.3d at 979.

<sup>53</sup> *Hershell Gill Consulting Eng'rs, Inc. v. Miami-Dade Cnty.*, 333 F. Supp. 2d 1305, 1325 (S.D. Fla. 2004).



The Tenth Circuit’s opinion in *Concrete Works VI* states that the burden of proof remains with the plaintiff to demonstrate that an ordinance is unconstitutional.<sup>54</sup> On the other hand, the Eleventh Circuit in *Hershell* contends that the government, as the proponent of the classification, bears the burden of proving that its consideration of race- is narrowly tailored to serve a compelling state interest, and that the government must always maintain a “strong basis in evidence” for undertaking affirmative action programs.<sup>55</sup> Therefore, the proponent of the classification must meet a substantial burden of proof, a standard largely allocated to the government to prove that sufficient vestiges of discrimination exist to support the conclusion that remedial action is necessary. Within the Eleventh Circuit, judicial review of a challenged affirmative action program focuses primarily on whether the government entity can meet the burden of proof.

In practice, the standards prescribed in the Eleventh Circuit for proving the constitutionality of a proposed M/WBE framework are rooted in *Engineering Contractors Ass’n v. Metropolitan Dade County*, the same Eleventh Circuit case that was cited to in the Tenth Circuit.<sup>56</sup> In *Dade County I*, the court found that a municipality can justify affirmative action by demonstrating “gross statistical disparities” between the proportion of minorities awarded contracts and the proportion of minorities willing and able to do the work, or by presenting anecdotal evidence – especially if buttressed by statistical data.<sup>57</sup>

## **V. *Croson* Evidentiary Framework**

Government entities must construct a strong evidentiary framework to stave off legal challenges and ensure that the adopted MBE program comports with the requirements of the Equal Protection Clause of the United States Constitution. The framework must comply with the stringent requirements of the strict scrutiny standard. Accordingly, there must be a strong basis in evidence that tends to show past discrimination, and the race-conscious remedy must be “narrowly tailored,” as set forth in *Croson*.<sup>58</sup> A summary of the appropriate types of evidence to satisfy the first element of the *Croson* standard follows.

### **A. *Active or Passive Participation***

*Croson* requires that the local entity seeking to adopt an MBE program must have perpetuated the discrimination to be remedied by the program.<sup>59</sup> However, the local entity need not have been an active perpetrator of such discrimination. Passive participation will satisfy this part of the Court’s

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<sup>54</sup> *Concrete Works VI*, 321 F.3d at 959 (quoting *Adarand v. Peña*, 228 F.3d 1147, 1176 (10th Cir. 2000) (“We reiterate that the ultimate burden of proof remains with the challenging party to demonstrate the unconstitutionality of an affirmative-action program.”)).

<sup>55</sup> *Hershell*, 333 F. Supp. 2d at 1305 (stating that *Concrete Works* is not persuasive because it conflicts with the allocation of the burden of proof stated by Eleventh Circuit precedent in *Johnson v. Board of Regents of the University of Georgia*, 263 F.3d 1234, 1244 (11th Cir. 2001)).

<sup>56</sup> 943 F. Supp. 1546 (S.D. Fla. 1996) (“*Dade County I*”).

<sup>57</sup> *Id.* at 907.

<sup>58</sup> *Croson*, 488 U.S. at 486.

<sup>59</sup> *Id.* at 488.



strict scrutiny review.<sup>60</sup> An entity will be considered an “active” participant if the evidence shows that it created barriers that actively exclude MBEs from its contracting opportunities. An entity will be considered to be a “passive” participant in private sector discriminatory practices if it has infused tax dollars into that discriminatory industry.<sup>61</sup>

Until *Concrete Works I*, the inquiry regarding passive discrimination was limited to the subcontracting practices of government prime contractors. The Tenth Circuit, in *Concrete Works I*, considered a purely private sector definition of passive discrimination, holding that evidence of a government entity infusing its tax dollars into a discriminatory system can satisfy passive discrimination.<sup>62</sup>

In *Concrete Works I*, the district court granted summary judgment in favor of the City of Denver in 1993.<sup>63</sup> Concrete Works appealed to the Tenth Circuit, in *Concrete Works II*, in which the summary judgment in favor of the City of Denver was reversed and the case was remanded to the district court for trial.<sup>64</sup> The case was remanded with specific instructions permitting the parties “to develop a factual record to support their competing interpretations of the empirical data.”<sup>65</sup> On remand, the district court entered a judgment in favor of the plaintiff holding that the City’s ordinances violated the Fourteenth Amendment.<sup>66</sup>

The district court in *Concrete III* rejected the four disparity studies the city offered to support the continuation of Denver’s M/WBE program.<sup>67</sup> The court surmised that (1) the methodology employed in the statistical studies was not “designed to answer the relevant questions,”<sup>68</sup> (2) the collection of data was flawed, (3) important variables were not accounted for in the analyses, and (4) the conclusions were based on unreasonable assumptions.<sup>69</sup> The court deemed that the “most fundamental flaw” in the statistical evidence was the lack of “objective criteria [to] define who is entitled to the benefits of the program and [which groups should be] excluded from those benefits.”<sup>70</sup> The statistical analysis relied upon by the City to support its M/WBE program was conducted as a result of the ensuing litigation. The statistical evidence proffered by the City to the court was not objective in that it lacked a correlation to the current M/WBE program goals.

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<sup>60</sup> *Id.* at 509.

<sup>61</sup> *Id.* at 492, accord *Coral Constr.*, 941 F.2d at 916.

<sup>62</sup> *Concrete Works of Colo., Inc. v. City & Cnty. of Denver*, 823 F. Supp. 821, 824 (D. Colo. 1993) (“*Concrete Works I*”), rev’d, 36 F.3d 1513 (10th Cir. 1994), rev’d, 86 F. Supp. 2d 1042 (D. Colo. 2000), rev’d, 321 F.3d 950 (10th Cir. 2003).

<sup>63</sup> *Concrete Works I*, 823 F. Supp. at 994.

<sup>64</sup> *Concrete Works II*, 36 F.3d at 1530-31.

<sup>65</sup> *Id.*

<sup>66</sup> *Concrete Works of Colo., Inc. v. City & Cnty. of Denver*, 86 F. Supp. 2d 1042, 1079 (D. Colo. 2000) (“*Concrete Works III*”).

<sup>67</sup> *Id.* at 1065-68.

<sup>68</sup> *Id.* at 1067.

<sup>69</sup> *Id.* at 1057-58, 1071.

<sup>70</sup> *Id.* at 1068.



The Tenth Circuit on appeal rejected the district court’s analysis because the district court’s queries required Denver to prove the existence of discrimination. Moreover, the Tenth Circuit explicitly held that “passive” participation included private sector discrimination in the marketplace. The court found that marketplace discrimination is relevant where the agency’s prime contractors’ practices are discriminatory against their subcontractors:

The Court, however, did set out two conditions which must be met for the governmental entity to show a compelling interest. “First, the discrimination must be identified discrimination.” (citation omitted). The City can satisfy this condition by identifying the discrimination “*public or private*, with some specificity.” (internal quotes and citation omitted).<sup>71</sup>

In *Concrete Works IV*, the Tenth Circuit held that the governmental entity must also have a “strong basis in evidence to conclude that remedial action was necessary.”<sup>72</sup> The Tenth Circuit further held that the city was correct in its attempt to show that it “indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against MBE and/or WBE subcontractors in other private portions of their business.”<sup>73</sup> While the Tenth Circuit noted that the record contained “extensive evidence” of private sector discrimination, the question of the adequacy of private sector discrimination as the factual predicate for a race-based remedy was not before the court.<sup>74</sup>

Ten months after *Concrete Works IV*, the question of whether a particular public sector race-based remedy is narrowly tailored when it is based solely on business practices within the private sector was at issue in *Builders Association of Greater Chicago v. City of Chicago*.<sup>75</sup> The plaintiff in *Builders Association of Greater Chicago* challenged the City’s construction set-aside program. The court considered pre-enactment and post-enactment evidence in support of the six-year-old M/WBE program.<sup>76</sup> The challenged program consisted of a 16.9 percent MBE subcontracting goal, a 10-percent MBE prime contracting goal, a 4.5 percent WBE subcontracting goal and a 1 percent WBE prime contracting goal.<sup>77</sup>

The district court found that private sector business practices offered by the city, which were based on United States Census data and surveys, constituted discrimination against minorities in the Chicago market area.<sup>78</sup> However, the district court did not find the City’s M/WBE subcontracting goal to be a narrowly tailored remedy given the factual predicate. The court found that the study

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<sup>71</sup> *Concrete Works IV*, 321 F.3d at 975-76.

<sup>72</sup> *Id.* at 976 (quoting *Shaw v. Hunt*, 517 U.S. 804, 909 (1996)).

<sup>73</sup> *Id.* at 976.

<sup>74</sup> *Id.* at 959, 977, 990.

<sup>75</sup> *Builders Ass’n of Greater Chi. v. City of Chi.*, 298 F. Supp. 2d 725, 732 (N.D. Ill. 2003).

<sup>76</sup> *Id.* at 726, 729, 733-34.

<sup>77</sup> *Id.* at 729.

<sup>78</sup> *Id.* at 735-37.



did not provide a meaningful, individualized review of M/WBEs in order to formulate remedies “more akin to a laser beam than a baseball bat.”<sup>79</sup> The City was ordered to suspend its M/WBE goals program.

As recently as 2010, the Fourth Circuit in *H.B. Rowe Co. v. Tippet* ruled that the State of North Carolina could not rely on private-sector data to demonstrate that prime contractors underutilized women subcontractors in the general construction industry.<sup>80</sup> The court found that the private sector data did not test whether the underutilization was statistically significant or just mere chance.<sup>81</sup>

## **B. Systemic Discriminatory Exclusion**

*Croson* established that a local government enacting a race-conscious contracting program must demonstrate identified systemic discriminatory exclusion on the basis of race or any other illegitimate criteria (arguably gender).<sup>82</sup> Thus, it is essential to demonstrate a pattern and practice of such discriminatory exclusion in the relevant market area.<sup>83</sup> Using appropriate evidence of the entity’s active or passive participation in the discrimination, as discussed above, past discriminatory exclusion must be identified for each racial group to which a remedy would apply.<sup>84</sup> Mere statistics and broad assertions of purely societal discrimination will not suffice to support a race- or gender-conscious program.

*Croson* enumerates two ways an entity may establish the requisite factual predicate of discrimination. First, a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by an entity or by the entity’s prime contractors may support an inference of discriminatory exclusion.<sup>85</sup> In other words, when the relevant statistical pool is used, a showing of statistically significant underutilization “may constitute prima facie proof of a pattern or practice of discrimination[.]”<sup>86</sup>

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<sup>79</sup> *Id.* at 737-39, 742.

<sup>80</sup> *Rowe*, 615 F.3d at 236.

<sup>81</sup> *Id.*

<sup>82</sup> *Croson*, 488 U.S. at 492; see *Monterey Mech. Co. v. Pete Wilson*, 125 F.3d 702, 713 (9th Cir. 1997); see also *W.H. Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 218-20 (1999) (held the City’s MBE program was unconstitutional for construction contracts because minority participation goals were arbitrarily set and not based on any objective data. Moreover, the Court noted that had the City implemented the recommendations from the disparity study it commissioned, the MBE program may have withstood judicial scrutiny (the City was not satisfied with the study and chose not to adopt its conclusions)).

<sup>83</sup> *Croson*, 488 U.S. at 509.

<sup>84</sup> *Id.* at 506. (The Court stated in *Croson*, “[t]he random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the city’s purpose was not in fact to remedy past discrimination”); See *N. Shore Concrete & Assoc. v. City of New York*, 1998 U.S. Dist. LEXIS 6785 \* 55 (E.D.N.Y. April 12, 1998) (rejected the inclusion of Native Americans and Alaskan Natives in the City’s program).

<sup>85</sup> *Croson*, 488 U.S. at 509.

<sup>86</sup> *Id.* at 501 (citing *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-08 (1977)).



The *Croson* Court made clear that both prime contract and subcontracting data were relevant.<sup>87</sup> The Court observed that “[w]ithout any information on minority participation in subcontracting, it is quite simply impossible to evaluate overall minority representation in the city’s construction expenditures.”<sup>88</sup> Subcontracting data is also an important means by which to assess suggested future remedial actions. Because the decision makers are different for the awarding of prime contracts and subcontracts, the remedies for discrimination identified at a prime contractor versus subcontractor level might also be different.

Second, “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”<sup>89</sup> Thus, if a local government has statistical evidence that non-minority contractors are systematically excluding minority businesses from subcontracting opportunities, it may act to end the discriminatory exclusion.<sup>90</sup> Once an inference of discriminatory exclusion arises, the entity may act to dismantle the closed business system “*by taking appropriate measures against those who discriminate* on the basis of race or other illegitimate criteria.”<sup>91</sup> *Croson* further states, “*In the extreme case*, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion.”<sup>92</sup>

In *Coral Construction*, the Ninth Circuit Court of Appeals further elaborated upon the type of evidence needed to establish the factual predicate that justifies a race-conscious remedy.<sup>93</sup> The Court held that both statistical and anecdotal evidence should be relied upon in establishing systemic discriminatory exclusion in the relevant marketplace as the factual predicate for an MBE program.<sup>94</sup> The court explained that statistical evidence, standing alone, often does not account for the complex factors and motivations guiding contracting decisions, many of which may be entirely race-neutral.<sup>95</sup>

Likewise, anecdotal evidence, standing alone, is unlikely to establish a systemic pattern of discrimination.<sup>96</sup> Nonetheless, anecdotal evidence is important because the individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”<sup>97</sup>

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<sup>87</sup> *Id.* at 502-03.

<sup>88</sup> *Id.*

<sup>89</sup> *Croson*, 488 U.S. at 509.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* (emphasis added).

<sup>92</sup> *Id.* (emphasis added).

<sup>93</sup> *Coral Constr.*, 941 F.2d at 917-18, 920-26.

<sup>94</sup> *Id.* at 919.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* (quoting *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977) (“*Teamster*”)).



## 1. Geographic Market

*Croson* did not speak directly to how the geographic market is to be determined. In *Coral Construction*, the Ninth Circuit Court of Appeals held that “an MBE program must limit its geographical scope to the boundaries of the enacting jurisdiction.”<sup>98</sup> Conversely, in *Concrete Works I*, the district court specifically approved the Denver Metropolitan Statistical Area (MSA) as the appropriate market area since 80 percent of the construction contracts were based there.<sup>99</sup> Read together, these cases support a definition of market area that is reasonable rather than dictated by a specific formula. Because *Croson* and its progeny did not provide a bright line rule for local market area, the determination should be fact-based. An entity may include consideration of evidence of discrimination within its own jurisdiction.<sup>100</sup> Extra-jurisdictional evidence may be permitted, when it is reasonably related to where the jurisdiction contracts.<sup>101</sup>

## 2. Current Versus Historical Evidence

In assessing the existence of identified discrimination through demonstration of a disparity between MBE utilization and availability, the entity should examine disparity data both prior to and after the entity’s current MBE program was enacted. This is referred to as “pre-program” versus “post-program” data.

*Croson* requires that an MBE program be “narrowly tailored” to remedy current evidence of discrimination.<sup>102</sup> Thus, goals must be set according to the evidence of disparity found. For example, if there is a current disparity between the percentage of an entity’s utilization of Hispanic construction contractors and the availability of Hispanic construction contractors in that entity’s marketplace, then that entity can set a goal to bridge that disparity.

It is not mandatory to examine a long history of an entity’s utilization to assess current evidence of discrimination. In fact, *Croson* indicates that it may be legally fatal to justify an MBE program based upon outdated evidence.<sup>103</sup> Therefore, the most recent two or three years of an entity’s utilization data would suffice to determine whether a statistical disparity exists between current M/WBE utilization and availability.<sup>104</sup>

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<sup>98</sup> *Coral Constr.*, 941 F.2d at 925.

<sup>99</sup> *Concrete Works I*, 823 F. Supp. at 835-836 (D. Colo. 1993); *rev’d on other grounds*, 36 F.3d 1513 (10th Cir. 1994).

<sup>100</sup> *Cone Corp. v. Hillsborough Cnty.*, 908 F.2d 908, 915 (11th Cir. 1990); *Associated Gen. Contractors v. Coal. for Econ. Equity*, 950 F.2d 1401, 1415 (9th Cir. 1991) (“AGCC II”).

<sup>101</sup> There is a related question of which firms can participate in a remedial program. In *Coral Construction*, the Court held that the definition of “minority business” used in King County’s MBE program was over-inclusive. The Court reasoned that the definition was overbroad because it included businesses other than those who were discriminated against in the King County business community. The program would have allowed, for instance, participation by MBEs who had no prior contact with the County. Hence, location within the geographic area is not enough. An MBE had to have shown that it previously sought business or is currently doing business in the market area.

<sup>102</sup> *See Croson*, 488 U.S. at 509-10.

<sup>103</sup> *Croson*, 488 U.S. at 499 (stating, “[i]t is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination”).

<sup>104</sup> *See AGCC II*, 950 F.2d at 1414 (consultant study looked at City’s MBE utilization over a one-year period).





### 3. Statistical Evidence

To determine whether statistical evidence is adequate to give rise to an inference of discrimination, courts have looked to the “disparity index,” which consists of the percentage of minority or women contractor participation in local contracts divided by the percentage of minority or women contractor availability or composition in the population of available firms in the local market area.<sup>105</sup> Disparity indexes have been found highly probative evidence of discrimination where they ensure that the “relevant statistical pool” of minority or women contractors is being considered.<sup>106</sup>

The Third Circuit Court of Appeals, in *Philadelphia VI*, ruled that the “relevant statistical pool” includes those businesses that not only exist in the marketplace but also are qualified and interested in performing the public agency’s work. In that case, the Third Circuit rejected a statistical disparity finding where the pool of minority businesses used in comparing utilization to availability was composed of those merely licensed to operate in the City of Philadelphia. A license to do business with the City, standing alone, does not indicate either willingness or capability to do work for the City. The Court concluded that this particular statistical disparity did not satisfy *Croson*.<sup>107</sup>

When using a pool of relevant statistical evidence, a disparity between the utilization and availability of M/WBEs can be shown in more than one way. First, the number of M/WBEs utilized by an entity can be compared to the number of available M/WBEs. This is a strict *Croson* “disparity” formula. A significant statistical disparity between the number of M/WBEs that an entity utilizes in a given industry and the number of available M/WBEs in the relevant market area specializing in the specified product/service category would give rise to an inference of discriminatory exclusion.

Second, M/WBE dollar participation can be compared to M/WBE availability. This comparison could show a disparity between an entity’s award of contracts to available market area non-minority male businesses and the award of contracts to M/WBEs. Thus, in *AGCC II*, the court found constitutional the comparison of an independent consultant’s study which “compared the number of available MBE prime construction contractors in San Francisco with the amount of

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<sup>105</sup> Although the disparity index is a common category of statistical evidence considered, other types of statistical evidence have been taken into account. In addition to looking at Dade County’s contracting and subcontracting statistics, the district court also considered marketplace data statistics (which looked at the relationship between the race, ethnicity, and gender of surveyed firm owners and the reported sales and receipts of those firms), the County’s Wainwright study (which compared construction business ownership rates of M/WBEs to those of non-M/WBEs and analyzed disparities in personal income between M/WBE and non-M/WBE business owners), and the County’s Brimmer Study (which focused only on Black-owned construction firms and looked at whether disparities existed when the sales and receipts of Black-owned construction firms in Dade County were compared with the sales and receipts of all Dade County construction firms). The court affirmed the judgment that declared appellant’s affirmative action plan for awarding county construction contracts unconstitutional and enjoined the plan’s operation because there was no statistical evidence of past discrimination and appellant failed to consider race and ethnic-neutral alternatives to the plan.

<sup>106</sup> *Rowe*, 615 F.3d at 236; see *Dade County I*, 943 F. Supp. at 1546, *aff’d*, 122 F.3d 895 (11th Cir. 1997); see also *Concrete Works II*, 36 F.3d at 1513.

<sup>107</sup> *Philadelphia VI*, 91 F.3d at 601-602. The courts have not spoken to the non-M/WBE component of the disparity index. However, if only as a matter of logic, the “availability” of non-M/WBEs requires that their willingness to be government contractors be established. The same measures used to establish the interest of M/WBEs should be applied to non-M/WBEs.



contract dollars awarded by the City to San Francisco-based MBEs” over a one-year period.<sup>108</sup> The study that was under review in *AGCC I* found that available MBEs received far fewer construction contract dollars in proportion to their numbers than their available non-minority counterparts.<sup>109</sup> *AGCC I* argued to the Ninth Circuit that the preferences given to MBEs violated the equal protection clause of the Fourteenth Amendment of the United States Constitution. The district court determined that *AGCC* only demonstrated a possibility of irreparable injury on the ground that such injury is assumed where constitutional rights have been alleged to be violated, but failed to demonstrate a likelihood of success on the merits.<sup>110</sup> On appeal, The Ninth Circuit affirmed the district court’s ruling.<sup>111</sup>

Whether a disparity index supports an inference that there is discrimination in the market area depends not only on what is being compared, but also on the statistical significance of any such disparity. In *Croson*, Justice O’Connor opined, “[w]here the gross statistical disparities can be shown, they alone, in a proper case, may constitute a *prima facie* proof of a pattern or practice of discrimination.”<sup>112</sup> However, the Court has not assessed or attempted to cast bright lines for determining if a disparity index is sufficient to support an inference of discrimination. In the absence of such a formula, the Tenth Circuit determined that the analysis of the disparity index and the findings of its significance are to be judged on a case-by-case basis.<sup>113</sup>

Following the dictates of *Croson*, courts may carefully examine whether there is data that show MBEs are qualified, ready, willing, and able to perform.<sup>114</sup> *Concrete Works II* made the same point: capacity—i.e., whether the firm is “able to perform”—is a ripe issue when a disparity study is examined on the merits:

[Plaintiff] has identified a legitimate factual dispute about the accuracy of Denver’s data and questioned whether Denver’s reliance on the percentage of MBEs and WBEs available in the marketplace overstates “the ability of MBEs or WBEs to conduct business relative to the industry as a whole because M/WBEs tend to be smaller and less experienced than non-minority owned firms.” In other words, a disparity index calculated on the basis of the absolute number of MBEs in the local market may show greater underutilization than does data that takes into consideration the size of MBEs and WBEs.<sup>115</sup>

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<sup>108</sup> *AGCC II*, 950 F.2d at 1414 (discussing *AGCC I*, 813 F.2d 922 (9th Cir. 1987)).

<sup>109</sup> *AGCC I*, 214 F.3d 730 (6th Cir. 2000); *Id.* at 1414. Specifically, the study found that MBE availability was 49.5 percent for prime construction, but MBE dollar participation was only 11.1 percent; that MBE availability was 36 percent prime equipment and supplies, but MBE dollar participation was 17 percent; and that MBE availability for prime general services was 49 percent, but dollar participation was 6.2 percent.

<sup>110</sup> *AGCC I*, 813 F.2d 922 (9th Cir. 1987).

<sup>111</sup> *Id.* at 1401.

<sup>112</sup> *Croson*, 488 U.S. at 501 (quoting *Hazelwood Sch. Dist.*, 433 U.S. at 307-308).

<sup>113</sup> *Concrete Works II*, 36 F.3d at 1522.

<sup>114</sup> The *Philadelphia* study was vulnerable on this issue.

<sup>115</sup> *Concrete Works II*, 36 F.3d at 1528.



Notwithstanding that appellate concern, the disparity studies before the district court on remand did not examine the issue of M/WBE capacity to perform Denver’s public sector contracts.

The Sixth Circuit Court of Appeals, in *Associated General Contractors of Ohio, Inc. v. Drabik* (“*Drabik*”), concluded that for statistical evidence to meet the legal standard of *Croson*, it must consider the issue of capacity.<sup>116</sup> The State’s factual predicate study based its statistical evidence on the percentage of MBE businesses in the population. The statistical evidence “did not take into account the number of minority businesses that were construction firms, let alone how many were qualified, willing, and able to perform state contracts.”<sup>117</sup> The court reasoned as follows:

Even statistical comparisons that might be apparently more pertinent, such as with the percentage of all firms qualified in some minimal sense, to perform the work in question, would also fail to satisfy the Court’s criteria. If MBEs comprise 10 percent of the total number of contracting firms in the State, but only get 3 percent of the dollar value of certain contracts that does not alone show discrimination, or even disparity. It does not account for the relative size of the firms, either in terms of their ability to do particular work or in terms of the number of tasks they have resources to complete.<sup>118</sup>

*Drabik* also pointed out that the State not only relied upon the wrong type of statistical data, but also that the datasets were more than twenty years old. Therefore, an entity must study current data that indicate the availability and qualifications of the MBEs.

The opinions in *Philadelphia VI*<sup>119</sup> and *Dade County I*,<sup>120</sup> regarding disparity studies involving public sector contracting, are particularly instructive in defining availability. In *Philadelphia VI*, the earlier of the two decisions, contractors’ associations challenged a city ordinance that created set-asides for minority subcontractors on city public works contracts. A summary judgment was granted for the contractors.<sup>121</sup> The Third Circuit upheld the third appeal, affirming that there was no firm basis in evidence for finding that race-based discrimination existed to justify a race-based program and that the program was not narrowly tailored to address past discrimination by the City.<sup>122</sup>

The Third Circuit reviewed the evidence of discrimination in prime contracting and stated that whether it is strong enough to infer discrimination is a “close call” which the court “chose not to

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<sup>116</sup> *Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 734-38 (6th Cir. 2000) (“*Drabik*”). The Court reviewed Ohio’s 1980, pre-*Croson*, program, which the Sixth Circuit found constitutional in *Ohio Contractors Ass’n v. Keip*, 713 F.2d 167, 176 (6th Cir. 1983), finding the program unconstitutional under *Croson*.

<sup>117</sup> *Drabik*, 214 F.3d at 736.

<sup>118</sup> *Id.*

<sup>119</sup> *Philadelphia VI*, 91 F.3d at 604-605.

<sup>120</sup> *Dade County I*, 943 F. Supp. at 1582-83.

<sup>121</sup> *Philadelphia VI*, 91 F.3d at 590.

<sup>122</sup> *Id.* at 609-10.



make.”<sup>123</sup> It was unnecessary to make this determination because the court found that even if there was a strong basis in evidence for the program, a subcontracting program was not narrowly tailored to remedy prime contracting discrimination.<sup>124</sup>

When the court looked at subcontracting, it found that a firm basis in evidence did not exist. The only subcontracting evidence presented was a review of a random 25 to 30 percent of project engineer logs on projects valued at more than \$30,000.<sup>125</sup> The consultant determined that no MBEs were used during the study period based upon recollections of the former general counsel to the General and Specialty Contractors Association of Philadelphia regarding whether the owners of the utilized firms were MBEs. The court found this evidence insufficient as a basis for finding that prime contractors in the market area were discriminating against subcontractors.<sup>126</sup>

The Third Circuit has recognized that consideration of qualifications can be approached at different levels of specificity and that the practicality of the approach should also be weighed. The Court of Appeals found that “[i]t would be highly impractical to review the hundreds of contracts awarded each year and compare them to each and every MBE” and that it was a “reasonable choice” under the circumstances to use a list of M/WBE certified contractors as a source for available firms.<sup>127</sup> Although theoretically it may have been possible to adopt a more refined approach, the court found that using the list of certified contractors was a rational approach to identifying qualified firms.<sup>128</sup>

In order to qualify for certification, the federal certification program required firms to detail their bonding capacity, size of prior contracts, number of employees, financial integrity, and equipment owned. According to the court, “the process by which the firms were certified [suggests that] those firms were both qualified and willing to participate in public works projects.”<sup>129</sup> The court found certification to be an adequate process of identifying capable firms, recognizing that the process may even understate the availability of MBE firms.<sup>130</sup> Therefore, the court was somewhat flexible in evaluating the appropriate method of determining the availability of MBE firms in the statistical analysis of a disparity.

Furthermore, the court discussed whether bidding was required in prime construction contracts as the measure of “willingness” and stated, “[p]ast discrimination in a marketplace may provide

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<sup>123</sup> *Id.* at 605.

<sup>124</sup> *Philadelphia VI*, 91 F.3d at 605.

<sup>125</sup> *Id.* at 600.

<sup>126</sup> Another problem with the program was that the 15 percent goal was not based on data indicating that minority businesses in the market area were available to perform 15 percent of the City’s contracts. The court noted, however, that “we do not suggest that the percentage of the preferred group in the universe of qualified contractors is necessarily the ceiling for all set-asides.” The court also found the program flawed because it did not provide sufficient waivers and exemptions, as well as consideration of race-neutral alternatives.

<sup>127</sup> *Philadelphia VI*, 91 F.3d at 603.

<sup>128</sup> *Philadelphia VI*, 91 F.3d at 603-605, 609.

<sup>129</sup> *Id.* at 603.

<sup>130</sup> *Id.*



reason to believe the minorities who would otherwise be willing are discouraged from trying to secure work.”<sup>131</sup>

In *Dade County I*, the district court held that the County had not shown the compelling interest required to institute a race-conscious program, because the statistically significant disparities upon which the County relied disappeared when the size of the M/WBEs was taken into account.<sup>132</sup> The *Dade County* district court accepted the disparity study’s limiting of “available” prime construction contractors to those that had bid at least once in the study period. However, it must be noted that relying solely on bidders to identify available firms may have limitations. If the solicitation of bidders is biased, then the results of the bidding process will be biased.<sup>133</sup> In addition, a comprehensive count of bidders is dependent on the adequacy of the agency’s record-keeping.<sup>134</sup>

The appellate court in *Dade County* did not determine whether the County presented sufficient evidence to justify the M/WBE program. It merely ascertained that the lower court was not clearly erroneous in concluding that the County lacked a strong basis in evidence to justify race-conscious affirmative action.<sup>135</sup> The appellate court did not prescribe the district court’s analysis or any other specific analysis for future cases.

### **C. Anecdotal Evidence**

In *Croson*, Justice O’Connor opined that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”<sup>136</sup> Anecdotal evidence should be gathered to determine if minority contractors are systematically being excluded from contracting opportunities in the relevant market area. Remedial measures fall along a sliding scale determined by their intrusiveness on non-targeted groups. At one end of the spectrum are race-neutral measures and policies, such as outreach to all segments of the business community regardless of race. They are not intrusive and, in fact, require no evidence of discrimination before implementation. Conversely, race-conscious measures, such as set-asides, fall at the other end of the spectrum and require a larger amount of evidence.<sup>137</sup>

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<sup>131</sup> *Id.*

<sup>132</sup> *Dade County I*, 943 F. Supp. at 1560.

<sup>133</sup> *Cf. League of United Latin Am. Citizens v. Santa Ana*, 410 F. Supp. 873, 897 (C.D. Cal. 1976); *Reynolds v. Sheet Metal Workers, Local 102*, 498 F. Supp. 952, 964 n. 12 (D. D.C. 1980), *aff’d*, 702 F.2d 221 (D.C. Cir. 1981) (involving the analysis of available applicants in the employment context).

<sup>134</sup> *Cf. EEOC v. Am. Nat’l Bank*, 652 F.2d 1176, 1196-1197 (4th Cir. 1981), *cert. denied*, 459 U.S. 923 (1981) (in the employment context, actual applicant flow data may be rejected where race coding is speculative or nonexistent).

<sup>135</sup> *Dade County I*, 943 F. Supp. at 1557.

<sup>136</sup> *Croson*, 488 U.S. at 509; *see Teamsters*, 431 U.S. at 338.

<sup>137</sup> *Cf. AGCC II*, 950 F.2d at 1417-18 (in finding that an ordinance providing for bid preferences was narrowly tailored, the Ninth Circuit stated that the program encompassed the required flexibility and stated that “the burdens of the bid preferences on those not entitled to them appear relatively light and well distributed. In addition, in contrast to remedial measures struck down in other cases, those bidding have no settled expectation of receiving a contract. [Citations omitted.]”).



As discussed below, anecdotal evidence alone is insufficient to establish the requisite predicate for a race-conscious program. Its great value lies in pointing to remedies that are “narrowly tailored,” the second prong of a *Croson* study. The following types of anecdotal evidence have been presented to and relied upon by the Ninth Circuit in both *Coral Construction* and *AGCC II*, to justify the existence of an M/WBE program:

- M/WBEs denied contracts despite being the low bidders — *Philadelphia*<sup>138</sup>
- Prime contractors showing MBE bids to non-minority subcontractors to find a non-minority firm to underbid the MBEs — *Cone Corporation v. Hillsborough County*<sup>139</sup>
- M/WBEs’ inability to obtain contracts for private sector work — *Coral Construction*<sup>140</sup>
- M/WBEs told that they were not qualified, although they were later found to be qualified when evaluated by outside parties — *AGCC II*<sup>141</sup>
- Attempts to circumvent M/WBE project goals — *Concrete Works II*<sup>142</sup>
- Harassment of M/WBEs by an entity’s personnel to discourage them from bidding on an entity’s contracts — *AGCC II*<sup>143</sup>

Courts must assess the extent to which relief measures disrupt settled “rights and expectations” when determining the appropriate corrective measures.<sup>144</sup> Presumably, courts would look more favorably upon anecdotal evidence in support of a less intrusive program than it would in support of a more intrusive one. For example, if anecdotal accounts related experiences of discrimination in obtaining bonds, they may be sufficient evidence to support a bonding program that assists M/WBEs.<sup>145</sup> However, these accounts would not be evidence of a statistical availability that would justify a racially limited program such as a set-aside.

As noted above, the *Croson* Court found that the City of Richmond’s MBE program was unconstitutional, because the City failed to provide a factual basis to support its MBE program. However, the Court opined that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”<sup>146</sup>

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<sup>138</sup> *Philadelphia IV*, 6 F.3d at 1002.

<sup>139</sup> *Cone Corp.*, 908 F.2d at 916.

<sup>140</sup> For instance, where a small percentage of an MBE or WBE’s business comes from private contracts and most of its business comes from race or gender-based set-asides, this would demonstrate exclusion in the private industry. *Coral Constr.*, 941 F.2d at 933 (WBE’s affidavit indicated that less than 7 percent of the firm’s business came from private contracts and that most of its business resulted from gender-based set-asides).

<sup>141</sup> *AGCC II*, 950 F.2d at 1415.

<sup>142</sup> *Concrete Works II*, 36 F.3d at 1530.

<sup>143</sup> *AGCC II*, 950 F.2d at 1415.

<sup>144</sup> *Wygant*, 476 U.S. at 283.

<sup>145</sup> *Teamsters*, 431 U.S. at 339; *Coral Constr.*, 941 F.2d at 919.

<sup>146</sup> *Croson*, 488 U.S. at 509 (citing *Teamsters*, 431 U.S. at 338).



In part, it was the absence of statistical evidence that proved fatal to the program. The Supreme Court stated that “[t]here was no direct evidence of race discrimination on the part of the city in letting contracts or any evidence that the city’s prime contractors had discriminated against minority-owned subcontractors.”<sup>147</sup>

This was not the situation confronting the Ninth Circuit in *Coral Construction*. There, the 700-plus page appellate records contained the affidavits of “at least 57 minority or women contractors, each of whom complain in varying degree of specificity about discrimination within the local construction industry . . . These affidavits certainly suggest that ongoing discrimination may be occurring in much of the King County business community.”<sup>148</sup>

Nonetheless, this anecdotal evidence alone was insufficient to justify King County’s MBE program since “[n]otably absent from the record, however, is *any* statistical data in support of the County’s MBE program.”<sup>149</sup> After noting the Supreme Court’s reliance on statistical data in Title VII employment discrimination cases and cautioning that statistical data must be carefully used, the court elaborated on its mistrust of purely anecdotal evidence:

Unlike the cases resting exclusively upon statistical deviations to prove an equal protection violation, the record here contains a plethora of anecdotal evidence. However, anecdotal evidence, standing alone, suffers the same flaws as statistical evidence. Indeed, anecdotal evidence may even be less probative than statistical evidence in the context of proving discriminatory patterns or practices.<sup>150</sup>

The court concluded its discourse on the potency of anecdotal evidence in the absence of a statistical showing of disparity by observing that “rarely, if ever, can such evidence show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan.”<sup>151</sup>

Two other circuit courts also suggested that anecdotal evidence might be dispositive in rare and exceptional cases, if ever, while rejecting it in the specific case before them. For example, in *Philadelphia IV*, the Third Circuit Court of Appeals noted that the Philadelphia City Council had “received testimony from at least fourteen minority contractors who recounted personal experiences with racial discrimination,” which the district court had “discounted” because it deemed this evidence to be “impermissible” for consideration under *Croson*.<sup>152</sup> The Third Circuit Court disapproved of the district court’s actions because in its view the court’s rejection of this

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<sup>147</sup> *Id.* at 480.

<sup>148</sup> *Coral Constr.*, 941 F.2d at 917-18.

<sup>149</sup> *Id.* at 918 (emphasis added) (additional statistical evidence gathered after the program had been implemented was also considered by the court and the case was remanded to the lower court for an examination of the factual predicate).

<sup>150</sup> *Coral Constr.*, 941 F.2d at 919.

<sup>151</sup> *Id.*

<sup>152</sup> *Philadelphia IV*, 6 F.3d at 1002.



evidence betrayed the court’s role in disposing of a motion for summary judgment.<sup>153</sup> “Yet,” the court stated:

Given *Croson*’s emphasis on statistical evidence, even had the district court credited the City’s anecdotal evidence, we do not believe this amount of anecdotal evidence is sufficient to satisfy strict scrutiny [quoting *Coral*, supra]. Although anecdotal evidence alone may, in an exceptional case, be so dominant or pervasive that it passes muster under *Croson*, it is insufficient here.<sup>154</sup>

The District of Columbia Circuit Court echoed the Ninth Circuit’s acknowledgment of the rare case in which anecdotal evidence is singularly potent in *O’Donnell Construction v. District of Columbia*.<sup>155</sup> The court found that, in the face of conflicting statistical evidence, the anecdotal evidence there was not sufficient:

It is true that in addition to statistical information, the Committee received testimony from several witnesses attesting to problems they faced as minority contractors. Much of the testimony related to bonding requirements and other structural impediments any firm would have to overcome, no matter what the race of its owners. (internal citation omitted.) The more specific testimony about discrimination by white firms could not in itself support an industry-wide remedy (internal quotes and citation omitted). Anecdotal evidence is most useful as a supplement to strong statistical evidence—which the Council did not produce in this case.<sup>156</sup>

The Eleventh Circuit in *Dade County II* is also in accord. In applying the “clearly erroneous” standard to its review of the district court’s decision in *Dade County II*, it commented that “[t]he picture painted by the anecdotal evidence is not a good one.”<sup>157</sup> However, it held that this was not the “exceptional case” where, unreinforced by statistics, the anecdotal evidence was enough.<sup>158</sup> In *Concrete Works II*, the Tenth Circuit Court of Appeals described the anecdotal evidence that is most compelling as evidence within a statistical context. In approving of the anecdotal evidence marshaled by the City of Denver in the proceedings below, the court recognized that “[w]hile a fact finder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality’s institutional practices carries more weight due to the systemic impact that such institutional practices have on market conditions.”<sup>159</sup> The court noted that the City had provided such systemic evidence.

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<sup>153</sup> *Id.* at 1003.

<sup>154</sup> *Id.*

<sup>155</sup> 963 F. 2d 420, 427 (D.C. Cir. 1992).

<sup>156</sup> *O’Donnell*, 963 F.2d at 427.

<sup>157</sup> *Dade County II*, 122 F.3d at 925.

<sup>158</sup> *Id.* at 926.

<sup>159</sup> *Concrete Works II*, 36 F.3d at 1530.





The Ninth Circuit Court of Appeals has articulated what it deems to be permissible anecdotal evidence in *AGCC II*.<sup>160</sup> There, the court approved a “vast number of individual accounts of discrimination,” which included (1) numerous reports of MBEs denied contracts despite being the low bidder, (2) MBEs told that they were not qualified although they were later found to be qualified when evaluated by outside parties, (3) MBEs refused work even after they were awarded the contracts as low bidder, and (4) MBEs being harassed by city personnel to discourage them from bidding on city contracts. On appeal, the City pointed to numerous individual accounts of discrimination to substantiate its findings that discrimination exists in the city’s procurement processes, an “old boy’s network” still exists, and racial discrimination is still prevalent within the San Francisco construction industry.<sup>161</sup> Based on *AGCC II*, it would appear that the Ninth Circuit’s standard for acceptable anecdotal evidence is more lenient than other Circuits that have considered the issue.

Taken together, these statements constitute a taxonomy of appropriate anecdotal evidence. Anecdotal evidence alone may, in exceptional cases, show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan, but it must be so dominant and pervasive that it passes muster under the *Croson* standards.<sup>162</sup> Pursuant to *Croson* and its progeny, case law suggests that, to be optimally persuasive, anecdotal evidence collectively should satisfy six particular requirements. These requirements are that the accounts:

- Are gathered from minority contractors, preferably those that are “qualified”<sup>163</sup>
- Concern specific, verifiable instances of discrimination<sup>164</sup>
- Involve the actions of governmental officials<sup>165</sup>
- Involve events within the relevant jurisdiction’s market area<sup>166</sup>
- Discuss the harm that the improper conduct has inflicted on the businesses in question<sup>167</sup>
- Collectively reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic.<sup>168</sup>

Given that neither *Croson*, nor its progeny identify the circumstances under which anecdotal evidence alone will carry the day, it is not surprising that none of these cases explicate bright line rules specifying the quantity of anecdotal evidence needed to support an MBE program. However,

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<sup>160</sup> *AGCC II*, 950 F.2d at 1401.

<sup>161</sup> *AGCC II*, 950 F.2d at 1415.

<sup>162</sup> *Philadelphia IV*, 6 F.3d at 1003. The anecdotal evidence must be “dominant or pervasive.”

<sup>163</sup> *Philadelphia VI*, 91 F.3d at 603.

<sup>164</sup> *Coral Constr.*, 941 F.2d at 917-18; but see *Concrete Works IV*, 321 F.3d at 989 (“There is no merit to [plaintiff’s] argument that the witnesses’ accounts must be verified to provide support for Denver’s burden.”).

<sup>165</sup> *Croson*, 488 U.S. at 509.

<sup>166</sup> *Coral Constr.*, 941 F.2d at 925.

<sup>167</sup> *O’Donnell*, 963 F.2d at 427.

<sup>168</sup> *Coral Constr.*, 941 F.2d at 919.



the foregoing cases provide some guidance by implication. *Philadelphia IV* makes clear that 14 anecdotal accounts standing alone will not suffice.<sup>169</sup> The court then turned to the statistical data.<sup>170</sup> While the matter is not free of countervailing considerations, 57 accounts, many of which appeared to be of the type referenced above, were insufficient without statistical data to justify the program in *Coral Construction*. Therefore, no court has provided rules on the number of anecdotal evidence that is needed in conjunction with statistical evidence to pass constitutional muster.

The quantum of anecdotal evidence that a court would likely find acceptable will depend on the proposed remedy. The remedies that are least burdensome to non-targeted groups would likely require a lesser degree of evidence. Those remedies that are more burdensome on the non-targeted groups would require a stronger factual basis likely extending to verification.

#### **D. Remedial Statutory Scheme**

*H.B. Rowe Company v. Tippet*, (“Rowe”) challenged the constitutionality of the North Carolina General Assembly’s Statute 136-28.4 (Statute), promulgated in 1983.<sup>171</sup> The Statute set forth a general policy to promote the use of small, minority, physically handicapped, and women contractors in non-federally funded State construction projects.<sup>172</sup> The 1983 Statute directed North Carolina Department of Transportation (NCDOT) to encourage and promote the policy.<sup>173</sup> Seven years later, in 1990, the Statute was amended to include specific participation goals on state funded transportation construction contracts for minority and women-owned businesses.<sup>174</sup>

As a result of the amendment, NCDOT created a Minority Business Enterprise and Women Business Enterprise Program (M/WBE Program) for non-federally funded highway and bridge construction contracts.<sup>175</sup> In 1991, the constitutionality of the Statute was challenged.<sup>176</sup> The court ruled in favor of the plaintiff stating that, in order to implement race-conscious measures to remedy discrimination, the governmental entity must identify with “some specificity” the racial discrimination it seeks to remedy.<sup>177</sup> As a result of the challenge, NCDOT suspended its M/WBE program in 1991.<sup>178</sup>

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<sup>169</sup> *Philadelphia IV*, 6 F.3d. at 1002-03.

<sup>170</sup> *Id.*

<sup>171</sup> *Rowe*, 615 F.3d at 236.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at 237; see *Dickerson Carolina, Inc. v. Harrelson*, 114 N.C. App. 693 (1994).

<sup>177</sup> *Rowe*, 615 F.3d at 237 (citing *Croson*, 488 U.S. at 504).

<sup>178</sup> *Id.*



In 1993, NCDOT commissioned a disparity study on state-funded transportation construction contracts.<sup>179</sup> The study determined that minority and women subcontractors were underutilized at a statistically significant level and the M/WBE Program was re-implemented.<sup>180</sup> In 1998, the North Carolina General Assembly again commissioned an update to the 1993 study.<sup>181</sup> The 1998 update study concluded that minority and women-owned businesses continued to be underutilized in state-funded road construction contracts.<sup>182</sup>

In 2002, H.B. Rowe Company was denied a NCDOT contract because the company's bid included 6.6 percent women subcontractor participation and no minority subcontractor participation.<sup>183</sup> NCDOT claimed that H.B. Rowe Company failed to meet the good faith effort requirements of the M/WBE program.<sup>184</sup> A third study was commissioned in 2004 to again study minority and women contractor participation in the State's highway construction industry.<sup>185</sup> In 2006, relying on the 2004 study, the North Carolina General Assembly amended Statute 136-28.4.<sup>186</sup> The principal modifications were:

- Remedial action should be taken only when there is a strong basis in evidence of ongoing effects of past or present discrimination that prevents, or limits disadvantaged minority and women-owned businesses from participating as subcontractors in State-funded projects.
- The minority/women classification was limited to those groups that suffered discrimination.
- A disparity study should be performed every five years to respond to changing conditions.
- Inclusion of a sunset provision.<sup>187</sup>

First, the court considered whether the statutory scheme as it relates to minorities survives the strict scrutiny standard. The Fourth Circuit Court of Appeals reviewed the statistical evidence detailed in the 2004 disparity study to determine if the statutory scheme was based on strong statistical evidence to implement race-conscious subcontractor goals.<sup>188</sup> The statistical evidence was also examined to determine if the statute's definition of minorities was over-inclusive by

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<sup>179</sup> *Id.*

<sup>180</sup> *Rowe*, 615 F.3d at 237.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 238.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 238-39.

<sup>188</sup> *Id.* at 238.



including minority groups that did not suffer discrimination pursuant to the statistical results of the 2004 disparity study.<sup>189</sup>

The court did not consider whether the statistical methodology employed in the 2004 disparity study was sufficient to support a compelling state interest. Rather, the court accepted the disparity index as the measure by which to determine the statistical significance of the underutilization of minorities in the State's subcontracts.<sup>190</sup> The methodology used in the 2004 disparity study calculated a disparity at .05 confidence level.<sup>191</sup> A statistical calculation is significant at the .05 confidence level because the probability of that result occurring by chance is 5 percent or less.<sup>192</sup> The .05 confidence level is used in social sciences as a marker of when a result is a product of some external influence, rather than ordinary variation or sampling error.<sup>193</sup>

While the circuit court found that "*the study itself* sets out the standard by which one could confidently conclude that discrimination was at work[,]” the standard was not followed in the State's statutory scheme.<sup>194</sup> The statistical evidence in the 2004 disparity study demonstrated that African American and Native American subcontractors were underutilized at a disparity index of less than 80 and that Hispanic American and Asian American subcontractors also were underutilized, but not at a .05 confidence level.<sup>195</sup> The 2004 Study determined that the underutilization of Hispanic American and Asian American contractors was not statistically significant.

Therefore, the only statutory scheme ruled narrowly tailored to achieve the State's compelling interest was the one related to African American and Native American subcontractors. The statutory scheme pertaining to Hispanic American and Asian American subcontractors was deemed unconstitutional.<sup>196</sup> Thus, the State only provided a strong basis in evidence for the minority subcontractor participation goals pertaining to African American and Native American subcontractors.

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<sup>189</sup> Rowe, 615 F.3d at 239.

<sup>190</sup> *Id.* at 243-44.

<sup>191</sup> *Id.* at 244.

<sup>192</sup> *Id.* at 261 n.12 (*citing* SHERRI L. JACKSON, RESEARCH METHODS AND STATISTICS: A CRITICAL THINKING APPROACH 168-69 (3d ed. 2006) (noting that the .05 confidence level is generally used in the social sciences as indication that the result was produced as a consequence of an external influence)).

<sup>193</sup> Rowe, 615 F.3d at 261 n. 12 (*citing* EARL BABBIE, THE PRACTICE OF SOCIAL RESEARCH 483 (11th ed. 2007)).

<sup>194</sup> *Id.* at 261.

<sup>195</sup> *Id.* at 245.

<sup>196</sup> *Id.* at 254.



Second, the court considered whether the statutory scheme as it relates to women survives the intermediate scrutiny standard. The evidence demonstrated that the State’s prime contractors “substantially over-utilized” women-owned businesses on public road construction projects.<sup>197</sup> The 2004 disparity study calculated the overutilization of women subcontractors as statistically significant at a .05 confidence level.<sup>198</sup> The circuit court further noted that the private sector evidence was insufficient to overcome the strong evidence of overutilization.<sup>199</sup> Consequently, the circuit court determined that the evidence in the 2004 disparity study did not provide “exceedingly persuasive justification” to include women-owned businesses in gender-based remedies.<sup>200</sup>

In light of the *Rowe* decision, caution should be exercised when determining which minority or gender group is appropriate for race-conscious or gender-conscious remedies. For an MBE program to be narrowly tailored there must be a statistical finding of underutilization of minority subcontractors. Where the underutilization of a minority group is not found to be statistically significant the minority group should not be included in race-conscious remedies.

The intermediate scrutiny standard for gender classifications can be met with statistical evidence of underutilization that is not statistically significant. However, this does not apply when there is demonstrated overutilization. Women-owned businesses should be considered for gender-based remedies when the statistical evidence demonstrates that the overutilization is not statistically significant.

## ***VI. Consideration of Race-Neutral Options***

A remedial program must address the source of the disadvantage faced by minority businesses. If it is found that race discrimination places MBEs at a competitive disadvantage, an MBE program may seek to counteract the situation by providing MBEs with a counterbalancing advantage.<sup>201</sup> An MBE program cannot stand if the sole barrier to M/WBE participation is a barrier that is faced by all new businesses, regardless of ownership.<sup>202</sup> If the evidence demonstrates that the sole barrier to M/WBE participation is that M/WBEs disproportionately lack capital or cannot meet bonding requirements, then only a race-neutral program of financing for all small firms would be justified.<sup>203</sup> In other words, if the barriers to minority participation are race-neutral, then the program must be race-neutral.

The requirement that race-neutral measures be considered does not mean that they must be exhausted before race-conscious remedies can be employed. The Supreme Court explained that

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<sup>197</sup> *Rowe*, 615 F.3d at 254.

<sup>198</sup> *Id.* at 254-55.

<sup>199</sup> *Id.* at 255.

<sup>200</sup> *Id.*

<sup>201</sup> *AGCC II*, 950 F.2d at 1404.

<sup>202</sup> *Croson*, 488 U.S. at 508.

<sup>203</sup> *Id.* at 507.



although “narrow tailoring does not require exhaustion of every conceivable race-neutral alternative” it “does require serious, good faith consideration of workable race-neutral alternatives that will achieve ... diversity[.]”<sup>204</sup>

If the barriers appear race-related but are not systemic, then the remedy should be aimed at the specific arena in which exclusion or disparate impact has been found as detailed above in *Section IV*. If the evidence shows that in addition to capital and bonding requirements, which are race-neutral, MBEs also face race discrimination in the awarding of contracts, then a race-conscious program will stand, so long as it also includes race-neutral measures to address the capital and bonding barriers.<sup>205</sup>

The Ninth Circuit Court of Appeals in *Coral Construction* ruled that there is no requirement that an entity exhaust every possible race-neutral alternative.<sup>206</sup> Instead, an entity must make a serious, good faith consideration of race-neutral measures in enacting an MBE program. Thus, in assessing MBE utilization, it is imperative to examine barriers to MBE participation that go beyond “small business problems.” The impact on the distribution of contract programs that have been implemented to improve MBE utilization should also be measured.<sup>207</sup>

## ***VII. Conclusion***

The decision of the United States Supreme Court in the *Croson* case changed the legal landscape for local governments’ business affirmative action programs. The United States Supreme Court altered the authority of a local government to use local funds to institute remedial race-conscious public contracting programs. This chapter has examined what *Croson* and its progeny require for a local government to institute a constitutional race and/or gender-conscious public contracting program.

Consistent with the case law, any race or gender-conscious recommendations for the City’s Code of Ordinances that are presented in this Disparity Study will be based on a constitutionally sound factual predicate. The methodology employed to conduct the Disparity Study will determine if the City has a compelling interest to implement a race or gender-based program. The analysis is based on statistical evidence that is limited to the City’s market area, and the statistical model used in the disparity analysis is consistent with the standards proscribed in *Croson* progeny and tailored to the Eleventh Circuit precedent. The disparity findings for prime contracts and subcontracts are calculated separately by industry, ethnicity, and gender.

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<sup>204</sup> *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003).

<sup>205</sup> *Croson*, 488 U.S. at 507 (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses).

<sup>206</sup> *Coral Constr.*, 941 F.2d at 910.

<sup>207</sup> *Dade County II*, 122 F.3d at 927. At the same time, the Eleventh Circuit’s caveat in *Dade County* should be kept in mind: “Supreme Court decisions teach that a race-conscious remedy is not merely one of many equally acceptable medications that a government may use to treat race-based problems. Instead, it is the strongest of medicines, with many potentially harmful side-effects, and must be reserved to those severe cases that are highly resistant to conventional treatment.” For additional guidance, *see supra* section II, Standard of Review for the discussion of narrow tailoring in *Concrete Works IV*, *Adarand*, *County of Cook*, and *City of Chicago*.



Depending on the statistical findings of the Disparity Study, the City of St. Petersburg may consider race and gender-based remedies in the award of its contracts. Given the case law discussed in this chapter, any race or gender-conscious affirmative action contracting program recommended in this Disparity Study will be based on a constitutionally sound factual predicate.



## VIII. List of Authorities

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<i>Contractors Ass’n of E. Pa v. City of Philadelphia (“Philadelphia VI”),</i> 91 F.3d 586 (3rd Cir. 1996) .....	passim
<i>Coral Constr. Co. v. King Cnty.,</i> 941 F.2d 910 (9th Cir. 1991) .....	passim
<i>Dickerson Carolina, Inc. v. Harrelson,</i> 114 N.C. App. 693 (1994) .....	25
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<i>EEOC v. Am. Nat’l Bank,</i> 652 F.2d 1176 (4th Cir. 1981) .....	19
<i>Eng’g Contractors Ass’n v. Metro. Dade Cnty. (“Dade County I”),</i> 943 F. Supp. 1546 (S.D. Fla. 1996) .....	9, 15, 18, 19, 20
<i>Eng’g Contractors Ass’n v. Metro. Dade Cnty. (“Dade County II”),</i> 122 F.3d 895 (11th Cir. 1997) .....	3, 4, 5, 15, 23, 28
<i>Ensley Branch N.A.A.C.P. v. Seibels,</i> 31 F.3d 1548 (11th Cir. 1994) .....	4, 5
<i>Florida AGC Council, Inc. v. Florida,</i> 303 F. Supp. 2d 1307 (N.D. Fla. 2004) .....	3
<i>Grutter v. Bollinger,</i> 539 U.S. 306 (2003) .....	28
<i>Hayes v. N. State Law Enforcement Officers Ass’n,</i> 10 F.3d 207 (4th Cir. 1993) .....	5
<i>Hazelwood Sch. Dist. v. United States,</i> 433 U.S. 299 (1977) .....	13, 16
<i>H.B. Rowe Co. v. N.C. Dep’t of Transp. (“Rowe”),</i> 615 F.3d 233 (4th Cir. 2010) .....	passim



<i>Hershell Gill Consulting Eng'rs, Inc. v. Miami-Dade Cnty.</i> , 333 F. Supp. 2d 1305 (S.D. Fla. 2004) .....	9
<i>Int'l Bhd. of Teamsters v. United States ("Teamsters")</i> , 431 U.S. 324 (1977) .....	14, 21
<i>Johnson v. Board of Regents of the University of Georgia</i> , 263 F.3d 1234, 1244 (11th Cir. 2001) .....	9
<i>Lakeside Roofing Company v. State of Missouri, et al.</i> , 2012 WL 709276 (E.D.Mo. Mar. 5, 2012) .....	4
<i>League of United Latin Am. Citizens v. Santa Ana</i> , 410 F. Supp. 873 (C.D. Cal. 1976) .....	19
<i>Mich. Rd. Builders Ass'n v. Milliken</i> , 834 F.2d 583 (6th Cir. 1987) .....	4
<i>Miss. Univ. for Women v. Hogan</i> , 458 U.S. 718 (1982) .....	4
<i>Monterey Mech. Co. v. Pete Wilson et al.</i> , 125 F.3d 702 (9th Cir. 1997).....	12
<i>N. Shore Concrete &amp; Ass'n v. City of N.Y.</i> , 1998 U.S. Dist. LEXIS 6785 (EDNY 1998).....	13
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## ***CHAPTER 2: Procurement Practices and Procedures Analysis***

### ***I. Introduction***

This chapter is a summary of the policies that governed the City of St. Petersburg's (City's) procurement and the small business program. This review considers the policies governing procurement for each of the three industries examined in this study, including construction, professional services, and goods and services.

St. Petersburg is the fifth-most populous city in Florida and one of 283 cities in the State. Its legislative authority is the City Council, which is comprised of a Council Chair, Council Vice Chair, and six council members. Procurement authority is conferred to the Procurement Department. The Procurement Director is responsible for the procurement functions and the implementation of the provisions of the St. Petersburg Procurement Code of Ordinances.

#### ***A. Governing Statutes, Codes, and Policies***

The applicable State statutes and administrative laws governing the City of St. Petersburg's purchase of construction, professional services, and goods and services are listed in Table 2.1.

**Table 2.1: Governing Statutes, Codes, and Policies**

<b>Florida State Statutes</b>
Title XVIII, Chapter 255 (Public Property and Publicly Owned Buildings) Title XIX, Chapter 287 Procurement of Personal Property and Services, Part I Commodities, Insurance, and Contractual Services (CCNA) Title XVIII, Chapter 255 (Public Property and Publicly Owned Buildings)
<b>St. Petersburg City Code of Ordinances and Administrative Policies</b>
St. Petersburg City Code of Ordinances Chapter 2, Article V, Divisions 2-4, 5, and 7 St. Petersburg Administrative Policies # 050100 – 050900, and 090504
<b>Procurement Operations Manual</b>
City of St. Petersburg Procurement Operations Manual, revised December 2017 City of St. Petersburg Procurement Operations Manual, revised July 2018

#### ***B. Florida State Statutes***

##### ***1. Title XVIII, Chapter 255***

Title XVIII, Chapter 255, Section 255.20 of the Florida Statutes, Public Lands and Property, governs the construction and improvement of public property and publicly-owned buildings. Section 255.20 establishes standards for the procurement of contracts for public construction



works and requires that local governments employ competitive solicitation processes to award contracts to an appropriately licensed contractor for each project that falls within its jurisdiction.<sup>208</sup>

## **2. Title XIX, Chapter 287, Part I, Section 287.055**

Title XIX, Chapter 287, Part I, Section 287.055 of the Florida Statutes, referred to as the Consultants' Competitive Negotiation Act (CCNA), governs the procurement of design services and professional services related to construction projects valued at \$325,000 or greater and studies that meet the minimum threshold requirement of \$35,000. Design services, as set forth in the CCNA, include architecture and engineering, landscape architecture, design-build, and registered surveying and mapping.<sup>209</sup>

### **C. St. Petersburg City Code of Ordinances, Chapter 2, Article V**

The City's Code of Ordinances, Chapter 2, Article V, codifies the Florida Statutes pertaining to public contracting laws. The relevant provisions include:

- *Division 2 – Contracts and Public Works*
- *Division 3 – Procurement Code*
- *Division 4 – Small Business Enterprise Assistance Program*
- *Division 5 – Construction Incentive Program*
- *Division 7 – Major Construction Project Requirements*

### **D. City of St. Petersburg Administrative Policies**

The procurement requirements set forth in the City's Administrative Policies are standards for implementing the statutes, codes, and policies governing the purchase of construction, professional services, and goods and services. The Mayor has the authority to adopt and amend the Administrative Policies. The policies reviewed are listed below.

- Policy 050200 - Development of Specifications, effective 5-17-99
- Policy 050300 - Methods of Source Selections, Part 1, effective 8-24-17
- Policy 050375 - Job Ordering Contracting, effective 3-30-18
- Policy 050400 – Payment of Invoices, effective 12-30-13
- Policy 050450 – Contracts Compliance Program, effective 1-7-18
- Policy 050600 – Blanket Purchase Agreement effective 12-6-16
- Policy 050800 – Purchasing Card, effective 8-26-16
- Policy 050900 – Small Business Enterprise Program, effective 3-20-18
- 090504 – Selecting and Contracting for Architectural, Engineering, or Land Surveying Professional Services, effective 12-9-13

<sup>208</sup> FLA. STAT. TIT. XVIII, § 255.20 (2014).

<sup>209</sup> FLA. STAT. TIT. XIX, § 287.055 (2014).



## ***E. St. Petersburg Procurement Operations Manual***

The Procurement Operations Manual describes the administrative procedures to implement the City Code of Ordinances set forth in Chapter 2, Article V, Division 3, Sections, 2-237 through 2-260 and the Administrative Policies issued by the Mayor.

## ***F. Industry Definitions***

**Construction:** all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property.<sup>210</sup>

**Architecture and Engineering:** services within the scope of the practice of architecture, professional engineering, landscape architecture, registered surveying and mapping, or those performed by any architect, professional engineer, landscape architect, registered surveyor and mapper in connection with professional employment or practice.<sup>211</sup>

**Professional Services:** brokerage and financial investing, accounting, auditing, claim review, health services and medical exams, retirement plan service providers, and those professional services defined in Florida Statutes Section 287.055 that include architect, engineering, landscape architecture, and registered surveying.<sup>212</sup>

**Services:** furnishing of labor, time, or effort by a person or entity, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. Services do not include employment agreements or collective bargaining agreements.<sup>213</sup>

**Goods:** property, including but not limited to, equipment, materials, and leases of personal property. Supplies do not include land or a permanent interest in land.<sup>214</sup>

## ***II. Small Purchases***

Purchases for construction, professional services and goods and services valued at less than \$100,000 may be procured using the small purchase procurement standards pursuant to Division 3, Section 2-248 of the City of St. Petersburg's municipal code. However, a procurement cannot be artificially unbundled to constitute a small purchase. One or more quotes are required to make a small purchase except when using a purchasing card (P-card). Table 2.2 presents the required quotations for solicitation of small purchases.

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<sup>210</sup> City of St. Petersburg Procurement Operations Manual, revised December 2017.

<sup>211</sup> FLA. STAT. TIT. XIX, § 287.055(2)(A) (2014).

<sup>212</sup> City of St. Petersburg Code of Ordinances Chapter 2, Article V, Division 3, Section 2-240.

<sup>213</sup> City of St. Petersburg Code of Ordinances Chapter 2, Article V, Division 3, Section 2-240.

<sup>214</sup> City of St. Petersburg Code of Ordinances Chapter 2, Article V, Division 3, Section 2-240.



**Table 2.2: Small Purchases**

Required Quotes for Small Purchases			
Estimated Quotation Amount	Number of Quotes	Approval of Award	Solicitation Payment System
Under \$4,999	1	User department	IProcurement
\$5,000 to \$9,999	3	User department	IProcurement
\$10,000 to \$99,999	5	Procurement Department	IProcurement

Quotes for purchases over \$10,000 are solicited online by the Procurement Department. They are tabulated, evaluated, and awarded to the lowest and best quote.

### ***III. Competitive Sealed Bids***

The competitive sealed bids solicitation method is used for the procurement of goods and services and construction services valued at \$100,000 and over. The procurement procedures are governed by Administrative Policy 050300, Chapter 2, Article V, Division Section 2-244 and the City's Procurement Operations Manual.

#### ***A. Goods and Services Procurement***

Formal competitive procurement of goods and services requires the use of Competitive Sealed Bids. The types of agreements that can be executed using this source selection method include the standard purchase order and the contract purchase agreement also used for procurement of professional services. Additionally, a blanket purchase order can be used for the purchase of goods and services. The blanket purchase order authorizes repetitive purchases from a vendor for a pre-determined period of time.

##### **1. Purchases \$100,000 and Over**

The procurement of goods and services contracts valued at \$100,000 and over must use the formal competitive sealed bid source method. The user department defines the specifications in the requisition for the goods or services. The solicitation for bids includes purchase description, evaluation factors, delivery and performance schedule. Other business-related information, such as warranties and bonding may be specified in the solicitation. The bid submission schedule, location, and method are also detailed in the solicitation. The solicitation will have a field for the insertion of the bid price and acknowledgement of any amendments.



*i. Public Notice*

The solicitation must be published to generate competition for the procurement. The notice shall be furnished to a sufficient number of vendors, including those on the City's vendor list. It should stipulate the date, time, and location for submitting a bid. The notification methods include general circulation print and industry media, electronic distribution using a City vendor list, posting on the internet and the City's website. In addition, the notice can be placed in other publicly accessible electronic media and government publications.

*ii. Evaluation of the Bids*

The bids are tabulated and opened at the date, time, and location specified in the solicitation. The evaluation of the bids for responsiveness is performed by a procurement analyst using the evaluation criteria stipulated in the solicitation. The award is made to the lowest responsive bidder. If two or more responsive bidders submit the same price, prioritized steps are used to break the tie. The first priority is to award to an SBE bidder. In the absence of an SBE in the tie, the priority is based on location. Highest priority is to a business located within the City, then County, and the last priority is a four-county region. If this method fails to break the tie, a coin is flipped to determine the bidder to be recommended for the award. When the responsive low bidder is determined, a written recommendation to award is prepared.

*iii. Award of the Contract*

The recommendation to award must be approved by the Budget Office. The City Attorney's Office prepares the board resolution recommending that the award must be made by the City Council. The Procurement Department issues the purchase order to authorize the delivery of the goods and services in accordance with the specific terms and conditions stipulated in the bid. Depending on the scope of the procurement, the department may issue a standard purchase order, a blanket purchase order, or a contract purchase agreement.

*iv. Notice of Award*

Notification of an award is sent to the successful bidder and the notice of award is published on the City's website.

**B. Construction Procurement**

The construction services procurement methods are set forth in the City of St. Petersburg City Code Chapter 2, Article V. Division 3, Procurement Code Section 2-244 through 2-250. The solicitation methods are Invitation for Bids and Multi-Step Sealed Bidding.





## **1. Procurements Valued \$100,000 and Over**

The competitive sealed bid source method must be used when the procurement is \$100,000 or more. An Invitation for Bids (IFB) is the solicitation method used to solicit bids for construction. The solicitation includes purchase description, evaluation factors, delivery, and performance schedule. Other business-related information, such as warranties and bonding may be specified in the IFB. The bid submission schedule, location, and method are also detailed in the solicitation.

### *i. Public Notice*

The notice must be furnished to a sufficient number of vendors, including those on the City's vendor list. It should stipulate the date, time, and location for submitting a bid. The solicitation must be published to generate competition for the procurement. The notification methods include general circulation print and industry media, electronic distribution using a City vendor list, posting on the internet, and the City's website. In addition, the notice can be placed in other publicly accessible electronic media and government publications.

### *ii. Evaluation of the Bids*

The bids are tabulated and opened at the date, time, and location specified in the solicitation. The evaluation of the bids for responsiveness is performed using the evaluation criteria stipulated in the solicitation. The award is made to the lowest responsive bidder. If two or more responsive bidders submit the same price, prioritized steps are used to break the tie. The first priority is to award to an SBE bidder. In the absence of an SBE in the tie, the priority is based on location. Highest priority is to a business located within the City, then County, and the last priority is a four-county region. If this method fails to break the tie, a coin is flipped to determine the bidder to be recommended for the award. When the responsive low bidder is determined, a written recommendation to award is prepared.

### *iii. Award of the Contract*

The award is approved by the City Council approval.

### *iv. Notice of Award*

Notification of an award is sent to the successful bidder. Each unsuccessful bidder may be notified of the award. Notice of award will be published on the City's website.

## **C. Multi-Step Sealed Bidding**

This is a two-step procurement process that solicits a request for proposals in the first phase and a separate request for a bid proposal in the second phase. The procurement method is designed to allow the evaluation of the technical proposal without consideration of price. However, the decision to award is made to the responsive proposal with the lowest price.



The user department issues the requisition for technical proposals and the Procurement Department prepares the multi-phase invitation to bid. The solicitation asks for a technical proposal without a price. The price may be requested with the technical proposal, but in a separate sealed envelope or as a separate submittal. The solicitation specifies that the price will be considered in the second phase, and only the cost proposals of the short-listed proposers will be opened.

#### ***IV. Competitive Sealed Proposals***

The competitive sealed proposals solicitation method is used for the procurement of non-design professional services valued at \$100,000 and greater and design professional services for a construction project valued at \$325,000 and greater. The procurement procedures are governed by Administrative Policy 050300 and 09504, Chapter 2, Article V, Division Section 2-246 and the City's Procurement Operations Manual.

There are two standards for soliciting competitive sealed proposals. One is used to solicit design professional services and the other for all other professional services. Two types of agreements can be executed using the competitive sealed proposals solicitation method. One is a standard purchase order and the other is a contract purchase agreement. The standard purchase order is an agreement that authorizes the delivery of specific services under certain terms and conditions. It also acknowledges that payment will be made upon receipt of the service. A contract purchase agreement authorizes the delivery of services for a predetermined time, but the specific services are not specified.

##### ***A. Design Professional Services***

Design professional services for construction projects valued at \$325,000 or greater, and planning and study projects valued at \$35,000 or greater must be procured in compliance with the Florida Statute 287.055, the Consultants Competitive Negotiations Act (CCNA). The provisions of CCNA<sup>215</sup> define the procurement standard for professional architectural, engineering, landscape architectural, surveying, and mapping services.<sup>216</sup> The procurement standard has three statutorily-defined steps: (1) public announcement and qualification;<sup>217</sup> (2) competitive selection;<sup>218</sup> and (3) competitive negotiation.<sup>219</sup>

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<sup>215</sup> Palm Beach County, FL., PPM CW-O-48 (December 1, 2013) (states that the purpose of the PPM is to establish procedures for the acquisition of professional services according to the rules established under the State of Florida's "Consultant's Competitive Negotiation Act").

<sup>216</sup> FLA. Stat. tit. XIX, § 287.055 (2014).

<sup>217</sup> *Id.* at § 287.055(3).

<sup>218</sup> *Id.* at § 287.055(4).

<sup>219</sup> *Id.* at § 287.055(5).



*i. Public Notice*

Public notice must be given to solicit qualification from professionals in the practice of architecture, professional engineering, landscape architecture, surveying, mapping, and planning to submit their qualifications. The City requires that the notice, and the publication of the notice, encourage professionals in the field to submit their statements of qualifications.

*ii. Certification of the Design Professional's Qualifications*

The City must certify that the professionals are qualified to perform services under the provisions of CCNA and hold a current and appropriate state-issued professional license.

*iii. Evaluation of the Design Professionals' Qualifications*

CCNA requires the City to evaluate no less than three proposals or statements of work in response to a solicitation. The evaluation criteria must be stipulated in the solicitation and the evaluation process must be open to the public and conducted by a committee. To determine if a consultant is qualified, the City must consider the seven factors set forth in the CCNA: (1) the ability of professional personnel; (2) whether or not a firm is a certified MBE; (3) past performance; (4) willingness to meet time and budget requirements; (5) location; (6) recent, current, and projected workloads of the firm; and (7) the volume of work previously awarded to the firm by the City, with the objective of effecting an equitable distribution of contracts among equally qualified firms.<sup>220</sup>

The design consultants' credentials are reviewed by an evaluation committee chaired by the Engineering and Capital Improvements Director. The committee is minimally staffed by a representative from the user department, facility, or the asset to be impacted by the project. To comply with CCNA, the evaluation process must short list at least three respondents, applying the factors set forth in the CCNA. The evaluation committee must produce a ranking, conduct interviews, and prepare a written recommendation for award. Certification that the ranked respondents are certified by the appropriate state licensing board is also the responsibility of the evaluation committee.

When the most qualified firm is selected, the City enters into the competitive negotiation process to negotiate a contract that is fair, competitive, and reasonable.<sup>221</sup> To ensure the consultant's fee is fair, competitive, and reasonable, a detailed cost analysis of the services required is conducted. The cost analysis considers the complexity of the scope of services to make the determination. Under the CCNA provisions, the City, if unable to negotiate a contract with the firm considered to be the most qualified at a price determined to be fair, competitive, and reasonable, is required to



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<sup>220</sup> FLA. STAT. tit. XIX, § 287.055(4)(a) (2014); Palm Beach County, FL., PPM CW-O-48(V) (December 1, 2013).

<sup>221</sup> Palm Beach County, FL., PPM CW-F-064; FLA. STAT. tit. XIX, § 287.055(5) (2014); Palm Beach County, FL., PPM CW-O-48(IX) (December 1, 2013).

formally terminate the negotiations and undertake negotiations with the second-most qualified firm.<sup>222</sup>

*iv. Award of the Contract*

When the determination is made, and the negotiations have otherwise concluded, the contract must be approved by the City Council, or if the purchase is for construction, consulting, or professional services exceeding \$50,000, City Council approval is required. Unsuccessful bidders are notified of the award and are offered a debriefing.

***B. Non-Design Professional Services***

The user department prepares the scope of work, evaluation criteria, and the schedule for performance of the items of work. Instructions to the respondents are prepared by the Procurement Department, which also issues the request for proposals. Price and technical offerings are submitted by vendors and are evaluated by the department.

*i. Public Notice*

The solicitation must be published to generate competition for the procurement. The notification methods include general circulation print and industry media, electronic distribution using a City vendor list, posting on the internet, and the City's website. In addition, the notice can be placed in other publicly accessible electronic media and government publications.

*ii. Evaluation of Proposals*

The proposals are tabulated and opened at the date and time specified in the solicitation. The evaluation of the proposals is performed by either a procurement analyst or an evaluation committee. If the evaluation is performed by an evaluation committee, the body is convened by the Procurement Department, otherwise the procurement analyst is assigned the responsibility to evaluate the proposals.

The proposals are evaluated in accordance with the evaluation criteria stipulated in the request for proposals. The proposals are ranked, and a short-list or competitive range is established based on the scores assigned to each proposal. During the proposal evaluation process, a decision is made regarding the necessity to hold interviews or request written information from the proposers on the short-list. Following the interviews with the short-listed proposers, the evaluators may also request a written best and final offer. When requested, the best and final must be evaluated in accordance with the published evaluation criteria. Following the evaluation process, a written recommendation to award is prepared.



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<sup>222</sup> FLA. STAT. tit. XIX, § 287.055(5)(b) (2014).

The recommendation to award is forwarded to the user department for approval. The user department is authorized to change the recommendation by submitting a written justification to the Procurement Department. The user department's alternative recommendation must be approved by the Procurement Director. An award can be made without discussion with the proposers when the proposal price and evaluation criteria are considered advantageous to the City.

*iii. Award of Contract*

The Office of the City Attorney prepares the board resolution recommending the award and the award must be made by the City Council. The Procurement Department issues the purchase order to authorize the delivery of the services in accordance specific terms and conditions. Depending on the scope of the procurement, the department will issue a standard purchase order or a contract purchase agreement. Under a contract purchase order, the services will be delivered upon request to fill the recurring needs of one or more departments.

*iv. Notice of Award*

Notification of an award is sent to the all proposers. The unsuccessful vendors are afforded an opportunity to have a debriefing.

## ***V. Alternative Competitive Procurement Methods***

The Chapter 2, Article V, Division Section 2-256 authorizes several procurement methods that do not require the use of the City's competitive solicitation method.

### ***A. Joint Bidding***

The City is permitted to combine its purchase requirements with one or more local entities into one invitation for bids. The Cooperative Purchasing Council designates a lead agency to prepare and solicit bids on behalf of the cooperative purchasing participants. The lead agency is responsible for preparing the specifications, bid package, and bidders list. The solicitation for bids is issued by the lead agency, which receives and tabulates the bids. The lead agency is also responsible for ensuring the evaluation is based on the criteria set forth in the solicitation.

If the purchase is valued at \$100,000 or greater, it must be submitted to the City Council for approval. The City is responsible for issuing its own purchase order or contract and the management of the contract.

### ***B. Cooperative Purchases***

The City is permitted to participate in cooperative purchases for supplies or services with another governmental entity, including joint contracts, multi-party contracts, and open-ended state contracts. Cooperative purchases allow the City to combine its purchasing requirements with one or more public entities to obtain lower prices and reduced administrative costs through volume



buying. The City may also accept a competitively bid proposal or contract from the state, county government, municipality, or agency.

### ***C. Piggyback Purchases***

Goods and services may be purchased under a contract awarded by another governmental entity if the entity utilized a competitive award process similar to the City. The purchase must be based on the same terms and conditions agreed on with the contractor.

The Procurement Department is responsible for reviewing the purchase request, state contract, or contract of the other governmental entity to determine if the City's requirements are met and if the price is reasonable. All purchases valued at \$100,000 or greater must be submitted to the City Council for approval.

## ***VI. Exceptions to Competitive Bidding***

### ***A. Sole Source Procurements***

Construction, professional services, and goods and services may be purchased as a sole source procurement if the supply or service is only available from one source. There must be an explanation of why no other vendor would be suitable or acceptable and why the good or service is only available through one source.<sup>223</sup> When the procurement is under \$100,000 for goods and services or under \$50,000 for construction or professional services, the user department must prepare a purchase requisition for procurement analyst. Sole source procurements valued at \$100,000 or more, or if the purchase is for construction, consulting, or professional services exceeding \$50,000, City Council's approval is required for contract award.

### ***B. Emergency Procurements***

The Mayor is authorized to negotiate, enter into contracts, or secure the purchase of any supply, service, or construction in response to the emergency situation. Emergency procurements are defined by the Mayor when he/she determines "that a disruption of essential operations or conditions is adversely affecting the safety, health, or security of people or property in the City and that it is infeasible to remedy such disruption through the use of the competitive bidding procedures."<sup>224</sup>

Additionally, the Mayor authorizes emergency procurements if the competitive bidding process could delay the purchase of any commodity or execution of any contract that could be detrimental to the best interest of the City. If a state of emergency is in effect for any portion of the City by the Governor or President or in accordance with article VIII, Division 2 of the municipal code, the Mayor has the authority to authorize emergency procurements.

<sup>223</sup> Palm Beach County, FL., PPM CW-L-008(II)(H) (2) (a) -(c) (April 23, 2012).

<sup>224</sup> St. Petersburg Municipal Code Section 2-250.



The Mayor must inform the City Council of the emergency procurement during the subsequent regularly scheduled session of the City Council. For emergency purchases for construction services exceeding \$200,000, the contractor must submit a performance bond, payment bond, and insurance certificates to the Procurement Department. If the emergency purchase is valued at over \$100,000, the Budget Department and the user department must review and sign the procurement and forward it to the City Clerk's Office for distribution to the City Council for approval.

## ***VII. Small Business Enterprise Program***

### ***A. Background***

The City's commitment to ensuring small, minority, and women business enterprises have equal access to its prime and subcontracts is a longstanding policy. In 1982, the City adopted Ordinance No. 554-F enacting its first Minority Business Enterprise (MBE) participation goal of five percent on goods and services procurement.

After the 1989 *Croson* decision, the City suspended its MBE ordinance and commissioned a disparity study in compliance with the requirements set forth in the Supreme Court decision. When the Disparity Study was adopted in 1990, the City Council approved an MBE Ordinance, with an eight (8) percent goal for African Americans, and seven (7) percent goal for Hispanic Americans and Women business enterprises.

The 1990 MBE Ordinance was suspended in 2001 and the City Council adopted a Small Disadvantaged Business Enterprise (SDBE) Ordinance 457-G. The SDBE Ordinance established the SDBE Program and included a goal to provide small and disadvantaged businesses domiciled in St. Petersburg access to the City's goods and services procurements. In 2006, the SDBE program was expanded to include construction contracts. The geographic eligibility criteria for the SDBE program was also broadened to include Pinellas, Hillsborough, Pasco, Polk, and Manatee counties.

The City's SBE program was last amended in 2017 by the adoption of Ordinance 293-H and codified in Chapter 2, Article 5, Division 4 of the St. Petersburg Code of Ordinances. The amendment included setting annual citywide goals for SBE participation, corrective action and penalties for non-compliance, the addition of two citizens to the SBE committee, and quarterly updates to the City Council regarding the awarding of contracts to small business enterprises. The components of the City's SBE program are described below.

### ***B. SBE Program Administration***

The administration of the SBE program is managed by the Greenhouse, a one-stop facility to assist with the growth of small businesses. The primary responsibilities of the Greenhouse are:

- Establish administrative policies and procedures to implement the provisions of Chapter 2, Article 5, Division 4 of the St. Petersburg Code of Ordinances and assist SBEs meet their contractual obligations



- Provide staff to assist businesses with learning how to do business with the City, including training programs
- Publicize procurement procedures designed to assist businesses, in particular SBEs, with learning how to do business with the City
- Compile, maintain, and disseminate the certified SBE directory
- Ensure SBEs are included on solicitation mailing lists
- Establish procedures to assure City departments solicit SBEs procurement pursuant to their expertise
- Establish a procedure to certify and recertify SBEs
- Apply discounts for evaluation purposes only, to bids and quotes submitted by SBEs for goods and services, and construction projects under \$50,000
- Reduce or modify bonding requirements in Section 2-245 to the extent allowed by State law
- Establish progress payment provisions to encourage SBE participation in the procurement process
- Create and promulgate administrative procedures for a sheltered market program to provide contract opportunities for SBEs

### ***C. SBE Certification Eligibility Requirements***

The eligibility requirements are based on business size and location. The certification of eligibility is managed by the Greenhouse. Reciprocal certification is not accepted from other municipalities, counties, and the state or federal government. Applicant business must meet the following eligibility requirements:

- Minimum of one year in operation
- Fewer than 50 full-time permanent employees
- Previous three years average sales revenues of:
  - \$5,000,000 or less for goods, services, or supplies
  - \$8,000,000 or less for construction
- Domiciled in Pinellas, Hillsborough, Pasco, Manatee, or Polk counties. Post office box as documentation for residency is insufficient.
- SBE certification is effective for three years. An eligible business must recertify every three years.

SBEs must perform a commercially useful function. A commercially useful function is defined as the execution of a distinct element of a contract, and actually performing, managing, and supervising the required scope of work.

SBEs are required to attend workshops within 90 days of their certification to understand the City's procurement process.





#### **D. SBE Goals**

The overall SBE program goal is set annually. The SBE goals for the period 2017 through 2020 are presented in Table 2.3 below:

**Table 2.3: SBE Goals - FY 2017-2020**

Fiscal Year	Annual Goal
2017	8%
2018	10%
2019	12 %
2020	14%

The SBE goal for construction is set on a contract by contract basis goal on projects valued at \$50,000 or greater. The SBE committee sets the contract specific SBE goal.<sup>225</sup> The SBE committee members are comprised of City staff and two residents. One resident is appointed by the Mayor and the other by the City Council Chair.

The engineer's estimate must be provided to the SBE committee. The items of work and estimated costs in the engineers' estimate must be specified in sufficient detail for the Committee determining the subcontracting opportunities and scope of work. The Greenhouse is responsible for reviewing the SBE directory to identify available subcontractors to perform the identified scopes of work.

A responsive bidder must submit at the time of bid opening (1) a list of certified SBEs to be utilized as subcontractors, (2) a letter of intent from each SBE intending to perform as a subcontractor or material supplier, (3) a description of the work to be performed or supplies to be provided by the SBE subcontractor or material supplier, and (4) the agreed upon dollar value for work or supplies to be subcontracted. The City notifies professional services SBEs of contracting opportunities to encourage participation.

#### **E. Good Faith Effort Requirements**

Prime contractors are required to document their good faith efforts if they fail to meet the construction SBE goal. The good faith effort forms must be submitted in the bid package. The bid may be rejected for non-compliance with the good faith effort requirements. Minimally, the following criteria are considered to determine if a good faith effort has been established:

- One monthly outreach event hosted by the prime contractor
- Publications in local newspapers, trade associations, and small business periodicals of subcontracting opportunities at least ten days prior to the bid opening date



<sup>225</sup> The SBE committee participants are comprised of City staff and two City residents. One City residents is appointed by the Mayor or his/her POD and the other appointed by the City Council Chair.

- Documented responses to subcontracting solicitations or quotes and reasons why an agreement was not met
- List of each SBE contacted that was determined to be unavailable, including documentation from the SBE

## ***F. Other Initiatives for the SBE Program***

### **1. Sheltered Market Program**

The Greenhouse administers the City's sheltered market program for construction and supplies and services procurements. The program is utilized when the committee establishes that there are sufficient available SBEs to the annual City-wide goal. The construction projects included in the sheltered market program are included on a contract-by-contract basis. The POD has the authority to include construction contracts valued at under \$50,000 in the sheltered market program without the consent of the SBE committee. Approval of the committee is needed for construction contracts valued at \$50,000 and over. Construction subcontractors should perform at least 20% of the total contract value, including materials, goods, and supplies.

### **2. Job Order Contracts**

All job order contracts are reviewed by the Procurement Director on a job order basis to establish an SBE participation goal. Contractors must demonstrate a good faith effort if the contractor fails to meet the SBE participation goal.

### **3. Bonding Assistance**

The Procurement Director has the authority to waive, reduce, or modify the types of bonding required on construction contracts less than \$100,000.

## ***G. SBE Program Compliance***

The Greenhouse is required to monitor contracts and vendors for compliance with the SBE participation requirements throughout the duration of the contract. Non-compliant contractors are required to submit a corrective plan within 30 days of notice from the Greenhouse. The corrective plan must be approved by the Greenhouse, which will also provide a deadline for completion. The contractor can be subjected to the following penalties for failure to complete the corrective action plan within the specified deadline:

- Withhold retainer for first violation
- Suspension from bidding on City contracts for one year for second violation
- Suspension from bidding on City contracts for three year for third violation



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# CHAPTER 3: Prime Contractor Utilization Analysis

## I. Introduction

This chapter documents City of St. Petersburg's (City's) utilization of Minority and Woman Business Enterprise (M/WBE) and non-minority male-owned business enterprise (non-M/WBE) prime contractors by ethnicity, gender, and industry during the October 1, 2014 to September 30, 2018 study period. The City's contracts examined were classified into three industries – construction, professional services (including architecture and engineering), and goods and services.

- **Construction:** means the process of 1) building, altering, repairing, improving, or demolishing any public structure, building, or roadway, or 2) making other improvements to any public real property. Construction does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.<sup>226</sup>
- **Professional Services:** means brokerage and financial investing, accounting, auditing, claim review, health services and medical exams, retirement plan service providers, and those professional services defined in Florida Statutes § 287.055 (which include architecture, engineering, landscape architecture, and registered surveying).<sup>227</sup>
- **Goods and Services:** Goods means property, including, but not limited to, equipment, materials, and leases of personal property. Supplies do not include land or a permanent interest in land.<sup>228</sup> Services means furnishing of labor, time, or effort by a person or entity, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. Services do not include employment agreements or collective bargaining agreements.<sup>229</sup>

The data in the Disparity Study (Study) are disaggregated into eight ethnic and gender groups, listed in Table 3.1.



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<sup>226</sup> City of St. Petersburg Code of Ordinances Chapter 2, Article V, Division 3, Section 2-240.

<sup>227</sup> City of St. Petersburg Code of Ordinances Chapter 2, Article V, Division 3, Section 2-240.

<sup>228</sup> City of St. Petersburg Code of Ordinances Chapter 2, Article V, Division 3, Section 2-240.

<sup>229</sup> City of St. Petersburg Code of Ordinances Chapter 2, Article V, Division 3, Section 2-240.

**Table 3.1: Business Ethnic and Gender Groups**

<b>Ethnicity and Gender Category</b>	<b>Definition</b>
African Americans	Businesses owned by African American males and females with origins in Africa; not including Hispanic origin
Asian Americans	Businesses owned by persons having origins from the Far East, Southeast Asia, or the Pacific Islands, and the Indian subcontinent
Hispanic Americans	Businesses owned by Hispanic males and females with origins in Puerto Rico, Mexico, Dominican Republic, Cuba, Central or Southern America, regardless of race
Native Americans	Businesses owned by Indigenous Native American and Alaska Native males and females
Caucasian Females	Businesses owned by Caucasian females
Non-minority Male-owned Businesses	Businesses owned by non-minority males, and businesses that could not be identified as minority or Caucasian female-owned <sup>230</sup>
Minority-owned Business	Businesses owned by male and female African Americans, Asian Pacific Americans, Asian Indian Americans, Hispanic Americans, and Native Americans
Woman-owned Business	Businesses owned by females

## ***II. Prime Contract Data Sources***

The prime contract data consists of contract records extracted from the City’s financial system. The purchase orders were issued during the October 1, 2014 to September 30, 2018 study period. The City’s prime contract data were normalized, to conform into a consistent standard, and combined to create a single prime contract dataset. Prime contracts were analyzed by contract number or purchase order number.

The dataset was scrubbed to remove duplicates and prime contracts awarded outside the study period. To assign industry, the records received from the City were analyzed by supplier name, purchase order item description, category description, or prime contract descriptions. Each prime contract was classified into one of the three industries—construction, professional services (including architecture and engineering), and goods and services. Excluded from the disparity study analysis are prime contracts with not-for-profit entities, state and other local government

<sup>230</sup> See Section II: *Prime Contract Data Sources* for the methodology employed to identify the ethnicity and gender of the City’s utilized prime contractors.



entities, claims/reimbursements, and utility companies.<sup>231</sup> Purchases of proprietary commodities, as well as maintenance and service of these proprietary commodities, were also excluded. The assignment of industry classifications was reviewed and approved by the City.

A number of steps were taken to determine the ethnicity and gender of each prime contractor. The initial step determined whether or not the contractor was certified by the City or another certifying agency. Where available, the ethnicity and gender of the certified firms were derived from the certification record. Additional sources used to determine the ethnicity and gender of non-certified contractors included internet research and contractor surveys. Internet research was conducted to examine the company's website, social media, digital media, and business listings to determine the business owner's ethnicity and gender. The contractor survey solicited ethnicity and gender information directly from the businesses. Prime contractors whose ethnicity and gender could not be verified as minority or female-owned were classified as non-M/WBE. The non-M/WBE category also included publicly traded corporations, employee-owned businesses, and 50/50 partnerships in which the partners were neither a minority nor a woman.

### ***III. Thresholds for Analysis***

The City's prime contracts awarded in each industry are analyzed at three size thresholds: 1) all prime contracts, 2) informal prime contracts, as defined by the City's Procurement code, the St. Petersburg City Code of Ordinances Chapter 2, Article V, Divisions 2-4, 5, and 7, and 3) formal prime contracts, with the upper limits determined by a statistical calculation. While formal prime contracts are defined by the City's Procurement code, an upper limit was set for each industry to exclude outliers. The methodology for defining the upper limits of the formal size threshold for each industry is detailed below.

#### ***A. Informal Thresholds***

There are three thresholds for analysis of the City's informal prime contracts, one for each industry.<sup>232</sup> The informal threshold for each industry is shown in Table 3.2.

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<sup>231</sup> FULL LIST OF EXCLUSIONS: The exclusions also included: Contract Expired with no Payments Made, Contract was canceled prior to work beginning, Contributions/Donations/Sponsorship, Credit, Depositions and Expert Witness Testimony, Disbursement, Duplicate contract, Educational Institutions and Services, Employees Benefits, Fees and Licenses, Financial Institutions/ Investment Company/Insurance, Food Purveyors, Government, Grant, Hotel, Individual/Reimbursements/Judgments, Mail/Courier Services, Manufacturer, Media (Radio, TV, Newspaper), Medical Supplies/Equipment, Medical/Healthcare/Rehabilitation/Custodial Care, Mega Store, Missing or Zero Amount, No releases for Master Agreement, Non-Profit, On-Line Database Service, Periodical Subscriptions, Membership, Personal Services, Public Utilities and Fuel, Publishing, Real Estate, Recreation, Redevelopment/Residential, Refund, Discount, Badge Deposit, Deductibles, Rebates, Registration and Tuition, Reimbursement, Staffing/Employment, Telecommunication, Transportation/Travel Related, Vehicle Dealerships, Out of Study Period.

<sup>232</sup> City of St. Petersburg Code of Ordinances Chapter 2, Article V, Division 3, Section 2-240.



**Table 3.2: Informal Contract Threshold by Industry**

Industry	Informal Contract Threshold
Construction	Under \$100,000
Professional Services	Under \$100,000
Goods and Services	Under \$100,000

### ***B. Formal Thresholds***

The formal contract threshold is defined in the *City's Procurement Regulations* for each industry. To perform the statistical analysis of formal procurement the contracts were reviewed to ensure there were no outliers in the data set. Outliers are the atypical contract values notably different from the rest of the contract values in the dataset. Outliers skew the statistical findings. This chapter presents the utilization analysis of contracts with and without the outliers.

A distribution cluster analysis was undertaken to determine the characteristics of the data given the wide range of contract amounts in the City's dataset. The distribution analysis revealed the presence of outliers in the dataset. To define the outliers the 1.5 x interquartile range (IQR) rule was applied.<sup>233</sup>

Calculating the interquartile range required identifying the value of the contract at the first quartile and the value of the contract at the third quartile. The distance, or the difference in value, between the first and third quartile was designated as the interquartile range. The interquartile range multiplied by 1.5 was subtracted from the first quartile to identify the lower limit of the accepted contract amount. The value of 1.5 multiplied by the interquartile range was then added to the third quartile to identify the upper limit of the accepted contract amount. Contracts that had an amount outside of the upper range were considered outliers and excluded from the disparity analysis of the formal contracts presented in *Chapter 7 – Prime Contract Disparity Analysis*.

The utilization analysis presented in this chapter includes the contract dataset with outliers to illustrate the City's total spending during the study period. The high roller analysis in this chapter also includes the outliers. In addition, the contract dataset with the outliers removed are included in this chapter.

Formal thresholds for each industry with the outliers removed are valued between \$100,000 and \$2,790,000 for construction, \$100,000 and \$1,400,000 for professional services, and \$100,000 and \$1,150,000 for goods and services. Table 3.3 shows the formal contract thresholds for each of the industries with the outliers removed.

<sup>233</sup> The interquartile range (IQR) is a measure of variability, based on dividing a data set into quartiles.



**Table 3.3: Formal Contract Threshold by Industry**

Industry	Formal Contract Threshold
Construction	Between \$100,000 and \$2,790,000
Professional Services	Between \$100,000 and \$1,400,000
Goods and Services	Between \$100,000 and \$1,150,000

#### ***IV. Prime Contractor Utilization***

##### ***A. All Prime Contractors***

As shown in Table 3.4, the City issued 7,896 prime contracts during the October 1, 2014 to September 30, 2018 study period.

The 7,896 total number of prime contracts included 555 for construction, 1,106 for professional services, and 6,235 for goods and services. The payments made by the City during the study period totaled \$684,925,107 for all 7,896 prime contracts. Payments included \$410,663,577 for construction, \$67,274,605 for professional services, and \$206,986,925 for goods and services.

**Table 3.4: Total Prime Contracts and Dollars Expended:  
All Industries, October 1, 2014 to September 30, 2018**

Industry	Total Number of Contracts	Total Dollars Expended
Construction	555	\$410,663,577
Professional Services	1,106	\$67,274,605
Goods and Services	6,235	\$206,986,925
<b>Total Expenditures</b>	<b>7,896</b>	<b>\$684,925,107</b>

##### ***B. Highly Used Construction Prime Contractors***

The City awarded a total of 555 construction contracts during the study period. As shown in Table 3.5, the City's 555 construction prime contracts were awarded to 247 unique businesses.



**Table 3.5: Construction Prime Contracts**

Total Prime Contracts	555
Total Utilized Businesses	247
<b>Total Expenditures</b>	<b>\$410,663,577</b>

Table 3.6 shows the distribution of the City's construction prime contracts by the number of businesses. Seven of the 247 businesses received \$285,610,219, or 70%, of the total construction prime contract dollars. The findings show that a small group of prime contractors received the majority of construction prime contract dollars awarded by the City.

**Table 3.6: Construction Prime Contracts Distributed by Number of Businesses**

<b>Businesses</b>	<b>Total Dollars</b>	<b>Percent of Dollars<sup>234</sup></b>	<b>Number of Contracts</b>	<b>Percent of Contracts<sup>235</sup></b>
7 Highly Used Businesses	\$285,610,219	70%	26	5%
240 Businesses	\$125,053,358	30%	529	95%
<b>247 Total Businesses</b>	<b>\$410,663,577</b>	<b>100%</b>	<b>555</b>	<b>100%</b>

Table 3.7 shows the ethnicity and gender of the most highly used construction prime contractors who received approximately 50% of the construction prime contract dollars. The most highly used prime contractors were non-minority males. The contracts received by these three businesses ranged from \$262,600 to \$61,729,374.

**Table 3.7: Top 3 Highly Used Construction Prime Contractors**

<b>Ethnicity/ Gender</b>	<b>Total Dollars</b>	<b>Percent of Dollars</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>
Non-minority Males	\$222,182,413	54.10%	9	1.62%

***C. Highly Used Professional Services Prime Contractors***

The City awarded a total of 1,106 professional services contracts during the study period. As shown in Table 3.8, City's 1,106 professional services prime contracts were received by 328 unique businesses.

**Table 3.8: Professional Services Prime Contracts**

Total Prime Contracts	1,106
Total Utilized Businesses	328
<b>Total Expenditures</b>	<b>\$67,274,605</b>

<sup>234</sup> Percentages are rounded to the nearest whole number.

<sup>235</sup> Percentages are rounded to the nearest whole number.





Table 3.9 shows the distribution of the City’s professional services prime contracts by the number of businesses. Twenty-five of the 328 businesses received \$47,075,046, or 70%, of the total professional services prime contract dollars. The findings show that a small group of prime contractors received the majority of professional services prime contract dollars spent by the City.

**Table 3.9: Professional Services Prime Contracts Distributed by Number of Businesses**

<b>Businesses</b>	<b>Total Dollars</b>	<b>Percent of Dollars<sup>236</sup></b>	<b>Number of Contracts</b>	<b>Percent of Contracts<sup>237</sup></b>
24 Highly Used Businesses	\$47,075,046	70%	148	13%
304 Businesses	\$20,199,559	30%	958	87%
<b>328 Total Businesses</b>	<b>\$67,274,605</b>	<b>100%</b>	<b>1,106</b>	<b>100%</b>

Table 3.10 shows the ethnicity and gender of the most highly used professional services prime contractors, who received approximately 50% of the professional services prime contract dollars. The twelve most highly used prime contractors were Asian Americans, Caucasian females, and non-minority males. The contracts received by these twelve businesses ranged from \$775 to \$4,254,376.

**Table 3.10: Top 12 Highly Used Professional Services Prime Contractors**

<b>Ethnicity/ Gender</b>	<b>Total Dollars</b>	<b>Percent of Dollars</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>
Asian Americans	\$1,619,578	2.41%	4	0.36%
Caucasian Females	\$2,762,159	4.11%	2	0.18%
Non-minority Males	\$29,610,095	44.01%	76	6.87%

#### ***D. Highly Used Goods and Services Prime Contractors***

The City awarded a total of 6,235 goods and services contracts during the study period. As shown in Table 3.11, the City’s 6,235 goods and services prime contracts were received by 1,030 unique businesses.

**Table 3.11: Goods and Services Prime Contracts**

Total Prime Contracts	6,235
Total Utilized Businesses	1,030
<b>Total Expenditures</b>	<b>\$206,986,925</b>

Table 3.12 shows the distribution of the City’s goods and services prime contracts by the number of businesses. Ninety-three of the 1,030 businesses received \$145,098,693, or 70%, of the total

<sup>236</sup> Percentages are rounded to the nearest whole number.

<sup>237</sup> Percentages are rounded to the nearest whole number.



goods and services prime contract dollars. The findings show that a small group of prime contractors received the majority of goods and services prime contract dollars spent by the City.

**Table 3.12: Goods and Services Prime Contracts Distributed by  
Number of Businesses**

<b>Businesses</b>	<b>Total Dollars</b>	<b>Percent of Dollars<sup>238</sup></b>	<b>Number of Contracts</b>	<b>Percent of Contracts<sup>239</sup></b>
93 Highly Used Businesses	\$145,098,693	70%	1,649	26%
937 Businesses	\$61,888,232	30%	4,586	74%
<b>1,030 Total Businesses</b>	<b>\$206,986,925</b>	<b>100%</b>	<b>6,235</b>	<b>100%</b>

Table 3.13 presents the ethnicity and gender of the most highly used goods and services prime contractors, who received approximately 50% of the goods and services prime contract dollars. The 42 most highly used prime contractors were non-minority males and Caucasian females. The contracts received by these 42 businesses ranged from \$100 to \$8,412,130.

**Table 3.13: Top 42 Highly Used Goods and Services Prime Contractors**

<b>Ethnicity/ Gender</b>	<b>Total Dollars</b>	<b>Percent of Dollars</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>
Non-minority Males	\$102,658,132	49.60%	733	11.76%
Caucasian Females	\$1,195,347	0.58%	2	0.03%



<sup>238</sup> Percentages are rounded to the nearest whole number.

<sup>239</sup> Percentages are rounded to the nearest whole number.

## ***E. All Prime Contracts by Industry***

### **1. Construction Prime Contract Utilization: All Contracts**

Table 3.14 summarizes all prime contract dollars expended by the City on construction prime contracts. Minority Business Enterprises (MBE) received 2.14% of the construction prime contract dollars; Woman-owned Business Enterprises (WBE) received 0.84%; and non-minority males-owned businesses (non-M/WBEs ) received 97.17%.

***African Americans*** received 3, or 0.54%, of all construction prime contracts awarded during the study period, representing \$161,064 or 0.04%, of the construction prime contract dollars.

***Asian Americans*** received 4, or 0.72%, of all construction prime contracts awarded during the study period, representing \$951,141 or 0.23%, of the construction prime contract dollars.

***Hispanic Americans*** received 22, or 3.96%, of all construction prime contracts awarded during the study period, representing \$7,685,666 or 1.87%, of the construction prime contract dollars.

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

***Caucasian Females*** received 36, or 6.49%, of all construction prime contracts awarded during the study period, representing \$2,826,647 or 0.69%, of the construction prime contract dollars.

***Non-minority Males*** received 490, or 88.29%, of all construction prime contracts awarded during the study period, representing \$399,039,059 or 97.17%, of the construction prime contract dollars.

***Minority Businesses Enterprises*** received 29, or 5.23%, of all construction prime contracts awarded during the study period, representing \$8,797,871 or 2.14%, of the construction prime contract dollars.

***Woman Business Enterprises*** received 44, or 7.93%, of all construction prime contracts awarded during the study period, representing \$3,451,630 or 0.84%, of the construction prime contract dollars.



**Table 3.14: Construction Prime Contract Utilization:  
All Contracts, October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African Americans	3	0.54%	\$161,064	0.04%
Asian Americans	4	0.72%	\$951,141	0.23%
Hispanic Americans	22	3.96%	\$7,685,666	1.87%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	36	6.49%	\$2,826,647	0.69%
Non-minority Males	490	88.29%	\$399,039,059	97.17%
<b>TOTAL</b>	<b>555</b>	<b>100.00%</b>	<b>\$410,663,577</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African American Females	0	0.00%	\$0	0.00%
African American Males	3	0.54%	\$161,064	0.04%
Asian American Females	1	0.18%	\$292,449	0.07%
Asian American Males	3	0.54%	\$658,692	0.16%
Hispanic American Females	7	1.26%	\$332,534	0.08%
Hispanic American Males	15	2.70%	\$7,353,132	1.79%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	36	6.49%	\$2,826,647	0.69%
Non-minority Males	490	88.29%	\$399,039,059	97.17%
<b>TOTAL</b>	<b>555</b>	<b>100.00%</b>	<b>\$410,663,577</b>	<b>100.00%</b>
<b>Minority and Women</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Minority Business Enterprises	29	5.23%	\$8,797,871	2.14%
Woman Business Enterprises	44	7.93%	\$3,451,630	0.84%



## 2. Professional Services Prime Contract Utilization: All Contracts

Table 3.15 summarizes all contract dollars expended by the City on professional services prime contracts. MBEs received 6.74% of the professional services prime contract dollars; WBEs received 12.09%; and non-M/WBEs received 84.61%.

*African Americans* received 19, or 1.72%, of all professional services prime contracts awarded during the study period, representing \$446,316 or 0.66%, of the professional services prime contract dollars.

*Asian Americans* received 23, or 2.08%, of all professional services prime contracts awarded during the study period, representing \$2,292,328 or 3.41%, of the professional services prime contract dollars.

*Hispanic Americans* received 23, or 2.08%, of all professional services prime contracts awarded during the study period, representing \$1,795,558 or 2.67%, of the professional services prime contract dollars.

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

*Caucasian Females* received 53, or 4.79%, of all professional services prime contracts awarded during the study period, representing \$5,822,186 or 8.65%, of the professional services prime contract dollars.

*Non-minority Males* received 988, or 89.33%, of all professional services prime contracts awarded during the study period, representing \$56,918,218 or 84.61%, of the professional services prime contract dollars.

*Minority Business Enterprises* received 65, or 5.88%, of all professional services prime contracts awarded during the study period, representing \$4,534,202 or 6.74%, of the professional services prime contract dollars.

*Woman Business Enterprises* received 65, or 5.88%, of all professional services prime contracts awarded during the study period, representing \$8,132,933 or 12.09%, of the professional services prime contract dollars.



**Table 3.15: Professional Services Prime Contract Utilization:  
All Contracts, October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African Americans	19	1.72%	\$446,316	0.66%
Asian Americans	23	2.08%	\$2,292,328	3.41%
Hispanic Americans	23	2.08%	\$1,795,558	2.67%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	53	4.79%	\$5,822,186	8.65%
Non-minority Males	988	89.33%	\$56,918,218	84.61%
<b>TOTAL</b>	<b>1,106</b>	<b>100.00%</b>	<b>\$67,274,605</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African American Females	2	0.18%	\$5,073	0.01%
African American Males	17	1.54%	\$441,243	0.66%
Asian American Females	9	0.81%	\$2,044,485	3.04%
Asian American Males	14	1.27%	\$247,843	0.37%
Hispanic American Females	1	0.09%	\$261,190	0.39%
Hispanic American Males	22	1.99%	\$1,534,369	2.28%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	53	4.79%	\$5,822,186	8.65%
Non-minority Males	988	89.33%	\$56,918,218	84.61%
<b>TOTAL</b>	<b>1,106</b>	<b>100.00%</b>	<b>\$67,274,605</b>	<b>100.00%</b>
<b>Minority and Women</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Minority Business Enterprises	65	5.88%	\$4,534,202	6.74%
Woman Business Enterprises	65	5.88%	\$8,132,933	12.09%



### 3. Goods and Services Prime Contract Utilization: All Contracts

Table 3.16 summarizes all contract dollars expended by the City on goods and services prime contracts. MBEs received 2.77% of the goods and services prime contract dollars; WBEs received 3.85%; and non-M/WBEs received 93.67%.

*African Americans* received 84, or 1.35%, of all goods and services prime contracts awarded during the study period, representing \$2,505,571 or 1.21%, of the goods and services prime contract dollars.

*Asian Americans* received 127, or 2.04%, of all goods and services prime contracts awarded during the study period, representing \$1,939,618 or 0.94%, of the goods and services prime contract dollars.

*Hispanic Americans* received 80, or 1.28%, of all goods and services prime contracts awarded during the study period, representing \$573,989 or 0.28%, of the goods and services prime contract dollars.

*Native Americans* received 3, or 0.05%, of all goods and services prime contracts awarded during the study period, representing \$711,257 or 0.34%, of the goods and services prime contract dollars.

*Caucasian Females* received 603, or 9.67%, of all goods and services prime contracts awarded during the study period, representing \$7,375,634 or 3.56%, of the goods and services prime contract dollars.

*Non-minority Males* received 5,338, or 85.61%, of all goods and services prime contracts awarded during the study period, representing \$193,880,857 or 93.67%, of the goods and services prime contract dollars.

*Minority Business Enterprises* received 294, or 4.72%, of all goods and services prime contracts awarded during the study period, representing \$5,730,434 or , 2.77% of the goods and services prime contract dollars.

*Woman Business Enterprises* received 707, or 11.34%, of all goods and services prime contracts awarded during the study period, representing \$7,967,505 or 3.85%, of the goods and services prime contract dollars.



**Table 3.16: Goods and Services Prime Contract Utilization:  
All Contracts, October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African Americans	84	1.35%	\$2,505,571	1.21%
Asian Americans	127	2.04%	\$1,939,618	0.94%
Hispanic Americans	80	1.28%	\$573,989	0.28%
Native Americans	3	0.05%	\$711,257	0.34%
Caucasian Females	603	9.67%	\$7,375,634	3.56%
Non-minority Males	5,338	85.61%	\$193,880,857	93.67%
<b>TOTAL</b>	<b>6,235</b>	<b>100.00%</b>	<b>\$206,986,925</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African American Females	1	0.02%	\$14,754	0.01%
African American Males	83	1.33%	\$2,490,817	1.20%
Asian American Females	79	1.27%	\$308,407	0.15%
Asian American Males	48	0.77%	\$1,631,211	0.79%
Hispanic American Females	24	0.38%	\$268,710	0.13%
Hispanic American Males	56	0.90%	\$305,279	0.15%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	3	0.05%	\$711,257	0.34%
Caucasian Females	603	9.67%	\$7,375,634	3.56%
Non-minority Males	5,338	85.61%	\$193,880,857	93.67%
<b>TOTAL</b>	<b>6,235</b>	<b>100.00%</b>	<b>\$206,986,925</b>	<b>100.00%</b>
<b>Minority and Women</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Minority Business Enterprises	294	4.72%	\$5,730,434	2.77%
Woman Business Enterprises	707	11.34%	\$7,967,505	3.85%





## ***F. Informal Contracts by Industry***

### **1. Construction Prime Contract Utilization: Contracts Valued Under \$100,000**

Table 3.17 summarizes all contract dollars expended by the City on construction prime contracts valued under \$100,000. MBEs received 6.59% of the construction prime contract dollars; WBEs received 12.80%; and non-M/WBEs received 83.66%.

*African Americans* received 2, or 0.52%, of the construction prime contracts valued under \$100,000 awarded during the study period, representing \$11,064 or 0.20%, of the construction prime contract dollars.

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

*Hispanic Americans* received 17, or 4.38%, of the construction prime contracts valued under \$100,000 awarded during the study period, representing \$345,441 or 6.39%, of the construction prime contract dollars.

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

*Caucasian Females* received 27, or 6.96%, of the construction prime contracts valued under \$100,000 awarded during the study period, representing \$526,933 or 9.75%, of the construction prime contract dollars.

*Non-minority Males* received 342, or 88.14%, of the construction prime contracts valued under \$100,000 awarded during the study period, representing \$4,522,498 or 83.66%, of the construction prime contract dollars.

*Minority Business Enterprises* received 19, or 4.90%, of the construction prime contracts valued under \$100,000 awarded during the study period, representing \$356,505 or 6.59%, of the construction prime contract dollars.

*Woman Business Enterprises* received 33, or 8.51%, of the construction prime contracts valued under \$100,000 awarded during the study period, representing \$691,773 or 12.80%, of the construction prime contract dollars.



**Table 3.17: Construction Prime Contract Utilization:  
Contracts Valued Under \$100,000, October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African Americans	2	0.52%	\$11,064	0.20%
Asian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	17	4.38%	\$345,441	6.39%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	27	6.96%	\$526,933	9.75%
Non-minority Males	342	88.14%	\$4,522,498	83.66%
<b>TOTAL</b>	<b>388</b>	<b>100.00%</b>	<b>\$5,405,936</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African American Females	0	0.00%	\$0	0.00%
African American Males	2	0.52%	\$11,064	0.20%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	6	1.55%	\$164,841	3.05%
Hispanic American Males	11	2.84%	\$180,600	3.34%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	27	6.96%	\$526,933	9.75%
Non-minority Males	342	88.14%	\$4,522,498	83.66%
<b>TOTAL</b>	<b>388</b>	<b>100.00%</b>	<b>\$5,405,936</b>	<b>100.00%</b>
<b>Minority and Women</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Minority Business Enterprises	19	4.90%	\$356,505	6.59%
Woman Business Enterprises	33	8.51%	\$691,773	12.80%



## 2. Professional Services Prime Contract Utilization: Contracts Valued Under \$100,000

Table 3.18 summarizes all contract dollars expended by the City on professional services prime contracts valued under \$100,000. MBEs received 9.42% of the professional services prime contract dollars; WBEs received 6.26%; and non-M/WBEs received 85.91%.

*African Americans* received 18, or 1.80%, of the professional services prime contracts valued under \$100,000 awarded during the study period, representing \$46,316 or 0.54%, of the professional services prime contract dollars.

*Asian Americans* received 19, or 1.90%, of the professional services prime contracts valued under \$100,000 awarded during the study period, representing \$279,572 or 3.25%, of the professional services prime contract dollars.

*Hispanic Americans* received 19, or 1.90%, of the professional services prime contracts valued under \$100,000 awarded during the study period, representing \$484,369 or 5.63%, of the professional services prime contract dollars.

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

*Caucasian Females* received 46, or 4.60%, of the professional services prime contracts valued under \$100,000 awarded during the study period, representing \$401,562 or 4.67%, of the professional services prime contract dollars.

*Non-minority Males* received 898, or 89.80%, of the professional services prime contracts valued under \$100,000 awarded during the study period, representing \$7,386,892 or 85.91%, of the professional services prime contract dollars.

*Minority Business Enterprises* received 56, or 5.60%, of the professional services prime contracts valued under \$100,000 awarded during the study period, representing \$810,257 or 9.42%, of the professional services prime contract dollars.

*Woman Business Enterprises* received 54, or 5.40%, of the professional services prime contracts valued under \$100,000 awarded during the study period, representing \$538,364 or 6.26%, of the professional services prime contract dollars.



**Table 3.18: Professional Services Prime Contract Utilization:  
Contracts Valued Under \$100,000, October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African Americans	18	1.80%	\$46,316	0.54%
Asian Americans	19	1.90%	\$279,572	3.25%
Hispanic Americans	19	1.90%	\$484,369	5.63%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	46	4.60%	\$401,562	4.67%
Non-minority Males	898	89.80%	\$7,386,892	85.91%
<b>TOTAL</b>	<b>1,000</b>	<b>100.00%</b>	<b>\$8,598,710</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African American Females	2	0.20%	\$5,073	0.06%
African American Males	16	1.60%	\$41,243	0.48%
Asian American Females	6	0.60%	\$131,730	1.53%
Asian American Males	13	1.30%	\$147,843	1.72%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	19	1.90%	\$484,369	5.63%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	46	4.60%	\$401,562	4.67%
Non-minority Males	898	89.80%	\$7,386,892	85.91%
<b>TOTAL</b>	<b>1,000</b>	<b>100.00%</b>	<b>\$8,598,710</b>	<b>100.00%</b>
<b>Minority and Women</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Minority Business Enterprises	56	5.60%	\$810,257	9.42%
Woman Business Enterprises	54	5.40%	\$538,364	6.26%



### 3. Goods and Services Prime Contract Utilization: Contracts Valued Under \$100,000

Table 3.19 summarizes all contract dollars expended by the City on goods and services prime contracts valued under \$100,000. MBEs received 4.70% of the goods and services prime contract dollars; WBEs received 8.23%; and non-M/WBEs received 89.03%.

*African Americans* received 77, or 1.31%, of the goods and services prime contracts valued under \$100,000 awarded during the study period, representing \$319,449 ,or 1.06%, of the goods and services prime contract dollars.

*Asian Americans* received 122, or 2.07%, of the goods and services prime contracts valued under \$100,000 awarded during the study period, representing \$524,758 or 1.73%, of the goods and services prime contract dollars.

*Hispanic Americans* received 80, or 1.36%, of the goods and services prime contracts valued under \$100,000 awarded during the study period, representing \$573,989 , or 1.90%, of the goods and services prime contract dollars.

*Native Americans* received 1, or 0.02%, of the goods and services prime contracts valued under \$100,000 awarded during the study period, representing \$2,992 or 0.01%, of the goods and services prime contract dollars.

*Caucasian Females* received 584, or 9.92%, of the goods and services prime contracts valued under \$100,000 awarded during the study period, representing \$1,898,109 or 6.27%, of the goods and services prime contract dollars.

*Non-minority Males* received 5,022, or 85.32%, of the goods and services prime contracts valued under \$100,000 awarded during the study period, representing \$26,947,106 or 89.03%, of the goods and services prime contract dollars.

*Minority Business Enterprises* received 280, or 4.76%, of the goods and services prime contracts valued under \$100,000 awarded during the study period, representing \$1,421,187 or 4.70%, of the goods and services prime contract dollars.

*Woman Business Enterprises* received 688, or 11.69%, of the goods and services prime contracts valued under \$100,000 awarded during the study period, representing \$2,489,980 or 8.23%, of the goods and services prime contract dollars.



**Table 3.19: Goods and Services Prime Contract Utilization:  
Contracts Valued Under \$100,000, October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African Americans	77	1.31%	\$319,449	1.06%
Asian Americans	122	2.07%	\$524,758	1.73%
Hispanic Americans	80	1.36%	\$573,989	1.90%
Native Americans	1	0.02%	\$2,992	0.01%
Caucasian Females	584	9.92%	\$1,898,109	6.27%
Non-minority Males	5,022	85.32%	\$26,947,106	89.03%
<b>TOTAL</b>	<b>5,886</b>	<b>100.00%</b>	<b>\$30,266,402</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African American Females	1	0.02%	\$14,754	0.05%
African American Males	76	1.29%	\$304,695	1.01%
Asian American Females	79	1.34%	\$308,407	1.02%
Asian American Males	43	0.73%	\$216,351	0.71%
Hispanic American Females	24	0.41%	\$268,710	0.89%
Hispanic American Males	56	0.95%	\$305,279	1.01%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	1	0.02%	\$2,992	0.01%
Caucasian Females	584	9.92%	\$1,898,109	6.27%
Non-minority Males	5,022	85.32%	\$26,947,106	89.03%
<b>TOTAL</b>	<b>5,886</b>	<b>100.00%</b>	<b>\$30,266,402</b>	<b>100.00%</b>
<b>Minority and Women</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Minority Business Enterprises	280	4.76%	\$1,421,187	4.70%
Woman Business Enterprises	688	11.69%	\$2,489,980	8.23%



## ***G. Formal Contracts by Industry***

### **1. Construction Prime Contract Utilization: Contracts Valued Between \$100,000 and \$2,790,000**

Table 3.20 summarizes all contract dollars expended by the City on construction prime contracts valued between \$100,000 and \$2,790,000. MBEs received 6.06% of the construction prime contract dollars; WBEs received 3.39%; and non-M/WBEs received 91.11%.

*African Americans* received 1, or 0.71%, of the construction prime contracts valued between \$100,000 and \$2,790,000 awarded during the study period, representing \$150,000 or 0.18%, of the construction prime contract dollars.

*Asian Americans* received 4, or 2.84%, of the construction prime contracts valued between \$100,000 and \$2,790,000 awarded during the study period, representing \$951,141 or 1.17%, of the construction prime contract dollars.

*Hispanic Americans* received 4, or 2.84%, of the construction prime contracts valued between \$100,000 and \$2,790,000 awarded during the study period, representing \$3,836,293 or 4.71%, of the construction prime contract dollars.

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

*Caucasian Females* received 9, or 6.38%, of the construction prime contracts valued between \$100,000 and \$2,790,000 awarded during the study period, representing \$2,299,715 or 2.82%, of the construction prime contract dollars.

*Non-minority Males* received 123, or 87.23%, of the construction prime contracts valued between \$100,000 and \$2,790,000 awarded during the study period, representing \$74,195,666 or 91.11%, of the construction prime contract dollars.

*Minority Business Enterprises* received 9, or 6.38%, of the construction prime contracts valued between \$100,000 and \$2,790,000 awarded during the study period, representing \$4,937,434 or 6.06%, of the construction prime contract dollars.

*Woman Business Enterprises* received 11, or 7.80%, of the construction prime contracts valued between \$100,000 and \$2,790,000 awarded during the study period, representing \$2,759,856 or 3.39%, of the construction prime contract dollars.



**Table 3.20: Construction Prime Contract Utilization:  
Contracts Valued Between \$100,000 and \$2,790,000,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African Americans	1	0.71%	\$150,000	0.18%
Asian Americans	4	2.84%	\$951,141	1.17%
Hispanic Americans	4	2.84%	\$3,836,293	4.71%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	9	6.38%	\$2,299,715	2.82%
Non-minority Males	123	87.23%	\$74,195,666	91.11%
<b>TOTAL</b>	<b>141</b>	<b>100.00%</b>	<b>\$81,432,814</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African American Females	0	0.00%	\$0	0.00%
African American Males	1	0.71%	\$150,000	0.18%
Asian American Females	1	0.71%	\$292,449	0.36%
Asian American Males	3	2.13%	\$658,692	0.81%
Hispanic American Females	1	0.71%	\$167,693	0.21%
Hispanic American Males	3	2.13%	\$3,668,600	4.51%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	9	6.38%	\$2,299,715	2.82%
Non-minority Males	123	87.23%	\$74,195,666	91.11%
<b>TOTAL</b>	<b>141</b>	<b>100.00%</b>	<b>\$81,432,814</b>	<b>100.00%</b>
<b>Minority and Women</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Minority Business Enterprises	9	6.38%	\$4,937,434	6.06%
Woman Business Enterprises	11	7.80%	\$2,759,856	3.39%





## 2. Professional Services Prime Contract Utilization: Contracts Valued Between \$100,000 and \$1,400,000

Table 3.21 summarizes all contract dollars expended by the City on professional services prime contracts valued between \$100,000 and \$1,400,000. MBEs received 8.83% of the professional services prime contract dollars; WBEs received 11.52%; and non-M/WBEs received 84.80%.

*African Americans* received 1, or 0.99%, of the professional services prime contracts valued between \$100,000 and \$1,400,000 awarded during the study period, representing \$400,000 or 0.95%, of the professional services prime contract dollars.

*Asian Americans* received 4, or 3.96%, of the professional services prime contracts valued between \$100,000 and \$1,400,000 awarded during the study period, representing \$2,012,755 or 4.77%, of the professional services prime contract dollars.

*Hispanic Americans* received 4, or 3.96%, of the professional services prime contracts valued between \$100,000 and \$1,400,000 awarded during the study period, representing \$1,311,190 or 3.11%, of the professional services prime contract dollars.

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

*Caucasian Females* received 6, or 5.94%, of the professional services prime contracts valued between \$100,000 and \$1,400,000 awarded during the study period, representing \$2,688,465 or 6.37%, of the professional services prime contract dollars.

*Non-minority Males* received 86, or 85.15%, of the professional services prime contracts valued between \$100,000 and \$1,400,000 awarded during the study period, representing \$35,784,967 or 84.80%, of the professional services prime contract dollars.

*Minority Business Enterprises* received 9, or 8.91%, of the professional services prime contracts valued between \$100,000 and \$1,400,000 awarded during the study period, representing \$3,723,945 or 8.83%, of the professional services prime contract dollars.

*Woman Businesses Enterprises* received 10, or 9.90%, of the professional services prime contracts valued between \$100,000 and \$1,400,000 awarded during the study period, representing \$4,862,410 or 11.52%, of the professional services prime contract dollars.



**Table 3.21: Professional Services Prime Contract Utilization:  
Contracts Valued Between \$100,000 and \$1,400,000,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African Americans	1	0.99%	\$400,000	0.95%
Asian Americans	4	3.96%	\$2,012,755	4.77%
Hispanic Americans	4	3.96%	\$1,311,190	3.11%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	6	5.94%	\$2,688,465	6.37%
Non-minority Males	86	85.15%	\$35,784,967	84.80%
<b>TOTAL</b>	<b>101</b>	<b>100.00%</b>	<b>\$42,197,377</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African American Females	0	0.00%	\$0	0.00%
African American Males	1	0.99%	\$400,000	0.95%
Asian American Females	3	2.97%	\$1,912,755	4.53%
Asian American Males	1	0.99%	\$100,000	0.24%
Hispanic American Females	1	0.99%	\$261,190	0.62%
Hispanic American Males	3	2.97%	\$1,050,000	2.49%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	6	5.94%	\$2,688,465	6.37%
Non-minority Males	86	85.15%	\$35,784,967	84.80%
<b>TOTAL</b>	<b>101</b>	<b>100.00%</b>	<b>\$42,197,377</b>	<b>100.00%</b>
<b>Minority and Women</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Minority Business Enterprises	9	8.91%	\$3,723,945	8.83%
Woman Business Enterprises	10	9.90%	\$4,862,410	11.52%



### 3. Goods and Services Prime Contract Utilization: Contracts Between \$100,000 and \$1,150,000

Table 3.22 summarizes all contract dollars expended by the City on goods and services prime contracts valued between \$100,000 and \$1,150,000. MBEs received 4.27% of the goods and services prime contract dollars; WBEs received 4.24%; and non-M/WBEs received 91.50%.

*African Americans* received 7, or 2.22%, of the goods and services prime contracts valued between \$100,000 and \$1,150,000 awarded during the study period, representing \$2,186,122 or 2.16%, of the goods and services prime contract dollars.

*Asian Americans* received 5, or 1.58%, of the goods and services prime contracts valued between \$100,000 and \$1,150,000 awarded during the study period, representing \$1,414,860 or 1.40%, of the goods and services prime contract dollars.

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

*Native Americans* received 2, or 0.63%, of the goods and services prime contracts valued between \$100,000 and \$1,150,000 awarded during the study period, representing \$708,265 or 0.70%, of the goods and services prime contract dollars.

*Caucasian Females* received 18, or 5.70%, of the goods and services prime contracts valued between \$100,000 and \$1,150,000 awarded during the study period, representing \$4,282,645 or 4.24%, of the goods and services prime contract dollars.

*Non-minority Males* received 284, or 89.87%, of the goods and services prime contracts valued between \$100,000 and \$1,150,000 awarded during the study period, representing \$92,444,549 or 91.50%, of the goods and services prime contract dollars.

*Minority Business Enterprises* received 14, or 4.43%, of the goods and services prime contracts valued between \$100,000 and \$1,150,000 awarded during the study period, representing \$4,309,247 or 4.27%, of the goods and services prime contract dollars.

*Woman Business Enterprises* received 18, or 5.70%, of the goods and services prime contracts valued between \$100,000 and \$1,150,000 awarded during the study period, representing \$4,282,645 or 4.24%, of the goods and services prime contract dollars.



**Table 3.22: Goods and Services Prime Contract Utilization:  
Contracts Valued Between \$100,000 and \$1,150,000,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African Americans	7	2.22%	\$2,186,122	2.16%
Asian Americans	5	1.58%	\$1,414,860	1.40%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	2	0.63%	\$708,265	0.70%
Caucasian Females	18	5.70%	\$4,282,645	4.24%
Non-minority Males	284	89.87%	\$92,444,549	91.50%
<b>TOTAL</b>	<b>316</b>	<b>100.00%</b>	<b>\$101,036,440</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African American Females	0	0.00%	\$0	0.00%
African American Males	7	2.22%	\$2,186,122	2.16%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	5	1.58%	\$1,414,860	1.40%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	2	0.63%	\$708,265	0.70%
Caucasian Females	18	5.70%	\$4,282,645	4.24%
Non-minority Males	284	89.87%	\$92,444,549	91.50%
<b>TOTAL</b>	<b>316</b>	<b>100.00%</b>	<b>\$101,036,440</b>	<b>100.00%</b>
<b>Minority and Women</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Minority Business Enterprises	14	4.43%	\$4,309,247	4.27%
Woman Business Enterprises	18	5.70%	\$4,282,645	4.24%



## **V. Summary**

The prime contract utilization analysis examined 7,896 prime contracts awarded by the City during the October 1, 2014 to September 30, 2018 study period. The \$684,925,107 expended included \$410,663,577 for construction, \$67,274,605 for professional services, and \$206,986,925 for goods and services. A total of 7,896 prime contracts were analyzed, which included 555 for construction, 1,106 for professional services, and 6,235 for goods and services.

The utilization analysis was performed for prime contracts in the three industries at three-dollar thresholds: 1) all prime contracts regardless of award amount, 2) all informal prime contracts valued under \$100,000 for construction, under \$100,000 for professional services, and under \$100,000 for goods and services, as defined by the City's Procurement code, the St. Petersburg City Code of Ordinances Chapter 2, Article V, Divisions 2-4, 5, and 7, and 3) formal prime contracts, with thresholds set for each industry to eliminate outliers. Given the application of the thresholds, the formal prime contracts analyzed were valued between \$100,000 and \$2,970,000 for construction, between \$100,000 and \$1,400,000 for professional services, and between \$100,000 and \$1,150,000 for goods and services. *Chapter 7: Prime Contract Disparity Analysis* presents the statistical analysis of disparity in each of the three industries.



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# **CHAPTER 4: Subcontractor Utilization Analysis**

## **I. Introduction**

A disparity study, as required by *Croson*, must document the local government's utilization of available Minority and Woman-owned Business Enterprises (M/WBEs), and non-minority male-owned businesses (non-M/WBEs) as prime contractors and subcontractors. The objective of this chapter is to present the utilization of subcontractors by ethnicity, gender, and industry on the City of St. Petersburg's construction and professional services (including architecture and engineering) prime contracts. The prime contracts examined were awarded during the October 1, 2014 to September 30, 2018 study period.

## **II. Data Sources**

### **A. Data Collection Process**

The City did not maintain comprehensive data on the subcontracts awarded by its prime contractors. Consequently, research was required to reconstruct the subcontracts awarded by the City's prime contractors. The reconstruction involved collaboration with the City and its prime contractors to identify the utilized subcontractors. The research compiled the payments made to the subcontractors utilized on construction prime contracts valued \$at 250,000 and over and professional service contracts (including architecture and engineering) valued at \$200,000 and over. Data was collected from the prime contractors over seven months, from February to September 2020.

To collect the data from the contractors, a survey was conducted. Each construction prime contractor awarded one or more contracts valued at \$250,000 and over and professional services prime contractors awarded one or more contracts valued at \$200,000 and over was asked to provide the name and payment amount for the subcontractor used on each contract. The survey, which was emailed to the prime contractors, contained a list of their awarded contracts and requested the name, award, and payment amount for all subcontractors, subconsultants, suppliers, and truckers who worked on each contract. To maximize the response rate, a letter from the City's Director of Purchasing requesting the prime contractor's cooperation accompanied each survey. Mason Tillman made follow-up telephone calls to each prime contractor to address questions concerning the Study and encourage the business to submit its subcontract records. Of the 94 prime contractors surveyed, 36 provided subcontract data.

### **B. Subcontract Data Analysis**

The compiled subcontract records were appended to the relational database and cleaned to remove duplicate records. The ethnicity and gender of each subcontractor was determined through a combination of certification directories, internet research, and telephone surveys. When the data



were cleaned, the subcontract utilization tables were prepared reporting the dollars and number of subcontracts awarded to each ethnic and gender group. This information is presented in the tables below.

### ***C. All Subcontracts***

As shown in Table 4.2, 609 subcontracts were analyzed. The subcontracts included 499 for construction and 110 for professional services contracts for a total of \$111,725,420 dollars. These dollars included \$102,644,758 for construction and \$9,080,662 for professional services subcontracts.

**Table 4.1: Subcontracts Awarded and Dollars Expended by Industry,  
October 1, 2014 to September 30, 2018**

<b>Industry</b>	<b>Total Number of Subcontracts</b>	<b>Total Amount Expended</b>
Construction	499	\$102,644,758
Professional Services	110	\$9,080,662
<b>Total</b>	<b>609</b>	<b>\$111,725,420</b>



## **D. Subcontracts by Industry**

### **1. Construction Subcontracts**

Table 4.3 shows the identified construction subcontracts awarded by the City's prime contractors. Minority-owned businesses (MBEs) received 11.41%; woman-owned businesses (WBEs) received 4.00%; and non-minority male-owned businesses (non-M/WBEs) received 85.38% of the construction subcontract dollars.

*African Americans* received 13 or 2.61% of the City's construction subcontracts during the study period, representing \$1,085,161 or 1.06% of the construction subcontract dollars.

*Asian Americans* received 4 or 0.80% of the City's construction subcontracts during the study period, representing \$198,303 or 0.19% of the construction subcontract dollars.

*Hispanic Americans* received 22 or 4.41% of the City's construction subcontracts during the study period, representing \$10,425,611 or 10.16% of the construction subcontract dollars.

*Native Americans* received none of the City's construction subcontracts during the study period.

*Caucasian Females* received 62 or 12.42% of the City's construction subcontracts during the study period, representing \$3,294,927 or 3.21% of the construction subcontract dollars.

*Non-minority Males* received 398 or 79.76% of the City's construction subcontracts during the study period, representing \$87,640,756 or 85.38% of the construction subcontract dollars.

*Minority Business Enterprises* received 39 or 7.82% of the City's construction subcontracts during the study period, representing \$11,709,075 or 11.41% of the construction subcontract dollars.

*Woman Business Enterprises* received 68 or 13.63% of the City's construction subcontracts during the study period, representing \$4,103,304 or 4.00% of the construction subcontract dollars.





**Table 4.2: Construction Subcontractor Utilization,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African Americans	13	2.61%	\$1,085,161	1.06%
Asian Americans	4	0.80%	\$198,303	0.19%
Hispanic Americans	22	4.41%	\$10,425,611	10.16%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	62	12.42%	\$3,294,927	3.21%
Non-minority Males	398	79.76%	\$87,640,756	85.38%
<b>TOTAL</b>	<b>499</b>	<b>100.00%</b>	<b>\$102,644,758</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African American Females	2	0.40%	\$109,866	0.11%
African American Males	11	2.20%	\$975,295	0.95%
Asian American Females	1	0.20%	\$3,950	0.00%
Asian American Males	3	0.60%	\$194,353	0.19%
Hispanic American Females	3	0.60%	\$694,561	0.68%
Hispanic American Males	19	3.81%	\$9,731,050	9.48%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	62	12.42%	\$3,294,927	3.21%
Non-minority Males	398	79.76%	\$87,640,756	85.38%
<b>TOTAL</b>	<b>499</b>	<b>100.00%</b>	<b>\$102,644,758</b>	<b>100.00%</b>
<b>Minority and Women</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Minority Business Enterprises	39	7.82%	\$11,709,075	11.41%
Woman Business Enterprises	68	13.63%	\$4,103,304	4.00%



## 2. Professional Services Subcontracts

Table 4.5 shows the professional services subcontracts issued by the City's prime contractors. MBEs received 3.33%; WBEs received 2.46%; and non-M/WBEs received 94.50% of the professional services subcontract dollars.

*African Americans* received 2 or 1.82% of the City's professional services subcontracts during the study period, representing \$211,819 or 2.33% of the professional services subcontract dollars.

*Asian Americans* received 2 or 1.82% of the City's professional services subcontracts during the study period, representing \$30,570 or 0.34% of the professional services subcontract dollars.

*Hispanic Americans* received 3 or 2.73% of the City's professional services subcontracts during the study period, representing \$59,602 or 0.66% of the professional services subcontract dollars.

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

*Caucasian Females* received 11 or 10.00% of the City's professional services subcontracts during the study period, representing \$197,319 or 2.17% of the professional services subcontract dollars.

*Non-minority Males* received 92 or 83.64% of the City's professional services subcontracts during the study period, representing \$8,581,353 or 94.50% of the professional services subcontract dollars.

*Minority Business Enterprises* received 7 or 6.36% of the City's professional services subcontracts during the study period, representing \$301,991 or 3.33% of the professional services subcontract dollars.

*Woman Business Enterprises* received 12 or 10.91% of the City's professional services subcontracts during the study period, representing \$223,569 or 2.46% of the professional services subcontract dollars.



**Table 4.3: Professional Services Subcontractor Utilization,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African Americans	2	1.82%	\$211,819	2.33%
Asian Americans	2	1.82%	\$30,570	0.34%
Hispanic Americans	3	2.73%	\$59,602	0.66%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	11	10.00%	\$197,319	2.17%
Non-minority Males	92	83.64%	\$8,581,353	94.50%
<b>TOTAL</b>	<b>110</b>	<b>100.00%</b>	<b>\$9,080,662</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African American Females	0	0.00%	\$0	0.00%
African American Males	2	1.82%	\$211,819	2.33%
Asian American Females	1	0.91%	\$26,250	0.29%
Asian American Males	1	0.91%	\$4,320	0.05%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	3	2.73%	\$59,602	0.66%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	11	10.00%	\$197,319	2.17%
Non-minority Males	92	83.64%	\$8,581,353	94.50%
<b>TOTAL</b>	<b>110</b>	<b>100.00%</b>	<b>\$9,080,662</b>	<b>100.00%</b>
<b>Minority and Women</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Minority Business Enterprises	7	6.36%	\$301,991	3.33%
Woman Business Enterprises	12	10.91%	\$223,569	2.46%



### ***III. Summary***

The construction and professional services subcontracts awarded by the City's prime contractors had to be reconstructed because the City did not maintain any subcontract records. The subcontract utilization analysis was therefore limited to the subcontract records that could be reconstructed through the prime contractor expenditure survey. The reconstructed subcontracts examined were awarded by the City's prime contractors from October 1, 2014 to September 30, 2018. The reconstructed construction and professional services subcontracts were valued at \$111,725,420. The \$111,725,420 expended included \$102,644,758 for construction and \$9,080,662 for professional services. A total of 609 subcontracts were analyzed, which included 499 for construction and 110 for professional services.



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# CHAPTER 5: Market Area Analysis

## I. Market Area Definition

### A. Legal Criteria for Geographic Market Area

The Supreme Court's decision in *City of Richmond v. J.A. Croson Co.*<sup>240</sup> (*Croson*) held that programs established by local governments to set goals for the participation of Minority-owned Business Enterprises (MBEs) must be supported by evidence of past discrimination in the award of their contracts. Prior to the *Croson* decision, local governments could implement race-conscious programs without developing a detailed public record to document the underutilization of MBEs in their award of contracts. Instead, they relied on widely recognized societal patterns of discrimination.<sup>241</sup>

*Croson* established that a local government could not rely on society-wide discrimination as the basis for a race-based contracting program. Instead, a local government was required to identify discrimination within its own contracting jurisdiction.<sup>242</sup> In *Croson*, the United States Supreme Court found the City of Richmond, Virginia's MBE construction program to be unconstitutional because there was insufficient evidence of discrimination in the local construction market.

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

### B. Application of the Croson Standard

While *Croson* emphasized the importance of the local market area, it provided little assistance in defining its parameters. However, it is informative to review the Court's definition of the City of Richmond, Virginia's market area. In discussing the geographic parameters of the constitutional violation that must be investigated, the Court interchangeably used the terms "relevant market," "Richmond construction industry,"<sup>243</sup> and "city's construction industry."<sup>244</sup> These terms were used to define the proper scope for examining the existence of discrimination within the City. This interchangeable use of terms lends support to a definition of market area that coincides with the boundaries of a contracting jurisdiction.

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<sup>240</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

<sup>241</sup> *United Steelworkers v. Weber*, 433 U.S. 193, 198, n. 1 (1979).

<sup>242</sup> *Croson*, 488 U.S. at 497.

<sup>243</sup> *Id.* at 500.

<sup>244</sup> *Id.* at 470.



An analysis of the cases following *Croson* provides additional guidance for defining the market area. The body of cases examining the *reasonable* market area definition is *fact-based*—rather than dictated by a specific formula.<sup>245</sup> In *Cone Corporation v. Hillsborough County*,<sup>246</sup> the United States Eleventh Circuit Court of Appeals considered a disparity study in support of Hillsborough County, Florida’s MBE Program. The MBE program used minority contractors located in Hillsborough County as the measure of available firms. The program was found to be constitutional under the compelling governmental interest element of the strict scrutiny standard.

Hillsborough County’s program was based on statistics indicating that specific discrimination existed in the construction contracts awarded by Hillsborough County, not in the construction industry in general. Hillsborough County extracted data from within its own jurisdictional boundaries and assessed the percentage of minority businesses available in Hillsborough County. The Court stated that the disparity study was properly conducted within the “local construction industry.”<sup>247</sup>

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,<sup>248</sup> the United States Ninth Circuit Court of Appeals found the City and County of San Francisco, California’s MBE Program to have the factual predicate necessary to survive strict scrutiny. The San Francisco MBE Program was supported by a disparity study that assessed the number of available MBE contractors within the City and County of San Francisco, California. The Court found it appropriate to use the City and County as the relevant market area within which to conduct a disparity study.<sup>249</sup>

In *Coral Construction v. King County*, the United States Ninth Circuit Court of Appeals held that “a set-aside program is valid only if actual, identifiable discrimination has occurred within the local industry affected by the program.”<sup>250</sup> In support of its MBE program, King County, Washington offered studies compiled by other jurisdictions, including entities completely within the County, others coterminous with the boundaries of the County, as well as a jurisdiction significantly distant from King County. The plaintiffs contended that *Croson* required King County, Washington, to compile its own data and cited *Croson* as prohibiting data sharing.

The Court found that data sharing could potentially lead to the improper use of societal discrimination data as the factual basis for a local MBE program and that innocent third parties could be unnecessarily burdened if an MBE program were based on data outside the government’s jurisdictional boundaries. However, the Court also found that the data from entities within King

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<sup>245</sup> See e.g., *Concrete Works of Colorado v. City of Denver, Colorado*, 36 F.3d 1513, 1528 (10th Cir. 1994) (“*Concrete Works*”).

<sup>246</sup> *Cone Corporation v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990).

<sup>247</sup> *Id.* at 915.

<sup>248</sup> *Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991).

<sup>249</sup> *AGCCII*, 950 F.2d at 1415.

<sup>250</sup> *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991).



County and from coterminous jurisdictions were relevant to discrimination in the County. They also found that the data posed no risk of unfairly burdening innocent third parties.

The Court concluded that data gathered by a neighboring county could not be used to support King County's MBE program. The Court noted, "It is vital that a race-conscious program align itself as closely to the scope of the problem sought to be rectified by the governmental entity. To prevent overbreadth, the enacting jurisdiction should limit its factual inquiry to the presence of discrimination within its own boundaries."<sup>251</sup> However, the Court did note that the "world of contracting does not conform itself neatly to jurisdictional boundaries."<sup>252</sup>

There are other situations in which courts have approved a market area definition that extended beyond a jurisdiction's geographic boundaries. In *Concrete Works v. City and County of Denver* (*Concrete Works*),<sup>253</sup> the United States Tenth Circuit Court of Appeals directly addressed the issue of whether extra-jurisdictional evidence of discrimination can be used to determine the "local market area" for a disparity study. In *Concrete Works*, the defendant relied on evidence of discrimination in the six-county Denver, Colorado Metropolitan Statistical Area (Denver MSA) to support its MBE program. Plaintiffs argued that the federal constitution prohibited consideration of evidence beyond jurisdictional boundaries. The Court of Appeals disagreed.

Critical to the Court's acceptance of the Denver MSA as the relevant local market was the finding that more than 80% of construction and design contracts awarded by the City and County of Denver were awarded to contractors within the Denver MSA. Another consideration was that the City and County of Denver's analysis was based on United States Census data, which was available for the Denver MSA but not for the City of Denver itself. There was no undue burden placed on nonculpable parties, as the City and County of Denver had expended a majority of its construction contract dollars within the area defined as the local market. Citing *AGCC II*,<sup>254</sup> the Court noted "that any plan that extends race-conscious remedies beyond territorial boundaries must be based on very specific findings that actions the city has taken in the past have visited racial discrimination on such individuals."<sup>255</sup>

Similarly, New York State conducted a disparity study in which the geographic market consisted of New York State and eight counties in northern New Jersey. The geographic market was defined as the area encompassing the location of businesses that received more than 90% of the dollar value of all contracts awarded by the agency.<sup>256</sup>

State and local governments must pay special attention to the geographical scope of their disparity studies. *Croson* determined that the statistical analysis should focus on the number of qualified

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<sup>251</sup> *Coral Construction Co. v. King County*, 941 F.2d at 917.

<sup>252</sup> *Id.*

<sup>253</sup> *Concrete Works*, 36 F.3d at 1528.

<sup>254</sup> *AGCC II*, 950 F.2d at 1401.

<sup>255</sup> *Concrete Works*, 36 F.3d at 1528.

<sup>256</sup> *Opportunity Denied! New York State's Study*, 26 Urban Lawyer No. 3, Summer 1994.



minority business owners in the government’s marketplace.<sup>257</sup> The text of *Croson* itself suggests that the geographical boundaries of the government entity comprise an appropriate market area and other courts have agreed with this finding.

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

## ***II. Market Area Analysis***

Although *Croson* and its progeny do not provide a bright line rule for the delineation of the local market area, when taken collectively, the case law supports a definition of the market area as the geographical boundaries of the government entity. The market area analysis revealed the City spent the majority of its dollars during the study period in Pinellas County. The Study’s market area is determined to be the geographical boundaries of the Pinellas County.

### ***A. Summary of the Distribution of All Prime Contracts Awarded***

The City awarded 7,896 prime contracts valued at \$684,925,107 from October 1, 2014 to September 30, 2018. The distribution of all prime contracts awarded, and dollars received by all firms domiciled inside and outside of the market area is shown below in Table 5.1.

**Table 5.1: Distribution of All Contracts Awarded**

<b>Geographic Area</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Total Dollars</b>	<b>Percent of Dollars</b>
Pinellas	4,598	58.23%	\$247,759,622	36.17%
Hillsborough	1,011	12.80%	\$147,440,817	21.53%
Duval	206	2.61%	\$122,417,573	17.87%
Orange	268	3.39%	\$26,287,779	3.84%
Polk	124	1.57%	\$14,639,573	2.14%
Manatee	59	0.75%	\$13,822,379	2.02%
Sarasota	100	1.27%	\$13,143,295	1.92%
Miami-dade	112	1.42%	\$11,404,794	1.67%
Lee	12	0.15%	\$6,979,338	1.02%
Citrus	4	0.05%	\$5,845,722	0.85%
Seminole	204	2.58%	\$5,320,442	0.78%
Alachua	21	0.27%	\$3,447,702	0.50%
Pasco	50	0.63%	\$1,838,563	0.27%
Lake	27	0.34%	\$1,397,864	0.20%
Broward	34	0.43%	\$828,323	0.12%
St. Lucie	12	0.15%	\$776,665	0.11%
Suwannee	1	0.01%	\$691,921	0.10%

<sup>257</sup> *Croson*, 488 U.S. at 501.





Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Charlotte	5	0.06%	\$680,366	0.10%
Marion	12	0.15%	\$679,607	0.10%
Highlands	2	0.03%	\$526,151	0.08%
Leon	10	0.13%	\$416,314	0.06%
Bay	1	0.01%	\$294,499	0.04%
Osceola	4	0.05%	\$222,948	0.03%
Palm Beach	18	0.23%	\$210,930	0.03%
Volusia	12	0.15%	\$174,193	0.03%
Walton	1	0.01%	\$95,200	0.01%
Escambia	2	0.03%	\$53,838	0.01%
Columbia	2	0.03%	\$48,046	0.01%
Indian River	9	0.11%	\$36,992	0.01%
Brevard	3	0.04%	\$22,344	0.00%
Martin	2	0.03%	\$10,757	0.00%
Collier	2	0.03%	\$3,600	0.00%
Jackson	1	0.01%	\$2,600	0.00%
Madison	2	0.03%	\$567	0.00%
Sumter	1	0.01%	\$261	0.00%
Hernando	1	0.01%	\$148	0.00%
Out of State	954	12.08%	\$57,185,165	8.35%
Out of Country	9	0.11%	\$218,212	0.03%
<b>Total</b>	<b>7,896</b>	<b>100.00%</b>	<b>\$684,925,107</b>	<b>100.00%</b>

### ***B. Distribution of Construction Prime Contracts***

The City awarded 555 construction prime contracts, valued at \$410,663,577, during the study period. Businesses located in the market area received 57.66% of the construction prime contracts and 31.58% of the dollars. The distribution of the construction prime contracts awarded, and dollars received by all firms domiciled inside and outside of the market area is shown below in Table 5.2.

**Table 5.2: Distribution of Construction Prime Contracts**

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Pinellas	320	57.66%	\$129,697,565	31.58%
Duval	19	3.42%	\$112,750,671	27.46%
Hillsborough	88	15.86%	\$92,470,202	22.52%
Orange	7	1.26%	\$17,461,682	4.25%
Manatee	8	1.44%	\$12,694,705	3.09%
Miami-dade	8	1.44%	\$7,333,755	1.79%



Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Lee	5	0.90%	\$6,652,125	1.62%
Sarasota	14	2.52%	\$5,928,409	1.44%
Polk	17	3.06%	\$5,878,234	1.43%
Citrus	1	0.18%	\$5,370,078	1.31%
Alachua	4	0.72%	\$3,336,713	0.81%
Seminole	10	1.80%	\$1,965,379	0.48%
Pasco	17	3.06%	\$955,760	0.23%
Lake	5	0.90%	\$519,759	0.13%
Bay	1	0.18%	\$294,499	0.07%
Charlotte	1	0.18%	\$87,750	0.02%
Broward	1	0.18%	\$64,789	0.02%
Marion	1	0.18%	\$22,447	0.01%
Osceola	2	0.36%	\$13,807	0.00%
Leon	1	0.18%	\$9,764	0.00%
Volusia	1	0.18%	\$7,251	0.00%
Indian River	2	0.36%	\$3,900	0.00%
Collier	2	0.36%	\$3,600	0.00%
Jackson	1	0.18%	\$2,600	0.00%
Out of State	19	3.42%	\$7,138,134	1.74%
<b>Total</b>	<b>555</b>	<b>100.00%</b>	<b>\$410,663,577</b>	<b>100.00%</b>

### ***C. Distribution of Professional Services Prime Contracts***

The City awarded 1,106 professional services prime contracts, valued at \$67,274,605 during the study period. Businesses located in the market area received 57.50% of the professional services prime contracts and 37.63% of the dollars. The distribution of the professional services prime contracts awarded, and dollars received by all firms domiciled inside and outside of the market area is shown below in Table 5.3.

**Table 5.3: Distribution of Professional Services Prime Contracts**

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Pinellas	636	57.50%	\$25,315,068	37.63%
Hillsborough	156	14.10%	\$22,788,948	33.87%
Duval	23	2.08%	\$6,553,596	9.74%
Orange	37	3.35%	\$3,513,954	5.22%
Sarasota	22	1.99%	\$2,682,666	3.99%
Pasco	6	0.54%	\$321,423	0.48%
Leon	5	0.45%	\$281,764	0.42%
Miami-dade	66	5.97%	\$245,189	0.36%
Palm Beach	3	0.27%	\$144,971	0.22%
Seminole	13	1.18%	\$137,310	0.20%
Polk	2	0.18%	\$45,086	0.07%



Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Lee	1	0.09%	\$9,415	0.01%
Volusia	1	0.09%	\$7,475	0.01%
Broward	2	0.18%	\$4,273	0.01%
Manatee	2	0.18%	\$4,060	0.01%
Alachua	1	0.09%	\$100	0.00%
Out of State	125	11.30%	\$5,159,801	7.67%
Out of Country	5	0.45%	\$59,507	0.09%
<b>Total</b>	<b>1,106</b>	<b>100.00%</b>	<b>\$67,274,605</b>	<b>100.00%</b>

#### ***D. Distribution of Goods and Services Prime Contracts***

The City awarded 6,235 goods and services prime contracts, valued at \$206,986,925 during the study period. Businesses located in the market area received 58.41% of the goods and services prime contracts and 44.81% of the dollars. The distribution of the goods and services prime contracts awarded, and dollars received by all firms domiciled inside and outside of the market area is shown below in Table 5.4.

**Table 5.4: Distribution of Goods and Services Prime Contracts**

Geographic Area	Number of Contracts	Percent of Contracts	Total Dollars	Percent of Dollars
Pinellas	3,642	58.41%	\$92,746,989	44.81%
Hillsborough	767	12.30%	\$32,181,667	15.55%
Polk	105	1.68%	\$8,716,253	4.21%
Orange	224	3.59%	\$5,312,143	2.57%
Sarasota	64	1.03%	\$4,532,219	2.19%
Miami-dade	38	0.61%	\$3,825,850	1.85%
Seminole	181	2.90%	\$3,217,753	1.55%
Duval	164	2.63%	\$3,113,306	1.50%
Manatee	49	0.79%	\$1,123,614	0.54%
Lake	22	0.35%	\$878,105	0.42%
St. Lucie	12	0.19%	\$776,665	0.38%
Broward	31	0.50%	\$759,261	0.37%
Suwannee	1	0.02%	\$691,921	0.33%
Marion	11	0.18%	\$657,160	0.32%
Charlotte	4	0.06%	\$592,616	0.29%
Pasco	27	0.43%	\$561,380	0.27%
Highlands	2	0.03%	\$526,151	0.25%
Citrus	3	0.05%	\$475,645	0.23%
Lee	6	0.10%	\$317,797	0.15%
Osceola	2	0.03%	\$209,141	0.10%
Volusia	10	0.16%	\$159,467	0.08%
Leon	4	0.06%	\$124,787	0.06%
Alachua	16	0.26%	\$110,889	0.05%



<b>Geographic Area</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Total Dollars</b>	<b>Percent of Dollars</b>
Walton	1	0.02%	\$95,200	0.05%
Palm Beach	15	0.24%	\$65,959	0.03%
Escambia	2	0.03%	\$53,838	0.03%
Columbia	2	0.03%	\$48,046	0.02%
Indian River	7	0.11%	\$33,092	0.02%
Brevard	3	0.05%	\$22,344	0.01%
Martin	2	0.03%	\$10,757	0.01%
Madison	2	0.03%	\$567	0.00%
Sumter	1	0.02%	\$261	0.00%
Hernando	1	0.02%	\$148	0.00%
Out of State	810	12.99%	\$44,887,230	21.69%
Out of Country	4	0.06%	\$158,705	0.08%
<b>Total</b>	<b>6,235</b>	<b>100.00%</b>	<b>\$206,986,925</b>	<b>100.00%</b>

### ***III. Summary***

During the study period, the City awarded 7,896 construction, professional services, and goods and services prime contracts, valued at \$684,925,107. The City awarded 58.23% of prime contracts and 36.17% of dollars to businesses domiciled within the market area.

Table 5.5 below presents an overview of the number of construction, professional services, and goods and services prime contracts the City awarded, and the dollars spent in the market area.

*Construction Prime Contracts:* 320 or 57.66%, of construction prime contracts were awarded to market area businesses. Construction prime contracts in the market area accounted for \$129,697,565, or 31.58%, of the total construction prime contract dollars.

*Professional Services Prime Contracts:* 636 or 57.50%, of professional services prime contracts were awarded to market area businesses. Professional services prime contracts in the market area accounted for \$25,315,068, or 37.63%, of the total professional services prime contract dollars.

*Goods and Services Prime Contracts:* 3,642 or 58.41%, of goods and services prime contracts were awarded to market area businesses. Goods and services prime contracts in the market area accounted for \$92,746,989, or 44.81%, of the total goods and services prime contract dollars.



**Table 5.5: The City's Prime Contract Distribution**

<b>Geographic Area</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Total Dollars</b>	<b>Percent of Dollars</b>
<b>Combined Industries</b>				
Market Area	4,598	58.23%	\$247,759,622	36.17%
Outside Market Area	3,298	41.77%	\$437,165,486	63.83%
<b>TOTAL</b>	<b>7,896</b>	<b>100.00%</b>	<b>\$684,925,107</b>	<b>100.00%</b>
<b>Construction</b>				
Market Area	320	57.66%	\$129,697,565	31.58%
Outside Market Area	235	42.34%	\$280,966,012	68.42%
<b>TOTAL</b>	<b>555</b>	<b>100.00%</b>	<b>\$410,663,577</b>	<b>100.00%</b>
<b>Professional Services</b>				
Market Area	636	57.50%	\$25,315,068	37.63%
Outside Market Area	470	42.50%	\$41,959,538	62.37%
<b>TOTAL</b>	<b>1,106</b>	<b>100.00%</b>	<b>\$67,274,605</b>	<b>100.00%</b>
<b>Goods and Services</b>				
Market Area	3,642	58.41%	\$92,746,989	44.81%
Outside Market Area	2,593	41.59%	\$114,239,936	55.19%
<b>TOTAL</b>	<b>6,235</b>	<b>100.00%</b>	<b>\$206,986,925</b>	<b>100.00%</b>



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# **CHAPTER 6: Prime Contractor and Subcontractor Availability Analysis**

## **I. Introduction**

According to *City of Richmond v. J.A. Croson Co.* (Croson), availability is defined as the number of businesses in the jurisdiction's market area that are ready, willing, and able to provide the goods or services procured by the jurisdiction.<sup>258</sup> To determine the availability of Minority and Woman-owned Business Enterprises<sup>259</sup> (M/WBE) and non-minority male-owned business enterprises (non-M/WBE) within the jurisdiction's market area, businesses domiciled within the market area need to be enumerated. As defined in *Chapter 5: Market Area Analysis*, the market area is the boundaries of Pinellas County (County).

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

## **II. Prime Contractor Availability Data Sources**

### **A. Identification of Willing Businesses Within the Market Area**

Three main sources of information were used to identify willing and able businesses in Pinellas County that provide the construction, professional services, and goods and services contracts that the City procures: 1) the City's records, including utilized businesses, and bidders and vendors lists; 2) government certification directories; and 3) business association membership lists, of which only those that were determined to be willing, ready, and able. Any business listed in more than one source was only counted once in the relevant industry. If a business were willing and able to provide goods or services in more than one industry, it was listed separately in each industry.

The three sources were ranked according to their reliability in determining a business' willingness to contract with the City, with the highest ranking assigned to the utilized businesses, bidders, and vendors. Government certification lists ranked second, and business association membership lists ranked third. Therefore, the first document used to build the availability database was the City's utilized businesses. Bidders and vendor lists were then appended to the availability database. Businesses identified from federal and local government certification agencies were thereafter



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<sup>258</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

<sup>259</sup> Hereinafter referred to as Minority and Caucasian woman-owned businesses in the statistical tables.

appended. The local certification lists included small, minority, and woman-owned businesses. Businesses identified from association membership lists that also affirmed their willingness through a survey of business association members were also appended. The business associations included trade organizations, professional organizations, and chambers of commerce.

## **B. Prime Contractor Sources**

Extensive targeted outreach to business associations in the market area was performed to identify and secure business membership directories. Table 6.1 lists the City's sources, certification directories, and business association listings.

**Table 6.1: Prime Contractor Availability Data Sources**

Source	Type of Information
<b>City of St. Petersburg Sources</b>	
Contract List, Multi-Year - Comprehensive	M/WBE and Non-minority Male
Contract List, Single Project - 2013-2017	M/WBE and Non-minority Male
PO_Suppliers_Active	M/WBE and Non-minority Male
<b>Government Certification Directories</b>	
Florida Department of Management Services, Office of Supplier Diversity	M/WBE and Non-minority Male
Florida Unified Certification Program Disadvantaged Business Enterprise Program	M/WBE and Non-minority Male
U.S. SBA _St. Pete_Pinellas County_Hubzone	M/WBE and Non-minority Male
U.S. SBA _St. Pete_Pinellas County_SDB	M/WBE and Non-minority Male
U.S. SBA_St. Pete_Pinellas County 8(a) Business Development Program	M/WBE and Non-minority Male
U.S. SBA_St. Pete_Pinellas County_Veterans	M/WBE and Non-minority Male
U.S. SBA_St. Pete_Pinellas County_Women Owned	M/WBE
<b>Association Membership Lists</b>	
African American Chamber of Commerce of Central Florida	M/WBE and Non-minority Male
Asian American Chamber of Commerce of Central Florida	Non-minority Male
Associated Builders and Contractors, Inc. Florida Gulf Coast Chapter	M/WBE and Non-minority Male
Associated General Contractors, South Florida Chapter	Non-minority Male
Clearwater Beach Chamber of Commerce	M/WBE
Clearwater Regional Chamber	M/WBE and Non-minority Male
Dunedin Chamber of Commerce	M/WBE and Non-minority Male
Florida Independent Concrete & Associated Products, Inc	Non-minority Male
Florida Marine Contractors Association, Tampa Bay Chapter	Non-minority Male
Florida Roofing and Sheet Metal Contractors Association, Inc.	Non-minority Male
Florida Surveying and Mapping Society	M/WBE and Non-minority Male
Florida Transportation Builders Association, Inc.	Non-minority Male



Source	Type of Information
Greater Palm Harbor Area Chamber of Commerce	M/WBE and Non-minority Male
Independent Electrical Contractors, Florida West Coast Chapter	M/WBE and Non-minority Male
Masonry Association of Florida	Non-minority Male
Mechanical Contractors Association of America of South Florida	Non-minority Male
Pinellas County Small Business Enterprise Program	M/WBE and Non-minority Male
Pinellas Park-Gateway Chamber of Commerce	M/WBE and Non-minority Male
Plumbing-Heating-Cooling Contractors Association, Pinellas	Non-minority Male
Safety Harbor Chamber of Commerce	M/WBE and Non-minority Male
St. Petersburg Area Chamber of Commerce	M/WBE and Non-minority Male
Tarpon Springs Chamber of Commerce	M/WBE
Treasure Island & Madeira Beach Chamber of Commerce	M/WBE and Non-minority Male

### ***C. Determination of Willingness***

From the three sources described in Section A above, 1,101 unique market area businesses that can provide goods or services in one or more of the three industries were identified. An accounting of the willing businesses derived by source is listed below.

#### **1. City of St. Petersburg's Records**

A total of 571 unique market area businesses were added to the availability database from City records.

#### **2. Government Certification Lists**

A total of 411 unique market area businesses were added to the availability database from government certification lists.

#### **3. Business Association Membership Lists**

A total of 119 unique market area businesses were identified from business association membership lists. These businesses were surveyed to determine their willingness to contract with the City. Of the 1,056 surveyed businesses, 194 refused to participate, 37 telephone number were disconnected, 610 did not respond, and 215 businesses completed the survey. Of the 215 businesses that completed the survey, 119 were deemed willing and added to the availability database.





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

Table 6.2 through Table 6.4 present the distribution of willing prime contractors by source. A distribution of available businesses by source also was calculated for each industry. As noted in Table 6.2, 83.80% of the construction businesses identified were derived from the City's records and government certification lists. Companies identified through the business association membership lists represent 16.20% of the willing businesses.

**Table 6.2: Distribution of Prime Contractor Availability Data Sources, Construction**

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	18.06%	75.69%	56.48%
Certification Lists	66.67%	7.64%	27.31%
<b>Subtotal</b>	<b>84.72%</b>	<b>83.33%</b>	<b>83.80%</b>
Willingness Survey	5.56%	14.58%	11.57%
Business Survey	9.72%	2.08%	4.63%
<b>Subtotal</b>	<b>15.28%</b>	<b>16.67%</b>	<b>16.20%</b>
<b>Grand Total*</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

\*The percentages may not total 100% due to rounding.

Table 6.3 shows the data sources for the available professional services prime contractors. As noted, 90.13% of the professional services businesses identified were derived from the City's records and government certification lists. Companies identified through the business association membership lists represent 9.87% of the willing businesses.



**Table 6.3: Distribution of Prime Contractor Availability Data Sources,  
Professional Services**

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	11.22%	58.95%	34.18%
Certification Lists	80.00%	29.47%	55.70%
<b>Subtotal</b>	<b>91.71%</b>	<b>88.42%</b>	<b>90.13%</b>
Willingness Survey	5.85%	9.47%	7.59%
Business Survey	2.44%	2.11%	2.28%
<b>Subtotal</b>	<b>8.29%</b>	<b>11.58%</b>	<b>9.87%</b>
<b>Grand Total*</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

\*The percentages may not total 100% due to rounding.

Table 6.4 shows the data sources for the available goods and other services prime contractors. As noted, 90.56% of the goods and other services businesses identified were derived from the City's records and government certification lists. Companies identified through the business association membership lists represent 9.44% of the willing businesses.

**Table 6.4: Distribution of Prime Contractor Availability Data Sources,  
Goods and Services**

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	26.47%	84.58%	64.59%
Certification Lists	64.22%	5.91%	25.97%
<b>Subtotal</b>	<b>90.69%</b>	<b>90.49%</b>	<b>90.56%</b>
Willingness Survey	8.33%	8.74%	8.60%
Business Survey	0.98%	0.77%	0.84%
<b>Subtotal</b>	<b>9.31%</b>	<b>9.51%</b>	<b>9.44%</b>
<b>Grand Total*</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

\*The percentages may not total 100% due to rounding.



### III. Capacity

The second component of the availability analysis requirement set forth in *Croson* is to assess the capacity or ability of a business to perform the contracts awarded by the government entity.<sup>260</sup> Capacity requirements are not delineated in *Croson*, but capacity has been considered in subsequent cases. Among the first circuit courts to address capacity was the Third Circuit, which held certification to be a valid method of defining availability.<sup>261</sup> In 1996, *Contractors Association of Eastern Pennsylvania v. City of Philadelphia (Philadelphia)*, the court held that utilizing a list of certified contractors was a rational approach to identify qualified, willing firms.<sup>262</sup> The court stated “[a]n analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach [of qualification].”<sup>263</sup> As noted in *Philadelphia*, “[t]he issue of qualifications can be approached at different levels of specificity[.]”<sup>264</sup>

Researchers have attempted to define capacity by profiling the age of the business, education of the business owner, revenue, number of employees, and bonding limits using census data. Although these conventional socio-economic indices are themselves impacted by race and gender-based discrimination they also have been considered in analyzing the capacity of the willing businesses.<sup>265</sup> Four methods were used to compare the capacity of M/WBEs to similarly situated non-minority male-owned businesses.

- A review of the distribution of contracts to determine the size of the contracts that the City awarded to M/WBEs and non-minority male-owned businesses.
- The identification of the largest contracts awarded to M/WBEs.
- An analysis of the frequency distribution of the City contracts comparing the median of contracts awarded to M/WBEs and non-minority male-owned businesses.
- An assessment of capacity-related economic factors of M/WBEs and non-minority male-owned businesses using the results of the capacity eSurvey.

In a further effort to address capacity, large contracts that required considerable capacity to perform were removed from the analysis. Limiting the range of the formal prime contracts ensured that the disparity analysis was not distorted by the presence of prime contracts that required a significant capacity to perform.

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<sup>260</sup> *Croson*, 488 U.S. 469.

<sup>261</sup> *Contractors Ass’n of E. Pa. v. City of Philadelphia* (“*Philadelphia VI*”), 91 F.3d 586, at 603 (3d Cir. 1996).

<sup>262</sup> *Id.*

<sup>263</sup> *Id.* at 603; see also, *Concrete Works IV*, 321 F.3d at 966 (noting a less sophisticated method to calculate availability does not render a disparity study flawed.)

<sup>264</sup> *Contractors Ass’n of E. Pa.*, 91 F.3d at 610.

<sup>265</sup> David G. Blanchflower & Phillip B. Levine & David J. Zimmerman, 2003. “*Discrimination in the Small-Business Credit Market*,” *The Review of Economics and Statistics*, MIT Press, vol. 85(4).



### **A. Prime Contract Size Distribution**

All of the City's contracts were ordered by the size of the award to determine the distribution of the awarded contracts. The purpose of this distribution was to gauge the capacity required to perform the City's contracts. In Table 6.5, contract awards in the three industries were grouped into nine ranges and are presented by minority females, minority males, Caucasian females, and non-minority males.

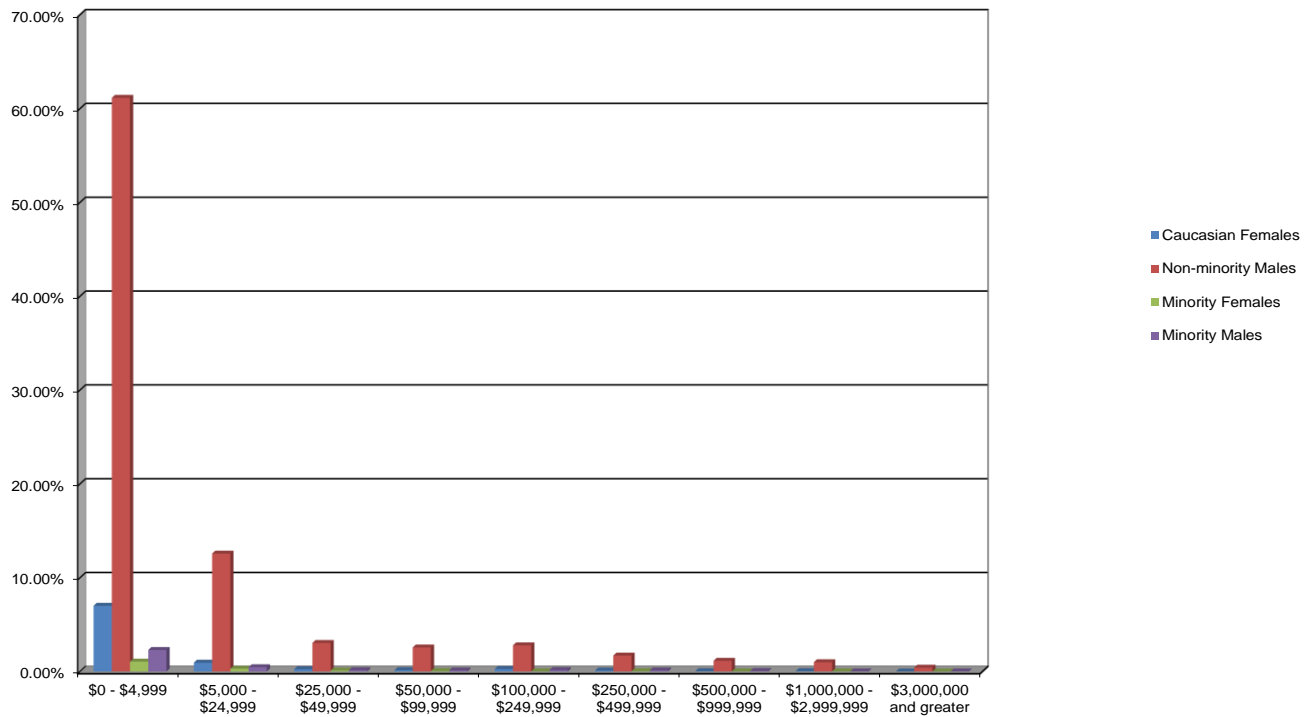
The data revealed that most of the prime contracts awarded by the City were small. Table 6.5 shows that 92.12% of the prime contracts awarded by the City were less than \$100,000. Additionally, 95.34% were less than \$250,000, 97.29% were less than \$500,000, 98.53% were less than \$1,000,000, and 99.58% were less than \$3,000,000. Only 0.42% of the awarded prime contracts were valued \$3,000,000 and greater.

**Table 6.5: All Industry Contracts by Size,  
October 1, 2014 to September 30, 2018**

Size	Non-minority				Minority					
	Females		Males		Females		Males		Total	
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$0 - \$4,999	553	7.00%	4,828	61.14%	83	1.05%	181	2.29%	5,645	71.49%
\$5,000 - \$24,999	74	0.94%	992	12.56%	23	0.29%	36	0.46%	1,125	14.25%
\$25,000 - \$49,999	19	0.24%	240	3.04%	8	0.10%	11	0.14%	278	3.52%
\$50,000 - \$99,999	11	0.14%	202	2.56%	4	0.05%	9	0.11%	226	2.86%
\$100,000 - \$249,999	21	0.27%	220	2.79%	1	0.01%	12	0.15%	254	3.22%
\$250,000 - \$499,999	8	0.10%	134	1.70%	3	0.04%	9	0.11%	154	1.95%
\$500,000 - \$999,999	3	0.04%	90	1.14%	1	0.01%	4	0.05%	98	1.24%
\$1,000,000 - \$2,999,999	3	0.04%	78	0.99%	1	0.01%	1	0.01%	83	1.05%
\$3,000,000 and greater	0	0.00%	32	0.41%	0	0.00%	1	0.01%	33	0.42%
Total	692	8.76%	6,816	86.32%	124	1.57%	264	3.34%	7,896	100.00%



**Chart 6.1: All Industry Contracts by Size,  
October 1, 2014 to September 30, 2018**



The size of the City’s prime contracts is a determinant of the capacity that a willing business needs to be competitive at the prime contract level. The fact that more than 92.12% of the City’s contracts are less than \$100,000 illustrates that the capacity needed to perform a significant number of the City’s contracts is not considerable.

### ***B. Largest Prime Contracts Awarded to Minority and Woman-Owned Businesses***

Table 6.6 shows that minority and woman-owned businesses demonstrated the capacity to perform contracts as large as \$3,503,932 in construction, \$2,732,159 in professional services, and \$1,194,880 in goods and services. The size of the largest prime contracts that the City awarded to minority and woman-owned businesses illustrates that these businesses have the capacity to perform substantial formal prime contracts.



**Table 6.6: Largest Prime Contracts Awarded by City of St. Petersburg to  
Minority and Woman-owned Businesses**

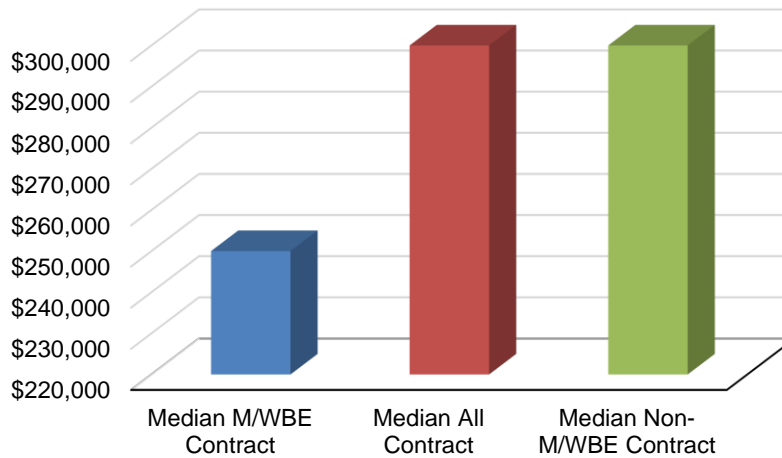
<b>Ethnic/Gender Group</b>	<b>Construction</b>	<b>Professional Services (Including Architecture and Engineering)</b>	<b>Goods and Services</b>
African American Female	----	\$4,073	\$14,754
African American Male	\$150,000	\$400,000	\$635,004
Asian American Female	\$292,449	\$1,000,000	\$66,575
Asian American Male	\$311,937	\$100,000	\$590,425
Hispanic American Female	\$167,693	\$261,190	\$90,000
Hispanic American Male	\$3,503,932	\$400,000	\$90,000
Native American Female	----	----	----
Native American Male	----	----	\$560,500
Caucasian Female	\$783,046	\$2,732,159	\$1,194,880
<b>Largest Dollar Amounts MBEs</b>	\$3,503,932	\$1,000,000	\$635,004
<b>Largest Dollar Amounts WBEs</b>	\$783,046	\$2,732,159	\$1,194,880

### ***C. Frequency Distribution***

The City's formal contracts range from \$100,000 to \$61,729,374. A frequency distribution was calculated for all of the City's prime contracts to determine the median contract size. The same distribution was calculated separately for minority and woman-owned businesses and non-minority male-owned businesses. As shown in Chart 6.2, the median of all City prime contracts was \$300,000. This median or center point marks the value at which 50.00% of contracts were above and below \$300,000. The median prime contract awarded to minority and woman-owned businesses was \$250,000 and to non-minority male-owned businesses was \$300,000.



**Chart 6.2: Formal Industry Contracts by Size,  
October 1, 2014 to September 30, 2018**



This finding illustrates that minority and woman-owned businesses have the capacity to perform a significant number of the prime contracts awarded by the City. The fact also highlights that minority and woman-owned businesses have the capacity to perform very large contracts (Chart 6.2). It is also notable that there are other methods commonly used by prime contractors to increase their capacity in response to contract requirements. These practices include subcontracting, joint ventures, and staff augmentation.

#### ***D. Formal Contract Threshold Analysis***

As a further measure to ensure that the available businesses have the capacity to perform the contracts analyzed in the disparity analysis, the prime contracts subject to the statistical analysis was limited. As discussed in *Chapter 3: Prime Contractor Utilization Analysis*, the analysis of formal contracts was limited to the awarded contracts with a dollar value beneath the 75<sup>th</sup> percentile. The decision to limit the analysis of disparity to contracts at or below the 75<sup>th</sup> percentile was made to eliminate outliers, which increased the reliability of the statistical findings, and reduced the business capacity requirements. Table 6.7 illustrates the contract distribution for each industry by percentile.

**Table 6.7: Threshold Analysis by Size and Industry**

Quantiles	All Industries Combined	Construction	Professional Services (including architecture and engineering)	Goods and Services
Minimum	\$100,000	\$100,267	\$100,000	\$100,000
25%	\$167,954	\$211,408	\$183,874	\$154,860
50% Quantile	\$300,000	\$460,593	\$269,304	\$270,380
Mean	\$1,029,990	\$2,426,692	\$553,546	\$506,363
75%	\$680,000	\$1,250,000	\$670,000	\$560,000
Maximum	\$61,729,374	\$61,729,374	\$4,254,376	\$8,412,130



## ***E. Business Capacity Assessment***

In an effort to ascertain the relative capacity of the M/WBEs and non-minority male-owned businesses enumerated in the availability analysis, an eSurvey was administered to the businesses in the availability dataset. The online survey was used to collect responses about independent business-related socioeconomic factors. While the results of this survey are illustrative of the capacity of the respondents, it measures factors that are most impacted by race and gender-based discrimination.

### **1. Profile of Respondents**

Table 6.8 illustrates the ethnicity and gender of survey respondents. The business capacity survey respondents were diverse: 21.51% were African American; 1.08% were Asian American; 7.53% were Hispanic American; 0.00% were Native American; and 69.89% were Caucasian American. Of the surveys completed, 38.71% were completed by females of all ethnicities and 61.29% were completed by males of all ethnicities.

**Table 6.8: Ethnicity and Gender of Business Owners**

<b>Response</b>	<b>African American</b>	<b>Asian American</b>	<b>Hispanic American</b>	<b>Native American</b>	<b>Caucasian</b>	<b>Total</b>
Female	6.45%	1.08%	3.23%	0.00%	27.96%	38.71%
Male	15.05%	0.00%	4.30%	0.00%	41.94%	61.29%
<b>Total</b>	<b>21.51%</b>	<b>1.08%</b>	<b>7.53%</b>	<b>0.00%</b>	<b>69.89%</b>	<b>100.00%</b>

The ethnic groups were combined and analyzed as “minority males” and “minority females.” Table 6.9 illustrates that 27.96% of businesses provided construction services; 41.94% of businesses provided professional services; and 30.11% of businesses provided goods and services.

**Table 6.9: Primary Industry of Business**

<b>Industry</b>	<b>Minority Females</b>	<b>Minority Males</b>	<b>Caucasian Females</b>	<b>Caucasian Males</b>	<b>Total</b>
Construction	0.00%	10.75%	6.45%	10.75%	27.96%
Professional Services (Including Architecture and Engineering)	7.53%	6.45%	10.75%	17.20%	41.94%
Goods and Services	3.23%	2.15%	10.75%	13.98%	30.11%
<b>Total</b>	<b>10.75%</b>	<b>19.35%</b>	<b>27.96%</b>	<b>41.94%</b>	<b>100.00%</b>

### **2. Capacity Assessment Findings**

Table 6.10 illustrates business annual gross revenue according to nine different levels. It shows that 52.18% of businesses earned \$500,000 and under; 16.30% of businesses earned \$500,001 to \$1,000,000; 19.57% of businesses earned \$1,000,001 to \$3,000,000; 2.17% of businesses earned \$3,000,001 to \$5,000,000; 4.35% of businesses earned \$5,000,001 to \$10,000,000; and 5.43% of businesses earned over \$10 million.





**Table 6.10: Annual Gross Revenue**

Revenue	Minority Females	Minority Males	Caucasian Females	Caucasian Males	Total
Less than \$50,000	2.17%	1.09%	3.26%	2.17%	8.70%
\$50,000 to \$100,000	3.26%	0.00%	2.17%	3.26%	8.70%
\$100,001 to \$300,000	1.09%	4.35%	8.70%	6.52%	20.65%
\$300,001 to \$500,000	0.00%	3.26%	2.17%	8.70%	14.13%
\$500,001 to \$1,000,000	2.17%	4.35%	4.35%	5.43%	16.30%
\$1,000,001 to \$3,000,000	0.00%	3.26%	4.35%	11.96%	19.57%
\$3,000,001 to \$5,000,000	0.00%	1.09%	1.09%	0.00%	2.17%
\$5,000,001 to \$10,000,000	1.09%	1.09%	1.09%	1.09%	4.35%
More than \$10,000,000	1.09%	1.09%	0.00%	3.26%	5.43%
<b>Total</b>	<b>10.87%</b>	<b>19.57%</b>	<b>27.17%</b>	<b>42.39%</b>	<b>100.00%</b>

Chart 6.3 illustrates more than half, or 68.48%, of businesses earn less than \$1,000,000 a year. This finding indicates that the majority of businesses are small, regardless of the ethnicity or gender of the owner.

**Chart 6.3: Annual Gross Revenue**

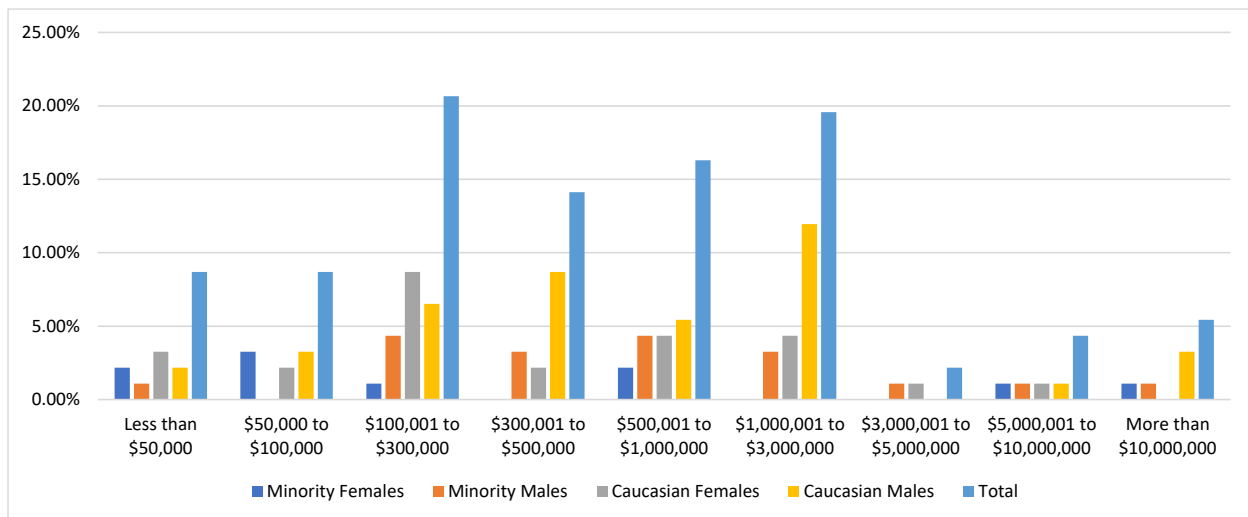


Table 6.11 shows the number of employees at each business within the four groups: minority females, minority males, Caucasian females, and non-minority males. The findings reveal that 57.47% of business had 0 to 5 employees;<sup>266</sup> 20.69% had 6 to 10 employees; 11.49% had 11 to 20 employees; 5.75% had 21 to 50 employees; and 4.60% had more than 50 employees.



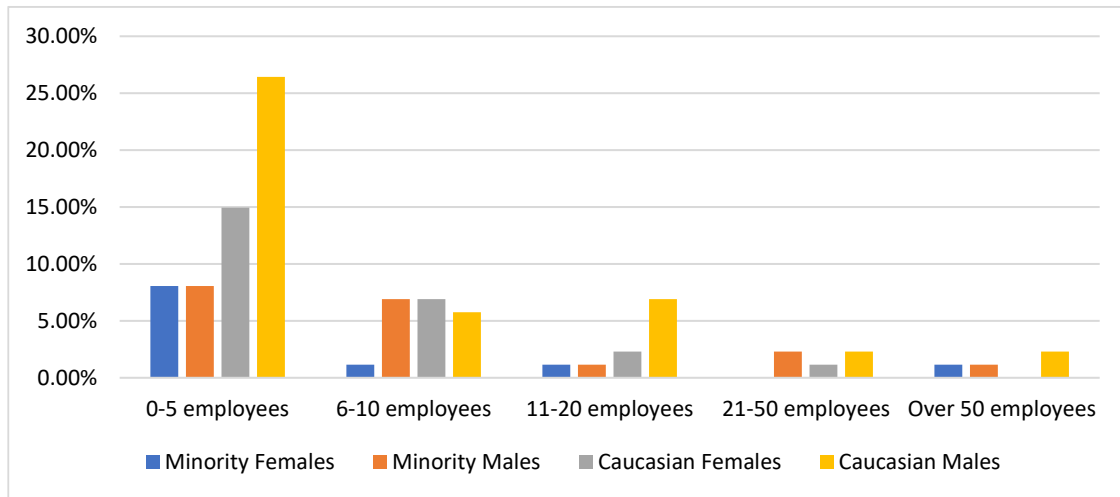
<sup>266</sup> Business owners are not counted as employees.

**Table 6.11: Number of Employees**

Number of Employees	Minority Females	Minority Males	Caucasian Females	Caucasian Males	Total
0-5 employees	8.05%	8.05%	14.94%	26.44%	57.47%
6-10 employees	1.15%	6.90%	6.90%	5.75%	20.69%
11-20 employees	1.15%	1.15%	2.30%	6.90%	11.49%
21-50 employees	0.00%	2.30%	1.15%	2.30%	5.75%
Over 50 employees	1.15%	1.15%	0.00%	2.30%	4.60%
<b>Total</b>	<b>11.49%</b>	<b>19.54%</b>	<b>25.29%</b>	<b>43.68%</b>	<b>100.00%</b>

Chart 6.4 illustrates that most businesses have fewer than five employees, regardless of the ethnicity or gender of the owner. Of all businesses, 89.65% are small, employing 20 or fewer employees. Although the surveyed businesses are small, they are similar to the average City of St. Petersburg business, as reported by ReferenceUSA (June 2020). The capacity survey illustrates that 89.65% of businesses in the City, regardless of ethnicity and gender, employ 20 or fewer employees.

**Chart 6.4: Number of Employees**



One consideration of capacity as discussed in the case law, is a contractor's ability to bid and perform multiple contracts.<sup>267</sup> This factor relates to the human and capital resources available for a business to perform multiple contracts, concurrently. Table 6.12 illustrates that businesses can perform multiple concurrent contracts within a calendar year. More than half, or 64.56%, of businesses responded that they have completed more than five contracts in a calendar year.



<sup>267</sup> See *Rothe Development Corporation v. U.S. Department of Defense*, 262 F.3d 1306 (Fed. Cir. 2001); see also *Rothe Development Corporation v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

**Table 6.12: Number of Annual Contracts**

Annual Contracts	Minority Females	Minority Males	Caucasian Females	Caucasian Males	Total
0	2.53%	2.53%	1.27%	2.53%	8.86%
1 to 5	3.80%	3.80%	8.86%	10.13%	26.58%
6 to 10	1.27%	3.80%	2.53%	5.06%	12.66%
10 to 20	0.00%	3.80%	1.27%	5.06%	10.13%
More than 20	2.53%	7.59%	11.39%	20.25%	41.77%
<b>Total</b>	<b>10.13%</b>	<b>21.52%</b>	<b>25.32%</b>	<b>43.04%</b>	<b>100.00%</b>

Chart 6.5 illustrates that more than half of the businesses performed multiple contracts within the previous calendar year. This finding illustrates that the businesses, without regard to ethnicity or gender, have successfully performed multiple contracts, concurrently.

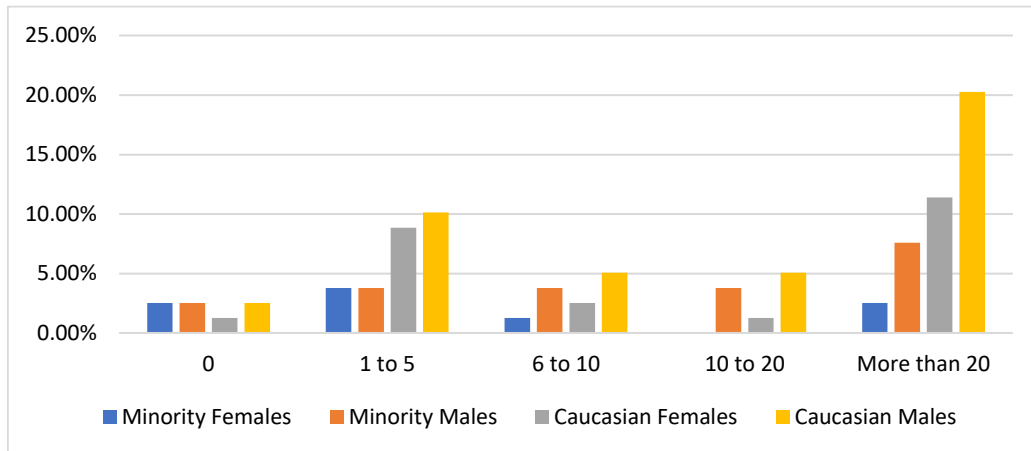
**Chart 6.5: Number of Annual Contracts**

Table 6.13 illustrates the length of time businesses have been in operation. More than half or 63.74%, of minority-owned, woman-owned, and non-minority male-owned businesses have been in business from 11 to 50 years, which illustrates that mature businesses make up the majority of the pool of available businesses.

**Table 6.13: Years in Business**

Years in Operation	Minority Females	Minority Males	Caucasian Females	Caucasian Males	Total
5 years and less	4.40%	2.20%	6.59%	5.49%	18.68%
6 -10 years	1.10%	2.20%	1.10%	7.69%	12.09%
11 - 20 years	2.20%	8.79%	10.99%	12.09%	34.07%
21 - 30 years	2.20%	5.49%	4.40%	7.69%	19.78%
31 - 50 years	0.00%	0.00%	4.40%	5.49%	9.89%
More than 50 years	1.10%	0.00%	0.00%	4.40%	5.49%
<b>Total</b>	<b>10.99%</b>	<b>18.68%</b>	<b>27.47%</b>	<b>42.86%</b>	<b>100.00%</b>



Chart 6.6 illustrates that minority and woman-owned businesses are a growing segment of the contracting market in comparison to Caucasian males. It is important to note, however, that the availability pool includes mature minority and woman-owned businesses with extensive experience in their respective fields.

**Chart 6.6: Years in Business**

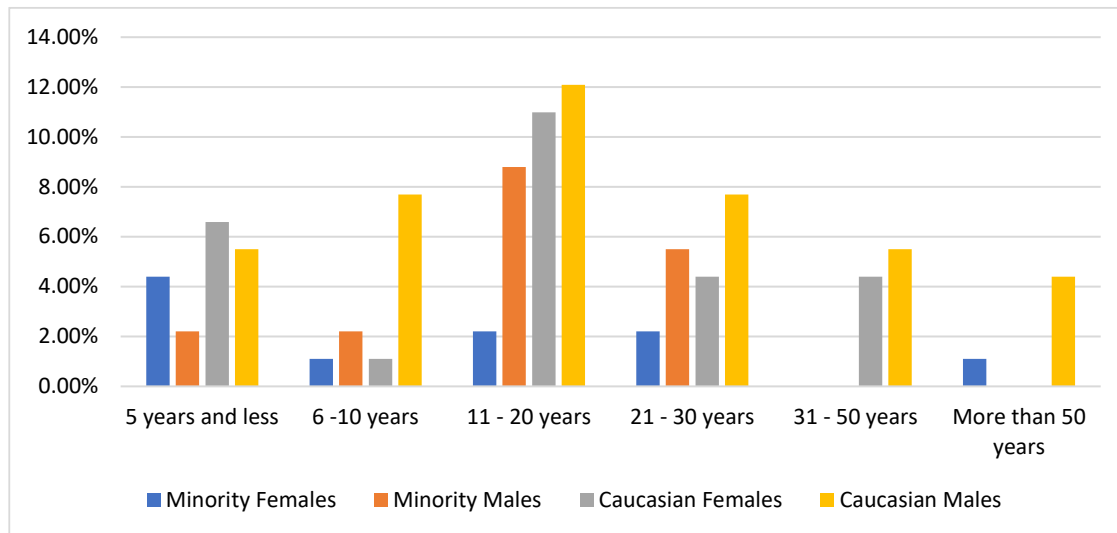


Table 6.14 illustrates the educational attainment of business owners. The data indicates that 32.61% of business owners have a bachelor's degree.

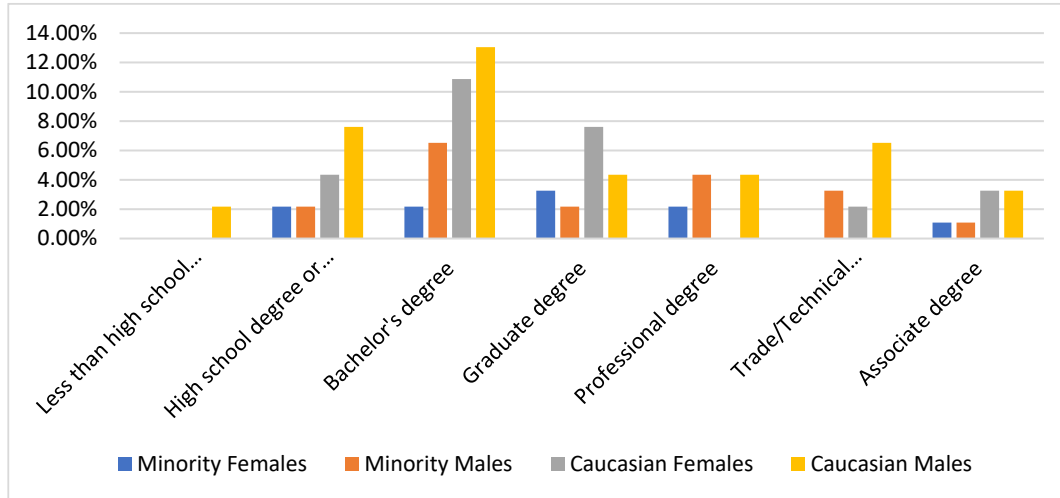
**Table 6.14: Education Level of Business Owners**

Education	Minority Females	Minority Males	Caucasian Females	Caucasian Males	Total
Less than high school degree	0.00%	0.00%	0.00%	2.17%	2.17%
High school degree or equivalent, e.g. GED	2.17%	2.17%	4.35%	7.61%	16.30%
Bachelor's degree	2.17%	6.52%	10.87%	13.04%	32.61%
Graduate degree	3.26%	2.17%	7.61%	4.35%	17.39%
Professional degree	2.17%	4.35%	0.00%	4.35%	10.87%
Trade/Technical certificate or degree	0.00%	3.26%	2.17%	6.52%	11.96%
Associate degree	1.09%	1.09%	3.26%	3.26%	8.70%
<b>Total</b>	<b>10.87%</b>	<b>19.57%</b>	<b>28.26%</b>	<b>41.30%</b>	<b>100.00%</b>

Chart 6.7 illustrates that the most common degree among business owners is a bachelor's degree. This finding indicates that most business owners, regardless of ethnicity and gender, are educated. 81.52% of business owners have pursued a degree or certification beyond a high school diploma.



**Chart 6.7: Educational Attainment**



The results of the eSurvey are evidence that willing M/WBEs have demonstrated capacity comparable to non-minority male-owned businesses. Furthermore, the analysis shows that the capacity of M/WBEs and similarly situated non-minority male-owned businesses enumerated in the availability dataset and included in the disparity analysis is comparable. The profile of most businesses in the dataset, including M/WBEs and non-minority males, have the following characteristics:

- Employ ten or fewer employees.
- Performed multiple public and private purchase orders concurrently.
- Have gross revenue of \$1,000,000 or less.
- Operated their business up to 30 years.
- Have a bachelor's degree.

Considering the metrics reviewed in this socio-economic analysis the fact that the State Agencies awarded a disproportionate number of purchase orders to non-minority males cannot be attributed to any single factor or combination of capacity measures. Given the overwhelming evidence that the M/WBEs have comparable capacity to similarly situated non-minority male-owned businesses the findings documented in the statistical analysis presented in Chapter 7: *Prime Contract Disparity* cannot be explained as the result M/WBE business capacity.



#### ***IV. Prime Contractor Availability Analysis***

The prime contractor availability analysis is based on the 1,101 willing market area businesses enumerated from the three availability sources described above. The availability of willing market area businesses is presented by ethnicity, gender, and industry in the sections below.

##### ***A. Construction Prime Contractor Availability***

The distribution of available construction prime contractors is summarized in Table 6.15 below.

***African Americans*** account for 11.11% of the construction prime contractors in the City's market area.

***Asian Americans*** account for 0.00% of the construction prime contractors in the City's market area.

***Hispanic Americans*** account for 6.94% of the construction prime contractors in the City's market area.

***Native Americans*** account for 1.85% of the construction prime contractors in the City's market area.

***Caucasian Females*** account for 13.43% of the construction prime contractors in the City's market area.

***Non-minority Males*** account for 66.67% of the construction prime contractors in the City's market area.

***Minority-owned Businesses*** account for 19.91% of the construction prime contractors in the City's market area.

***Woman-owned Businesses*** account for 18.06% of the construction prime contractors in the City's market area.



**Table 6.15: Available Construction Prime Contractors,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
African Americans	11.11%
Asian Americans	0.00%
Hispanic Americans	6.94%
Native Americans	1.85%
Caucasian Females	13.43%
Non-minority Males	66.67%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
African American Females	2.31%
African American Males	8.80%
Asian American Females	0.00%
Asian American Males	0.00%
Hispanic American Females	1.85%
Hispanic American Males	5.09%
Native American Females	0.46%
Native American Males	1.39%
Caucasian Females	13.43%
Non-minority Males	66.67%
<b>TOTAL</b>	<b>100.00%</b>
<b>Minority and Females</b>	<b>Percent of Businesses</b>
Minority Business Enterprises	19.91%
Woman Business Enterprises	18.06%



## ***B. Professional Services Prime Contractor Availability***

The distribution of available professional services prime contractors is summarized in Table 6.16 below.

***African Americans*** account for 6.84% of the professional services prime contractors in the City's market area.

***Asian Americans*** account for 3.80% of the professional services prime contractors in the City's market area.

***Hispanic Americans*** account for 7.59% of the professional services prime contractors in the City's market area.

***Native Americans*** account for 2.78% of the professional services prime contractors in the City's market area.

***Caucasian Females*** account for 30.89% of the professional services prime contractors in the City's market area.

***Non-minority Males*** account for 48.10% of the professional services prime contractors in the City's market area.

***Minority-owned Businesses*** account for 21.01% of the professional services prime contractors in the City's market area.

***Woman-owned Businesses*** account for 38.23% of the professional services prime contractors in the City's market area.





**Table 6.16: Available Professional Services Prime Contractors,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
African Americans	6.84%
Asian Americans	3.80%
Hispanic Americans	7.59%
Native Americans	2.78%
Caucasian Females	30.89%
Non-minority Males	48.10%
TOTAL	100.00%
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
African American Females	3.29%
African American Males	3.54%
Asian American Females	1.01%
Asian American Males	2.78%
Hispanic American Females	2.53%
Hispanic American Males	5.06%
Native American Females	0.51%
Native American Males	2.28%
Caucasian Females	30.89%
Non-minority Males	48.10%
TOTAL	100.00%
<b>Minority and Females</b>	<b>Percent of Businesses</b>
Minority Business Enterprises	21.01%
Woman Business Enterprises	38.23%



### **C. Goods and Services Prime Contractor Availability**

The distribution of available goods and services prime contractors is summarized in Table 6.17 below.

**African Americans** account for 3.71% of the goods and services prime contractors in the City's market area.

**Asian Americans** account for 2.02% of the goods and services prime contractors in the City's market area.

**Hispanic Americans** account for 6.24% of the goods and services prime contractors in the City's market area.

**Native Americans** account for 0.34% of the goods and services prime contractors in the City's market area.

**Caucasian Females** account for 22.09% of the goods and services prime contractors in the City's market area.

**Non-minority Males** account for 65.60% of the goods and services prime contractors in the City's market area.

**Minority-owned Businesses** account for 12.31% of the goods and services prime contractors in the City's market area.

**Woman-owned Businesses** account for 26.64% of the goods and services prime contractors in the City's market area.



**Table 6.17: Available Goods and Services Prime Contractors,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
African Americans	3.71%
Asian Americans	2.02%
Hispanic Americans	6.24%
Native Americans	0.34%
Caucasian Females	22.09%
Non-minority Males	65.60%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
African American Females	1.35%
African American Males	2.36%
Asian American Females	1.01%
Asian American Males	1.01%
Hispanic American Females	2.19%
Hispanic American Males	4.05%
Native American Females	0.00%
Native American Males	0.34%
Caucasian Females	22.09%
Non-minority Males	65.60%
<b>TOTAL</b>	<b>100.00%</b>
<b>Minority and Females</b>	<b>Percent of Businesses</b>
Minority Business Enterprises	12.31%
Woman Business Enterprises	26.64%



## ***V. Subcontractor Availability Analysis***

### ***A. Source of Willing and Able Subcontractors***

Only prime contractors that provided services similar to the services provided by the subcontractors were included in the calculation of the subcontractor availability. Additional subcontractors in the City's market area were identified using the source in Table 6.18.

Subcontractor availability was not calculated for the goods and other services, as the subcontracting activity in that industry was limited.

**Table 6.18: Unique Subcontractor Availability Data Source**

Type Record	Type Information
Subcontract awards provided by the City	M/WBEs and non-M/WBEs

### ***B. Determination of Willingness and Capacity***

Utilized prime contractors, certified companies, and companies from directory sources that were surveyed and confirmed their willingness to work on the City's projects were used to prepare subcontractor availability. All businesses utilized as subcontractors were included, and only companies from the sources above that provided services similar to services provided by the subcontractors were included in the subcontractor availability. Subcontractors' NAICS Codes and keywords found in the subcontractor's names and work descriptions were used to identify businesses to be added to the subcontractor availability. Therefore, the determination of willingness and capacity was achieved. Furthermore, *Croson* does not require a separate measure of subcontractor capacity in the analysis of subcontractor availability.



### **C. Construction Subcontractor Availability**

The distribution of available construction subcontractors is summarized in Table 6.19 below.

*African Americans* account for 6.53% of the construction subcontractors in the City's market area.

*Asian Americans* account for 2.28% of the construction subcontractors in the City's market area.

*Hispanic Americans* account for 8.50% of the construction subcontractors in the City's market area.

*Native Americans* account for 1.21% of the construction subcontractors in the City's market area.

*Caucasian Females* account for 22.46% of the construction subcontractors in the City's market area.

*Non-minority Males* account for 59.03% of the construction subcontractors in the City's market area.

*Minority-owned Businesses* account for 18.51% of the construction subcontractors in the City's market area.

*Woman-owned Businesses* account for 28.98% of the construction subcontractors in the City's market area.



**Table 6.19: Available Construction Subcontractors  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
African Americans	6.53%
Asian Americans	2.28%
Hispanic Americans	8.50%
Native Americans	1.21%
Caucasian Females	22.46%
Non-minority Males	59.03%
TOTAL	100.00%
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
African American Females	2.58%
African American Males	3.95%
Asian American Females	0.46%
Asian American Males	1.82%
Hispanic American Females	3.19%
Hispanic American Males	5.31%
Native American Females	0.30%
Native American Males	0.91%
Caucasian Females	22.46%
Non-minority Males	59.03%
TOTAL	100.00%
<b>Minority and Females</b>	<b>Percent of Businesses</b>
Minority Business Enterprises	18.51%
Woman Business Enterprises	28.98%
TOTAL	100.00%



#### ***D. Professional Services Subcontractor Availability***

The distribution of available professional services subcontractors is summarized in Table 6.20 below.

***African Americans*** account for 8.37% of the professional services subcontractors in the City's market area.

***Asian Americans*** account for 3.80% of the professional services subcontractors in the City's market area.

***Hispanic Americans*** account for 11.03% of the professional services subcontractors in the City's market area.

***Native Americans*** account for 1.14% of the professional services subcontractors in the City's market area.

***Caucasian Females*** account for 23.19% of the professional services subcontractors in the City's market area.

***Non-minority Males*** account for 52.47% of the professional services subcontractors in the City's market area.

***Minority-owned Businesses*** account for 24.33% of the professional services subcontractors in the City's market area.

***Woman-owned Businesses*** account for 30.42% of the professional services subcontractors in the City's market area.



**Table 6.20: Available Professional Services  
Subcontractors, October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
African Americans	8.37%
Asian Americans	3.80%
Hispanic Americans	11.03%
Native Americans	1.14%
Caucasian Females	23.19%
Non-minority Males	52.47%
TOTAL	100.00%
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
African American Females	2.66%
African American Males	5.70%
Asian American Females	0.76%
Asian American Males	3.04%
Hispanic American Females	3.42%
Hispanic American Males	7.60%
Native American Females	0.38%
Native American Males	0.76%
Caucasian Females	23.19%
Non-minority Males	52.47%
TOTAL	100.00%
<b>Minority and Females</b>	<b>Percent of Businesses</b>
Minority Business Enterprises	24.33%
Woman Business Enterprises	30.42%





## ***VI. Summary***

This chapter presented the enumeration of willing and able market area businesses by ethnicity, gender, and industry. The capacity of the enumerated businesses was assessed using four methods. They included 1) a review of the distribution of contracts to determine the size of the contracts that the City awarded, 2) the identification of the largest contracts awarded to minority and woman-owned businesses, 3) an analysis of the frequency distribution of the City's contracts awarded to minority and woman-owned businesses and non-minority male-owned businesses, and 4) a threshold analysis that limited the range of the formal prime contracts analyzed by eliminating outliers.

The findings from these analyses illustrate that M/WBEs have a socioeconomic profile comparable to similarly situated Caucasian male-owned businesses and the capacity to perform large City contracts. Minority-owned businesses account for 17.08% of construction, professional services, and goods and services prime contractors, woman business enterprises account for 29.61%, and non-minority male-owned business account for 58.95%. Minority-owned businesses account for 18.51% of construction subcontractors, woman business enterprises account for 28.98%, and non-minority male-owned businesses account for 59.03%. Minority-owned businesses account for 24.33% of professional services subcontractors, woman business enterprises account for 30.42%, and non-minority male-owned businesses account for 52.47%.



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# CHAPTER 7: Prime Contract Disparity Analysis

## I. Introduction

The objective of this chapter is to determine if available Minority and Woman-owned Business Enterprises (M/WBEs) were underutilized on City of St. Petersburg (City) prime contracts during the October 1, 2014 to September 30, 2018 study period. Under a fair and equitable system of awarding prime contracts, the proportion of prime contract dollars awarded to M/WBEs should be relatively close to the corresponding proportion of available M/WBEs<sup>268</sup> in the relevant market area. If the ratio of utilized M/WBE prime contractors compared to available M/WBE prime contractors is less than one, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio. This analysis assumes a fair and equitable system.<sup>269</sup> *City of Richmond v. J.A. Croson Co. (Croson)*<sup>270</sup> states that an inference of discrimination can be made if the disparity is statistically significant. Under the *Croson* standard, non-minority male-owned businesses (non-M/WBEs) are not subjected to a statistical test of underutilization.

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

If the disparity ratio is found to be less than 1, for which the expected contract amount exceeds the actual contract amount, tests of statistical significance are performed. For parametric and non-parametric analyses, the p-value takes into account the number of contracts, amount of contract dollars, and variation in contract dollars. If the difference between the actual and expected number of contracts and total contract dollars has a p-value equal to or less than 0.05, the difference is statistically significant.<sup>271</sup>

In the simulation analysis, the p-value takes into account a combination of the distribution formulated from the empirical data and the contract dollar amounts. If the actual contract dollar amount, or actual contract rank, falls below the fifth percentile of the distribution, it denotes a p-value less than 0.05.

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<sup>268</sup> Availability is defined as the number of ready, willing, and able firms. The methodology for determining willing and able firms is detailed in Chapter 6: Prime Contractor and Subcontractor Availability Analysis.

<sup>269</sup> When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100-percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95-percent confidence level is the statistical standard used in physical and social sciences and is thus used in the present report to determine if an inference of discrimination can be made.

<sup>270</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

<sup>271</sup> This study does not test statistically the overutilization of minority or gender groups or the underutilization of non-minority males.



If the p-value from any one of the three methods is less than 0.05, the finding is reported in the disparity tables as statistically significant. If the p-value is greater than 0.05, the finding is reported as not statistically significant.

## **II. Disparity Analysis**

A prime contract disparity analysis was performed on the contracts awarded in the construction, professional services (including architecture and engineering), and goods and services industries during the October 1, 2014 to September 30, 2018 study period. The informal thresholds were defined according to the City’s procurement policies. The informal threshold for each industry is listed in Table 7.1.

**Table 7.1: Informal Contract Thresholds by Industry**

Industry	Contract Threshold
Construction	Under \$100,000
Professional Services	Under \$100,000
Goods and Services	Under \$100,000

The thresholds utilized in each industry for the formal contract analysis were derived from a statistical analysis, which calculated the contract values that would skew the disparity analysis. To determine which contracts were outliers, the 1.5 x IQR rule was applied to the prime contracts in each of the four industries. Outliers over the threshold were removed for each industry. The statistical analysis performed to define the formal contract thresholds analyzed is discussed in *Chapter 3: Prime Contractor Utilization Analysis*. The formal contract thresholds for each industry are listed in Table 7.2.

**Table 7.2: Formal Contract Thresholds by Industry**

Industry	Contract Threshold
Construction	Between \$100,000 and \$2,790,000
Professional Services	Between \$100,000 and \$1,400,000
Goods and Services	Between \$100,000 and \$1,150,000

The findings from the methods employed to calculate statistical significance, as discussed on page 7-1, are presented in the subsequent sections. The outcomes of the statistical analyses are presented in the “P-Value” column of the tables. A description of these statistical outcomes, as shown in the disparity tables, is presented below in Table 7.3.



**Table 7.3: Statistical Outcome Descriptions**

<b>P-Value Outcome</b>	<b>Definition of P-Value Outcome</b>
< .05 *	This underutilization is statistically significant.
not significant	<ul style="list-style-type: none"><li>• M/WBEs: This underutilization is not statistically significant.</li><li>• Non-minority males: This overutilization is not statistically significant.</li></ul>
< .05 †	This overutilization is statistically significant.
----	While this group was underutilized, there were too few available firms to determine statistical significance.
**	This study does not test statistically the overutilization of minority or gender groups or the underutilization of non-minority males.



## **A.     *Disparity Analysis: Informal Prime Contracts, by Industry***

### **1.       Construction Prime Contracts Valued Under \$100,000**

The disparity analysis of construction prime contracts valued under \$100,000 is described below and shown in Table 7.4 and Chart 7.1.

***African Americans*** represent 11.11% of the available construction businesses and received 0.20% of the dollars on construction contracts valued under \$100,000. This underutilization is statistically significant.

***Asian Americans*** represent 0.00% of the available construction businesses and received 0.00% of the dollars on construction contracts valued under \$100,000. While this group was underutilized, there were too few available firms to determine statistical significance.

***Hispanic Americans*** represent 6.94% of the available construction businesses and received 6.39% of the dollars on construction contracts valued under \$100,000. This underutilization is not statistically significant.

***Native Americans*** represent 1.85% of the available construction businesses and received 0.00% of the dollars on construction contracts valued under \$100,000. This underutilization is statistically significant.

***Caucasian Females*** represent 13.43% of the available construction businesses and received 9.75% of the dollars on construction contracts valued under \$100,000. This underutilization is statistically significant.

***Non-minority Males*** represent 66.67% of the available construction businesses and received 83.66% of dollars on construction contracts valued under \$100,000. This overutilization is statistically significant.

***Minority-owned Businesses*** represent 19.91% of the available construction businesses and received 6.59% of dollars on construction contracts valued under \$100,000. This underutilization is statistically significant.

***Woman-owned Businesses*** represent 18.06% of the available construction businesses and received 12.80% of dollars on construction contracts valued under \$100,000. This underutilization is statistically significant.



**Table 7.4: Disparity Analysis: Construction Prime Contracts Valued Under \$100,000,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African Americans	\$11,064	0.20%	11.11%	\$600,660	-\$589,595	0.02	< .05 *
Asian Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic Americans	\$345,441	6.39%	6.94%	\$375,412	-\$29,971	0.92	not significant
Native Americans	\$0	0.00%	1.85%	\$100,110	-\$100,110	0.00	< .05 *
Caucasian Females	\$526,933	9.75%	13.43%	\$725,797	-\$198,864	0.73	< .05 *
Non-minority Males	\$4,522,498	83.66%	66.67%	\$3,603,957	\$918,541	1.25	< .05 †
<b>TOTAL</b>	<b>\$5,405,936</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$5,405,936</b>			
<b>Ethnicity and Gender</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African American Females	\$0	0.00%	2.31%	\$125,137	-\$125,137	0.00	< .05 *
African American Males	\$11,064	0.20%	8.80%	\$475,522	-\$464,458	0.02	< .05 *
Asian American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Asian American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Hispanic American Females	\$164,841	3.05%	1.85%	\$100,110	\$64,731	1.65	**
Hispanic American Males	\$180,600	3.34%	5.09%	\$275,302	-\$94,702	0.66	< .05 *
Native American Females	\$0	0.00%	0.46%	\$25,027	-\$25,027	0.00	----
Native American Males	\$0	0.00%	1.39%	\$75,082	-\$75,082	0.00	< .05 *
Caucasian Females	\$526,933	9.75%	13.43%	\$725,797	-\$198,864	0.73	< .05 *
Non-minority Males	\$4,522,498	83.66%	66.67%	\$3,603,957	\$918,541	1.25	< .05 †
<b>TOTAL</b>	<b>\$5,405,936</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$5,405,936</b>			
<b>Minority and Females</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
Minority Business Enterprises	\$356,505	6.59%	19.91%	\$1,076,182	-\$719,676	0.33	< .05 *
Woman Business Enterprises	\$691,773	12.80%	18.06%	\$976,072	-\$284,298	0.71	< .05 *

( \* ) denotes a statistically significant underutilization.

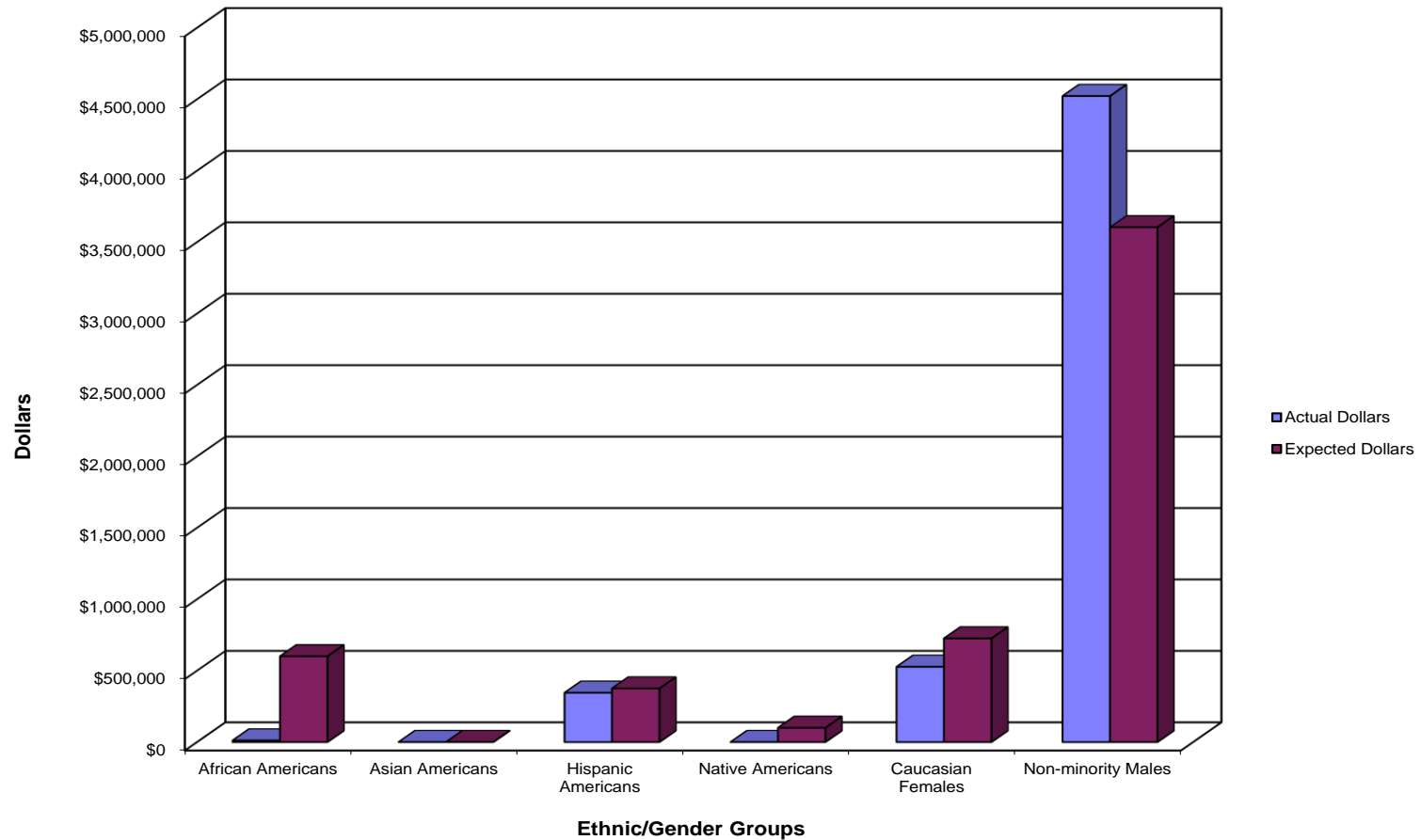
( † ) denotes a statistically significant overutilization.

( \*\* ) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

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



**Chart 7.1: Disparity Analysis: Construction Prime Contracts Valued Under \$100,000,  
October 1, 2014 to September 30, 2018**



## 2. Professional Services Prime Contracts Valued Under \$100,000

The disparity analysis of professional services prime contracts valued under \$100,000 is described below and shown in Table 7.5 and Chart 7.2.

**African Americans** represent 6.84% of the available professional services businesses and received 0.54% of the dollars on professional services contracts valued under \$100,000. This underutilization is statistically significant.

**Asian Americans** represent 3.80% of the available professional services businesses and received 3.25% of the dollars on professional services contracts valued under \$100,000. This underutilization is not statistically significant.

**Hispanic Americans** represent 7.59% of the available professional services businesses and received 5.63% of the dollars on professional services contracts valued under \$100,000. This underutilization is statistically significant.

**Native Americans** represent 2.78% of the available professional services businesses and received 0.00% of the dollars on professional services contracts valued under \$100,000. This underutilization is statistically significant.

**Caucasian Females** represent 30.89% of the available professional services businesses and received 4.67% of the dollars on professional services contracts valued under \$100,000. This underutilization is statistically significant.

**Non-minority Males** represent 48.10% of the available professional services businesses and received 85.91% of dollars on professional services contracts valued under \$100,000. This overutilization is statistically significant.

**Minority-owned Businesses** represent 21.01% of the available professional services businesses and received 9.42% of dollars on professional services contracts valued under \$100,000. This underutilization is statistically significant.

**Woman-owned Businesses** represent 38.23% of the available professional services businesses and received 6.26% of dollars on professional services contracts valued under \$100,000. This underutilization is statistically significant.





**Table 7.5: Disparity Analysis: Professional Services Prime Contracts Valued Under \$100,000,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African Americans	\$46,316	0.54%	6.84%	\$587,760	-\$541,444	0.08	< .05 *
Asian Americans	\$279,572	3.25%	3.80%	\$326,533	-\$46,961	0.86	not significant
Hispanic Americans	\$484,369	5.63%	7.59%	\$653,067	-\$168,698	0.74	< .05 *
Native Americans	\$0	0.00%	2.78%	\$239,458	-\$239,458	0.00	< .05 *
Caucasian Females	\$401,562	4.67%	30.89%	\$2,655,804	-\$2,254,242	0.15	< .05 *
Non-minority Males	\$7,386,892	85.91%	48.10%	\$4,136,089	\$3,250,803	1.79	< .05 †
<b>TOTAL</b>	<b>\$8,598,710</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$8,598,710</b>			
<b>Ethnicity and Gender</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African American Females	\$5,073	0.06%	3.29%	\$282,996	-\$277,923	0.02	< .05 *
African American Males	\$41,243	0.48%	3.54%	\$304,764	-\$263,522	0.14	< .05 *
Asian American Females	\$131,730	1.53%	1.01%	\$87,076	\$44,654	1.51	**
Asian American Males	\$147,843	1.72%	2.78%	\$239,458	-\$91,615	0.62	< .05 *
Hispanic American Females	\$0	0.00%	2.53%	\$217,689	-\$217,689	0.00	< .05 *
Hispanic American Males	\$484,369	5.63%	5.06%	\$435,378	\$48,991	1.11	**
Native American Females	\$0	0.00%	0.51%	\$43,538	-\$43,538	0.00	----
Native American Males	\$0	0.00%	2.28%	\$195,920	-\$195,920	0.00	< .05 *
Caucasian Females	\$401,562	4.67%	30.89%	\$2,655,804	-\$2,254,242	0.15	< .05 *
Non-minority Males	\$7,386,892	85.91%	48.10%	\$4,136,089	\$3,250,803	1.79	< .05 †
<b>TOTAL</b>	<b>\$8,598,710</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$8,598,710</b>			
<b>Minority and Females</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
Minority Business Enterprises	\$810,257	9.42%	21.01%	\$1,806,818	-\$996,561	0.45	< .05 *
Woman Business Enterprises	\$538,364	6.26%	38.23%	\$3,287,102	-\$2,748,738	0.16	< .05 *

( \* ) denotes a statistically significant underutilization.

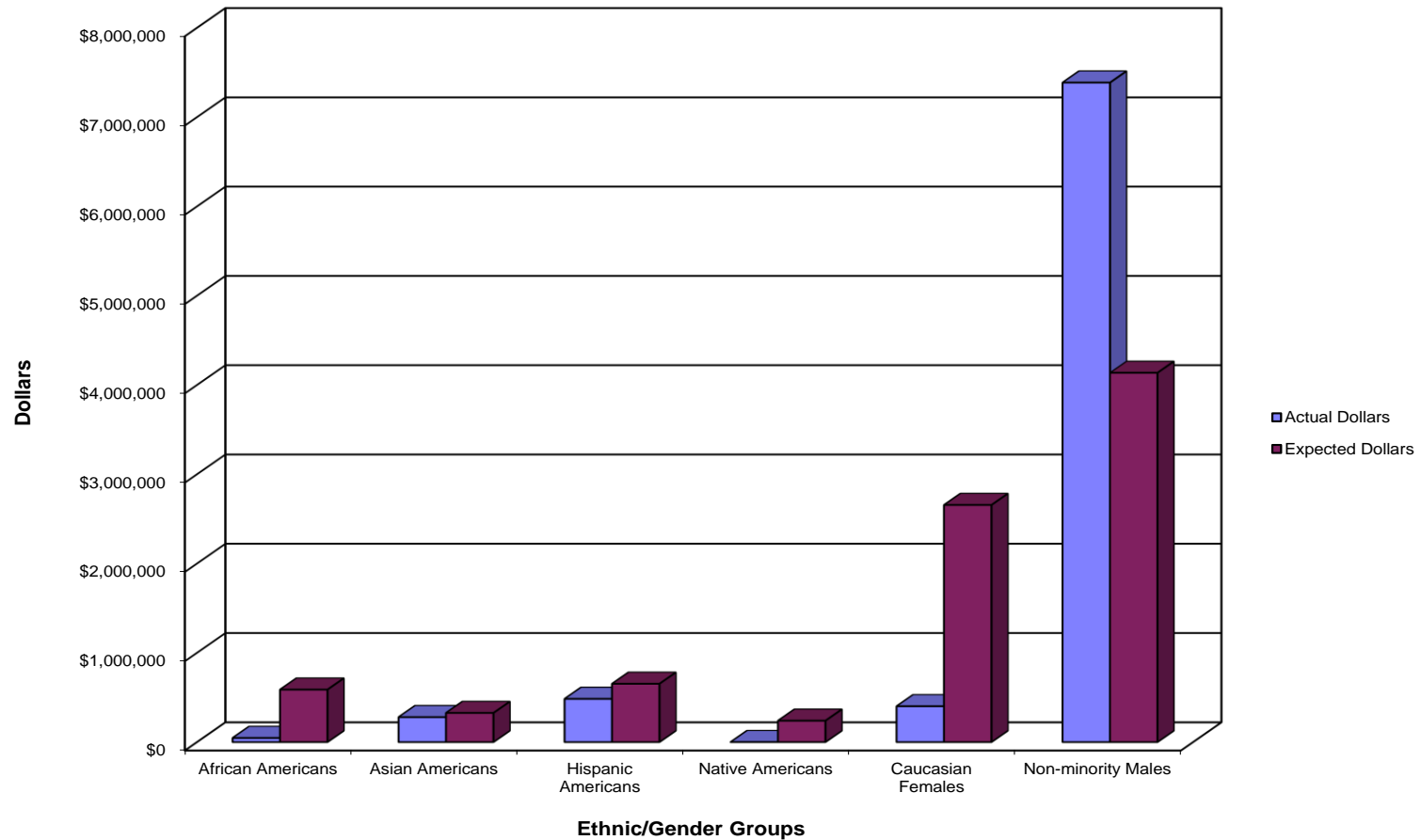
( † ) denotes a statistically significant overutilization.

( \*\* ) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

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



**Chart 7.2: Disparity Analysis: Professional Services Prime Contracts Valued Under \$100,000,  
October 1, 2014 to September 30, 2018**



### 3. Goods and Services Prime Contracts Valued Under \$100,000

The disparity analysis of goods and services prime contracts valued under \$100,000 is described below and shown in Table 7.6 and Chart 7.3.

***African Americans*** represent 3.71% of the available goods and services businesses and received 1.06% of the dollars on goods and services contracts valued under \$100,000. This underutilization is statistically significant.

***Asian Americans*** represent 2.02% of the available goods and services businesses and received 1.73% of the dollars on goods and services contracts valued under \$100,000. This underutilization is not statistically significant.

***Hispanic Americans*** represent 6.24% of the available goods and services businesses and received 1.90% of the dollars on goods and services contracts valued under \$100,000. This underutilization is statistically significant.

***Native Americans*** represent 0.34% of the available goods and services businesses and received 0.01% of the dollars on goods and services contracts valued under \$100,000. While this group was underutilized, there were too few contracts awarded to determine statistical significance.

***Caucasian Females*** represent 22.09% of the available goods and services businesses and received 6.27% of the dollars on goods and services contracts valued under \$100,000. This underutilization is statistically significant.

***Non-minority Males*** represent 65.60% of the available goods and services businesses and received 89.03% of dollars on goods and services contracts valued under \$100,000. This overutilization is statistically significant.

***Minority-owned Businesses*** represent 12.31% of the available goods and services businesses and received 4.70% of dollars on goods and services contracts valued under \$100,000. This underutilization is statistically significant.

***Woman-owned Businesses*** represent 26.64% of the available goods and services businesses and received 8.23% of dollars on goods and services contracts valued under \$100,000. This underutilization is statistically significant.



**Table 7.6: Disparity Analysis: Goods and Services Prime Contracts Valued Under \$100,000,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African Americans	\$319,449	1.06%	3.71%	\$1,122,868	-\$803,419	0.28	< .05 *
Asian Americans	\$524,758	1.73%	2.02%	\$612,474	-\$87,716	0.86	not significant
Hispanic Americans	\$573,989	1.90%	6.24%	\$1,888,460	-\$1,314,471	0.30	< .05 *
Native Americans	\$2,992	0.01%	0.34%	\$102,079	-\$99,087	0.03	----
Caucasian Females	\$1,898,109	6.27%	22.09%	\$6,686,170	-\$4,788,061	0.28	< .05 *
Non-minority Males	\$26,947,106	89.03%	65.60%	\$19,854,352	\$7,092,755	1.36	< .05 †
<b>TOTAL</b>	<b>\$30,266,402</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$30,266,402</b>			
<b>Ethnicity and Gender</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African American Females	\$14,754	0.05%	1.35%	\$408,316	-\$393,562	0.04	< .05 *
African American Males	\$304,695	1.01%	2.36%	\$714,553	-\$409,858	0.43	< .05 *
Asian American Females	\$308,407	1.02%	1.01%	\$306,237	\$2,170	1.01	**
Asian American Males	\$216,351	0.71%	1.01%	\$306,237	-\$89,886	0.71	not significant
Hispanic American Females	\$268,710	0.89%	2.19%	\$663,513	-\$394,803	0.40	< .05 *
Hispanic American Males	\$305,279	1.01%	4.05%	\$1,224,947	-\$919,669	0.25	< .05 *
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$2,992	0.01%	0.34%	\$102,079	-\$99,087	0.03	----
Caucasian Females	\$1,898,109	6.27%	22.09%	\$6,686,170	-\$4,788,061	0.28	< .05 *
Non-minority Males	\$26,947,106	89.03%	65.60%	\$19,854,352	\$7,092,755	1.36	< .05 †
<b>TOTAL</b>	<b>\$30,266,402</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$30,266,402</b>			
<b>Minority and Females</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
Minority Business Enterprises	\$1,421,187	4.70%	12.31%	\$3,725,881	-\$2,304,694	0.38	< .05 *
Woman Business Enterprises	\$2,489,980	8.23%	26.64%	\$8,064,235	-\$5,574,255	0.31	< .05 *

( \* ) denotes a statistically significant underutilization.

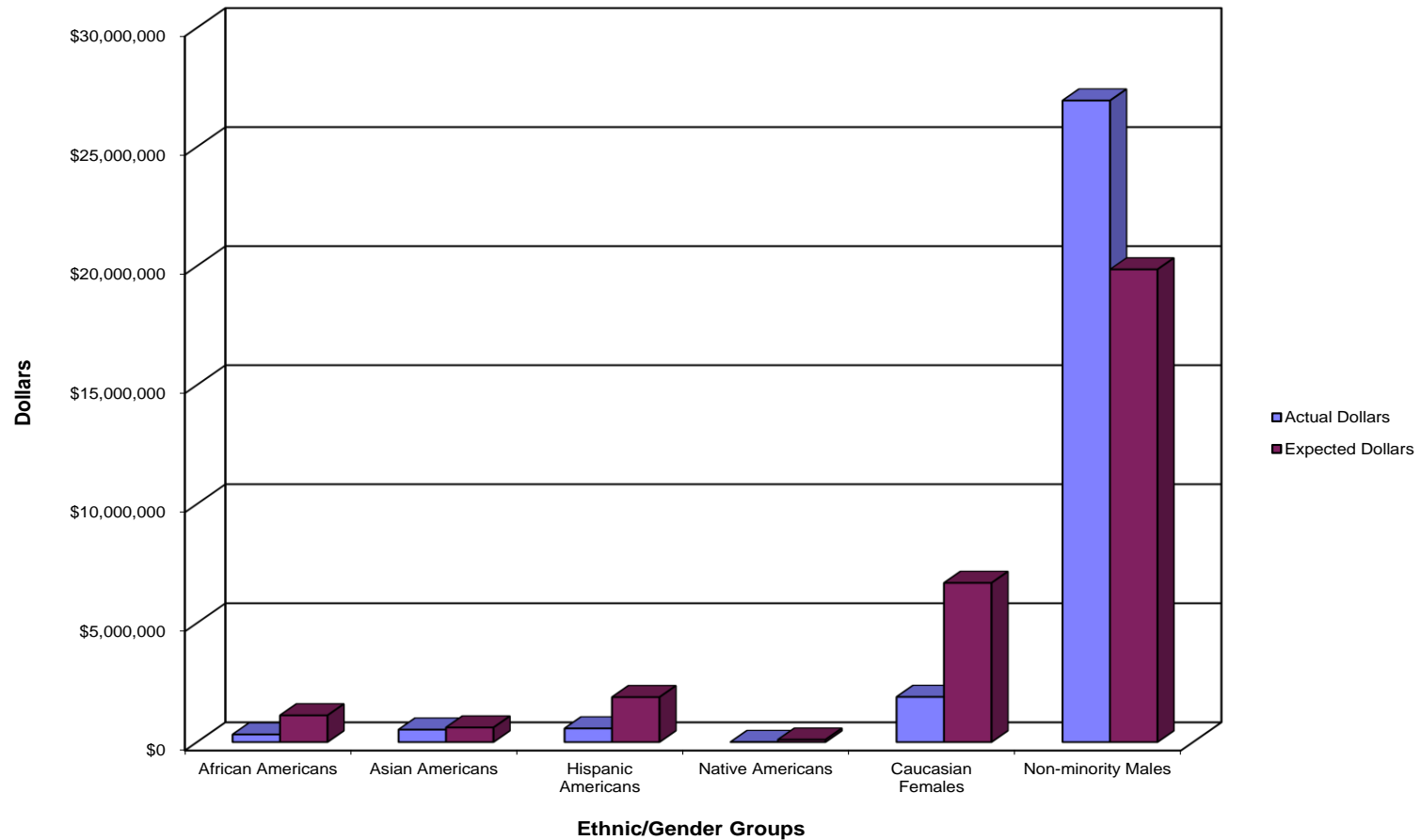
( † ) denotes a statistically significant overutilization.

( \*\* ) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

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



**Chart 7.3: Disparity Analysis: Goods and Services Prime Contracts Valued Under \$100,000,  
October 1, 2014 to September 30, 2018**



**B. Disparity Analysis: Formal Prime Contracts Valued, by Industry**

**1. Construction Prime Contracts Valued Between \$100,000 and \$2,790,000**

The disparity analysis of construction prime contracts valued between \$100,000 and \$2,790,000 is described below and shown in Table 7.7 and Chart 7.4.

*African Americans* represent 11.11% of the available construction businesses and received 0.18% of the dollars on construction contracts valued between \$100,000 and \$2,790,000. This underutilization is statistically significant.

*Asian Americans* represent 0.00% of the available construction businesses and received 1.17% of the dollars on construction contracts valued between \$100,000 and \$2,790,000. This study does not test statistically the overutilization of M/WBEs.

*Hispanic Americans* represent 6.94% of the available construction businesses and received 4.71% of the dollars on construction contracts valued between \$100,000 and \$2,790,000. This underutilization is statistically significant.

*Native Americans* represent 1.85% of the available construction businesses and received 0.00% of the dollars on construction contracts valued between \$100,000 and \$2,790,000. While this group was underutilized, there were too few available firms to determine statistical significance.

*Caucasian Females* represent 13.43% of the available construction businesses and received 2.82% of the dollars on construction contracts valued between \$100,000 and \$2,790,000. This underutilization is statistically significant.

*Non-minority Males* represent 66.67% of the available construction businesses and received 91.11% of the dollars on construction contracts valued between \$100,000 and \$2,790,000. This overutilization is statistically significant.

*Minority-owned Businesses* represent 19.91% of the available construction businesses and received 6.06% of the dollars on construction contracts valued between \$100,000 and \$2,790,000. This underutilization is statistically significant.

*Woman-owned Businesses* represent 18.06% of the available construction businesses and received 3.39% of the dollars on construction contracts valued between \$100,000 and \$2,790,000. This underutilization is statistically significant.



**Table 7.7: Disparity Analysis: Construction Prime Contracts Valued Between \$100,000 and \$2,790,000,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African Americans	\$150,000	0.18%	11.11%	\$9,048,090	-\$8,898,090	0.02	< .05 *
Asian Americans	\$951,141	1.17%	0.00%	\$0	\$951,141	----	**
Hispanic Americans	\$3,836,293	4.71%	6.94%	\$5,655,057	-\$1,818,764	0.68	< .05 *
Native Americans	\$0	0.00%	1.85%	\$1,508,015	-\$1,508,015	0.00	----
Caucasian Females	\$2,299,715	2.82%	13.43%	\$10,933,109	-\$8,633,395	0.21	< .05 *
Non-minority Males	\$74,195,666	91.11%	66.67%	\$54,288,543	\$19,907,123	1.37	< .05 †
<b>TOTAL</b>	<b>\$81,432,814</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$81,432,814</b>			
<b>Ethnicity and Gender</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African American Females	\$0	0.00%	2.31%	\$1,885,019	-\$1,885,019	0.00	< .05 *
African American Males	\$150,000	0.18%	8.80%	\$7,163,072	-\$7,013,072	0.02	< .05 *
Asian American Females	\$292,449	0.36%	0.00%	\$0	\$292,449	----	**
Asian American Males	\$658,692	0.81%	0.00%	\$0	\$658,692	----	**
Hispanic American Females	\$167,693	0.21%	1.85%	\$1,508,015	-\$1,340,322	0.11	not significant
Hispanic American Males	\$3,668,600	4.51%	5.09%	\$4,147,041	-\$478,441	0.88	not significant
Native American Females	\$0	0.00%	0.46%	\$377,004	-\$377,004	0.00	----
Native American Males	\$0	0.00%	1.39%	\$1,131,011	-\$1,131,011	0.00	----
Caucasian Females	\$2,299,715	2.82%	13.43%	\$10,933,109	-\$8,633,395	0.21	< .05 *
Non-minority Males	\$74,195,666	91.11%	66.67%	\$54,288,543	\$19,907,123	1.37	< .05 †
<b>TOTAL</b>	<b>\$81,432,814</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$81,432,814</b>			
<b>Minority and Females</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
Minority Business Enterprises	\$4,937,434	6.06%	19.91%	\$16,211,162	-\$11,273,729	0.30	< .05 *
Woman Business Enterprises	\$2,759,856	3.39%	18.06%	\$14,703,147	-\$11,943,291	0.19	< .05 *

( \* ) denotes a statistically significant underutilization.

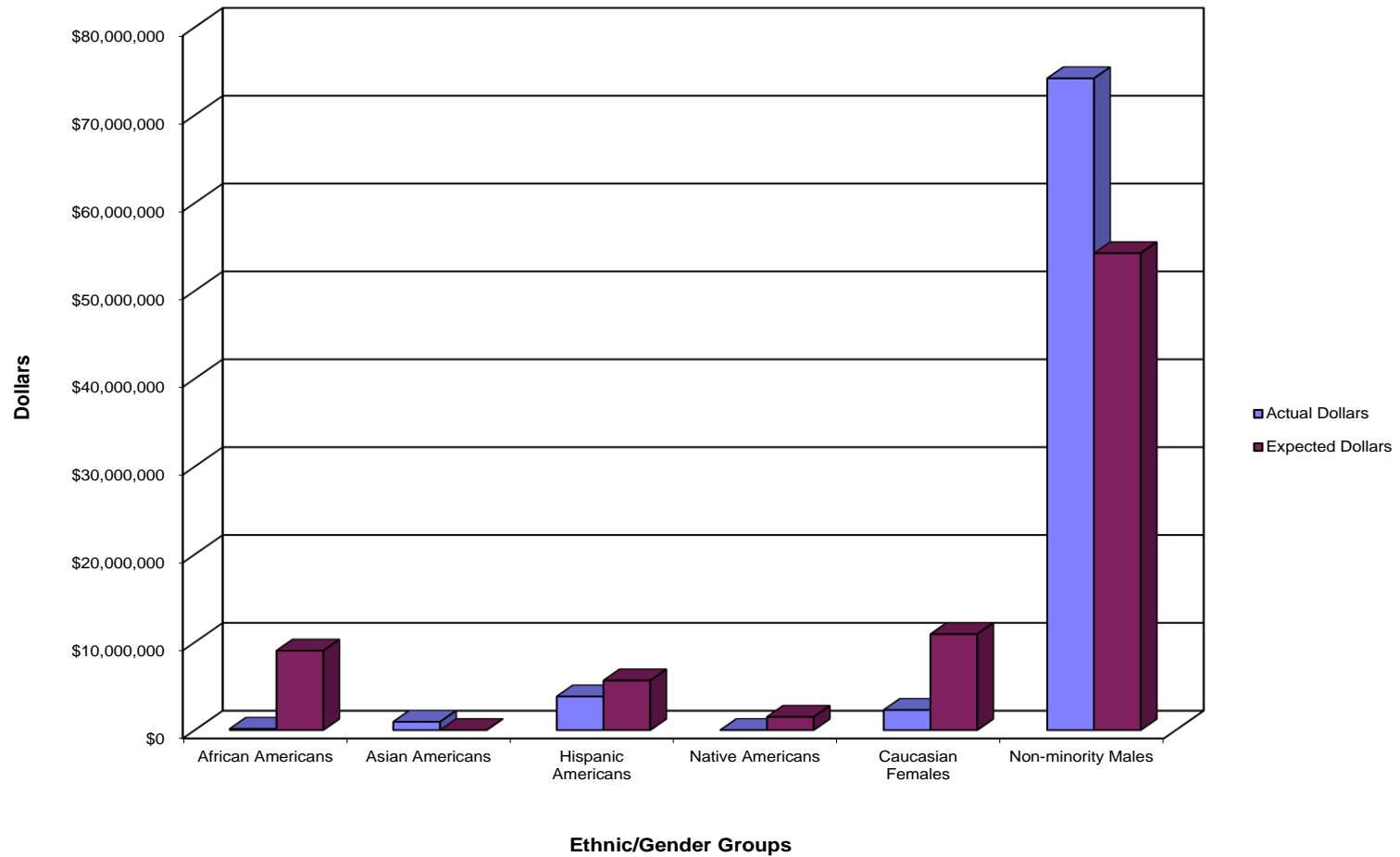
( † ) denotes a statistically significant overutilization.

( \*\* ) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

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



**Chart 7.4: Disparity Analysis: Construction Prime Contracts Valued Between \$100,000 and \$2,790,000,  
October 1, 2014 to September 30, 2018**





## **2. Professional Services Prime Contracts Valued Between \$100,000 and \$1,400,000**

The disparity analysis of professional service prime contracts valued between \$100,000 and \$1,400,000 is described below and shown in Table 7.8 and Chart 7.5.

***African Americans*** represent 6.84% of the available professional services businesses and received 0.95% of the dollars on professional services contracts valued between \$100,000 and \$1,400,000. This underutilization is statistically significant.

***Asian Americans*** represent 3.80% of the available professional services businesses and received 4.77% of the dollars on professional services contracts valued between \$100,000 and \$1,400,000. This study does not test statistically the overutilization of M/WBEs.

***Hispanic Americans*** represent 7.59% of the available professional services businesses and received 3.11% of the dollars on professional services contracts valued between \$100,000 and \$1,400,000. This underutilization is not statistically significant.

***Native Americans*** represent 2.78% of the available professional services businesses and received 0.00% of the dollars on professional services contracts valued between \$100,000 and \$1,400,000. This underutilization is statistically significant.

***Caucasian Females*** represent 30.89% of the available professional services businesses and received 6.37% of the dollars on professional services contracts valued between \$100,000 and \$1,400,000. This underutilization is statistically significant.

***Non-minority Males*** represent 48.10% of the available professional services businesses and received 84.80% of the dollars on professional services contracts valued between \$100,000 and \$1,400,000. This overutilization is statistically significant.

***Minority-owned Businesses*** represent 21.01% of the available professional services businesses and received 8.83% of the dollars on professional services contracts valued between \$100,000 and \$1,400,000. This underutilization is statistically significant.

***Woman-owned Businesses*** represent 38.23% of the available professional services businesses and received 11.52% of the dollars on professional services contracts valued between \$100,000 and \$1,400,000. This underutilization is statistically significant.



**Table 7.8: Disparity Analysis: Professional Services Prime Contracts Valued Between \$100,000 and \$1,400,000,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African Americans	\$400,000	0.95%	6.84%	\$2,884,378	-\$2,484,378	0.14	< .05 *
Asian Americans	\$2,012,755	4.77%	3.80%	\$1,602,432	\$410,323	1.26	**
Hispanic Americans	\$1,311,190	3.11%	7.59%	\$3,204,864	-\$1,893,675	0.41	not significant
Native Americans	\$0	0.00%	2.78%	\$1,175,117	-\$1,175,117	0.00	< .05 *
Caucasian Females	\$2,688,465	6.37%	30.89%	\$13,033,114	-\$10,344,649	0.21	< .05 *
Non-minority Males	\$35,784,967	84.80%	48.10%	\$20,297,473	\$15,487,495	1.76	< .05 †
<b>TOTAL</b>	<b>\$42,197,377</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$42,197,377</b>			
<b>Ethnicity and Gender</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African American Females	\$0	0.00%	3.29%	\$1,388,774	-\$1,388,774	0.00	< .05 *
African American Males	\$400,000	0.95%	3.54%	\$1,495,603	-\$1,095,603	0.27	not significant
Asian American Females	\$1,912,755	4.53%	1.01%	\$427,315	\$1,485,440	4.48	**
Asian American Males	\$100,000	0.24%	2.78%	\$1,175,117	-\$1,075,117	0.09	not significant
Hispanic American Females	\$261,190	0.62%	2.53%	\$1,068,288	-\$807,098	0.24	not significant
Hispanic American Males	\$1,050,000	2.49%	5.06%	\$2,136,576	-\$1,086,576	0.49	not significant
Native American Females	\$0	0.00%	0.51%	\$213,658	-\$213,658	0.00	----
Native American Males	\$0	0.00%	2.28%	\$961,459	-\$961,459	0.00	----
Caucasian Females	\$2,688,465	6.37%	30.89%	\$13,033,114	-\$10,344,649	0.21	< .05 *
Non-minority Males	\$35,784,967	84.80%	48.10%	\$20,297,473	\$15,487,495	1.76	< .05 †
<b>TOTAL</b>	<b>\$42,197,377</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$42,197,377</b>			
<b>Minority and Females</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
Minority Business Enterprises	\$3,723,945	8.83%	21.01%	\$8,866,791	-\$5,142,846	0.42	< .05 *
Woman Business Enterprises	\$4,862,410	11.52%	38.23%	\$16,131,149	-\$11,268,739	0.30	< .05 *

( \* ) denotes a statistically significant underutilization.

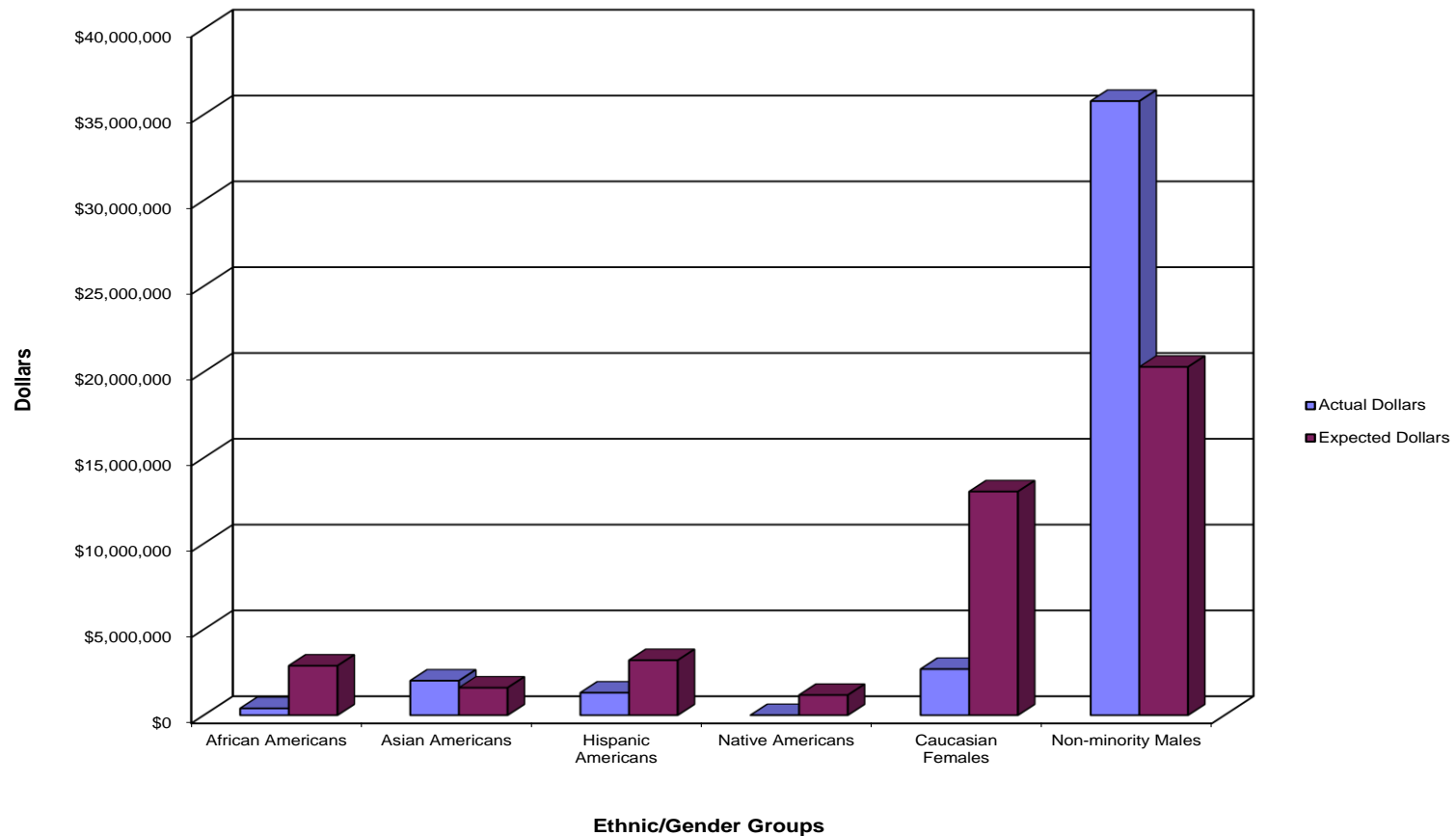
( † ) denotes a statistically significant overutilization.

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

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



**Chart 7.5: Disparity Analysis: Professional Services Prime Contracts Valued Between \$100,000 and \$1,400,000, October 1, 2014 to September 30, 2018**



### **3. Goods and Services Prime Contracts Valued Between \$100,000 and \$1,150,000**

The disparity analysis of goods and services prime contracts valued between \$100,000 and \$1,150,000 is described below and shown in Table 7.9 and Chart 7.6.

***African Americans*** represent 3.71% of the available goods and services businesses and received 2.16% of the dollars on goods and services contracts valued between \$100,000 and \$1,150,000. This underutilization is not statistically significant.

***Asian Americans*** represent 2.02% of the available goods and services businesses and received 1.40% of the dollars on goods and services contracts valued between \$100,000 and \$1,150,000. This underutilization is not statistically significant.

***Hispanic Americans*** represent 6.24% of the available goods and services businesses and received 0.00% of the dollars on goods and services contracts valued between \$100,000 and \$1,150,000. This underutilization is statistically significant.

***Native Americans*** represent 0.34% of the available goods and services businesses and received 0.70% of the dollars on goods and services contracts valued between \$100,000 and \$1,150,000. This study does not test statistically the overutilization of minority or gender groups.

***Caucasian Females*** represent 22.09% of the available goods and services businesses and received 4.24% of the dollars on goods and services contracts valued between \$100,000 and \$1,150,000. This underutilization is statistically significant.

***Non-minority Males*** represent 65.60% of the available goods and services businesses and received 91.50% of the dollars on goods and services contracts valued between \$100,000 and \$1,150,000. This overutilization is statistically significant.

***Minority-owned Businesses*** represent 12.31% of the available goods and services businesses and received 4.27% of the dollars on goods and services contracts valued between \$100,000 and \$1,150,000. This underutilization is statistically significant.

***Woman-owned Businesses*** represent 26.64% of the available goods and services businesses and received 4.24% of the dollars on goods and services contracts valued between \$100,000 and \$1,150,000. This underutilization is statistically significant.



**Table 7.9: Disparity Analysis: Goods and Services Prime Contracts Valued Between \$100,000 and \$1,150,000,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African Americans	\$2,186,122	2.16%	3.71%	\$3,748,401	-\$1,562,279	0.58	not significant
Asian Americans	\$1,414,860	1.40%	2.02%	\$2,044,582	-\$629,722	0.69	not significant
Hispanic Americans	\$0	0.00%	6.24%	\$6,304,129	-\$6,304,129	0.00	< .05 *
Native Americans	\$708,265	0.70%	0.34%	\$340,764	\$367,501	2.08	**
Caucasian Females	\$4,282,645	4.24%	22.09%	\$22,320,023	-\$18,037,378	0.19	< .05 *
Non-minority Males	\$92,444,549	91.50%	65.60%	\$66,278,542	\$26,166,007	1.39	< .05 †
<b>TOTAL</b>	<b>\$101,036,440</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$101,036,440</b>			
<b>Ethnicity and Gender</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African American Females	\$0	0.00%	1.35%	\$1,363,055	-\$1,363,055	0.00	< .05 *
African American Males	\$2,186,122	2.16%	2.36%	\$2,385,346	-\$199,224	0.92	not significant
Asian American Females	\$0	0.00%	1.01%	\$1,022,291	-\$1,022,291	0.00	< .05 *
Asian American Males	\$1,414,860	1.40%	1.01%	\$1,022,291	\$392,569	1.38	**
Hispanic American Females	\$0	0.00%	2.19%	\$2,214,964	-\$2,214,964	0.00	< .05 *
Hispanic American Males	\$0	0.00%	4.05%	\$4,089,165	-\$4,089,165	0.00	< .05 *
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$708,265	0.70%	0.34%	\$340,764	\$367,501	2.08	**
Caucasian Females	\$4,282,645	4.24%	22.09%	\$22,320,023	-\$18,037,378	0.19	< .05 *
Non-minority Males	\$92,444,549	91.50%	65.60%	\$66,278,542	\$26,166,007	1.39	< .05 †
<b>TOTAL</b>	<b>\$101,036,440</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$101,036,440</b>			
<b>Minority and Females</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
Minority Business Enterprises	\$4,309,247	4.27%	12.31%	\$12,437,875	-\$8,128,629	0.35	< .05 *
Woman Business Enterprises	\$4,282,645	4.24%	26.64%	\$26,920,333	-\$22,637,688	0.16	< .05 *

( \* ) denotes a statistically significant underutilization.

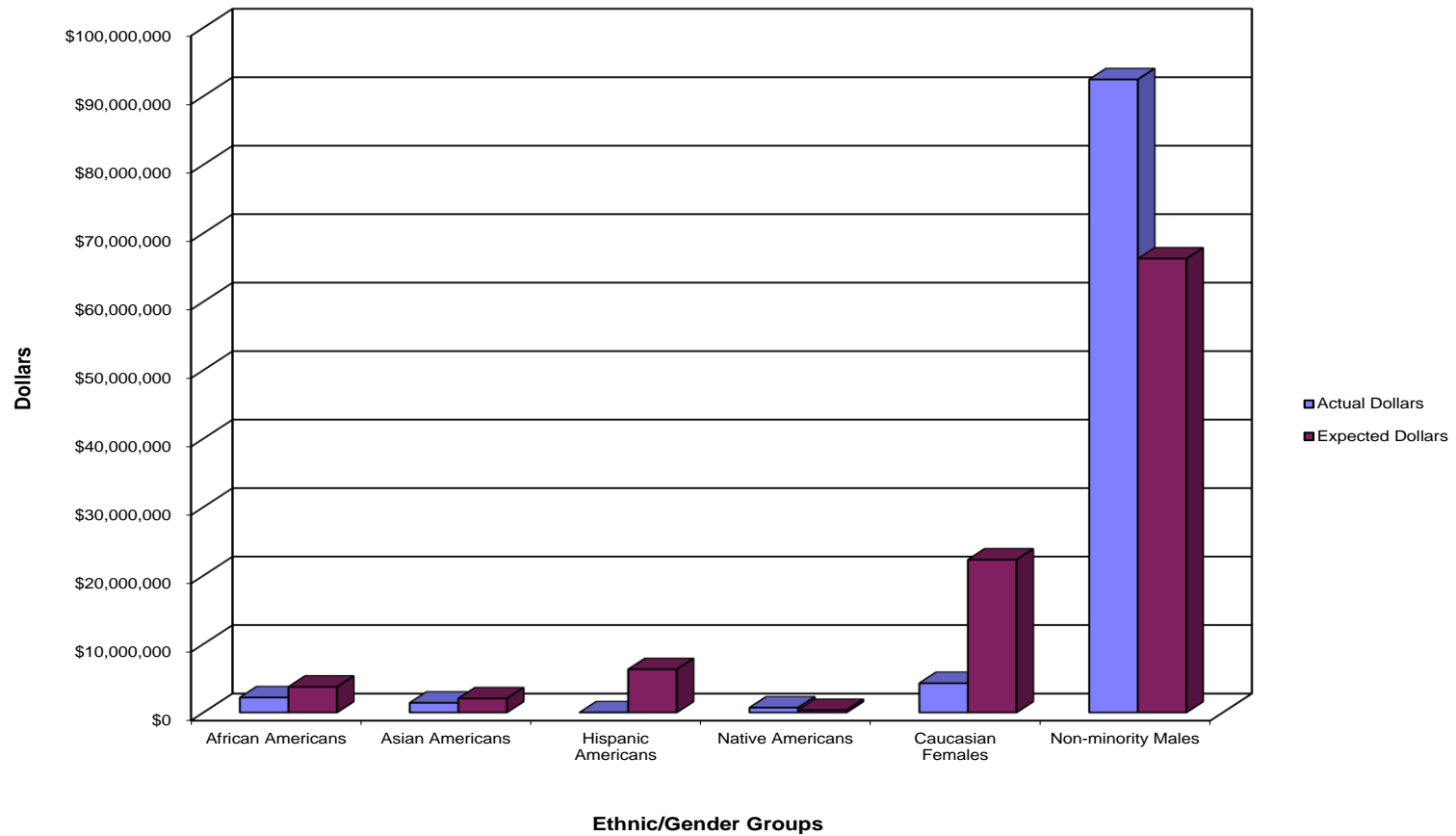
( † ) denotes a statistically significant overutilization.

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

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



**Chart 7.6: Disparity Analysis: Goods and Services Prime Contracts Valued Between \$100,000 and \$1,150,000,  
October 1, 2014 to September 30, 2018**



### ***III. Disparity Analysis Summary***

#### ***A. Construction Prime Contracts***

As indicated in Table 7.10, disparity was found for African American, Native American, Caucasian female, minority-owned business, and woman-owned business prime contractors on construction contracts valued under \$100,000. Disparity was also found for African American, Hispanic American, Caucasian female, minority-owned business, and woman-owned business prime contractors on construction contracts valued between \$100,000 and \$2,790,000.

**Table 7.10: Disparity Summary: Construction Prime Contract Dollars,  
October 1, 2014 to September 30, 2018**

Ethnicity/Gender	Construction	
	Contracts Valued Under \$100,000	Contracts Valued Between \$100,000 and \$2,790,000
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	----	No Disparity
Hispanic Americans	No Disparity	<i>Disparity</i>
Native Americans	<i>Disparity</i>	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>
Minority-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Woman-owned Businesses	<i>Disparity</i>	<i>Disparity</i>

( ---- ) the statistical test could not detect the disparity because there were no contracts awarded, too few contracts awarded, or too few available businesses.



### ***B. Professional Services Prime Contracts***

As indicated in Table 7.11, disparity was found for African American, Hispanic American, Native American, Caucasian female, minority-owned business, and woman-owned business prime contractors on professional services contracts valued under \$100,000. Disparity was also found for African American, Native American, Caucasian female, minority-owned business, and woman-owned business prime contractors on professional services contracts valued between \$100,000 and \$1,400,000.

**Table 7.11: Disparity Summary: Professional Services Prime Contract Dollars,  
October 1, 2014 to September 30, 2018**

Ethnicity/Gender	Professional Services	
	Contracts Valued Under \$100,000	Contracts Valued Between \$100,000 and \$1,400,000
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	No Disparity
Native Americans	<i>Disparity</i>	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>
Minority-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Woman-owned Businesses	<i>Disparity</i>	<i>Disparity</i>





### **C. Goods and Services Prime Contracts**

As indicated in Table 7.12, disparity was found for African American, Hispanic American, Caucasian female, minority-owned business, and woman-owned business prime contractors on goods and services contracts valued under \$100,000. Disparity was also found for Hispanic American, Caucasian female, minority-owned business, and woman-owned business prime contractors on goods and services contracts valued between \$100,000 and \$1,150,000.

**Table 7.12: Disparity Summary: Goods and Services Prime Contract Dollars, October 1, 2014 to September 30, 2018**

Ethnicity/Gender	Goods and Services	
	Contracts Valued Under \$100,000	Contracts Valued Between \$100,000 and \$1,150,000
African Americans	<i>Disparity</i>	No Disparity
Asian Americans	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans	----	No Disparity
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>
Minority-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Woman-owned Businesses	<i>Disparity</i>	<i>Disparity</i>

( ---- ) the statistical test could not detect the disparity because there were no contracts awarded, too few contracts awarded, or too few available businesses.



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# CHAPTER 8: Subcontract Disparity Analysis

## I. Introduction

The objective of this chapter is to determine if available Minority and Woman-owned Business Enterprise (M/WBE) subcontractors were underutilized in the award of the City of St. Petersburg's (City) contracts during the October 1, 2014 to September 30, 2018 study period. A detailed discussion of the statistical procedures for conducting a disparity analysis is set forth in *Chapter 7: Prime Contract Disparity Analysis*. The same statistical procedures are used to perform the subcontract disparity analysis.

Under a fair and equitable system of awarding subcontracts, the proportion of subcontracts and subcontract dollars awarded to M/WBE subcontractors should be relatively close to the proportion of available M/WBE subcontractors in the market area of the City. Availability is defined as the number of willing and able businesses. The methodology for determining willing and able businesses is detailed in *Chapter 6: Prime Contractor and Subcontractor Availability Analysis*.

If the ratio of utilized M/WBE subcontractors to available M/WBE subcontractors is less than one, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio or any event which is less probable.<sup>272</sup> *Croson* states that an inference of discrimination can be made *prima facie* if the observed disparity is statistically significant. Under the *Croson* standard, non-minority male-owned businesses are not subjected to a statistical test of underutilization.<sup>273</sup>

## II. Disparity Analysis

As detailed in *Chapter 4: Subcontractor Utilization Analysis*, extensive efforts were undertaken to obtain subcontractor records for the City's construction and professional services contracts. The disparity analysis was performed on subcontracts issued October 1, 2014 to September 30, 2018.

The subcontract disparity findings in the two industries under consideration are detailed in *Section III*. The outcomes of the statistical analyses are presented in the "P-Value" column of the tables. A description of the statistical outcomes in the disparity tables are presented in Table 8.1.



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<sup>272</sup> When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100-percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95-percent confidence level is the statistical standard used in physical and social sciences, and is thus used in the present report to determine if an inference of discrimination can be made.

<sup>273</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

**Table 8.1: Statistical Outcome Descriptions**

<b>P-Value Outcome</b>	<b>Definition of P-Value Outcome</b>
< .05 *	This underutilization is statistically significant.
not significant	<ul style="list-style-type: none"><li>• M/WBEs: This underutilization is not statistically significant.</li><li>• Non-minority males: This overutilization is not statistically significant.</li></ul>
< .05 †	This overutilization is statistically significant.
----	While this group was underutilized, there were too few available firms to determine statistical significance.
**	This study does not test statistically the overutilization of minority or gender groups or the underutilization of non-minority males.



### ***III. Disparity Analysis: All Subcontracts by Industry***

#### ***A. Construction Subcontracts***

The disparity analysis of construction subcontracts is described below and shown in Table 8.2 and Chart 8.2.

***African Americans*** represent 6.53% of the available construction businesses and received 1.06% of the construction subcontract dollars. This underutilization is statistically significant.

***Asian Americans*** represent 2.28% of the available construction businesses and received 0.19% of the construction subcontract dollars. This underutilization is statistically significant.

***Hispanic Americans*** represent 8.50% of the available construction businesses and received 10.16% of the construction subcontract dollars. This study does not test statistically the overutilization of minority and woman-owned businesses..

***Native Americans*** represent 1.21% of the available construction businesses and received 0.00% of the construction subcontract dollars. This underutilization is statistically significant.

***Caucasian Females*** represent 22.46% of the available construction businesses and received 3.21% of the construction subcontract dollars. This underutilization is statistically significant.

***Non-minority Males*** represent 59.03% of the available construction businesses and received 85.38% of the construction subcontract dollars. This overutilization is statistically significant.

***Minority Business Enterprises*** represent 18.51% of the available construction businesses and received 11.41% of the construction subcontract dollars. This underutilization is statistically significant.

***Woman Business Enterprises*** represent 28.98% of the available construction businesses and received 4.00% of the construction subcontract dollars. This underutilization is statistically significant.



**Table 8.2: Disparity Analysis: Construction Subcontracts,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African Americans	\$1,085,161	1.06%	6.53%	\$6,697,609	-\$5,612,449	0.16	< .05 *
Asian Americans	\$198,303	0.19%	2.28%	\$2,336,375	-\$2,138,072	0.08	< .05 *
Hispanic Americans	\$10,425,611	10.16%	8.50%	\$8,722,468	\$1,703,143	1.20	**
Native Americans	\$0	0.00%	1.21%	\$1,246,067	-\$1,246,067	0.00	< .05 *
Caucasian Females	\$3,294,927	3.21%	22.46%	\$23,052,237	-\$19,757,310	0.14	< .05 *
Non-minority Males	\$87,640,756	85.38%	59.03%	\$60,590,001	\$27,050,754	1.45	< .05 †
<b>TOTAL</b>	<b>\$102,644,758</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$102,644,758</b>			
<b>Ethnicity and Gender</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African American Females	\$109,866	0.11%	2.58%	\$2,647,892	-\$2,538,026	0.04	< .05 *
African American Males	\$975,295	0.95%	3.95%	\$4,049,717	-\$3,074,423	0.24	< .05 *
Asian American Females	\$3,950	0.00%	0.46%	\$467,275	-\$463,325	0.01	----
Asian American Males	\$194,353	0.19%	1.82%	\$1,869,100	-\$1,674,747	0.10	not significant
Hispanic American Females	\$694,561	0.68%	3.19%	\$3,270,926	-\$2,576,364	0.21	< .05 *
Hispanic American Males	\$9,731,050	9.48%	5.31%	\$5,451,543	\$4,279,507	1.79	**
Native American Females	\$0	0.00%	0.30%	\$311,517	-\$311,517	0.00	----
Native American Males	\$0	0.00%	0.91%	\$934,550	-\$934,550	0.00	----
Caucasian Females	\$3,294,927	3.21%	22.46%	\$23,052,237	-\$19,757,310	0.14	< .05 *
Non-minority Males	\$87,640,756	85.38%	59.03%	\$60,590,001	\$27,050,754	1.45	< .05 †
<b>TOTAL</b>	<b>\$102,644,758</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$102,644,758</b>			
<b>Minority and Females</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
Minority Business Enterprises	\$11,709,075	11.41%	18.51%	\$19,002,520	-\$7,293,445	0.62	< .05 *
Woman Business Enterprises	\$4,103,304	4.00%	28.98%	\$29,749,846	-\$25,646,542	0.14	< .05 *

( \* ) denotes a statistically significant underutilization.

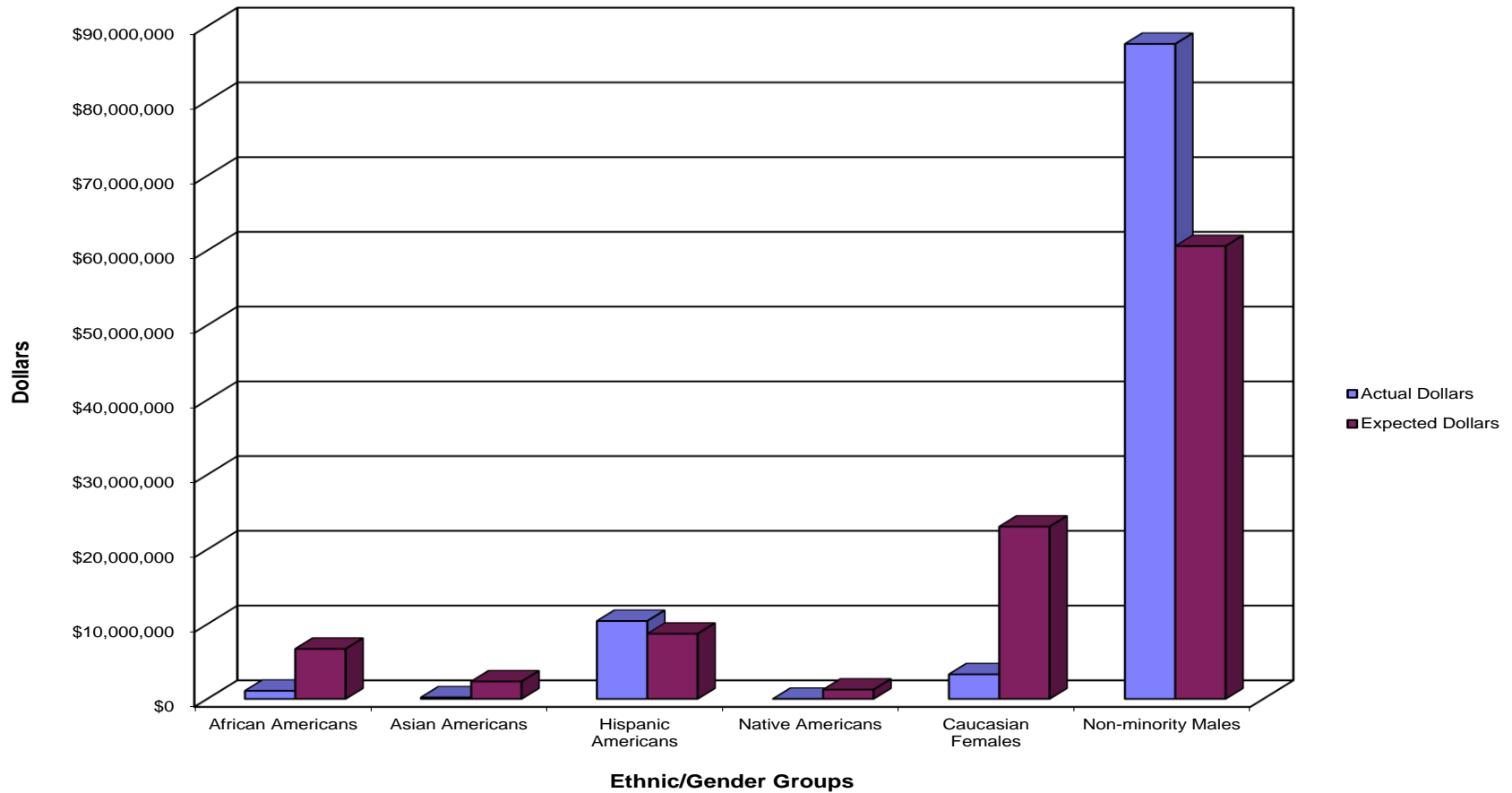
( † ) denotes a statistically significant overutilization.

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

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



**Chart 8.2: Disparity Analysis: Construction Subcontracts,  
October 1, 2014 to September 30, 2018**



## ***B. Professional Services Subcontracts***

The disparity analysis of professional services subcontracts is described below and shown in Table 8.3 and Chart 8.3.

***African Americans*** represent 8.37% of the available professional services businesses and received 2.33% of the professional services subcontract dollars. This underutilization is statistically significant.

***Asian Americans*** represent 3.80% of the available professional services businesses and received 0.34% of the professional services subcontract dollars. This underutilization is not statistically significant.

***Hispanic Americans*** represent 11.03% of the available professional services businesses and received 0.66% of the professional services subcontract dollars. This underutilization is statistically significant.

***Native Americans*** represent 1.14% of the available professional services businesses and received 0.00% of the professional services subcontract dollars. While this group was underutilized, there were too few available firms to determine statistical significance.

***Caucasian Females*** represent 23.19% of the available professional services businesses and received 2.17% of the professional services subcontract dollars. This underutilization is statistically significant.

***Non-minority Males*** represent 52.47% of the available construction businesses and received 94.50% of the professional services subcontract dollars. This overutilization is statistically significant.

***Minority Business Enterprises*** represent 24.33% of the available professional services businesses and received 3.33% of the professional services subcontract dollars. This underutilization is statistically significant.

***Woman Business Enterprises*** represent 30.42% of the available professional services businesses and received 2.46% of the professional services subcontract dollars. This underutilization is statistically significant.



**Table 8.3: Disparity Analysis: Professional Services Subcontracts,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African Americans	\$211,819	2.33%	8.37%	\$759,599	-\$547,781	0.28	< .05 *
Asian Americans	\$30,570	0.34%	3.80%	\$345,272	-\$314,702	0.09	not significant
Hispanic Americans	\$59,602	0.66%	11.03%	\$1,001,290	-\$941,688	0.06	< .05 *
Native Americans	\$0	0.00%	1.14%	\$103,582	-\$103,582	0.00	----
Caucasian Females	\$197,319	2.17%	23.19%	\$2,106,161	-\$1,908,842	0.09	< .05 *
Non-minority Males	\$8,581,353	94.50%	52.47%	\$4,764,758	\$3,816,595	1.80	< .05 †
<b>TOTAL</b>	<b>\$9,080,662</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$9,080,662</b>			
<b>Ethnicity and Gender</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African American Females	\$0	0.00%	2.66%	\$241,691	-\$241,691	0.00	< .05 *
African American Males	\$211,819	2.33%	5.70%	\$517,908	-\$306,090	0.41	not significant
Asian American Females	\$26,250	0.29%	0.76%	\$69,054	-\$42,804	0.38	----
Asian American Males	\$4,320	0.05%	3.04%	\$276,218	-\$271,898	0.02	< .05 *
Hispanic American Females	\$0	0.00%	3.42%	\$310,745	-\$310,745	0.00	< .05 *
Hispanic American Males	\$59,602	0.66%	7.60%	\$690,545	-\$630,943	0.09	< .05 *
Native American Females	\$0	0.00%	0.38%	\$34,527	-\$34,527	0.00	----
Native American Males	\$0	0.00%	0.76%	\$69,054	-\$69,054	0.00	----
Caucasian Females	\$197,319	2.17%	23.19%	\$2,106,161	-\$1,908,842	0.09	< .05 *
Non-minority Males	\$8,581,353	94.50%	52.47%	\$4,764,758	\$3,816,595	1.80	< .05 †
<b>TOTAL</b>	<b>\$9,080,662</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$9,080,662</b>			
<b>Minority and Females</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
Minority Business Enterprises	\$301,991	3.33%	24.33%	\$2,209,743	-\$1,907,752	0.14	< .05 *
Woman Business Enterprises	\$223,569	2.46%	30.42%	\$2,762,179	-\$2,538,610	0.08	< .05 *

( \* ) denotes a statistically significant underutilization.

( † ) denotes a statistically significant overutilization.

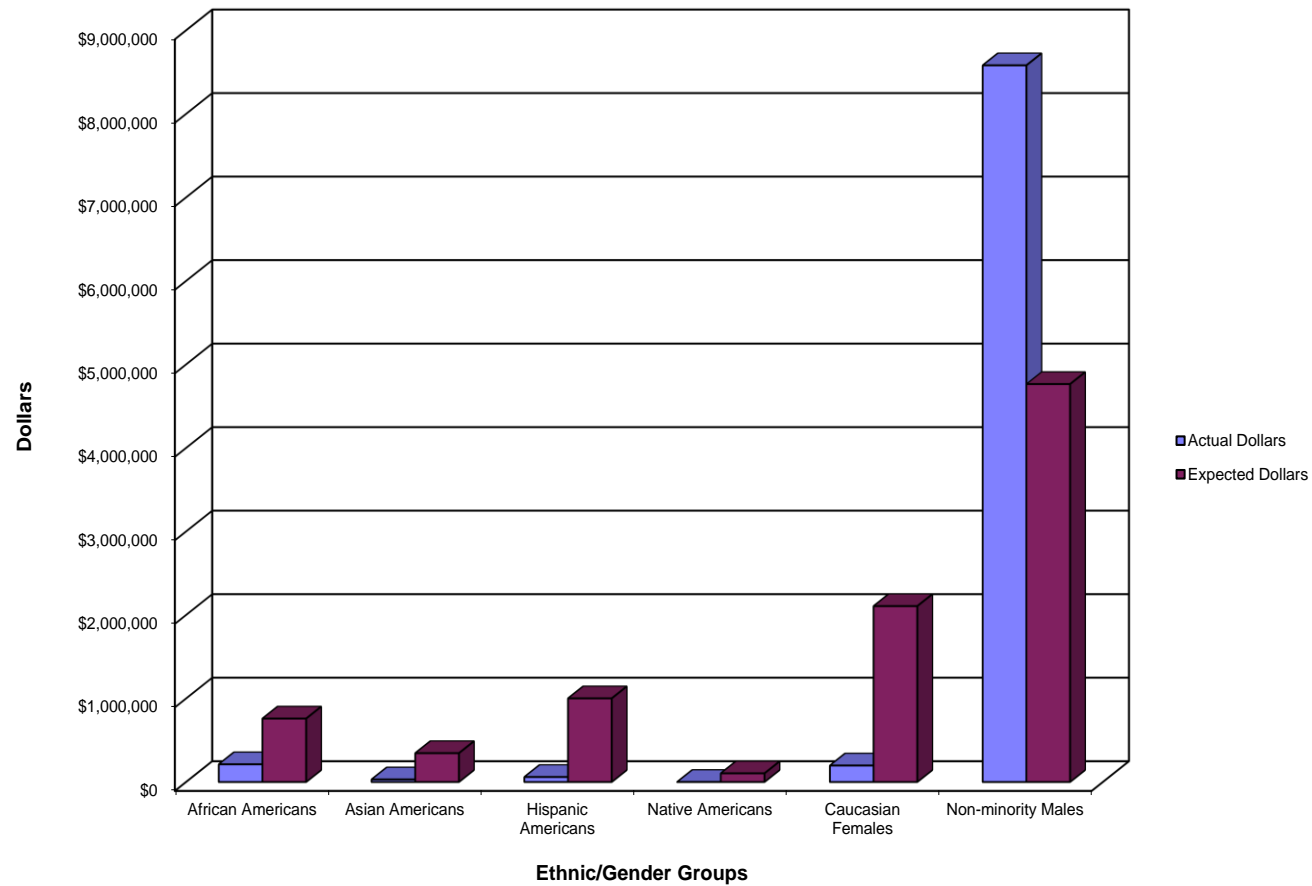
( \*\* ) denotes that this study does not test statistically the overutilization of M/WBEs or the underutilization of Non-minority Males.

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





**Chart 8.3: Disparity Analysis: Professional Services Subcontracts,  
October 1, 2014 to September 30, 2018**



#### ***IV. Subcontract Disparity Summary***

As indicated in Table 8.4, disparity was found for African American, Asian American, Native American, Caucasian female, minority-owned business, and woman-owned business subcontractors on construction contracts. Disparity was also found for African American, Hispanic American, Caucasian female, minority-owned business, and woman-owned business subcontractors on professional services contracts.

**Table 8.4: Subcontract Disparity Summary,  
October 1, 2014 to September 30, 2018**

<b>Ethnicity/Gender</b>	<b>Construction</b>	<b>Professional Services</b>
<b>African Americans</b>	<b><i>Disparity</i></b>	<b><i>Disparity</i></b>
<b>Asian Americans</b>	<b><i>Disparity</i></b>	<b>No Disparity</b>
<b>Hispanic Americans</b>	<b>No Disparity</b>	<b><i>Disparity</i></b>
<b>Native Americans</b>	<b><i>Disparity</i></b>	<b>----</b>
<b>Caucasian Females</b>	<b><i>Disparity</i></b>	<b><i>Disparity</i></b>
<b>Minority Business Enterprises</b>	<b><i>Disparity</i></b>	<b><i>Disparity</i></b>
<b>Woman Business Enterprises</b>	<b><i>Disparity</i></b>	<b><i>Disparity</i></b>



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# CHAPTER 9: Regression Analysis

## I. Introduction

Business Enterprise (M/WBE) requirements are indicators of marketplace conditions that could adversely affect the formation and growth of M/WBEs. The adverse marketplace conditions thereby could depress the current availability of M/WBEs. *Concrete Works of Colorado v. City and County of Denver (Concrete Works III)*<sup>274</sup> sets forth a framework for considering a passive participant model for an analysis of discrimination in private sector business practices. In accordance with *Concrete Works III*, Mason Tillman Associates, Ltd. conducted regression analyses to examine two outcome variables—business ownership rates and business earnings. These two regression analyses examined possible impediments to minority and woman business ownership, as well as factors affecting M/WBE business earnings. Further details are provided in the current chapter, under *Section IV Datasets Analyzed*.

Each regression analysis compared minority group members<sup>275</sup> and Caucasian females to Non-Minority Male-owned Businesses by controlling for race- and gender-neutral explanatory variables, such as age, education, marital status, and access to capital. The impact of the explanatory variables on the outcome variables is described in this chapter. These findings elucidate the socioeconomic conditions in the City’s market area that could adversely affect the relative availability of M/WBEs and Non-minority Male-owned Business Enterprises. Statistically significant findings for lower M/WBE business earnings and lower likelihoods of minority and Caucasian female business ownership could indicate patterns of discrimination that might result in disproportionately fewer of willing and capable M/WBEs.

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



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<sup>274</sup> *Concrete Works of Colo., Inc. v. Denver*, 86 F. Supp. 2d 1042, 1057-61 (D. Colo. 2000), *rev'd on other grounds*, 321 F.3d 950 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027 (2003) (“*Concrete Works III*”).

<sup>275</sup> Minority group members include both males and females.

The applicable limits of the private sector discrimination findings are set forth in *Builders Association of Greater Chicago v. City of Chicago*<sup>276</sup> (*City of Chicago*), where the court established that even when there is evidence of private sector discrimination, the findings cannot be used as the factual predicate for a government-sponsored, race-conscious M/WBE program unless there is a nexus between the private sector data and the public agency actions. The private sector findings, however, can be used to develop race-neutral programs to address barriers to the formation and development of M/WBEs. Given the case law, caution must be exercised in the interpretation and application of the regression findings. Case law regarding the application of private sector discrimination is discussed below in detail.

## **II. Legal Analysis**

### **A. Passive Discrimination**

The controlling legal precedent set forth in the 1989 *City of Richmond v. J.A. Croson Co.*<sup>277</sup> decision authorized state and local governments to remedy discrimination in the awarding of subcontracts by its prime contractors on the grounds that the government cannot be a “passive participant” in discrimination. In January 2003, *Concrete Works IV*<sup>278</sup> and *City of Chicago*<sup>279</sup> extended the private sector analysis to the investigation of discriminatory barriers that M/WBEs encountered in the formation and development of businesses and their consequence for state and local remedial programs. *Concrete Works IV* set forth a framework for considering private sector discrimination as a passive participant model for analysis. However, the obligation of presenting an appropriate nexus between the government remedy and the private sector discrimination was first addressed in *City of Chicago*.

The Tenth Circuit Court decided in *Concrete Works IV* that business activities conducted in the private sector, if within the government’s market area, are also appropriate areas to explore the issue of passive participation.<sup>280</sup> However, the appropriateness of the City’s remedy, given the finding of private sector discrimination, was not at issue before the court. The question before the court was whether sufficient facts existed to determine if the private sector business practices under consideration constituted discrimination. For technical legal reasons,<sup>281</sup> the court did not examine whether a consequent public sector remedy, i.e., one involving a goal requirement on the City of Denver’s contracts, was “narrowly tailored” or otherwise supported by the City’s private sector findings of discrimination.

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<sup>276</sup> *Builders Ass’n of Greater Chicago v. Chicago*, 298 F. Supp. 2d 725 (N.D. Ill. 2003).

<sup>277</sup> 488 U.S. 469 (1989).

<sup>278</sup> *Concrete Works of Colo., Inc. v. Denver*, 321 F.3d 950, 965-69 (10th Cir. 2003) (“*Concrete Works IV*”).

<sup>279</sup> *City of Chicago*, 298 F. Supp. 2d at 738-39.

<sup>280</sup> *Concrete Works IV*, 321 F.3d at 966-67.

<sup>281</sup> Plaintiff had not preserved the issue on appeal. Therefore, it was no longer part of the case.



## **B. Narrow Tailoring**

The question of whether a public sector remedy is narrowly tailored when it is based solely on business practices within the private sector was at issue in *City of Chicago*. *City of Chicago*, decided ten months after *Concrete Works IV*, found that certain private sector business practices constituted discrimination against minorities in the Chicago market area. However, the district court did not find City of Chicago's M/WBE subcontracting goal to be a remedy "narrowly tailored" to address the documented private sector discriminatory business practices that had been discovered within the City's market area.<sup>282</sup> The court explicitly stated that certain discriminatory business practices documented by regression analyses constituted private sector discrimination.<sup>283</sup> It is also notable that the documented discriminatory business practices reviewed by the court in *City of Chicago* were similar to those reviewed in *Concrete Works IV*. Notwithstanding the fact that discrimination in City of Chicago's market area was documented, the court determined that the evidence was insufficient to support the city's race-based subcontracting goals.<sup>284</sup> The court ordered an injunction to invalidate City of Chicago's race-based program.<sup>285</sup>

The following statements from that opinion are noteworthy:

Racial preferences are, by their nature, highly suspect, and they cannot be used to benefit one group that, by definition, is not either individually or collectively the present victim of discrimination . . . There may well also be (and the evidence suggests that there are) minorities and women who do not enter the industry because they perceive barriers to entry. If there is none, and their perception is in error, that false perception cannot be used to provide additional opportunities to M/WBEs already in the market to the detriment of other firms who, again by definition, neither individually nor collectively, are engaged in discriminatory practices.<sup>286</sup>

Given these distortions of the market and these barriers, is City's program narrowly tailored as a remedy? It is here that I believe the program fails. There is no "meaningful individualized review" of M/WBEs. *Gratz v. Bollinger*, 539 U.S. 244, 156 L. Ed. 2d 257, 123 S.Ct. 2411, 2431 (2003) (Justice O'Connor concurring). Chicago's program is more expansive and more rigid than plans that have been sustained in the courts. It has no termination date, nor has it any means for determining a termination date. The "graduation" revenue amount is very high, \$27,500,000, and very few have graduated. There is no net worth threshold. A third-generation Japanese-American from a wealthy family, with a graduate degree from MIT, qualifies (and an Iraqi immigrant does not). Waivers are rarely or never granted on construction contracts, but "regarding flexibility, 'the availability of

<sup>282</sup> *City of Chicago*, 298 F. Supp. 2d at 739.

<sup>283</sup> *Id.* at 731-32.

<sup>284</sup> *Id.* at 742.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.* at 734-35.



waivers’ is of particular importance . . . a ‘rigid numerical quota’ particularly disserves the cause of narrow tailoring.” *Adarand Constructors v. Slater, supra*, at 1177. The City’s program is “rigid numerical quota,” a quota not related to the number of available, willing and able firms but to concepts of how many of those firms there should be. Formalistic points did not survive strict scrutiny in *Gratz v. Bollinger, supra*, and formalistic percentages cannot survive scrutiny.<sup>287</sup>

### **C. Conclusion**

As established in *City of Chicago*, private sector discrimination cannot be used as the factual basis for a government-sponsored, race-based M/WBE program without a nexus to the government's actions. Therefore, the discrimination that might be revealed in the regression analysis is not a sufficient factual predicate for the City to establish a race-based M/WBE program unless a nexus is established between the City and the private sector data. These economic indicators, albeit a measure of passive discrimination, are illustrative of private sector discrimination and can support the City-sponsored, race-neutral programs.

## **III. Regression Analysis Methodology**

The two regression analyses conducted focus on the construction, professional services (including architecture and engineering), and goods and services industries. The datasets used for the regression analyses did not allow for an exact match of the industries used in the City’s Disparity Study (Study). Therefore, the industries in the datasets were selected that most closely mirror the industries in the City’s Study.

Both the Business Ownership Analysis and the Earnings Disparity Analysis take into consideration race and gender-neutral factors, such as age, education, and creditworthiness in assessing whether the explanatory factors examined are disproportionately affecting minorities and females when compared to similarly situated non-minority males.

## **IV. Datasets Analyzed**

The 2013 through 2017 PUMS dataset produced by the United States Census Bureau was used to analyze business ownership and earnings disparities within the Pinellas County, Florida. The 2013 through 2017 PUMS dataset represented the most recent data that most closely matched the October 1, 2014 to September 30, 2018 study period. To further align the dataset and the study period, all records from 2013 were scrubbed from the PUMS dataset. The data for the Pinellas County were identified using Public Use Microdata Areas (PUMA), a variable within the PUMS dataset that reports data for counties within states. The dataset includes information on personal profile, industry, work characteristics, and family structure. The PUMS data allowed for an analysis by an individual’s race and gender.



<sup>287</sup> *City of Chicago*, 298 F.Supp.2d at 739-40.

## V. *Regression Models Defined*

### A. *Business Ownership Analysis*

The Business Ownership Analysis examines the relationship between the likelihood of being a business owner and independent socioeconomic variables. Business ownership, the dependent variable, includes business owners of incorporated and non-incorporated firms. The business ownership variable utilizes two values. A value of “1” indicates that a person is a business owner, whereas a value of “0” indicates that a person is not a business owner. When the dependent variable is defined this way, it is called a binary variable. In this case, a logistic regression model is utilized to predict the likelihood of business ownership using independent socioeconomic variables. Three logistic models are run to predict the probability of business ownership in each of the three industries examined in the City’s Study. Categories of the independent variables analyzed include educational level, citizenship status, personal characteristics, and race/gender.

In the table below, a finding of disparity is denoted by an asterisk (\*) when the independent variable is significant at or above the 95% confidence level. A finding of disparity indicates that there is a non-random relationship between the probability of owning a business and the independent variable. Tables of regression results indicate the sign of each variable’s coefficient from the regression output. If the coefficient sign is positive, it indicates that there is a positive relationship between the dependent variable and that independent variable. For example, having an advanced degree is positively related to the likelihood of being a business owner, holding all other variables constant. If the coefficient sign for the independent variable is negative, this implies an inverse relationship between the dependent variable and that independent variable. For instance, an individual with children under the age of 6 has a lower likelihood of owning a business, holding all other variables constant.

For each of the three industries, the logistic regression is used to identify the likelihood that an individual owns a business given his or her background, including race, gender, and race and gender-neutral factors. The dependent variables in all regressions are binary variables coded as “1” for individuals who are self-employed and “0” for individuals who are not self-employed.<sup>288</sup> Table 9.1 presents the independent variables used for the Business Ownership Analysis.

**Table 9.1: Independent Variables Used in the Business Ownership Analysis**

Personal Characteristics	Educational Attainment	Race	Gender
1. Age	10. Bachelor’s Degree	12. Caucasian American	18. Female
2. Age Squared	11. Advanced Degree	13. African American	
3. Home Ownership		14. Asian American	
4. Home Value		15. Hispanic American	
5. Monthly Mortgage Payments		16. Native American	

<sup>288</sup> Note: The terms “business owner” and “self-employed” are used interchangeably throughout the chapter.



Personal Characteristics	Educational Attainment	Race	Gender
6. Interest and Dividends		17. Other Minority Group <sup>289</sup>	
7. Speaks English at Home			
8. Children Under the Age of Six in the Household			
9. Marital Status			

## ***B. The Earnings Disparity Analysis***

The Earnings Disparity Analysis examines the relationship between the annual self-employment income and independent socioeconomic variables. “Wages” are defined as the individual’s total dollar income earned in the previous 12 months. Categories of independent socioeconomic variables analyzed include educational level, citizenship status, personal characteristics, business characteristics, and race/gender.

All of the independent variables are regressed against wages in an Ordinary Least Squares (OLS) regression model. The OLS model estimates a linear relationship between the independent variables and the dependent variable. This multivariate regression model estimates a line similar to the standard  $y = mx + b$  format, but with additional independent variables. The mathematical purpose of a regression analysis is to estimate a best-fit line for the model and assess which findings are statistically significant.

In the table below, a finding of disparity is denoted by an asterisk (\*) when an independent variable is significant at or above the 95% confidence level. A finding of disparity indicates that there is a non-random relationship between wages and the independent variable. If the coefficient sign is positive, it means there is a positive relationship between the dependent variable and that independent variable. If the coefficient sign for the independent variable is negative, this implies an inverse relationship between the dependent variable and that independent variable.

An OLS regression analysis is used to assess the presence of business earning disparities. OLS regressions have been conducted separately for each industry. Table 9.2 presents the independent variables used for the Earnings Disparity Analysis.<sup>290</sup>



<sup>289</sup> Other Minority includes individuals who belong to two or more racial groups.

<sup>290</sup> If an independent variable is a binary variable, it will be coded as “1” if the individual has that variable present and “0” if otherwise (i.e. for the Hispanic American variable, it is coded as “1” if the individual is Hispanic American and “0” if otherwise). If an independent variable is a continuous variable, a value will be used (i.e. one’s age can be labeled as 35).



**Table 9.2: Independent Variables Used for the Earnings Disparity Analysis**

<b>Personal Characteristics</b>	<b>Educational Attainment</b>	<b>Race</b>	<b>Gender</b>
1. Age	11. Bachelor's Degree	13. Caucasian American	19. Female
2. Age Squared	12. Advanced Degree	14. African American	
3. Incorporated Business		15. Asian American	
4. Home Ownership		16. Hispanic American	
5. Home Value		17. Native American	
6. Monthly Mortgage Payments		18. Other Minority Group	
7. Interest and Dividends			
8. Speaks English at Home			
9. Children Under the Age of Six in the Household			
10. Marital Status			

## ***VI. Findings***

### ***A. Business Ownership Analysis***

The business ownership variable is defined by the number of self-employed individuals in each of the three industries.

Previous studies have shown that many non-discriminatory factors, such as education, age, and marital status, are associated with self-employment. In this analysis, race and gender-neutral factors are combined with race and gender-specific factors in a logistic regression model. The purpose of this model is to determine whether observed race or gender disparities are independent of the race and gender-neutral factors known to be associated with self-employment. It must be noted that many of these variables, such as having an advanced degree, while seeming to be race and gender-neutral, may in fact be correlated with race and gender.

#### **1. Logistic Model Results for Construction Business Ownership**

Table 9.3 presents the logistic regression results for the likelihood of owning a business in the construction industry based on the 20 variables analyzed in this model.



**Table 9.3: Construction Industry Logistic Model**

Business Ownership Model	Coefficient	Significance	Standard Error	Z-score	P> z
Age	0.116064	*	0.034391	3.37	0.001
Age-squared	-0.000872	*	0.000341	-2.56	0.011
Bachelor's Degree (a)	-0.398214		0.244186	-1.63	0.103
Advanced Degree	0.193859		0.519388	0.37	0.709
Home Owner	0.312934		0.229078	1.37	0.172
Home Value	0.000000		0.000000	-0.08	0.936
Monthly Mortgage Payment	-0.000168		0.000129	-1.30	0.194
Interest and Dividends	0.000000		0.000000	1.54	0.124
Speaks English at Home	-0.276826		0.354935	-0.78	0.435
Has a Child under the Age of Six	0.267235		0.849143	0.31	0.753
Married	0.128080		0.178004	0.72	0.472
Caucasian Female (b)	-1.363455	*	0.268236	-5.08	0.000
African American	-1.208590	*	0.411290	-2.94	0.003
Asian American	-1.248004		0.647285	-1.93	0.054
Hispanic American	-0.239948		0.479555	-0.50	0.617
Native American	0.348980		0.775575	0.45	0.653
Other Minority	-0.644467		0.681692	-0.95	0.344
Year 2015 (c)	0.291500		0.254290	1.15	0.252
Year 2016	0.300958		0.238317	1.26	0.207
Year 2017	0.236037		0.234067	1.01	0.313
Constant	-4.242760	*	0.957762	-4.43	0.000

(a) For the variables bachelor's degree and advanced degree, the baseline variable is high school.

(b) For the ethnicity variables, the baseline variable is Caucasian males.

(c) For the year variables, the baseline variable is year 2014.

(P>|z|) of less than 0.05 denotes findings of statistical significance.

(\*) denotes a statistically significant variable with 95% confidence.

The construction industry logistic regression results indicate the following:

- The likelihood of construction business ownership is positively associated with increased age; older individuals are more likely to be business owners in the construction industry at a significant<sup>291</sup> level. However, as individuals reach advanced age, the likelihood of being a business owner significantly decreases.
- Caucasian females and African Americans are significantly less likely to be business owners in the construction industry than non-minority males.
- Asian Americans, Hispanic Americans, and other minorities are less likely to be business owners in the construction industry than non-minority males, but not at a significant level.
- Native Americans are more likely than non-minority males to be business owners in the construction industry, but not at a significant level.

<sup>291</sup> Throughout this chapter, significance refers to statistical significance.



## 2. Logistic Model Results for Professional Services Business Ownership

Table 9.4 presents the logistic regression results for the likelihood of owning a business in the professional services industry based on the 20 variables analyzed in this model.

**Table 9.4: Professional Services Industry Logistic Model**

Business Ownership Model	Coefficient	Significance	Standard Error	Z-score	P> z
Age	0.108335	*	0.027681	3.91	0.000
Age-squared	-0.000550	*	0.000252	-2.18	0.029
Bachelor's Degree (a)	0.588200	*	0.138674	4.24	0.000
Advanced Degree	0.939849	*	0.161445	5.82	0.000
Home Owner	-0.175439		0.170546	-1.03	0.304
Home Value	0.000000	*	0.000000	2.56	0.011
Monthly Mortgage Payment	0.000074		0.000062	1.19	0.235
Interest and Dividends	0.000000		0.000000	1.41	0.159
Speaks English at Home	-0.418310		0.233030	-1.80	0.073
Has a Child under the Age of Six	0.568719		0.361356	1.57	0.116
Married	0.251968		0.137239	1.84	0.066
Caucasian Female (b)	-0.418268	*	0.132437	-3.16	0.002
African American	-1.024985	*	0.374629	-2.74	0.006
Asian American	-1.220927	*	0.509135	-2.40	0.016
Hispanic American	-0.393936		0.392943	-1.00	0.316
Native American	0.323637		0.988799	0.33	0.743
Other Minority	-0.783987		0.593909	-1.32	0.187
Year 2015 (c)	0.100959		0.176459	0.57	0.567
Year 2016	0.188213		0.166218	1.13	0.257
Year 2017	0.029551		0.161093	0.18	0.854
Constant	-5.408347	*	0.731855	-7.39	0.000

(a) For the variables bachelor's degree and advanced degree, the baseline variable is high school.

(b) For the ethnicity variables, the baseline variable is Caucasian males.

(c) For the year variables, the baseline variable is year 2014.

(P>|z|) of less than 0.05 denotes findings of statistical significance.

(\*) denotes a statistically significant variable with 95% confidence.



The professional services industry logistic regression results indicate the following:

- The likelihood of professional services business ownership is positively associated with increased age; older individuals are more likely to be business owners in the professional services industry at a significant level. However, as individuals reach advanced age, the likelihood of being a business owner significantly decreases.
- Having a bachelor's degree and an advanced degree significantly increases the likelihood of being a business owner in the professional services industry.
- Individuals who have higher-valued home are significantly more likely to be business owners in the professional services industry.
- Caucasian females, African Americans, and Asian Americans are significantly less likely to be business owners in the professional services industry than non-minority males.
- Hispanic Americans and other minorities are less likely to be business owners in the professional services industry than non-minority males, but not at a significant level.
- Native Americans are more likely than non-minority males to be business owners in the professional services industry, but not at a significant level.

### 3. Logistic Model Results for Goods and Services Business Ownership

Table 9.5 presents the logistic regression results for the likelihood of owning a business in the goods and services industry based on the 20 variables analyzed in this model.

**Table 9.5: Goods and Services Industry Logistic Model**

Business Ownership Model	Coefficient	Significance	Standard Error	Z-score	P> z
Age	0.115172	*	0.031630	3.64	0.000
Age-squared	-0.001028	*	0.000315	-3.27	0.001
Bachelor's Degree (a)	-0.254135		0.178414	-1.42	0.154
Advanced Degree	-0.054813		0.360430	-0.15	0.879
Home Owner	0.315998		0.191035	1.65	0.098
Home Value	0.000001	*	0.000000	2.99	0.003
Monthly Mortgage Payment	-0.000045		0.000103	-0.44	0.661
Interest and Dividends	0.000000		0.000000	0.67	0.500
Speaks English at Home	-0.510344		0.315401	-1.62	0.106
Has a Child under the Age of Six	-0.431194		0.575507	-0.75	0.454
Married	0.386408	*	0.162926	2.37	0.018
Caucasian Female (b)	-0.385813	*	0.184822	-2.09	0.037
African American	-1.164343	*	0.309423	-3.76	0.000
Asian American	-1.439512	*	0.590467	-2.44	0.015
Hispanic American	-0.425507		0.412278	-1.03	0.302
Native American	-		-	-	-



Business Ownership Model	Coefficient	Significance	Standard Error	Z-score	P> z
Other Minority	-1.499708		1.102199	-1.36	0.174
Year 2015 (c)	0.568898	*	0.210865	2.70	0.007
Year 2016	0.528297	*	0.213305	2.48	0.013
Year 2017	0.425350	*	0.216636	1.96	0.050
Constant	-4.508837	*	0.772674	-5.84	0.000

(a) For the variables bachelor's degree and advanced degree, the baseline variable is high school.

(b) For the ethnicity variables, the baseline variable is Caucasian males.

(c) For the year variables, the baseline variable is year 2014.

(P>|z|) of less than 0.05 denotes findings of statistical significance.

(\*) denotes a statistically significant variable with 95% confidence.

(-) denotes a variable with too few available data to determine statistical significance.

The goods and services industry logistic regression results indicate the following:

- The likelihood of goods and services business ownership is positively associated with increased age; older individuals are more likely to be business owners in the goods and services industry at a significant level. However, as individuals reach advanced age, the likelihood of being a business owner significantly decreases.
- Individuals who have higher-valued home are significantly more likely to be business owners in the goods and services industry.
- Married individuals are significantly more likely to be business owners in the goods and services industry.
- Caucasian females, African Americans, and Asian Americans are significantly less likely to be business owners in the goods and services industry than non-minority males.
- Hispanic Americans and other minorities are less likely to be business owners in the goods and services industry than non-minority males, but not at a significant level.

## **B. Business Ownership Analysis Conclusion**

The Business Ownership Analysis examined the different explanatory variables' impact on an individual's likelihood of owning a business in the construction, professional services, and goods and services industries. Controlling for race and gender-neutral factors, the Business Ownership Analysis results show that statistically significant disparities in the likelihood of owning a business exist for minorities and Caucasian females when compared to similarly situated non-minority males.

Caucasian females and African Americans experience the greatest disparity, as they are significantly less likely to own a business in the construction, professional services, and goods and services industries than non-minority males. Asian Americans are also significantly less likely to own a business in the professional services and goods and services industries. Table 9.6 depicts the business ownership regression analysis results by race, gender, and industry.



**Table 9.6: Statistically Significant Business Ownership Disparities**

Race/Gender	Construction	Professional Services	Goods and Services
Caucasian Female	<b>SIGNIFICANT</b>	<b>SIGNIFICANT</b>	<b>SIGNIFICANT</b>
African American	<b>SIGNIFICANT</b>	<b>SIGNIFICANT</b>	<b>SIGNIFICANT</b>
Asian American	NOT SIGNIFICANT	<b>SIGNIFICANT</b>	<b>SIGNIFICANT</b>
Hispanic American	NOT SIGNIFICANT	NOT SIGNIFICANT	NOT SIGNIFICANT
Native American	NOT SIGNIFICANT	NOT SIGNIFICANT	NOT SIGNIFICANT
Other Minority	NOT SIGNIFICANT	NOT SIGNIFICANT	NOT SIGNIFICANT

### **C. Business Earnings Analysis**

The business earnings variable is identified by self-employment income<sup>292</sup> from the year 2014 to 2017 for the three industries: construction, professional services, and goods and services. The analysis considered incorporated and non-incorporated businesses.

Previous studies have shown that many non-discriminatory factors, such as education, age, and marital status, are associated with self-employment income. In this analysis, race and gender-neutral factors are combined with race and gender groups in an OLS regression model to determine whether observed race or gender disparities were independent of the race and gender-neutral factors known to be associated with self-employment income.

#### **1. OLS Regression Results in the Construction Industry**

Table 9.7 depicts the results of the OLS regression for business earnings in the construction industry based on the 21 variables analyzed in this model.

**Table 9.7: Construction Industry OLS Regression**

Business Earnings Model	Coefficient	Significance	Standard Error	t-value	P> t
Age	575.787		555.335	1.04	0.300
Age-squared	-1.931		6.434	-0.30	0.764
Incorporated Business	-2735.449		4636.847	-0.59	0.555
Bachelor's Degree (a)	17208.040	*	3905.664	4.41	0.000
Advanced Degree	31544.690		20495.800	1.54	0.124
Home Owner	-3783.567		3291.037	-1.15	0.251
Home Value	0.020	*	0.009	2.15	0.032
Monthly Mortgage Payment	5.549	*	2.530	2.19	0.029
Interest and Dividends	0.030		0.024	1.23	0.217
Speaks English at Home	8932.834	*	3647.500	2.45	0.015

<sup>292</sup> The terms “business earnings” and “self-employment income” are used interchangeably.



<b>Business Earnings Model</b>	<b>Coefficient</b>	<b>Significance</b>	<b>Standard Error</b>	<b>t-value</b>	<b>P&gt; t </b>
Has a Child under the Age of Six	-934.507		6797.576	-0.14	0.891
Married	9469.168	*	3055.520	3.10	0.002
Caucasian Female (b)	-12862.870	*	4130.909	-3.11	0.002
African American	-12372.060	*	3718.774	-3.33	0.001
Asian American	7864.593		12155.010	0.65	0.518
Hispanic American	-8915.585	*	3692.379	-2.41	0.016
Native American	22334.710		30653.380	0.73	0.466
Other Minority	-8339.507		5358.019	-1.56	0.120
Year 2015 (c)	4325.297		3751.047	1.15	0.249
Year 2016	7136.368		4232.544	1.69	0.092
Year 2017	6769.639		3800.835	1.78	0.075
Constant	-2031.239		11736.950	-0.17	0.863

(a) For the variables bachelor's degree and advanced degree, the baseline variable is high school.

(b) For the ethnicity variables, the baseline variable is Caucasian males.

(c) For the year variables, the baseline variable is year 2014.

(P>|t|) of less than 0.05 denotes findings of statistical significance.

(\*) denotes a statistically significant variable with 95% confidence.

The OLS regression results for business earnings in the construction industry indicate the following:

- Business owners with a bachelor's degree have significantly higher business earnings in the construction industry.
- Business owners with higher-valued home have significantly higher business earnings in the construction industry.
- Business owners with higher monthly mortgage payment have significantly higher business earnings in the construction industry.
- Business owners who speak English at home have significantly higher business earnings in the construction industry.
- Married business owners have significantly higher business earnings in the construction industry.
- Caucasian female, African American, and Hispanic American business owners have significantly lower business earnings in the construction industry than non-minority males.
- Other minority business owners have lower business earnings in the construction industry than non-minority males, but not at a significant level.
- Asian American and Native American business owners have higher business earnings in the construction industry than non-minority males, but not at a significant level.



## 2. OLS Regression Results in the Professional Services Industry

Table 9.8 depicts the results of the OLS regression for business earnings in the professional services industry based on the 21 variables analyzed in this model.

**Table 9.8: Professional Services Industry OLS Regression**

Business Earnings Model	Coefficient	Significance	Standard Error	t-value	P> t
Age	4957.359	*	597.135	8.30	0.000
Age-squared	-47.546	*	6.946	-6.85	0.000
Incorporated Business	-8085.152		7675.555	-1.05	0.292
Bachelor's Degree (a)	13904.280	*	2682.068	5.18	0.000
Advanced Degree	48968.590	*	6050.483	8.09	0.000
Home Owner	-3078.964		3598.081	-0.86	0.392
Home Value	0.038	*	0.010	3.74	0.000
Monthly Mortgage Payment	12.305	*	3.194	3.85	0.000
Interest and Dividends	0.010		0.013	0.81	0.419
Speaks English at Home	11416.190	*	4189.504	2.72	0.006
Has a Child under the Age of Six	-2995.730		5298.041	-0.57	0.572
Married	6189.218	*	3058.622	2.02	0.043
Caucasian Female (b)	-23338.730	*	3398.517	-6.87	0.000
African American	-25841.380	*	4868.239	-5.31	0.000
Asian American	-15785.520	*	6963.388	-2.27	0.024
Hispanic American	-20681.170	*	4709.561	-4.39	0.000
Native American	-30856.660		22088.040	-1.40	0.163
Other Minority	-8322.153		8274.913	-1.01	0.315
Year 2015 (c)	-213.866		4681.225	-0.05	0.964
Year 2016	-2267.732		4702.705	-0.48	0.630
Year 2017	1762.210		4980.194	0.35	0.723
Constant	-84492.380	*	12605.650	-6.70	0.000

(a) For the variables bachelor's degree and advanced degree, the baseline variable is high school.

(b) For the ethnicity variables, the baseline variable is Caucasian males.

(c) For the year variables, the baseline variable is year 2014.

(P>|t|) of less than 0.05 denotes findings of statistical significance.

(\*) denotes a statistically significant variable with 95% confidence.

The OLS regression results for business earnings in the professional services industry indicate the following:

- Older business owners have significantly higher business earnings in the professional services industry. However, as business owners reach advanced age, they have significantly lower business earnings in the professional services industry.
- Business owners with a bachelor's degree and an advanced degree have significantly higher business earnings in the professional services industry.





- Business owners with higher-valued home have significantly higher business earnings in the professional services industry.
- Business owners with higher monthly mortgage payment have significantly higher business earnings in the professional services industry.
- Business owners who speak English at home have significantly higher business earnings in the professional services industry.
- Married business owners have significantly higher business earnings in the professional services industry.
- Caucasian female, African American, Asian American, and Hispanic American business owners have significantly lower business earnings in the professional services industry than non-minority males.
- Native American and Other minority business owners have lower business earnings in the professional services industry than non-minority males, but not at a significant level.

### 3. OLS Regression Results in the Goods and Services Industry

Table 9.9 depicts the results of the OLS regression for business earnings in the goods and services industry based on the 21 variables analyzed in this model.

**Table 9.9: Goods and Services Industry OLS Regression**

Business Earnings Model	Coefficient	Significance	Standard Error	t-value	P> t
Age	3661.639	*	351.066	10.43	0.000
Age-squared	-36.368	*	3.848	-9.45	0.000
Incorporated Business	-3960.359		4043.501	-0.98	0.328
Bachelor's Degree (a)	11940.410	*	2871.293	4.16	0.000
Advanced Degree	16797.770	*	7547.480	2.23	0.026
Home Owner	2080.195		2749.879	0.76	0.450
Home Value	0.015		0.008	1.84	0.067
Monthly Mortgage Payment	15.480	*	2.821	5.49	0.000
Interest and Dividends	0.157	*	0.070	2.23	0.026
Speaks English at Home	252.589		4641.856	0.05	0.957
Has a Child under the Age of Six	6101.188		5756.380	1.06	0.289
Married	3752.807		2367.715	1.58	0.113
Caucasian Female (b)	-3627.426		2873.225	-1.26	0.207
African American	-7749.770	*	2993.514	-2.59	0.010
Asian American	-5053.814		7257.619	-0.70	0.486
Hispanic American	-5832.134		4522.676	-1.29	0.197
Native American	-1787.651		4668.293	-0.38	0.702
Other Minority	-3839.788		3719.835	-1.03	0.302
Year 2015 (c)	-1593.223		2998.147	-0.53	0.595



Business Earnings Model	Coefficient	Significance	Standard Error	t-value	P> t
Year 2016	3459.417		3144.604	1.10	0.271
Year 2017	91.557		3087.918	0.03	0.976
Constant	-65294.530	*	9113.240	-7.16	0.000

(a) For the variables bachelor's degree and advanced degree, the baseline variable is high school.

(b) For the ethnicity variables, the baseline variable is Caucasian males.

(c) For the year variables, the baseline variable is year 2014.

(P>|t|) of less than 0.05 denotes findings of statistical significance.

(\*) denotes a statistically significant variable with 95% confidence.

The OLS regression results for business earnings in the goods and services industry indicate the following:

- Older business owners have significantly higher business earnings in the goods and services industry. However, as business owners reach advanced age, they have significantly lower business earnings in the goods and services industry.
- Business owners with a bachelor's degree and an advanced degree have significantly higher business earnings in the goods and services industry.
- Business owners with higher monthly mortgage payment have significantly higher business earnings in the goods and services industry.
- Business owners with higher interest and dividend income have significantly higher business earnings in the goods and services industry.
- African American business owners have significantly lower business earnings in the goods and services industry than non-minority males.
- Caucasian female, Asian American, Hispanic American, Native American, and other minority business owners have lower business earnings in the goods and services industry than non-minority males, but not at a significant level.

#### ***D. Business Earnings Analysis Conclusion***

Controlling for race and gender-neutral factors, the Business Earnings Analysis documented statistically significant disparities in business earnings for minorities and Caucasian females when compared to similarly situated non-minority males. African Americans have significant lower business earnings in the construction, professional services, and goods and services industries. Caucasian females and Hispanic Americans have significant lower business earnings in the construction and professional services industries. Asian Americans have significant lower business earnings in the professional services industry. Table 9.10 depicts the earnings disparity regression results by race, gender, and industry.



**Table 9.10: Statistically Significant Business Earnings Disparities**

<b>Race/Gender</b>	<b>Construction</b>	<b>Professional Services</b>	<b>Goods and Services</b>
Caucasian Female	<b><i>SIGNIFICANT</i></b>	<b><i>SIGNIFICANT</i></b>	NOT SIGNIFICANT
African American	<b><i>SIGNIFICANT</i></b>	<b><i>SIGNIFICANT</i></b>	<b><i>SIGNIFICANT</i></b>
Asian American	NOT SIGNIFICANT	<b><i>SIGNIFICANT</i></b>	NOT SIGNIFICANT
Hispanic American	<b><i>SIGNIFICANT</i></b>	<b><i>SIGNIFICANT</i></b>	NOT SIGNIFICANT
Native American	NOT SIGNIFICANT	NOT SIGNIFICANT	NOT SIGNIFICANT
Other	NOT SIGNIFICANT	NOT SIGNIFICANT	NOT SIGNIFICANT

## ***VII. Conclusion***

The analyses of the two outcome variables document disparities that could adversely affect the formation and growth of M/WBEs within the construction, professional services, and goods and services industries. In the absence of a race and gender-neutral explanation for the disparities, the regression findings point to racial and gender discrimination that depressed business ownership and business earnings. Such discrimination is a manifestation of economic conditions in the private sector that impede minorities and Caucasian females' efforts to own, expand, and sustain businesses. It can reasonably be inferred that these private sector conditions are manifested in the current M/WBEs' experiences and likely contributed to lower levels of willing and able M/WBEs. It is important to note that there are limitations to using the regression findings in order to assess disparity between the utilization and availability of businesses. No matter how discriminatory the private sector may be, the findings cannot be used as the factual basis for a government-sponsored, race-conscious M/WBE program. Therefore, caution must be exercised in the interpretation and application of the regression findings in a disparity study. Nevertheless, the findings can be used to enhance the race-neutral recommendations to eliminate identified statistically significant disparities in the City's use of available M/WBEs.



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# ***CHAPTER 10: Anecdotal Analysis***

## ***I. Purpose and Background for eSurvey***

The purpose of the Anecdotal eSurvey was to solicit information from M/WBEs and Caucasian male business owners domiciled in Pinellas County as willing to do business with the City of St. Petersburg (City). The eSurvey provides an opportunity for all available businesses to express their experience working with or seeking work from the City.

## ***II. eSurvey Methodology***

The survey population was the businesses available to perform the City contracts during the October 1, 2014 to September 30, 2018 study period. The survey was administered in a digital format.

### ***A. eSurvey Instrument Design***

The eSurvey questions were designed to elicit from the respondents (1) general background information; (2) experience submitting bids/proposals; (3) history working with the City; (4) interest in technical assistance and supportive services; and (5) comments regarding the City's SBE program.

The eSurvey included 37 questions yielding either a yes-or-no, multiple-choice, rating-scale response, and eight open-ended questions. The eSurvey questions were imported into Form Assembly™, an on-line research tool that converted the questions into an eSurvey. A copy of the eSurvey is attached as Appendix A.

### ***B. Identification of the eSurvey Population***

In the survey population there were 2,756 minority-owned, female-owned, and Caucasian male-owned companies in the market area that provide construction, professional services (including architecture and engineering), and goods and services. A profile of the 2,756 businesses, by ethnicity and gender, is presented in Table 10.1.



**Table 10.1: Profile of eSurvey Population by Ethnicity and Gender**

<b>Ethnicity/Gender</b>	<b>Number</b>	<b>Percent</b>
African Americans	95	3.45%
Asian Americans	33	1.20%
Hispanic Americans	95	3.45%
Native Americans	17	0.62%
Caucasian Females	368	13.35%
Non-Minority Males	2,148	77.94%
<b>Total</b>	<b>2,756</b>	<b>100.00%</b>

### ***C. Distribution of the eSurvey Instrument***

The eSurvey was emailed to the 2,756 businesses in the availability database. The email transmission included a description of the purpose for the eSurvey and the Uniform Resource Locator (URL) link to the eSurvey. The business owners were encouraged to complete all questions but were informed that including their company name was optional. In an effort to maximize the number of responses, two reminder emails were sent to the 2,756 businesses, encouraging them to complete the eSurvey.

## ***III. eSurvey Findings***

The responses to the 37 questions in the anecdotal eSurvey are presented below in three sections—*Profile of the eSurvey Respondents, Overview of Business Practices, and Best Management Practices.*

### ***A. Profile of the eSurvey Respondents***

A total of 70 eSurveys were received, which represent 2.53% percent of the 2,756 businesses that received an email invitation from Mason Tillman to complete the eSurvey.

Chart 1 presents the industry of the businesses that responded to the eSurvey. The findings revealed that 55.70% of businesses classified themselves as professional services, 24.30% as goods and supplies, and 20.00% as construction. Our analysis combined respondents who identified as architecture, engineering, landscaping, or surveying services with professional services.



**Chart 10.1: Respondents by Industry**

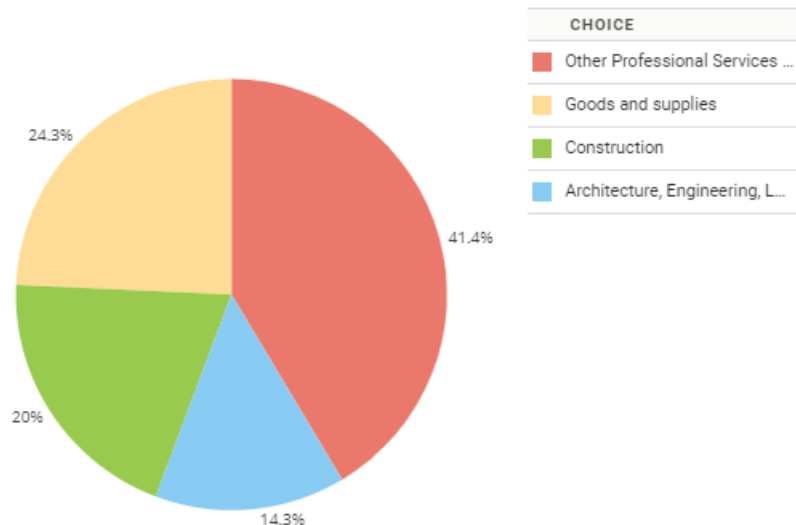


Chart 10.2 presents the gender of the business owners. Male-owned businesses represented 55.70% of respondents and woman-owned businesses represented 38.60%.

**Chart 10.2: Respondents by Gender**

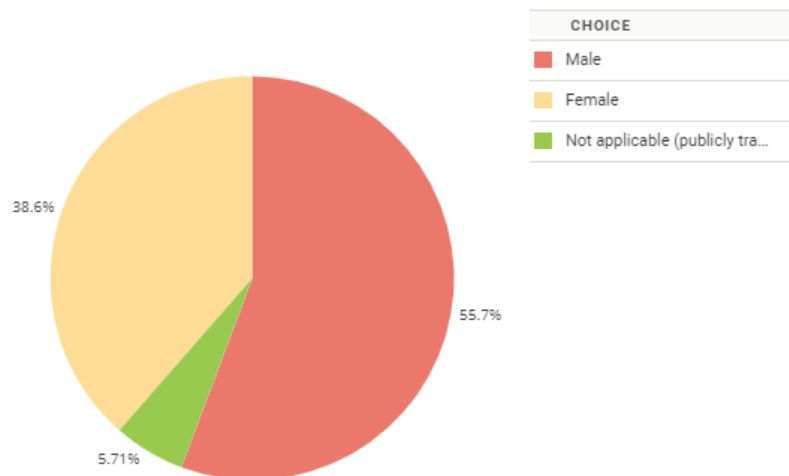


Chart 10.3 presents the ethnicity of the business owners. The majority were Caucasian American, representing 47.50% of respondents, followed by African American, representing 38.60% of respondents.



**Chart 10.3: Businesses by Ethnicity**

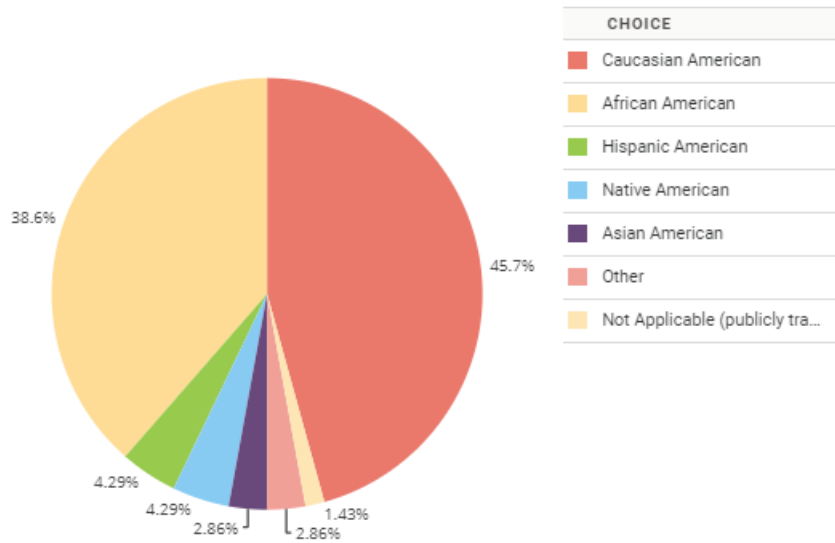


Chart 10.4 presents the business enterprise certifications of the businesses that responded to the eSurvey. The findings revealed that 37.10% of businesses had an M/WBE certification, 42.90% had no certifications, 15.70% had other certifications, and 40.00% had SBE certifications.

**Chart 10.4: Respondents' Certifications**

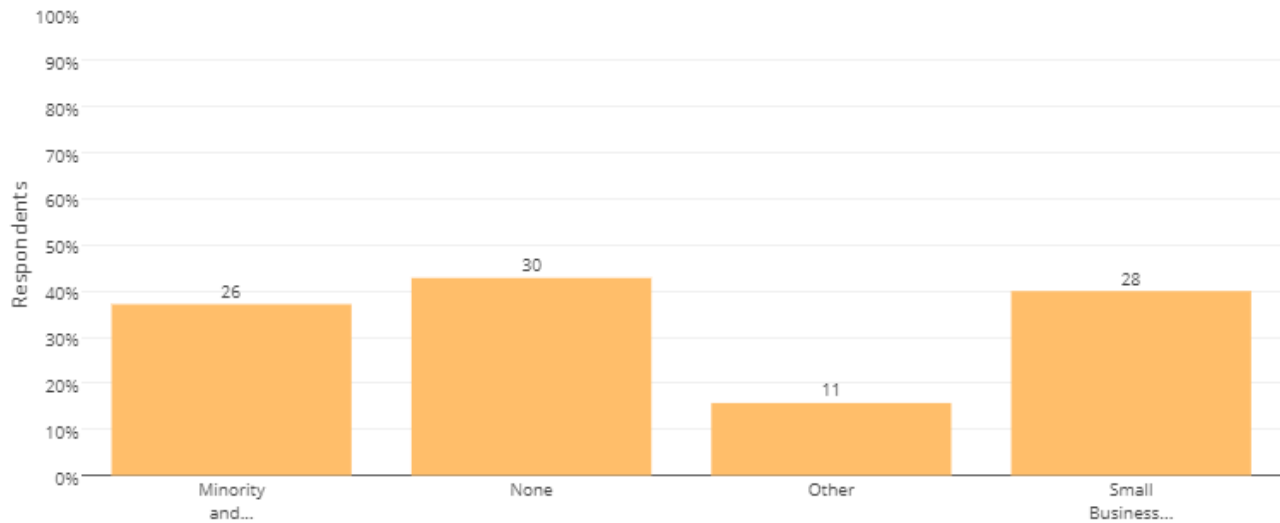
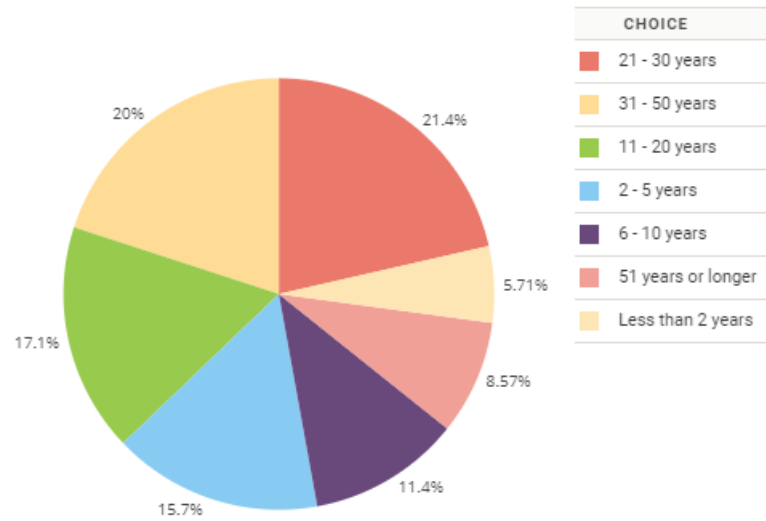


Chart 10.5 presents the years in operation of businesses that responded to the eSurvey. The majority of respondents (78.40%) had been in business for over 6 years, while 15.70% of respondents have been in business for 2 to 5 years and 5.71% of respondents have been in business for less than 2 years.

**Chart 10.5: Businesses by Number of Years in Operation**



### ***B. Overview of Business Practices***

This section presents the business practices reported by the business owners. The respondents reported on their bid/proposal submissions, prime and subcontract awards, and experience navigating the City's procurement process.

Chart 10.6 presents the number bids, quotes, or proposals submitted to the City for construction, professional services (including architecture and engineering), and goods and services prime contracts. The majority of respondents did not submit bids/proposals during the study period. For those that submitted bids, 38.60% submitted 1 to 4 bids/proposals, 8.57% submitted 5 to 9 bids/proposals, and 7.14% submitted 15 or more bids/proposals.





**Chart 10.6: Prime Contract Bids or Proposals Submittals**

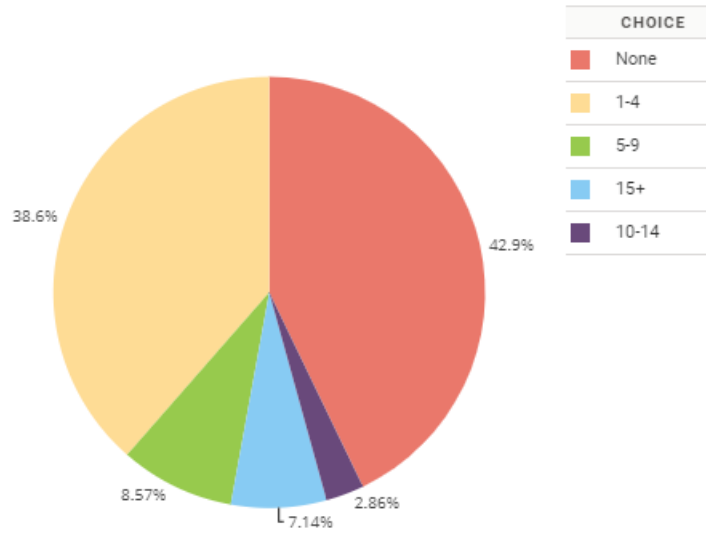


Chart 10.7 presents the number of bids or proposals submitted to the City’s prime contractors by businesses that responded to the eSurvey. The majority, or 72.90% of respondents, did not submit bids/proposals for subcontracts.

**Chart 10.7: Subcontract Bids or Proposals Submittals**

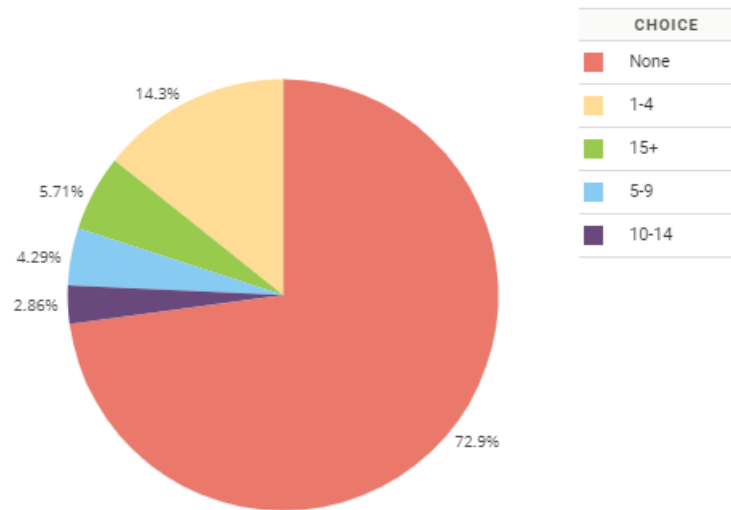


Chart 10.8 presents the number of prime contracts awarded during the study period to businesses that responded to the eSurvey. The majority, or 65.70% of the respondents, had no prime contract awards, while 22.90% had 1 to 4 prime contract awards.



**Chart 10.8: Prime Contract Awards**

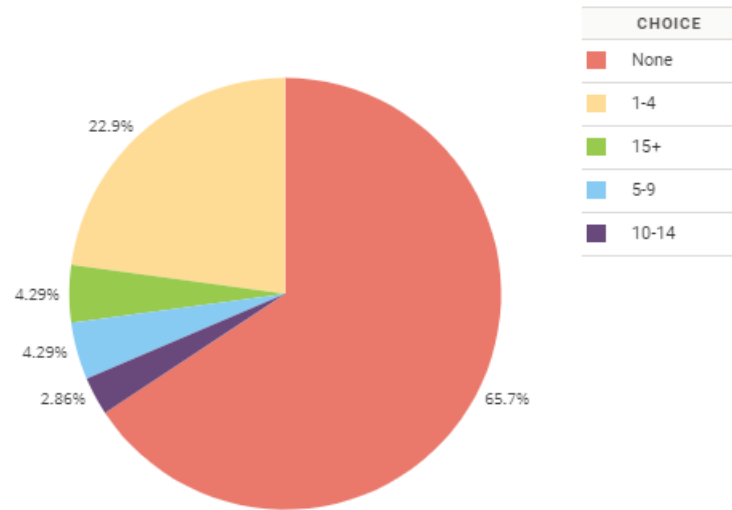


Chart 10.9 presents the number of subcontracts awarded during the study period to businesses that responded to the eSurvey. The majority, or 75.70% of respondents, received no subcontract awards, while 15.70% had 1 to 4 subcontract awards.

**Chart 10.9: Subcontract Awards**

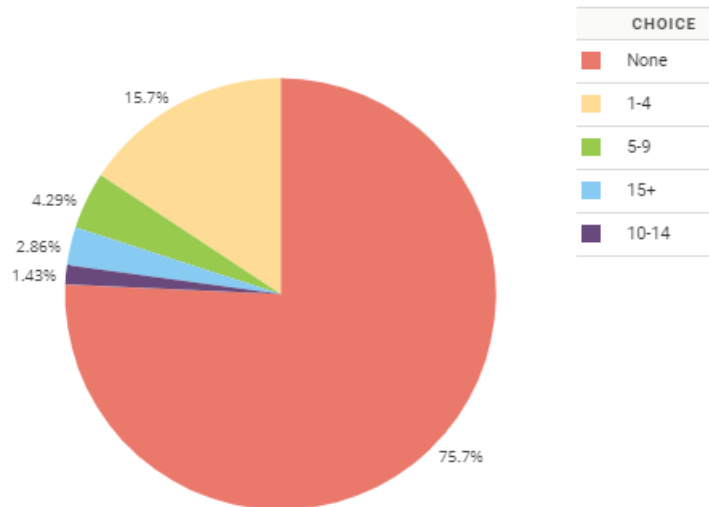


Chart 10.10 presents how often businesses that responded to the eSurvey were asked by prime contractors to lower the price of a bid/proposal. The majority, or 74.30% of respondents, were never asked to reduce the price of their bid/proposal.



**Chart 10.10: Pressure to Reduce Bid or Proposal**

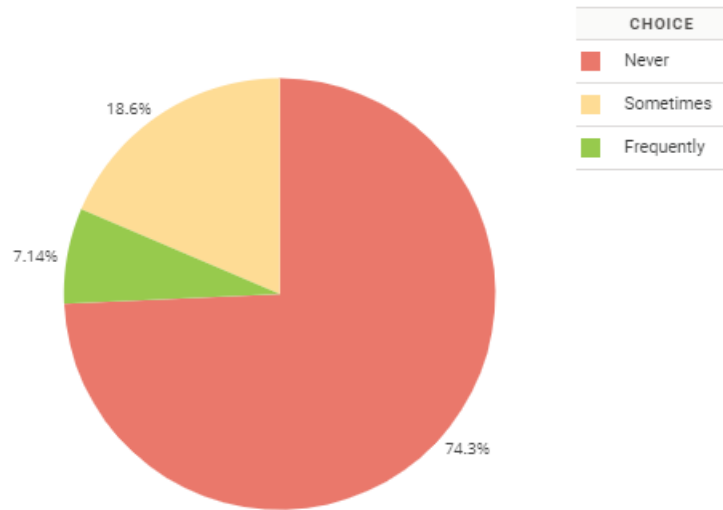


Chart 10.11 presents how often businesses that responded to the eSurvey experienced insufficient lead time to submit a bid or proposal on City contracts. The findings revealed that 74.30% of respondents reported never experiencing insufficient lead time to submit a bid or proposal, 17.10% sometimes experienced insufficient lead time to submit a bid or proposal, and 8.57% frequently experienced insufficient lead time to submit a bid or proposal.

**Chart 10.11: Insufficient Lead Time to Submit a Bid or Proposal**

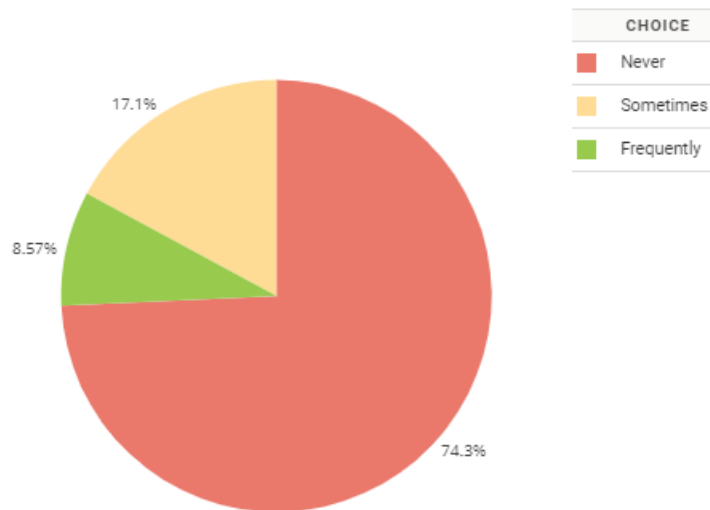


Chart 10.12 presents businesses that were not awarded work as a subcontractor by a prime contractor who won the contract. The majority, or 85.70% of respondents, received work as a subcontractor from a prime contractor after the contract was awarded.

**Chart 10.12: Subcontractors Utilized by Prime Contractors**

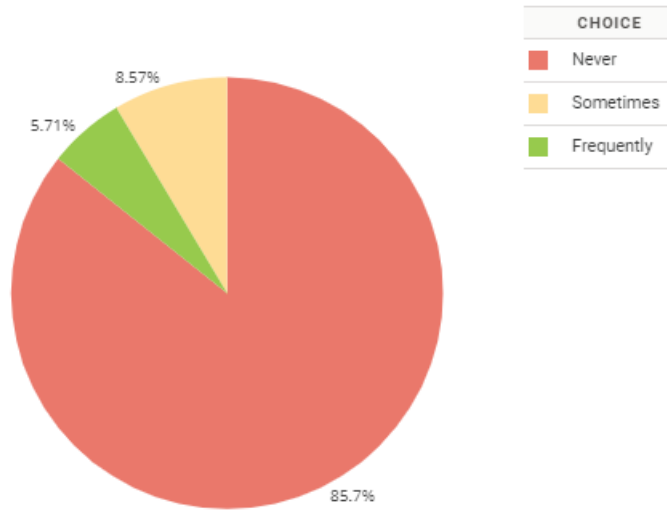


Chart 10.13 presents how often businesses that responded to the eSurvey had to meet performance requirements that exceeded their scope of work. The majority, or 80.00% of the respondents, did not experience excessive performance requirements while working on a City contract.

**Chart 10.13: Performance Requirements**

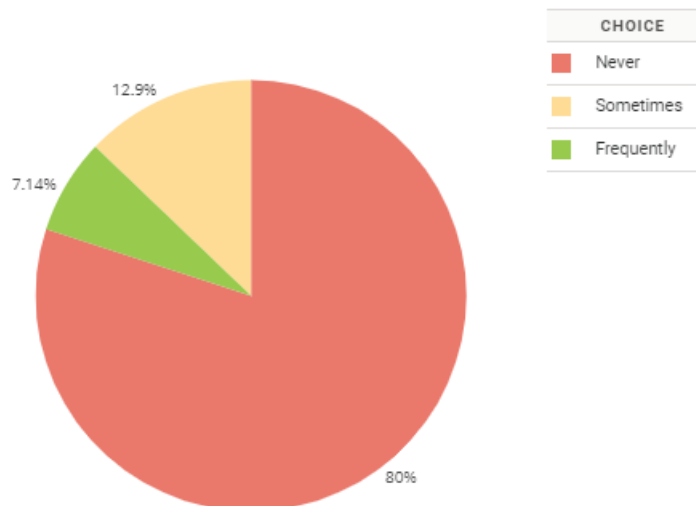


Chart 10.14 presents the frequency at which businesses that responded to the eSurvey experienced prime contractors not paying invoices for work performed. The majority, or 92.90% of the respondents, received payment for their invoices from prime contractors.

**Chart 10.14: Unpaid Invoices by Prime Contractors**

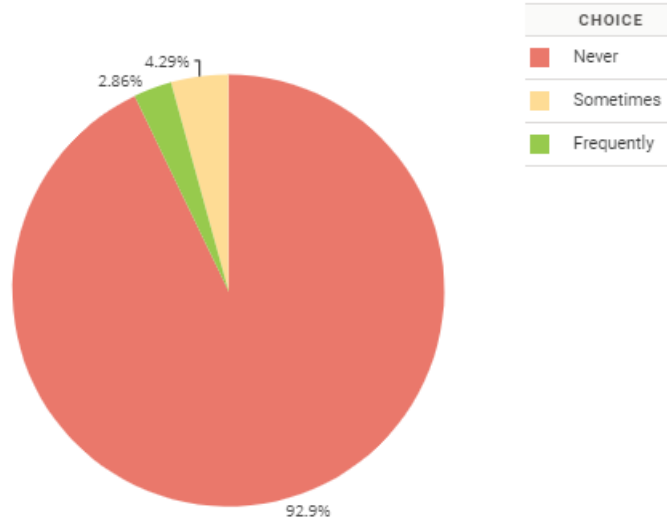


Chart 10.15 presents the frequency of City invoices paid more than 60 days late. The majority, or 84.30% of the respondents, received payments for their invoices before 60 days.

**Chart 10.15: Late Payments by the City**

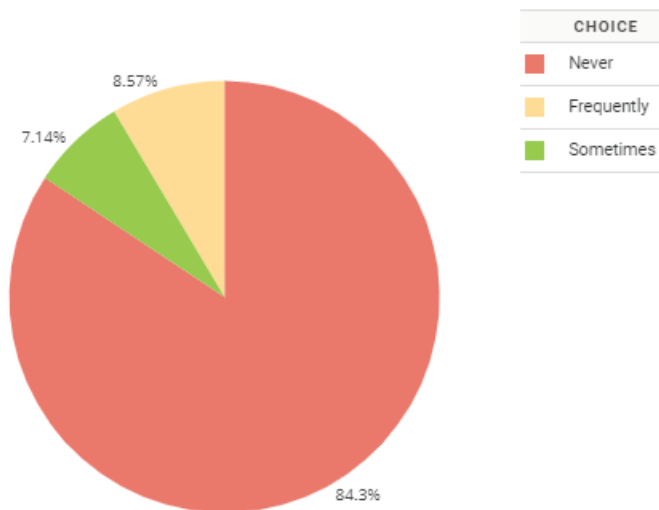


Chart 10.16 presents whether businesses that responded to the eSurvey requested a debriefing from the City after their bid or proposal was unsuccessful. The majority, or 91.40% of the respondents, did not request a debriefing from the City after their bid or proposal was unsuccessful.



**Chart 10.16: Debriefing Requests from Unsuccessful Bidders or Proposers**

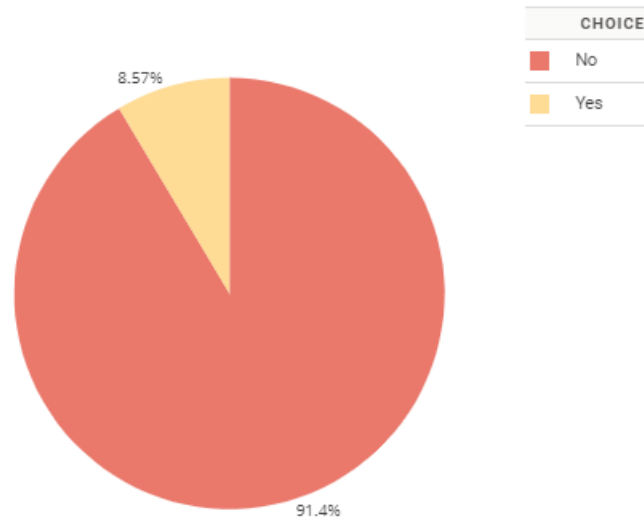


Chart 10.17 presents the extent to which businesses that responded to the eSurvey found debriefing meetings with the City to be helpful after unsuccessful contract bids. The findings revealed that 15.71% of respondents found debriefing meetings with the City to be very helpful or somewhat helpful, while 8.57% of respondents did not find debriefing meetings with the City to be helpful.

**Chart 10.17: Helpfulness of Debriefing Meetings**

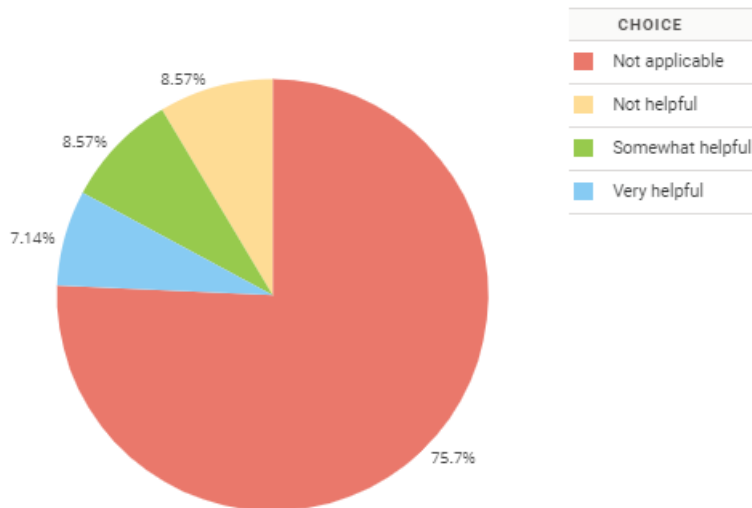


Chart 10.18 presents multi-year agreements awarded to businesses that responded to the eSurvey during the study period. The majority, or 80.00% of the respondents, have never been awarded a multi-year agreement.

**Chart 10.18: Multi-year Agreement Awards**

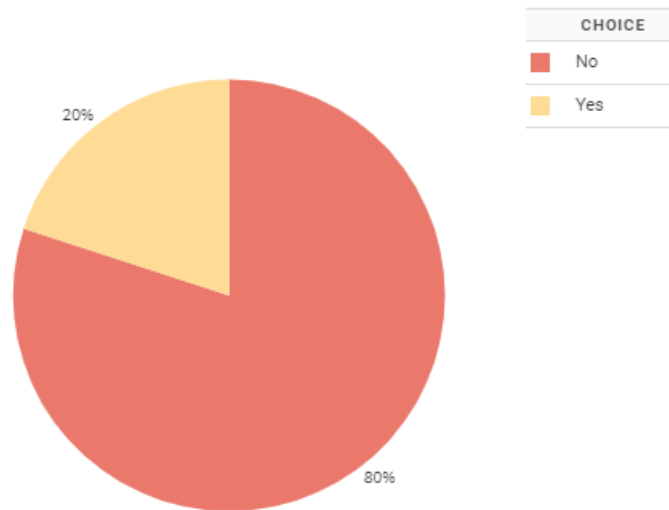


Chart 10.19 presents the number of multi-year agreements awarded to businesses that responded to the eSurvey. The majority, or 78.60% of respondents, did not indicate receiving a multi-year agreement. The findings revealed that 17.32% of respondents were awarded 1 to 5 multi-year agreements.

**Chart 10.19: Number of Multi-year Agreements**

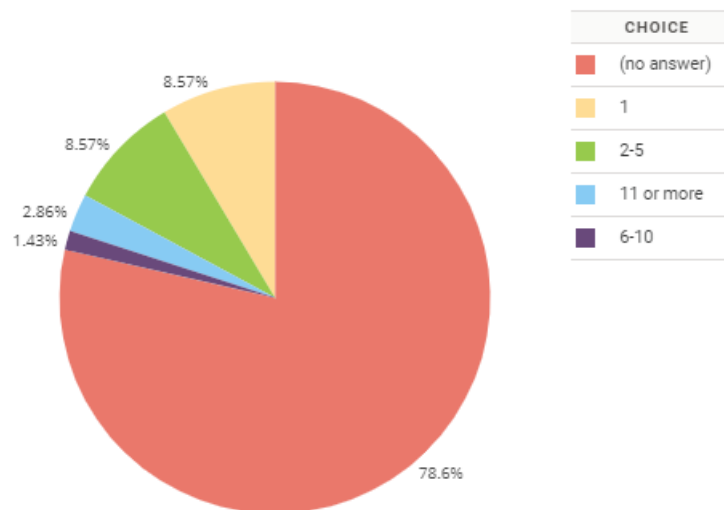


Chart 10.20 reports on whether the respondents believe the City has preferred prime contractors. The findings revealed that 44.30% of respondents reported that the City has a preference for certain prime contractors.

**Chart 10.20: Highly Used Prime Contractors**

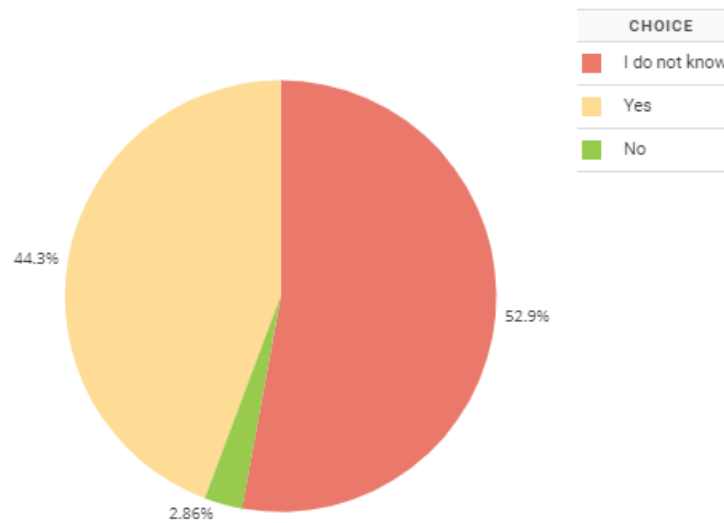


Chart 10.21 presents the types of preferential treatment the respondents believe is accorded to select businesses. The findings revealed that 32.90% of respondents reported that preferred contractors receive advance bid or proposal notifications, 18.60% of respondents reported the City approved multiple change orders or amendments for the preferred contractors, and 34.30% of respondents reported that there are bid or proposal requirements that favor large businesses.

**Chart 10.21: Preferential Treatment to Preferred Contractors**

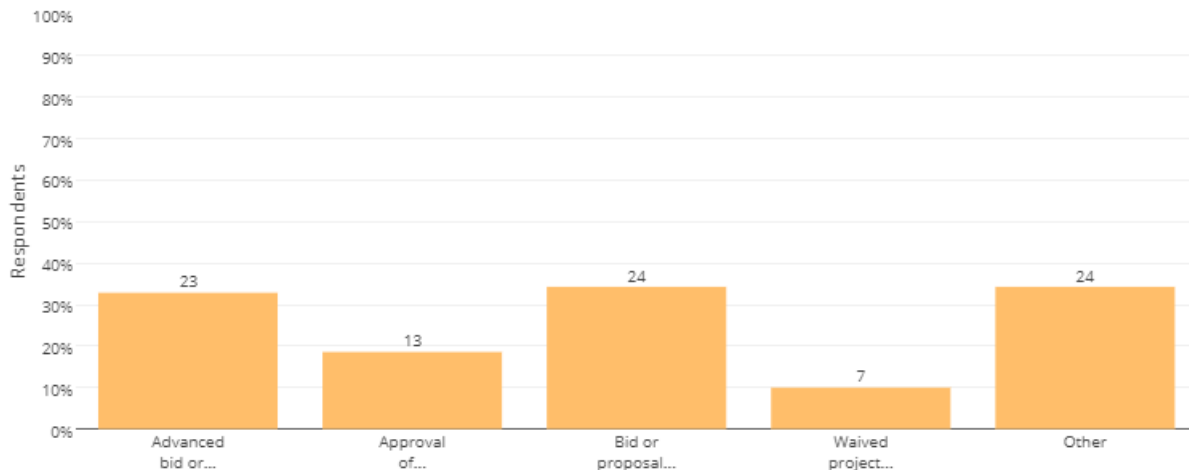


Chart 10.22 presents businesses that responded to the survey who have submitted bond waiver applications. The findings revealed that 21.40% of the construction businesses have not applied for a bond waiver with the City.



**Chart 10.22: Bond Waiver Application Requests**

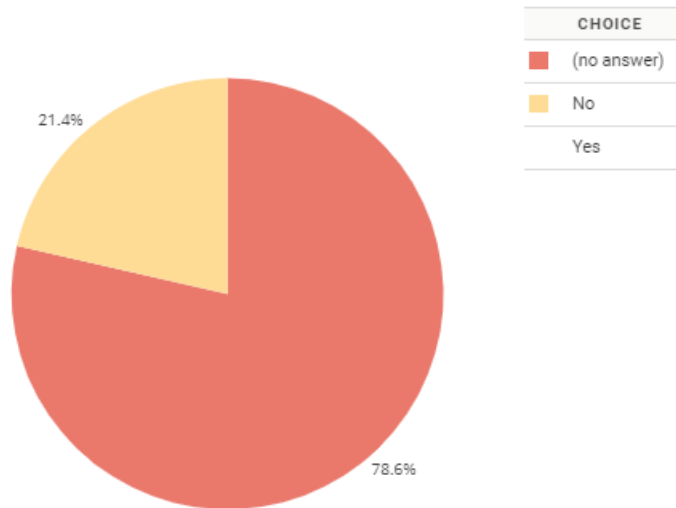


Chart 10.23 presents bond waivers awarded to construction businesses that responded to the survey. The findings revealed that no company reported receiving a bond waiver from the City on a construction contract valued under \$100,000 since October 1, 2014.

**Chart 10.23: Bond Waiver Awards**

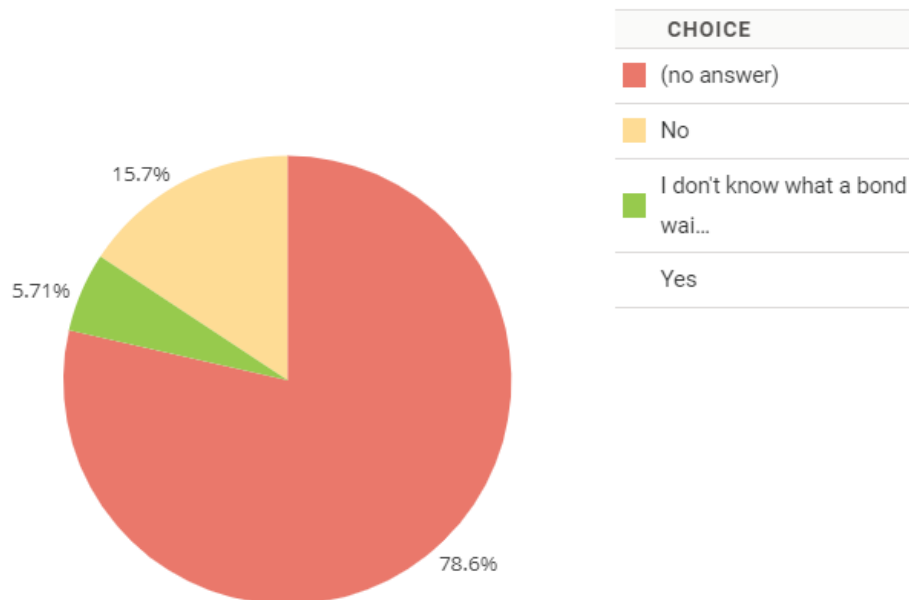


Chart 10.24 presents the reasonability of bond waiver requirements as reported by construction businesses that responded to the survey. Of the 21.43% of construction companies who responded, 8.57% believe that the City's prime contract bond requirements are frequently reasonable based

on the project size and scope of work, 8.57% believe that the bonding requirements are not reasonable, and 4.29% believe that the bonding requirements are sometimes reasonable.

**Chart 10.24: Bond Waiver Requirements Consistent with Scope of Work**

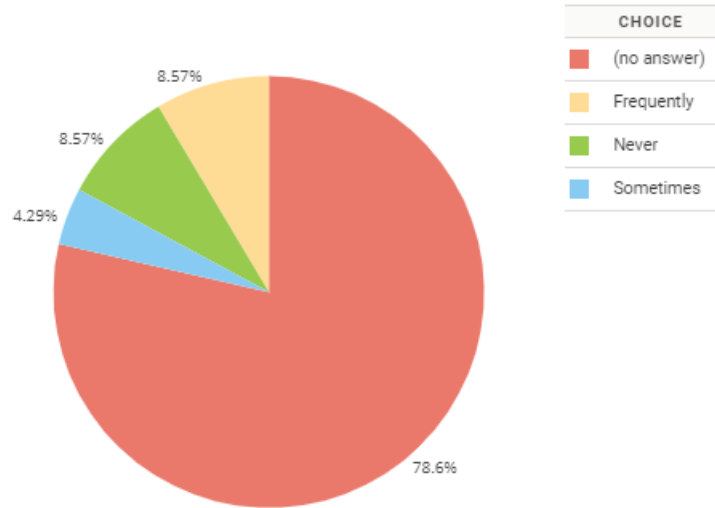


Chart 10.25 presents how frequently construction businesses that responded to the survey were prohibited from bidding as a prime contractor due to the City’s bonding requirements. While 18.60% said that the City’s bonding requirements have never prohibited them from bidding as a prime contractor, and 1.43% were frequently prohibited from bidding as a prime contractor, and 1.43% were sometimes prohibited from bidding as a prime contractor.

**Chart 10.25: Prohibitive Bonding Requirements**

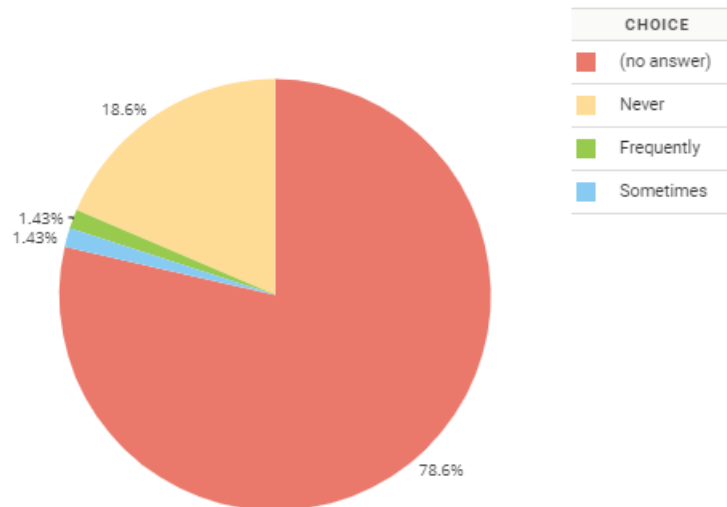
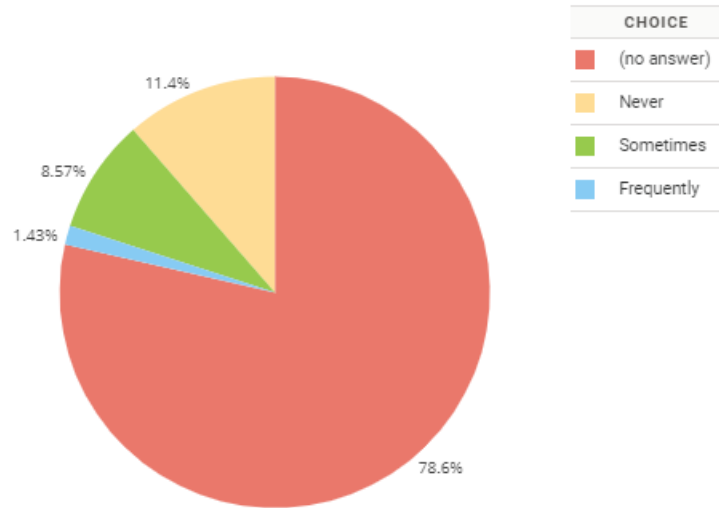


Chart 10.26 presents how frequently construction businesses that responded to the survey were required to bond their subcontracts. The respondents reported that 11.40% have never been required to bond their subcontracts, 8.57% have sometimes been required to bond their subcontracts, and 1.43% have frequently been required to bond their subcontracts.

**Chart 10.26: Subcontract Bonding Requirements**



### ***C. Small Business Enterprise Program***

This section presents the respondents experience with the City's SBE Program.

Chart 10.27 presents the SBE certifications of businesses that responded to the eSurvey. The findings revealed that 38.60% of the respondents had an SBE certification, while 61.40% of the respondents did not have an SBE certification.



**Chart 10.27: Respondents by SBE Certification**

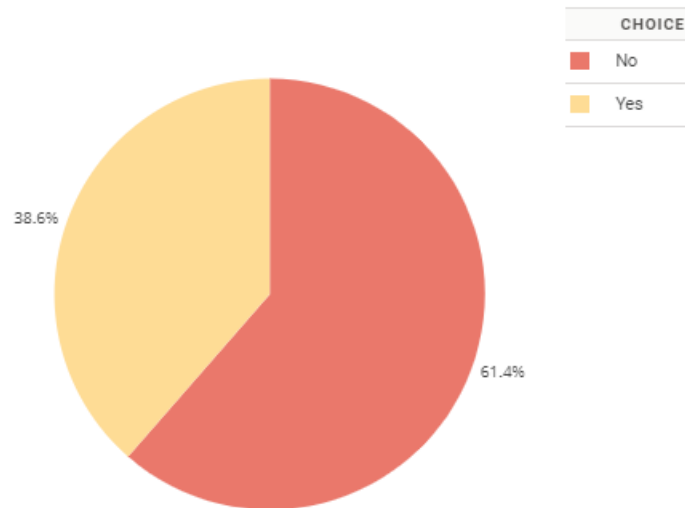


Chart 10.28 presents whether businesses that responded to the eSurvey have benefitted from the City's SBE program. The majority of respondents, 77.10%, reported that they have not benefitted from the City's SBE program, while 22.90% of the respondents reported that the SBE program was beneficial.

**Chart 10.28: SBE Program Benefit**

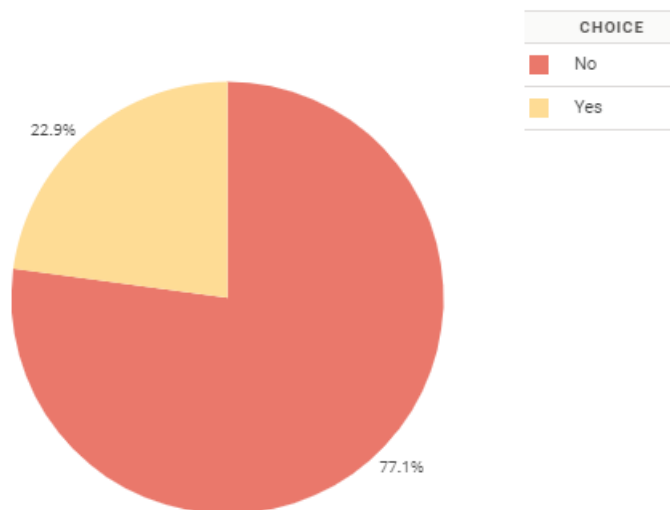


Chart 10.29 presents the number of contracts that businesses were used to meet an SBE program goal. The majority of respondents, 82.90%, had not been used to meet an SBE goal. The findings revealed that 5.71% of respondents had been used to meet SBE goals on 2 to 5 contracts; 5.71% had been used to meet SBE goals on 6 to 10 contracts; 4.29% had been used to meet SBE goals on 1 contract; and 1.43% of respondents had been used to meet SBE goals on 11 or more contracts.

**Chart 10.29: Number of Contracts Used to Meet SBE Goals**

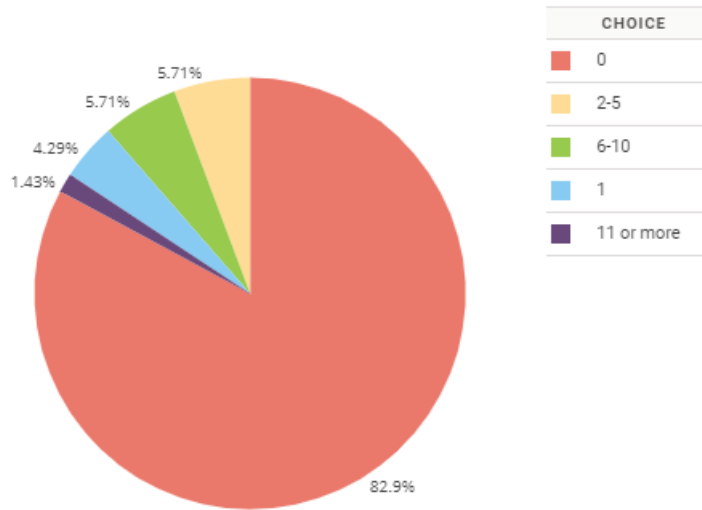


Chart 10.30 presents whether there is a process available for expediting SBE certification applications to meet to the City’s bid/proposal deadline. The majority of respondents, 87.10%, replied that there is not a process available for expediting SBE certifications. The findings revealed that 12.90% of respondents reported that there is a process available for expediting SBE certifications.



**Chart 10.30: SBE Certification Expediting Process**

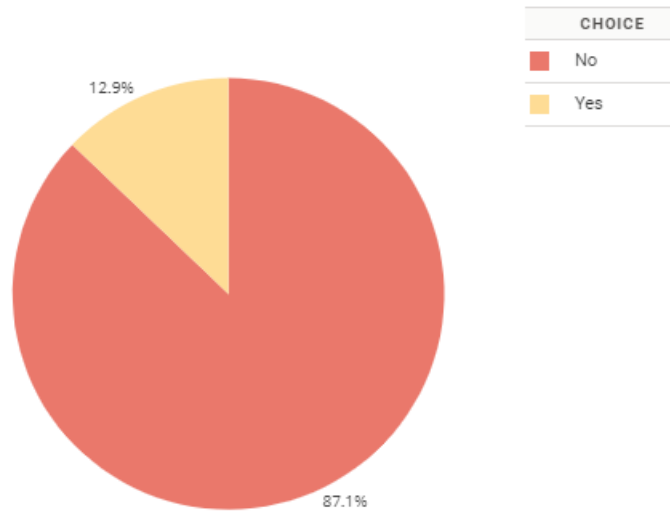
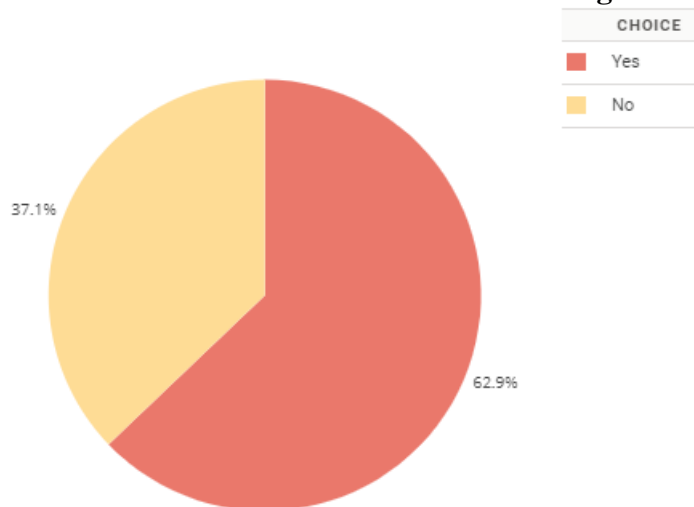


Chart 10.31 presents the need for a Minority and Woman-owned Business Enterprise Program, as reported by businesses that responded to the eSurvey. The majority of respondents, 62.90%, believe that there is a need for the City to implement a Minority and Woman-owned Business Enterprise Program.

**Chart 10.31: Need for M/WBE Program**



#### ***D. Summary***

The majority of respondents to the anecdotal eSurvey were Caucasian American, representing 47.50% of respondents, and African American, representing 38.60% of respondents. In addition, male-owned businesses accounted for 55.70% of respondents and woman-owned businesses accounted for 38.60%. The findings revealed that 37.10% of businesses had an M/WBE certification, 42.90% had no certifications, 15.70% had other certifications, and 40.00% had small business enterprise certifications.

When describing issues businesses have had in dealing with the City, 25.70% of respondents have experienced insufficient time for submitting bids on City contracts. When bids were rejected by the City, 15.71% of respondents who pursued a debriefing meeting found the meeting with the City to be helpful, while 8.57% of respondents did not find debriefings with the City to be helpful. Respondents also detailed the types of preferential treatment highly used contractors receive: 32.90% of respondents reported advance bid or proposal notifications, 18.60% of respondents reported the City's approval of multiple change orders or amendments, and 34.30% of respondents reported that there are bid or proposal requirements that favor large businesses. The findings revealed that 44.30% reported that the City shows preference to highly used prime contractors.

While 38.60% of respondents were members of the SBE program, only 22.90% of respondents found the program to be helpful. Information gathered from the eSurvey was used to draft the race and gender-neutral recommendations set forth in *Chapter 11, Recommendations*.



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# **CHAPTER 11: Recommendations**

## **I. Introduction**

This chapter presents recommendations to address disparities that were documented in the City of St. Petersburg Disparity Study (Study). The Study included a statistical analysis of the utilization of available M/WBEs and non-M/WBEs on construction, professional services (including architectural and engineering services), and goods and services prime contracts issued during the study period. An analysis of the utilization of available M/WBEs and non-M/WBEs on construction and professional services subcontracts was also undertaken. This chapter is organized into five sections: 1) *Introduction*, 2) *Disparity Analysis Findings*, 3) *Assessment of the City's Small Business Enterprise Program*, 4) *Race and Gender-Conscious Recommendations*, and 5) *Race and Gender-Neutral Recommendation*.

## **II. Disparity Analysis Findings**

The statistically significant findings of disparity in the award of prime contracts were calculated in compliance with the constitutional parameters set forth in *City of Richmond v. J.A. Croson* (*Croson*),<sup>293</sup> and its progeny. The statistical findings of disparity summarized in this chapter are detailed in *Chapter 7: Prime Contract Disparity Analysis* and *Chapter 8: Subcontract Disparity Analysis*.

### **A. Number of Prime Payments**

As shown in Table 11.1, 7,896 prime contracts awarded by the City during the October 1, 2014 to September 30, 2018 study period were analyzed. These contracts included 555 for construction, 1,106 for professional services, and 6,235 for goods and services.

During the study period, the City awarded a total of \$684,925,107. Prime contract expenditures included \$410,663,577 for construction, \$67,274,605 for professional services, and \$206,986,925 for goods and services.

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<sup>293</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).



**Table 11.1: Total Prime Payments and Dollars Expended: All Industries  
October 1, 2014 to September 30, 2018**

Industry	Total Number of Contracts	Total Award Dollars
Construction	555	\$410,663,577
Professional Services	1,106	\$67,274,605
Goods and Services	6,235	\$206,986,925
<b>Total Expenditures</b>	<b>7,896</b>	<b>\$684,925,107</b>

**B. Prime Payment Disparity Findings**

The prime contract disparity analysis was performed at both informal and formal thresholds. The informal threshold, which is defined by the City's *Procurement Operations Manual*, is as follows:

**Table 11.2: Informal Thresholds by Industry**

Industry	Contract Threshold
Construction	Under \$100,000
Professional Services	Under \$100,000
Goods and Services	Under \$100,000

The formal threshold for each industry is as follows:

**Table 11.3: Formal Thresholds by Industry**

Industry	Contract Threshold
Construction	\$100,000 to \$2,790,000
Professional Services	\$100,000 to \$1,400,000
Goods and Services	\$100,000 to \$1,150,000

Table 11.4 shows a description of the disparity analysis outcomes.

**Table 11.4: Statistical Outcome Descriptions**

P-Value Outcome	Definition of P-Value Outcome
< .05 *	The underutilization is statistically significant.
not significant	<ul style="list-style-type: none"><li>• The underutilization of M/WBEs is not statistically significant.</li><li>• The overutilization of non-minority males is not statistically significant.</li></ul>
----	The magnitude of the statistical significance of disparity for this underutilization cannot be detected.
< .05 †	The overutilization is statistically significant.
**	This study does not test statistically the overutilization of minority or gender groups or the underutilization of non-minority males.

### **1. Construction Prime Contract Disparity Findings**

Table 11.5 shows the construction prime contract disparity findings at the two thresholds: 1) formal contracts valued from \$100,000 to \$2,790,000 and 2) informal contracts valued less than \$100,000. On formal prime purchase orders valued between \$100,000 and \$2,790,000, disparity was found for African Americans, Hispanic Americans, and Caucasian females. On informal contracts valued under \$100,000, disparity was found for African Americans, Native Americans, and Caucasian females.

**Table 11.5: Prime Contract Disparity Summary: Construction**  
**October 1, 2014 to September 30, 2018**

Ethnicity/Gender	Construction	
	Contracts Valued Under \$100,000	Contracts Valued \$100,000 to \$2,790,000
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	----	No Disparity
Hispanic Americans	No Disparity	<i>Disparity</i>
Native Americans	<i>Disparity</i>	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

## 2. Professional Services Prime Contract Disparity Findings

Table 11.6 shows the professional services prime contracts disparity findings at the two thresholds: 1) formal contracts valued from \$100,000 to \$1,400,000 and 2) informal contracts valued less than \$100,000. On formal contracts valued from \$100,000 to \$1,400,000, disparity was found for African Americans, Native Americans, and Caucasian females. On informal prime contracts valued less than \$100,000, disparity was found for African Americans, Hispanic Americans, Native Americans, and Caucasian females.

**Table 11.6: Prime Contracts Disparity Summary: Professional Services**  
**October 1, 2014 to September 30, 2018**

Ethnicity/Gender	Professional Services	
	Contracts Valued Under \$100,000	Contracts Valued \$100,000 to \$1,400,000
African Americans	<i>Disparity</i>	<i>Disparity</i>
Asian Americans	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	No Disparity
Native Americans	<i>Disparity</i>	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

### 3. Goods and Services Prime Contracts Disparity Findings

Table 11.7 shows the goods and services prime contract disparity findings at the two thresholds: 1) formal contracts valued from \$100,000 to \$1,150,000 and 2) informal contracts valued less than \$100,000. On formal prime contracts valued from \$100,000 to \$1,150,000, disparity was found for Hispanic Americans and Caucasian females. On informal prime contracts valued less than \$100,000, disparity was found for African Americans, Hispanic Americans, and Caucasian females.

**Table 11.7: Prime Contracts Disparity Summary: Goods and Services  
October 1, 2014 to September 30, 2018**

Ethnicity/Gender	Goods and Services	
	Contracts Valued Under \$100,000	Contracts Valued \$100,000 to \$1,150,000
African Americans	<i>Disparity</i>	No Disparity
Asian Americans	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans	----	No Disparity
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

### ***III. Assessment of the City's Small Business Enterprise Program***

The efficacy of the City's Small Business Enterprise (SBE) Program was assessed to determine if the program had achieved parity in the award of prime contracts and subcontracts to available M/WBEs. In 1990, the City Council adopted the Small Disadvantaged Business Enterprise (SDBE) Ordinance 457-G. The SDBE Ordinance established the SDBE Program and included a goal to provide small and disadvantaged businesses domiciled in St. Petersburg access to the City's goods and services procurements. In 2006, the SDBE program was expanded to include construction contracts, and the eligibility criteria for the SDBE program were broadened to include Pinellas, Hillsborough, Pasco, Polk, and Manatee Counties.

The City's SDBE program, which is referred to as SBE program, was last amended in 2017 by the adoption of Ordinance 293-H and codified in Chapter 2, Article 5, Division 4 of the St. Petersburg Code of Ordinances. The Ordinance included setting annual citywide goals for SBE participation, corrective actions and penalties for non-compliance with the program requirements, the addition of

two citizens to the SBE committee, and quarterly updates to the City Council regarding the contracts awarded to small business enterprises.

### ***A. SBE Program Administration***

The SBE program is managed by the Greenhouse, a one-stop facility to assist with the growth of small businesses. The primary responsibilities of the Greenhouse are:

- Establish administrative policies and procedures to implement the provisions of Chapter 2, Article 5, Division 4 of the St. Petersburg Code of Ordinances and assist SBEs to meet their contractual obligations
- Assist businesses with training programs on how to do business with the City
- Publicize procurement procedures defining standards on how to do business with the City
- Compile, maintain, and disseminate the certified SBE directory
- Ensure SBEs are included on solicitation mailing lists
- Establish procedures to assure City departments match SBEs with appropriate solicitations
- Establish a procedure to certify and recertify SBEs
- Apply discounts for evaluation purposes only, to SBEs' bids and quotes for goods and services, and construction projects under \$50,000
- Modify bonding requirements in Section 2-245 to the extent allowed by State law
- Establish progress payment provisions to encourage SBE participation in the procurement process
- Create and promulgate administrative procedures for a sheltered market program

The SBE certification eligibility requirements the business must meet include:

Active business operation for at least one year

- Employ fewer than 50 full-time permanent employees
- Annual sales averaged over the previous three years:
  - \$5 million or less for goods, services, supplies
  - \$8 million or less for construction
- Domiciled in Pinellas, Hillsborough, Pasco, Manatee, or Polk County

### ***B. SBE Program Components***

The SBE program has a comprehensive set of race and gender-neutral components, including:

- **SBE Goal** – Construction projects valued at \$50,000 or more are reviewed by the SBE Committee, which votes on a participation percentage to maximize SBE participation.
- **Sheltered Market Program** – Utilized on a contract-by-contract basis for construction and supplies and services procurements when the Committee establishes that there are sufficient available SBEs to provide the service and approves use of the procurement

method. Committee approval is not required to include construction contracts valued less than \$50,000 in the sheltered market program. Within the sheltered market procurement, subcontractors should perform at least 20% of the total contract value, including materials, goods, and supplies on construction projects included in the sheltered market.

- **Job Order Contracts** – All job order contracts are reviewed by the Procurement Director to establish an SBE participation goal. Contractors must demonstrate a good faith effort if the contractor fails to meet the SBE participation goal.
- **Bonding Assistance** – The Procurement Director has the authority to waive or reduce the bonding requirement on construction contracts less than \$100,000.

### ***C. Small Business Enterprise Utilization Findings***

#### **1. Prime Contracts, All Industries, All Dollars**

The utilization of certified SBEs on the City’s prime contracts awarded during the October 1, 2014 to September 30, 2018 study period was reviewed. The SBE utilization findings analyzed by ethnicity and gender of the certified small business are summarized in Table 11.8.

***African Americans*** received 14, or 12.61%, of all prime contracts awarded during the study period, representing \$14,204, or 0.24%, of the prime contract dollars.

***Asian Americans*** received 1, or 0.90%, of all prime contracts awarded during the study period, representing \$250,000, or 4.15%, of the prime contract dollars.

***Hispanic Americans*** received 1, or 0.90%, of all prime contracts awarded during the study period, representing \$20,847, or 0.35%, of the prime contract dollars.

***Native Americans*** received 2, or 1.80%, of all prime contracts awarded during the study period, representing \$708,265, or 11.76%, of the prime contract dollars.

***Caucasian Females*** received 33, or 29.73%, of all prime contracts awarded during the study period, representing \$1,009,376, or 16.77%, of the prime contract dollars.

***Non-minority Males*** received 60, or 54.05%, of all prime contracts awarded during the study period, representing \$4,017,996, or 66.74%, of the prime contract dollars.

***Minority Business Enterprises*** received 18, or 16.22%, of all prime contracts awarded during the study period, representing \$993,316, or 16.50%, of the prime contract dollars.

***Woman Business Enterprises*** received 34, or 30.63%, of all prime contracts awarded during the study period, representing \$1,030,223, or 17.11%, of the prime contract dollars.

**Table 11.8: Certified SBE Prime Contractor Utilization, All Industries  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African Americans	14	12.61%	\$14,204	0.24%
Asian Americans	1	0.90%	\$250,000	4.15%
Hispanic Americans	1	0.90%	\$20,847	0.35%
Native Americans	2	1.80%	\$708,265	11.76%
Caucasian Females	33	29.73%	\$1,009,376	16.77%
Non-minority Males	60	54.05%	\$4,017,996	66.74%
<b>TOTAL</b>	<b>111</b>	<b>100.00%</b>	<b>\$6,020,688</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
African American Females	0	0.00%	\$0	0.00%
African American Males	14	12.61%	\$14,204	0.24%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	1	0.90%	\$250,000	4.15%
Hispanic American Females	1	0.90%	\$20,847	0.35%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	2	1.80%	\$708,265	11.76%
Caucasian Females	33	29.73%	\$1,009,376	16.77%
Non-minority Males	60	54.05%	\$4,017,996	66.74%
<b>TOTAL</b>	<b>111</b>	<b>100.00%</b>	<b>\$6,020,688</b>	<b>100.00%</b>
<b>Minority and Women</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Minority Business Enterprises	18	16.22%	\$993,316	16.50%
Woman Business Enterprises	34	30.63%	\$1,030,223	17.11%

The certified SBE prime contract utilization analysis for all industries combined revealed that non-minority males received most of the dollars awarded to SBE prime contractors. When the utilization of certified SBEs was compared to the percent of each ethnic group on the City's list of certified SBEs, Hispanic Americans, Caucasian females, woman business enterprises, and minority business enterprises were underutilized at a statistically significant level. Table 11.9 shows the disparity analysis of the SBE-certified contractors in all industries by ethnicity and gender.

**Table 11.9: Utilization of Certified SBEs, All Industries, Prime Contracts  
October 1, 2014 to September 30, 2018**

<b>Ethnicity</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African Americans	\$14,204	0.24%	9.22%	\$554,807	-\$540,604	0.03	----
Asian Americans	\$250,000	4.15%	5.46%	\$328,775	-\$78,775	0.76	not significant
Hispanic Americans	\$20,847	0.35%	10.92%	\$657,550	-\$636,702	0.03	< .05 *
Native Americans	\$708,265	11.76%	3.07%	\$184,936	\$523,329	3.83	**
Caucasian Females	\$1,009,376	16.77%	40.96%	\$2,465,811	-\$1,456,435	0.41	< .05 *
Non-minority Males	\$4,017,996	66.74%	30.38%	\$1,828,810	\$2,189,186	2.20	< .05 †
<b>TOTAL</b>	<b>\$6,020,688</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$6,020,688</b>			
<b>Ethnicity and Gender</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
African American Females	\$0	0.00%	4.44%	\$267,129	-\$267,129	0.00	< .05 *
African American Males	\$14,204	0.24%	4.78%	\$287,678	-\$273,474	0.05	not significant
Asian American Females	\$0	0.00%	1.71%	\$102,742	-\$102,742	0.00	----
Asian American Males	\$250,000	4.15%	3.75%	\$226,033	\$23,967	1.11	**
Hispanic American Females	\$20,847	0.35%	5.46%	\$328,775	-\$307,928	0.06	not significant
Hispanic American Males	\$0	0.00%	5.46%	\$328,775	-\$328,775	0.00	< .05 *
Native American Females	\$0	0.00%	0.34%	\$20,548	-\$20,548	0.00	----
Native American Males	\$708,265	11.76%	2.73%	\$164,387	\$543,878	4.31	**
Caucasian Females	\$1,009,376	16.77%	40.96%	\$2,465,811	-\$1,456,435	0.41	< .05 *
Non-minority Males	\$4,017,996	66.74%	30.38%	\$1,828,810	\$2,189,186	2.20	< .05 †
<b>TOTAL</b>	<b>\$6,020,688</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$6,020,688</b>			
<b>Minority and Females</b>	<b>Actual Dollars</b>	<b>Utilization</b>	<b>Availability</b>	<b>Expected Dollars</b>	<b>Dollars Lost</b>	<b>Disp. Ratio</b>	<b>P-Value</b>
Minority Business Enterprises	\$993,316	16.50%	28.67%	\$1,726,067	-\$732,751	0.58	< .05 *
Woman Business Enterprises	\$1,030,223	17.11%	52.90%	\$3,185,005	-\$2,154,782	0.32	< .05 *

( \* ) denotes a statistically significant underutilization.

( † ) denotes a statistically significant overutilization.

( \*\* ) this study does not test statistically the overutilization of MWBEs or the underutilization of Non-minority Males.

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



The evidence indicates that the SBE program did not achieve parity in the award of prime contracts to SBE certified M/WBE firms even when the analysis was limited to certified small businesses. Clearly the SBE program, after nearly 31 years in operation, has been ineffective in achieving equitable participation for M/WBE prime contractors based on their availability in the City's market area.

#### ***IV. Race and Gender-Conscious Recommendations***

The Disparity Study was commissioned to examine the City's procurement activities for any evidence of discrimination in the award of contracts to available minority and women business enterprises and determine the effectiveness of the SBE program in addressing the underutilization of willing and able M/WBE. The persistence of statistically significant underutilization of M/WBEs after operating a robust SBE program for three decades is evidence the race and gender-neutral strategies have failed to remedy discrimination in the City's contracting with M/WBE prime and subcontractors. Given the documented discrimination, the City has a compelling interest to implement a race-based contracting program to eliminate the discrimination.<sup>294</sup>

The 1989 landmark decision of *City of Richmond v. J. A. Croson Co. (Croson)*<sup>295</sup> allows local governments to enact race-conscious remedies when there is a strong basis in evidence of ongoing effects of past or present discrimination. *Croson* held, "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."<sup>296</sup>

The proposed race and gender-conscious recommendations are predicated on the disparity findings and limited to the ethnic groups that were underutilized at a statistically significant level. Recommendations also include gender-based remedies for the female groups that are underutilized, albeit not at a statistically significant level. Findings of discrimination for WBEs only require statistical evidence of underutilization.

##### ***A. Prime Contract Remedies***

Prime contract remedies for the race and gender groups that have a statistically significant disparity should be implemented by the City. The recommended prime contract remedies could mitigate the adverse impact of the discrimination documented in the City's award of prime contracts. The proposed remedies include bid discounts for bid prime contracts and evaluation points for prime contracts for which the award is not based on low bid.



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<sup>294</sup> *Id.*

<sup>295</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

<sup>296</sup> *Id.* at 509.

### 1. Apply Bid Discount to Construction Prime Contracts

Implement a bid discount for construction prime contracts. A 10% bid discount should be applied when ranking the prime contractor's bid amount. To determine the lowest bidder during the evaluation process, the bid amount for eligible M/WBE bidders should be reduced by the discount percentage. The amount of the bid, as the basis for the contract amount, should remain unchanged. The maximum discount should not exceed \$50,000. The groups with statistically significant underutilization eligible for the bid discount are listed in Table 11.10.

**Table 11.10: Groups Eligible for Construction Bid Discount**

<b>Ethnicity/Gender</b>
<b>African Americans</b>
<b>Hispanic Americans</b>
<b>Native Americans</b>
<b>Caucasian Females</b>

### 2. Apply Bid Discount to Goods and Services Prime Contracts

A 10% bid discount for groups with statistically significant disparity on goods and services prime contracts should be implemented. The bid discount should be applied when ranking the prime contractor's bid amount. To determine the lowest bidder during the evaluation process, the bid amount for eligible M/WBE bidders should be reduced by the discount percentage. The amount of the bid, as the basis for the bid award, should remain unchanged. The maximum discount should not exceed \$50,000. The eligible groups with statistically significant disparity are listed in Table 11.11.

**Table 11.11: Groups Eligible for Goods and Services Bid Discounts**

<b>Ethnicity/Gender</b>
<b>African Americans</b>
<b>Hispanic Americans</b>
<b>Caucasian Females</b>

### 3. Establish Evaluation Points for Professional Services Prime Contracts

Evaluation points for the groups with a disparity should be standard on professional services prime contracts. Evaluation points equal to 10% of the total points should be applied during the evaluation process to professional services prime contractors who are members of the minority and gender groups that were underutilized at a statistically significant level. The groups with statistically significant disparity eligible for the evaluation points are listed in Table 11.12.



**Table 11.12: Groups Eligible for Professional Services Evaluation Points**

<b>Ethnicity/Gender</b>
<b>African Americans</b>
<b>Hispanic Americans</b>
<b>Native Americans</b>
<b>Caucasian Females</b>

**B. Subcontract Remedies**

As detailed in *Chapter 4: Subcontractor Utilization Analysis*, an extensive effort was undertaken to reconstruct the subcontracts awarded by the City's construction and professional services (including architecture and engineering services) prime contractors. A collaborative effort between the City and Mason Tillman resulted in a reconstruction of both M/WBEs and non-M/WBE subcontract records for the City's construction and professional services prime contracts.

**1. Subcontract Disparity Findings**

A disparity was found for African American, Asian American, Native American, Caucasian female, minority-owned business, and woman-owned business subcontractors on construction contracts. Disparity was also found for African American, Hispanic American, Caucasian female, minority-owned business, and woman-owned business subcontractors on professional services contracts.

**Table 11.13: Subcontract Disparity Summary  
October 1, 2014 to September 30, 2018**

<b>Ethnicity/Gender</b>	<b>Construction</b>	<b>Professional Services</b>
<b>African Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian Americans</b>	<i>Disparity</i>	<b>No Disparity</b>
<b>Hispanic Americans</b>	<b>No Disparity</b>	<i>Disparity</i>
<b>Native Americans</b>	<i>Disparity</i>	----
<b>Caucasian Females</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Minority Business Enterprises</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Woman Business Enterprises</b>	<i>Disparity</i>	<i>Disparity</i>



## **C. Procedures to Implement Remedies for M/WBEs**

The City should enact an ordinance to establish a Minority and Woman-owned Business Enterprise (M/WBE) Program to remedy the documented disparity in the award of both prime contracts and subcontracts to M/WBEs. Policy should include certification standards, goal-setting procedures, and monitoring and reporting requirements.

### **1. Certification Eligibility Standards**

Businesses domiciled in Pinellas County that meet the certification requirements should be eligible to participate in the M/WBE program at the prime and subcontract level. Certification is important to ensure the integrity of the M/WBE program. It determines the eligibility to participate in the M/WBE program's race and gender-based remedies. The City should accept reciprocal certification. Only entities that perform both desk and site reviews to verify the owner's ethnicity, gender, and control of the business operations should be granted reciprocal status. When granting reciprocal status, the City should reserve the right to audit the certification process for compliance with its standards.

### **2. Goal Setting**

Subcontracting goals should be set on both construction and professional service prime contracts. The solicitation should specify the subcontract goals and the requirements for compliance with the goals. Goal attainment should be verified at bid opening.

Bid discounts should apply on all construction and goods and services bids when the bidder is an eligible M/WBE. Preference points should apply to eligible M/WBEs on all proposals and statements of qualification. The preference points should be assigned during the evaluation process.

### **3. Goal Attainment at Bid Opening**

Documentation of goal attainment should be required at bid opening. To ensure the integrity of the goal attainment process, the prime contractor who fails to meet the contract goal must submit good faith effort documentation with the bid or proposal. If the good faith effort documentation is not submitted with the bid or proposal, or the documentation is not approved, the submittal should be considered non-responsive. If no responses are found to be responsive, the solicitation should be cancelled and re-advertised.

### **4. Quantified Good Faith Effort Criteria**

When applying M/WBE subcontracting goals, the City must implement good faith effort requirements to satisfy the legal standards set forth in *Croson*. A value should be assigned to each good faith effort criterion to quantify the assessment of the goal attainment. A prime contractor should achieve a minimum score of 80 points to demonstrate a bona fide good faith effort. In the event the prime contractor is unable to meet the subcontract goal, a good faith effort waiver form



with an explanation of the efforts undertaken to meet the goal should be submitted. If the determination is made that a good faith effort was not undertaken, the bidder should be deemed non-responsive, and the goal attainment of the next lowest bidder should be reviewed. The good faith elements and recommended point assignments are:

- Advertising (5 points)

**Effort:** Prime contractors should advertise opportunities for M/WBEs at least two weeks prior to bid opening through reasonable means, such as attendance at pre-bid meetings, advertising, and written notices. Contractors should be required to publish these opportunities in the general circulation media, minority-focused media, or trade-related publications at least twice unless the City waives this requirement due to time constraints.

**Documentation:** The advertisement shall include the name and location of the project, location where plans and specifications can be viewed, subcontractor proposal due date, and items of work or specialties being solicited.

- Bidders Outreach to Identify M/WBEs (15 points)

**Effort:** Prime contractors should attempt to contact M/WBEs through personal, frequent, and persistent contact. The contractor is required to promptly return phone calls and emails.

**Documentation:** Prime contractors should provide a list of the names of the organizations or firms, persons contacted, and the dates of contact. They should also include copies of correspondence received from any organization or firm responding to the bidder's solicitation or initiating contact for the purpose of seeking subcontracting work. The contractor must contact at least three (3) firms/organizations or an amount sufficient to reasonably result in a viable subcontract.

Bidders must submit documentation of good faith efforts to contract with or to purchase significant material supplies from eligible firms within 48 hours of the bid opening. If a contractor or bidder fails to meet specified goals in the bid documents, the City must determine that the contractor has complied with all requirements of the solicitation documents and has made the required good faith effort.

- Attending the Pre-bid Meeting (5 points)

**Effort:** Attendance should be mandatory to comply with the good faith effort requirement. However, attendance may be optional if the participation goal is met.

**Documentation:** The contractor or the representative's name on the pre-bid meeting sign-in sheet and representative presence at the pre-bid meeting shall serve as documentation.



- Providing Timely Written Notification (30 points)

**Effort:** Prime contractors should solicit subcontract bids and material quotes from relevant eligible businesses in writing at least two weeks prior to bid opening. Relevant firms are those that could feasibly provide the services or supplies required for completing the scope of services provided in the bid document. In soliciting sub-bids, quotes, and proposals, the contractor will furnish the following information:

- Contractor's name, address, and telephone number.
- Project location and description.
- Solicited items of work services to be subcontracted or materials purchased, including a specific description of the work involved.
- Place where bid documents, plans, and specifications can be reviewed.
- Contractor representative to contact if more information is needed.
- Date and time when subcontractor/supplier quotes must be received by the contractor.

**Documentation:** Written notification must include verification of transmission date. Such verification may include copies of certified mail-return receipts, emails, and automated facsimile journals.

- Contact Follow-up (10 points)

**Effort:** Prime contractors should return phone calls, facsimiles, and emails promptly after the initial solicitation at least two weeks prior to bid opening. The follow-up should take the form of a phone call, facsimile, or email during normal business hours. Such contact shall be within a reasonable amount of time to allow the prospective subcontractor an opportunity to submit a competitive sub-bid.

**Documentation:** The list of subcontractors who were contacted by telephone, including results of that contact, should be documented with a telephone log, email print-out, automated facsimile journal, or facsimile transmittal document. Included should be names of the eligible businesses, telephone numbers, contact persons, and dates of contact.

- Identifying Items of Work (10 points)

**Effort:** Prime contractors' subcontracts should be broken down into discrete items or packages that market area M/WBEs may find economically feasible to perform. Smaller portions of work or other assistance that could reasonably be expected to produce a level of participation sufficient to meet the goals should be offered to eligible prospective subcontractors. Prime contractors should not deny a subcontract to a qualified and competitive M/WBE solely because the M/WBE cannot perform the entire package unless unbundling would jeopardize scheduling or increase costs by more than five (5) percent.



**Documentation:** The list of the specific items of work solicited, including identification of eligible firms, in which such work was solicited.

- Negotiating in Good Faith (15 points)

**Effort:** Prime contractors should negotiate fairly with interested M/WBEs even if the selection of the M/WBE would increase costs. A contractor should not unjustifiably reject sub-bids, quotes, and proposals prepared by eligible businesses. However, the City should afford the contractor to choose a low bid if two or more quotes are received.

**Documentation:** Provide written statements of the names, addresses, and telephone numbers of subcontractors contacted by the contractor to negotiate prices or services. Include dates of the negotiations and the results. Document the quotes/proposals received from the eligible businesses. Lack of qualifications or significant price difference of five (5) percent or more will be considered just cause for rejecting eligible businesses. Proof of price differential must be made available to the City.

- Offer Assistance with Financing, Bonding, Insurance, or Mentoring (10 points)

**Effort:** Prime contractors should provide M/WBEs technical assistance with plans, specifications, and requirements of the contract in a timely manner to respond to a solicitation. In addition, the contractor should also advise and make efforts to assist interested businesses in obtaining bonds, lines of credit, or insurance required by the City, where applicable. A prime contractor may also receive 10 points for good faith effort by offering mentoring assistance.

**Documentation:** Provide written statements of the type of assistance offered. The contractor shall provide the name, contact person, and telephone number of the bonding company or financial institution offering assistance.

To claim points for mentoring, the prime contractor must submit a mentoring plan that is subject to the City's approval for one or more of the eligible businesses included as a subcontractor for the project. The mentoring plan outcomes should enhance capability to bid projects as a prime contractor and new skills in estimating projects, completing project schedules, hiring subcontractors, acquiring additional licenses or certification, accessing capital, and increasing bonding capacity.

## 5. Verification of Commercially Useful Function



The determination that the certified businesses can perform a commercially useful function must be made at the time of bid opening. Services should be considered useful if such services would be provided in the normal course of conducting the business or trade activities assigned to the M/WBE subcontractor. The subcontractor must perform a distinct element of work and possess the skill and expertise as well as responsibility for managing and supervising the work.

The responsibility for demonstrating that the listed M/WBEs can perform a commercially useful function is the sole responsibility of the prime contractor. The commercially useful function requirement should apply to all procurement activity, including change orders, substitutions, and task orders. A business that performs a commercially useful function minimally does the following:

- Executes a distinct element of the contract scope of work.
- Carries out its obligations by performing, managing, and supervising the assigned work involved and, in the case of a supplier, warehousing its materials, supplies, and equipment.
- Performs work that is normal business practice for its industry.
- Completes its scope of work and does not further subcontract portions of the work greater than that expected to be subcontracted by normal industry standards.

## **6. Participation Counted Toward the M/WBE Goal**

Subcontractor participation counted toward the goal should be performed by the listed M/WBE subcontractors unless the City approves a substitution during the term of the contract. Prime contractors should be required to submit a signed Letter of Intent to Subcontract form for every subcontractor used to meet the goal. Contractors that do not use the listed M/WBE subcontractor and fail to secure an approved substitution should not receive reimbursement for self-performing or having another contractor perform all or part of the listed M/WBEs work unless an M/WBE substitution is approved by the City.

## **7. Substitution of Listed M/WBE Subcontractor**

Substitution of an M/WBE listed in a prime contract should be approved in writing by the project manager and the M/WBE Program Manager. To substitute an M/WBE, there must be due process. Conditions in which a substitution should be considered are when the subcontractor:

- Becomes insolvent
- Fails to execute a written contract for the scope of work and price specified in the subcontractor's bid after a reasonable amount of time has been granted
- Fails to perform the subcontract scope of work in accordance with industry standards
- Fails to meet the agreed upon bond requirements
- Fails to comply with the work completion schedule and disrupts the progress of the project

A written request for substitution should be submitted to the project manager and the M/WBE Program Manager. The subcontractor should be copied on the request. The subcontractor should be afforded a hearing to present its written or oral statement of the facts. The County should hold the hearing within 48 hours of receiving the request for substitution. Prior to the hearing, the M/WBE Program Manager should attempt to mediate the dispute. The decision reached by the project manager and the M/WBE Program Manager should be final and binding. If the substitution is granted, the substituted M/WBE should be replaced with another M/WBE and approved by the M/WBE Program Manager.





## 8. Penalties Assessed for Failing to Achieve M/WBE Subcontract Goals

Contract compliance reviews should occur throughout the term of the contract to ensure that M/WBEs listed on the bid perform the subcontract work unless a substitution is approved. Monetary penalties should be levied on prime contractors who fail to meet the M/WBE goals. The City should monitor payments monthly and request documentation of MBE and WBE monthly and final payments. The penalty should equal the M/WBE goal shortfall. As appropriate, it should be assessed during the project close-out and be withheld from the prime contractor's final payment.

## 9. M/WBE Program Staff

Sufficient staff to effectively execute the program should be retained. The staff should possess the requisite skills, knowledge, and abilities to implement and manage the complex requirements of a comprehensive M/WBE Program. Below are descriptions of the recommended M/WBE Program's staffing plan:

### **Executive Staff:**

- **Executive Assistant to the M/WBE Program Manager** - provides confidential assistance to the Manager with responsibility to perform secretarial and administrative support duties. The Executive Assistant must demonstrate proficiency in Microsoft Office Suite, the capacity to handle sensitive information with discretion, and the ability to work with a variety of individuals with diverse interests and backgrounds.

### **Technical Staff:**

- **Contract Compliance Manager** - assists the Manager in managing the M/WBE Program, oversees pre-award compliance with the M/WBE Program requirements stipulated in the solicitation, and monitors post-contract compliance to ensure that the contract provisions are adhered to during the term of the contract. The Contract Compliance Manager must demonstrate proficiency in Microsoft Office Suite, have knowledge of construction and construction-related procurement processes, and the ability to work with a variety of individuals with diverse interests and backgrounds.
- **Certification Analysts** - advise applicants to whether their applications are complete and suitable for evaluation, review all certification-related documents, and perform site visits. Certification Analysts also participate in business outreach activities to increase certification applications. Certification Analysts must demonstrate proficiency in Microsoft Office Suite, business record auditing skills, have knowledge of construction and construction-related procurement processes, and the ability to work with a variety of individuals with diverse interests and backgrounds.
- **Contract Compliance Specialist** - monitors M/WBE contract compliance and M/WBE contractor and subcontractor project participation, investigates complaints, ensures



contracts are properly and legally executed, and creates a profile of each contractor by preparing a site visit report. The Contract Compliance Specialist must demonstrate proficiency in Microsoft Office Suite, have knowledge of construction and construction-related procurement processes, the ability to work with public officials and the general public, and the ability to work with a variety of individuals with diverse interests and backgrounds.

- **Data Analyst** - compiles, verifies, and reports data measuring the user department's compliance with the contract goals and monitoring requirements. The Data Analyst manages the data management system to ensure it is capable of generating the reports required to measure compliance with M/WBE Program requirements. The Data Analyst must demonstrate proficiency in Microsoft Office Suite, have knowledge of databases, design, data collection, and manipulation, and the ability to work with a variety of individuals with diverse interests and backgrounds.
- **Ombudsperson** - provides dispute resolution services and direct investigations of complaints from user departments, as well as prime contractors and subcontractors. The Ombudsperson must demonstrate proficiency in Microsoft Office Suite, have knowledge of legal and mediation training methods and construction and construction-related procurement processes, and the ability to work with a variety of individuals with diverse interests and backgrounds.

## **10. M/WBE Advisory Committee**

The City should recommission its SBE Advisory Committee (Committee) of business owners and advocacy group executives to support the administration of the M/WBE Program. The Committee should function as an advocate for M/WBEs and other small businesses and be responsible for:

- Facilitating access to contracting opportunities for M/WBEs and other small businesses
- Promoting and advancing M/WBE participation as prime and subcontractors
- Identifying enhancements to the contract opportunity notification process

Members should be appointed by the City Council and the Mayor. The Mayor should designate and appoint a Chairman and the Committee should elect a Secretary for three-year terms. The membership and Committee guidelines should be published on the City's M/WBE Program's webpage. Members should serve for staggered terms of three years. The Committee should monitor the effectiveness of the M/WBE Program and make recommendations, as needed, to the City Council and the M/WBE Program Manager.

## **11. M/WBE Program Training Manual**

An *M/WBE Training Manual* describing the Program's mission, policy, and procedures should be created and made available to all staff electronically and downloadable from the Procurement and Supply Management Department's webpage. The *M/WBE Program Training Manual* should be

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developed to standardize the delivery of the Program requirements within the City departments. The manual could ensure that staff in all departments have the knowledge and skills to fulfill their M/WBE Program duties. The requirements set forth in the manual should become standard operating procedure in each department. The *M/WBE Program Training Manual* would also provide staff with clear guidance on its responsibilities to track and report the participation of M/WBEs. The *M/WBE Program Training Manual* should also be incorporated into a new employee orientation.

## **12. M/WBE Program City Staff Training**

The M/WBE Program Manager should conduct routine training to ensure all personnel are knowledgeable about the Program's requirements and capable of supporting its policies and objectives. The training programs should minimally include:

- Annual training seminar - to inform staff of any changes to the M/WBE Program policy and procedures, and to promote the Program enhancements.
- New employee training - to ensure that new employees understand the established policies and procedures. A printed copy of the *M/WBE Program Training Manual* should be provided to each new City employee. The training should be conducted quarterly.

## **13. MWBE Program Outreach and Marketing Campaign**

Promotion of the race and gender-conscious and neutral components of the M/WBE Program should be executed through a comprehensive outreach and marketing campaign to encourage local businesses to apply for certification and respond to solicitations. The outreach campaign should communicate the goals and objectives of the Program to M/WBEs and the existence of a new and robust M/WBE Program. The following outreach and marketing objectives should be considered:

- Collaborate with minority and women business trade associations, chambers, and advocacy groups to publish contracting opportunities and recommendations resulting from this Study on their websites.
- Provide networking opportunities at pre-bid and pre-proposal conferences and certification workshops.
- Host marketing forums that allow M/WBEs to deliver technical presentations on the services that they provide directly to City staff with contracting authority. The forums should be industry-specific and held on a quarterly basis.
- Enhance the City's digital presence by releasing an M/WBE business development newsletter with corresponding e-notifications to certified businesses regarding contracting opportunities. The newsletter can supplement procurement email notification systems and enhance communication with M/WBEs. The City should use a monthly digital publication as a tool to keep business owners updated on important announcements. The newsletter



should provide detailed information on upcoming projects, project status, and City announcements, including networking opportunities and upcoming capacity building workshops. The newsletter should be published on schedule each month and remain on the City's website for at least 36 months.

#### **14. M/WBE Business Outreach**

When soliciting bids, proposals, and statements of qualifications for construction, professional services, and goods and services contracts, City departments should be required to adhere to the following outreach efforts:

- Solicit responses for construction, professional services, and goods and services prime purchase orders from race and gender groups that were found to have a disparity.
- Include lists of potential proposers from the M/WBE Program.
- Conduct outreach to the identified M/WBEs before the request for proposals is released to notify them of upcoming opportunities.
- Email the notice of opportunities to the certified M/WBE.
- Maintain an email log of all M/WBEs solicited for construction, professional services, and goods and services contracts.

#### **15. Utilization Reporting Standards**

The departments with authority to award a contract should be required to submit a monthly utilization report to the M/WBE Program Manager. The report should list the prime contracts for which a minority or woman-owned business submitted a bid, the amount of the bid discount assigned to each bid, the evaluation points assigned to the professional service proposals, and statements of qualification. The total dollars awarded to each ethnic and gender group should also be reported. The ethnicity and gender of the subcontractors used on each construction and professional service prime contract should be reported. Quarterly utilization reports of all departments should be compiled by the M/WBE Program Manager describing the prime purchase order awards and prime purchase order payments. The report should also capture the subcontractor utilization by ethnicity, gender, and certification status. The M/WBE Program Manager should submit to the City Council a quarterly utilization report and an annual review and evaluation of the effectiveness of the Program, summarizing M/WBE utilization.

#### **16. Tracking and Monitoring Standards**

The approved M/WBE subcontract goals should be monitored for compliance for the duration of the contract. The M/WBE Program should include reporting provisions to measure the M/WBE Program's effectiveness. The City's financial management system does not capture SBE or non-SBE subcontract data. A tracking and monitoring compliance system is needed to capture all subcontractors, suppliers, and truckers. The compliance management system should capture the subcontractors at the time of bid opening. All subcontractors, M/WBE, and non-M/WBE subcontractor awards should be recorded in the system.



A quarterly M/WBE Utilization report should be automated to document the M/WBE goal attainment by department and, overall, for the City. The report should present the contracts and prime contractors that did not attain the goal listed in the subcontractor utilization plan. Monitoring should also include a monthly verification of payments to M/WBE subcontractors. Any approved substitutions of listed subcontractors should be reported.

## **17. Financial Assistance to M/WBEs**

Many M/WBEs have struggled financially due to the impact of COVID-19 on their small businesses. The City should leverage its banking relationships to provide financial services to mitigate the adverse impact M/WBEs experience from their limited access to capital. There is an array of services that can be offered to M/WBEs without cost, or nominal cost, to the City. Financial services that could be offered through financial institutions with which the City has a business relationship include:

- Commitments to provide offer letters of financial capability with contingent financing commitments so M/WBEs can demonstrate that they possess the financial solvency to execute contract awards.
- Start-up loan programs for M/WBEs to increase access to capital and put larger projects within reach of small businesses. The loans could be used to cover payroll costs, equipment purchases, working capital, and mobilization costs.
- Lines of credit and capital improvement financing with interest rates, loan terms, and collateral requirements that are more favorable than that available in the commercial market.
- Linked deposit program that leverages the City's deposits with financial institutions to create a low-interest loan program. M/WBEs could use their City contracts or subcontracts as collateral for a loan with lower interest rates and modified underwriting criteria.

- **Prompt Pay Program for M/WBEs**

The City should establish a program to pay its M/WBE primes in ten (10) businesses days from receipt of an undisputed invoice. When an invoice is disputed, the fees that are not disputed should be paid within the ten-day period. The M/WBE should be noticed of the dispute within five (5) days of the invoice being received.

- **Implement a Small Purchase Sheltered Market Program**

A sheltered market rotation program would allow small business to compete with similarly situated businesses for small contracts. Contracts awarded using the informal procurement method and other small contracts issued as purchase orders under large multi-year contracts and master agreement contracts could be awarded under the sheltered market program.

Informal contracts solicited without advertising afford opportunity for M/WBE and small businesses to perform as prime contractors. The sheltered market rotation would limit competition to MWBEs and other similarly situated small businesses. Construction, professional services, and



goods and services prime contracts valued less than \$100,000 should be awarded under the sheltered market. The awards would be made on a rotating basis. No business in the rotation would be eligible to receive a second assignment until all other businesses on the list have been offered at least one assignment.

Businesses could prequalify for the sheltered market program by responding to a request for qualifications. Prequalification criteria would be based on the capacity needed to perform contracts in the trades less than \$100,000. Prequalified businesses would be placed on a list based on the trade, and contracts would be assigned on a rotational basis.

## ***V. Race and Gender-Neutral Recommendations***

Race and gender-neutral recommendations are offered to expand the responsibility of the M/WBE Program Manager to more effectively address the barriers that market area M/WBEs and SBEs encounter while seeking to do business in the City.

### ***A. Pre-Award Recommendations***

#### **1. Maximize the Competitive Solicitation Process**

Multi-year contracts should be unbundled into smaller projects to increase the number of businesses participating at both the prime contracting and subcontracting levels. Contracts should not be extended through change orders or amendments unless the modification is required to complete the scope specified in the original contract. New specifications or additional work with the same specifications should be put out to bid to allow more contractors to perform the City's work.

#### **2. Contract Unbundling Policy**

- Unbundle master agreements and multi-year contracts to increase the number of contracting opportunities available to MWBEs and small businesses, Conditions that are often conducive to unbundling solicitations for construction and professional services include the following:
- Projects with phased delivery of the work
- Projects conducted at multiple locations
- Specialty work, such as signage, public art, demolition, trucking, traffic studies, and surveying
- Master agreements

#### **3. Debriefing Sessions for Unsuccessful Bidders**

Debriefing sessions should be provided by the City to provide vital information to help small businesses prepare more competitive submittals. The City should publish the option for a debriefing session on its website for all unsuccessful bidders. The sessions should be provided by the Procurement and Supply Management Department and include participation of the awarding



department. The procedures for scheduling the debriefing session should be set forth in the solicitation and the bid award notice. Prior to the debriefing session, the bidder should be provided a copy of the evaluation scores and the winning bid.

## ***B. Post-Award Recommendations***

### **1. Standardized Subcontractor Substitution Requirements**

Standards for formal subcontractor substitution should be included in each solicitation and prime contract. The standard should require the prime contractor to provide a written request to substitute a listed subcontractor and the reason for the substitution. Due process should be afforded the subcontractor who should be notified in writing of the request for substitution.

### **2. Enhanced Prime Contract Financial Management System**

The City's financial management system tracked comprehensive prime contract data for construction, professional services, and goods and services. However, some information was missing from the prime contract dataset maintained in the City's financial management system. Mason Tillman recommends several modifications to track comprehensive prime contractor data:

- Capture the ethnicity and gender for all prime contractors
- Code prime contracts by industry classification using North American Industry Classification System (NAICS) code

### **3. Publication of Prime Contractor Payments**

Prime contractor payments should be posted on the City's website to allow subcontractors to track the City's payments of prime contractor's invoices. Payment data should be updated weekly or bi-weekly on the same day of the week. The reported prime contract payment information should be searchable by contract number, project name, and prime contractor name. This system would enable subcontractors and suppliers to track the disbursements to their prime contractors in real time and thereby eliminate the subcontractor's need to ask the City for the status of its prime contractor's invoice payment.

### **4. Dispute Resolution Standards**

Dispute resolution standards should be established to allow businesses to resolve issues relating to work performance after a contract award. A dispute resolution process should apply to disputes between prime contractors and the City, as well as disputes between subcontractors and prime contractors. The dispute resolution process should include provisions for an ombudsperson. A dispute resolution meeting should be mandatory in the event a dispute cannot be resolved by the ombudsperson within twenty (20) working days.

The first step in the dispute resolution process would be the submission of an oral or written complaint by the aggrieved party to the ombudsperson. The ombudsperson would then aid the



parties in resolving the dispute by investigating the claim and making initial contact with the City, prime contractor, and, if relevant, the subcontractor. If the dispute is not resolved through these means within twenty (20) working days, the ombudsperson will assist the aggrieved party in filing a request for a dispute resolution meeting. Any party that does not respond to requests by the ombudsperson will be placed on a suspension list until the matter is resolved.

The meeting would be the second step in the resolution process. Neither party may involve legal representation during this initial informal process to avoid significant legal costs for both parties. If the parties are not able to reach a mutually agreed upon resolution through meeting, the dispute may proceed to formal mediation or arbitration. A dispute must be taken to mediation before it can proceed to arbitration.

Arbitration is the final step to resolving a dispute. The decision reached by the arbitrator is final and binding. The parties may retain legal representation during the mediation or arbitration process.





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# ***Appendix A: Regression Analysis***

## ***Technical Appendix***

### ***I. Introduction***

The following technical appendix details the research conducted in this study. This technical appendix will cover the following: data collection, cleaning, modeling, and analysis. All variables hold a default value of null and are only transformed if a response has been submitted, unless otherwise noted. Table 1 is the general information of the two types of regression conducted.

**Table A.14: Regression Models**

<b>Dataset</b>	<b>Regression Model</b>	<b>Details</b>
Public Use Microdata Sample (PUMS)	Business Ownership Model	<ul style="list-style-type: none"><li>• Dependent Variable: Business Ownership</li><li>• Type of Regression: Logistic Regression</li></ul>
	Business Earnings Model	<ul style="list-style-type: none"><li>• Dependent Variable: Business Earnings of Owners</li><li>• Type of Regression: Ordinary Least Squares Regression</li></ul>

### ***II. PUMS Coding***

#### ***A. Data Collection***

##### ***1. Raw Dataset***

The dataset used for the regression is the five-year United States Census Bureau Public Use Microdata Sample (PUMS) dataset covering 2013 to 2017 which is the most recent data matching the study period of this Study.

The raw PUMS dataset was retrieved from the following link:

<http://www.census.gov/programs-surveys/acs/data/pums.html>

##### ***2. Documentation***

The PUMS Data Dictionary to support the dataset can be found here:

[https://www2.census.gov/programs-surveys/acs/tech\\_docs/pums/data\\_dict/PUMS\\_Data\\_Dictionary\\_2013-2017.pdf](https://www2.census.gov/programs-surveys/acs/tech_docs/pums/data_dict/PUMS_Data_Dictionary_2013-2017.pdf)



### 3. Merge

The PUMS datasets are segregated into two datasets by state: housing and population. These two datasets were loaded into separate tables, cleaned, and then merged together by matching the serialno variable prior to the analysis. Below is the coding combining the two datasets of population and housing. To match the dataset and the study period, all records from 2013 were scrubbed from the PUMS dataset.

```
SELECT [tblPopulation2013-2017].SERIALNO, [tblPopulation2013-2017].PUMA00,
[tblPopulation2013-2017].PUMA10, [tblPopulation2013-2017].INDP, [tblPopulation2013-
2017].COW, [tblHousing2013-2017].ADJINC, [tblPopulation2013-2017].SEMP,
[tblPopulation2013-2017].WAGP, [tblPopulation2013-2017].AGEP, [tblPopulation2013-
2017].SCHL, [tblHousing2013-2017].TEN, [tblHousing2013-2017].VALP, [tblHousing2013-
2017].ADJHSG, [tblHousing2013-2017].MRGP, [tblHousing2013-2017].RNTP,
[tblPopulation2013-2017].INTP AS Expr1, [tblPopulation2013-2017].LANX,
[tblPopulation2013-2017].PAOC, [tblPopulation2013-2017].MAR, [tblPopulation2013-
2017].SEX, [tblPopulation2013-2017].RAC1P, [tblPopulation2013-2017].HISP,
[tblPopulation2013-2017].PWGTP, [tblPopulation2013-2017].INTP INTO [tblMergeHP2013-
2017]
FROM [tblHousing2013-2017] RIGHT JOIN [tblPopulation2013-2017] ON [tblHousing2013-
2017].SERIALNO = [tblPopulation2013-2017].SERIALNO;
```

#### B. Variable Classification

Table 2 below lists the variables used in the two PUMS regression models, the business ownership model and the business earnings model. Also, included in the table are the Mason Tillman codes and the corresponding PUMS variables specific to the data dictionary.

**Table A.15: Variable Name in Logistic/OLS Regression**

Description	MTA Variable Name	PUMS Variable Name
Geographic Area	pinellas	puma
Construction	c	indp
Professional Services	p	indp
Goods and Services	g	indp
Business Owner	owner	cow
Adjusted Income	income_adj	semp, wagp, adjinc
Age	age	agep
Age-squared	agesq	agep
Education of Business Owner	edu	schl
Home Value	homevalue	valp
Interest and Dividends Adjusted	Inter_div_adj	intp, adjinc



Description	MTA Variable Name	PUMS Variable Name
Monthly Mortgage Payment	mon_pay	ten, mrgp, rn timer, adjhsg
Speaks English at Home	home_eng	lanx
Having a child under six	child6	paoc
Married	married	mar
Caucasian Female	ethgen, female, caucasian	sex, rac1p
African American	ethgen, african	rac1p
Asian American	ethgen, asian	rac1p
Hispanic American	ethgen, hispanic	hisp, rac1p
Native American	ethgen, native	rac1p
Other Minority	ethgen, other	rac1p
Year	year	serialno

### C. Geographic Area Classification

The geographic area of interest is the service area for the Pinellas County, Florida. The PUMS dataset uses a defining variable called Public Use Microdata Areas (PUMA) that can specify the geographical boundaries. The variable PUMA with the value of 10301 to 10308 was used to determine the Pinellas County, Florida.

```
SELECT If([PUMA] In (10301,10302,10303,10304,10305,10306,10307,10308),1, If([PUMA]
Is Null,Null,0)) AS PINELLAS
FROM [tblMergeHP2013-2017];
```

### D. Industry Classification

The PUMS data classifies each industry similar to the North American Industry Classification System (NAICS) codes, however, different numbers are used. All numbers and corresponding industries are provided in the PUMS 2013-2017 data dictionary. These were used in the classification of the three industries in this study.

The three industries analyzed in the geographic area are: construction, professional services including architectural and engineering services (hereinafter referred to as professional services), and goods and services. Table 3 indicates which PUMS classification numbers were used for each industry.

**Table A.16: PUMS Industry Classification**

Industry	PUMS Classification
Construction	770
Professional Services	6695
	7270-7280
	7290



Industry	PUMS Classification
	7370-7470
	7490-7570
	7590
Goods and Services	4090-4180
	4265-4270
	4795-4890
	5480
	6170
	6390
	7080
	7180
	7680
	7690
	7770
	7780-7790
	8770-8870

### 1. c: Construction

- Flag to indicate whether the business is in the construction industry based on the PUMS industry classification

```
SELECT If([indp]=770,1,0) AS c INTO tblFinal
FROM [tblMergeHP2013-2017];
```

### 2. p: Professional Services

- Flag to indicate whether the business is in the professional services industry based on the PUMS industry classification

```
SELECT If((([indp] In (7490,7570,7590,6695)) Or ([indp] Between 7270 And 7470),1,0) AS p
INTO tblFinal
FROM [tblMergeHP2013-2017];
```



### 3. g: Goods and Services

- Flag to indicate whether the business is in the goods and services industry based on the PUMS industry classification

```
SELECT If([indp] In (5480,6170,6390,7080,7180,7770,7680,7690,7780,7790) Or ([indp] Between 4090 And 4180) Or ([indp] Between 4265 And 4270) Or ([indp] Between 4795 And 4890) Or ([indp] Between 8770 And 8870),1,0) AS g INTO tblFinal
FROM [tblMergeHP2013-2017];
```

### E. Coding Implemented

Below, each variable displayed in Table 2 is described. Along with the description is the SQL code used to define each variable.

#### 1. owner: Business Owner

- Flag to indicate the respondent is a business owner labeled as below
- 6 = Self-employed in unincorporated business, professional practice, or farm
- 7 = Self-employed in incorporated business, professional practice, or farm
- If the data is missing it is assumed that the respondent is not a business owner

```
SELECT If([cow] In ("6","7"),1,0) AS owner INTO tblFinal
FROM [tblMergeHP2013-2017];
```

#### 2. income\_adj: Income Adjusted Accordingly by Year

- Flag to indicate income adjusted accordingly by year
- The variable semp indicates self-employment income over the past 12 months
- The variable wagp indicates wages or salary income over the past 12 months
- In the case that semp is null or 0 while wagp has a value, wagp was used
- The variable adjinc is an adjustment factor for income and earnings in dollar amounts
- The variables semp and wagp were adjusted to the dollar values in 2017 using the PUMS adjustment factor adjinc
- The variable adjinc was divided by 1,000,000 as per the instructions in the PUMS Data Dictionary

```
SELECT If((([semp] Is Null) Or ([semp]="0")) And ([wagp]<>"0"),[wagp]*([adjinc]/1000000),If([semp] Is Null,[semp]*([adjinc]/1000000))) AS income_adj INTO tblFinal
FROM [tblMergeHP2013-2017];
```



### 3. age: Age of Individual

- Flag to indicate age of the individual

```
SELECT [tblMergeHP2013-2017].AGEP AS age INTO tblFinal  
FROM [tblMergeHP2013-2017];
```

### 4. agesq: Age-squared

- Flag to indicate age-squared
- The variable agesq is used in the regression to determine if the relationship between age and the dependent variable changes over time. Age can have a positive relationship, however, as one becomes much older the relationship may decrease or become negative

```
SELECT [agep]*[agep] AS agesq INTO tblFinal  
FROM [tblMergeHP2013-2017];
```

### 5. se\_corp: Incorporated Business

- Flag to indicate whether the individual is self-employed in an incorporated business

```
SELECT If([cow]="7",1,0) AS se_corp INTO tblFinal  
FROM [tblMergeHP2013-2017];
```

### 6. edu: Educational Attainment

- Flag to indicate educational attainment of the individual labeled as below
- 0 = No college degree (High school or less)
- 1 = Associate's or Bachelor's degree
- 2 = Post graduate degree
- The baseline variable is no college degree

```
SELECT If([schl]="20" Or [schl]="21",1,If([schl]<="19",0,If([schl]>="22",2,Null))) AS edu  
INTO tblFinal  
FROM [tblMergeHP2013-2017];
```

### 7. homevalue: Property Value

- Flag to indicate the property value of the individual

```
SELECT If([ownhome]=1,[valp],If([ownhome]=0,0,Null)) AS homevalue INTO tblFinal  
FROM [tblMergeHP2013-2017];
```



## 8. mon\_pay: Monthly Payment

- Flag to indicate the monthly payment of the individual due each month for a mortgage or rented property
- The variable mrgp indicates a monthly mortgage payment
- The variable rn timer indicates a monthly rent payment
- The variable adjhsg is an adjustment factor for housing in dollar amounts
- The monthly payments were adjusted to the dollar value in 2017 using the PUMS adjustment factor adjhsg
- The variable adjhsg was divided by 1,000,000 as per the instructions in the PUMS Data Dictionary
- Monthly payments were assumed to default to 0 when an individual owns a home free and clear or occupies a location free of rent

```
SELECT If([mrgp] Is Not Null,[mrgp]*([adjhsg]/1000000),If([rn timer] Is Not Null,[rn timer]*([adjhsg]/1000000),If([ten] In ("2","4"),0,Null))) AS mon_pay INTO tblFinal FROM [tblMergeHP2013-2017];
```

## 9. inter\_div\_adj: Interest and Dividends Income

- Flag to indicate interest, dividends, and net rental income over the past 12 months
- The variable inter\_div\_adj was adjusted to the dollar value in 2017 using the PUMS adjustment factor adjinc

```
SELECT [intp]*[adjinc]/1000000 AS inter_div_adj INTO tblFinal FROM [tblMergeHP2013-2017];
```

## 10. home\_eng: Individual Speaks English at Home

- Flag to indicate whether English is the only language spoken at home
- 0 = Speaks another language
- 1 = Speaks only English

```
SELECT If([lanx]="1",0,If([lanx]="2",1,Null)) AS home_eng INTO tblFinal FROM [tblMergeHP2013-2017];
```



### 11. child6: Individual Has Children under the Age of 6

- Flag to indicate whether the person has children under the age of 6
- If the data is missing, one assumes the individual does not have children under the age of 6

```
SELECT If([paoc] In ("1","3"),1,0) AS child6 INTO tblFinal
FROM [tblMergeHP2013-2017];
```

### 12. married: Marital Status

- Flag to indicate whether the individual is married

```
SELECT If([mar]="1",1,If([mar] In ("2","3","4","5"),0,Null)) AS married INTO tblFinal
FROM [tblMergeHP2013-2017];
```

### 13. ethgen: Ethnicity and Gender of the Individual

- Race classifications do not overlap with one another
- 0 = Caucasian Male
- 1 = Caucasian Female
- 2 = African American
- 3 = Asian American
- 4 = Hispanic American
- 5 = Native American
- 6 = Other Minority
- The baseline variable is Caucasian Male
- If one is labeled both Hispanic and Caucasian, African, Asian, Native or other minority, Hispanic overrides

```
SELECT If([hispanic]=1,4,If([caucasian]=1) And ([female]=0),0,If([caucasian]=1) And
([female]=1),1,If([african]=1,2,If([asian]=1,3,If([native]=1,5,If([other]=1,6,Null)))))) AS
ethgen INTO tblFinal
FROM [tblMergeHP2013-2017];
```

#### a) female: Female

- Flag to indicate whether the individual is female

```
SELECT If([sex]="1",0,If([sex]="2",1,Null)) AS female INTO tblFinal
FROM [tblMergeHP2013-2017];
```





**b) caucasian: Caucasian American**

- Flag to indicate whether the individual is a Caucasian American

```
SELECT If([rac1p]="1",1,If([rac1p] Is Null,Null,0)) AS Caucasian INTO tblFinal
FROM [tblMergeHP2013-2017];
```

**c) african: African American**

- Flag to indicate whether the individual is an African American

```
SELECT If([rac1p]="2",1,If([rac1p] Is Null,Null,0)) AS African INTO tblFinal
FROM [tblMergeHP2013-2017];
```

**d) asian: Asian American**

- Flag to indicate whether the individual is an Asian American

```
SELECT If((([rac1p]="6") Or ([rac1p]="7")),1,If([rac1p] Is Null,Null,0)) AS Asian INTO
tblFinal
FROM [tblMergeHP2013-2017];
```

**e) hispanic: Hispanic American**

- Flag to indicate whether the individual is a Hispanic American

```
SELECT If([hisp] Is Null,Null,If([hisp]<>"1",1,0)) AS Hispanic INTO tblFinal
FROM [tblMergeHP2013-2017];
```

**f) native: Native American**

- Flag to indicate whether the individual is a Native American

```
SELECT If([rac1p] In ("3","4","5"),1,If([rac1p] Is Null,Null,0)) AS native INTO tblFinal
FROM [tblMergeHP2013-2017];
```

**g) other: Other Minority**

- Flag to indicate whether the individual is another ethnicity

```
SELECT If([rac1p]="8",1,If((([rac1p]="9") And ([hispanic]<>1),1,If([rac1p] Is
Null,Null,0)))) AS other INTO tblFinal
FROM [tblMergeHP2013-2017];
```



## 14. year: Survey Year

- Flag to indicate the year of the survey conducted, which is the first four digits of the variable serialno

```
SELECT Left([serialno],4) AS [Year] INTO tblFinal
FROM [tblMergeHP2013-2017];
```

## 15. pwgtp: Person's Weight for Generating Statistics on Individuals

- Stratified sampling is the sampling method used and the PUMS variable to account for the weights is pwgtp. The weight was properly implemented in the regression

```
SELECT [tblMergeHP2013-2017].PWGTP INTO tblFinal
FROM [tblMergeHP2013-2017];
```

## F. Output

### 1. Business Ownership Logistic Regression by Industry

#### a) Business Ownership Logistic Regression: Construction

```
. logit owner age agesq i.edu ownhome homevalue mon_pay inter_div_adj home_eng child6 married
i.ethgen i.year [pweight=pwgtp] if pinellas==1 & c==1
```

```
Iteration 0: log pseudolikelihood = -13978.461
Iteration 1: log pseudolikelihood = -12731.21
Iteration 2: log pseudolikelihood = -12667.489
Iteration 3: log pseudolikelihood = -12667.029
Iteration 4: log pseudolikelihood = -12667.028
```

```
Logistic regression                                Number of obs   =      1223
Wald chi2(20)   =      99.39
Prob > chi2     =      0.0000
Pseudo R2      =      0.0938
Log pseudolikelihood = -12667.028
```

	owner	Coef.	Robust Std. Err.	z	P> z	[95% Conf. Interval]	
	age	.1160643	.0343911	3.37	0.001	.0486589	.1834697
	agesq	-.0008716	.0003408	-2.56	0.011	-.0015395	-.0002036
	edu						
	1	-.3982138	.2441864	-1.63	0.103	-.8768103	.0803828
	2	.1938594	.5193878	0.37	0.709	-.8241221	1.211841
	ownhome	.3129342	.2290783	1.37	0.172	-.1360509	.7619194
	homevalue	-2.59e-08	3.25e-07	-0.08	0.936	-6.62e-07	6.10e-07
	mon_pay	-.0001676	.0001291	-1.30	0.194	-.0004207	.0000854
	inter_div_adj	4.95e-07	3.22e-07	1.54	0.124	-1.36e-07	1.13e-06
	home_eng	-.2768264	.3549354	-0.78	0.435	-.972487	.4188342
	child6	.267235	.8491429	0.31	0.753	-1.397055	1.931525
	married	.1280798	.1780037	0.72	0.472	-.2208011	.4769606
	ethgen						
	1	-1.363455	.2682361	-5.08	0.000	-1.889188	-.837722



2		-1.20859	.4112898	-2.94	0.003	-2.014703	-.4024766
3		-1.248004	.6472849	-1.93	0.054	-2.516659	.0206512
4		-.2399479	.479555	-0.50	0.617	-1.179858	.6999626
5		.3489804	.7755747	0.45	0.653	-1.171118	1.869079
6		-.6444666	.681692	-0.95	0.344	-1.980558	.6916252
year							
2015		.2914996	.2542897	1.15	0.252	-.2068989	.7898982
2016		.3009581	.2383171	1.26	0.207	-.1661348	.768051
2017		.2360372	.2340666	1.01	0.313	-.2227249	.6947994
_cons		-4.24276	.957762	-4.43	0.000	-6.119939	-2.365581

## b) Business Ownership Logistic Regression: Professional Services

```
. logit owner age agesq i.edu ownhome homevalue mon_pay inter_div_adj home_eng child6 married
i.ethgen i.year [pweight=pwgtp] if pinellas==1 & p==1
```

```
Iteration 0: log pseudolikelihood = -21139.966
Iteration 1: log pseudolikelihood = -18377.544
Iteration 2: log pseudolikelihood = -18101.299
Iteration 3: log pseudolikelihood = -18094.94
Iteration 4: log pseudolikelihood = -18094.933
Iteration 5: log pseudolikelihood = -18094.933
```

Logistic regression	Number of obs	=	2398
	Wald chi2(20)	=	264.50
	Prob > chi2	=	0.0000
Log pseudolikelihood = -18094.933	Pseudo R2	=	0.1440

		Coef.	Robust Std. Err.	z	P> z	[95% Conf. Interval]	
owner							
age		.1083352	.027681	3.91	0.000	.0540814	.1625889
agesq		-.0005498	.0002524	-2.18	0.029	-.0010445	-.0000552
edu							
1		.5881996	.1386737	4.24	0.000	.3164041	.859995
2		.9398494	.1614449	5.82	0.000	.6234233	1.256275
ownhome		-.1754394	.1705457	-1.03	0.304	-.5097028	.1588241
homevalue		3.47e-07	1.36e-07	2.56	0.011	8.08e-08	6.13e-07
mon_pay		.0000742	.0000624	1.19	0.235	-.0000481	.0001965
inter_div_adj		2.85e-07	2.03e-07	1.41	0.159	-1.12e-07	6.83e-07
home_eng		-.41831	.2330296	-1.80	0.073	-.8750395	.0384196
child6		.5687188	.361356	1.57	0.116	-.1395259	1.276963
married		.2519675	.1372392	1.84	0.066	-.0170163	.5209514
ethgen							
1		-.4182679	.1324369	-3.16	0.002	-.6778395	-.1586963
2		-1.024985	.3746294	-2.74	0.006	-1.759245	-.2907244
3		-1.220927	.5091352	-2.40	0.016	-2.218814	-.2230407
4		-.393936	.3929425	-1.00	0.316	-1.164089	.3762172
5		.3236373	.9887994	0.33	0.743	-1.614374	2.261648
6		-.7839873	.5939085	-1.32	0.187	-1.948027	.380052
year							
2015		.1009585	.1764586	0.57	0.567	-.244894	.446811
2016		.1882129	.1662178	1.13	0.257	-.1375679	.5139938
2017		.0295511	.1610927	0.18	0.854	-.2861848	.3452869
_cons		-5.408347	.7318548	-7.39	0.000	-6.842756	-3.973938



### c) Business Ownership Logistic Regression: Goods and Services

```
. logit owner age agesq i.edu ownhome homevalue mon_pay inter_div_adj home_eng child6 married
i.ethgen i.year [pweight=pwgtp] if pinellas==1 & g==1
```

note: 5.ethgen != 0 predicts failure perfectly  
5.ethgen dropped and 6 obs not used

```
Iteration 0: log pseudolikelihood = -16755.384
Iteration 1: log pseudolikelihood = -15591.41
Iteration 2: log pseudolikelihood = -15509.692
Iteration 3: log pseudolikelihood = -15508.744
Iteration 4: log pseudolikelihood = -15508.744
```

Logistic regression	Number of obs	=	1770
	Wald chi2(19)	=	98.23
	Prob > chi2	=	0.0000
Log pseudolikelihood = -15508.744	Pseudo R2	=	0.0744

		Coef.	Robust Std. Err.	z	P> z	[95% Conf. Interval]	
owner							
age		.1151721	.0316304	3.64	0.000	.0531776	.1771666
agesq		-.0010284	.000315	-3.27	0.001	-.0016458	-.0004111
edu							
1		-.2541352	.1784142	-1.42	0.154	-.6038206	.0955501
2		-.0548132	.3604304	-0.15	0.879	-.7612437	.6516174
ownhome		.3159979	.1910349	1.65	0.098	-.0584236	.6904195
homevalue		6.51e-07	2.18e-07	2.99	0.003	2.24e-07	1.08e-06
mon_pay		-.000045	.0001025	-0.44	0.661	-.0002459	.0001559
inter_div_adj		2.84e-07	4.20e-07	0.67	0.500	-5.40e-07	1.11e-06
home_eng		-.510344	.3154014	-1.62	0.106	-1.128519	.1078312
child6		-.4311942	.5755067	-0.75	0.454	-1.559167	.6967783
married		.386408	.1629257	2.37	0.018	.0670795	.7057366
ethgen							
1		-.3858125	.1848222	-2.09	0.037	-.7480575	-.0235676
2		-1.164343	.3094229	-3.76	0.000	-1.770801	-.5578851
3		-1.439512	.5904666	-2.44	0.015	-2.596805	-.2822185
4		-.4255071	.4122779	-1.03	0.302	-1.233557	.3825427
5		0	(empty)				
6		-1.499708	1.102199	-1.36	0.174	-3.659978	.6605626
year							
2015		.5688981	.2108652	2.70	0.007	.15561	.9821863
2016		.5282971	.2133054	2.48	0.013	.1102262	.946368
2017		.4253502	.2166363	1.96	0.050	.0007508	.8499496
_cons		-4.508837	.7726738	-5.84	0.000	-6.023249	-2.994424



## 2. Business Earnings Ordinary Least Squares Regression by Industry

### a) Business Earnings Ordinary Least Squares Regression: Construction

```
. reg income_adj age agesq se_corp i.edu ownhome homevalue mon_pay inter_div_adj home_eng
child6 married i.ethgen i.year [pweight=pwgtp] if pinellas==1 & c==1
(sum of wgt is 1.7846e+04)
```

Linear regression

Number of obs = 898  
F( 21, 876) = 6.39  
Prob > F = 0.0000  
R-squared = 0.1795  
Root MSE = 37853

income_adj	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
age	575.7873	555.3353	1.04	0.300	-514.1559	1665.73
agesq	-1.930699	6.433865	-0.30	0.764	-14.55829	10.69689
se_corp	-2735.449	4636.847	-0.59	0.555	-11836.08	6365.179
edu						
1	17208.04	3905.664	4.41	0.000	9542.488	24873.59
2	31544.69	20495.8	1.54	0.124	-8681.912	71771.29
ownhome	-3783.567	3291.037	-1.15	0.251	-10242.81	2675.671
homevalue	.0202357	.009425	2.15	0.032	.0017376	.0387338
mon_pay	5.548676	2.529573	2.19	0.029	.5839437	10.51341
inter_div_adj	.0299182	.0242313	1.23	0.217	-.0176401	.0774765
home_eng	8932.834	3647.5	2.45	0.015	1773.974	16091.69
child6	-934.5068	6797.576	-0.14	0.891	-14275.94	12406.93
married	9469.168	3055.52	3.10	0.002	3472.174	15466.16
ethgen						
1	-12862.87	4130.909	-3.11	0.002	-20970.5	-4755.232
2	-12372.06	3718.774	-3.33	0.001	-19670.81	-5073.309
3	7864.593	12155.01	0.65	0.518	-15991.74	31720.93
4	-8915.585	3692.379	-2.41	0.016	-16162.53	-1668.642
5	22334.71	30653.38	0.73	0.466	-37827.94	82497.36
6	-8339.507	5358.019	-1.56	0.120	-18855.56	2176.547
year						
2015	4325.297	3751.047	1.15	0.249	-3036.791	11687.39
2016	7136.368	4232.544	1.69	0.092	-1170.743	15443.48
2017	6769.639	3800.835	1.78	0.075	-690.1689	14229.45
_cons	-2031.239	11736.95	-0.17	0.863	-25067.06	21004.58



## b) Business Earnings Ordinary Least Squares Regression: Professional Services

```
. reg income_adj age agesq se_corp i.edu ownhome homevalue mon_pay inter_div_adj home_eng  
child6 married i.ethgen i.year [pweight=pwgt] if pinellas==1 & p==1  
(sum of wgt is 3.1354e+04)
```

Linear regression

Number of obs = 1796  
F( 21, 1774) = 20.47  
Prob > F = 0.0000  
R-squared = 0.2659  
Root MSE = 60142

income_adj	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
age	4957.359	597.1352	8.30	0.000	3786.196	6128.521
agesq	-47.54583	6.945863	-6.85	0.000	-61.16876	-33.92289
se_corp	-8085.152	7675.555	-1.05	0.292	-23139.23	6968.93
edu						
1	13904.28	2682.068	5.18	0.000	8643.934	19164.63
2	48968.59	6050.483	8.09	0.000	37101.77	60835.42
ownhome	-3078.964	3598.081	-0.86	0.392	-10135.89	3977.96
homevalue	.0379013	.0101227	3.74	0.000	.0180476	.0577551
mon_pay	12.3045	3.193583	3.85	0.000	6.040917	18.56808
inter_div_adj	.0102123	.0126309	0.81	0.419	-.0145606	.0349853
home_eng	11416.19	4189.504	2.72	0.006	3199.31	19633.07
child6	-2995.73	5298.041	-0.57	0.572	-13386.79	7395.33
married	6189.218	3058.622	2.02	0.043	190.3364	12188.1
ethgen						
1	-23338.73	3398.517	-6.87	0.000	-30004.25	-16673.21
2	-25841.38	4868.239	-5.31	0.000	-35389.47	-16293.29
3	-15785.52	6963.388	-2.27	0.024	-29442.83	-2128.216
4	-20681.17	4709.561	-4.39	0.000	-29918.05	-11444.3
5	-30856.66	22088.04	-1.40	0.163	-74177.99	12464.66
6	-8322.153	8274.913	-1.01	0.315	-24551.76	7907.452
year						
2015	-213.8658	4681.225	-0.05	0.964	-9395.161	8967.43
2016	-2267.732	4702.705	-0.48	0.630	-11491.16	6955.692
2017	1762.21	4980.194	0.35	0.723	-8005.455	11529.88
_cons	-84492.38	12605.65	-6.70	0.000	-109215.9	-59768.9



### c) Business Earnings Ordinary Least Squares Regression: Goods and Services

```
. reg income_adj age agesq se_corp i.edu ownhome homevalue mon_pay inter_div_adj home_eng
child6 married i.ethgen i.year [pweight=pwgt] if pinellas==1 & g==1
(sum of wgt is 2.5649e+04)
```

Linear regression

Number of obs = 1320  
F( 21, 1298) = 11.22  
Prob > F = 0.0000  
R-squared = 0.2308  
Root MSE = 37261

income_adj	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
age	3661.639	351.0664	10.43	0.000	2972.919	4350.358
agesq	-36.36756	3.848208	-9.45	0.000	-43.91695	-28.81817
se_corp	-3960.359	4043.501	-0.98	0.328	-11892.87	3972.154
edu						
1	11940.41	2871.293	4.16	0.000	6307.523	17573.29
2	16797.77	7547.48	2.23	0.026	1991.174	31604.37
ownhome	2080.195	2749.879	0.76	0.450	-3314.5	7474.889
homevalue	.0151214	.0082354	1.84	0.067	-.0010348	.0312777
mon_pay	15.47973	2.820828	5.49	0.000	9.945853	21.01361
inter_div_adj	.1565756	.0703332	2.23	0.026	.0185964	.2945549
home_eng	252.5891	4641.856	0.05	0.957	-8853.772	9358.95
child6	6101.188	5756.38	1.06	0.289	-5191.64	17394.02
married	3752.807	2367.715	1.58	0.113	-892.1614	8397.775
ethgen						
1	-3627.426	2873.225	-1.26	0.207	-9264.1	2009.249
2	-7749.77	2993.514	-2.59	0.010	-13622.43	-1877.116
3	-5053.814	7257.619	-0.70	0.486	-19291.76	9184.134
4	-5832.134	4522.676	-1.29	0.197	-14704.69	3040.421
5	-1787.651	4668.293	-0.38	0.702	-10945.88	7370.575
6	-3839.788	3719.835	-1.03	0.302	-11137.33	3457.759
year						
2015	-1593.223	2998.147	-0.53	0.595	-7474.968	4288.522
2016	3459.417	3144.604	1.10	0.271	-2709.646	9628.48
2017	91.55665	3087.918	0.03	0.976	-5966.3	6149.413
_cons	-65294.53	9113.24	-7.16	0.000	-83172.82	-47416.24



## Appendix B: Anecdotal Questionnaire

### City of St. Petersburg Disparity Study Anecdotal eSurvey

Page 2

Please complete the following information:

Business Name: \*

First Name of Owner: \*

Last Name of Owner: \*

Phone: \*

Email Address: \*

Business Address: \*

City: \*

State: \*

Zip Code: \*

Fax:

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## City of St. Petersburg Disparity Study Anecdotal eSurvey

### Page 3

2. What type of services or products do you provide? \*

- ☐ Construction
- ☐ Architecture, Engineering, Landscaping, and Surveying Services
- ☐ Other Professional Services involving the delivery of a specific products other than reports
- ☐ Goods and supplies

3. What is the gender of the majority owner of your business? \*

- ☐ Male
- ☐ Female
- ☐ Not applicable (publicly traded, nonprofit, employee-owned, partnership, etc.)

4. What is the ethnicity of the majority owner of your business? \*

- ☐ African American
- ☐ Asian American
- ☐ Caucasian American
- ☐ Hispanic American
- ☐ Native American
- ☐ Not Applicable (publicly traded, nonprofit, employee-owned, partnership, etc.)
- ☐ Other

Conditional

Please specify the majority owner's ethnicity. \*

5. What certifications does your business have? \*

- ☐ None
- ☐ Small Business Enterprise (SBE)
- ☐ Minority and Woman Business Enterprise (M/WBE)
- ☐ Other



Conditional

Please specify your businesses' other certifications. \*

6. How long has your business been in operation? \*

- ☐ Less than 2 years
- ☐ 2 - 5 years
- ☐ 6 - 10 years
- ☐ 11 - 20 years
- ☐ 21 - 30 years
- ☐ 31 - 50 years
- ☐ 51 years or longer

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## City of St. Petersburg Disparity Study Anecdotal eSurvey

### Page 4

7. How many bids, quotes, or proposals has your business submitted for a City prime or subcontract since 2014?

- | Prime Contractor *          | Subcontractor *             |
|-----------------------------|-----------------------------|
| <input type="radio"/> None  | <input type="radio"/> None  |
| <input type="radio"/> 1-4   | <input type="radio"/> 1-4   |
| <input type="radio"/> 5-9   | <input type="radio"/> 5-9   |
| <input type="radio"/> 10-14 | <input type="radio"/> 10-14 |
| <input type="radio"/> 15+   | <input type="radio"/> 15+   |

8. How many City prime or subcontracts has your business had since 2014?

- | Prime Contractor *          | Subcontractor *             |
|-----------------------------|-----------------------------|
| <input type="radio"/> None  | <input type="radio"/> None  |
| <input type="radio"/> 1-4   | <input type="radio"/> 1-4   |
| <input type="radio"/> 5-9   | <input type="radio"/> 5-9   |
| <input type="radio"/> 10-14 | <input type="radio"/> 10-14 |
| <input type="radio"/> 15+   | <input type="radio"/> 15+   |

9. Have you experienced any of the following when pursuing a City contract since 2014?

Prime contractor asked your business to lower the price of a bid, quote, or proposal. \*

- ☐ Frequently
- ☐ Sometimes
- ☐ Never

Given insufficient time by the prime contractor to prepare a bid, quote, or proposal. \*

- ☐ Frequently
- ☐ Sometimes
- ☐ Never



Prime contractor listed your firm as a subcontractor and won the contract, but your services were not used. \*

- ☐ Frequently
- ☐ Sometimes
- ☐ Never

The City required your company to meet higher performance requirements than were needed to perform the contract. \*

- ☐ Frequently
- ☐ Sometimes
- ☐ Never

The City cancelled a contract when your company was the lowest bidder. \*

- ☐ Frequently
- ☐ Sometimes
- ☐ Never

The prime contractor reduced your scope of work without consulting your company. \*

- ☐ Frequently
- ☐ Sometimes
- ☐ Never

The prime contractor would not pay an invoice for work performed. \*

- ☐ Frequently
- ☐ Sometimes
- ☐ Never

The City paid your invoice 60 or more days late \*

- ☐ Frequently
- ☐ Sometimes
- ☐ Never

The City would not pay an invoice for work you provided. \*

- ☐ Frequently
- ☐ Sometimes
- ☐ Never



## City of St. Petersburg Disparity Study Anecdotal eSurvey

### Page 5

10. Have you ever requested a debriefing with the City when you were an unsuccessful bidder? \*

- ☐ Yes
- ☐ No

11. How many weeks after submitting the request was the debriefing scheduled? \*

Conditional

- ☐ 1 week
- ☐ 2 weeks
- ☐ 3 weeks
- ☐ 4 weeks
- ☐ 5 weeks or longer
- ☐ Never received debriefing

12. How helpful was the information provided in the debriefing for preparing a response to a future City solicitation? \*

- ☐ Very helpful
- ☐ Somewhat helpful
- ☐ Not helpful
- ☐ Not applicable

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## City of St. Petersburg Disparity Study Anecdotal eSurvey

### Page 6

#### Multi-Year Agreements

13. Has your company been awarded a multi-year agreement in which multiple City departments utilize the contract to purchase goods or services? \*

- ☐ Yes
- ☐ No

14. How many multi-year agreements has your company been awarded since 2014? \*

Conditional

- ☐ 1
- ☐ 2-5
- ☐ 6-10
- ☐ 11 or more

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## City of St. Petersburg Disparity Study Anecdotal eSurvey

### Page 7

#### Highly Used Contractors

15. Do you think that there are highly used prime contractors that the City prefers to use?

- ☐ Yes
- ☐ No
- ☐ I do not know

16. Please specify the type of special treatment that highly used contractors receive (check all that apply):

- ☐ Advanced bid or proposal notification
- ☐ Bid or proposal qualification requirements favoring large businesses (eg: years in business, prior experience with the City)
- ☐ Approval of multiple change orders/amendments
- ☐ Waived project requirements (eg: bonding, insurance, etc)
- ☐ Other

Conditional

Please specify other kinds of special treatment:

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## City of St. Petersburg Disparity Study Anecdotal eSurvey

### Page 9

#### Consultants Competitive Negotiation Act (CCNA)

21. Is your business CCNA certified with the State of Florida?

- ☐ Yes  
☐ No

22. Since October 1, 2014, has the City denied your business a CCNA certification? \*

- ☐ Yes  
☐ No  
☐ I do not know what a CCNA certification is

What reason was given for the denial? \*

Conditional

23. For what type of work was your business' CCNA certification denied? \*

Conditional

24. Were you given instructions on how to appeal the denial? \*

- ☐ Yes  
☐ No

Conditional

25. Since Oct 1, 2014, have you bid on a CCNA contract? \*

- ☐ Yes  
☐ No

Conditional

26. How many CCNA contracts has your business bid on since October 1, 2014? \*

- ☐ 1  
☐ 2-5  
☐ 6-10  
☐ 11 or more



27. Since October 1, 2014, have you been awarded a CCNA contract? \*

☐ Yes

☐ No

Conditional

28. How many CCNA contracts has your business been awarded since October 1, 2014? \*

☐ 1

☐ 2-5

☐ 6-10

☐ 11 or more

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## City of St. Petersburg Disparity Study Anecdotal eSurvey

### Page 10

#### Small Business Enterprise Program

29. Are you currently certified as an SBE? \*

☐ Yes

☐ No

Conditional

30. When were you certified as an SBE? \*

YYYY

31. Has your company benefited from the City's SBE Program? \*

☐ Yes

☐ No

32. On how many contracts has your company been used to meet a SBE goal? \*

☐ 0

☐ 1

☐ 2-5

☐ 6-10

☐ 11 or more

33. Is there an expedited certification process available to respond to the City proposal? \*

☐ Yes

☐ No

34. Was your certification application expedited? \*

☐ Yes

☐ No

Conditional

35. What reason was given for not expediting your certification application? \*



36. Do you think there is a need for the City to implement a Minority and Women-owned Business Enterprise Program? \*

☐ Yes

☐ No

Conditional

37. Why? \*

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