



# STATE OF NEW YORK 2016 MWBE DISPARITY STUDY

FINAL REPORT

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NEW YORK  
STATE OF  
OPPORTUNITY.

Empire State  
Development

VOLUME I



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# FOREWORD

The State of New York 2016 MWBE Disparity Study (Study) determined if a statistically significant disparity existed between the number of Minority and Woman-owned Business Enterprises (MWBE) that are ready, willing, and able to provide the goods and services that the State of New York (State) procures and the number of available market area MWBEs. The Study contains four volumes:

- I. Disparity Study
- II. Policy Review
- III. Personal Net Worth Review
- IV. Workforce Study

## ***I. Disparity Study***

Volume I of the Study analyzed the statistical significance of underutilized MWBEs at the prime contract and subcontract levels. The Disparity Study examined four industries: construction, construction-related services, non-construction related services, and commodities and other services. The prime contracts reviewed were awarded during the study period of April 1, 2010, to March 31, 2015. The prime contract and subcontract disparity findings are presented below by industry, ethnicity, and gender.

### ***A. Prime Contract Disparity Findings***

**Table 1: Construction Prime Contract Dollars,  
April 1, 2010, to March 31, 2015**

<b>Ethnicity/Gender</b>	<b>Construction Contracts Valued \$50,000 to \$1,400,000</b>	<b>Construction Contracts Valued Between \$25,000 and \$50,000</b>
<b>Black Americans</b>	<b><i>Disparity</i></b>	<b><i>Disparity</i></b>
<b>Asian-Pacific Americans</b>	<b><i>Disparity</i></b>	<b><i>Disparity</i></b>
<b>Asian-Indian Subcontinent Americans</b>	<b><i>Disparity</i></b>	<b><i>Disparity</i></b>
<b>Hispanic Americans</b>	<b><i>Disparity</i></b>	<b><i>Disparity</i></b>
<b>Native Americans or Alaskan Native Americans</b>	----	----
<b>Caucasian Females</b>	<b><i>Disparity</i></b>	<b><i>Disparity</i></b>

(----) denotes an underutilized group with too few available firms to test statistical significance.



**Table 2: Construction-Related Services Prime Contract Dollars,  
April 1, 2010, to March 31, 2015**

<b>Ethnicity/Gender</b>	<b>Contracts Valued \$50,000 to \$2,000,000</b>	<b>Contracts Valued Between \$25,000 and \$50,000</b>
<b>Black Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Pacific Americans</b>	<i>Disparity</i>	<b>No Disparity</b>
<b>Asian-Indian Subcontinent Americans</b>	<i>Disparity</i>	<b>No Disparity</b>
<b>Hispanic Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Native Americans or Alaskan Native Americans</b>	----	----
<b>Caucasian Females</b>	<i>Disparity</i>	<i>Disparity</i>

( ---- ) denotes an underutilized group with too few available firms to test statistical significance.

**Table 3: Non-Construction Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015**

<b>Ethnicity/Gender</b>	<b>Non-Construction Related Services Contracts Valued \$50,000 to \$500,000</b>	<b>Non-Construction Related Services Contracts Valued Between \$25,000 and \$50,000</b>
<b>Black Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Pacific Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Indian Subcontinent Americans</b>	<b>No Disparity</b>	<b>No Disparity</b>
<b>Hispanic Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Native Americans or Alaskan Native Americans</b>	----	----
<b>Caucasian Females</b>	<i>Disparity</i>	<i>Disparity</i>

( ---- ) denotes an underutilized group with too few available firms to test statistical significance.





**Table 4: Commodities and Other Services Prime Contract Dollars,  
April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Commodities and Other Services Contracts Valued \$50,000 to \$275,000	Commodities and Other Services Contracts Valued Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Subcontinent Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans or Alaskan Native Americans	----	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

( ---- ) denotes an underutilized group with too few available firms to test statistical significance.

### **B. Subcontract Disparity Findings**

Prime contracts valued over \$250,000 were reviewed for the subcontracts awarded during the study period of April 1, 2010 to March 31, 2015. The disparity findings for construction, construction-related services, and non-construction related services subcontracts are presented below.

**Table 5: Subcontract Disparity Summary,  
April 1, 2010, to March 31, 2015**

Ethnicity/ Gender	Construction	Construction-Related Services	Non-Construction Related Services
Black Americans	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Subcontinent Americans	<i>Disparity</i>	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
Native Americans	No Disparity	----	----
Caucasian Females	<i>Underutilization</i>	<i>Disparity</i>	<i>Disparity</i>

( ---- ) denotes an underutilized group with too few available firms to test statistical significance.

### **C. Recommendations**

Proposed race and gender-conscious remedies are presented in *Chapter 10: Recommendations and Remedies*. The recommendations are narrowly tailored to the ethnic and gender groups with a documented disparity. The race and gender-conscious remedies include: 1) bid discounts for construction and commodities and other services prime contracts; and 2) evaluation credits for construction-related and non-construction related prime contracts. Subcontract MWBE goals are recommended for the ethnic and gender



groups with a documented disparity. Race and gender-neutral recommendations are described in the *Volume II: Policy Review Report*.

## **II. Policy Review Report**

*Volume II: Policy Review Report*, provides race and gender-neutral recommendations to mitigate the disparities in MWBE participation on State contracts as documented in the Disparity Study. The *Policy Review Report* assesses: 1) the legality of contract goals, set-asides, price preferences, and mentor-protégé programs; 2) the MWBE Program mandated by Article 15-A; 3) the State's procurement methods that could unintentionally create barriers for MWBE participation; and 4) best management practices implemented by other states.

## **III. Personal Net Worth Review**

*Volume III: Personal Net Worth Review*, assesses the legal precedent for using personal net worth (PNW) as a criterion in the State's MWBE Program's certification requirements. The report reviews 1) the legislative history of PNW; 2) the precedent for application of PNW by state and municipal governments; and 3) a literature review analyzing the relationship between PNW, race, and access to capital.

The assessment revealed that PNW is a measure of credit worthiness and a determinant of access to capital for business growth and capacity building. However, the PNW certification criterion is excessive and requires the applicant to provide a disproportionate amount of information to demonstrate his or her net worth. The PNW criterion can limit the growth of a business, which would affect the business' ability to achieve financing and bonding resources needed to support the large contracts awarded by the State. The State's PNW criterion should be simplified and streamlined to lessen the burden on applicants who seek MWBE certification. Minimally, the life insurance, pension benefits, stock investments, and other personal property requirements should be removed from the PNW criterion.

## **IV. Workforce Study**

*Volume IV: Workforce Study*, assesses the employment of minorities and Caucasian females on contracts awarded by the State from January 1, 2016 to December 31, 2016. The purpose of the *Workforce Study* is to 1) assess the level of minority and Caucasian female employment on State contracts; 2) determine the availability of minorities and Caucasian females by Equal Employment Opportunity (EEO) category, as recorded in the United States Census Bureau, *2012 American Community Survey*; and 3) compare the prime contractor and subcontractor incumbent workforce to the percent of available minority and Caucasian female workers in the State by EEO category.

A number of recommendations are offered to remedy the documented disparity, including minority and Caucasian female construction employment goals. Collaboration with



existing pre-apprentice programs to provide recruitment and training opportunities to retain minorities and Caucasian females in the construction trades is also recommended. Post-employment retention strategies are offered to assist the State's contractors in meeting the workforce policy objectives. The *Workforce Study* also includes enhanced monitoring and compliance standards to produce quarterly workforce utilization reports electronically and to assess penalties for non-compliant contractors.



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# Table of Contents

<b>CHAPTER 1: LEGAL ANALYSIS</b> .....	<b>1-1</b>
<b>I. INTRODUCTION</b> .....	<b>1-1</b>
<b>II. STANDARD OF REVIEW</b> .....	<b>1-2</b>
<b>III. BURDEN OF PROOF</b> .....	<b>1-5</b>
A. Initial Burden of Proof .....	1-5
B. Ultimate Burden of Proof.....	1-6
<b>IV. CROSON EVIDENTIARY FRAMEWORK</b> .....	<b>1-7</b>
A. Active or Passive Participation .....	1-7
B. Systemic Discriminatory Exclusion.....	1-10
C. Anecdotal Evidence .....	1-17
D. Remedial Statutory Scheme .....	1-22
E. Post-Enactment Evidence .....	1-25
<b>V. CONSIDERATION OF RACE-NEUTRAL OPTIONS</b> .....	<b>1-26</b>
<b>VI. CONCLUSION</b> .....	<b>1-27</b>
<b>VII. LIST OF AUTHORITIES</b> .....	<b>1-28</b>
<b>CHAPTER 2: PROCUREMENT AND CONTRACTING POLICY REVIEW</b> .....	<b>2-1</b>
<b>I. INTRODUCTION</b> .....	<b>2-1</b>
<b>II. GOVERNING LAWS, CODES, AND EXECUTIVE ORDERS</b> .....	<b>2-2</b>
A. State Finance Law Article 11 .....	2-2
B. State Finance Law Section 136-a.....	2-2
C. State Finance Law Section 163.....	2-2
D. State Public Buildings Law Article 8.....	2-2
E. State Highway Law Section 8.....	2-3
F. State Education Law Section 376 .....	2-3
G. State Education Law Section 355 .....	2-3
H. State Education Law Section 6216 .....	2-3
I. New York Codes, Rules and Regulations Title 5 .....	2-3
J. Executive Amendment Article 15-A and New York Code Sections 310-318.....	2-3



<b>III. INDUSTRIES AND DEFINITIONS .....</b>	<b>2-4</b>
A. Industries .....	2-4
B. Definitions.....	2-4
<b>IV. PROCUREMENT PROCESS OVERVIEW.....</b>	<b>2-7</b>
A. Preferred Source Offerings .....	2-8
B. Centralized Contracts.....	2-8
C. Discretionary Purchases.....	2-9
D. Competitively Bid Contracts.....	2-9
E. Exceptions to the Competitive Bid Process .....	2-11
<b>V. EXECUTIVE LAW ARTICLE 15-A.....</b>	<b>2-13</b>
A. Division of Minority and Women’s Business Development .....	2-13
B. Certification Eligibility .....	2-14
C. MWBE Contracting Goals.....	2-15
D. Monitoring and Reporting.....	2-15
<b>CHAPTER 3: PRIME CONTRACTOR UTILIZATION ANALYSIS.....</b>	<b>3-1</b>
<b>I. INTRODUCTION.....</b>	<b>3-1</b>
<b>II. PRIME CONTRACT DATA SOURCES.....</b>	<b>3-3</b>
<b>III. PRIME CONTRACT UTILIZATION THRESHOLDS.....</b>	<b>3-4</b>
<b>IV. PRIME CONTRACTOR UTILIZATION .....</b>	<b>3-5</b>
A. All Prime Contractors .....	3-5
B. Highly Used Construction Prime Contractors .....	3-5
C. Highly Used Construction-related Services Prime Contractors.....	3-6
D. Highly Used Non-Construction Related Services Prime Contractors .....	3-7
E. Highly Used Commodities and Other Services Prime Contractors .....	3-8
F. All Prime Contracts by Industry .....	3-10
G. Formal Prime Contracts by Industry.....	3-18
H. Informal Prime Contracts: Contracts Valued Between \$25,000 and \$50,000, by Industry .....	3-26
<b>V. SUMMARY .....</b>	<b>3-34</b>
<b>CHAPTER 4: SUBCONTRACTOR UTILIZATION ANALYSIS.....</b>	<b>4-1</b>
<b>I. INTRODUCTION.....</b>	<b>4-1</b>





<b>II. DATA SOURCES .....</b>	<b>4-1</b>
A. Subcontract Sampling Plan .....	4-1
B. Data Collection Efforts .....	4-1
<b>III. SUBCONTRACTOR UTILIZATION.....</b>	<b>4-4</b>
A. All Subcontracts.....	4-4
B. All Subcontracts by Industry .....	4-5
<b>IV. SUMMARY .....</b>	<b>4-11</b>
<b>CHAPTER 5: MARKET AREA ANALYSIS .....</b>	<b>5-1</b>
<b>I. MARKET AREA DEFINITION.....</b>	<b>5-1</b>
A. Legal Criteria for Geographic Market Area.....	5-1
B. Application of the Croson Standard.....	5-1
<b>II. MARKET AREA ANALYSIS .....</b>	<b>5-4</b>
A. Summary of the Distribution of All Prime Contracts Awarded .....	5-4
B. Distribution of Construction Prime Contracts .....	5-6
C. Distribution of Construction-Related Services Prime Contracts .....	5-8
D. Distribution of Non-Construction Related Services Prime Contracts .....	5-9
E. Distribution of Commodities and Other Services Prime Contracts .....	5-11
<b>III. SUMMARY .....</b>	<b>5-13</b>
<b>CHAPTER 6: PRIME CONTRACTOR AND SUBCONTRACTOR AVAILABILITY</b>	
<b>ANALYSIS .....</b>	<b>6-1</b>
<b>I. INTRODUCTION.....</b>	<b>6-1</b>
<b>II. PRIME CONTRACTOR AVAILABILITY DATA SOURCES .....</b>	<b>6-1</b>
A. Identification of Businesses within the Market Area.....	6-1
B. Prime Contractor Sources .....	6-3
C. Determination of Willingness .....	6-9
D. Assignment of Industry Codes.....	6-9
E. Distribution of Available Prime Contractors by Source, Ethnicity, and Gender .....	6-9
<b>III. CAPACITY .....</b>	<b>6-12</b>
A. Contract Size Distribution.....	6-13



B. Largest MWBE Contract Awarded by Industry .....	6-15
C. Contract Quartile Analysis.....	6-15
D. Business Capacity Assessment .....	6-16
E. Conclusion .....	6-24
<b>IV. PRIME CONTRACTOR AVAILABILITY ANALYSIS .....</b>	<b>6-25</b>
A. Construction Prime Contractor Availability .....	6-26
B. Construction-Related Services Prime Contractor Availability .....	6-28
C. Non-Construction Related Services Prime Contractor Availability .....	6-30
D. Commodities and Other Services Prime Contractor Availability.....	6-32
<b>V. SUBCONTRACTOR AVAILABILITY ANALYSIS.....</b>	<b>6-34</b>
A. Source of Willing and Able Subcontractors .....	6-34
B. Determination of Willingness and Capacity .....	6-34
C. Construction Subcontractor Availability .....	6-35
D. Construction-Related Services Subcontractor Availability .....	6-37
E. Non-Construction Related Services Subcontractor Availability .....	6-39
<b>VI. SUMMARY .....</b>	<b>6-41</b>
<b>CHAPTER 7: PRIME CONTRACT STATISTICAL DISPARITY ANALYSIS.....</b>	<b>7-1</b>
<b>I. INTRODUCTION.....</b>	<b>7-1</b>
<b>II. STATISTICAL DISPARITY ANALYSIS .....</b>	<b>7-2</b>
A. Disparity Analysis: Formal Prime Contracts, by Industry.....	7-4
B. Disparity Analysis: All Informal Prime Contracts Valued Between \$25,000 and \$50,000, by Industry .....	7-16
<b>III. DISPARITY ANALYSIS SUMMARY .....</b>	<b>7-28</b>
A. Construction Prime Contracts .....	7-28
B. Construction-Related Services Prime Contracts.....	7-29
C. Non-Construction Related Services Prime Contracts.....	7-30
D. Commodities and Other Services Prime Contracts.....	7-31
<b>CHAPTER 8: SUBCONTRACT DISPARITY ANALYSIS .....</b>	<b>8-1</b>
<b>I. INTRODUCTION.....</b>	<b>8-1</b>
<b>II. DISPARITY ANALYSIS .....</b>	<b>8-1</b>



<b>III. DISPARITY ANALYSIS: ALL SUBCONTRACTS, BY INDUSTRY .....</b>	<b>8-3</b>
A. Construction Subcontracts .....	8-3
B. Construction-Related Services Subcontracts .....	8-6
C. Non-Construction Related Services Subcontracts .....	8-9
<b>IV. SUBCONTRACT DISPARITY SUMMARY .....</b>	<b>8-12</b>
<b>CHAPTER 9: ANECDOTAL ANALYSIS .....</b>	<b>9-1</b>
<b>I. INTRODUCTION.....</b>	<b>9-1</b>
<b>II. LEGAL STANDARD .....</b>	<b>9-1</b>
A. Evidence of Active or Passive Participation .....	9-1
B. Anecdotal Interview Process.....	9-2
C. Structure of the Anecdotal Interviews .....	9-4
<b>III. ANECDOTAL FINDINGS .....</b>	<b>9-4</b>
A. Racial Barriers .....	9-4
B. Sexism.....	9-6
C. Project Labor Agreements .....	9-8
D. Difficulty Breaking into the Contractor Community .....	9-12
E. Preferred Sources .....	9-15
F. “Good Old Boy” Network .....	9-16
G. Prime Contractor Circumventing MWBE Program Requirements .....	9-18
H. Problems with the MWBE Certification Process.....	9-19
I. Late Payments by Prime Contractors.....	9-24
J. Late Payments by State Agencies .....	9-25
K. Comments about the State’s Minority and Woman-Owned Business Program .....	9-27
L. Exemplary Practices of Executive Agencies and Public Authorities .....	9-33
M. Recommendations to Enhance the State’s Minority and Woman Business Enterprise Program .....	9-36
<b>IV. SUMMARY .....</b>	<b>9-43</b>
<b>CHAPTER 10: RECOMMENDATIONS .....</b>	<b>10-1</b>
<b>I. INTRODUCTION.....</b>	<b>10-1</b>
<b>II. DISPARITY FINDINGS .....</b>	<b>10-1</b>
A. Prime Contract Disparity Findings .....	10-1
B. Subcontract Disparity Findings.....	10-5



**III. RACE AND GENDER-CONSCIOUS RECOMMENDATIONS ..... 10-6**

A. Prime Contract Remedies: Construction..... 10-6

B. Prime Contract Remedies: Construction-Related Services..... 10-7

C. Prime Contract Remedies: Non-Construction Related Services..... 10-8

D. Prime Contract Remedies: Commodities and Other Services ..... 10-8

E. Subcontract Remedies..... 10-9

**APPENDIX A: AVAILABILITY TABLES BY REGION ..... A-1**



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## **List of Tables**

Table 2.1: Governing Laws, Codes, and Executive Orders .....	2-2
Table 3.1: Excluded Agencies and Authorities.....	3-2
Table 3.2: Business Race and Gender Groups.....	3-2
Table 3.3: Formal Contract Thresholds for Analysis.....	3-4
Table 3.4: Informal Contract Thresholds for Analysis .....	3-4
Table 3.5: Total Prime Contracts and Dollars Expended: All Industries, April 1, 2010, to March 31, 2015 .....	3-5
Table 3.6: Construction Prime Contracts.....	3-5
Table 3.7: Construction Prime Contracts Distributed by Number of Vendors.....	3-6
Table 3.8: Top 36 Highly Used Construction Prime Contractors.....	3-6
Table 3.9: Construction-Related Services Prime Contracts.....	3-6
Table 3.10: Construction-Related Services Prime Contracts Distributed by Number of Vendors .....	3-7
Table 3.11: Top 19 Highly Used Construction-Related Services Prime Contractors.....	3-7
Table 3.12: Non-Construction Related Services Prime Contracts.....	3-7
Table 3.13: Non-Construction Related Services Prime Contracts Distributed by Number of Vendors .....	3-8
Table 3.14: Top 23 Highly Used Non-Construction Related Services Prime Contractors.....	3-8
Table 3.15: Commodities and Other Services Prime Contracts .....	3-8
Table 3.16: Commodities and Other Services Prime Contracts Distributed by Number of Vendors .....	3-9
Table 3.17: Top 25 Highly Used Commodities and Other Services Prime Contractors .....	3-9
Table 3.18: Construction Prime Contract Utilization: All Contracts, April 1, 2010, to March 31, 2015.....	3-11



Table 3.19: Construction-Related Services Prime Contract Utilization: All Contracts, April 1, 2010, to March 31, 2015 .....	3-13
Table 3.20: Non-Construction Related Services Prime Contract Utilization: All Contracts, April 1, 2010, to March 31, 2015 .....	3-15
Table 3.21: Commodities and Other Services Prime Contract Utilization: All Contracts, April 1, 2010, to March 31, 2015 .....	3-17
Table 3.22: Construction Prime Contract Utilization: Contracts Valued \$50,000 to \$1,400,000, April 1, 2010, to March 31, 2015 .....	3-19
Table 3.23: Construction-Related Services Prime Contract Utilization: Contracts Valued \$50,000 to \$2,000,000, April 1, 2010, to March 31, 2015 .....	3-21
Table 3.24: Non-Construction Related Services Prime Contract Utilization: Contracts Valued \$50,000 to \$500,000, April 1, 2010, to March 31, 2015 .....	3-23
Table 3.25: Commodities and Other Services Prime Contract Utilization: Contracts Valued \$50,000 to \$275,000, April 1, 2010, to March 31, 2015 .....	3-25
Table 3.26: Construction Prime Contract Utilization: Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015 .....	3-27
Table 3.27: Construction-Related Prime Contract Utilization: Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015 .....	3-29
Table 3.28: Non-Construction Related Prime Contract Utilization: Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015 .....	3-31
Table 3.29: Commodities and Other Services Prime Contract Utilization: Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015 .....	3-33
Table 4.1: Total Subcontracts Awarded and Dollars Expended by Industry, April 1, 2010, to March 31, 2015 .....	4-4
Table 4.2: Construction Subcontractor Utilization, April 1, 2010, to March 31, 2015 .....	4-6
Table 4.3: Construction-Related Services Subcontractor Utilization, April 1, 2010, to March 31, 2015 .....	4-8
Table 4.4: Non-Construction Related Services Subcontractor Utilization, April 1, 2010 to March 31, 2015 .....	4-10
Table 5.1: Distribution of All Contracts Awarded.....	5-4





Table 5.2: Distribution of Construction Prime Contracts .....	5-6
Table 5.3: Distribution of Construction-Related Services Prime Contracts .....	5-8
Table 5.4: Distribution of Non-Construction Related Services Prime Contracts .....	5-9
Table 5.5: Distribution of Commodities and Other Services Prime Contracts.....	5-11
Table 6. 1: Prime Contractor Availability Data Sources .....	6-3
Table 6.2: Distribution of Prime Contractor Availability Data Sources, Construction .....	6-10
Table 6.3: Distribution of Prime Contractor Availability Data Sources, Construction- Related Services.....	6-11
Table 6.4: Distribution of Prime Contractor Availability Data Sources, Non-Construction Related Services.....	6-11
Table 6.5: Distribution of Prime Contractor Availability Data Sources, Commodities and Other Services.....	6-12
Table 6.6: All Industry Contracts by Size, April 1, 2010, to March 31, 2015.....	6-14
Table 6.7: Largest MWBE Contracts Awarded by the State .....	6-15
Table 6.8: Quartile Analysis by Size and Industry .....	6-16
Table 6.9: Ethnicity and Gender of Respondents .....	6-16
Table 6.10: Primary Industry .....	6-17
Table 6.11: Annual Gross Revenue .....	6-17
Table 6.12: Number of Employees .....	6-18
Table 6.13: Number of Contracts.....	6-19
Table 6.14: Bidding Frequency.....	6-21
Table 6.15: Years in Operation.....	6-22
Table 6.16: Educational Attainment .....	6-23
Table 6.17: Available Construction Prime Contractors, April 1, 2010, to March 31, 2015.....	6-27



Table 6.18: Available Construction-Related Services Prime Contractors, April 1, 2010, to March 31, 2015.....	6-29
Table 6.19: Available Non-Construction Related Services Prime Contractors, April 1, 2010, to March 31, 2015 .....	6-31
Table 6.20: Available Commodities and Other Services Prime Contractors, April 1, 2010, to March 31, 2015.....	6-33
Table 6.21: Unique Subcontractor Availability Data Source .....	6-34
Table 6.22: Available Construction Subcontractors, April 1, 2010, to March 31, 2015 .....	6-36
Table 6.23: Available Construction-Related Services Subcontractors, April 1, 2010, to March 31, 2015.....	6-38
Table 6.24: Available Non-Construction Related Services Subcontractors, April 1, 2010, to March 31, 2015.....	6-40
Table 7.1: Formal Thresholds for Analysis, by Industry .....	7-2
Table 7.2: Informal Thresholds for Analysis, by Industry.....	7-2
Table 7.3: Statistical Outcome Descriptions.....	7-3
Table 7.4: Disparity Analysis: Construction Prime Contracts Valued \$50,000 to \$1,400,000, April 1, 2010, to March 31, 2015.....	7-5
Table 7.5: Disparity Analysis: Construction-Related Services Prime Contracts Valued \$50,000 to \$2,000,000, April 1, 2010, to March 31, 2015 .....	7-8
Table 7.6: Disparity Analysis: Non-Construction Related Services Prime Contracts Valued \$50,000 to \$500,000, April 1, 2010, to March 31, 2015 .....	7-11
Table 7.7: Disparity Analysis: Commodities and Other Services Prime Contracts Valued \$50,000 to \$275,000, April 1, 2010, to March 31, 2015 .....	7-14
Table 7.8: Disparity Analysis: Construction Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015.....	7-17
Table 7.9: Disparity Analysis: Construction-Related Services Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015.....	7-20
Table 7.10: Disparity Analysis: Non-Construction Related Services Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015 .....	7-23



Table 7.11: Disparity Analysis: Commodities and Other Services Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015 .....	7-26
Table 7.12: Disparity Summary: Construction Prime Contract Dollars, April 1, 2010, to March 31, 2015.....	7-28
Table 7.13: Disparity Summary: Construction-Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015 .....	7-29
Table 7.14: Disparity Summary: Non-Construction Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015 .....	7-30
Table 7.15: Disparity Summary: Commodities and Other Services Prime Contract Dollars, April 1, 2010, to March 31, 2015 .....	7-31
Table 8.1: Statistical Outcome Descriptions.....	8-2
Table 8.2: Disparity Analysis: Construction Subcontracts, April 1, 2010, to March 31, 2015 ...	8-4
Table 8.3: Disparity Analysis: Construction-Related Services Subcontracts, April 1, 2010, to March 31, 2015 .....	8-7
Table 8.4: Disparity Analysis: Non-Construction Related Services Subcontracts, April 1, 2010, to March 31, 2015 .....	8-10
Table 8.5: Subcontract Disparity Summary, April 1, 2010, to March 31, 2015.....	8-12
Table 9.1: Business Community Meetings .....	9-3
Table 10.1: Disparity Summary: Construction Prime Contract Dollars, April 1, 2010, to March 31, 2015.....	10-2
Table 10.2: Disparity Summary: Construction-Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015 .....	10-3
Table 10.3: Disparity Summary: Non-Construction Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015 .....	10-4
Table 10.4: Disparity Summary: Commodities and Other Services Prime Contract Dollars, April 1, 2010, to March 31, 2015 .....	10-5
Table 10.5: Subcontract Disparity Summary, April 1, 2010, to March 31, 2015.....	10-6
Table 10.6: Disparity Summary: Construction Services for Informal Contracts, April 1, 2010, to March 31, 2015 .....	10-7



Table 10.7: Disparity Summary: Construction-Related Services Prime Contract Dollars,  
April 1, 2010, to March 31, 2015 ..... 10-7

Table 10.8: Disparity Summary: Non-Construction Related Services Prime Contract  
Dollars, April 1, 2010, to March 31, 2015 ..... 10-8

Table 10.9: Groups Eligible for Commodities and Other Services Bid Discounts ..... 10-9

Table 10.10: MWBE Subcontractor Construction Availability..... 10-10

Table 10.11: MWBE Construction Related Services Subcontractor Availability ..... 10-11

Table 10.12: MWBE Non-Construction Related Services Subcontractor Availability..... 10-11



---

## ***List of Charts***

Chart 6.1: Number of Employees .....	6-19
Chart 6.2: Number of Contracts.....	6-20
Chart 6.3: Bidding Frequency.....	6-21
Chart 6.4: Years in Operation .....	6-22
Chart 6.5: Educational Attainment .....	6-23
Chart 6.6: Median Contract Values .....	6-24
Chart 7.1: Disparity Analysis: Construction Prime Contracts Valued \$50,000 to \$1,400,000, April 1, 2010, to March 31, 2015 .....	7-6
Chart 7.2: Disparity Analysis: Construction-Related Services Prime Contracts Valued \$50,000 to \$2,000,000, April 1, 2010, to March 31, 2015 .....	7-9
Chart 7.3: Disparity Analysis: Non-Construction Related Services Prime Contracts Valued \$50,000 to \$500,000, April 1, 2010, to March 31, 2015 .....	7-12
Chart 7.4: Disparity Analysis: Commodities and Other Services Prime Contracts Valued \$50,000 to \$275,000, April 1, 2010, to March 31, 2015 .....	7-15
Chart 7.5: Disparity Analysis: Construction Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015 .....	7-18
Chart 7.6: Disparity Analysis: Construction-Related Services Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015 .....	7-21
Chart 7.7: Disparity Analysis: Non-Construction Related Services Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015 .....	7-24
Chart 7.8: Disparity Analysis: Commodities and Other Services Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015 .....	7-27
Chart 8.1: Disparity Analysis: Construction Subcontracts, April 1, 2010, to March 31, 2015 ...	8-5
Chart 8.2: Disparity Analysis: Construction-Related Services Subcontracts, April 1, 2010, to March 31, 2015.....	8-8



Chart 8.3: Disparity Analysis: Non-Construction Related Services Subcontracts, April 1, 2010, to  
March 31, 2015..... 8-11





## ***Appendix List of Tables***

Table A.1: Available Prime Contractors – Construction Capital District .....	A-1
Table A.2: Available Prime Contractors – Construction-Related Services Capital District .....	A-2
Table A.3: Available Prime Contractors – Non-Construction Related Services Capital District .....	A-3
Table A.4: Available Prime Contractors – Commodities and Other Services Capital District ..	A-4
Table A.5: Available Prime Contractors - Construction Central New York .....	A-5
Table A.6: Available Prime Contractors – Construction-Related Services Central New York .	A-6
Table A.7: Available Prime Contractors – Non-Construction Related Services Central New York.....	A-7
Table A.8: Available Prime Contractors – Commodities and Other Services Central New York.....	A-8
Table A.9: Available Prime Contractors - Construction Finger Lakes.....	A-9
Table A.10: Available Prime Contractors – Construction-Related Services Finger Lakes .....	A-10
Table A.11: Available Prime Contractors – Non-Construction Related Services Finger Lakes .....	A-11
Table A.12: Available Prime Contractors – Commodities and Other Services Finger Lakes..	A-12
Table A.13: Available Prime Contractors - Construction Long Island .....	A-13
Table A.14: Available Prime Contractors – Construction-Related Services Long Island.....	A-14
Table A.15: Available Prime Contractors – Non-Construction Related Services Long Island	A-15
Table A.16: Available Prime Contractors – Commodities and Other Services Long Island ...	A-16
Table A.17: Available Prime Contractors - Construction Mid-Hudson .....	A-17
Table A.18: Available Prime Contractors – Construction-Related Services Mid-Hudson .....	A-18
Table A.19: Available Prime Contractors – Non-Construction Related Services Mid-Hudson.....	A-19



Table A.20: Available Prime Contractors – Commodities and Other Services Mid-Hudson .. A-20

Table A.21: Available Prime Contractors - Construction Mohawk Valley ..... A-21

Table A.22: Available Prime Contractors – Construction-Related Services Mohawk Valley . A-22

Table A.23: Available Prime Contractors – Non-Construction Related Services Mohawk Valley ..... A-23

Table A.24: Available Prime Contractors – Commodities and Other Services Mohawk Valley ..... A-24

Table A.25: Available Prime Contractors - Construction New York City ..... A-25

Table A.26: Available Prime Contractors – Construction-Related Services New York City .. A-26

Table A.27: Available Prime Contractors – Non-Construction Related Services New York City ..... A-27

Table A.28: Available Prime Contractors – Commodities and Other Services New York City ..... A-28

Table A.29: Available Prime Contractors - Construction North Country ..... A-29

Table A.30: Available Prime Contractors – Construction-Related Services North Country ... A-30

Table A.31: Available Prime Contractors – Non-Construction Related Services North Country .....A-31

Table A.32: Available Prime Contractors – Commodities and Other Services North Country .....A-32

Table A.33: Available Prime Contractors – Construction Southern Tier ..... A-33

Table A.34: Available Prime Contractors – Construction-Related Services Southern Tier ..... A-34

Table A.35: Available Prime Contractors – Non-Construction Related Services Southern Tier .....A-35

Table A.36: Available Prime Contractors – Commodities and Other Services Southern Tier. A-36

Table A.37: Available Prime Contractors – Construction Western New York ..... A-37

Table A.38: Available Prime Contractors – Construction-Related Services Western New York .....A-38



Table A.39: Available Prime Contractors – Non-Construction Related Services Western New York ..... A-39

Table A.40: Available Prime Contractors – Commodities and Other Services Western New York..... A-40

Table A.41: Available Prime Contractors – Construction Downstate ..... A-41

Table A.42: Available Prime Contractors – Construction-Related Services Downstate..... A-42

Table A.43: Available Prime Contractors – Non-Construction Related Services Downstate.. A-43

Table A.44: Available Prime Contractors – Commodities and Other Services Downstate..... A-44

Table A.45: Available Prime Contractors – Construction Upstate..... A-45

Table A.46: Available Prime Contractors – Construction-Related Services Upstate..... A-46

Table A.47: Available Prime Contractors – Non-Construction Related Services Upstate..... A-47

Table A.48: Available Prime Contractors – Commodities and Other Services Upstate ..... A-48



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# CHAPTER 1: Legal Analysis

## I. Introduction

This chapter presents the constitutional standard utilized by state and federal courts to review minority and women-owned business enterprise (MWBE) contracting programs. The standard is set forth in the 1989 United States Supreme Court decision of *City of Richmond v. J.A. Croson Co.*<sup>1</sup> and its progeny. *Croson* dealt with the City of Richmond's locally funded Minority-owned Business Enterprise (MBE) Program and established the most stringent evidentiary standard of review for race-based programs. *Croson* announced that programs employing racial classification 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 also must impose a minimal burden upon unprotected classes.

In 1988, the State of New York (State) adopted a statewide MWBE Program under Article 15-A, Sections 310 through 317. The State's MWBE Program was challenged unsuccessfully in 1992 wherein the Second Circuit Court confirmed the lower district court's decision to dismiss the case as moot on the grounds that the program did not contain MWBE goals.<sup>2</sup> Although the case was dismissed, the Second Circuit Court determined that the constitutional standard set forth in *Croson* would have been applied to the MWBE Program if the challenge was ripe. The Second Circuit also determined that the State would have to demonstrate its own findings of prior discrimination within the state before the implementation of remedial measures to stave off any future challenges to its M/WBE Program.<sup>3</sup> The 2016 MWBE Disparity Study (Study) will determine if there is evidence of a statistically significant underutilization of available MWBEs as required by *Croson* and its progeny.

The legal standard *Croson* and its progeny require to implement a race-based contracting program is presented in seven sections. The first section is the *Introduction*. Section II, *Standard of Review*, provides an overview of the constitutional parameters applicable to race and gender-conscious programs. A factual predicate, as set forth in Section III, *Burden of Proof*, presents the documented evidence of past discrimination that must be demonstrated by the State of New York before the implementation of race and gender remedial measures. The *Croson Evidentiary Framework* is discussed in Section IV. The framework must include a strong basis in evidence of past discrimination and "narrowly tailored" race-conscious remedies.<sup>4</sup> The *Consideration of Race-Neutral Options*, offering remedial initiatives in addition to race and gender-conscious remedies,

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<sup>1</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 495-96 (1989).

<sup>2</sup> *Harrison & Burrowes Bridge Constructors, Inc. v. Mario M. Cuomo, as Governor of the State of New York, et. al.*, 981 F.2d 50 (2nd Cir. 1992).

<sup>3</sup> *Id.* at 12.

<sup>4</sup> *Croson*, 488 U.S. at 486.



is described in Section V. The *Conclusion* and *List of Authorities* are contained in Sections VI and VII, respectively.

## **II. Standard of Review**

In this context, the standard of review refers to the level of scrutiny a court applies during its analysis of whether a particular law is constitutional. This section discusses the standards of review applied to remedial programs based on various classifications, including the heightened standard of review that the United States Supreme Court set forth in *Croson* for race-conscious programs.

### **1. Minority-owned 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 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-owned Business Enterprise Programs**

Since *Croson*, which dealt exclusively with the review of a race-conscious plan, the United States Supreme Court has remained silent with respect to the appropriate standard of review for geographically-based Women-owned 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 the gender favored.

The consensus among the Third, Fourth, Ninth, Tenth, and Eleventh 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 review requires the

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

<sup>6</sup> *Croson*, 488 U.S. at 493.

<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.



governmental entity to demonstrate that the action taken furthers an “important governmental objective,” employing a method that is substantially related to the goal.<sup>10</sup> The Fourth and Sixth Circuit 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 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 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*: “[T]his standard requires the [County] to present probative evidence in support of its stated rationale for the gender preference, discrimination against women-owned

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1997); see also *Concrete Works of Colo. v. City & County of Denver*, 321 F.3d 950, 960 (10th Cir. 2003) (“*Concrete Works*”); and *H.B. Rowe Co. v. Tippett*, 615 F.3d 233, 236 (4th Cir. 2010).

<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 724; see also *Mich. Rd. Builders Ass’n, Inc. v. Milliken*, 834 F.2d 583, 595 (6th Cir. 1987); see also *H.B. Rowe Co. v. Tippett*, 615 F.3d 233, 236 (4th Cir. 2010); see also *Virginia*, 518 U.S. at 515.

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

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

<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 1401, 940 (9th Cir. 1991) (hereinafter “*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).





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> that found 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 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 echoed that speculation, it concluded that “[u]nless and until the 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>

In *Dade County II*, the Eleventh Circuit court noted that the Third Circuit in *Philadelphia* 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>

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<sup>19</sup> *Dade County II*, 122 F.3d 895, 909 (1997) (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.

<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.).



### **III. Burden of Proof**

The procedural protocol established by *Croson* imposes an initial burden of proof upon the government to demonstrate that the challenged MBE program is supported by a strong factual predicate, i.e., documented evidence of past discrimination. Notwithstanding this requirement, the plaintiff bears the ultimate burden of proof to persuade the court that the MBE program is unconstitutional. The plaintiff may challenge a government’s factual predicate on any of the following grounds:<sup>31</sup>

- Disparity exists due to race-neutral reasons,
- Methodology is flawed,
- Data are statistically insignificant, or
- 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>32</sup> Whether the government has produced a strong basis in evidence is a question of law.<sup>33</sup> The Court reviews questions of law *de novo* and the district court’s factual findings under a clearly erroneous standard.<sup>34</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>35</sup> Once the defendant meets this initial burden, the burden of proof then 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>36</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>37</sup> The onus is upon the jurisdiction to provide

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<sup>31</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); see also *H.B. Rowe Co. v. Tippett*, 615 F.3d 233, 236 (4th Cir. 2010).

<sup>32</sup> *Philadelphia VI*, 91 F.3d at 586 (citing *Concrete Works of Colo. v. Denver*, 36 F.3d 1513, 1522 (10th Cir. 1994)); see *Croson*, 488 U.S. at 510.

<sup>33</sup> *Id.* (citing *Associated Gen. Contractors v. New Haven*, 791 F. Supp. 941, 944 (D. Conn. 1992)).

<sup>34</sup> *Concrete Works of Colo. v. Denver* (“*Concrete Works I*”), 36 F.3d 1513, 1521-22 (10th Cir. 1994); see also *Engineering Contractors Ass’n of South FL Inc. v. Metropolitan Dade County*, 122 F. 3d. 895 (11<sup>th</sup> Cir. 1997).

<sup>35</sup> *Concrete Works of Colo. v. Denver* (“*Concrete Works I*”), 36 F.3d 1513, 1521-22 (10th Cir. 1994) (citing *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 292 (1986)).

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

<sup>37</sup> *Id.* (citing *Croson*, 488 U.S. at 498).



a factual predicate that is sufficient in scope and precision to demonstrate that contemporaneous discrimination necessitated the adoption of the MBE program.<sup>38</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>39</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>40</sup>

[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>41</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>42</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>43</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>44</sup> However, the ultimate issue of whether sufficient evidence exists to prove past discrimination is a question of law.

*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.*

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<sup>38</sup> See *Croson*, 488 U.S. at 488.

<sup>39</sup> See *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 277-78, 293 (1986).

<sup>40</sup> *Id.* (O’Connor, S., concurrence).

<sup>41</sup> *Wygant*, 476 U.S. at 277-78.

<sup>42</sup> *Philadelphia VI*, 91 F.3d at 597.

<sup>43</sup> *Id.* at 597.

<sup>44</sup> *Id.* at 597-598.



*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>45</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*.

#### ***IV. 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 of past discrimination, and the race-conscious remedy must be “narrowly tailored,” as set forth in *Croson*.<sup>46</sup> A summary of the appropriate types of evidence to satisfy the first element of the *Croson* standard follows.

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 of past discrimination, and the race-conscious remedy must be “narrowly tailored,” as set forth in *Croson*.<sup>47</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>48</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 strict scrutiny review.<sup>49</sup> An entity will be considered an “active” participant if the evidence shows it has 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>50</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*

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<sup>45</sup> *Concrete Works of Colo., Inc. v. Denver* (“*Concrete Works IV*”), 321 F.3d 950, 979 (10th Cir. 2003).

<sup>46</sup> *Croson*, 488 U.S. at 486.

<sup>47</sup> *Croson*, 488 U.S. at 486.

<sup>48</sup> *Id.* at 488.

<sup>49</sup> *Id.* at 509.

<sup>50</sup> *Id.* at 492, accord *Coral Constr. Co. v. King Cnty.*, 941 F.2d 910, 916 (9th Cir. 1991).



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>51</sup>

In *Concrete Works I*, the district court granted summary judgment in favor of the City of Denver in 1993.<sup>52</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>53</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>54</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>55</sup>

The district court in *Concrete III* rejected the four disparity studies the city offered to support the continuation of Denver’s MWBE program.<sup>56</sup> The court surmised that: (1) the methodology employed in the statistical studies was not “designed to answer the relevant questions;”<sup>57</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>58</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>59</sup> The statistical analysis relied upon by the City to support its MWBE 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 MWBE program goals.

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.<sup>60</sup> 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 that must be met for the governmental entity to show a compelling interest. “First, the discrimination must be identified discrimination. (citation omitted). The City

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<sup>51</sup> *Concrete Works of Colo., Inc. v. City & County of Denver* (“*Concrete Works I*”), 823 F. Supp. 821, 824 (D. Colo. 1993), *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>52</sup> *Concrete Works I*, 823 F. Supp. at 994.

<sup>53</sup> *Concrete Works of Colo., Inc. v. City & County of Denver* (“*Concrete Works II*”), 36 F.3d 1513, 1530-31 (10th Cir. 1994).

<sup>54</sup> *Id.*

<sup>55</sup> *Concrete Works of Colo., Inc. v. City & County of Denver* (“*Concrete Works III*”), 86 F. Supp. 2d 1042, 1079 (D. Colo. 2000).

<sup>56</sup> *Id.* at 1065-68.

<sup>57</sup> *Concrete Works III*, 86 F. Supp. 2d. at 1067.

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

<sup>59</sup> *Id.* at 1068.

<sup>60</sup> *Concrete Works of Colo., Inc. v. Denver* (“*Concrete Works IV*”), 321 F.3d 950, 958 (10th Cir. 2003).



can satisfy this condition by identifying the discrimination “*public or private*, with some specificity.” (internal quotes and citation omitted).<sup>61</sup>

In *Concrete Works IV*, the Tenth Circuit held that the second condition the governmental entity must also satisfy is whether a “strong basis in evidence to conclude that remedial action was necessary.”<sup>62</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>63</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>64</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>65</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 MWBE program.<sup>66</sup> The challenged program consisted of a 16.9% MBE subcontracting goal, a 10% MBE prime contracting goal, a 4.5% WBE subcontracting goal, and a 1% WBE prime contracting goal.<sup>67</sup>

The district court found that private sector business practices offered by the city, which were based on United States Census and surveys, constituted discrimination against minorities in the Chicago market area.<sup>68</sup> However, the district court did not find the City’s MWBE subcontracting goal to be a narrowly tailored remedy given the factual predicate. The court found that the study did not provide a meaningful individualized review of MWBEs in order to formulate remedies “more akin to a laser beam than a baseball bat.”<sup>69</sup> The City was ordered to suspend its MWBE goals program.

As recent as 2010, the Fourth Circuit in *H.B. Rowe Co. v. Tippett* concluded that the private-sector data of underutilization proffered by the State of North Carolina could not be relied upon to

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<sup>61</sup> *Concrete Works of Colo., Inc. v. Denver* (“*Concrete Works IV*”), 321 F.3d 950, 975-76 (10th Cir, 2003).

<sup>62</sup> *Concrete Works IV*, 321 F.3d at 976 (quoting *Shaw v. Hunt*, 517 U.S. 804, 909 (1996)).

<sup>63</sup> *Concrete Works IV*, 321 F.3d at 976.

<sup>64</sup> *Id.* at 959, 977, 990.

<sup>65</sup> *Builders Ass’n of Greater Chi. v. City of Chi.*, 298 F. Supp. 2d 725, 732 (N.D. III. 2003).

<sup>66</sup> *Id.* at 726, 729, 733-34. *West Tenn. Chapter of Associated Builders & Contrs., Inc. v. Board of Educ.*, 64 F. Supp. 2d at 710 (1999) held that post-enactment evidence cannot be used to demonstrate a compelling need for defendants’ MWBE plans. (Citing *Coral Construction*, 941 F. 2d at 921; citing *Concrete Works*, 36 F. 3d at 1521).

<sup>67</sup> *Id.* at 729.

<sup>68</sup> *Id.* at 735-37.

<sup>69</sup> *Id.* at 737-39, 742.





establish private sector discrimination in the general construction industry.<sup>70</sup> The court found the private sector data deficient because the data were not tested to determine whether the underutilization was statistically significant or the result of mere chance.<sup>71</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>72</sup> Thus, it is essential to demonstrate a pattern and practice of such discriminatory exclusion in the relevant market area.<sup>73</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>74</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>75</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>76</sup>

The *Croson* court made clear that both prime contract and subcontracting data were relevant.<sup>77</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>78</sup> Subcontracting data are 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 may also be different.

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<sup>70</sup> *H.B. Rowe Co. v. Tippett*, 615 F.3d 255-256 (4th Cir. 2010).

<sup>71</sup> *Id.*

<sup>72</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>73</sup> *Croson*, 488 U.S. at 509.

<sup>74</sup> *Id.* at 506.

<sup>75</sup> *Croson*, 488 U.S. at 509.

<sup>76</sup> *Id.* at 501 (citing *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-08 (1977)).

<sup>77</sup> *Id.* at 502-03.

<sup>78</sup> *Id.*



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>79</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>80</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>81</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>82</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>83</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>84</sup> The court explained that statistical evidence alone often does not account for the complex factors and motivations guiding contracting decisions, many of which may be entirely race-neutral.<sup>85</sup>

Likewise, anecdotal evidence alone is unlikely to establish a systemic pattern of discrimination.<sup>86</sup> Nonetheless, anecdotal evidence is important because the individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”<sup>87</sup>

## 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 also be limited in its geographical scope to the boundaries of the enacting jurisdiction.”<sup>88</sup> Conversely, in *Concrete Works I*, the district court specifically approved the Denver Metropolitan Statistical Area (MSA) as the appropriate market area since 80% of the construction contracts were let there.<sup>89</sup>

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<sup>79</sup> *Croson*, 488 U.S. at 509.

<sup>80</sup> *Croson*, 488 U.S. at 509.

<sup>81</sup> *Croson*, 488 U.S. at 509 (emphasis added).

<sup>82</sup> *Id.* (emphasis added).

<sup>83</sup> *Coral Constr.*, 941 F.2d at 917-18, 920-26.

<sup>84</sup> *Coral Constr.*, 941 F.2d at 919.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* (quoting *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977)).

<sup>88</sup> *Id.* at 925.

<sup>89</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).



Taken 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>90</sup> Extra-jurisdictional evidence may be permitted when it is reasonably related to where the jurisdiction contracts.<sup>91</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>92</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 on outdated evidence.<sup>93</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 MWBE utilization and availability.<sup>94</sup>

## 3. Statistical Evidence

To determine whether statistical evidence is adequate to support 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

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<sup>90</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 I").

<sup>91</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>92</sup> See *Croson*, 488 U.S. at 509-10.

<sup>93</sup> *Id.* at 499 (stating, "[i]t is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination").

<sup>94</sup> See *AGCC II*, 950 F.2d at 1414 (consultant study looked at City's MBE utilization over a one-year period).



area.<sup>95</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>96</sup>

The Third Circuit Court of Appeals, in *Philadelphia VI*, concluded that the relevant statistical pool includes those businesses that not only exist in the marketplace, but also are qualified and willing to perform the public agency’s work.<sup>97</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 MWBEs utilized by an entity can be compared to the number of available MWBEs. This is a strict *Croson* “disparity” formula. A significant statistical disparity between the number of MWBEs that an entity utilizes in a given industry and the number of available MWBEs in the relevant market area specializing in the specified product/service category would support an inference of discriminatory exclusion.

Second, MWBE dollar participation can be compared to MWBE availability. This comparison can show a disparity between an entity’s award of contracts to available market area non-minority male businesses and the award of contracts to MWBEs.<sup>98</sup>

Whether a disparity index supports an inference that there is discrimination in the market area turns 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>99</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

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<sup>95</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>96</sup> *H.B. Rowe Co. v. Tippett*, 615 F.3d 233, 236 (4th Cir. 2010); see *Engineering Contractors Association of South Florida v. Metropolitan Dade County*, 1546 (S.D. Fla. 1996), aff’d, 122 F.3d 895 (11th Cir. 1997); see also *Concrete Works of Colorado v. City and County of Denver*, 36 F.3d 1513 (10th Cir. 1994).

<sup>97</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.

<sup>98</sup> In *AGCC II*, an independent consultant’s study “compared the number of available MBE prime construction contractors in San Francisco with the amount of contract dollars awarded by the City to San Francisco-based MBEs” over a one-year period.<sup>98</sup>The study found that available MBEs received far fewer construction contract dollars in proportion to their numbers than their available non-minority counterparts.<sup>98</sup>AGCC 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. On appeal, The Ninth Circuit affirmed the district court’s ruling.<sup>98</sup>

<sup>99</sup> *Croson*, 488 U.S. at 501 (quoting *Hazelwood Sch. Dist.*, 433 U.S. at 307-308).



absence of such a formula, the Tenth Circuit determined the analysis of the disparity index and the findings of its significance are to be judged on a case-by-case basis.<sup>100</sup>

Following the dictates of *Croson*, courts may carefully examine whether there are data that show MBEs are qualified, ready, willing, and able to perform.<sup>101</sup> In 1998, the Eastern District Court of New York addressed the issue of capacity as it relates to the elasticity of the construction industry.<sup>102</sup> In *North Shore Concrete & Associates v. City of New York*, the court stated, “firm size is not a reliable indicator of the kind of work a firm [construction] can perform.”<sup>103</sup> The court made this statement based on the City’s evidence that in “the construction industry it is relatively easy to obtain ‘qualifications’ by hiring additional employees.”<sup>104</sup> The court found that the defendant depicted the very essence of elasticity in the construction industry as the plaintiff was a “small firm whose only employee other than the owner is the secretary...however, [it] bid on projects worth over \$1 million.”<sup>105</sup> Thus, the court distinguished the construction industry from the manufacturing industry where the business is located in a fixed locale with a defined capacity to produce its product.

The issue of capacity has also been discussed by several other federal circuit courts. In the Tenth Circuit Court of Appeals, *Concrete Works II* found that 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 take into consideration the size of MBEs and WBEs.<sup>106</sup>

Notwithstanding that appellate concern, the disparity studies before the district court on remand did not examine the issue of MWBE capacity to perform Denver’s public sector contracts. The Sixth Circuit Court of Appeals, in *Associated General Contractors of Ohio, Inc. v. Drabik*, concluded that for statistical evidence to meet the legal standard of *Croson*, it must consider the issue of capacity.<sup>107</sup> The State’s factual predicate study based its statistical evidence on the

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<sup>100</sup> *Concrete Works II*, 36 F.3d at 1522.

<sup>101</sup> The *Philadelphia* study was vulnerable on this issue.

<sup>102</sup> *N. Shore Concrete & Assoc. v. City of New York*, No. 94-cv-4017, 1998 U.S. Dist. LEXIS 6785 \* 25 (E.D.N.Y. Apr. 12, 1998).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Concrete Works II*, 36 F.3d at 1528.

<sup>107</sup> *Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 734-38 (6th Cir. 2000). The Court reviewed Ohio’s 1980, pre-*Croson*, program, which the Sixth Circuit found constitutional in *Ohio Contractors Ass’n v. Keip*, 713 F.2d 167, 176 (6th Cir. 1983), finding the program unconstitutional under *Croson*.



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>108</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>109</sup>

Drabik also pointed out that the State not only relied upon the wrong type of statistical data, but also the data 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>110</sup> and *Dade County I*<sup>111</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>112</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>113</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” that the court “chose not to make.”<sup>114</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>115</sup>

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<sup>108</sup> *Drabik*, 214 F.3d at 736.

<sup>109</sup> *Drabik*, 214 F.3d at 736.

<sup>110</sup> *Philadelphia VI*, 91 F.3d at 604-605.

<sup>111</sup> *Eng’g Contractors Ass’n v. Metro. Dade County* (“*Dade County I*”), 943 F. Supp. 1546, 1582-83 (S.D. Fla. 1996).

<sup>112</sup> *Philadelphia VI*, 91 F.3d at 590.

<sup>113</sup> *Id.* at 609-10.

<sup>114</sup> *Id.* at 605.

<sup>115</sup> *Id.*



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% of project engineer logs on projects valued more than \$30,000.<sup>116</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>117</sup>

The Third Circuit has recognized that consideration of qualifications can be approached at different levels of specificity, and the practicality of the approach also should be weighed. The Court of Appeals found that “[i]t would be highly impractical to review the hundreds of contracts awarded each year and compare them to each and every MBE” and that it was a “reasonable choice” under the circumstances to use a list of MWBE-certified contractors as a source for available firms.<sup>118</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>119</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 work projects.”<sup>120</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>121</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 reason to believe the minorities who would otherwise be willing are discouraged from trying to secure work.”<sup>122</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

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<sup>116</sup> *Philadelphia VI*, 91 F.3d at 600.

<sup>117</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>118</sup> *Philadelphia VI*, 91 F.3d at 603.

<sup>119</sup> *Id.* at 603-605, 609.

<sup>120</sup> *Id.* at 603.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 603.



which the County relied disappeared when the size of the MWBEs was taken into account.<sup>123</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>124</sup> In addition, a comprehensive count of bidders is dependent on the adequacy of the agency’s record-keeping.<sup>125</sup>

The appellate court in *Dade County* did not determine whether the County presented sufficient evidence to justify the MWBE 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>126</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>127</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>128</sup>

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 MWBE program:

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<sup>123</sup> *Dade County I*, 943 F. Supp. at 1560.

<sup>124</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>125</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>126</sup> *Dade County I*, 943 F. Supp. at 1557.

<sup>127</sup> *Croson*, 488 U.S. at 509; *see Teamsters*, 431 U.S. at 338.

<sup>128</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.]”).





- MWBEs denied contracts despite being the low bidders—*Philadelphia*.<sup>129</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>130</sup>
- MWBEs’ inability to obtain contracts for private sector work—*Coral Construction*.<sup>131</sup>
- MWBEs told that they were not qualified, although they were later found to be qualified when evaluated by outside parties—*AGCC II*.<sup>132</sup>
- Attempts to circumvent MWBE project goals—*Concrete Works II*.<sup>133</sup>
- Harassment of MWBEs by an entity’s personnel to discourage them from bidding on an entity’s contracts—*AGCC II*.<sup>134</sup>

Courts must assess the extent to which relief measures disrupt settled “rights and expectations” when determining the appropriate corrective measures.<sup>135</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 MWBEs.<sup>136</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>137</sup>

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>138</sup>

<sup>129</sup> *Philadelphia IV*, 6 F.3d at 1002.

<sup>130</sup> *Cone Corp.*, 908 F.2d at 916.

<sup>131</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 Construction*, 941 F.2d 910 at 933 (WBE’s affidavit indicated that less than 7 percent of the firm’s business came from private contracts and that most of its business resulted from gender-based set-asides).

<sup>132</sup> *AGCC II*, 950 F.2d at 1415.

<sup>133</sup> *Concrete Works II*, 36 F.3d at 1530.

<sup>134</sup> *AGCC II*, 950 F.2d at 1415.

<sup>135</sup> *Wygant*, 476 U.S. at 283.

<sup>136</sup> *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (U.S.1977); *Coral Constr.*, 941 F.2d at 919.

<sup>137</sup> *Croson*, 488 U.S. at 509 (citing *Teamsters*, 431 U.S. at 338).

<sup>138</sup> *Id.* at 480.



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>139</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>140</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>141</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>142</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>143</sup> The Third Circuit Court disapproved of the district court’s actions, because, in its view, the court’s rejection of this evidence betrayed the court’s role in disposing of a motion for summary judgment.<sup>144</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

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<sup>139</sup> *Coral Constr.*, 941 F.2d at 917-18.

<sup>140</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>141</sup> *Id.* at 919.

<sup>142</sup> *Id.*

<sup>143</sup> *Philadelphia IV*, 6 F.3d at 1002.

<sup>144</sup> *Id.* at 1003.



anecdotal evidence alone may, in an exceptional case, be so dominant or pervasive that it passes muster under *Croson*, it is insufficient here.<sup>145</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>146</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, by 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>147</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>148</sup> However, it held that this was not the “exceptional case” in which, unreinforced by statistics, the anecdotal evidence was enough.<sup>149</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>150</sup> The court noted that the City had provided such systemic evidence.

The Ninth Circuit Court of Appeals has articulated what it deems to be permissible anecdotal evidence in *AGCC II*.<sup>151</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

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<sup>145</sup> *Philadelphia IV*, 6 F.3d at 1003.

<sup>146</sup> 963 F.2d 420, 427 (D.C. Cir. 1992).

<sup>147</sup> *O’Donnell Constr. Co. v. D.C.*, 963 F.2d 420, 427 (D.C. Cir. 1992).

<sup>148</sup> *Dade County II*, 122 F.3d at 925.

<sup>149</sup> *Id.* at 926.

<sup>150</sup> *Concrete Works II*, 36 F.3d at 1530.

<sup>151</sup> *AGCC II*, 950 F.2d at 1401.



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>152</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.<sup>153</sup> The case law suggests that, to be optimally persuasive, anecdotal evidence collectively should satisfy six particular requirements. These requirements are that the accounts:

1. Are gathered from minority contractors, preferably those that are "qualified."<sup>154</sup>
2. Concern specific, instances of discrimination.<sup>155</sup>
3. Involve the actions of prime contractors or government officials.<sup>156</sup>
4. Involve events within the relevant jurisdiction's market area.<sup>157</sup>
5. Discuss the harm that the improper conduct has inflicted on the businesses in question.<sup>158</sup>
6. Collectively reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic.<sup>159</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, the foregoing cases provide some guidance by implication. *Philadelphia IV* makes clear that 14 anecdotal accounts standing alone will not suffice.<sup>160</sup> The court then turned to the statistical data.<sup>161</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 quantity of anecdotal evidence that is needed in conjunction with statistical evidence to pass constitutional muster.

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<sup>152</sup> *AGCC II*, 950 F.2d at 1415.

<sup>153</sup> *Philadelphia IV*, 6 F.3d at 1003 ; *Coral Constr.*, 941 F.2d at 917-19; *Croson*, 488 U.S. at 509; *O'Donnell*, 963 F.2d at 427.

<sup>154</sup> *Philadelphia VI*, 91 F.3d at 603.

<sup>155</sup> *Coral Constr.*, 941 F.2d at 917-18; *but see Concrete Works II*, 321 F.3d at 989 ("There is no merit to [plaintiff's] argument that the witnesses' accounts must be verified to provide support for Denver's burden.")

<sup>156</sup> *Concrete Works II*, 321 F.3d. at 989.

<sup>157</sup> *Coral Constr.*, 941 F.2d at 925.

<sup>158</sup> *O'Donnell*, 963 F.2d at 427.

<sup>159</sup> *Coral Constr.*, 941 F.2d at 919.

<sup>160</sup> *Philadelphia IV*, 6 F.3d. at 1002-03.

<sup>161</sup> *Id.*



The amount 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. Tippett (Rowe)* challenged the constitutionality of the North Carolina General Assembly’s Statute 136-28.4 (Statute), promulgated in 1983.<sup>162</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>163</sup> The 1983 Statute directed North Carolina Department of Transportation (NCDOT) to encourage and promote the policy.<sup>164</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>165</sup>

As a result of the amendment, NCDOT created a Minority Business Enterprise and Women Business Enterprise Program (MWBE Program) for non-federally funded highway and bridge construction contracts.<sup>166</sup> In 1991, the constitutionality of the statute was challenged.<sup>167</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>168</sup> As a result of the challenge, NCDOT suspended its MWBE program in 1991.<sup>169</sup>

In 1993, NCDOT commissioned a disparity study on state-funded transportation construction contracts.<sup>170</sup> The study determined that minority and women subcontractors were underutilized at a statistically significant level and the MWBE Program was re-implemented.<sup>171</sup> In 1998, the North Carolina General Assembly again commissioned an update to the 1993 study.<sup>172</sup> The 1998

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<sup>162</sup> *H.B. Rowe Co. v. Tippett*, 615 F.3d 233, 236 (4th Cir. 2010).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 237; see *Dickerson Carolina, Inc. v. Harrelson*, 114 N.C. App. 693 (1994).

<sup>168</sup> *Rowe*, 615 F.3d at 237 (citing *Croson*, 488 U.S. at 504).

<sup>169</sup> *Id.*

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

<sup>171</sup> *Rowe*, 615 F.3d at 237.

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



update study concluded that minority and women-owned businesses continued to be underutilized in State-funded road construction contracts.<sup>173</sup>

In 2002, Rowe was denied a NCDOT contract because the company's bid included 6.6% women subcontractor participation and no minority subcontractor participation.<sup>174</sup> NCDOT claimed that Rowe failed to meet the good faith effort requirements of the MWBE Program.<sup>175</sup> A third study was commissioned in 2004 to again study minority and women contractor participation on the State's highway construction industry.<sup>176</sup> In 2006, relying on the 2004 study, the North Carolina General Assembly amended Statute 136-28.4.<sup>177</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.
- The inclusion of a sunset provision.<sup>178</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>179</sup> The statistical evidence was also examined to determine if the statute's definition of minorities was over-inclusive by including minority groups that did not suffer discrimination pursuant to the statistical results of the 2004 disparity study.<sup>180</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>181</sup> The methodology used in the 2004 disparity study calculated a disparity at the .05 confidence level.<sup>182</sup> A statistical calculation is significant at the

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<sup>173</sup> *Rowe*, 615 F.3d at 237.

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

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

<sup>176</sup> *Id.* at 238.

<sup>177</sup> *Id.*

<sup>178</sup> *Rowe*, 615 F.3d. at 238-39.

<sup>179</sup> *Id.* at 238.

<sup>180</sup> *Rowe*, 615 F.3d at 239.

<sup>181</sup> *Id.* at 243-44.

<sup>182</sup> *Id.* at 244.



.05 confidence level because the probability of that result occurring by chance is 5% or less.<sup>183</sup> The .05 confidence level is used in social and other sciences as a marker of when a result is a product of some external influence rather than ordinary variation or sampling error.<sup>184</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>185</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>186</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>187</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.

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>188</sup> The 2004 disparity study calculated the overutilization of women subcontractors as statistically significant at a .05 confidence level.<sup>189</sup> The circuit court further noted that the private sector evidence was insufficient to overcome the strong evidence of overutilization.<sup>190</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>191</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

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<sup>183</sup> *Rowe*, 615 F.3d 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>184</sup> *Id.* (citing EARL BABBIE, THE PRACTICE OF SOCIAL RESEARCH 483 (11th ed. 2007)).

<sup>185</sup> *Id.* at 261.

<sup>186</sup> *Rowe*, 615 F.3d at 245.

<sup>187</sup> *Id.* at 254.

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

<sup>189</sup> *Rowe*, 615 F.3d at 254-55.

<sup>190</sup> *Id.* at 255.

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



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.<sup>192</sup> Where the overutilization of women-owned businesses is statistically established, however, the exceedingly persuasive justification standard is not satisfied.<sup>193</sup>

### ***E. Post-Enactment Evidence***

As discussed above, a governmental entity may enact remedial legislation based upon race when a compelling state interest exists, and the legislation is narrowly tailored to accomplish that purpose. Remedying the effects of past or present racial discrimination may constitute a compelling state interest sufficient to enact remedial legislation based upon race. Such legislation will only survive the compelling interest prong of strict scrutiny analysis if the governmental entity can meet two evidentiary conditions: (1) the entity must offer evidence that identifies active or passive discrimination with some specificity; and (2) the entity must have a “strong basis” in evidence that remedial action was necessary before the remedy is narrowly tailored, and the entity may enact a remedial program based upon race.

The first condition emphasizes the necessity of tracing discrimination to the actions of the governmental entity.<sup>194</sup> The second condition ensures that the legislative body is motivated by the constitutionally permissible purpose of remedying past or present racial discrimination that existed prior to the law’s enactment.<sup>195</sup> Although *West Tenn. Assoc. Builders V. City Of Memphis*, 138 F. Supp.2d 1015 (W.D. Tenn. 2000) (*Shaw v. Hunt*, 507 U.S. 804 (1996)) holds that post-enactment evidence alone may be insufficient to justify remedial legislation, it may fairly be interpreted to allow post-enactment evidence to supplement a plan’s “proper factual basis” in order to prove that a strong basis existed to use race-conscious legislation as a remedial tool.<sup>196</sup>

Post-enactment evidence of discrimination may be introduced to supplement pre-enactment evidence. Five circuits that have decided the issue are unanimous in permitting the introduction of post-enactment evidence, though the circuits disagree on the rationale that supports that determination. A substantial disagreement of opinion therefore exists as to the proper role played by post-enactment evidence, and the means of its introduction. Decided post-*Shaw*, the Tenth Circuit relied upon the language used in *Croson*, holding that the city must “identify [the] discrimination...with some specificity before [it] may use race-conscious relief.”<sup>197</sup> The court reasoned that *Croson* does not foreclose consideration of post-enactment evidence.

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<sup>192</sup> *Rowe*, 615 F.3d at 242.

<sup>193</sup> *Id.* at 254.

<sup>194</sup> *Croson*, 488 U.S. at 492, 109 S. Ct. at 721.

<sup>195</sup> *Shaw*, 517 U.S. at 910, 116 S. Ct. at 1903.

<sup>196</sup> *West Tenn. Assoc. Builders v. City of Memphis*, 138 F. Supp. 2d 1015 (W.D. 2000) (citing *Shaw*, 517 U.S. at 908 n. 4).

<sup>197</sup> *Concrete Works*, 36 F.3d at 1521 (quoting *Croson*, 488 U.S. at 504, 109 S.Ct. at 727).





## V. Consideration of Race-Neutral Options

A remedial program must address the source of the disadvantage faced by minority businesses. If it is found that race discrimination places MBEs at a competitive disadvantage, an MBE program may seek to counteract the situation by providing MBEs with a counterbalancing advantage.<sup>198</sup> An MBE program cannot stand if the sole barrier to MWBE participation is a barrier that is faced by all new businesses, regardless of ownership.<sup>199</sup> If the evidence demonstrates that the sole barrier to MWBE participation is that MWBEs disproportionately lack capital or cannot meet bonding requirements, then only a race-neutral program of financing for all small firms would be justified.<sup>200</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 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>201</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, as long as it also includes race-neutral measures to address the capital and bonding barriers.<sup>202</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>203</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>204</sup>

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<sup>198</sup> *AGCC II*, 950 F.2d at 1404.

<sup>199</sup> *Croson*, 488 U.S. at 508.

<sup>200</sup> *Id.* at 507.

<sup>201</sup> *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003).

<sup>202</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>203</sup> *Coral Constr.*, 941 F.2d at 910.

<sup>204</sup> *Dade County II*, 122 F.3d at 927; *Hershell Gill Consulting Eng'rs, Inc. v. Miami-Dade County*, 333 F. Supp. 2d 1305 (S.D. Fla. 2004). 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*.



## **VI. Conclusion**

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

Depending on the statistical findings of the Disparity Study, the results may provide the State of New York with the factual predicate needed to continue race and gender-based remedies for its MWBE Program authorized under Article 15-A. 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.



## VII. List of Authorities

Cases	Pages
<i>Adarand Constructors, Inc. v. Slater</i> , 228 F.3d 1147 (10th Cir. 2000) .....	3, 28
<i>Armour v. City of Indianapolis, Ind.</i> , 132 S. Ct. 2073 (2012) .....	5
<i>Associated Gen. Contractors of Cal. v. City &amp; Cnty. of San Francisco (“AGCC I”)</i> , 214 F.3d 730 (6th Cir. 2000) .....	3, 5
<i>Associated Gen. Contractors v. Coal. for Econ. Equity (“AGCC II”)</i> , 950 F.2d 1401 (9th Cir. 1991) .....	<i>passim</i>
<i>Associated Gen. Contractors of Ohio, Inc. v. Drabik</i> , 813 F.2d 922 (9th Cir. 1987) .....	16, 17
<i>Associated Gen. Contractors v. New Haven</i> , 791 F. Supp. 941 (D. Conn. 1992) .....	7
<i>Builders Ass’n of Greater Chi. v. City of Chi.</i> , 298 F. Supp. 2d 725 (N.D. Ill. 2003) .....	11
<i>Builders Ass’n of Greater Chicago v. Cnty. of Cook</i> , 256 F.3d 642 (7th Cir. 2001) .....	4
<i>City of Richmond v. J.A. Croson Co.</i> , 488 U.S. 469 (1989) .....	<i>passim</i>
<i>Concrete Works of Colo., Inc. v. City &amp; Cnty. of Denver (“Concrete Works I”)</i> , 823 F. Supp. 821 (D. Colo. 1993) .....	<i>passim</i>
<i>Concrete Works of Colo., Inc. v. City &amp; Cnty. of Denver (“Concrete Works II”)</i> , 36 F.3d 1513 (10th Cir. 1994) .....	9, 16, 20, 23
<i>Concrete Works of Colo., Inc. v. City &amp; Cnty. of Denver (“Concrete Works III”)</i> , 86 F. Supp. 2d 1042 (D. Colo. 2000) .....	9, 10
<i>Concrete Works of Colo., Inc. v. City &amp; Cnty. of Denver (“Concrete Works IV”)</i> , 321 F.3d 950 (10th Cir. 2003) .....	8, 10



<i>Cone Corp. v. Hillsborough Cnty.</i> , 908 F.2d 908 (11th Cir. 1990) .....	13, 19
<i>Contractors Ass'n of E. Pa. v. City of Philadelphia ("Philadelphia IV")</i> , 6 F.3d 990 (3d Cir. 1993) .....	3, 22, 23, 24
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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) .....	<i>passim</i>
<i>Coral Constr. Co. v. King Cnty.</i> , 941 F.2d 910 (9th Cir. 1991) .....	<i>passim</i>
<i>Dickerson Carolina v. Harrelson</i> , 114 N.C. App. 693 (1994) .....	24
<i>Doe I v. Lower Merion Sch. Dist.</i> , 689 F. Supp. 2d 742, 748 (E.D. Pa. 2010) .....	5
<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) .....	15, 17, 19
<i>Eng'g Contractors Ass'n v. Metro. Dade Cnty. ("Dade County II")</i> , 22 F.3d 895 (11th Cir. 1997) .....	2, 3, 4, 22, 28
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<i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003) .....	28
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<i>Hayes v. N. State Law Enforcement Officers Ass'n</i> , 10 F.3d 207 (4th Cir. 1993) .....	4
<i>Hazelwood Sch. Dist. v. United States</i> , 433 U.S. 299 (1977) .....	12



<i>H.B. Rowe Co. v. N.C. Dep’t of Transp.,</i> 615 F.3d 233 (4th Cir. 2010) .....	<i>passim</i>
<i>Heller v. Doe,</i> 509 U.S. 312 (1993) .....	5
<i>Hershell Gill Consulting Eng’rs, Inc. v. Miami-Dade Cnty.,</i> 333 F. Supp. 2d 1305 (S.D. Fla. 2004) .....	28
<i>Int’l Bhd. of Teamsters v. United States,</i> 431 U.S. 324 (1977) .....	13, 19, 20
<i>Lakeside Roofing Co. v. State of Missouri, et al,</i> 2012 WL 709276 (E.D. Mo.) .....	5
.....	19
<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) .....	2
<i>Miss. Univ. for Women v. Hogan,</i> 458 U.S. 718 (1982) .....	2
<i>Monterey Mech. Co. v. Pete Wilson et al.,</i> 125 F.3d 702 (9th Cir. 1997) .....	11
<i>N. Shore Concrete &amp; Ass’n v. City of N.Y.,</i> 1998 U.S. Dist. LEXIS 6785 (EDNY 1998) .....	12
<i>O’Donnell Constr. Co. v. D.C.,</i> 963 F.2d 420 (D.C. Cir. 1992).....	22, 23
<i>Ohio Contractors Ass’n v. Keip,</i> 1983 U.S. App. LEXIS 24185 (6th Cir. 1983) .....	16
<i>Reynolds v. Sheet Metal Workers, Local 102,</i> 498 F. Supp. 952 (D. D.C. 1980).....	19
<i>Schlesinger v. Ballard,</i> 419 U.S. 498, 508 (1975).....	3



*Shaw v. Hunt*,  
517 U.S. 899 (1996)..... 10

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199 F.3d 206, 218-20 (1999) .....11

*Wygant v. Jackson Bd. of Educ.*,  
476 U.S. 267 (1986) .....7, 8, 20

.....7, 8, 20



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# ***CHAPTER 2: Procurement and Contracting Policy Review***

## ***I. Introduction***

This chapter is an overview of the laws, codes, and executive orders that governed the State of New York’s (State) procurement and contracting during the April 1, 2010, to March 31, 2015, study period. The overview is limited to the standards governing procurement and contracting in the four industries under review in the 2016 Minority and Woman-owned Business Enterprise (MWBE) Disparity Study. The industries are construction, construction-related services, non-construction related services, and commodities. The State codes and regulations relevant to construction, construction-related services, non-construction related services, and commodities for State agencies which operate under the oversight of the Office of the State Comptroller are addressed herein.

Due to the variation in procurement procedures among the State’s public authorities, their specific practices are not delineated in this chapter. The Public Authorities Reform Act of 2009 granted public authorities the autonomy to conduct business outside of the typical procurement and contracting framework. Each public authority is governed by a separate board of directors and budget process, and has separate contracting and procurement procedures.

The documents reviewed in preparation of this chapter include:

- New York State Laws
- New York State Codes
- New York State Executive Orders for State Agencies<sup>205</sup>



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<sup>205</sup> For purposes of this chapter, “State agency” refers to New York State Agencies under review for the Disparity Study.

## II. *Governing Laws, Codes, and Executive Orders*

**Table 2.1: Governing Laws, Codes, and Executive Orders**

<b>New York State Laws</b>
New York State Finance Law Article 11
New York State Finance Law Section 136-a
New York State Finance Law Section 163(6)
New York State Public Buildings Law Article 2
New York State Highway Law Section 38
New York State Education Law Section 376
New York State Education Law Section 355
<b>New York Code</b>
New York Code, Rules and Regulations, Title 5
<b>Executive Law</b>
Article 15-A, New York State Law Sections 310-18

### **A. *State Finance Law Article 11***

New York State Finance Law, Article 11, governs the procurement of commodities, services, and technology.<sup>206</sup>

### **B. *State Finance Law Section 136-a***

New York State Finance Law, Section 136-a, governs the procurement of architecture, engineering, and surveying services.<sup>207</sup>

### **C. *State Finance Law Section 163***

New York State Finance Law, Section 163, governs the procurement of commodities, services, and technology, and also permits discretionary purchases from MWBEs certified pursuant to Article 15-A of the Executive Law when the value of the purchases fall below prescribed levels.<sup>208</sup>

### **D. *State Public Buildings Law Article 8***

New York State Public Buildings Law, Section 8, governs the procurement of construction contracts for State buildings. The law requires the specifications to be filed with the Office of General Services and with the board, department, commission, or officer that has jurisdiction over the State buildings. The law further authorizes the Office of General Services or the office that has



<sup>206</sup> State Finance Law, N.Y. STF LAW art. 11 State Purchasing § 160(4) (McKinney 2015).

<sup>207</sup> State Finance Law, N.Y. STF LAW § 136-a (McKinney 2015).

<sup>208</sup> State Finance Law, N.Y. STF LAW § 163(6) (McKinney 2015).



jurisdiction to advertise for proposals for such work of construction under the guidelines promulgated by the Commissioner of General Services.<sup>209</sup>

***E. State Highway Law Section 8***

New York State Highway Law, Section 38, governs the procurement of construction contracts and improvements for State highways. The law authorizes the Commissioner of Transportation to advertise solicitations for the construction or improvements of highways according to detailed specifications prepared in conformance with State law.<sup>210</sup>

***F. State Education Law Section 376***

New York State Education Law, Section 376, governs the procurement of construction contracts for State universities.

***G. State Education Law Section 355***

New York State Education Law, Sections 355(5) and 355(16), govern the procurement of materials, supplies, equipment, and services (including printing) for State universities.<sup>211</sup>

***H. State Education Law Section 6216***

New York State Education Law, Section 6218, governs the procurement of materials, supplies, equipment, and services (including printing) for the City University of New York.<sup>212</sup>

***I. New York Codes, Rules and Regulations Title 5***

Title 5 of the New York Codes, Rules and Regulations governs the Department of Economic Development. In pertinent part, Chapter V of Title 5 regulates the application process for the Minority and Woman-owned Business Enterprise Development Centers.<sup>213</sup>

***J. Executive Amendment Article 15-A and New York Code Sections 310-318***

Executive Law Article 15-A, codified in New York Code Sections 310 through 318, governs the implementation and administration of the State's MWBE program. Created under the consolidated

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<sup>209</sup> N.Y. PBB. LAW art. 2 Public Buildings § 8 Contracts (McKinney 2015).

<sup>210</sup> N.Y. HAY. LAW § 38 Contracts for construction or improvement of highways (McKinney 2015).

<sup>211</sup> N.Y. EDN. LAW § 355 Powers and duties of trustees (McKinney 2015).

<sup>212</sup> N.Y. EDN. LAW § 6216 State aid (McKinney 2015).

<sup>213</sup> The Department of Economic Development, Minority and Woman-owned Business Enterprise Development Centers, N.Y. COMP. CODES R. & REGS. Tit. 5, § 40.1-7 (2015).



laws of the State of New York, Article 15-A statutorily authorizes the creation of the current Division of Minority and Women’s Business Development and charges State agencies with the duty to establish employment and business participation goals for minorities and women.<sup>214</sup>

### **III. Industries and Definitions**

#### **A. Industries**

**Construction:** Building erection, reconstruction, installation, demolition, maintenance or repair of structures, and the building, reconstruction, alteration, remodeling or repair of any public works, or related construction items, as well as the construction of highways, bridges, and other horizontal construction. Construction items are any goods or materials used in construction and procured directly by a State agency or under a State contract.<sup>215</sup>

**Construction-related Services:** Planning, budgeting, scheduling design review, code enforcement, asbestos abatement and environmental management, procurement, and construction project management services. Construction-related services requiring the expertise of engineers, architects, and specialists throughout project development.

**Non-construction Professional Services:** Investment banking/underwriting firms, commercial bankers and legal services providers, financial advisors, accountants, brokers/dealers, real estate brokers and insurance brokers, and all other non-construction related professional service providers,<sup>216</sup> including finance and bond management.<sup>217</sup>

**Commodities:** Material goods, supplies, products, construction items, and other standard articles of commerce that can be purchased or exchanged.<sup>218</sup>

#### **B. Definitions**

**Agency or Multi-Agency Established Contracts:** Multi-year contracts established by a single agency or multiple agencies to procure commodities or services on an on-going basis. Agency or multi-agency established contracts are procured using competitive bid, sole source, single source, piggyback, and emergency procurement procedures.<sup>219</sup>

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<sup>214</sup> Executive Article 15-A, Division of Minority and Women’s Business Development, N.Y. EX LAW § 311 (McKinney 2015).

<sup>215</sup> State Finance Law, N.Y. STF LAW § 160(4) (McKinney 2015).

<sup>216</sup> State Finance Law, N.Y. STF LAW § 163 (McKinney 2015); State Finance Law, N.Y. STF LAW § 160(7) (McKinney 2015) (“service” does not apply to those contracts for architectural, engineering, or surveying services, or purchases made in accordance with Article eleven-B); *see also* New York Agency Programs Guidelines available at <http://www.nyfirst.ny.gov/resourcecenter/AgencyPrograms/DASNY/OppProgramsGroup.html> (last accessed June 2015).

<sup>217</sup> *Id.*; *see also* Office of General Services Guidelines available at <http://ogs.ny.gov/core/docs/Guidelines.pdf> (last accessed June 2015).

<sup>218</sup> State Finance Law, N.Y. STF LAW § 160(3) (McKinney 2015).

<sup>219</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § II.(D) Contracts (2014) (Establishing agency or multi-agency contracts must be performed under the guidance for general solicitation guidelines, invitations for bids, and requests for proposals under the New York State Procurement Guidelines).



**Backdrop Contract:** Contracts with pre-qualified vendors to provide services. The contracts have established standards, conditions, and not-to-exceed pricing. Utilization of backdrop contracts may require additional procurement processes and the approval of the State Comptroller.<sup>220</sup>

**Best Value:** The evaluation of the response to a service or technology solicitation that is based on quality, cost, and efficiency relative to the pool of responsive and responsible bidders.<sup>221</sup>

**Centralized Contract:** A contract for commodities or services let by the Office of General Services (OGS) and on behalf of more than one agency, political subdivision, public authority, public school, fire district, library, or other organization.<sup>222</sup>

**Contract Use Request:** A form used to request approval from the OGS Commissioner to use another entity's public contract.<sup>223</sup>

**Discretionary Purchase:** Purchases authorized by law to be made without a formal competitive process based upon cost thresholds.<sup>224</sup>

**Invitation for Bid:** A competitive solicitation for commodities. An award is made to the responsive and responsible bidder submitting the lowest price.<sup>225</sup>

**Mini-Bid:** An abbreviated bid process in which an agency, political subdivision, public authority, public school, fire district, library, or other organization solicits bids from prequalified backdrop contractors.<sup>226</sup>

**Open Market Purchases:** A discretionary or competitively bid procurement.<sup>227</sup>

**Piggyback Contract:** A non-competitive procurement using a contract with its terms and conditions as awarded by the United States government, or any state agency or political subdivision. OGS approval is required for a piggyback contract.<sup>228</sup>

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<sup>220</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014).

<sup>221</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014).

<sup>222</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014).

<sup>223</sup> State Finance Law, N.Y. STF LAW § 163(10)(e) (McKinney 2015); STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § II.(D) Contracts (2014); for definition of piggyback contract please see glossary below.

<sup>224</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014).

<sup>225</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014).

<sup>226</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014).

<sup>227</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § II.(D) Contracts (2014).

<sup>228</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014).



**Preferred Source:** The purchase of select commodities and services from designated organizations. State-preferred sources include Department of Correctional Services Industries Program, New York State Preferred Source Program for People Who are Blind, New York State Industries for the Disabled, and the New York State Office of Mental Health.<sup>229</sup>

**Procurement Card (P-card):** An expedited payment and purchasing method used to procure commodities, services, and technology from preferred sources, OGS centralized contracts, and supplies and materials. The P-card transaction limit is determined by an agency's discretionary purchasing threshold.<sup>230</sup>

**Public Authority:** Public authorities are corporate instruments of the State created by the legislature to further public interests. These entities develop, operate, and maintain the State's most critical infrastructure including roads, bridges, and schools.<sup>231</sup>

**Purchase Authorization:** An agreement with a vendor which specifies the terms and pricing of a product without a specified amount. Upon the State Comptroller's approval of an authorization, State agencies are permitted to issue purchase orders without further approval.<sup>232</sup>

**Purchase Order:** A contractual document issued for a one time purchase. Purchase orders are used to procure from preferred sources, centralized contracts, and agency open market purchases. Preferred sources and open market purchases over \$50,000 require a contract.<sup>233</sup>

**Request for Proposals:** A competitive solicitation for proposals to provide a specified service or technology, pursuant to which an award is made to the responsive and responsible proposer(s) offering the best value.<sup>234</sup>

**Responsible and Responsive:** Responsible indicates the status afforded to a bidder based on factors such as financial ability, organization capacity, and legal authority to conduct business in New York State. Business conduct and past performance are also conditions of a responsible bid. Responsive indicates that the bidder meets the minimum specifications or requirements set forth in the solicitation.<sup>235</sup>

**Single Source:** A non-competitive procurement that is justified by written findings that substantiate the award of the contract to one contractor over another.<sup>236</sup>

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<sup>229</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014); State Finance Law, N.Y. STF LAW § 162 (McKinney 2015).

<sup>230</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § II.(F) Procurement Card Program (2014).

<sup>231</sup> N.Y. LAW § 310(11)(a)-(b) (McKinney 2015); available at <http://www.osc.state.ny.us/pubauth/> (accessed June 2015).

<sup>232</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § II.(H) Purchase Authorizations (2014).

<sup>233</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § II.(G) Purchase Orders (2014).

<sup>234</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014).

<sup>235</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014).

<sup>236</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014).



**Small Business:** An entity that is domiciled in the State, independently owned and operated, not dominant in its field, and employs no more than 100 people.<sup>237</sup>

**Sole Source:** A non-competitive procurement in which only one contractor is capable of supplying the required commodities or services.<sup>238</sup>

**State Agency:** All State departments, boards, commissions, offices, or institutions. However, the State Finance Law definition of state agency excludes the State University of New York and the City University of New York.<sup>239</sup>

#### **IV. Procurement Process Overview**

The procurement methods available to the State are set forth in the governing laws, codes, and executive orders. The procurement method depends on the value and type of the purchase. State agencies procure commodities and services through five primary solicitation procedures. First, primary status is given to certain vendors through preferred source offerings to advance social and economic goals. Second, state agencies are required to determine if the commodity, service, or technology is available on a centralized contract established by OGS. Third, purchasers may make discretionary purchases of less than \$50,000 for State agencies, \$85,000 for OGS, and \$125,000 for the State University of New York (SUNY) for commodities, services, and technology without formal competition pursuant to the discretionary buying thresholds established by the State Finance Law.<sup>240</sup> The threshold for discretionary purchases from small businesses and minority and women-owned business enterprises is \$200,000. Fourth, competitively bid contracts are solicited through an Invitation to Bid, Request for Proposal, and Statement of Qualifications. And fifth, exceptions to competitively bid solicitations include sole source, single source, piggyback, emergency, and procurement cards.

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<sup>237</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014); State Finance Law, N.Y. STF LAW § 160(8) (McKinney 2015).

<sup>238</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § VII. Glossary (2014).

<sup>239</sup> State Finance Law, N.Y. STF LAW § 160(9) (McKinney 2015).

<sup>240</sup> State Finance Law, N.Y. STF LAW § 163(6) (McKinney 2015).



## **A. Preferred Source Offerings**

Under the Preferred Source Program, State agencies must purchase commodities and services from the List of Preferred Source Offerings when a listed vendor offers the product or services that meets the form, function, and utility needed by the agency. The list is developed by the Commissioner of General Services, upon the recommendation of the State Procurement Council. The commissioner is charged with the responsibility of making the list available to prospective vendors, State agencies, public benefit corporations, political subdivisions, and other interested parties.

### **1. Commodities**

The State agency must define its need and review the current List of Preferred Source Offerings to determine if the commodity being sought is one provided by one or more preferred sources. The State agency must first notify the Department of Correctional Services' Correction Industrial Program (Corcraft) of the need. If a preferred source responds within ten days of the State agency's notification and the commodity meets the State agency's requirements, the agency may proceed with the procurement. If the procurement is valued \$50,000 or more, the State agency must obtain the State Comptroller's price approval. Agencies may procure from Corcraft, New York State Preferred Source Program for People Who are Blind (NYSPSP), or the New York State Industries for the Disabled, in that order. If neither, Corcraft, NYSPSP, or the New York State Industries for the Disabled provide the commodity being sought, the State agency may proceed through the order of procurement precedence set forth in section 163(5) of the State Finance Law.

### **2. Services**

With respect to services, equal priority is given to charitable, non-profit agencies for the blind, severely disabled, and qualified veterans' workshops. State agencies may purchase from the preferred source that meets the agency's form, function, and utility requirements. If more than one preferred source meets the agency's requirements, cost becomes the determining factor.

## **B. Centralized Contracts**

State agencies must consider whether centralized contracts let by OGS offer the commodities they require, and utilize an OGS centralized contract unless no centralized contract offers commodities in the form, function, and utility required by the state agency.<sup>241</sup> When no OGS centralized contract satisfies the form, function, and utility needs of the state agency, the agency may proceed further in the order of procurement precedence.



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<sup>241</sup> State Finance Law, N.Y. STF Law § 163(3)(c) (McKinney 2015).

## **C. Discretionary Purchases**

Discretionary purchases are procurements made below statutorily-established monetary levels and at the discretion of the State agency. Discretionary purchases are procured without competition. New York State Finance Law, Section 112, does not require approval from the State Comptroller.

State agencies have the discretionary authority to purchase commodities, services, and technology contracts valued under \$50,000. The Office of General Services has the discretionary authority to purchase State agency-specific contracts valued under \$85,000. All State agencies have the discretionary authority to make purchases from small businesses or State-certified MWBEs or Service-Disabled Veteran-owned Business Enterprises for contracts valued under \$200,000.<sup>242</sup>

State agencies must also notify the New York State Department of Economic Development (DED) of projected procurement opportunities valued from \$5,000 to \$50,000 for quarterly publication in the Contract Reporter.<sup>243</sup>

### **1. Procurement Card Program**

Each State agency sets its own maximum single transaction limit that must not exceed its discretionary purchasing threshold. Solicitation procedures and policies are also established by each State agency.

### **2. Purchase Orders**

Purchase orders are one-time purchases issued by a State agency. Purchase orders are used to procure from preferred sources and Office of General Services centralized contracts. Solicitation procedures and policies are established by each State agency.

### **3. Purchase Authorizations**

State agencies can issue purchase orders against the purchase authorizations without further approval of the State Comptroller. State agencies can award a term contract that allows for the purchase of commodities on an as-needed basis through a purchase authorization contract. The solicitation procedures and policies for purchase authorization procurements are established by each State agency.

## **D. Competitively Bid Contracts**

Within the State bidding process, there are three types of competitive procurements: (1) Invitation for Bids, (2) Request for Proposals, and (3) Statement of Qualifications.

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<sup>242</sup> State Finance Law, N.Y. STF LAW § 163(6) (McKinney 2015).

<sup>243</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § III.(G) Advertising Procurement Opportunities (2014); State Finance Law, N.Y. STF LAW § 161(2)(m) (McKinney 2015) (requiring that the Council “establish and, from time to time, amend guidelines with respect to publishing by state agencies of quarterly listings of projected procurements having a value greater than five thousand dollars but less than fifteen thousand dollars in the procurement opportunities newsletter...”).



## **1. Invitation for Bid**

An Invitation for Bid (IFB) is a competitive solicitation seeking bids for specified commodities and general purchases, including construction, which is awarded to the responsive and responsible bidder that submits the lowest price. For services, however, the award must be based on best value. The State agency must develop clear, inclusive, and informative specifications for the commodity or service needed to ensure that bidders know exactly what is required, but broad enough to encourage competition among the potential vendors.

The solicitation document describes the nature of the procurement, statutory requirements, deadlines, and locations where bids must be sent, delivery terms, price, and any other terms the agency desires. It also informs whether the method of the award is by lot, item, region, or some other method.

The IFB is distributed to all potential bidders, and the State agency conducts site visits, holds pre-bid conferences, and responds to bidder's questions, as appropriate. Any bid the State agency receives prior to the bid opening must not be opened until the time of the bid opening. All timely bids are opened and recorded, creating a bid tabulation that is kept as part of the procurement record and accompanies the bid packages sent to the State Comptroller for approval.

After the bid opening, the State agency must ensure that the bid submissions are complete and verifies that the lowest bidder meets all the requirements and is responsible. If the apparent low bidder is not found to be responsive or responsible, the bid is rejected and the next lowest price bid is reviewed.

It is mandatory for State agencies to advertise procurement opportunities valued \$50,000 or more in the Contract Reporter. State agencies must also notify the DED of projected procurement opportunities valued from \$5,000 to \$50,000 for quarterly publication in the Contract Reporter.

Once verified, the State agency makes an award to the lowest, responsive, and responsible bidder. Contracts procured through an IFB must be approved by the Office of the Attorney General and the State Comptroller. After approval and issuance of the contract, the State agency must retain the supporting documentation as part of the procurement record.

## **2. Request for Proposal**

A Request for Proposal (RFP) may be used for procurements of services and technologies where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is best value.

The proposals are analyzed using an evaluation process with three distinct parts: (1) an administrative review of prequalification criteria; (2) a technical evaluation of the non-cost elements; and (3) a cost evaluation comparing the price proposed to the prices and costs of the competing certified proposals. The New York State Procurement Guidelines recommend that State agencies establish an evaluation team that has various oversight roles. The number of evaluators





should be determined using factors such as the potential evaluator's knowledge regarding the procurement. The evaluation team can be made up of a single team or separate teams, but it is recommended that separate teams be used to simultaneously review the technical and cost proposals.

When the evaluation process is completed, the State agency weighs the proposals' technical and cost results and combines the weighted scores to produce a final score for each proposal. The State agency proceeds to examine the proposal scores to select a vendor, but the agency may reject all proposals or may reject separate parts of the scope of services. Upon vendor selection, the State agency sends award notification to all successful and non-successful bidders. Contracts procured through an RFP must be approved by the Office of the Attorney General and the State Comptroller.

### **3. Statement of Qualifications**

Architecture, engineering, and surveying contracts valued over \$25,000 are negotiated and awarded based on competence, qualifications, and fair and reasonable fees.

The Statement of Qualification and performance data are evaluated, and three or more firms are contacted regarding their anticipated design concepts and proposed methods of approach for the project. The State agency will negotiate a contract with the highest qualified firm at a price that is deemed to be fair and reasonable.

The selection criteria include the estimated value of the services, cost, scope, complexity, and professional nature of the services being procured. If the State agency is unable to negotiate a contract with the most qualified firm, negotiations with that firm will be terminated. Negotiations will then commence with the next most qualified firm. The negotiations will continue until an agreement is reached.

### ***E. Exceptions to the Competitive Bid Process***

#### **1. Sole Source Contract**

A sole source procurement occurs when only one vendor can supply commodities or technology, or perform the services required by a State agency.<sup>244</sup> The agency must document why the proposed vendor is the only viable source for the commodities or services needed by the State agency.<sup>245</sup>

Once the State agency determines that only one vendor can supply the commodities or services required, the State agency may directly negotiate with and award the contract to the approved vendor. State agencies must publish the exemption in the New York State Contract Reporter and, in some cases, obtain approval for the exemption from the State Comptroller.<sup>246</sup>

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<sup>244</sup> State Finance Law, N.Y. STF LAW § 163(1)(g) (McKinney 2015).

<sup>245</sup> STATE PROCUREMENT COUNCIL, NEW YORK STATE PROCUREMENT GUIDELINES § II(D) Contracts (2014).

<sup>246</sup> *Id.*



If the sole source contract is in excess of \$50,000, the State agency must obtain the State Comptroller's price approval.

## **2. Single Source Contract**

A single source procurement occurs when the State agency has determined that it is in the best interest of the State to procure from a particular vendor, although there are two or more potential offerors. New York State law allows State agencies to procure goods and services without a formal competitive bid process in limited circumstances. The basis for a determination to purchase from a single source must be documented in the procurement record, subject to review by the State Comptroller. State agencies are mandated to minimize the use of single source procurements and shall use this procurement method only when a formal competitive bid process is not feasible.

Once the agency determines that it is in the best interest of the State agency to procure from a particular vendor, the agency may directly negotiate with and award the contract to the approved vendor.

State agencies must seek a waiver from the State Comptroller and publish the exemption in the New York State Contract Reporter. If the single source contract is valued \$50,000 or more, the State agency must obtain the State Comptroller's price approval.

### **a. Piggyback Contract**

A State agency may find it more efficient to establish a contract based on another governmental entity's contract, in order to acquire the same commodities or services at the same or lower price. The Office of General Services may authorize State agencies to purchase commodities or services from existing contracts procured by other state agencies, the U.S. government, or any other state, with the concurrence of the State Comptroller and under appropriate circumstances.

When using this form of procurement, the State agency should examine numerous factors, including subject matter, notice to originating agency, and consent of vendor, in order to determine the appropriateness of piggybacking as the preferred procurement over the other contracting alternatives. The requesting State agency can use the Contract Use Request form provided by the Office of General Services to summarize all the factors. Additionally, the State agency must create a New York State contract by obtaining all approvals required for the specified contract value. There is no advertising requirement for the piggyback contract method of procurement. If the piggyback contract is valued \$50,000 or more, the State agency must obtain the State Comptroller's price approval.

### **b. Emergency Contract**

An emergency procurement is one in which an urgent and unexpected situation occurs where health and public safety or the conservation of public resources is at risk. When an emergency arises from unforeseen causes, a State agency may issue procurement contracts without a formal competitive bidding process. However, the State agency should make a reasonable attempt to



obtain at least three oral quotes and document the basis of the nature of the emergency giving rise to the contract in the procurement record.

State agencies must publish a summary of the reasons why a competitive procurement is not feasible and publish the summary on the agency's website. State agencies must meet this publishing requirement unless a waiver from advertising exemption is approved by the State Comptroller. If the emergency contract is valued \$50,000 or more, the agency must also obtain the State Comptroller's price approval.

## **V. Executive Law Article 15-A**

The Division of Minority and Women's Business Development (DMWBD) was established under Article 15-A of Executive Law on July 19, 1988. The DMWBD's mission is to promote employment and business opportunities on State contracts for minorities and women.<sup>247</sup>

### **A. Division of Minority and Women's Business Development**

Executive Article 15-A is the regulatory authorization of the DMWBD. Executive Article 15-A regulates the scope and extent of its rulemaking authority and its position as a statewide advocate.<sup>248</sup> The director is the head of the DMWBD and is appointed by the governor.<sup>249</sup> The director is charged with the following responsibilities and duties:

- Encourage and assist State agencies and authorities to increase MWBE participation on their prime contracts and subcontracts.
- Develop uniform reporting documents for the DMWBD.
- Facilitate educational programs to meet the objectives of the DMWBD.
- Routinely review State agencies' and authorities' practices and procedures for compliance with Article 15-A, including requirement of periodic reports their MWBE utilization.
- Report to the governor and the chairpersons of the Senate Finance and Assembly Ways and Means Committees on the utilization of MWBEs by each agency and authority. The State comptroller assists in the collection of data on MWBE utilization from the agencies and authorities.
- Draft and maintain a directory of certified MWBEs.
- Appoint independent hearing officers to preside over adjudicatory hearings.
- Implement standards to streamline the certification process to accept federal and municipal corporation certifications.

Article 15-A also authorized the DMWBD to include a statewide advocate to act as a liaison for MWBEs. The advocate is available to assist MWBEs with obtaining technical, managerial, financial, and other business assistance for certified MWBEs and applicants. MWBEs' complaints

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<sup>247</sup> Executive Article 15-A, N.Y. EX LAW §§ 310-18 (McKinney 2015).

<sup>248</sup> Executive Article 15-A, N.Y. EX LAW §§ 310-18 (McKinney 2015).

<sup>249</sup> Executive Article 15-A, Division of Minority and Women's Business Development, N.Y. EX LAW § 311 (McKinney 2015).



regarding certification delays and violations by state agencies or authorities are investigated by the advocate.

The advocate is also responsible for establishing a toll-free number to answer questions concerning the MWBE certification process. The advocate must report to the director and commissioner on an annual basis regarding all activities pertaining to the advocate's duties.

### ***B. Certification Eligibility***

To be eligible to participate in the MWBE program as a minority-owned business enterprise or a woman-owned business enterprise, the entity must be certified. An applicant for minority-owned business enterprise certification must demonstrate membership in one of the following groups:

- Black persons having origins in any of the Black African racial groups.
- Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race.
- Native American or Alaskan native persons having origins in any of the original peoples of North America.
- Asian and Pacific Islander persons having origins in any of the Far East countries, Southeast Asia, the Indian subcontinent, or the Pacific Islands.<sup>250</sup>

Additionally, to be eligible to participate in the MWBE program as a minority or woman-owned business enterprise, the applicant must demonstrate that:

- At least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are minority or women.
- The ownership interest is real, substantial, and continuing.
- The owner has and exercises the authority to control independently the day-to-day business decisions of the enterprise.
- The business is authorized to do business in the State of New York and is independently owned and operated.
- The business owner must consent to a physical site inspection to verify the fifty-one percent ownership requirement.
- The business owner cannot have a personal net worth exceeding \$3.5 million, as adjusted annually for inflation, after allowable deductions.
- The business must have fewer than 300 employees.



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<sup>250</sup> Executive Article 15-A, Statewide Certification Program, N.Y. EX LAW §§ 314 (McKinney 2015).

### **C. MWBE Contracting Goals**

Agencies are required to assess for construction contracts with MWBE goals valued \$100,000 and over, and service and commodity contracts valued \$25,000 and over.<sup>251</sup> Prime contractors are required to demonstrate good faith efforts to meet contract-specific goals for MWBE utilization. Contractors may be entitled to waivers of goals for MWBE utilization under certain circumstances. Criteria for determining whether a contractor is entitled to a waiver include, but are not limited to, evidence of the following:

- The contractor's solicitations in general circulation media, trade association publications, and minority-focused and women-focused media for certified MWBEs to perform on the contract.
- Documentation of outreach to appropriate businesses listed in the certified MWBE directory, and any responses thereto.
- Documentation of any negotiations between the contractor and certified MWBEs.

The contractor's efforts to reasonably structure the work to be subcontracted to increase the likelihood of participation by certified MWBEs.

### **D. Monitoring and Reporting**

Prime contractors must submit an MWBE Utilization Plan, including a policy statement, MWBE authorized representative, and project description. The utilization plan identifies the MWBEs working on the project and their proposed participation. The utilization plan must be submitted within ten days after contract approval by the State Comptroller. The prime contractor must also submit quarterly reports describing payments to certified MWBEs.

State agencies are required to report their efforts to promote MWBE utilization to the director of the DMWBD. State agencies are encouraged to use discretionary purchases valued \$200,000 and under to increase the utilization of MWBEs on their contracts.



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<sup>251</sup> Executive Article 15-A, Equal Employment Opportunities for Minority Group Members and Women, N.Y. EX LAW §§ 312 (McKinney 2015).

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# CHAPTER 3: Prime Contractor Utilization Analysis

## I. Introduction

This chapter documents the State of New York’s (State) agencies’ and authorities’<sup>252</sup> utilization of Minority and Woman-owned Business Enterprise (MWBE) prime contractors, hereinafter referred to as Minority and Caucasian female-owned businesses, and non-minority male-owned (non-MWBE) prime contractors by ethnicity and gender during the April 1, 2010, to March 31, 2015, study period. The analysis of the State’s non-federally funded competitively solicited procurements focuses on contracts valued \$50,000 and over. The contracts were classified into four industries—construction, construction-related services, non-construction related services, and commodities and other services. The industries are defined below pursuant to the State Finance Law:

- Construction includes building erection, reconstruction, installation, demolition, maintenance or repair of structures, the building, reconstruction, alteration, remodeling, or repair of any public works, and the construction of highways, bridges, and other horizontal construction.
- Construction-related services include planning, budgeting, scheduling design review, code enforcement, asbestos abatement and environmental management, and procurement and construction project management services. Construction-related services also include services that require the expertise of engineers, architects, and specialists throughout project development.
- Non-construction related services include those provided by legal services providers, financial advisors, accountants, and all other non-construction related service providers.<sup>253</sup>
- Commodities and other services include material goods, supplies, products, construction items, and other standard articles of commerce that can be purchased or exchanged.<sup>254</sup> Services, which is defined as the performance of one or more tasks, can also include the purchase of technology, but does not include professional services.<sup>255</sup>

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<sup>252</sup> A complete list of the State Agencies and Public Authorities can be found in the final report.

<sup>253</sup> State Finance Law, N.Y. STF LAW § 163 (McKinney 2015); State Finance Law, N.Y. STF LAW § 160(7) (McKinney 2015) (“service” does not apply to those contracts for architectural, engineering, or surveying services, or purchases made in accordance with Article eleven-B); see also New York Agency Programs Guidelines available at <http://www.nyfirst.ny.gov/resourcecenter/AgencyPrograms/DASNY/OppProgramsGroup.html> (last accessed June 2015).

<sup>254</sup> State Finance Law, N.Y. STF LAW § 160(3) (McKinney 2015).



The Disparity Study (Study) considered contracts awarded by the agencies and authorities under the requirements of Executive Law Article 15-A; however, several agencies' and authorities' contract awards and expenditures are not analyzed herein. These agencies and authorities and the justification for their exclusion are detailed below in Table 3.1.

**Table 3.1: Excluded Agencies and Authorities**

<b>Agency/Authority</b>	<b>Exclusion Reason</b>
Buffalo Fiscal Stability Authority	Did not award any contracts above \$50,000 during the study period
Erie County Medical Center	Could not be linked to the business units within the Office of the State Comptroller datasets
Housing Finance Agency	Did not provide utilization data
Joint Commission on Public Ethics	Did not award contracts during the study period
National Heritage Trust	Recipient of private funds and serves as a fiduciary of funds for specific projects
Nassau County Interim Finance Authority	Repays debt for Nassau County
Niagara Falls Water Board	Could not be linked to the business units within the Office of the State Comptroller datasets
Office of the Prevention of Domestic Violence	Only awarded contracts to non-profit organizations during the study period
Office of the Welfare Inspector General	Could not be linked to the business units within the Office of the State Comptroller datasets
Port of Oswego Authority	Awarded one federally funded contract during the study period
Syracuse Airport Authority	Did not award contracts during the study period
The Egg	Could not be linked to the business units within the Office of the State Comptroller datasets

The data in the Study is disaggregated into six race and gender groups as defined by Executive Law Article 15-A. The six groups are listed in Table 3.2.

**Table 3.2: Business Race and Gender Groups**

<b>Race and Gender Category</b>	<b>Definition</b>
Black	Businesses owned by persons having origins from any of the Black African racial groups
Asian	Businesses owned by persons having origins from the Far East, Southeast Asia, the Pacific Islands, and the Indian subcontinent
Hispanic/Latino	Businesses owned persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Native American or Latin American origin, regardless of race
Native American or Alaska Native	Businesses owned by persons having origins in any of the original peoples of North America



Race and Gender Category	Definition
Caucasian Female (WBE)	Businesses owned by Caucasian females*
Non-minority Male (non-MWBE)	Businesses owned by Caucasian males and businesses that could not be identified as minority or Caucasian female-owned <sup>256</sup>

\*Includes all other ethnic females not listed.

## II. Prime Contract Data Sources

The prime contract dataset consists of contract records extracted from the State’s financial systems, which include the Central Accounting System, the Public Authorities Reporting Information System, the Statewide Financial System, B2GNow diversity management system, and individual agency/authority tracking and monitoring systems. The contracts were issued during the April 1, 2010, to March 31, 2015, study period.

Revenue-based procurements with investment banking/underwriting firms, commercial bankers, brokers/dealers, real estate brokers, and insurance brokers were not included in the prime contractor utilization analysis. In addition, agreements with non-profits, government agencies, utilities, eminent domain, and public/private partnerships were excluded from the analysis. Purchases of proprietary commodities and software, and maintenance and service of these proprietary commodities, were also excluded. The contracts subject to the utilization analysis were classified into one of the four industries based on a review of the purchase description and the types of services provided by the prime contractor. The industry classifications and exclusions were reviewed and approved by the State.

To determine the ethnicity and gender of each utilized prime contractor, the majority owner of each utilized vendor was researched. Sources used to determine the majority owner’s ethnicity and gender included certification lists, chamber of commerce directories, trade organization membership directories, internet research, and contractor surveys. Utilized prime contractors whose ethnicity and gender could not be verified as minority or female, publicly traded, employee-owned, and 50/50 partnerships in which neither party is minority or female were classified as non-minority male-owned businesses.



<sup>256</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.



### III. Prime Contract Utilization Thresholds

Contract size is a depiction of the capacity that a willing business needs to successfully compete for the State’s competitively bid prime contracts. The distribution of contracts valued \$50,000 and over was calculated using a quartile analysis within each industry, grouped by dollar amount. The quartile analysis was used to set the thresholds for the utilization analysis of prime contracts valued \$50,000 and over.

The analysis was limited by dollar value to contracts beneath the upper limit of contracts, representing the 75<sup>th</sup> percentile of the State’s contracts awarded in each of the four industries. Applying this threshold mirrors the capacity of businesses enumerated in the availability analysis and ensures that contracts which are outliers in size and scope do not skew the results of the analysis. To this end, contracts within each of the four industries were analyzed at three threshold levels:

1. The first threshold level included all competitively solicited contracts regardless of award amount. This analysis is illustrative only, and no recommendations will be made based on the analysis of all contracts.
2. The second threshold level included competitively solicited contracts beneath the 75<sup>th</sup> percentile for each industry. These thresholds are listed in Table 3.3.
3. The third threshold level included all informal contracts. These thresholds are listed in Table 3.4.

**Table 3.3: Formal Contract Thresholds for Analysis**

Industry	Formal Contract Threshold
Construction	\$50,000 to \$1,400,000
Construction-Related Services	\$50,000 to \$2,000,000
Non-Construction Related Services	\$50,000 to \$500,000
Commodities and Other Services	\$50,000 to \$275,000

**Table 3.4: Informal Contract Thresholds for Analysis**

Industry	Informal Contract Threshold
Construction	Between \$25,000 and \$50,000
Construction-Related Services	Between \$25,000 and \$50,000
Non-Construction Related Services	Between \$25,000 and \$50,000
Commodities and Other Services	Between \$25,000 and \$50,000



## IV. Prime Contractor Utilization

### A. All Prime Contractors

As listed in Table 3.5, the State issued 56,065 prime contracts during the April 1, 2010 to March 31, 2015 study period. The 56,065 total number of prime contracts included 10,134 for construction, 2,785 for construction-related services, 5,427 for non-construction related services, and 37,719 for commodities and other services.

The payments made by the State during the study period totaled \$63,391,070,587 for all 56,065 prime contracts. Payments included \$27,413,621,369 for construction, \$6,176,716,644 for construction-related services, \$6,459,274,339 for non-construction related services, and \$23,341,458,235 for commodities and other services.

**Table 3.5: Total Prime Contracts and Dollars Expended: All Industries, April 1, 2010, to March 31, 2015**

Industry	Total Number of Contracts	Total Dollars Expended
Construction	10,134	\$27,413,621,369
Construction-related Services	2,785	\$6,176,716,644
Non-construction Related Services	5,427	\$6,459,274,339
Commodities and Other Services	37,719	\$23,341,458,235
<b>Total Expenditures</b>	<b>56,065</b>	<b>\$63,391,070,587</b>

### B. Highly Used Construction Prime Contractors

The State awarded a total of 10,134 construction prime contracts during the study period. As depicted in Table 3.6, the State's 10,134 construction prime contracts were received by 2,488 unique vendors.

**Table 3.6: Construction Prime Contracts**

Total Prime Contracts	10,134
Total Utilized Vendors	2,488
<b>Total Expenditures</b>	<b>\$27,413,621,369</b>

Table 3.7 presents the distribution of the State construction prime contracts by the number of vendors. Ninety-six of the 2,488 vendors received \$19,179,814,657 or 70% of the total



construction prime contract dollars. The findings illustrate that a small group of prime contractors received the majority of construction prime contract dollars spent by the State.

**Table 3.7: Construction Prime Contracts Distributed by Number of Vendors**

Vendors	Total Dollars	Percent of Dollars <sup>257</sup>	Number of Contracts	Percent of Contracts <sup>258</sup>
96 Highly Used Vendors	\$19,179,814,657	70%	1,442	14%
2,392 Vendors	\$8,233,806,712	30%	8,692	86%
<b>2,488 Total Vendors</b>	<b>\$27,413,621,369</b>	<b>100%</b>	<b>10,134</b>	<b>100%</b>

Table 3.8 presents the ethnicity and gender of the most highly used construction prime contractors who received approximately 50% of the construction prime contract dollars. The 36 most highly used prime contractors were non-minority male-owned businesses. The contracts received by these 36 businesses ranged from \$31,960 to \$554,770,000.

**Table 3.8: Top 36 Highly Used Construction Prime Contractors**

Ethnicity/ Gender <sup>259</sup>	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Non-minority Males	\$13,714,456,856	50.03%	411	4.06%

**C. Highly Used Construction-related Services Prime Contractors**

The State awarded a total of 2,785 construction-related services contracts during the study period. As listed in Table 3.9, the State’s 2,785 construction-related services prime contracts were received by 766 unique vendors.

**Table 3.9: Construction-Related Services Prime Contracts**

Total Prime Contracts	2,785
Total Utilized Vendors	766
<b>Total Expenditures</b>	<b>\$6,176,716,644</b>

Table 3.10 presents the distribution of the State’s construction-related services prime contracts by the number of vendors. Fifty-one of the 766 vendors received \$4,321,975,856 or 70% of the total construction-related services prime contract dollars. The findings illustrate that a small group of prime contractors received the majority of construction-related services prime contract dollars spent by the State.



<sup>257</sup> Percentages are rounded to the nearest whole number.

<sup>258</sup> Percentages are rounded to the nearest whole number.

<sup>259</sup> Black, Asian-Pacific, Asian-Indian Subcontinent, Hispanic, Native American or Alaskan Native, and Caucasian female-owned businesses were omitted from the table because they were not highly used.

**Table 3.10: Construction-Related Services Prime Contracts  
Distributed by Number of Vendors**

<b>Vendors</b>	<b>Total Dollars</b>	<b>Percent of Dollars<sup>260</sup></b>	<b>Number of Contracts</b>	<b>Percent of Contracts<sup>261</sup></b>
51 Highly Used Vendors	\$4,321,975,856	70%	775	28%
715 Vendors	\$1,854,740,788	30%	2,010	72%
<b>766 Total Vendors</b>	<b>\$6,176,716,644</b>	<b>100%</b>	<b>2,785</b>	<b>100%</b>

Table 3.11 presents the ethnicity and gender of the most highly used construction-related services prime contractors who received approximately 50% of construction-related services prime contract dollars. The 19 most highly used prime contractors were Asian-Indian Subcontinent and non-minority male-owned businesses. The contracts received by these 19 businesses ranged from \$25,000 to \$250,000,000.

**Table 3.11: Top 19 Highly Used Construction-Related Services Prime Contractors**

<b>Ethnicity/ Gender<sup>262</sup></b>	<b>Total Dollars</b>	<b>Percent of Dollars</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>
Asian-Indian Subcontinent	\$89,024,262	1.44%	29	1.04%
Non-minority Males	\$3,031,649,281	49.08%	468	16.80%

**D. Highly Used Non-Construction Related Services Prime Contractors**

The State awarded a total of 5,427 non-construction related services prime contracts during the study period. As depicted in Table 3.12, the State’s 5,427 non-construction related services prime contracts were received by 1,945 unique vendors.

**Table 3.12: Non-Construction Related Services Prime Contracts**

Total Prime Contracts	5,427
Total Utilized Vendors	1,945
<b>Total Expenditures</b>	<b>\$6,459,274,339</b>

Table 3.13 presents the distribution of the State’s non-construction related services prime contracts by the number of vendors. Sixty-six of the 1,945 vendors received \$4,517,173,871 or 70% of the total non-construction related services prime contract dollars. The findings illustrate that a small group of prime contractors received the majority of non-construction related services prime contract dollars spent by the State.



<sup>260</sup> Percentages are rounded to the nearest whole number.

<sup>261</sup> Percentages are rounded to the nearest whole number.

<sup>262</sup> Black, Asian-Pacific, Hispanic, Native American or Alaskan Native, and Caucasian female-owned businesses were omitted from the table because they were not highly used.

**Table 3.13: Non-Construction Related Services Prime Contracts Distributed by Number of Vendors**

Vendors	Total Dollars	Percent of Dollars <sup>263</sup>	Number of Contracts	Percent of Contracts <sup>264</sup>
66 Highly Used Vendors	\$4,517,173,871	70%	1,120	21%
1,879 Vendors	\$1,942,100,468	30%	4,307	79%
<b>1,945 Total Vendors</b>	<b>\$6,459,274,339</b>	<b>100%</b>	<b>5,427</b>	<b>100%</b>

Table 3.14 presents the ethnicity and gender of the most highly used non-construction related services prime contractors, who received approximately 50% of the non-construction related services prime contract dollars. The 23 most highly used prime contractors were Asian-Indian Subcontinent, Caucasian female, and non-minority male-owned businesses. The contracts received by these 23 businesses ranged from \$25,000 to \$683,880,180.

**Table 3.14: Top 23 Highly Used Non-Construction Related Services Prime Contractors**

Ethnicity/ Gender <sup>265</sup>	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Asian-Indian Subcontinent	\$249,554,586	3.86%	318	5.86%
Caucasian Females	\$85,967,192	1.33%	69	1.27%
Non-minority Males	\$2,908,115,633	45.02%	248	4.57%

***E. Highly Used Commodities and Other Services Prime Contractors***

The State awarded a total of 37,719 commodities and other services prime contracts during the study period. As depicted in Table 3.15, the State’s 37,719 commodities and other services prime contracts were received by 7,076 unique vendors.

**Table 3.15: Commodities and Other Services Prime Contracts**

Total Prime Contracts	37,719
Total Utilized Vendors	7,076
<b>Total Expenditures</b>	<b>\$23,341,458,235</b>

Table 3.16 presents the distribution of the State’s commodities and other services prime contracts by the number of vendors. One hundred and eleven of the 7,076 vendors received \$16,350,920,694 or 70% of the total commodities and other services prime contract dollars. The findings illustrate



<sup>263</sup> Percentages are rounded to the nearest whole number.

<sup>264</sup> Percentages are rounded to the nearest whole number.

<sup>265</sup> Black, Asian-Pacific, Hispanic, and Native American or Alaskan native-owned businesses were omitted from the table because they were not highly used.

that a small group of prime contractors received the majority of commodities and other services prime contract dollars spent by the State.

**Table 3.16: Commodities and Other Services Prime Contracts Distributed by Number of Vendors**

Vendors	Total Dollars	Percent of Dollars <sup>266</sup>	Number of Contracts	Percent of Contracts <sup>267</sup>
111 Highly Used Vendors	\$16,350,920,694	70%	9,500	25%
6,965 Vendors	\$6,990,537,541	30%	28,219	75%
<b>7,076 Total Vendors</b>	<b>\$23,341,458,235</b>	<b>100%</b>	<b>37,719</b>	<b>100%</b>

Table 3.17 presents the ethnicity and gender of the most highly used commodities and other services prime contractors, who received approximately 50% of the commodities and other services prime contract dollars. The 25 most highly used prime contractors were non-minority male-owned businesses. The contracts received by these 25 businesses ranged from \$25,000 to \$1,427,857,242.

**Table 3.17: Top 25 Highly Used Commodities and Other Services Prime Contractors**

Ethnicity/ Gender <sup>268</sup>	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Non-minority Males	\$11,637,615,886	49.86%	4,293	11.38%



<sup>266</sup> Percentages are rounded to the nearest whole number.

<sup>267</sup> Percentages are rounded to the nearest whole number.

<sup>268</sup> Black, Asian-Pacific, Asian-Indian Subcontinent, Hispanic, Native American or Alaskan Native, and Caucasian female-owned businesses were omitted from the table because they were not highly used.

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

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

Table 3.18 summarizes all prime contract dollars expended by the State on construction prime contracts. Minority-owned businesses (MBEs) received 2.86% of the construction prime contract dollars; Caucasian female-owned businesses (WBEs) received 4.22%; and non-minority male-owned businesses (non-MWBEs) received 92.92%.

**Black-owned businesses** received 196 or 1.93% of all construction prime contracts awarded during the study period, representing \$101,804,343 or 0.37% of the construction prime contract dollars.

**Asian-Pacific-owned businesses** received 38 or 0.37% of all construction prime contracts awarded during the study period, representing \$36,140,223 or 0.13% of the construction prime contract dollars.

**Asian-Indian Subcontinent-owned businesses** received 361 or 3.56% of all construction prime contracts awarded during the study period, representing \$469,170,434 or 1.71% of the construction prime contract dollars.

**Hispanic-owned businesses** received 206 or 2.03% of all construction prime contracts awarded during the study period, representing \$137,477,699 or 0.50% of the construction prime contract dollars.

**Native American or Alaskan Native-owned businesses** received 36 or 0.36% of all construction prime contracts awarded during the study period, representing \$39,608,613 or 0.14% of the construction prime contract dollars.

**Caucasian Female-owned businesses** received 1,350 or 13.32% of all construction prime contracts awarded during the study period, representing \$1,155,589,272 or 4.22% of the construction prime contract dollars.

**Non-minority male-owned businesses** received 7,947 or 78.42% of all construction prime contracts awarded during the study period, representing \$25,473,830,785 or 92.92% of the construction prime contract dollars.



**Table 3.18: Construction Prime Contract Utilization:  
All Contracts, April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	196	1.93%	\$101,804,343	0.37%
Asian-Pacific	38	0.37%	\$36,140,223	0.13%
Asian-Indian Subcontinent	361	3.56%	\$469,170,434	1.71%
Hispanic	206	2.03%	\$137,477,699	0.50%
Native American or Alaskan Native	36	0.36%	\$39,608,613	0.14%
Caucasian Females	1,350	13.32%	\$1,155,589,272	4.22%
Non-minority Males	7,947	78.42%	\$25,473,830,785	92.92%
<b>TOTAL</b>	<b>10,134</b>	<b>100.00%</b>	<b>\$27,413,621,369</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>
Black Females	24	0.24%	\$37,736,778	0.14%
Black Males	172	1.70%	\$64,067,565	0.23%
Asian-Pacific Females	7	0.07%	\$1,855,098	0.01%
Asian-Pacific Males	31	0.31%	\$34,285,125	0.13%
Asian-Indian Subcontinent Females	64	0.63%	\$45,269,425	0.17%
Asian-Indian Subcontinent Males	297	2.93%	\$423,901,009	1.55%
Hispanic Females	34	0.34%	\$21,356,150	0.08%
Hispanic Males	172	1.70%	\$116,121,549	0.42%
Native American or Alaskan Native Females	2	0.02%	\$69,731	0.00%
Native American or Alaskan Native Males	34	0.34%	\$39,538,882	0.14%
Caucasian Females	1,350	13.32%	\$1,155,589,272	4.22%
Non-minority Males	7,947	78.42%	\$25,473,830,785	92.92%
<b>TOTAL</b>	<b>10,134</b>	<b>100.00%</b>	<b>\$27,413,621,369</b>	<b>100.00%</b>





## 2. Construction-Related Services Prime Contract Utilization: All Contracts

Table 3.19 summarizes all prime contract dollars expended by the State on construction-related services prime contracts. MBEs received 5.38% of the construction-related services prime contract dollars; WBEs received 2.14%; and non-MWBEs received 92.49%.

*Black-owned businesses* received 24 or 0.86% of all construction-related services prime contracts awarded during the study period, representing \$18,597,176 or 0.30% of the construction-related services prime contract dollars.

*Asian-Pacific-owned businesses* received 77 or 2.76% of all construction-related services prime contracts awarded during the study period, representing \$81,570,031 or 1.32% of the construction-related services prime contract dollars.

*Asian-Indian Subcontinent-owned businesses* received 146 or 5.24% of all construction-related services prime contracts awarded during the study period, representing \$185,212,903 or 3.00% of the construction-related services prime contract dollars.

*Hispanic-owned businesses* received 35 or 1.26% of all construction-related services prime contracts awarded during the study period, representing \$46,735,858 or 0.76% of the construction-related services prime contract dollars.

*Native American or Alaskan Native-owned businesses* received 0 or 0.00% of all construction-related services prime contracts awarded during the study period, representing \$0 or 0.00% of the construction-related services prime contract dollars.

*Caucasian Female-owned businesses* received 173 or 6.21% of all construction-related services prime contracts awarded during the study period, representing \$131,888,900 or 2.14% of the construction-related services prime contract dollars.

*Non-minority male-owned businesses* received 2,330 or 83.66% of all construction-related services prime contracts awarded during the study period, representing \$5,712,711,775 or 92.49% of the construction-related services prime contract dollars.



**Table 3.19: Construction-Related Services Prime Contract Utilization:  
All Contracts, April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	24	0.86%	\$18,597,176	0.30%
Asian-Pacific	77	2.76%	\$81,570,031	1.32%
Asian-Indian Subcontinent	146	5.24%	\$185,212,903	3.00%
Hispanic	35	1.26%	\$46,735,858	0.76%
Native American or Alaskan Native	0	0.00%	\$0	0.00%
Caucasian Females	173	6.21%	\$131,888,900	2.14%
Non-minority Males	2,330	83.66%	\$5,712,711,775	92.49%
<b>TOTAL</b>	<b>2,785</b>	<b>100.00%</b>	<b>\$6,176,716,644</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>
Black Females	2	0.07%	\$448,830	0.01%
Black Males	22	0.79%	\$18,148,346	0.29%
Asian-Pacific Females	4	0.14%	\$1,541,353	0.02%
Asian-Pacific Males	73	2.62%	\$80,028,679	1.30%
Asian-Indian Subcontinent Females	1	0.04%	\$88,400	0.00%
Asian-Indian Subcontinent Males	145	5.21%	\$185,124,503	3.00%
Hispanic Females	7	0.25%	\$10,029,997	0.16%
Hispanic Males	28	1.01%	\$36,705,861	0.59%
Native American or Alaskan Native Females	0	0.00%	\$0	0.00%
Native American or Alaskan Native Males	0	0.00%	\$0	0.00%
Caucasian Females	173	6.21%	\$131,888,900	2.14%
Non-minority Males	2,330	83.66%	\$5,712,711,775	92.49%
<b>TOTAL</b>	<b>2,785</b>	<b>100.00%</b>	<b>\$6,176,716,644</b>	<b>100.00%</b>



### 3. Non-Construction Related Services Prime Contract Utilization: All Contracts

Table 3.20 summarizes all contract dollars expended by the State on non-construction related services prime contracts. MBEs received 8.59% of the non-construction related services prime contract dollars; WBEs received 6.40%; and non-MWBEs received 85.01%.

*Black-owned businesses* received 118 or 2.17% of all non-construction related services prime contracts awarded during the study period, representing \$19,994,025 or 0.31% of the non-construction related services prime contract dollars.

*Asian-Pacific-owned businesses* received 66 or 1.22% of all non-construction related services prime contracts awarded during the study period, representing \$9,297,258 or 0.14% of the non-construction related services prime contract dollars.

*Asian-Indian Subcontinent-owned businesses* received 581 or 10.71% of all non-construction related services prime contracts awarded during the study period, representing \$487,554,889 or 7.55% of the non-construction related services prime contract dollars.

*Hispanic-owned businesses* received 59 or 1.09% of all non-construction related services prime contracts awarded during the study period, representing \$38,037,058 or 0.59% of the non-construction related services prime contract dollars.

*Native American or Alaskan Native-owned businesses* received 3 or 0.06% of all non-construction related services prime contracts awarded during the study period, representing \$212,232 or less than 0.01% of the non-construction related services prime contract dollars.

*Caucasian Female-owned businesses* received 635 or 11.70% of all non-construction related services prime contracts awarded during the study period, representing \$413,120,436 or 6.40% of the non-construction related services prime contract dollars.

*Non-minority male-owned businesses* received 3,965 or 73.06% of all non-construction related services prime contracts awarded during the study period, representing \$5,491,058,441 or 85.01% of the non-construction related services prime contract dollars.



**Table 3.20: Non-Construction Related Services Prime Contract Utilization:  
All Contracts, April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	118	2.17%	\$19,994,025	0.31%
Asian-Pacific	66	1.22%	\$9,297,258	0.14%
Asian-Indian Subcontinent	581	10.71%	\$487,554,889	7.55%
Hispanic	59	1.09%	\$38,037,058	0.59%
Native American or Alaskan Native	3	0.06%	\$212,232	0.00%
Caucasian Females	635	11.70%	\$413,120,436	6.40%
Non-minority Males	3,965	73.06%	\$5,491,058,441	85.01%
<b>TOTAL</b>	<b>5,427</b>	<b>100.00%</b>	<b>\$6,459,274,339</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>
Black Females	64	1.18%	\$8,476,998	0.13%
Black Males	54	1.00%	\$11,517,027	0.18%
Asian-Pacific Females	49	0.90%	\$5,257,374	0.08%
Asian-Pacific Males	17	0.31%	\$4,039,884	0.06%
Asian-Indian Subcontinent Females	243	4.48%	\$196,219,546	3.04%
Asian-Indian Subcontinent Males	338	6.23%	\$291,335,342	4.51%
Hispanic Females	13	0.24%	\$2,318,088	0.04%
Hispanic Males	46	0.85%	\$35,718,970	0.55%
Native American or Alaskan Native Females	1	0.02%	\$32,232	0.00%
Native American or Alaskan Native Males	2	0.04%	\$180,000	0.00%
Caucasian Females	635	11.70%	\$413,120,436	6.40%
Non-minority Males	3,965	73.06%	\$5,491,058,441	85.01%
<b>TOTAL</b>	<b>5,427</b>	<b>100.00%</b>	<b>\$6,459,274,339</b>	<b>100.00%</b>



#### 4. Commodities and Other Services Prime Contract Utilization: All Contracts

Table 3.21 summarizes all contract dollars expended by the State on commodities and other services prime contracts. MBEs received 2.99% of the commodities and other services prime contract dollars; WBEs received 3.82%; and non-MBEs received 93.20%.

*Black-owned businesses* received 638 or 1.69% of all commodities and other services prime contracts awarded during the study period, representing \$228,220,902 or 0.98% of the commodities and other services prime contract dollars.

*Asian-Pacific-owned businesses* received 484 or 1.28% of all commodities and other services prime contracts awarded during the study period, representing \$203,800,441 or 0.87% of the commodities and other services prime contract dollars.

*Asian-Indian Subcontinent-owned businesses* received 361 or 0.96% of all commodities and other services prime contracts awarded during the study period, representing \$137,642,961 or 0.59% of the commodities and other services prime contract dollars.

*Hispanic-owned businesses* received 536 or 1.42% of all commodities and other services prime contracts awarded during the study period, representing \$122,527,761 or 0.52% of the commodities and other services prime contract dollars.

*Native American or Alaskan Native-owned businesses* received 67 or 0.18% of all commodities and other services prime contracts awarded during the study period, representing \$4,851,251 or 0.02% of the commodities and other services prime contract dollars.

*Caucasian Female-owned businesses* received 3,982 or 10.56% of all commodities and other services prime contracts awarded during the study period, representing \$890,574,146 or 3.82% of the commodities and other services prime contract dollars.

*Non-minority male-owned businesses* received 31,651 or 83.91% of all commodities and other services prime contracts awarded during the study period, representing \$21,753,840,773 or 93.20% of the commodities and other services prime contract dollars.



**Table 3.21: Commodities and Other Services Prime Contract Utilization:  
All Contracts, April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	638	1.69%	\$228,220,902	0.98%
Asian-Pacific	484	1.28%	\$203,800,441	0.87%
Asian-Indian Subcontinent	361	0.96%	\$137,642,961	0.59%
Hispanic	536	1.42%	\$122,527,761	0.52%
Native American or Alaskan Native	67	0.18%	\$4,851,251	0.02%
Caucasian Females	3,982	10.56%	\$890,574,146	3.82%
Non-minority Males	31,651	83.91%	\$21,753,840,773	93.20%
<b>TOTAL</b>	<b>37,719</b>	<b>100.00%</b>	<b>\$23,341,458,235</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>
Black Females	172	0.46%	\$98,365,296	0.42%
Black Males	466	1.24%	\$129,855,606	0.56%
Asian-Pacific Females	271	0.72%	\$106,770,098	0.46%
Asian-Pacific Males	213	0.56%	\$97,030,343	0.42%
Asian-Indian Subcontinent Females	80	0.21%	\$8,523,332	0.04%
Asian-Indian Subcontinent Males	281	0.74%	\$129,119,629	0.55%
Hispanic Females	140	0.37%	\$31,490,018	0.13%
Hispanic Males	396	1.05%	\$91,037,743	0.39%
Native American or Alaskan Native Females	50	0.13%	\$3,459,168	0.01%
Native American or Alaskan Native Males	17	0.05%	\$1,392,083	0.01%
Caucasian Females	3,982	10.56%	\$890,574,146	3.82%
Non-minority Males	31,651	83.91%	\$21,753,840,773	93.20%
<b>TOTAL</b>	<b>37,719</b>	<b>100.00%</b>	<b>\$23,341,458,235</b>	<b>100.00%</b>



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

### **1. Construction Prime Contract Utilization: Contracts Valued \$50,000 to \$1,400,000**

Table 3.22 summarizes all contract dollars expended by the State on construction prime contracts valued \$50,000 to \$1,400,000. MBEs received 8.78% of the construction prime contract dollars; WBEs received 13.93%; and non-MBEs received 77.29%.

**Black-owned businesses** received 166 or 2.48% of the construction prime contracts valued \$50,000 to \$1,400,000 that were awarded during the study period, representing \$42,068,856 or 1.69% of the construction prime contract dollars.

**Asian-Pacific-owned businesses** received 19 or 0.28% of the construction prime contracts valued \$50,000 to \$1,400,000 that were awarded during the study period, representing \$9,891,567 or 0.40% of the construction prime contract dollars.

**Asian-Indian Subcontinent-owned businesses** received 260 or 3.89% of the construction prime contracts valued \$50,000 to \$1,400,000 that were awarded during the study period, representing \$103,124,056 or 4.14% of the construction prime contract dollars.

**Hispanic-owned businesses** received 153 or 2.29% of the construction prime contracts valued \$50,000 to \$1,400,000 that were awarded during the study period, representing \$57,337,169 or 2.30% of the construction prime contract dollars.

**Native American or Alaskan Native-owned businesses** received 22 or 0.33% of the construction prime contracts valued \$50,000 to \$1,400,000 that were awarded during the study period, representing \$5,925,640 or 0.24% of the construction prime contract dollars.

**Caucasian Female-owned businesses** received 983 or 14.70% of the construction prime contracts valued \$50,000 to \$1,400,000 that were awarded during the study period, representing \$346,585,890 or 13.93% of the construction prime contract dollars.

**Non-minority male-owned businesses** received 5,084 or 76.03% of the construction prime contracts valued \$50,000 to \$1,400,000 that were awarded during the study period, representing \$1,923,176,465 or 77.29% of the construction prime contract dollars.



**Table 3.22: Construction Prime Contract Utilization:  
Contracts Valued \$50,000 to \$1,400,000, April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	166	2.48%	\$42,068,856	1.69%
Asian-Pacific	19	0.28%	\$9,891,567	0.40%
Asian-Indian Subcontinent	260	3.89%	\$103,124,056	4.14%
Hispanic	153	2.29%	\$57,337,169	2.30%
Native American or Alaskan Native	22	0.33%	\$5,925,640	0.24%
Caucasian Females	983	14.70%	\$346,585,890	13.93%
Non-minority Males	5,084	76.03%	\$1,923,176,465	77.29%
<b>TOTAL</b>	<b>6,687</b>	<b>100.00%</b>	<b>\$2,488,109,642</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>
Black Females	18	0.27%	\$4,571,712	0.18%
Black Males	148	2.21%	\$37,497,144	1.51%
Asian-Pacific Females	3	0.04%	\$1,706,289	0.07%
Asian-Pacific Males	16	0.24%	\$8,185,278	0.33%
Asian-Indian Subcontinent Females	41	0.61%	\$13,316,941	0.54%
Asian-Indian Subcontinent Males	219	3.28%	\$89,807,114	3.61%
Hispanic Females	25	0.37%	\$9,537,630	0.38%
Hispanic Males	128	1.91%	\$47,799,539	1.92%
Native American or Alaskan Native Females	0	0.00%	\$0	0.00%
Native American or Alaskan Native Males	22	0.33%	\$5,925,640	0.24%
Caucasian Females	983	14.70%	\$346,585,890	13.93%
Non-minority Males	5,084	76.03%	\$1,923,176,465	77.29%
<b>TOTAL</b>	<b>6,687</b>	<b>100.00%</b>	<b>\$2,488,109,642</b>	<b>100.00%</b>





## 2. Construction-Related Services Prime Contract Utilization: Contracts Valued \$50,000 to \$2,000,000

Table 3.23 summarizes all contract dollars expended by the State on construction-related services prime contracts valued \$50,000 to \$2,000,000. MBEs received 8.42% of all construction-related services prime contract dollars; WBEs received 5.42%; and non-MBEs received 86.16%.

*Black-owned businesses* received 17 or 0.91% of the construction-related services prime contracts valued \$50,000 to \$2,000,000 that were awarded during the study period, representing \$10,209,370 or 0.89% of the construction-related services prime contract dollars.

*Asian-Pacific-owned businesses* received 49 or 2.62% of the construction-related services prime contracts valued \$50,000 to \$2,000,000 that were awarded during the study period, representing \$15,191,287 or 1.33% of the construction-related services prime contract dollars.

*Asian-Indian Subcontinent-owned businesses* received 98 or 5.24% of the construction-related services prime contracts valued \$50,000 to \$2,000,000 that were awarded during the study period, representing \$56,864,325 or 4.97% of the construction-related services prime contract dollars.

*Hispanic-owned businesses* received 25 or 1.34% of the construction-related services prime contracts valued \$50,000 to \$2,000,000 that were awarded during the study period, representing \$14,000,705 or 1.22% of the construction-related services prime contract dollars.

*Native American or Alaskan Native-owned businesses* received 0 or 0.00% of the construction-related services prime contracts valued \$50,000 to \$2,000,000 that were awarded during the study period, representing \$0 or 0.00% of the construction-related services prime contract dollars.

*Caucasian Female-owned businesses* received 120 or 6.42% of the construction-related services prime contracts valued \$50,000 to \$2,000,000 that were awarded during the study period, representing \$61,991,764 or 5.42% of the construction-related services prime contract dollars.

*Non-minority male-owned businesses* received 1,560 or 83.47% of the construction-related services prime contracts valued \$50,000 to \$2,000,000 that were awarded during the study period, representing \$985,248,627 or 86.16% of the construction-related services prime contract dollars.



**Table 3.23: Construction-Related Services Prime Contract Utilization:  
Contracts Valued \$50,000 to \$2,000,000, April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	17	0.91%	\$10,209,370	0.89%
Asian-Pacific	49	2.62%	\$15,191,287	1.33%
Asian-Indian Subcontinent	98	5.24%	\$56,864,325	4.97%
Hispanic	25	1.34%	\$14,000,705	1.22%
Native American or Alaskan Native	0	0.00%	\$0	0.00%
Caucasian Females	120	6.42%	\$61,991,764	5.42%
Non-minority Males	1,560	83.47%	\$985,248,627	86.16%
<b>TOTAL</b>	<b>1,869</b>	<b>100.00%</b>	<b>\$1,143,506,077</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>
Black Females	2	0.11%	\$448,830	0.04%
Black Males	15	0.80%	\$9,760,540	0.85%
Asian-Pacific Females	3	0.16%	\$1,498,268	0.13%
Asian-Pacific Males	46	2.46%	\$13,693,019	1.20%
Asian-Indian Subcontinent Females	1	0.05%	\$88,400	0.01%
Asian-Indian Subcontinent Males	97	5.19%	\$56,775,925	4.97%
Hispanic Females	5	0.27%	\$2,886,514	0.25%
Hispanic Males	20	1.07%	\$11,114,191	0.97%
Native American or Alaskan Native Females	0	0.00%	\$0	0.00%
Native American or Alaskan Native Males	0	0.00%	\$0	0.00%
Caucasian Females	120	6.42%	\$61,991,764	5.42%
Non-minority Males	1,560	83.47%	\$985,248,627	86.16%
<b>TOTAL</b>	<b>1,869</b>	<b>100.00%</b>	<b>\$1,143,506,077</b>	<b>100.00%</b>



### 3. Non-Construction Related Services Prime Contract Utilization: Contracts Valued \$50,000 to \$500,000

Table 3.24 summarizes all contract dollars expended by the State on non-construction related services prime contracts valued \$50,000 to \$500,000. MBEs received 19.85% of the non-construction related services prime contract dollars; WBEs received 12.69%; and non-MBEs received 67.46%.

*Black-owned businesses* received 72 or 2.44% of the non-construction related services prime contracts valued \$50,000 to \$500,000 that were awarded during the study period, representing \$10,584,599 or 2.11% of the non-construction related services prime contract dollars.

*Asian-Pacific-owned businesses* received 38 or 1.29% of the non-construction related services prime contracts valued \$50,000 to \$500,000 that were awarded during the study period, representing \$4,455,477 or 0.89% of the non-construction related services prime contract dollars.

*Asian-Indian Subcontinent-owned businesses* received 466 or 15.82% of the non-construction related services prime contracts valued \$50,000 to \$500,000 that were awarded during the study period, representing \$79,296,527 or 15.83% of the non-construction related services prime contract dollars.

*Hispanic-owned businesses* received 30 or 1.02% of the non-construction related services prime contracts valued \$50,000 to \$500,000 that were awarded during the study period, representing \$4,898,998 or 0.98% of the non-construction related services prime contract dollars.

*Native American or Alaskan Native-owned businesses* received 1 or 0.03% of the non-construction related services prime contracts valued \$50,000 to \$500,000 that were awarded during the study period, representing \$150,000 or 0.03% of the non-construction related services prime contract dollars.

*Caucasian Female-owned businesses* received 370 or 12.56% of the non-construction related services prime contracts valued \$50,000 to \$500,000 that were awarded during the study period, representing \$63,542,437 or 12.69% of the non-construction related services prime contract dollars.

*Non-minority male-owned businesses* received 1,969 or 66.84% of the non-construction related services prime contracts valued \$50,000 to \$500,000 that were awarded during the study period, representing \$337,845,641 or 67.46% of the non-construction related services prime contract dollars.



**Table 3.24: Non-Construction Related Services Prime Contract Utilization:  
Contracts Valued \$50,000 to \$500,000, April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	72	2.44%	\$10,584,599	2.11%
Asian-Pacific	38	1.29%	\$4,455,477	0.89%
Asian-Indian Subcontinent	466	15.82%	\$79,296,527	15.83%
Hispanic	30	1.02%	\$4,898,998	0.98%
Native American or Alaskan Native	1	0.03%	\$150,000	0.03%
Caucasian Females	370	12.56%	\$63,542,437	12.69%
Non-minority Males	1,969	66.84%	\$337,845,641	67.46%
<b>TOTAL</b>	<b>2,946</b>	<b>100.00%</b>	<b>\$500,773,680</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>
Black Females	38	1.29%	\$4,631,548	0.92%
Black Males	34	1.15%	\$5,953,051	1.19%
Asian-Pacific Females	27	0.92%	\$3,029,850	0.61%
Asian-Pacific Males	11	0.37%	\$1,425,628	0.28%
Asian-Indian Subcontinent Females	204	6.92%	\$36,910,491	7.37%
Asian-Indian Subcontinent Males	262	8.89%	\$42,386,036	8.46%
Hispanic Females	6	0.20%	\$1,117,543	0.22%
Hispanic Males	24	0.81%	\$3,781,456	0.76%
Native American or Alaskan Native Females	0	0.00%	\$0	0.00%
Native American or Alaskan Native Males	1	0.03%	\$150,000	0.03%
Caucasian Females	370	12.56%	\$63,542,437	12.69%
Non-minority Males	1,969	66.84%	\$337,845,641	67.46%
<b>TOTAL</b>	<b>2,946</b>	<b>100.00%</b>	<b>\$500,773,680</b>	<b>100.00%</b>



#### 4. Commodities and Other Services Prime Contract Utilization: Contracts Valued \$50,000 to \$275,000

Table 3.25 summarizes all contract dollars expended by the State on commodities and other services prime contracts valued \$50,000 to \$275,000. MBEs received 5.57% of the commodities and other services prime contract dollars; WBEs received 10.30%; and non-MBEs received 84.12%.

*Black-owned businesses* received 270 or 1.68% of the commodities and other services prime contracts valued \$50,000 to \$275,000 that were awarded during the study period, representing \$31,339,628 or 1.75% of the commodities and other services prime contract dollars.

*Asian-Pacific-owned businesses* received 222 or 1.38% of the commodities and other services prime contracts valued \$50,000 to \$275,000 that were awarded during the study period, representing \$23,143,566 or 1.29% of the commodities and other services prime contract dollars.

*Asian-Indian Subcontinent-owned businesses* received 159 or 0.99% of the commodities and other services prime contracts valued \$50,000 to \$275,000 that were awarded during the study period, representing \$17,919,109 or 1.00% of the commodities and other services prime contract dollars.

*Hispanic-owned businesses* received 220 or 1.37% of the commodities and other services prime contracts valued \$50,000 to \$275,000 that were awarded during the study period, representing \$24,990,884 or 1.40% of the commodities and other services prime contract dollars.

*Native American or Alaskan Native-owned businesses* received 25 or 0.16% of the commodities and other services prime contracts valued \$50,000 to \$275,000 that were awarded during the study period, representing \$2,316,439 or 0.13% of the commodities and other services prime contract dollars.

*Caucasian Female-owned businesses* received 1,717 or 10.67% of the commodities and other services prime contracts valued \$50,000 to \$275,000 that were awarded during the study period, representing \$184,332,037 or 10.30% of the commodities and other services prime contract dollars.

*Non-minority male-owned businesses* received 13,479 or 83.76% of the commodities and other services prime contracts valued \$50,000 to \$275,000 that were awarded during the study period, representing \$1,505,057,653 or 84.12% of the commodities and other services prime contract dollars.



**Table 3.25: Commodities and Other Services Prime Contract Utilization:  
Contracts Valued \$50,000 to \$275,000, April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	270	1.68%	\$31,339,628	1.75%
Asian-Pacific	222	1.38%	\$23,143,566	1.29%
Asian-Indian Subcontinent	159	0.99%	\$17,919,109	1.00%
Hispanic	220	1.37%	\$24,990,884	1.40%
Native American or Alaskan Native	25	0.16%	\$2,316,439	0.13%
Caucasian Females	1,717	10.67%	\$184,332,037	10.30%
Non-minority Males	13,479	83.76%	\$1,505,057,653	84.12%
<b>TOTAL</b>	<b>16,092</b>	<b>100.00%</b>	<b>\$1,789,099,316</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>
Black Females	76	0.47%	\$8,321,429	0.47%
Black Males	194	1.21%	\$23,018,199	1.29%
Asian-Pacific Females	112	0.70%	\$10,743,400	0.60%
Asian-Pacific Males	110	0.68%	\$12,400,166	0.69%
Asian-Indian Subcontinent Females	39	0.24%	\$4,519,858	0.25%
Asian-Indian Subcontinent Males	120	0.75%	\$13,399,250	0.75%
Hispanic Females	61	0.38%	\$6,910,595	0.39%
Hispanic Males	159	0.99%	\$18,080,288	1.01%
Native American or Alaskan Native Females	22	0.14%	\$1,836,412	0.10%
Native American or Alaskan Native Males	3	0.02%	\$480,027	0.03%
Caucasian Females	1,717	10.67%	\$184,332,037	10.30%
Non-minority Males	13,479	83.76%	\$1,505,057,653	84.12%
<b>TOTAL</b>	<b>16,092</b>	<b>100.00%</b>	<b>\$1,789,099,316</b>	<b>100.00%</b>



## **H. Informal Prime Contracts: Contracts Valued Between \$25,000 and \$50,000, by Industry**

### **1. Construction Prime Contract Utilization: Contracts Valued Between \$25,000 and \$50,000**

Table 3.26 summarizes all contract dollars expended by the State on construction prime contracts valued between \$25,000 and \$50,000. MBEs received 7.74% of the construction prime contract dollars; WBEs received 14.60%; and non-MBEs received 77.65%.

*Black-owned businesses* received 18 or 1.44% of the construction prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$666,221 or 1.45% of the construction prime contract dollars.

*Asian-Pacific-owned businesses* received 9 or 0.72% of the construction prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$303,272 or 0.66% of the construction prime contract dollars.

*Asian-Indian Subcontinent-owned businesses* received 40 or 3.20% of the construction prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$1,480,719 or 3.22% of the construction prime contract dollars.

*Hispanic-owned businesses* received 27 or 2.16% of the construction prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$964,573 or 2.10% of the construction prime contract dollars.

*Native American or Alaskan Native-owned businesses* received 4 or 0.32% of the construction prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$147,940 or 0.32% of the construction prime contract dollars.

*Caucasian Female-owned businesses* received 182 or 14.57% of the construction prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$6,720,858 or 14.60% of the construction prime contract dollars.

*Non-minority male-owned businesses* received 969 or 77.58% of the construction prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$35,736,132 or 77.65% of the construction prime contract dollars.



**Table 3.26: Construction Prime Contract Utilization: Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	18	1.44%	\$666,221	1.45%
Asian-Pacific	9	0.72%	\$303,272	0.66%
Asian-Indian Subcontinent	40	3.20%	\$1,480,719	3.22%
Hispanic	27	2.16%	\$964,573	2.10%
Native American or Alaskan Native	4	0.32%	\$147,940	0.32%
Caucasian Females	182	14.57%	\$6,720,858	14.60%
Non-minority Males	969	77.58%	\$35,736,132	77.65%
<b>TOTAL</b>	<b>1,249</b>	<b>100.00%</b>	<b>\$46,019,714</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>
Black Females	1	0.08%	\$41,711	0.09%
Black Males	17	1.36%	\$624,510	1.36%
Asian-Pacific Females	4	0.32%	\$148,809	0.32%
Asian-Pacific Males	5	0.40%	\$154,463	0.34%
Asian-Indian Subcontinent Females	16	1.28%	\$631,459	1.37%
Asian-Indian Subcontinent Males	24	1.92%	\$849,259	1.85%
Hispanic Females	5	0.40%	\$167,696	0.36%
Hispanic Males	22	1.76%	\$796,877	1.73%
Native American or Alaskan Native Females	2	0.16%	\$69,731	0.15%
Native American or Alaskan Native Males	2	0.16%	\$78,209	0.17%
Caucasian Females	182	14.57%	\$6,720,858	14.60%
Non-minority Males	969	77.58%	\$35,736,132	77.65%
<b>TOTAL</b>	<b>1,249</b>	<b>100.00%</b>	<b>\$46,019,714</b>	<b>100.00%</b>





## 2. Construction-Related Services Prime Contract Utilization: Contracts Valued Between \$25,000 and \$50,000

Table 3.27 summarizes all contract dollars expended by the State on construction-related services prime contracts valued between \$25,000 and \$50,000. MBEs received 12.23% of all construction-related services prime contract dollars; WBEs received 8.96%; and non-MBEs received 78.81%.

*Black-owned businesses* received 5 or 1.20% of the construction-related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$172,806 or 1.16% of the construction-related services prime contract dollars.

*Asian-Pacific-owned businesses* received 17 or 4.09% of the construction-related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$609,345 or 4.09% of the construction-related services prime contract dollars.

*Asian-Indian Subcontinent-owned businesses* received 27 or 6.49% of the construction-related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$969,645 or 6.51% of the construction-related services prime contract dollars.

*Hispanic-owned businesses* received 2 or 0.48% of the construction-related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$69,138 or 0.46% of the construction-related services prime contract dollars.

*Native American or Alaskan Native-owned businesses* received 0 or 0.00% of the construction-related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$0 or 0.00% of the construction-related services prime contract dollars.

*Caucasian Female-owned businesses* received 37 or 8.89% of the construction-related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$1,334,383 or 8.96% of the construction-related services prime contract dollars.

*Non-minority male-owned businesses* received 328 or 78.85% of the construction-related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$11,737,190 or 78.81% of the construction-related services prime contract dollars.



**Table 3.27: Construction-Related Prime Contract Utilization:  
Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	5	1.20%	\$172,806	1.16%
Asian-Pacific	17	4.09%	\$609,345	4.09%
Asian-Indian Subcontinent	27	6.49%	\$969,645	6.51%
Hispanic	2	0.48%	\$69,138	0.46%
Native American or Alaskan Native	0	0.00%	\$0	0.00%
Caucasian Females	37	8.89%	\$1,334,383	8.96%
Non-minority Males	328	78.85%	\$11,737,190	78.81%
<b>TOTAL</b>	<b>416</b>	<b>100.00%</b>	<b>\$14,892,507</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>
Black Females	0	0.00%	\$0	0.00%
Black Males	5	1.20%	\$172,806	1.16%
Asian-Pacific Females	1	0.24%	\$43,085	0.29%
Asian-Pacific Males	16	3.85%	\$566,260	3.80%
Asian-Indian Subcontinent Females	0	0.00%	\$0	0.00%
Asian-Indian Subcontinent Males	27	6.49%	\$969,645	6.51%
Hispanic Females	0	0.00%	\$0	0.00%
Hispanic Males	2	0.48%	\$69,138	0.46%
Native American or Alaskan Native Females	0	0.00%	\$0	0.00%
Native American or Alaskan Native Males	0	0.00%	\$0	0.00%
Caucasian Females	37	8.89%	\$1,334,383	8.96%
Non-minority Males	328	78.85%	\$11,737,190	78.81%
<b>TOTAL</b>	<b>416</b>	<b>100.00%</b>	<b>\$14,892,507</b>	<b>100.00%</b>



### 3. Non-Construction Related Services Prime Contract Utilization: Contracts Valued Between \$25,000 and \$50,000

Table 3.28 summarizes all contract dollars expended by the State on non-construction related services prime contracts valued between \$25,000 and \$50,000. MBEs received 11.40% of the non-construction related services prime contract dollars; WBEs received 12.97%; and non-MBEs received 75.63%.

*Black-owned businesses* received 40 or 2.60% of the non-construction related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$1,498,510 or 2.59% of the non-construction related services prime contract dollars.

*Asian-Pacific-owned businesses* received 23 or 1.50% of the non-construction related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$844,299 or 1.46% of the non-construction related services prime contract dollars.

*Asian-Indian Subcontinent-owned businesses* received 82 or 5.34% of the non-construction related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$3,345,014 or 5.78% of the non-construction related services prime contract dollars.

*Hispanic-owned businesses* received 21 or 1.37% of the non-construction related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$848,350 or 1.47% of the non-construction related services prime contract dollars.

*Native American or Alaskan Native-owned businesses* received 2 or 0.13% of the non-construction related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$62,232 or 0.11% of the non-construction related services prime contract dollars.

*Caucasian Female-owned businesses* received 188 or 12.24% of the non-construction related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$7,510,683 or 12.97% of the non-construction related services prime contract dollars.

*Non-minority Male-owned businesses* received 1,180 or 76.82% of the non-construction related services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$43,794,736 or 75.63% of the non-construction related services prime contract dollars.



**Table 3.28: Non-Construction Related Prime Contract Utilization:  
Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	40	2.60%	\$1,498,510	2.59%
Asian-Pacific	23	1.50%	\$844,299	1.46%
Asian-Indian Subcontinent	82	5.34%	\$3,345,014	5.78%
Hispanic	21	1.37%	\$848,350	1.47%
Native American or Alaskan Native	2	0.13%	\$62,232	0.11%
Caucasian Females	188	12.24%	\$7,510,683	12.97%
Non-minority Males	1,180	76.82%	\$43,794,736	75.63%
<b>TOTAL</b>	<b>1,536</b>	<b>100.00%</b>	<b>\$57,903,824</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>
Black Females	24	1.56%	\$885,634	1.53%
Black Males	16	1.04%	\$612,876	1.06%
Asian-Pacific Females	20	1.30%	\$732,099	1.26%
Asian-Pacific Males	3	0.20%	\$112,200	0.19%
Asian-Indian Subcontinent Females	30	1.95%	\$1,281,182	2.21%
Asian-Indian Subcontinent Males	52	3.39%	\$2,063,832	3.56%
Hispanic Females	6	0.39%	\$237,346	0.41%
Hispanic Males	15	0.98%	\$611,004	1.06%
Native American or Alaskan Native Females	1	0.07%	\$32,232	0.06%
Native American or Alaskan Native Males	1	0.07%	\$30,000	0.05%
Caucasian Females	188	12.24%	\$7,510,683	12.97%
Non-minority Males	1,180	76.82%	\$43,794,736	75.63%
<b>TOTAL</b>	<b>1,536</b>	<b>100.00%</b>	<b>\$57,903,824</b>	<b>100.00%</b>



#### 4. Commodities and Other Services Prime Contract Utilization: Contracts Valued Between \$25,000 and \$50,000

Table 3.29 summarizes all contract dollars expended by the State on commodities and other services prime contracts valued between \$25,000 and \$50,000. MBEs received 5.91% of the commodities and other services prime contract dollars; WBEs received 11.53%; and non-MBEs received 82.56%.

*Black-owned businesses* received 280 or 1.72% of the commodities and other services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$10,406,899 or 1.79% of the commodities and other services prime contract dollars.

*Asian-Pacific-owned businesses* received 218 or 1.34% of the commodities and other services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$8,138,956 or 1.40% of the commodities and other services prime contract dollars.

*Asian-Indian Subcontinent-owned businesses* received 153 or 0.94% of the commodities and other services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$5,460,071 or 0.94% of the commodities and other services prime contract dollars.

*Hispanic-owned businesses* received 248 or 1.52% of the commodities and other services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$8,952,649 or 1.54% of the commodities and other services prime contract dollars.

*Native American or Alaskan Native-owned businesses* received 39 or 0.24% of the commodities and other services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$1,409,706 or 0.24% of the commodities and other services prime contract dollars.

*Caucasian Female-owned businesses* received 1,867 or 11.44% of the commodities and other services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$67,123,006 or 11.53% of the commodities and other services prime contract dollars.

*Non-minority Male-owned businesses* received 13,514 or 82.81% of the commodities and other services prime contracts valued between \$25,000 and \$50,000 that were awarded during the study period, representing \$480,438,725 or 82.56% of the commodities and other services prime contract dollars.



**Table 3.29: Commodities and Other Services Prime Contract Utilization:  
Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	280	1.72%	\$10,406,899	1.79%
Asian-Pacific	218	1.34%	\$8,138,956	1.40%
Asian-Indian Subcontinent	153	0.94%	\$5,460,071	0.94%
Hispanic	248	1.52%	\$8,952,649	1.54%
Native American or Alaskan Native	39	0.24%	\$1,409,706	0.24%
Caucasian Females	1,867	11.44%	\$67,123,006	11.53%
Non-minority Males	13,514	82.81%	\$480,438,725	82.56%
<b>TOTAL</b>	<b>16,319</b>	<b>100.00%</b>	<b>\$581,930,013</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>
Black Females	78	0.48%	\$2,978,616	0.51%
Black Males	202	1.24%	\$7,428,283	1.28%
Asian-Pacific Females	144	0.88%	\$5,437,575	0.93%
Asian-Pacific Males	74	0.45%	\$2,701,381	0.46%
Asian-Indian Subcontinent Females	36	0.22%	\$1,332,469	0.23%
Asian-Indian Subcontinent Males	117	0.72%	\$4,127,602	0.71%
Hispanic Females	65	0.40%	\$2,372,872	0.41%
Hispanic Males	183	1.12%	\$6,579,778	1.13%
Native American or Alaskan Native Females	26	0.16%	\$902,755	0.16%
Native American or Alaskan Native Males	13	0.08%	\$506,950	0.09%
Caucasian Females	1,867	11.44%	\$67,123,006	11.53%
Non-minority Males	13,514	82.81%	\$480,438,725	82.56%
<b>TOTAL</b>	<b>16,319</b>	<b>100.00%</b>	<b>\$581,930,013</b>	<b>100.00%</b>



## V. Summary

The prime contract utilization analysis examined \$63,391,070,587 of the State's procurements and expenditures on prime contracts awarded during the April 1, 2010, to March 31, 2015, study period. The \$63,391,070,587 expended included \$27,413,621,369 for construction, \$6,176,716,644 for construction-related services, \$6,459,274,339 for non-construction related services, and \$23,341,458,235 for commodities and other services contracts. A total of 56,065 prime contracts were analyzed, which included 10,134 for construction, 2,785 for construction-related services, 5,427 for non-construction related services, and 37,719 for commodities and other services.

The analysis of prime contracts was conducted at three dollar threshold levels. The first threshold level included all contracts regardless of award amount. The second threshold level included all formal contracts valued \$50,000 to \$1,400,000 for construction, contracts valued \$50,000 to \$2,000,000 for construction-related services, contracts valued \$50,000 to \$500,000 for non-construction related services, and contracts valued \$50,000 to \$275,000 for commodities and other services. The third threshold level included all informal contracts valued between \$25,000 and \$50,000 for construction, construction-related services, non-construction related services, and commodities and other services. *Chapter 7: Prime Contract Statistical Disparity Analysis* presents the statistical analysis of disparity in each of the four industries.



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# ***CHAPTER 4: Subcontractor Utilization Analysis***

## ***I. Introduction***

As discussed in *Chapter 3: Prime Contractor Utilization Analysis*, a disparity study, as required under *Crosby*, documents the contracting history of minority and woman-owned business enterprises (MWBE), hereinafter referred to as minority and Caucasian female-owned businesses and non-minority male-owned businesses' (non-MWBE), contracting history. The objective of this chapter is to determine the level of MWBE and non-MWBE subcontractor utilization by ethnicity, gender, and industry. Subcontracting was analyzed in three industries during the April 1, 2010, through March 31, 2015, study period: construction, construction-related services, and non-construction related services.

## ***II. Data Sources***

Extensive research was undertaken to reconstruct the construction, construction-related services, and non-construction related services subcontracts issued by the agencies' and authorities' prime contractors. Subcontract data were compiled through three sources—agency and authority records, on-site subcontract data collection, and expenditure surveys.

### ***A. Subcontract Sampling Plan***

A stratified sample of prime contracts was drawn. To perform the subcontractor utilization and disparity analyses, Mason Tillman drew a stratified sample from the total number of prime contracts awarded by the State agencies and authorities. The sample was drawn by industry from contracts valued \$250,000 and over. Excluding contracts valued less than \$250,000 from the sample reduced the variability of the data, thereby decreasing the margin of error. Contracts in the sample from which subcontractor activity could not be reconstructed were removed from the analysis. The removed contracts were not replaced to avoid introducing a non-response bias into the analysis. Contracts for which subcontracting activity was reconstructed are analyzed herein and are used to estimate the proportion of subcontracting dollars expended by the State's prime contractors.

### ***B. Data Collection Efforts***

The data collection efforts included three methods of collecting data: compiling data from agency and authority records, researching hard copy records from contract and project files, and conducting expenditure surveys. The three methods were conducted in phases.





## **1. Agency and Authority Records**

Mason Tillman collaborated with the State's information technology staff to extract all electronic copies of subcontract records housed in the State's B2Gnow System. The subcontract data contained in the B2Gnow System are self-reported by the State's prime contractors. Mason Tillman analyzed the subcontract data contained in the B2Gnow System. The analysis revealed that minimal non-MWBE subcontract data were tracked in the B2Gnow System. Of the sample prime contracts, only 535 of the 4664 sample prime contracts had subcontract data in the B2Gnow System. MWBE subcontractors represented 81.38% of the subcontract dollars in B2Gnow System, and non-MWBEs represent only 18.62% of the subcontract dollars. Since the B2Gnow System did not track comprehensive non-MWBE subcontract data, it could not be relied on for a complete subcontract dataset.

To supplement the data extracted from the B2Gnow System, Mason Tillman worked in conjunction with the 63 agencies and authorities that had prime contracts in the sample over a two-month period to retrieve subcontract data from their electronic files and hard copy records. The agencies and authorities were provided with a list of their prime contracts included in the sample. Mason Tillman worked with each agency and authority to determine if the subcontract data were maintained electronically or in hard copy records. The agencies and authorities also agreed to send their prime contractors a letter encouraging them to provide Mason Tillman with information about the subcontractors, suppliers, and truckers that worked on their projects. As a follow-up to the meetings with the agencies and authorities, Mason Tillman also contacted project managers, business unit supervisors, and program managers to identify subcontractors, suppliers, and truckers that worked on the sample prime contracts they managed.

Some agencies and authorities provided subcontract data from their financial management systems. Mason Tillman analyzed the electronic data received from these agencies and authorities. Similarly, with the B2Gnow System the data received from the agency and authority records were primarily MWBE subcontract data. Only 475 of the prime contracts of the 3,339 total sample prime contracts had non-MWBE subcontract data, while 1,555 of the prime contracts of the 3,339 total sample prime contracts had MWBE subcontract data. On-site data collection was undertaken to supplement the subcontract data received from the B2Gnow System and the agency and authority records.

## **2. On-Site Subcontract Data Collection**

On-site subcontract data collection was conducted to research hard copy records including, but not limited to, project files for bids/proposals, pay invoices and applications, inspector logs, prevailing wage reports, and certified payrolls. Mason Tillman worked with the agencies and authorities to determine the physical location of the prime contract records housed in a hard copy format. The on-site data collection required a review of hard copy records from agencies and authorities throughout the State of New York. The on-site subcontract data collection was conducted at approximately 40 agencies and authorities.



Mason Tillman examined agency and authority project and contract files for awards, payments, and related documents that identified subcontractors, suppliers, and truckers. The agencies' and authorities' hard copy records were not uniformly organized and required significant time to collect the needed data. The on-site subcontract data collection process required an additional four weeks of research. Additionally, the non-MWBE subcontract data were not uniformly tracked by the agencies and authorities. However, Mason Tillman was able to identify subcontractors from the agencies' and authorities' hard copy records contained in their project and contract files.

### **3. Expenditure Surveys**

A prime expenditure survey was conducted to verify the accuracy of the subcontract data compiled from the agencies' and authorities' electronic and hard copy files. The survey was also conducted to collect subcontract records that were not maintained by the authorities and agencies. The expenditure survey was conducted concurrently with the other subcontract data collection efforts. To increase the response rate, letters from the Office of the Governor of New York State were sent to the prime contractors encouraging them to submit their subcontract data.

Subcontractors were also surveyed to verify the payment data received from the B2Gnow System, agency and authority records, on-site data collection, and the prime contract expenditure survey. Data verifying ethnicity and gender of the subcontractors were compiled from certification lists, minority and women business organization membership directories, Internet research, and telephone surveys. The sources used to verify contractor information are defined in Table 6.1 of *Chapter 6: Prime Contractor and Subcontractor Availability Analysis*.

### **4. Subcontract Data Analysis**

The data from the B2Gnow System, hard copy and electronic records from the agencies and authorities, and the expenditure surveys were compiled and entered into Mason Tillman's relational database. The subcontract records were cleaned and analyzed in the database. The extensive subcontract data collection efforts yielded comprehensive MWBE and non-MWBE subcontract records, sufficient to perform a subcontract utilization analysis and a subcontract disparity analysis for construction, construction-related services, and non-construction related services subcontracts. Subcontract utilization tables were prepared according to ethnicity and gender within each of the relevant industries and are presented below.



### **III. Subcontractor Utilization**

#### **A. All Subcontracts**

As depicted in Table 4.1, 4,295 subcontracts were analyzed, which included 2,857 for construction, 1,025 for construction-related services, and 413 for non-construction related services subcontracts.

There were \$644,483,321 total subcontract dollars expended during the April 1, 2010 to March 31, 2015 study period. These dollars included \$355,663,152 for construction, \$230,037,051 for construction-related services, and \$58,783,118 for non-construction related services subcontracts.

**Table 4.1: Total Subcontracts Awarded and Dollars Expended by Industry, April 1, 2010, to March 31, 2015**

<b>Industry</b>	<b>Total Number of Subcontracts</b>	<b>Total Amount Expended</b>
Construction	2,857	\$355,663,152
Construction-Related Services	1,025	\$230,037,051
Non-Construction Related Services	413	\$58,783,118
<b>Total</b>	<b>4,295</b>	<b>\$644,483,321</b>



## **B. All Subcontracts by Industry**

### **1. Construction Subcontracts**

Table 4.2 depicts the identified construction subcontracts awarded by the State's prime contractors. Minority-owned business enterprises (MBE) received 12.50%; Caucasian female-owned businesses (WBE) received 16.13%; and non-minority male-owned businesses (non-MWBE) received 71.37% of the construction subcontract dollars.

*Black-owned businesses* received 141 or 4.94% of the construction subcontracts during the study period, representing \$19,943,563 or 5.61% of the construction subcontract dollars.

*Asian-Pacific-owned businesses* received 36 or 1.26% of the construction subcontracts during the study period, representing \$3,812,095 or 1.07% of the construction subcontract dollars.

*Asian-Indian Subcontinent-owned businesses* received 37 or 1.30% of the construction subcontracts during the study period, representing \$3,222,509 or 0.91% of the construction subcontract dollars.

*Hispanic-owned businesses* received 106 or 3.71% of the construction subcontracts during the study period, representing \$13,819,270 or 3.89% of the construction subcontract dollars.

*Native American or Alaskan Native-owned businesses* received 50 or 1.75% of the construction subcontracts during the study period, representing \$3,670,712 or 1.03% of the construction subcontract dollars.

*Caucasian female-owned businesses* received 618 or 21.63% of the construction subcontracts during the study period, representing \$57,375,935 or 16.13% of the construction subcontract dollars.

*Non-minority male-owned businesses* received 1,869 or 65.42% of the construction subcontracts during the study period, representing \$253,819,068 or 71.37% of the construction subcontract dollars.



**Table 4.2: Construction Subcontractor Utilization,  
April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	141	4.94%	\$19,943,563	5.61%
Asian-Pacific	36	1.26%	\$3,812,095	1.07%
Asian-Indian Subcontinent	37	1.30%	\$3,222,509	0.91%
Hispanic	106	3.71%	\$13,819,270	3.89%
Native American or Alaskan Native	50	1.75%	\$3,670,712	1.03%
Caucasian Females	618	21.63%	\$57,375,935	16.13%
Non-minority Males	1,869	65.42%	\$253,819,068	71.37%
<b>TOTAL</b>	<b>2,857</b>	<b>100.00%</b>	<b>\$355,663,152</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>
Black Females	26	0.91%	\$2,907,061	0.82%
Black Males	115	4.03%	\$17,036,502	4.79%
Asian-Pacific Females	23	0.81%	\$2,782,853	0.78%
Asian-Pacific Males	13	0.46%	\$1,029,242	0.29%
Asian-Indian Subcontinent Females	8	0.28%	\$390,573	0.11%
Asian-Indian Subcontinent Males	29	1.02%	\$2,831,936	0.80%
Hispanic Females	36	1.26%	\$6,405,300	1.80%
Hispanic Males	70	2.45%	\$7,413,970	2.08%
Native American or Alaskan Native Females	4	0.14%	\$884,745	0.25%
Native American or Alaskan Native Males	46	1.61%	\$2,785,968	0.78%
Caucasian Females	618	21.63%	\$57,375,935	16.13%
Non-minority Males	1,869	65.42%	\$253,819,068	71.37%
<b>TOTAL</b>	<b>2,857</b>	<b>100.00%</b>	<b>\$355,663,152</b>	<b>100.00%</b>



## 2. Construction-Related Services Subcontracts

Table 4.3 depicts the construction-related services subcontracts issued by the State's prime contractors. MBEs received 20.31%; WBEs received 8.54%; and non-MWBEs received 71.16% of the construction-related services subcontract dollars.

*Black-owned businesses* received 54 or 5.27% of the construction-related services subcontracts during the study period, representing \$7,217,098 or 3.14% of the construction-related services subcontract dollars.

*Asian-Pacific-owned businesses* received 28 or 2.73% of the construction-related services subcontracts during the study period, representing \$6,236,570 or 2.71% of the construction-related services subcontract dollars.

*Asian-Indian Subcontinent-owned businesses* received 84 or 8.20% of the construction-related services subcontracts during the study period, representing \$22,147,228 or 9.63% of the construction-related services subcontract dollars.

*Hispanic-owned businesses* received 43 or 4.20% of the construction-related services subcontracts during the study period, representing \$10,912,378 or 4.74% of the construction-related services subcontract dollars.

*Native American or Alaskan Native-owned businesses* received 5 or 0.49% of the construction-related services subcontracts during the study period, representing \$202,938 or 0.09% of the construction-related services subcontract dollars.

*Caucasian female-owned businesses* received 251 or 24.49% of the construction-related services subcontracts during the study period, representing \$19,635,705 or 8.54% of the construction-related services subcontract dollars.

*Non-minority male-owned businesses* received 560 or 54.63% of the construction-related services subcontracts during the study period, representing \$163,685,133 or 71.16% of the construction-related services subcontract dollars.



**Table 4.3: Construction-Related Services Subcontractor Utilization,  
April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	54	5.27%	\$7,217,098	3.14%
Asian-Pacific	28	2.73%	\$6,236,570	2.71%
Asian-Indian Subcontinent	84	8.20%	\$22,147,228	9.63%
Hispanic	43	4.20%	\$10,912,378	4.74%
Native American or Alaskan Native	5	0.49%	\$202,938	0.09%
Caucasian Females	251	24.49%	\$19,635,705	8.54%
Non-minority Males	560	54.63%	\$163,685,133	71.16%
<b>TOTAL</b>	<b>1,025</b>	<b>100.00%</b>	<b>\$230,037,051</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>
Black Females	12	1.17%	\$924,143	0.40%
Black Males	42	4.10%	\$6,292,955	2.74%
Asian-Pacific Females	3	0.29%	\$1,396,923	0.61%
Asian-Pacific Males	25	2.44%	\$4,839,648	2.10%
Asian-Indian Subcontinent Females	3	0.29%	\$880,016	0.38%
Asian-Indian Subcontinent Males	81	7.90%	\$21,267,213	9.25%
Hispanic Females	8	0.78%	\$143,974	0.06%
Hispanic Males	35	3.41%	\$10,768,405	4.68%
Native American or Alaskan Native Females	5	0.49%	\$202,938	0.09%
Native American or Alaskan Native Males	0	0.00%	\$0	0.00%
Caucasian Females	251	24.49%	\$19,635,705	8.54%
Non-minority Males	560	54.63%	\$163,685,133	71.16%
<b>TOTAL</b>	<b>1,025</b>	<b>100.00%</b>	<b>\$230,037,051</b>	<b>100.00%</b>



### 3. Non-Construction Related Services Subcontracts

Table 4.4 depicts the non-construction related services subcontracts issued by the State's prime contractors. MBEs received 16.82%; WBEs received 6.14%; and non-MWBEs received 77.04% of the non-construction related services subcontract dollars.

*Black-owned businesses* received 4 or 0.97% of the non-construction related services subcontracts during the study period, representing \$333,803 or 0.57% of the non-construction related services subcontract dollars.

*Asian-Pacific-owned businesses* received 2 or 0.48% of the non-construction related services subcontracts during the study period, representing \$117,028 or 0.20% of the non-construction related services subcontract dollars.

*Asian-Indian Subcontinent-owned businesses* received 36 or 8.72% of the non-construction related services subcontracts during the study period, representing \$8,113,164 or 13.80% of the non-construction related services subcontract dollars.

*Hispanic-owned businesses* received 6 or 1.45% of the non-construction related services subcontracts during the study period, representing \$1,105,869 or 1.88% of the non-construction related services subcontract dollars.

*Native American or Alaskan Native-owned businesses* received 2 or 0.48% of the non-construction related services subcontracts during the study period, representing \$216,098 or 0.37% of the non-construction related services subcontract dollars.

*Caucasian female-owned businesses* received 39 or 9.44% of the non-construction related services subcontracts during the study period, representing \$3,608,720 or 6.14% of the non-construction related services subcontract dollars.

*Non-minority male-owned businesses* received 324 or 78.45% of the non-construction related services subcontracts during the study period, representing \$45,288,437 or 77.04% of the non-construction related services subcontract dollars.





**Table 4.4: Non-Construction Related Services Subcontractor Utilization,  
April 1, 2010 to March 31, 2015**

<b>Ethnicity</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Amount of Dollars</b>	<b>Percent of Dollars</b>
Black	4	0.97%	\$333,803	0.57%
Asian-Pacific	2	0.48%	\$117,028	0.20%
Asian-Indian Subcontinent	36	8.72%	\$8,113,164	13.80%
Hispanic	6	1.45%	\$1,105,869	1.88%
Native American or Alaskan Native	2	0.48%	\$216,098	0.37%
Caucasian Females	39	9.44%	\$3,608,720	6.14%
Non-minority Males	324	78.45%	\$45,288,437	77.04%
<b>TOTAL</b>	<b>413</b>	<b>100.00%</b>	<b>\$58,783,118</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>
Black Females	1	0.24%	\$855	0.00%
Black Males	3	0.73%	\$332,948	0.57%
Asian-Pacific Females	0	0.00%	\$0	0.00%
Asian-Pacific Males	2	0.48%	\$117,028	0.20%
Asian-Indian Subcontinent Females	9	2.18%	\$1,655,374	2.82%
Asian-Indian Subcontinent Males	27	6.54%	\$6,457,790	10.99%
Hispanic Females	3	0.73%	\$212,365	0.36%
Hispanic Males	3	0.73%	\$893,504	1.52%
Native American or Alaskan Native Females	1	0.24%	\$32,502	0.06%
Native American or Alaskan Native Males	1	0.24%	\$183,596	0.31%
Caucasian Females	39	9.44%	\$3,608,720	6.14%
Non-minority Males	324	78.45%	\$45,288,437	77.04%
<b>TOTAL</b>	<b>413</b>	<b>100.00%</b>	<b>\$58,783,118</b>	<b>100.00%</b>



#### ***IV. Summary***

The State subcontractor utilization analysis examined \$644,483,321 expended on subcontracts awarded by the State's prime contractors from April 1, 2010, to March 31, 2015. The \$644,483,321 expended included \$355,663,152 for construction, \$230,037,051 for construction-related services, and \$58,783,118 for non-construction related services subcontracts. A total of 4,295 subcontracts were analyzed, which included 2,857 for construction, 1,025 for construction-related services, and 413 for non-construction related 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. (Croson)*<sup>269</sup> held that programs established by local governments to set goals for the participation of Minority-owned Business Enterprises (MBE) must be supported by evidence of past discrimination in the award of their contracts. Prior to the *Croson* decision, local agencies could implement race-conscious programs without developing a detailed public record to document the underutilization of MBEs in their award of contracts. Instead, they relied on widely-recognized societal patterns of discrimination.<sup>270</sup>

*Croson* established that a local government could not rely on society-wide discrimination as the basis for a race-based program. Instead, a local government was required to identify discrimination within its own contracting jurisdiction.<sup>271</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>272</sup> and "city's construction industry."<sup>273</sup> These terms were used to define the proper scope for examining the existence of discrimination within the City of Richmond. 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>269</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

<sup>270</sup> *United Steelworkers v. Weber*, 433 U.S. 193, 198, n. 1 (1979).

<sup>271</sup> *Croson*, 488 U.S. at 497.

<sup>272</sup> *Croson*, 488 U.S. at 500.

<sup>273</sup> *Id.* at 470.



An analysis of the cases following *Croson* reveals a pattern that 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>274</sup> In *Cone Corporation v. Hillsborough County*,<sup>275</sup> the United States Eleventh Circuit Court of Appeals considered a study in support of Hillsborough County, Florida’s MBE Program, which used minority contractors located in Hillsborough County as the measure of available 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>276</sup>

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,<sup>277</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 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 of San Francisco, California, as the relevant market area within which to conduct a disparity study.<sup>278</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>279</sup> In support of its MBE program, King County, Washington, offered studies compiled by other jurisdictions, including entities completely within King County, others coterminous with the boundaries of King County, as well as a jurisdiction completely outside of 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 outside data. However, the court also found that the data from entities within King County and from coterminous jurisdictions

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<sup>274</sup> See e.g., *Concrete Works of Colorado v. City of Denver, Colorado*, 36 F.3d 1513, 1528 (10th Cir. 1994) (“*Concrete Works*”).

<sup>275</sup> *Cone Corporation v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990).

<sup>276</sup> *Id.* at 915.

<sup>277</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>278</sup> *AGCCII*, 950 F.2d at 1415.

<sup>279</sup> *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991).



were relevant to discrimination in King 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>280</sup> However, the court did note that the “world of contracting does not conform itself neatly to jurisdictional boundaries.”<sup>281</sup>

There are other situations where 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>282</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 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>283</sup> the court noted “that any plan that extends race-conscious remedies beyond territorial boundaries must be based on very specific findings that actions that the city has taken in the past have visited racial discrimination on such individuals.”<sup>284</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 minority business owners in the government’s marketplace.<sup>285</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.

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<sup>280</sup> *Coral Construction Co. v. King County*, 941 F.2d at 917.

<sup>281</sup> *Id.*

<sup>282</sup> *Concrete Works*, 36 F.3d at 1528.

<sup>283</sup> *AGCC II*, 950 F.2d at 1401.

<sup>284</sup> *Concrete Works*, 36 F.3d at 1528.

<sup>285</sup> *Croson*, 488 U.S. at 501.



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, taken collectively, the case law supports a definition of the market area as the geographical boundaries of the government entity. Given the State of New York’s (State) jurisdiction, the Study’s market area is determined to be the geographical boundaries of New York State.

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

The State awarded 56,143 prime contracts valued \$63,768,786,680 from April 1, 2010, to March 31, 2015. The distribution of all prime contracts awarded and dollars received by all firms domiciled inside and outside of the market area is listed 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>Number of Dollars</b>	<b>Percent of Dollars</b>
NEW YORK CITY	7,910	14.09%	\$16,662,262,222	26.13%
WESTCHESTER	1,284	2.29%	\$4,139,910,857	6.49%
ALBANY	3,401	6.06%	\$4,110,218,218	6.45%
NASSAU	2,539	4.52%	\$4,005,486,606	6.28%
SUFFOLK	2,820	5.02%	\$3,109,783,601	4.88%
MONROE	3,530	6.29%	\$3,020,171,397	4.74%
ERIE	2,795	4.98%	\$2,738,506,037	4.29%
ONONDAGA	1,955	3.48%	\$1,212,095,335	1.90%
SARATOGA	1,545	2.75%	\$1,100,625,083	1.73%
ONTARIO	521	0.93%	\$1,063,433,738	1.67%
QUEENS	666	1.19%	\$872,658,355	1.37%
BROOME	680	1.21%	\$664,355,591	1.04%
CLINTON	1,126	2.01%	\$643,880,183	1.01%
ROCKLAND	248	0.44%	\$498,785,385	0.78%
RENSSELAER	528	0.94%	\$476,545,430	0.75%
SCHENECTADY	925	1.65%	\$470,396,705	0.74%
JEFFERSON	455	0.81%	\$446,199,754	0.70%
SCHOHARIE	134	0.24%	\$423,224,236	0.66%
GENESEE	787	1.40%	\$421,896,906	0.66%
CORTLAND	401	0.71%	\$386,863,996	0.61%
LIVINGSTON	641	1.14%	\$378,488,372	0.59%



<b>Geographic Area</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Number of Dollars</b>	<b>Percent of Dollars</b>
DUTCHESS	517	0.92%	\$279,584,571	0.44%
WAYNE	407	0.72%	\$232,354,396	0.36%
ORANGE	545	0.97%	\$220,988,904	0.35%
ONEIDA	471	0.84%	\$210,358,077	0.33%
PUTNAM	411	0.73%	\$156,421,682	0.25%
NIAGARA	247	0.44%	\$156,161,334	0.24%
WARREN	255	0.45%	\$141,037,251	0.22%
ST. LAWRENCE	272	0.48%	\$136,663,697	0.21%
ESSEX	125	0.22%	\$104,385,752	0.16%
ORLEANS	90	0.16%	\$103,397,358	0.16%
ULSTER	280	0.50%	\$100,138,573	0.16%
OSWEGO	88	0.16%	\$89,632,851	0.14%
HERKIMER	100	0.18%	\$89,421,086	0.14%
SENECA	46	0.08%	\$84,623,338	0.13%
MADISON	81	0.14%	\$81,225,173	0.13%
CAYUGA	302	0.54%	\$72,185,223	0.11%
CHEMUNG	99	0.18%	\$58,125,114	0.09%
COLUMBIA	56	0.10%	\$55,554,555	0.09%
WYOMING	91	0.16%	\$53,308,661	0.08%
FRANKLIN	105	0.19%	\$43,653,889	0.07%
CHAUTAUQUA	94	0.17%	\$40,718,064	0.06%
DELAWARE	24	0.04%	\$38,432,515	0.06%
SULLIVAN	44	0.08%	\$34,755,864	0.05%
FULTON	43	0.08%	\$33,653,484	0.05%
CHENANGO	75	0.13%	\$32,360,545	0.05%
STEUBEN	55	0.10%	\$28,288,716	0.04%
TOMPKINS	155	0.28%	\$23,506,344	0.04%
CATTARAUGUS	37	0.07%	\$21,059,813	0.03%
MONTGOMERY	99	0.18%	\$19,458,178	0.03%
ALLEGANY	32	0.06%	\$19,433,999	0.03%
SCHUYLER	10	0.02%	\$18,156,228	0.03%
GREENE	34	0.06%	\$15,556,496	0.02%
OTSEGO	63	0.11%	\$9,885,033	0.02%
TIOGA	27	0.05%	\$9,060,884	0.01%
WASHINGTON	47	0.08%	\$7,454,881	0.01%
HAMILTON	7	0.01%	\$5,214,848	0.01%
LEWIS	35	0.06%	\$4,201,934	0.01%
YATES	4	0.01%	\$186,763	0.00%



Geographic Area	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
OUT OF STATE	14,803	26.37%	\$13,103,068,059	20.55%
OUT OF COUNTRY	976	1.74%	\$989,324,541	1.55%
TOTAL	56,143	100.00%	\$63,768,786,680	100.00%

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

The State awarded 10,144 construction prime contracts valued \$27,418,261,439 during the study period. Businesses located in the market area received 93.33% of the construction prime contracts and 91.71% 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 listed below in Table 5.2.

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

Geographic Area	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
NEW YORK CITY	1,346	13.27%	\$8,896,753,784	32.45%
WESTCHESTER	392	3.86%	\$3,367,548,335	12.28%
ERIE	959	9.45%	\$1,791,846,573	6.54%
NASSAU	494	4.87%	\$1,771,383,138	6.46%
SUFFOLK	688	6.78%	\$1,583,727,107	5.78%
MONROE	575	5.67%	\$1,165,323,171	4.25%
ALBANY	566	5.58%	\$635,917,789	2.32%
ONONDAGA	477	4.70%	\$630,195,034	2.30%
QUEENS	209	2.06%	\$570,741,186	2.08%
SARATOGA	278	2.74%	\$543,862,906	1.98%
BROOME	332	3.27%	\$526,460,900	1.92%
RENSSELAER	239	2.36%	\$318,869,803	1.16%
ONTARIO	190	1.87%	\$299,943,752	1.09%
SCHOHARIE	24	0.24%	\$294,297,496	1.07%
JEFFERSON	142	1.40%	\$291,621,939	1.06%
CORTLAND	124	1.22%	\$258,294,073	0.94%
CLINTON	206	2.03%	\$233,625,025	0.85%
DUTCHESS	231	2.28%	\$197,237,820	0.72%
ROCKLAND	61	0.60%	\$174,038,673	0.63%
ONEIDA	196	1.93%	\$148,229,496	0.54%
SCHENECTADY	190	1.87%	\$126,333,105	0.46%
LIVINGSTON	69	0.68%	\$100,065,284	0.36%
GENESEE	33	0.33%	\$94,730,235	0.35%
NIAGARA	102	1.01%	\$92,811,311	0.34%





<b>Geographic Area</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Number of Dollars</b>	<b>Percent of Dollars</b>
ORANGE	158	1.56%	\$89,396,571	0.33%
HERKIMER	72	0.71%	\$84,602,577	0.31%
WAYNE	133	1.31%	\$70,247,730	0.26%
OSWEGO	40	0.39%	\$69,828,211	0.25%
ESSEX	31	0.31%	\$68,848,327	0.25%
ULSTER	127	1.25%	\$65,201,603	0.24%
ST. LAWRENCE	186	1.83%	\$65,132,495	0.24%
MADISON	14	0.14%	\$61,651,556	0.22%
ORLEANS	51	0.50%	\$51,955,230	0.19%
WARREN	34	0.34%	\$44,452,121	0.16%
FRANKLIN	71	0.70%	\$36,559,284	0.13%
CHEMUNG	49	0.48%	\$34,262,317	0.12%
WYOMING	21	0.21%	\$33,908,803	0.12%
FULTON	30	0.30%	\$33,029,883	0.12%
PUTNAM	37	0.36%	\$27,816,105	0.10%
SULLIVAN	13	0.13%	\$27,514,029	0.10%
COLUMBIA	15	0.15%	\$27,175,460	0.10%
CHAUTAUQUA	47	0.46%	\$23,152,261	0.08%
CAYUGA	32	0.32%	\$19,236,644	0.07%
ALLEGANY	25	0.25%	\$18,083,189	0.07%
SCHUYLER	2	0.02%	\$17,496,814	0.06%
CATTARAUGUS	20	0.20%	\$17,101,505	0.06%
GREENE	23	0.23%	\$14,449,643	0.05%
TIOGA	21	0.21%	\$7,955,802	0.03%
DELAWARE	12	0.12%	\$5,302,903	0.02%
TOMPKINS	10	0.10%	\$3,921,487	0.01%
WASHINGTON	25	0.25%	\$2,735,611	0.01%
CHENANGO	11	0.11%	\$2,274,057	0.01%
HAMILTON	3	0.03%	\$2,232,012	0.01%
OTSEGO	11	0.11%	\$2,131,690	0.01%
STEUBEN	8	0.08%	\$1,611,634	0.01%
SENECA	5	0.05%	\$732,791	0.00%
LEWIS	2	0.02%	\$278,948	0.00%
MONTGOMERY	5	0.05%	\$266,240	0.00%
OUT OF STATE	659	6.50%	\$2,259,723,802	8.24%
OUT OF COUNTRY	18	0.18%	\$14,134,168	0.05%
<b>TOTAL</b>	<b>10,144</b>	<b>100.00%</b>	<b>\$27,418,261,439</b>	<b>100.00%</b>



### C. *Distribution of Construction-Related Services Prime Contracts*

The State awarded 2,796 construction-related services prime contracts valued \$6,178,514,548 during the study period. Businesses located in the market area received 89.31% of the construction-related services prime contracts and 92.66% of the dollars. The distribution of the construction-related services prime contracts awarded and dollars received by all firms domiciled inside and outside of the market area is listed below in Table 5.3.

**Table 5.3: Distribution of Construction-Related Services Prime Contracts**

<b>Geographic Area</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Number of Dollars</b>	<b>Percent of Dollars</b>
NEW YORK CITY	891	31.87%	\$3,301,428,046	53.43%
NASSAU	150	5.36%	\$392,435,632	6.35%
ALBANY	188	6.72%	\$358,212,341	5.80%
ERIE	232	8.30%	\$249,263,664	4.03%
ROCKLAND	26	0.93%	\$238,924,628	3.87%
ONONDAGA	190	6.80%	\$234,227,720	3.79%
WESTCHESTER	82	2.93%	\$205,514,035	3.33%
MONROE	128	4.58%	\$142,259,680	2.30%
SUFFOLK	161	5.76%	\$127,784,005	2.07%
QUEENS	49	1.75%	\$114,701,040	1.86%
SARATOGA	47	1.68%	\$78,939,424	1.28%
ORANGE	38	1.36%	\$51,936,404	0.84%
RENSSELAER	33	1.18%	\$45,683,958	0.74%
DUTCHESS	38	1.36%	\$42,003,950	0.68%
BROOME	35	1.25%	\$32,310,139	0.52%
ONEIDA	31	1.11%	\$19,103,607	0.31%
JEFFERSON	18	0.64%	\$15,927,816	0.26%
NIAGARA	17	0.61%	\$14,871,461	0.24%
MADISON	25	0.89%	\$13,791,536	0.22%
SCHENECTADY	15	0.54%	\$8,325,939	0.13%
WARREN	9	0.32%	\$8,293,660	0.13%
CAYUGA	8	0.29%	\$6,786,405	0.11%
GENESEE	8	0.29%	\$4,283,222	0.07%
CLINTON	8	0.29%	\$4,167,616	0.07%
ST. LAWRENCE	6	0.21%	\$4,144,727	0.07%
TOMPKINS	18	0.64%	\$2,795,462	0.05%
LIVINGSTON	11	0.39%	\$1,797,904	0.03%
ULSTER	4	0.14%	\$1,185,761	0.02%
CHEMUNG	8	0.29%	\$1,028,257	0.02%
SULLIVAN	4	0.14%	\$741,140	0.01%



Geographic Area	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
FRANKLIN	2	0.07%	\$622,106	0.01%
SCHOHARIE	3	0.11%	\$491,929	0.01%
ONTARIO	1	0.04%	\$210,950	0.00%
CHAUTAUQUA	2	0.07%	\$183,016	0.00%
PUTNAM	1	0.04%	\$176,805	0.00%
FULTON	3	0.11%	\$173,146	0.00%
CORTLAND	2	0.07%	\$142,108	0.00%
CATTARAUGUS	1	0.04%	\$102,500	0.00%
OSWEGO	1	0.04%	\$99,792	0.00%
OTSEGO	2	0.07%	\$60,000	0.00%
CHENANGO	1	0.04%	\$48,750	0.00%
OUT OF STATE	291	10.41%	\$447,279,578	7.24%
OUT OF COUNTRY	8	0.29%	\$6,054,688	0.10%
TOTAL	2,796	100.00%	\$6,178,514,548	100.00%

**D. Distribution of Non-Construction Related Services Prime Contracts**

The State awarded 5,455 non-construction related services prime contracts valued \$6,806,517,582 during the study period. Businesses located in the market area received 69.26% of the non-construction related services prime contracts and 77.10% of the dollars. The distribution of the non-construction related services prime contracts awarded and dollars received by all firms domiciled inside and outside of the market area is listed below in Table 5.4.

**Table 5.4: Distribution of Non-Construction Related Services Prime Contracts**

Geographic Area	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
NEW YORK CITY	1,180	21.63%	\$2,318,043,473	34.06%
ALBANY	729	13.36%	\$864,877,533	12.71%
NASSAU	156	2.86%	\$519,812,234	7.64%
SUFFOLK	182	3.34%	\$393,659,359	5.78%
MONROE	278	5.10%	\$353,423,429	5.19%
ERIE	158	2.90%	\$156,951,264	2.31%
ONONDAGA	213	3.90%	\$116,611,601	1.71%
SCHOHARIE	3	0.05%	\$103,410,526	1.52%
SARATOGA	162	2.97%	\$83,664,878	1.23%
SCHENECTADY	185	3.39%	\$66,317,296	0.97%
RENSSELAER	83	1.52%	\$46,216,502	0.68%



<b>Geographic Area</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Number of Dollars</b>	<b>Percent of Dollars</b>
ROCKLAND	31	0.57%	\$34,338,855	0.50%
WESTCHESTER	83	1.52%	\$28,393,801	0.42%
COLUMBIA	14	0.26%	\$22,353,400	0.33%
ONTARIO	20	0.37%	\$22,051,280	0.32%
ORANGE	32	0.59%	\$18,389,148	0.27%
QUEENS	39	0.71%	\$13,116,264	0.19%
LIVINGSTON	7	0.13%	\$12,720,305	0.19%
OSWEGO	5	0.09%	\$11,140,698	0.16%
ONEIDA	13	0.24%	\$9,272,762	0.14%
DUTCHESS	14	0.26%	\$8,463,123	0.12%
MONTGOMERY	30	0.55%	\$7,378,021	0.11%
STEUBEN	2	0.04%	\$5,300,000	0.08%
TOMPKINS	12	0.22%	\$5,040,482	0.07%
PUTNAM	51	0.93%	\$4,824,314	0.07%
ESSEX	4	0.07%	\$3,615,280	0.05%
OTSEGO	8	0.15%	\$3,251,608	0.05%
ORLEANS	1	0.02%	\$3,000,000	0.04%
CLINTON	10	0.18%	\$2,662,757	0.04%
NIAGARA	5	0.09%	\$2,021,405	0.03%
BROOME	8	0.15%	\$1,824,612	0.03%
ULSTER	15	0.27%	\$1,679,346	0.02%
GENESEE	11	0.20%	\$951,985	0.01%
WARREN	10	0.18%	\$933,041	0.01%
MADISON	10	0.18%	\$877,786	0.01%
JEFFERSON	4	0.07%	\$375,960	0.01%
CAYUGA	1	0.02%	\$372,100	0.01%
ST. LAWRENCE	3	0.05%	\$257,000	0.00%
FRANKLIN	1	0.02%	\$159,870	0.00%
CHAUTAUQUA	1	0.02%	\$117,300	0.00%
GREENE	1	0.02%	\$78,000	0.00%
SULLIVAN	1	0.02%	\$49,500	0.00%
WASHINGTON	1	0.02%	\$49,500	0.00%
WAYNE	1	0.02%	\$36,313	0.00%
OUT OF STATE	1,612	29.55%	\$1,478,927,060	21.73%
OUT OF COUNTRY	65	1.19%	\$79,506,610	1.17%
<b>TOTAL</b>	<b>5,455</b>	<b>100.00%</b>	<b>\$6,806,517,582</b>	<b>100.00%</b>



**E. Distribution of Commodities and Other Services Prime Contracts**

The State awarded 37,748 commodities and other services prime contracts valued \$23,365,493,111 during the study period. Businesses located in the market area received 65.23% of the commodities and other services prime contracts and 58.03% of the dollars. The distribution of the commodities and other services prime contracts awarded and dollars received by all firms domiciled inside and outside of the market area is listed below in Table 5.5.

**Table 5.5: Distribution of Commodities and Other Services Prime Contracts**

<b>Geographic Area</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Number of Dollars</b>	<b>Percent of Dollars</b>
ALBANY	1,921	5.09%	\$2,321,952,224	9.94%
NEW YORK CITY	4,491	11.90%	\$2,145,939,951	9.18%
MONROE	2,549	6.75%	\$1,359,165,117	5.82%
NASSAU	1,740	4.61%	\$1,321,885,301	5.66%
SUFFOLK	1,789	4.74%	\$1,004,613,129	4.30%
ONTARIO	310	0.82%	\$741,227,756	3.17%
ERIE	1,446	3.83%	\$540,444,537	2.31%
WESTCHESTER	727	1.93%	\$538,454,687	2.30%
CLINTON	902	2.39%	\$403,424,785	1.73%
SARATOGA	1,058	2.80%	\$394,157,874	1.69%
GENESEE	735	1.95%	\$321,931,464	1.38%
ONONDAGA	1,114	2.95%	\$287,347,002	1.23%
LIVINGSTON	554	1.47%	\$263,904,879	1.13%
QUEENS	370	0.98%	\$174,167,133	0.75%
WAYNE	273	0.72%	\$162,070,353	0.69%
SCHENECTADY	492	1.30%	\$142,318,930	0.61%
JEFFERSON	291	0.77%	\$138,274,039	0.59%
CORTLAND	275	0.73%	\$128,427,814	0.55%
PUTNAM	322	0.85%	\$123,604,458	0.53%
BROOME	305	0.81%	\$103,759,940	0.44%
WARREN	202	0.54%	\$87,358,429	0.37%
SENECA	41	0.11%	\$83,890,547	0.36%
ST. LAWRENCE	77	0.20%	\$67,129,475	0.29%
RENSSELAER	174	0.46%	\$65,848,909	0.28%
ORANGE	317	0.84%	\$61,266,782	0.26%
ROCKLAND	130	0.34%	\$51,483,229	0.22%
ORLEANS	38	0.10%	\$48,442,128	0.21%
NIAGARA	123	0.33%	\$46,457,158	0.20%
CAYUGA	261	0.69%	\$45,790,074	0.20%



<b>Geographic Area</b>	<b>Number of Contracts</b>	<b>Percent of Contracts</b>	<b>Number of Dollars</b>	<b>Percent of Dollars</b>
ONEIDA	231	0.61%	\$33,752,212	0.14%
DUTCHESS	240	0.64%	\$33,513,508	0.14%
DELAWARE	12	0.03%	\$33,129,612	0.14%
ESSEX	90	0.24%	\$31,922,144	0.14%
ULSTER	128	0.34%	\$30,438,032	0.13%
CHENANGO	63	0.17%	\$30,037,738	0.13%
SCHOHARIE	104	0.28%	\$25,024,285	0.11%
CHEMUNG	42	0.11%	\$22,834,540	0.10%
STEUBEN	45	0.12%	\$21,377,083	0.09%
WYOMING	70	0.19%	\$19,399,858	0.08%
CHAUTAUQUA	44	0.12%	\$17,265,487	0.07%
MONTGOMERY	64	0.17%	\$11,813,917	0.05%
TOMPKINS	115	0.30%	\$11,748,913	0.05%
OSWEGO	42	0.11%	\$8,564,150	0.04%
SULLIVAN	26	0.07%	\$6,451,195	0.03%
FRANKLIN	31	0.08%	\$6,312,629	0.03%
COLUMBIA	27	0.07%	\$6,025,696	0.03%
MADISON	32	0.08%	\$4,904,295	0.02%
HERKIMER	28	0.07%	\$4,818,509	0.02%
WASHINGTON	21	0.06%	\$4,669,770	0.02%
OTSEGO	42	0.11%	\$4,441,735	0.02%
LEWIS	33	0.09%	\$3,922,986	0.02%
CATTARAUGUS	16	0.04%	\$3,855,808	0.02%
HAMILTON	4	0.01%	\$2,982,836	0.01%
ALLEGANY	7	0.02%	\$1,350,810	0.01%
TIOGA	6	0.02%	\$1,105,082	0.00%
GREENE	10	0.03%	\$1,028,853	0.00%
SCHUYLER	8	0.02%	\$659,414	0.00%
FULTON	10	0.03%	\$450,456	0.00%
YATES	4	0.01%	\$186,763	0.00%
OUT OF STATE	12,241	32.43%	\$8,917,137,620	38.16%
OUT OF COUNTRY	885	2.34%	\$889,629,075	3.81%
TOTAL	37,748	100.00%	\$23,365,493,111	100.00%



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

During the study period, the State awarded 56,143 construction, construction-related services, non-construction related services, and commodities and other services prime contracts valued \$63,768,786,680. The State awarded 71.89% of prime contracts and 77.90% of dollars to businesses domiciled within the market area. The total contracts awarded by the State, by industry is as follows:

*Construction Prime Contracts:* Market area businesses were awarded 9,467 (93.33%) of construction prime contracts. Construction prime contracts in the market area accounted for \$25,144,403,469 (91.71%) of the total construction prime contract dollars.

*Construction-Related Services Prime Contracts:* Market area businesses were awarded 2,497 (89.31%) of construction-related services prime contracts. Construction-related services prime contracts in the market area accounted for \$5,725,180,282 (92.66%) of the total construction-related services prime contract dollars.

*Non-Construction Related Services Prime Contracts:* Market area businesses were awarded 3,778 (69.26%) of non-construction related services prime contracts. Non-construction related services prime contracts in the market area accounted for \$5,248,083,912 (77.10%) of the total non-construction related services prime contract dollars.

*Commodities and Other Services Prime Contracts:* Market area businesses were awarded 24,622 (65.23%) of commodities and other services prime contracts. Commodities and other services prime contracts in the market area accounted for \$13,558,726,417 (58.03%) of the total commodities and other services prime contract dollars.



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

## **I. Introduction**

Availability is defined, according to *Croson*, as the number of businesses in the jurisdiction’s market area that are willing and able to provide the types of goods and services procured by the jurisdiction.<sup>286</sup> The market area for each of the four industries in the Study—construction, construction-related services, non-construction related services, and commodities and other services, as defined in *Chapter 5: Market Area Analysis*—is the jurisdictional boundaries of the State of New York (State). To determine the availability of businesses within the State’s market area, businesses owned by minorities, women, and non-minority males were enumerated.

When considering sources for determining the number of willing and able minority and woman-owned business enterprises, hereinafter referred to as minority and Caucasian female-owned business enterprises (MWBEs), and non-minority male-owned businesses (non-MWBEs) in the market area, the selection must be based on whether two aspects about the population can be gauged. 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 the solicited goods and services, as implied by the term “able.”

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

### **A. Identification of Businesses within the Market Area**

Mason Tillman collected four types of sources to identify businesses in the market area that provide the goods and services that the State procures. One source was the State’s records, including utilized businesses and vendor and bidder lists. Vendor and bidder lists were provided by each agency and authority. The second source was government certification directories, and included directories from agencies that certify MWBEs, small businesses, local businesses, veteran-owned businesses, and disadvantaged businesses. The third source was business association membership lists, which included membership lists from national, state, and local chambers of commerce, business advocacy groups, trade associations, small business development centers, and technical assistance providers. The fourth source included all additional businesses identified in the Disparity Study community meetings and subsequent anecdotal interviews.

Extensive targeted outreach to business associations in the market area was performed to identify and secure business membership directories in order to identify non-minority male-owned



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<sup>286</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).



businesses that are typically not found on government certification sources. This effort included written and electronic correspondence, telephone reminders, and distribution of non-disclosure agreements describing Mason Tillman's intent to maintain the confidentiality of association members. To maximize the number of business associations that released their membership lists, Empire State Development's Division of Minority & Women's Business Development (DMWBD) also directly solicited the cooperation of the business associations by requesting that they provide membership lists. DMWBD's correspondence with the business associations also reiterated the importance of complying with Mason Tillman's request and explained Mason Tillman's use of the sources to enumerate businesses in the market area. Business associations who refused to provide their lists were provided the business survey to distribute to their members directly.

Lists from the four types of sources were ranked in the analysis, with the highest rank assigned to the utilized businesses, bidders, and vendors. Government certification lists were ranked second, and business association membership lists were ranked third. As a result, the first source used to build the availability dataset was the State's utilized businesses, bidders and vendors. Businesses identified from federal, state, and local government certification agencies were appended to the database of available businesses. Businesses identified from business association membership lists, community meetings, and anecdotal interviews were surveyed for their willingness and capacity to provide goods and services to the State. Businesses that affirmed their willingness were also appended to the database of available businesses.

From the four sources, 28,845 unique market area businesses that provided goods or services in one or more of the four industries were identified. An accounting of the willing businesses derived by source is presented below:

### **1. State Records**

From the State's records, 6,993 unique market area businesses were added to the availability database.

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

Of the 12,368 businesses identified from government certification lists, 10,519 unique market area businesses with phone numbers were added to the availability database from government certification lists.

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

Of the 51,186 businesses identified from business association membership lists, 11,546 unique market area businesses were identified. Of the 51,186 businesses identified from business association membership lists, 26,249 were sent a business survey by postal mail, 15,706 were sent a business survey by email, and 7,662 were sent a business survey by facsimile. Businesses who did not respond to the business survey were administered the willingness survey by telephone to determine their willingness to contract with the State. In total 1,833 businesses completed the business and willingness surveys. Of the 1,833 businesses that completed the surveys through



either method, 1,202 were deemed willing and able to provide goods and services to the State and added to the availability database.

#### 4. Additional Availability Sources

Additional sources of business availability included attendees at the Disparity Study community meetings and participation in an anecdotal interview. From the Disparity Study community meeting attendee list, 937 businesses were identified. From the anecdotal interview process, 396 businesses were identified. The 1,336 businesses identified from these sources were surveyed for their capacity to provide the goods and services solicited by the State. Of the 900 businesses identified from the community meetings and anecdotal interviews, 76 were deemed willing and able to provide goods and services to the State and added to the availability database.

##### B. Prime Contractor Sources

Table 6.1 lists the sources from which the list of willing businesses was compiled.

**Table 6. 1: Prime Contractor Availability Data Sources**

Source	Type of Information
<b>State Records</b>	
New York State Contract System	MWBE and Non-MWBE
New York State Department of Transportation Office of Civil Rights	MWBE and Non-MWBE
New York State MWBE Directory	MWBE
New York State SBE Professional Architecture & Engineering Firms	MWBE and Non-MWBE
New York State's Empire State Development Division of Minority and Women's Business Development	MWBE
State of New York Central Accounting System	MWBE and Non-MWBE
State of New York Statewide Financial System	MWBE and Non-MWBE
<b>Government Certification Directories</b>	
Battery Park City Authority	MWBE and Non-MWBE
City of Syracuse Minority and Women-owned Business Enterprise (MWBE) Participation Program	MWBE
County of Erie Division of Equal Employment Opportunity-MBE	MWBE
County of Erie Division of Equal Employment Opportunity-WBE	MWBE
Dormitory Authority State of New York Certification	MWBE and Non-MWBE
New York City Department of Small Business Services	MWBE and Non-MWBE
Suffolk County Office of Minority Affairs	MWBE
The Nassau County Office of Minority Affairs, Minority and Women-owned Business Enterprise	MWBE
The Port Authority of New York and New Jersey Minority, Women-owned, Small and Disadvantaged Business Enterprises	MWBE and Non-MWBE



Source	Type of Information
The U.S. Small Business Administration 8(a) Certified or 8(a) Joint Venture	MWBE and Non-MWBE
The U.S. Small Business Administration HUBZone Certification	MWBE and Non-MWBE
The U.S. Small Business Administration, Small Disadvantaged Business	MWBE and Non-MWBE
The U.S Small Business Administration, Veteran Owned Business	MWBE and Non-MWBE
The U.S Small Business Administration, Women-owned Small Business	MWBE
Veteran Owned Business Directory	MWBE and Non-MWBE
Business Association Membership Lists	
Adirondack Regional Chamber of Commerce	MWBE and Non-MWBE
Adirondacks Speculator Region Chamber of Commerce	MWBE and Non-MWBE
African American Chamber of Commerce of Westchester and Rockland Counties	MWBE
Albany Chapter of National Electrical Contractors Association	MWBE and Non-MWBE
Albany-Colonie Regional Chamber of Commerce	MWBE and Non-MWBE
Alden Chamber of Commerce	MWBE and Non-MWBE
American Council of Engineering Companies of New York	MWBE and Non-MWBE
American Institute of Architects New York State	MWBE and Non-MWBE
Amherst Chamber of Commerce	MWBE and Non-MWBE
Associated General Contractors of New York State	MWBE and Non-MWBE
Association for Bridge Construction and Design Western New York Chapter	MWBE and Non-MWBE
Association of Contracting Plumbers of the City of New York	MWBE and Non-MWBE
Association of Electrical Contractors	MWBE and Non-MWBE
Association of Master Painters & Decorator of New York	MWBE and Non-MWBE
Association of Minority Enterprises of New York	MWBE
Association of Wall-Ceiling and Carpentry Industries of New York	MWBE and Non-MWBE
Baldwin Chamber of Commerce	MWBE and Non-MWBE
Bethlehem Chamber of Commerce	MWBE and Non-MWBE
Boilermakers Association of Greater New York	MWBE and Non-MWBE
Boonville Area Chamber of Commerce	MWBE and Non-MWBE
Brockport Chamber of Commerce	MWBE and Non-MWBE
Bronx Chamber of Commerce	MWBE and Non-MWBE
Buffalo Niagara Builders Association	MWBE and Non-MWBE
Buffalo Niagara Partnership	MWBE and Non-MWBE
Builders and Remodelers Association of Northern New York	MWBE and Non-MWBE
Building Contractors Association	MWBE and Non-MWBE
Building Performance Contractors Association	MWBE and Non-MWBE
Building Restoration Contractors Association	MWBE and Non-MWBE



Source	Type of Information
Building Trades Employers' Association	MWBE and Non-MWBE
Business Council of Westchester	MWBE and Non-MWBE
Canandaigua Chamber of Commerce	MWBE and Non-MWBE
Capital Region Chamber	MWBE and Non-MWBE
Carthage Chamber of Commerce	MWBE and Non-MWBE
Cayuga County Chamber of Commerce	MWBE and Non-MWBE
Ceilings and Interior Systems Construction Association	MWBE and Non-MWBE
Center State Chamber of Commerce	MWBE and Non-MWBE
Central Catskills Chamber of Commerce	MWBE and Non-MWBE
Chamber of Schenectady County	MWBE and Non-MWBE
Chautauqua County Chamber of Commerce	MWBE and Non-MWBE
Cheektowaga Chamber of Commerce	MWBE and Non-MWBE
Chenango County Chamber of Commerce	MWBE and Non-MWBE
City Island Chamber of Commerce	MWBE and Non-MWBE
Clarence Chamber of Commerce	MWBE and Non-MWBE
Clayton Chamber of Commerce	MWBE and Non-MWBE
Colchester Chamber of Commerce	MWBE and Non-MWBE
Colonie Chamber of Commerce	MWBE and Non-MWBE
Columbia County Chamber of Commerce	MWBE and Non-MWBE
Contractors' Association of Greater New York	MWBE and Non-MWBE
Corning Area Chamber of Commerce	MWBE and Non-MWBE
Cortland County Chamber of Commerce	MWBE and Non-MWBE
Coxsackie Regional Chamber of Commerce	MWBE and Non-MWBE
Delaware County Chamber of Commerce	MWBE and Non-MWBE
Dutchess County Regional Chamber of Commerce	MWBE and Non-MWBE
Eastern Contractors Association	MWBE and Non-MWBE
Gates-Chili Chamber of Commerce	MWBE and Non-MWBE
Genesee County Chamber of Commerce	MWBE and Non-MWBE
Glen Cove Chamber of Commerce	MWBE and Non-MWBE
Grand Island Chamber of Commerce	MWBE and Non-MWBE
Greater Gouverneur Area Chamber of Commerce	MWBE and Non-MWBE
Greater Greenwich Chamber of Commerce	MWBE and Non-MWBE
Greater Liverpool Chamber of Commerce	MWBE and Non-MWBE
Greater New Hyde Park Chamber of Commerce	MWBE and Non-MWBE
Greater New York Chamber of Commerce	MWBE and Non-MWBE
Greater New York Chapter of the Air Conditioning Contractors of America	MWBE and Non-MWBE



Source	Type of Information
Greater New York Welding Chapter	MWBE and Non-MWBE
Greater North Syracuse Chamber of Commerce	MWBE and Non-MWBE
Greater Olean Area Chamber of Commerce	MWBE and Non-MWBE
Greater Ossining Chamber of Commerce	MWBE and Non-MWBE
Greater Oswego-Fulton Chamber of Commerce	MWBE and Non-MWBE
Greater Sayville Chamber of Commerce	MWBE and Non-MWBE
Greater Sleepy Hollow Tarrytown Chamber of Commerce	MWBE and Non-MWBE
Greater South Buffalo Chamber of Commerce	MWBE and Non-MWBE
Greater Stamford Area Chamber of Commerce	MWBE and Non-MWBE
Greater Utica Chamber of Commerce	MWBE and Non-MWBE
Greater Watertown North Country Chamber of Commerce	MWBE and Non-MWBE
Greece Chamber of Commerce	MWBE and Non-MWBE
Greene County Chamber of Commerce	MWBE and Non-MWBE
Guilderland Chamber of Commerce	MWBE and Non-MWBE
Hamburg Chamber of Commerce	MWBE and Non-MWBE
Hampton Bays Chamber of Commerce	MWBE and Non-MWBE
Harlem Business Alliance	MWBE and Non-MWBE
Herkimer County Chamber of Commerce	MWBE and Non-MWBE
Home Builders and Remodelers Association of Mohawk Valley	MWBE and Non-MWBE
Hornell Area Chamber of Commerce	MWBE and Non-MWBE
Hudson Valley Gateway Chamber of Commerce	MWBE and Non-MWBE
Hudson Valley Mechanical Contractors Association	MWBE and Non-MWBE
Huntington Township Chamber of Commerce	MWBE and Non-MWBE
Insulation Contractors Association of New York City	MWBE and Non-MWBE
Interior Design Association of Western New York	MWBE and Non-MWBE
Irrigation Association of New York	MWBE and Non-MWBE
John F. Kennedy International Airport Chamber of Commerce	MWBE and Non-MWBE
Ken-Ton Chamber of Commerce	MWBE and Non-MWBE
Kuyahora Valley Chamber of Commerce	MWBE and Non-MWBE
Lake George Regional Chamber of Commerce	MWBE and Non-MWBE
Lancaster Area Chamber of Commerce	MWBE and Non-MWBE
Livingston County Area Chamber of Commerce	MWBE and Non-MWBE
Long Island and New York Mechanical Contractors Association	MWBE and Non-MWBE
Marcy Chamber of Commerce	MWBE and Non-MWBE
Massapequa Chamber of Commerce	MWBE and Non-MWBE
Mechanical Contractors Association of New York	MWBE and Non-MWBE



Source	Type of Information
Mineola Chamber of Commerce	MWBE and Non-MWBE
Mount Kisco Chamber of Commerce	MWBE and Non-MWBE
National Electrical Contractors Association	MWBE and Non-MWBE
National Electrical Contractors Association Albany Chapter	MWBE and Non-MWBE
National Electrical Contractors Association New York City Chapter	MWBE and Non-MWBE
National Electrical Contractors Association Northeastern Line Constructors Chapter	MWBE and Non-MWBE
National Electrical Contractors Association Rochester New York Chapter	MWBE and Non-MWBE
National Electrical Contractors Association Southern Tier Chapter	MWBE and Non-MWBE
National Electrical Contractors Association Western New York State Chapter	MWBE and Non-MWBE
National Electrical Contractors Association, Finger Lakes NY Chapter	MWBE and Non-MWBE
New American Chamber of Commerce	MWBE and Non-MWBE
New Paltz Regional Chamber of Commerce	MWBE and Non-MWBE
New York Fire Sprinkler Contractors Association	MWBE and Non-MWBE
New York State Concrete Masonry Association	MWBE and Non-MWBE
New York State Electronic Security Association	MWBE and Non-MWBE
New York State Society of Professional Engineers	MWBE and Non-MWBE
New York Women's Chamber of Commerce	MWBE
Niagara Falls New York Chamber of Commerce	MWBE and Non-MWBE
North Country Chamber of Commerce	MWBE and Non-MWBE
North East Roofing Contractors Association	MWBE and Non-MWBE
Northeastern Subcontractors Association	MWBE and Non-MWBE
Northport Chamber of Commerce	MWBE and Non-MWBE
Nyack Chamber of Commerce	MWBE and Non-MWBE
Orange County Chamber of Commerce	MWBE and Non-MWBE
Orchard Park Chamber of Commerce	MWBE and Non-MWBE
Orleans County Chamber of Commerce	MWBE and Non-MWBE
Penfield Business Association	MWBE and Non-MWBE
Plant Western New York	MWBE and Non-MWBE
Port Washington Chamber of Commerce	MWBE and Non-MWBE
Queens Chamber of Commerce	MWBE and Non-MWBE
Red Hook Area Chamber of Commerce	MWBE and Non-MWBE
Rochester Business Alliance	MWBE and Non-MWBE
Rockland Business Association	MWBE and Non-MWBE
Rome Area Chamber of Commerce	MWBE and Non-MWBE
Roofing and Waterproofing Contractors Association	MWBE and Non-MWBE



Source	Type of Information
Sag Harbor Chamber of Commerce	MWBE and Non-MWBE
Saratoga County Chamber of Commerce	MWBE and Non-MWBE
Scarsdale Chamber of Commerce	MWBE and Non-MWBE
Schoharie County Chamber of Commerce	MWBE and Non-MWBE
Seaford Chamber of Commerce	MWBE and Non-MWBE
Seneca County Chamber of Commerce	MWBE and Non-MWBE
Service Fitters Industry Promotional Fund of New York	MWBE and Non-MWBE
Sharon Springs Chamber of Commerce	MWBE and Non-MWBE
Shelter Island Chamber of Commerce	MWBE and Non-MWBE
Skaneateles Area Chamber of Commerce	MWBE and Non-MWBE
Southern Tier Builders Association	MWBE and Non-MWBE
Southern Ulster County Chamber of Commerce	MWBE and Non-MWBE
St. Lawrence County Chamber of Commerce	MWBE and Non-MWBE
Staten Island Chamber of Commerce	MWBE and Non-MWBE
Syosset Woodbury Chamber of Commerce	MWBE and Non-MWBE
The Greater Ogdensburg Chamber of Commerce	MWBE and Non-MWBE
The Women Builders Council Membership List	MWBE
Tioga County Chamber of Commerce	MWBE and Non-MWBE
Tompkins County Chamber of Commerce	MWBE and Non-MWBE
Tompkins-Cortland Builders and Remodelers Association	MWBE and Non-MWBE
Town of Hunter Chamber of Commerce	MWBE and Non-MWBE
Unadilla Chamber of Commerce	MWBE and Non-MWBE
Victor Chamber of Commerce	MWBE and Non-MWBE
Walton Chamber of Commerce	MWBE and Non-MWBE
Warwick Valley Chamber of Commerce	MWBE and Non-MWBE
Watkins Glen Chamber of Commerce	MWBE and Non-MWBE
Webster Chamber of Commerce	MWBE and Non-MWBE
Wellsville Area Chamber of Commerce	MWBE and Non-MWBE
West Seneca Chamber of Commerce	MWBE and Non-MWBE
Western New York Association of Plumbing and Mechanical Contractors	MWBE and Non-MWBE
Women's Enterprise Development Center	MWBE
Woodbury Chamber of Commerce	MWBE and Non-MWBE
Yonkers Chamber of Commerce	MWBE and Non-MWBE
Yorktown Chamber of Commerce	MWBE and Non-MWBE



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

All businesses included in the availability analysis were determined to be willing to contract with the State. “Willingness” is defined in *Croscon* and its progeny as a business’ interest in contracting with the government. To be classified as willing, each business either bid on a government contract, secured government certification, or affirmed their interest in contracting with the State through the willingness or business survey.

Any business identified as “willing” from more than one source was counted only once in an industry. A business that was willing to provide goods or services in more than one industry was listed uniquely in each relevant industry’s availability list. Businesses identified from the sources listed in Table 6.1 demonstrated their willingness to perform on public contracts.

### **D. Assignment of Industry Codes**

North American Industry Classification System (NAICS) codes were assigned to the available businesses for which the relevant information was available. Several of the sources from which the available businesses were culled provided the businesses’ NAICS code(s). The source with the most comprehensive assignment of NAICS codes was the certification directory. In an effort to produce the most complete assignment of NAICS codes to the available businesses, three additional methods were used to assign NAICS codes to the businesses that were determined to be willing to contract with the State. The Dun & Bradstreet business information database was queried to secure NAICS codes for the available businesses that had a D&B D-U-N-S® Number. The business survey queried prime contractors for their NAICS code(s). Mason Tillman distributed the business survey to the 18,223 willing businesses in the availability dataset requesting the NAICS code(s) reflecting the company’s primary line of work. In the instances in which a NAICS code was not available from the business or through a third party, a keyword query was run. Keywords were cross-referenced against the business name, business description, and contract description to infer the line of work. The distribution of the available businesses by NAICS codes is presented in the Appendix. The percent of available businesses in each NAICS code is presented in the availability analysis tables below.

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

Table 6.2 through Table 6.5 present the distribution of willing prime contractors by source. The highest ranked source was the prime contractors utilized by the State. Each ranked business is counted only once. For example, a utilized prime contractor counted in the prime contractor utilization source was not counted a second time as a bidder, certified business, or company identified from a business association list.

A distribution of available businesses by source was also calculated for each industry. As noted in Table 6.3, 96.58% of the construction businesses identified were derived from the State’s records, other government agencies’ records, and government certification lists. Companies identified





through the business association membership lists, community meeting attendee lists, and anecdotal interviews represent 3.42% of the willing businesses.

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

Sources	MWBE Percentage	Non-MWBE Percentage	Source Percentage
Prime Contractor Utilization	20.61%	69.52%	41.80%
Certification Lists	77.73%	24.75%	54.78%
<b>Subtotal</b>	<b>98.34%</b>	<b>94.27%</b>	<b>96.58%</b>
Community Meeting Attendees	0.29%	0.31%	0.29%
Willingness Survey	0.54%	4.48%	2.25%
Business Survey	0.80%	0.95%	0.87%
Anecdotal Interview	0.03%	0.00%	0.01%
<b>Subtotal</b>	<b>1.66%</b>	<b>5.73%</b>	<b>3.42%</b>
<b>Grand Total*</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

\*Due to rounding, the percentages may not total 100%.

Table 6.3 lists the data sources for the available construction-related services prime contractors. As noted, 96.31% of the construction-related services businesses identified were derived from the State’s records, government agencies’ records, and government certification lists. Companies identified through the business association membership lists and community meeting attendee lists represent 3.69% of the willing businesses.



**Table 6.3: Distribution of Prime Contractor Availability Data Sources, Construction-Related Services**

Sources	MWBE Percentage	Non-MWBE Percentage	Source Percentage
Prime Contractor Utilization	13.58%	58.91%	30.12%
Certification Lists	85.34%	32.86%	66.19%
<b>Subtotal</b>	<b>98.92%</b>	<b>91.76%</b>	<b>96.31%</b>
Community Meeting Attendees	0.21%	0.45%	0.29%
Willingness Survey	0.62%	5.82%	2.52%
Business Survey	0.26%	1.97%	0.88%
<b>Subtotal</b>	<b>1.08%</b>	<b>8.24%</b>	<b>3.69%</b>
<b>Grand Total*</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

\*Due to rounding, the percentages may not total 100%.

Table 6.4 lists the data sources for the available non-construction related services prime contractors. As noted, 94.68% of the non-construction related services businesses identified were derived from the State’s records, other government agencies’ records, and government certification lists. Companies identified through the business association membership lists and community meeting attendee lists represent 5.32% of the willing businesses.

**Table 6.4: Distribution of Prime Contractor Availability Data Sources, Non-Construction Related Services**

Sources	MWBE Percentage	Non-MWBE Percentage	Source Percentage
Prime Contractor Utilization	11.91%	55.23%	27.12%
Certification Lists	84.96%	35.40%	67.56%
<b>Subtotal</b>	<b>96.87%</b>	<b>90.63%</b>	<b>94.68%</b>
Community Meeting Attendees	0.28%	0.57%	0.38%
Willingness Survey	2.01%	7.75%	4.03%
Business Survey	0.83%	1.05%	0.91%
<b>Subtotal</b>	<b>3.13%</b>	<b>9.37%</b>	<b>5.32%</b>
<b>Grand Total*</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

\*Due to rounding, the percentages may not total 100%.



Table 6.5 lists the data sources for the available commodities and other services prime contractors. As noted, 94.28% of the commodities and other services businesses identified were derived from the State’s records, other government agencies’ records, and government certification lists. Companies identified through the business association membership lists, community meeting attendee lists, and anecdotal interviews represent 5.72% of the willing businesses.

**Table 6.5: Distribution of Prime Contractor Availability Data Sources, Commodities and Other Services**

Sources	MWBE Percentage	Non-MWBE Percentage	Source Percentage
Prime Contractor Utilization	20.00%	70.45%	46.49%
Certification Lists	77.17%	21.22%	47.79%
<b>Subtotal</b>	<b>97.17%</b>	<b>91.67%</b>	<b>94.28%</b>
Community Meeting Attendees	0.31%	0.32%	0.32%
Willingness Survey	1.56%	6.46%	4.13%
Business Survey	0.93%	1.55%	1.26%
Anecdotal Interview	0.02%	0.00%	0.01%
<b>Subtotal</b>	<b>2.83%</b>	<b>8.33%</b>	<b>5.72%</b>
<b>Grand Total*</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

\*Due to rounding, the percentages may not total 100%.

### III. Capacity

The second component of the availability requirement set forth in *Croson* is to assesses the capacity or ability of a business to perform the contracts awarded by the jurisdiction.<sup>287</sup> Capacity requirements are not delineated in *Croson*, but capacity has been considered in subsequent cases. Specifically, *Rothe Development Corporation v. United States Department of Defense (Rothe)* addressed the relative capacity of businesses as enumerated in an availability analysis.<sup>288</sup> Relative capacity according to *Rothe* is intended to measure the ability of a business to bid and perform multiple contracts. 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. However, they have that found these conventional indices are themselves impacted by race and gender-based discrimination.<sup>289</sup>

<sup>287</sup> *Croson*, 488 U.S. 469.

<sup>288</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).

<sup>289</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).



In 1996, the Federal Reserve Bank of Boston conducted a study to identify relevant economic data that might predict the approval of a loan application.<sup>290</sup> The data showed that African Americans that are similarly situated to Caucasian males were 18% more likely to have their loan applications rejected. When the study controlled for borrower credit-worthiness variables, such as debt amount, debt-to-income ratio, credit history, and loan characteristics, African Americans were still 8% less likely to be granted a loan.<sup>291</sup> Access to capital, a critical component of an entrepreneur's ability to start, sustain, and grow a business enterprise, is clearly subject to the discriminatory market forces. As indicated in this analysis, minority and Caucasian female-owned businesses in the state of New York, despite the inherent discrimination in access to credit, have demonstrated the capacity to perform contracts awarded by the State at a dollar level comparable to similarly situated Caucasian male-owned businesses.

Given the discrimination that adversely affects the conventional economic indicators of capacity, this analysis has assessed the factors least affected by discrimination. Four analyses are presented to address the availability component of *Croson*. Two analyses include a review of the distribution of contracts by size to determine the capacity needed to perform the State's contracts; and the identification of the largest contracts awarded to MWBEs. A third is a quartile analysis which determined the range of the contracts awarded by the State during the study period. The fourth, an assessment of capacity-related economic factors, illustrates the relative capacity of similarly situated MWBEs to the capacity of Caucasian male-owned firms.

### **A. Contract Size Distribution**

The State's construction, construction-related services, non-construction related services, and commodities and other services contracts were analyzed to determine the size of awarded contracts. The purpose of this analysis is to gauge the capacity required to perform the State's contracts. Contract values were grouped into seven dollar ranges<sup>292</sup> and are presented by non-minority males Caucasian females, minority females, and minority males.

Table 6.6 and its accompanying graph show contracts awarded within the seven dollar ranges. Over 89% of the awarded contracts were less than \$1,000,000. In fact, 34.82% of contracts were less than \$50,000, 55.14% were less than \$100,000, 74.07% were less than \$250,000, 83.12% were less than \$500,000, 89.20% were less than \$1,000,000, and 95.46% were less than \$3,000,000. Only 4.54% of the awarded prime contracts were valued \$3,000,000 and greater. These large multi-million dollar contracts were excluded from the disparity analysis to avoid skewing the findings.



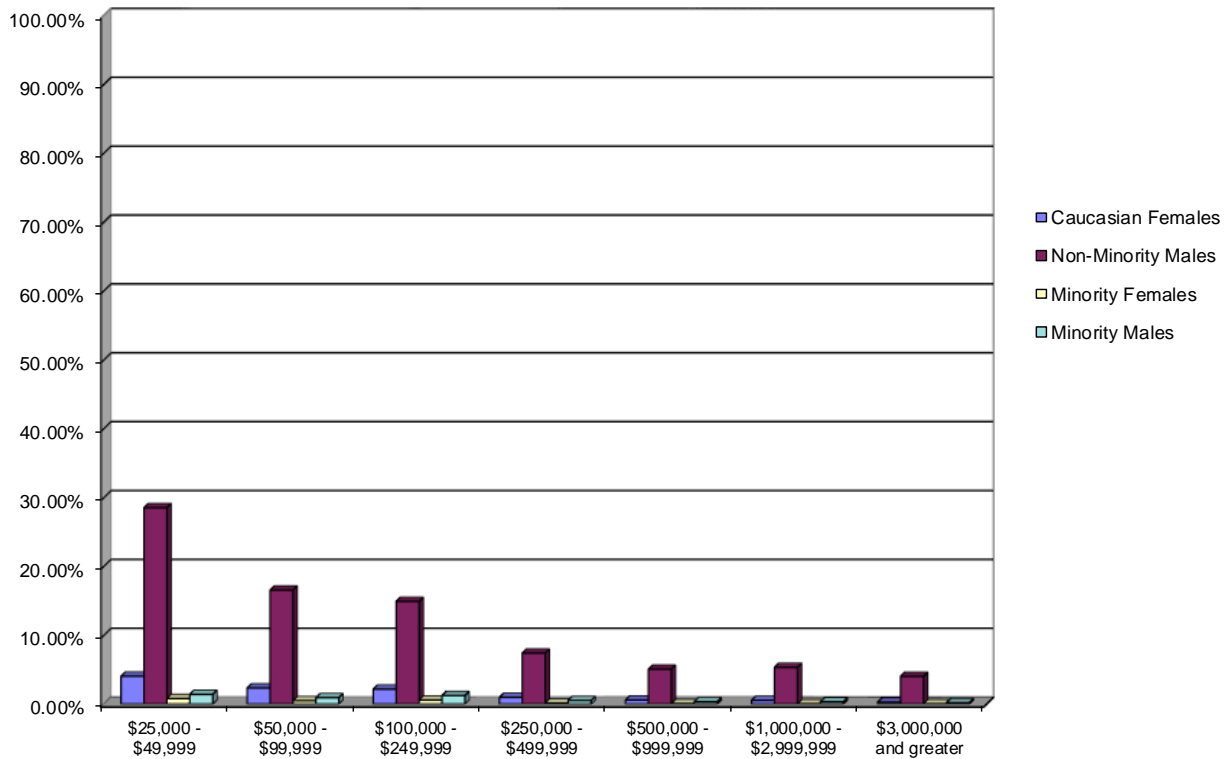
<sup>290</sup> Munnell, A.G., M.B Tootell, L.E. Browne and J. McEneaney (1996). "Mortgage lending in Boston: interpreting HMDA data", American Economic Review, March, 86(1)

<sup>291</sup> Blanchflower, David G., Levine, Phillip B., and Zimmerman, David J. "Discrimination in the Small Business Credit Market." p.3, August 2002.

<sup>292</sup> The seven dollar ranges are \$25,000 - \$49,999; \$50,000 - \$99,999; \$50,000 to \$99,999; \$100,000 - \$249,999; \$250,000 - \$499,999; \$500,000 - \$999,999; \$1,000,000 - \$2,999,999; and \$3,000,000 and greater.

**Table 6.6: All Industry Contracts by Size,  
April 1, 2010, to March 31, 2015**

Size	Non-Minority				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$25,000 - \$49,999	2,274	4.06%	15,991	28.52%	459	0.82%	796	1.42%	19,520	34.82%
\$50,000 - \$99,999	1,314	2.34%	9,284	16.56%	271	0.48%	525	0.94%	11,394	20.32%
\$100,000 - \$249,999	1,216	2.17%	8,366	14.92%	332	0.59%	700	1.25%	10,614	18.93%
\$250,000 - \$499,999	548	0.98%	4,154	7.41%	78	0.14%	293	0.52%	5,073	9.05%
\$500,000 - \$999,999	333	0.59%	2,845	5.07%	40	0.07%	193	0.34%	3,411	6.08%
\$1,000,000 - \$2,999,999	300	0.54%	2,996	5.34%	26	0.05%	183	0.33%	3,505	6.25%
\$3,000,000 and greater	155	0.28%	2,257	4.03%	22	0.04%	114	0.20%	2,548	4.54%
<b>Total</b>	<b>6,140</b>	<b>10.95%</b>	<b>45,893</b>	<b>81.86%</b>	<b>1,228</b>	<b>2.19%</b>	<b>2,804</b>	<b>5.00%</b>	<b>56,065</b>	<b>100.00%</b>



Clearly, contract size is a determinant of the capacity that a willing business needs to be competitive at the prime contract level. As shown in Table 6.6, most of the State’s contracts were small. In fact, the median size of formal contracts awarded by the State was \$174,736. This finding reveals that the capacity needed to perform the vast majority of the State’s contracts is not significant.

**B. Largest MWBE Contract Awarded by Industry**

This analysis classified the largest contracts that the State awarded by ethnicity and gender within each industry to determine MWBEs’ demonstrated capacity to perform large formal contracts. MWBEs were awarded large contracts in each industry. Table 6.7 shows that MWBEs demonstrated the capacity to successfully compete for contracts as large as \$60,000,000 in construction, \$20,975,165 in construction-related services, \$50,000,000 in non-construction related services, and \$83,052,900 in commodities and other services.

**Table 6.7: Largest MWBE Contracts Awarded by the State**

<b>Ethnicity and Gender</b>	<b>Construction</b>	<b>Construction-Related Services</b>	<b>Non-Construction-Related Services</b>	<b>Commodities and Other Services</b>
Black Female	\$ 22,840,181.00	\$ 330,000.00	\$ 2,000,000.00	\$ 47,168,332.00
Black Male	\$ 14,848,765.00	\$ 5,430,000.00	\$ 2,396,100.00	\$ 20,598,300.00
Asian-Pacific Female	\$ 840,780.00	\$ 678,000.00	\$ 871,326.00	\$ 83,052,900.00
Asian-Pacific Male	\$ 3,332,350.00	\$ 17,850,000.00	\$ 1,209,542.00	\$ 25,751,000.00
Asian-Indian Subcontinent Female	\$ 14,940,000.00	\$ 88,400.00	\$ 42,000,000.00	\$ 999,212.00
Asian-Indian Subcontinent Male	\$ 60,000,000.00	\$ 20,975,165.00	\$ 50,000,000.00	\$ 69,000,000.00
Hispanic Female	\$ 6,000,000.00	\$ 4,000,000.00	\$ 963,200.00	\$ 5,720,400.00
Hispanic Male	\$ 13,558,742.00	\$ 8,426,000.00	\$ 18,000,000.00	\$ 6,336,000.00
Native American or Alaskan Native Female	\$ 37,356.00	----	\$ 32,232.00	\$ 400,000.00
Native American or Alaskan Native Male	\$ 6,313,175.00	----	\$ 150,000.00	\$ 405,106.00
Caucasian Female	\$ 37,443,166.00	\$ 10,000,000.00	\$ 45,747,800.00	\$ 55,466,907.00
<b>Largest Dollar Amounts MBEs</b>	<b>\$ 60,000,000.00</b>	<b>\$ 20,975,165.00</b>	<b>\$ 50,000,000.00</b>	<b>\$ 83,052,900.00</b>
<b>Largest Dollar Amounts WBEs</b>	<b>\$ 37,443,166.00</b>	<b>\$ 10,000,000.00</b>	<b>\$ 45,747,800.00</b>	<b>\$ 83,052,900.00</b>

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

**C. Contract Quartile Analysis**

In each of the four industries, the formal, competitively bid contracts analyzed were limited to those beneath the third quartile (Q3), which is also known as the upper quartile. The upper quartile represents the 75<sup>th</sup> percentile of the contracts the State awarded, meaning that 75% of the State’s contracts are beneath this value, and 25% of the State’s contracts are above this value. Applying contract thresholds, separated by quartiles, to limit the contracts subject to analysis is a method to ensure that the contracts analyzed can be performed by the available businesses. As detailed in Table 6.8, 25% of the State’s competitively bid contracts were less than \$85,501, 50% were under \$174,736, and 75% were under \$518,047. These findings illustrate that most of the State’s competitively bid contracts were small, requiring limited capacity to perform the scopes of work.



**Table 6.8: Quartile Analysis by Size and Industry**

Quartile	All Industries Combined	Construction	Construction-Related Services	Non-Construction Related Services	Commodities
(Q1) 25%	\$85,501	\$154,100	\$192,771	\$100,000	\$73,202
(Q2) Median	\$174,736	\$366,536	\$600,000	\$195,576	\$120,684
(Q3) 75%	\$518,047	\$1,376,000	\$2,000,000	\$500,000	\$272,632
Maximum	\$1,427,857,242	\$554,770,000	\$250,000,000	\$683,880,180	\$1,427,857,242

**D. Business Capacity Assessment**

To assess the relative capacity of the MWBEs and Caucasian male-owned businesses enumerated in the availability analysis, an eSurvey was administered to available businesses. The eSurvey, which was administered to the 18,615 available businesses, queried for independent business indicators. The analysis revealed that even when MWBEs bid on contracts at the same frequency as Caucasian males, MWBE business revenue and contract awards were lower.

As noted in the tables below, none of the economic indicators that were assessed accounted for the disproportionate award of contracts to Caucasian males documented in *Chapter 7: Prime Contract Statistical Disparity Analysis*, and *Chapter 8: Subcontract Statistical Disparity Analysis*.

**1. Profile of Respondents**

The business capacity survey was completed by 1,833 unique businesses. Table 6.9 shows that of these businesses, 17.77% were African American-owned, 7.46% were Asian American-owned, 6.32% were Hispanic American-owned, 0.97% were Native American-owned, 4.65% were owned by people of other races, and 62.83% were Caucasian American-owned. Of the respondents, 47.60% were completed by females of all ethnicities, and 52.40% were completed by males of all ethnicities.

**Table 6.9: Ethnicity and Gender of Respondents**

Response	African American	Asian American	Caucasian American	Hispanic American	Native American	Other Races	Total
Female	6.75%	2.00%	33.55%	2.54%	0.38%	2.38%	47.60%
Male	11.02%	5.46%	29.28%	3.78%	0.59%	2.27%	52.40%
Total	17.77%	7.46%	62.83%	6.32%	0.97%	4.65%	100.00%

As shown in Table 6.10, 28.63% of businesses provided construction services; 18.85% of businesses provided construction-related services; 30.47% of businesses provided non-construction related services; and 22.04% of businesses provided commodities and other services.



**Table 6.10: Primary Industry**

Response	Minority Females	Minority Males	Caucasian Females	Caucasian Males	Total
Construction	3.19%	7.02%	8.54%	9.89%	28.63%
Construction-related Services	2.00%	6.16%	6.48%	4.21%	18.85%
Non-Construction Related Services	6.65%	6.92%	10.91%	6.00%	30.47%
Commodities and Other Services	2.22%	3.03%	7.62%	9.18%	22.04%
<b>Total Percent</b>	<b>14.05%</b>	<b>23.12%</b>	<b>33.55%</b>	<b>29.28%</b>	<b>100.00%</b>

## 2. Capacity Assessment Findings

Table 6.11 details the business annual gross revenue, which shows that 14.82% of businesses earned up to \$50,000; 7.27% of businesses earned \$50,001 to \$100,000; 12.73% of businesses earned \$100,001 to \$300,000; 8.06% of businesses earned \$300,001 to \$500,000; 10.70% of businesses earned \$500,001 to \$1,000,000; 18.48% of businesses earned \$1,000,001 to \$3,000,000; 8.00% of businesses earned \$3,000,001 to \$5,000,000; 8.06% of businesses earned \$5,000,001 to \$10,000,000; 11.89% of businesses earned over \$10 million. Also, 23.43% of Caucasian males earned over \$10 million dollars, whereas only 9.09% of minority males, 4.64% of minority females, and 6.60% of Caucasian females earned over \$10 million.

**Table 6.11: Annual Gross Revenue**

Response	Minority Females	Minority Males	Caucasian Females	Caucasian Males	Total
\$50,000 and Under	32.91%	18.67%	12.38%	6.48%	14.82%
\$50,001 to \$100,000	11.39%	8.11%	8.25%	3.62%	7.27%
\$100,001 to \$300,000	14.77%	14.50%	13.70%	9.33%	12.73%
\$300,001 to \$500,000	7.17%	10.32%	8.58%	6.10%	8.06%
\$500,001 to \$1,000,000	9.70%	10.57%	11.72%	10.10%	10.70%
\$1,000,001 to \$3,000,000	12.66%	15.72%	19.47%	22.10%	18.48%
\$3,000,001 to \$5,000,000	3.38%	5.41%	11.06%	8.57%	8.00%
\$5,000,001 to \$10,000,000	3.38%	7.62%	8.25%	10.29%	8.06%
Over \$10,000,000	4.64%	9.09%	6.60%	23.43%	11.89%
<b>Total Percent</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>





As described in the quartile analysis, the contracts subject to the disparity analysis were limited to those beneath the 75<sup>th</sup> percentile, so the results of the disparity analysis would not be skewed by including large contracts. The same standard was applied to the tables detailing independent business indicators. Thus, the following tables only include respondents whose annual gross revenue was less than \$3 million. This value was selected because it most closely mirrors the highest contract value threshold included in the disparity analysis.

As shown in Table 6.12, 57.31% of businesses with annual revenue less than \$3 million had fewer than five employees; 20.52% had six to ten employees; 14.15% had 11 to 20 employees; 4.48% had 21 to 30 employees; 2.44% had 31 to 50 employees; and 1.10% had more than 50 employees. Also, 19.78% of Caucasian male-owned businesses had more than 50 employees, whereas only 11.14% of minority male-owned businesses, 6.23% of minority female-owned businesses, and 7.92% of Caucasian female-owned businesses had more than 50 employees.

**Table 6.12: Number of Employees**

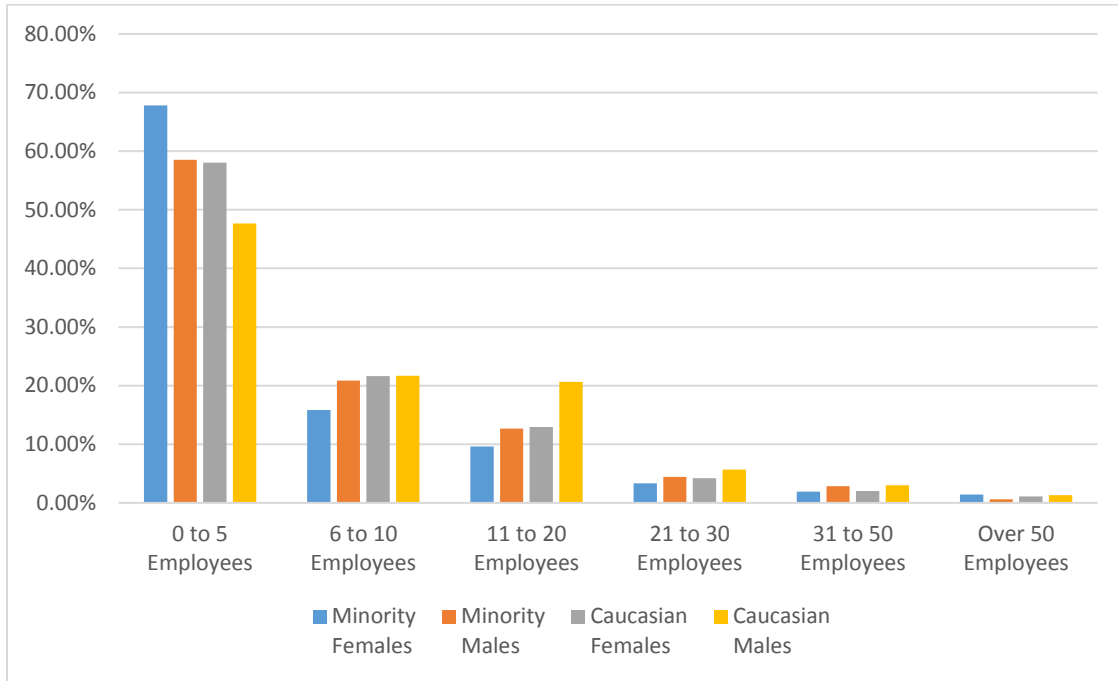
Response	Minority Females	Minority Males	Caucasian Females	Caucasian Males	Total
<b>0 to 5 Employees</b>	67.79%	58.54%	58.04%	47.67%	57.31%
<b>6 to 10 Employees</b>	15.87%	20.89%	21.65%	21.67%	20.52%
<b>11 to 20 Employees</b>	9.62%	12.66%	12.95%	20.67%	14.15%
<b>21 to 30 Employees</b>	3.37%	4.43%	4.24%	5.67%	4.48%
<b>31 to 50 Employees</b>	1.92%	2.85%	2.01%	3.00%	2.44%
<b>Over 50 Employees</b>	1.44%	0.63%	1.12%	1.33%	1.10%
<b>Total Percent</b>	100.00%	100.00%	100.00%	100.00%	100.00%

Chart 6.1 illustrates that most businesses, MWBEs and Caucasian male-owned businesses, are small. As reported in the eSurvey, 77.83% of all businesses employ 10 or fewer persons. This finding is consistent with the United States Census *Survey of Business Owners*, which reports that 82.60% of businesses in the state of New York employ 10 or fewer employees<sup>293</sup>. This finding shows that among similarly situated MWBEs and Caucasian male-owned businesses, the employee size profile is comparable.



<sup>293</sup> United States Census Bureau, 2007 Survey of Business Owners

**Chart 6.1: Number of Employees**



One consideration of capacity as discussed in *Rothe* considered the ability to perform and bid multiple contracts. This factor relates to the human resources and capital resources available to perform multiple contracts concurrently. As shown in Table 6.13, most businesses, MWBEs and Caucasian male-owned businesses, performed multiple concurrent contracts within the previous calendar year. Only 11.43% of businesses with annual revenue less than \$3,000,000 reported performing only a single contract.

**Table 6.13: Number of Contracts**

Response	Minority Females	Minority Males	Caucasian Females	Caucasian Males	Total
<b>1 Contract</b>	15.83%	13.82%	8.65%	9.55%	11.43%
<b>2 to 5 Contracts</b>	36.69%	43.50%	33.65%	17.42%	33.60%
<b>6 to 10 Contracts</b>	18.71%	17.48%	15.06%	10.11%	15.31%
<b>11 to 20 Contracts</b>	7.91%	11.38%	12.82%	10.67%	11.20%
<b>Over 20 Contracts</b>	20.86%	13.82%	29.81%	52.25%	28.46%
<b>Total Percent</b>	100.00%	100.00%	100.00%	100.00%	100.00%

Chart 6.2 illustrates that most MWBEs performed between two and five contracts. This finding, however, is also subject to the impact of marketplace discrimination. MWBEs are likely less



successful at obtaining contracts due to private and public sector business practices. This finding should not be interpreted as the maximum number of contracts MWBEs have the capacity to perform, but rather the number of contracts that MWBEs have performed in the presence of discrimination.

**Chart 6.2: Number of Contracts**

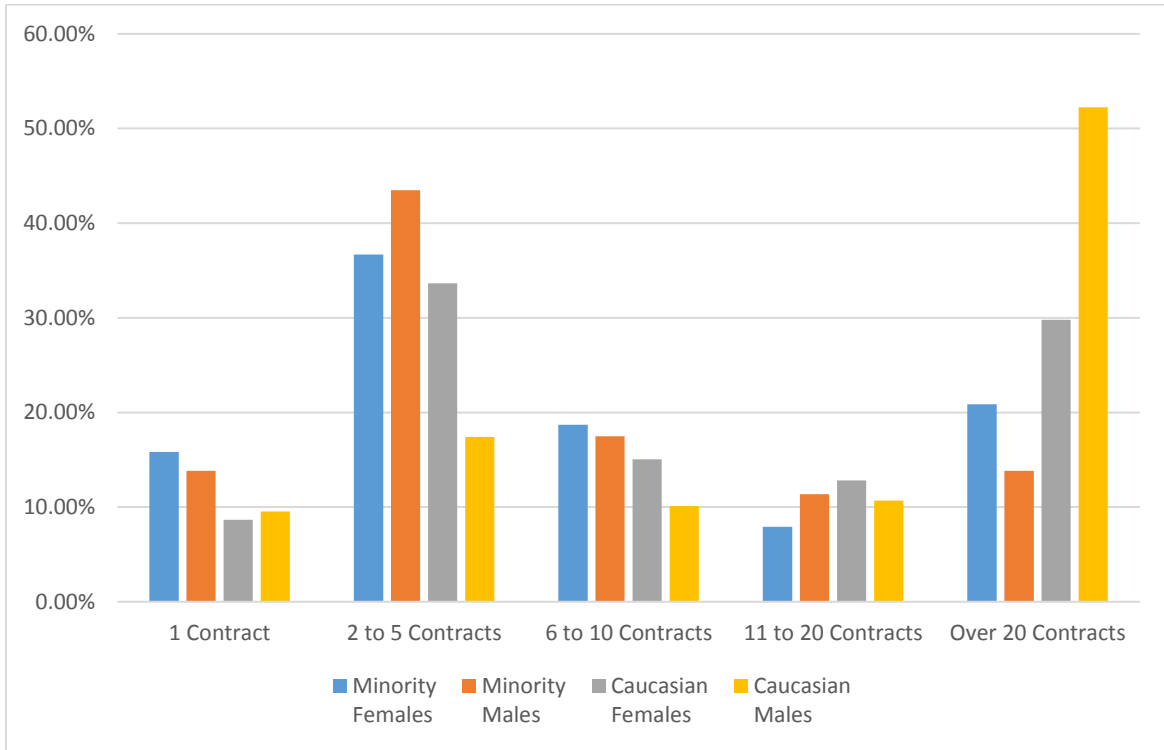


Table 6.14 shows that 70.50% of businesses with annual revenue less than \$3,000,000 bid on the State’s contracts. Within this pool, MWBEs bid on the State’s contracts at a higher frequency than Caucasian males. Even though MWBEs bid more frequently, Caucasian male-owned businesses still received the majority of the State’s contracts. This outcome is expected in the presence of marketplace discrimination.



**Table 6.14: Bidding Frequency**

Response	Minority Females	Minority Males	Caucasian Females	Caucasian Males	Total
Yes	67.01%	77.60%	74.40%	59.04%	70.50%
No	32.99%	22.40%	25.60%	40.96%	29.50%
<b>Total Percent</b>	100.00%	100.00%	100.00%	100.00%	100.00%

Chart 6.3 illustrates that MWBEs bid on the State’s contracts more frequently than Caucasian males.

**Chart 6.3: Bidding Frequency**

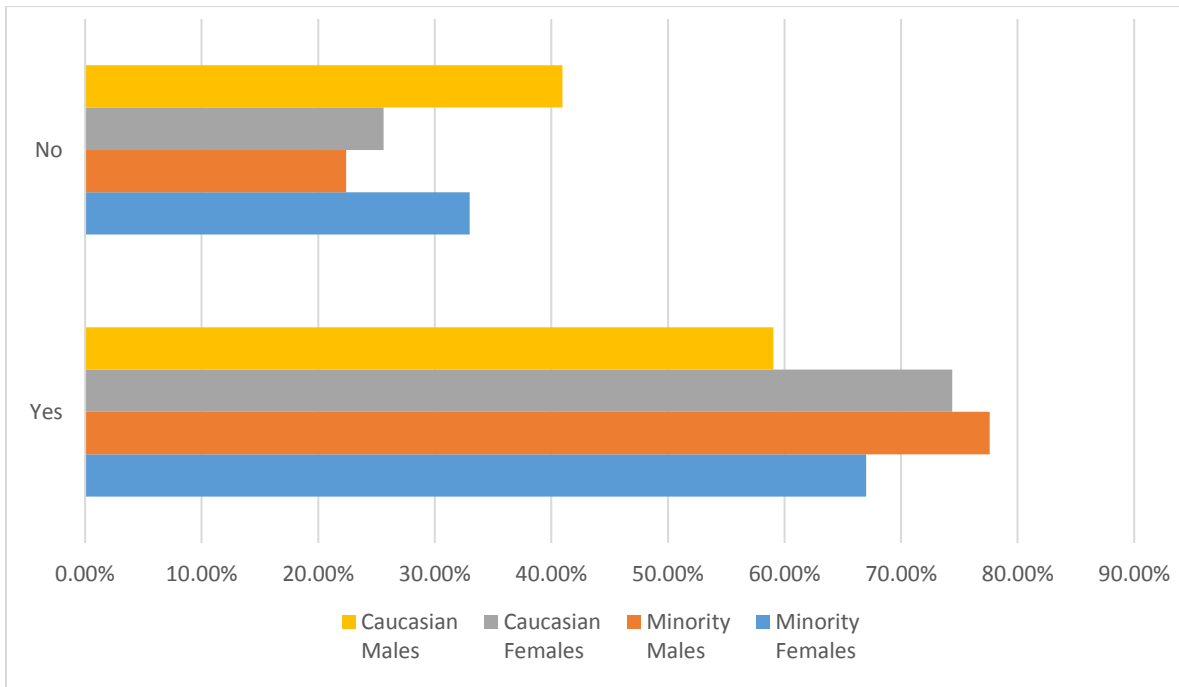


Table 6.15 shows that 24.41% of businesses with annual revenue less than \$3,000,000 have been in operation for 11 to 20 years. This finding illustrates that there are mature MWBEs within the pool of available MWBEs. The upper limits of the mature MWBEs is a finding consistent with the passage of anti-discrimination legislation, beginning with the Civil Rights Act of 1964, which spawned the 1971 Executive Order 11625. This early legislation applied to federally funded contracts and minimal effect on local laws. Local government affirmative action policies were not accelerated until the promulgation of the United States Department of Transportation (USDOT) Disadvantaged Business Enterprise regulations in 1989. These regulations required states, counties, cities, and transportation agencies to implement affirmative action contracting programs.



**Table 6.15: Years in Operation**

Response	Minority Females	Minority Males	Caucasian Females	Caucasian Males	Total
Less than 5 Years	38.28%	27.53%	21.70%	8.05%	22.68%
6 to 10 Years	28.71%	24.68%	19.69%	11.41%	20.47%
11 to 20 Years	21.53%	28.48%	25.06%	21.14%	24.41%
21 to 30 Years	6.22%	10.13%	17.67%	19.80%	14.41%
31 to 50 Years	3.35%	6.96%	10.51%	26.51%	12.20%
Over 50 Years	1.91%	2.22%	5.37%	13.09%	5.83%
<b>Total Percent</b>	100.00%	100.00%	100.00%	100.00%	100.00%

Chart 6.4 illustrates that minority males and females are the fastest growing group of entrepreneurs in the past five years. Minority-owned businesses tend to be younger; however, the availability pool includes mature MWBEs with experience in their respective fields.

**Chart 6.4: Years in Operation**

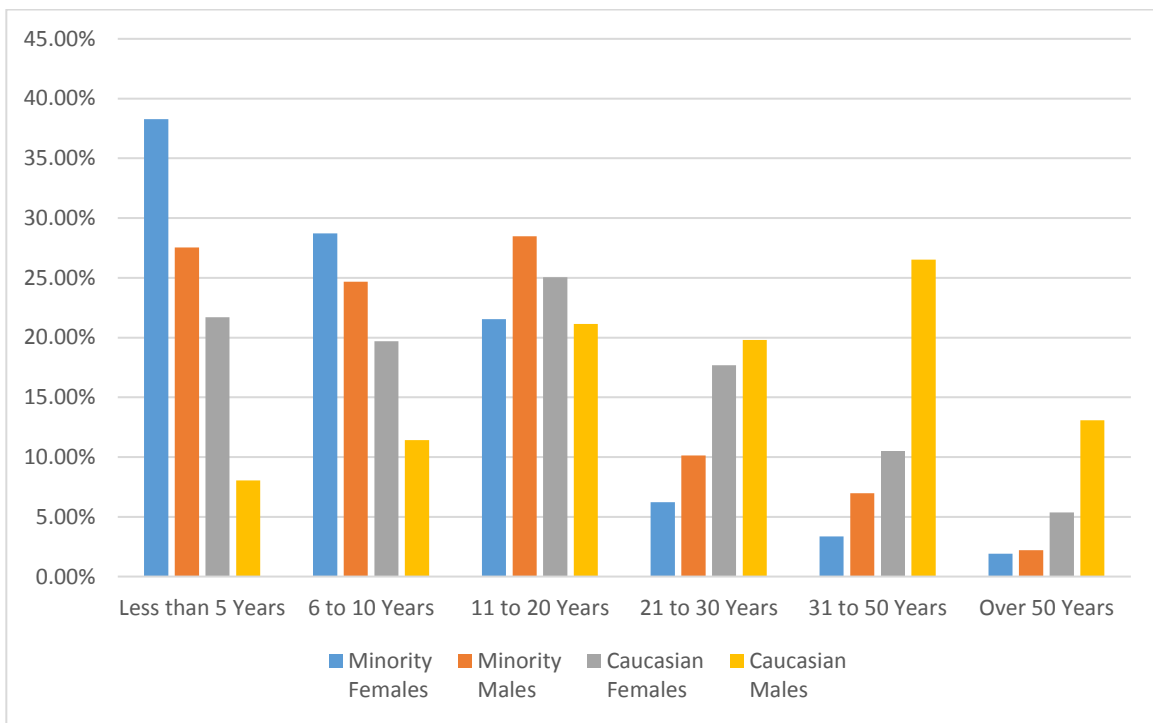


Table 6.16 shows that 30.35% of owners of businesses with annual revenue less than \$3,000,000 have a bachelor’s degree. However, within this pool, Caucasian males have a lower educational attainment than MWBEs. Even though MWBEs obtained associate’s, bachelor’s, graduate, and

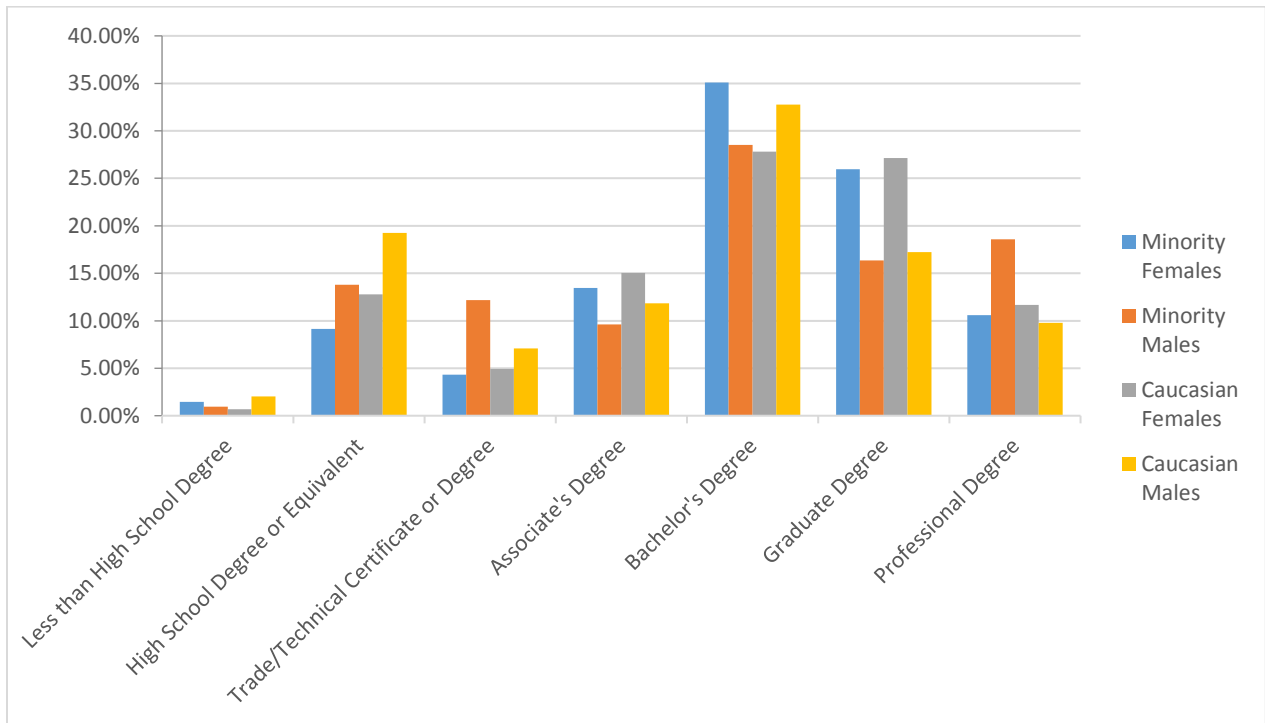
professional degrees at a higher frequency, Caucasian male-owned businesses still received most of the State’s contracts.

**Table 6.16: Educational Attainment**

Response	Minority Females	Minority Males	Caucasian Females	Caucasian Males	Total
Less than High School Degree	1.44%	0.96%	0.67%	2.03%	1.19%
High School Degree or Equivalent	9.13%	13.78%	12.78%	19.26%	13.95%
Trade/Technical Certificate or Degree	4.33%	12.18%	4.93%	7.09%	7.13%
Associate's Degree	13.46%	9.62%	15.02%	11.82%	12.68%
Bachelor's Degree	35.10%	28.53%	27.80%	32.77%	30.35%
Graduate Degree	25.96%	16.35%	27.13%	17.23%	21.95%
Professional Degree	10.58%	18.59%	11.66%	9.80%	12.76%
<b>Total Percent</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Chart 6.5 illustrates that MWBEs obtain higher education at a greater frequency than Caucasian males. Caucasian males were the majority of businesses with only a high school diploma or equivalent.

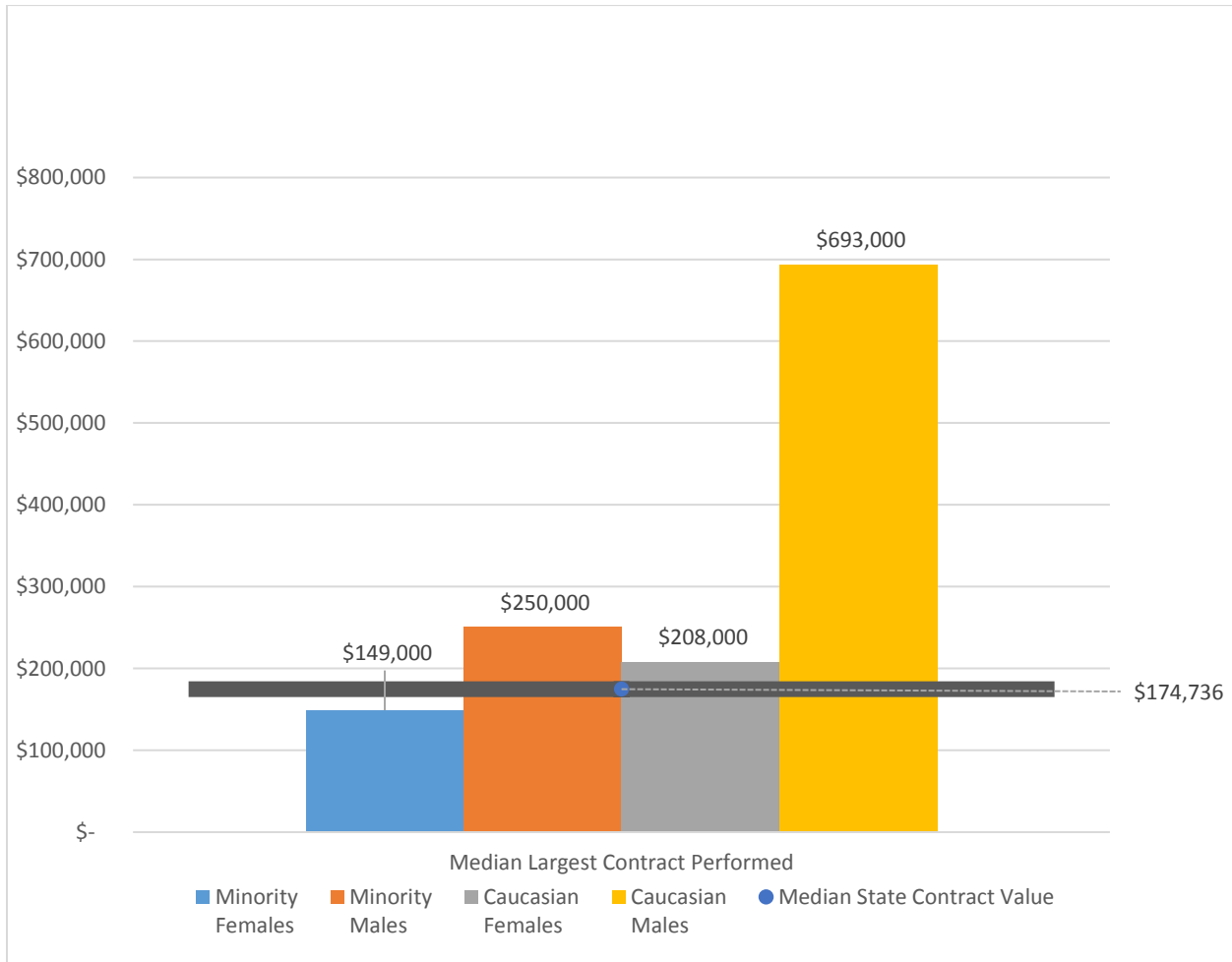
**Chart 6.5: Educational Attainment**



### ***E. Conclusion***

The State’s formal contracts range in value from \$50,000 to \$1,427,857,241; the median State contract value is \$174,736. The median largest contract performed (including public and private contracts) for minority females in the pool is \$149,000, for minority males is \$250,000, for Caucasian females is \$208,000, and for Caucasian males is \$693,000. Chart 6.6 illustrates that MWBEs have documented capacity to perform most of the contracts awarded by the State. Additionally, in the presence of contracting opportunities, firms have the elasticity to expand their capacity through subcontracting, joint ventures, and staff augmentation.

**Chart 6.6: Median Contract Values**



The analysis of prime contract disparity is limited to contracts beneath the 75<sup>th</sup> percentile of all competitive prime contracts awarded by the State to avoid skewing the disparity analysis. Prime contracts above the 75<sup>th</sup> percentile are exceedingly large in scope and complexity. The inclusion of these large contracts in the prime contract disparity analysis would skew the findings, and are not representative of the types of contracts the MWBEs and Caucasian male-owned businesses in the availability pool can perform.

The capacity analysis shows that, among similarly situated MWBEs and Caucasian male-owned businesses with annual revenue less than \$3,000,000, the relative capacity of firms is comparable. Most businesses, including MWBEs and Caucasian males, enumerated in the availability analysis have the following profile:

- Employ five or fewer staff persons
- Performed two to five public and private contracts concurrently
- Operated their business for 11 to 20 years
- Submitted bids to the state of New York
- Majority owner has a bachelor's degree

The findings also revealed that MWBEs submit bids to the state of New York at a greater frequency, are relatively newer businesses, and have obtained higher educational attainment than Caucasian males, even in the presence of marketplace discrimination. Considering the metrics reviewed in this analysis, Caucasian males are not awarded larger contracts more frequently because of any single business economic indicators or combination of measures. The fact that Caucasian males are awarded larger contracts is more likely a function of public and private sector business practices, and not due to MWBEs perceived lack of capacity to perform the State's contracts.

#### ***IV. Prime Contractor Availability Analysis***

The size of the State's contracts demonstrates that the majority of the contracts are small, requiring limited capacity to perform. Furthermore, the awards that the State has made to MWBEs demonstrate that the capacity of the available businesses is considerably greater than that needed to bid on the majority of the contracts awarded in the four industries studied. Nevertheless, as noted in *Chapter 3: Prime Contractor Utilization Analysis*, the decision was made to limit the prime contracts subject to the disparity analysis to contracts valued from \$50,000 to \$1,400,000 for construction, contracts valued from \$50,000 to \$2,000,000 for construction-related services, contracts valued from \$50,000 to \$500,000 for non-construction related services, and contracts valued from \$50,000 to \$275,000 for commodities and other services.

The prime contractor availability findings for the State's market area are as follows:<sup>294</sup>



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<sup>294</sup> The prime contractor availability tables for the State's market area by region are located in *Appendix A*.



## **A. Construction Prime Contractor Availability**

The distribution of available construction prime contractors is summarized in Table 6.17 below.

*Black-owned businesses* account for 13.37% of the construction prime contractors in the State's market area.

*Asian-Pacific-owned businesses* account for 2.95% of the construction prime contractors in the State's market area.

*Asian-Indian Subcontinent-owned businesses* account for 7.84% of the construction prime contractors in the State's market area.

*Hispanic-owned businesses* account for 9.89% of the construction prime contractors in the State's market area.

*Native American or Alaskan Native-owned businesses* account for 0.84% of the construction prime contractors in the State's market area.

*Caucasian female-owned businesses* account for 21.79% of the construction prime contractors in the State's market area.

*Non-minority male-owned businesses* account for 43.32% of the construction prime contractors in the State's market area.



**Table 6.17: Available Construction Prime Contractors,  
April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	13.37%
Asian-Pacific	2.95%
Asian-Indian Subcontinent	7.84%
Hispanic	9.89%
Native American or Alaskan Native	0.84%
Caucasian Females	21.79%
Non-minority Males	43.32%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.66%
Black Males	10.71%
Asian-Pacific Females	0.72%
Asian-Pacific Males	2.23%
Asian-Indian Subcontinent Females	0.93%
Asian-Indian Subcontinent Males	6.92%
Hispanic Females	2.39%
Hispanic Males	7.49%
Native American or Alaskan Native Females	0.26%
Native American or Alaskan Native Males	0.57%
Caucasian Females	21.79%
Non-minority Males	43.32%
<b>TOTAL</b>	<b>100.00%</b>



## **B. Construction-Related Services Prime Contractor Availability**

The distribution of available construction-related services prime contractors is summarized in Table 6.18 below.

*Black-owned businesses* account for 12.02% of the construction-related services prime contractors in the State's market area.

*Asian-Pacific-owned businesses* account for 5.36% of the construction-related services prime contractors in the State's market area.

*Asian-Indian Subcontinent-owned businesses* account for 7.12% of the construction-related services prime contractors in the State's market area.

*Hispanic-owned businesses* account for 9.02% of the construction-related services prime contractors in the State's market area.

*Native American or Alaskan Native-owned businesses* account for 0.52% of the construction-related services prime contractors in the State's market area.

*Caucasian female-owned businesses* account for 29.47% of the construction-related services prime contractors in the State's market area.

*Non-minority male-owned businesses* account for 36.49% of the construction-related services prime contractors in the State's market area.



**Table 6.18: Available Construction-Related Services Prime Contractors,  
April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	12.02%
Asian-Pacific	5.36%
Asian-Indian Subcontinent	7.12%
Hispanic	9.02%
Native American or Alaskan Native	0.52%
Caucasian Females	29.47%
Non-minority Males	36.49%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.84%
Black Males	9.18%
Asian-Pacific Females	1.83%
Asian-Pacific Males	3.53%
Asian-Indian Subcontinent Females	1.21%
Asian-Indian Subcontinent Males	5.91%
Hispanic Females	2.35%
Hispanic Males	6.66%
Native American or Alaskan Native Females	0.26%
Native American or Alaskan Native Males	0.26%
Caucasian Females	29.47%
Non-minority Males	36.49%
<b>TOTAL</b>	<b>100.00%</b>



### **C. Non-Construction Related Services Prime Contractor Availability**

The distribution of available non-construction related services prime contractors is summarized in Table 6.19 below.

**Black-owned businesses** account for 14.00% of the non-construction related services prime contractors in the State's market area.

**Asian-Pacific-owned businesses** account for 4.40% of the non-construction related services prime contractors in the State's market area.

**Asian-Indian Subcontinent-owned businesses** account for 5.01% of the non-construction related services prime contractors in the State's market area.

**Hispanic-owned businesses** account for 7.24% of the non-construction related services prime contractors in the State's market area.

**Native American or Alaskan Native-owned businesses** account for 0.60% of the non-construction related services prime contractors in the State's market area.

**Caucasian female-owned businesses** account for 33.64% of the non-construction related services prime contractors in the State's market area.

**Non-minority male-owned businesses** account for 35.12% of the non-construction related services prime contractors in the State's market area.



**Table 6.19: Available Non-Construction Related Services Prime Contractors,  
April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	14.00%
Asian-Pacific	4.40%
Asian-Indian Subcontinent	5.01%
Hispanic	7.24%
Native American or Alaskan Native	0.60%
Caucasian Females	33.64%
Non-minority Males	35.12%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	5.58%
Black Males	8.42%
Asian-Pacific Females	2.09%
Asian-Pacific Males	2.31%
Asian-Indian Subcontinent Females	1.52%
Asian-Indian Subcontinent Males	3.49%
Hispanic Females	2.37%
Hispanic Males	4.87%
Native American or Alaskan Native Females	0.41%
Native American or Alaskan Native Males	0.18%
Caucasian Females	33.64%
Non-minority Males	35.12%
<b>TOTAL</b>	<b>100.00%</b>



#### **D. Commodities and Other Services Prime Contractor Availability**

The distribution of available commodities and other services prime contractors is summarized in Table 6.20 below.

*Black-owned businesses* account for 10.76% of the commodities and other services prime contractors in the State's market area.

*Asian-Pacific-owned businesses* account for 2.44% of the commodities and other services prime contractors in the State's market area.

*Asian-Indian Subcontinent-owned businesses* account for 3.01% of the commodities and other services prime contractors in the State's market area.

*Hispanic-owned businesses* account for 6.88% of the commodities and other services prime contractors in the State's market area.

*Native American or Alaskan Native-owned businesses* account for 0.57% of the commodities and other services prime contractors in the State's market area.

*Caucasian female-owned businesses* account for 23.83% of the commodities and other services prime contractors in the State's market area.

*Non-minority male-owned businesses* account for 52.50% of the commodities and other services prime contractors in the State's market area.



**Table 6.20: Available Commodities and Other Services Prime Contractors,  
April 1, 2010, to March 31, 2015**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	10.76%
Asian-Pacific	2.44%
Asian-Indian Subcontinent	3.01%
Hispanic	6.88%
Native American or Alaskan Native	0.57%
Caucasian Females	23.83%
Non-minority Males	52.50%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.67%
Black Males	8.08%
Asian-Pacific Females	0.92%
Asian-Pacific Males	1.52%
Asian-Indian Subcontinent Females	0.62%
Asian-Indian Subcontinent Males	2.39%
Hispanic Females	1.92%
Hispanic Males	4.96%
Native American or Alaskan Native Females	0.25%
Native American or Alaskan Native Males	0.32%
Caucasian Females	23.83%
Non-minority Males	52.50%
<b>TOTAL</b>	<b>100.00%</b>





## V. *Subcontractor Availability Analysis*

### A. *Source of Willing and Able Subcontractors*

All available prime contractors were included in the calculation of the subcontractor availability analysis. Additional subcontractors in the State’s market area were identified using the source listed in Table 6.21.

Subcontractor availability was not calculated for the commodities and other services industry, as the subcontracting activity in that industry was limited.

**Table 6.21: Unique Subcontractor Availability Data Source**

Type Record	Type Information
Subcontract Awards Provided by the State	MWBEs and Non-MWBEs

### B. *Determination of Willingness and Capacity*

Subcontractor availability was limited to utilized prime contractors and the unique businesses utilized as subcontractors. Therefore, the determination of willingness and capacity was achieved. Furthermore, *Crososn* does not require a separate measure of subcontractor capacity in the analysis of subcontractor availability because subcontracts are negotiated between prime contractors and subcontractors and are mainly awarded on the basis of past experience and personal relationships. Thus, the decision to award subcontracts are not subject to the rigor the courts have applied to the prime contract award process.



### **C. Construction Subcontractor Availability**

The distribution of available construction subcontractors is summarized in Table 6.22.

*Black-owned businesses* account for 11.53% of the construction subcontractors in the State's market area.

*Asian-Pacific-owned businesses* account for 2.59% of the construction subcontractors in the State's market area.

*Asian-Indian Subcontinent-owned businesses* account for 6.69% of the construction subcontractors in the State's market area.

*Hispanic-owned businesses* account for 8.63% of the construction subcontractors in the State's market area.

*Native American or Alaskan Native-owned businesses* account for 0.73% of the construction subcontractors in the State's market area.

*Caucasian female-owned businesses* account for 20.24% of the construction subcontractors in the State's market area.

*Non-minority male-owned businesses* account for 49.58% of the construction subcontractors in the State's market area.



**Table 6.22: Available Construction Subcontractors,  
April 1, 2010, to March 31, 2015**

<b>Group</b>	<b>Percent of Businesses</b>
Black	11.53%
Asian-Pacific	2.59%
Asian-Indian Subcontinent	6.69%
Hispanic	8.63%
Native American or Alaskan Native	0.73%
Caucasian Females	20.24%
Non-minority Males	49.58%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.30%
Black Males	9.23%
Asian-Pacific Females	0.66%
Asian-Pacific Males	1.94%
Asian-Indian Subcontinent Females	0.83%
Asian-Indian Subcontinent Males	5.86%
Hispanic Females	2.13%
Hispanic Males	6.50%
Native American or Alaskan Native Females	0.26%
Native American or Alaskan Native Males	0.47%
Caucasian Females	20.24%
Non-minority Males	49.58%
<b>TOTAL</b>	<b>100.00%</b>



#### **D. Construction-Related Services Subcontractor Availability**

The distribution of available construction-related services subcontractors is summarized in Table 6.23.

**Black-owned businesses** account for 10.82% of the construction-related services subcontractors in the State's market area.

**Asian-Pacific-owned businesses** account for 4.68% of the construction-related services subcontractors in the State's market area.

**Asian-Indian Subcontinent-owned businesses** account for 6.40% of the construction-related services subcontractors in the State's market area.

**Hispanic-owned businesses** account for 8.18% of the construction-related services subcontractors in the State's market area.

**Native American or Alaskan Native-owned businesses** account for 0.67% of the construction-related services subcontractors in the State's market area.

**Caucasian female-owned businesses** account for 28.34% of the construction-related services subcontractors in the State's market area.

**Non-minority male-owned businesses** account for 40.90% of the construction-related services subcontractors in the State's market area.



**Table 6.23: Available Construction-Related Services Subcontractors,  
April 1, 2010, to March 31, 2015**

<b>Group</b>	<b>Percent of Businesses</b>
Black	10.82%
Asian-Pacific	4.68%
Asian-Indian Subcontinent	6.40%
Hispanic	8.18%
Native American or Alaskan Native	0.67%
Caucasian Females	28.34%
Non-minority Males	40.90%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.45%
Black Males	8.37%
Asian-Pacific Females	1.67%
Asian-Pacific Males	3.01%
Asian-Indian Subcontinent Females	1.13%
Asian-Indian Subcontinent Males	5.27%
Hispanic Females	2.29%
Hispanic Males	5.89%
Native American or Alaskan Native Females	0.32%
Native American or Alaskan Native Males	0.35%
Caucasian Females	28.34%
Non-minority Males	40.90%
<b>TOTAL</b>	<b>100.00%</b>



### ***E. Non-Construction Related Services Subcontractor Availability***

The distribution of available non-construction related services subcontractors is summarized in Table 6.24.

***Black-owned businesses*** account for 13.43% of the non-construction related services subcontractors in the State's market area.

***Asian-Pacific-owned businesses*** account for 4.22% of the non-construction related services subcontractors in the State's market area.

***Asian-Indian Subcontinent-owned businesses*** account for 4.97% of the non-construction related services subcontractors in the State's market area.

***Hispanic-owned businesses*** account for 6.97% of the non-construction related services subcontractors in the State's market area.

***Native American or Alaskan Native-owned businesses*** account for 0.59% of the non-construction related services subcontractors in the State's market area.

***Caucasian female-owned businesses*** account for 32.59% of the non-construction related services subcontractors in the State's market area.

***Non-minority male-owned businesses*** account for 37.22% of the non-construction related services subcontractors in the State's market area.



**Table 6.24: Available Non-Construction Related Services Subcontractors,  
April 1, 2010, to March 31, 2015**

<b>Group</b>	<b>Percent of Businesses</b>
Black	13.43%
Asian-Pacific	4.22%
Asian-Indian Subcontinent	4.97%
Hispanic	6.97%
Native American or Alaskan Native	0.59%
Caucasian Females	32.59%
Non-minority Males	37.22%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	5.32%
Black Males	8.10%
Asian-Pacific Females	1.99%
Asian-Pacific Males	2.23%
Asian-Indian Subcontinent Females	1.48%
Asian-Indian Subcontinent Males	3.49%
Hispanic Females	2.32%
Hispanic Males	4.65%
Native American or Alaskan Native Females	0.41%
Native American or Alaskan Native Males	0.19%
Caucasian Females	32.59%
Non-minority Males	37.22%
<b>TOTAL</b>	<b>100.00%</b>



## **VI. Summary**

This chapter provided the availability analysis for the State's market area. A total of 18,615 unique businesses that provided goods and services during the study period in one or more of the four industries were identified.

Prime contractor and subcontractor availability were analyzed by ethnicity and gender. Minority-owned businesses account for 27.81% of prime contractors within the four industries, Caucasian females account for 25.24% of prime contractors, and non-minority males account for 46.95% of prime contractors.

Minority-owned businesses account for 28.47% of subcontractors within the four industries, Caucasian females account for 25.01% of subcontractors, and non-minority males account for 46.52% of subcontractors.





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# CHAPTER 7: Prime Contract Statistical Disparity Analysis

## I. Introduction

The objective of the disparity analysis is to determine the levels at which Minority and Woman-owned Business Enterprises, hereinafter referred to as Minority and Caucasian female-owned Business Enterprises (MWBE), are utilized on State of New York (State) prime contracts. Under a fair and equitable system of awarding prime contracts, the proportion of prime contract dollars awarded to MWBEs should be relatively close to the corresponding proportion of available MWBEs<sup>295</sup> in the relevant market area. If the ratio of utilized MWBE prime contractors to available MWBE prime contractors is less than one, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio, or any event which is less probable. This analysis assumes a fair and equitable system.<sup>296</sup> *City of Richmond v. J.A. Croson (Croson)* provides that an inference of discrimination can be made *prima facie* if the disparity is statistically significant.<sup>297</sup> Under the *Croson* model, non-minority male-owned business enterprises (non-MWBE) are not subjected to a statistical test of underutilization.

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

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>298</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 or contract rank. If the actual contract dollar amount or actual contract rank falls below the fifth percentile of the distribution, it denotes a p-value less than 0.05, which is statistically significant.

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<sup>295</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>296</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 considered by the statistical standard to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analysis here was done within the 95-percent confidence level.

<sup>297</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

<sup>298</sup> A statistical test is not performed for underutilization of Non-minority Males or when the ratio of utilized to available is greater than one for MWBEs.



Mason Tillman’s statistical model applies all three methods—parametric, non-parametric, and simulation analysis—simultaneously to each industry. Findings from one of the three methods are reported. If the p-value from any one of the three methods is less than 0.05, the finding is reported in the disparity tables as statistically significant. If the p-value is greater than 0.05, the finding is reported as not statistically significant.

## II. Statistical Disparity Analysis

A prime contract disparity analysis was performed on the contracts awarded in the construction, construction-related services, non-construction related services, and commodities and other services industries during the April 1, 2010, to March 31, 2015, study period.

The threshold levels for the size of contracts examined in each industry were set to ensure that there was documented capacity within the pool of willing businesses to perform the prime contract disparity analysis. Contract size is a depiction of the capacity that a willing business needs to successfully compete for the State’s competitively solicited prime contracts. The quartile analysis, as discussed in the *Chapter 3: Prime Contractor Utilization Analysis*, was used to set the threshold within which the statistical disparity analysis was performed.

The contracts analyzed were limited by dollar value to contracts beneath the upper limit of contracts, representing the 75<sup>th</sup> percentile of the State’s contracts awarded in each of the four industries. Applying this threshold mirrors the capacity of businesses enumerated in the availability analysis and ensures that contracts that are outliers in size and scope do not skew the results of this analysis. The thresholds for analysis by industry are listed in Tables 7.1 and 7.2.

**Table 7.1: Formal Thresholds for Analysis, by Industry**

Industry	Contract Threshold Amount
Construction	\$50,000 to \$1,400,000
Construction-Related Services	\$50,000 to \$2,000,000
Non-Construction Related Services	\$50,000 to \$500,000
Commodities and Other Services	\$50,000 to \$275,000

**Table 7.2: Informal Thresholds for Analysis, by Industry**

Industry	Contract Threshold Amount
Construction	Between \$25,000 and \$50,000
Construction-Related Services	Between \$25,000 and \$50,000
Non-Construction Related Services	Between \$25,000 and \$50,000
Commodities and Other Services	Between \$25,000 and \$50,000



The findings from the three 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 depicted 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 *	The underutilization is statistically significant.
not significant	The analysis is not statistically significant.
----	There are too few available firms to test statistical significance.
**	The statistical test is not performed for the overutilization of MWBEs or the underutilization of non-minority males.
< .05 †	The overutilization is statistically significant.



## **A. Disparity Analysis: Formal Prime Contracts, by Industry**

### **1. Construction Prime Contracts Valued \$50,000 to \$1,400,000**

The disparity analysis of construction prime contracts valued \$50,000 to \$1,400,000 is described below and depicted in Table 7.4 and Chart 7.1.

**Black-owned businesses** represent 13.37% of the available construction businesses and received 1.69% of the dollars on construction contracts valued \$50,000 to \$1,400,000. This underutilization is statistically significant.

**Asian-Pacific-owned businesses** represent 2.95% of the available construction businesses and received 0.40% of the dollars on construction contracts valued \$50,000 to \$1,400,000. This underutilization is statistically significant.

**Asian-Indian Subcontinent-owned businesses** represent 7.84% of the available construction businesses and received 4.14% of the dollars on construction contracts valued \$50,000 to \$1,400,000. This underutilization is statistically significant.

**Hispanic-owned businesses** represent 9.89% of the available construction businesses and received 2.30% of the dollars on construction contracts valued \$50,000 to \$1,400,000. This underutilization is statistically significant.

**Native American or Alaskan Native-owned businesses** represent 0.84% of the available construction businesses and received 0.24% of the dollars on construction contracts valued \$50,000 to \$1,400,000. There are too few available firms to test statistical significance.

**Caucasian Female-owned businesses** represent 21.79% of the available construction businesses and received 13.93% of the dollars on construction contracts valued \$50,000 to \$1,400,000. This underutilization is statistically significant.

**Non-minority male-owned businesses** represent 43.32% of the available construction businesses and received 77.29% of the dollars on construction contracts valued \$50,000 to \$1,400,000. This overutilization is statistically significant.



**Table 7.4: Disparity Analysis: Construction Prime Contracts Valued \$50,000 to \$1,400,000,  
April 1, 2010, to March 31, 2015**

<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>
Black	\$42,068,856	1.69%	13.37%	\$332,625,206	-\$290,556,350	0.13	< .05 *
Asian-Pacific	\$9,891,567	0.40%	2.95%	\$73,469,963	-\$63,578,396	0.13	< .05 *
Asian-Indian Subcontinent	\$103,124,056	4.14%	7.84%	\$195,188,857	-\$92,064,801	0.53	< .05 *
Hispanic	\$57,337,169	2.30%	9.89%	\$245,996,443	-\$188,659,275	0.23	< .05 *
Native American or Alaskan Native	\$5,925,640	0.24%	0.84%	\$20,834,766	-\$14,909,125	0.28	----
Caucasian Females	\$346,585,890	13.93%	21.79%	\$542,069,428	-\$195,483,539	0.64	< .05 *
Non-minority Males	\$1,923,176,465	77.29%	43.32%	\$1,077,924,979	\$845,251,486	1.78	< .05 †
<b>TOTAL</b>	<b>\$2,488,109,642</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$2,488,109,642</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>
Black Females	\$4,571,712	0.18%	2.66%	\$66,159,519	-\$61,587,807	0.07	< .05 *
Black Males	\$37,497,144	1.51%	10.71%	\$266,465,687	-\$228,968,542	0.14	< .05 *
Asian-Pacific Females	\$1,706,289	0.07%	0.72%	\$17,910,588	-\$16,204,299	0.10	----
Asian-Pacific Males	\$8,185,278	0.33%	2.23%	\$55,559,375	-\$47,374,097	0.15	< .05 *
Asian-Indian Subcontinent Females	\$13,316,941	0.54%	0.93%	\$23,027,899	-\$9,710,958	0.58	----
Asian-Indian Subcontinent Males	\$89,807,114	3.61%	6.92%	\$172,160,958	-\$82,353,844	0.52	< .05 *
Hispanic Females	\$9,537,630	0.38%	2.39%	\$59,580,119	-\$50,042,489	0.16	< .05 *
Hispanic Males	\$47,799,539	1.92%	7.49%	\$186,416,324	-\$138,616,785	0.26	< .05 *
Native American or Alaskan Native Females	\$0	0.00%	0.26%	\$6,579,400	-\$6,579,400	0.00	----
Native American or Alaskan Native Males	\$5,925,640	0.24%	0.57%	\$14,255,366	-\$8,329,726	0.42	----
Caucasian Females	\$346,585,890	13.93%	21.79%	\$542,069,428	-\$195,483,539	0.64	< .05 *
Non-minority Males	\$1,923,176,465	77.29%	43.32%	\$1,077,924,979	\$845,251,486	1.78	< .05 †
<b>TOTAL</b>	<b>\$2,488,109,642</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$2,488,109,642</b>			

( \* ) denotes a statistically significant underutilization.

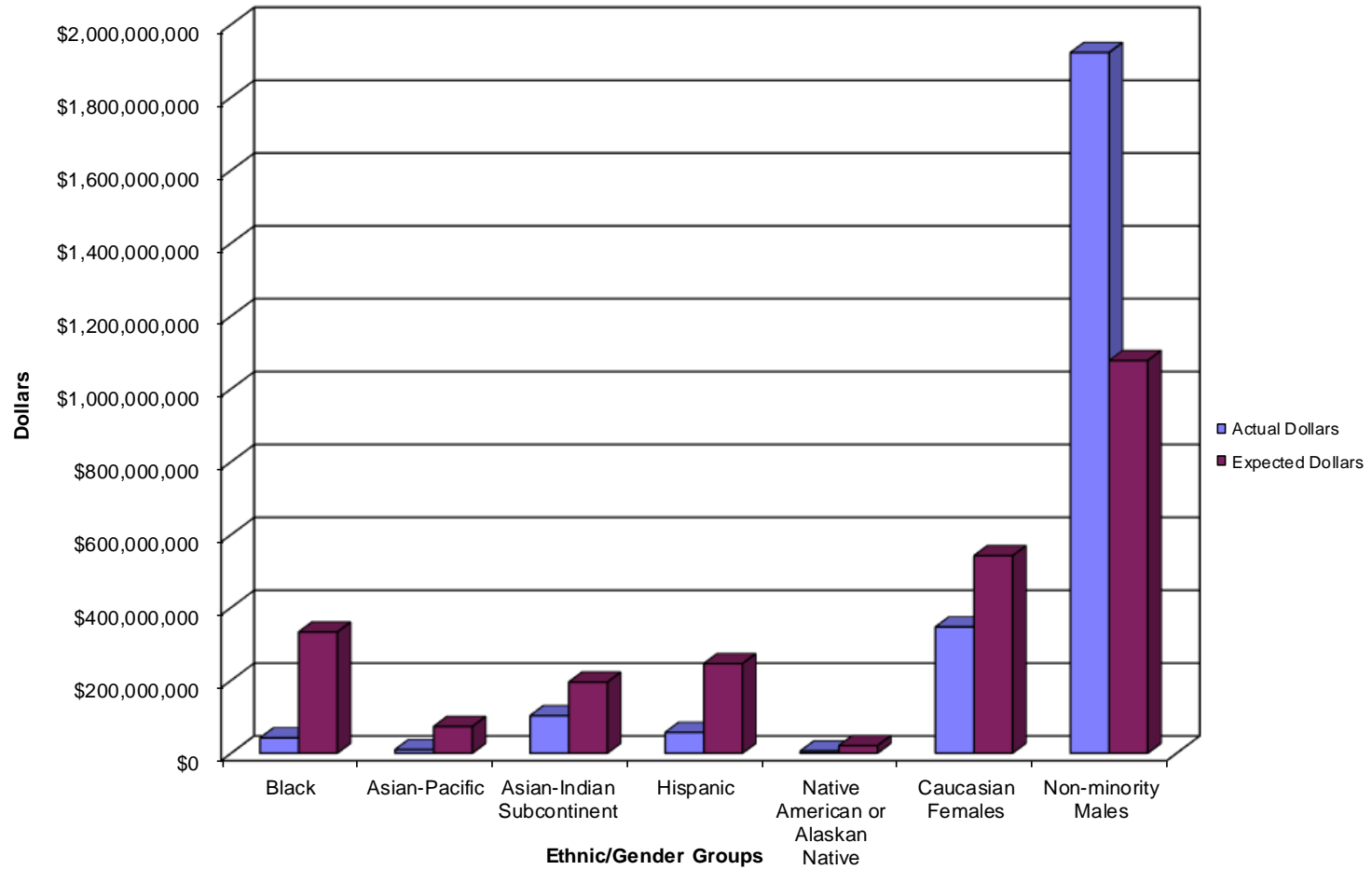
( † ) denotes a statistically significant overutilization.

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

( ---- ) denotes an underutilized group with too few available firms to test statistical significance.



**Chart 7.1: Disparity Analysis: Construction Prime Contracts Valued \$50,000 to \$1,400,000, April 1, 2010, to March 31, 2015**



## 2. Construction-Related Services Prime Contracts Valued \$50,000 to \$2,000,000

The disparity analysis of construction-related services prime contracts valued \$50,000 to \$2,000,000 is described below and depicted in Table 7.5 and Chart 7.2.

**Black-owned businesses** represent 12.02% of the available construction-related services businesses and received 0.89% of the dollars on construction-related services contracts valued \$50,000 to \$2,000,000. This underutilization is statistically significant.

**Asian-Pacific-owned businesses** represent 5.36% of the available construction-related services businesses and received 1.33% of the dollars on construction-related services contracts valued \$50,000 to \$2,000,000. This underutilization is statistically significant.

**Asian-Indian Subcontinent-owned businesses** represent 7.12% of the available construction-related services businesses and received 4.97% of the dollars on construction-related services contracts valued \$50,000 to \$2,000,000. This underutilization is statistically significant.

**Hispanic-owned businesses** represent 9.02% of the available construction-related services businesses and received 1.22% of the dollars on construction-related services contracts valued \$50,000 to \$2,000,000. This underutilization is statistically significant.

**Native American or Alaskan Native-owned businesses** represent 0.52% of the available construction-related services businesses and received 0.00% of the dollars on construction-related services contracts valued \$50,000 to \$2,000,000. There are too few available firms to test statistical significance.

**Caucasian Female-owned businesses** represent 29.47% of the available construction-related services businesses and received 5.42% of the dollars on construction-related services contracts valued \$50,000 to \$2,000,000. This underutilization is statistically significant.

**Non-minority male-owned businesses** represent 36.49% of the available construction-related services businesses and received 86.16% of the dollars on construction-related services contracts valued \$50,000 to \$2,000,000. This overutilization is statistically significant.



**Table 7.5: Disparity Analysis: Construction-Related Services Prime Contracts Valued \$50,000 to \$2,000,000,  
April 1, 2010, to March 31, 2015**

<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>
Black	\$10,209,370	0.89%	12.02%	\$137,474,759	-\$127,265,389	0.07	< .05 *
Asian-Pacific	\$15,191,287	1.33%	5.36%	\$61,265,925	-\$46,074,639	0.25	< .05 *
Asian-Indian Subcontinent	\$56,864,325	4.97%	7.12%	\$81,438,852	-\$24,574,527	0.70	< .05 *
Hispanic	\$14,000,705	1.22%	9.02%	\$103,106,069	-\$89,105,364	0.14	< .05 *
Native American or Alaskan Native	\$0	0.00%	0.52%	\$5,977,163	-\$5,977,163	0.00	----
Caucasian Females	\$61,991,764	5.42%	29.47%	\$336,962,588	-\$274,970,824	0.18	< .05 *
Non-minority Males	\$985,248,627	86.16%	36.49%	\$417,280,721	\$567,967,906	2.36	< .05 †
<b>TOTAL</b>	<b>\$1,143,506,077</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$1,143,506,077</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>
Black Females	\$448,830	0.04%	2.84%	\$32,500,826	-\$32,051,996	0.01	< .05 *
Black Males	\$9,760,540	0.85%	9.18%	\$104,973,933	-\$95,213,393	0.09	< .05 *
Asian-Pacific Females	\$1,498,268	0.13%	1.83%	\$20,920,072	-\$19,421,804	0.07	< .05 *
Asian-Pacific Males	\$13,693,019	1.20%	3.53%	\$40,345,853	-\$26,652,835	0.34	< .05 *
Asian-Indian Subcontinent Females	\$88,400	0.01%	1.21%	\$13,822,190	-\$13,733,790	0.01	< .05 *
Asian-Indian Subcontinent Males	\$56,775,925	4.97%	5.91%	\$67,616,661	-\$10,840,737	0.84	not significant
Hispanic Females	\$2,886,514	0.25%	2.35%	\$26,897,235	-\$24,010,721	0.11	< .05 *
Hispanic Males	\$11,114,191	0.97%	6.66%	\$76,208,834	-\$65,094,643	0.15	< .05 *
Native American or Alaskan Native Females	\$0	0.00%	0.26%	\$2,988,582	-\$2,988,582	0.00	----
Native American or Alaskan Native Males	\$0	0.00%	0.26%	\$2,988,582	-\$2,988,582	0.00	----
Caucasian Females	\$61,991,764	5.42%	29.47%	\$336,962,588	-\$274,970,824	0.18	< .05 *
Non-minority Males	\$985,248,627	86.16%	36.49%	\$417,280,721	\$567,967,906	2.36	< .05 †
<b>TOTAL</b>	<b>\$1,143,506,077</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$1,143,506,077</b>			

(\*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

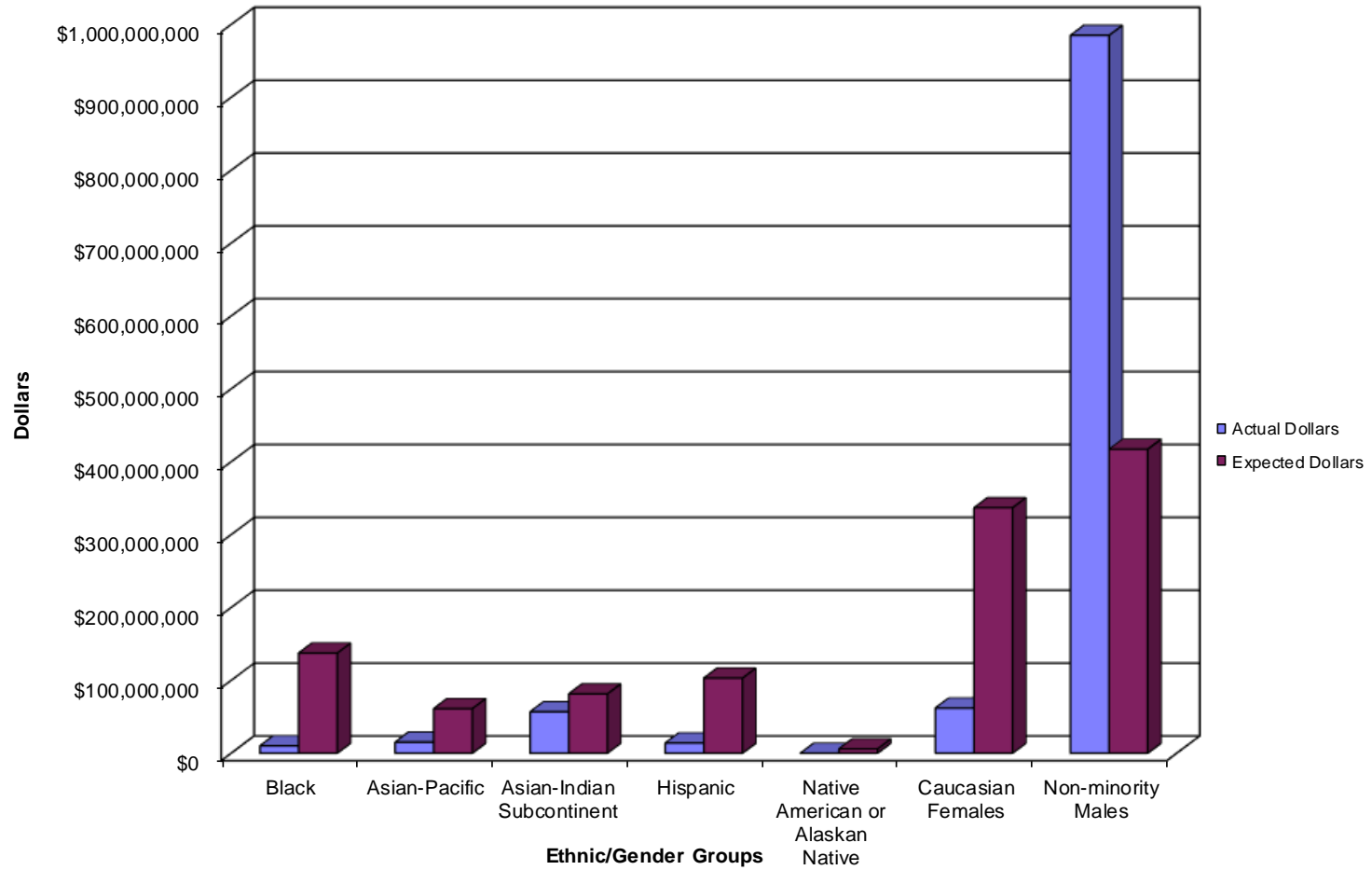
(\*\*) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

(----) denotes an underutilized group with too few available firms to test statistical significance.





**Chart 7.2: Disparity Analysis: Construction-Related Services Prime Contracts Valued \$50,000 to \$2,000,000, April 1, 2010, to March 31, 2015**



### 3. Non-Construction Related Services Prime Contracts Valued \$50,000 to \$500,000

The disparity analysis of non-construction related services prime contracts valued \$50,000 to \$500,000 is described below and depicted in Table 7.6 and Chart 7.3.

*Black-owned businesses* represent 14.00% of the available non-construction related services businesses and received 2.11% of the dollars on non-construction related services contracts valued \$50,000 to \$500,000. This underutilization is statistically significant.

*Asian-Pacific-owned businesses* represent 4.40% of the available non-construction related services businesses and received 0.89% of the dollars on non-construction related services contracts valued \$50,000 to \$500,000. This underutilization is statistically significant.

*Asian-Indian Subcontinent-owned businesses* represent 5.01% of the available non-construction related services businesses and received 15.83% of the dollars on non-construction related services contracts valued \$50,000 to \$500,000. The statistical test is not performed for the overutilization of MWBEs.

*Hispanic-owned businesses* represent 7.24% of the available non-construction related services businesses and received 0.98% of the dollars on non-construction related services contracts valued \$50,000 to \$500,000. This underutilization is statistically significant.

*Native American or Alaskan Native-owned businesses* represent 0.60% of the available non-construction related services businesses and received 0.03% of the dollars on non-construction related services contracts valued \$50,000 to \$500,000. There are too few available firms to test statistical significance.

*Caucasian Female-owned businesses* represent 33.64% of the available non-construction related services businesses and received 12.69% of the dollars on non-construction related services contracts valued \$50,000 to \$500,000. This underutilization is statistically significant.

*Non-minority male-owned businesses* represent 35.12% of the available non-construction related services businesses and received 67.46% of the dollars on non-construction related services contracts valued \$50,000 to \$500,000. This overutilization is statistically significant.



**Table 7.6: Disparity Analysis: Non-Construction Related Services Prime Contracts Valued \$50,000 to \$500,000,  
April 1, 2010, to March 31, 2015**

<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>
Black	\$10,584,599	2.11%	14.00%	\$70,109,854	-\$59,525,255	0.15	< .05 *
Asian-Pacific	\$4,455,477	0.89%	4.40%	\$22,010,338	-\$17,554,861	0.20	< .05 *
Asian-Indian Subcontinent	\$79,296,527	15.83%	5.01%	\$25,088,707	\$54,207,819	3.16	**
Hispanic	\$4,898,998	0.98%	7.24%	\$36,247,795	-\$31,348,797	0.14	< .05 *
Native American or Alaskan Native	\$150,000	0.03%	0.60%	\$3,001,410	-\$2,851,410	0.05	----
Caucasian Females	\$63,542,437	12.69%	33.64%	\$168,463,744	-\$104,921,307	0.38	< .05 *
Non-minority Males	\$337,845,641	67.46%	35.12%	\$175,851,830	\$161,993,811	1.92	< .05 †
<b>TOTAL</b>	<b>\$500,773,680</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$500,773,680</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>
Black Females	\$4,631,548	0.92%	5.58%	\$27,936,199	-\$23,304,650	0.17	< .05 *
Black Males	\$5,953,051	1.19%	8.42%	\$42,173,656	-\$36,220,605	0.14	< .05 *
Asian-Pacific Females	\$3,029,850	0.61%	2.09%	\$10,466,455	-\$7,436,605	0.29	< .05 *
Asian-Pacific Males	\$1,425,628	0.28%	2.31%	\$11,543,884	-\$10,118,256	0.12	< .05 *
Asian-Indian Subcontinent Females	\$36,910,491	7.37%	1.52%	\$7,618,963	\$29,291,527	4.84	**
Asian-Indian Subcontinent Males	\$42,386,036	8.46%	3.49%	\$17,469,744	\$24,916,292	2.43	**
Hispanic Females	\$1,117,543	0.22%	2.37%	\$11,851,721	-\$10,734,178	0.09	< .05 *
Hispanic Males	\$3,781,456	0.76%	4.87%	\$24,396,074	-\$20,614,619	0.16	< .05 *
Native American or Alaskan Native Females	\$0	0.00%	0.41%	\$2,077,899	-\$2,077,899	0.00	----
Native American or Alaskan Native Males	\$150,000	0.03%	0.18%	\$923,511	-\$773,511	0.16	----
Caucasian Females	\$63,542,437	12.69%	33.64%	\$168,463,744	-\$104,921,307	0.38	< .05 *
Non-minority Males	\$337,845,641	67.46%	35.12%	\$175,851,830	\$161,993,811	1.92	< .05 †
<b>TOTAL</b>	<b>\$500,773,680</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$500,773,680</b>			

(\*) denotes a statistically significant underutilization.

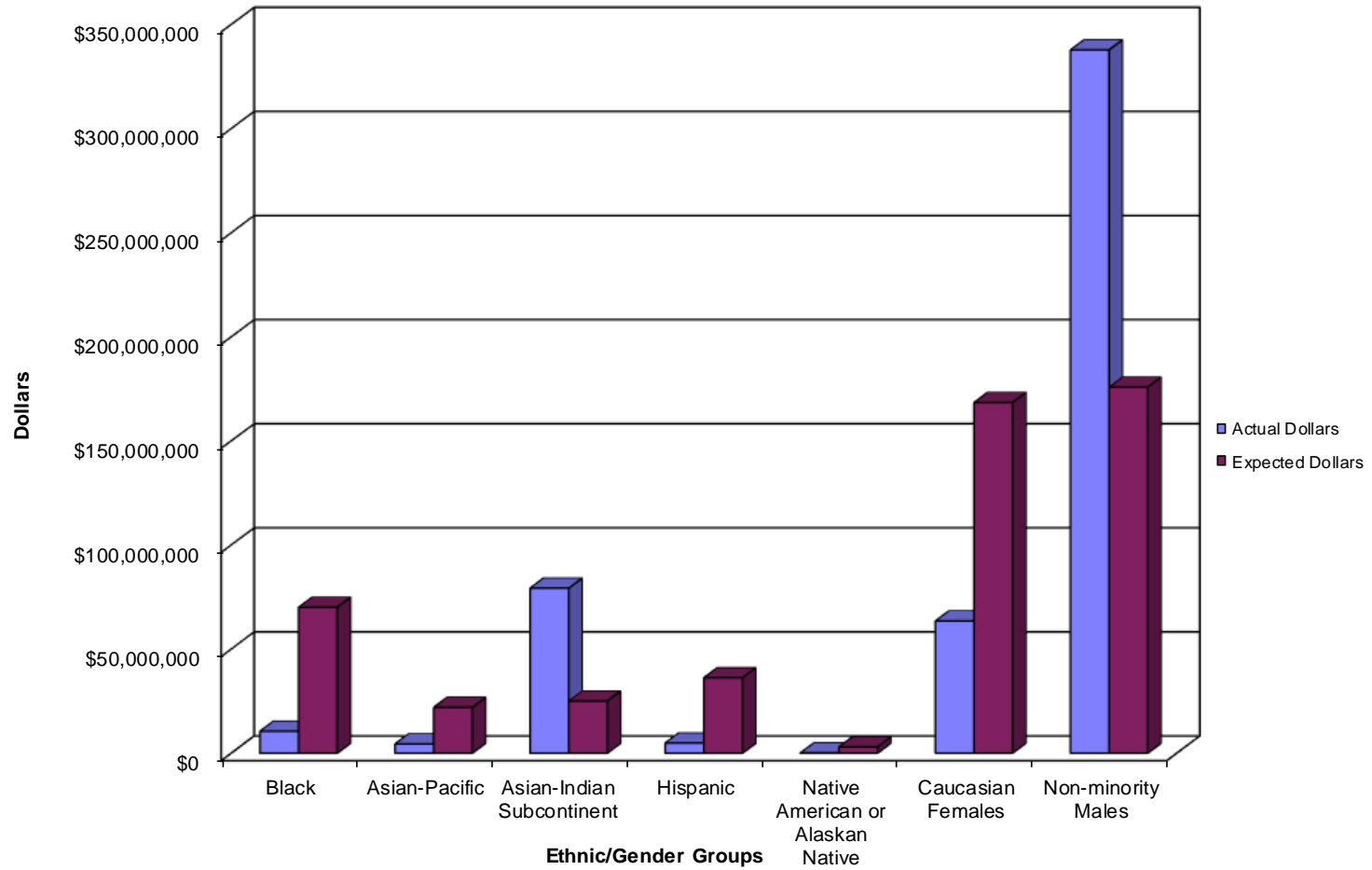
(†) denotes a statistically significant overutilization.

(\*\*) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

(----) denotes an underutilized group with too few available firms to test statistical significance.



**Chart 7.3: Disparity Analysis: Non-Construction Related Services Prime Contracts Valued \$50,000 to \$500,000, April 1, 2010, to March 31, 2015**



#### 4. Commodities and Other Services Prime Contracts Valued \$50,000 to \$275,000

The disparity analysis of commodities and other services prime contracts valued \$50,000 to \$275,000 is described below and depicted in Table 7.7 and Chart 7.4.

*Black-owned businesses* represent 10.76% of the available commodities and other services businesses and received 1.75% of the dollars on commodities and other services contracts valued \$50,000 to \$275,000. This underutilization is statistically significant.

*Asian-Pacific-owned businesses* represent 2.44% of the available commodities and other services businesses and received 1.29% of the dollars on commodities and other services contracts valued \$50,000 to \$275,000. This underutilization is statistically significant.

*Asian-Indian Subcontinent-owned Businesses* represent 3.01% of the available commodities and other services businesses and received 1.00% of the dollars on commodities and other services contracts valued \$50,000 to \$275,000. This underutilization is statistically significant.

*Hispanic-owned businesses* represent 6.88% of the available commodities and other services businesses and received 1.40% of the dollars on commodities and other services contracts valued \$50,000 to \$275,000. This underutilization is statistically significant.

*Native American or Alaskan Native-owned businesses* represent 0.57% of the available commodities and other services businesses and received 0.13% of the dollars on commodities and other services contracts valued \$50,000 to \$275,000. There are too few available firms to test statistical significance.

*Caucasian Female-owned businesses* represent 23.83% of the available commodities and other services businesses and received 10.30% of the dollars on commodities and other services contracts valued \$50,000 to \$275,000. This underutilization is statistically significant.

*Non-minority male-owned businesses* represent 52.50% of the available commodities and other services businesses and received 84.12% of the dollars on commodities and other services contracts valued \$50,000 to \$275,000. This overutilization is statistically significant.



**Table 7.7: Disparity Analysis: Commodities and Other Services Prime Contracts Valued \$50,000 to \$275,000,  
April 1, 2010, to March 31, 2015**

<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>
Black	\$31,339,628	1.75%	10.76%	\$192,486,060	-\$161,146,432	0.16	< .05 *
Asian-Pacific	\$23,143,566	1.29%	2.44%	\$43,678,075	-\$20,534,509	0.53	< .05 *
Asian-Indian Subcontinent	\$17,919,109	1.00%	3.01%	\$53,888,534	-\$35,969,425	0.33	< .05 *
Hispanic	\$24,990,884	1.40%	6.88%	\$123,092,756	-\$98,101,872	0.20	< .05 *
Native American or Alaskan Native	\$2,316,439	0.13%	0.57%	\$10,210,459	-\$7,894,020	0.23	----
Caucasian Females	\$184,332,037	10.30%	23.83%	\$426,381,205	-\$242,049,167	0.43	< .05 *
Non-minority Males	\$1,505,057,653	84.12%	52.50%	\$939,362,228	\$565,695,425	1.60	< .05 †
<b>TOTAL</b>	<b>\$1,789,099,316</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$1,789,099,316</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>
Black Females	\$8,321,429	0.47%	2.67%	\$47,837,891	-\$39,516,462	0.17	< .05 *
Black Males	\$23,018,199	1.29%	8.08%	\$144,648,169	-\$121,629,971	0.16	< .05 *
Asian-Pacific Females	\$10,743,400	0.60%	0.92%	\$16,450,184	-\$5,706,784	0.65	----
Asian-Pacific Males	\$12,400,166	0.69%	1.52%	\$27,227,891	-\$14,827,725	0.46	< .05 *
Asian-Indian Subcontinent Females	\$4,519,858	0.25%	0.62%	\$11,155,872	-\$6,636,013	0.41	----
Asian-Indian Subcontinent Males	\$13,399,250	0.75%	2.39%	\$42,732,662	-\$29,333,411	0.31	< .05 *
Hispanic Females	\$6,910,595	0.39%	1.92%	\$34,413,028	-\$27,502,433	0.20	< .05 *
Hispanic Males	\$18,080,288	1.01%	4.96%	\$88,679,727	-\$70,599,439	0.20	< .05 *
Native American or Alaskan Native Females	\$1,836,412	0.10%	0.25%	\$4,537,982	-\$2,701,570	0.40	----
Native American or Alaskan Native Males	\$480,027	0.03%	0.32%	\$5,672,477	-\$5,192,450	0.08	----
Caucasian Females	\$184,332,037	10.30%	23.83%	\$426,381,205	-\$242,049,167	0.43	< .05 *
Non-minority Males	\$1,505,057,653	84.12%	52.50%	\$939,362,228	\$565,695,425	1.60	< .05 †
<b>TOTAL</b>	<b>\$1,789,099,316</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$1,789,099,316</b>			

(\*) denotes a statistically significant underutilization.

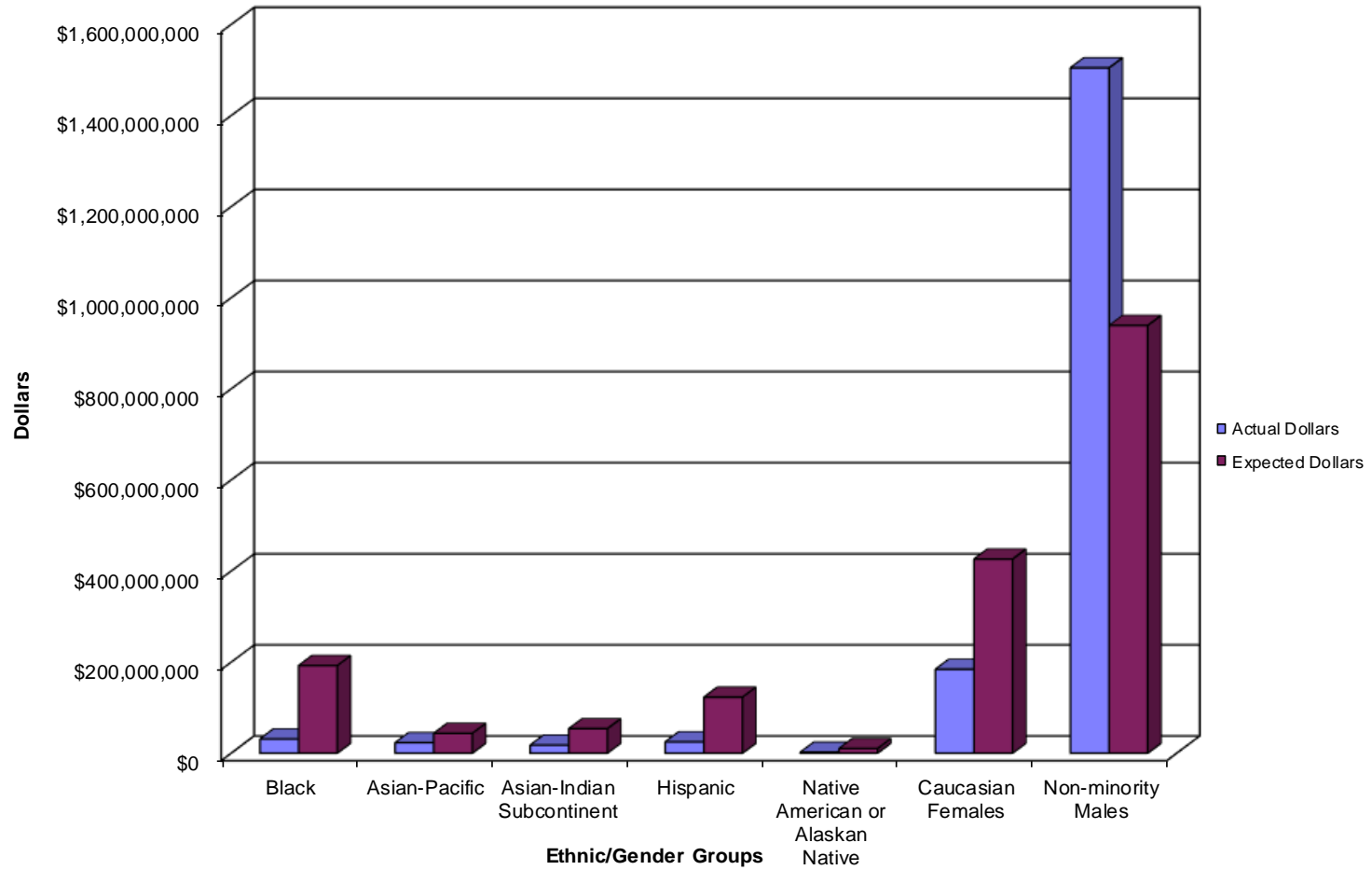
(†) denotes a statistically significant overutilization.

(\*\*) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

(----) denotes an underutilized group with too few available firms to test statistical significance.



**Chart 7.4: Disparity Analysis: Commodities and Other Services Prime Contracts Valued \$50,000 to \$275,000, April 1, 2010, to March 31, 2015**



**B. Disparity Analysis: All Informal Prime Contracts Valued Between \$25,000 and \$50,000, by Industry**

**1. Construction Prime Contracts Valued Between \$25,000 and \$50,000**

The disparity analysis of construction prime contracts valued between \$25,000 and \$50,000 is described below and depicted in Table 7.8 and Chart 7.5.

*Black-owned businesses* represent 13.37% of the available construction businesses and received 1.45% of the dollars on construction contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Asian-Pacific-owned businesses* represent 2.95% of the available construction businesses and received 0.66% of the dollars on construction contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Asian-Indian Subcontinent-owned businesses* represent 7.84% of the available construction businesses and received 3.22% of the dollars on construction contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Hispanic-owned businesses* represent 9.89% of the available construction businesses and received 2.10% of the dollars on construction contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Native American or Alaskan Native-owned businesses* represent 0.84% of the available construction businesses and received 0.32% of the dollars on construction contracts valued between \$25,000 and \$50,000. There are too few available firms to test statistical significance.

*Caucasian Female-owned businesses* represent 21.79% of the available construction businesses and received 14.60% of the dollars on construction contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Non-minority male-owned businesses* represent 43.32% of the available construction businesses and received 77.65% of the dollars on construction contracts valued between \$25,000 and \$50,000. This overutilization is statistically significant.





**Table 7.8: Disparity Analysis: Construction Prime Contracts Valued Between \$25,000 and \$50,000,  
April 1, 2010, to March 31, 2015**

<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>
Black	\$666,221	1.45%	13.37%	\$6,152,187	-\$5,485,967	0.11	< .05 *
Asian-Pacific	\$303,272	0.66%	2.95%	\$1,358,890	-\$1,055,617	0.22	< .05 *
Asian-Indian Subcontinent	\$1,480,719	3.22%	7.84%	\$3,610,185	-\$2,129,466	0.41	< .05 *
Hispanic	\$964,573	2.10%	9.89%	\$4,549,914	-\$3,585,341	0.21	< .05 *
Native American or Alaskan Native	\$147,940	0.32%	0.84%	\$385,357	-\$237,417	0.38	----
Caucasian Females	\$6,720,858	14.60%	21.79%	\$10,026,037	-\$3,305,180	0.67	< .05 *
Non-minority Males	\$35,736,132	77.65%	43.32%	\$19,937,144	\$15,798,988	1.79	< .05 †
<b>TOTAL</b>	<b>\$46,019,714</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$46,019,714</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>
Black Females	\$41,711	0.09%	2.66%	\$1,223,677	-\$1,181,966	0.03	< .05 *
Black Males	\$624,510	1.36%	10.71%	\$4,928,511	-\$4,304,000	0.13	< .05 *
Asian-Pacific Females	\$148,809	0.32%	0.72%	\$331,272	-\$182,463	0.45	----
Asian-Pacific Males	\$154,463	0.34%	2.23%	\$1,027,618	-\$873,155	0.15	< .05 *
Asian-Indian Subcontinent Females	\$631,459	1.37%	0.93%	\$425,921	\$205,539	1.48	**
Asian-Indian Subcontinent Males	\$849,259	1.85%	6.92%	\$3,184,264	-\$2,335,005	0.27	< .05 *
Hispanic Females	\$167,696	0.36%	2.39%	\$1,101,985	-\$934,289	0.15	< .05 *
Hispanic Males	\$796,877	1.73%	7.49%	\$3,447,929	-\$2,651,052	0.23	< .05 *
Native American or Alaskan Native Females	\$69,731	0.15%	0.26%	\$121,692	-\$51,960	0.57	----
Native American or Alaskan Native Males	\$78,209	0.17%	0.57%	\$263,665	-\$185,456	0.30	----
Caucasian Females	\$6,720,858	14.60%	21.79%	\$10,026,037	-\$3,305,180	0.67	< .05 *
Non-minority Males	\$35,736,132	77.65%	43.32%	\$19,937,144	\$15,798,988	1.79	< .05 †
<b>TOTAL</b>	<b>\$46,019,714</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$46,019,714</b>			

(\*) denotes a statistically significant underutilization.

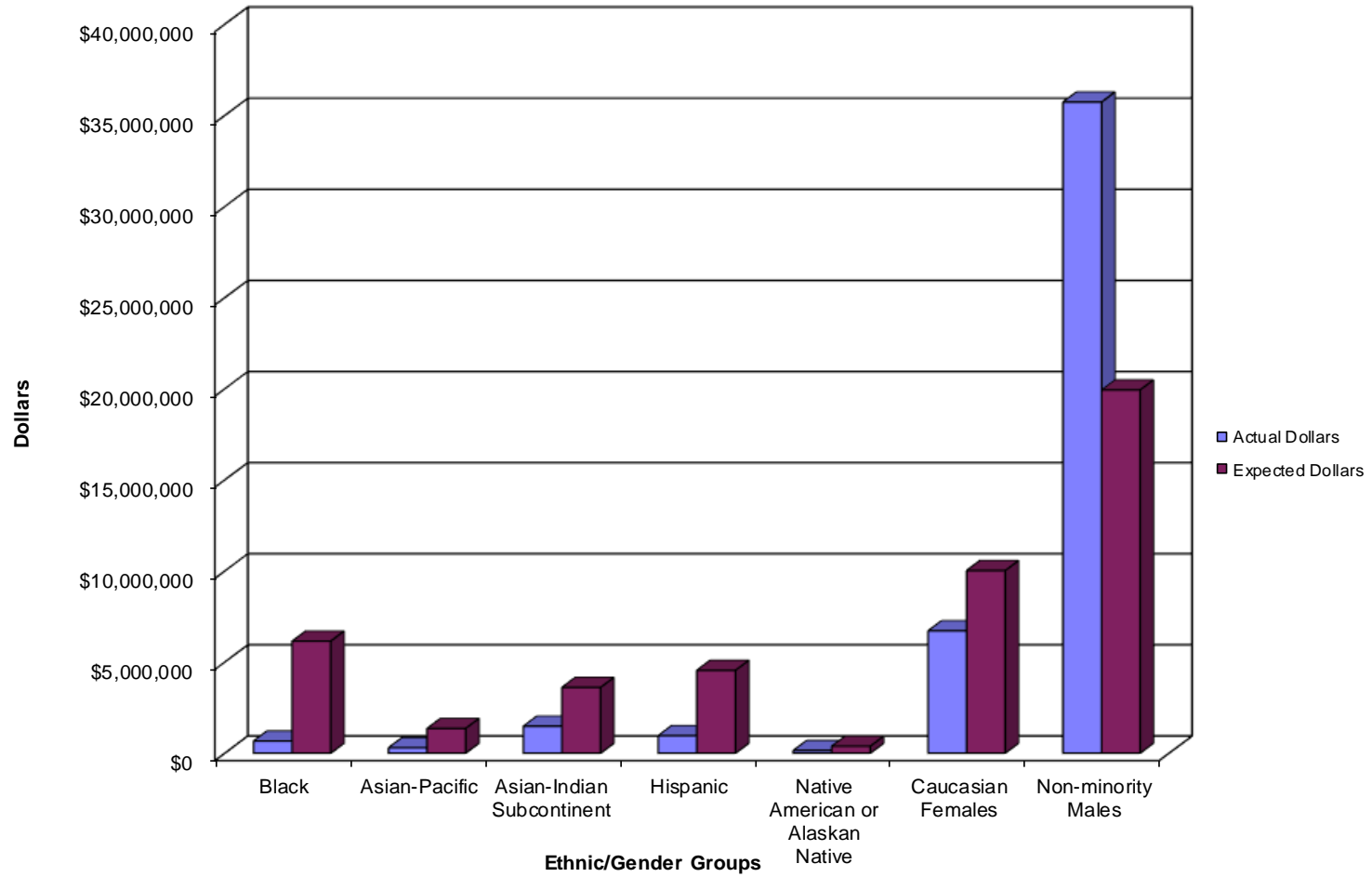
(†) denotes a statistically significant overutilization.

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

(----) denotes an underutilized group with too few available firms to test statistical significance.



**Chart 7.5: Disparity Analysis: Construction Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015**



## 2. Construction-Related Services Prime Contracts Valued Between \$25,000 and \$50,000

The disparity analysis of construction-related services prime contracts valued between \$25,000 and \$50,000 is described below and depicted in Table 7.9 and Chart 7.6.

*Black-owned businesses* represent 12.02% of the available construction-related services businesses and received 1.16% of the dollars on construction-related services contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Asian-Pacific-owned businesses* represent 5.36% of the available construction-related services businesses and received 4.09% of the dollars on construction-related services contracts valued between \$25,000 and \$50,000. This underutilization is not statistically significant.

*Asian-Indian Subcontinent-owned businesses* represent 7.12% of the available construction-related services businesses and received 6.51% of the dollars on construction-related services contracts valued between \$25,000 and \$50,000. This underutilization is not statistically significant.

*Hispanic-owned businesses* represent 9.02% of the available construction-related services businesses and received 0.46% of the dollars on construction-related services contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Native American or Alaskan Native-owned businesses* represent 0.52% of the available construction-related services businesses and received 0.00% of the dollars on construction-related services contracts valued between \$25,000 and \$50,000. There are too few available firms to test statistical significance.

*Caucasian Female-owned businesses* represent 29.47% of the available construction-related services businesses and received 8.96% of the dollars on construction-related services contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Non-minority male-owned businesses* represent 36.49% of the available construction-related services businesses and received 78.81% of the dollars on construction-related services contracts valued between \$25,000 and \$50,000. This overutilization is statistically significant.



**Table 7.9: Disparity Analysis: Construction-Related Services Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015**

<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>
Black	\$172,806	1.16%	12.02%	\$1,790,409	-\$1,617,603	0.10	< .05 *
Asian-Pacific	\$609,345	4.09%	5.36%	\$797,900	-\$188,555	0.76	not significant
Asian-Indian Subcontinent	\$969,645	6.51%	7.12%	\$1,060,623	-\$90,978	0.91	not significant
Hispanic	\$69,138	0.46%	9.02%	\$1,342,807	-\$1,273,669	0.05	< .05 *
Native American or Alaskan Native	\$0	0.00%	0.52%	\$77,844	-\$77,844	0.00	----
Caucasian Females	\$1,334,383	8.96%	29.47%	\$4,388,449	-\$3,054,066	0.30	< .05 *
Non-minority Males	\$11,737,190	78.81%	36.49%	\$5,434,476	\$6,302,715	2.16	< .05 †
<b>TOTAL</b>	<b>\$14,892,507</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$14,892,507</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>
Black Females	\$0	0.00%	2.84%	\$423,276	-\$423,276	0.00	< .05 *
Black Males	\$172,806	1.16%	9.18%	\$1,367,133	-\$1,194,327	0.13	< .05 *
Asian-Pacific Females	\$43,085	0.29%	1.83%	\$272,454	-\$229,369	0.16	< .05 *
Asian-Pacific Males	\$566,260	3.80%	3.53%	\$525,446	\$40,814	1.08	**
Asian-Indian Subcontinent Females	\$0	0.00%	1.21%	\$180,014	-\$180,014	0.00	< .05 *
Asian-Indian Subcontinent Males	\$969,645	6.51%	5.91%	\$880,609	\$89,036	1.10	**
Hispanic Females	\$0	0.00%	2.35%	\$350,297	-\$350,297	0.00	< .05 *
Hispanic Males	\$69,138	0.46%	6.66%	\$992,509	-\$923,372	0.07	< .05 *
Native American or Alaskan Native Females	\$0	0.00%	0.26%	\$38,922	-\$38,922	0.00	----
Native American or Alaskan Native Males	\$0	0.00%	0.26%	\$38,922	-\$38,922	0.00	----
Caucasian Females	\$1,334,383	8.96%	29.47%	\$4,388,449	-\$3,054,066	0.30	< .05 *
Non-minority Males	\$11,737,190	78.81%	36.49%	\$5,434,476	\$6,302,715	2.16	< .05 †
<b>TOTAL</b>	<b>\$14,892,507</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$14,892,507</b>			

(\*) denotes a statistically significant underutilization.

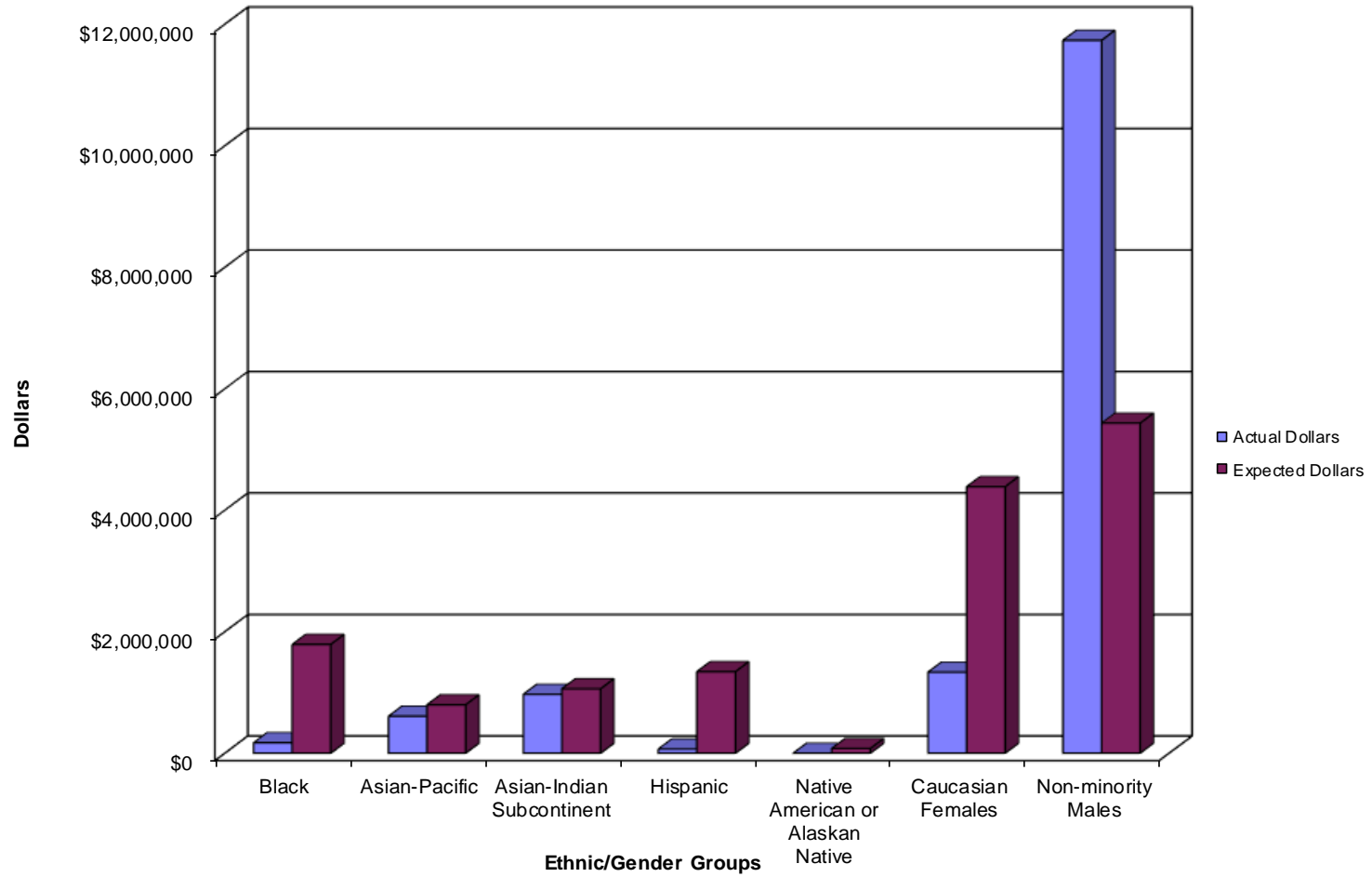
(†) denotes a statistically significant overutilization.

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

(----) denotes an underutilized group with too few available firms to test statistical significance.



**Chart 7.6: Disparity Analysis: Construction-Related Services Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015**



### 3. Non-Construction Related Services Prime Contracts Valued Between \$25,000 and \$50,000

The disparity analysis of non-construction related services prime contracts valued between \$25,000 and \$50,000 is described below and depicted in Table 7.10 and Chart 7.7.

**Black-owned businesses** represent 14.00% of the available non-construction related services businesses and received 2.59% of the dollars on non-construction related services contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

**Asian-Pacific-owned businesses** represent 4.40% of the available non-construction related services businesses and received 1.46% of the dollars on non-construction related services contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

**Asian-Indian Subcontinent-owned businesses** represent 5.01% of the available non-construction related services businesses and received 5.78% of the dollars on non-construction related services contracts valued between \$25,000 and \$50,000. The statistical test is not performed for the overutilization of MWBEs.

**Hispanic-owned businesses** represent 7.24% of the available non-construction related services businesses and received 1.47% of the dollars on non-construction related services contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

**Native American or Alaskan Native-owned businesses** represent 0.60% of the available non-construction related services businesses and received 0.11% of the dollars on non-construction related services contracts valued between \$25,000 and \$50,000. There are too few available firms to test statistical significance.

**Caucasian Female-owned businesses** represent 33.64% of the available non-construction related services businesses and received 12.97% of the dollars on non-construction related services contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

**Non-minority male-owned businesses** represent 35.12% of the available non-construction related services businesses and received 75.63% of the dollars on non-construction related services contracts valued between \$25,000 and \$50,000. This overutilization is statistically significant.



**Table 7.10: Disparity Analysis: Non-Construction Related Services Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015**

<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>
Black	\$1,498,510	2.59%	14.00%	\$8,106,713	-\$6,608,203	0.18	< .05 *
Asian-Pacific	\$844,299	1.46%	4.40%	\$2,545,027	-\$1,700,729	0.33	< .05 *
Asian-Indian Subcontinent	\$3,345,014	5.78%	5.01%	\$2,900,975	\$444,039	1.15	**
Hispanic	\$848,350	1.47%	7.24%	\$4,191,286	-\$3,342,936	0.20	< .05 *
Native American or Alaskan Native	\$62,232	0.11%	0.60%	\$347,049	-\$284,817	0.18	----
Caucasian Females	\$7,510,683	12.97%	33.64%	\$19,479,249	-\$11,968,566	0.39	< .05 *
Non-minority Males	\$43,794,736	75.63%	35.12%	\$20,333,524	\$23,461,212	2.15	< .05 †
<b>TOTAL</b>	<b>\$57,903,824</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$57,903,824</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>
Black Females	\$885,634	1.53%	5.58%	\$3,230,227	-\$2,344,593	0.27	< .05 *
Black Males	\$612,876	1.06%	8.42%	\$4,876,486	-\$4,263,610	0.13	< .05 *
Asian-Pacific Females	\$732,099	1.26%	2.09%	\$1,210,223	-\$478,124	0.60	< .05 *
Asian-Pacific Males	\$112,200	0.19%	2.31%	\$1,334,805	-\$1,222,605	0.08	< .05 *
Asian-Indian Subcontinent Females	\$1,281,182	2.21%	1.52%	\$880,971	\$400,211	1.45	**
Asian-Indian Subcontinent Males	\$2,063,832	3.56%	3.49%	\$2,020,004	\$43,828	1.02	**
Hispanic Females	\$237,346	0.41%	2.37%	\$1,370,399	-\$1,133,054	0.17	< .05 *
Hispanic Males	\$611,004	1.06%	4.87%	\$2,820,887	-\$2,209,883	0.22	< .05 *
Native American or Alaskan Native Females	\$32,232	0.06%	0.41%	\$240,265	-\$208,033	0.13	----
Native American or Alaskan Native Males	\$30,000	0.05%	0.18%	\$106,784	-\$76,784	0.28	----
Caucasian Females	\$7,510,683	12.97%	33.64%	\$19,479,249	-\$11,968,566	0.39	< .05 *
Non-minority Males	\$43,794,736	75.63%	35.12%	\$20,333,524	\$23,461,212	2.15	< .05 †
<b>TOTAL</b>	<b>\$57,903,824</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$57,903,824</b>			

(\*) denotes a statistically significant underutilization.

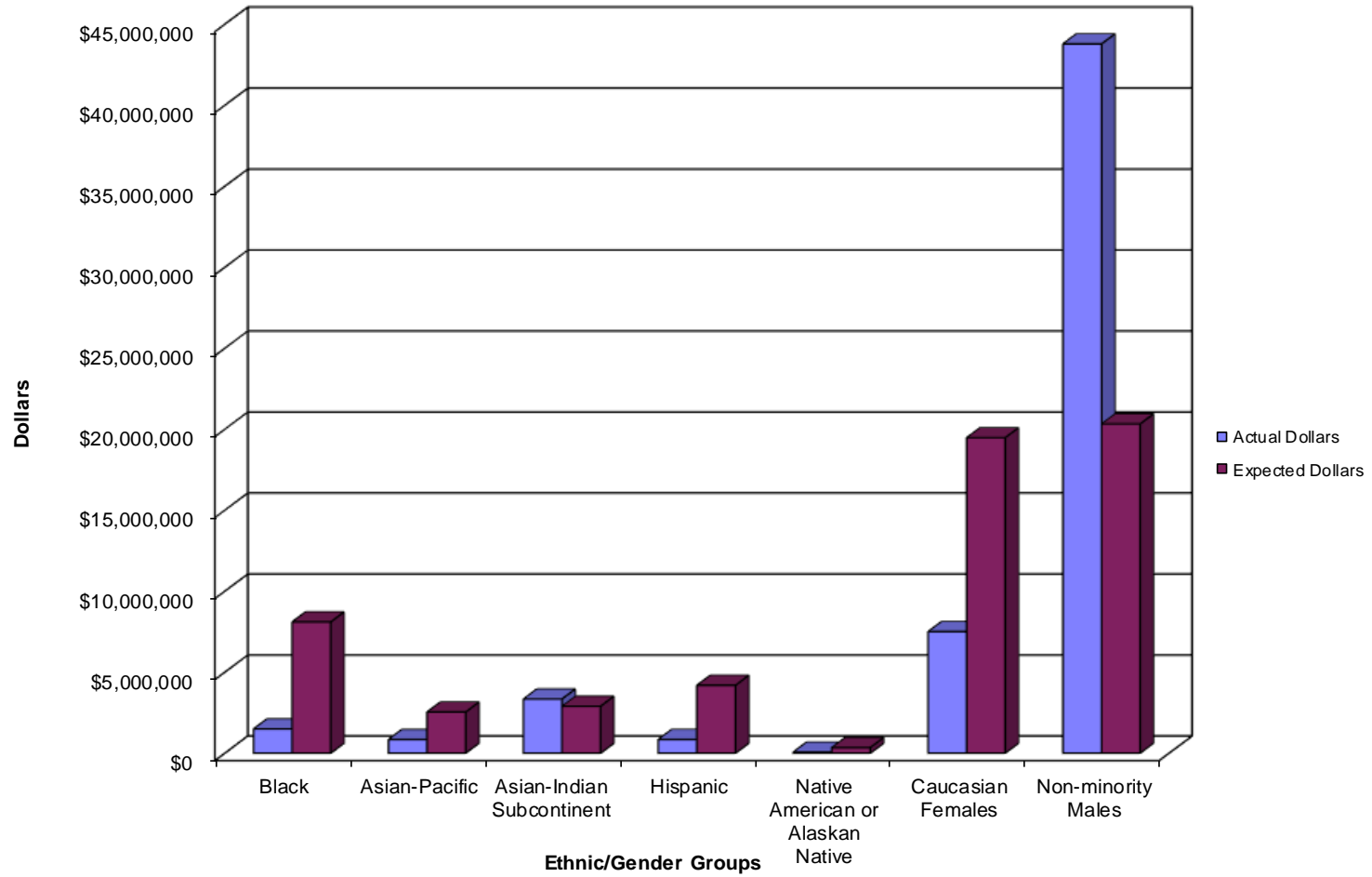
(†) denotes a statistically significant overutilization.

(\*\*) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

(----) denotes an underutilized group with too few available firms to test statistical significance.



**Chart 7.7: Disparity Analysis: Non-Construction Related Services Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015**





#### 4. Commodities and Other Services Prime Contracts Valued Between \$25,000 and \$50,000

The disparity analysis of commodities and other services prime contracts valued between \$25,000 and \$50,000 is described below and depicted in Table 7.11 and Chart 7.8.

*Black-owned businesses* represent 10.76% of the available commodities and other services businesses and received 1.79% of the dollars on commodities and other services contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Asian-Pacific-owned businesses* represent 2.44% of the available commodities and other services businesses and received 1.40% of the dollars on commodities and other services contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Asian-Indian Subcontinent-owned businesses* represent 3.01% of the available commodities and other services businesses and received 0.94% of the dollars on commodities and other services contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Hispanic-owned businesses* represent 6.88% of the available commodities and other services businesses and received 1.54% of the dollars on commodities and other services contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Native American or Alaskan Native-owned businesses* represent 0.57% of the available commodities and other services businesses and received 0.24% of the dollars on commodities and other services contracts valued between \$25,000 and \$50,000. There are too few available firms to test statistical significance.

*Caucasian Female-owned businesses* represent 23.83% of the available commodities and other services businesses and received 11.53% of the dollars on commodities and other services contracts valued between \$25,000 and \$50,000. This underutilization is statistically significant.

*Non-minority male-owned businesses* represent 52.50% of the available commodities and other services businesses and received 82.56% of the dollars on commodities and other services contracts valued between \$25,000 and \$50,000. This overutilization is statistically significant.



**Table 7.11: Disparity Analysis: Commodities and Other Services Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015**

<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>
Black	\$10,406,899	1.79%	10.76%	\$62,608,830	-\$52,201,931	0.17	< .05 *
Asian-Pacific	\$8,138,956	1.40%	2.44%	\$14,206,915	-\$6,067,959	0.57	< .05 *
Asian-Indian Subcontinent	\$5,460,071	0.94%	3.01%	\$17,528,012	-\$12,067,941	0.31	< .05 *
Hispanic	\$8,952,649	1.54%	6.88%	\$40,037,671	-\$31,085,021	0.22	< .05 *
Native American or Alaskan Native	\$1,409,706	0.24%	0.57%	\$3,321,097	-\$1,911,391	0.42	----
Caucasian Females	\$67,123,006	11.53%	23.83%	\$138,686,555	-\$71,563,548	0.48	< .05 *
Non-minority Males	\$480,438,725	82.56%	52.50%	\$305,540,933	\$174,897,792	1.57	< .05 †
<b>TOTAL</b>	<b>\$581,930,013</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$581,930,013</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>
Black Females	\$2,978,616	0.51%	2.67%	\$15,559,955	-\$12,581,338	0.19	< .05 *
Black Males	\$7,428,283	1.28%	8.08%	\$47,048,876	-\$39,620,593	0.16	< .05 *
Asian-Pacific Females	\$5,437,575	0.93%	0.92%	\$5,350,656	\$86,919	1.02	**
Asian-Pacific Males	\$2,701,381	0.46%	1.52%	\$8,856,259	-\$6,154,878	0.31	< .05 *
Asian-Indian Subcontinent Females	\$1,332,469	0.23%	0.62%	\$3,628,606	-\$2,296,137	0.37	----
Asian-Indian Subcontinent Males	\$4,127,602	0.71%	2.39%	\$13,899,406	-\$9,771,804	0.30	< .05 *
Hispanic Females	\$2,372,872	0.41%	1.92%	\$11,193,327	-\$8,820,456	0.21	< .05 *
Hispanic Males	\$6,579,778	1.13%	4.96%	\$28,844,343	-\$22,264,566	0.23	< .05 *
Native American or Alaskan Native Females	\$902,755	0.16%	0.25%	\$1,476,043	-\$573,288	0.61	----
Native American or Alaskan Native Males	\$506,950	0.09%	0.32%	\$1,845,054	-\$1,338,103	0.27	----
Caucasian Females	\$67,123,006	11.53%	23.83%	\$138,686,555	-\$71,563,548	0.48	< .05 *
Non-minority Males	\$480,438,725	82.56%	52.50%	\$305,540,933	\$174,897,792	1.57	< .05 †
<b>TOTAL</b>	<b>\$581,930,013</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$581,930,013</b>			

( \*) denotes a statistically significant underutilization.

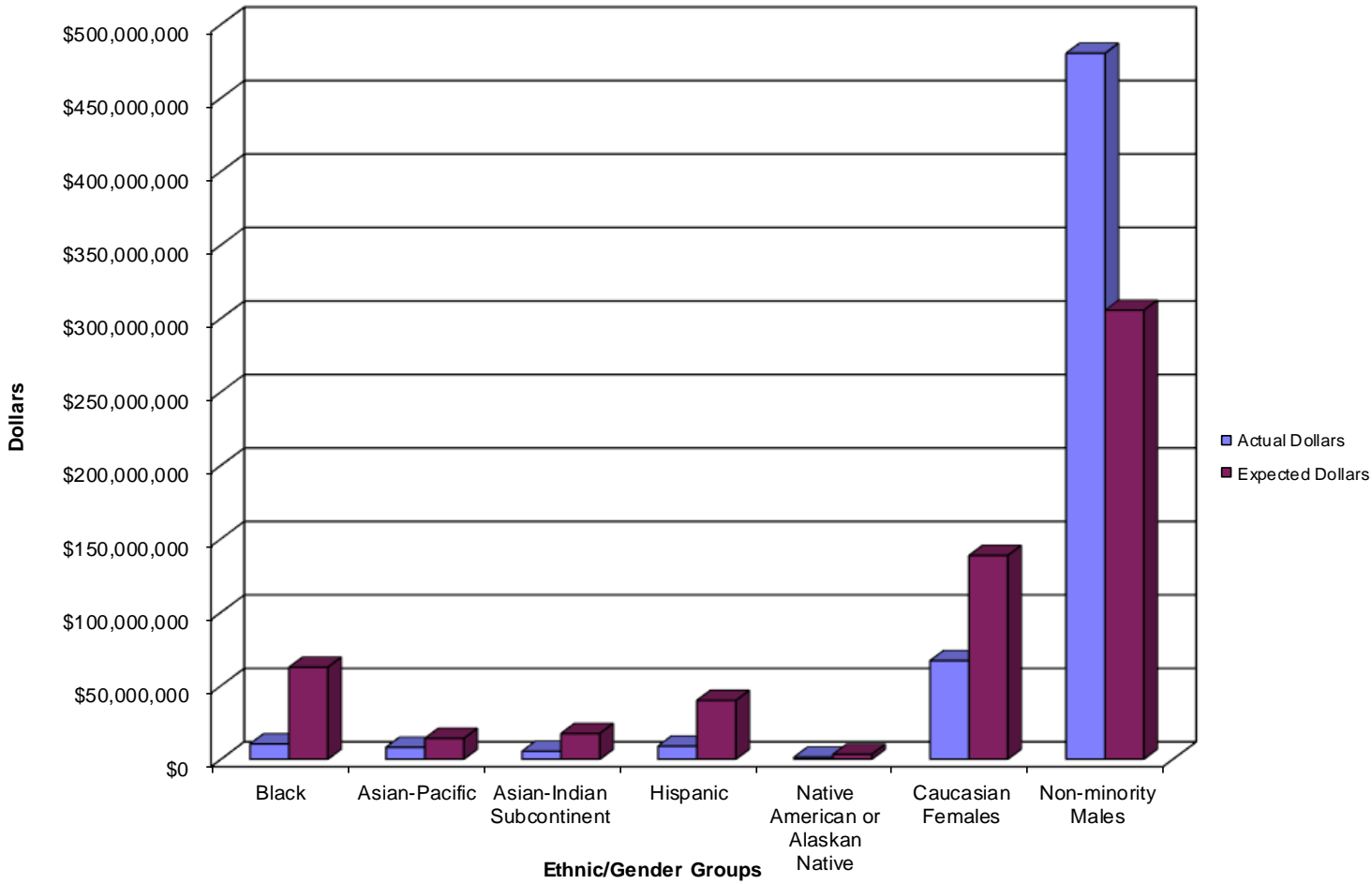
( † ) denotes a statistically significant overutilization.

( \*\* ) this study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.

( ---- ) denotes an underutilized group with too few available firms to test statistical significance.



**Chart 7.8: Disparity Analysis: Commodities and Other Services Prime Contracts Valued Between \$25,000 and \$50,000, April 1, 2010, to March 31, 2015**



### III. Disparity Analysis Summary

#### A. Construction Prime Contracts

As indicated in Table 7.12 below, disparity was found for Black-owned businesses, Asian Pacific-owned businesses, Asian-Indian Subcontinent-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on construction contracts valued \$50,000 to \$1,400,000, and Black-owned businesses, Asian-Pacific-owned businesses, Asian-Indian Subcontinent-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on construction contracts valued between \$25,000 and \$50,000.

**Table 7.12: Disparity Summary: Construction Prime Contract Dollars, April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Construction Contracts Valued \$50,000 to \$1,400,000	Construction Contracts Valued Between \$25,000 and \$50,000
Black-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Subcontinent-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Hispanic-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Native American or Alaskan Native-owned Businesses	No Disparity	No Disparity
Caucasian Female-owned Businesses	<i>Disparity</i>	<i>Disparity</i>



**B. Construction-Related Services Prime Contracts**

As indicated in Table 7.13 below, disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Asian-Indian Subcontinent-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on construction-related services contracts valued \$50,000 to \$2,000,000, and Black-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on construction-related services contracts valued between \$25,000 and \$50,000.

**Table 7.13: Disparity Summary: Construction-Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Construction-Related Services Contracts Valued \$50,000 to \$2,000,000	Construction-Related Services Contracts Valued Between \$25,000 and \$50,000
Black-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific-owned Businesses	<i>Disparity</i>	No Disparity
Asian-Indian Subcontinent-owned Businesses	<i>Disparity</i>	No Disparity
Hispanic-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Native American or Alaskan Native-owned Businesses	No Disparity	No Disparity
Caucasian Female-owned Businesses	<i>Disparity</i>	<i>Disparity</i>



### C. *Non-Construction Related Services Prime Contracts*

As indicated in Table 7.14 below, disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on non-construction related services contracts valued \$50,000 to \$500,000, and Black-owned businesses, Asian-Pacific-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on non-construction related services contracts valued between \$25,000 and \$50,000.

**Table 7.14: Disparity Summary: Non-Construction Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015**

<b>Ethnicity/Gender</b>	<b>Non-Construction Related Services Contracts Valued \$50,000 to \$500,000</b>	<b>Non-Construction Related Services Contracts Valued Between \$25,000 and \$50,000</b>
<b>Black-owned Businesses</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Pacific-owned Businesses</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Indian Subcontinent-owned Businesses</b>	No Disparity	No Disparity
<b>Hispanic-owned Businesses</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Native American or Alaskan Native-owned Businesses</b>	No Disparity	No Disparity
<b>Caucasian Female-owned Businesses</b>	<i>Disparity</i>	<i>Disparity</i>



**D. Commodities and Other Services Prime Contracts**

As indicated in Table 7.15 below, disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Asian-Indian Subcontinent-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on commodities and other services contracts valued \$50,000 to \$275,000, and Black-owned businesses, Asian-Pacific-owned businesses, Asian-Indian Subcontinent-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on commodities and other services contracts valued between \$25,000 and \$50,000.

**Table 7.15: Disparity Summary: Commodities and Other Services Prime Contract Dollars, April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Commodities and Other Services Contracts Valued \$50,000 to \$275,000	Commodities and Other Services Contracts Valued Between \$25,000 and \$50,000
Black-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Subcontinent-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Hispanic-owned Businesses	<i>Disparity</i>	<i>Disparity</i>
Native American or Alaskan Native-owned Businesses	No Disparity	No Disparity
Caucasian Female-owned Businesses	<i>Disparity</i>	<i>Disparity</i>



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# **CHAPTER 8: Subcontract Statistical Disparity Analysis**

## **I. Introduction**

The objective of this chapter is to determine if there was any underutilization of minority and woman-owned business enterprise (MWBE) subcontractors, hereinafter referred to as minority and Caucasian female-owned businesses, on the State of New York's (State's) contracts during the April 1, 2010, to March 31, 2015, study period. A detailed discussion of the statistical procedures for conducting a disparity analysis is set forth in *Chapter 7: Prime Contract Statistical Disparity Analysis*. The same statistical procedures were 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 MWBE subcontractors should be relatively close to the proportion of available MWBE subcontractors in the State's market area. 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 MWBE subcontractors to available MWBE 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>299</sup> *Croson* states that an inference of discrimination can be made *prima facie* if the observed disparity is statistically significant. Under the *Croson* model, non-minority male-owned business enterprises (non-MWBEs) are not subjected to a statistical test.

## **II. Disparity Analysis**

The disparity analysis was performed on subcontracts issued in three industries: construction, construction-related services, and non-construction related services during the April 1, 2010 through March 31, 2015 study period. As detailed in *Chapter 4: Subcontractor Utilization Analysis*, extensive efforts were undertaken to obtain subcontractor records for the State's construction, construction-related services, and non-construction related services contracts.



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<sup>299</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 considered by statistical standards to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analysis here was done within the 95-percent confidence level.



The subcontract disparity findings in the three industries under consideration are summarized below. 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 below in Table 8.1.

**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>• MWBEs: This underutilization is not statistically significant.</li> <li>• Non-minority males: This overutilization is not statistically significant.</li> </ul>
----	While this group was underutilized, there were too few available firms to determine statistical significance.
**	This study does not test statistically the overutilization of MWBEs or the underutilization of non-minority males.
< .05 †	This overutilization is statistically significant.

### **III. Disparity Analysis: All Subcontracts, By Industry**

#### **A. Construction Subcontracts**

The disparity analysis of construction subcontracts is described below and depicted in Table 8.2 and Chart 8.1.

**Black-owned businesses** represent 11.53% of the available construction subcontractors and received 5.61% of the construction subcontract dollars. This underutilization is statistically significant.

**Asian-Pacific-owned businesses** represent 2.59% of the available construction subcontractors and received 1.07% of the construction subcontract dollars. This underutilization is statistically significant.

**Asian-Indian Subcontinent-owned businesses** represent 6.69% of the available construction subcontractors and received 0.91% of the construction subcontract dollars. This underutilization is statistically significant.

**Hispanic-owned businesses** represent 8.63% of the available construction subcontractors and received 3.89% of the construction subcontract dollars. This underutilization is statistically significant.

**Native American or Alaskan Native-owned businesses** represent 0.73% of the available construction subcontractors and received 1.03% of the construction subcontract dollars. This study does not test statistically the overutilization of MWBEs.

**Caucasian female-owned businesses** represent 20.24% of the available construction subcontractors and received 16.13% of the construction subcontract dollars. This underutilization is not statistically significant.

**Non-minority male-owned businesses** represent 49.58% of the available construction subcontractors and received 71.37% of the construction subcontract dollars. This overutilization is statistically significant.

**Table 8.2: Disparity Analysis: Construction Subcontracts,  
April 1, 2010, to March 31, 2015**

<b>Group</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>
Black	\$19,943,563	5.61%	11.53%	\$41,019,730	-\$21,076,167	0.49	< .05 *
Asian-Pacific	\$3,812,095	1.07%	2.59%	\$9,226,191	-\$5,414,096	0.41	< .05 *
Asian-Indian Subcontinent	\$3,222,509	0.91%	6.69%	\$23,780,182	-\$20,557,672	0.14	< .05 *
Hispanic	\$13,819,270	3.89%	8.63%	\$30,710,653	-\$16,891,383	0.45	< .05 *
Native American or Alaskan Native	\$3,670,712	1.03%	0.73%	\$2,598,927	\$1,071,786	1.41	**
Caucasian Females	\$57,375,935	16.13%	20.24%	\$71,990,276	-\$14,614,342	0.80	not significant
Non-minority Males	\$253,819,068	71.37%	49.58%	\$176,337,193	\$77,481,875	1.44	< .05 †
<b>TOTAL</b>	<b>\$355,663,152</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$355,663,152</b>			

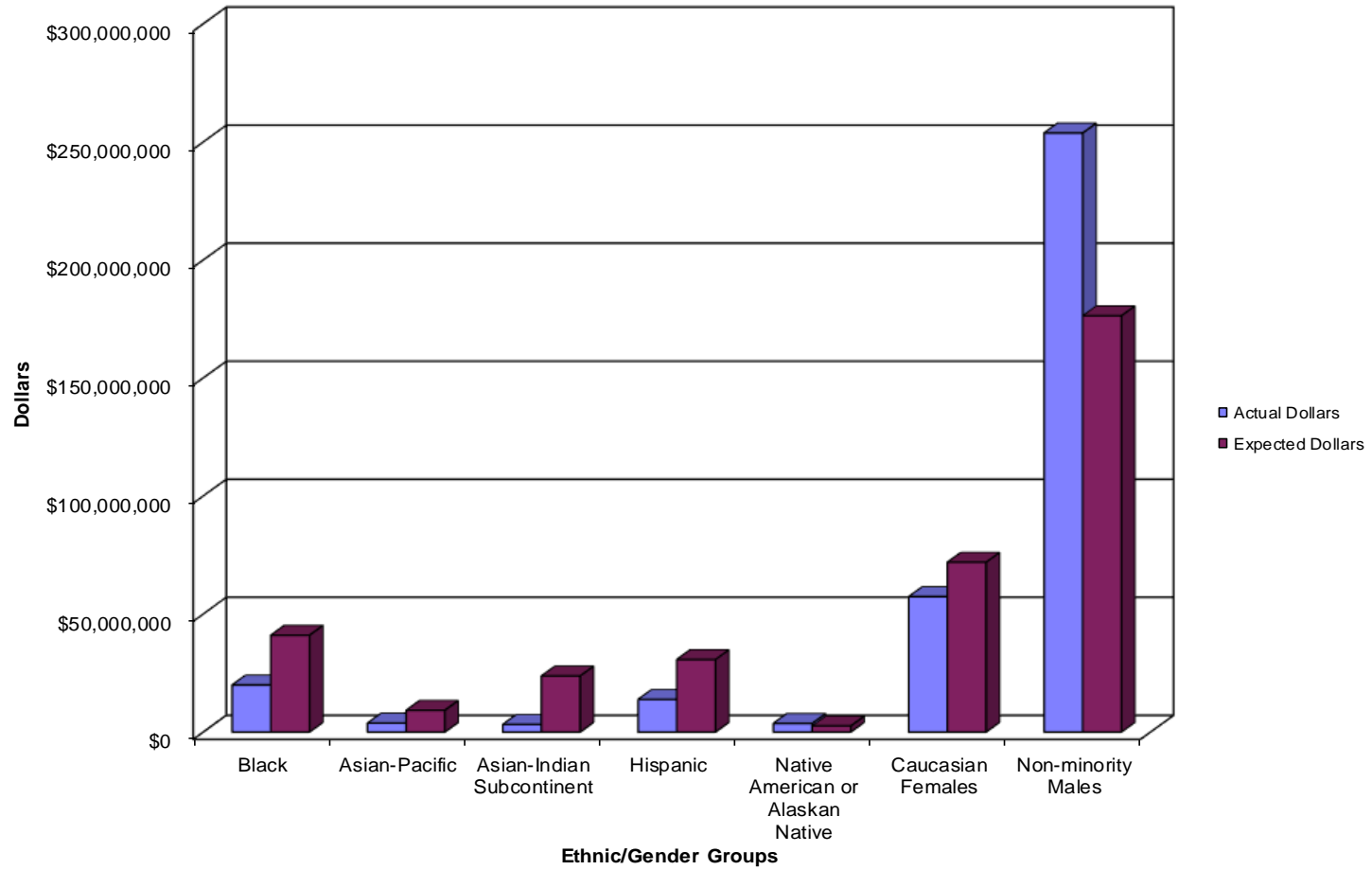
( \* ) denotes a statistically significant underutilization.

( † ) denotes a statistically significant overutilization.

( \*\* ) denotes that this study does not test statistically the overutilization of MWBEs or the underutilization of Non-minority males.

( ---- ) denotes an underutilized group with too few available firms to test statistical significance.

**Chart 8.1: Disparity Analysis: Construction Subcontracts,  
April 1, 2010, to March 31, 2015**



## **B. Construction-Related Services Subcontracts**

The disparity analysis of construction-related services subcontracts is described below and depicted in Table 8.3 and Chart 8.2.

*Black-owned businesses* represent 10.82% of the available construction-related services subcontractors and received 3.14% of the construction-related services subcontract dollars. This underutilization is statistically significant.

*Asian-Pacific-owned businesses* represent 4.68% of the available construction-related services subcontractors and received 2.71% of the construction-related services subcontract dollars. This underutilization is statistically significant.

*Asian-Indian Subcontinent-owned businesses* represent 6.40% of the available construction-related services subcontractors and received 9.63% of the construction-related services subcontract dollars. This study does not test statistically the overutilization of MWBEs.

*Hispanic-owned businesses* represent 8.18% of the available construction-related services subcontractors and received 4.74% of the construction-related services subcontract dollars. This underutilization is statistically significant.

*Native American or Alaskan Native-owned businesses* represent 0.67% of the available construction-related services subcontractors and received 0.09% of the construction-related services subcontract dollars. While this group was underutilized, there were too few available firms to determine statistical significance.

*Caucasian female-owned businesses* represent 28.34% of the available construction-related services subcontractors and received 8.54% of the construction-related services subcontract dollars. This underutilization is statistically significant.

*Non-minority male-owned businesses* represent 40.90% of the available construction-related services subcontractors and received 71.16% of the construction-related services subcontract dollars. This overutilization is statistically significant.

**Table 8.3: Disparity Analysis: Construction-Related Services Subcontracts,  
April 1, 2010, to March 31, 2015**

<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>
Black	\$7,217,098	3.14%	10.82%	\$24,885,601	-\$17,668,504	0.29	< .05 *
Asian-Pacific	\$6,236,570	2.71%	4.68%	\$10,771,380	-\$4,534,810	0.58	< .05 *
Asian-Indian Subcontinent	\$22,147,228	9.63%	6.40%	\$14,733,266	\$7,413,962	1.50	**
Hispanic	\$10,912,378	4.74%	8.18%	\$18,818,962	-\$7,906,584	0.58	< .05 *
Native American or Alaskan Native	\$202,938	0.09%	0.67%	\$1,547,612	-\$1,344,674	0.13	----
Caucasian Females	\$19,635,705	8.54%	28.34%	\$65,185,418	-\$45,549,713	0.30	< .05 *
Non-minority Males	\$163,685,133	71.16%	40.90%	\$94,094,811	\$69,590,322	1.74	< .05 †
<b>TOTAL</b>	<b>\$230,037,051</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$230,037,051</b>			

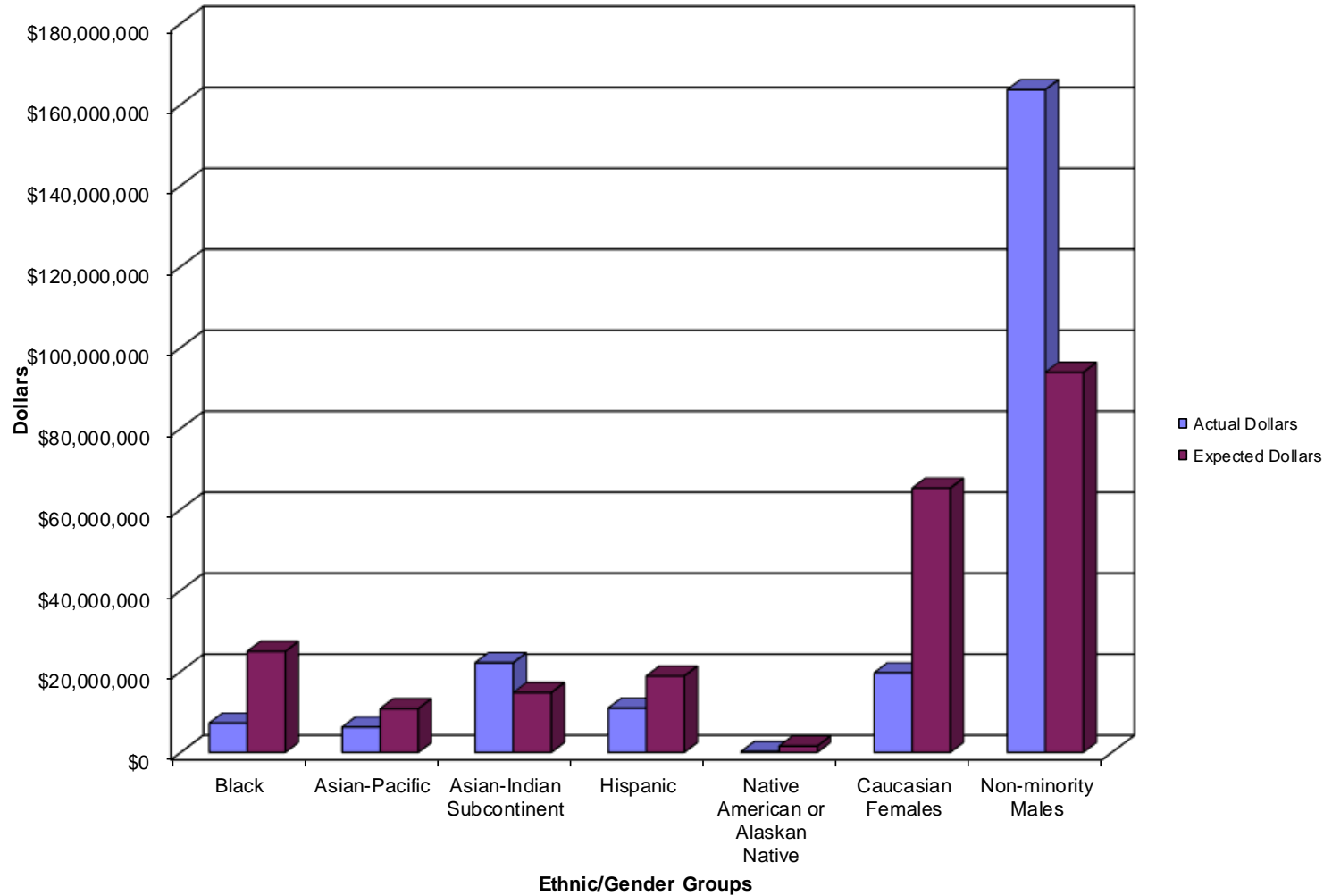
( \* ) denotes a statistically significant underutilization.

( † ) 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 too few available firms to test statistical significance.

**Chart 8.2: Disparity Analysis: Construction-Related Services Subcontracts, April 1, 2010, to March 31, 2015**



### **C. Non-Construction Related Services Subcontracts**

The disparity analysis of non-construction related services subcontracts is described below and depicted in Table 8.4 and Chart 8.3.

**Black-owned businesses** represent 13.43% of the available non-construction related services subcontractors and received 0.57% of the non-construction related services subcontract dollars. This underutilization is statistically significant.

**Asian-Pacific-owned businesses** represent 4.22% of the available non-construction related services subcontractors and received 0.20% of the non-construction related services subcontract dollars. This underutilization is statistically significant.

**Asian-Indian Subcontinent-owned businesses** represent 4.97% of the available non-construction related services subcontractors and received 13.80% of the non-construction related services subcontract dollars. This study does not test statistically the overutilization of MWBEs.

**Hispanic-owned businesses** represent 6.97% of the available non-construction related services subcontractors and received 1.88% of the non-construction related services subcontract dollars. This underutilization is statistically significant.

**Native American or Alaskan Native-owned businesses** represent 0.59% of the available non-construction related services subcontractors and received 0.37% of the non-construction related services subcontract dollars. While this group was underutilized, there were too few available firms to determine statistical significance.

**Caucasian female-owned businesses** represent 32.59% of the available non-construction related services subcontractors and received 6.14% of the non-construction related services subcontract dollars. This underutilization is statistically significant.

**Non-minority male-owned businesses** represent 37.22% of the available non-construction related services subcontractors and received 77.04% of the non-construction related services subcontract dollars. This overutilization is statistically significant.



**Table 8.4: Disparity Analysis: Non-Construction Related Services Subcontracts,  
April 1, 2010, to March 31, 2015**

<b>Group</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>
Black	\$333,803	0.57%	13.43%	\$7,892,296	-\$7,558,494	0.04	< .05 *
Asian-Pacific	\$117,028	0.20%	4.22%	\$2,480,192	-\$2,363,164	0.05	< .05 *
Asian-Indian Subcontinent	\$8,113,164	13.80%	4.97%	\$2,923,388	\$5,189,775	2.78	**
Hispanic	\$1,105,869	1.88%	6.97%	\$4,099,562	-\$2,993,693	0.27	< .05 *
Native American or Alaskan Native	\$216,098	0.37%	0.59%	\$349,443	-\$133,345	0.62	----
Caucasian Females	\$3,608,720	6.14%	32.59%	\$19,159,700	-\$15,550,979	0.19	< .05 *
Non-minority Males	\$45,288,437	77.04%	37.22%	\$21,878,536	\$23,409,900	2.07	< .05 †
<b>TOTAL</b>	<b>\$58,783,118</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$58,783,118</b>			

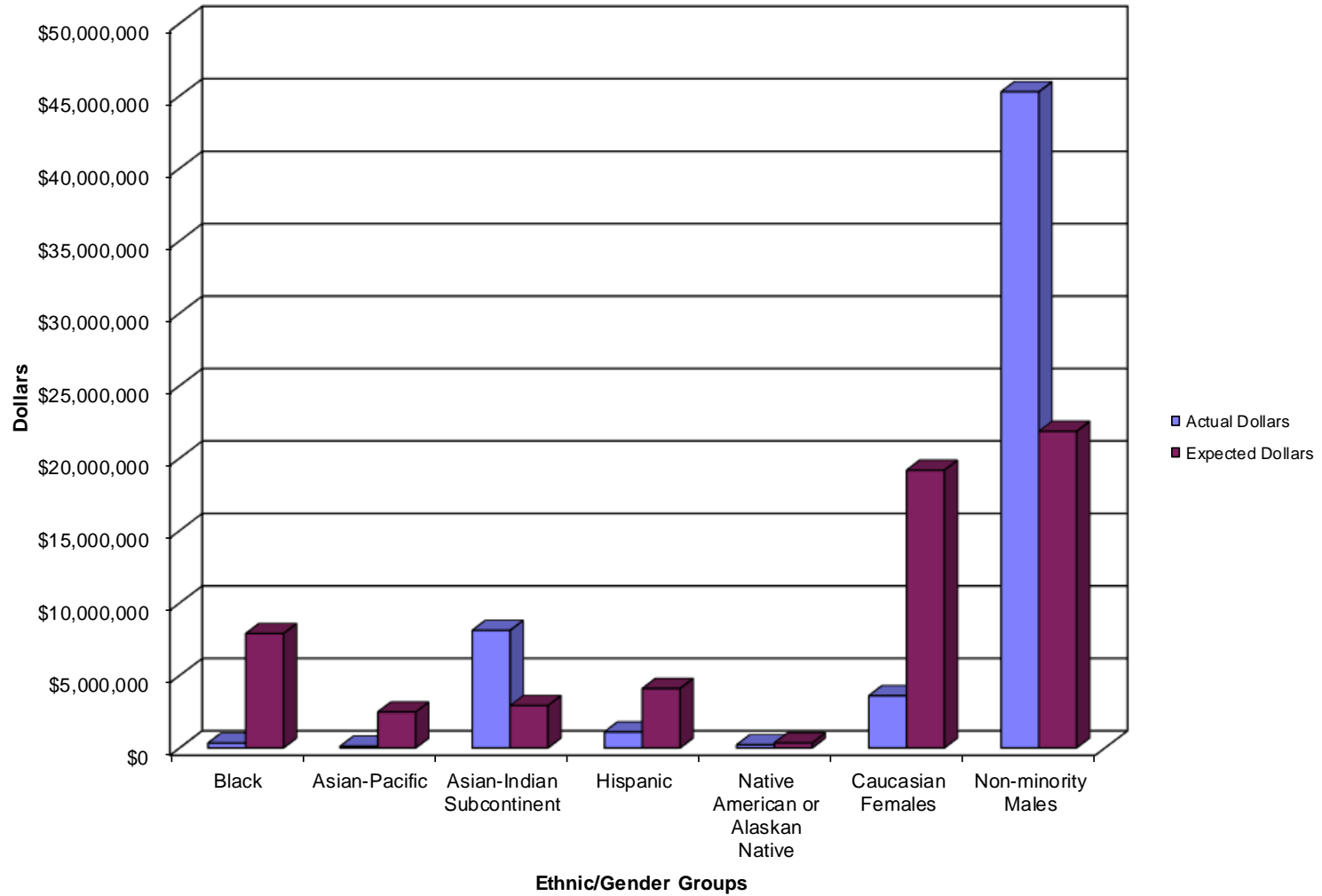
( \* ) denotes a statistically significant underutilization.

( † ) 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 too few available firms to test statistical significance.

**Chart 8.3: Disparity Analysis: Non-Construction Related Services Subcontracts, April 1, 2010, to March 31, 2015**



#### ***IV. Subcontract Disparity Summary***

As indicated in Table 8.5, disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Asian-Indian Subcontinent-owned businesses, and Hispanic-owned businesses utilized as subcontractors on construction subcontracts. Caucasian female-owned businesses were underutilized on the construction subcontracts. Disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses utilized as subcontractors on construction-related services subcontracts. Disparity was also found for Black-owned businesses, Asian-Pacific-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses utilized as subcontractors on non-construction related services subcontracts.

**Table 8.5: Subcontract Disparity Summary,  
April 1, 2010, to March 31, 2015**

<b>Ethnicity / Gender</b>	<b>Construction</b>	<b>Construction-Related Services</b>	<b>Non-Construction Related Services</b>
<b>Black-owned Businesses</b>	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Pacific-owned Businesses</b>	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Indian Subcontinent-owned Businesses</b>	<i>Disparity</i>	No Disparity	No Disparity
<b>Hispanic-owned Businesses</b>	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
<b>Native American or Alaskan Native-owned Businesses</b>	No Disparity	No Disparity	No Disparity
<b>Caucasian Female-owned Businesses</b>	<i>Underutilized</i>	<i>Disparity</i>	<i>Disparity</i>



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# **CHAPTER 9: Anecdotal Analysis**

## **I. Introduction**

This chapter presents anecdotal evidence that was gathered and analyzed to supplement the statistical findings and disclose any barriers that might affect MWBE access to the State of New York's (State) Executive Agencies and Public Authorities contracts. The anecdotal evidence was gathered in a fair and equitable manner. In-depth one-on-one interviews were conducted and testimony gathered from statewide business community meetings.

## **II. Legal Standard**

The importance of anecdotal evidence in assessing the presence of discrimination in a geographic market was identified in the landmark case of *City of Richmond v. J.A. Croson Co. (Croson)*.<sup>300</sup> The United States Supreme Court, in its 1989 *Croson* decision, specified the use of anecdotal testimony as a means to determine whether remedial, race-conscious relief may be justified in a local government's market area. The Court stated that a pattern of individual discriminatory acts can offer an explanation of the findings of statistical disparity.<sup>301</sup> However, the discriminatory acts cannot be used to determine the presence of discrimination in a government entity's contracting process.

The Court did find that anecdotal testimony of individual discriminatory acts can document the routine practices affecting MWBE access to contracting opportunities within a given market area. While the statistical data must be used to measure the existence of discrimination, anecdotal testimony provides the human context through which the numbers can be understood. Anecdotal testimony from business owners provides information on perceived barriers in a government's market area. This type of information can be used to define best management practices that could improve MWBE access to the government's contracts.

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

*Croson* authorizes anecdotal inquiries along two lines. The first approach investigates active government discrimination or acts of exclusion committed by representatives of the governmental entity. The purpose of this examination is to determine whether the government has committed acts that have prevented MWBEs from obtaining contracts.



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<sup>300</sup> *City of Richmond V. J.A. Croson Co.*, 488 U.S. 469 (1989)

<sup>301</sup> *Id.*

The second line of inquiry examines the government’s passive support of discriminatory practices in the market area where its funds are infused. Passive exclusion occurs when government contracts are awarded to companies that discriminate against MWBEs, or when government fails to take corrective measures to prevent discrimination by its prime contractors.<sup>302</sup>

Although anecdotal evidence of discrimination is entitled to less evidentiary weight than statistical evidence, when paired with appropriate statistical data, anecdotal evidence of either active or passive discrimination can support the imposition of a race or gender-conscious remedial program.<sup>303</sup> Therefore anecdotal testimony used in combination with statistical data that supports a race or gender-conscious program has value in the *Croson* framework. As *Croson* notes in reference to the City of Richmond procurement policy, there are available “a whole array of race-neutral devices to increase the accessibility of City contracting opportunities to small entrepreneurs of all races.”<sup>304</sup> The anecdotal narratives, according to *Croson*, can identify practices that should be enhanced or eliminated in order to increase contracting opportunities for MWBEs.

## **B. Anecdotal Interview Process**

The method used in gathering anecdotal testimony elicited eyewitness accounts and perceptions of the effects of exclusionary practices. Allowing interviewees to describe the barriers they have experienced in conducting business informs an understanding of how barriers occur, who creates them, and their effect on business development. Thus, the information obtained offers the State vital insights on an array of policy changes to its Minority and Woman-Owned Business Enterprise Program.

### **1. In-depth Interviews**

Interviews were conducted with owners of 125 businesses domiciled in the State of New York. The questions asked elicited descriptions of barriers business owners encountered working with or seeking work from the State’s executive agencies and public authorities, positive experiences working with the agencies and authorities and their prime contractors, knowledge of the State’s MWBE Program, and recommendations to enhance the program.

The business owners interviewed were identified from contract and certification records, business community meetings, and outreach. Potential interviewees were pre-screened to determine if they operated a business within the market area during the study period and were willing to commit to the interview process.



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<sup>302</sup> *Croson*, 488 U.S. at 491-93, 509.

<sup>303</sup> *Croson*, 488 U.S. at 509.

<sup>304</sup> *Croson*, 488 U.S. at 509.

## 2. Business Community Meeting and Testimony

Fifteen business community meetings were held throughout the State of New York. The meetings were held to inform the business community about the purpose of the Disparity Study and to allow the participants an opportunity to provide information about their experiences working with or seeking work from the agencies and authorities. The outreach efforts to promote the business community meetings targeted firms from the construction, non-construction related services (including architecture and engineering), and commodities and other services industries.

The meetings were also attended by State representatives and local governmental officials. As noted in Table 1, the meetings were held in each of the five New York City boroughs, Long Island, Western and Central New York, Finger Lakes, North Country, Mohawk Valley, Southern Tier, Capital District, and Mid-Hudson. The business community meetings were attended by 1,048 persons including individuals representing MWBE and non-MWBE businesses.

**Table 9.1: Business Community Meetings**

<b>Statewide Business Community Meetings</b>		
<b>Meeting Date</b>	<b>Location</b>	<b>Attendees</b>
10/28/2015	Buffalo	59
10/29/2015	Rochester	48
10/29/2015	Syracuse	40
12/18/2015	Trade Association Outreach– Albany and NYC	33
1/13/2016	Brooklyn	100
1/14/2016	Staten Island	40
1/13/2016	Queens	102
2/17/2016	Bronx	54
2/18/2016	Long Island	66
2/17/2016	Manhattan	135
3/11/2016	Poughkeepsie	68
3/10/2016	Albany	136
4/28/2016	Utica	13
4/27/2016	Binghamton	106
5/4/2016	Plattsburgh	19
5/5/2016	Watertown	29
<b>TOTAL</b>		<b>1,048</b>

The meetings were recorded and transcribed. Testimony from these meetings has been incorporated in this chapter.



### **C. Structure of the Anecdotal Interviews**

Excerpts from the interviewee accounts illustrate a pattern of practices that have adversely affected MWBE participation in the State's contracting process.

The practices identified by the interviewees are grouped into thirteen categories:

1. Racial Barriers
2. Sexism
3. Project Labor Agreements
4. Difficulty Breaking into the Contractor Community
5. Preferred Sources
6. Good Old Boy Network
7. Prime Contractor Circumventing MWBE Program Requirements
8. Problems with MWBE Certification Process
9. Late Payments by Prime Contractors
10. Late Payments by Executive Agencies and Public Authorities
11. Comments on the State's MWBE Program
12. Exemplary Practices of Executive Agencies and Public Authorities
13. Recommendations to Enhance the State's Minority and Woman-Owned Business Program

## **III. Anecdotal Findings**

### **A. Racial Barriers**

Minority business owners reported that the growth and development of their companies are impacted by prejudicial attitudes and behavior ascribed to the group based on race. Categorically, there are situations that MBEs experience that affirm their perception that people of color are viewed as less competent than their Caucasian counterparts.

A minority male owner of a non-construction related company reported that MBEs are unfairly judged as incompetent:

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*On paper my team can match the qualifications of any other firm. We have nine degrees between four people. Our team includes a Ph.D., Masters in Computer Science and Business Administration. We have worked for white contractors and made them a lot of money. Now that we want to work as a prime contractor and bring some of the money back to our community they say, "Well, you don't have the experience, you don't have this, and you don't have that." That's garbage! They need to find better criteria for how to measure and evaluate effectiveness of small businesses. Stop considering minorities as less than capable. The MBE*



*status is not an inferior status. While on a project, I overheard a white guy say, “We have the FBI security team.” And the other guy asked, “FBI?” He says, “Yeah, feeble, black and incompetent.” So in many cases, that’s what they think of minorities.*

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A minority male owner of a non-construction related company reported that MWBEs are oftentimes considered as incompetent. This business owner explained why he believes MWBEs are viewed negatively:

*We are sort of dismissed as being an MWBE unable to do good work. It happens sometimes in joint ventures when we partner with majority firms. The majority firm does all the work and we are just window dressing. We really want to do the real work, we want to learn. Supreme Court Justice Scalia recently said that blacks should go to lower-tiered schools. This is a Supreme Court judge making a public statement on affirmative action. He believes that Blacks do better at lower-tiered schools that have lower expectations of them. So, it’s not unreasonable to think that executives in America think the same way about minority businesses in general. They feel as though they are being compelled to use us. If there wasn’t a mandate from the governor forcing agencies to use minority firms, they wouldn’t consider using us at all. We need the political help because if you leave it to the agencies they’re not going to hire a minority business.*

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A minority female owner of a non-construction related company reported that some prime contractors believe that MWBE goals are an underserved benefit:

*MWBE goals are sometimes viewed as corporate welfare. A lot of low income people are looked down upon because they receive certain benefits that is available to help but others are resentful toward them. And this is the attitude of a lot of prime contractors. They believe they are giving us corporate welfare, and we should be happy whenever we get paid. It’s like I don’t deserve it and I am receiving the work because I am Black and a woman. So, it’s corporate welfare for them. That’s how they view it. Quite frankly, the whole idea behind MWBE programs is to strengthen and help businesses that are economically and racially at a disadvantage. It’s not about corporate welfare.*

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A minority female owner of a non-construction related company believes that she was treated differently after her ethnicity was known:





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*When I meet with managers on the phone and then send them information on my professional services, they love it. But once we have a face to face meeting, they say, “Well we have to think about it and things like that.” I don’t know what the issue is because they loved my phone presentation. So, I just chalk it up to discrimination.*

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A minority male owner of a professional services company reported that he oftentimes allows his staff to take the lead during presentations because of his ethnicity:

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*I don’t put myself in front as the business owner of my company. I put my staff in front because they mimic the good old boys network.*

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A minority male owner of a construction company believes that his MBE firm’s workforce is unfairly scrutinized during pre-bid meetings:

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*Our company is an MBE. The majority of our workforce are Hispanics, African Americans, and women. So, we have a very diverse racial makeup as a team. So, when we go to pre-bid meetings to get work they look for a familiar face, but we don’t look the way they do. As people of color, we often have to justify our experience, pricing, capacity and capability.*

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## **B. Sexism**

Interviewees reported that some women business owners experience gender bias.

A Caucasian female owner of a non-construction company reported that she is sometimes pressured by prime contractors to reduce her rates when responding to a quote:

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*The value of the work that I provide is equal to the work that my male counterparts provide. I have the experience, but I’m not compensated at the same rate. This has been my biggest hurdle. I have been asked to lower my price by prime consultants although my male peers get higher hourly rates.*

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A Caucasian female owner of a non-construction related company reported that she is solicited by prime contractors for a quote even though they have no intention of working with her firm:

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*We can’t determine whether some prime contractors are asking for a quote because they’re trying to fulfill a good faith effort requirement or if they’re*



*seriously interested in doing business with us. Most prime contractors don't call back because they were just looking for me to submit a number so they can say, "Oh, we tried to get a woman."*

---

A Caucasian female owner of a construction company reported that her staff experienced gender-based slurs while working on a Dormitory Authority project:

*On a construction site with the Dormitory Authority a project manager constantly asked my team who's my daddy and does he really run the company. My team got really pissed off because they knew that was far from the truth. The project manager espoused slurs and tried to bury me because of my gender. It was infuriating.*

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A Caucasian female owner of a construction company reported that she is often overlooked during business meetings because of her gender:

*People don't take me seriously as a female business owner. When I bring one of my project managers to a meeting, they will look at him and ask questions. I don't think they mean it in a harmful way, it's just the culture. That is the assumption in a predominantly male industry. Women make up 51 percent of our population, and it doesn't make sense that we are only 5 percent of the construction industry. So, something's not right.*

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A Caucasian female owner of a construction company reported that some tradesmen refuse to work for a woman-owned firm:

*Construction is a male dominated industry. And I can make that statement as a certainty. The gender barriers today are very subtle. It happens when men talk over me. Some of my workforce have told me that there are workers that will not work for me because I'm not a man.*

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A Caucasian female owner of a construction firm reported that some contractors believe that women are unable to perform demolition work:

*Some contractors don't want us on the job because they don't feel we are as qualified as our male counterparts. I do demolition work and some contractors think that women should not do that type of work. I am looked at as the weaker gender, so they rather work with another trucking company. They also refer to*



*me as “sweetie” and “honey.” I think that is inappropriate in this day and age. But I don’t walk around in high heels and skirts. I wear jeans and work boots, and it doesn’t take a lot of strength to shift gears in a truck. But still, they would rather not work with females. I think they are more comfortable speaking with another guy than with me.*

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A Caucasian male owner of a commodities and other services company believes MWBEs are not experiencing discrimination on construction sites:

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*There are a number of political representatives who believe that building trades unions are not recruiting minority or women applicants. This has certainly not been my experience. I deal with all of the trades in my region, and there is no hostility toward minorities or women joining the workforce. About one-third of the recent class for carpenters is made up of minorities and women. Women are still going to struggle in the building trades because of heavy equipment. Men are generally stronger than women so you’re going to have a harder time attracting and retaining women in the trades. That’s not discrimination, that’s just what it is. I don’t know of a lot of my MWBE counterparts complaining about being treated differently because of their race or gender. They complain about the difficulty of meeting project requirements, being able to handle complex paperwork on State jobs, and managing cash flow on long-term projects. But I don’t really hear them complaining about being treated differently because of their race or gender. I have heard women-contractors complain very bitterly about the state certification process and how difficult it is for them to get certified compared to African-Americans.*

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### **C. Project Labor Agreements**

Some agencies and authorities enter into collective bargaining agreements with unions that establish the terms and conditions of employment for a specific construction project. Many interviewees expressed concern about the impact project labor agreements (PLAs) have on non-union MWBEs.

A minority male owner of a commodity and other services company reported that his decision to pay union rates instead of the prevailing wage was detrimental to his small business:

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*The project labor agreements include specific rates that are assigned by the authorities and the unions working on the project. The rates are for the duration of the project. We worked on a project and the contract included the prevailing wage requirements. When we started to do the work, we were told by the union that, “This is a union project not a prevailing wage project and therefore you have to adhere to union rates.” Since the union and prevailing wage rates were*



*compatible, we agreed to do the work based on the union rates. The union had three different rate increases on the labor, and we had to comply. If we didn't pay the union increases, we could be shut down. We couldn't work unless we paid the rates, so we were forced to pay the higher labor rates to finish the project. The union rates were higher than the agreed amount under the PLA. The cost added up to almost \$2 million. The higher rates took a financial toll on my company. I was unable to pay my debts which were due within four to six months after completion of the work. Eventually, I had to close the doors on our firm, and now I'm trying to figure out what to do next.*

---

A minority male owner of a construction company reported that some provisions in PLAs can have a negative impact on small businesses:

*Most of the jobs for Dormitory Authority of the State of New York have PLAs. I understand prevailing wage requirements is to make sure everyone gets a fair share. But the PLAs stipulate that the benefits for my workers be paid to the union hall instead to my workers. I took two classes on PLAs to understand why the benefits must go to the union hall. Well, unless he becomes a union mechanic down the line, he will not receive those benefits. It seems like a slush fund because it's not benefiting any of my guys. I worked on a project where I paid \$2,000 to the union, but my non-union workers did not receive the benefit. We get penalized if we don't pay the benefits to the union. The fact we have to put money into a phantom account, describes the power that unions have on State projects. On private sector jobs there is open shop, and union guys work with non-union guys and there are no PLAs.*

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A Caucasian male owner of a construction company explained why he prefers not to work under PLAs:

*I'm not in favor of PLAs even though I'm a union contractor. Union contractors have an advantage over a non-union contractor. It almost guarantees that the contractor has to be a union worker. PLAs actually results in reducing the dollar value unless you have union workforce.*

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A Caucasian male owner of a construction company reported that it is more costly to work on projects that have PLAs even though he has a union firm:

*We are a union firm, but we oppose project labor agreements. The reason we're opposed to them is because we have contracts that include four different trades. Some of the building trades associations might have 10 to 12 trades, and when*



*they negotiate project labor agreements with State agencies, they include every single trade. So, PLA specifies that we have to hire workers in all of the trades. I compare it to a professional sports team, and when you go to a different city, you have to hire different players instead of bringing your own players. Ultimately, your productivity automatically goes down. It's just inefficient. As a competitive business, we compete against open shop firms. So naturally, we try to make sure our contract is free as possible of burdensome work rules in order to compete against open shop firms. Contracts subject to PLAs are more costly and burdensome than contracts without them. It doesn't matter if you're a woman, minority, or Caucasian-owned business, you all have the same goal, to be competitive and efficient.*

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A Caucasian female owner of a construction company believes that PLAs prevent MWBEs from working on construction projects because they are primarily non-union businesses:

*The use of project labor agreements on State projects are more of an exclusionary practice. The agreements prevent MWBEs from participating on the job. Many MWBEs are non-union shops.*

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A Caucasian female owner of a construction company believes that it is difficult for many MWBEs to meet requirements in project labor agreements:

*There are not enough union MWBE shops. When there's a PLA, it is a challenge for minority subcontractors to comply with the PLA. For instance, they still must pay the benefits to the union. They must comply with the union requirements and pay the prevailing wage. This limits us to only work with union subcontractors. If they are non-union MWBE subs that don't want to comply with the PLA, we can't use them.*

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A Caucasian female owner of a construction company explained why she believes PLAs are not beneficial for MWBEs and other small businesses:

*The prevailing wage law was put into place so that anybody could work without having to be signed with unions. I thought that they were fair and reasonable to even the playing field. But the PLAs are costly for MWBEs in a lot of ways. MWBEs have a workforce that's not union. Some unions are good and some are as crooked as the day is long. There are no women at the top of any union, and they don't treat women business owners very nice. But the PLAs do not favor small minority contractors because you cannot bring your own workers. You*



*have to hire sometimes like eight people from the union before you can hire one of your own guys. That is very troubling for small firms.*

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A Caucasian female owner of a construction company explained why she refused to sign PLAs because it would restrict her right to hire nonunion workers:

*We bid a job that had a project labor agreement attached to it. It required us to utilize four union workers before we could use our existing employees. I had about 20 employees so that limited the number of my employees that could work on that job. I didn't sign the PLA because I could not hire any non-union subcontractors. I would have been bound to the PLA.*

---

A representative of a construction contractor association believes that MBEs have a difficult time meeting PLA requirements because they don't have access to apprenticeship programs:

*Most upstate minority contractors are non-union. The Labor Department mainly approves apprenticeship training programs that partner with unions. In my personal view they should allow minority contractor associations throughout the State of New York to develop apprenticeship programs. In upstate New York there is a dampening effect on minority contractors because they don't have the ability to work under PLAs because they have a workforce that is unable to do the work.*

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A Caucasian female owner of a construction company does not believe there should be different prevailing rates for each county:

*The prevailing rate for a trucker in Erie County is about \$19.10 per hour and that includes their benefits. In Chautauqua County the drivers make around \$46 per hour and that too includes their benefits. That is a pretty substantial difference for a truck driver. I don't think \$46 per hour is warranted. I think the wage for a trucker in Chautauqua County and some other areas are too high. The PLAs are not competitive when you pay truckers different rates based on the county where the project is located. I think the truckers should get paid the wage where they are located.*

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A minority female owner of a construction-related company reported that she is unable to meet the bid requirements that include PLAs:

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*As a minority business owner I cannot bid on contracts with PLAs because I can't meet their qualifications. I don't have the required experience, bonding, or financing for the project. The PLAs are barriers for MWBEs.*

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A Caucasian male owner of a construction company reported that PLA requirements prevent him from using MWBE subcontractors who are non-union:

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*We are a union contractor, and the PLAs and unions require us to use other union contractors. Many of the MWBE firms are non-union, and they automatically cannot work projects with PLAs. So, we are prevented from using MWBEs on these projects.*

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A Caucasian male owner of a construction company believes that the prevailing wage requirements may be too complicated for small business owners to meet the requirements:

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*The prevailing wage compliance in New York State is complex, and smaller firms tend to have a hard time dealing with the requirements compared to larger more sophisticated firms. The prevailing wage may be more than they pay someone on a private job and that makes it a little more difficult as well.*

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#### **D. Difficulty Breaking into the Contractor Community**

The interviewees complained that they are unable to establish relationships with non-Minority owned businesses despite their attempts to break into the contracting community. Networking with established companies is essential for small and minority business owners to secure subcontracting opportunities on large projects.

A minority male owner of a construction-related company believes that majority-owned business owners only work with certain subconsultants:

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*Most of the time I respond to a request to submit a proposal for work. Those of us who are small business owners know that prime contractors already know who they are going to give the work to. They have their favorite firms that they use all the time. It seems like it is hard for them to change or to think of changing. There is a relationship that has been established over time so they stick with it. But it deprives us from getting a fair shot and opportunities.*

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A Caucasian female owner of a commodities and other services company believes it is difficult for small businesses to obtain work as a supplier:

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*As a WBE vendor on the New York State contract list, we thought our certification would provide us with the opportunity to get in the door. But being on the list is basically a license to hunt and struggle to get work. It's a real struggle to do business in New York especially as a supplier with so much competition from large local and foreign businesses. It's very difficult to find a dealer that will represent our product line. The big guys are just gobbling up all the work.*

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A minority male owner of a construction company believes that certain prequalification requirements can prevent qualified businesses from receiving work:

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*Prequalification requirements that include a clause for five years of experience makes it difficult for me to bid. We have to look for opportunities that do not have that language. I am not sure what that means anyway. Are they asking for a set dollar value or a certain number of clients? But we are automatically excluded from bidding on these projects even though I know that we can do the work. I know that we have the right experience. And we definitely have the references from other government agencies. That's not even private and commercial work, I'm talking about other federal agencies that can vouch for the quality of our work and our performance.*

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The same minority male owner of a construction company has had his certification used to meet an MWBE goal but not its services:

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*We have been approached by several prime contractors to bid as a subcontractor to meet the State's goals. A lot of our efforts have not borne any fruit. We provide them with a quote and our MWBE certification information. After this point it seems like everything stalls and goes nowhere. We do not receive any feedback from the prime contractor to know if we were the lowest bidder or if they were awarded the contract. I would like to know if we were the lowest bidder and if they submitted our information to meet the MWBE goals.*

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A Caucasian female owner of a construction-related services company reported that contracts for architectural services are difficult to obtain because the larger firms continue to receive the awards:



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*You can't work as a prime contractor for architectural services unless you have a lot of experience. But you can't get the experience unless you get a prime contract. So, it's a catch-22 sometimes. It is hard to get the experience to show that you have the ability to perform on larger contracts when you're a small company. Also, there is a very small representation of women in the upper echelon where the decision makers are.*

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A minority female owner of a commodities and other services company believes that certain printing companies are dominating the work on State contracts:

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*I am a women-owned, full service printing company, and it's a male dominated industry. The work for printing services for the State are not going to MWBE printing companies. The study will show that a lot of the same companies have been receiving the work for a very long time. I've reached out to a lot of those prime contractors to partner or get subcontract work and nothing has happened.*

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A minority male owner of a non-construction related company believes some prequalification requirements can prevent small firms from qualifying for State contracts:

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*I'm a certified public account, and I hold a master's in financial forensics. I could not bid on any work during the study period because they package the requests for proposals for professional services exclusively for large firms. The prequalification requirement that firms with 20 employees or less cannot bid is unreasonable. I have attended several statewide MWBE conferences, and every time I raised this issue I was told to go intern with a large firm. Excuse my language, but that pisses me off. I have more qualifications and my staff has more qualifications than some of the firms they are telling me to intern with. I don't know how we as minority businesses can participate in the professional services arena with these requirements.*

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A Caucasian female owner of a non-construction related company reported that although she has been certified since 2011, her company has only received a small contract from one State agency:

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*We do staff development and leadership training. I have been certified since 2011 and have tried to secure State work. I received a little work with one agency. It has been extremely frustrating trying to get State work. I am not going to give up, but I have to say it has been very frustrating over the past five years.*

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A Caucasian female owner of a commodities and other services company reported that she has not received work from a State agency after nine years of responding to bids:

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*I became MWBE-certified about nine years ago, and I have yet to receive work on the contracts that I bid on. I have given up hope that there's any benefit to being a woman-owned business. I fight like anybody else to get the business, but I haven't received any so far.*

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### **E. Preferred Sources**

Interviewees expressed concern regarding the State's Preferred Source Program, in which certain commodities and services from select sources are exempt from competitive procurement requirements.

A minority male owner of a non-construction related company believes that the preferred source program has prevented MWBEs from receiving work from State agencies:

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*There is something in New York State called preferred sources, and the guidelines in the procurement policy state that all agencies must use preferred sources first before any other company on certain service and commodities contracts. This procurement procedure should be changed by legislation requiring State agencies to go to preferred sources first. Preferred sources are the prison, industries for the blind, and I think the disabled. These contracts are being taken from regular businesses and are being given to these preferred sources. For example, cleaning contracts used to be bid out. They took them from the bidding process and gave it to industries for the blind. With all due respect to industries for the blind, but how could they come and clean a building? I doesn't make sense. And the gatekeepers for commodity and architect contracts have exclusive relationship with certain manufacturers, and they get millions of dollars in public contracts but they do not give opportunities to us.*

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A minority female owner of a non-construction related company reported that the State's preferred source program has prevented him from receiving State contracts:

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*The State has preferred vendors that keeps my firm from securing work in my field. I am tired of all these speeches and all these promises about what they are going to do for MWBEs, but when it comes down to it, they're not even throwing us crumbs.*

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A minority female owner of a non-construction related company reported that she has to seek work outside of the State of New York:

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*The 2010 disparity report revealed that people of color received less than 1 percent participation on professional services. We have to do a better job on professional services contracts. We live in the State of New York, but we have to go outside the state to get business. Something is broken, and it needs to be fixed.*

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A Caucasian female owner of a non-construction related company reported that she is unable to receive work from the State despite responding to bids for the past nine years:

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*I've been in business for about nine years and have been a certified WBE for about seven of those years. We have responded to a number of RFPs through the State as a prime consultant and as a subconsultant and have yet to be awarded a contract.*

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#### **F. “Good Old Boy” Network**

The interviewees reported many instances where they believe that the “good old boy” network operates as a barrier to their participation on the State’s contracts. A minority female owner of a non-construction related company believes that most of the State’s contracts are awarded to members of the good old boy network based on what’s reported in the Office of the State Comptroller’s Open Book system:

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*I feel there is a big boys or good old boys club that is getting all of the business. So, I have a MWBE certificate that hangs on my wall, but it has no value. In New York State there is a tracking system called Open Book. Open Book lists all of the money that is spent by State agencies and the contractors that were awarded the contract.*

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This same business owner reported that despite the many hours she devotes to responding to request for proposals, the work is always awarded to the same contractors:

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*I don't give up. I keep bidding and spending seven to eight hours a week trying to get work, and I never get anything. It takes time from my company, but I always keep going and moving forward. Even though the State has thousands of people certified, you see the same people being awarded the work. They are the ones that have relationships with the decision makers.*

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A minority male owner of a non-construction related company believes that MWBEs are considered inferior:

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*We are dismissed because we are a MWBE law firm despite our law school background. We are used as window dressing to meet MWBE goals. They think of our abilities as subpar just like the sentiments expressed by Justice Scalia who said, "Blacks should go to lower-tiered schools."*

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A minority male owner of a non-construction related company believes that the good old boy network only works with preferred MWBE subconsultants.

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*The big boys or major players have already identified their minority vendor, and they're not looking to use anyone else. I went to a State conference two years ago, and I saw it going on all around me. They networked with their certain vendors, and I got the cold shoulder.*

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A Caucasian female owner of a construction-related company described her knowledge of the good old boy network in her industry:

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*[Prime contractor name withheld] was awarded the contract for [project name withheld]. They were soliciting a quote for waterproofing. We put together a bid and submitted it. As it turns out, we did not get the subcontract. A day later my competitor called me, who I knew very well, and asked me what price I provided. I told him and he said that [prime contractor name withheld] called him and asked him to lower his price by \$10,000 so it would come in just under us so he could get the work. This type of stuff happens every day of the week, it's just how the good old boys operate. Those channels are not open to us.*

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A Caucasian female owner of a non-construction related company believes that exclusionary networks consisting of majority-owned business owners are influential in her industry:

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*I hate to say it, but there definitely is still a good old boy club out there. There's a lot of casual networking that goes on at the bar or the golf course. Many of the women that I speak to who are business owners are not a part of that.*

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A Caucasian female owner of a non-construction related company explained why she believes the good old boy network still impacts her industry:



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*A contractor tried to blackball me into not giving the same pricing as a competitor because they had a pre-existing relationship. And that to me is definitely good old boys club.*

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A Caucasian female owner of a construction company reported that she was familiar with the good old boy network before she inherited her business from her father:

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*There is a good old boy network. I worked under my father for years. It was really obvious that the good old boy network was going on. They all knew each other, and people would give work to their friends and relationships were important. I had to find a way to establish relationships in my own way that didn't involve those activities.*

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### **G. Prime Contractor Circumventing MWBE Program Requirements**

Some business owners reported that prime contractors employ tactics to avoid the MWBE Program requirements.

A minority female owner of a non-construction related company reported that a prime consultant provided fraudulent information to a State agency, claiming that she was paid on a project as a subconsultant:

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*Last year we received an MWBE questionnaire verifying that we were paid by a particular client on a subcontract award. So, I followed up and called the prime, and they insisted that they were never awarded the contract. I then sent the form back to the Metropolitan Transportation Authority and wrote on the form that we were never awarded the subcontract and never heard back from the prime.*

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A minority male owner of a non-construction related company reported that two prime consultants fraudulently listed his firm as having worked as a subconsultant on their projects:

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*As part of a State audit, I noticed that two companies listed my firm as working with them as a subconsultant. But I knew nothing about them. They listed me without my knowledge.*

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A Caucasian female owner of a non-construction related company reported that some prime consultants have received work with State agencies using her quote without giving her any work:



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*Sometimes we submit quotes and never hear back. There have been a couple of times where the prime consultant was selected to do the work, but we were not utilized. I think if they win the bid, we should get the work.*

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A Caucasian female owner of a non-construction-related company reported that she is oftentimes pressured by prime consultants to lower her bid, which diminishes her profit:

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*The prime consultant will drive us down in price very hard. They will hold us to a rate cap at a point where we have to walk away from the business because we know we can't deliver it and make a profit.*

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#### **H. Problems with the MWBE Certification Process**

Many interviewees reported that the time required to obtain a MWBE certification from the State is too lengthy. Certification requirements can be a major obstacle for minority and woman-owned business owners.

A Caucasian female owner of a non-construction related company reported that the MWBE certification process took three and a half years:

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*We are an electronic systems integrator. We provide audio video and HVAC services. We finally got our certification after three and a half years. It was quite a process, it took so long that the Empire State Development contacted us and said our documents were outdated and requested we send in a new application. I'm a small business, and if you make it easier for legitimate candidates to become certified in a shorter period of time, that would be helpful.*

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A minority female owner of a non-construction related company reported that the lengthy time it took to receive her MWBE certification prevented her from receiving work on a State project:

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*Recently, a very significant bid was released for employee benefits. I'm really perturbed that the contract opportunity is within our backyard, but we were unable to participate. There was MWBE goals attached to this contract. Yet, we are still waiting on feedback from the Empire State Development as to whether or not they will certify us.*

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A minority female owner of a non-construction related company reported that she waited six months to receive her MWBE certification:



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*My main issue with the certification process is their ineffective communication process. After submitting all the documentation, I received several calls and emails stating that I did not provide the documents. It took about six months to be approved.*

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A minority male owner of a construction-related company reported that the State's MWBE certification process takes too long to complete:

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*I applied for the State's MWBE certification and it was so ominous and required a lot of documentation which took months to complete. I'm very happy with my MWBE certification, but I know a lot of people who are frustrated with the slowness of the system. The system is supposed to help small businesses, not frustrate them. And many of them find it very frustrating.*

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A minority female owner of a non-construction related company reported that she had to seek assistance from another agency because the State's MWBE certification process took so long:

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*I received my MWBE certification directly through the State. I had a lot of problems with some of the questions in the application. Some of the documents that they needed were hard to obtain, because they originated decades ago. Also, the certification process was extremely long. Once I uploaded all of my information, it took at least a year for me to get certified. It required lots of calls. I asked the Small Business Solution Center to intervene because it took such a long time to process. The process was grueling to say the least. I had to spend a lot of my personal time to keep following up with emails, calls, and trips to the Empire State Development.*

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A Caucasian female owner of a construction-related company also complained that the recertification process was unreasonably lengthy:

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*I filed for recertification with the State. I filed last year, and I haven't heard anything back except that I'm to continue doing business as a WBE. But my WBE certification is about to expire. I still don't know if they are going to recertify me. The whole recertification process needs to be streamlined with better communication so you can find out what's going on.*

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A Caucasian female owner of a non-construction company reported that her recertification process has taken over a year and still is not resolved:





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*We submitted our paperwork for recertification last year, and we had to update our profile regarding the services that we offer. We also had to provide them with our NAICS code and contracts that we have already done. So, this made our application a little bit more arduous and complex. I have made several calls to the Empire State Development to find out how long the process will take, but I have not been able to get any information. I don't know where this is going to lead. It could create a huge loss of business for us. I'm really at a loss right now because I'm taken aback by how long this process is taking, and the fact that we're not even assigned a reviewer yet is very frustrating. The backlog is so severe that they can't provide any status.*

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A Caucasian female owner of a non-construction company described the lengthy process she endured after applying for a MWBE certification:

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*It takes a very long time to put the certification documentation together in the first place. It took months. Once we submitted the paperwork, it just sat there without receiving an update. I could not find out a timeline when we would get certified. Nobody knew the answer. It's a really difficult time consuming project. It takes months, and that's time taking away from my business.*

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A Caucasian female owner of a construction-related company also reported that the length of time required to get recertified was burdensome:

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*I think the State's certification process is overly burdensome. To be honest, I don't understand why it takes so long. I also think it's an incredibly burdensome amount of paperwork required to get your certification renewed. I do think that some of requirements are legitimate like tax returns and their extensive questionnaire. But a lot of it is redundant. For instance, I'm going through a recertification, and I have to complete another extensive questionnaire, provide résumés, stock certificates, and my corporate state filing certificate. I also have to get letters from three vendors who have provided services to us before. I think that all of this is not necessary since we are being recertified. I think one simple form is really all that's necessary.*

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A Caucasian female owner of a non-construction related company reported that the recertification process was more arduous than her initial certification:

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*When I was originally certified, it was a lot easier. Right now, it's like doing your taxes. It requires a lot of paperwork. The recertification process seems over*





*the top with paperwork. I am still waiting to be recertified, and I have not been able to get status.*

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A representative of a non-construction business association reported that many of his members complained about the length of time it took to receive their MWBE certifications:

*Our organization has a number of MWBE members, probably more WBEs than MBEs but we do have both. The biggest complaint I hear is the length of time it takes to get certified or recertified by the State. In fact I had a WBE tell me it took forever to get recertified. If it takes an inordinate amount of time to get certified, it can hurt MWBEs that need it as part of their quote.*

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A minority female owner of a commodities and other services company reported that the State's on-line application system is not easy to navigate:

*The new on-line application system seemed confusing. I attended a webinar, and the person that was explaining it did not seem very knowledgeable. It seems very complicated. My MWBE certification from the State has absolutely not been a benefit.*

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A minority male owner of a construction company described the issues he faced trying to obtain his MWBE certification:

*The Empire State Development said they emailed me information regarding my certification application, but I couldn't find the email. I did a search on my computer to see if I got an email from the Empire State Development, and it did not come up. I knew I didn't get it, but I had to do all the paperwork over again. It took a couple of hours for several weekends to redo all the paperwork. I can't take off from my daytime hours to sit down and do it because that would stop me from hunting down money. I had to do it off hours.*

---

A Caucasian female owner of a construction-related company reported that the State's certification process has not gotten better over the years:

*We had to get certified with the Empire State Development. I remember several years ago trying to get certified with them, and it was really insane. The*



*application was complete insanity. So, we did it anyway. Now, the certification process is not much better.*

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A minority male owner of a commodities and other services company reported that it took him nine months to get certified with the State:

*I don't know anyone that has received a State certification within 90 days. It took me nine months and that was expedited.*

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A Caucasian female owner of a non-construction related company reported that it took over three years to get certified with the State:

*We got our certification after three and a half years. Yes, three and a half years. So, it was a very daunting process.*

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A Caucasian female owner of a non-construction related company reported that she almost withdrew her certification application because it was too time consuming:

*It took us one year to get certified. If [Empire State Development staff name withheld] hadn't continued to encourage us to keep going, I'm sure we would have stopped trying to do it. It is very difficult to get certified.*

---

A Caucasian male owner of a commodities and other services company reported that he has knowledge of WBEs being treated unfairly by compliance officers:

*I don't see a lot of my MWBE counterparts complaining about being treated differently because of their race. I hear them complaining about difficulty dealing with project requirements. With being able to handle complex paperwork on state jobs. I have heard women-owned contractors complain very bitterly about the State's certification process and how difficult it is for them to get certified compared to African-American males. This has been a consistent complaint. That's probably the biggest racial issue that I've heard. There appears to be some sort of bias in the group of compliance officers. Compliance officers assume that a female contractor is a sham for her husband's company. I also know of a story where an individual woman business owner who happens to be a minority was told by an African-American male in the NY Department of Transportation hierarchy that he had a hard time approving her application*



*because she didn't look black enough. "Hostile" may be the wrong word, but it's more difficult for women to succeed in the workforce.*

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## **I. Late Payments by Prime Contractors**

The interviewees reported that late payments caused by prime contractors is detrimental to small businesses that rely on positive cash flow to operate.

A minority male owner of a non-construction related firm explained why he believes some prime consultants purposely pay their subconsultants late:

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*I usually work as a prime consultant. But when we work as a subconsultant, we have to wait on the prime consultant to pay us. The prime consultants use our money to fund their projects before we get paid. I thought this was against the law in New York State. But still they get away with that.*

---

A Caucasian female owner of a construction-related company reported that she has waited up to 120 days to receive payment from a prime contractor:

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*Trying to get paid is a huge problem. It's taken 90 to 120 days to get paid. I'm on the bottom of the totem pole as a subconsultant, and I think that's the problem.*

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A Caucasian female owner of a construction company reported on the hardships she endured as a result of late payments from prime contractors:

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*Trying to get financing is a big problem. Not getting paid is also a big problem especially for smaller contractors. As a subcontractor, we are at the end of the food chain. I wish they could enact laws to help subcontractors with late payments. Direct pay would be great. But advocating for direct pay from the agencies doesn't go over well. I've gotten ulcers over the years trying to deal with the impact late payments have on my business. There have been times where I didn't know what was going to happen day to day. We have come close to going bankrupt, but we made it.*

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A Caucasian female owner of a construction-related company reported that it is typical to wait 60 to 90 days for payment from prime contractors:



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*Because we don't know when prime contractors are paid, we really can't determine if we are being paid on time. There's no way to confirm it. Years ago we got paid within a month, but that's not true anymore. Now, we can wait from 60 to 90-plus days to get paid from prime contractors. This makes it hard to pay our bills. If you don't have any reserves, you won't make it.*

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A Caucasian female owner of a construction-related company does not believe she has a recourse when prime contractors fail to pay her invoice in a timely manner:

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*I had an experience with [prime consultant name withheld] where the architect was paid but they didn't pay us. And I found out that they had been paid but claimed they weren't. But I have no recourse with these State agencies because my contract is not with them directly.*

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## **J. Late Payments by State Agencies**

Some business owners reported on the untimely payments received from State agencies and authorities.

A minority male owner of a commodities and other services company reported that it took two years to receive payment as a subcontractor on a project for the Dormitory Authority of the State of New York:

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*After employing over 30 employees we had to strip down to four staff persons because we waited two years to get payment from the Dormitory Authority of the State of New York. In my case there was no protection for MWBEs against the prime contractor. We went to the Dormitory Authority of the State of New York to get a resolution. They told us that our contract is with the prime and not with them. Since our contract was with [prime name withheld], they said there was nothing they could do.*

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A Caucasian female owner of a non-construction related company reported that waiting up to 90 days to receive payments from executive agencies is detrimental to her small business:

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*I find that the executive agencies drag their feet anywhere between 60 and 90 days to pay invoices which is very detrimental. These are our largest agencies, and I don't know why there's such a drag with payments. We don't seem to be able to get any answers. Our costs go up astronomically after the thirty days.*

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*Nobody likes to carry that expense month after month, those costs add up after the 30 day mark.*

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A minority male owner of a construction-related company reported that he routinely waits several months to receive payment from the State:

*It takes forever to get paid from the State. My experience with the State is sometimes it can take three to six months.*

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A minority female owner of a non-construction related company reported that she waited a year to receive payment from a prime consultant:

*I had to wait a year to get paid from a vendor. The vendor invited me to work on the project because I was a minority-owned business, and they needed me to meet the goals. These larger companies get paid from the State and then they hold our money. There needs to be a monitoring system to make sure these companies pay us. I know of a colleague that owns an advertising agency who had to take a second mortgage out on his house because he couldn't get paid by an agency. That's ridiculous. If the federal government can pay invoices in 15 days, I think the State can.*

---

A Caucasian male owner of a construction company reported that he experienced difficulty getting change orders approved and paid from the State University Construction Fund:

*You will have a hard time finding anyone who has anything good to say about the State University Construction Fund regarding timely payments. Or working with them from a project manager perspective. The biggest issue is their inability to process change orders. It takes forever to get paid on change orders. I think they are trying to get free construction services.*

---

A Caucasian male owner of a construction company reported that his company is not negatively impacted by late payments from the State but described the hardships faced by small businesses:

*We are an established firm, and we have very good cash flow. There are some companies that are capable of building a bridge, but they don't have that history and good cash flow. They will work for the State on a job and have to wait for two or three months to get paid, and then they decide not to work for them anymore. The agencies need to clean this up. There's a big \$100 million building*



*project that the State is currently doing to build solar panels. In the newspaper it is reported that they are behind in payments, and contractors are going to start laying off their workers because the State is over 90 days behind.*

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A minority male owner of a construction company experienced late payments from the State and was forced to pay his staff from his personal account:

*We completed the work in September, and by December we still had not been paid. We are a prime contractor, and we have personnel, material, cost, etc. The ability to perform the work successfully is only one piece which always occurs. We did our job in a timely and correct manner with quality workmanship. We need to get paid in a timely manner as well. Here we are many months later, and we're still trying to get paid. We took money out of our own pockets to pay staff.*

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#### **K. Comments about the State's Minority and Woman-Owned Business Program**

The interviewees reported on their observations regarding the State's MWBE Program and recommendations that they believe will enhance the program.

A minority male owner of a construction company reported that his MWBE certification was instrumental in receiving work with the Dormitory Authority of the State of New York:

*Our certification as a MBE was helpful in getting work with the Dormitory Authority of the State of New York. We have had several projects with the Dormitory Authority of the State of New York. I don't believe that I would have been awarded the work if the Dormitory Authority of the State of New York did not engage in the type of outreach that they provided. But I wish they had a debriefing process, especially for MBEs.*

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A minority male owner of a non-construction related company believes the MWBE Program has helped to grow his business:

*My business is [company name withheld] and we have been certified for six years. Business was slow at first but it has picked up a great deal thanks to the Governor's leadership. There are billions of dollars out there and women and minority businesses should share in it. Without the MWBE Program doors will close.*

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A minority female owner of a construction company believes that her business would suffer if the MWBE goals were eliminated:

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*We provide information technology services to New York State agencies. Article 15-A has been successful in helping us win subcontracts with the State's prime contractors. If the State decides to reduce the participation of MBEs we will be left out.*

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A Caucasian female owner of a construction company reported that the MWBE Program has had a positive impact on her firm:

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*Our WBE certification has resulted in a substantial increase in our business in recent years with the State. We've grown a lot in volume because of it.*

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A minority male owner of a construction-related company reported that the MWBE Program has been instrumental in maintaining the solvency of his firm:

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*I am MWBE-certified with the State, and I work mainly as a subcontractor. The only way I can get any work with the State is through the MWBE Program.*

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A Caucasian female owner of a construction-related company reported that her MWBE certification has been beneficial to her firm:

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*We get business with State agencies because of the MWBE goals. We also get work because we are prequalified and our capabilities to perform on certain contracts.*

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A Caucasian female owner of a construction-related company reported that her WBE certification has assisted her in receiving work from the State:

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*I'm the sole owner, and my WBE certification with the State has been helpful. I have been a part of some projects because I helped them meet their goal.*

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A Caucasian female owner of a non-construction related company reported that her WBE certification has been beneficial to her company:





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*My certification has been a key aspect to our firm being able to do business with the State agencies. It has helped tremendously because of the goals that are set with procurement opportunities for MWBEs. It forces the major companies to bring MWBEs on projects which is critical for us to continue to grow and be successful.*

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A minority male owner of a non-construction related company believes that the State's MWBE Program has helped to build the capacity of his small firm:

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*I think the MWBE Program in New York State is very valuable. I believe that without the support of this program firms like mine would never be able to succeed. If the program did not exist, we would be at a disadvantage in terms of being able to compete against the larger firms. As a small firm, we can't compete in terms of quantity of project experience with larger firms. The program enables companies like ours to grow into prime contractors rather than remaining subcontractors. If a company is not able to build capacity through the MWBE Program, then minority-owned businesses end up losing ground. The program should prepare MWBEs to compete head to head. To grow, MBEs need to have direct relationships with procurement managers to develop trust. The 30 percent goal opens the door to tremendous opportunities for our company. However, many companies worry about what happens if they graduate from the program. They fear they will immediately lose their revenue stream.*

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A Caucasian female owner of a commodities and other services company believes the State's MWBE Program is valuable but also wants more outreach to inform the business community about the program's provisions:

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*My WBE certification opens doors for us to pursue opportunities that we would otherwise not be able to get. There are very few WBE manufacturers. [Manufacturer name withheld] is our direct competitor who is a preferred vendor with the State. At the MWBE shows, State agency representatives show interest in our product but don't know how to get around [manufacturer name withheld]. I am still learning how to navigate the State's purchasing system with types of barriers. More work needs to be done to help everyone understand the mission of the MWBE Program. It is supposed to create an inclusive economy that lifts everyone. This type of change takes a long time, and change can be uncomfortable.*

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A minority male owner of a construction-related services company explained the benefits and disadvantages of the MWBE Program:



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*Certification has been somewhat beneficial to my company. The agencies have been satisfied with our work which has resulted in more business opportunities. But some agencies only consider me on projects with goals for minority firms which limits the amount of business I can get on other work. So, the program has its benefits and disadvantages.*

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A minority female owner of a non-construction related company explained why she believes the MWBE Program is not effective:

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*My certification is garbage because most of the time prime contractors are allowed to get waivers. So the goals are not met. And there are more support services for MWBE construction contractors but professional services subcontractors don't get the same level of support.*

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A Caucasian female owner of a commodities and other services company described a tactic used by prime contractors to avoid the MWBE program requirements:

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*There are times when general contractors request our price and never call back. Then they can show the State that they tried to work with a woman. Prime contractors should be required to meet the MWBE subcontract goal at the time of bid opening. I think the 30 percent goal is reasonable. I usually attend the Albany MWBE conference, and they have good classes.*

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A minority male owner of a commodities and other services company reported that the MWBE Program is not beneficial for suppliers:

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*The State needs to make sure minority and Hispanic American businesses get a piece of the pie. Our Hispanic elected officials are not complaining. The black politicians are really advocating for Hispanics and blacks. The worst thing for me is trying to get work as a supplier. I'm certified, but I can't get any work. I think if the governor is interested in running for President, this is going to hurt him.*

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A Caucasian male owner of a non-construction company explained why he believes the MWBE Program is not beneficial:



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*If the goal of the State's diversity program is to build a successful MWBE contractors, it is not doing that. It is shoving contracts to a group of unsustainable contractors. From the perspective of non-minorities it's just another regulation that we have to comply with. It has no value. I think that a small portion of the firms have been able to benefit from construction set asides. Also, from a contractor's perspective, it is meaningless to claim that MWBEs can do concrete or masonry work. I find it interesting that we are forced to jump through all these hoops when we could just bid the work and get the job done. In some cases, I think the State certification process impedes the growth of MWBE contractors. Too often contractor would like to give work to small firms, but we must give it to a certified minority contractor. They work with non-certified minority businesses because they can't get credit under the program. Also, the required advertisements in the newspapers are a waste of money. It's only good for the newspapers. In any given industry, the prime contractors and subcontractors know each other. The advertisements only benefits new companies moving into the area. Prime contractors are required to provide documentation proving they advertised, faxed, and called MWBEs. There will be some MWBE contractors that don't respond to anything. I suggest that advertising be done through trade associations.*

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A representative of a subcontractor association believes that the MWBE Program will never work as intended since most MWBEs do not have the capacity to perform the work:

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*Breaking off a piece of work normally done in house to a MWBE affects the continuity of the job and is costly. In order for the prime contractor to meet the 30 percent goal, they literally must subcontract 60 percent of all subcontracts to MWBEs. I think the MWBE Program will never work as intended. The only way you can increase the number and capacity of small MWBE contractors is to review how contractors are formed. Typically, successful contractors in our industry have some level of education in the industry. Either community college or apprentice programs should be the first step, then after completing a two or four-year program or degree work for a contractor 10 or 15 years until you are ready to go into business. When I talk to MBEs, they can't handle the work in the solicitations because they don't have the capacity to estimate and bid work. Without an educational component, I don't think the goals alone will increase the number of MBEs with capacity. Do upstate MWBEs have the capacity to meet the 30 percent goal? I don't think so.*

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A Caucasian male owner of a construction company reported that he supports the State's MWBE Program but believes the goals are not realistic:

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*I have been involved with the MWBE Program for about 25 years. Depending on the job, we subcontract out between 10 to 25 percent of our work. We subcontract structural steel work, iron work, guard railings, and some landscaping. We self-perform the heavy highway work. Our subcontractors must perform to meet the schedules that are put on us by the agencies. We don't treat subcontractors differently whether they are woman, minority, or Caucasian-owned. We have an excellent record of paying. We don't hold back money from subcontractors until we're paid by the State. Our selection of subcontractors are based on competitive prices and quality work. It is a nightmare trying to meet the 30 percent MWBE participation goals. We do a good faith effort by sending out solicitations to all firms. We contact those firms two or three times to make sure they have an interest in the job. We have to spend a lot of time at pre-bid meetings making sure firms know we're bidding the work and making sure we don't get surprises. We don't negotiate after the bid is submitted. The State has doubled the goals, but that doesn't mean MWBEs can handle double growth. The MWBE Program has been around for 40 years and really hasn't improved the issues pertaining to MWBEs. I've seen many good firms go out of business trying to grow too fast. A 30 percent goal is a recipe for failure.*

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A representative of a construction contractor association believes there are too few MWBE subcontractors with the capacity to perform work on State projects:

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*My members don't think the MWBE Program has developed any long-term capacity for MWBEs. There is too much emphasis on the supplier side and not enough on subcontractors. My members believe the 30 percent goal is baseless without the real market recognition and understanding of the scale and location of most projects. Our members also express frustration with the waiver process. The contractors that really put in a good faith effort receive little recognition. The State needs to recognize the reality of the market. It is not good to force a situation with repeated calls to uninterested MWBEs. In most parts of the State the 30 percent goal is not achievable and is counterproductive. Project labor agreements are another major issue. They have a dampening effect on minority contractors because they don't understand them and they don't have the workforce to comply with them. Minority businesses need to be trained in estimating so they can become general contractors.*

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A minority female owner of a non-construction company believes that additional work is needed to make the program more effective:

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*Business community meetings sponsored by the State agencies can be a waste of time. We are dissuaded from meeting directly with the prime contractors. There*



*is distrust between prime contractors and MWBEs. When we reach out to agency staff, we get disregarded.*

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A minority female owner of a non-construction related company believes that some State agencies issue MWBE goal waivers when it is not warranted:

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*I don't think that the MWBE Office has the teeth to make anything happen. It's a lot of titles and positions, but when it comes down to making something happen with these manufacturers, nothing gets done. I don't think that the MWBE goals should be waived. There are enough MWBEs looking for work, and the managers are just helping them be discriminatory when they give waivers.*

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**L. Exemplary Practices of Executive Agencies and Public Authorities**

Many business owners credited the work they received from the State agencies and authorities for growing their small business.

A Caucasian female owner of a commodities and other services company reported that she has received work with several State Agencies:

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*I am a supplier and typically work as a subcontractor to general contractors. We do a lot of work on State projects for School University Construction Fund, Metropolitan Transit Authority, and the Dormitory Authority. We got this much work because of our WBE certification. We have experienced growth in our business in the last two to three years.*

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A minority male owner of a non-construction related company reported that the Dormitory Authority of the State of New York has been instrumental in helping to resolve issues with late payments by prime contractors:

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*Whenever I inform the Dormitory Authority of the State of New York that I haven't been paid by a prime contract, they get right on it. You would be surprised how fast the prime will take out their checkbooks and send in a payment. The Dormitory Authority of the State of New York has some teeth in their MWBE Program.*

---

A Caucasian female owner of a construction company reported that the Metropolitan Transportation Authority's Direct Pay policy is very effective:



---

*A general contractor was delaying paying us, and the Metropolitan Transportation Authority stepped in and granted us direct pay. The other agencies should consider this when prime contractors are late.*

---

A Caucasian female owner of a construction-related company appreciates Governor Cuomo's efforts in increasing the participation of MWBEs on the State's contracts:

---

*I think that Governor Cuomo has done an excellent job making sure that the pie is divided up between people who have paid taxes. Our tax money is paying for these projects, and we should be given a fair opportunity to bid on and be awarded the projects.*

---

A minority female owner of a non-construction related company reported that the work she has received as a subconsultant on State projects has benefited her small firm:

---

*I have been fortunate to receive subcontracting opportunities from the State as well as currently serving as a prime contractor on a State project. And the difference for me was a cheerleader within the State's MWBE office that was making a concerted effort to make sure that brown folks had opportunities and matched us with prime consultant. We were able to obtain experience doing State work as a prime consultant. And that made the difference in my experience.*

---

A Caucasian female owner of a commodities and other services company reported having success getting work from the State University of New York:

---

*We've been quite successful with the State University of New York, and we're making progress with the City University of New York. These universities are really quite interested in meeting their procurement goals. So, they gave us a chance. They are also very receptive.*

---

A minority male owner of a non-construction related company reported that a Metropolitan Transit Authority employee has been an asset to his small business:

---

*I would say [Metropolitan Transit Authority staff name withheld] has been in our corner for sure. He has helped strengthen our business.*

---



A minority male owner of a non-construction related company reported that the work he has received from the State has helped grow his business:

---

*We have done business with the Dormitory Authority of New York and City University of New York throughout the years. They were instrumental in helping us start and grow our business to the tune of \$10 million.*

---

A Caucasian male owner of a construction-related company reported that the Empire State Development's webinars have been very informative:

---

*I have logged into webinars sponsored by the Empire State Development as part of their outreach program. They have been very helpful. They talk about how to grow your business. They also talk about how to manage your finances and how to join a team as a subconsultant.*

---

A Caucasian female owner of a commodities and other services company described how the MWBE Program has benefited her firm:

---

*The MWBE Program has opened the door for prospects and provided us with a lot of information and opportunities to meet people. They host networking events so we can meet prospective prime contractors. Some of the prime contractors have reached out to us for introductory meetings.*

---

A minority female owner of a non-construction company spoke highly of staff at the Empire State Development and the State University of New York:

---

*[Name withheld] in the Empire State Development's MWBE Office has an open door policy. I've called him personally, and he has given me good suggestions on how to reach out to people within the agencies. They are very proactive. Another person at the State University of New York, [name withheld], is also proactive in helping MWBEs.*

---

A Caucasian female owner of a commodities and other services company also commended the Empire State Development for providing helpful assistance when needed:

---

*There are lots of people at Empire State Development that have been really helpful. I also attend the MWBE forum in Albany every October to network with*



*people. Everyone I've spoken to at Empire State Development has always been very helpful. They always get me the information I need and are very responsive.*

---

A minority male owner of a construction-related company spoke highly of the Empire State Development's commitment to MWBEs:

*I think the New York State Empire Development is a very good organization. They offer a lot of information and assistance to MWBEs.*

---

A Caucasian female owner of a construction-related company reported on the positive experience she had working on an Office of General Services project:

*I've done a lot of work with OGS on the correctional facilities. The people at OGS are pretty good. If I have a question, I can talk to them, and they are pretty good at responding.*

---

A Caucasian female owner of a non-construction company reported on the helpful assistance she received when applying for her WBE certification:

*There was a gentleman that helped me with my WBE certification. His name is [name withheld] with the Empire State Development. He is a certification analyst. He was helpful throughout the entire process. I've also contacted him from time to time to ask questions, and he is very responsive.*

---

### **M. Recommendations to Enhance the State's Minority and Woman Business Enterprise Program**

The interviewees provided recommendations that they believe will enhance the State's MWBE Program.

A Caucasian female owner of a commodities and other services company does not believe that the MWBE goal should be met at the time of the bid opening:

*I do not feel that the prime contractors should be required to meet the MWBE subcontract goal at the time of the bid opening. I think that they should be given the opportunity to have a little extra time afterwards. I'd rather have a little extra time to sell my services to the general contractors.*

---





A representative of a construction trade association suggests the State reconsider its procedures for granting MWBE waivers:

---

*The State needs to have a uniform policy as it relates to granting a waiver that is fair to the prime contractors. They should be granted based upon the availability and capacity of MWBE subcontractors in the market area. I've heard a lot of our members complain that the State is not going to grant us a waiver. They are told to comply no matter what. The State should eat the cost increase we have to incur to hire MWBEs to meet the goals. To add the MWBE compliance requirements to the lowest bid increases the cost to do business.*

---

A minority male owner of a commodities and other services company recommends technical assistance classes for MWBEs to educate them on how to prepare bids:

---

*I think that the State should offer classes for new MWBE contractors to train them on how to read the bid documents and complete a proper bid. The State doesn't have many workshops. So far I have not gotten any jobs from State agencies through MWBE goals or as a prime contractor.*

---

A Caucasian male owner of a construction-related company recommends that the State relax the requirements for meeting the good faith efforts:

---

*It is difficult to receive a waiver at this point on government projects. I don't think any prime can get a waiver from anyone unless maybe it is an ongoing contract that was modified. But as far as I know, you cannot get a waiver for not fulfilling the MWBE goals. It is required, and you have to provide that. The State should look at the facts of each contract scope to determine a realistic goal before the award. The goal should be based upon what is realistic to accomplish.*

---

The State's procurement procedures include discretionary spending that allows commodities and services under a certain threshold to be purchased without a competitive process. A Caucasian female owner of a commodities and other services company recommends that discretionary spending procurements be set aside for MWBEs:

---

*The discretionary procurements should be directed to MWBEs. The discretionary purchases should be competitively bid among MWBEs.*

---





A minority male owner of a non-construction related company recommends that the State implement more provisions to ensure compliance regarding the MWBE Program requirements:

---

*I would like to see the State's compliance staff have more authority to enforce the program's requirements. They should be able to shut the project down if they are not complying. Until this happens, everyone is just paying lip service with no authority to do anything.*

---

A minority female owner of a non-construction related company recommends the State increase MWBE participation on legal services procurements:

---

*I think that the emerging business classes are helpful for MWBEs. But MBE firms that provide litigation services are not getting any work. There needs to be better monitoring to make sure that work is being assigned to MBE litigation firms.*

---

A minority male owner of a construction-related company recommends that the State increase the participation of MWBE architecture firms on its prime contracts and subcontracts:

---

*The State's contracts for architectural and design services are not going to MWBEs. Why go through the aches and pains of certification if I'm not going to get any work? If pressure is not put on the architectural community and design firms, MWBEs will not get their fair share of the work. And, I think there should be mechanisms in place to stop prime contractors from using us to finance their work by waiting 120 days to pay us.*

---

A Caucasian male owner of a construction company recommends setting goals on a contract by contract basis instead of an overall MWBE goal:

---

*If you have the discussion about MWBE goals on a project with the people in Albany, most contractors believe the numbers should be based on the potential for participation not a number. The goal should be set based on each prime contract.*

---

A Caucasian male owner of a construction-related company believes that the MWBE goals are not consistent with the availability of MWBEs:



---

*The State should consider establishing the goals based upon the number of available MWBEs in the area. Then we would not have these high goals on large projects. I think the objectives of the Program are admirable and should be supported but the goals are not reasonable.*

---

A minority female owner of a non-construction related company recommends a matchmaking program for the State's prime contractors and MWBE subcontractors:

---

*It is hard for prime consultants and project managers to get through the maze to meet MWBE firms. The State should start a matchmaking program like the federal government. I would love to have a chance to sit down with the hiring managers or procurement managers to get a more in depth discussion about contract opportunities and our capacity to perform them.*

---

A minority male owner of a non-construction related company recommends unbundling large projects into smaller contracting opportunities:

---

*Many State agencies seem to have a comfort level with really large companies. But a portion of that budget should be carved out to create a portion of work for smaller businesses.*

---

A Caucasian male owner of a construction company recommends a mentoring program for MWBE construction subcontractors:

---

*There should be opportunities for contractors that want to mentor MWBEs. If you mentor someone, you should receive some sort of credit.*

---

A Caucasian female owner of a construction company recommends technical assistance services to build the capacity of MWBEs that will increase the pool of contractors able to meet the goal:

---

*I think that they should really focus on developing minority subcontractors. If you get more young minorities and women opportunities to earn electrical or plumbing licenses, that would increase their chances of becoming minority subcontractors. If you don't become an electrician or plumber, you're not going to get the work because subcontractors must have a license.*

---



A Caucasian female owner of a construction-related company recommends more technical assistance programs for MWBEs:

---

*We want to build our capacity. If there was a program that would allow us to do that, that would be great. After you complete the mentor program there is no place else to go and grow your capacity. Some agencies and authorities have smaller contracts, but most of them are huge. So, I really feel they need to do more of that. The State needs to get the prime contractors involved in mentor programs. The prime contractors could not complain that they can't find MWBEs to work with because they would be creating those relationships.*

---

A Caucasian female owner of a construction company recommends stricter enforcement of the good faith effort requirements:

---

*The State should impose stringent requirements of the good faith effort requirements and really make sure they are enforced. I think the Port Authority has a very good approach evaluating the efforts made.*

---

A Caucasian female owner of a non-construction related company recommends debriefing sessions for unsuccessful MWBEs:

---

*The State should offer debriefing sessions for MWBEs. If possible, they should be done in person.*

---

A minority male owner of a construction company recommends transparency on the State's projects so that subcontractors can have access to the administrators:

---

*First and foremost when prime contractors are utilizing MWBEs, we should have full knowledge of who at the State agency should be contacted if a problem arises. We should have the point of contact of the administration that is managing the project. That would enable us to resolve or mitigate any issues that may occur.*

---

A minority male owner of a non-construction related company recommends that the State enact safeguards to ensure timely payments for its prime contractors:



---

*I recommend that the State's accounts payable unit gets it act together. Why does it take so long to get paid? We have to wait two to five months to receive payment.*

---

A minority male owner of non-construction related company recommends unbundling the State's professional services contracts:

---

*I think the State should unbundle some of their professional services projects to allow different companies to get involved. I think the focus should be on capability instead of capacity. If a company is capable to perform the work, that should be sufficient.*

---

A Caucasian female owner of a construction-related company recommends more networking opportunities for MWBEs with majority-owned contractors:

---

*I would like to recommend opportunities where State agencies host forums where we can introduce our self to prime contractors and procurement managers. This would allow us to present our credentials to these people*

---

A Caucasian female owner of non-construction related company supports the State's MWBE Program:

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*The MWBE population is not well organized. I support the expansion of the 30 percent MWBE goals to municipalities like the Bay Park Wastewater Treatment Center. The goals are loosely applied in Long Island. I also would advocate for an increase in statewide mentorship programs. The Metropolitan Transportation Authority has a fabulous program and has demonstrated results.*

---

A minority female owner of a non-construction related company believes that the State could increase the effectiveness of the MWBE Program through more outreach activities:

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*I am a certified small business and minority woman-owned business. I am the principal and own 99 percent of the company. The MWBE Program's outreach events are usually for show. Staff who attend these fairs do not help you after the fair. I have not received any results from attending these fairs. My experience with the State's MWBE Office has been frustrating. The State agencies' procurement managers never gets back to us. I don't think they respect the*



*State's MWBE Program staff. I worked with [name withheld] in the State's MWBE Office, and he emailed several agencies on my behalf and they ignored him. Also, the State needs a discretionary program that requires State agencies to use MWBEs on contracts valued under \$25,000. And there are too many loopholes for prime contractors to exclude MWBE subcontractors from performing the work. There needs to be monitoring and follow-up.*

---

A minority female owner of a commodities and other services company recommends a sheltered market program:

*My recommendation is to divide contracts into small projects to create a sheltered market program. Smaller companies could compete against each other which would be fair for all of us. What possibility is there for me competing against companies like Staples, for an example?*

---

A minority female owner of a non-construction related company recommends a matchmaking program for the State's prime contractors and MWBE subcontractors:

*It is hard for prime consultants and project managers to get through the maze to meet MWBE firms. The State should start a matchmaking program like the federal government. I would love to have a chance to sit down with the hiring managers or procurement managers to get a more in depth discussion about contract opportunities and our capacity to perform them.*

---

A Caucasian female owner of a non-construction related company recommends utilizing discriminatory purchases to increase the capacity of MWBEs:

*There needs to be a focus on how to target the discretionary contracting to MWBEs. Discretionary purchases directed toward MWBEs would be a unique and direct way of contracting with these businesses. Also, the State should take a closer look at the waiver process. My recommendation would be to verify whether or not MWBEs can be utilized for a portion of the awarded contract before granting a waiver.*

---



A Caucasian female owner of a construction-related company recommends the State implement procedures to inform the public when prime contractors are paid:

---

*There is no way of finding out when the prime contractors are paid. We really don't know if we are being paid on time. There is no way to confirm it. It would be great if we were notified when the agency pay the prime contractor.*

---

A minority female owner of a non-construction related company offers several suggestions to improve access for MWBEs, including unbundling large contracts and transparency regarding payments to prime contractors:

---

*I think the State needs to be cautious when it comes to bundling contracts that are too large for small businesses to perform. And, we need to know when prime contractors are paid. If I don't know when a prime contractor is paid how can I tell if they are paying me on time? Some agencies have a payment tracking system like the Dormitory Authority of the State of New York. There system should be duplicated by other State agencies.*

---

#### **IV. Summary**

The anecdotal analysis presents the perceptions of business owners domiciled in the State of New York. The businesses articulated experiences working on or seeking work from the State's Executive Agencies and Public Authorities. The interviewees were identified from business community meetings, certification directories, and outreach efforts. The anecdotes were solicited through in-depth, one-on-one interviews and the public comment period during the business community meetings.

The anecdotes reported by the interviewees referenced racial barriers, sexism, issues with project labor agreements, difficulty breaking into the contractor community, the exclusionary tactics of the good old boy network, and prime contractors circumventing MWBE Program requirements. The interviewees also identified problems with the MWBE certification process, as well as the negative impact of late payments by agencies, authorities, and prime contractors. Anecdotes about the State's MWBE Program and recommendations were perceived to improve the effectiveness of the State's program.

The anecdotal analysis assessed patterns and practices within the contracting process that were perceived as affecting MWBE participation in the State's contracting opportunities. The anecdotal evidence supplements the statistical findings reported in the [Prime Contractor Disparity Analysis and the Subcontractor Disparity analysis] which can affect MWBE access to the State's contracts. Enhancements to the State's MWBE Program based on the anecdotal evidence are included in *Chapter 10, Recommendations*.



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# **CHAPTER 10: Recommendations**

## **I. Introduction**

This Chapter presents recommendations for the State of New York's (State) agencies and authorities<sup>305</sup> to address the statistical disparity documented in the 2016 Minority and Women-owned (MWBE) Disparity Study (Study). The statistical findings provide evidence of underutilization on State contracts of MWBEs available in the State's geographic market area. The statistical analysis includes an assessment of construction, construction-related services, non-construction related services, and commodities and other services contracts awarded during the April 1, 2010, to March 31, 2015 study period. These recommendations are offered to maximize the participation of MWBEs on the State's contracts.

The *Introduction* is the first section in this chapter. Section II, *Disparity Analysis Findings*, presents the statistically significant findings of disparity. *Race and Gender-specific Recommendations* predicated on the statistically significant findings are presented in Section III.

## **II. Disparity Findings**

The prime contract disparity findings on which the race-based prime contract remedies are predicated are derived from an analysis of prime contracts limited by size. The size of the contracts analyzed was determined for each of the four industries by the 75<sup>th</sup> quartile of all utilized contracts. Thus, the upper limits of each threshold include 75% of all contracts awarded in the industry. The subcontract analysis findings are based on a representative sample of all prime contracts awarded in each industry during the study period. No limitation was placed on the size of prime contracts included in the subcontract analysis.

### **A. Prime Contract Disparity Findings**

#### **1. Construction Prime Contracts**

As shown in Table 10.1, disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Asian-Indian Subcontinent-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on construction contracts valued \$50,000 to \$1,400,000. Disparity was also found for Black-owned businesses, Asian-Pacific-owned businesses, Asian-Indian Subcontinent-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on construction contracts valued between \$25,000 and \$50,000.



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<sup>305</sup> A complete list of the State Agencies and Public Authorities can be found in the Final Report.

**Table 10.1: Disparity Summary: Construction Prime Contract Dollars,  
April 1, 2010, to March 31, 2015**

<b>Ethnicity/Gender</b>	<b>Construction Contracts Valued \$50,000 to \$1,400,000</b>	<b>Construction Contracts Valued Between \$25,000 and \$50,000</b>
<b>Black Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Pacific Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Indian Subcontinent Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Hispanic Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Native Americans or Alaskan Native Americans</b>	----	----
<b>Caucasian Females</b>	<i>Disparity</i>	<i>Disparity</i>

( ---- ) denotes an underutilized group with too few available firms to test statistical significance.

## 2. Construction-Related Services Prime Contracts

As shown in Table 10.2, disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Asian-Indian Subcontinent-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on construction-related services contracts valued \$50,000 to \$2,000,000. Disparity was also found for Black-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on construction-related services contracts valued between \$25,000 and \$50,000.





**Table 10.2: Disparity Summary: Construction-Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015**

<b>Ethnicity/Gender</b>	<b>Construction-Related Services Contracts Valued \$50,000 to \$2,000,000</b>	<b>Construction-Related Services Contracts Valued Between \$25,000 and \$50,000</b>
<b>Black Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Pacific Americans</b>	<i>Disparity</i>	No Disparity
<b>Asian-Indian Subcontinent Americans</b>	<i>Disparity</i>	No Disparity
<b>Hispanic Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Native Americans or Alaskan Native Americans</b>	----	----
<b>Caucasian Females</b>	<i>Disparity</i>	<i>Disparity</i>

( ---- ) denotes an underutilized group with too few available firms to test statistical significance.

### **3. Non-Construction Related Services Prime Contracts**

As shown in Table 10.3, disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on non-construction related services contracts valued \$50,000 to \$500,000. Disparity was also found for Black-owned businesses, Asian-Pacific-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on non-construction related services contracts valued between \$25,000 and \$50,000.



**Table 10.3: Disparity Summary: Non-Construction Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015**

<b>Ethnicity/Gender</b>	<b>Non-Construction Related Services Contracts Valued \$50,000 to \$500,000</b>	<b>Non-Construction Related Services Contracts Valued Between \$25,000 and \$50,000</b>
<b>Black Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Pacific Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Indian Subcontinent Americans</b>	No Disparity	No Disparity
<b>Hispanic Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Native Americans or Alaskan Native Americans</b>	----	----
<b>Caucasian Females</b>	<i>Disparity</i>	<i>Disparity</i>

( ---- ) denotes an underutilized group with too few available firms to test statistical significance.

#### **4. Commodities and Other Services Prime Contracts**

As shown in Table 10.4, disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Asian-Indian Subcontinent-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on commodities and other services contracts valued \$50,000 to \$275,000. Disparity was also found for Black-owned businesses, Asian-Pacific-owned businesses, Asian-Indian Subcontinent-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on commodities and other services contracts valued between \$25,000 and \$50,000.



**Table 10.4: Disparity Summary: Commodities and Other Services Prime Contract Dollars, April 1, 2010, to March 31, 2015**

<b>Ethnicity/Gender</b>	<b>Commodities and Other Services Contracts Valued \$50,000 to \$275,000</b>	<b>Commodities and Other Services Contracts Valued Between \$25,000 and \$50,000</b>
<b>Black Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Pacific Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Indian Subcontinent Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Hispanic Americans</b>	<i>Disparity</i>	<i>Disparity</i>
<b>Native Americans or Alaskan Native Americans</b>	----	----
<b>Caucasian Females</b>	<i>Disparity</i>	<i>Disparity</i>

( ---- ) denotes an underutilized group with too few available firms to test statistical significance.

### ***B. Subcontract Disparity Findings***

As shown in Table 10.5, a subcontract disparity was found for Black-owned businesses, Asian-Pacific-owned business, Asian-Indian Subcontinent-owned businesses, and Hispanic-owned business subcontractors on construction prime contracts. A subcontract disparity was also found for Black-owned businesses, Asian-Pacific-owned business, Hispanic-owned businesses, and Caucasian female-owned business subcontractors on construction-related services prime contracts. And a subcontractor disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Hispanic-owned businesses, and Caucasian female-owned business subcontractors on non-construction related services prime contracts. There were too few available firms to test disparity for Native American or Alaskan Native-owned businesses for construction, construction-related services, and non-construction related services subcontracts.



**Table 10.5: Subcontract Disparity Summary,  
April 1, 2010, to March 31, 2015**

<b>Ethnicity / Gender</b>	<b>Construction</b>	<b>Construction-Related Services</b>	<b>Non-Construction Related Services</b>
<b>Black Americans</b>	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Pacific Americans</b>	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
<b>Asian-Indian Subcontinent Americans</b>	<i>Disparity</i>	<b>No Disparity</b>	<b>No Disparity</b>
<b>Hispanic Americans</b>	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
<b>Caucasian Females</b>	<i>Underutilization</i>	<i>Disparity</i>	<i>Disparity</i>

### ***III. Race and Gender-Conscious Recommendations***

The documented findings of statistically significant underutilization of ethnic and gender groups on the State’s prime and subcontracts are the predicate for the race and gender-conscious recommendations. The proposed remedies are narrowly tailored to ethnic and gender groups with the documented disparity.

The scope of the recommendations takes into consideration that the State’s procurement process has been subject to the MWBE program provisions of New York Executive Article 15-A since 1988. Despite the Executive Article 15-A requirements to equitably award prime and subcontracts, significant disparity has been found in the utilization of available MWBEs. This disparity is evident in the award of small and large prime contracts and subcontracts.

#### ***A. Prime Contract Remedies: Construction***

The following race and gender-conscious prime contract remedies should apply to the State’s construction contracts to address the findings of disparity outlined in this report.

##### **1. Apply Bid Discounts to Mitigate Construction Prime Contractor Disparity**

The State should apply a 10% bid discount for evaluation purposes on low bid construction prime contracts. The bid discount, when applied, would reduce the bidder’s price by 10% for evaluation purposes. The ethnic and gender groups eligible for the bid discounts are depicted in Table 10.6.



**Table 10.6: Disparity Summary: Construction Services for Informal Contracts, April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Construction
	Informal Contracts Valued Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>
Asian Pacific Americans	<i>Disparity</i>
Asian-Indian Subcontinent Americans	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>

**B. Prime Contract Remedies: Construction-Related Services**

The following race and gender-conscious prime contract remedies should apply to the State’s construction-related contracts to address the findings of disparity outlined in this report.

**1. Assign Evaluation Points to Prime Contractors with a Disparity**

Evaluation points should be assigned during the prime contractor selection process to the ethnic groups with a disparity to mitigate the effects of the documented disparity. The ethnic and gender groups eligible for the evaluation points are depicted in Table 10.7. The points should be assigned during the evaluation of the proposals and statements of qualification. As a best management practice, the assignment should be 10% of the available evaluation points.

**Table 10.7: Disparity Summary: Construction-Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Construction-Related Services	
	Formal Contracts Valued \$50,000 to \$2,000,000	Informal Contracts Valued Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>No Disparity</i>
Asian-Indian Subcontinent Americans	<i>Disparity</i>	<i>No Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>



The requests for proposal and statements of qualification should clearly delineate the evaluation criteria and the evaluation points assigned for each criterion. The recommendation for each award should include a narrative report explaining the assignment of points for each proposer. A signed copy of each evaluator’s scores and comments should be attached to the narrative report. The evaluation scores should reflect the points assigned for each criterion. The State should publish the scores within 30 days of the issuance of the Intent to Award.

### **C. Prime Contract Remedies: Non-Construction Related Services**

The following race and gender-conscious prime contract remedies should apply to the State’s non-construction-related contracts to address the findings of disparity outlined in this report.

#### **1. Assign Evaluation Points to Mitigate Prime Contractor Disparity**

Evaluation points should be assigned during the prime contractor selection process to the groups with a disparity to mitigate the effects of the documented disparity. The ethnic and gender groups eligible for the evaluation points are depicted in Table 10.8. The points should be assigned during the evaluation of the proposals and statements of qualification. As a best management practice, the assignment should be 10% of the available evaluation points.

**Table 10.8: Disparity Summary: Non-Construction Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Non-Construction-Related Services	
	Formal Contracts Valued \$50,000 to \$500,000	Informal Contracts Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>No Disparity</i>
Asian-Indian Subcontinent Americans	<i>No Disparity</i>	<i>No Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

The request for proposals and statements of qualification should clearly delineate the evaluation criteria and the evaluation points assigned for each criterion. The recommendation for award should include a narrative report explaining the assignment of points for each proposer. A signed copy of each evaluator’s scores and comments should be attached to the narrative report. The evaluation scores should reflect the points assigned for each criterion. The State should publish the scores within 30 days of the issuance of the Intent to Award.

### **D. Prime Contract Remedies: Commodities and Other Services**

Race and gender-conscious prime contract remedies should apply to commodities and other services contracts under the \$275,000 threshold.

#### **1. Apply Bid Discounts to Mitigate Prime Contractor Disparity**

The State should apply a 10% bid discount for evaluation purposes on low bid commodities and other services prime contracts. The bid discount, when applied, would reduce the bidder’s price by 10% for evaluation purposes. The ethnic and gender groups eligible for the bid discounts are depicted in Table 10.9.



**Table 10.9: Groups Eligible for Commodities and Other Services Bid Discounts**

Ethnicity/Gender	Commodities and Other Services	
	Formal Contracts Valued \$50,000 to \$275,000	Informal Contracts Valued Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

**E. Subcontract Remedies**

Race and gender-conscious remedies should apply to subcontracts awarded in the construction, construction-related and non-construction related industries.

**1. Construction Subcontract Goals**

A disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Asian-Indian Subcontinent-owned businesses, and Hispanic-owned businesses on the State’s construction subcontracts. Caucasian female-owned businesses were underutilized on the State’s construction subcontracts. Since *Croson*, the Supreme Court has remained silent with respect to the appropriate standard of review for WBE programs.<sup>306</sup> In other contexts, however, the Supreme Court has ruled that gender classifications are not subject to the rigorous strict scrutiny standard applied to racial classifications, which requires a finding of statistically significant underutilization. Instead, gender classifications are subject only to an “intermediate” level of review, regardless of which gender is favored. Thus, Caucasian females should remain in the MWBE program because they were underutilized on the State’s construction subcontracts.

The subcontractor disparity analysis revealed that MWBEs received 28.64% of the construction subcontract dollars. Thus the State’s 30% MWBE goal should remain in effect. The MWBE subcontract goal should apply to construction subcontracts valued from \$50,000 to \$3,000,000 to eliminate the documented MBE disparity and Caucasian Female underutilization.

The prime contractor utilization analysis revealed that 27 agencies and authorities awarded 1,235 prime contracts valued over \$3,000,000 during the study period. MWBE subcontract goals on construction prime contracts valued over \$3,000,000 should be contract specific to consider the availability of MWBEs to work on large construction projects. The MWBE goal should reflect the availability of MWBEs in the relevant NAICS categories. Table 10.10 below depicts the groups with a documented disparity.



<sup>306</sup> *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 495-96 (1989).

**Table 10.10: MWBE Subcontractor Construction Availability**

<b>Ethnicity/Gender</b>	<b>Availability</b>
<b>Black Americans</b>	11.53%
<b>Asian-Pacific Asian Pacific Americans</b>	2.59%
<b>Asian-Indian Americans</b>	6.69%
<b>Hispanic Americans</b>	8.63%
<b>Caucasian Females</b>	20.24%

## **2. Construction-Related Services Subcontract Goals**

Disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on construction-related services subcontracts. The construction-related professional services MBE goal should apply to Black American Business Enterprises, Asian-Pacific-owned Business Enterprises, and Hispanic-owned Business Enterprises. The construction-related professional services WBE goal should apply to Caucasian Female-owned Business Enterprises.

The subcontractor disparity analysis revealed that MWBEs received 28.85% of the construction-related subcontract dollars. Thus, the State's 30% MWBE goal should apply to construction-related subcontracts valued from \$50,000 to \$3,000,000 to eliminate the documented MWBE disparity. The prime contractor utilization analysis revealed that 16 agencies and authorities awarded 353 construction-related prime contracts valued over \$3,000,000 during the study period. MWBE subcontract goals on construction-related prime contracts valued over \$3,000,000 should be contract specific to consider the availability of MWBEs to work on large construction-related projects. Thus, the MWBE goal should reflect the availability of MWBE subcontractors. Table 10.11 below depicts the groups with a documented disparity.

Construction prime contracts valued over \$3,000,000 should be set on a contract-by-contract basis that reflects the availability of MWBEs in the relevant NAICS categories. To meet the narrowly tailored standard, the subcontract goals should apply to the groups with a documented disparity as shown in Table 10.11.





**Table 10.11: MWBE Construction Related Services Subcontractor Availability**

<b>Ethnicity/Gender</b>	<b>Availability</b>
<b>Black Americans</b>	10.82%
<b>Caucasian Females</b>	28.34%

**3. Non-Construction Related Services Subcontract Goals**

Disparity was found for Black-owned businesses, Asian-Pacific-owned businesses, Hispanic-owned businesses, and Caucasian female-owned businesses on non-construction related services subcontracts. The MBE goal should apply to Black-owned businesses, Asian-Pacific-owned businesses, and Hispanic-owned businesses. The WBE goal should apply to Caucasian Female-owned Business Enterprises.

The subcontractor disparity analysis revealed that MWBEs received 22.96% of the non-construction related subcontract dollars. The State's 30% MWBE goal should remain to eliminate the documented MWBE disparity. To meet the narrowly tailored standard, the subcontract goal should apply to the groups with a statistically significant disparity as shown in Table 10.12.

**Table 10.12: MWBE Non-Construction Related Services Subcontractor Availability**

<b>Ethnicity/Gender</b>	<b>Availability</b>
<b>Black Americans</b>	13.43%
<b>Asian-Pacific Americans</b>	4.22%
<b>Hispanic Americans</b>	6.97%
<b>Caucasian Females</b>	32.59%



# ***APPENDIX A: Availability Tables by Region***

**Table A.1: Available Prime Contractors – Construction  
Capital District**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	4.61%
Asian-Pacific	1.15%
Asian-Indian Subcontinent	2.14%
Hispanic	3.45%
Native American or Alaskan Native	1.32%
Caucasian Females	26.15%
Non-Minority Males	61.18%
TOTAL	100.00%
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.82%
Black Males	3.78%
Asian-Pacific Females	0.66%
Asian-Pacific Males	0.49%
Asian-Indian Subcontinent Females	0.16%
Asian-Indian Subcontinent Males	1.97%
Hispanic Females	1.64%
Hispanic Males	1.81%
Native American or Alaskan Native Females	0.33%
Native American or Alaskan Native Males	0.99%
Caucasian Females	26.15%
Non-minority Males	61.18%
TOTAL	100.00%



**Table A.2: Available Prime Contractors – Construction-Related Services  
Capital District**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	3.99%
Asian-Pacific	2.33%
Asian-Indian Subcontinent	4.98%
Hispanic	3.65%
Native American or Alaskan Native	0.66%
Caucasian Females	30.90%
Non-Minority Males	53.49%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.33%
Black Males	3.65%
Asian-Pacific Females	1.00%
Asian-Pacific Males	1.33%
Asian-Indian Subcontinent Females	0.66%
Asian-Indian Subcontinent Males	4.32%
Hispanic Females	1.99%
Hispanic Males	1.66%
Native American or Alaskan Native Females	0.00%
Native American or Alaskan Native Males	0.66%
Caucasian Females	30.90%
Non-minority Males	53.49%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.3: Available Prime Contractors – Non-Construction Related Services  
Capital District**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	5.19%
Asian-Pacific	1.04%
Asian-Indian Subcontinent	5.45%
Hispanic	2.47%
Native American or Alaskan Native	0.39%
Caucasian Females	37.66%
Non-Minority Males	47.79%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	1.95%
Black Males	3.25%
Asian-Pacific Females	0.52%
Asian-Pacific Males	0.52%
Asian-Indian Subcontinent Females	2.99%
Asian-Indian Subcontinent Males	2.47%
Hispanic Females	1.04%
Hispanic Males	1.43%
Native American or Alaskan Native Females	0.26%
Native American or Alaskan Native Males	0.13%
Caucasian Females	37.66%
Non-minority Males	47.79%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.4: Available Prime Contractors – Commodities and Other Services  
Capital District**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	4.97%
Asian-Pacific	0.37%
Asian-Indian Subcontinent	1.31%
Hispanic	1.69%
Native American or Alaskan Native	0.56%
Caucasian Females	24.93%
Non-Minority Males	66.17%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	1.69%
Black Males	3.28%
Asian-Pacific Females	0.09%
Asian-Pacific Males	0.28%
Asian-Indian Subcontinent Females	0.47%
Asian-Indian Subcontinent Males	0.84%
Hispanic Females	0.37%
Hispanic Males	1.31%
Native American or Alaskan Native Females	0.28%
Native American or Alaskan Native Males	0.28%
Caucasian Females	24.93%
Non-minority Males	66.17%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.5: Available Prime Contractors - Construction  
Central New York**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	9.57%
Asian-Pacific	0.68%
Asian-Indian Subcontinent	1.14%
Hispanic	1.37%
Native American or Alaskan Native	1.82%
Caucasian Females	25.97%
Non-Minority Males	59.45%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	1.14%
Black Males	8.43%
Asian-Pacific Females	0.23%
Asian-Pacific Males	0.46%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	1.14%
Hispanic Females	0.46%
Hispanic Males	0.91%
Native American or Alaskan Native Females	0.46%
Native American or Alaskan Native Males	1.37%
Caucasian Females	25.97%
Non-minority Males	59.45%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.6: Available Prime Contractors – Construction-Related Services  
Central New York**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	9.22%
Asian-Pacific	0.49%
Asian-Indian Subcontinent	3.40%
Hispanic	0.97%
Native American or Alaskan Native	0.49%
Caucasian Females	32.52%
Non-Minority Males	52.91%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.97%
Black Males	8.25%
Asian-Pacific Females	0.00%
Asian-Pacific Males	0.49%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	3.40%
Hispanic Females	0.49%
Hispanic Males	0.49%
Native American or Alaskan Native Females	0.00%
Native American or Alaskan Native Males	0.49%
Caucasian Females	32.52%
Non-minority Males	52.91%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.7: Available Prime Contractors – Non-Construction Related Services  
Central New York**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	8.23%
Asian-Pacific	0.32%
Asian-Indian Subcontinent	0.95%
Hispanic	0.63%
Native American or Alaskan Native	0.00%
Caucasian Females	37.66%
Non-Minority Males	52.22%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	1.58%
Black Males	6.65%
Asian-Pacific Females	0.32%
Asian-Pacific Males	0.00%
Asian-Indian Subcontinent Females	0.32%
Asian-Indian Subcontinent Males	0.63%
Hispanic Females	0.32%
Hispanic Males	0.32%
Native American or Alaskan Native Females	0.00%
Native American or Alaskan Native Males	0.00%
Caucasian Females	37.66%
Non-minority Males	52.22%
<b>TOTAL</b>	<b>100.00%</b>





**Table A.8: Available Prime Contractors – Commodities and Other Services  
Central New York**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	5.61%
Asian-Pacific	0.72%
Asian-Indian Subcontinent	0.29%
Hispanic	0.43%
Native American or Alaskan Native	0.58%
Caucasian Females	24.46%
Non-Minority Males	67.91%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.58%
Black Males	5.04%
Asian-Pacific Females	0.43%
Asian-Pacific Males	0.29%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	0.29%
Hispanic Females	0.29%
Hispanic Males	0.14%
Native American or Alaskan Native Females	0.14%
Native American or Alaskan Native Males	0.43%
Caucasian Females	24.46%
Non-minority Males	67.91%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.9: Available Prime Contractors - Construction  
Finger Lakes**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	12.52%
Asian-Pacific	1.54%
Asian-Indian Subcontinent	1.73%
Hispanic	4.43%
Native American or Alaskan Native	1.35%
Caucasian Females	25.24%
Non-Minority Males	53.18%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	1.93%
Black Males	10.60%
Asian-Pacific Females	0.96%
Asian-Pacific Males	0.58%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	1.73%
Hispanic Females	1.35%
Hispanic Males	3.08%
Native American or Alaskan Native Females	0.00%
Native American or Alaskan Native Males	1.35%
Caucasian Females	25.24%
Non-minority Males	53.18%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.10: Available Prime Contractors – Construction-Related Services  
Finger Lakes**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	8.42%
Asian-Pacific	1.98%
Asian-Indian Subcontinent	4.46%
Hispanic	4.95%
Native American or Alaskan Native	0.50%
Caucasian Females	30.20%
Non-Minority Males	49.50%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	1.98%
Black Males	6.44%
Asian-Pacific Females	0.50%
Asian-Pacific Males	1.49%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	4.46%
Hispanic Females	2.48%
Hispanic Males	2.48%
Native American or Alaskan Native Females	0.00%
Native American or Alaskan Native Males	0.50%
Caucasian Females	30.20%
Non-minority Males	49.50%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.11: Available Prime Contractors – Non-Construction Related Services  
Finger Lakes**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	8.08%
Asian-Pacific	1.50%
Asian-Indian Subcontinent	2.07%
Hispanic	3.57%
Native American or Alaskan Native	0.56%
Caucasian Females	39.10%
Non-Minority Males	45.11%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.63%
Black Males	5.45%
Asian-Pacific Females	0.56%
Asian-Pacific Males	0.94%
Asian-Indian Subcontinent Females	0.19%
Asian-Indian Subcontinent Males	1.88%
Hispanic Females	1.32%
Hispanic Males	2.26%
Native American or Alaskan Native Females	0.38%
Native American or Alaskan Native Males	0.19%
Caucasian Females	39.10%
Non-minority Males	45.11%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.12: Available Prime Contractors – Commodities and Other Services  
Finger Lakes**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	6.26%
Asian-Pacific	1.08%
Asian-Indian Subcontinent	0.43%
Hispanic	2.05%
Native American or Alaskan Native	0.97%
Caucasian Females	23.19%
Non-Minority Males	66.02%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	1.40%
Black Males	4.85%
Asian-Pacific Females	0.43%
Asian-Pacific Males	0.65%
Asian-Indian Subcontinent Females	0.11%
Asian-Indian Subcontinent Males	0.32%
Hispanic Females	0.54%
Hispanic Males	1.51%
Native American or Alaskan Native Females	0.22%
Native American or Alaskan Native Males	0.76%
Caucasian Females	23.19%
Non-minority Males	66.02%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.13: Available Prime Contractors - Construction  
Long Island**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	9.04%
Asian-Pacific	2.32%
Asian-Indian Subcontinent	8.32%
Hispanic	10.24%
Native American or Alaskan Native	0.48%
Caucasian Females	24.80%
Non-Minority Males	44.80%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.16%
Black Males	6.88%
Asian-Pacific Females	0.64%
Asian-Pacific Males	1.68%
Asian-Indian Subcontinent Females	1.36%
Asian-Indian Subcontinent Males	6.96%
Hispanic Females	2.80%
Hispanic Males	7.44%
Native American or Alaskan Native Females	0.16%
Native American or Alaskan Native Males	0.32%
Caucasian Females	24.80%
Non-minority Males	44.80%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.14: Available Prime Contractors – Construction-Related Services  
Long Island**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	10.85%
Asian-Pacific	2.71%
Asian-Indian Subcontinent	11.43%
Hispanic	11.05%
Native American or Alaskan Native	0.39%
Caucasian Females	26.94%
Non-Minority Males	36.63%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.33%
Black Males	8.53%
Asian-Pacific Females	0.78%
Asian-Pacific Males	1.94%
Asian-Indian Subcontinent Females	1.94%
Asian-Indian Subcontinent Males	9.50%
Hispanic Females	2.13%
Hispanic Males	8.91%
Native American or Alaskan Native Females	0.19%
Native American or Alaskan Native Males	0.19%
Caucasian Females	26.94%
Non-minority Males	36.63%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.15: Available Prime Contractors – Non-Construction Related Services  
Long Island**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	11.21%
Asian-Pacific	2.75%
Asian-Indian Subcontinent	8.87%
Hispanic	7.44%
Native American or Alaskan Native	0.71%
Caucasian Females	29.15%
Non-Minority Males	39.86%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	5.30%
Black Males	5.91%
Asian-Pacific Females	1.22%
Asian-Pacific Males	1.53%
Asian-Indian Subcontinent Females	2.45%
Asian-Indian Subcontinent Males	6.42%
Hispanic Females	2.34%
Hispanic Males	5.10%
Native American or Alaskan Native Females	0.71%
Native American or Alaskan Native Males	0.00%
Caucasian Females	29.15%
Non-minority Males	39.86%
<b>TOTAL</b>	<b>100.00%</b>





**Table A.16: Available Prime Contractors – Commodities and Other Services  
Long Island**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	6.66%
Asian-Pacific	1.64%
Asian-Indian Subcontinent	4.00%
Hispanic	6.82%
Native American or Alaskan Native	0.46%
Caucasian Females	25.63%
Non-Minority Males	54.79%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.05%
Black Males	4.61%
Asian-Pacific Females	0.51%
Asian-Pacific Males	1.13%
Asian-Indian Subcontinent Females	0.77%
Asian-Indian Subcontinent Males	3.23%
Hispanic Females	2.26%
Hispanic Males	4.56%
Native American or Alaskan Native Females	0.26%
Native American or Alaskan Native Males	0.21%
Caucasian Females	25.63%
Non-minority Males	54.79%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.17: Available Prime Contractors - Construction  
Mid-Hudson**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	12.63%
Asian-Pacific	1.57%
Asian-Indian Subcontinent	3.86%
Hispanic	14.72%
Native American or Alaskan Native	0.10%
Caucasian Females	23.90%
Non-Minority Males	43.22%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	1.88%
Black Males	10.75%
Asian-Pacific Females	0.31%
Asian-Pacific Males	1.25%
Asian-Indian Subcontinent Females	0.42%
Asian-Indian Subcontinent Males	3.44%
Hispanic Females	3.55%
Hispanic Males	11.17%
Native American or Alaskan Native Females	0.00%
Native American or Alaskan Native Males	0.10%
Caucasian Females	23.90%
Non-minority Males	43.22%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.18: Available Prime Contractors – Construction-Related Services  
Mid-Hudson**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	10.93%
Asian-Pacific	3.56%
Asian-Indian Subcontinent	5.94%
Hispanic	11.16%
Native American or Alaskan Native	0.00%
Caucasian Females	30.40%
Non-Minority Males	38.00%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	3.33%
Black Males	7.60%
Asian-Pacific Females	1.19%
Asian-Pacific Males	2.38%
Asian-Indian Subcontinent Females	0.48%
Asian-Indian Subcontinent Males	5.46%
Hispanic Females	4.04%
Hispanic Males	7.13%
Native American or Alaskan Native Females	0.00%
Native American or Alaskan Native Males	0.00%
Caucasian Females	30.40%
Non-minority Males	38.00%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.19: Available Prime Contractors – Non-Construction Related Services  
Mid-Hudson**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	13.85%
Asian-Pacific	2.00%
Asian-Indian Subcontinent	3.40%
Hispanic	9.04%
Native American or Alaskan Native	0.35%
Caucasian Females	37.44%
Non-Minority Males	33.92%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	5.75%
Black Males	8.10%
Asian-Pacific Females	1.29%
Asian-Pacific Males	0.70%
Asian-Indian Subcontinent Females	0.82%
Asian-Indian Subcontinent Males	2.58%
Hispanic Females	3.64%
Hispanic Males	5.40%
Native American or Alaskan Native Females	0.35%
Native American or Alaskan Native Males	0.00%
Caucasian Females	37.44%
Non-minority Males	33.92%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.20: Available Prime Contractors – Commodities and Other Services  
Mid-Hudson**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	9.14%
Asian-Pacific	1.24%
Asian-Indian Subcontinent	1.89%
Hispanic	10.63%
Native American or Alaskan Native	0.33%
Caucasian Females	24.46%
Non-Minority Males	52.31%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.31%
Black Males	6.84%
Asian-Pacific Females	0.49%
Asian-Pacific Males	0.74%
Asian-Indian Subcontinent Females	0.58%
Asian-Indian Subcontinent Males	1.32%
Hispanic Females	3.05%
Hispanic Males	7.58%
Native American or Alaskan Native Females	0.16%
Native American or Alaskan Native Males	0.16%
Caucasian Females	24.46%
Non-minority Males	52.31%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.21: Available Prime Contractors - Construction  
Mohawk Valley**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	2.84%
Asian-Pacific	0.57%
Asian-Indian Subcontinent	0.57%
Hispanic	6.25%
Native American or Alaskan Native	0.00%
Caucasian Females	34.66%
Non-Minority Males	55.11%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.57%
Black Males	2.27%
Asian-Pacific Females	0.00%
Asian-Pacific Males	0.57%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	0.57%
Hispanic Females	1.70%
Hispanic Males	4.55%
Native American or Alaskan Native Females	0.00%
Native American or Alaskan Native Males	0.00%
Caucasian Females	34.66%
Non-minority Males	55.11%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.22: Available Prime Contractors – Construction-Related Services  
Mohawk Valley**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	1.41%
Asian-Pacific	0.00%
Asian-Indian Subcontinent	2.82%
Hispanic	2.82%
Native American or Alaskan Native	0.00%
Caucasian Females	36.62%
Non-Minority Males	56.34%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.00%
Black Males	1.41%
Asian-Pacific Females	0.00%
Asian-Pacific Males	0.00%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	2.82%
Hispanic Females	1.41%
Hispanic Males	1.41%
Native American or Alaskan Native Females	0.00%
Native American or Alaskan Native Males	0.00%
Caucasian Females	36.62%
Non-minority Males	56.34%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.23: Available Prime Contractors – Non-Construction Related Services  
Mohawk Valley**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	2.52%
Asian-Pacific	0.00%
Asian-Indian Subcontinent	1.68%
Hispanic	3.36%
Native American or Alaskan Native	0.84%
Caucasian Females	49.58%
Non-Minority Males	42.02%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.84%
Black Males	1.68%
Asian-Pacific Females	0.00%
Asian-Pacific Males	0.00%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	1.68%
Hispanic Females	0.84%
Hispanic Males	2.52%
Native American or Alaskan Native Females	0.84%
Native American or Alaskan Native Males	0.00%
Caucasian Females	49.58%
Non-minority Males	42.02%
<b>TOTAL</b>	<b>100.00%</b>





**Table A.24: Available Prime Contractors – Commodities and Other Services  
Mohawk Valley**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	2.12%
Asian-Pacific	0.61%
Asian-Indian Subcontinent	0.30%
Hispanic	1.52%
Native American or Alaskan Native	0.00%
Caucasian Females	24.55%
Non-Minority Males	70.91%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.61%
Black Males	1.52%
Asian-Pacific Females	0.30%
Asian-Pacific Males	0.30%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	0.30%
Hispanic Females	0.30%
Hispanic Males	1.21%
Native American or Alaskan Native Females	0.00%
Native American or Alaskan Native Males	0.00%
Caucasian Females	24.55%
Non-minority Males	70.91%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.25: Available Prime Contractors - Construction  
New York City**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	20.18%
Asian-Pacific	5.90%
Asian-Indian Subcontinent	16.95%
Hispanic	14.55%
Native American or Alaskan Native	0.15%
Caucasian Females	12.95%
Non-Minority Males	29.32%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	4.07%
Black Males	16.11%
Asian-Pacific Females	1.22%
Asian-Pacific Males	4.68%
Asian-Indian Subcontinent Females	1.83%
Asian-Indian Subcontinent Males	15.12%
Hispanic Females	3.35%
Hispanic Males	11.20%
Native American or Alaskan Native Females	0.11%
Native American or Alaskan Native Males	0.04%
Caucasian Females	12.95%
Non-minority Males	29.32%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.26: Available Prime Contractors – Construction-Related Services  
New York City**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	15.93%
Asian-Pacific	9.52%
Asian-Indian Subcontinent	10.67%
Hispanic	11.68%
Native American or Alaskan Native	0.29%
Caucasian Females	23.50%
Non-Minority Males	28.41%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	4.04%
Black Males	11.90%
Asian-Pacific Females	3.32%
Asian-Pacific Males	6.20%
Asian-Indian Subcontinent Females	1.80%
Asian-Indian Subcontinent Males	8.87%
Hispanic Females	2.60%
Hispanic Males	9.08%
Native American or Alaskan Native Females	0.22%
Native American or Alaskan Native Males	0.07%
Caucasian Females	23.50%
Non-minority Males	28.41%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.27: Available Prime Contractors – Non-Construction Related Services  
New York City**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	20.00%
Asian-Pacific	7.95%
Asian-Indian Subcontinent	6.25%
Hispanic	10.17%
Native American or Alaskan Native	0.35%
Caucasian Females	26.11%
Non-Minority Males	29.17%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	7.78%
Black Males	12.22%
Asian-Pacific Females	3.75%
Asian-Pacific Males	4.20%
Asian-Indian Subcontinent Females	1.60%
Asian-Indian Subcontinent Males	4.65%
Hispanic Females	2.81%
Hispanic Males	7.36%
Native American or Alaskan Native Females	0.24%
Native American or Alaskan Native Males	0.10%
Caucasian Females	26.11%
Non-minority Males	29.17%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.28: Available Prime Contractors – Commodities and Other Services  
New York City**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	20.09%
Asian-Pacific	5.62%
Asian-Indian Subcontinent	6.25%
Hispanic	12.76%
Native American or Alaskan Native	0.10%
Caucasian Females	16.97%
Non-Minority Males	38.21%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	4.80%
Black Males	15.29%
Asian-Pacific Females	2.01%
Asian-Pacific Males	3.62%
Asian-Indian Subcontinent Females	1.12%
Asian-Indian Subcontinent Males	5.13%
Hispanic Females	3.39%
Hispanic Males	9.37%
Native American or Alaskan Native Females	0.07%
Native American or Alaskan Native Males	0.03%
Caucasian Females	16.97%
Non-minority Males	38.21%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.29: Available Prime Contractors - Construction  
North Country**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	3.10%
Asian-Pacific	0.44%
Asian-Indian Subcontinent	0.44%
Hispanic	2.21%
Native American or Alaskan Native	2.65%
Caucasian Females	35.40%
Non-Minority Males	55.75%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.44%
Black Males	2.65%
Asian-Pacific Females	0.00%
Asian-Pacific Males	0.44%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	0.44%
Hispanic Females	1.77%
Hispanic Males	0.44%
Native American or Alaskan Native Females	1.33%
Native American or Alaskan Native Males	1.33%
Caucasian Females	35.40%
Non-minority Males	55.75%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.30: Available Prime Contractors – Construction-Related Services  
North Country**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	2.74%
Asian-Pacific	0.00%
Asian-Indian Subcontinent	1.37%
Hispanic	5.48%
Native American or Alaskan Native	1.37%
Caucasian Females	45.21%
Non-Minority Males	43.84%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.00%
Black Males	2.74%
Asian-Pacific Females	0.00%
Asian-Pacific Males	0.00%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	1.37%
Hispanic Females	4.11%
Hispanic Males	1.37%
Native American or Alaskan Native Females	1.37%
Native American or Alaskan Native Males	0.00%
Caucasian Females	45.21%
Non-minority Males	43.84%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.31: Available Prime Contractors – Non-Construction Related Services  
North Country**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	2.70%
Asian-Pacific	0.00%
Asian-Indian Subcontinent	0.00%
Hispanic	4.50%
Native American or Alaskan Native	2.70%
Caucasian Females	44.14%
Non-Minority Males	45.95%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.00%
Black Males	2.70%
Asian-Pacific Females	0.00%
Asian-Pacific Males	0.00%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	0.00%
Hispanic Females	2.70%
Hispanic Males	1.80%
Native American or Alaskan Native Females	0.90%
Native American or Alaskan Native Males	1.80%
Caucasian Females	44.14%
Non-minority Males	45.95%
<b>TOTAL</b>	<b>100.00%</b>





**Table A.32: Available Prime Contractors – Commodities and Other Services  
North Country**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	1.94%
Asian-Pacific	0.28%
Asian-Indian Subcontinent	0.00%
Hispanic	0.55%
Native American or Alaskan Native	1.11%
Caucasian Females	25.76%
Non-Minority Males	70.36%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.28%
Black Males	1.66%
Asian-Pacific Females	0.28%
Asian-Pacific Males	0.00%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	0.00%
Hispanic Females	0.00%
Hispanic Males	0.55%
Native American or Alaskan Native Females	0.55%
Native American or Alaskan Native Males	0.55%
Caucasian Females	25.76%
Non-minority Males	70.36%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.33: Available Prime Contractors – Construction Southern Tier**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	1.72%
Asian-Pacific	0.43%
Asian-Indian Subcontinent	3.02%
Hispanic	3.02%
Native American or Alaskan Native	0.86%
Caucasian Females	25.86%
Non-Minority Males	65.09%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.00%
Black Males	1.72%
Asian-Pacific Females	0.43%
Asian-Pacific Males	0.00%
Asian-Indian Subcontinent Females	0.43%
Asian-Indian Subcontinent Males	2.59%
Hispanic Females	1.29%
Hispanic Males	1.72%
Native American or Alaskan Native Females	0.43%
Native American or Alaskan Native Males	0.43%
Caucasian Females	25.86%
Non-minority Males	65.09%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.34: Available Prime Contractors – Construction-Related Services  
Southern Tier**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	3.19%
Asian-Pacific	1.06%
Asian-Indian Subcontinent	6.38%
Hispanic	5.32%
Native American or Alaskan Native	0.00%
Caucasian Females	32.98%
Non-Minority Males	51.06%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.00%
Black Males	3.19%
Asian-Pacific Females	1.06%
Asian-Pacific Males	0.00%
Asian-Indian Subcontinent Females	1.06%
Asian-Indian Subcontinent Males	5.32%
Hispanic Females	2.13%
Hispanic Males	3.19%
Native American or Alaskan Native Females	0.00%
Native American or Alaskan Native Males	0.00%
Caucasian Females	32.98%
Non-minority Males	51.06%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.35: Available Prime Contractors – Non-Construction Related Services  
Southern Tier**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	3.68%
Asian-Pacific	1.23%
Asian-Indian Subcontinent	2.45%
Hispanic	3.07%
Native American or Alaskan Native	0.61%
Caucasian Females	45.40%
Non-Minority Males	43.56%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.45%
Black Males	1.23%
Asian-Pacific Females	1.23%
Asian-Pacific Males	0.00%
Asian-Indian Subcontinent Females	1.23%
Asian-Indian Subcontinent Males	1.23%
Hispanic Females	1.84%
Hispanic Males	1.23%
Native American or Alaskan Native Females	0.00%
Native American or Alaskan Native Males	0.61%
Caucasian Females	45.40%
Non-minority Males	43.56%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.36: Available Prime Contractors – Commodities and Other Services  
Southern Tier**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	2.21%
Asian-Pacific	0.55%
Asian-Indian Subcontinent	1.38%
Hispanic	1.38%
Native American or Alaskan Native	0.83%
Caucasian Females	25.41%
Non-Minority Males	68.23%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	0.83%
Black Males	1.38%
Asian-Pacific Females	0.28%
Asian-Pacific Males	0.28%
Asian-Indian Subcontinent Females	0.55%
Asian-Indian Subcontinent Males	0.83%
Hispanic Females	0.55%
Hispanic Males	0.83%
Native American or Alaskan Native Females	0.55%
Native American or Alaskan Native Males	0.28%
Caucasian Females	25.41%
Non-minority Males	68.23%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.37: Available Prime Contractors – Construction  
Western New York**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	10.91%
Asian-Pacific	1.14%
Asian-Indian Subcontinent	1.14%
Hispanic	3.26%
Native American or Alaskan Native	3.42%
Caucasian Females	22.96%
Non-Minority Males	57.17%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.93%
Black Males	7.98%
Asian-Pacific Females	0.33%
Asian-Pacific Males	0.81%
Asian-Indian Subcontinent Females	0.16%
Asian-Indian Subcontinent Males	0.98%
Hispanic Females	0.65%
Hispanic Males	2.61%
Native American or Alaskan Native Females	0.98%
Native American or Alaskan Native Males	2.44%
Caucasian Females	22.96%
Non-minority Males	57.17%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.38: Available Prime Contractors – Construction-Related Services  
Western New York**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	10.23%
Asian-Pacific	1.14%
Asian-Indian Subcontinent	3.03%
Hispanic	3.41%
Native American or Alaskan Native	2.65%
Caucasian Females	28.79%
Non-Minority Males	50.76%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	3.41%
Black Males	6.82%
Asian-Pacific Females	0.00%
Asian-Pacific Males	1.14%
Asian-Indian Subcontinent Females	0.00%
Asian-Indian Subcontinent Males	3.03%
Hispanic Females	1.14%
Hispanic Males	2.27%
Native American or Alaskan Native Females	1.14%
Native American or Alaskan Native Males	1.52%
Caucasian Females	28.79%
Non-minority Males	50.76%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.39: Available Prime Contractors – Non-Construction Related Services  
Western New York**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	9.11%
Asian-Pacific	1.69%
Asian-Indian Subcontinent	1.48%
Hispanic	2.75%
Native American or Alaskan Native	1.69%
Caucasian Females	33.90%
Non-Minority Males	49.36%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	4.24%
Black Males	4.87%
Asian-Pacific Females	0.64%
Asian-Pacific Males	1.06%
Asian-Indian Subcontinent Females	0.42%
Asian-Indian Subcontinent Males	1.06%
Hispanic Females	1.06%
Hispanic Males	1.69%
Native American or Alaskan Native Females	0.85%
Native American or Alaskan Native Males	0.85%
Caucasian Females	33.90%
Non-minority Males	49.36%
<b>TOTAL</b>	<b>100.00%</b>





**Table A.40: Available Prime Contractors – Commodities and Other Services  
Western New York**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	6.90%
Asian-Pacific	1.05%
Asian-Indian Subcontinent	0.42%
Hispanic	1.46%
Native American or Alaskan Native	1.99%
Caucasian Females	24.27%
Non-Minority Males	63.91%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.09%
Black Males	4.81%
Asian-Pacific Females	0.63%
Asian-Pacific Males	0.42%
Asian-Indian Subcontinent Females	0.21%
Asian-Indian Subcontinent Males	0.21%
Hispanic Females	0.52%
Hispanic Males	0.94%
Native American or Alaskan Native Females	0.73%
Native American or Alaskan Native Males	1.26%
Caucasian Females	24.27%
Non-minority Males	63.91%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.41: Available Prime Contractors – Construction  
Downstate**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	16.03%
Asian-Pacific	4.05%
Asian-Indian Subcontinent	11.46%
Hispanic	13.42%
Native American or Alaskan Native	0.24%
Caucasian Females	18.30%
Non-Minority Males	36.49%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	3.18%
Black Males	12.85%
Asian-Pacific Females	0.87%
Asian-Pacific Males	3.18%
Asian-Indian Subcontinent Females	1.34%
Asian-Indian Subcontinent Males	10.13%
Hispanic Females	3.14%
Hispanic Males	10.28%
Native American or Alaskan Native Females	0.11%
Native American or Alaskan Native Males	0.13%
Caucasian Females	18.30%
Non-minority Males	36.49%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.42: Available Prime Contractors – Construction-Related Services  
Downstate**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	13.97%
Asian-Pacific	7.06%
Asian-Indian Subcontinent	9.10%
Hispanic	11.33%
Native American or Alaskan Native	0.28%
Caucasian Females	26.23%
Non-Minority Males	32.03%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	3.53%
Black Males	10.45%
Asian-Pacific Females	2.37%
Asian-Pacific Males	4.69%
Asian-Indian Subcontinent Females	1.58%
Asian-Indian Subcontinent Males	7.52%
Hispanic Females	2.69%
Hispanic Males	8.64%
Native American or Alaskan Native Females	0.19%
Native American or Alaskan Native Males	0.09%
Caucasian Females	26.23%
Non-minority Males	32.03%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.43: Available Prime Contractors – Non-Construction Related Services  
Downstate**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	17.30%
Asian-Pacific	5.92%
Asian-Indian Subcontinent	6.03%
Hispanic	9.41%
Native American or Alaskan Native	0.45%
Caucasian Females	29.35%
Non-Minority Males	31.55%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	6.99%
Black Males	10.31%
Asian-Pacific Females	2.80%
Asian-Pacific Males	3.11%
Asian-Indian Subcontinent Females	1.61%
Asian-Indian Subcontinent Males	4.41%
Hispanic Females	2.85%
Hispanic Males	6.57%
Native American or Alaskan Native Females	0.38%
Native American or Alaskan Native Males	0.07%
Caucasian Females	29.35%
Non-minority Males	31.55%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.44: Available Prime Contractors – Commodities and Other Services  
Downstate**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	13.98%
Asian-Pacific	3.56%
Asian-Indian Subcontinent	4.56%
Hispanic	10.50%
Native American or Alaskan Native	0.26%
Caucasian Females	21.54%
Non-Minority Males	45.61%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	3.45%
Black Males	10.53%
Asian-Pacific Females	1.28%
Asian-Pacific Males	2.28%
Asian-Indian Subcontinent Females	0.90%
Asian-Indian Subcontinent Males	3.66%
Hispanic Females	2.90%
Hispanic Males	7.60%
Native American or Alaskan Native Females	0.16%
Native American or Alaskan Native Males	0.10%
Caucasian Females	21.54%
Non-minority Males	45.61%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.45: Available Prime Contractors – Construction  
Upstate**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	8.18%
Asian-Pacific	1.00%
Asian-Indian Subcontinent	1.28%
Hispanic	3.45%
Native American or Alaskan Native	1.88%
Caucasian Females	27.71%
Non-Minority Males	56.50%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	1.60%
Black Males	6.58%
Asian-Pacific Females	0.48%
Asian-Pacific Males	0.52%
Asian-Indian Subcontinent Females	0.12%
Asian-Indian Subcontinent Males	1.16%
Hispanic Females	1.16%
Hispanic Males	2.29%
Native American or Alaskan Native Females	0.56%
Native American or Alaskan Native Males	1.32%
Caucasian Females	27.71%
Non-minority Males	56.50%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.46: Available Prime Contractors – Construction-Related Services  
Upstate**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	7.43%
Asian-Pacific	1.45%
Asian-Indian Subcontinent	3.47%
Hispanic	3.76%
Native American or Alaskan Native	0.97%
Caucasian Females	34.65%
Non-Minority Males	48.26%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	1.54%
Black Males	5.89%
Asian-Pacific Females	0.48%
Asian-Pacific Males	0.97%
Asian-Indian Subcontinent Females	0.29%
Asian-Indian Subcontinent Males	3.19%
Hispanic Females	1.74%
Hispanic Males	2.03%
Native American or Alaskan Native Females	0.39%
Native American or Alaskan Native Males	0.58%
Caucasian Females	34.65%
Non-minority Males	48.26%
<b>TOTAL</b>	<b>100.00%</b>



**Table A.47: Available Prime Contractors – Non-Construction Related Services  
Upstate**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	7.03%
Asian-Pacific	1.08%
Asian-Indian Subcontinent	2.91%
Hispanic	2.64%
Native American or Alaskan Native	0.85%
Caucasian Females	41.04%
Non-Minority Males	44.44%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	2.60%
Black Males	4.44%
Asian-Pacific Females	0.54%
Asian-Pacific Males	0.54%
Asian-Indian Subcontinent Females	1.25%
Asian-Indian Subcontinent Males	1.66%
Hispanic Females	1.21%
Hispanic Males	1.43%
Native American or Alaskan Native Females	0.45%
Native American or Alaskan Native Males	0.40%
Caucasian Females	41.04%
Non-minority Males	44.44%
<b>TOTAL</b>	<b>100.00%</b>





**Table A.48: Available Prime Contractors – Commodities and Other Services  
Upstate**

<b>Ethnicity</b>	<b>Percent of Businesses</b>
Black	5.67%
Asian-Pacific	0.73%
Asian-Indian Subcontinent	0.73%
Hispanic	1.43%
Native American or Alaskan Native	1.00%
Caucasian Females	26.52%
Non-Minority Males	63.93%
<b>TOTAL</b>	<b>100.00%</b>
<b>Ethnicity and Gender</b>	<b>Percent of Businesses</b>
Black Females	1.43%
Black Males	4.24%
Asian-Pacific Females	0.38%
Asian-Pacific Males	0.35%
Asian-Indian Subcontinent Females	0.23%
Asian-Indian Subcontinent Males	0.50%
Hispanic Females	0.45%
Hispanic Males	0.98%
Native American or Alaskan Native Females	0.40%
Native American or Alaskan Native Males	0.60%
Caucasian Females	26.52%
Non-minority Males	63.93%
<b>TOTAL</b>	<b>100.00%</b>





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