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CITY OF OAKLAND

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City of Oakland

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RACE AND GENDER
DISPARITY STUDY

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CHAPTER 1: Legal Review

I. Introduction

This legal analysis summarizes the constitutional standards that the federal and state courts have applied to review local governments' affirmative action contracting programs. The United States Supreme Court decision of *City of Richmond v. J.A. Croson Co. (Croson)*¹ raised the standard by which lower courts review both local and state affirmative action contracting programs.

The City of Oakland Race and Gender Disparity Study was commissioned to conduct statistical analyses of data measuring the availability and utilization of Small Local Business Enterprises (SLBE), including minority and woman-owned businesses in contracts awarded by the City of Oakland (City). This Study will ensure that the City's SLBE Program, including race- or gender-conscious remedial measures recommended as a result of the Study's analysis, is narrowly tailored in compliance with *Croson* and its progeny, federal law applicable to race-based programs, and the California Constitution.

The United States Supreme Court decision in *Croson* sets forth the strict scrutiny constitutional analysis applicable to race-based remedies for public contracting programs. Since the City is located within California, the California Constitution and the United States Court of Appeals for the Ninth Circuit decisions including *Western States Paving v. Washington Department of Transportation*,² constitute binding legal precedent and are discussed herein. Since 1989, courts in several circuits, including the Sixth Circuit, have decided cases involving challenges to affirmative action programs. Case law pertaining to Minority and Woman-owned Business Enterprise (M/WBE) programs adjudicated outside of the Ninth Circuit are discussed because they are instructive, albeit not binding, when implementing race-based public contracting programs.

II. Standard of Review

The standard of review represents the measure by which a court evaluates whether a legal claim meets a certain statute, rule, or precedent. The standard of review that the Supreme Court set in *Croson* for race-specific programs is applicable to meet constitutional muster. *Croson*, decided in 1989, dealt with non-federally funded programs and established an evidentiary standard of review for race-based programs. The Court 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. Local governments, as set forth in *Croson*, may adopt race-conscious programs only as a remedy for identified statistical findings of discrimination, and the remedy must impose a minimal burden upon unprotected classes.

¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989). Please note that in *Adarand Constructors, Inc. v. Federico Peña*, 115 S.Ct. 2097 (1995), the Court applied the same standards to federal Disadvantaged Business Enterprise programs.

² *Western States Paving Co. v. State of Washington Dept. of Transportation*, 407 F.3d 983 (9th Cir. 2005).



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A. *Race-Conscious Programs*

In *Croson*, the United States Supreme Court affirmed that pursuant to the 14th Amendment, the proper standard of review for state and local MBE programs, which are necessarily race-based, is strict scrutiny.³ Specifically, the government must show that the classification is narrowly tailored to achieve a compelling state interest.⁴ 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.⁵ Speaking for the majority, Justice O'Connor articulated various methods of demonstrating discrimination and set forth guidelines for crafting MBE programs so that they are “narrowly tailored” to address systemic racial discrimination.⁶

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:⁷

- Disparity exists due to race-neutral reasons
- Methodology is flawed
- Findings from data analysis are statistically insignificant
- Conflicting data exists

Thus, a disparity study must be analytically rigorous, at least to the extent that the data permits, if it is to withstand legal challenge.⁸

A. *Strong Basis in Evidence*

Croson requires defendant jurisdictions to produce a “strong basis in evidence” that the objective of the challenged MBE program is to rectify the effects of discrimination.⁹ The issue of whether

³ *Croson*, 488 U.S. at 493-95.

⁴ *Id.* at 493.

⁵ *Croson*, 488 U.S. at 509.

⁶ *Croson*, 488 U.S. at 501-02. Cases involving education and employment frequently refer to the principal concepts applicable to the use of race in government contracting—compelling interest and narrowly tailored remedies. The Supreme Court in *Croson* and subsequent cases provides 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.

⁷ These were the issues on which the district court in Philadelphia reviewed the disparity study before it.

⁸ *Croson*, 488 U.S. 469.

⁹ *Concrete Works of Colorado v. City and County of Denver*, 36 F.3d 1513 at 1522 (10th Cir. 1994), (citing *Wygant v. Jackson Board of Education*, 476 U.S. 267, 292 (1986); see *Croson* 488 U.S. at 509 (1989)).



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or not the government has produced a strong basis in evidence is a question of law.¹⁰ 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.¹¹

The adequacy of the government’s evidence is “evaluated in the context of the breadth of the remedial program advanced by the [jurisdiction].”¹² The onus is upon the jurisdiction to provide a factual predicate that is sufficient in scope and precision to demonstrate that current disparity in utilization necessitated the adoption of the MBE program.

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.¹³ The plaintiff must persuade the court that the program is constitutionally flawed by challenging the government’s factual predicate for the program or by demonstrating that the program is overly broad.

Justice O’Connor explained the nature of the plaintiff’s burden of proof in her concurring opinion in *Wygant v. Jackson Board of Education (Wygant)*.¹⁴ She stated that following the production of the factual predicate supporting the program:

[I]t is incumbent upon the non-minority [plaintiffs] to prove their case; they continue to bear the ultimate burden of persuading the court that the [government’s] evidence did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently “narrowly tailored.”¹⁵

In *Philadelphia*, 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.¹⁶ That court wrote that the allocation of the burden of persuasion depends on the theory of constitutional invalidity that is being considered.¹⁷ 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

¹⁰ *Id.* (citing *Associated General Contractors v. New Haven*, 791 F.Supp. 941, 944 (D.Conn 1992)).

¹¹ *Concrete Works I*, 36 F.3d at 1522.

¹² *Concrete Works I*, 36 F.3d at 1522. (citing *Croson* 488 U.S. at 498).

¹³ *Id.* (citing *Wygant*, 476 U.S. at 277-278).

¹⁴ *Wygant v. Jackson Board of Education*, 476 U.S. 267, 293 (1986).

¹⁵ *Wygant*, 476 U.S. at 293.

¹⁶ *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990 (3rd Cir. 1993), on remand, 893 F.Supp. 419 (E.D. Penn. 1995), *aff’d*, 91 F.3d 586 (3rd Cir. 1996).

¹⁷ *Id.* at 597.



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burden of convincing the court that the identified remedial motivation is a pretext and that the real motivation was something else.¹⁸

The situation differs if the plaintiff's theory is that an agency's conclusions as to the existence of discrimination and the necessity of the remedy chosen have no strong basis in evidence. In such a situation, once the agency comes forward with evidence of facts alleged to justify its conclusions, the plaintiff has the burden of persuading the court that those facts are not accurate. However, the ultimate issue of whether a strong basis in evidence exists is an issue of law, and the burden of persuasion in the traditional sense plays no role in the court's resolution of that ultimate issue.¹⁹

In *Concrete Works II*, the Tenth Circuit clearly stated that as the plaintiff's burden is an evidentiary one, it cannot be discharged simply by argument. The court cited its opinion in *Adarand Constructors Inc. v. Slater*, 228 F.3d 1147 (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.”²⁰

The Supreme Court's disposition of the plaintiff's petition for *certiorari* strongly supports the conclusion that the plaintiff has the burden of proof. Supreme Court review of appellate decisions is discretionary in that four justices must agree, so normally little can be inferred from its denial. However, *Concrete Works* is not the typical instance. Justice Scalia concurred in *Croson* that strict scrutiny was required of race-conscious contracting programs. However, his antagonism there and over the years to the use of race is clear. Justice Scalia's view is that governmental remedies should be limited to provable individual victims. That view is at the base of his written dissent, on which only Chief Justice Rehnquist joined, to the Court's December 17, 2003 decision not to grant *certiorari* in *Concrete Works*.²¹

Justice Scalia would place the burden of proof squarely on the defendant jurisdiction when a plaintiff pleads unequal treatment. Pursuant to Justice Scalia's argument, the Tenth Circuit was simply wrong, because the defendant should have to *prove* that there was discrimination. He takes this position despite the case law in equal employment cases, from which *Croson* was derived, that the defendant has the burden of *production*. Once the defendant satisfies that, the burden of *proof* shifts to the plaintiff.

¹⁸ *Contractors Association of Eastern Pennsylvania*, 893 F.Supp. at 597.

¹⁹ At first glance, the position of the Third Circuit does not square with what the Eleventh Circuit announced as its standard in reviewing whether a jurisdiction has established the “compelling interest” required by strict scrutiny. The Eleventh Circuit said the inquiry was factual and would be reversed only if it was “clearly erroneous.” However, the difference in formulation may have had to do with the angle from which the question was approached: If one starts with the disparity study—whether a compelling interest has been shown—factual issues are critical. If the focus is the remedy, because the constitutional issue of equal protection in the context of race comes into play, the review is necessarily a legal one.

²⁰ *Concrete Works II*, 321 F.3d at 979 (quoting *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (2000)).

²¹ *Concrete Works of Colorado, Inc. v. City and County of Denver, Colorado*, 321 F.3d 950 (10th Cir. 2003), *petition for cert. denied*, (U.S. Nov. 17, 2003) (No. 02-1673) (“*Concrete Works II*”).



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Contrary to Justice Scalia’s dissenting opinion, the Tenth Circuit in *Concrete Works II* held that the defendant must show “a strong basis” for concluding that MBEs are being discriminated against. Additionally, the plaintiff must put in evidence that negates its validity.

IV. Croson Evidentiary Framework

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

A. Active or Passive Participation

Croson requires that the local entity seeking to adopt an MBE program must have perpetuated the discrimination to be remedied by the program. However, the local entity need not be an active perpetrator of such discrimination. Passive participation will satisfy this part of the Court’s strict scrutiny review.²²

An entity will be considered an “active” participant if the evidence shows that it has created barriers that actively exclude MBEs from its contracting opportunities. In addition to examining the government’s contracting record and process, MBEs who have contracted or attempted to contract with that entity can be interviewed to relay their experiences in pursuing that entity’s contracting opportunities.²³

An entity is considered to be a “passive” participant in private sector discriminatory practices if it has infused tax dollars into that discriminatory industry.²⁴ The *Croson* Court emphasized a government’s ability to passively participate in private sector discrimination with monetary involvement, stating:

[I]t is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from tax contributions of all citizens, do not serve to finance the evil of private prejudice.²⁵

Until *Concrete Works I*, the inquiry regarding passive discrimination was limited to the subcontracting practices of government prime contractors. In *Concrete Works I*, the Tenth Circuit considered a purely private sector definition of passive discrimination. Since no government funds were involved in the contracts analyzed in the case, the court questioned whether purely private



²² *Croson*, 488 U.S. at 509.

²³ *Wygant v. Jackson Board of Education*, 476 U.S. 267 at 275 (1985).

²⁴ *Croson*, 488 U.S. at 492; *Coral Construction*, 941 F.2d at 916.

²⁵ *Croson*, 488 U.S. at 492.

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sector discrimination was likely to be a fruitful line of inquiry.²⁶ On remand the district court rejected the three disparity studies offered to support the continuation of Denver's M/WBE program, because each focused on purely private sector discrimination. Indeed, Denver's focus on purely private sector discrimination may account for what seemed to be a shift by the court away from the standard *Croson* queries of: (1) whether there was a firm basis in the entity's contracting process to conclude that discrimination existed; (2) whether race-neutral remedies would resolve what was found; and (3) whether any race-conscious remedies had to be narrowly tailored. The court noted that in the City of Denver's disparity studies, the chosen methodologies failed to address the following six questions:

- Was there pervasive discrimination throughout the Denver Metropolitan Statistical Area (MSA)?
- Were all designated groups equally affected?
- Was discrimination intentional?
- Would Denver's use of such firms constitute "passive" participation?
- Would the proposed remedy change industry practices?
- Was the burden of compliance—which was on white male prime contractors in an intensely competitive, low profit margin business—a fair one?

The court concluded that the City of Denver had not documented a firm basis of identified discrimination derived from the statistics submitted.²⁷

However, the Tenth Circuit on appeal of that decision completely rejected the district court's analysis. 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. Relying on *Shaw v. Hunt*,²⁸ a post-*Croson* Supreme Court decision, the court wrote as follows:

The *Shaw* Court did not adopt any requirement that only discrimination by the governmental entity, either directly or by utilizing firms engaged in discrimination on projects funded by the entity, was remediable. The Court, however, did set out two conditions which must be met for the governmental entity to show a compelling interest. "First, the discrimination must be identified discrimination." *Id.* at 910.

²⁶ *Concrete Works I*, 36 F.3d at 1529. "What the Denver MSA data does not indicate, however, is whether there is any linkage between Denver's award of public contracts and the Denver MSA evidence of industry-wide discrimination. That is, we cannot tell whether Denver indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against MBE and/or WBE subcontractors in other private portions of their business or whether the private discrimination was practiced by firms who did not receive any public contracts. Neither *Croson* nor its progeny clearly state whether private discrimination that is in no way funded with public tax dollars can, by itself, provide the requisite strong basis in evidence necessary to justify a municipality's affirmative action program. A plurality in *Croson* simply suggested that remedial measures could be justified upon a municipality's showing that 'it had essentially become "a passive participant" in a system of racial exclusion practiced by elements of the local construction industry' [citing *Croson*]. Although we do not read *Croson* as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination, such evidence would at least enhance the municipality's factual predicate for a race- and gender-conscious program. The record before us does not explain the Denver government's role in contributing to the underutilization of MBEs and WBEs in the private construction market in the Denver MSA, and this may well be a fruitful issue to explore at trial."

²⁷ *Id.* at 61.

²⁸ *Shaw v. Hunt*, 517 U.S. at 519.



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The City can satisfy this condition by identifying the discrimination “public or private, with some specificity.” *Id.* (quoting *Croson*, 488 U.S. at 504 (emphasis added)). The governmental entity must also have a “strong basis in evidence to conclude that remedial action was necessary.” *Id.*²⁹

The Tenth Circuit therefore 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 M/WBE subcontractors in other private portions of their business.”³⁰ The court emphasized that its reading of *Croson*³¹ and its own precedents supported that conclusion. Also, the court pointed out that the plaintiff, which had the burden of proof, failed to introduce conflicting evidence and merely *argued* that the private sector was out of bounds and that Denver’s data were flawed.³²

The courts found that the disparities in MBE private sector participation, demonstrated with the rate of business formation and lack of access to credit that affected MBEs’ ability to expand in order to perform larger contracts, gave Denver a firm basis to conclude that there was actionable private sector discrimination. For technical legal reasons,³³ however, the court did not examine whether the consequent public-sector remedy—i.e., one involving a goal requirement on the City of Denver’s contracts—was “narrowly tailored.” The court took this position despite the plaintiff’s contention that the remedy was inseparable from the findings and that the court should have addressed the issue of whether the program was narrowly tailored.

Ten months later, in *Builders Association of Greater Chicago v. City of Chicago*,³⁴ the question of whether a public-sector remedy is “narrowly tailored” when it is based on purely private sector discrimination was at issue. The district court reviewed the remedies derived from private sector practices with a more stringent scrutiny. It found that there was discrimination against minorities in the Chicago construction industry. However, it did not find the City of Chicago’s MBE subcontracting goal an appropriate remedy, because it was not “narrowly tailored” to address the lack of access to credit for MBEs, which was the documented private discrimination. The court also criticized the remedy because it was a “rigid numerical quota,” and there was no individualized review of MBE beneficiaries, citing Justice O’Connor’s opinion in *Gratz v. Bollinger*.³⁵

²⁹ *Concrete Works II*, 321 F.3d at 975-76.

³⁰ Slip opinion, pg. 20.

³¹ See also *Shaw v. Hunt*, 517 U.S. 899 (1996), which it cited.

³² Whether Denver had the requisite strong basis to conclude that there was discrimination was a question of law; it was for the Tenth Circuit to decide. The standard by which the factual record before it was reviewed was “clearly erroneous.”

³³ Plaintiff had not preserved the issue on appeal; therefore, it was no longer part of the case.

³⁴ 298 F.Supp2d 725 (N.D.Ill. 2003).

³⁵ 123 S.Ct. 2411, 2431 (2003). *Croson* requires a showing that there was a strong basis for concluding that there was *discrimination* before a race-conscious remedy can be used in government contracting. In the University of Michigan cases that considered race-conscious admissions programs, a key element in the decisions is the Court acceptance of *diversity* as a constitutionally sufficient ground; it did not require a showing of past *discrimination* against minority applicants. If it had, the basis for a program would have disappeared. Discrimination is the historic concern of the 14th Amendment, while promoting diversity is of recent origin. The Court may have been disposed therefore to apply a more rigorous review of legislation based on diversity. The 14th Amendment’s prohibitions are directed against “state action.” The private sector



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The question of whether evidence of private sector practices met the Court standard also arose in *Builders Ass'n of Greater Chicago v. County of Cook*.³⁶ In this case, the Seventh Circuit cited *Associated General Contractors of Ohio v. Drabik*³⁷ in throwing out a 1988 County ordinance under which at least 30 percent of the value of prime contracts was to go to minority subcontractors and at least ten percent to woman-owned businesses. Appellants argued that evidence of purely private sector discrimination justified a public-sector program. The Court found that the County, in order to justify the public-sector remedy, had to demonstrate that it had been at least a passive participant in the private discrimination by showing that it had infused tax dollars into the discriminatory private industry.

B. Systemic Discriminatory Exclusion

Croson clearly established that an entity enacting a business affirmative action program must demonstrate identified, systemic discriminatory exclusion on the basis of race or any other illegitimate criteria (arguably gender).³⁸ Thus, it is essential to demonstrate a pattern and practice of such discriminatory exclusion in the relevant market area.³⁹ Using appropriate evidence of the entity's active or passive participation in the discrimination, as discussed above, the showing of discriminatory exclusion must cover each racial group to whom a remedy would apply.⁴⁰ Mere statistics and broad assertions of purely societal discrimination will not suffice to support a race or gender-conscious program.

Croson enumerates several ways an entity may establish the requisite factual predicate. First, a significant statistical disparity between the number of qualified minority contractors willing and

behavior of businesses that contract with state and local governments is a conceptual step away from what it does in its public-sector transactions. That distinction may lead courts to apply the *Gratz* approach of more searching scrutiny to remedial plans based on private sector contracting.

³⁶ 256 F.3d 642 (7th Cir. 2001).

³⁷ 214 F.3d 730 (6th Cir. 2000).

³⁸ *Croson*, 488 U.S. at 469. See also *Monterey Mechanical v. Pete Wilson*, 125 F.3d 702 (9th Cir. 1997). The Fifth Circuit Court in *W.H. Scott Construction Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (1999) found that the City's MBE program was unconstitutional for construction contracts because minority participation goals were arbitrarily set and not based on any objective data. Moreover, the Court noted that had the City implemented the recommendations from the disparity study it commissioned, the MBE program may have withstood judicial scrutiny (the City was not satisfied with the study and chose not to adopt its conclusions). "Had the City adopted particularized findings of discrimination within its various agencies and set participation goals for each accordingly, our outcome today might be different. Absent such evidence in the City's construction industry, however, the City lacks the factual predicates required under the Equal Protection Clause to support the Department's 15% DBE-participation goal."

In 1996, Houston Metro had adopted a study done for the City of Houston whose statistics were limited to aggregate figures that showed *income* disparity between groups, without making any connection between those statistics and the City's contracting policies. The disadvantages cited that M/WBEs faced in contracting with the City also applied to small businesses. Under *Croson*, that would have pointed to race-neutral remedies. The additional data on which Houston Metro relied was even less availing. Its own expert contended that the ratio of lawsuits involving private discrimination to total lawsuits and ratio of unskilled black wages to unskilled white wages established that the correlation between low rates of black self-employment was due to discrimination. Even assuming that nexus, there is nothing in *Croson* that accepts a low number of MBE business *formation* as a basis for a race-conscious remedy.

³⁹ *Croson*, 488 U.S. at 509.

⁴⁰ *Croson*, 488 U.S. at 506. As the Court said in *Croson*, "[t]he random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the city's purpose was not in fact to remedy past discrimination." See *North Shore Concrete and Assoc. v. City of New York*, 1998 U.S. Dist. LEXIS 6785 (EDNY 1998), which rejected the inclusion of Native Americans and Alaskan Natives in the City's program, citing *Croson*.



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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.⁴¹ In other words, when the relevant statistical pool is used, a showing of gross statistical disparity alone “may constitute *prima facie* proof of a pattern or practice of discrimination.”⁴²

The *Croson* Court made clear that both prime contract and subcontracting data were relevant. The Court observed that “[w]ithout any information on minority participation in subcontracting, it is quite simply impossible to evaluate overall minority representation in the city’s construction expenditures.”⁴³ Subcontracting data are also important means by which to assess suggested future remedial actions. Since the decision makers are different for the awarding of prime contracts and subcontracts, the remedies for discrimination identified at a prime contractor versus subcontractor level may also be different.

Second, “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”⁴⁴ Thus, if an entity has statistical evidence that non-minority contractors are systematically excluding minority businesses from subcontracting opportunities, it may act to end the discriminatory exclusion.⁴⁵ Once an inference of discriminatory exclusion arises, the entity may act to dismantle the closed business system.

In *Coral Construction*, the Ninth Circuit Court of Appeals further elaborated upon the type of evidence needed to establish the factual predicate that justifies a race-conscious remedy. The court held that both statistical and anecdotal evidence should be relied upon in establishing systemic discriminatory exclusion in the relevant marketplace as the factual predicate for an MBE program.⁴⁶ The court explained that statistical evidence, standing alone, often does not account for the complex factors and motivations guiding contracting decisions, many of which may be entirely race-neutral.⁴⁷

Likewise, anecdotal evidence, standing alone, is unlikely to establish a systemic pattern of discrimination.⁴⁸ Nonetheless, anecdotal evidence is important because the individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”⁴⁹

⁴¹ *Croson*, 488 U.S. at 509.

⁴² *Id.* at 501 (citing *Hazelwood School District v. United States*, 433 U.S. 299, 307-08 (1977)).

⁴³ *Croson*, 488 U.S. at 502-03.

⁴⁴ *Id.* at 509.

⁴⁵ *Id.*

⁴⁶ *Coral Construction*, 941 F.2d at 919.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* (quoting *International Brotherhood of Teamsters v. United States (Teamsters)*, 431 U.S. 324, 339 (1977)).



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1. Geographic Market

Croson did not speak directly to how the geographic market is to be determined. In *Coral Construction*, the Court of Appeals held that “an MBE program must limit its geographical scope to the boundaries of the enacting jurisdiction.”⁵⁰ Conversely, in *Concrete Works I* the Tenth Circuit Court of Appeals specifically approved the Denver MSA as the appropriate market area, since 80 percent of the construction contracts were let there.⁵¹

Taken together, these cases support a definition of market area that is reasonable rather than dictated by a specific formula. *Croson* and its progeny did not provide a bright line rule for local market area, which determination should be fact-based. An entity may limit consideration of evidence of discrimination within its own jurisdiction.⁵² Extra-jurisdictional evidence may be permitted when it is reasonably related to where the jurisdiction contracts.⁵³

2. Current Versus Historical Evidence

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

On the one hand, *Croson* requires that an MBE program be “narrowly tailored” to remedy current evidence of discrimination.⁵⁴ Thus, goals must be set according to the evidence of disparity found. For example, if there is a current disparity between the percentage of an entity’s utilization of Hispanic construction contractors and the availability of Hispanic construction contractors in that entity’s marketplace, then that entity can set a goal to bridge that disparity.

It is not mandatory to examine a long history of an entity’s utilization to assess current evidence of discrimination. In fact, *Croson* indicates that it may be legally fatal to justify an MBE program based upon outdated evidence.⁵⁵ Therefore, the most recent two or three years of an entity’s

⁵⁰ *Coral Construction*, 941 F.2d at 925.

⁵¹ *Concrete Works of Colorado v. City and County of Denver*, 823 F.Supp. 821, 835-836 (D.Colo. 1993); rev’d on other grounds, 36 F.3d 1513 (10th Cir. 1994); 86 F. Supp. 2d 1042 (D. Colo. 2000).

⁵² *Cone Corporation V. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990); *Associated General Contractors v. Coalition for Economic Equity*, 950 F.2d 1401 (9th Cir. 1991).

⁵³ 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.

⁵⁴ See *Croson*, 488 U.S. at 509-10.

⁵⁵ See *Croson*, 488 U.S. at 499 (stating that “[i]t is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination”).



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utilization data would suffice to determine whether a statistical disparity exists between current M/WBE utilization and availability.⁵⁶

Pre-program data regarding an entity’s utilization of MBEs prior to enacting the MBE program may be relevant to assess the need for the agency to keep such a program intact. A 1992 unpublished opinion by Judge Henderson of the U.S. District Court for the Northern District of California, *RGW Construction v. San Francisco Bay Area Rapid Transit District (BART)*,⁵⁷ set forth the possible significance of statistical data during an entity’s “pre-program” years. Judge Henderson opined that statistics that provide data for a period when no M/WBE goals were operative is often the most relevant data in evaluating the need for remedial action by an entity. Indeed, “to the extent that the most recent data reflect the impact of operative DBE goals, then such data are not necessarily a reliable basis for concluding that remedial action is no longer warranted.”⁵⁸ Judge Henderson noted that this is particularly so given the fact that M/WBEs report that they are seldom or never used by a majority prime contractor without M/WBE goals, which suggests a possibly fruitful line of inquiry—an examination of whether different programmatic approaches in the same market area led to different outcomes in M/WBE participation. The Tenth Circuit came to the same conclusion in *Concrete Works II*: It is permissible for a study to examine programs where there were no goals.

Similarly, the Eleventh Circuit in *Dade County* cautions that using post-enactment evidence (post-program data) may mask discrimination that might otherwise be occurring in the relevant market. Still, the court agreed with the district court that it was not enough to speculate on what MBE utilization would have been in the absence of the program.⁵⁹

Thus, an entity should look both at pre-program and post-program data in assessing whether discrimination exists currently and analyze whether it would exist in the absence of an M/WBE program.

3. Statistical Evidence

To determine whether statistical evidence is adequate to infer discrimination, courts have looked to the “disparity index,” which consists of the percentage of minority or women contractor participation in local contracts divided by the percentage of minority or women contractor availability or composition in the population of available firms in the local market area.⁶⁰ Disparity

⁵⁶ See *Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991). (Consultant study looked at City’s MBE utilization over a one-year period).

⁵⁷ See December 25, 1992, Order by Judge Thelton Henderson (on file with Mason Tillman Associates).

⁵⁸ *Id.*

⁵⁹ *Eng’g Contractors Ass’n v. Metro. Dade County*, 122 F.3d 895, 912 (11th Cir. 1997).

⁶⁰ 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).



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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.

In *Philadelphia*, the Third Circuit Court of Appeals ruled that the “relevant statistical pool” includes those businesses that not only exist in the marketplace but that are qualified and interested in performing the public agency’s work. In that case, the Third Circuit rejected a statistical disparity finding in which the pool of minority businesses used in comparing utilization to availability were those that were merely licensed to operate in the City of Philadelphia. Merely being licensed to do business with the City does not indicate either a willingness or capability to do work for the City. As such, the Court concluded this statistical disparity did not satisfy *Croson*.⁶¹

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

Second, M/WBE dollar participation can be compared to M/WBE availability. This comparison could show a disparity between the award of contracts by an entity in the relevant locality/market area to available majority contractors and the award of contracts to M/WBEs. Thus, in *AGCC II*, an independent consultant’s study compared the number of available MBE prime contractors in the construction industry in San Francisco with the amount of contract dollars awarded to San Francisco-based MBEs over a one-year period. The study found that available MBEs received far fewer construction contract dollars in proportion to their numbers than their available non-minority counterparts.⁶²

Whether a disparity index supports an inference that there is discrimination in the market depends not only on what is being compared, but also on whether any disparity is statistically significant. 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.”⁶³

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.

⁶¹ *Philadelphia*, 91 F.3d at 586. The courts have not spoken to the non-M/WBE component of the disparity index. However, if only as a matter of logic, the “availability” of non-M/WBEs requires that their willingness to be government contractors be established. The same measures used to establish the interest of M/WBEs should be applied to non-M/WBEs.

⁶² *AGCC II*, 950 F.2d 1401 at 1414. Specifically, the study found that MBE availability was 49.5 percent for prime construction, but MBE dollar participation was only 11.1 percent; that MBE availability was 36 percent prime equipment and supplies, but MBE dollar participation was 17 percent; and that MBE availability for prime general services was 49 percent, but dollar participation was 6.2 percent.

⁶³ *Croson*, 488 U.S. at 501 (quoting *Hazelwood School District v. United States*, 433 U.S. 299, 307-308 (1977)).



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However, the Court has not assessed nor attempted to cast bright lines for determining if a disparity index is enough to support an inference of discrimination. Rather, the analysis of the disparity index and the finding of its significance are judged on a case-by-case basis.⁶⁴

Following the dictates of *Croson*, courts may carefully examine whether there are data that show that MBEs are ready, willing, and able to perform.⁶⁵ *Concrete Works I* made the same point: Capacity—i.e., whether the firm is “able to perform”—is a ripe issue when a disparity study is examined on the merits:

[Plaintiff] has identified a legitimate factual dispute about the accuracy of Denver’s data and questioned whether Denver’s reliance on the percentage of MBEs and WBEs available in the marketplace overstates “the ability of MBEs or WBEs to conduct business relative to the industry as a whole because M/WBEs tend to be smaller and less experienced than non-minority owned firms.” In other words, a disparity index calculated on the basis of the absolute number of MBEs in the local market may show greater underutilization than does data that takes into consideration the size of MBEs and WBEs.⁶⁶

Notwithstanding that appellate concern, the disparity studies before the district court on remand did not examine the issue of M/WBE capacity to perform Denver’s public-sector contracts. As mentioned above, they were focused on the private sector, using census-based data and Dun & Bradstreet statistical extrapolations.

The Sixth Circuit Court of Appeals in *Drabik* concluded that for statistical evidence to meet the legal standard of *Croson*, it must consider the issue of capacity.⁶⁷ The State’s factual predicate study based its statistical evidence on the percentage of M/WBE businesses in the population.

The statistical evidence did not consider the number of minority businesses that were construction firms, let alone how many were qualified, willing, and able to perform state contracts.⁶⁸ The court reasoned as follows:

Even statistical comparisons that might be apparently more pertinent, such as with the percentage of all firms qualified in some minimal sense, to perform the work in question, would also fail to satisfy the Court’s criteria. If MBEs comprise 10% of the total number of contracting firms in the State, but only get 3% of the dollar value of certain contracts that does not alone show discrimination, or even disparity. It does

⁶⁴ *Concrete Works*, 36 F.3d at 1522.

⁶⁵ The *Philadelphia* study was vulnerable on this issue.

⁶⁶ *Concrete Works*, 36 F.3d at 1528.

⁶⁷ See *Contractors of Ohio v. Drabik*, 214 F.3d 730 (6th Cir. 2000). The Court reviewed Ohio’s 1980, pre-*Croson*, program, which the Sixth Circuit found constitutional in *Ohio Contractors Ass’n v. Keip*, 1983 U.S. App. LEXIS 24185 (6th Cir. 1983), finding the program unconstitutional under *Croson*.

⁶⁸ *Drabik*, 214 F.3d at 730.



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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.⁶⁹

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

The appellate opinions in *Philadelphia*⁷⁰ and *Dade County*⁷¹ regarding disparity studies involving public sector contracting are particularly instructive in defining availability. First, in *Philadelphia*, the earlier of the two decisions, contractors' associations challenged a city ordinance that created set-asides for minority subcontractors on city public works contracts. Summary judgment was granted for the contractors.⁷² 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.⁷³

The Third Circuit reviewed the evidence of discrimination in prime contracting and stated that whether it is strong enough to infer discrimination is a "close call" which the court "chose not to make."⁷⁴ It was unnecessary to make this determination because the court found that even if there was a strong basis in evidence for the program, a subcontracting program was not narrowly tailored to remedy prime contracting discrimination.

When the court looked at subcontracting, it found that a firm basis in evidence did not exist. The only subcontracting evidence presented was a review of a random 25 to 30 percent of project engineer logs on projects more than \$30,000. The consultant determined that no MBEs were used during the study period based on recollections 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 were discriminating against subcontractors.⁷⁵

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

⁶⁹ *Drabik*, 214 F.3d at 736.

⁷⁰ *Philadelphia*, 6 F.3d 990 (3rd Cir. 1993), on remand, 893 F.Supp. 419 (E.D. Penn. 1995), aff'd, 91 F.3d 586 (3rd Cir. 1996).

⁷¹ *Dade County*, 943 F.Supp. 1546 (11th Circuit, 1997).

⁷² *Philadelphia*, 91 F.3d at 586.

⁷³ *Id.* at 586.

⁷⁴ *Id.* at 605.

⁷⁵ 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.



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the circumstances to use a list of certified contractors as a source for available firms.⁷⁶ Although, theoretically, it may have been possible to adopt a more refined approach, the court found that using the list of certified contractors was a rational approach to identifying qualified firms.

Furthermore, the court discussed whether bidding was required in prime construction contracts as the measure of “willingness” and stated, “[p]ast discrimination in a marketplace may provide reason to believe the minorities who would otherwise be willing are discouraged from trying to secure work.”⁷⁷

In addition, the court found that a program certifying MBEs for federal construction projects was a satisfactory measure of capability of MBE firms.⁷⁸ 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.”⁷⁹ 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.⁸⁰ Therefore, the court was somewhat flexible in evaluating the appropriate method of determining the availability of MBE firms in the statistical analysis of a disparity.

In *Dade County*, the District Court held that the County had not shown the compelling interest required to institute a race-conscious program, because the statistically significant disparities upon which the County relied disappeared when the size of the M/WBEs was considered.⁸¹ 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.⁸² In addition, a comprehensive count of bidders is dependent on the adequacy of the agency’s record keeping.⁸³

The appellate court in *Dade County* did not determine whether the County presented sufficient evidence to justify the M/WBE program. It merely ascertained that the lower court was not clearly erroneous in concluding that the County lacked a strong basis in evidence to justify race-conscious

⁷⁶ *Philadelphia*, 91 F.3d at 603.

⁷⁷ *Id.* at 603.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Philadelphia*, 91 F.3d at 603.

⁸¹ *Engineering Contractors Association of South Florida, Inc. et al. v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Florida 1996).

⁸² Cf. *League of United Latin American 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.)

⁸³ Cf. *EEOC v. American Nat’l Bank*, 652 F.2d 1176, 1196-1197 (4th Cir.), 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.)



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affirmative action. 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.”⁸⁴ 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 the M/WBE community, which are accessible to all segments of the business community, regardless of race. They are not intrusive and, in fact, require no evidence of discrimination before implementation. Conversely, race-conscious measures, such as set-asides, fall at the other end of the spectrum and require a larger amount of evidence.⁸⁵

As discussed below, anecdotal evidence alone will not suffice to establish the requisite predicate for a race-conscious program. Its great value lies in pointing to remedies that are “narrowly tailored,” which is the second prong of a *Croson* study.

The following types of anecdotal evidence have been presented and relied upon by the Ninth Circuit, in both *Coral Construction* and *AGCC II*, to justify the existence of an M/WBE program:

- M/WBEs denied contracts despite being the low bidders—*Philadelphia*⁸⁶
- Prime contractors showing MBE bids to non-minority subcontractors to find a non-minority firm to underbid the MBEs—*Cone Corporation v. Hillsborough County*⁸⁷
- M/WBEs’ inability to obtain contracts for private sector work—*Coral Construction*⁸⁸
- M/WBEs told that they were not qualified, although they were later found to be qualified when evaluated by outside parties—*AGCC*⁸⁹

⁸⁴ *Croson*, 488 U.S. at 509. The Court specifically cited to *Teamsters*, 431 U.S. at 338.

⁸⁵ 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.]”)

⁸⁶ *Philadelphia*, 6 F.3d at 1002.

⁸⁷ *Cone Corporation v. Hillsborough County*, 908 F.2d at 916 (11th Cir.1990).

⁸⁸ 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 seven percent of the firm’s business came from private contracts and that most of its business resulted from gender-based set-asides).

⁸⁹ *AGCC II*, 950 F.2d at 1415.



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- Attempts to circumvent M/WBE project goals—*Concrete Works I*⁹⁰
- Harassment of M/WBEs by an entity's personnel to discourage them from bidding on an entity's contracts—*AGCC*⁹¹

Courts must assess the extent to which relief measures disrupt settled “rights and expectations” when determining the appropriate corrective measures.⁹² Presumably, courts would look more favorably upon anecdotal evidence, which supports a less intrusive program than a more intrusive one. For example, if anecdotal accounts related experiences of discrimination in obtaining bonds, they may be sufficient evidence to support a bonding program that assists M/WBEs. However, these accounts would not be evidence of a statistical availability that would justify a racially limited program such as a set-aside.

As noted above, in *Croson*, the Supreme Court found that the City of Richmond’s MBE program was unconstitutional, because the City lacked proof that race-conscious remedies were justified. However, the Court opined that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”⁹³

In part, it was the absence of such evidence that proved lethal 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.”⁹⁴

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 minorities or women contractors, each of whom complain, in varying degrees of specificity, about discrimination within the local construction industry. These affidavits certainly suggest that ongoing discrimination may be occurring in much of the King County business community.”⁹⁵

Nonetheless, this anecdotal evidence, standing alone, was insufficient to justify King County’s MBE program since “[n]otably absent from the record, however, is *any* statistical data in support of the County’s MBE program.”⁹⁶ 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 pure anecdotal evidence:

⁹⁰ *Concrete Works*, 36 F.3d at 1530.

⁹¹ *AGCC II*, 950 F.2d at 1415.

⁹² *Wygant*, 476 U.S. at 283.

⁹³ *Croson*, 488 U.S. at 509, citing *Teamsters*, 431 U.S. at 338.

⁹⁴ *Croson*, 488 U.S. at 480.

⁹⁵ *Coral Construction*, 941 F.2d at 917-18.

⁹⁶ *Coral Construction*, 941 F.2d 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).



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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.⁹⁷

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.”⁹⁸

Two other circuit courts also suggested that anecdotal evidence might be dispositive, while rejecting it in the specific case before them. For example, in *Contractors Ass’n* 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*.⁹⁹ The 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.¹⁰⁰ The circuit court stated:

Yet, [g]iven *Croson*’s emphasis on statistical evidence, even had the district court credited the City’s anecdotal evidence, we do not believe this amount of anecdotal evidence is sufficient to satisfy strict scrutiny [quoting *Coral, supra*]. Although anecdotal evidence alone may, in an exceptional case, be so dominant or pervasive that it passes muster under *Croson*, it is insufficient here.¹⁰¹

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*.¹⁰² 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. The more specific testimony about discrimination by white firms could not in itself support an industry-wide remedy [quoting *Coral*]. Anecdotal

⁹⁷ *Coral Construction*, 941 F.2d at 919.

⁹⁸ *Id.*

⁹⁹ *Philadelphia*, 6 F.3d at 1002.

¹⁰⁰ *Id.* at 1003.

¹⁰¹ *Philadelphia*, 6 F.3d at 1003.

¹⁰² 963 F.2d at 427 (D.C. Cir.1992).



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evidence is most useful as a supplement to strong statistical evidence—which the Council did not produce in this case.¹⁰³

The Eleventh Circuit is also in accord. In applying the “clearly erroneous” standard to its review of the district court’s decision in *Dade County*, it commented that “[t]he picture painted by the anecdotal evidence is not a good one.”¹⁰⁴ However, it held that this was not the “exceptional case” where, unreinforced by statistics, the anecdotal evidence was enough.¹⁰⁵

In *Concrete Works I*, the Tenth Circuit Court of Appeals described the type of anecdotal evidence that is most compelling—evidence within a statistical context. In approving of the anecdotal evidence marshaled by the City of Denver in the proceedings below, the 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.¹⁰⁶

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*.¹⁰⁷ There, the court approved a “vast number of individual accounts of discrimination,” which included numerous reports of MBEs denied contracts despite being the low bidder; MBEs told they were not qualified, although they were later found qualified when evaluated by outside parties; MBEs refused work even after they were awarded the contracts as low bidder; and MBEs being harassed by city personnel to discourage them from bidding on city contracts. On appeal, the City points to numerous individual accounts of discrimination to substantiate its findings that discrimination exists in the City’s procurement processes; an “old boy’s network” still exists; and racial discrimination is still prevalent within the San Francisco construction industry.¹⁰⁸ Based on *AGCC II*, it would appear that the Ninth Circuit’s standard for acceptable anecdotal evidence is more lenient than other Circuits that have considered the issue.

Taken together, these statements constitute a taxonomy of appropriate anecdotal evidence. The cases suggest that, to be optimally persuasive, anecdotal evidence must satisfy six requirements.¹⁰⁹ These requirements are that the accounts:

¹⁰³ *Id.*

¹⁰⁴ *Engineering Contractors Ass’n of South Florida v. Metropolitan Dade County*, 943 F.Supp 1546 (S.D. Fla. 1996), *aff’d*, 122 F.3d 895 (11th Cir. 1997).

¹⁰⁵ *Engineering Contractors Ass’n of South Florida v. Metropolitan Dade County*, 943 F.Supp. at 926.

¹⁰⁶ *Concrete Works I*, 36 F.3d at 1530.

¹⁰⁷ *AGCC II*, 950 F.2d at 1401.

¹⁰⁸ *Id.* at 1415.

¹⁰⁹ *Philadelphia*, 6 F.3d at 1003. The anecdotal evidence must be “dominant or pervasive.”



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- Are gathered from minority contractors, preferably those that are “qualified.”¹¹⁰
- Concern specific, verifiable instances of discrimination.¹¹¹
- Involve the actions of governmental officials.¹¹²
- Involve events within the relevant jurisdiction’s market area.¹¹³
- Discuss the harm that the improper conduct has inflicted on the businesses in question.¹¹⁴
- Collectively reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic.¹¹⁵

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 a race-conscious remedy. However, the foregoing cases and others provide some guidance by implication.

Philadelphia makes clear that 14 anecdotal accounts will not suffice.¹¹⁶ While the matter is not free of countervailing considerations, 57 accounts, many of which appeared to be of the type referenced above, were insufficient to justify the program in *Coral Construction*. The number of anecdotal accounts relied upon by the district court in approving Denver’s M/WBE program in *Concrete Works I* is unclear but, by one count, the number might have exceeded 139.¹¹⁷ It is, of course, a matter of speculation as to how many of these accounts were indispensable to the court’s approval of the Denver M/WBE program.

In addition, as noted above, the quantum of anecdotal evidence that a court would likely find acceptable may depend on the remedy in question. The remedies that are least burdensome to non-targeted groups would likely require a lesser degree of evidence. Those remedies that are more burdensome on the non-targeted groups would require a stronger factual basis likely extending to verification.

¹¹⁰ *Philadelphia*, 91 F.3d at 603.

¹¹¹ *Coral Construction*, 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.”

¹¹² *Croson*, 488 U.S. at 509.

¹¹³ *Coral Construction*, 941 F.2d at 925.

¹¹⁴ *O’Donnell*, 963 F.2d at 427.

¹¹⁵ *Coral Construction*, 941 F.2d at 919.

¹¹⁶ *Philadelphia*, 6 F.3d. at 1002-03.

¹¹⁷ The Denver City Council enacted its M/WBE ordinance in 1990. The program was based on the results of public hearings held in 1983 and 1988 at which numerous people testified (approximately 21 people and at least 49 people, respectively), and on a disparity study performed in 1990. See *Concrete Works of Colorado v. Denver*, 823 F.Supp. 821, 833-34. The disparity study consultant examined all these preexisting data, presumably including the anecdotal accounts from the 1983 and 1988 public hearings, as well as the results of its own 69 interviews, in preparing its recommendations. *Id.* at 833-34. Thus, short of analyzing the record in the case, it is not possible to determine a minimum number of accounts because it is not possible to ascertain the number of consultant interviews and anecdotal accounts that are recycled statements or statements from the same people. Assuming no overlap in accounts, however, and also assuming that the disparity study relied on prior interviews in addition to its own, the number of M/WBEs interviewed in this case could be as high as 139, and, depending on the number of new people heard by the Denver Department of Public Works in March 1988 (*see id.* at 833), the number might have been even greater.



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D. Remedial Statutory Scheme

In 2010, *H.B. Rowe Company (Rowe) v. Tippett* challenged the constitutionality of the North Carolina General Assembly's Statute 136-28.4 (Statute), promulgated in 1983.¹¹⁸ 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. The 1983 Statute directed North Carolina Department of Transportation (NCDOT) to encourage and promote the policy. 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.

As a result of the amendment, NCDOT created a Minority Business Enterprise and Women Business Enterprise Program for non-federally funded highway and bridge construction contracts. For all intents and purposes, the program mirrored the federal DBE Program pursuant to 49 CFR Part 26. In 1991, the Statute was challenged in District Court regarding its constitutionality. The District 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. As a result of the District court decision, NCDOT suspended its M/WBE Program in 1991.

In 1993, NCDOT commissioned a disparity study on state-funded transportation construction contracts. The study determined that minority and women subcontractors were statistically significantly underutilized, and the M/WBE Program was re-implemented. In 1998, the North Carolina General Assembly commissioned an update to the 1993 study. The 1998 update study concluded that minority and women-owned businesses continued to be underutilized in State-funded road construction contracts.

In 2002, H.B. Rowe Company was denied a NCDOT contract because the company's bid included 6.6 percent women subcontractor participation and no minority subcontractor participation. NCDOT claimed that Rowe failed to meet the good faith effort requirements.

A third study was commissioned in 2004 to again study minority and women contractor participation on the State's highway construction industry. In 2006, relying on the 2004 study, the North Carolina General Assembly amended Statute 136-28.4. The principle modifications were:

- Remedial action should only be taken 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.
- A sunset provision should be included.



¹¹⁸ *H.B. Rowe Company v. Tippett*, 615 F.3d 233, (4th Cir. 2010).

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First, the court considered whether the statutory scheme as it relates to minorities survives the “strict scrutiny” standard. The circuit court 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. 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 standards set forth in the 2004 disparity study.

The court did not consider whether the statistical methodology employed in the 2004 disparity study was sufficient to support a compelling state interest. The court noted and accepted that the disparity index was the statistical measure used to determine whether the underutilization of minorities on the State’s subcontracts was statistically significant. The 2004 disparity study calculated a disparity at .05 confidence level. A statistical calculation is significant at the .05 confidence level because the probability of that result occurring by chance is five percent or less.¹¹⁹ The .05 confidence level is used in social and physical sciences as a marker of when a result is a product of some external influence, rather than ordinary variation or sampling error.¹²⁰

The circuit court admonished that “the study itself sets out the standard by which one could confidently conclude that discrimination was at work,” but the standard was not followed in the State’s statutory scheme. The statistical evidence in the 2004 disparity study demonstrated that African American and Native American subcontractors were underutilized at a disparity index of 0.05. Hispanic American and Asian American subcontractors were also underutilized, but not at a 0.05 confidence level. The 2004 Study determined that underutilization was not statistically significant.

Therefore, the statutory scheme was ruled “narrowly tailored” to achieve the State’s compelling interest as it relates to African American and Native American subcontractors but not Hispanic American and Asian American subcontractors. Thus, the State provided a strong basis in evidence for 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. The 2004 disparity study calculated the overutilization of women subcontractors as statistically significant at a 96 percent (.04) confidence level. The circuit court further noted that the private sector evidence was insufficient to overcome the strong evidence of overutilization. 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.



¹¹⁹ Fourth Circuit Court citing, *Research Methods and Statistics: A Critical Thinking Approach*, Sherri L. Jackson, (3ed. 2009).

¹²⁰ Fourth Circuit Court citing, *The Practice of Social Research*, Earl Babbie, (12th ed. 2010).

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Considering 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 M/WBE program to be narrowly tailored, there must be a statistical finding of underutilization of minority subcontractors. Where the underutilization of a minority group is not found to be statistically significant, the minority group should not be included in race-conscious remedies.

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

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.¹²¹ On the other hand, an MBE program cannot stand if the sole barrier to minority or woman-owned business participation is a barrier that is faced by all new businesses, regardless of ownership.¹²² If the evidence demonstrates that the sole barrier to M/WBE participation is that M/WBEs disproportionately lack capital or cannot meet bonding requirements, then only a race-neutral program of financing for all small firms would be justified.¹²³ In other words, if the barriers to minority participation are race-neutral, then the program must be race-neutral or contain race-neutral aspects.

The requirement that race-neutral measures be considered does not mean that they must be exhausted before race-conscious remedies can be employed. The district court recently wrote in *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County*:

The Supreme Court has recently explained that although “narrow tailoring does not require exhaustion of every conceivable race-neutral alternative” it “does require serious, good faith consideration of workable race-neutral alternatives that will achieve... diversity[.]” *Gratz*, 123 S.Ct, at 2344, 2345. The County has failed to show the necessity for the relief it has chosen, and the efficacy of alternative remedies has not been sufficiently explored.¹²⁴

If the barriers appear race-related but are not systemic, then the remedy should be aimed at the specific arena in which exclusion or disparate impact has been found. If the evidence shows that,

¹²¹ *AGCC II*, 950 F.2d at 1404.

¹²² *Croson*, 488 U.S. at 508.

¹²³ *Id.* at 507.

¹²⁴ *Hershell Gill*, 333 F.Supp. 2d 1305, 1330 (S.D.Fla. 2004) (quoting *Gratz v. Bollinger*, 123 S. Ct 2411 (2003)); *Grutter v. Bollinger*, 539 U.S. 306 (2003).



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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.¹²⁵

The Ninth Circuit Court of Appeals in *Coral Construction* ruled that there is no requirement that an entity exhaust every possible race-neutral alternative.¹²⁶ Instead, an entity must make a serious, good faith consideration of race-neutral measures in enacting an MBE program. Thus, in assessing MBE utilization, it is imperative to examine barriers to MBE participation that go beyond “small business problems.” The impact on the distribution of contracts programs that have been implemented to improve MBE utilization should also be measured.¹²⁷

VI. United States Court of Appeals for the Ninth Circuit

The United States Court of Appeals for the Ninth Circuit defines the legal standards applied to public agencies implementing race-conscious affirmative action programs. Although the Ninth Circuit cases that adjudicate this issue apply to federally funded Disadvantaged Business Enterprise (DBE) programs, the Ninth Circuit’s analysis is instructive on the methodology that will be accepted as the legal predicate for race-conscious programs in the jurisdiction.

There have since been several challenges to the DBE regulations. A major decision was adjudicated in the Ninth Circuit, and the decision acts as binding precedent for the City, particularly as it relates to federally funded grants. The relevant decisions are discussed herein.

A. Analysis of the Ninth Circuit Challenges

The landmark Ninth Circuit cases challenging the constitutionality of race-based elements of a DBE program, *Western States Paving Co. v. Washington State Department of Transportation*,¹²⁸ and *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation (AGC)* are discussed below.

¹²⁵ *Hershell Gill*, 333 F.Supp. 2d at 1330 (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses).

¹²⁶ *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991).

¹²⁷ *Dade County*, 122 F.3d at 927. At the same time, the Eleventh Circuit’s caveat in *Dade County* should be kept in mind: “Supreme Court decisions teach that a race-conscious remedy is not merely one of many equally acceptable medications that a government may use to treat race-based problems. Instead, it is the strongest of medicines, with many potentially harmful side-effects, and must be reserved to those severe cases that are highly resistant to conventional treatment.” For additional guidance, see *supra* the discussion of narrow tailoring in *Concrete Works, Adarand, County of Cook, and City of Chicago*.

¹²⁸ *Western States Paving Co., v. Washington State Department of Transportation*, 407 F.3d 983 (9th Cir. 2005).



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1. Western States

Western States, decided in 2005, subjected the State of Washington’s Department of Transportation DBE Program to a two-pronged analysis. One aspect of the analysis determined whether the USDOT DBE legislation was constitutional, and the other assessed whether the State of Washington’s application of the DBE regulations was valid.

a. Facial Constitutional Challenge

In *Western States*, the plaintiff sought a declaratory judgment, arguing that the 1998 Transportation Equity Act for the 21st Century’s (TEA-21) preference program was in violation of the equal protection provision under the Fifth and Fourteenth Amendments of the U.S. Constitution. As applied by the State of Washington, the TEA-21 DBE Program was claimed to be unconstitutional. In addressing *Western States*’ facial challenge, the Court interpreted the issue as to whether the United States met its burden of demonstrating that the federal statute and regulations satisfied the strict scrutiny’s exacting requirements.

According to *Croson*, the federal government has a compelling interest in ensuring that its funding is not distributed in a manner that perpetuates the effects of either public or private discrimination within the transportation contracting industry.¹²⁹ Thus, the Court evaluated the evidence that Congress considered in enacting the DBE statute to ensure it had a “strong basis in evidence for its conclusion that remedial action was necessary.”¹³⁰ The Court concluded that a substantial body of statistical and anecdotal evidence was considered by Congress at the time the law was enacted. Therefore, the Court found that Congress had a strong basis in evidence for concluding that, at least in some parts of the country, there was discrimination within the transportation contracting industry that hindered minorities’ ability to compete for federally funded contracts.¹³¹

Next, the Court considered whether the DBE regulation’s racial classification was narrowly tailored as represented in the State of Washington’s DBE goals. Citing *Croson*, *Western States* decided that a minority preference program must establish utilization goals that bear a close relationship to minority firms’ availability in a particular market in order to be narrowly tailored.¹³² The Court referenced *Sherbrooke Turf Inc. v. Minnesota Department of Transportation*, noting the Eighth Circuit holding that the DBE programs of the Minnesota and Nebraska Departments of Transportation independently satisfied the strict scrutiny’s narrow tailoring requirement by relying on two disparity studies.¹³³

¹²⁹ *Croson*, 488 U.S. 469, 492 (1982).

¹³⁰ *Id.* at 493.

¹³¹ *Western States Paving Co., v. Washington State Department of Transportation*, 407 F.3d at 983 (9th Cir. 2005).

¹³² *Western States*, 407 F.3d at 983.

¹³³ See generally *Gross Seed Co. v. Nebraska Department of Roads, et. al.*, 345 F.3d 964 (8th Cir. 2003); *Sherbrook Turf Inc. v. Minnesota Department of Transportation*, 345 F.3d 964 (8th Cir. 2003).



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The Minnesota Department of Transportation (MnDOT) offered statistical evidence of the highway contracting market in Minnesota. Following the goal setting methodology set forth in 49 CFR Section 26.45(c), MnDOT formulated a factual predicate that illustrated the DBE availability in MnDOT's relevant market area. Findings from the statistical analysis of business formation statistics were used to adjust the base figure upward based on the rationale that the number of participating minority-owned businesses would be higher in a race-neutral market.

MnDOT implemented good faith efforts to encourage prime contractors to meet the DBE goal. The availability of DBEs and the extent of subcontracting opportunities for each project were considered when setting the race-conscious portion of the overall DBE goal. The Eighth Circuit court agreed with the district court that MnDOT's revised DBE Program served a compelling government interest and was narrowly tailored on its face and as applied in Minnesota. Similarly, the Nebraska Department of Transportation (NDOT) also set an overall DBE goal pursuant to the DBE regulations for the Nebraska highway construction market. Like Minnesota, the Eighth Circuit found that NDOT's DBE Program was narrowly tailored. The Court notes that the DBE regulations did not establish a mandatory nationwide minority utilization goal in transportation contracting. The Court found that the ten percent DBE utilization goal in the regulation was only "aspirational" and that the regulation provides that each state must establish a DBE utilization goal based on the proportion of ready, willing, and able DBEs in its transportation contracting industry.¹³⁴ Because the regulations require each state to set minority utilization goals that reflect the contractor availability in its own labor market, the Court found the DBE regulations to be narrowly tailored to remedy the effects of race- and sex-based discrimination within the transportation contracting industry. The Court ultimately held that it was satisfied that TEA-21's DBE program was narrowly tailored to remedy the effects of race- and sex-based discrimination within the transportation contracting industry, and thus *Western States*' facial challenge failed.

b. Application of the Narrowly Tailored Standard in Overall Goal Setting

The second prong of the Court's analysis considered whether the utilization goals established by the State of Washington "as applied" were unconstitutional, because there is no evidence of discrimination within the State's transportation industry. The State contended that its implementation of the DBE Program was constitutional, because it comported with the federal statute and regulations. The State also proffered that since the proportion of DBEs in the state was 11.17 percent and the percentage of contracting funds awarded to them on race-neutral contracts was only nine percent, discrimination was demonstrated.¹³⁵ The Court disagreed with the rationale. It found that this oversimplified statistical evidence is entitled to little weight, because it does not account for factors that may affect the relative capacity of DBEs to undertake contracting work. The Ninth Circuit opined that the only other circuit to consider an applied challenge to the federal DBE program was the Eighth Circuit in *Sherbrook*. In discussing the Eighth Circuit's opinion in *Sherbrook*, the Ninth Circuit reasoned that both Minnesota and Nebraska had hired outside consulting firms to conduct statistical analyses of the availability and capacity of DBEs in their



¹³⁴ *Western States*, 407 F.3d at 983.

¹³⁵ *Id.*

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local market. Accordingly, *Western States* concluded that the Eighth Circuit had relied on the statistical evidence in the studies to hold that the State’s DBE program was narrowly tailored and satisfied strict scrutiny.

Citing *Croson*, the Court opined that recipients of federal funds could not use race-conscious methods to meet their DBE goals without a finding of discrimination. The Ninth Circuit also concluded that, in order to satisfy the narrowly tailored requirement, even when discrimination is present, the State may only implement a remedial race-conscious program, including those minority groups that have suffered discrimination. The Ninth Circuit found insufficient evidence, suggesting that minorities currently or previously suffered discrimination in the Washington transportation contracting industry. Further, the Court found that the State of Washington failed to provide evidence of discrimination within its own contracting market and thus failed to meet its burden of demonstrating that its DBE program was narrowly tailored to further Congress’s compelling remedial interest.¹³⁶

The Court concluded that the District Court erred when it upheld the State’s DBE program simply because the State complied with the federal program’s requirement. Washington’s DBE program was categorized as an “unconstitutional windfall to minority contractors solely on the basis of their race or sex.”

In sum, *Western States* found that Washington’s DBE program met the first prong of the test and was held facially constitutional, but it did not pass the second prong because the State’s application of the DBE regulations was not narrowly tailored to a finding of statistically significant underutilization of the respective minority groups. Therefore, the State’s application of the DBE regulations was deemed unconstitutional.

c. Evidentiary Requirements for Overall Goal Setting

In response to *Western States*, the USDOT issued a Memorandum in 2005, recommending a disparity study that adheres to the evidentiary standards set forth in *Croson* as the appropriate method for USDOT recipients in the Ninth Circuit to formulate narrowly tailored DBE goals.¹³⁷

2. Associated General Contractors

Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation (AGC), filed in 2011 in the District Court, cited civil rights violations in the application of California Department of Transportation’s (Caltrans) 2009 DBE Program.¹³⁸ *AGC* charged that the Equal Protection Clause, federal DBE program regulations, and the U.S. Constitution generally require that Caltrans’ DBE Program be predicated on evidence showing

¹³⁶ *Id.*

¹³⁷ We note that the USDOT regulations, as demanded in 1992 recommends the use of a disparity study among other availability sources for setting the DBE goals.

¹³⁸ California Department of Transportation (Caltrans) in the matter, *Associated General Contractors of California, San Diego Chapter v. Caltrans* (2:09-CV-01622-JAM-GGH) March 23, 2011.



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intentional discrimination. *AGC* argued that the remedial scheme regarding various groups based on Caltrans' statistical evidence violates the nondiscrimination mandate of Title VI of the 1964 Civil Rights Act. Additionally, *AGC* argued that Caltrans, as a federal grantee, did not demonstrate that it would lose its federal funds if it did not implement the 2009 DBE program.

Specifically, *AGC* challenged the 2005 congressionally enacted "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" as applied by Caltrans. The Act requires that a minimum of ten percent of federal dollars be expended with disadvantaged business enterprises (DBEs).

AGC sought an injunction against Caltrans' DBE program, declaring the program unconstitutional. *AGC* asserted that Caltrans must identify intentional acts of discrimination and that failing to identify specific acts of intentional discrimination renders its program unconstitutional. The program was also attacked on the grounds that some of the categories included in the DBE goal did not include sufficient specific statistical evidence pertaining to minority women. The statistical evidence in the disparity study found disparities for minorities, but the findings were not broken down by gender.

To rebut *AGC's* claim, Caltrans argued that its program met the requirements set forth in *Western States'* two-prong test for narrow tailoring. The presence or absence of discrimination in the State's transportation contracting industry and the narrowly tailored remedy limited to minority groups that had suffered discrimination were the two prongs.

The court compared the probative evidence presented in *Western States* and *AGC*. It was determined that in *Western States* there was insufficient evidence of discrimination within the department's own contracting market. Thus, Washington failed to meet its burden of demonstrating that its DBE program was narrowly tailored to further Congress's compelling remedial interest. To calculate a disparity in *Western States*, the proportion of DBE firms in the state was compared with the percentage of contracts awarded to DBEs on race-neutral contracts. This methodology was found to be oversimplified by the Appellate Court. In contrast, the evidence Caltrans proffered was characterized by the District Court as extensive statistical and anecdotal evidence of discrimination in the California contracting industry.

On March 23, 2011, the District Court granted summary judgment in the *AGC* case in favor of Caltrans. The Court found that Caltrans met the standard set forth in *Croson* by identifying discrimination with "specificity," and showing a pattern of "deliberate exclusion."¹³⁹

AGC appealed the District Court's decision to the Ninth Circuit Court of Appeals, where it is currently under review. On April 16, 2013, Judge Jerome Harris delivered the opinion for the Ninth Circuit, dismissed *AGC's* appeal, and upheld Caltrans' DBE Program, ruling that it survived the strict scrutiny standard.¹⁴⁰ Judge Harris opined that Caltrans presented sufficient evidence of discrimination in the California transportation contracting industry, and that the DBE Program was



¹³⁹ *Croson*, 488 U.S. at 509.

¹⁴⁰ *ACG II*, 713 F.3d at 1200.

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narrowly tailored to remedy the identified discrimination.¹⁴¹ The Ninth Circuit dismissed the appeal for lack of standing, and held that AGC did not establish that any of its members had suffered or will suffer harm as a result of Caltrans' program.¹⁴²

VII. Section 31 of the California Constitution

California Constitution, Section 31, is a constitutional amendment that precludes the use of preferences based on race, sex, color, ethnicity, or national origin in the award of public contracts. Although the amendment allows for the affirmative action requirements of a federal grant, the question of the appropriate application of a DBE program by a USDOT grantee in California has not been reviewed by the Ninth Circuit. The question of the appropriate application of the DBE program by a USDOT grantee in California was reviewed by the Ninth Circuit in *AGC*, and the court determined that Caltrans was required to comply with the DBE regulations.¹⁴³ The federal court, however, has yet to rule on whether Section 31 of the California Constitution conflicts with the Equal Protection Clause of the Fourteenth Amendment.¹⁴⁴

However, the U.S. Constitution requires governmental agencies to treat all individuals and groups equally in the operation of public employment, public education, and public contracting. Section 31 does state that “if any parts are found to conflict with federal law or the U.S. Constitution, the section shall be implemented to the maximum extent that federal law and the U.S. Constitution permit.”

The leading California cases concerning Section 31 are *Hi-Voltage v. City of San Jose*¹⁴⁵ and *Ward Connerly v. State Personnel Board*.¹⁴⁶ In *Hi-Voltage*, the California Supreme Court held that Section 31 prohibited the City of San Jose from requiring construction contractors to document their efforts to solicit M/WBEs as subcontractors. The court noted two fatal flaws: (1) Contractors were required to request bids from at least four M/WBEs, which the court considered a preference in favor of M/WBEs and (2) the program also failed because the extent to which M/WBEs were chosen would be measured against the City's statistical expectation.

Ward Connerly, a subsequent appellate court opinion, determined that Section 31 applied to the five California statutory programs before that court.¹⁴⁷ However, neither *Hi-Voltage* nor *Ward Connerly* speak directly to what would happen should the findings of the local government's disparity study point to a race-conscious remedy.

¹⁴¹ *Id.*

¹⁴² *Associated General Contractors of California, San Diego Chapter v. Caltrans, Case No. 11-16228* (9th Cir. April 16, 2013).

¹⁴³ *ACG II*, 713 F.3d at 1200.

¹⁴⁴ *Id.* at 1193.

¹⁴⁵ 24 Cal. 4th 537 (Cal. 2000).

¹⁴⁶ 92 Cal. App. 4th 16 (Cal. 2001).

¹⁴⁷ State Lottery, Professional Bond Services, State Civil Service, Community Colleges, State Contracting (reporting requirements).



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Hi-Voltage refers to the impact of a remedy based on a disparity study. The California Supreme Court wrote:

...if it were determined the City had violated federal constitutional or statutory law, the supremacy clause as well as the express terms of Proposition 209 would dictate federal law prevails...¹⁴⁸

Crucially, it went on:

The disparity study is not part of the record in this case. Without it, the court has no basis for measuring the fit between the Program and the goal of eliminating a disparity in the amount of contract dollars awarded MBEs in comparison to non-MBEs.¹⁴⁹

Therefore, it is unclear whether the inclusion of a disparity study in this case may have permitted a race-conscious remedy despite Proposition 209.

Moreover, federal courts still must decide whether Proposition 209 conflicts with the Equal Protection Clause of the Fourteenth Amendment.¹⁵⁰ *Croson* stated that such race-conscious contracting remedies are appropriate. In accordance with the Supreme Court's 1803 decision, *Marbury v. Madison*,¹⁵¹ the Supreme Court of the United States retains the constitutional authority to review legislative acts. The federal courts are granted the power to determine whether a remedy growing out of a disparity study process sanctioned by the Court in *Croson* is narrowly tailored.

Title VI of the Civil Rights Act of 1964 established nondiscrimination requirements on recipients of federal funds in their non-federally funded programs.¹⁵² In *Coral Construction v. San Francisco*,¹⁵³ the California Superior Court determined that Proposition 209 barred San Francisco's race-conscious program.¹⁵⁴ On April 18, 2007, the First District Court of Appeals affirmed that judgment but remanded the case for a determination of whether the defendant's evidence met the majority opinion's test that the discrimination was intentional.¹⁵⁵

¹⁴⁸ *Hi-Voltage*, 24 Cal. 4th 537 at 569.

¹⁴⁹ *Hi-Voltage*, 24 Cal. 4th 537 at 569.

¹⁵⁰ *Cantrell v. Granholm* is a constitutional challenge, framed in the context of higher education, to the Michigan Civil Rights Initiative (a *Ward Connerly*-backed measure similar to Proposition which became law in 2006). Plaintiffs argue that MCRI (1) discriminated against them on account of race; (2) use of the initiative process to amend of Michigan Constitution placed a unique and too heavy a burden on racial minorities in that they in that they would have obtain a constitutional amendment to reverse that policy; and (3) the federal government preempted the field of race and gender discrimination from the states by Title VI of the 1964 Civil Rights Act and Title IX of the Education Amendments of 1972. On March 18, 2008, the District Court granted summary judgment for the Attorney General, rejected each of plaintiffs' challenges, holding that race conscious state or locally funded programs were a prohibited "preference" within the meaning of MCRI.

¹⁵¹ 5 U.S. 137 (1803).

¹⁵² The 1987 Civil Rights Restoration Act reversed court decisions that restricted its reach.

¹⁵³ *Coral Construction, Inc. v. City & County of San Francisco*, See 116 Cal. App. 4th 6 (2004).

¹⁵⁴ It is also challenging the procedural propriety of the court granting plaintiff summary judgment because the factual record did not support one.

¹⁵⁵ 149 Cal.App.4th 1218 (2007). The City's appeal is pending in the California Supreme Court.



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The application of Title VI to the Sacramento Municipal Utility District was also raised in *C&C Construction v. Sacramento Municipal Utility District (SMUD)*.¹⁵⁶ The majority Court of Appeals opinion began with the point that race-neutral programs are the only ones Proposition 209 permits in California, but also acknowledged that its provisions were subject to federal law. It viewed the regulations of the U.S. Departments of Energy, Defense, and Transportation as not *requiring* recipients of federal funds to use race-conscious remedial programs for identified discrimination. Moreover, its reading of the regulations themselves was that SMUD’s actions had to be consistent with Proposition 209.¹⁵⁷ Also, both SMUD’s 1993 disparity study and its 1998 update found *Crosby*-level discrimination against MBEs, but they did not look at whether race-neutral remedies would suffice to meet its federal nondiscrimination obligations.¹⁵⁸ Indeed, the majority observed that the disparity study update was specifically instructed not to consider this factor. Finally, the Court found that SMUD, under its reading of the federal regulations, had a burden to show that it would *lose* funds if it did not put in place the race-conscious program.

Citing *S.J. Groves & Sons v. Fulton County*,¹⁵⁹ the dissent’s view of the regulations was that, properly read, a race-conscious program is not an *option* where a race-neutral one will suffice. The required “affirmative action” did not refer only to race-neutral programs; it also included race-conscious programs.¹⁶⁰

The Department Secretary determined whether SMUD was in compliance. What the majority did in affirming the trial court decision to enjoin the use of race interfered with that authority and SMUD’s obligation to comply with the regulations. As such, SMUD violated the Supremacy Clause. However, the majority held that what could be seen as a cogent argument was raised too late to be considered during the appeal.

The dissent summarized its position as follows:

Since the requirement of “affirmative action” includes both race-neutral and race-conscious action and the undisputed evidence establishes that SMUD has attempted to use race-neutral outreach and other methods and concluded in good faith that they were not sufficient to remedy the statistical underutilization reflected in the disparity studies, SMUD was left with no other alternative but to adopt a race-conscious remedial plan to eliminate the effects of its own discriminatory practices.¹⁶¹

¹⁵⁶ 122 Cal. App. 4th 284 (Cal. App. 2004).

¹⁵⁷ SMUD offers no argument or authority that the Department of Energy requires race-based discrimination [a violation of Proposition 209], either in general or specifically, in SMUD’s case, as an “appropriate remedial step.” It would appear that the Department of Energy, by using the general term “‘appropriate,’ meant for the funding recipient to consider the state laws and regulations relevant to that recipient when determining what action to take. In SMUD’s case, such consideration includes the limitations of [Proposition 209].” The opinion interpreted the Department of Transportation’s regulations as also not *requiring* race conscious responses.

¹⁵⁸ By implication, we note, if SMUD had, it could have move to a race-conscious program.

¹⁵⁹ 920 F.2d 752 (11th Cir. 1991).

¹⁶⁰ The applicable regulation “condone[s], and in some cases *require[s]*, race-conscious regulations and/or action”. (*italics added*), *S.J. Groves*, 920 F.2d at 764-765.

¹⁶¹ 122 Cal. App. 4th 284 at 324.



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The decision of the U.S. Supreme Court in the *Croson* case changed the legal landscape for business affirmative action programs. The U.S. Supreme Court altered the authority of local government to use local and federal funds to institute remedial race-conscious public contracting programs. This chapter has examined what *Croson* and its progeny require for the City to institute a constitutional race-conscious public contracting program. The case law interpretation has also considered the significance of Section 31 of the California constitution.

Because California is in the Ninth Circuit, a disparity study should provide the factual predicate for any legal race-conscious affirmative action contracting program.

VIII. 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 altered the authority of a local government to use federal funds to institute remedial race-conscious public contracting programs.

This chapter has examined what *Croson* and its progeny, including *Western States*, require for a local or state government agency to institute a constitutional race- or gender-conscious public contracting program. Given the case law discussed in this chapter, any recommended race- or gender-conscious affirmative action contracting program must be based on a constitutionally sound factual predicate.

The statistical findings of the Race and Gender Disparity Study support race and gender-conscious and race and gender-neutral remedial measures.



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IX. List of Authorities

A. Cases

Cases	Pages
<i>Adarand Constructors, Inc. v. Federico Peña</i> , 115 S.Ct. 2097 (1995)	1
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<i>Associated Gen. Contractors v. Coal. for Econ. Equity (“AGCC IP”)</i> , 950 F.2d 1401 (9th Cir. 1991)	<i>passim</i>
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<i>C & C Construction v. Sacramento Municipal Utility District (SMUD)</i> , 122 Cal. App. 4th 284 (Cal. App. 2004)	<i>passim</i>
<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 & 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 & Cnty. of Denver (“Concrete Works II”)</i> , 36 F.3d 1513 (10th Cir. 1994)	<i>passim</i>



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<i>Cone Corp. v. Hillsborough Cnty.,</i> 908 F.2d 908 (11th Cir. 1990)	10, 16
<i>Contractors Ass’n of E. Pa. v. City of Philadelphia (“Philadelphia IV”),</i> 6 F.3d 990 (3d Cir. 1993)	3, 14, 16, 18, 20
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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 County,</i> 941 F.2d 910 (9th Cir. 1991)	<i>passim</i>
<i>EEOC v. Am. Nat’l Bank,</i> 652 F.2d 1176 (4th Cir. 1981)	15
<i>Eng’g Contractors Ass’n v. Metro. Dade Cnty. (“Dade County I”),</i> 943 F. Supp. 1546 (S.D. Fla. 1996)	14, 15, 19
<i>Eng’g Contractors Ass’n v. Metro. Dade Cnty. (“Dade County II”),</i> 122 F.3d 895 (11th Cir. 1997)	11, 19, 24
<i>Gratz v. Bollinger,</i> 123 S. Ct. 2411 (2003)	7, 24
<i>Grutter v. Bollinger,</i> 539 U.S. 306 (2003)	24
<i>Gross Seed Co. v. Nebraska Department of Roads, et. al.,</i> 345 F.3d 964 (8th Cir. 2003)	26
<i>Hazelwood Sch. Dist. v. United States,</i> 433 U.S. 299 (1977)	9, 12
<i>H.B. Rowe Co. v. N.C. Dep’t of Transp.,</i> 615 F.3d 233 (4th Cir. 2010)	<i>passim</i>



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<i>Hershell Gill Consulting Eng'rs, Inc. v. Miami-Dade Cnty.</i> , 333 F. Supp. 2d 1305 (S.D. Fla. 2004)	24
<i>Int'l Bhd. of Teamsters v. United States</i> , 431 U.S. 324 (1977)	9, 16, 17
<i>League of United Latin Am. Citizens v. Santa Ana</i> , 410 F. Supp. 873 (C.D. Cal. 1976)	15
<i>Monterey Mech. Co. v. Pete Wilson et al.</i> , 125 F.3d 702 (9th Cir. 1997)	8
<i>O'Donnell Constr. Co. v. D.C.</i> , 963 F.2d 420 (D.C. Cir. 1992).....	18, 20
<i>Ohio Contractors Ass'n v. Keip</i> , 1983 U.S. App. LEXIS 24185 (6th Cir. 1983)	13
<i>Reynolds v. Sheet Metal Workers, Local 102</i> , 498 F. Supp. 952 (D.C. Cir. 1980).....	15
<i>RGW Construction v. San Francisco Bay Area Rapid Transit District</i> , No. C92-2938 THE (N.D. Cal. Sept. 18, 1992).....	11
<i>Shaw v. Hunt</i> , 517 U.S. 899 (1996).....	6,7
<i>Sherbrooke Turf Inc. v. Minnesota Department of Transportation</i> , 345 F.3d 964 (8th Cir. 2003)	26
<i>W.H. Scott Constr. Co. v. City of Jackson</i> , 199 F.3d 206 (1999)	8
<i>Western States Paving Co. v. State of Washington Dept. of Transportation</i> , 407 F.3d 983 (9th Cir. 2005)	1, 25, 26, 27
<i>Wygant v. Jackson Bd. of Educ.</i> , 476 U.S. 267 (1986)	2, 3, 5, 17



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B. Statutes

42 U.S.C. Section 14000e et seq.

49 CFR Part 26.

Cal. Const., Article I, Section 31.

Cal. Public Contracting Code, Section 2002.



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CHAPTER 2: Procurement Review

I. Introduction

This chapter is an overview of the standards that governed the City of Oakland's (City) procurement process during the July 1, 2011, to June 30, 2016, study period. The procurement standards are defined in the City of Oakland, California Code of Ordinances (Ordinance). Legislative authority to authorize, amend, and approve the procurement standards is vested in the City Council.¹⁶² The authority to implement procurement policy and procedures is delegated to the City Administrator by the provisions of the Ordinance.¹⁶³ Additionally, City policies and procedures are subject to the provisions of California State Law.

II. Procurement Standards

The governing laws and guidelines reviewed to prepare this chapter include the Ordinance and the State of California Revised Code. The Ordinance and the state laws that govern the City's purchase of construction, professional services, and goods and services are presented below.

A. State of California Revised Code

The State of California's Qualifications-Based Selection (QBS) Law¹⁶⁴ governs the City's procurement of architecture and engineering services.¹⁶⁵ The QBS Law requires that the City's procurement process for architecture and engineering services include evaluation, ranking, and negotiation procedures based on competence and qualifications, without regard to price.¹⁶⁶

B. City of Oakland, California Code of Ordinances

The City's procurement of construction, professional services, and goods and services contracts is governed by Title 2, Chapter 2.04 of the Ordinance. The Ordinance establishes standards for expending public funds and defines the procurement methods that the City can use to purchase construction, professional services, and goods and services.¹⁶⁷

¹⁶² OAKLAND, CAL., CODE OF ORDINANCES art. 2 § 207 (1997).

¹⁶³ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.018-2.04.020 (1997).

¹⁶⁴ CAL. GOV'T CODE tit. 1, div. 5, ch. 10 § 4525-4529.5 (1987).

¹⁶⁵ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.010 (1997); 2.04.051.

¹⁶⁶ CAL. GOV'T CODE tit. 1, div. 5, ch. 10 § 4525-4529.5 (1987).

¹⁶⁷ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.010 *et seq.* (1997).



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III. Industry Definitions

The City of Oakland 2017 Race and Gender Disparity Study (Study) was commissioned to measure the utilization of available minority and woman-owned businesses willing to perform the contracts and grants awarded by the City from July 1, 2011 to June 30, 2016. The Study analyzes construction, professional services that include architecture and engineering services, and goods and services contracts. The definitions of each of these industries, as set forth in the Ordinance, are presented below.

Construction: public works projects, including construction, alteration, repair, or improvement other than ordinary maintenance.

Professional Services: services that must be performed by licensed consultants, architecture or engineering personnel, or by persons possessing unique or special training, education, or skills.

Goods: supplies, materials, commodities, vehicles, machinery, and equipment.

Services: labor, maintenance services, or a combination of services and supplies that support public works projects.

In this Study, goods and services, as defined in the Ordinance, are combined and analyzed as one industry.

IV. Procurement Process Overview

The Ordinance defines the authorized procurement methods utilized by the City.¹⁶⁸ The City Administrator directs City agencies in selecting the appropriate solicitation method based on the value and type of the purchase and the funding source. The City Administrator is also authorized under the Ordinance to institute additional contracting procedures for formal and informal procurement.¹⁶⁹ On-call contracts is an additional procurement method authorized by the City administrator and standardized in On-Call Contracting Procedures.¹⁷⁰



¹⁶⁸ *Id. et seq.* The Ordinance designates competitive sealed bidding process as the general standard for procurement.

¹⁶⁹ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.040-2.04.150 (1997).

¹⁷⁰ City of Oakland Public Works Department, *On-Call Contracting Procedures*, Calvin Hao, 2016.

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A. Construction

The City procures construction contracts through both an informal and formal bidding process.¹⁷¹

1. Informal Construction Contracts Valued Under \$50,000

The City procures construction contracts valued \$50,000 and under through an informal bidding process.¹⁷² The user department is required to follow informal solicitation requirements as established by the City Administrator.

a. Advertising Requirements

Informal solicitations must be advertised through the informal advertisement process.¹⁷³ Reasonable measures must be undertaken by the user department to secure bids or quotes from at least three vendors.¹⁷⁴ These requirements are satisfied if the user department solicits bids or quotes from a reasonably sufficient number of vendors to secure at least three written responses to the solicitation. The City must solicit from Small Local Business Enterprises (SLBE) and take reasonable measures to provide for competition.

b. Evaluation and Award

The contract award is made to the lowest responsive bidder, whose price is fair and reasonable.¹⁷⁵ A bidder is determined to be responsive when the submitted bid complies with bid specifications and submission requirements.

c. Approval and Authorization of the Award

The user department approves the contract and the City Administrator authorizes the award.¹⁷⁶

2. Formal Construction Contracts Valued \$50,000 and Over

The City procures construction contracts valued \$50,000 and over through a formal bidding process. There are two levels of formal construction contracts: 1) contracts valued from \$50,000 to \$250,000¹⁷⁷ and 2) formal construction contracts valued over \$250,000.¹⁷⁸ For the solicitation

¹⁷¹ *Id.* at § 2.04.040-2.04.050.

¹⁷² *Id.* at § 2.04.040. Informal bidding process must follow advertising procedures as designated by the City Administrator and provide for competition to the extent that is reasonable under the circumstances.

¹⁷³ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.040 (1997).

¹⁷⁴ *Id.* at § 2.04.010.

¹⁷⁵ *Id.* at § 2.04.060.

¹⁷⁶ *Id.* at § 2.04.030.

¹⁷⁷ *Id.* at § 2.04.040.

¹⁷⁸ *Id.* at § 2.04.045.



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of formal construction contracts, the City uses the invitation-for-bid (IFB) process. The City Administrator prepares the IFB, including the specifications, contractual terms, and conditions applicable to the procurement.¹⁷⁹

Formal construction contracts valued from \$50,000 to \$250,000 are subject to the Mandatory Preferred Small Local Business Program (MPSLBE Program).¹⁸⁰ SLBE prequalification requirements are optional for formal construction contracts valued \$250,000 and over and are applied at the discretion of the City Administrator.

a. Formal Construction Contracts Valued \$50,000 to \$250,000

i. Advertising Requirements

IFBs must be publicly advertised at least 10 calendar days prior to the bid due date.¹⁸¹ The notice must be placed in the City's official paper of record, on iSupplier, the City's electronic procurement system, or on the City's website.¹⁸² The advertisement must contain the contract requirements, the estimated value of services, terms, deadlines, and other information relevant to the project.¹⁸³

ii. Prequalification

Under the directives of the MPSLBE Program, the City is required to solicit bids solely from Oakland-certified SLBEs.¹⁸⁴ The City establishes the prequalified list through a request for qualifications (RFQ) process. A prequalified list of certified small local businesses that perform construction contracts is prepared by the City Administrator or authorized designee.

Once the prequalification list is established, the City limits solicitations to the businesses prequalified to perform the types of services requested and solicits bids directly from businesses on the MPSLBE prequalification list.¹⁸⁵ The City must solicit bids from three or more of the prequalified SLBEs. Therefore, a bidder must be prequalified as an SLBE to be responsive. The City Administrator is permitted to solicit bids on the open market only if all responsive bids received from prequalified vendors exceed the engineer's estimate, or if an insufficient number of bids are received from SLBEs.¹⁸⁶

¹⁷⁹ *Id.* at § 2.04.020.

¹⁸⁰ *Id.* at § 2.04.045.

¹⁸¹ *Id.* at § 2.04.050.

¹⁸² CITY OF OAKLAND ORD. TIT. II, ART. I, CH. 204 *Purchasing System* §§ 2.04.050(A); 2.01.010.

¹⁸³ *Id.* at § 2.04.050.

¹⁸⁴ *Id.* at § 2.04.045.

¹⁸⁵ CITY OF OAKLAND ORD. TIT. II, ART. I, CH. 204 *Purchasing System* § 2.04.045.

¹⁸⁶ *Id.*



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iii. Evaluation and Award

The contract award is made to the lowest, responsive, and responsible bidder.¹⁸⁷ A prequalified bidder is determined to be responsive when the submitted bid complies with bid specifications and submission requirements and if the price is fair and reasonable. A bidder is determined to be responsible after a review of the firm's record of past performance, financial and technical resources, and competency and capability to perform the type of services requested. In the City's evaluation of responsibility, consideration must be given to the bidder's compliance with federal, state, and local laws, including affirmative action program requirements, local preference standards, and any minority business enterprise, female business enterprise, or equal business opportunity programs adopted by the City. For contracts that are wholly or partially federally funded, the bidder must also submit an affirmative action hiring plan in accordance with the requirements of federal law.¹⁸⁸

iv. Approval and Authorization of the Award

The user department makes the recommendation for the award, and the contract award is authorized by the City Administrator.¹⁸⁹

b. Formal Construction Contracts Valued Over \$250,000

i. Advertising Requirements

IFBs must be publicly advertised at least 10 calendar days prior to the bid due date. The notice must be placed in the City's official paper of record, on iSupplier, or on the City's website.¹⁹⁰ The advertisement must contain the contract requirements, the estimated value of services, the terms deadlines, and other information relevant to the project.

ii. Prequalification

The City may establish a list of businesses prequalified to perform specified scopes of work for construction projects valued \$250,000 and over. The prequalification list is used to solicit construction contracts when the City Administrator determines it is in the best interest of the City. When a prequalified list is established, the City may solicit three or more bids from prequalified SLBEs, in addition to the option of soliciting bids on the open market.¹⁹¹

¹⁸⁷ *Id.* at § 2.04.060.

¹⁸⁸ *Id.* The bidder is required to submit certification that bidder is in compliance with Executive Order No. 11246, as amended by Executive Order No. 11375.

¹⁸⁹ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.051 (1997). During the annual City Council recess in August, the authorization requirements differ. The authorization and approval guidelines increase during the annual City Council recess: 1) contracts valued from \$50,000 to \$500,000 must be authorized by the City Administrator and 2) contracts valued over \$500,000 must be authorized by the City Council. Contracts valued over \$500,000 are also subject to the City Council's recess agenda process and must be presented to the City Council for ratification upon return from its annual recess.

¹⁹⁰ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.050 (1997).

¹⁹¹ *Id.* at § 2.04.045.



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iii. Evaluation and Award

The contract award is made to the lowest, responsive, and responsible bidder.¹⁹² For contracts that are wholly or partially federally funded, the bidder must also submit an affirmative action hiring plan in accordance with the requirements of federal law. In the City's evaluation of responsibility, consideration must also be given to the bidder's compliance with federal, state, and local laws, including affirmative action program requirements, local preference standards, and any minority business enterprise, female business enterprise, or equal business opportunity programs adopted by the City.

iv. Approval and Authorization of the Award

The user department makes the recommendation for the contract award, and the contract award is authorized by the City Council.¹⁹³

B. Professional Services

The City procures professional services contracts through both informal and formal request for qualifications (RFQ) or request for proposals (RFP) procurement processes.¹⁹⁴ The City Administrator has discretionary authority to select the procurement method. There are different procurement procedures for the solicitation and award of architecture and engineering services contracts and other professional services contracts. Pursuant to the State of California's Qualifications-Based Selection Law (QBS), the procurement of architecture and engineering services are discussed separately in *Section 3* below.¹⁹⁵

1. Informal Professional Services Contracts Valued \$50,000 and Under

The City solicits informal professional services contracts through an informal RFQ or RFP process.¹⁹⁶ The procurement method is selected at the discretion of the City Administrator.

a. Advertising Requirements

There is no advertising requirement. The informal process is administered at the discretion of the City Administrator. If the City Administrator determines that it is in the best interest of the City, RFP and RFQ requirements may be applied to professional services valued under \$50,000.¹⁹⁷ Informal RFPs and RFQs must be advertised through the informal advertisement process.¹⁹⁸

¹⁹² *Id.* at § 2.04.060.

¹⁹³ *Id.* at § 2.04.030.

¹⁹⁴ *Id.* at § 2.04.051.

¹⁹⁵ CAL. GOV'T CODE tit. 1, div. 5, ch. 10 § 4525-4529.5 (1987).

¹⁹⁶ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.040 (1997).

¹⁹⁷ *Id.* at § 2.04.051.

¹⁹⁸ *Id.* at § 2.04.040.



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Reasonable measures must be undertaken by the user department to secure proposals or qualifications from at least three vendors.¹⁹⁹ The City must solicit from SLBEs and take reasonable measures to provide for competition.²⁰⁰

b. Evaluation and Award

The contract award is made to the lowest responsive proposer with demonstrated competence and qualifications for the types of services to be performed at a price that is fair and reasonable.²⁰¹ A proposer is determined to be responsive when the submitted proposal complies with the specifications and submission requirements in the RFP or RFQ.

c. Approval and Authorization of the Award

-The user department approves the contract and the City Administrator authorizes the award.

2. Formal Professional Services Contracts Valued Over \$50,000

Through the RFP process, the City procures professional services contracts valued over \$50,000, except for architecture and engineering contracts. If the City Council determines that it is in the best interest of the City, it may waive RFP and RFQ requirements for professional services contracts valued over \$50,000.²⁰²

a. Advertising Requirements

RFPs must be publicly advertised at least 10 calendar days prior to the bid due date. The notice must be placed in the City's official paper of record, on iSupplier, and on the City's website.²⁰³ The advertisement must contain the contract requirements, the estimated value of services, terms, deadlines, and other information relevant to the project.

b. Evaluation and Award

The Contracts and Compliance Division of the City Administrators Office (Contracts and Compliance Division) initially conducts a compliance assessment for the proposals submitted in response to an RFP.²⁰⁴ Once the Contracts and Compliance Division screens the proposals for responsiveness, the user department evaluates all proposals based on the capacity to perform the required services, the demonstrated competence of the firm, and qualifications that are relevant to

¹⁹⁹ CITY OF OAKLAND ORD. TIT. II, ART. I, CH. 204 *Purchasing System* §2.04.040(B)(1). The user department is required to follow informal solicitation requirements as established by the City Administrator.

²⁰⁰ City of Oakland, Contracts and Compliance Division, *Standard Contracting Procedures: Buying Procedures*.

²⁰¹ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.051 (1997).

²⁰² *Id.*

²⁰³ *Id.* at § 2.04.050.

²⁰⁴ City of Oakland Contracts and Compliance Division, *Professional Services Process*.



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the types of services specified in the solicitation. In determining if a firm is qualified, the evaluation committee must consider the following evaluation factors: 1) the competence of the offeror, as indicated by the technical training, education, and experience of the firm's personnel; 2) the capacity to perform the required service competently and expeditiously, measured by the availability of firm resources; and 3) past performance.

The user department may conduct interviews and negotiations with the top-ranked firms. These interviews should explicate the firm's qualifications, proposed approach to the project, and ability to furnish the required services. The City's RFP evaluation process, as set forth in a City Administrator's administrative instruction, requires that the selection and award of professional services contracts must be made at fair and reasonable prices.²⁰⁵ After negotiation, the user department selects the firm that will provide the services and notifies the Contracts and Compliance Division of the City Administrator's Office, along with a written recommendation of award.²⁰⁶

c. Approval and Authorization of the Award

For contracts valued from \$50,000 to \$250,000, contract awards are authorized by the City Administrator.²⁰⁷ For contracts valued over \$250,000, contract awards are authorized by the City Council.²⁰⁸

3. Formal Architecture and Engineering Contracts Valued Over \$50,000

The City procures architecture and engineering contracts through the RFQ process. The City's procurement process for architecture and engineering services is subject to the requirements of the California's QBS Laws, which requires government agencies to initially evaluate and rank proposers' qualifications without consideration of price.²⁰⁹

California's QBS Laws mandate that the award of architecture and engineering services contracts is based on a firm's demonstrated competence and qualifications for the type of services to be performed, at a fair and reasonable price for the public agency.²¹⁰ California's QBS Laws require public announcement, evaluation, and ranking, and an initial negotiation process based on competence and qualifications.²¹¹

²⁰⁵ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.051 (1997).

²⁰⁶ City of Oakland Contracts and Compliance Division, *Professional Services Process*.

²⁰⁷ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.051 (1997).

²⁰⁸ *Id.* at § 2.04.030.

²⁰⁹ CAL. GOV'T CODE tit. 1, div. 5, ch. 10 § 4525-4529.5 (1987).

²¹⁰ *Id.* at § 4526.

²¹¹ *Id.* at § 4527.



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a. Advertising Requirements

The user department must publicly announce solicitations for statements of qualifications in a uniform and consistent manner.²¹² RFQs must be publicly advertised in the City's official paper of record, on iSupplier, and on the City's website at least 10 calendar days prior to the bid due date.²¹³ The advertisement must contain the contract requirements, the estimated value of services, terms deadlines, and other information relevant to the project.

b. Evaluation of Qualifications

The Contracts and Compliance Division initially conducts a compliance assessment for the proposals submitted in response to an RFQ or RFP.²¹⁴ Once the Contracts and Compliance Division screens the responses for responsiveness, the user department evaluates all proposals.²¹⁵ Under the California QBS Laws, the head of the user department must conduct the evaluation in two phases: 1) the qualifications-based selection process and 2) the negotiation process.²¹⁶

i. Qualifications-Based Selection

In the first phase of the evaluation, the user department evaluates and ranks the firms based on qualifications. The evaluation is based on the firm's experience on similar projects; the expertise of key professional staff; the firm's resources, including personnel, facilities and equipment; the firm's references; and other qualitative factors. The evaluation committee must select and rank at least three firms determined to be the most qualified to provide the required services.²¹⁷

ii. Negotiation

In the second phase of evaluation, the user department conducts negotiations with the top-ranked firm to establish the specific scope of services and negotiate a fee that is fair and reasonable. When making the determination of fair and reasonable cost, the user department conducts a detailed cost analysis of the services required, considering the scope and complexity of the project with the advice and consent of the selected firm.²¹⁸ Should the user department be unable to negotiate a contract with the top-ranked firm at a price determined to be fair and reasonable, the user department will undertake negotiations with the second most qualified firm.²¹⁹

²¹² *Id.*

²¹³ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.050 (1997).

²¹⁴ City of Oakland Contracts and Compliance Division, *Professional Services Process*.

²¹⁵ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.051 (1997).

²¹⁶ CAL. GOV'T CODE tit. 1, div. 5, ch. 10 § 4527 (1987).

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* at § 4528.



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c. Approval and Authorization of the Award

For contracts valued over \$50,000, contract awards must be authorized by the City Administrator.²²⁰ For contracts valued over \$250,000, contract awards must be authorized by the City Council.²²¹

C. On-call Contracts

The standards for the on-call procurement method, the Oakland Public Works Department published in December 2016 in the *On-Call Contracting Procedures*,²²² were established to deliver small consulting services and construction projects promptly, efficiently, and in a cost effective manner. Projects that are under \$100,000 may be procured using the on-call method and they can be grouped into a larger, multi-year, on-call contracts. The projects are authorized using task orders. Each contract has a maximum value that is reduced each time a task order is issued against it.

1. Consultant Services

a. Advertising Requirements

There is no formal advertisement requirement. The project manager is authorized to solicit proposals from three contractors in the relevant discipline with sufficient capacity to perform the project. An RFP is emailed to the three selected consultants with instructions to submit a proposal to the project manager.

b. Evaluation and Award

The project manager determines the consultants with sufficient contract capacity to receive the RFP and may consult with the contract manager for advice. The selection of the contractor is also made by the project manager.

c. Approval and Authorization of the Award

The project manager is authorized to make the award. A contract is issued by the contract manager to the contractor selected by the project manager, and the contract includes a not-to-exceed amount. When the project manager wants a project completed, the on-call contractor is issued a task order.



²²⁰ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.051 (1997).

²²¹ *Id.* at § 2.04.030.

²²² City of Oakland Public Works Department, *On-Call Contracting Procedures*, Calvin Hao, 2016.

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2. Construction Solicitations

a. Advertising Requirement

A request for bid is used to solicit information from businesses in the same discipline with sufficient contract capacity. Bids must be solicited from all contractors having the required license and sufficient contract capacity. The RFB is emailed to each contractor in the required discipline determined to have sufficient capacity.

b. Evaluation and Authorization of Award

The project manager makes the assessment of the sufficiency of the contractors' capacity. The project manager issues a contract to the responsive bidder. In the event there is not a responsive bid, the project manager may directly negotiate with a contractor. The standard is to start negotiation with the lowest bidder. Task orders exceeding \$25,000 must be accompanied by a bond to negotiate directly with one bidder.

3. Approval and Authorization of the Award

The project manager is authorized to make the contract award and sign the contract.

D. Goods and Services

The City procures goods and services contracts through an informal and formal bidding process.²²³

1. Informal Goods and Services Contracts Valued Under \$50,000

The City solicits informal goods and services contracts through an informal IFB process.²²⁴ The procurement method is selected at the discretion of the City user department.

a. Advertising Requirements

Informal IFBs must be advertised through the informal advertisement process.²²⁵ Reasonable measures must be undertaken by the user department to secure bids or quotes from at least three vendors. These requirements are satisfied if the user department solicits bids or quotes from a reasonably sufficient number of vendors to secure at least three written responses to the solicitation.²²⁶ The City must solicit from S/LBEs and take reasonable measures to provide for competition.



²²³ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.040 (1997).

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.* at § 2.04.010; 2.04.050.

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b. Evaluation and Award

The contract award is made to the lowest responsive bidder whose price is fair and reasonable.²²⁷ A bidder is determined to be responsive when the submitted bid complies with bid specifications and submission requirements.

c. Approval and Authorization of the Award

The user department approves the contract and the contract awards are authorized by the City Administrator.²²⁸

2. Formal Goods and Services Contracts Valued \$50,000 and Over

The City procures goods and services contracts valued \$50,000 and over through a formal bidding process.

a. Advertising Requirements

IFBs must be publicly advertised in the City's official paper of record, on iSupplier, or on the City's website at least 10 calendar days prior to the bid due date.²²⁹ The advertisement must contain the contract requirements, the estimated value of services, terms, deadlines, and other information relevant to the project.

b. Evaluation and Award

Contract award is made to the lowest, responsive, and responsible bidder.²³⁰ For contracts that are wholly or partially federally funded, the bidder must also submit an affirmative action hiring plan in accordance with the requirements of federal law. In the City's evaluation of responsibility, consideration must also be given to the bidder's compliance with federal, state, and local laws, including affirmative action program requirements, local preference standards, and any minority business enterprise, female business enterprise, or equal business opportunity programs adopted by the City.



²²⁷ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.060 (1997).

²²⁸ *Id.* at § 2.04.020.

²²⁹ *Id.* at § 2.04.050.

²³⁰ *Id.* at § 2.04.060.

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c. Approval and Authorization of the Award

For contracts valued from \$50,000 to \$250,000, contract awards are authorized by the City Administrator.²³¹ For contracts valued over \$250,000, contract awards are authorized by the City Council.²³²

V. Exceptions to Competitive Sealed Bidding

Construction, professional services, and goods and services contracts can be procured without a competitive sealed bidding process under the following circumstances.²³³

A. Direct Contracts or Purchases

Pursuant to the City Charter, the City Administrator is authorized to establish informal contracting procedures that may include direct contracting provisions for informal professional services and goods and services contracts.²³⁴ The City Administrator is authorized to make direct purchases for surplus goods and services contracts from the Federal Government of the United States, any federal agency, the State of California or any state agency, or any public body without compliance with formal bidding or contract requirements when it is advantageous to the City.²³⁵ Furthermore, internal City procedures authorize City user departments to make direct purchases of goods and services valued \$5,000 and under.²³⁶ A direct purchase may be made from any vendor who is qualified and capable of meeting the original specifications for the goods or service.

B. Open Market Purchase

The City Administrator is authorized to purchase goods and services contracts valued \$15,000 and under without advertisement and without observing formal bidding procedures, when feasible and when the circumstances are in the best interest of the City.²³⁷ Furthermore, if no proposals, quotes, responses, or submittals are received in response to a solicitation, or if all responsive bids exceed the City engineer's estimate, the City Administrator may solicit bids on the open market without following advertisement guidelines or implementing an additional competitive process.²³⁸

²³¹ *Id.* at § 2.04.040.

²³² *Id.* at § 2.04.030.

²³³ *Id.* at § 2.04.070-2.04.120 (1997).

²³⁴ *Id.* at § 2.04.040.

²³⁵ *Id.* at § 2.04.090.

²³⁶ City of Oakland Contracts and Compliance Division, *Standardized Contracting Procedures: Buying Procedures*.

²³⁷ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.070 (1997).

²³⁸ *Id.* at § 2.04.045; 2.04.050.



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An open market purchase requires direct solicitation through written request for quotation or telephone request for quotation. Internal procedures for administering the open-market purchase process must be established by the City Administrator.²³⁹

C. Petty Cash Purchase

The City Administrator may authorize the purchase of goods and services valued \$500 and under using a petty cash fund. Petty cash fund expenditures may be made without following formal purchasing guidelines.²⁴⁰

D. Cooperative Purchasing Agreement

The City is permitted to participate in, sponsor, conduct, or administer a cooperative purchase with another governmental entity, governmental jurisdiction, or public agency without additional formal or competitive bidding procedures.²⁴¹ For the City to enter a cooperative purchasing agreement, the City must require the same good or service with the same terms and conditions set forth in the contract, and the governmental entity must have awarded the contract through the relevant competitive process. Cooperative purchasing agreements are subject to the City's purchasing guidelines to the extent feasible. Therefore, the City must ensure that the legal contracts were awarded pursuant to the appropriate procurement process. Professional services contracts must have been advertised and awarded through a similar RFP or RFQ process, and goods and services must have been advertised and awarded through a similar IFB process.²⁴²

E. Pay-go-Funded Purchase

The City Administrator may purchase professional services and goods and services contracts for capital improvement projects directly through an existing pay-go-fund without additional competitive solicitation, subject to certain conditions. Established by the Mayor or the City Council, pay-go-funds are the annual appropriations to the Mayor and each Councilmember to pay for discretionary projects.

The City Administrator is authorized to make purchases, in any amount, from a pay-go-fund if: 1) the purchase is made for the designated purpose of the pay-go-fund account; 2) the pay-go fund account is the sole funding source of the contract; and 3) the purchase does not violate the City's municipal code.²⁴³

²³⁹ *Id.* at § 2.04.070.

²⁴⁰ *Id.* at § 2.04.040.

²⁴¹ *Id.* at § 2.04.080.

²⁴² *Id.* Cooperative agreements are subject to City of Oakland purchasing and other applicable policies and requirements set forth in the City's standards contracts and insurance requirements.

²⁴³ OAKLAND, CAL., CODE OF ORDINANCES tit. 2, ch. 2.04, art. 1 § 2.04.018 (1997).



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F. Emergency Purchase

The City Administrator may authorize emergency purchases for construction, professional services, and goods and services contracts in the event of a clear and present danger to public peace, health, or safety.²⁴⁴ The City Administrator may declare a state of emergency when necessary for the immediate preservation of public peace, health, or safety, and authorize an emergency procurement of construction, professional services, and goods and services without additional approval by the City Council.²⁴⁵ Emergency procurements may be made without advertisement or competitive sealed bids.²⁴⁶ A record of the emergency purchase, including a written explanation of the basis of the emergency and the selection of the contractor, must be presented to the City Council within a reasonable time of contract execution.

VI. Local Programs

The City of Oakland has enacted an employment and contracting policy to use the power of the public purse to stimulate economic development. In November of 2011, the City Council modified Ordinance No. 12389 C.M.S in order to more narrowly tailor the mandates that govern participation of local and small local business enterprises in City contracting.

The Ordinance, as amended, has enhanced the two major programs to provide economic opportunity for Oakland residents and businesses and especially those that have been economically disadvantaged. The two major programs that have stimulated economic development are the Local and Small Local Business Enterprise (L/SLBE) Program and the Local Employment Program (LEP).

Major components of the Local Employment Program are the living wage and the prevailing wage standards, the apprenticeship employment ratios, equal benefits for domestic partners, and the local construction employment referral program. Several of these standards are precedent setting in the state of California.

The Local and Small Local Business Enterprise (L/SLBE) Program also has some innovative components that include goals for the participation of Small Local Business Enterprises, Local Business Enterprises, Preferred Small Local Businesses, and Very Small Business Enterprises on the City's prime contracts. The Programs allow for bid discounts and preference points to maximize the participation of local businesses as prime and subcontractors. In addition, this program offers certification services to verify the residency of businesses seeking to participate on City contracts as a local, small local, or very small local business. This report assesses the effectiveness of the City's policy intended to increase the circulation of City contract dollars within the Oakland community.



²⁴⁴ *Id.* at § 2.04.020; 2.04.150.

²⁴⁵ *Id.* at § 2.04.020.

²⁴⁶ *Id.*

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A. SLBE Participation Goal

To meet the SLBE Program objectives, the City enacted a 25% goal for SLBE participation on its contracts.²⁴⁷ The minimum participation requirements are mandatory and apply to construction contracts valued over \$100,000, professional services contracts valued over \$50,000, and goods and services contracts valued over \$50,000.²⁴⁸ Prime contractors are required to maintain the SLBE utilization percentages asserted at the time of contract award throughout the term of the contract. If the SLBE utilization goal is not met, the City has the option to assess penalties against the prime contractor.

To meet the LBE Program objectives, the City enacted a 25% goal for LBE participation on its contracts.²⁴⁹ The minimum participation requirements are mandatory and apply to construction contracts valued over \$100,000, professional services contracts valued over \$50,000, and goods and services contracts valued over \$50,000.²⁵⁰

B. Application of the SLBE Participation Goal

The SLBE preference is applied in the evaluation process through bid discounts and preference points. Bid discounts are applied by the City during the evaluation process of a competitive solicitation at a rate of 1% for every 10% of contract dollars spent with certified SLBEs, up to a maximum of 5%.²⁵¹

Preference points are applied by the City during the evaluation process of a competitive solicitation up to a maximum of five points for dollars spent with certified SLBEs, and a maximum of two and a half points for dollars spent with certified LBEs. The allocation of preference points awarded during the evaluation process is based on the proposer's and the subconsultant's status as an SLBE and the length of years that the business has maintained a fixed presence in the City. An SLBE prime contractor will be awarded up to five points, depending on the percentage of services provided by the SLBE-certified business.²⁵² An LBE prime contractor will be awarded up to two and a half points, depending on the duration that the prime consultant has been in Oakland.²⁵³

²⁴⁷ City of Oakland Offices of the City Administrator & Contracts and Compliance, *Local and Small Local Business Enterprise Program* § Part I: Program Guidelines (2012).

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.* at § Part II: Program Incentives (2012).

²⁵² *Id.* Five points are awarded if the SLBE-certified business provides 100% of the services solicited, four points for 75-99% of services, three points for 50-75% of services, two points for 25-24% of services, and one point for up to 24% of services.

²⁵³ Local and Small Local Business Enterprise Program (L/SLBE), Office of the City Administrator, Contracts and Compliance § II PROGRAM INCENTIVES (February 1, 2012). For 25 years or more, two points when the proposer prime consultant has been in Oakland for 20-24 years, one and a half points when the proposer prime consultant has been in Oakland for 15-19 years, one point when the proposer prime consultant has been in Oakland for 10-15 years, and a half point when the proposer prime consultant has been in Oakland for five years or more.



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C. **Certification Procedures**

1. **Eligibility Criteria**

To be certified as an SLBE or LBE, the applicant must demonstrate that the business has an established operation with a substantial presence in Oakland, maintains a fixed office space in the geographical boundaries of the City of Oakland, with employees that are available during standard operating hours, has been operational for at least 12 consecutive months, has a valid business tax license, and completed registration in the City's iSupplier system.

2. **Ownership and Control**

An SLBE and LBE on call must possess ownership and control of the business that is real, substantial, and continuing, and shall go beyond the *pro forma* ownership as reflected in the ownership documents.²⁵⁴ SLBE and LBE owners shall possess the power to direct or cause the direction of the management and policies of the firm and the authority to make day-to-day operations decisions as well as major decisions on matters of management, policy, and operation. There shall be no restrictions on SLBE or LBE owners' authority to make business decisions by the firm through by-law provisions, partnership arrangements, charter requirements for cumulative voting rights, or any other arrangement that might prevent the SLBE or LBE from controlling the firm.

3. **Size Standards**

The maximum average gross revenue is established by the City for each industry and equals 30% of the most recently published size standards of the United States Small Business Administration.²⁵⁵ The City is required to adjust the size standards after every updated publication that is released by the Small Business Administration.



²⁵⁴ *Id.*

²⁵⁵ *Id.*

CHAPTER 3: Prime Contractor Utilization Analysis

I. Introduction

This chapter documents the City of Oakland’s (City) utilization of prime contractors by race, gender, and industry during the July 1, 2011, to June 30, 2016, study period. The City’s contracts were classified into four industries: construction, professional services, services, and goods and commodities.

- **Construction:** public works projects, including construction, alteration, repair, or improvement other than ordinary maintenance.²⁵⁶
- **Professional Services:** advisory services that must be performed by licensed consultants, architecture or engineering personnel, or by persons possessing unique or special training, education, or skills.²⁵⁷
- **Services:** labor, maintenance services, or a combination of services and supplies that support public works projects.²⁵⁸
- **Goods and Commodities:** supplies, materials, vehicles, machinery and equipment.²⁵⁹

Table 3.1 lists the seven race and gender groups the businesses are divided into, along with the classification of the two ethnic and gender groups.



²⁵⁶ Glossary of Terms, Standardized Contracting Procedures.

²⁵⁷ City of Oakland Ord. tit. II, art. I, ch. 204 *Purchasing System* §2.04.010.

²⁵⁸ City of Oakland Ord. tit. II, art. I, ch. 204 *Purchasing System* §2.04.010. Public works projects are all construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost to the City. Glossary of Terms, Standardized Contracting Procedures.

²⁵⁹ Glossary of Terms, Standardized Contracting Procedures; City of Oakland Ord. tit. II, art. I, ch. 204 *Purchasing System* §2.04.010.

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Table 3.1: Business Race and Gender Groups

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

II. Prime Contract Data Sources

The prime contract data consists of prime purchase order records with payments extracted from Oracle, the City’s financial system. The payments were issued during the July 1, 2011, to June 30, 2016, study period. The City’s prime purchase orders data were normalized and combined to create a prime contract dataset. One of three standards was used to create a prime dataset: 1) project number and vendor name, 2) contract/contract purchase order number and vendor name and 3) resolution number, vendor name, and project description.



The data were scrubbed to remove duplicate records and prime contracts awarded outside the study period. To assign industry, data were analyzed by project name, vendor name, object code, and/or prime contract description. Each prime contract was classified into one of the four industries: construction, professional services, services, and goods and commodities. Prime contracts with

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not-for-profit entities, state and other local governments, cooperative agreements, and utility companies were excluded from the analysis.²⁶⁰ The assignment of industry classifications was reviewed and approved by the City.

Several steps were taken to determine the race and gender of each prime contractor. The initial step determined whether the contractor was certified by the City or another government certifying agency. Where available, the race and gender of the certified firms were derived from the certification record. Additional sources used to determine the race and gender of non-certified contractors included chamber of commerce directories, trade organization membership lists, Internet research, and a contractor survey. Internet research conducted examined the company's website, social media, digital media, and business listings to determine the business owner's race and gender. The contractor survey solicited race and gender information directly from the businesses. Prime contractors whose ethnicity and gender could not be verified as minority or woman-owned were classified as non-minority male-owned businesses. The non-minority male-owned business category also included publicly traded corporations, employee-owned businesses, and partnerships that were more than 51 percent owned by a non-minority male-owned business enterprise.

III. Thresholds for Analysis

The City's prime contracts awarded in each industry are analyzed at three size thresholds. The first threshold includes all prime contracts. The second threshold includes informal prime contracts, as defined by the City of Oakland's Ordinance Title II Chapter 2.04 (Ordinance)²⁶¹. The third threshold includes formal prime contracts with the upper limits determined by a statistical calculation. An upper limit, or threshold, was set for each industry to exclude outliers. These thresholds are listed in Table 3.2.

- The first threshold level included all contracts, regardless of award amount. No recommendations will be made based on the analysis of all contracts because it includes outliers.
- The second threshold level included all informal contracts.



²⁶⁰ The exclusions also included: courier services, educational institutions and services, fees and licenses, food purveyors, hotels, caterers, proprietary goods, individuals, investment companies/ financial institutions /insurance companies, manufacturers, wholesale services, media (radio, TV, newspaper), medical/healthcare/rehabilitation/custodial care, megastores, personal services, fuel companies, publishers, real estate, recreation, redevelopment/residential, staffing/employment companies, telecommunication companies, travel companies, and vehicle dealerships.

²⁶¹ CITY OF OAKLAND ORD. TIT. II, ART. I, CH. 204 *Purchasing System* § 2.04.010.

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Table 3.2: Informal Contract Threshold by Industry

Industry	Informal Contract Threshold
Construction	Under \$50,000
Professional Services	Under \$50,000
Services	Under \$50,000
Goods and Commodities	Under \$50,000

- The third threshold level included formal contracts that fall within the 75th percentile of all the contracts. A distribution analysis of the City’s formal prime contracts was undertaken to ensure the reliability of the study findings. This analysis revealed the skewness of the data. The skewness of the data was caused by the very large contracts that were outliers in the prime contract dataset. The outliers distorted the true nature of the central tendency of the dataset. The very large prime contracts distorted the distribution of the dataset. Including the outliers would obscure the results of the disparity analysis. To address this issue, the Gaussian distribution theorem was applied to normalize the skewed data.²⁶²

In the statistical model of a Gaussian distribution, the percent of contract values would be equally distributed above and below the arithmetic mean. The mean is calculated by adding the dollar value of all contracts and dividing the total by the number of contracts in the dataset. However, in this dataset, the distribution of the formal contracts revealed that the dollar values were heavily skewed to the right, indicating a significant number of outliers.

The numeric value that defined the outliers was calculated using percentiles. It was determined that prime contracts with a dollar value above the 75th percentile were outliers and therefore excluded from the utilization and disparity analysis. Limiting the formal prime contracts analyzed to those valued at and below the 75th percentile also removed formal prime contracts that require extensive capacity to perform. Furthermore, considerably less capacity is needed to perform the prime contracts beneath the 75th percentile threshold.

The formal thresholds for the four industries are listed in Table 3.3.



²⁶² Also known as the bell-shaped or normal distribution.

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Table 3.3: Formal Contract Threshold by Industry

Industry	Formal Contract Threshold
Construction	\$50,000 to \$780,000
Professional Services	\$50,000 to \$310,000
Services	\$50,000 to \$220,000
Goods and Commodities	\$50,000 to \$190,000

IV. Prime Contractor Utilization

A. All Prime Contractors

As shown in Table 3.4, the City issued 7,780 prime contracts during the July 1, 2011, to June 30, 2016, study period. Since these prime contracts include outliers, the presentation of all contracts is for illustrative purposes only. Furthermore, all prime contracts, as shown in Table 3.4, are not subject to the statistical analysis of disparity because they contain the outliers identified through the Gaussian distribution theorem analysis.

The 7,780 prime contracts included 530 for construction, 1,509 for professional services, 1,454 for services, and 4,287 for goods and commodities. The payments made by the City during the study period totaled \$566,285,263 for all 7,780 prime contracts. Payments included \$271,864,842 for construction, \$121,529,429 for professional services, \$61,379,771 for services, and \$111,511,222 for goods and commodities.

**Table 3.4: Total Prime Contracts and Dollars Expended:
All Industries, July 1, 2011, to June 30, 2016**

Industry	Total Number of Contracts	Total Dollars Expended
Construction	530	\$271,864,842
Professional Services	1,509	\$121,529,429
Services	1,454	\$61,379,771
Goods and Commodities	4,287	\$111,511,222
Total Expenditures	7,780	\$566,285,263



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B. Highly Used Construction Prime Contractors

The City awarded a total of 530 construction contracts during the study period. As shown in Table 3.5, the City’s 530 construction prime contracts were awarded to 91 unique businesses.

Table 3.5: Construction Prime Contracts

Total Prime Contracts	530
Total Utilized Businesses	91
Total Expenditures	\$271,864,842

Table 3.6 presents the distribution of the City’s construction prime contracts by the total number of prime contractors. Eight of the 91 businesses received \$192,671,998, or 71%, of the total construction prime contract dollars. The findings illustrate that a small group of prime contractors received the majority of the construction prime contract dollars awarded by the City.

Table 3.6: Construction Prime Contracts Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars ²⁶³	Number of Contracts	Percent of Contracts ²⁶⁴
8 Highly Used Businesses	\$192,671,998	71%	185	35%
83 Businesses	\$79,192,843	29%	345	65%
91 Total Businesses	\$271,864,842	100%	530	100%

Table 3.7 presents the race and gender of the most highly used construction prime contractors who received approximately 50% of the construction prime contract dollars. The four most highly used prime contractors were Hispanic American and non-minority male-owned businesses. The contracts received by these four businesses ranged from \$2,500 to \$9,766,417.

Table 3.7: Top Four Most Highly Used Construction Prime Contractors

Race and Gender	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Hispanic Americans	\$31,100,410	11.44%	19	3.58%
Non-minority Males	\$102,121,420	37.56%	116	21.89%

C. Highly Used Professional Services Prime Contractors

The City awarded a total of 1,509 professional services contracts during the study period. As shown in Table 3.8, the City’s 1,509 professional services prime contracts were received by 439 unique businesses.



²⁶³ Percentages are rounded to the nearest whole number.

²⁶⁴ Percentages are rounded to the nearest whole number.

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Table 3.8: Professional Services Prime Contracts

Total Prime Contracts	1,509
Total Utilized Businesses	439
Total Expenditures	\$121,529,429

Table 3.9 presents the distribution of the City’s professional services prime contracts by the number of prime contractors. Forty-five of the 439 businesses received \$85,127,088, or 70%, of the total professional services prime contract dollars. The findings illustrate that a small group of prime contractors received the majority of the professional services prime contract dollars spent by the City.

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

Businesses	Total Dollars	Percent of Dollars²⁶⁵	Number of Contracts	Percent of Contracts²⁶⁶
45 Highly Used Businesses	\$85,127,088	70%	351	23%
394 Businesses	\$36,402,341	30%	1,158	77%
439 Total Businesses	\$121,529,429	100%	1,509	100%

Table 3.10 presents the race and gender of the most highly used professional services prime contractors, who received approximately 50% of professional services prime contract dollars. The 20 most highly used prime contractors were Asian Pacific American and non-minority male-owned businesses. The contracts received by these 20 businesses ranged from \$372 to \$4,957,469.

Table 3.10: Top 20 Most Highly Used Professional Services Prime Contractors

Race and Gender	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Asian Pacific Americans	\$1,349,362	1.11%	5	0.33%
Non-minority Males	\$59,755,328	49.17%	147	9.74%

D. Highly Used Services Prime Contractors

The City awarded a total of 1,454 services contracts during the study period. As shown in Table 3.11, the City’s 1,454 services prime contracts were awarded to 491 unique businesses.



²⁶⁵ Percentages are rounded to the nearest whole number.

²⁶⁶ Percentages are rounded to the nearest whole number.

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Table 3.11: Services Prime Contracts

Total Prime Contracts	1,454
Total Utilized Businesses	491
Total Expenditures	\$61,379,771

Table 3.12 presents the distribution of the City’s services prime contracts by the number of prime contractors. Twenty of the 491 businesses received \$42,768,966, or 70%, of the total services prime contract dollars. The findings illustrate that a small group of prime contractors received the majority of the services prime contract dollars spent by the City.

Table 3.12: Services Prime Contracts Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars²⁶⁷	Number of Contracts	Percent of Contracts²⁶⁸
20 Highly Used Businesses	\$42,768,966	70%	152	10%
471 Businesses	\$18,610,805	30%	1,302	90%
491 Total Businesses	\$61,379,771	100%	1,454	100%

Table 3.13 presents the race and gender of the most highly used services prime contractors, who received approximately 50% of the services prime contract dollars. The four most highly used prime contractors were Asian Pacific, Caucasian female, and non-minority male-owned businesses. The contracts received by these four businesses ranged from \$2,922 to \$7,315,544.

Table 3.13: Top Four Most Highly Used Services Prime Contractors

Race and Gender	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Asian Pacific Americans	\$13,184,115	21.48%	10	0.69%
Caucasian Females	\$2,579,232	4.20%	5	0.34%
Non-minority Males	\$15,141,079	24.67%	34	2.34%

E. Highly Used Goods and Commodities Prime Contractors

The City awarded a total of 4,287 goods and commodities contracts during the study period. As shown in Table 3.14, the City’s 4,287 goods and commodities prime contracts were awarded to 1,072 unique businesses.



²⁶⁷ Percentages are rounded to the nearest whole number.

²⁶⁸ Percentages are rounded to the nearest whole number.

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Table 3.14: Goods and Commodities Prime Contracts

Total Prime Contracts	4,287
Total Utilized Businesses	1,072
Total Expenditures	\$111,511,222

Table 3.15 presents the distribution of the City’s goods and commodities prime contracts by the number of businesses. Forty-five of the 1,072 businesses received \$78,125,763, or 70%, of the total goods and commodities prime contract dollars. The findings illustrate that a small group of prime contractors received the majority of the goods and commodities prime contract dollars awarded by the City.

Table 3.15: Goods and Commodities Prime Contracts Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars²⁶⁹	Number of Contracts	Percent of Contracts²⁷⁰
45 Highly Used Businesses	\$78,125,763	70%	1,042	24%
1,027 Businesses	\$33,385,459	30%	3,245	76%
1,072 Total Businesses	\$111,511,222	100%	4,287	100%

Table 3.16 presents the race and gender of the most highly used goods and commodities prime contractors, who received approximately 50% of the goods and commodities prime contract dollars. The 19 most highly used prime contractors were Caucasian female and non-minority male-owned businesses. The contracts received by these 19 businesses ranged from \$141 to \$11,115,572.

Table 3.16: Top 19 Highly Used Goods and Commodities Prime Contractors

Race and Gender	Total Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
Caucasian Females	\$5,756,034	5.16%	221	5.16%
Non-minority Males	\$50,109,810	44.93%	387	9.03%

F. On-Call Prime Contractors

The on-call contract payments are included in the prime utilization analysis discussed in the previous section. This section is a separate analysis of the construction, professional services, and goods and commodities dollars expended using the on-call procurement method. For construction projects, the project manager solicits bids from all contractors with the required license and sufficient contract capacity. If a responsive bid is received the project manager may issue a task



²⁶⁹ Percentages are rounded to the nearest whole number.

²⁷⁰ Percentages are rounded to the nearest whole number.

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order. In the event no responsive bids are received the project manager may select a contractor to negotiate the task order.

For on-call professional service projects the project manager identifies three firms in the relevant discipline with sufficient capacity to perform the project. The contract issued to the selected firm has a not to exceed amount. Against the contract the project manager issues task orders to complete projects.

Proposals are solicited from three firms and the project manager selects the one considered to be most qualified. A contract is issued to the firm selected by the project manager with a not to exceed award amount. When the project manager wants a project completed the contractor is issued a task order.

The policy does not describe the on-call procurement process for goods and commodities. There were however payments made for on-call contracts for goods and commodities.

As shown in Table 3.17, the City issued 717 payments on task orders for construction and professional services projects during the July 1, 2011 to June 30, 2016 study period. The data also shows that non-Minority males were issued 65.49% of the task orders and 75.34% of the on-call dollars awarded during the study period. The largest single payment received for an on-call task order was \$1,285,825. It was also a payment to a non-minority male.

**Table 3.17: Total On-Call Dollars Expended:
All Industries, July 1, 2011, to June 30, 2016**

Industry	Total Dollars Expended
Construction	\$11,473,574
Professional Services	\$14,650,233
Total Expenditures	\$26,123,807

G. Highly Used On-Call Construction Prime Contractors

While the number of task orders issued cannot be discerned from the data in the financial system, the total payments to each vendor awarded at least one task order could be calculated. If in fact a single payment is for a task order the payment data may also be a measure of the number of task orders issued to each contractor. As shown in Table 3.18, task orders were awarded to 23 unique construction businesses. These vendors received \$11,473,574 in total payments.



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Table 3.18: Construction Task Orders

Total Utilized Businesses	23
Total Expenditures	\$11,473,574

Table 3.19 presents the distribution of the on-call construction dollars by the total number of prime contractors. Seven of the 23 businesses received \$8,221,497, or 72%, of the total on-call construction dollars. The findings illustrate that a small group of prime contractors received the majority of the on-call construction dollars awarded by the City.

Table 3.19: Total On-Call Construction Dollars Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars²⁷¹
7 Highly Used Businesses	\$8,221,497	72%
16 Businesses	\$3,252,077	28%
23 Total Businesses	\$11,473,574	100%

Table 3.20 presents the race and gender of the most highly used on-call construction prime contractors, who received approximately 50% of the on-call construction prime contract dollars. The four most highly used prime contractors were Hispanic American and non-minority male-owned businesses. The contracts received by these four businesses ranged from \$254 to \$1,285,825.

Table 3.20: Top 12 Most Highly Used Construction Contractors

Race and Gender	Total Dollars	Percent of Dollars
Hispanic Americans	\$1,064,133	9.27%
Non-minority Males	\$4,521,790	39.41%

H. Highly Used On-Call Professional Services Prime Contractors

As shown in Table 3.21, task orders were awarded to 92 unique construction businesses. These vendors received \$14,650,233 in total payments.

Table 3.21: Professional Service Task Orders

Total Utilized Businesses	92
Total Expenditures	\$14,650,233



²⁷¹ Percentages are rounded to the nearest whole number.

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Table 3.22 presents the distribution of the on-call professional service dollars by the total number of prime contractors. Nineteen of the 92 businesses received \$10,163,583, or 69% of the total on-call professional service dollars. The findings illustrate that a small group of prime contractors received the majority of the on-call professional prime dollars awarded by the City.

Table 3.22: Total On-Call Professional Service Dollars Distributed by Number of Businesses

Businesses	Total Dollars	Percent of Dollars²⁷²
19 Highly Used Businesses	\$10,163,583	69%
73 Businesses	\$4,486,650	31%
92 Total Businesses	\$14,650,233	100%

Table 3.23 presents the race and gender of the most highly used on-call professional services prime contractors, who received approximately 50% of the on-call professional service prime contract dollars. The 10 most highly used prime contractors were non-minority male-owned businesses. The contracts received by these 10 businesses ranged from \$372 to \$499,953.

Table 3.23: Top 12 Most Highly Used Professional Service Contractors

Race and Gender	Total Dollars	Percent of Dollars
Non-minority Males	\$7,525,401	51.37%

The analysis of the on-call payments, which shows many single payments in excess of \$100,000, documents the fact that on-call task orders were not all under \$100,000, as expressed in the *On-Call Contracting Procedures*. Additionally, many of the contractors that received the majority of the on-call payments were also within the top 17 vendors representing 50% of the total dollars expended on all professional service and construction contracts, as discussed in the previous section. Furthermore the fact that the on-call procurement method authorizes the project manager to award contracts, and the majority of the on-call dollars were awarded to the same few contractors, suggests that the City may have a preference for non-minority male-owned businesses.



²⁷² Percentages are rounded to the nearest whole number.

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I. All Prime Contracts by Industry

1. Construction Prime Contract Utilization: All Contracts

Table 3.24 summarizes all prime contract dollars expended by the City on construction prime contracts. Minority-owned businesses (MBEs) received 21.84% of the construction prime contract dollars; Woman-owned businesses (WBEs) received 0.84%; Non-minority male-owned businesses (Non-M/WBEs) received 77.79%.

African Americans received 17, or 3.21%, of all construction prime contracts awarded during the study period, representing \$873,374, or 0.32%, of the construction prime contract dollars.

Asian Pacific Americans received 58, or 10.94%, of all construction prime contracts awarded during the study period, representing \$13,038,277, or 4.80%, of the construction prime contract dollars.

Asian Indian Americans received 2, or 0.38%, of all construction prime contracts awarded during the study period, representing \$994,265, or 0.37%, of the construction prime contract dollars.

Hispanic Americans received 79, or 14.91%, of all construction prime contracts awarded during the study period, representing \$44,463,813, or 16.36%, of the construction prime contract dollars.

Native Americans received 0, or 0.00%, of all construction prime contracts awarded during the study period, representing \$0, or 0.00%, of the construction prime contract dollars.

Caucasian Females received 8, or 1.51%, of all construction prime contracts awarded during the study period, representing \$1,009,759, or 0.37%, of the construction prime contract dollars.

Non-minority Males received 366, or 69.06%, of all construction prime contracts awarded during the study period, representing \$211,485,354, or 77.79%, of the construction prime contract dollars.

Minority-owned Businesses received 156, or 29.43%, of all construction prime contracts awarded during the study period, representing \$59,369,729, or 21.84%, of the construction prime contract dollars.

Woman-owned Businesses received 17, or 3.21%, of all construction prime contracts awarded during the study period, representing \$2,292,266, or 0.84%, of the construction prime contract dollars.



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**Table 3.24: Construction Prime Contract Utilization:
All Contracts, July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	17	3.21%	\$873,374	0.32%
Asian Pacific Americans	58	10.94%	\$13,038,277	4.80%
Asian Indian Americans	2	0.38%	\$994,265	0.37%
Hispanic Americans	79	14.91%	\$44,463,813	16.36%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	8	1.51%	\$1,009,759	0.37%
Non-minority Males	366	69.06%	\$211,485,354	77.79%
TOTAL	530	100.00%	\$271,864,842	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	17	3.21%	\$873,374	0.32%
Asian Pacific American Females	8	1.51%	\$309,327	0.11%
Asian Pacific American Males	50	9.43%	\$12,728,950	4.68%
Asian Indian American Females	1	0.19%	\$973,180	0.36%
Asian Indian American Males	1	0.19%	\$21,085	0.01%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	79	14.91%	\$44,463,813	16.36%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	8	1.51%	\$1,009,759	0.37%
Non-minority Males	366	69.06%	\$211,485,354	77.79%
TOTAL	530	100.00%	\$271,864,842	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	156	29.43%	\$59,369,729	21.84%
Woman Business Enterprises	17	3.21%	\$2,292,266	0.84%
Minority and Woman Business Enterprises	164	30.94%	\$60,379,487	22.21%



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2. Professional Services Prime Contract Utilization: All Contracts

Table 3.25 summarizes all prime contract dollars expended by the City on professional services prime contracts. MBEs received 7.64% of the professional services prime contract dollars; WBEs received 6.61%; Non-M/WBEs received 86.91%.

African Americans received 44, or 2.92%, of all professional services prime contracts awarded during the study period, representing \$1,106,002, or 0.91%, of the professional services prime contract dollars.

Asian Pacific Americans received 104, or 6.89%, of all professional services prime contracts awarded during the study period, representing \$5,539,209, or 4.56%, of the professional services prime contract dollars.

Asian Indian Americans received 18, or 1.19%, of all professional services prime contracts awarded during the study period, representing \$1,252,322, or 1.03%, of the professional services prime contract dollars.

Hispanic Americans received 88, or 5.83%, of all professional services prime contracts awarded during the study period, representing \$1,386,404, or 1.14%, of the professional services prime contract dollars.

Native Americans received 4, or 0.27%, of all professional services prime contracts awarded during the study period, representing \$5,764, or less than 0.01%, of the professional services prime contract dollars.

Caucasian Females received 182, or 12.06%, of all professional services prime contracts awarded during the study period, representing \$6,616,567, or 5.44%, of the professional services prime contract dollars.

Non-minority Males received 1,069, or 70.84%, of all professional services prime contracts awarded during the study period, representing \$105,623,162, or 86.91%, of the professional services prime contract dollars.

Minority-owned Businesses received 258, or 17.10%, of all professional services prime contracts awarded during the study period, representing \$9,289,700, or 7.64%, of the professional services prime contract dollars.

Woman-owned Businesses received 276, or 18.29%, of all professional services prime contracts awarded during the study period, representing \$8,030,034, or 6.61%, of the professional services prime contract dollars.



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**Table 3.25: Professional Services Prime Contract Utilization:
All Contracts, July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	44	2.92%	\$1,106,002	0.91%
Asian Pacific Americans	104	6.89%	\$5,539,209	4.56%
Asian Indian Americans	18	1.19%	\$1,252,322	1.03%
Hispanic Americans	88	5.83%	\$1,386,404	1.14%
Native Americans	4	0.27%	\$5,764	0.00%
Caucasian Females	182	12.06%	\$6,616,567	5.44%
Non-minority Males	1,069	70.84%	\$105,623,162	86.91%
TOTAL	1,509	100.00%	\$121,529,429	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	24	1.59%	\$282,280	0.23%
African American Males	20	1.33%	\$823,722	0.68%
Asian Pacific American Females	25	1.66%	\$397,956	0.33%
Asian Pacific American Males	79	5.24%	\$5,141,253	4.23%
Asian Indian American Females	0	0.00%	\$0	0.00%
Asian Indian American Males	18	1.19%	\$1,252,322	1.03%
Hispanic American Females	41	2.72%	\$727,468	0.60%
Hispanic American Males	47	3.11%	\$658,936	0.54%
Native American Females	4	0.27%	\$5,764	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	182	12.06%	\$6,616,567	5.44%
Non-minority Males	1,069	70.84%	\$105,623,162	86.91%
TOTAL	1,509	100.00%	\$121,529,429	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	258	17.10%	\$9,289,700	7.64%
Woman Business Enterprises	276	18.29%	\$8,030,034	6.61%
Minority and Woman Business Enterprises	440	29.16%	\$15,906,266	13.09%



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3. Services Prime Contract Utilization: All Contracts

Table 3.26 summarizes all contract dollars expended by the City on services prime contracts. MBEs received 31.03% of the professional services prime contract dollars; WBEs received 10.34%; Non-M/WBEs received 62.43%.

African Americans received 54, or 3.71%, of all services prime contracts awarded during the study period, representing \$944,710, or 1.54%, of the services prime contract dollars.

Asian Pacific Americans received 101, or 6.95%, of all services prime contracts awarded during the study period, representing \$15,337,391, or 24.99%, of the services prime contract dollars.

Asian Indian Americans received 7, or 0.48%, of all services prime contracts awarded during the study period, representing \$250,172, or 0.41%, of the services prime contract dollars.

Hispanic Americans received 97, or 6.67%, of all services prime contracts awarded during the study period, representing \$2,462,429, or 4.01%, of the services prime contract dollars.

Native Americans received 6, or 0.41%, of all services prime contracts awarded during the study period, representing \$53,839, or 0.09%, of the services prime contract dollars.

Caucasian Females received 107, or 7.36%, of all services prime contracts awarded during the study period, representing \$4,010,829, or 6.53%, of the services prime contract dollars.

Non-minority Males received 1,082, or 74.42%, of all services prime contracts awarded during the study period, representing \$38,320,401, or 62.43%, of the services prime contract dollars.

Minority-owned Businesses received 265, or 18.23%, of all services prime contracts awarded during the study period, representing \$19,048,541, or 31.03%, of the services prime contract dollars.

Woman-owned Businesses received 152, or 10.45%, of all services prime contracts awarded during the study period, representing \$6,344,634, or 10.34%, of the services prime contract dollars.



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**Table 3.26: Services Prime Contract Utilization:
All Contracts, July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	54	3.71%	\$944,710	1.54%
Asian Pacific Americans	101	6.95%	\$15,337,391	24.99%
Asian Indian Americans	7	0.48%	\$250,172	0.41%
Hispanic Americans	97	6.67%	\$2,462,429	4.01%
Native Americans	6	0.41%	\$53,839	0.09%
Caucasian Females	107	7.36%	\$4,010,829	6.53%
Non-minority Males	1,082	74.42%	\$38,320,401	62.43%
TOTAL	1,454	100.00%	\$61,379,771	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	26	1.79%	\$601,793	0.98%
African American Males	28	1.93%	\$342,917	0.56%
Asian Pacific American Females	6	0.41%	\$49,618	0.08%
Asian Pacific American Males	95	6.53%	\$15,287,772	24.91%
Asian Indian American Females	1	0.07%	\$16,489	0.03%
Asian Indian American Males	6	0.41%	\$233,684	0.38%
Hispanic American Females	7	0.48%	\$1,614,324	2.63%
Hispanic American Males	90	6.19%	\$848,105	1.38%
Native American Females	5	0.34%	\$51,581	0.08%
Native American Males	1	0.07%	\$2,258	0.00%
Caucasian Females	107	7.36%	\$4,010,829	6.53%
Non-minority Males	1,082	74.42%	\$38,320,401	62.43%
TOTAL	1,454	100.00%	\$61,379,771	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	265	18.23%	\$19,048,541	31.03%
Woman Business Enterprises	152	10.45%	\$6,344,634	10.34%
Minority and Woman Business Enterprises	372	25.58%	\$23,059,370	37.57%



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4. Goods and Commodities Prime Contract Utilization: All Contracts

Table 3.27 summarizes all contract dollars expended by the City on goods and commodities prime contracts. MBEs received 5.02% of the professional services prime contract dollars; WBEs received 7.55%; Non-M/WBEs received 88.13%.

African Americans received 83, or 1.94%, of all goods and commodities prime contracts awarded during the study period, representing \$477,260, or 0.43%, of the goods and commodities prime contract dollars.

Asian Pacific Americans received 128, or 2.99%, of all goods and commodities prime contracts awarded during the study period, representing \$2,757,089, or 2.47%, of the goods and commodities prime contract dollars.

Asian Indian Americans received 72, or 1.68%, of all goods and commodities prime contracts awarded during the study period, representing \$631,628, or 0.57%, of the goods and commodities prime contract dollars.

Hispanic Americans received 74, or 1.73%, of all goods and commodities prime contracts awarded during the study period, representing \$1,712,673, or 1.54%, of the goods and commodities prime contract dollars.

Native Americans received 7, or 0.16%, of all goods and commodities prime contracts awarded during the study period, representing \$24,356, or 0.02%, of the goods and commodities prime contract dollars.

Caucasian Females received 440, or 10.26%, of all goods and commodities prime contracts awarded during the study period, representing \$7,630,171, or 6.84%, of the goods and commodities prime contract dollars.

Non-minority Males received 3,483, or 81.25%, of all goods and commodities prime contracts awarded during the study period, representing \$98,278,044, or 88.13%, of the goods and commodities prime contract dollars.

Minority-owned Businesses received 364, or 8.49%, of all goods and commodities prime contracts awarded during the study period, representing \$5,603,006, or 5.02%, of the goods and commodities prime contract dollars.

Woman-owned Businesses received 546, or 12.74%, of all goods and commodities prime contracts awarded during the study period, representing \$8,413,743, or 7.55%, of the goods and commodities prime contract dollars.



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**Table 3.27: Goods and Commodities Prime Contract Utilization:
All Contracts, July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	83	1.94%	\$477,260	0.43%
Asian Pacific Americans	128	2.99%	\$2,757,089	2.47%
Asian Indian Americans	72	1.68%	\$631,628	0.57%
Hispanic Americans	74	1.73%	\$1,712,673	1.54%
Native Americans	7	0.16%	\$24,356	0.02%
Caucasian Females	440	10.26%	\$7,630,171	6.84%
Non-minority Males	3,483	81.25%	\$98,278,044	88.13%
TOTAL	4,287	100.00%	\$111,511,222	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	51	1.19%	\$270,690	0.24%
African American Males	32	0.75%	\$206,570	0.19%
Asian Pacific American Females	24	0.56%	\$181,133	0.16%
Asian Pacific American Males	104	2.43%	\$2,575,957	2.31%
Asian Indian American Females	17	0.40%	\$183,620	0.16%
Asian Indian American Males	55	1.28%	\$448,008	0.40%
Hispanic American Females	13	0.30%	\$133,884	0.12%
Hispanic American Males	61	1.42%	\$1,578,789	1.42%
Native American Females	1	0.02%	\$14,244	0.01%
Native American Males	6	0.14%	\$10,112	0.01%
Caucasian Females	440	10.26%	\$7,630,171	6.84%
Non-minority Males	3,483	81.25%	\$98,278,044	88.13%
TOTAL	4,287	100.00%	\$111,511,222	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	364	8.49%	\$5,603,006	5.02%
Woman Business Enterprises	546	12.74%	\$8,413,743	7.55%
Minority and Woman Business Enterprises	804	18.75%	\$13,233,178	11.87%



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J. Informal Contracts by Industry

1. Construction Prime Contract Utilization: Contracts Valued Under \$50,000

Table 3.28 summarizes all contract dollars expended by the City on construction prime contracts valued under \$50,000. MBEs received 35.86% of the professional services prime contract dollars; WBEs received 4.52%; Non-M/WBEs received 63.08%.

African Americans received 12, or 5.80%, of the construction prime contracts valued under \$50,000 awarded during the study period, representing \$237,449, or 6.56%, of the construction prime contract dollars.

Asian Pacific Americans received 29, or 14.01%, of the construction prime contracts valued under \$50,000 awarded during the study period, representing \$546,948, or 15.12%, of the construction prime contract dollars.

Asian Indian Americans received 1, or 0.48%, of the construction prime contracts valued under \$50,000 awarded during the study period, representing \$21,085, or 0.58%, of the construction prime contract dollars.

Hispanic Americans received 24, or 11.59%, of the construction prime contracts valued under \$50,000 awarded during the study period, representing \$491,751, or 13.60%, of the construction prime contract dollars.

Native Americans or Alaska Natives received 0, or 0.00%, of the construction prime contracts valued under \$50,000 awarded during the study period, representing \$0, or 0.00%, of the construction prime contract dollars.

Caucasian Females received 5, or 2.42%, of the construction prime contracts valued under \$50,000 awarded during the study period, representing \$38,095, or 1.05%, of the construction prime contract dollars.

Non-minority Males received 136, or 65.70%, of the construction prime contracts valued under \$50,000 awarded during the study period, representing \$2,281,672, or 63.08%, of the construction prime contract dollars.

Minority-owned Businesses received 66, or 31.88%, of the construction prime contracts valued under \$50,000 awarded during the study period, representing \$1,297,233, or 35.86%, of the construction prime contract dollars.

Woman-owned Businesses received 11, or 5.31%, of the construction prime contracts valued under \$50,000 awarded during the study period, representing \$163,397, or 4.52%, of the construction prime contract dollars.



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**Table 3.28: Construction Prime Contract Utilization:
Contracts Valued Under \$50,000, July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	12	5.80%	\$237,449	6.56%
Asian Pacific Americans	29	14.01%	\$546,948	15.12%
Asian Indian Americans	1	0.48%	\$21,085	0.58%
Hispanic Americans	24	11.59%	\$491,751	13.60%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	5	2.42%	\$38,095	1.05%
Non-minority Males	136	65.70%	\$2,281,672	63.08%
TOTAL	207	100.00%	\$3,616,999	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	12	5.80%	\$237,449	6.56%
Asian Pacific American Females	6	2.90%	\$125,302	3.46%
Asian Pacific American Males	23	11.11%	\$421,645	11.66%
Asian Indian American Females	0	0.00%	\$0	0.00%
Asian Indian American Males	1	0.48%	\$21,085	0.58%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	24	11.59%	\$491,751	13.60%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	5	2.42%	\$38,095	1.05%
Non-minority Males	136	65.70%	\$2,281,672	63.08%
TOTAL	207	100.00%	\$3,616,999	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	66	31.88%	\$1,297,233	35.86%
Woman Business Enterprises	11	5.31%	\$163,397	4.52%
Minority and Woman Business Enterprises	71	34.30%	\$1,335,328	36.92%



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2. Professional Services Prime Contract Utilization: Contracts Valued Under \$50,000

Table 3.29 summarizes all contract dollars expended by the City on professional services prime contracts valued under \$50,000. MBEs received 18.21% of the professional services prime contract dollars; WBEs received 19.56%; Non-M/WBEs received 68.82%.

African Americans received 40, or 3.52%, of the professional services prime contracts valued under \$50,000 awarded during the study period, representing \$608,251, or 4.18%, of the professional services prime contract dollars.

Asian Pacific Americans received 83, or 7.31%, of the professional services prime contracts valued under \$50,000 awarded during the study period, representing \$1,095,119, or 7.52%, of the professional services prime contract dollars.

Asian Indian Americans received 12, or 1.06%, of the professional services prime contracts valued under \$50,000 awarded during the study period, representing \$141,891, or 0.97%, of the professional services prime contract dollars.

Hispanic Americans received 80, or 7.04%, of the professional services prime contracts valued under \$50,000 awarded during the study period, representing \$800,819, or 5.50%, of the professional services prime contract dollars.

Native Americans received 4, or 0.35%, of the professional services prime contracts valued under \$50,000 awarded during the study period, representing \$5,764, or 0.04%, of the professional services prime contract dollars.

Caucasian Females received 156, or 13.73%, of the professional services prime contracts valued under \$50,000 awarded during the study period, representing \$1,888,848, or 12.97%, of the professional services prime contract dollars.

Non-minority Males received 761, or 66.99%, of the professional services prime contracts valued under \$50,000 awarded during the study period, representing \$10,023,828, or 68.82%, of the professional services prime contract dollars.

Minority-owned Businesses received 219, or 19.28%, of the professional services prime contracts valued under \$50,000 awarded during the study period, representing \$2,651,844, or 18.21%, of the professional services prime contract dollars.

Woman-owned Businesses received 244, or 21.48%, of the professional services prime contracts valued under \$50,000 awarded during the study period, representing \$2,848,652, or 19.56%, of the professional services prime contract dollars.



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**Table 3.29: Professional Services Prime Contract Utilization:
Contracts Valued Under \$50,000, July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	40	3.52%	\$608,251	4.18%
Asian Pacific Americans	83	7.31%	\$1,095,119	7.52%
Asian Indian Americans	12	1.06%	\$141,891	0.97%
Hispanic Americans	80	7.04%	\$800,819	5.50%
Native Americans	4	0.35%	\$5,764	0.04%
Caucasian Females	156	13.73%	\$1,888,848	12.97%
Non-minority Males	761	66.99%	\$10,023,828	68.82%
TOTAL	1,136	100.00%	\$14,564,520	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	24	2.11%	\$282,280	1.94%
African American Males	16	1.41%	\$325,971	2.24%
Asian Pacific American Females	25	2.20%	\$397,956	2.73%
Asian Pacific American Males	58	5.11%	\$697,163	4.79%
Asian Indian American Females	0	0.00%	\$0	0.00%
Asian Indian American Males	12	1.06%	\$141,891	0.97%
Hispanic American Females	35	3.08%	\$273,804	1.88%
Hispanic American Males	45	3.96%	\$527,015	3.62%
Native American Females	4	0.35%	\$5,764	0.04%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	156	13.73%	\$1,888,848	12.97%
Non-minority Males	761	66.99%	\$10,023,828	68.82%
TOTAL	1,136	100.00%	\$14,564,520	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	219	19.28%	\$2,651,844	18.21%
Woman Business Enterprises	244	21.48%	\$2,848,652	19.56%
Minority and Woman Business Enterprises	375	33.01%	\$4,540,692	31.18%



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3. Services Prime Contract Utilization: Contracts Valued Under \$50,000

Table 3.30 summarizes all contract dollars expended by the City on services prime contracts valued under \$50,000. MBEs received 22.76% of the professional services prime contract dollars; WBEs received 7.71%; Non-M/WBEs received 73.20%.

African Americans received 47, or 3.61%, of the services prime contracts valued under \$50,000 awarded during the study period, representing \$300,040, or 2.97%, of the services prime contract dollars.

Asian Pacific Americans received 89, or 6.83%, of the services prime contracts valued under \$50,000 awarded during the study period, representing \$1,149,465, or 11.36%, of the services prime contract dollars.

Asian Indian Americans received 6, or 0.46%, of the services prime contracts valued under \$50,000 awarded during the study period, representing \$62,172, or 0.61%, of the services prime contract dollars.

Hispanic Americans received 93, or 7.14%, of the services prime contracts valued under \$50,000 awarded during the study period, representing \$736,954, or 7.28%, of the services prime contract dollars.

Native Americans received 6, or 0.46%, of the services prime contracts valued under \$50,000 awarded during the study period, representing \$53,839, or 0.53%, of the services prime contract dollars.

Caucasian Females received 94, or 7.21%, of the services prime contracts valued under \$50,000 awarded during the study period, representing \$409,181, or 4.04%, of the services prime contract dollars.

Non-minority Males received 968, or 74.29%, of the services prime contracts valued under \$50,000 awarded during the study period, representing \$7,406,768, or 73.20%, of the services prime contract dollars.

Minority-owned Businesses received 241, or 18.50%, of the services prime contracts valued under \$50,000 awarded during the study period, representing \$2,302,471, or 22.76%, of the services prime contract dollars.

Woman-owned Businesses received 132, or 10.13%, of the services prime contracts valued under \$50,000 awarded during the study period, representing \$780,172, or 7.71%, of the services prime contract dollars.



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**Table 3.30: Services Prime Contract Utilization:
Contracts Valued Under \$50,000, July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	47	3.61%	\$300,040	2.97%
Asian Pacific Americans	89	6.83%	\$1,149,465	11.36%
Asian Indian Americans	6	0.46%	\$62,172	0.61%
Hispanic Americans	93	7.14%	\$736,954	7.28%
Native Americans	6	0.46%	\$53,839	0.53%
Caucasian Females	94	7.21%	\$409,181	4.04%
Non-minority Males	968	74.29%	\$7,406,768	73.20%
TOTAL	1,303	100.00%	\$10,118,420	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	21	1.61%	\$186,668	1.84%
African American Males	26	2.00%	\$113,372	1.12%
Asian Pacific American Females	6	0.46%	\$49,618	0.49%
Asian Pacific American Males	83	6.37%	\$1,099,847	10.87%
Asian Indian American Females	1	0.08%	\$16,489	0.16%
Asian Indian American Males	5	0.38%	\$45,684	0.45%
Hispanic American Females	5	0.38%	\$66,635	0.66%
Hispanic American Males	88	6.75%	\$670,319	6.62%
Native American Females	5	0.38%	\$51,581	0.51%
Native American Males	1	0.08%	\$2,258	0.02%
Caucasian Females	94	7.21%	\$409,181	4.04%
Non-minority Males	968	74.29%	\$7,406,768	73.20%
TOTAL	1,303	100.00%	\$10,118,420	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	241	18.50%	\$2,302,471	22.76%
Woman Business Enterprises	132	10.13%	\$780,172	7.71%
Minority and Woman Business Enterprises	335	25.71%	\$2,711,651	26.80%



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4. Goods and Commodities Prime Contract Utilization: Contracts Valued Under \$50,000

Table 3.31 summarizes all contract dollars expended by the City on goods and commodities prime contracts valued under \$50,000. MBEs received 10.29% of the professional services prime contract dollars; WBEs received 11.77%; Non-M/WBEs received 80.73%.

African Americans received 83, or 2.12%, of the goods and commodities prime contracts valued under \$50,000 awarded during the study period, representing \$477,260, or 1.88%, of the goods and commodities prime contract dollars.

Asian Pacific Americans received 112, or 2.87%, of the goods and commodities prime contracts valued under \$50,000 awarded during the study period, representing \$818,441, or 3.22%, of the goods and commodities prime contract dollars.

Asian Indian Americans received 71, or 1.82%, of the goods and commodities prime contracts valued under \$50,000 awarded during the study period, representing \$548,358, or 2.16%, of the goods and commodities prime contract dollars.

Hispanic Americans received 65, or 1.66%, of the goods and commodities prime contracts valued under \$50,000 awarded during the study period, representing \$747,502, or 2.94%, of the goods and commodities prime contract dollars.

Native Americans received 7, or 0.18%, of the goods and commodities prime contracts valued under \$50,000 awarded during the study period, representing \$24,356, or 0.10%, of the goods and commodities prime contract dollars.

Caucasian Females received 410, or 10.49%, of the goods and commodities prime contracts valued under \$50,000 awarded during the study period, representing \$2,283,118, or 8.98%, of the goods and commodities prime contract dollars.

Non-minority Males received 3,159, or 80.85%, of the goods and commodities prime contracts valued under \$50,000 awarded during the study period, representing \$20,523,119, or 80.73%, of the goods and commodities prime contract dollars.

Minority-owned Businesses received 338, or 8.65%, of the goods and commodities prime contracts valued under \$50,000 awarded during the study period, representing \$2,615,917, or 10.29%, of the goods and commodities prime contract dollars.

Woman-owned Businesses received 515, or 13.18%, of the goods and commodities prime contracts valued under \$50,000 awarded during the study period, representing \$2,993,410, or 11.77%, of the goods and commodities prime contract dollars.



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**Table 3.31: Goods and Commodities Prime Contract Utilization:
Contracts Valued Under \$50,000, July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	83	2.12%	\$477,260	1.88%
Asian Pacific Americans	112	2.87%	\$818,441	3.22%
Asian Indian Americans	71	1.82%	\$548,358	2.16%
Hispanic Americans	65	1.66%	\$747,502	2.94%
Native Americans	7	0.18%	\$24,356	0.10%
Caucasian Females	410	10.49%	\$2,283,118	8.98%
Non-minority Males	3,159	80.85%	\$20,523,119	80.73%
TOTAL	3,907	100.00%	\$25,422,154	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	51	1.31%	\$270,690	1.06%
African American Males	32	0.82%	\$206,570	0.81%
Asian Pacific American Females	24	0.61%	\$181,133	0.71%
Asian Pacific American Males	88	2.25%	\$637,309	2.51%
Asian Indian American Females	17	0.44%	\$183,620	0.72%
Asian Indian American Males	54	1.38%	\$364,737	1.43%
Hispanic American Females	12	0.31%	\$60,605	0.24%
Hispanic American Males	53	1.36%	\$686,897	2.70%
Native American Females	1	0.03%	\$14,244	0.06%
Native American Males	6	0.15%	\$10,112	0.04%
Caucasian Females	410	10.49%	\$2,283,118	8.98%
Non-minority Males	3,159	80.85%	\$20,523,119	80.73%
TOTAL	3,907	100.00%	\$25,422,154	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	338	8.65%	\$2,615,917	10.29%
Woman Business Enterprises	515	13.18%	\$2,993,410	11.77%
Minority and Woman Business Enterprises	748	19.15%	\$4,899,035	19.27%



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K. Formal Contracts by Industry

1. Construction Prime Contract Utilization: Contracts Valued \$50,000 to \$780,000

Table 3.32 summarizes all contract dollars expended by the City on construction prime contracts valued \$50,000 to \$780,000. MBEs received 25.67% of the professional services prime contract dollars; WBEs received 2.05%; Non-M/WBEs received 72.61%.

African Americans received 5, or 2.07%, of the construction prime contracts valued \$50,000 to \$780,000 awarded during the study period, representing \$635,925, or 1.13%, of the construction prime contract dollars.

Asian Pacific Americans received 23, or 9.50%, of the construction prime contracts valued \$50,000 to \$780,000 awarded during the study period, representing \$3,911,464, or 6.92%, of the construction prime contract dollars.

Asian Indian Americans received 0, or 0.00%, of the construction prime contracts valued \$50,000 to \$780,000 awarded during the study period, representing \$0, or 0.00%, of the construction prime contract dollars.

Hispanic Americans received 41, or 16.94%, of the construction prime contracts valued \$50,000 to \$780,000 awarded during the study period, representing \$9,956,063, or 17.62%, of the construction prime contract dollars.

Native Americans received 0, or 0.00%, of the construction prime contracts valued \$50,000 to \$780,000 awarded during the study period, representing \$0, or 0.00%, of the construction prime contract dollars.

Caucasian Females received 3, or 1.24%, of the construction prime contracts valued \$50,000 to \$780,000 awarded during the study period, representing \$971,664, or 1.72%, of the construction prime contract dollars.

Non-minority Males received 170, or 70.25%, of the construction prime contracts valued \$50,000 to \$780,000 awarded during the study period, representing \$41,017,355, or 72.61%, of the construction prime contract dollars.

Minority-owned Businesses received 69, or 28.51%, of the construction prime contracts valued \$50,000 to \$780,000 awarded during the study period, representing \$14,503,452, or 25.67%, of the construction prime contract dollars.

Woman-owned Businesses received 5, or 2.07%, of the construction prime contracts valued \$50,000 to \$780,000 awarded during the study period, representing \$1,155,689, or 2.05%, of the construction prime contract dollars.



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**Table 3.32: Construction Prime Contract Utilization:
Contracts Valued \$50,000 to \$780,000, July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	5	2.07%	\$635,925	1.13%
Asian Pacific Americans	23	9.50%	\$3,911,464	6.92%
Asian Indian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	41	16.94%	\$9,956,063	17.62%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	3	1.24%	\$971,664	1.72%
Non-minority Males	170	70.25%	\$41,017,355	72.61%
TOTAL	242	100.00%	\$56,492,470	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	5	2.07%	\$635,925	1.13%
Asian Pacific American Females	2	0.83%	\$184,025	0.33%
Asian Pacific American Males	21	8.68%	\$3,727,439	6.60%
Asian Indian American Females	0	0.00%	\$0	0.00%
Asian Indian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	41	16.94%	\$9,956,063	17.62%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	3	1.24%	\$971,664	1.72%
Non-minority Males	170	70.25%	\$41,017,355	72.61%
TOTAL	242	100.00%	\$56,492,470	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	69	28.51%	\$14,503,452	25.67%
Woman Business Enterprises	5	2.07%	\$1,155,689	2.05%
Minority and Woman Business Enterprises	72	29.75%	\$15,475,116	27.39%



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2. Professional Services Prime Contract Utilization: Contracts Valued \$50,000 to \$310,000

Table 3.33 summarizes all contract dollars expended by the City on professional services prime contracts valued \$50,000 to \$310,000. MBEs received 10.92% of the professional services prime contract dollars; WBEs received 9.80%; Non-M/WBEs received 80.62%.

African Americans received 4, or 1.43%, of the professional services prime contracts valued \$50,000 to \$310,000 awarded during the study period, representing \$497,751, or 1.46%, of the professional services prime contract dollars.

Asian Pacific Americans received 16, or 5.71%, of the professional services prime contracts valued \$50,000 to \$310,000 awarded during the study period, representing \$1,838,326, or 5.40%, of the professional services prime contract dollars.

Asian Indian Americans received 5, or 1.79%, of the professional services prime contracts valued \$50,000 to \$310,000 awarded during the study period, representing \$796,884, or 2.34%, of the professional services prime contract dollars.

Hispanic Americans received 8, or 2.86%, of the professional services prime contracts valued \$50,000 to \$310,000 awarded during the study period, representing \$585,585, or 1.72%, of the professional services prime contract dollars.

Native Americans received 0, or 0.00%, of the professional services prime contracts valued \$50,000 to \$310,000 awarded during the study period, representing \$0, or 0.00%, of the professional services prime contract dollars.

Caucasian Females received 23, or 8.21%, of the professional services prime contracts valued \$50,000 to \$310,000 awarded during the study period, representing \$2,884,246, or 8.47%, of the professional services prime contract dollars.

Non-minority Males received 224, or 80.00%, of the professional services prime contracts valued \$50,000 to \$310,000 awarded during the study period, representing \$27,462,946, or 80.62%, of the professional services prime contract dollars.

Minority-owned Businesses received 33, or 11.79%, of the professional services prime contracts valued \$50,000 to \$310,000 awarded during the study period, representing \$3,718,545, or 10.92%, of the professional services prime contract dollars.

Woman-owned Businesses received 29, or 10.36%, of the professional services prime contracts valued \$50,000 to \$310,000 awarded during the study period, representing \$3,337,909, or 9.80%, of the professional services prime contract dollars.



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**Table 3.33: Professional Services Prime Contract Utilization:
Contracts Valued \$50,000 to \$310,000, July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	4	1.43%	\$497,751	1.46%
Asian Pacific Americans	16	5.71%	\$1,838,326	5.40%
Asian Indian Americans	5	1.79%	\$796,884	2.34%
Hispanic Americans	8	2.86%	\$585,585	1.72%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	23	8.21%	\$2,884,246	8.47%
Non-minority Males	224	80.00%	\$27,462,946	80.62%
TOTAL	280	100.00%	\$34,065,738	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	4	1.43%	\$497,751	1.46%
Asian Pacific American Females	0	0.00%	\$0	0.00%
Asian Pacific American Males	16	5.71%	\$1,838,326	5.40%
Asian Indian American Females	0	0.00%	\$0	0.00%
Asian Indian American Males	5	1.79%	\$796,884	2.34%
Hispanic American Females	6	2.14%	\$453,664	1.33%
Hispanic American Males	2	0.71%	\$131,921	0.39%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	23	8.21%	\$2,884,246	8.47%
Non-minority Males	224	80.00%	\$27,462,946	80.62%
TOTAL	280	100.00%	\$34,065,738	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	33	11.79%	\$3,718,545	10.92%
Woman Business Enterprises	29	10.36%	\$3,337,909	9.80%
Minority and Woman Business Enterprises	56	20.00%	\$6,602,791	19.38%



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3. Services Prime Contract Utilization: Contracts Valued \$50,000 to \$220,000

Table 3.34 summarizes all contract dollars expended by the City on services prime contracts valued \$50,000 to \$220,000. MBEs received 13.37% of the services prime contract dollars; WBEs received 11.00%; Non-M/WBEs received 79.23%.

African Americans received 7, or 6.14%, of the services prime contracts valued \$50,000 to \$220,000 awarded during the study period, representing \$644,670, or 5.59%, of the services prime contract dollars.

Asian Pacific Americans received 6, or 5.26%, of the services prime contracts valued \$50,000 to \$220,000 awarded during the study period, representing \$531,138, or 4.61%, of the services prime contract dollars.

Asian Indian Americans received 1, or 0.88%, of the services prime contracts valued \$50,000 to \$220,000 awarded during the study period, representing \$188,000, or 1.63%, of the services prime contract dollars.

Hispanic Americans received 2, or 1.75%, of the services prime contracts valued \$50,000 to \$220,000 awarded during the study period, representing \$177,786, or 1.54%, of the services prime contract dollars.

Native Americans received 0, or 0.00%, of the services prime contracts valued \$50,000 to \$220,000 awarded during the study period, representing \$0, or 0.00%, of the services prime contract dollars.

Caucasian Females received 8, or 7.02%, of the services prime contracts valued \$50,000 to \$220,000 awarded during the study period, representing \$853,490, or 7.40%, of the services prime contract dollars.

Non-minority Males received 90, or 78.95%, of the services prime contracts valued \$50,000 to \$220,000 awarded during the study period, representing \$9,136,265, or 79.23%, of the services prime contract dollars.

Minority-owned Businesses received 16, or 14.04%, of the services prime contracts valued \$50,000 to \$220,000 awarded during the study period, representing \$1,541,594, or 13.37%, of the services prime contract dollars.

Woman-owned Businesses received 13, or 11.40%, of the services prime contracts valued \$50,000 to \$220,000 awarded during the study period, representing \$1,268,615, or 11.00%, of the services prime contract dollars.



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**Table 3.34: Services Prime Contract Utilization:
Contracts Valued \$50,000 to \$220,000, July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	7	6.14%	\$644,670	5.59%
Asian Pacific Americans	6	5.26%	\$531,138	4.61%
Asian Indian Americans	1	0.88%	\$188,000	1.63%
Hispanic Americans	2	1.75%	\$177,786	1.54%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	8	7.02%	\$853,490	7.40%
Non-minority Males	90	78.95%	\$9,136,265	79.23%
TOTAL	114	100.00%	\$11,531,349	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	5	4.39%	\$415,125	3.60%
African American Males	2	1.75%	\$229,545	1.99%
Asian Pacific American Females	0	0.00%	\$0	0.00%
Asian Pacific American Males	6	5.26%	\$531,138	4.61%
Asian Indian American Females	0	0.00%	\$0	0.00%
Asian Indian American Males	1	0.88%	\$188,000	1.63%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	2	1.75%	\$177,786	1.54%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	8	7.02%	\$853,490	7.40%
Non-minority Males	90	78.95%	\$9,136,265	79.23%
TOTAL	114	100.00%	\$11,531,349	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	16	14.04%	\$1,541,594	13.37%
Woman Business Enterprises	13	11.40%	\$1,268,615	11.00%
Minority and Woman Business Enterprises	24	21.05%	\$2,395,084	20.77%



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4. Goods and Commodities Prime Contract Utilization: Contracts Valued \$50,000 to \$190,000

Table 3.35 summarizes all contract dollars expended by the City on goods and commodities prime contracts valued \$50,000 to \$190,000. MBEs received 6.71% of the goods and commodities prime contract dollars; WBEs received 9.02%; Non-M/WBEs received 84.53%.

African Americans received 0, or 0.00%, of the goods and commodities prime contracts valued \$50,000 to \$190,000 awarded during the study period, representing \$0, or 0.00%, of the goods and commodities prime contract dollars.

Asian Pacific Americans received 14, or 4.84%, of the goods and commodities prime contracts valued \$50,000 to \$190,000 awarded during the study period, representing \$1,145,301, or 4.21%, of the goods and commodities prime contract dollars.

Asian Indian Americans received 1, or 0.35%, of the goods and commodities prime contracts valued \$50,000 to \$190,000 awarded during the study period, representing \$83,270, or 0.31%, of the goods and commodities prime contract dollars.

Hispanic Americans received 8, or 2.77%, of the goods and commodities prime contracts valued \$50,000 to \$190,000 awarded during the study period, representing \$595,676, or 2.19%, of the goods and commodities prime contract dollars.

Native Americans received 0, or 0.00%, of the goods and commodities prime contracts valued \$50,000 to \$190,000 awarded during the study period, representing \$0, or 0.00%, of the goods and commodities prime contract dollars.

Caucasian Females received 22, or 7.61%, of the goods and commodities prime contracts valued \$50,000 to \$190,000 awarded during the study period, representing \$2,379,019, or 8.75%, of the goods and commodities prime contract dollars.

Non-minority Males received 244, or 84.43%, of the goods and commodities prime contracts valued \$50,000 to \$190,000 awarded during the study period, representing \$22,973,539, or 84.53%, of the goods and commodities prime contract dollars.

Minority-owned Businesses received 23, or 7.96%, of the goods and commodities prime contracts valued \$50,000 to \$190,000 awarded during the study period, representing \$1,824,247, or 6.71%, of the goods and commodities prime contract dollars.

Woman-owned Businesses received 23, or 7.96%, of the goods and commodities prime contracts valued \$50,000 to \$190,000 awarded during the study period, representing \$2,452,298, or 9.02%, of the goods and commodities prime contract dollars.



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**Table 3.35: Goods and Commodities Prime Contract Utilization:
Contracts Valued \$50,000 to \$190,000, July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Pacific Americans	14	4.84%	\$1,145,301	4.21%
Asian Indian Americans	1	0.35%	\$83,270	0.31%
Hispanic Americans	8	2.77%	\$595,676	2.19%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	22	7.61%	\$2,379,019	8.75%
Non-minority Males	244	84.43%	\$22,973,539	84.53%
TOTAL	289	100.00%	\$27,176,805	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian Pacific American Females	0	0.00%	\$0	0.00%
Asian Pacific American Males	14	4.84%	\$1,145,301	4.21%
Asian Indian American Females	0	0.00%	\$0	0.00%
Asian Indian American Males	1	0.35%	\$83,270	0.31%
Hispanic American Females	1	0.35%	\$73,279	0.27%
Hispanic American Males	7	2.42%	\$522,397	1.92%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	22	7.61%	\$2,379,019	8.75%
Non-minority Males	244	84.43%	\$22,973,539	84.53%
TOTAL	289	100.00%	\$27,176,805	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	23	7.96%	\$1,824,247	6.71%
Woman Business Enterprises	23	7.96%	\$2,452,298	9.02%
Minority and Woman Business Enterprises	45	15.57%	\$4,203,267	15.47%



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V. *Summary*

The prime contract utilization analysis examined \$566,285,263 on the prime contracts awarded by the City during the July 1, 2011, to June 30, 2016, study period. The \$566,285,263 expended included \$271,864,842 for construction, \$121,529,429 for professional services, \$61,379,771 for services, and \$111,511,222 for goods and commodities. A total of 7,780 prime contracts were analyzed, which included 530 for construction, 1,509 for professional services, 1,454 for services, and 4,287 for goods and commodities.

The prime contract utilization analysis was performed in the four industries at three size thresholds: 1) all prime contracts regardless of award amount, 2) all informal prime contracts valued under \$50,000 as defined by the City of Oakland's Ordinance Title II Chapter 2.04, and 3) formal prime contracts with thresholds set for each industry to eliminate outliers.

Given the application of the thresholds, the formal prime contracts analyzed were valued \$50,000 to \$780,000 for construction, \$50,000 to \$310,000 for professional services, \$50,000 to \$220,000 for services, and \$50,000 to \$190,000 for goods and commodities. *Chapter 6: Prime Contract Disparity Analysis* presents the statistical analysis of disparity in each of the four industries.



CHAPTER 4: Market Area Analysis

I. Market Area Definition

A. Legal Criteria for Geographic Market Area

The Supreme Court's decision in *City of Richmond v. J.A. Croson Co.*²⁷³ (*Croson*) held that a local government's program established to set goals for the participation of Minority-owned Business Enterprises (MBEs) must be supported by evidence of past discrimination in the award of their contracts. Prior to the *Croson* decision, local governments could implement race-conscious programs without documenting the underutilization of MBEs on their awarded contracts. Before the *Croson* decision, local governments could simply rely on widely-recognized societal patterns of discrimination.²⁷⁴

Croson established that a local government could not rely on society-wide discrimination as the basis for a race-based contracting program. Instead, a local government was required to identify discrimination within its own contracting jurisdiction.²⁷⁵ In *Croson*, the United States Supreme Court found the City of Richmond, Virginia's MBE construction contracting 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 a statistical comparison 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,"²⁷⁶ and "city's construction industry."²⁷⁷ These terms were used to define the proper scope for examining the existence of discrimination within the City. This interchangeable use of terms lends support to a definition of market area that coincides with the boundaries of the contracting jurisdiction.

²⁷³ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

²⁷⁴ *United Steelworkers v. Weber*, 433 U.S. 193, 198, n. 1 (1979).

²⁷⁵ *Croson*, 488 U.S. at 497.

²⁷⁶ *Id.* at 500.

²⁷⁷ *Id.* at 470.



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An analysis of the cases following *Croson* provides additional guidance for defining the market area. The body of cases examining the *reasonable* market area definition is *fact-based*—rather than dictated by a specific formula.²⁷⁸ In *Cone Corporation v. Hillsborough County*,²⁷⁹ the United States Eleventh Circuit Court of Appeals considered a disparity study in support of Hillsborough County, Florida’s MBE Program. The MBE program used minority contractors located in Hillsborough County as the measure of available firms. The program was found to be constitutional under the compelling governmental interest element of the strict scrutiny standard.

Hillsborough County’s program was based on statistics indicating that specific discrimination existed in the construction contracts awarded by Hillsborough County, not in the construction industry in general. Hillsborough County extracted data from within its own jurisdictional boundaries and assessed the percentage of minority businesses available in Hillsborough County. The Court stated that the disparity study was properly conducted within the “local construction industry.”²⁸⁰

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,²⁸¹ the United States Ninth Circuit Court of Appeals found the City and County of San Francisco, California’s MBE Program to have the factual predicate necessary to survive strict scrutiny. The San Francisco MBE Program was supported by a disparity study that assessed the number of available MBE contractors within the City and County of San Francisco. The Court found it appropriate to use the City and County as the relevant market area within which to conduct a disparity study.²⁸²

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.”²⁸³ In support of its MBE program, King County, Washington offered studies compiled by other jurisdictions, including entities completely within the County, others coterminous with the boundaries of the County, as well as a jurisdiction significantly distant from King County. The plaintiffs contended that *Croson* required King County, Washington to compile its own data and cited *Croson* as prohibiting data sharing.

The Court found that data sharing could potentially lead to the improper use of societal discrimination data as the factual basis for a local MBE program. However, the Court also found that the data from entities within King County and from coterminous jurisdictions were relevant to discrimination in the County. Furthermore, the court found that the data posed no risk of unfairly burdening innocent third parties.

²⁷⁸ See e.g., *Concrete Works of Colorado v. City of Denver, Colorado*, 36 F.3d 1513, 1528 (10th Cir. 1994) (“*Concrete Works*”).

²⁷⁹ *Cone Corporation v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990).

²⁸⁰ *Cone*, 908 F.2d at 915.

²⁸¹ *Associated General Contractors of California v. Coalition for Economic Equity and City and County of San Francisco*, 950 F.2d 1401 (9th Cir. 1991).

²⁸² *AGCCII*, 950 F.2d at 1415.

²⁸³ *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991).



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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.”²⁸⁴ However, the Court did note that the “world of contracting does not conform itself neatly to jurisdictional boundaries.”²⁸⁵

There are other situations when the 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)*,²⁸⁶ the United States Tenth Circuit Court of Appeals directly addressed the issue of whether extra-jurisdictional evidence of discrimination can be used to determine the “local market area” for a disparity study. In *Concrete Works*, the defendant relied on evidence of discrimination in the six-county Denver, Colorado Metropolitan Statistical Area (Denver MSA) to support its MBE program. Plaintiffs argued that the federal constitution prohibited consideration of evidence beyond jurisdictional boundaries. The Court of Appeals disagreed.

Critical to the Court’s acceptance of the Denver MSA as the relevant local market was the finding that more than 80% of construction and design contracts awarded by the City and County of Denver were awarded to contractors within the Denver MSA. Another consideration was that the City and County of Denver’s analysis was based on United States Census data, which were 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*,²⁸⁷ the Court noted “that any plan that extends race-conscious remedies beyond territorial boundaries must be based on very specific findings that actions the city has taken in the past have visited racial discrimination on such individuals.”²⁸⁸

Similarly, New York State conducted a disparity study in which the geographic market consisted of New York State and eight counties in northern New Jersey. The geographic market was defined as the area encompassing the location of businesses that received more than 90% of the dollar value of all contracts awarded by the agency.²⁸⁹

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.²⁹⁰

²⁸⁴ *Coral*, 941 F.2d at 917.

²⁸⁵ *Id.*

²⁸⁶ *Concrete Works*, 36 F.3d at 1528.

²⁸⁷ *AGCC II*, 950 F.2d at 1401.

²⁸⁸ *Concrete Works*, 36 F.3d at 1528.

²⁸⁹ *Opportunity Denied! New York State’s Study*, 26 Urban Lawyer No. 3, Summer 1994.

²⁹⁰ *Croson*, 488 U.S. at 501.



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II. Market Area Analysis

Although *Croson* and its progeny do not provide a bright line rule for the delineation of the local market area, the case law, taken collectively, supports a definition of the market area as the geographical boundaries of the government entity. Thus, the Study's market area is determined to be the City of Oakland (City).

A. Summary of the Distribution of All Prime Contracts Awarded

The City awarded 7,780 prime contracts valued at \$566,285,263 during the July 1, 2011, to June 30, 2016, study period. The distribution of all prime contracts awarded and dollars received by all firms domiciled inside and outside of the market area is shown in Table 4.1.

Table 4.1: Distribution of All Contracts Awarded

City	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
Oakland	3,087	39.68%	\$380,335,430	67.16%
San Leandro	333	4.28%	\$11,824,557	2.09%
San Francisco	209	2.69%	\$10,012,985	1.77%
Novato	6	0.08%	\$6,806,341	1.20%
Santa Clara	43	0.55%	\$6,679,110	1.18%
Walnut Creek	72	0.93%	\$6,599,920	1.17%
San Ramon	47	0.60%	\$6,406,762	1.13%
Pleasanton	115	1.48%	\$5,772,494	1.02%
Hayward	178	2.29%	\$5,484,113	0.97%
Fremont	170	2.19%	\$5,462,242	0.96%
Dublin	27	0.35%	\$5,340,725	0.94%
Berkeley	186	2.39%	\$5,118,671	0.90%
Newark	63	0.81%	\$4,314,287	0.76%
San Jose	121	1.56%	\$3,479,687	0.61%
Livermore	124	1.59%	\$3,390,037	0.60%
Dixon	12	0.15%	\$2,602,262	0.46%
Emeryville	78	1.00%	\$2,552,929	0.45%
Fairfield	24	0.31%	\$2,351,142	0.42%
Burlingame	28	0.36%	\$2,175,194	0.38%
Benicia	31	0.40%	\$2,094,136	0.37%
Concord	100	1.29%	\$1,972,946	0.35%
Morgan Hill	17	0.22%	\$1,474,051	0.26%
Milpitas	13	0.17%	\$1,207,836	0.21%
San Mateo	30	0.39%	\$979,742	0.17%
Alameda	47	0.60%	\$883,563	0.16%



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City	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
Vallejo	30	0.39%	\$844,205	0.15%
Sunnyvale	22	0.28%	\$771,076	0.14%
Los Altos	11	0.14%	\$694,652	0.12%
Antioch	29	0.37%	\$568,162	0.10%
Union City	55	0.71%	\$548,107	0.10%
Richmond	57	0.73%	\$498,845	0.09%
El Sobrante	4	0.05%	\$322,367	0.06%
Albany	12	0.15%	\$321,760	0.06%
Los Gatos	7	0.09%	\$225,604	0.04%
South San Francisco	10	0.13%	\$199,215	0.04%
Petaluma	26	0.33%	\$166,973	0.03%
Martinez	16	0.21%	\$161,282	0.03%
Castro Valley	7	0.09%	\$156,958	0.03%
Foster City	9	0.12%	\$133,182	0.02%
Napa	6	0.08%	\$127,823	0.02%
Danville	6	0.08%	\$111,059	0.02%
Santa Rosa	6	0.08%	\$108,684	0.02%
Lafayette	5	0.06%	\$102,802	0.02%
Discovery Bay	5	0.06%	\$98,921	0.02%
San Rafael	13	0.17%	\$96,572	0.02%
Stanford	1	0.01%	\$94,609	0.02%
Campbell	7	0.09%	\$91,472	0.02%
Cotati	3	0.04%	\$81,360	0.01%
Redwood City	10	0.13%	\$81,127	0.01%
Monte Sereno	2	0.03%	\$77,273	0.01%
Orinda	10	0.13%	\$74,760	0.01%
Brisbane	5	0.06%	\$66,186	0.01%
Palo Alto	4	0.05%	\$54,953	0.01%
Alamo	3	0.04%	\$52,892	0.01%
San Bruno	1	0.01%	\$48,006	0.01%
San Carlos	4	0.05%	\$44,631	0.01%
Mountain View	7	0.09%	\$41,163	0.01%
San Lorenzo	7	0.09%	\$36,004	0.01%
Gilroy	3	0.04%	\$30,028	0.01%
Pacheco	9	0.12%	\$23,960	0.00%
Vacaville	1	0.01%	\$21,195	0.00%
Saratoga	8	0.10%	\$19,174	0.00%
Belmont	3	0.04%	\$14,995	0.00%



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City	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
Menlo Park	1	0.01%	\$9,265	0.00%
Pacifica	2	0.03%	\$9,152	0.00%
Sonoma	4	0.05%	\$8,767	0.00%
Pleasant Hill	4	0.05%	\$8,760	0.00%
Rohnert Park	2	0.03%	\$4,938	0.00%
Sunol	2	0.03%	\$4,420	0.00%
Mill Valley	1	0.01%	\$3,600	0.00%
Daly City	1	0.01%	\$1,300	0.00%
Pittsburg	1	0.01%	\$1,063	0.00%
Kensington	1	0.01%	\$786	0.00%
San Anselmo	1	0.01%	\$600	0.00%
Oakley	2	0.03%	\$312	0.00%
Out-of-Bay Area	857	11.02%	\$30,338,405	5.36%
Out-of-State	1,277	16.41%	\$42,942,013	7.58%
Out-of-Country	39	0.50%	\$418,690	0.07%
Total	7,780	100.00%	\$566,285,263	100.00%

B. Distribution of Construction Prime Contracts

The City awarded 530 construction prime contracts valued at \$271,864,842 during the study period. Businesses located in the market area received 77.55% of the construction prime contracts and 89.81% of the dollars. The distribution of the construction prime contracts awarded and dollars received by all firms domiciled inside and outside of the market area is shown in Table 4.2.

Table 4.2: Distribution of Construction Prime Contracts

City	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
Oakland	411	77.55%	\$244,169,686	89.81%
Novato	2	0.38%	\$6,784,927	2.50%
Santa Clara	1	0.19%	\$4,518,634	1.66%
San Francisco	14	2.64%	\$4,211,698	1.55%
San Leandro	31	5.85%	\$2,447,497	0.90%
Benicia	9	1.70%	\$1,562,535	0.57%
Milpitas	10	1.89%	\$978,215	0.36%
Hayward	13	2.45%	\$895,227	0.33%
Pleasanton	1	0.19%	\$832,689	0.31%
Alameda	2	0.38%	\$282,287	0.10%
Burlingame	3	0.57%	\$271,838	0.10%
San Jose	3	0.57%	\$233,345	0.09%



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City	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
Napa	1	0.19%	\$99,000	0.04%
Cotati	1	0.19%	\$68,804	0.03%
San Mateo	7	1.32%	\$58,151	0.02%
Fremont	2	0.38%	\$16,142	0.01%
Castro Valley	1	0.19%	\$13,800	0.01%
Out-of-Bay Area	7	1.32%	\$2,515,045	0.93%
Out-of-State	11	2.08%	\$1,905,321	0.70%
Total	530	100.00%	\$271,864,842	100.00%

C. *Distribution of Professional Services Prime Contracts*

The City awarded 1,509 professional services prime contracts valued at \$121,529,429 during the study period. Businesses located in the market area received 44.67% of the professional services prime contracts and 42.43% of the dollars. The distribution of the professional services prime contracts awarded and dollars received by all firms domiciled inside and outside of the market area is shown in Table 4.3.

Table 4.3: Distribution of Professional Services Prime Contracts

City	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
Oakland	674	44.67%	\$51,568,911	42.43%
Walnut Creek	60	3.98%	\$6,572,635	5.41%
Dublin	3	0.20%	\$5,288,702	4.35%
San Francisco	96	6.36%	\$4,384,911	3.61%
San Ramon	12	0.80%	\$4,169,178	3.43%
Newark	9	0.60%	\$2,943,248	2.42%
Fremont	18	1.19%	\$2,915,936	2.40%
Pleasanton	35	2.32%	\$2,831,386	2.33%
Berkeley	62	4.11%	\$2,557,182	2.10%
Santa Clara	13	0.86%	\$1,813,910	1.49%
Burlingame	3	0.20%	\$1,702,078	1.40%
San Jose	20	1.33%	\$1,567,935	1.29%
Emeryville	25	1.66%	\$1,035,257	0.85%
Sunnyvale	3	0.20%	\$571,000	0.47%
San Mateo	7	0.46%	\$536,043	0.44%
Los Altos	10	0.66%	\$515,800	0.42%
Albany	6	0.40%	\$313,247	0.26%
Los Gatos	7	0.46%	\$225,604	0.19%
Benicia	14	0.93%	\$189,150	0.16%



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City	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
South San Francisco	1	0.07%	\$142,842	0.12%
Martinez	9	0.60%	\$135,250	0.11%
Castro Valley	3	0.20%	\$129,998	0.11%
Lafayette	3	0.20%	\$101,693	0.08%
Stanford	1	0.07%	\$94,609	0.08%
Concord	11	0.73%	\$91,354	0.08%
San Rafael	5	0.33%	\$65,800	0.05%
Redwood City	2	0.13%	\$49,500	0.04%
Petaluma	4	0.27%	\$48,363	0.04%
Discovery Bay	1	0.07%	\$47,648	0.04%
Palo Alto	2	0.13%	\$43,318	0.04%
Livermore	5	0.33%	\$26,015	0.02%
Napa	1	0.07%	\$18,952	0.02%
Hayward	1	0.07%	\$10,717	0.01%
Santa Rosa	1	0.07%	\$10,500	0.01%
Alameda	5	0.33%	\$10,172	0.01%
Vallejo	3	0.20%	\$9,934	0.01%
Campbell	1	0.07%	\$8,750	0.01%
Pleasant Hill	3	0.20%	\$6,793	0.01%
Richmond	2	0.13%	\$4,660	0.00%
Mill Valley	1	0.07%	\$3,600	0.00%
San Leandro	3	0.20%	\$3,182	0.00%
Novato	1	0.07%	\$2,000	0.00%
Daly City	1	0.07%	\$1,300	0.00%
Kensington	1	0.07%	\$786	0.00%
San Anselmo	1	0.07%	\$600	0.00%
Union City	1	0.07%	\$224	0.00%
Out-of-Bay Area	175	11.60%	\$9,845,899	8.10%
Out-of-State	166	11.00%	\$18,579,659	15.29%
Out-of-Country	18	1.19%	\$333,198	0.27%
Total	1,509	100.00%	\$121,529,429	100.00%



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D. Distribution of Services Prime Contracts

The City awarded 1,454 services prime contracts valued at \$61,379,771 during the study period. Businesses located in the market area received 39.96% of the services prime contracts and 60.56% of the dollars. The distribution of the services prime contracts awarded and dollars received by all firms domiciled inside and outside of the market area is shown in Table 4.4.

Table 4.4: Distribution of Services Prime Contracts

City	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
Oakland	581	39.96%	\$37,172,614	60.56%
Dixon	8	0.55%	\$2,587,553	4.22%
San Leandro	86	5.91%	\$2,108,981	3.44%
Berkeley	35	2.41%	\$1,672,473	2.72%
Livermore	48	3.30%	\$1,488,537	2.43%
Morgan Hill	7	0.48%	\$1,149,114	1.87%
Emeryville	35	2.41%	\$1,080,110	1.76%
Fremont	28	1.93%	\$889,229	1.45%
San Francisco	32	2.20%	\$856,265	1.40%
Hayward	55	3.78%	\$607,654	0.99%
Antioch	20	1.38%	\$526,524	0.86%
Alameda	14	0.96%	\$508,587	0.83%
Concord	32	2.20%	\$380,141	0.62%
Benicia	5	0.34%	\$334,727	0.55%
El Sobrante	4	0.28%	\$322,367	0.53%
Pleasanton	29	1.99%	\$255,470	0.42%
Milpitas	2	0.14%	\$228,591	0.37%
San Mateo	8	0.55%	\$210,520	0.34%
Los Altos	1	0.07%	\$178,853	0.29%
Richmond	18	1.24%	\$175,099	0.29%
Vallejo	17	1.17%	\$154,010	0.25%
San Jose	21	1.44%	\$139,678	0.23%
Sunnyvale	3	0.21%	\$123,977	0.20%
Danville	6	0.41%	\$111,059	0.18%
Union City	17	1.17%	\$92,675	0.15%
Santa Clara	12	0.83%	\$89,772	0.15%
Orinda	9	0.62%	\$74,700	0.12%
Campbell	2	0.14%	\$64,798	0.11%
Brisbane	4	0.28%	\$62,729	0.10%
Alamo	3	0.21%	\$52,892	0.09%



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City	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
Discovery Bay	4	0.28%	\$51,272	0.08%
Newark	3	0.21%	\$46,403	0.08%
San Carlos	4	0.28%	\$44,631	0.07%
South San Francisco	6	0.41%	\$43,674	0.07%
San Ramon	3	0.21%	\$23,345	0.04%
Martinez	6	0.41%	\$22,544	0.04%
Foster City	2	0.14%	\$20,828	0.03%
Burlingame	3	0.21%	\$18,202	0.03%
Petaluma	1	0.07%	\$18,033	0.03%
Santa Rosa	3	0.21%	\$17,856	0.03%
San Rafael	3	0.21%	\$17,326	0.03%
Belmont	2	0.14%	\$14,597	0.02%
Cotati	2	0.14%	\$12,556	0.02%
Dublin	3	0.21%	\$11,808	0.02%
San Lorenzo	1	0.07%	\$10,254	0.02%
Novato	2	0.14%	\$10,000	0.02%
Mountain View	1	0.07%	\$7,140	0.01%
Castro Valley	1	0.07%	\$6,106	0.01%
Pacifica	1	0.07%	\$4,928	0.01%
Redwood City	4	0.28%	\$4,669	0.01%
Sunol	1	0.07%	\$3,840	0.01%
Pacheco	1	0.07%	\$3,500	0.01%
Walnut Creek	2	0.14%	\$2,724	0.00%
Pleasant Hill	1	0.07%	\$1,967	0.00%
Albany	2	0.14%	\$1,229	0.00%
Fairfield	1	0.07%	\$900	0.00%
Rohnert Park	1	0.07%	\$727	0.00%
Gilroy	1	0.07%	\$480	0.00%
Oakley	2	0.14%	\$312	0.00%
Out-of-Bay Area	138	9.49%	\$4,696,823	7.65%
Out-of-State	106	7.29%	\$2,555,299	4.16%
Out-of-Country	1	0.07%	\$6,100	0.01%
Total	1,454	100.00%	\$61,379,771	100.00%



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E. Distribution of Goods and Commodities Prime Contracts

The City awarded 4,287 goods and commodities prime contracts valued at \$111,511,222 during the study period. Businesses located in the market area received 33.15% of the goods and commodities prime contracts and 42.53% of the dollars. The distribution of the goods and commodities prime contracts awarded and dollars received by all firms domiciled inside and outside of the market area is shown in Table 4.5.

Table 4.5: Distribution of Goods and Commodities Prime Contracts

City	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
Oakland	1,421	33.15%	\$47,424,219	42.53%
San Leandro	213	4.97%	\$7,264,897	6.51%
Hayward	109	2.54%	\$3,970,515	3.56%
Fairfield	23	0.54%	\$2,350,242	2.11%
San Ramon	32	0.75%	\$2,214,239	1.99%
Livermore	71	1.66%	\$1,875,485	1.68%
Pleasanton	50	1.17%	\$1,852,949	1.66%
Fremont	122	2.85%	\$1,640,934	1.47%
San Jose	77	1.80%	\$1,538,728	1.38%
Concord	57	1.33%	\$1,501,451	1.35%
Newark	51	1.19%	\$1,324,636	1.19%
Berkeley	89	2.08%	\$889,017	0.80%
Vallejo	10	0.23%	\$680,260	0.61%
San Francisco	67	1.56%	\$560,111	0.50%
Union City	37	0.86%	\$455,208	0.41%
Emeryville	18	0.42%	\$437,561	0.39%
Morgan Hill	10	0.23%	\$324,937	0.29%
Richmond	37	0.86%	\$319,086	0.29%
Santa Clara	17	0.40%	\$256,793	0.23%
Burlingame	19	0.44%	\$183,076	0.16%
San Mateo	8	0.19%	\$175,028	0.16%
Foster City	7	0.16%	\$112,354	0.10%
Petaluma	21	0.49%	\$100,578	0.09%
Alameda	26	0.61%	\$82,516	0.07%
Santa Rosa	2	0.05%	\$80,328	0.07%
Monte Sereno	2	0.05%	\$77,273	0.07%
Sunnyvale	16	0.37%	\$76,098	0.07%
San Bruno	1	0.02%	\$48,006	0.04%
Antioch	9	0.21%	\$41,638	0.04%
Dublin	21	0.49%	\$40,215	0.04%



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City	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
Mountain View	6	0.14%	\$34,023	0.03%
Gilroy	2	0.05%	\$29,548	0.03%
Redwood City	4	0.09%	\$26,958	0.02%
San Lorenzo	6	0.14%	\$25,750	0.02%
Walnut Creek	10	0.23%	\$24,560	0.02%
Vacaville	1	0.02%	\$21,195	0.02%
Pacheco	8	0.19%	\$20,460	0.02%
Saratoga	8	0.19%	\$19,174	0.02%
Campbell	4	0.09%	\$17,924	0.02%
Dixon	4	0.09%	\$14,709	0.01%
San Rafael	5	0.12%	\$13,445	0.01%
South San Francisco	3	0.07%	\$12,699	0.01%
Palo Alto	2	0.05%	\$11,635	0.01%
Napa	4	0.09%	\$9,871	0.01%
Novato	1	0.02%	\$9,414	0.01%
Menlo Park	1	0.02%	\$9,265	0.01%
Sonoma	4	0.09%	\$8,767	0.01%
Benicia	3	0.07%	\$7,723	0.01%
Albany	4	0.09%	\$7,284	0.01%
Castro Valley	2	0.05%	\$7,054	0.01%
Pacifica	1	0.02%	\$4,225	0.00%
Rohnert Park	1	0.02%	\$4,210	0.00%
Martinez	1	0.02%	\$3,488	0.00%
Brisbane	1	0.02%	\$3,457	0.00%
Lafayette	2	0.05%	\$1,110	0.00%
Pittsburg	1	0.02%	\$1,063	0.00%
Milpitas	1	0.02%	\$1,030	0.00%
Sunol	1	0.02%	\$580	0.00%
Belmont	1	0.02%	\$397	0.00%
Orinda	1	0.02%	\$60	0.00%
Out-of-Bay Area	537	12.53%	\$13,280,638	11.91%
Out-of-State	994	23.19%	\$19,901,734	17.85%
Out-of-Country	20	0.47%	\$79,392	0.07%
Total	4,287	100.00%	\$111,511,222	100.00%



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III. Summary

During the study period, the City awarded 7,780 construction, professional services, services, and goods and commodities, prime contracts valued at \$566,285,263. The City awarded 39.68% of prime contracts and 67.16% of dollars to businesses domiciled within the market area.

Table 4.6 presents an overview of the number of construction, professional services, services, and goods and commodities prime contracts awarded by the City and the dollars spent in the market area.

Construction Prime Contracts: 411, or 77.55%, of construction prime contracts were awarded to market area businesses. Construction prime contracts in the market area accounted for \$244,169,686, or 89.81%, of the total construction prime contract dollars.

Professional Services Prime Contracts: 674, or 44.67%, of professional services prime contracts were awarded to market area businesses. Professional services prime contracts in the market area accounted for \$51,568,911, or 42.43%, of the total professional services prime contract dollars.

Services Prime Contracts: 581, or 39.96%, of services prime contracts were awarded to market area businesses. Services prime contracts in the market area accounted for \$37,172,614, or 60.56%, of the total services prime contract dollars.

Goods and Commodities Prime Contracts: 1,421, or 33.15%, of goods and commodities prime contracts were awarded to market area businesses. Goods and commodities prime contracts in the market area accounted for \$47,424,219, or 42.53%, of the total goods and commodities prime contract dollars.



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Table 4.6: City of Oakland Contract Distribution

Geographic Area	Number of Contracts	Percent of Contracts	Number of Dollars	Percent of Dollars
Combined Industries				
City of Oakland	3,087	39.68%	\$380,335,430	67.16%
Outside Market Area	4,693	60.32%	\$185,949,834	32.84%
TOTAL	7,780	100.00%	\$566,285,263	100.00%
Construction				
City of Oakland	411	77.55%	\$244,169,686	89.81%
Outside Market Area	119	22.45%	\$27,695,156	10.19%
TOTAL	530	100.00%	\$271,864,842	100.00%
Professional Services				
City of Oakland	674	44.67%	\$51,568,911	42.43%
Outside Market Area	835	55.33%	\$69,960,518	57.57%
TOTAL	1,509	100.00%	\$121,529,429	100.00%
Services				
City of Oakland	581	39.96%	\$37,172,614	60.56%
Outside Market Area	873	60.04%	\$24,207,157	39.44%
TOTAL	1,454	100.00%	\$61,379,771	100.00%
Goods and Commodities				
City of Oakland	1,421	33.15%	\$47,424,219	42.53%
Outside Market Area	2,866	66.85%	\$64,087,003	57.47%
TOTAL	4,287	100.00%	\$111,511,222	100.00%



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CHAPTER 5: Prime Contractor and Subcontractor Availability Analysis

I. Introduction

According to *City of Richmond v. J.A. Croson Co. (Croson)*, availability is defined as the number of businesses in the jurisdiction’s market area that are ready, willing, and able to provide the goods or services procured by the jurisdiction.²⁹¹ To determine the availability of minority and woman-owned businesses (M/WBEs) and non-minority male-owned businesses (Non-MWBEs) within the jurisdiction’s market area, businesses domiciled within the market area need to be enumerated. As defined in *Chapter 4: Market Area Analysis*, the market area was determined by the geographic boundaries of the City of Oakland (City).

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

II. Prime Contractor Availability Data Sources

A. Identification of Willing Businesses Within the Market Area

To identify willing and able businesses in the City that could provide the construction, professional services, services, and goods and commodities contracts that the City of Oakland procures, four main sources of information were used: (1) data provided by the City, which included bidder and vendor lists; (2) government certification directories; (3) business association membership lists that included businesses that were determined to be willing, ready, and able; and (4) the outreach campaign for three business community meetings. Any business listed in more than one source was counted only once in the relevant industry. If a business was willing and able to provide goods or services in more than one industry, it was listed separately in each industry.

The four sources were ranked according to their reliability in determining a business’ willingness to contract with the City, with the highest ranking assigned to the utilized businesses, bidders, and vendors. Government certification lists ranked second, business association membership lists ranked third, and business outreach meeting attendees ranked fourth. Therefore, the first document used to build the availability database was the City’s utilized businesses. Bidder and vendor lists were then appended to the availability database. Businesses identified from federal and local



²⁹¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

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government certification agencies were thereafter appended. The local certification lists included small, minority-owned, woman-owned, and local businesses. Businesses identified from association membership lists that also affirmed their willingness through a survey of business association members were appended next. The business associations included trade organizations, professional organizations, and chambers of commerce. The list of businesses that attended a business community meeting was appended last.

B. Prime Contractor Sources

Extensive targeted outreach to business associations in the market area was performed to identify and secure business membership directories. Table 5.1 lists the City sources, government certification directories, and business association listings.

Table 5.1: Prime Contractor Availability Data Sources

Source	Type of Information
City Sources	
Blanket Orders with Utilized Prime Contractors	M/WBE and Non-minority Male
Contracts with Utilized Prime Contractors	M/WBE and Non-minority Male
Payment for Invoices with Purchase Order from July 1, 2011 to June 30, 2016	M/WBE and Non-minority Male
Payment for Invoices from July 1, 2016 to December 16, 2016	M/WBE and Non-minority Male
Payment for Invoices with Purchase Order from December 17, 2016 to January 29, 2019	M/WBE and Non-minority Male
Purchase Order 11i_02012019 final	M/WBE and Non-minority Male
Government Certification Directories	
Alameda County Small, Local and Emerging Business (SLEB) Program	M/WBE and Non-minority Male
California Department of Transportation Unified Certification Program (CUCP)	M/WBE and Non-minority Male
California Department of Transportation, Office of Business & Economic Opportunity	M/WBE and Non-minority Male
California Public Utility Commission Directory	M/WBE and Non-minority Male
Caltrans Office of Business & Economic Opportunity DBE Program	M/WBE and Non-minority Male
City of Oakland L/SLBE Certification Program	M/WBE and Non-minority Male
U.S. Small Business Administration, Alameda County, 8(a) Certified or 8(a) Joint Venture	M/WBE
U.S. Small Business Administration, Alameda County, Service-Disabled Veteran-Owned Businesses	M/WBE and Non-minority Male
U.S. Small Business Administration, Alameda County, Small Disadvantaged Business	M/WBE and Non-minority Male
U.S. Small Business Administration, Alameda County, Women-owned Businesses	M/WBE
U.S. Small Business Administration, Alameda County, HUBZone Program	M/WBE and Non-minority Male



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Source	Type of Information
Association Membership Lists	
Alameda Chamber of Commerce	M/WBE and Non-minority Male
Albany Chamber of Commerce	M/WBE and Non-minority Male
American Institute of Architects East Bay	M/WBE and Non-minority Male
Association of Environmental Contractors	M/WBE and Non-minority Male
Bay Area Business Women	M/WBE
Berkeley Chamber of Commerce	M/WBE and Non-minority Male
Builders Exchange of Alameda County	M/WBE and Non-minority Male
California Association of General Contractors	M/WBE and Non-minority Male
California Landscape Contractors Association, East Bay Chapter	M/WBE and Non-minority Male
California Landscape Contractors Association, San Francisco Bay Area Chapter	M/WBE and Non-minority Male
California Precast Concrete Association	M/WBE and Non-minority Male
Castro Valley Chamber of Commerce	M/WBE and Non-minority Male
Concrete Masonry Association of California and Nevada	M/WBE and Non-minority Male
Danville Area Chamber of Commerce	M/WBE and Non-minority Male
Dimond Business and Professional Association	M/WBE and Non-minority Male
Dublin Chamber of Commerce	M/WBE and Non-minority Male
Finishing Contractors Association	M/WBE and Non-minority Male
Floor Covering Institute	M/WBE and Non-minority Male
Fremont Chamber of Commerce	M/WBE and Non-minority Male
Greater Concord Chamber of Commerce	M/WBE and Non-minority Male
Heartland Merchants Association	M/WBE and Non-minority Male
Hispanic Chamber of Commerce Alameda County	M/WBE
Livermore Chamber of Commerce	M/WBE and Non-minority Male
Martinez Chamber of Commerce	M/WBE and Non-minority Male
Masonry Institute of America	M/WBE and Non-minority Male
Moraga Chamber of Commerce	M/WBE and Non-minority Male
Northern California Engineering Contractors Association	M/WBE and Non-minority Male
Northern California Mechanical Contractor Association	M/WBE and Non-minority Male
Oakland Chinatown Chamber of Commerce	M/WBE and Non-minority Male
Pleasant Hill Chamber of Commerce	M/WBE and Non-minority Male
Pleasanton Chamber of Commerce	M/WBE and Non-minority Male
San Leandro Chamber of Commerce	M/WBE and Non-minority Male
San Ramon Chamber of Commerce	M/WBE and Non-minority Male



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C. Determination of Willingness

From the four sources listed in the previous section, 2,590 unique market area businesses that can provide goods or services in one or more of the four industries were identified. An account of the willing businesses derived by source is listed below.

1. City Sources

A total of 505 unique market area businesses were added to the availability database from the City's records.

2. Government Certification Directories

A total of 2,058 unique market area businesses were added to the availability database from government certification lists.

3. Business Association Membership Lists

A total of 24 unique market area businesses were added to the availability database from business association membership lists. There were 948 businesses identified from business association membership lists. These businesses were surveyed for willingness and capacity: 344 refused to participate, 301 did not respond, 92 telephone numbers were disconnected, and 211 businesses completed the survey. Of the 211 businesses that completed the survey, 24 were deemed willing and added to the availability database.

4. Business Outreach Meetings

A total of three unique market area businesses were added to the availability database from the City's business outreach meetings.

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

Tables 5.2 through 5.5 present the distribution of willing prime contractors by source. A distribution of the available businesses by source was also calculated for each industry.

As noted in Table 5.2, 98.84% of the construction businesses identified were derived from the City's records, other government agencies' records, and government certification lists. Companies identified through business outreach meeting attendees and the business association membership lists represent 1.16% of the willing businesses.



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Table 5.2: Distribution of Prime Contractor Availability Data Sources, Construction

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	19.86%	12.68%	15.12%
Certification Lists	75.34%	85.56%	82.09%
Vendors Lists	3.42%	0.70%	1.63%
Subtotal	98.63%	98.94%	98.84%
Willingness Survey	1.37%	1.06%	1.16%
Subtotal	1.37%	1.06%	1.16%
Grand Total*	100.00%	100.00%	100.00%

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

Table 5.3 shows the data sources for the available professional services prime contractors. As noted, 98.54% of the professional services businesses identified were derived from the City’s records, government agencies’ records, and government certification lists. Companies identified through business outreach meetings and business association membership lists represent 1.46% of the willing businesses.

Table 5.3: Distribution of Prime Contractor Availability Data Sources, Professional Services

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	17.82%	9.71%	11.99%
Certification Lists	78.71%	88.54%	85.77%
Vendors Lists	1.24%	0.58%	0.77%
Subtotal	97.77%	98.83%	98.54%
Community Meeting Attendees	0.25%	0.19%	0.21%
Willingness Survey	1.98%	0.97%	1.26%
Subtotal	2.23%	1.17%	1.46%
Grand Total*	100.00%	100.00%	100.00%

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

Table 5.4 shows the data sources for the available services prime contractors. As noted, 99.65% of the services businesses identified were derived the City’s records, other government agencies’ records, and government certification lists. Companies identified through business outreach meetings and business association membership lists represent 0.35% of the willing businesses.



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Table 5.4: Distribution of Prime Contractor Availability Data Sources, Services

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	40.94%	21.82%	26.86%
Certification Lists	56.38%	76.26%	71.02%
Vendors Lists	2.68%	1.44%	1.77%
Subtotal	100.00%	99.52%	99.65%
Willingness Survey	0.00%	0.48%	0.35%
Subtotal	0.00%	0.48%	0.35%
Grand Total*	100.00%	100.00%	100.00%

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

Table 5.5 shows the data sources for the available goods and commodities prime contractors. As noted, 100.00% of the goods and commodities businesses identified were derived from the City’s records, other government agencies’ records, and government certification lists.

Table 5.5: Distribution of Prime Contractor Availability Data Sources, Goods and Commodities

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
Prime Contractor Utilization	46.72%	44.57%	45.17%
Certification Lists	51.82%	54.00%	53.39%
Vendors Lists	1.46%	1.43%	1.44%
Subtotal	100.00%	100.00%	100.00%
Grand Total*	100.00%	100.00%	100.00%

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

III. Capacity

The second component of the availability requirement set forth in *Croson* is the capacity or ability of a business to perform the contracts awarded by the jurisdiction.²⁹² Capacity requirements are not delineated in *Croson*, but capacity has been considered in subsequent cases. Specifically, the Third Circuit Court of Appeals held certification to be a valid method of defining availability.²⁹³ In *Contractors Association of Eastern Pennsylvania v. City of Philadelphia (Philadelphia)*, the court held that utilizing a list of certified contractors was a rational approach to identify qualified, willing firms.²⁹⁴ The court stated “[a]n analysis is not devoid of probative value simply because it



²⁹² *Croson*, 488 U.S. 469.

²⁹³ *Contractors Ass’n of E. Pa.*, 91 F.3d at 603.

²⁹⁴ *Id.*

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may theoretically be possible to adopt a more refined approach [of qualification].”²⁹⁵ As noted in *Philadelphia*, “[t]he issue of qualifications can be approached at different levels of specificity using census data[.]”²⁹⁶ Researchers have attempted to define capacity by profiling the age of the business, education of the business owner, business revenue, number of employees, and bonding limits. However, these conventional indices are themselves impacted by race- and gender-based discrimination.²⁹⁷

Given the limitations of the census data, Mason Tillman assessed the capacity of minority and woman-owned businesses using five measures that controlled for the impact of race and gender discrimination. The first method was a review of the distribution of contracts to determine the size of the contracts that the City awarded. The second was the identification of the largest contracts awarded to minority and woman-owned businesses and non-minority male-owned businesses. The third was an analysis of the frequency distribution of the City’s contracts awarded to minority and woman-owned businesses and non-minority male-owned businesses. The fourth was a threshold analysis that limited the range of the formal prime contracts analyzed by eliminating outliers. The fifth was an assessment of capacity-related economic factors of minority and woman-owned businesses compared to similarly situated non-minority male-owned businesses using the results of the capacity eSurvey.

A. Prime Contract Size Distribution

All of the City’s contracts were ordered by the size of the award to determine the distribution of the awarded contracts. The purpose of this distribution was to gauge the capacity required to perform the City’s contracts. In Table 5.6, contract awards in the four industries were grouped into nine ranges and are presented by minority females, minority males, Caucasian females, and non-minority males.

The data revealed that most of the prime contracts awarded by the City were small. Table 5.6 shows that 90.51% of the prime contracts awarded by the City were less than \$100,000. Additionally, 95.19% were less than \$250,000, 97.48% were less than \$500,000, 98.83% were less than \$1,000,000, and 99.50% were less than \$3,000,000. Only 0.50% of the awarded prime contracts were valued \$3,000,000 and greater.



²⁹⁵ *Id.* at 603; see also, *Concrete Works IV*, 321 F.3d at 966 (noting a less sophisticated method to calculate availability does not render a disparity study flawed.)

²⁹⁶ *Contractors Ass’n of E. Pa.*, 91 F.3d at 610.

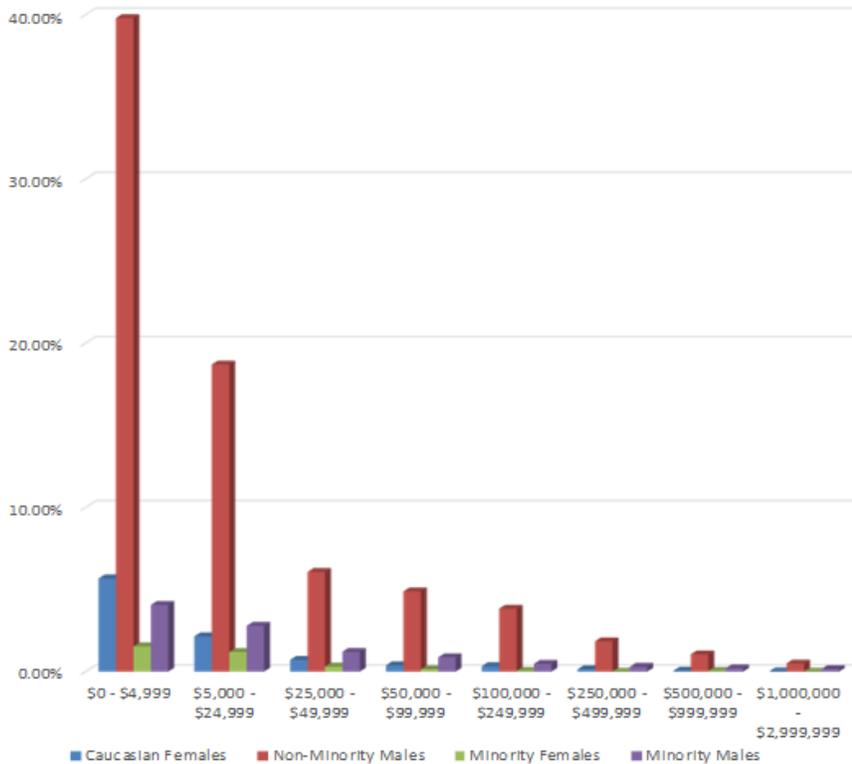
²⁹⁷ David G. Blanchflower & Phillip B. Levine & David J. Zimmerman, 2003. "Discrimination in the Small-Business Credit Market," *The Review of Economics and Statistics*, MIT Press, vol. 85(4).

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**Table 5.6: All Industry Contracts by Size
July 1, 2011, to June 30, 2016**

Size	Non-Minority				Minority				Total	
	Females		Males		Females		Males		Freq	Percent
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent		
\$0 - \$4,999	442	5.68%	3,096	39.79%	120	1.54%	316	4.06%	3,974	51.08%
\$5,000 - \$24,999	167	2.15%	1,455	18.70%	93	1.20%	217	2.79%	1,932	24.83%
\$25,000 - \$49,999	56	0.72%	473	6.08%	24	0.31%	94	1.21%	647	8.32%
\$50,000 - \$99,999	30	0.39%	380	4.88%	11	0.14%	68	0.87%	489	6.29%
\$100,000 - \$249,999	26	0.33%	298	3.83%	3	0.04%	37	0.48%	364	4.68%
\$250,000 - \$499,999	11	0.14%	144	1.85%	0	0.00%	23	0.30%	178	2.29%
\$500,000 - \$999,999	4	0.05%	82	1.05%	3	0.04%	16	0.21%	105	1.35%
\$1,000,000 - \$2,999,999	1	0.01%	39	0.50%	0	0.00%	12	0.15%	52	0.67%
\$3,000,000 and greater	0	0.00%	33	0.42%	0	0.00%	6	0.08%	39	0.50%
Total	737	9.47%	6,000	77.12%	254	3.26%	789	10.14%	7,780	100.00%

**Chart 5.1: All Industry Contracts by Size
July 1, 2011, to June 30, 2016**



The size of the City’s prime contracts is a determinant of the capacity that a willing business needs to be competitive at the prime contract level. The fact that 90.51% of the City’s contracts are less than \$100,000 illustrates that the capacity needed to perform a significant number of the City’s contracts is not considerable.

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B. Largest Prime Contracts Awarded to Minority and Woman-Owned Businesses

Table 5.7 shows that minority and woman-owned businesses demonstrated the capacity to perform contracts as large as \$6,088,748 in construction, \$965,000 in professional services, \$7,315,544 in services, and \$587,461 in goods and commodities. The size of the largest prime contracts that the City awarded to minority and woman-owned businesses illustrates that these businesses have the capacity to perform substantial formal contracts.

Table 5.7: Largest Prime Contracts Awarded by the City of Oakland to Minority and Woman-owned Businesses

Race and Gender Group	Construction	Professional Services	Services	Goods and Commodities
African American Female	\$20,598	\$30,900	\$135,529	\$33,297
African American Male	\$264,193	\$231,886	\$135,442	\$37,061
Asian Pacific American Female	\$112,003	\$48,938	\$15,963	\$37,883
Asian Pacific American Male	\$1,958,190	\$835,269	\$7,315,544	\$587,461
Asian Indian American Female	\$973,180	----	\$16,489	\$47,233
Asian Indian American Male	\$21,085	\$313,547	\$188,000	\$83,270
Hispanic American Female	----	\$110,703	\$948,977	\$73,279
Hispanic American Male	\$6,088,748	\$298,000	\$97,536	\$369,496
Native American or Alaska Native Female	----	\$1,684	\$15,221	\$14,244
Native American or Alaska Native Male	----	----	\$2,258	\$5,156
Caucasian Female	\$523,666	\$965,000	\$1,135,000	\$518,193
Largest Dollar Amounts MBEs	\$6,088,748	\$835,269	\$7,315,544	\$587,461
Largest Dollar Amounts WBEs	\$973,180	\$965,000	\$1,135,000	\$518,193

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

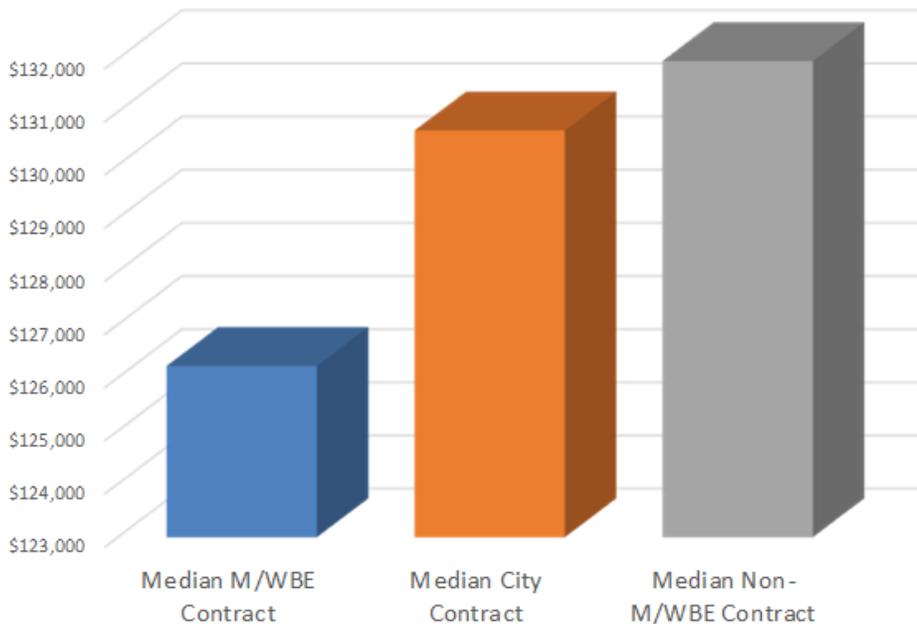
C. Frequency Distribution

The City’s formal contracts range from \$50,000 to \$13,740,972. A frequency distribution was calculated for all of the City’s prime contracts to determine the median contract size. The same distribution was calculated separately for minority and woman-owned businesses and non-minority male-owned businesses. As shown in Chart 5.2, the median of all City prime contracts was \$130,650. This median or center point marks the value at which 50.00% of contracts were above and below \$130,650. The median prime contract awarded to minority and woman-owned businesses was \$126,220 and to non-minority male-owned businesses was \$131,959.



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**Chart 5.2: All Industry Contracts by Size
July 1, 2011, to June 30, 2016**



This finding illustrates that minority and woman-owned businesses have the capacity to perform a significant number of the prime contracts awarded by the City. The fact also highlights that minority and woman-owned businesses have the capacity to perform very large contracts (Chart 5.2). It is also notable that there are other methods commonly used by prime contractors to increase their capacity in response to contract requirements. These practices include subcontracting, joint ventures, and staff augmentation.

D. Formal Contract Threshold Analysis

As a further measure to ensure that the available businesses have the capacity to perform the contracts analyzed in the disparity analysis, the prime contracts subject to the statistical analysis were limited. As discussed in *Chapter 3: Prime Contractor Utilization Analysis*, the analysis of formal contracts was limited to the awarded contracts with a dollar value beneath the 75th percentile. The decision to limit the analysis of disparity to contracts at or below the 75th percentile was made to eliminate outliers, which increased the reliability of the statistical findings, and mirrors the business capacity requirements. Table 5.8 shows the contract distribution by percentile for each industry.



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Table 5.8: Threshold Analysis by Size and Industry

Quartiles	All Industries Combined	Construction	Professional Services	Services	Goods and Commodities
Minimum	\$50,000	\$50,484	\$50,000	\$50,000	\$50,000
25%	\$76,212	\$102,126	\$78,246	\$68,576	\$71,070
Median	\$130,650	\$279,890	\$129,511	\$113,893	\$99,939
Mean	\$417,737	\$830,489	\$286,769	\$339,479	\$226,550
75%	\$320,000	\$780,000	\$310,000	\$220,000	\$190,000
Maximum	\$13,740,972	\$13,740,972	\$4,957,469	\$7,315,544	\$11,115,572

E. Business Capacity Assessment

To ascertain the relative capacity of the minority and woman-owned businesses and non-minority male-owned businesses enumerated in the availability analysis, an eSurvey was administered to the businesses in the availability dataset. The online survey was used to collect responses about independent business-related socioeconomic factors.

1. Profile of Respondents

The business capacity survey was completed by 95 unique businesses: 33.68% African American, 11.58% Asian Pacific American, 5.26% Asian Indian American, 10.53% Hispanic American, 0% Native American, and 38.95% Caucasian American. Of the 95 surveys, 52.63% were completed by females of all races and 47.37% were completed by males of all races.

Table 5.9: Race and Gender of Businesses

Response	African American	Asian Pacific American	Asian Indian American	Hispanic American	Native American	Caucasian American	All Responses
Female	16.84%	7.37%	4.21%	7.37%	0.00%	16.84%	52.63%
Male	16.84%	4.21%	1.05%	3.16%	0.00%	22.11%	47.37%
Total	33.68%	11.58%	5.26%	10.53%	0.00%	38.95%	100.00%

Due to the limited number of responses, the ethnic groups were combined and analyzed as “minority males” and “minority females.” As shown in Table 5.10, 21.05% of the businesses provided construction services, 67.37% of the businesses provided professional services, 3.16% of the businesses provided services, and 8.42% of the businesses provided goods and commodities.

Table 5.10: Business Owners’ Race, Gender and Primary Industry

Industry	Minority Females	Minority Males	Caucasian Females	Non-minority Males	Total
Construction	14.71%	33.33%	6.25%	28.57%	21.05%
Professional Services	79.41%	54.17%	68.75%	61.90%	67.37%
Services	0.00%	4.17%	12.50%	0.00%	3.16%
Goods and Commodities	5.88%	8.33%	12.50%	9.52%	8.42%
Total	100.00%	100.00%	100.00%	100.00%	100.00%



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2. Capacity Assessment Findings

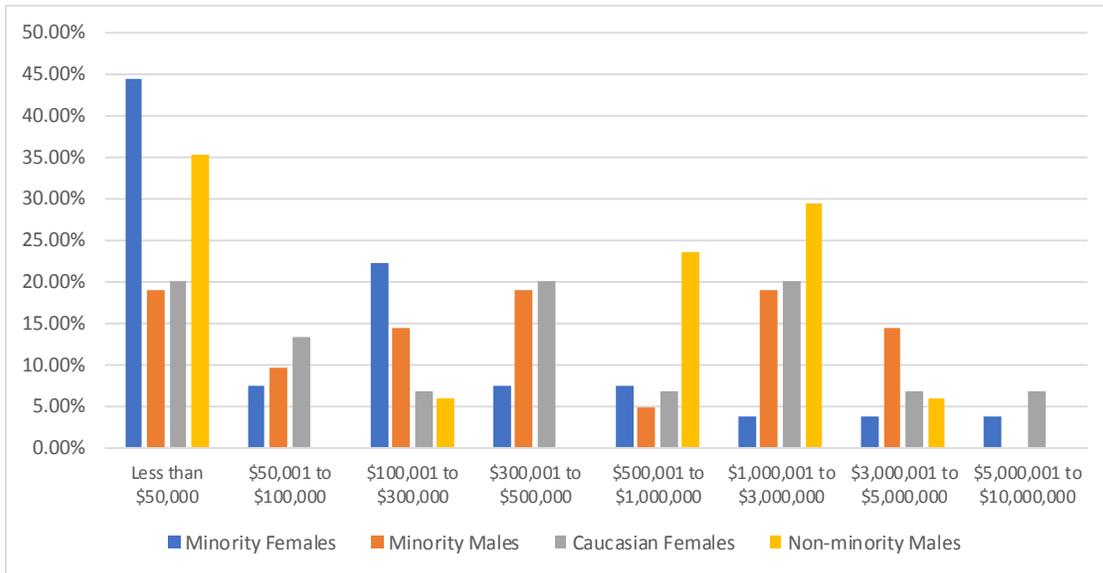
Table 5.11 details business annual gross revenue, which shows that 63.75% of businesses earned \$500,000 and under; 10.00% of businesses earned \$500,001 to \$1,000,000; 16.25% of businesses earned \$1,000,001 to \$3,000,000; 7.50% of businesses earned \$3,000,001 to \$5,000,000; and 2.50% of businesses earned \$5,000,001 to \$10,000,000.

Table 5.11: Annual Gross Revenue

Revenue	Minority Females	Minority Males	Caucasian Females	Non-minority Males	Total
Less than \$50,000	44.44%	19.05%	20.00%	35.29%	31.25%
\$50,001 to \$100,000	7.41%	9.52%	13.33%	0.00%	7.50%
\$100,001 to \$300,000	22.22%	14.29%	6.67%	5.88%	13.75%
\$300,001 to \$500,000	7.41%	19.05%	20.00%	0.00%	11.25%
\$500,001 to \$1,000,000	7.41%	4.76%	6.67%	23.53%	10.00%
\$1,000,001 to \$3,000,000	3.70%	19.05%	20.00%	29.41%	16.25%
\$3,000,001 to \$5,000,000	3.70%	14.29%	6.67%	5.88%	7.50%
\$5,000,001 to \$10,000,000	3.70%	0.00%	6.67%	0.00%	2.50%
Total	100.00%	100.00%	100.00%	100.00%	100.00%

Chart 5.3 illustrates that most respondents, regardless of race or gender, fell into the less than \$500,000 level. This finding indicates that the majority of businesses in the market area are small.

Chart 5.3: Annual Gross Revenue



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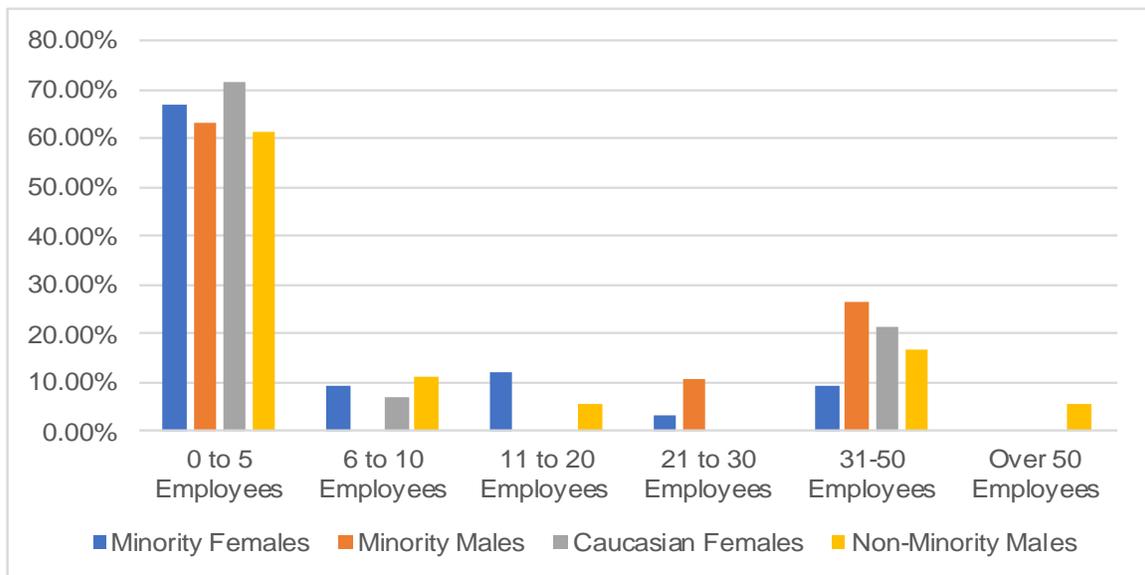
As shown in Table 5.12, 65.48% of businesses had 0 to 5 employees,²⁹⁸ 7.14% had 6 to 10 employees, 5.95% had 11 to 20 employees, 3.57% had 21 to 30 employees, 16.67% had 31 to 50 employees, and 1.19% had more than 50 employees.

Table 5.12: Number of Employees

Employees	Minority Females	Minority Males	Caucasian Females	Non-minority Males	Total
0 to 5 Employees	66.67%	63.16%	71.43%	61.11%	65.48%
6 to 10 Employees	9.09%	0.00%	7.14%	11.11%	7.14%
11 to 20 Employees	12.12%	0.00%	0.00%	5.56%	5.95%
21 to 30 Employees	3.03%	10.53%	0.00%	0.00%	3.57%
31-50 Employees	9.09%	26.32%	21.43%	16.67%	16.67%
Over 50 Employees	0.00%	0.00%	0.00%	5.56%	1.19%
Total	100.00%	100.00%	100.00%	100.00%	100.00%

Chart 5.4 illustrates that, 72.62% of all businesses are small, employing 10 or fewer persons. This finding is consistent with the average Alameda County business, as reported by the United States Census Survey of Business Owners (Census). The Census reports that 72.45% of businesses in Alameda County employ 10 or fewer persons.²⁹⁹

Chart 5.4: Number of Employees



²⁹⁸ Business owners are not counted as employees.

²⁹⁹ United States Census Bureau, 2015 Business Patterns.

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As shown in Table 5.13, 20.00% of all the businesses were bonded and 80.00% of businesses were not bonded.

Table 5.13: Percentage of Bonded Businesses

Bonded	Minority Females	Minority Males	Caucasian Females	Non-minority Males	Total
Yes	18.75%	13.64%	37.50%	15.00%	20.00%
No	81.25%	86.36%	62.50%	85.00%	80.00%
Total	100.00%	100.00%	100.00%	100.00%	100.00%

Table 5.14 details bonding amount, which shows 40.00% of business had less than a \$50,000 bonding limit, 6.67% had a limit between \$500,001 and \$1,000,000, 53.33% had a limit between \$1,000,001 and \$5,000,000. No business has a bond between \$50,000 and \$500,000, or greater than \$5,000,000.

Table 5.14: Bonding Amount

Bonding Amount	Minority Females	Minority Males	Caucasian Females	Non-minority Males	Total
Less than \$50,000	50.00%	0.00%	40.00%	0.00%	40.00%
\$50,000 to \$100,000	0.00%	0.00%	0.00%	0.00%	0.00%
\$100,001 to \$150,000	0.00%	0.00%	0.00%	0.00%	0.00%
\$150,001 to \$500,000	0.00%	0.00%	0.00%	0.00%	0.00%
\$500,001 to \$1,000,000	12.50%	0.00%	0.00%	0.00%	6.67%
\$1,000,001 to \$5,000,000	37.50%	100.00%	50.00%	100.00%	53.33%
\$5,000,001 to \$10,000,000	0.00%	0.00%	0.00%	0.00%	0.00%
More than \$10,000,000	0.00%	0.00%	0.00%	0.00%	0.00%
Total	100.00%	100.00%	100.00%	100.00%	100.00%

One consideration of capacity as discussed in the caselaw is a contractor's ability to bid and perform multiple contracts.³⁰⁰ This factor relates to the human and capital resources available to a business to perform multiple contracts, concurrently. Table 5.15 shows that most minority and woman-owned businesses and non-minority male-owned businesses performed multiple concurrent contracts within the previous calendar year. Just 5.88% of the businesses reported performing only a single public or private contract at one time.



³⁰⁰ 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).

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Table 5.15: Percent of Annual Contracts

Annual Contracts	Minority Females	Minority Males	Caucasian Females	Non-minority Males	Total
1 Contract	4.76%	9.09%	0.00%	8.33%	5.88%
2-5 Contracts	33.33%	27.27%	28.57%	8.33%	25.49%
6-10 Contracts	4.76%	9.09%	14.29%	8.33%	7.84%
11-20 Contracts	23.81%	9.09%	14.29%	33.33%	21.57%
More than 20 Contracts	33.33%	45.45%	42.86%	41.67%	39.22%
Total	100.00%	100.00%	100.00%	100.00%	100.00%

Chart 5.5 illustrates that most minority and woman-owned businesses and non-minority male-owned businesses performed more than 20 contracts within the previous calendar year. This illustrates that the businesses have the capacity to perform multiple contracts concurrently, regardless of ethnicity or gender.

Chart 5.5: Number of Contracts

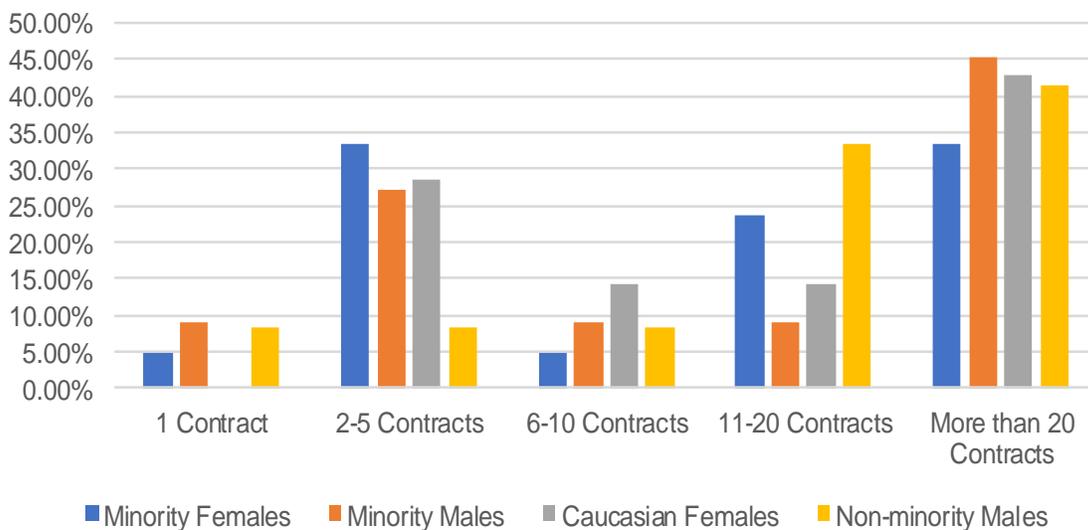


Table 5.16 shows that a large proportion of businesses are 21 to 50 years old (21.74%), illustrating that there are a significant number of mature minority and woman-owned businesses within the pool of available businesses. Nevertheless, no business owned by a minority is over 50 years old. This finding is expected since public policy legislating affirmative action did not begin until the 1960s with the passage of the Civil Rights Act of 1964, which spawned Executive Order 11625 in 1971. However, this executive order applied to federally funded contracts and minimally affected local laws. Local government affirmative action policies were not accelerated until the promulgation of the United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) regulations in 1983. The DBE regulations require states, counties,



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cities, and transportation agencies to implement affirmative action contracting programs as a condition of USDOT funding.

Table 5.16: Years in Business

Years in Operation	Minority Females	Minority Males	Caucasian Females	Non-minority Males	Total
0 - 5 years	54.84%	16.67%	12.50%	19.05%	29.35%
6 -10 years	35.48%	25.00%	12.50%	19.05%	25.00%
11 - 20 years	6.45%	20.83%	43.75%	23.81%	20.65%
21 - 30 years	3.23%	25.00%	12.50%	23.81%	15.22%
31 - 50 years	0.00%	12.50%	6.25%	9.52%	6.52%
More than 50 years	0.00%	0.00%	12.50%	4.76%	3.26%
Total	100.00%	100.00%	100.00%	100.00%	100.00%

Chart 5.6 illustrates that minority and woman-owned businesses are a growing segment of the contracting market. The fact that the availability pool includes mature minority and woman-owned businesses with extensive experience in their respective fields is significant.

Chart 5.6: Years in Operation

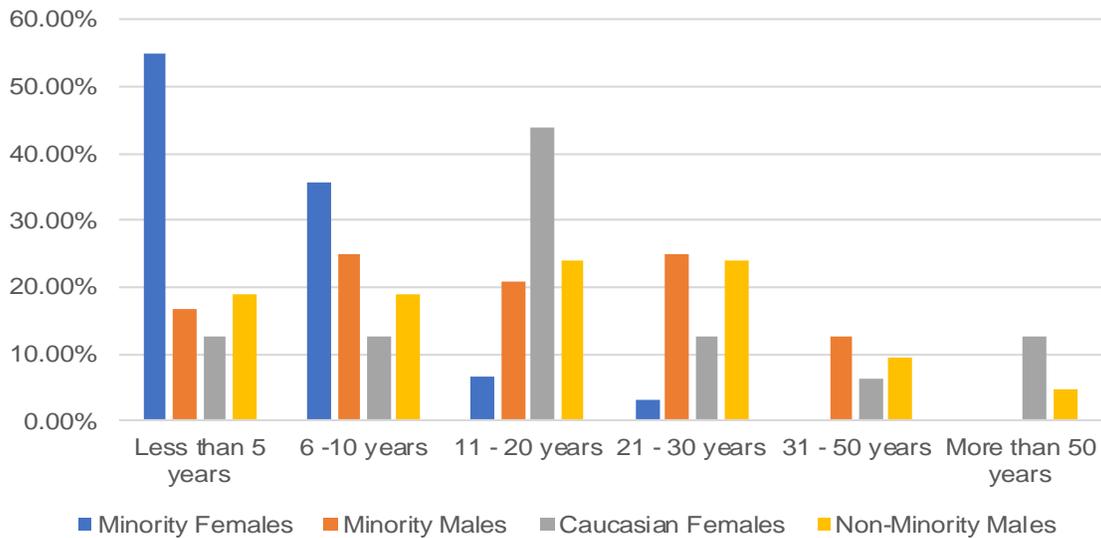


Table 5.17 shows that 32.61% of business owners have a bachelor’s degree. However, within this pool, minority females obtained graduate degrees and minority males obtained graduate and professional degrees at a higher frequency than non-minority male business owners. Despite educational attainment, non-minority male-owned businesses still received most of the City’s contracts, as detailed in *Chapter 3: Prime Contractor Utilization Analysis*.



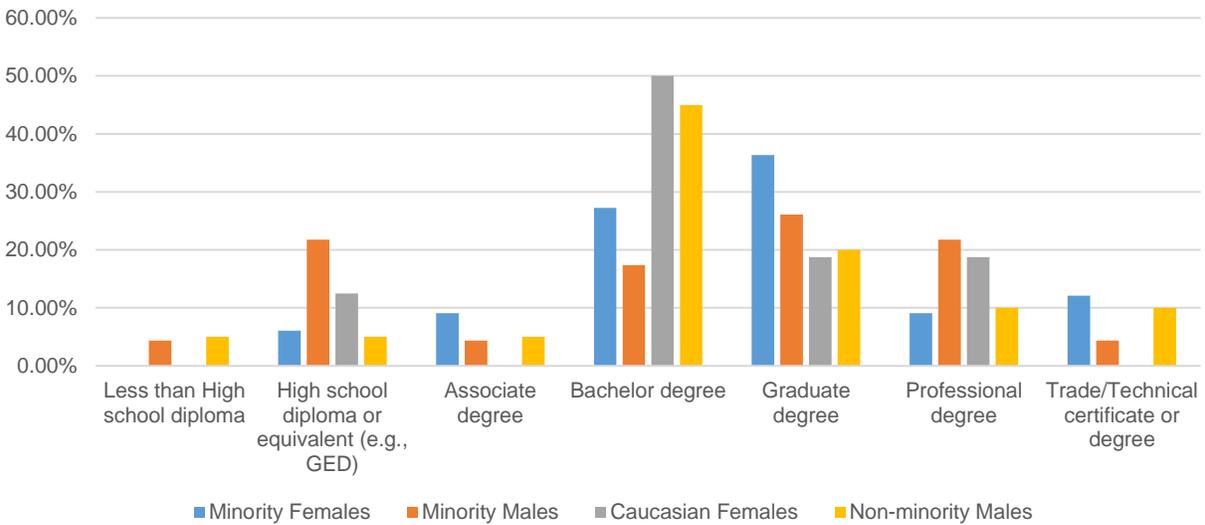
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Table 5.17: Education Level of Business Owners

Education	Minority Females	Minority Males	Caucasian Females	Non-minority Males	Total
Less than High school degree	0.00%	4.35%	0.00%	5.00%	2.17%
High school degree or equivalent (e.g., GED)	6.06%	21.74%	12.50%	5.00%	10.87%
Associate's degree	9.09%	4.35%	0.00%	5.00%	5.43%
Bachelor's degree	27.27%	17.39%	50.00%	45.00%	32.61%
Graduate degree	36.36%	26.09%	18.75%	20.00%	27.17%
Professional degree	9.09%	21.74%	18.75%	10.00%	14.13%
Trade/Technical certificate or degree	12.12%	4.35%	0.00%	10.00%	7.61%
Total	100.00%	100.00%	100.00%	100.00%	100.00%

Chart 5.7 illustrates that most business owners have a bachelor's degree. However, minority and female business owners obtain graduate, professional, and trade degrees at a higher rate than non-minority males.

Chart 5.7: Educational Attainment



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F. Conclusion

The analysis shows that, among similarly situated minority and woman-owned businesses and non-minority male-owned businesses, the relative capacity of firms is comparable. Most businesses enumerated in the availability analysis, including minority and woman-owned and non-minority male-owned businesses, have the following profile:

- Earn gross revenue of \$500,000 or less
- Employ 10 or fewer persons
- Performed over 20 public and private contracts annually
- Operated their business for less than 20 years
- Possess bachelor's degree

The eSurvey results reveal that willing minority and woman-owned businesses have demonstrated capacity comparable to similarly situated non-minority male-owned businesses. Yet non-minority males received most of the City's contracts despite the fact that minority and woman-owned businesses have similar educational attainment, years in business, and number of employees.

The disparity in contract awards is detailed in *Chapter 3: Prime Contractor Utilization Analysis*. However, the capacity evidence does not show any single socioeconomic factor or combination of measures to account for the disparity in the disparate award of contracts to non-minority males. The data does clearly suggest that non-minority males are afforded a preference in the award of City contracts. Additionally, there is evidence of racial and gender discrimination in both the public- and private-sector business practices.



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IV. Prime Contractor Availability Analysis

The prime contractor availability analysis is based on the willing market area businesses enumerated from the four availability sources described at the beginning of the chapter. The availability of willing market area businesses is presented by race, gender, and industry in the sections below.

A. Construction Prime Contractor Availability

The distribution of available construction prime contractors is summarized in Table 5.18.

African Americans account for 16.51% of the construction prime contractors in the City's market area.

Asian Pacific Americans account for 3.95% of the construction prime contractors in the City's market area.

Asian Indian Americans account for 0.70% of the construction prime contractors in the City's market area.

Hispanic Americans account for 7.21% of the construction prime contractors in the City's market area.

Native Americans account for 0.23% of the construction prime contractors in the City's market area.

Caucasian Females account for 4.88% of the construction prime contractors in the City's market area.

Non-minority Males account for 66.51% of the construction prime contractors in the City's market area.

Minority-owned Businesses account for 28.60% of the construction prime contractors in the City's market area.

Woman-owned Businesses account for 8.14% of the construction prime contractors in the City's market area.



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**Table 5.18: Available Construction Prime Contractors,
July 1, 2011, to June 30, 2016**

Race	Percent of Businesses
African Americans	16.51%
Asian Pacific Americans	3.95%
Asian Indian Americans	0.70%
Hispanic Americans	7.21%
Native Americans	0.23%
Caucasian Females	4.88%
Non-minority Males	66.51%
TOTAL	100.00%

Race and Gender	Percent of Businesses
African American Females	1.86%
African American Males	14.65%
Asian Pacific American Females	0.70%
Asian Pacific American Males	3.26%
Asian Indian American Females	0.23%
Asian Indian American Males	0.47%
Hispanic American Females	0.47%
Hispanic American Males	6.74%
Native American Females	0.00%
Native American Males	0.23%
Caucasian Females	4.88%
Non-minority Males	66.51%
TOTAL	100.00%

Minority and Females	Percent of Businesses
Minority Business Enterprises	28.60%
Woman Business Enterprises	8.14%
Minority and Woman Business Enterprises	33.49%



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B. Professional Services Prime Contractor Availability

The distribution of available professional services prime contractors is summarized in Table 5.19.

African Americans account for 9.00% of the professional services prime contractors in the City's market area.

Asian Pacific Americans account for 5.30% of the professional services prime contractors in the City's market area.

Asian Indian Americans account for 1.60% of the professional services prime contractors in the City's market area.

Hispanic Americans account for 2.79% of the professional services prime contractors in the City's market area.

Native Americans account for 0.21% of the professional services prime contractors in the City's market area.

Caucasian Females account for 8.86% of the professional services prime contractors in the City's market area.

Non-minority Males account for 72.25% of the professional services prime contractors in the City's market area.

Minority-owned Businesses account for 18.90% of the professional services prime contractors in the City's market area.

Woman-owned Businesses account for 16.18% of the professional services prime contractors in the City's market area.



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**Table 5.19: Available Professional Services Prime Contractors,
July 1, 2011, to June 30, 2016**

Race	Percent of Businesses
African Americans	9.00%
Asian Pacific Americans	5.30%
Asian Indian Americans	1.60%
Hispanic Americans	2.79%
Native Americans	0.21%
Caucasian Females	8.86%
Non-minority Males	72.25%
TOTAL	100.00%
Race and Gender	Percent of Businesses
African American Females	3.91%
African American Males	5.09%
Asian Pacific American Females	1.67%
Asian Pacific American Males	3.63%
Asian Indian American Females	0.35%
Asian Indian American Males	1.26%
Hispanic American Females	1.26%
Hispanic American Males	1.53%
Native American Females	0.14%
Native American Males	0.07%
Caucasian Females	8.86%
Non-minority Males	72.25%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	18.90%
Woman Business Enterprises	16.18%
Minority and Woman Business Enterprises	27.75%



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C. Services Prime Contractor Availability

The distribution of available services prime contractors is summarized in Table 5.20.

African Americans account for 11.66% of the services prime contractors in the City's market area.

Asian Pacific Americans account for 4.06% of the services prime contractors in the City's market area.

Asian Indian Americans account for 0.71% of the services prime contractors in the City's market area.

Hispanic Americans account for 4.42% of the services prime contractors in the City's market area.

Native Americans account for 0.18% of the services prime contractors in the City's market area.

Caucasian Females account for 4.59% of the services prime contractors in the City's market area.

Non-minority Males account for 74.38% of the services prime contractors in the City's market area.

Minority-owned Businesses account for 21.02% of the services prime contractors in the City's market area.

Woman-owned Businesses account for 11.48% of the services prime contractors in the City's market area.



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**Table 5.20: Available Services Prime Contractors,
July 1, 2011, to June 30, 2016**

Race	Percent of Businesses
African Americans	11.66%
Asian Pacific Americans	4.06%
Asian Indian Americans	0.71%
Hispanic Americans	4.42%
Native Americans	0.18%
Caucasian Females	4.59%
Non-minority Males	74.38%
TOTAL	100.00%
Race and Gender	Percent of Businesses
African American Females	4.42%
African American Males	7.24%
Asian Pacific American Females	1.41%
Asian Pacific American Males	2.65%
Asian Indian American Females	0.00%
Asian Indian American Males	0.71%
Hispanic American Females	1.06%
Hispanic American Males	3.36%
Native American Females	0.00%
Native American Males	0.18%
Caucasian Females	4.59%
Non-minority Males	74.38%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	21.02%
Woman Business Enterprises	11.48%
Minority and Woman Business Enterprises	25.62%



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D. Goods and Commodities Prime Contractor Availability

The distribution of available goods and commodities prime contractors is summarized in Table 5.21.

African Americans account for 9.86% of the goods and commodities prime contractors in the City's market area.

Asian Pacific Americans account for 5.75% of the goods and commodities prime contractors in the City's market area.

Asian Indian Americans account for 0.21% of the goods and commodities prime contractors in the City's market area.

Hispanic Americans account for 3.49% of the goods and commodities prime contractors in the City's market area.

Native Americans account for 0.00% of the goods and commodities prime contractors in the City's market area.

Caucasian Females account for 8.21% of the goods and commodity prime contractors in the City's market area.

Non-minority Males account for 72.48% of the goods and commodity prime contractors in the City's market area.

Minority-owned Businesses account for 19.30% of the goods and commodity prime contractors in the City's market area.

Woman-owned Businesses account for 14.78% of the goods and commodity prime contractors in the City's market area.



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**Table 5.21: Available Goods and Commodities Prime Contractors,
July 1, 2011, to June 30, 2016**

Race	Percent of Businesses
African Americans	9.86%
Asian Pacific Americans	5.75%
Asian Indian Americans	0.21%
Hispanic Americans	3.49%
Native Americans	0.00%
Caucasian Females	8.21%
Non-minority Males	72.48%
TOTAL	100.00%
Race and Gender	Percent of Businesses
African American Females	3.70%
African American Males	6.16%
Asian Pacific American Females	1.85%
Asian Pacific American Males	3.90%
Asian Indian American Females	0.00%
Asian Indian American Males	0.21%
Hispanic American Females	1.03%
Hispanic American Males	2.46%
Native American Females	0.00%
Native American Males	0.00%
Caucasian Females	8.21%
Non-minority Males	72.48%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	19.30%
Woman Business Enterprises	14.78%
Minority and Woman Business Enterprises	27.52%



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V. *Subcontractor Availability Analysis*

A. *Source of Willing and Able Subcontractors*

All available prime contractors were included in the calculation of the subcontractor availability. Additional subcontractors in the City’s market area were identified using the source in Table 5.22.

Subcontractor availability was not calculated for the services or goods and commodities, as the subcontracting activity in those industries was limited.

Table 5.22: Unique Subcontractor Availability Data Source

Type Record	Type Information
CIP Data Collection	MWBEs and Non-MWBEs
City Clerk’s Office	MWBE
PW Data Collection	MWBEs and Non-MWBEs
Treva Upload	Non-MWBEs
Client Data Collection 6-1-18	MWBEs and Non-MWBEs
LBE_SLBE Dataset	MWBEs and Non-MWBEs
LCP Tracker Dataset	MWBEs and Non-MWBEs
Legistar	MWBE
Onsite Data Collection	MWBEs and Non-MWBEs
Prime Expenditure Survey for POs	MWBEs and Non-MWBEs
Project Managers	MWBEs and Non-MWBEs
Shelley Data 8-1-18	MWBEs and Non-MWBEs

B. *Determination of Willingness and Capacity*

Subcontractor availability was limited to the 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.



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C. Construction Subcontractor Availability

The distribution of available construction subcontractors is summarized in Table 5.23 below.

African Americans account for 17.86% of the construction subcontractors in the City's market area.

Asian Pacific Americans account for 3.49% of the construction subcontractors in the City's market area.

Asian Indian Americans account for 0.82% of the construction subcontractors in the City's market area.

Hispanic Americans account for 7.19% of the construction subcontractors in the City's market area.

Native Americans account for 0.41% of the construction subcontractors in the City's market area.

Caucasian Females account for 5.13% of the construction subcontractors in the City's market area.

Non-minority Males account for 65.09% of the construction subcontractors in the City's market area.

Minority-owned Businesses account for 29.77% of the construction subcontractors in the City's market area.

Woman-owned Businesses account for 9.24% of the construction subcontractors in the City's market area.



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**Table 5.23: Available Construction Subcontractors,
January 1, 2011, to June 30, 2016**

Race	Percent of Businesses
African American	17.86%
Asian Pacific American	3.49%
Asian Indian American	0.82%
Hispanic American	7.19%
Native American	0.41%
Caucasian Females	5.13%
Non-minority Males	65.09%
TOTAL	100.00%

Race and Gender	Percent of Businesses
African American Females	2.67%
African American Males	15.20%
Asian Pacific American Females	0.62%
Asian Pacific American Males	2.87%
Asian Indian American Females	0.21%
Asian Indian American Males	0.62%
Hispanic American Females	0.41%
Hispanic American Males	6.78%
Native American Females	0.21%
Native American Males	0.21%
Caucasian Females	5.13%
Non-minority Males	65.09%
TOTAL	100.00%

Minority and Females	Percent of Businesses
Minority Business Enterprises	29.77%
Woman Business Enterprises	9.24%
Minority and Woman Business Enterprises	34.91%



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D. Professional Services Subcontractor Availability

The distribution of available professional services subcontractors is summarized in Table 6.20 below.

African Americans account for 9.12% of the professional services subcontractors in the City's market area.

Asian Pacific Americans account for 5.29% of the professional services subcontractors in the City's market area.

Asian Indian Americans account for 1.60% of the professional services subcontractors in the City's market area.

Hispanic Americans account for 2.85% of the professional services subcontractors in the City's market area.

Native Americans account for 0.21% of the professional services subcontractors in the City's market area.

Caucasian Females account for 8.84% of the professional services subcontractors in the City's market area.

Non-minority Males account for 72.09% of the professional services subcontractors in the City's market area.

Minority-owned Businesses account for 19.07% of the professional services subcontractors in the City's market area.

Woman-owned Businesses account for 16.14% of the professional services subcontractors in the City's market area.



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**Table 5.24: Available Professional Services Subcontractors,
January 1, 2011, to June 30, 2016**

Race	Percent of Businesses
African American	9.12%
Asian Pacific American	5.29%
Asian Indian American	1.60%
Hispanic American	2.85%
Native American	0.21%
Caucasian Females	8.84%
Non-minority Males	72.09%
TOTAL	100.00%
Race and Gender	Percent of Businesses
African American Females	3.90%
African American Males	5.22%
Asian Pacific American Females	1.67%
Asian Pacific American Males	3.62%
Asian Indian American Females	0.35%
Asian Indian American Males	1.25%
Hispanic American Females	1.25%
Hispanic American Males	1.60%
Native American Females	0.14%
Native American Males	0.07%
Caucasian Females	8.84%
Non-minority Males	72.09%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	19.07%
Woman Business Enterprises	16.14%
Minority and Woman Business Enterprises	27.91%



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VI. Summary

This chapter presented the enumeration of willing and able market area businesses by race, gender, and industry. The capacity of the enumerated businesses was assessed using five methods: (1) a review of the City's contract size distribution to identify the capacity needed to perform most City contracts, (2) a determination of the largest contracts the City awarded to minority and woman-owned businesses, (3) a frequency distribution that defined the median size of contracts awarded to minority and woman-owned, and non-minority male-owned businesses, (4) a threshold analysis that defined the formal contracts within the 75th percentile in order to eliminate outliers and increase the reliability of the statistical findings, and (5) a business capacity analysis that assessed relevant socioeconomic factors in the private sector affecting business formation and revenue.

The findings from these analyses illustrate that minority and woman-owned businesses have a socioeconomic profile comparable to similarly situated non-minority male-owned businesses, and the capacity to perform the majority of contracts awarded by the City. Minority-owned businesses account for 19.77% of construction, professional services, services, and goods and commodities prime contractors. Woman-owned businesses account for 13.36% and non-minority male-owned business account for 73.17%. The data shows that non-minority males are afforded a preference in the award of City contracts. There is evidence of racial and gender discrimination, given the size of the contracts awarded by the City and the evidence of the size of contracts awarded to minority and women-owned businesses. Minority-owned businesses account for 20.65% of construction and professional services subcontractors. Woman-owned businesses account for 13.51%, and non-minority male-owned business account for 72.29%.



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CHAPTER 6: Prime Contract Disparity Analysis

I. Introduction

The objective of this chapter is to determine if available Minority and Woman-owned Business Enterprises (M/WBE) were underutilized on the City of Oakland's (City) prime contracts during the July 1, 2011, to June 30, 2016 study period. Under a fair and equitable system of awarding prime contracts, the proportion of prime contract dollars awarded to M/WBEs should be relatively close to the corresponding proportion of their availability³⁰¹ in the relevant market area. If the ratio of utilized M/WBE prime contractors compared to their availability is less than one, a statistical test is conducted to calculate the probability of observing the empirical disparity ratio. This analysis assumes a fair and equitable system.³⁰² *City of Richmond v. J.A. Croson Co. (Croson)*³⁰³ states that an inference of discrimination can be made if the disparity is statistically significant. Under the *Croson* standard, non-minority male-owned businesses are not subject to a statistical test of underutilization.

The first step in conducting the statistical test is to calculate the contract dollars that each race and gender group is expected to receive. This value is based on each group's availability in the market area and shall be referred to as the **expected contract amount**. The next step is to compute the difference between each race 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 level of statistical significance expressed as a p-value considers 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.³⁰⁴

In the simulation analysis, the p-value considers a combination of the distribution formulated from the empirical data and the contract dollar amounts. If the actual contract dollar amount, or actual contract rank, falls below the fifth percentile of the distribution, it denotes a p-value less than 0.05.

³⁰¹ Availability is defined as the number of ready, willing, and able firms. The methodology for determining willing and able firms is detailed in *Chapter 5: Prime Contractor and Subcontractor Availability Analysis*.

³⁰² When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100-percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95-percent confidence level is the statistical standard used in physical and social sciences and is thus used in the present report to determine if an inference of discrimination can be made.

³⁰³ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

³⁰⁴ This study does not test statistically the overutilization of minority or gender groups or the underutilization of non-minority males.



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Our statistical model employs all three steps 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. However, there is an exception to this rule when the group has significant availability but receives zero or one contract. Zero or one contract means there is no variation in the variable, contract awards. When there is no variation in that variable the statistical test cannot detect the disparity. There is a separate symbol that reports this disparity.

II. Disparity Analysis

A prime contract disparity analysis was performed on the contracts awarded in the construction, professional services, services, and goods and commodities industries during the July 1, 2011, to June 30, 2016 study period. The informal contracts thresholds were defined according to the City's procurement policies. The informal contract thresholds for each industry are listed in Table 6.1.

Table 6.1: Informal Contract Thresholds for Analysis by Industry

Industry	Informal Contract Threshold
Construction	Under \$50,000
Professional Services	Under \$50,000
Services	Under \$50,000
Goods and Commodities	Under \$50,000

The thresholds utilized in each industry for the formal contract analysis were derived from a statistical analysis, which calculated the contract values which would skew the disparity analysis. The statistical analysis was limited to contracts representing the 75th percentile of the contracts the City awarded in each of the four industries. Outliers over the 75th percentile were removed from the analysis. The method used to define the formal contract thresholds for analysis is discussed in *Chapter 3: Prime Contractor Utilization Analysis*. The formal contract thresholds for each industry are listed in Table 6.2.



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Table 6.2: Formal Contract Thresholds for Analysis by Industry

Industry	Formal Contract Threshold
Construction	\$50,000 to \$780,000
Professional Services	\$50,000 to \$310,000
Services	\$50,000 to \$220,000
Goods and Commodities	\$50,000 to \$190,000

The findings from the methods employed to calculate statistical significance, as discussed on page 6-1, are presented in the subsequent sections. The outcomes of the statistical analyses are presented in the “P-Value” column of the tables. A description of these statistical outcomes, as shown in the disparity tables, is presented below in Table 6.3.

Table 6.3: Statistical Outcome Descriptions

P-Value Outcome	Definition of P-Value Outcome
< 0.05 *	This underutilization is statistically significant.
not significant	<ul style="list-style-type: none"> Minority and woman-owned businesses: this underutilization is not statistically significant. Non-minority males: this underutilization or overutilization is not statistically significant.
< 0.05 †	This overutilization is statistically significant.
----	While this group was underutilized, there were too few available firms to determine statistical significance.
**	This study does not test statistically the overutilization of minority and woman-owned businesses or the underutilization of non-minority male-owned businesses.
^	The statistical test could not detect the disparity because there were less than two contracts awarded.



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A. *Disparity Analysis: Informal Prime Contracts by Industry*

1. **Construction Prime Contracts Valued Under \$50,000**

The disparity analysis of construction prime contracts valued under \$50,000 is described below and the results are shown in Table 6.4 and Chart 6.1.

African Americans represent 16.51% of the available construction businesses and received 6.56% of the dollars on construction contracts valued under \$50,000. This underutilization is statistically significant.

Asian Pacific Americans represent 3.95% of the available construction businesses and received 15.12% of the dollars on construction contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Asian Indian Americans represent 0.70% of the available construction businesses and received 0.58% of the dollars on construction contracts valued under \$50,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Hispanic Americans represent 7.21% of the available construction businesses and received 13.60% of the dollars on construction contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Native Americans represent 0.23% of the available construction businesses and received 0.00% of the dollars on construction contracts valued under \$50,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 4.88% of the available construction businesses and received 1.05% of the dollars on construction contracts valued under \$50,000. This underutilization is statistically significant.

Non-minority Males represent 66.51% of the available construction businesses and received 63.08% of dollars on construction contracts valued under \$50,000. This study does not test statistically the underutilization of non-minority male-owned businesses.

Minority-owned Businesses represent of the 28.60% available construction businesses and received 35.86% of the dollars on construction contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Woman-owned Businesses represent of the 8.14% available construction businesses and received 4.52% of the dollars on construction contracts valued under \$50,000. This underutilization is not statistically significant.



**Table 6.4: Disparity Analysis: Construction Prime Contracts Valued Under \$50,000,
July 1, 2011, to June 30, 2016**

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$237,449	6.56%	16.51%	\$597,225	-\$359,776	0.40	< 0.05 *
Asian Pacific Americans	\$546,948	15.12%	3.95%	\$142,998	\$403,950	3.82	**
Asian Indian Americans	\$21,085	0.58%	0.70%	\$25,235	-\$4,150	0.84	----
Hispanic Americans	\$491,751	13.60%	7.21%	\$260,760	\$230,990	1.89	**
Native Americans	\$0	0.00%	0.23%	\$8,412	-\$8,412	0.00	----
Caucasian Females	\$38,095	1.05%	4.88%	\$176,644	-\$138,549	0.22	< 0.05 *
Non-minority Males	\$2,281,672	63.08%	66.51%	\$2,405,725	-\$124,054	0.95	**
TOTAL	\$3,616,999	100.00%	100.00%	\$3,616,999			
Race and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	1.86%	\$67,293	-\$67,293	0.00	< 0.05 *
African American Males	\$237,449	6.56%	14.65%	\$529,932	-\$292,483	0.45	< 0.05 *
Asian Pacific American Females	\$125,302	3.46%	0.70%	\$25,235	\$100,067	4.97	**
Asian Pacific American Males	\$421,645	11.66%	3.26%	\$117,763	\$303,883	3.58	**
Asian Indian American Females	\$0	0.00%	0.23%	\$8,412	-\$8,412	0.00	----
Asian Indian American Males	\$21,085	0.58%	0.47%	\$16,823	\$4,262	1.25	**
Hispanic American Females	\$0	0.00%	0.47%	\$16,823	-\$16,823	0.00	----
Hispanic American Males	\$491,751	13.60%	6.74%	\$243,937	\$247,814	2.02	**
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.23%	\$8,412	-\$8,412	0.00	----
Caucasian Females	\$38,095	1.05%	4.88%	\$176,644	-\$138,549	0.22	< 0.05 *
Non-minority Males	\$2,281,672	63.08%	66.51%	\$2,405,725	-\$124,054	0.95	**
TOTAL	\$3,616,999	100.00%	100.00%	\$3,616,999			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$1,297,233	35.86%	28.60%	\$1,034,630	\$262,603	1.25	**
Woman Business Enterprises	\$163,397	4.52%	8.14%	\$294,407	-\$131,010	0.56	not significant
Minority and Woman Business Enterprises	\$1,335,328	36.92%	33.49%	\$1,211,274	\$124,054	1.10	**

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

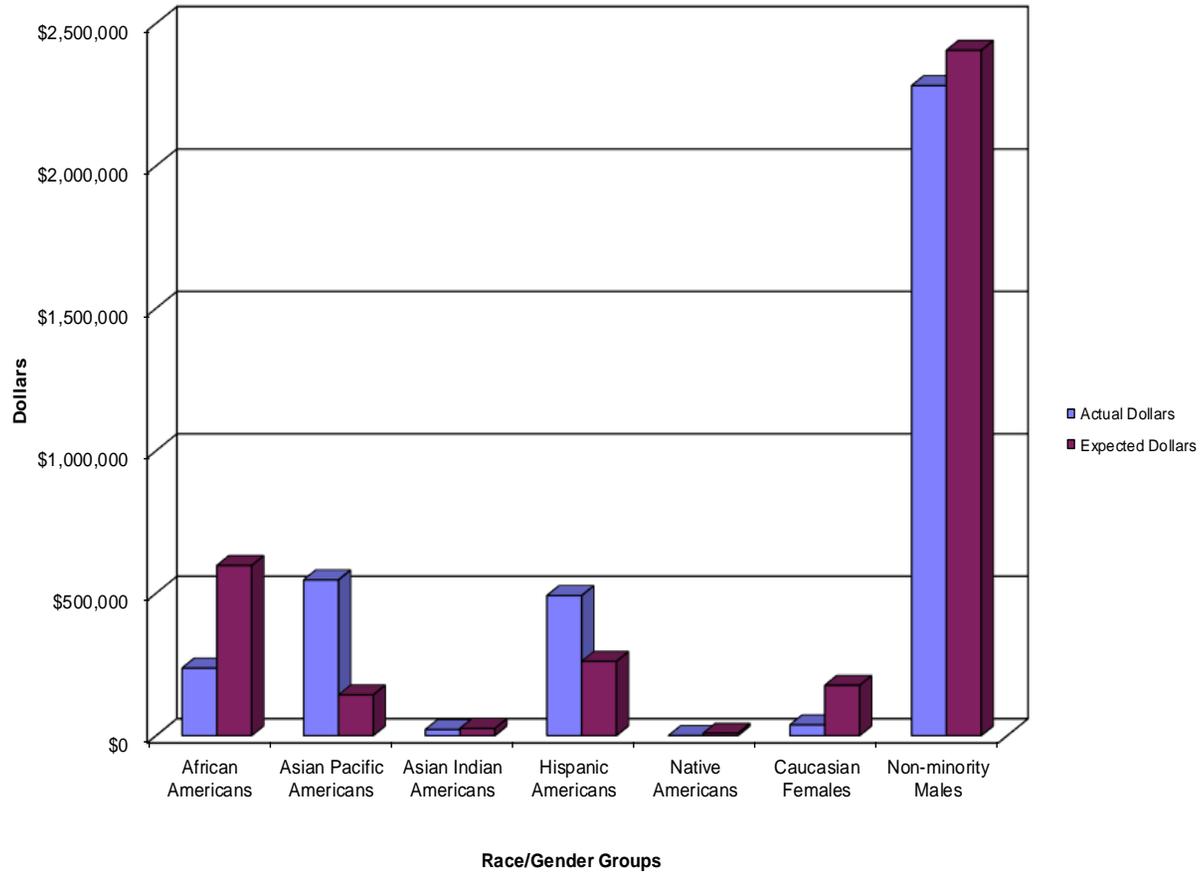
(**) this study does not test statistically the overutilization of minority and woman-owned businesses or the underutilization of non-minority male-owned businesses.

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

(^) The statistical test could not detect the disparity because there were less than two contracts awarded.



**Chart 6.1: Disparity Analysis: Construction Prime Contracts Valued Under \$50,000,
July 1, 2011, to June 30, 2016**



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2. Professional Services Prime Contracts Valued at Under \$50,000

The disparity analysis of professional services prime contracts valued under \$50,000 is described below and the results are shown in Table 6.5 and Chart 6.2.

African Americans represent 9.00% of the available professional services businesses and received 4.18% of the dollars on professional services contracts valued under \$50,000. This underutilization is statistically significant.

Asian Pacific Americans represent 5.30% of the available professional services businesses and received 7.52% of the dollars on professional services contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Asian Indian Americans represent 1.60% of the available professional services businesses and received 0.97% of the dollars on professional services contracts valued under \$50,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Hispanic Americans represent 2.79% of the available professional services businesses and received 5.50% of the dollars on professional services contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Native Americans represent 0.21% of the available professional services businesses and received 0.04% of the dollars on professional services contracts valued under \$50,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 8.86% of the available professional services businesses and received 12.97% of the dollars on professional services contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Non-minority Males represent 72.25% of the available professional services businesses and received 68.82% of dollars on professional services contracts valued under \$50,000. This study does not test statistically the underutilization of non-minority male-owned businesses.

Minority-owned Businesses represent 18.90% of the available professional services businesses and received 18.21% of the dollars on professional services contracts valued under \$50,000. This underutilization is not statistically significant.

Woman-owned Businesses represent 16.18% of the available professional services businesses and received 19.56% of the dollars on professional services contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.



Table 6.5: Disparity Analysis: Professional Services Prime Contracts Valued Under \$50,000, July 1, 2011, to June 30, 2016

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$608,251	4.18%	9.00%	\$1,310,197	-\$701,946	0.46	< 0.05 *
Asian Pacific Americans	\$1,095,119	7.52%	5.30%	\$771,899	\$323,220	1.42	**
Asian Indian Americans	\$141,891	0.97%	1.60%	\$233,601	-\$91,710	0.61	not significant
Hispanic Americans	\$800,819	5.50%	2.79%	\$406,263	\$394,556	1.97	**
Native Americans	\$5,764	0.04%	0.21%	\$30,470	-\$24,706	0.19	----
Caucasian Females	\$1,888,848	12.97%	8.86%	\$1,289,884	\$598,964	1.46	**
Non-minority Males	\$10,023,828	68.82%	72.25%	\$10,522,206	-\$498,377	0.95	**
TOTAL	\$14,564,520	100.00%	100.00%	\$14,564,520			
Race and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$282,280	1.94%	3.91%	\$568,768	-\$286,488	0.50	< 0.05 *
African American Males	\$325,971	2.24%	5.09%	\$741,430	-\$415,458	0.44	< 0.05 *
Asian Pacific American Females	\$397,956	2.73%	1.67%	\$243,758	\$154,198	1.63	**
Asian Pacific American Males	\$697,163	4.79%	3.63%	\$528,142	\$169,021	1.32	**
Asian Indian American Females	\$0	0.00%	0.35%	\$50,783	-\$50,783	0.00	----
Asian Indian American Males	\$141,891	0.97%	1.26%	\$182,818	-\$40,927	0.78	not significant
Hispanic American Females	\$273,804	1.88%	1.26%	\$182,818	\$90,986	1.50	**
Hispanic American Males	\$527,015	3.62%	1.53%	\$223,445	\$303,570	2.36	**
Native American Females	\$5,764	0.04%	0.14%	\$20,313	-\$14,550	0.28	----
Native American Males	\$0	0.00%	0.07%	\$10,157	-\$10,157	0.00	----
Caucasian Females	\$1,888,848	12.97%	8.86%	\$1,289,884	\$598,964	1.46	**
Non-minority Males	\$10,023,828	68.82%	72.25%	\$10,522,206	-\$498,377	0.95	**
TOTAL	\$14,564,520	100.00%	100.00%	\$14,564,520			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$2,651,844	18.21%	18.90%	\$2,752,430	-\$100,587	0.96	not significant
Woman Business Enterprises	\$2,848,652	19.56%	16.18%	\$2,356,324	\$492,328	1.21	**
Minority and Woman Business Enterprises	\$4,540,692	31.18%	27.75%	\$4,042,315	\$498,377	1.12	**

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

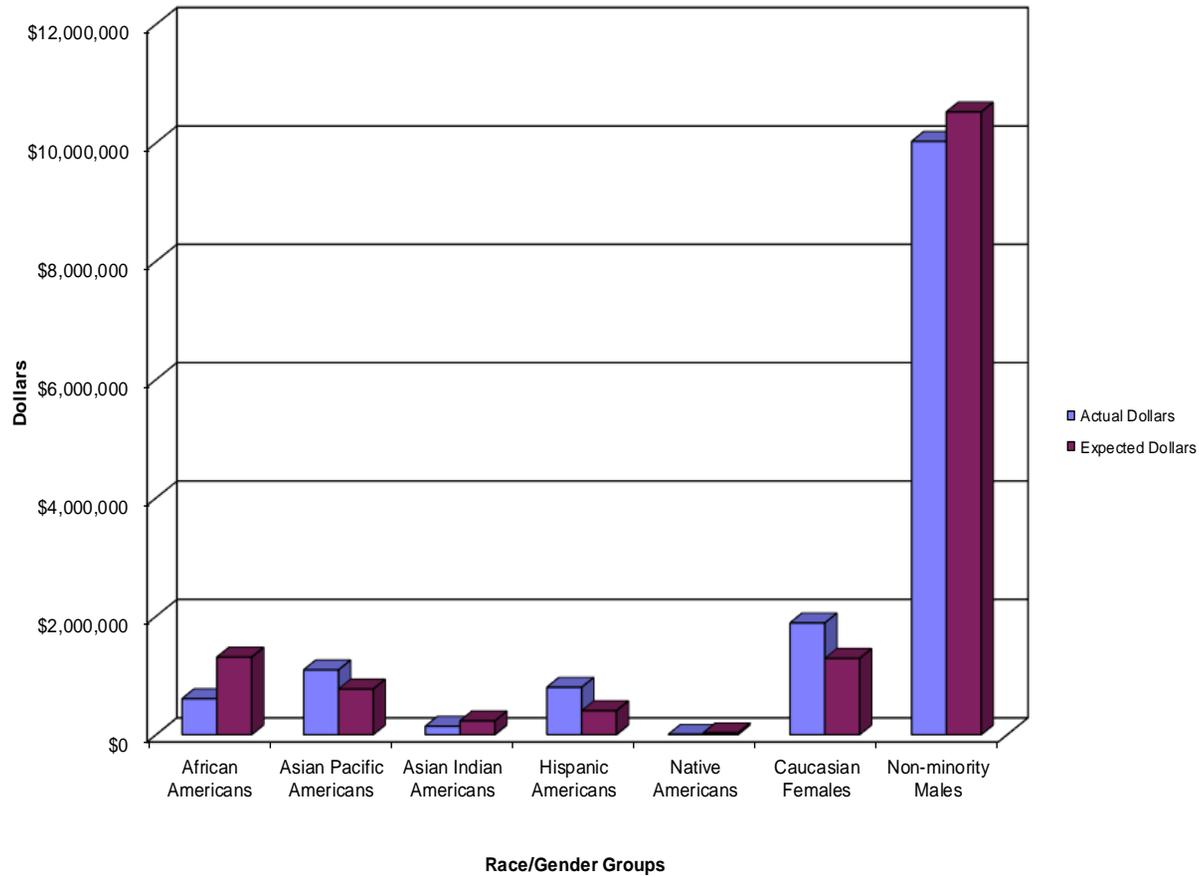
(**) this study does not test statistically the overutilization of minority and woman-owned businesses or the underutilization of non-minority male-owned businesses.

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

(^) The statistical test could not detect the disparity because there were less than two contracts awarded.



Chart 6.2: Disparity Analysis: Professional Services Prime Contracts Valued Under \$50,000, July 1, 2011, to June 30, 2016



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3. Services Prime Contracts Valued Under \$50,000

The disparity analysis of services prime contracts valued under \$50,000 is described below and the results are shown in Table 6.6 and Chart 6.3.

African Americans represent 11.66% of the available services businesses and received 2.97% of the dollars on services contracts valued under \$50,000. This underutilization is statistically significant.

Asian Pacific Americans represent 4.06% of the available services businesses and received 11.36% of the dollars on services contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Asian Indian Americans represent 0.71% of the available services businesses and received 0.61% of the dollars on services contracts valued under \$50,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Hispanic Americans represent 4.42% of the available services businesses and received 7.28% of the dollars on services contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Native Americans represent 0.18% of the available services businesses and received 0.53% of the dollars on services contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Caucasian Females represent 4.59% of the available services businesses and received 4.04% of the dollars on services contracts valued under \$50,000. This underutilization is not statistically significant.

Non-Minority Males represent 74.38% of the available services businesses and received 73.20% of dollars on services contracts valued under \$50,000. This study does not test the statistically the underutilization of non-minority male-owned businesses.

Minority-owned Businesses represent 21.02% of the available services businesses and received 22.76% of the dollars on services contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Woman-owned Businesses represent 11.48% of the available services businesses and received 7.71% of the dollars on services contracts valued under \$50,000. This underutilization is statistically significant.



**Table 6.6: Disparity Analysis: Services Prime Contracts Valued Under \$50,000,
July 1, 2011, to June 30, 2016**

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$300,040	2.97%	11.66%	\$1,179,886	-\$879,847	0.25	< 0.05 *
Asian Pacific Americans	\$1,149,465	11.36%	4.06%	\$411,173	\$738,292	2.80	**
Asian Indian Americans	\$62,172	0.61%	0.71%	\$71,508	-\$9,336	0.87	----
Hispanic Americans	\$736,954	7.28%	4.42%	\$446,927	\$290,028	1.65	**
Native Americans	\$53,839	0.53%	0.18%	\$17,877	\$35,962	3.01	**
Caucasian Females	\$409,181	4.04%	4.59%	\$464,804	-\$55,623	0.88	not significant
Non-minority Males	\$7,406,768	73.20%	74.38%	\$7,526,245	-\$119,477	0.98	**
TOTAL	\$10,118,420	100.00%	100.00%	\$10,118,420			
Race and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$186,668	1.84%	4.42%	\$446,927	-\$260,259	0.42	< 0.05 *
African American Males	\$113,372	1.12%	7.24%	\$732,960	-\$619,588	0.15	< 0.05 *
Asian Pacific American Females	\$49,618	0.49%	1.41%	\$143,017	-\$93,398	0.35	< 0.05 *
Asian Pacific American Males	\$1,099,847	10.87%	2.65%	\$268,156	\$831,691	4.10	**
Asian Indian American Females	\$16,489	0.16%	0.00%	\$0	\$16,489	----	**
Asian Indian American Males	\$45,684	0.45%	0.71%	\$71,508	-\$25,825	0.64	----
Hispanic American Females	\$66,635	0.66%	1.06%	\$107,262	-\$40,627	0.62	< 0.05 *
Hispanic American Males	\$670,319	6.62%	3.36%	\$339,664	\$330,655	1.97	**
Native American Females	\$51,581	0.51%	0.00%	\$0	\$51,581	----	**
Native American Males	\$2,258	0.02%	0.18%	\$17,877	-\$15,619	0.13	----
Caucasian Females	\$409,181	4.04%	4.59%	\$464,804	-\$55,623	0.88	not significant
Non-minority Males	\$7,406,768	73.20%	74.38%	\$7,526,245	-\$119,477	0.98	**
TOTAL	\$10,118,420	100.00%	100.00%	\$10,118,420			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$2,302,471	22.76%	21.02%	\$2,127,371	\$175,100	1.08	**
Woman Business Enterprises	\$780,172	7.71%	11.48%	\$1,162,009	-\$381,837	0.67	<0.05 *
Minority and Woman Business Enterprises	\$2,711,651	26.80%	25.62%	\$2,592,175	\$119,477	1.05	**

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

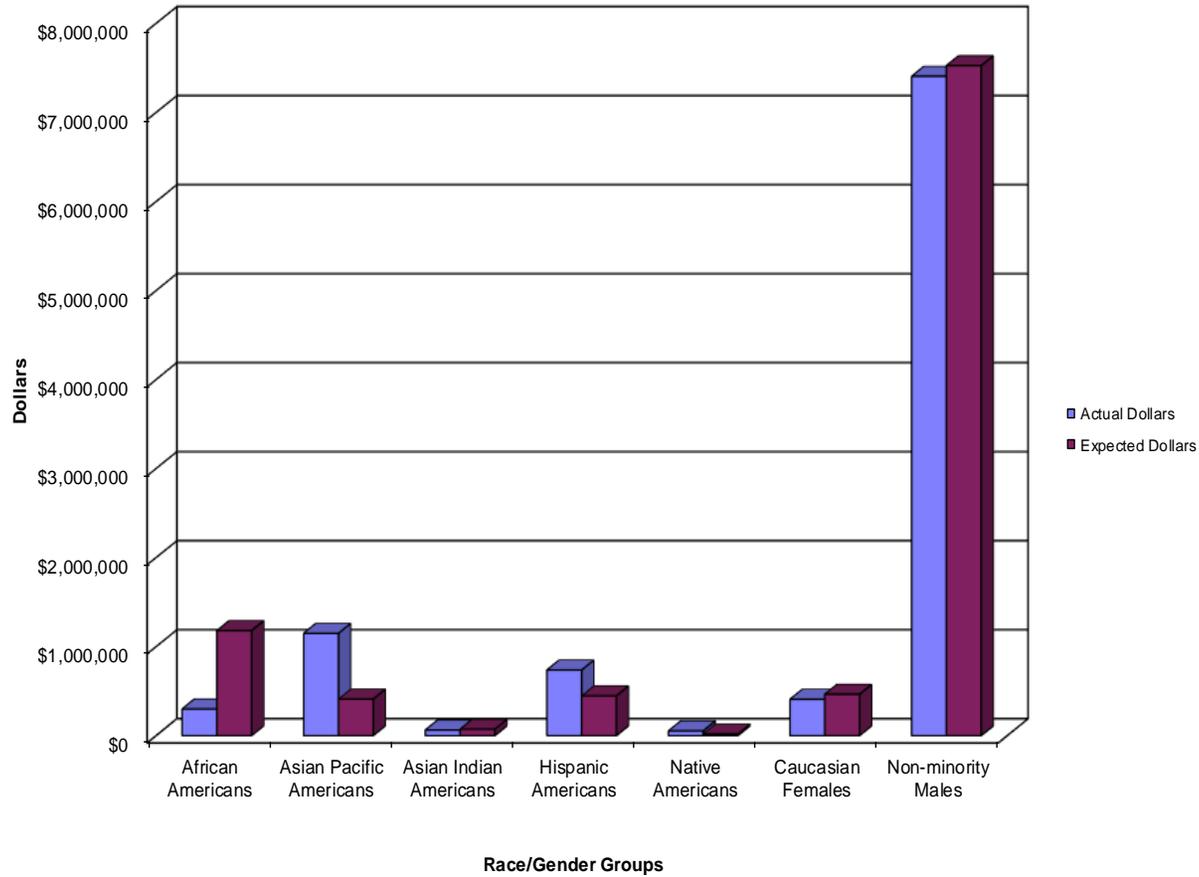
(**) this study does not test statistically the overutilization of minority and woman-owned businesses or the underutilization of non-minority male-owned businesses.

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

(^) The statistical test could not detect the disparity because there were less than two contracts awarded.



**Chart 6.3: Disparity Analysis: Services Prime Contracts Valued Under \$50,000,
July 1, 2011, to June 30, 2016**



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4. Goods and Commodities Prime Contracts Valued Under \$50,000

The disparity analysis of goods and commodities prime contracts valued under \$50,000 is described below and the results are shown in Table 6.7 and Chart 6.4.

African Americans represent 9.86% of the available goods and commodities businesses and received 1.88% of the dollars on goods and commodities contracts valued under \$50,000. This underutilization is statistically significant.

Asian Pacific Americans represent 5.75% of the available goods and commodities businesses and received 3.22% of the dollars on goods and commodities contracts valued under \$50,000. This underutilization is statistically significant.

Asian Indian Americans represent 0.21% of the available goods and commodities businesses and received 2.16% of the dollars on goods and commodities contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Hispanic Americans represent 3.49% of the available goods and commodities businesses and received 2.94% of the dollars on goods and commodities contracts valued under \$50,000. This underutilization is not statistically significant.

Native Americans represent 0.00% of the available goods and commodities businesses and received 0.10% of the dollars on goods and commodities contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Caucasian Females represent 8.21% of the available goods and commodities businesses and received 8.98% of the dollars on goods and commodities contracts valued under \$50,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Non-minority Males represent 72.48% of the available goods and commodities businesses and received 80.73% of dollars on goods and commodities contracts valued under \$50,000. This overutilization is statistically significant.

Minority-owned Businesses represent 19.30% of the available goods and commodities businesses and received 10.29% of the dollars on goods and commodities contracts valued under \$50,000. This underutilization is statistically significant.

Woman-owned Businesses represent 14.78% of the available goods and commodities businesses and received 11.77% of the dollars on goods and commodities contracts valued under \$50,000. This underutilization is statistically significant.



Table 6.7: Disparity Analysis: Goods and Commodities Prime Contracts Valued Under \$50,000, July 1, 2011, to June 30, 2016

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$477,260	1.88%	9.86%	\$2,505,674	-\$2,028,415	0.19	< 0.05 *
Asian Pacific Americans	\$818,441	3.22%	5.75%	\$1,461,643	-\$643,202	0.56	< 0.05 *
Asian Indian Americans	\$548,358	2.16%	0.21%	\$52,202	\$496,156	10.50	**
Hispanic Americans	\$747,502	2.94%	3.49%	\$887,426	-\$139,924	0.84	not significant
Native Americans	\$24,356	0.10%	0.00%	\$0	\$24,356	----	**
Caucasian Females	\$2,283,118	8.98%	8.21%	\$2,088,062	\$195,056	1.09	**
Non-minority Males	\$20,523,119	80.73%	72.48%	\$18,427,147	\$2,095,973	1.11	< 0.05 †
TOTAL	\$25,422,154	100.00%	100.00%	\$25,422,154			
Race and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$270,690	1.06%	3.70%	\$939,628	-\$668,938	0.29	< 0.05 *
African American Males	\$206,570	0.81%	6.16%	\$1,566,046	-\$1,359,477	0.13	< 0.05 *
Asian Pacific American Females	\$181,133	0.71%	1.85%	\$469,814	-\$288,681	0.39	< 0.05 *
Asian Pacific American Males	\$637,309	2.51%	3.90%	\$991,829	-\$354,521	0.64	< 0.05 *
Asian Indian American Females	\$183,620	0.72%	0.00%	\$0	\$183,620	----	**
Asian Indian American Males	\$364,737	1.43%	0.21%	\$52,202	\$312,536	6.99	**
Hispanic American Females	\$60,605	0.24%	1.03%	\$261,008	-\$200,403	0.23	< 0.05 *
Hispanic American Males	\$686,897	2.70%	2.46%	\$626,419	\$60,479	1.10	**
Native American Females	\$14,244	0.06%	0.00%	\$0	\$14,244	----	**
Native American Males	\$10,112	0.04%	0.00%	\$0	\$10,112	----	**
Caucasian Females	\$2,283,118	8.98%	8.21%	\$2,088,062	\$195,056	1.09	**
Non-minority Males	\$20,523,119	80.73%	72.48%	\$18,427,147	\$2,095,973	1.11	< 0.05 †
TOTAL	\$25,422,154	100.00%	100.00%	\$25,422,154			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$2,615,917	10.29%	19.30%	\$4,906,946	-\$2,291,029	0.53	< 0.05 *
Woman Business Enterprises	\$2,993,410	11.77%	14.78%	\$3,758,511	-\$765,101	0.80	< 0.05 *
Minority and Woman Business Enterprises	\$4,899,035	19.27%	27.52%	\$6,995,008	-\$2,095,973	0.70	< 0.05 *

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

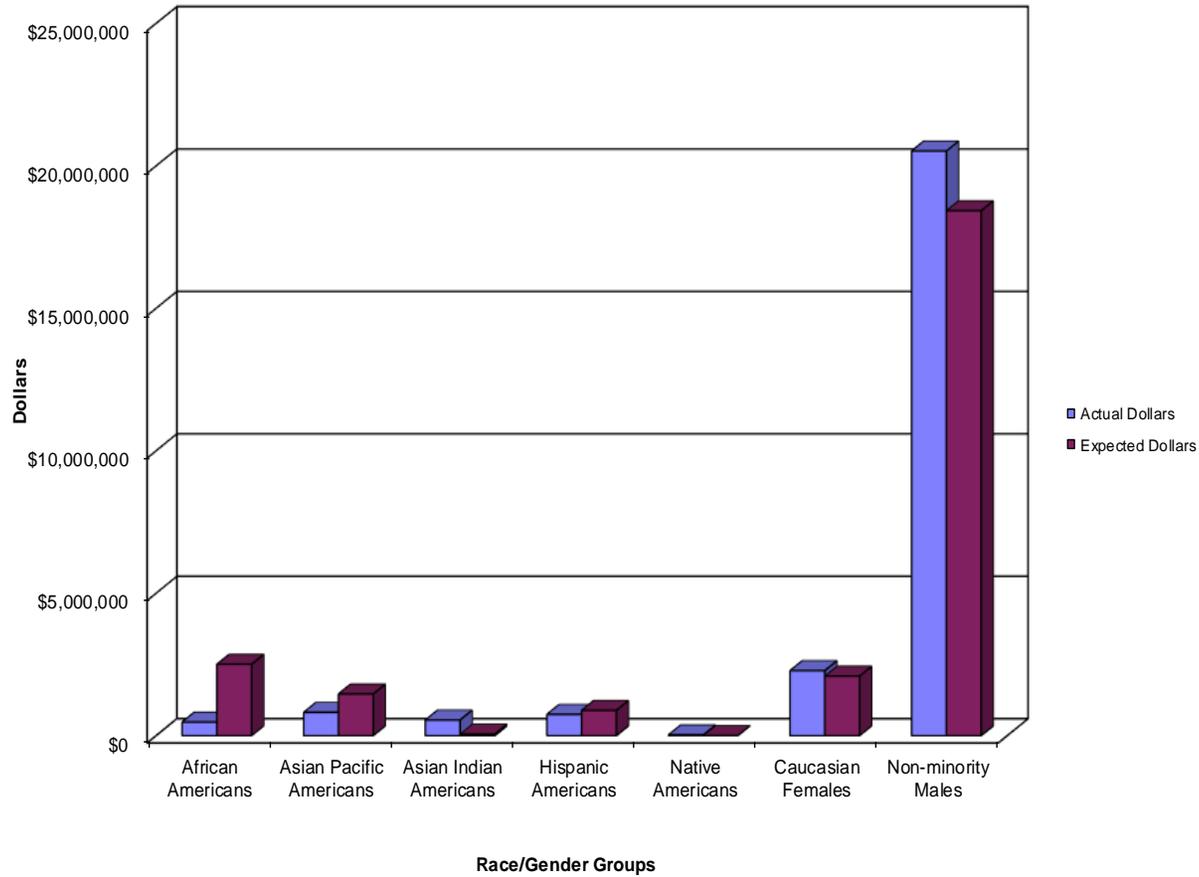
(**) this study does not test statistically the overutilization of minority and woman-owned businesses or the underutilization of non-minority male-owned businesses.

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

(^) The statistical test could not detect the disparity because there were less than two contracts awarded.



**Chart 6.4: Disparity Analysis: Goods and Commodities Prime Contracts Valued Under \$50,000,
July 1, 2011, to June 30, 2016**



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B. Disparity Analysis: Formal Prime Contracts, by Industry

1. Construction Prime Contracts Valued \$50,000 to \$780,000

The disparity analysis of construction prime contracts valued \$50,000 to \$780,000 is described below and the results are shown in Table 6.8 and Chart 6.5.

African Americans represent 16.51% of the available construction businesses and received 1.13% of the dollars on construction contracts valued \$50,000 to \$780,000. This underutilization is statistically significant.

Asian Pacific Americans represent 3.95% of the available construction businesses and received 6.92% of the dollars on construction contracts valued \$50,000 to \$780,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Asian Indian Americans represent 0.70% of the available construction businesses and received 0.00% of the dollars on construction contracts valued \$50,000 to \$780,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Hispanic Americans represent 7.21% of the available construction businesses and received 17.62% of the dollars on construction contracts valued \$50,000 to \$780,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Native Americans represent 0.23% of the available construction businesses and received 0.00% of the dollars on construction contracts valued \$50,000 to \$780,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 4.88% of the available construction businesses and received 1.72% of the dollars on construction contracts valued \$50,000 to \$780,000. This underutilization is statistically significant.

Non-minority Males represent 66.51% of the available construction businesses and received 72.61% of the dollars on construction contracts valued \$50,000 to \$780,000. This overutilization is not statistically significant.

Minority-owned Businesses represent 28.60% of the available construction businesses and received 25.67% of the dollars on construction contracts valued \$50,000 to \$780,000. This underutilization is not statistically significant.

Woman-owned Businesses represent 8.14% of the available construction businesses and received 2.05% of the dollars on construction contracts valued \$50,000 to \$780,000. This underutilization is statistically significant.



Table 6.8: Disparity Analysis: Construction Prime Contracts Valued \$50,000 to \$780,000, July 1, 2011, to June 30, 2016

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$635,925	1.13%	16.51%	\$9,327,826	-\$8,691,902	0.07	< 0.05 *
Asian Pacific Americans	\$3,911,464	6.92%	3.95%	\$2,233,423	\$1,678,041	1.75	**
Asian Indian Americans	\$0	0.00%	0.70%	\$394,134	-\$394,134	0.00	----
Hispanic Americans	\$9,956,063	17.62%	7.21%	\$4,072,713	\$5,883,350	2.44	**
Native Americans	\$0	0.00%	0.23%	\$131,378	-\$131,378	0.00	----
Caucasian Females	\$971,664	1.72%	4.88%	\$2,758,935	-\$1,787,271	0.35	< 0.05 *
Non-minority Males	\$41,017,355	72.61%	66.51%	\$37,574,062	\$3,443,293	1.09	not significant
TOTAL	\$56,492,470	100.00%	100.00%	\$56,492,470			
Race and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	1.86%	\$1,051,023	-\$1,051,023	0.00	< 0.05 *
African American Males	\$635,925	1.13%	14.65%	\$8,276,804	-\$7,640,879	0.08	< 0.05 *
Asian Pacific American Females	\$184,025	0.33%	0.70%	\$394,134	-\$210,109	0.47	----
Asian Pacific American Males	\$3,727,439	6.60%	3.26%	\$1,839,290	\$1,888,149	2.03	**
Asian Indian American Females	\$0	0.00%	0.23%	\$131,378	-\$131,378	0.00	----
Asian Indian American Males	\$0	0.00%	0.47%	\$262,756	-\$262,756	0.00	----
Hispanic American Females	\$0	0.00%	0.47%	\$262,756	-\$262,756	0.00	----
Hispanic American Males	\$9,956,063	17.62%	6.74%	\$3,809,957	\$6,146,106	2.61	**
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.23%	\$131,378	-\$131,378	0.00	----
Caucasian Females	\$971,664	1.72%	4.88%	\$2,758,935	-\$1,787,271	0.35	< 0.05 *
Non-minority Males	\$41,017,355	72.61%	66.51%	\$37,574,062	\$3,443,293	1.09	not significant
TOTAL	\$56,492,470	100.00%	100.00%	\$56,492,470			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$14,503,452	25.67%	28.60%	\$16,159,474	-\$1,656,022	0.90	not significant
Woman Business Enterprises	\$1,155,689	2.05%	8.14%	\$4,598,224	-\$3,442,536	0.25	<0.05 *
Minority and Woman Business Enterprises	\$15,475,116	27.39%	33.49%	\$18,918,409	-\$3,443,293	0.82	not significant

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

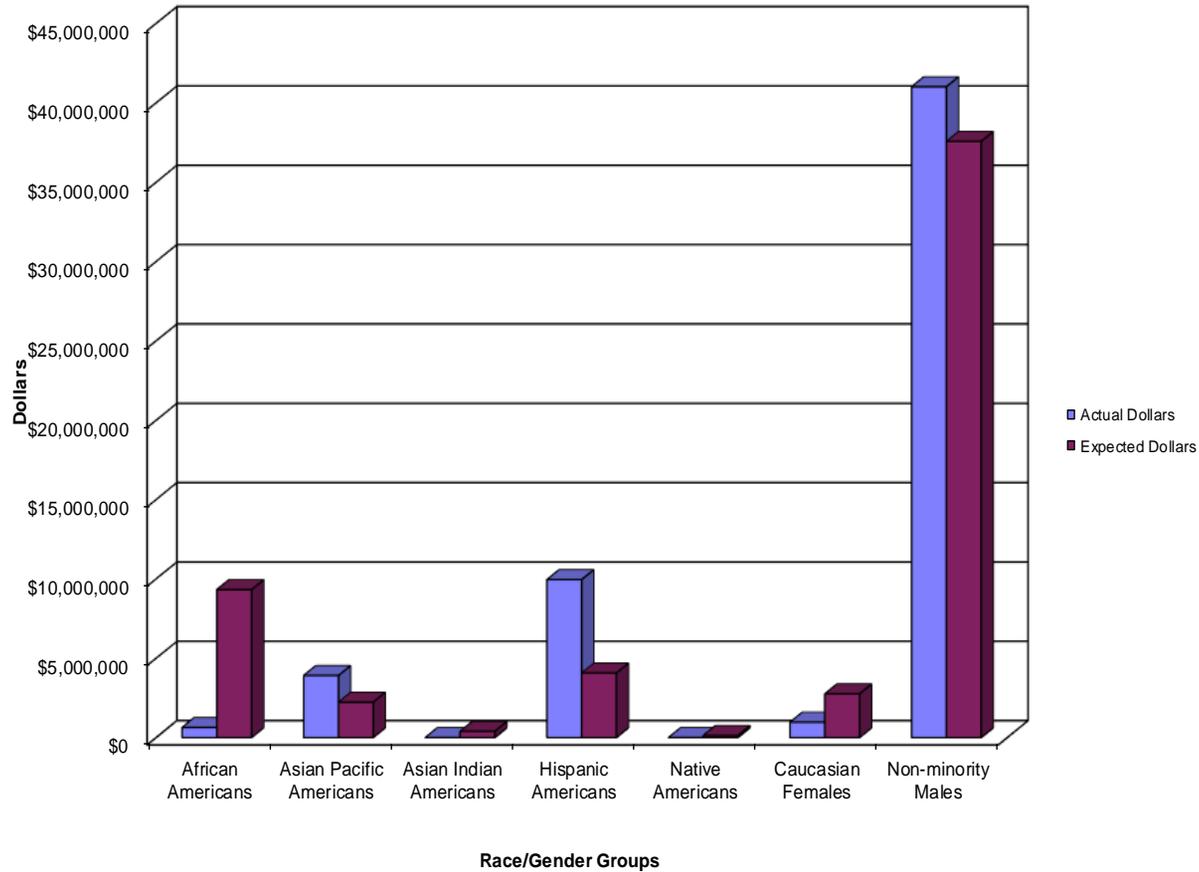
(**) this study does not test statistically the overutilization of minority and woman-owned businesses or the underutilization of non-minority male-owned businesses.

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

(^) The statistical test could not detect the disparity because there were less than two contracts awarded.



Chart 6.5: Disparity Analysis: Construction Prime Contracts Valued \$50,000 to \$780,000, July 1, 2011, to June 30, 2016



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2. Professional Services Prime Contracts Valued \$50,000 to \$310,000

The disparity analysis of professional services prime contracts valued \$50,000 to \$310,000 is described below and the results are shown in Table 6.9 and Chart 6.6.

African Americans represent 9.00% of the available professional services businesses and received 1.46% of the dollars on professional services contracts valued \$50,000 to \$310,000. This underutilization is statistically significant.

Asian Pacific Americans represent 5.30% of the available professional services businesses and received 5.40% of the dollars on professional services contracts valued \$50,000 to \$310,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Asian Indian Americans represent 1.60% of the available professional services businesses and received 2.34% of the dollars on professional services contracts valued \$50,000 to \$310,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Hispanic Americans represent 2.79% of the available professional services businesses and received 1.72% of the dollars on professional services contracts valued \$50,000 to \$310,000. This underutilization is not statistically significant.

Native Americans represent 0.21% of the available professional services businesses and received 0.00% of the dollars on professional services contracts valued \$50,000 to \$310,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 8.86% of the available professional services businesses and received 8.47% of the dollars on professional services contracts valued \$50,000 to \$310,000. This underutilization is not statistically significant.

Non-minority Males represent 72.25% of the available professional services businesses and received 80.62% of the dollars on professional services contracts valued \$50,000 to \$310,000. This overutilization is statistically significant.

Minority-owned Businesses represent 18.90% of the available professional services businesses and received 10.92% of the dollars on professional services contracts valued \$50,000 to \$310,000. This underutilization is statistically significant.

Woman-owned Businesses represent 16.18% of the available professional services businesses and received 9.80% of the dollars on professional services contracts valued \$50,000 to \$310,000. This underutilization is statistically significant.



Table 6.9: Disparity Analysis: Professional Services Prime Contracts Valued \$50,000 to \$310,000, July 1, 2011, to June 30, 2016

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$497,751	1.46%	9.00%	\$3,064,491	-\$2,566,740	0.16	< 0.05 *
Asian Pacific Americans	\$1,838,326	5.40%	5.30%	\$1,805,437	\$32,889	1.02	**
Asian Indian Americans	\$796,884	2.34%	1.60%	\$546,382	\$250,502	1.46	**
Hispanic Americans	\$585,585	1.72%	2.79%	\$950,230	-\$364,645	0.62	not significant
Native Americans	\$0	0.00%	0.21%	\$71,267	-\$71,267	0.00	----
Caucasian Females	\$2,884,246	8.47%	8.86%	\$3,016,980	-\$132,734	0.96	not significant
Non-minority Males	\$27,462,946	80.62%	72.25%	\$24,610,951	\$2,851,995	1.12	< 0.05 †
TOTAL	\$34,065,738	100.00%	100.00%	\$34,065,738			
Race and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	3.91%	\$1,330,322	-\$1,330,322	0.00	< 0.05 *
African American Males	\$497,751	1.46%	5.09%	\$1,734,169	-\$1,236,419	0.29	< 0.05 *
Asian Pacific American Females	\$0	0.00%	1.67%	\$570,138	-\$570,138	0.00	< 0.05 *
Asian Pacific American Males	\$1,838,326	5.40%	3.63%	\$1,235,299	\$603,027	1.49	**
Asian Indian American Females	\$0	0.00%	0.35%	\$118,779	-\$118,779	0.00	----
Asian Indian American Males	\$796,884	2.34%	1.26%	\$427,603	\$369,281	1.86	**
Hispanic American Females	\$453,664	1.33%	1.26%	\$427,603	\$26,060	1.06	**
Hispanic American Males	\$131,921	0.39%	1.53%	\$522,626	-\$390,705	0.25	not significant
Native American Females	\$0	0.00%	0.14%	\$47,511	-\$47,511	0.00	----
Native American Males	\$0	0.00%	0.07%	\$23,756	-\$23,756	0.00	----
Caucasian Females	\$2,884,246	8.47%	8.86%	\$3,016,980	-\$132,734	0.96	not significant
Non-minority Males	\$27,462,946	80.62%	72.25%	\$24,610,951	\$2,851,995	1.12	< 0.05 †
TOTAL	\$34,065,738	100.00%	100.00%	\$34,065,738			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$3,718,545	10.92%	18.90%	\$6,437,807	-\$2,719,261	0.58	<0.05 *
Woman Business Enterprises	\$3,337,909	9.80%	16.18%	\$5,511,333	-\$2,173,423	0.61	<0.05 *
Minority and Woman Business Enterprises	\$6,602,791	19.38%	27.75%	\$9,454,786	-\$2,851,995	0.70	<0.05 *

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

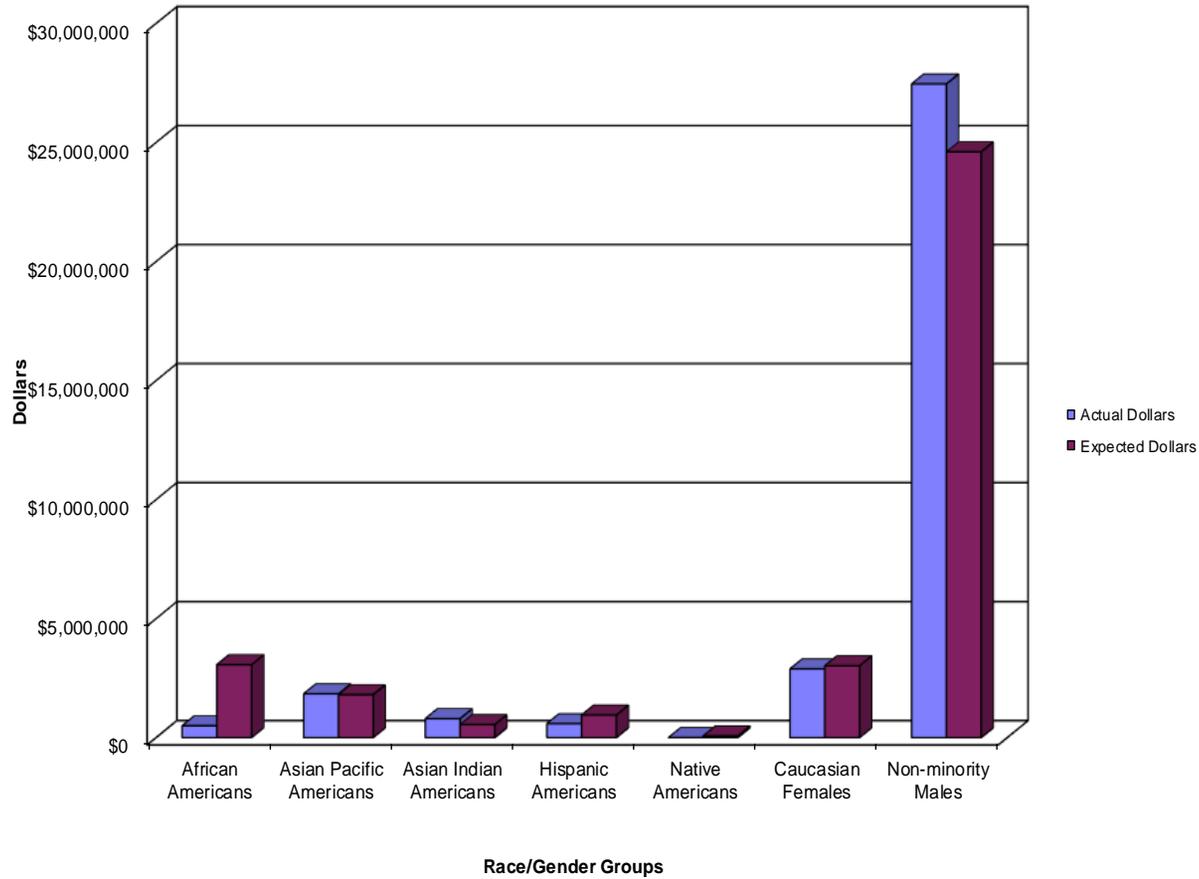
(**) this study does not test statistically the overutilization of minority and woman-owned businesses or the underutilization of non-minority male-owned businesses.

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

(^) The statistical test could not detect the disparity because there were less than two contracts awarded.



**Chart 6.6: Disparity Analysis: Professional Services Prime Contracts Valued \$50,000 to \$310,000,
July 1, 2011, to June 30, 2016**



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3. Services Prime Contracts Valued \$50,000 to \$220,000

The disparity analysis of services prime contracts valued \$50,000 to \$220,000 is described below and the results are shown in Table 6.10 and Chart 6.7.

African Americans represent 11.66% of the available services businesses and received 5.59% of the dollars on services contracts valued \$50,000 to \$220,000. This underutilization is statistically significant.

Asian Pacific Americans represent 4.06% of the available services businesses and received 4.61% of the dollars on services contracts valued \$50,000 to \$220,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Asian Indian Americans represent 0.71% of the available services businesses and received 1.63% of the dollars on services contracts valued \$50,000 to \$220,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Hispanic Americans represent 4.42% of the available services businesses and received 1.54% of the dollars on services contracts valued \$50,000 to \$220,000. This underutilization is not statistically significant.

Native Americans represent 0.18% of the available services businesses and received 0.00% of the dollars on services contracts valued \$50,000 to \$220,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 4.59% of the available services businesses and received 7.40% of the dollars on services contracts valued \$50,000 to \$220,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Non-minority Males represent 74.38% of the available services businesses and received 79.23% of the dollars on services contracts valued \$50,000 to \$220,000. This overutilization is not statistically significant.

Minority-owned Businesses represent 21.02% of the available services businesses and received 13.37% of the dollars on services contracts valued \$50,000 to \$220,000. This underutilization is statistically significant.

Woman-owned Businesses represent 11.48% of the available services businesses and received 11.00% of the dollars on services contracts valued \$50,000 to \$220,000. This underutilization is not statistically significant.



**Table 6.10: Disparity Analysis: Services Prime Contracts Valued \$50,000 to \$220,000,
July 1, 2011, to June 30, 2016**

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$644,670	5.59%	11.66%	\$1,344,645	-\$699,975	0.48	< 0.05 *
Asian Pacific Americans	\$531,138	4.61%	4.06%	\$468,588	\$62,549	1.13	**
Asian Indian Americans	\$188,000	1.63%	0.71%	\$81,494	\$106,506	2.31	**
Hispanic Americans	\$177,786	1.54%	4.42%	\$509,335	-\$331,549	0.35	not significant
Native Americans	\$0	0.00%	0.18%	\$20,373	-\$20,373	0.00	----
Caucasian Females	\$853,490	7.40%	4.59%	\$529,709	\$323,781	1.61	**
Non-minority Males	\$9,136,265	79.23%	74.38%	\$8,577,205	\$559,060	1.07	not significant
TOTAL	\$11,531,349	100.00%	100.00%	\$11,531,349			
Race and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$415,125	3.60%	4.42%	\$509,335	-\$94,210	0.82	not significant
African American Males	\$229,545	1.99%	7.24%	\$835,310	-\$605,765	0.27	< 0.05 *
Asian Pacific American Females	\$0	0.00%	1.41%	\$162,987	-\$162,987	0.00	not significant
Asian Pacific American Males	\$531,138	4.61%	2.65%	\$305,601	\$225,537	1.74	**
Asian Indian American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Asian Indian American Males	\$188,000	1.63%	0.71%	\$81,494	\$106,506	2.31	**
Hispanic American Females	\$0	0.00%	1.06%	\$122,240	-\$122,240	0.00	not significant
Hispanic American Males	\$177,786	1.54%	3.36%	\$387,095	-\$209,308	0.46	not significant
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.18%	\$20,373	-\$20,373	0.00	----
Caucasian Females	\$853,490	7.40%	4.59%	\$529,709	\$323,781	1.61	**
Non-minority Males	\$9,136,265	79.23%	74.38%	\$8,577,205	\$559,060	1.07	not significant
TOTAL	\$11,531,349	100.00%	100.00%	\$11,531,349			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$1,541,594	13.37%	21.02%	\$2,424,436	-\$882,841	0.64	<0.05 *
Woman Business Enterprises	\$1,268,615	11.00%	11.48%	\$1,324,272	-\$55,656	0.96	not significant
Minority and Woman Business Enterprises	\$2,395,084	20.77%	25.62%	\$2,954,144	-\$559,060	0.81	not significant

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

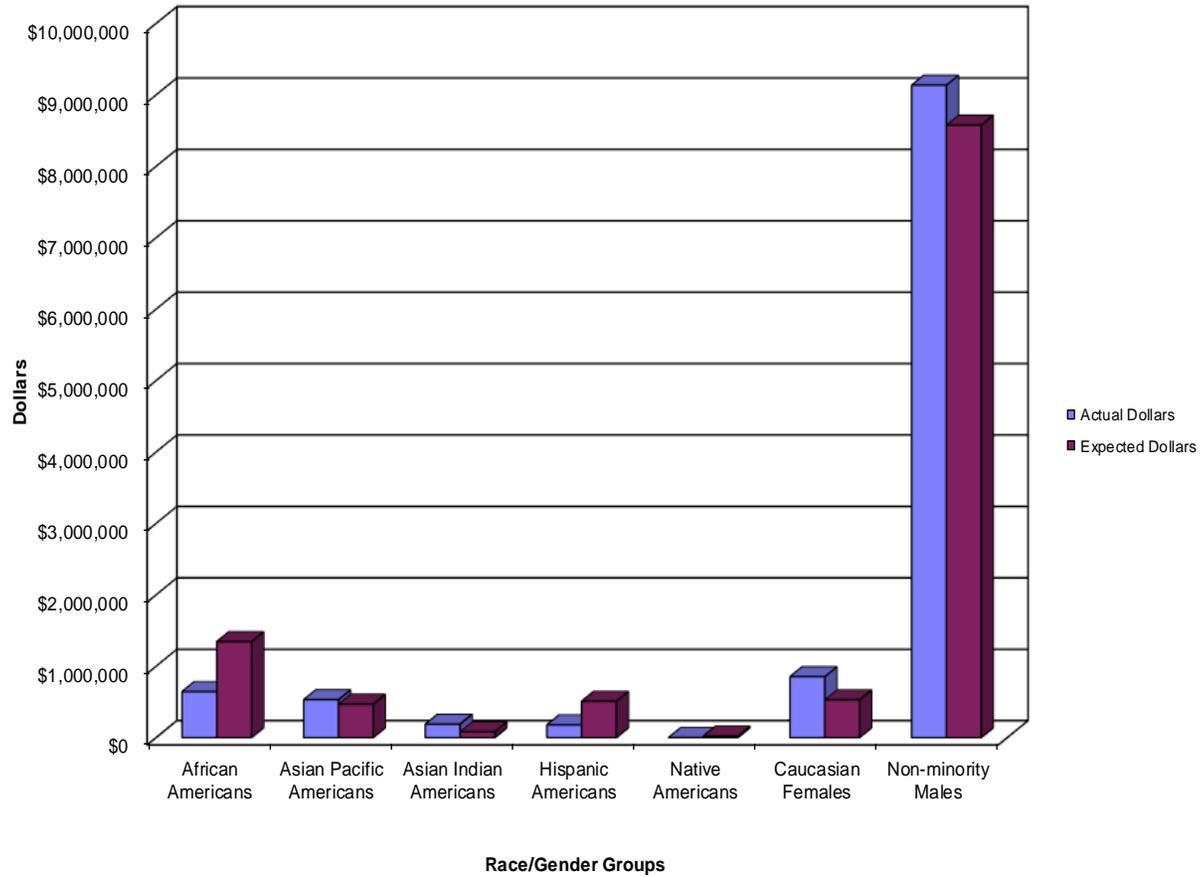
(**) this study does not test statistically the overutilization of minority and woman-owned businesses or the underutilization of non-minority male-owned businesses.

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

(^) The statistical test could not detect the disparity because there were less than two contracts awarded.



**Chart 6.7: Disparity Analysis: Services Prime Contracts Valued \$50,000 to \$220,000,
July 1, 2011, to June 30, 2016**



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4. Goods and Commodities Prime Contracts Valued \$50,000 to \$190,000

The disparity analysis of goods and commodities prime contracts valued \$50,000 to \$190,000 is described below and the results are shown in Table 6.11 and Chart 6.8.

African Americans represent 9.86% of the available goods and commodities businesses and received 0.00% of the dollars on goods and commodities contracts valued \$50,000 to \$190,000. This underutilization is statistically significant.

Asian Pacific Americans represent 5.75% of the available goods and commodities businesses and received 4.21% of the dollars on goods and commodities contracts valued \$50,000 to \$190,000. This underutilization is not statistically significant.

Asian Indian Americans represent 0.21% of the available goods and commodities businesses and received 0.31% of the dollars on goods and commodities contracts valued \$50,000 to \$190,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Hispanic Americans represent 3.49% of the available goods and commodities businesses and received 2.19% of the dollars on goods and commodities contracts valued \$50,000 to \$190,000. This underutilization is not statistically significant.

Native Americans represent 0.00% of the available goods and commodities businesses and received 0.00% of the dollars on goods and commodities contracts valued \$50,000 to \$190,000. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 8.21% of the available goods and commodities businesses and received 8.75% of the dollars on goods and commodities contracts valued \$50,000 to \$190,000. This study does not test statistically the overutilization of minority and woman-owned businesses.

Non-minority Males represent 72.48% of the available goods and commodities businesses and received 84.53% of the dollars on goods and commodities contracts valued \$50,000 to \$190,000. This overutilization is statistically significant.

Minority-owned Businesses represent 19.30% of the available goods and commodities businesses and received 6.71% of the dollars on goods and commodities contracts valued \$50,000 to \$190,000. This underutilization is statistically significant.

Woman-owned Businesses represent 14.78% of the available goods and commodities businesses and received 9.02% of the dollars on goods and commodities contracts valued \$50,000 to \$190,000. This underutilization is statistically significant.



Table 6.11: Disparity Analysis: Goods and Commodities Prime Contracts Valued \$50,000 to \$190,000, July 1, 2011, to June 30, 2016

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$0	0.00%	9.86%	\$2,678,617	-\$2,678,617	0.00	< 0.05 *
Asian Pacific Americans	\$1,145,301	4.21%	5.75%	\$1,562,527	-\$417,226	0.73	not significant
Asian Indian Americans	\$83,270	0.31%	0.21%	\$55,805	\$27,466	1.49	**
Hispanic Americans	\$595,676	2.19%	3.49%	\$948,677	-\$353,001	0.63	not significant
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$2,379,019	8.75%	8.21%	\$2,232,181	\$146,838	1.07	**
Non-minority Males	\$22,973,539	84.53%	72.48%	\$19,698,998	\$3,274,540	1.17	< 0.05 †
TOTAL	\$27,176,805	100.00%	100.00%	\$27,176,805			
Race and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	3.70%	\$1,004,482	-\$1,004,482	0.00	< 0.05 *
African American Males	\$0	0.00%	6.16%	\$1,674,136	-\$1,674,136	0.00	< 0.05 *
Asian Pacific American Females	\$0	0.00%	1.85%	\$502,241	-\$502,241	0.00	< 0.05 *
Asian Pacific American Males	\$1,145,301	4.21%	3.90%	\$1,060,286	\$85,015	1.08	**
Asian Indian American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Asian Indian American Males	\$83,270	0.31%	0.21%	\$55,805	\$27,466	1.49	**
Hispanic American Females	\$73,279	0.27%	1.03%	\$279,023	-\$205,744	0.26	not significant
Hispanic American Males	\$522,397	1.92%	2.46%	\$669,654	-\$147,258	0.78	not significant
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$2,379,019	8.75%	8.21%	\$2,232,181	\$146,838	1.07	**
Non-minority Males	\$22,973,539	84.53%	72.48%	\$19,698,998	\$3,274,540	1.17	< 0.05 †
TOTAL	\$27,176,805	100.00%	100.00%	\$27,176,805			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$1,824,247	6.71%	19.30%	\$5,245,626	-\$3,421,378	0.35	<0.05 *
Woman Business Enterprises	\$2,452,298	9.02%	14.78%	\$4,017,926	-\$1,565,628	0.61	<0.05 *
Minority and Woman Business Enterprises	\$4,203,267	15.47%	27.52%	\$7,477,807	-\$3,274,540	0.56	<0.05 *

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

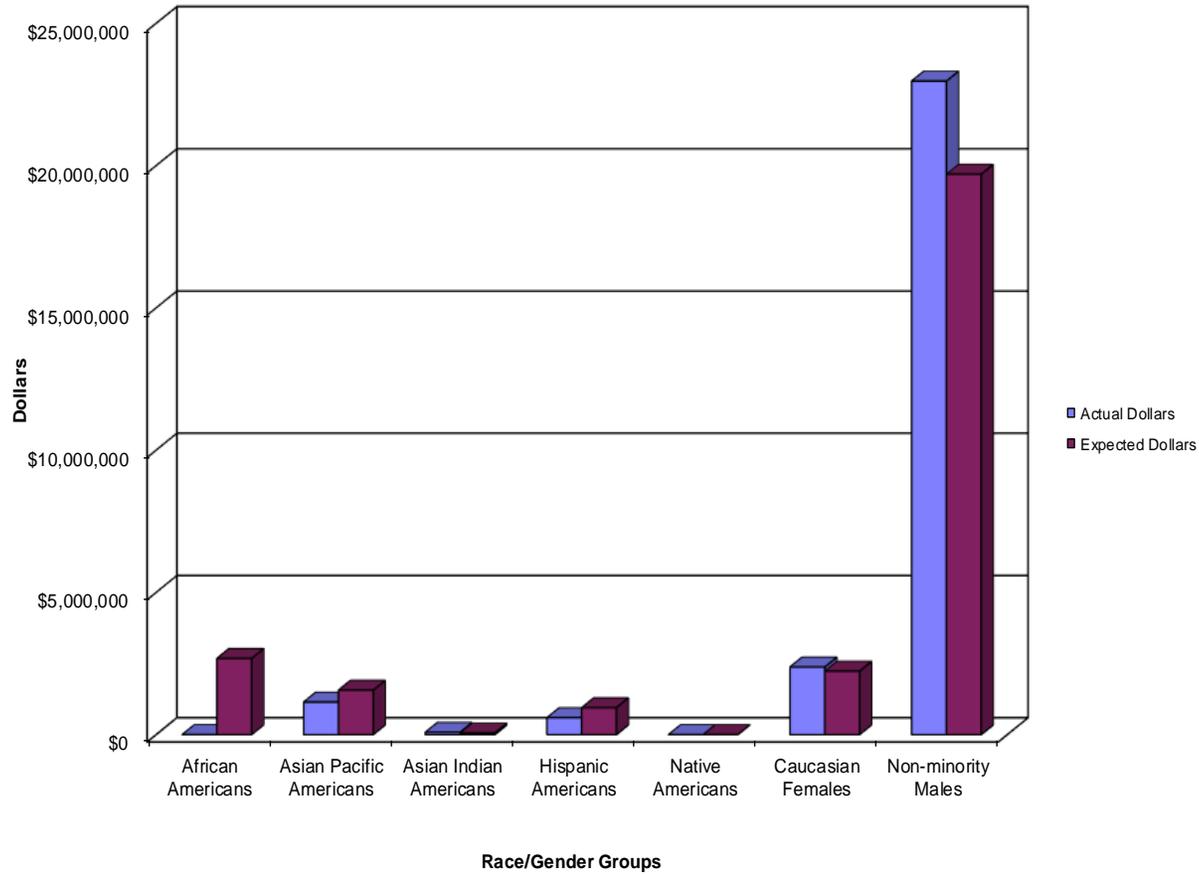
(**) this study does not test statistically the overutilization of minority and woman-owned businesses or the underutilization of non-minority male-owned businesses.

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

(^) The statistical test could not detect the disparity because there were less than two contracts awarded.



Chart 6.8: Disparity Analysis: Goods and Commodities Prime Contracts Valued \$50,000 to \$190,000, July 1, 2011, to June 30, 2016



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III. Disparity Analysis Summary

A. Construction Prime Contracts

As indicated in Table 6.12, disparity was identified for African American and Caucasian female-owned prime contractors on construction contracts valued under \$50,000. Disparity was also identified for African American, Caucasian female-owned, and woman-owned prime contractors on construction contracts valued \$50,000 to \$780,000.

**Table 6.12: Disparity Summary: Construction Prime Contract Dollars,
July 1, 2011, to June 30, 2016**

Race/Gender	Construction	
	Contracts Valued Under \$50,000	Contracts Valued \$50,000 to \$780,000
African American	<i>Disparity</i>	<i>Disparity</i>
Asian Pacific American	No Disparity	No Disparity
Asian Indian American	No Disparity	No Disparity
Hispanic American	No Disparity	No Disparity
Native American	No Disparity	No Disparity
Caucasian Female	<i>Disparity</i>	<i>Disparity</i>
Minority-owned Business	No Disparity	No Disparity
Woman-owned Business	No Disparity	<i>Disparity</i>



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B. Professional Services Prime Contracts

As indicated in Table 6.13 below, disparity was identified for African American prime contractors on professional services contracts valued under \$50,000. Disparity was also identified for African American, minority-owned, and woman-owned prime contractors on professional services contracts valued \$50,000 to \$310,000.

Table 6.13: Disparity Summary: Professional Services Prime Contract Dollars, July 1, 2011, to June 30, 2016

Race/Gender	Professional Services	
	Contracts Valued Under \$50,000	Contracts Valued \$50,000 to \$310,000
African American	<i>Disparity</i>	<i>Disparity</i>
Asian Pacific American	No Disparity	No Disparity
Asian Indian American	No Disparity	No Disparity
Hispanic American	No Disparity	No Disparity
Native American	No Disparity	No Disparity
Caucasian Female	No Disparity	No Disparity
Minority-owned Business	No Disparity	<i>Disparity</i>
Woman-owned Business	No Disparity	<i>Disparity</i>



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C. Services Prime Contracts

As indicated in Table 6.14 below, disparity was identified for African American and woman-owned prime contractors on services contracts valued under \$50,000. Disparity was also identified for African American and minority-owned prime contractors on services contracts valued \$50,000 to \$220,000.

**Table 6.14: Disparity Summary: Services Prime Contract Dollars,
July 1, 2011, to June 30, 2016**

Race/Gender	Services	
	Contracts Valued Under \$50,000	Contracts Valued \$50,000 to \$220,000
African American	<i>Disparity</i>	<i>Disparity</i>
Asian Pacific American	No Disparity	No Disparity
Asian Indian American	No Disparity	No Disparity
Hispanic American	No Disparity	No Disparity
Native American	No Disparity	No Disparity
Caucasian Female	No Disparity	No Disparity
Minority-owned Business	No Disparity	<i>Disparity</i>
Woman-owned Business	<i>Disparity</i>	No Disparity



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D. Goods and Commodities Prime Contracts

As indicated in Table 6.15 below, disparity was found for African American, Asian Pacific American, minority-owned, and woman-owned prime contractors on goods and commodities contracts valued under \$50,000. Disparity was also found for African American, minority-owned, and woman-owned prime contractors on goods and commodities contracts valued \$50,000 to \$190,000.

Table 6.15: Disparity Summary: Goods and Commodities Prime Contract Dollars, July 1, 2011, to June 30, 2016

Race/Gender	Goods and Commodities	
	Contracts Valued Under \$50,000	Contracts Valued \$50,000 to \$190,000
African American	<i>Disparity</i>	<i>Disparity</i>
Asian Pacific American	<i>Disparity</i>	No Disparity
Asian Indian American	No Disparity	No Disparity
Hispanic American	No Disparity	No Disparity
Native American	No Disparity	No Disparity
Caucasian Female	No Disparity	No Disparity
Minority-owned Business	<i>Disparity</i>	<i>Disparity</i>
Woman-owned Business	<i>Disparity</i>	<i>Disparity</i>



CHAPTER 7: Subcontractor Utilization Analysis

I. Introduction

A disparity study, as required by *Croscon*, must document the local government's utilization of available minority and woman-owned businesses as prime contractors and subcontractors. The objective of this chapter is to present the utilization by race, gender, and industry of businesses as construction and professional services subcontractors. The analysis examined the subcontracts awarded by the City of Oakland's (City) prime contractors during the July 1, 2011, to June 30, 2016 study period.

II. Data Sources

The City did not maintain comprehensive data on the subcontracts awarded by its prime contractors. Consequently, extensive research was required to reconstruct the subcontracts issued by the City's construction and professional services prime contractors. Mason Tillman Associates, Ltd. (Mason Tillman) compiled the subcontract data in conjunction with the City.

A. Data Collection Process

In addition to the initial data collection from the City's department records, several methods were used to compile the subcontract data, a survey was used to collect subcontract records from the City's prime contractors. Onsite data collection at the City's departments was also used to compile the most comprehensive dataset of subcontracts.

1. City Provided Subcontract Records

The City provided an electronic file containing subcontract award and payment records. The subcontract data were extracted from Schedule E, Schedule R, Schedule G, and the City's certified payroll. Schedule G was completed by prime contractors and submitted throughout the duration of the contract.

2. Prime Contractor Expenditure Survey

A survey was conducted to collect the prime contractors' subcontractor and subconsultant data. The prime contractors were asked to provide the name, award, and payment amount for each subcontractor, subconsultant, and supplier who worked on each contract the City awarded to the prime contractor during the study period. To maximize the response rate, each survey was accompanied by a letter from the City Administrator requesting the prime contractor's cooperation. Mason Tillman made follow-up calls to each prime contractor to address any questions concerning



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the Study and encouraged the business to submit its subcontract records. Of the 168 prime contractors surveyed, 11 provided subcontract data.

3. On-Site Subcontract Data Collection

In the final effort to reconstruct the subcontracts awarded by the City's prime contractors, Mason Tillman conducted on-site research. The on-site data collection was performed for contracts that Mason Tillman had not received with prior data. Mason Tillman conducted on-site data collection research on contracts that the City submitted with no prior subcontract data.

In anticipation of the onsite research, Mason Tillman asked the departments to pull the prime contract project files for examination by the field researchers. The collection strategies employed included retrieving subcontracts from prime contract documents pulled from document storage and from contract and project management files located onsite. All electronic and hard copy records made available by the departments were reviewed for subcontract award and payment data.

B. Subcontract Data Analysis

The subcontract records that Mason Tillman was able to reconstruct from the various sources listed above were appended to the relational database and cleaned to remove duplicate records. The race and gender of each subcontractor were verified through a combination of certification directories, Internet research, and telephone surveys. Once the data were cleaned, the subcontract utilization tables were prepared for the two industries, identifying the dollars and number of subcontracts awarded to each race and gender group. Subcontractor utilization is organized by race and gender within the two industries and presented below.

III. Subcontractor Utilization

A. All Subcontracts

As shown in Table 7.1, 314 of the reconstructed subcontracts with either award or payment data were analyzed. The reconstructed subcontracts included 289 construction and 25 professional services.

There were \$25,286,374 subcontract dollars analyzed for the July 1, 2011, to June 30, 2016 study period. These dollars included \$24,122,335 for construction and \$1,164,039 for professional services.



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**Table 7.1: Subcontracts Awarded and Dollars Expended by Industry,
July 1, 2011, to June 30, 2016**

Industry	Total Number of Subcontracts	Total Amount Expended
Construction	289	\$24,122,335
Professional Services	25	\$1,164,039
Total	314	\$25,286,374



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B. Subcontracts by Industry

1. Construction Subcontracts

Table 7.2 lists the identified construction subcontracts awarded by the City's prime contractors. Minority-owned businesses (MBEs) received 16.75% of the construction subcontract dollars; Woman-owned businesses (WBEs) received 5.24%; Non-minority male-owned businesses (Non-M/WBEs) received 78.92%.

African Americans received 22, or 7.61%, of the City's construction subcontracts during the study period, representing \$440,753, or 1.83%, of the construction subcontract dollars.

Asian Pacific Americans received 2, or 0.69%, of the City's construction subcontracts during the study period, representing \$83,500, or 0.35%, of the construction subcontract dollars.

Asian Indian Americans received 3, or 1.04%, of the City's construction subcontracts during the study period, representing \$482,800, or 2.00%, of the construction subcontract dollars.

Hispanic Americans received 25, or 8.65%, of the City's construction subcontracts during the study period, representing \$3,009,103, or 12.47%, of the construction subcontract dollars.

Native Americans received 4, or 1.38%, of the City's construction subcontracts during the study period, representing \$25,200, or 0.10%, of the construction subcontract dollars.

Caucasian Females received 18, or 6.23%, of the City's construction subcontracts during the study period, representing \$1,043,162, or 4.32%, of the construction subcontract dollars.

Non-minority Males received 215, or 74.39%, of all construction subcontracts awarded during the study period, representing \$19,037,817, or 78.92%, of the construction subcontracts dollars.

Minority-owned Businesses received 56, or 19.38%, of all construction subcontracts awarded during the study period, representing \$4,041,356, or 16.75%, of the construction subcontracts dollars.

Woman-owned Businesses received 28, or 9.69%, of all construction subcontracts awarded during the study period, representing \$1,263,207, or 5.24%, of the construction subcontracts dollars.



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**Table 7.2: Construction Subcontractor Utilization,
July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American	22	7.61%	\$440,753	1.83%
Asian Pacific American	2	0.69%	\$83,500	0.35%
Asian Indian American	3	1.04%	\$482,800	2.00%
Hispanic American	25	8.65%	\$3,009,103	12.47%
Native American	4	1.38%	\$25,200	0.10%
Caucasian Females	18	6.23%	\$1,043,162	4.32%
Non-minority Males	215	74.39%	\$19,037,817	78.92%
TOTAL	289	100.00%	\$24,122,335	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	4	1.38%	\$175,045	0.73%
African American Males	18	6.23%	\$265,709	1.10%
Asian Pacific American Females	0	0.00%	\$0	0.00%
Asian Pacific American Males	2	0.69%	\$83,500	0.35%
Asian Indian American Females	2	0.69%	\$19,800	0.08%
Asian Indian American Males	1	0.35%	\$463,000	1.92%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	25	8.65%	\$3,009,103	12.47%
Native American Females	4	1.38%	\$25,200	0.10%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	18	6.23%	\$1,043,162	4.32%
Non-minority Males	215	74.39%	\$19,037,817	78.92%
TOTAL	289	100.00%	\$24,122,335	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	56	19.38%	\$4,041,356	16.75%
Woman Business Enterprises	28	9.69%	\$1,263,207	5.24%
Minority and Woman Business Enterprises	74	25.61%	\$5,084,518	21.08%



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2. Professional Services Subcontracts

Table 7.3 lists the professional services subcontracts issued by the City's prime contractors. MBEs received 25.35% of the professional services subcontract dollars; WBEs received 7.52%; Non-M/WBEs received 67.56%.

African Americans received 1, or 4.00%, of the City's professional services subcontracts during the study period, representing \$37,500, or 3.22%, of the professional services subcontract dollars.

Asian Pacific Americans received 3, or 12.00%, of the City's professional services subcontracts during the study period, representing \$130,000, or 11.17%, of the professional services subcontract dollars.

Asian Indian Americans received 1, or 4.00%, of the City's professional services subcontracts during the study period, representing \$90,077, or 7.74%, of the professional services subcontract dollars

Hispanic Americans received 1, or 4.00%, of the City's professional services subcontracts during the study period, representing \$22,500, or 1.93%, of the professional services subcontract dollars.

Native Americans received 1, or 4.00%, of the City's professional services subcontracts during the study period, representing \$15,000, or 1.29%, of the professional services subcontract dollars.

Caucasian Females received 3, or 12.00%, of the City's professional services subcontracts during the study period, representing \$82,500, or 7.09%, of the professional services subcontract dollars.

Non-minority Males received 15, or 60.00%, of all professional services subcontracts awarded during the study period, representing \$786,462, or 67.56%, of the professional services subcontract dollars.

Minority-owned Businesses received 7, or 28.00%, of all professional services subcontracts awarded during the study period, representing \$295,077, or 25.35%, of the professional services subcontract dollars.

Woman-owned Businesses received 4, or 16.00%, of all professional services subcontracts awarded during the study period, representing \$87,500, or 7.52%, of the professional services subcontract dollars.



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**Table 7.3: Professional Services Subcontractor Utilization,
July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American	1	4.00%	\$37,500	3.22%
Asian Pacific American	3	12.00%	\$130,000	11.17%
Asian Indian American	1	4.00%	\$90,077	7.74%
Hispanic American	1	4.00%	\$22,500	1.93%
Native American	1	4.00%	\$15,000	1.29%
Caucasian Females	3	12.00%	\$82,500	7.09%
Non-minority Males	15	60.00%	\$786,462	67.56%
TOTAL	25	100.00%	\$1,164,039	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	1	4.00%	\$37,500	3.22%
Asian Pacific American Females	1	4.00%	\$5,000	0.43%
Asian Pacific American Males	2	8.00%	\$125,000	10.74%
Asian Indian American Females	0	0.00%	\$0	0.00%
Asian Indian American Males	1	4.00%	\$90,077	7.74%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	1	4.00%	\$22,500	1.93%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	1	4.00%	\$15,000	1.29%
Caucasian Females	3	12.00%	\$82,500	7.09%
Non-minority Males	15	60.00%	\$786,462	67.56%
TOTAL	25	100.00%	\$1,164,039	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	7	28.00%	\$295,077	25.35%
Woman Business Enterprises	4	16.00%	\$87,500	7.52%
Minority and Woman Business Enterprises	10	40.00%	\$377,577	32.44%



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IV. Summary

The construction and professional services subcontracts awarded by the City's prime contractors had to be reconstructed using a multi-faceted research methodology because the City did not maintain comprehensive subcontract records. The subcontract utilization analysis was therefore limited to the subcontract records that could be reconstructed through the combined effort of the City, the City's prime contractors, and Mason Tillman. The subcontract utilization analysis was limited to the construction and professional services prime contracts for which subcontracts records were complete or could be reconstructed. The reconstructed construction and professional services subcontracts were valued at \$25,286,374. The reconstructed subcontracts examined were awarded by the City's prime contractors from July 1, 2011, to June 30, 2016. The \$25,286,374 expended included \$24,122,335 for construction and \$1,164,039 for professional services. A total of 314 subcontracts were analyzed, which included 289 for construction and 25 for professional services.



CHAPTER 8: Subcontract Disparity Analysis

I. Introduction

The objective of this chapter is to determine if available minority and woman-owned businesses were underutilized as subcontractors in the award of the City of Oakland’s (City) contracts during the July 1, 2011, to June 30, 2016 study period. A detailed discussion of the statistical procedures for conducting a disparity analysis is set forth in *Chapter 6: Prime Contract Disparity Analysis*. The same statistical procedures are used to perform the subcontract disparity analysis.

Under a fair and equitable system of awarding subcontracts, the proportion of subcontracts and subcontract dollars awarded to minority and woman-owned businesses should be relatively close to the proportion of their availability in the City’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 5: Prime Contractor and Subcontractor Availability Analysis*.

If the ratio of utilized minority and woman-owned businesses to their availability 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.³⁰⁵ *Croson* states that an inference of discrimination can be made *prima facie* if the observed disparity is statistically significant. Under the *Croson* standard, Caucasian male-owned businesses are not subjected to a statistical test of underutilization.³⁰⁶

II. Disparity Analysis

As detailed in *Chapter 7: Subcontractor Utilization Analysis*, extensive efforts were undertaken to obtain subcontractor records for the City’s construction and professional services contracts. The disparity analysis was performed on subcontracts issued during the July 1, 2011, to June 30, 2016 study period.

The subcontract disparity findings in the three industries under consideration are detailed in *Section III*. The outcomes of the statistical analyses are presented in the “P-Value” column of the tables. A description of the statistical outcomes in the disparity tables are presented in Table 8.1.



³⁰⁵ 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% confidence level or a level of absolute certainty can never be obtained in statistics. A 95% confidence level is the statistical standard used in physical and social sciences, and is thus used in the present report to determine if an inference of discrimination can be made.

³⁰⁶ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

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Table 8.1: Statistical Outcome Descriptions

P-Value Outcome	Definition of P-Value Outcome
< 0.05 *	This underutilization is statistically significant.
not significant	Minority and woman-owned businesses: this underutilization is not statistically significant. Non-minority males: this overutilization is not statistically significant.
< 0.05 †	This overutilization is statistically significant
---	While this group was underutilized, there were too few available firms to determine statistical significance.
**	This study does not test statistically the overutilization of minority and woman-owned businesses or the underutilization of non-minority male-owned businesses.
^	The statistical test could not detect the disparity because there were less than two contracts awarded.



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III. Disparity Analysis: All Subcontracts by Industry

A. Construction Subcontracts

The disparity analysis of construction subcontracts is described below and shown in Table 8.2 and Chart 8.1.

African Americans represent 17.86% of the available construction businesses and received 1.83% of the construction subcontract dollars. This underutilization is statistically significant.

Asian Pacific Americans represent 3.49% of the available construction businesses and received 0.35% of the construction subcontract dollars. This underutilization is statistically significant.

Asian Indian Americans represent 0.82% of the available construction businesses and received 2.00% of the construction subcontract dollars. This study does not test statistically the overutilization of minority and woman-owned businesses.

Hispanic Americans represent 7.19% of the available construction businesses and received 12.47% of the construction subcontract dollars. This study does not test statistically the overutilization of minority and woman-owned businesses.

Native Americans represent 0.41% of the available construction businesses and received 0.10% of the construction subcontract dollars. While this group was underutilized, there were too few available firms to determine statistical significance.

Caucasian Females represent 5.13% of the available construction businesses and received 4.32% of the construction subcontract dollars. This underutilization is not statistically significant.

Non-minority Males represent 65.09% of the available construction businesses and received 78.92% of the construction subcontract dollars. This overutilization is statistically significant.

Minority-owned Businesses represent 29.77% of the available construction businesses and received 16.75% of the construction subcontract dollars. This underutilization is statistically significant.

Woman-owned Businesses represent 9.24% of the available construction businesses and received 5.24% of the construction subcontract dollars. This underutilization is not statistically significant.



**Table 8.2: Disparity Analysis: Construction Subcontracts,
July 1, 2011, to June 30, 2016**

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American	\$440,753	1.83%	17.86%	\$4,309,329	-\$3,868,576	0.10	< .05 *
Asian Pacific American	\$83,500	0.35%	3.49%	\$842,053	-\$758,553	0.10	< .05 *
Asian Indian American	\$482,800	2.00%	0.82%	\$198,130	\$284,670	2.44	**
Hispanic American	\$3,009,103	12.47%	7.19%	\$1,733,638	\$1,275,465	1.74	**
Native American	\$25,200	0.10%	0.41%	\$99,065	-\$73,865	0.25	----
Caucasian Females	\$1,043,162	4.32%	5.13%	\$1,238,313	-\$195,151	0.84	not significant
Non-minority Males	\$19,037,817	78.92%	65.09%	\$15,701,807	\$3,336,009	1.21	< .05 †
TOTAL	\$24,122,335	100.00%	100.00%	\$24,122,335			
Race and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$175,045	0.73%	2.67%	\$643,923	-\$468,878	0.27	not significant
African American Males	\$265,709	1.10%	15.20%	\$3,665,406	-\$3,399,698	0.07	< .05 *
Asian Pacific American Females	\$0	0.00%	0.62%	\$148,598	-\$148,598	0.00	----
Asian Pacific American Males	\$83,500	0.35%	2.87%	\$693,455	-\$609,955	0.12	< .05 *
Asian Indian American Females	\$19,800	0.08%	0.21%	\$49,533	-\$29,733	0.40	----
Asian Indian American Males	\$463,000	1.92%	0.62%	\$148,598	\$314,402	3.12	**
Hispanic American Females	\$0	0.00%	0.41%	\$99,065	-\$99,065	0.00	----
Hispanic American Males	\$3,009,103	12.47%	6.78%	\$1,634,573	\$1,374,530	1.84	**
Native American Females	\$25,200	0.10%	0.21%	\$49,533	-\$24,333	0.51	----
Native American Males	\$0	0.00%	0.21%	\$49,533	-\$49,533	0.00	----
Caucasian Females	\$1,043,162	4.32%	5.13%	\$1,238,313	-\$195,151	0.84	not significant
Non-minority Males	\$19,037,817	78.92%	65.09%	\$15,701,807	\$3,336,009	1.21	< .05 †
TOTAL	\$24,122,335	100.00%	100.00%	\$24,122,335			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$4,041,356	16.75%	29.77%	\$7,182,215	-\$3,140,859	0.56	< .05 *
Woman Business Enterprises	\$1,263,207	5.24%	9.24%	\$2,228,963	-\$195,151	0.57	not significant
Minority and Woman Business Enterprises	\$5,084,518	21.08%	34.91%	\$8,420,528	-\$3,336,009	0.60	< .05 *

(*) denotes a statistically significant underutilization.

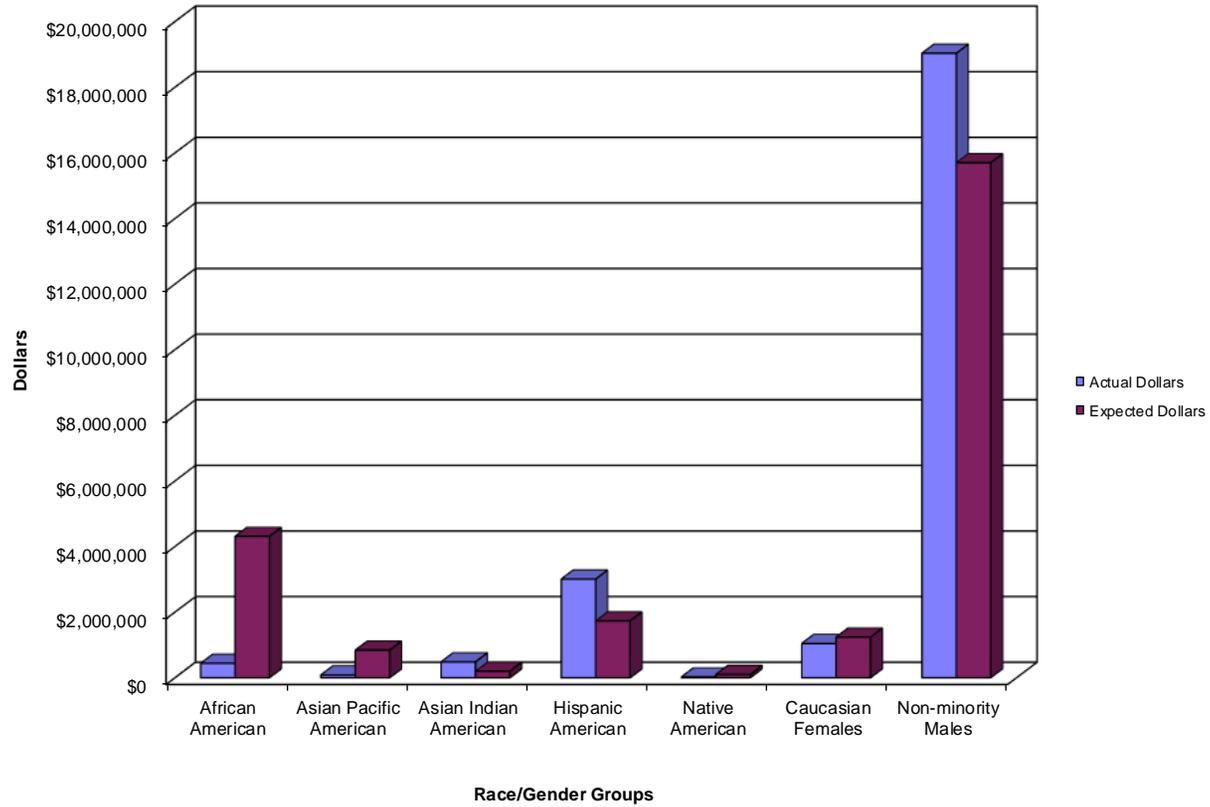
(†) denotes a statistically significant overutilization.

(**) denotes that this study does not test statistically the overutilization of minority and woman-owned businesses or the underutilization of non-minority male-owned businesses

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



**Chart 8.1: Disparity Analysis: Construction Subcontracts,
July 1, 2011, to June 30, 2016**



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B. Professional Services Subcontracts

The disparity analysis of professional services subcontracts is described below and shown in Table 8.3 and Chart 8.2.

African Americans represent 9.12% of the available professional services businesses and received 3.22% of the professional services subcontract dollars. This underutilization is statistically significant.

Asian Pacific Americans represent 5.29% of the available professional services businesses and received 11.17% of the professional services subcontract dollars. This study does not test statistically the overutilization of minority and woman-owned businesses.

Asian Indian Americans represent 1.60% of the available professional services businesses and received 7.74% of the professional services subcontract dollars. This study does not test statistically the overutilization of minority and woman-owned businesses.

Hispanic Americans represent 2.85% of the available professional services businesses and received 1.93% of the professional services subcontract dollars. This underutilization is not statistically significant.

Native Americans represent 0.21% of the available professional services businesses and received 1.29% of the professional services subcontract dollars. This study does not test statistically the overutilization of minority and woman-owned businesses.

Caucasian Females represent 8.84% of the available professional services businesses and received 7.09% of the professional services subcontract dollars. This underutilization is not statistically significant.

Non-minority Males represent 72.09% of the available professional services businesses and received 67.56% of the professional services subcontract dollars. This overutilization is statistically significant.

Minority-owned Businesses represent 19.07% of the available professional services businesses and received 25.35% of the professional services subcontract dollars. This study does not test statistically the overutilization of minority and woman-owned businesses.

Woman-owned Businesses represent 16.14% of the available professional services businesses and received 7.52% of the professional services subcontract dollars. This underutilization is not statistically significant.



**Table 8.3: Disparity Analysis: Professional Services Subcontracts,
July 1, 2011, to June 30, 2016**

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American	\$37,500	3.22%	9.12%	\$106,116	-\$68,616	0.35	^
Asian Pacific American	\$130,000	11.17%	5.29%	\$61,564	\$68,436	2.11	**
Asian Indian American	\$90,077	7.74%	1.60%	\$18,631	\$71,446	4.83	**
Hispanic American	\$22,500	1.93%	2.85%	\$33,212	-\$10,712	0.68	not significant
Native American	\$15,000	1.29%	0.21%	\$2,430	\$12,570	6.17	**
Caucasian Females	\$82,500	7.09%	8.84%	\$102,876	-\$20,376	0.80	not significant
Non-minority Males	\$786,462	67.56%	72.09%	\$839,210	-\$52,748	0.94	not significant
TOTAL	\$1,164,039	100.00%	100.00%	\$1,164,039			
Race and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$0	0.00%	3.90%	\$45,363	-\$45,363	0.00	not significant
African American Males	\$37,500	3.22%	5.22%	\$60,754	-\$23,254	0.62	not significant
Asian Pacific American Females	\$5,000	0.43%	1.67%	\$19,441	-\$14,441	0.26	not significant
Asian Pacific American Males	\$125,000	10.74%	3.62%	\$42,122	\$82,878	2.97	**
Asian Indian American Females	\$0	0.00%	0.35%	\$4,050	-\$4,050	0.00	----
Asian Indian American Males	\$90,077	7.74%	1.25%	\$14,581	\$75,496	6.18	**
Hispanic American Females	\$0	0.00%	1.25%	\$14,581	-\$14,581	0.00	not significant
Hispanic American Males	\$22,500	1.93%	1.60%	\$18,631	\$3,869	1.21	**
Native American Females	\$0	0.00%	0.14%	\$1,620	-\$1,620	0.00	----
Native American Males	\$15,000	1.29%	0.07%	\$810	\$14,190	18.52	**
Caucasian Females	\$82,500	7.09%	8.84%	\$102,876	-\$20,376	0.80	not significant
Non-minority Males	\$786,462	67.56%	72.09%	\$839,210	-\$52,748	0.94	not significant
TOTAL	\$1,164,039	100.00%	100.00%	\$1,164,039			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$295,077	25.35%	19.07%	\$221,953	\$73,124	1.33	**
Woman Business Enterprises	\$87,500	7.52%	16.14%	\$187,931	-\$20,376	0.47	not significant
Minority and Woman Business Enterprises	\$377,577	32.44%	27.91%	\$324,829	\$52,748	1.16	**

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

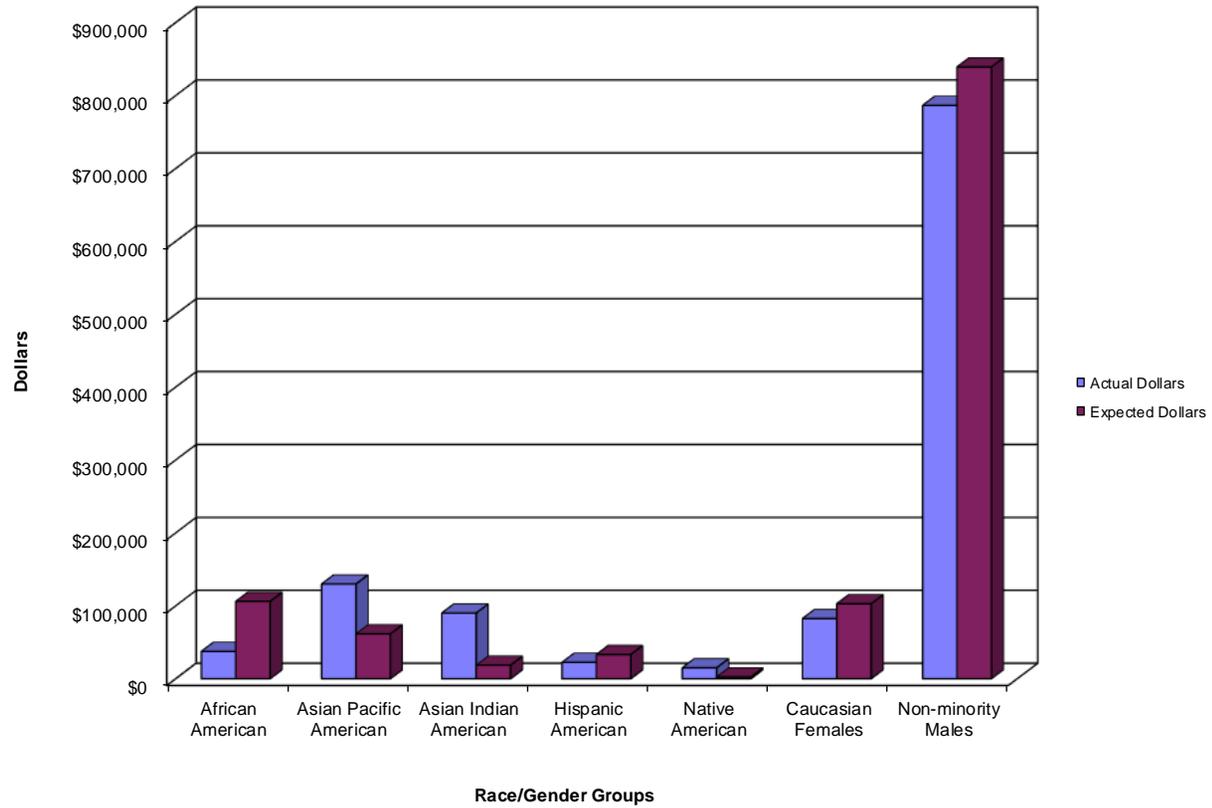
(**) denotes that this study does not test statistically the overutilization of people of color and female-owned businesses or the underutilization of non-minority males.

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

(^) The statistical test could not detect the disparity because there were less than two contracts awarded.



**Chart 8.2: Disparity Analysis: Professional Services Subcontracts,
July 1, 2011, to June 30, 2016**



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IV. Subcontract Disparity Summary

As indicated in Table 8.4, disparity was found for African American and Asian Pacific American construction subcontractors. Disparity was not found for professional services subcontractors.

**Table 8.4: Subcontract Disparity Summary,
July 1, 2011, to June 30, 2016**

Ethnicity / Gender	Construction	Professional Services
African American	<i>Disparity</i>	<i>Disparity</i>
Asian Pacific American	<i>Disparity</i>	No Disparity
Asian Indian American	No Disparity	No Disparity
Hispanic American	No Disparity	No Disparity
Native Americans	No Disparity	No Disparity
Caucasian Female	No Disparity	No Disparity
Minority-owned Business	<i>Disparity</i>	No Disparity
Woman-owned Business	No Disparity	No Disparity



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 minority and women-owned business enterprises (M/WBEs) access to the City of Oakland’s (City) contracts. The anecdotal evidence was gathered through in-depth, one-on-one interviews and public comments from 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)*.³⁰⁷ In its 1989 *Croson* decision, the United States Supreme Court 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 explain the findings of statistical disparity.³⁰⁸ 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 MBE 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 M/WBE 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 government entity. The purpose of this examination is to determine whether the government has committed acts that have prevented MBEs from obtaining contracts.

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



³⁰⁷ *City of Richmond V. J.A. Croson Co.*, 488 U.S. 469 (1989).

³⁰⁸ *Croson*, 488 U.S. at 469.

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contracts are awarded to companies that discriminate against M/WBEs, or when government fails to take corrective measures to prevent discrimination by its prime contractors.³⁰⁹

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.³¹⁰ Therefore, anecdotal testimony used in combination with statistical data that support a race- or gender-conscious program has value in the *Croson* framework. As *Croson* notes in reference to the City of Richmond’s 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.”³¹¹ According to *Croson*, the anecdotal narratives can identify practices that should be enhanced or eliminated in order to increase contracting opportunities for MBEs.

III. Anecdotal Methodology

The method used in gathering anecdotal testimony included eliciting eyewitness accounts and perceptions of the effects of exclusionary practices through in-depth interviews and public comments during business community meetings. Allowing business owners 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 City vital insights on an array of policy changes to its Local and Small Local Business Enterprise (L/SLBE) program and procurement standards to increase the participation of M/WBEs on the City’s contracts.

A. In-depth Interviews

Interviews were conducted with 40 business owners domiciled in the City of Oakland. The questions asked elicited:

- Descriptions of barriers business owners encountered working with or seeking work from the City
- Positive experiences working with the City and their prime contractors
- Knowledge of the City’s L/SLBE program
- Recommendations to enhance the L/SLBE program
- Concerns regarding the City’s proposed Project Labor Agreement

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



³⁰⁹ *Croson*, 488 U.S. at 491-93, 509.

³¹⁰ *Id.* at 509.

³¹¹ *Id.*

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operated a business within the market area during the study period and were willing to commit to the interview process.

B. Business Community Meeting and Testimony

Four business community meetings were held to inform the business community about the City’s Race and Gender Disparity Study. The meetings were held at the following locations and times:

Business Community Meetings		
Location	Date	Time
San Antonio Senior Center	October 21, 2017	10 AM
Rainbow Recreation Center	October 21, 2017	2 PM
Lincoln Square Recreation Center	October 24, 2017	2 PM
City Hall Council Chambers	October 24, 2017	6 PM

The purpose of the meetings was to announce the Study, which included informing the business community about the Study’s legal framework, methodology, and timeline. The meetings also gave business owners the opportunity to speak with the City and connect with local technical assistance providers. Additionally, the meetings also sought to identify business owners willing to participate in the anecdotal phase of the Study.

Mason Tillman conducted a business outreach campaign for the meetings, which included partnering with local media outlets and City of Oakland representatives to promote the upcoming meetings. The outreach tools that Mason Tillman utilized for the business outreach meetings included community calendar postings, digital media and social media announcements, save-the-date announcements, invitations, reminder notices, and reminder calls to businesses. The information was distributed to individual businesses through email blasts, U.S. postal mail, facsimile transmissions, telephone calls, and social media posts. A total of 197 businesses pre-registered for the four meetings.

The meetings were recorded and transcribed. Testimony from these meetings has been incorporated in this chapter.



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IV. Anecdotal Findings

A. Discrimination

The City's commitment to equity in public contracting spans over several decades. The impetus for the City's first disparity study was admissible under Section 808(b) of the City Charter. Resulting from a voter referendum, Section 808(b) authorized the City in 1991 to conduct a disparity study to determine whether it had been an active or passive participant in discrimination within the relevant market area. The 1991 Disparity Study revealed disparities in several areas of City contracting.

On December 5, 1996, six years after the completion of the City's 1991 Draft Disparity Study, voters approved a California Civil Rights Initiative, Proposition 209, that amended the California Constitution. The amendment added Section 31, which banned preferences based on race or gender in public contracting. Thereafter, the City suspended its M/WBE program and implemented a race- and gender-neutral L/SLBE program.

In 2007, nine years after the passage of Section 31 of the California Constitution, the City, in conjunction with the Redevelopment Agency, commissioned its second disparity study. The 2007 Disparity Study revealed that minority business enterprises (MBEs) continued to be underutilized at a statistically significant level on the City's contracts. The findings from both the 1991 and 2007 disparity studies document discrimination against MBEs in the City's market area before and after Proposition 209 and the amendment of the California Constitution.

The discrimination suffered by MBEs attempting to do business with the City extends well beyond the geographic boundaries of the City of Oakland. A report on MBEs access to public contracting with the State of California and local governments, commissioned by the Equal Justice Society, documented that MBEs lost approximately:³¹²

- \$820 million per year in contracts with the State of California
- \$200 million per year in contracts with the City and County of San Francisco
- \$30 million per year in contracts with the City of Oakland
- \$20 million per year in contracts with the City of San Jose

In the City of Oakland, 28 years after the City's initial disparity study, M/WBEs are still being discriminated against in the City's award of its contracts. And non-minority males are receiving preferences in the award of City contracts. The most dramatic impact of the documented discrimination is the drastic decline in the utilization of M/WBEs, and especially African Americans as revealed in both the 2007 and 2019 Disparity Studies.

Patterns of discrimination chronicled in the 2019 Disparity Study were also reported in the 2007 Disparity Study. The persistence of these patterns over the last dozen years has no doubt adversely affected the growth of the African American business community. One noteworthy example of the



³¹² *The Impact of Proposition 209 on California MWBEs*, by Tim Lohrentz, commissioned by the Equal Justice Society, (2015).

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documented barriers that have confronted African American business owners in their effort to contract with the City is described by one African American architect. The business owner complained about experiencing discriminatory behaviors by agency managers and the contracting community, while attempting to participate in the City's procurement process.

I have had awards taken away from my company when it was [determined that] we were a Black firm. My race is the reason my business is small. There are not many Black engineering firms of any size in the State of California. Whereas in other places, they have African American firms of considerable size, but in the Bay area and in Los Angeles, there are not.

African American contractors received 1.49% of the dollars on the City's professional services prime contracts during the July 1, 2002 to June 30, 2005 study period.

Chapter 4, Prime Contractor Utilization Analysis, 2007 Disparity Study

We were a potential prime contractor on a two-and-a-half million-dollar contract. And we made it to the interview or source selection committee stage. They were not happy [that we were] allowed to bid on the job in the first place. So, I felt a strong racist undertone [during the interview] because of the nature of the questions [we were asked]. It was a very tense meeting. The lead [interviewer] on the selection committee was the same person who did not want [us] to bid on the job. So, she made no bones about the fact that she felt that we were not qualified to do the job. She asked my [Caucasian] business partner why does he [work] with me and my company because we are a small business.

We have participated in a number [of interviews] for different design projects and [because] of our qualifications, [they erroneously] believed [we] were a White-owned firm. And, [when] we came through the door, they said, 'Oh, wait a minute.' We have been told by committee members and by our consultants that we made a good presentation, but we still did not get the project. It was fairly obvious why we were not selected. They would rather give [the work] to a White female than a Black male, which is what happened.



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I think racism is more of an issue now. When I talk to people on the phone, apparently, they cannot determine that [I am] Black. But when I show up to their office they are totally dumbfounded. I even had somebody tell me, “I can’t believe you are the same person I spoke to.” There has been a couple [of instances] where we were rejected because they had already made a selection prior to the interview. The interview was just a formality. We didn’t make a complaint because as a [professional services] contractor, if you complain they can bar you from bidding on a project. So, we may not be invited to submit a bid on another project if we complain.

African American contractors received 4.26% of the dollars on the City’s construction services prime contracts during the July 1, 2002 to June 30, 2005 study period although their availability was 20.62%.

Chapter 4, *Prime Contractor Utilization Analysis, 2007 Disparity Study*

Since many cities have tight budgets, they have partnered with private developers to [work] on a lot of projects. A lot of the developers are good White ole’ boys who come from old family or real estate wealth. They have their own set of architects that they work with [the majority of] the time. This makes it hard to get on teams for public [contracts]. The City of Oakland’s staff is very good, but it is hard to hook up with private developers. The City has been very helpful, but the developers stick to their same ‘ole boys’ network. I don’t know about Hispanic [Americans’] or Asian [Americans’] difficulties, but I know that it is tough for Black guys to get on these White development teams. If you are part of the ‘good ole’ boy’ White network, you get more business. When you have those relationships, like a college roommate with a daddy who owns a big corporation, then you are going to get the big corporate business. It’s White people that have those kinds of long-standing relationships. If you are Black, you don’t have those opportunities.

African American contractors received 1.62% of the dollars on the City’s architecture and engineering prime contracts during the July 1, 2002 to June 30, 2005 study period.

Chapter 4, *Prime Contractor Utilization Analysis, 2007 Disparity Study*



The fact that the number of African American businesses willing to do business with the City has decreased since 2007 is to be expected given the reported practices of the City. For example, in 2007, African American construction contractors represented 21% of the construction businesses willing to contract with the City. Despite their availability, African American construction

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contractors received only 4.26% of the total dollars. In 2019, African American construction contractors willing to contract with the City account for 16% of the construction businesses in the City but receive less than 1% of the total dollars.

The utilization pattern documented in the two studies also underscores the ineffectiveness of the L/SLBE program to support equitable distribution of City contracts among all available market area businesses. A comparison of the findings is presented below in Table 9.1.

Table 9.1: Comparison of the 2007 and 2019 Disparity Study Findings

Industry All Dollars	2007 Disparity Study Groups with a Disparity	2019 Disparity Study Groups with a Disparity
Prime Contracts		
Construction	African Americans, Hispanic Americans, and Women Business Enterprises	African Americans and Women Business Enterprises
Professional Services (including architecture and engineering)	African American, Asian American, Hispanic American, and Women Business Enterprises	African Americans, Minority Business Enterprises, and Women Business Enterprises
Services	Hispanic Americans	African Americans, and Minority Business Enterprises
Goods and Commodities		African Americans, Asian Pacific Americans, Minority Business Enterprises, and Women Business Enterprises

The following anecdotal accounts from the business owners post Proposition 209 reinforce the statistical findings from the 2019 Disparity Study as well as the findings from the City’s two earlier studies. Although anecdotal evidence alone is unlikely to establish a systemic pattern of discrimination,³¹³ the anecdotes described below can bring “the cold numbers convincingly to life.”³¹⁴

A minority male owner of a construction company described the major differences he has experienced since the passage of proposition 209:



³¹³ *Id.*

³¹⁴ *Id.* (quoting *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977)).

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It has always been extremely difficult for black companies or companies of color to get government contracts. But after proposition 209, the City's policies and procedures changed drastically, so now there's a lot of pushback. When you

African American contractors received less than 1% of the dollars on the City's construction services contracts during the July 1, 2011 to June 30, 2016 study period.

Chapter 3, *Prime Contractor Utilization Analysis, 2019 Disparity Study*

have a situation where companies have been historically oppressed and denied access, and when they start making a little leeway, they turn back the clock. And that's what Proposition

209 did. I think it's a slap in the face to be considered disadvantaged. I'm not handicapped, but historically Blacks and other companies of color have been denied access to public work. Another thing that happened immediately after proposition 209 is the City of Oakland had a lot of Blacks in senior management positions. And after 209, most of them got fired or were forced out. They had at least 40% to 50% Black department heads. So, after Proposition 209, many Blacks got pushed out. They had a Black city manager and a Black city clerk. All these people were pushed out and those that are there now don't seem to have an understanding of the issues faced by Blacks historically.

A minority male owner of a construction company believes that African American contractors experience discrimination when navigating the City's procurement process:

I'm in the same category of many other African American contractors. We don't get the work and we aren't called back. If you don't want us, then dammit you don't want us. So, we move on. We don't complain. Now, if I had an opportunity I might complain. But there haven't been any opportunities. We are just told, "Good luck next time." There is no one to complain to. When [name withheld] tried to help contractors in the City, he was threatened out of office. I've seen subcontractors get projects, I won't say deserved, I'll just say should not have happened. But what could I say about somebody hiring his own brother? They're going to do what they want to. And after the project begins, a couple of general contractors I worked with fired me to bring in one of their own to make the rest of the money.



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A minority male owner of a construction company believes that minority male contractors are the group most discriminated against:

Well, interestingly, I don't think there are many barriers today for women. I am familiar with and have encountered a significant number of women who have entered the construction trade successfully. I do think that, unfortunately, for a man of color, there can be substantial sociological and societal barriers. I think it is harder for members of the minority groups because many in the contracting community are fundamentally racists. I don't think it is any different anywhere. I really don't. For example, here in the Bay Area, two of the largest and most successful residential construction and development companies are women owned. They were daughters that were brought up in the business. So, my ethnicity hurts more than it helps. I think that being an old white man has an inherent advantage in terms of experience, background, and opportunities. If I had that as a young man, I would have had a leg up.

A minority male owner of a professional services company believes that African American consultants are not considered competent:

There is a lack of confidence in my race's ability to perform. So, there is a lack of City support because they don't see people of my race as successful in what they do.

A minority male owner of a construction company reported why he believes African Americans grapple with unique challenges seeking work from the City:

I feel that my race has been a positive because I'm so positive about who I am. I present myself in a professional and respectful way. Many times, White managers and people who are not Black haven't dealt with many black folks. Many times, White folks only come in contact with us if they are judges, lawyers, police officers, or social workers. They come in contact with us when we're having issues and problems. They don't

African American contractors received less than 1% of the dollars on the City's professional services contracts during the July 1, 2011 to June 30, 2016 study period. Similarly, African American contractors received 1.49% of the professional services dollars during the July 1, 2002 to June 30, 2005 study period.

Chapter 3, Prime Contractor Utilization Analysis, 2019
Disparity Study



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come in contact with us on a day-to-day basis for business professional reasons. I had people who work for the City of Oakland be surprised by my bid. They tell me, "You must think you are a White man, that's a White man's deal." I asked for a \$3 million loan or grant, and they say, "That is ridiculous." And I said, "Look, they just gave a White company a \$6 million loan or grant, I'm asking for half of that." They respond, "But you aren't White." When you walk into the City of Oakland, they look at you like, "Okay he's a problem already." How do you know I'm a problem? So, it's just preconceived notions and attitudes that people carry with them that's bad.

A minority male owner of a construction business reported that prime contractors rather work with other minorities than African Americans:

Most of the big prime contractors are Caucasian males and they don't want to work with us. They either will work with other Caucasian males or Hispanics.

Hispanic American contractors were overutilized on the City's construction services prime contracts receiving 19.36% of the total dollars during the July 1, 2011 to June 30, 2016 study period.

Chapter 3, Prime Contractor Utilization Analysis, 2019 Disparity Study

They don't usually go for brothers. Whatever the reason, that definitely happens. I wouldn't say their preference is to use other Caucasian males and Mexicans, but I would probably say

their preference is not to use brothers. Before proposition 209, I was a union contractor. And, about 85% to 90% of the cement workers were African Americans. And now, I don't think there are any in the unions. They have switched to Hispanics and we were kicked to the curb. Now they have this phony pre-apprenticeship program. I'm like, "What the hell is a pre-apprenticeship program?" The unions need to just let people into the program. You don't need to be a pre-apprentice, because an apprentice means you don't know, you're learning. I think the pre-apprenticeship program is just a way to keep people out. I never heard of it.

A minority male owner of a professional services company reported that certain prime contractors do not value the acumen that minority businesses provide:

When they see that we are a small or minority-owned business, they say in a subtle way that they are not interested in partnering with us. They see no value in partnering with us, so they go with someone else that they feel will be good for them. I think this happens in a lot of cases. They should be able to do a



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certain amount of business with small or minority/women owned businesses. It should be monitored. I met with one of the City of Oakland's officials and he liked my presentation. I just want to be able to compete, that's all. We have to just keep moving.

B. Difficulty Breaking into the Contractor Community

Section 2.04.045 of the City's municipal code governs the pre-qualification and bid processes for general construction services and the Mandatory Preferred Small Local Business (MPSLB) program. The general construction services process includes an optional prequalification procedure for construction services valued over \$250,000. A list of pre-qualified businesses is developed to perform as needed and specified construction services at the discretion of the City and when deemed by the City Administrator to be in the best interests of the City. The City may limit solicitations for bids to three or more business on the pre-qualified list.

The MPSLB program includes pre-qualification procedures for construction services valued under \$250,000. As with the general construction process, the City will establish a list of pre-qualified businesses. Qualifications are sought from Oakland's certified small, local business enterprises. The solicitations are limited to three or more businesses on the pre-qualified list.

Despite the City's pre-qualification procedures, both the 2007 and 2017 disparity studies documented that the City's total construction dollars were received by a few contractors. In the 2007 Disparity Study, the prime contract utilization analysis revealed that five construction contractors received 95% of the total construction dollars. Similarly, the 2017 prime contract utilization analysis revealed that eight construction contractors received 71% of the total construction dollars. The findings from the 2017 Disparity Study underscores the fact that the beneficiaries of Proposition 209 are Caucasian male contractors. The Caucasian male construction, professional services, and goods and commodities contractors were over-utilized on the City's prime contracts. While the disparity analysis revealed that African American construction contractors lost \$46,408,688 in contracts with the City during the July 1, 2011 to June 30, 2016 study period.

A minority male owner of a services company reported that he tried to join the union in order to receive work from the City:

I tried to get on with the union that works with the City of Oakland. I met with them about four times and I provided them with all of my paperwork. I didn't hear back from them. I decided that I'm not running after them anymore trying to get their little \$20,000 bids. I don't have the good ole' boy connection. You have to be in with them, hobnob with them and I'm not going to kiss nobody's behind for money. I'm not going to do that.



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A minority male owner of a construction company explained why project labor agreements are detrimental for non-union contractors:

Project labor agreements give unions too much of a competitive advantage over non-union contractors. If you're not in the union, they force you to use union workers on their projects. As long as you're required to pay prevailing wage on a project, you shouldn't be forced to use union workers.

Caucasian male contractors were overutilized on the City's construction services. They received 74.63% of the total dollars during the July 1, 2011 to June 30, 2016 study period, which exceeded their 67.25% availability. In fact, a mere 66.51% of the available Caucasian construction contractors received 77.79% of the construction contracts.

Chapter 3, *Prime Contractor Utilization Analysis, 2017 Disparity Study*

A minority male owner of a construction company explained why union requirements make it difficult for small businesses to break into the contractor community and it increases the cost to bid the work:

One of the horrible lessons I had to learn was that unions control everything in the San Francisco Bay Area. If you are a small company without the lobbying and financial heft to fight them, you might as well just shut up and get in line. I hate that the unions don't have a small business program. They don't treat small businesses with any care and deference. As a union guy, I don't have any discretion over my costs. My labor costs are dictated by those guys. Every single job I do, I have to cost it the way they want it. If I had the discretion of not being union, I would be able to make adjustments and do jobs at a lower cost.



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This same business owner further elaborated:

Caucasian male contractors were overutilized on the City's goods and commodities prime contracts receiving 88.12% of the total dollars during the July 1, 2011 to June 30, 2016 study period.

Chapter 3, *Prime Contractor Utilization Analysis, 2019 Disparity Study*

The PLAs are not uniformly administered. For me, it makes it very difficult to participate in an environment with PLAs. They hurt small businesses more than it helps the union or it does so at the expense of helping the union. I

cannot decide to no longer be in the union, as a signatory and still be in business. As a business owner, we are just as responsible for the union promises and contractual requirements to their members as their actual union officers. So, if I left the union today, I would have to sit down with their attorneys and their accountants, and they would determine what my fair share of their outstanding obligations are, based on some fancy time value of money calculations. I will have to buy my way out of the union responsibility. Otherwise, for the rest of my life, I am beholden to the union for their requirements.

A minority male owner of a construction company explains why he does not learn about subcontracting opportunities:

It's hard to find out about subcontractor bids on City projects. You must know the prime contractors to hear about those opportunities. I submitted quotes to a few prime contractors, but to no avail.

A minority female owner of a professional services company reported that the City's procurement process is not intended to develop a diverse pool of contractors for their projects:

The City is looking for companies that have all the bells and the whistles. They do not have a diverse perspective. We can't compete with these large companies. I am not saying that they should give us any concessions, but as a small business, there should be opportunities for us as well. They expect us to compete on the same playing field, even though we don't have the same resources, tools, or financing. And a lot of times the City already knows who they are going to select. Not too long ago, I bid for something and it was a joke. We went to a meeting for one of their RFPs. They just talked and talked but didn't allow us to ask questions. They already knew who they wanted to work with. They were just



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going through the formalities. They told us to submit any questions online. It was really a joke.

A minority male owner of a construction company explained why he has experienced difficulty breaking into the contracting community:

If you work for Alameda County, you need to be part of the Filipino mob. I don't

Eight of the 93 construction contractors available to contract with the City during the July 1, 2011 to June 30, 2016 study period received 71% or \$205,604,761 of the total construction prime contract dollars. The findings illustrate that a small group of prime contractors received the majority of the construction prime contract dollars awarded by the City.

Chapter 3, *Prime Contractor Utilization Analysis, 2019 Disparity Study*

mean mob like mafia but there's a huge number of Filipinos who work for Alameda County. And, they are a clique within the City of Oakland. When you have people, who are not aware or sensitive to the historical facts of what happened in this country to Black people, their attitude toward us is very

negative.

This same business owner further elaborated:

I feel that the game is rigged at the City of Oakland. The things they allow over there is ridiculous. For example, they will have a 25% local resident goal. Now, companies that are doing \$300 million a year have projects in Salisbury, Sacramento, Stockton, and San Francisco and are headquarters in San Francisco. They are allowed to certify as a local business. The primes have Oakland residents work on projects outside of Oakland and meet the local business hiring goals.

So, the City of Oakland allows outside companies to use Oakland residents on projects outside of the City. To me, that's ridiculous. You know, when you say that you're talking about Oakland hiring, you're talking about Oakland hiring for your project in Oakland, everybody understands that. So, they just let the primes do whatever they want. They give them loopholes and they give them a way out.



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A minority male owner of a construction company reported that the City uses preferred contractors for their electrical services:

It is common for the City to use the same contractors, especially for electrical work. [Company name withheld] receives a lot of the work. Sometimes, it's hard for a new guy to break in and compete against an established company. [Company name withheld] has been doing electrical work with the City for a while, so they know how to cut corners and they know what they can get away with.

The prime contract disparity analysis revealed that African American construction contractors lost \$46,408,68 in contracts with the City during the July 1, 2011 to June 30, 2016 study period.

Chapter 3, Prime Contractor Disparity Analysis, 2019 Disparity Study

This same business owner further elaborated:

I bid a job and a Caucasian owned supplier gave me a number for material and then, subsequent to the bid, I later found out that he had given someone else a lower number for the same material.

A Caucasian male owner of a construction company reported that smaller companies are often precluded from contracting opportunities because of capacity requirements and lack of professional relationships:

Well, we have to demonstrate that we have the capacity to handle the assignment. If the master contract requires 200 guards, there are only a handful of local companies that can fit that size, so the playing field is reduced immediately. I think that it boils down to relationships and whether people get

The prime contract utilization analysis revealed that Caucasian male construction contractors received 63.08% of the construction dollars on contracts awarded under \$50,000 and 72.61% of the dollars on contracts valued from \$50,000 to \$780,000 during the July 1, 2011 to June 30, 2016 study period.

Chapter 3, Prime Contractor Disparity Analysis, 2019 Disparity Study



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along with one another. So, we become an outsider, which diminishes your long-term effectiveness.

A minority male owner of a professional services company reported that he saw an advertisement for a City project from a prime contractor before the project was advertised by the City:

The contracts are absolutely not equitably distributed. If you're doing business with the City of Oakland, there are political situations that confirm this. I saw [company name withheld] advertise a project that did not exist at the time. Later, the project came up for bid and we submitted a bid to [company name withheld]. But that company had advertised the project prior to it going out to bid. So, they already owned that prime contract. When [company name withheld] advertised [project name withheld], I called my councilperson and I told him how come this is advertised before it was in the marketplace; it's obvious that the deal was already made. That's not the first time I've seen that type of situation happen. So, the City of Oakland is not fair in its distribution of contracts, whether it's a large or small company. If you don't have the relationship, then you're probably not going to get the contract. I can only speak about the things I've been involved in. Oakland is not a good place to contract with because there is too much political involvement.

A Caucasian female owner of a professional services company believes that her status as a woman-owned business has not been a benefit:

The bigger tech companies have gone out of their way to classify us as a woman-owned business so we could meet their diversity quota because that's important to them. I rarely see anything like that with the City for women-owned prime contractors. We are able to attract really large corporations as subcontractors because we have a good reputation. I have been in business a long time, so I feel like our pricing and service is really competitive. So, it's kind of shocking to me that we can't get more government business as prime contractors. It makes me think that somehow someone is either under bidding us, or we don't have the right relationship with the right people in the City. Regardless, I have not received any advantages being a woman-owned business.



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A minority male owner of a construction company reported that general contractors use several tactics to circumvent using the lowest responsible bid:

If you drive around the City of Oakland, you will basically see the same contractor's names on most of the sites. It's the same electrical companies and general contractors. When you've been in business for 50 to 100 years, you don't have a lot of black plumbers and black electrical contractors. Historically, the people at the top are all White. The people who are managing the \$100 million construction company are White, period. Show me a Black \$100 million construction company. What I'm saying is, White companies that have been in business for sixty years already have relationships with the people they work with. They use each other and they have friends that are all White. So, they feed each other. But when you're dealing with public money and we all pay taxes, we're all entitled to the same access to those public dollars. The general contractors have so much leeway to stack the deck in their favor, it's ridiculous. Case in point, I work for a general contractor and I have five people bidding my jobs by two o'clock. I want to use ABCD contractor. All the bids come in between \$2 to \$2.3 million. Well, what's stopping me from changing my friend's number to \$1.9 million? You have absolutely no way of determining if they did this or not. Even still, there are other tricks. All I'm trying to say is that general contractors have 100 different tricks to eliminate you or not use your bid and getting in who they want to get in.

C. Difficulty Navigating the Bidding Process

Several business owners reported that they do not receive notices of the City's upcoming contracting opportunities because the City uses On Call contracts and awards projects without bids or proposals. A minority male owner of a construction company reported that he never received the City's bid solicitations:

I don't know where to look for bid opportunities with the City of Oakland. I've never seen any advertisement from the City of Oakland's on call projects. The City of San Francisco puts its bids in the newspaper. I have not heard of a City of Oakland bidders' list.



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A minority male owner of a goods and services company reported that he does not receive any solicitations from the City of Oakland. The business owner further explained the methods he uses to seek contracting opportunities:

I don't get any solicitations from the City of Oakland. But I don't let that stop me from making money. I got a lot of business from Yelp and Home Advisors. The City should e-mail or text solicitations. Like I said, I get work from Yelp or Home Advisors. I get a lot of commercial stuff from them, too. I go to the City events and the food is good but listening to them talk for two hours is a waste of my time.

A Caucasian female owner of a professional services company also reported that she does not know how to access contracting opportunities with the City of Oakland:

I am in the City of Oakland's Supplier Collaboration Network. I have not received any emails from the City of Oakland. So, I don't know if there are solicitations for something in my field. The Port of Oakland notifies me all the time. It is very time consuming and difficult to get bidding information the City. It was really easy with the Port of Oakland. But I definitely have not received anything from the City of Oakland. Access is a major issue, just understanding where to find their RFPs and information on environmental projects.

A Caucasian female owner of a construction company explained why she is unable to respond to bids that meet her skill set:

Sometimes, when I review an RFP, I think the response time is too short. While I would love to win the contract, I don't have the time to get all the information together when I have a long shot of getting the contract. Big contractors have dedicated departments with five or six people to respond to bids. All they do is prepare the responses to proposals. As a small company, I don't have the staff or time to respond. In many instances, it is already preordained by the City staff who will get the contract. It's unfortunate, but that is the way it tends to work.

A minority female owner of a goods and services company reported that the City utilizes the same contractor for janitorial services:

The City of Oakland's Financing and Purchasing Department continues to award the janitorial contract to a company that uses a post office box in Orinda.



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They didn't have a physical office space in Oakland. Before the contract was up for them again, I went to the City of Oakland's Finance Department and I spoke with [name withheld]. He told me that the contract was coming up for bid the following month and I left him my information. I went back about 45 days later because I never received an email. He conveyed to me that the contract was already awarded. I said, "How is that and I didn't get a chance to bid?" He said, "I don't know what to tell you." I said, "Can you give me the information of who handled the contract?" He told me [name withheld]. I called and emailed him, but he never responded. I later learned that [company name withheld] was awarded the contract again.

A minority female owner of a professional services company explained why she experienced difficulty competing with large companies:

Sometimes large companies come in at a lower bid and knock out a lot of your small businesses based on pure volume. So, that is a disadvantage. The City should provide procurement workshops to show local companies how to become subcontractors or prime contractors.

A minority female owner of a professional services company explained why she felt the selection committee was abrupt, rude and dismissive of her team during their presentation:

The interview with the selection committee was short and sweet. We were in the interview for maybe twenty minutes, if that. I think they could have given us at least an hour. They were so intimidating I couldn't even ask a question. And there were more of them than there were of us. It felt like they had the old cronies in the interview.

A minority male owner of a professional services company reported that he encountered difficulty trying to communicate with the City regarding bidding opportunities and meeting the pre-qualification requirements:

I've called the City, and nobody answers the phone. I have tried to reach out to different buyers, and they will tell you to talk to this person or that person. I went over to the Business Center and nobody was there in the middle of the day. And, we had a lot of trouble meeting the City's qualifications. A couple of them are so unrealistic that we did not bid on the project. They want all this stuff and then if anything goes bad, well, you're the one on the hook to make sure it's



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done. So, it's like, what? They try to dump everything on the vendor, putting all the risk on them, knowing that there's very little chance the work can be done in time. And the vendor is the one getting on the hook for paying to make sure a project is done. So, it's like, forget it.

D. Difficulty Meeting Bonding and Insurance Requirements

Bonding is required on the City's construction contracts valued over \$250,000. A minority male owner of a construction company recommends that the City provide bonding assistance for construction contracts valued above \$250,000:

I haven't tried to obtain help with bonding from the City of Oakland. But I know of other cities that have programs to help with financing. Contractors should be allowed to get the work first without meeting certain financial requirements.

A minority male owner of a construction company explained that professional relationships are essential to securing financial assistance for small businesses:

One of the things that people need to really be clear on is that minorities don't have relationships with the banks even when they do substantial business with the bank. I have had a half million dollars in the bank for three or four months. And when I walked into the bank to get a million-dollar loan, I was turned down. So, the point I'm trying to make is that we, collectively speaking, have no relationships with banks. I don't care if they are a community bank or a local bank. I don't care how much money you put in the bank.

A minority male owner of a construction company explained that his inability to secure bonding is intentional by decision makers in the contracting community:

I have been with my bank for ten years and never bounced a check, but I have less of a relationship with bonding companies. That's why I can easily make the statement that there are no African Americans doing \$50 million projects. We lack bonding capacity because we don't have the needed relationships. People need to understand that it is just about a relationship. We aren't getting bonding because everybody is in cahoots. There is something called [association name withheld], which is full of big, white general contractors. They are part of the cliques, including unions, banks and bonding companies. I tried to get a small bond and they said we'll give you half a million dollars but wanted me to put up so much collateral it was ridiculous. I had a property that clearly had over a



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half million dollars of equity in it, and they wanted that plus my life insurance policy. So, yeah, bonding has always been a problem. But let's be clear, these are the hurdles that they put in front of us so that we can't get work.

E. Difficulty Obtaining Financing

A minority female owner of a professional services company explained why she had to seek unconventional avenues to secure financing for her company:

There is a pool of money available if you have good credit and collateral. But you still have to go through a thousand hoops. You have to use unconventional routes because a regular bank will just say no. We had good credit, then they gave 10 more reasons why we didn't qualify. San Francisco and the Chamber in Oakland have been good about trying to get information out about financial opportunities.

A minority female owner of a goods and services company reported that she was unable to receive financing without proof of a purchase order:

The bank would not provide us financing without proof of a purchase order. I realized that I needed some kind of memorandum of understanding to prove that we had the contract and that is where it got political. I wish I was a large contractor. Those guys make big bucks and they are always getting contracting opportunities with the City.

A minority male owner of a construction company believes that African American business owners encounter more obstacles when seeking financing than other minority groups:

I remember when they had the Enhanced Enterprise Zone and White and Hispanic companies could come into the City of Oakland and apply for Enhanced Enterprise Zone money or grants. It was funny how many of them were able to get \$3 million in grants. But Black companies could only get loans, never grants. This happened oftentimes because the program manager didn't even let us know there was a grant program. Once we learned about the grant program, we were discouraged from applying because we were told that we didn't fit the criteria.



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This business owner further elaborated:

White companies that participated in the Enhance Enterprise Zone program received money to pay off their bills. If you were Black, they would not provide financing to pay off bills. The first thing they tell us is you need to pay that bill before you can qualify. We have to deal with double standards. Some companies that have loans would not have to start paying it back until years down the road. They had 12 months to utilize the capital to expand their business before paying the money back. If a Black company received money on January 1st, you had to start paying that money back February 1st. These policies were pushed by project managers and district managers within the City of Oakland. I call them slave debts. They write up these slave contracts and we go for it because we have no other resource to get funding.

F. Late Payments

Section 2.06.040 of the City's municipal code requires that the City pay all local prime contractors 20 business days after receipt of an undisputed invoice. Section 2.06.050 of the code requires the City's prime contractors to pay their subcontractors within 20 business days of receipt of the subcontractor's undisputed invoice. However, a minority female owner of a professional services company reported that she is often paid late by the City despite the prompt pay provisions:

Despite their prompt pay ordinance, they still take a long time to pay. The lady who was in charge of payments was sick or something and you guys were very, very late and I believe you're still late. I have to chase them to get paid. Sometimes I don't have money to do my payroll because of late payments.

A minority male owner of a construction company also reported that the City's prompt payment provisions are not enforced:

The payment turn-around for me has always been late. It could take three months before receiving payments. There are laws regarding prompt payment, but they are not enforced.



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A minority female owner of a services company reported that she typically receives payment from the City after 30 days:

Sometimes it might be 45 or 60 days before we are paid. When I went down to the City of Oakland where the checks are issued, I gave the lady a copy of the invoice. She looked like she needed to retire. I was told my invoice has small writing and she couldn't see it.

A minority male owner of a construction company reported that some prime contractors pay late because of issues with the paperwork submitted to the City:

Sometimes, prime contractors do not submit their paperwork timely to the City, which delays our payment. I always ask them to pay me when my payment is due. They are late even if they messed up on their paperwork, which has happened to me before.

G. Comments about the Local/Small Local Business Enterprise Program

The business owners shared their knowledge and experience regarding the City's L/SLBE program. A minority male owner of a construction company is unaware of technical assistance services offered by the City for small business owners:

I am not aware of the City offering any technical support for L/SLBEs. I wouldn't know who to call.

A Caucasian female owner of a professional services company reported that the L/SLBE program has not benefited her in competing against larger companies:

I haven't received any benefits from the L/SLBE program. I think the staff is very supportive by providing networking events and other opportunities to meet prime contractors. But I have not received any monetary benefits. I'm facing the challenge of competing against primarily larger companies.



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A minority male owner of a construction business explained why the City's L/SLBE program benefited his company:

The L/SLBE program is valuable because it encourages larger prime contractors to use City of Oakland contractors. On certain projects that I worked on as a subcontractor, the prime contractor actually told me that the reason he had me on the project was because of the program. So, it does help, or it has helped me. It has given me a competitive edge, and it has made prime contractors look at me more seriously. Usually, these guys prefer to work with certain companies that they have worked with in the past.

A minority female owner of a professional services company described the L/SLBE program as beneficial but lacking an effective compliance monitoring system:

The City's L/SLBE program has been helpful. Without the program, we would not receive subconsultant work. The prime consultants that are bidding City projects wouldn't use us unless they have to meet that requirement. So, the program gives us a competitive advantage. It also allows us an opportunity to market our business to get contracting work with the City or get on a team. But we have challenges when prime contractors act like they can't meet the L/SLBE requirement. They get the work without meeting the requirement nor are they subject to penalties. They act like there are not enough firms that can do the work. They use this as the reason why they can't meet the requirement. And they are awarded the contract without meeting the SLBE goal.

A minority male owner of a construction company believes the L/SLBE program is valuable but not adequately enforced:

I think the program is extremely valuable. Oakland has always been a place where most Blacks lived. So, a lot of White people didn't want to live in Oakland, work here, or do business here. So, many of the small Oakland businesses were Black-owned businesses. Now, White companies are coming to Oakland to do business. But they are forced to work with local businesses. So, this gave us a leg up. This gave us an opportunity to get some work. The major problem is the double standard. For instance, when my business got certified, someone from the City of Oakland came out and inspected my office. They asked to see my books and if my telephone works. There are a lot of White companies that have an Oakland address and business license. They have no one working in their Oakland office. But, yet, they're able to get certified. There are loopholes where people can take advantage of the situation. I would say that the vast majority of



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the people that work for the City of Oakland are good people. They are just fighting against money and power. And the people who don't have the money and power are usually Black and small local businesses. We are really fighting policies and procedures.

A Caucasian male owner of a professional services company credited the L/SLBE program for building the capacity of his firm:

We became L/SLBE certified because it allowed us to bid and participate in certain contracts for which we might not otherwise be eligible. I believe the L/SLBE program is valuable or a positive program. The program includes set-asides for small, local, minority, or women-owned businesses. I think it is a fairly level playing field, but when you have to compete with really large entities in many instances it's a disadvantage. Small businesses rarely have the capital or physical resources that larger established entities have. We have been fortunate to have a number of county contracts and a substantial City contract.

A minority male owner of a construction company reported that he has been unable to receive work during his 20-year business history:

The L/SLBE program didn't work for me. I haven't received one job in any shape or form from the City of Oakland or that program. They work with established companies that are not leaving and they will not let new blood come in. We've been dealing with this thing for twenty years. It makes no sense. I've heard stories where it took seven years to get into the City.

A minority male owner of a professional services company reported that the L/SLBE program no longer serves as a channel for procurement opportunities for small businesses:

The L/SLBE program has not been helpful to me because I have not received any opportunities from the City of Oakland. The reality is, it's not as helpful as it has been or was conceived to be. It's watered down from the initial concept of helping minority and women businesses. Nobody is providing that advocacy anymore.



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A Caucasian female owner of a professional services company explained why the L/SLBE program have not benefitted her small business:

A lot of companies hire us because we are a women-owned business. We're always looking for new opportunities. I put in bids for Sonoma County, Alameda County, and the City, but we landed one contract with Alameda County. In the five years that we have been certified, we only landed one contract. Our L/SLBE certification has not paid off financially yet, but I'm not willing to throw in the towel. It's time consuming to go through databases to try and find the jobs. It takes up more than 10 percent of our time to respond to bids because they are time consuming compared to our private clients that don't require information that the government bids tend to need. Larger companies normally have someone assigned to look at government bids, which help to make them successful.

A minority female owner of a goods and services company believes that an L/SLBE program advocate is needed to make the program effectual:

I feel that the L/SLBE program could be improved by creating a team or committee that would advocate for small business. Since it is a City program that is supposed to be tailored around the growth of small local businesses, we should have an advocate with the City that we can reach out to.

A Caucasian female owner of a goods and services company reported that her company has received prime contract work from other agencies but not the City. But the work in the City has been primarily as a subcontractor:

We do get some work from the City of Oakland. We don't feel like we get as much as we could, that's for sure. I think being a L/SLBE helps us get recognized, but I'm not sure if we're getting an advantage. We do a lot of business with the County and other government agencies, but not so much with the City. But we do get a lot of business from companies that are doing work with the City.



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A minority female owner of a professional services company believes the L/SLBE program could be beneficial for small businesses if it were understood that seasoned business owners have value:

I don't want to say that the program has not been beneficial because I know that we have to do the legwork to get business. We are not looking for a handout, so we market our services. But, sometimes, it seems condescending because they always assume that we don't know what we are doing. So, they want us to participate in all of these trainings, even though we have been in business for over a decade.

A minority male owner of a professional services company lauded the L/SLBE program for its outreach efforts:

I think the L/SLBE program is awesome. They provide me with information on different bids that become available that I can bid on. Also, they provide information on different large companies that are looking for a certified small business to partner with.

A minority male owner of construction company believes that the L/SLBE program could be more instrumental in creating subcontracting opportunities for small businesses:

I think the L/SLBE program is valuable and, yes, it has helped my business. Some of the larger general contractors are encouraged to use small businesses, otherwise they would not use small businesses if they didn't have to. I think it gives small businesses an equal advantage to large, more established, and capitalized businesses.

A Caucasian male owner of a professional services company reported that the cost to establish a business in the City of Oakland can be a barrier to many small businesses:

If we could be certified as a firm out of San Francisco, we would certainly do so. It requires us to have an office in Oakland, but we're too small. We have staff who lives in Oakland and there would be interest, but we're an economically disadvantaged firm in this insane market we call the Bay Area. We are certified as a small business with the State of California and a small business with the federal government.



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This business owner further elaborated:

But the obstacles are really about relationships. Everything is based on who you know or who you worked with in the past. The City of San Francisco's Local Business Enterprise program has helped us grow from a home office to a brick and mortar building with employees in San Francisco. The rents are very high in the City which makes it difficult for us to get an office in Oakland. It's insanely expensive here. Even if you could find an office space that's not too expensive, you have to pay people a lot more. Everything is just more expensive, so it's more difficult for a small business to actually establish themselves in the City. It's the chicken and the egg.

A minority female owner of a professional services company explained why the L/SLBE program is needed for small businesses:

The L/SLBE program is valuable because we have won contracts and we get the 5% preference points.

H. Recommendations to Improve Access to Small, Minority, and Women Businesses on the City's Public Contracts

A minority male owner of a construction company suggests the City implement remedial measures aimed to address the statistical disparities in order to rebuild the African American business community:

The disparity studies are going to keep telling everyone that we have no equity in the City of Oakland. I mean, how many times do you have to see these programs gutted and whittled away while the African American participation and other minorities is steadily decreasing? The answer is not to cut out the program. The answer is to continue to pursue equity by putting programs in place. There needs to be a focus on creating an environment that encourages the development of my community. But I see impediments, especially the ones that generally have been put there by the dominant culture that does not want to share the opportunities.

African American contractors were the only minority group that had a disparity on the City's construction prime contracts for total dollars during the July 1, 2011 to June 30, 2016 study period.

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It is not survival of the fittest or the most successful business; it is actually achieved by holding the competition back. They try to stop their competitors from ever doing anything, and when it comes to African Americans, that effort is on steroids. In actuality, there is not enough of us left out here to threaten these large companies. But they believe that just by our very existence that we are a threat. They believe that they should not have 85% of the contracting opportunities or 90% of the opportunities, they want it all. I would ask that the City of Oakland put in place a stronger, more capable mandate to figure out what it takes to encourage and preserve our small minority business community.

This same business owner recommends the City reconsider the eligibility requirements for the L/SLBE program:

There are not many certified businesses in Oakland, so the City does not have many L/SLBEs to choose from. One of the issues that there is not a large competitive pool of local businesses is because they are not headquartered in Oakland, but in San Francisco. The eligibility requirements are poorly crafted because I do not believe that I'm a San Francisco headquartered business. I have several employees that are in the East Bay who cross the bridge to come over to San Francisco. I think the City of Oakland should feel grateful that I was able to survive without getting any work from them, and now I want to come back and work as a small business. San Francisco was a necessary evil for me, because I could not get any work in Oakland.

A minority male owner of a construction company recommends an advisory committee to advocate on behalf of Oakland small businesses:

The City of San Francisco has a small business advisory committee that meets every two months. They are managed by the San Francisco Public Utilities Commission, but they represent a number of City agencies. They serve as a one-stop shop, where all the communication and coordination are managed for the small business community. It became the hub of where businesses can get their problems addressed. In San Francisco, when legislation is being contemplated that will impact the small business community, it goes through the Committee. The Committee reviews it and determines the impact on small businesses before implementation. That is one of the reasons why I would suggest the City create an advisory committee for Oakland small businesses.



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A minority female owner of a goods and services company recommends the City add an advocate for local businesses to the Compliance Program:

I just feel that the City of Oakland should have better advocacy for local businesses, especially minority businesses.

A Caucasian female owner of a professional services company described supportive services offered by other agencies that should be implemented by the City:

There are substantial differences between the City and other local agencies. The Port of Oakland is really supportive, and they are quick to complete the certification review process. Potential prime contractors and the incumbents are at the preproposal meetings and we are able to interact with them pretty easily. So, I've found Port to be really helpful. At this point, some of the projects that have come through have been outside of my scope, so I did not propose on them. But the process has been super easy and very informative and really helpful. But I compare it to the City because I get a lot of feedback and supportive information from the Port of Oakland. I get email updates from Alameda County and I have attended their Meet the Primes events. So, you know, again, I haven't seen this with the City. I've gotten updated information on RFPs with the Alameda County's Transportation Commission. I get a lot of information from these agencies, but none from the City of Oakland.

This same business owner also recommends unbundling large projects to create opportunities for smaller businesses:

For environmental projects, it would be helpful if they had smaller projects to help smaller businesses. This would help because we can compete with other small businesses. And this helps us gain more experience. Oftentimes, the City requires very specific experience before you can even propose on some projects. So, we're already excluded because we may not have the needed depth of experience to be able to respond to the proposal. Although we're capable of doing the work, we could prove our capability with opportunities on smaller projects.



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A Caucasian female owner of a professional services business recommends more contracting opportunities for small businesses:

The City has a bias toward big firms. They really should break down the scope for small businesses. But there's definitely a bias toward big companies. A lot of public agencies will say they give preference to small, women, and minority-owned businesses, but that has never happened in our year and a half of business. Where are these bonus points that I'm supposed to be getting? I've never, ever got any.

A minority female owner of a goods and services company recommends that the City provide more outreach services to inform the business community about its procurement process:

I wish the City would do more outreach in terms of improving the chances for small businesses to get contracts. I would like to attend events to learn more about how procurement works in the City. I believe that Alameda County does something very similar. They host ongoing events all throughout the County. I would also like to learn the types of technical assistance the City provides.

A Caucasian female owner of a professional services company recommends more networking events at which small businesses can meet prime contractors:

I believe the City should reach out to small businesses to provide a heads up on projects that we might be interested in. Just to say, "Here's a bid that you might want to take a look at." The state of California does this regularly and it saves a ton of time searching the databases. If the City could do the same, it would be great. So, if they had a networking fair twice a year, just a networking fair. I go to shows all the time where I meet clients in the private industry, but I've never met anyone from the City of Oakland. So, more networking events would be especially great for local businesses. I don't need to be wooed and dined, just a coffee networking event where we can meet other business owners twice a year would be great.



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A minority female owner of professional services business recommends that the City engage in extensive outreach to inform the business community about contracting opportunities, technical assistance services, and subcontracting opportunities:

I would like to find out about contracting opportunities from an email alert, or even a text alert. If we could sign up with specific departments for immediate notifications, that would be great. Sometimes, it's hard to find information on their website. That would be helpful for vendors wanting to work with the City. The City should let us know about the relationships they have with different local organizations, non-profits, and local chambers of commerce so that we can take advantage of these opportunities. If the City would leverage their relationships with organizations that are business focused, that would be a good start. Right now, I think one of the best things that the City could do, especially on larger scale projects, is to require prime contractors to use local, qualified vendors as their subconsultants.

A minority female owner of a professional services company recommends that the City conduct targeted outreach to inform business owners about upcoming non-construction professional services contracts:

There does not seem to be a lot of opportunities for professional services non-construction projects. We see a lot of opportunities for construction and even professional services for construction, like engineering and architecture services. But we don't see a lot of opportunities at all for non-construction professional services, especially human resources. I don't believe they are doing all that stuff in-house. I haven't seen any of those types of opportunities come across my desk.

This same business owner also recommends that the City innovate its bid submittal process:

Also, the RFP process should be modernized. We are small businesses, and sometimes the RFP requirements include five hard copies plus three junk drives and FedEx delivery of the proposal. They should modernize the RFP process and just require an emailed submittal.



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A minority female owner of a professional services company recommends that the City provide more information regarding L/SLBE goals on its website:

The City should have a page on its website that describes the L/SLBE goals and the projects that have goals. It should include current projects and future projects.

A minority male owner of a construction company believes that the City should implement a M/WBE program if supported by the statistical findings:

I think the City should have a program for African Americans. When they start watering the program down by including lesbians, gays, and women, you begin to go down a slippery slope. Case in point, affirmative action was designed for Black people. I think that most people would agree with that. Affirmative action was not designed to help Asians, Hispanics, or White women. It was designed to help Black people. But what they did was open it up for all minorities. And then they decided to include White women. However, there should be a program for the minorities that are found to have a disparity.

V. Summary

This chapter presented a qualitative analysis of the barriers business owners experienced while working on or seeking work from the City. A comparison of the anecdotal and statistical analyses from the City's 2006 and 2019 disparities are also presented.

An overwhelming number of interviewees described their frustration in trying to obtain work on the City's construction services projects. The use of preferred contractors or the good old boy network was credited for creating a barrier for M/WBEs on the City's contracts. Many interviewees reported on instances of discriminatory behaviors by the City and the prime contractor community which prevented them from receiving construction contracts from the City and their prime contractors. The anecdotes contextualized the statistical findings which revealed that significant disparities were found on the City's formal and informal contracts at both the prime contract and subcontract level.

Recommendations were also offered to improve the City's L/SLBE program's effectiveness in fulfilling its mission. This anecdotal information together with the statistical findings will inform the remedies presented in *Chapter 10: Recommendations*.



CHAPTER 10: Recommendations

I. Introduction

This chapter presents recommendations to address the statistical findings that documented disparity in the City’s award of prime contracts and subcontracts. The findings, which were derived from a statistical analysis of four procurement methods employed by the City during the study period of July 1, 2011 to June 30, 2016, document the preference accorded non-minority, male-owned businesses in the award of the City’s prime contracts and subcontracts. The four procurement methods, authorized in the City’s procurement code, are competitive solicitation, on-call contracting, cooperative agreements, and Local/Small Local Business Enterprise goals. The analysis of the construction, professional services, services, and goods and commodities prime contracts awarded during the July 1, 2011, to June 30, 2016, study period, employing these four procurement methods, revealed a statistically significant disparity in the contracts awarded to minority and woman-owned businesses in each industry.

The chapter is organized in seven sections: 1) *Introduction*; 2) *Disparity Analysis Findings*; 3) *Overview of the On-Call Contracting Procedures*; 4) *Overview of Cooperative Agreements*; 5) *Overview of the Local and Small Local Business Enterprise Program*; 6) *Race and Gender-Conscious Recommendations*; and 7) *Race and Gender-Neutral Recommendations*. Both the race and gender-neutral recommendations, which can be implemented without a finding of disparity, and the race and gender-conscious recommendations are offered to eliminate the preference practices. Elimination of preference practices is necessary in order to achieve parity in the use of M/WBEs, L/SLBEs, and other small businesses on the City’s contracts.

II. Disparity Analysis Findings - All Contracts

The statistically significant findings of disparity in the award of both prime contracts and subcontracts were calculated in compliance with the constitutional parameters set forth in *City of Richmond v. J.A. Croson* (*Croson*)³¹⁵ and its progeny. The statistical findings of disparity summarized in this chapter are detailed in *Chapter 6: Prime Contract Disparity Analysis* and *Chapter 8: Subcontract Disparity Analysis*.

³¹⁵ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

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A. Number of Prime Contracts

As shown in Table 10.1, 7,780 prime contracts awarded by the City of Oakland during the study period were analyzed. The prime contracts included 530 construction contracts, 1,509 professional services contracts, 1,454 services contracts, and 4,287 goods and commodities contracts.

The dollars the City awarded during the study period totaled \$566,285,263. Prime contract expenditures included \$271,864,842 for construction, \$121,529,429 for professional services, \$61,379,771 for services, and \$111,511,222 for goods and commodities contracts.

Table 10.1: Total Prime Contracts and Dollars Expended: All Industries, July 1, 2011, to June 30, 2016

Industry	Total Number of Contracts	Total Dollars Expended
Construction	530	\$271,864,842
Professional Services	1,509	\$121,529,429
Services	1,454	\$61,379,771
Goods and Commodities	4,287	\$111,511,222
Total Expenditures	7,780	\$566,285,263

B. Number of Subcontracts

As shown in Table 10.2, 314 subcontracts were analyzed. The analysis included 289 construction and 25 professional services subcontracts. The subcontract dollars expended during the study period totaled \$25,286,374, including \$24,122,335 for construction subcontracts and \$1,164,039 for professional services subcontracts. Services and goods and commodities contracts were not included in the subcontract analysis since the subcontracting activity in those industries was limited.

Table 10.2: Total Subcontracts and Dollars Expended: Construction and Professional Services, July 1, 2011, to June 30, 2016

Industry	Total Number of Subcontracts	Total Amount Expended
Construction	289	\$24,122,335
Professional Services	25	\$1,164,039
Total	314	\$25,286,374

*The total and summed counts may differ due to rounding.



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C. *Thresholds by Industry*

The prime contract disparity analysis was performed at two thresholds. First, was the informal threshold defined by the Oakland Code of Ordinances, Title 2, Chapter 2.04, Article 1, §2.04.040 (Ordinances). The informal thresholds for each industry are presented in Table 10.3 below:

Table 10.3: Informal Thresholds by Industry

Industry	Informal Threshold
Construction	Under \$50,000
Professional Services	Under \$50,000
Services	Under \$50,000
Goods and Commodities	Under \$50,000

The second threshold included formal contracts defined in the Ordinances as contracts valued at over \$50,000 for construction, professional services, services, and goods and commodities. The formal thresholds, as set forth in the Oakland Code of Ordinances, Title 2, Chapter 2.04, were modified for this analysis. As detailed in *Chapter 3: Prime Contractor Utilization Analysis*, the prime contract dataset included outliers, which were very large contracts that distorted the distribution of the dataset. Therefore, the formal threshold analyzed for the study was limited to contracts within the 75th percentile of all contracts awarded by industry. Contracts beyond the 75th percentile were excluded from the analysis, reducing the capacity required to perform the contracts analyzed. The formal prime contract thresholds used in this analysis for each industry is presented below in Table 10.4:

Table 10.4: Formal Thresholds by Industry

Industry	Formal Threshold
Construction	\$50,000 to \$780,000
Professional Services	\$50,000 to \$310,000
Services	\$50,000 to \$220,000
Goods and Commodities	\$50,000 to \$190,000

A description of the disparity analysis outcomes is presented in Tables 10.6 and 10.7.

Table 10.5: Statistical Outcome Descriptions

Disparity Analysis Outcome	Definition of Outcome
Disparity	This underutilization is statistically significant.
Underutilized	This underutilization is not statistically significant.
No Disparity	This utilization is at parity with or higher than availability.
---	While this group was underutilized, there were too few available firms to determine statistical significance.
^	The statistical test could not detect the disparity because there were less than two contracts awarded.



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1. Prime Contract Disparity Findings

Table 10.6 and Table 10.7 summarizes the prime contract disparity findings at two thresholds: 1) formal and 2) informal contracts, by industry. The detailed analysis of the prime contract disparity findings is presented in Table 10.6.

Table 10.6: Prime Contract Disparity Summary by Industry, Informal Contracts, July 1, 2011, to June 30, 2016

Ethnicity/Gender	Construction	Professional Services	Services	Goods and Commodities
	Under \$50,000	Under \$50,000	Under \$50,000	Under \$50,000
African Americans	Disparity	Disparity	Disparity	Disparity
Asian Pacific Americans	No Disparity	No Disparity	No Disparity	Disparity
Asian Indian Americans	----	No Disparity	----	No Disparity
Hispanic Americans	No Disparity	No Disparity	No Disparity	No Disparity
Native Americans	----	----	No Disparity	No Disparity
Caucasian Females	Disparity	No Disparity	Underutilized	No Disparity
Minority-owned Businesses	No Disparity	No Disparity	No Disparity	Disparity
Woman-owned Businesses	Underutilized	No Disparity	Disparity	Disparity

Table 10.7: Prime Contract Disparity Summary by Industry, Formal Contracts, July 1, 2011, to June 30, 2016

Ethnicity/Gender	Construction	Professional Services	Services	Goods and Commodities
	\$50,000 to \$780,000	\$50,000 to \$310,000	\$50,000 to \$220,000	\$50,000 to \$190,000
African Americans	Disparity	Disparity	Disparity	Disparity
Asian Pacific Americans	No Disparity	No Disparity	No Disparity	No Disparity
Asian Indian Americans	----	No Disparity	No Disparity	No Disparity
Hispanic Americans	No Disparity	No Disparity	No Disparity	No Disparity
Native Americans	----	----	----	----
Caucasian Females	Disparity	Underutilized	No Disparity	No Disparity
Minority-owned Businesses	No Disparity	Disparity	Disparity	Disparity
Woman-owned Businesses	Disparity	Disparity	Underutilized	Disparity



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D. Subcontract Disparity Findings

The subcontract disparity analysis was limited to construction and professional services subcontracts issued during the July 1, 2011, to June 30, 2016, study period. As detailed in *Chapter 7: Subcontractor Utilization Analysis*, the subcontract data were compiled by the City in conjunction with Mason Tillman. Multiple methods were used to collect information on the subcontracts awarded by the City's construction and professional services prime contractors.

The data collection effort consisted of compiling subcontractor names, award amounts, and payments from the City records. Project files, bid documents, and compliance records were examined to compile the information. Prime contractors were also surveyed by Mason Tillman to secure their subcontractors, subconsultants, suppliers, and truckers awards and payment data. All identified subcontractors, subconsultants, suppliers, and truckers were surveyed to verify their payments. Data verifying ethnicity and gender were compiled from certification lists, minority and woman-owned business organization membership directories, Internet research, and telephone surveys. The organizational sources used to verify contractor information are defined in Table 3.1 of *Chapter 3: Prime Contractor Utilization Analysis*.

1. Subcontract Disparity Findings

Table 10.8 shows the subcontract disparity findings by industry.

**Table 10.8: Subcontract Disparity Summary by Industry,
Construction and Professional Services, July 1, 2011, to June 30, 2016**

Ethnicity/Gender	Construction	Professional Services
African Americans	Disparity	No Disparity
Asian Pacific Americans	Disparity	No Disparity
Asian Indian Americans	No Disparity	No Disparity
Hispanic Americans	No Disparity	No Disparity
Native Americans	----	No Disparity
Caucasian Females	Underutilized	Underutilized
Minority-owned Businesses	Disparity	No Disparity
Woman-owned Businesses	Underutilized	Underutilized



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III. Disparity Analysis for On-Call Contracts

The statistical findings of the underutilization of on-call contractors presented in this section are based on the payments identified in the City’s Oracle Financial System dataset as “on-call contracts.” The on-call procurement process, utilized by the Department of Public Works, does not require formal advertising, and the authorization to award is delegated to the Department of Public Work’s manager. According to the City’s On-Call Contracting Procedures memorandum, the procurement method is used to select businesses to perform small projects generally valued at under \$25,000. This information indicates that limited capacity is needed to perform an on-call project for the City.

The contractor utilization presented in this section represents the contractors that the project manager selected as qualified to perform small projects. The findings illustrate that even the M/WBE contractors the project manager deemed to be qualified as on-call contractors to perform small projects were not highly used. In fact, the contract awards to these pre-qualified M/WBEs was significantly less than their percentages in the qualified pool of on-call contractors.

Projects are assigned to on-call contractors by the project manager using task orders. This analysis could not assess the number of task orders issued to contractors because the Oracle Financial System, where the procurement records are maintained, does not capture the task orders issued by either project or contract number. Therefore, this analysis is limited to a discussion of the on-call payments to businesses that were identified as on-call contractors.

A. Utilization of On-Call Construction Prime Contractors

Table 10.9 shows the utilization findings for on-call construction contracts awarded to pre-qualified vendors. Four African American construction contractors represented 17.39% of the utilized on-call construction businesses, but they only received 3.93% of the dollars. Three Asian Pacific American construction contractors received 11.13% of the dollars, and they represented 13.04% of the utilized on-call businesses. Thirteen non-minority, male-owned businesses received 67.52% of the on-call construction dollars, yet they represented 56.52% of the utilized on-call businesses.



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**Table 10.9: Construction On-Call Prime Contractor Utilization, All Dollars,
July 1, 2011, to June 30, 2016**

Race	Number of Vendors	Percent of Vendors	Amount of Dollars	Percent of Dollars
African Americans	4	17.39%	\$450,822	3.93%
Asian Pacific Americans	3	13.04%	\$1,276,573	11.13%
Asian Indian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	3	13.04%	\$1,999,635	17.43%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Non-minority Males	13	56.52%	\$7,746,544	67.52%
TOTAL	23	100.00%	\$11,473,574	100.00%
Race and Gender	Number of Vendors	Percent of Vendors	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	4	17.39%	\$450,822	3.93%
Asian Pacific American Females	0	0.00%	\$0	0.00%
Asian Pacific American Males	3	13.04%	\$1,276,573	11.13%
Asian Indian American Females	0	0.00%	\$0	0.00%
Asian Indian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	3	13.04%	\$1,999,635	17.43%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	0	0.00%	\$0	0.00%
Non-minority Males	13	56.52%	\$7,746,544	67.52%
TOTAL	23	100.00%	\$11,473,574	100.00%
Minority and Women	Number of Vendors	Percent of Vendors	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	10	43.48%	\$3,727,030	32.48%
Woman Business Enterprises	0	0.00%	\$0	0.00%
Minority and Woman Business Enterprises	10	43.48%	\$3,727,030	32.48%



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The on-call utilization analysis of construction contracts also revealed that four of the total 23 businesses received approximately 50% of the total dollars. Of the four highly used businesses, three were non-minority, male-owned businesses. The three non-minority, male-owned businesses received 39.41% of the total on-call construction dollars, and the one Hispanic American business received 9.27% of the dollars. See Table 10.10 below.

Table 10.10: Top Four Highly Used On-Call Construction Contractors, July 1, 2011, to June 30, 2016

Ethnicity and Gender	Total Award Dollars	Percent of Dollars
Hispanic Americans	\$1,064,133	9.27%
Non-Minority Males	\$4,521,790	39.41%
Total	\$5,585,923	48.69%

B. Utilization of On-Call Professional Services Prime Contractors

Table 10.11 shows the utilization findings on the on-call professional services contracts. Two African American professional service contractors represented 2.17% of the utilized on-call professional services contractors, but they only received 1.78% of the dollars. Two Asian Pacific American professional service contractors represented 16.30% of the utilized on-call contractors, but they only received 7.03% of the dollars. Two Asian Indian American professional service contractors represented 2.17% of the utilized on-call contractors, and they only received 1.51% of the dollars. Five Hispanic American professional service contractors represented 5.43% of the utilized on-call contractors, but they only received 2.52% of the dollars. Fourteen Caucasian female professional service contractors represented 15.22% of the utilized on-call contractors, but they only received 5.95% of the dollars. While the 54 non-minority, male-owned professional service contractors only represented 58.70% of the utilized on-call contractors, they received 81.21% of the on-call professional service dollars.



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Table 10.11: Professional Services On-Call Prime Contractor Utilization, All Dollars, July 1, 2011, to June 30, 2016

Race	Number of Vendors	Percent of Vendors	Amount of Dollars	Percent of Dollars
African Americans	2	2.17%	\$260,920	1.78%
Asian Pacific Americans	15	16.30%	\$1,029,404	7.03%
Asian Indian Americans	2	2.17%	\$221,150	1.51%
Hispanic Americans	5	5.43%	\$368,837	2.52%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	14	15.22%	\$872,007	5.95%
Non-minority Males	54	58.70%	\$11,897,916	81.21%
TOTAL	92	100.00%	\$14,650,233	100.00%
Race and Gender	Number of Vendors	Percent of Vendors	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	2	2.17%	\$260,920	1.78%
Asian Pacific American Females	3	3.26%	\$252,691	1.72%
Asian Pacific American Males	12	13.04%	\$776,713	5.30%
Asian Indian American Females	0	0.00%	\$0	0.00%
Asian Indian American Males	2	2.17%	\$221,150	1.51%
Hispanic American Females	1	1.09%	\$18,750	0.13%
Hispanic American Males	4	4.35%	\$350,087	2.39%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	14	15.22%	\$872,007	5.95%
Non-minority Males	54	58.70%	\$11,897,916	81.21%
TOTAL	92	100.00%	\$14,650,233	100.00%
Minority and Women	Number of Vendors	Percent of Vendors	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	24	26.09%	\$1,880,310	12.83%
Woman Business Enterprises	18	19.57%	\$1,143,448	7.80%
Minority and Woman Business Enterprises	38	41.30%	\$2,752,318	18.79%



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As Table 10.12 shows the utilization analysis for on-call professional services contracts also revealed that 10 of the total 92 businesses received 51% of the total dollars. All top 10 highly used businesses were non-minority, male owned.

Table 10.12: Top 10 Highly Used On-Call Professional Services Contractors, July 1, 2011, to June 30, 2016

Ethnicity and Gender	Total Award Dollars	Percent of Dollars
Non-minority Males	\$7,525,401	51.37%
Total	\$7,525,401	51.37%

C. Utilization of On-Call Construction and Professional Services Prime Contractors

When all on-call contracts were combined and analyzed together, the utilization analysis revealed that 12 of the total 125 on-call construction and professional services businesses received 51% of the total on-call contract dollars. Of the top 12 businesses that received 39.87% of the on-call payment dollars in both industries, nine were non-minority, males, as shown in Table 10.13.

Table 10.13: Top 12 Highly Used On-Call Contractors, Combined Industries, July 1, 2011, to June 30, 2016

Ethnicity and Gender	Total Award Dollars	Percent of Dollars
Asian Pacific Americans	\$848,386	3.22%
Hispanic Americans	\$1,951,853	7.42%
Non-Minority Males	\$10,493,286	39.87%
Total	\$13,293,525	50.51%

D. Utilization of M/WBEs on On-Call Projects

This data show a disparity in the award of small, on-call projects to the minority and woman-owned businesses that were pre-qualified by the Department of Public Works project managers to receive an on-call task order. Tables 4.14 and 4.15 below compare all available construction and professional services businesses to the dollars awarded to M/WBEs on the on-call contracts. This data show a statistically significant underutilization of African American businesses and Caucasian female businesses in construction and a statistically significant underutilization of African American businesses in professional services. These findings of statistical disparity mirror those of the informal construction and professional services contract awards discussed in the section above. They are consistent with the findings on competitively bid formal contracts presented in the previous section.

Since the on-call procurement method, as described in the On-Call Contracting Procedures Memorandum, is used to award small projects and the procurement process is discretionary, there should not be a disparity in the use of the available M/WBEs. The fact that there is a disparity in



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the application of this procurement method indicates the project manager's preference for non-minority, male-owned businesses to perform the Department of Public Works' small projects. This preference has had an adverse impact on the number of M/WBEs that performed the contracts and the number in the City of Oakland willing and able to perform City contracts.



**Table 10.14: Construction On-Call Prime Contractor Utilization,
All Dollars, July 1, 2011, to June 30, 2016**

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$450,822	3.93%	16.51%	\$1,894,474	-\$1,443,651	0.24	< .05 *
Asian Pacific Americans	\$1,276,573	11.13%	3.95%	\$453,606	\$822,966	2.81	**
Asian Indian Americans	\$0	0.00%	0.70%	\$80,048	-\$80,048	0.00	----
Hispanic Americans	\$1,999,635	17.43%	7.21%	\$827,165	\$1,172,470	2.42	**
Native Americans or Alaska Natives	\$0	0.00%	0.23%	\$26,683	-\$26,683	0.00	----
Caucasian Females	\$0	0.00%	4.88%	\$560,337	-\$560,337	0.00	< .05 *
Non-minority Males	\$7,746,544	67.52%	66.51%	\$7,631,261	\$115,283	1.02	not significant
TOTAL	\$11,473,574	100.00%	100.00%	\$11,473,574			

(*) 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.

**Table 10.15: Professional Services On-Call Prime Contractor Utilization,
All Dollars, July 1, 2011, to June 30, 2016**

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$260,920	1.78%	9.00%	\$1,317,908	-\$1,056,988	0.20	< .05 *
Asian Pacific Americans	\$1,029,404	7.03%	5.30%	\$776,442	\$252,962	1.33	**
Asian Indian Americans	\$221,150	1.51%	1.60%	\$234,976	-\$13,826	0.94	not significant
Hispanic Americans	\$368,837	2.52%	2.79%	\$408,654	-\$39,817	0.90	not significant
Native Americans or Alaska Natives	\$0	0.00%	0.21%	\$30,649	-\$30,649	0.00	----
Caucasian Females	\$872,007	5.95%	8.86%	\$1,297,475	-\$425,468	0.67	not significant
Non-minority Males	\$11,897,916	81.21%	72.25%	\$10,584,129	\$1,313,786	1.12	not significant
TOTAL	\$14,650,233	100.00%	100.00%	\$14,650,233			

(*) 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.



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IV. Overview of Cooperative Agreement Contracting

This section examines the utilization of M/WBEs and non-minority, male-owned business enterprises on contracts awarded through the City’s cooperative agreement procurement method. Using the cooperative agreement procurement method, construction services, professional services, services, and goods and commodities may be purchased under a contract awarded by another governmental entity if the entity utilized a competitive award process similar to that used by the City. The City participates in cooperative agreements with other governmental entities without additional formal or competitive bidding procedures. Cooperative agreements are subject to the City’s purchasing guidelines to the extent feasible. The utilization analysis examined the participation of M/WBEs and non-minority, male-owned businesses on all City cooperative agreements. The statistical findings of the underutilization of M/WBEs on cooperative agreements presented in this section are based on the payments identified in the Oracle Financial System dataset as cooperative contracts.

Table 10.16 below shows the utilization findings on all cooperative agreements awarded during the study period. The utilization analysis revealed that African American and Hispanic American-owned businesses received less than 1% of the total dollars for agreements valued under \$50,000. Approximately 76% of the City’s cooperative agreements are valued less than \$50,000. The value of the majority of the City’s cooperative agreement contacts demonstrates that the majority of the contracts are small and require limited capacity to perform. Nevertheless, non-minority, male-owned businesses received approximately 90% of the total dollars, and cooperative agreements valued under \$50,000.



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**Table 10.16: Cooperative Agreements, All Contracts,
July 1, 2011, to June 30, 2016**

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	7	0.11%	\$212,979	0.27%
Asian Pacific Americans	272	4.33%	\$3,068,410	3.94%
Asian Indian Americans	1	0.02%	\$52,705	0.07%
Hispanic Americans	28	0.45%	\$415,392	0.53%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	572	9.12%	\$4,376,695	5.62%
Non-minority Males	5,395	85.98%	\$69,692,436	89.56%
TOTAL	6,275	100.00%	\$77,818,616	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	4	0.06%	\$17,415	0.02%
African American Males	3	0.05%	\$195,564	0.25%
Asian Pacific American Females	107	1.71%	\$1,224,690	1.57%
Asian Pacific American Males	165	2.63%	\$1,843,720	2.37%
Asian Indian American Females	0	0.00%	\$0	0.00%
Asian Indian American Males	1	0.02%	\$52,705	0.07%
Hispanic American Females	4	0.06%	\$24,658	0.03%
Hispanic American Males	24	0.38%	\$390,734	0.50%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	572	9.12%	\$4,376,695	5.62%
Non-minority Males	5,395	85.98%	\$69,692,436	89.56%
TOTAL	6,275	100.00%	\$77,818,616	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	308	4.91%	\$3,749,485	4.82%
Woman Business Enterprises	687	10.95%	\$5,643,457	7.25%
Minority and Woman Business Enterprises	880	14.02%	\$8,126,180	10.44%



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Table 10.17 below shows the utilization of M/WBEs and non-minority, male-owned businesses on the City's cooperative agreement contracts valued under \$50,000 awarded during the study period. The utilization analysis revealed that African American-owned businesses received 0.18% of dollars on cooperative agreements valued under \$50,000. Non-minority, male-owned businesses received 89.03% of the dollars.

Table 10.17: Cooperative Agreements, Contracts Valued Under \$50,000, July 1, 2011, to June 30, 2016

Race	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	6	0.10%	\$48,620	0.18%
Asian Pacific Americans	260	4.39%	\$1,366,864	5.05%
Asian Indian Americans	0	0.00%	\$0	0.00%
Hispanic Americans	25	0.42%	\$100,891	0.37%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	561	9.48%	\$1,454,021	5.37%
Non-minority Males	5,064	85.60%	\$24,110,015	89.03%
TOTAL	5,916	100.00%	\$27,080,410	100.00%
Race and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	4	0.07%	\$17,415	0.06%
African American Males	2	0.03%	\$31,205	0.12%
Asian Pacific American Females	104	1.76%	\$430,701	1.59%
Asian Pacific American Males	156	2.64%	\$936,163	3.46%
Asian Indian American Females	0	0.00%	\$0	0.00%
Asian Indian American Males	0	0.00%	\$0	0.00%
Hispanic American Females	4	0.07%	\$24,658	0.09%
Hispanic American Males	21	0.35%	\$76,232	0.28%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	561	9.48%	\$1,454,021	5.37%
Non-minority Males	5,064	85.60%	\$24,110,015	89.03%
TOTAL	5,916	100.00%	\$27,080,410	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	291	4.92%	\$1,516,375	5.60%
Woman Business Enterprises	673	11.38%	\$1,926,795	7.12%
Minority and Woman Business Enterprises	852	14.40%	\$2,970,395	10.97%



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V. ***Disparity Analysis of Local/Small Local Business Enterprise Program Effectiveness***

Ordinance Number 12389 authorized the implementation of the City’s Local/Small Local Business Enterprise (L/SLBE) Program on December 18, 2001, to stimulate stronger economic growth by increasing the number of Oakland businesses participating in City contracts. The ordinance was also intended to increase the circulation of City dollars within the community. The ordinance has been amended several times since 2001 to increase the utilization of L/SLBE. The L/SLBE Program includes local and small business goals and race-neutral components designed to eliminate the statistically significant disparities identified in previous disparity studies. The program was also intended to increase the number of Oakland-based businesses participating on City contracts. Race-neutral components were used instead of race and gender-specific goals to achieve parity in the award of contracts to M/WBEs.

The analysis of the L/SLBE Program’s effectiveness found an underutilization of Minority-owned certified L/SLBEs on the City’s contracts during the July 1, 2011 to June 30, 2016, study period. The finding of ethnic and gender disparity in the contracts awarded to L/SLBEs indicates the participation that was stimulated by the ordinance did not positively affect the inclusion of M/WBEs. The dataset also shows that a significant percentage of the contracts awarded went to businesses headquartered outside of Oakland.

The L/SLBE Program was modified in December 2011 to further ensure the objective of increasing the number of Oakland businesses participating in City contracts. However, as indicated by the disparity findings, parity in the award of contracts to available minority-certified L/SLBE businesses has not been achieved. The data clearly show the L/SLBE Program failed to meet its stated goal to afford all L/SLBE-certified businesses, both minority and non-minority, the opportunity for full and equitable participation in the City’s contracts. Equitable participation, as defined by *Croson*, occurs when the level of contracting with MBEs and non-MBEs is in parity with their availability.³¹⁶

A. ***Profile of Utilized Local/Small Local Business Enterprises***

There were 28 L/SLBEs in the Oracle Financial System with final amounts of \$1,000,000 and over. All of the 28 L/SLBEs are headquartered in Oakland. The total payment to the 28 L/SLBE businesses was \$242,078,138.



³¹⁶ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

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Table 10.18 shows the 135 total L/SLBE payments distributed by ethnicity and gender.

Table 10.18: Distribution of All L/SLBE Payments by Ethnicity and Gender

Ethnicity and Gender	Amount of Dollars	Number of Businesses
\$3,000,000 and Greater		
Asian Pacific American	\$9,909,610	1
Caucasian	\$171,883,552	10
Hispanic American	\$60,334,969	3
Total	\$242,128,131	14
\$1,000,000-\$3,000,000		
Asian Pacific American	\$1,349,362	1
Caucasian	\$22,724,609	14
Hispanic American	\$5,497,173	4
Total	\$29,571,145	19
\$500,000-\$1,000,000		
Asian Pacific American	\$2,117,029	3
Caucasian	\$6,270,223	8
Hispanic American	\$656,183	1
Total	\$9,043,436	12
\$250,000-\$500,000		
Asian Pacific American	\$309,093	1
Asian Indian American	\$384,670	1
Caucasian	\$4,741,196	13
Hispanic American	\$459,001	1
Total	\$5,893,959	16
\$100,000-\$250,000		
Asian Pacific American	\$348,877	2
African American	\$706,699	4
Caucasian	\$4,085,588	24
Hispanic American	\$102,450	1
Total	\$5,243,615	31
\$50,000-\$100,000		
Asian Pacific American	\$144,431	2
Caucasian	\$633,155	9
Hispanic American	\$95,000	1
Total	\$872,586	12
\$25,000-\$50,000		
Asian Pacific American	\$27,641	1
African American	\$87,000	2
Caucasian	\$351,024	9



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Ethnicity and Gender	Amount of Dollars	Number of Businesses
Hispanic American	\$37,993	1
Total	\$503,658	13
\$5,000-\$24,999		
Asian Pacific American	\$20,069	1
African American	\$31,018	3
Caucasian	\$109,947	9
Total	\$161,034	13
\$0-\$4,999		
Asian Pacific American	\$3,516	1
Caucasian	\$7,734	4
Total	\$11,250	5
GRAND TOTAL	\$293,428,813	135

The total payments to the top 28 L/SLBEs are grouped by payment amount. The dollar range of these payments is shown in Table 10.19.

Table 10.19: Total Payments to Highly Used L/SLBEs

Dollar Range	Number of Business
\$1,000,000 - \$5,000,000	16
\$5,000,001 - \$10,000,000	5
\$10,000,001 - \$20,000,000	3
\$20,000,001 - \$50,000,000	4

The ethnicity, gender, and payment amount of the four highly used L/SLBEs is shown in Table 10.20.

Table 10.20: Ethnicity and Gender of Highly Used L/SLBEs

Ethnicity and Gender	Amount of Dollars
Hispanic American Male	\$31,100,410
Caucasian Male	\$102,932,256
Grand Total	\$134,032,666

The highly used L/SLBEs with an office in Oakland received \$134,032,666 which represents 51.75% of total payment to highly used L/SLBEs.

Table 10.21: Highly Used L/SLBEs by Location

Headquarters	Total Payment
Oakland	\$134,032,666

B. Local/Small Local Business Enterprise Disparity Findings



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The disparity analysis of L/SLBE-certified prime contractors in all industries combined is described below in Table 10.22 by ethnicity and gender.



**Table 10.22: L/SLBE Certified Prime Contract Disparity:
All Industries, July 1, 2011 to June 30, 2016**

Race	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$824,717	0.32%	16.87%	\$43,687,379	-\$42,862,662	0.02	< 0.05 *
Asian Pacific Americans	\$14,229,628	5.49%	7.23%	\$18,723,162	-\$4,493,534	0.76	not significant
Asian Indian Americans	\$384,670	0.15%	1.51%	\$3,900,659	-\$3,515,989	0.10	not significant
Hispanic Americans	\$43,500,787	16.80%	7.23%	\$18,723,162	\$24,777,625	2.32	**
Native Americans	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$6,541,449	2.53%	11.14%	\$28,864,875	-\$22,323,426	0.23	< 0.05 *
Non-minority Males	\$193,522,496	74.72%	56.02%	\$145,104,509	\$48,417,987	1.33	< 0.05 †
TOTAL	\$259,003,747	100.00%	100.00%	\$259,003,747			
Race and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$31,018	0.01%	3.92%	\$10,141,713	-\$10,110,695	0.00	< 0.05 *
African American Males	\$793,699	0.31%	12.95%	\$33,545,666	-\$32,751,967	0.02	< 0.05 *
Asian Pacific American Females	\$243,408	0.09%	1.51%	\$3,900,659	-\$3,657,251	0.06	not significant
Asian Pacific American Males	\$13,986,220	5.40%	5.72%	\$14,822,504	-\$836,283	0.94	not significant
Asian Indian American Females	\$0	0.00%	0.60%	\$1,560,264	-\$1,560,264	0.00	----
Asian Indian American Males	\$384,670	0.15%	0.90%	\$2,340,395	-\$1,955,726	0.16	----
Hispanic American Females	\$694,176	0.27%	1.51%	\$3,900,659	-\$3,206,483	0.18	not significant
Hispanic American Males	\$42,806,611	16.53%	5.72%	\$14,822,504	\$27,984,108	2.89	**
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.00%	\$0	\$0	----	----
Caucasian Females	\$6,541,449	2.53%	11.14%	\$28,864,875	-\$22,323,426	0.23	< 0.05 *
Non-minority Males	\$193,522,496	74.72%	56.02%	\$145,104,509	\$48,417,987	1.33	< 0.05 †
TOTAL	\$259,003,747	100.00%	100.00%	\$259,003,747			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$58,939,802	22.76%	32.83%	\$85,034,363	-\$26,094,561	0.69	<0.05 *
Woman Business Enterprises	\$7,510,051	2.90%	18.67%	\$48,368,170	-\$40,858,119	0.16	<0.05 *
Minority and Woman Business Enterprises	\$65,481,251	25.28%	43.98%	\$113,899,238	-\$48,417,987	0.57	<0.05 *

(*) denotes a statistically significant underutilization.

(†) denotes a statistically significant overutilization.

(**) this study does not test statistically the overutilization of M/WBEs or the underutilization of non-minority males.

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

(^) The statistical test could not detect the disparity because there were less than two contracts awarded.



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C. Summary of the L/SLBE Program's Effectiveness

Despite the L/SLBE Program's rigorous and aggressive race and gender-neutral goals, there is still a statistically significant disparity in the award of prime contracts to L/SLBE-certified African American businesses. The disparity analysis revealed that L/SLBE-certified African American businesses lost \$42,862,662 in City contracts during the study period. Given the availability of African American businesses, the group was expected to be awarded \$42,862,662 more than received. L/SLBE-certified Asian Pacific and Asian Indian businesses were also underutilized, although not at a statistically significant level.

Consistent with the findings for competitively bid contracts, on-call contracts, and cooperative agreements, L/SLBE-certified African American businesses are underutilized at a statistically significant level in all industries, and the utilization of L/SLBE-certified non-minority males on the City's prime construction, professional services, services, and goods and commodities contracts exceeds their availability. In fact, the utilization of L/SLBE-certified, non-minority males on services prime contracts is almost double their availability in the City's market area.

The statistical evidence shows that the L/SLBE Program has been ineffective in achieving equitable participation of all certified L/SLBEs. However, the City, by operating a rigorous L/SLBE Program for nearly two decades, has fulfilled its legal obligation to make a good faith effort to use race-neutral means to address the statistically significant disparity identified in its previous disparity study.

VI. Implementation of Race and Gender-Conscious Remedies

The statistical findings of disparity for each of the four procurement methods the City used in awarding prime contracts during the study period provide clear evidence that a preference has been given by the City and its prime contractors in the selection of non-minority, male-owned businesses. Additionally, the assessment of the efficacy of the L/SLBE Program is further evidence of the practices to exercise the preference even when contracts were awarded to certified L/SLBEs. The underutilization of African Americans is especially notable under each of the procurement methods. There is also evidence that the City and its prime contractors discriminated against woman-owned businesses and ethnic groups when awarding prime contracts using the several procurement methods.

The United States Supreme Court has definitively opined that it is the obligation of states and localities to adopt race-conscious remedies to address the disparity resulting from preferential treatment within their relevant market area. In support of race-based remedies in public contracting, the United States Supreme Court explained that states and localities have an obligation to adopt race-conscious remedies to dismantle preferential treatment.³¹⁷ While the Supreme Court



³¹⁷ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

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requires local governments to consider race-neutral measures to dismantle preferential treatment, the Court concluded that the continuation of race-neutral efforts to remediate discrimination can indicate a lack of good faith by the government.

On December 5, 1996, California voters approved a Civil Rights Initiative, Proposition 209, that amended the California Constitution. The amendment added Section 31, which banned preferences based on race or gender in public contracting. The Ninth Circuit Court of Appeals has ruled that Proposition 209 does not violate the equal protection clause of the Fourteenth Amendment because it does not serve “as an impediment to protection against unequal treatment but as an impediment to receiving preferential treatment.”³¹⁸ The statistically significant findings from this analysis have documented that the City is affording preferential treatment to non-minority male-owned businesses. Given Article 31 of the California Constitution, which bans preferential treatment by local governments in the award of their contracts, recommendations are provided to address the documented preferential treatment of non-minority male-owned businesses in the City’s award of contracts.

A. Race and Gender-Conscious Prime Contract Remedies

The following remedies are presented to address the statistically significant disparity that can be attributed to the preferential treatment accorded non-minority, male-owned businesses in the award of City contracts.

1. Bid Discounts on Construction and Goods and Commodities Prime Contracts

A bid discount for construction prime contracts should be implemented. The bid discount should be applied when ranking the prime contractor’s bid amount. To determine the lowest bidder during the evaluation process, the bid amount for eligible M/WBE bidders should be reduced by the discount percentage. The amount of the bid, as the basis for the bid award, should remain unchanged. The maximum discount should not exceed \$50,000. The eligible group with statistically significant underutilization is listed in Table 10.23.

Table 10.23: Groups Eligible for Construction Bid Discount

Ethnicity/Gender
African American



A bid discount for groups with statistically significant disparity on goods and commodities prime contracts should be implemented. The bid discount should be applied when ranking the prime contractor’s bid amount. To determine the lowest bidder during the evaluation process, the bid amount for eligible M/WBE bidders should be reduced by the discount percentage. The amount of

³¹⁸ *Coalition for Economic Equity v. Wilson*, 122 F.3d at 708 (9th Cir. 1997).

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the bid, as the basis for the bid award, should remain unchanged. The maximum discount should not exceed \$50,000. The eligible groups with statistically significant disparity are listed in Table 10.24.

Table 10.24: Groups Eligible for Goods and Commodities Bid Discounts

Ethnicity/Gender
African American
Asian Pacific American
Hispanic American
Caucasian Female

2. Establish Evaluation Points for Professional Services and Services Prime Contracts

Evaluation points for the groups with a disparity should be standard on professional services prime contracts. Evaluation points should be applied during the evaluation process to local professional services prime contractors who are members of the minority and gender groups that were underutilized at a statistically significant level. The eligible groups with statistically significant disparity are listed in Table 10.25.

Table 10.25: Groups Eligible for Professional Services Evaluation Points

Ethnicity/Gender
African American
Caucasian Female

Evaluation points for the groups with a disparity should be standard on services prime contracts. Evaluation points should be applied during the evaluation process to local services prime contractors who are members of the minority and gender groups that were underutilized at a statistically significant level. The eligible groups with statistically significant disparity are listed in Table 10.26.



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Table 10.26: Groups Eligible for Services Evaluation Points

Ethnicity/Gender
African American

B. Race and Gender-Conscious Subcontract Remedies

1. Establish Construction and Professional Services Subcontracting Goals

African Americans and Asian Pacific Americans had a statistically significant disparity on the construction subcontracts awarded by the City’s prime contractors. Although Caucasian females did not have a disparity, they were underutilized which meets intermediate scrutiny, the lower standard of review applied to gender-based remedial measures. An M/WBE subcontract goal should be set to address the documented disparity.

To meet the narrowly tailored standard, the subcontract goals should not exceed the availability levels of each eligible group listed in Table 10.27.

Table 10.27: M/WBE Subcontractor Construction Availability

M/WBE Subcontractor Construction Availability	
Ethnicity/Gender	Construction
African American	17.86%
Asian Pacific American	3.49%
Caucasian Female	5.13%

African Americans had a statistically significant disparity on the professional services subcontracts awarded by the City’s prime contractors. Caucasian females were underutilized on the professional services subcontracts awarded by the City’s prime contractors.³¹⁹ An M/WBE subcontract goal should be set to address the documented disparity.

To meet the narrowly tailored standard, the subcontract goals should not exceed the group’s availability levels shown in Table 10.28.



³¹⁹ The strict scrutiny standard set forth in *Croson* is not applicable to gender-based remedies. Intermediate standard, a less rigorous standard applies to gender-based remedies. Underutilization of a gender group is sufficient factual predicate to implement gender-based remedies.

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Table 10.28: M/WBE Subcontractor Professional Services Availability

M/WBE Professional Services Availability	
Ethnicity/Gender	Professional Services
African American	9.12%
Caucasian Female	8.84%

C. Quantify Good Faith Effort Requirements When Applying Race and Gender-Conscious Remedies

The M/WBE subcontract goal must be met at bid opening. A contractor that fails to meet the published contract goal with an eligible M/WBE must document that a good faith effort was made to meet the goal. Bidders that fail to meet the published goal should submit documentation of a good faith effort with the bid. Contracts and Compliance should determine whether the prime contractor complied with all requirements of the solicitation documents and met the goal or made the required good faith effort.

The City should assign a value to each good faith effort element, thus quantifying the good faith effort analysis. The maximum score should be 100 points. A prime contractor should achieve a minimum score of 80 points to demonstrate a bona fide good faith effort. The contractor that fails to make a good faith will be deemed non-responsive and non-responsible. The next lowest bidder's goal attainment report will be reviewed. If no bidder meets the goal or makes a good faith effort the solicitation will be re-advertised. Proposals that fail to meet the goal or make a good faith effort will be deemed non-responsive and non-responsible and removed from the evaluation process.

The following are recommended good faith effort elements and point assignments:

1. Advertising (5 points)

Effort: Contractors should advertise opportunities for M/WBEs in three (3) print or digital media outlets during the three (3) weeks prior to the bid opening. Contractors should be required to publish these opportunities in the general circulation media, minority-focused media, trade association publications, or trade-related publications at least twice unless the City waives this requirement due to time constraints.

Documentation: The advertisement should include the project name, name of the bidder, areas of work available for subcontracting, contact person's name and phone number, information on the availability of plans and specifications, date that the subcontractor's written bid is due to the prime contractor, and bidder's assistance available to subcontractors, suppliers, and vendors in obtaining bonds, financing, and/or insurance.



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2. Bidders Outreach to Identify M/WBEs (15 points)

Effort: Contractors should communicate with M/WBEs through personal, frequent, and persistent contact. The contractor should also be required to promptly return telephone calls, facsimiles, and emails.

Documentation: Correspondence logs should list the names of the businesses, the representatives who have been contacted, and the dates of contact. Copies of correspondence provided to the contacted businesses and the responses received should be provided. Documentation can also include facsimile transmittal confirmation and written confirmation of receipt via email with the date of the transmission. The contractor should contact at least three businesses. However, the number should be sufficient to reasonably result in a viable subcontract.

3. Attend the Pre-bid Meeting (5 points)

Effort: Attendance at the pre-bid meeting(s) should be mandatory to comply with the good faith effort requirement.

Documentation: The contractor's name on the pre-bid meeting sign-in sheet can serve as documentation.

4. Provide Timely Written Notification (20 points)

Effort: Contractors should solicit subcontract bids and material quotes from relevant eligible businesses in writing at least two (2) weeks prior to the bid opening. Relevant businesses are those that could feasibly provide the goods or services required for completing the scope of services provided in the City's solicitation. In soliciting bids, quotes, and proposals, the contractor should furnish: project name, bidder name, subcontract items, prime contact person's name and phone number, information on the availability of plans and specifications, date that the subcontractor's written bid is due to the prime contractor, and bidder's assistance available to subcontractors, suppliers, and vendors in obtaining bonds, financing, and/or insurance.

Documentation: Written notification should include verification of the transmission date, the recipient's name, and the company name. Documentation can also include facsimile transmittal confirmation slips and written confirmation of receipt via email with the date of the transmission.

5. Contact Follow-up (15 points)

Effort: Contractors should return telephone calls, facsimiles, and emails promptly after the initial solicitation. The follow-up should take the form of a telephone call, facsimile, or email during normal business hours and must occur at least two (2) weeks prior to the bid opening. The contact should be within a reasonable amount of time to allow the prospective subcontractor an opportunity to submit a competitive sub-bid, but not less than two (2) weeks prior to the bid opening.



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Documentation: Correspondence logs should contain the list of subcontractors who were contacted, including results of that contact, and should be documented with a telephone log, email print-out, or facsimile transmittal confirmation slip. The list should also include names of the eligible businesses, telephone numbers, contact persons, dates of contact, and note the outcome of the contact. The record should also identify the scope of work for which each contacted subcontractor was asked to submit a bid.

6. Identify Items of Work (15 points)

Effort: Subcontracts should be broken down into discrete items or packages that M/WBEs may find economically feasible to perform. Smaller portions or quantities of work should be identified to maximize M/WBE participation.

Documentation: The documentation should include a list with description of the specific items of work, which were solicited from eligible businesses. Documentation can include notices and advertisements targeting M/WBE subcontractors.

7. Negotiate in Good Faith (15 points)

Effort: Contractors should negotiate fairly with interested M/WBEs even if the selection of an M/WBE would increase costs or the contractor could self-perform the work. A contractor should not unjustifiably reject sub-bids, quotes, or proposals prepared by eligible businesses based on the subcontractor's standing within its industry, membership in a specific group, organization, or association, and political or social affiliation.

Documentation: A written statement with the names, addresses, and telephone numbers of subcontractors contacted and the negotiated price and services should be submitted. This list should include dates of the negotiations and the results, and document the bids received from the businesses that could provide a commercially useful function.

8. Help in Securing Financing, Bonding, Insurance, or Competitive Supplier Pricing (10 points)

Effort: Contractors must provide M/WBEs with technical assistance regarding plans, specifications, and requirements of the contract in a timely manner to respond to a solicitation. Contractors should not deny a subcontract solely because a necessary and certified M/WBE cannot obtain a bond. In addition, the contractor should also advise and make efforts to assist interested businesses in obtaining bonds, financing, and insurance required by the City, as well as providing competitive pricing.

Documentation: The contractor should provide a written description of the type of assistance, the name, contact person, and telephone number of the agency, the name of the person who provided the assistance, and the supplier that offered competitive pricing.



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D. Track, Monitor and Report MWBE Participation

The tracking, monitoring and reporting standards established under the enhanced L/SLBE Program should be applied to the Race and Gender Conscious Program. The M/WBE program should be managed by the Contracts and Compliance Division.

VII. Race and Gender-Neutral Remedies

A. Policy Enhancements

A number of race and gender-neutral remedies are recommended to increase contracting with local, small, minority, and woman-owned businesses. These proposed recommendations include policy and administrative enhancements to the L/SLBE Program, modifications to the procurement policy, and improvements in tracking and monitoring standards. These recommendations are race and gender-neutral; therefore, they can be implemented without a statistical finding of disparity.

1. Update the Trucking Program

The Local Small Local Business program has a 50% L/SLBE trucking participation requirement applied to construction contracts. Under the requirement, 50% of the dollars allocated to trucking should be awarded to L/SLBEs. The trucking requirement should be modified to require that construction contractors select all truckers used to meet their requirement from a list of certified truckers. The certified list of truckers should be established drawing upon the SLBEs on the certification list. Truckers should be available to the prime contractors on a rotational basis. Each prime contractor should be dispatched one or more truckers based on the trucking company's order on the list.

Additionally, the trucking participation requirement should be modified to limit participants in the program to SLBE truckers. In order to maximize the number of small local business truckers that participate, targeted outreach should be conducted to maximize the number of local truckers that apply for certification. Certification requirements for truckers should also be reviewed given the changes in the industry. Increasing real estate values have made the cost of a yard to park trucks more expensive and has heightened the City's enforcement of its street parking policies.

2. Implement a Small Contracts Rotation Program

Informal construction and professional services contracts \$50,000 and under should be awarded to SLBEs on a rotational basis through a Sheltered Market Program. Each specialty within construction and professional services should have its own certified lists. Certified SLBEs should be placed automatically on the rotation list according to their certification date and specialty. Businesses with the same certification date, industry and specialty should be placed alphabetically, according to the owner's last name. Whenever two or more businesses are appended to the rotation list, the placement should follow the same procedure. After a business on the rotation list receives a contract, it should be placed at the end of the list. Contracts and Compliance should approve all contracts awarded through the Sheltered Market Program.



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3. Combine the On-Call Contracts Procurement Process and the Local/ Small Local Business Enterprise Program

The Department of Public Works is authorized to use the on-call procurement method to award small construction and professional services projects without competition or additional approval. The contractors that receive the small construction and professional services projects are selected by the department manager who is authorized to award the contract.

This procurement method limits competition for many small construction and professional services projects and allows a project manager to determine the businesses awarded many small projects. There is also evidence that either large contracts are being awarded using this procurement method or select businesses are receiving multiple small projects because the total payments to some contractors far exceed the \$25,000 threshold that defines a small project.

In effect, the on-call procurement method removes a large number of small construction and professional services projects from the competitive process and bundles them for award to a few contractors. With contract amendments, which the department manager is also authorized to award, the on-call contracts can extend over multiple years.

The L/SLBE Program sets informal thresholds that limit bidding for construction and professional services contracts to small local businesses. The informal threshold for construction contracts is \$100,000 or below and \$50,000 and below for professional services. Despite this SLBE requirement, small projects are awarded through the on-call procurement method. This procurement method does not comply with SLBE requirement. The Department of Public Works's on-call procurement method should not be exempt from the SLBE requirement nor should any other department award contracts below the L/SLBE construction and professional services informal thresholds without complying with the SLBE requirement. Combining these two programs would require the Department of Public Works to offer small projects to SLBEs. Applying the SLBE requirement to the on-call procurement method would increase the number of small contracts available to be bid by small local businesses.

4. Enhance Requirements for the Preferred Small Local Business Program

The Preferred Small Local Business Program limits competition on construction and professional pre-construction services under \$250,000 to pre-qualified small local businesses. The requirement should extend to all professional services contracts. The current process assumes each department will identify solicitations that should be advertised through the Preferred Small Local Business Program. To ensure that pre-qualified L/SLBEs are presented with the opportunity to bid on solicitations through the Preferred Small Local Business Program, the contracts \$250,000 and under should be identified in sufficient time to allow Contracts and Compliance to solicit bids from SLBEs.

Quarterly each department should prepare a list of solicitations for construction and professional pre-construction services that have an estimated value of \$250,000 and under. The list should be



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submitted to Contracts and Compliance at least 60 days before the proposed advertisement date. The list should minimally include an annotated summary of the scope of work and an estimated cost. Contracts and Compliance should notify the SLBEs in the relevant industry and request a letter of interest. If two or more SLBEs in the relevant industry, trade or profession are present on the L/SLBE certified list and express an interest, the solicitation must be advertised under the Preferred Small Local Business Program.

5. Reduce the L/SLBE Program Size Standards

The United States Small Business Administration (SBA) revenue and employee count are the size standards used to define eligibility for the L/SLBE Program. SBA sets the size standards by revenue and employee count and type of contract within four industries. The four industries, as shown in Table 10.29, are construction, professional services, goods, and services. The current SLBE size standards are 30% of the SBA revenue size standards, as shown in Table 10.30.

Table 10.29: Size Standards as Percentage of SBA Standards

Industry	SBA Revenue Size Standard	SLBE Size Standard at 30% of SBA
Heavy Construction	\$36,500,000	\$10,950,000
Special Trade	\$15,000,000	\$4,500,000
Architectural Services	\$7,500,000	\$2,250,000
Engineering, Surveying, and Mapping	\$15,000,000	\$4,500,000
Other Electronic and Precision Equipment	\$20,500,000	\$6,150,000
Business Support Services	\$15,000,000	\$4,500,000
Janitorial Services	\$18,000,000	\$5,400,000
Other Support Services	\$20,500,000	\$6,150,000

The current SLBE size standards are as high as \$10.9 million for heavy construction. Consideration should be given to the revenue of Oakland businesses in calculating size standards for the L/SLBE Program. InfoUSA, which is a business database that compiles data from over 10,000 sources, reports that less than 3% of Oakland businesses have a revenue greater than \$10 million. The annual revenue of businesses in the City of Oakland in 2019, as reported in InfoUSA, is shown in Table 10.30.



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Table 10.30: City of Oakland Businesses: Size Standards by Annual Revenue

Annual Revenue	Percent of Business
Less than \$500,000	43.92%
\$500,001 - \$1,000,000	23.89%
\$1,000,001– \$2,500,000	11.82%
\$2,500,001 - \$5,000,000	15.61%
\$5,000,001 - \$10,000,000	2.60%
Over \$10,000,000	2.15%

Source: InfoUSA December 2019

In order to achieve the L/SLBE Program objective of increasing the utilization of Oakland small businesses, it is important to align the SLBE size standard more closely with the average revenue of Oakland businesses. As shown in Table 10.30, the revenue of the average Oakland business is considerably lower than the SBA revenue levels. In fact, the current L/SLBE size standard represents on average nearly 80 % of all Oakland businesses. Given the revenue of Oakland businesses in 2019, the SLBE size standard should not be calculated on the SBA size standard.

Instead SLBE size standards should be determined based on the annual revenue of Oakland businesses. The standards should be reviewed every five years to reflect changes in the revenue of businesses in the City of Oakland. The recommendation is to set the size standard at 80 % of the City of Oakland businesses’ annual revenue. At 80% of the 2019 revenue reported by InfoUSA, the SLBE size standard would be \$2.5 million.

6. Establish an Owner-Controlled Insurance Program

An Owner-Controlled Insurance Program (OCIP) should be instituted for construction and construction related professional services contracts. Consideration should be given to establishing an OCIP in cooperation with the Port of Oakland. OCIP is a centrally procured and managed insurance and risk control program that can be used by the prime contractor and its subcontractors for a single City funded construction or professional services project, or for a series of projects.

The City is permitted, pursuant to California State Law, to implement owner-controlled insurance for a construction program valued \$50,000,000 and over, with some restrictions.³²⁰ OCIP would insure City prime contractors, and all subcontractors for work performed for the relevant projects. The contractor’s bonding, insurance and fees, which would otherwise pass to the City in the bid, would be absorbed by OCIP. Thus, OCIP would be a more advantageous contracting standard for small businesses, that might otherwise experience high bond fees.



³²⁰ CAL. CODE REGS., § 4420 (2001).

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7. Expand the Definition of LBE

The residency requirement is a substantial presence in the City of Oakland. This standard should be expanded: 1) The licensed Oakland business should be headquartered within the City of Oakland; 2) The business located in a commercial office should have a current lease signed at least 12 months prior to the bid opening date; 3) When the business has occupied a commercial space in more than one site in the 12 months prior to the bid opening date, a signed lease for each location should be required; 4) In the prior 12 months, if the business had its headquarters in a homebased office, the requirements for a homebased office would have to be met for the relevant period within the 12 months; 5) Home-based businesses should have the owner's residence as the business' sole headquarters; 6) All employees, including the owner, must be housed at the residential office; 7) The business operations should be located in a defined area within the residence; and 8) The owner of a virtual office must have its primary residence in the City of Oakland.

8. Expand the Definition of an Oakland-Based Manufacturer

A manufacturer should meet the criteria for a local business and possess the permit and license required to conduct a manufacturing operation in an area zoned as industrial. All other certifications, licenses, and permits required by the City, County and State to operate a manufacturing facilitate should be current.

9. Require L/SLBE Compliance at Bid Opening

Contracts and Compliance should review Schedule R and E to determine compliance with the SLBE requirements as a condition of a responsive and responsible bidder. Any bidder that fails to meet the SLBE requirement should be deemed a non-responsive and non-responsible bidder. Contracts and Compliance's decision should be final. The L/SLBE participation listed on Schedule R and E should not be modified after bid opening without following the formal substitution requirements. Failure to achieve the contract goal should invoke a penalty.

10. Apply VSLBE Preferences and Bid Discounts

Providing preference points and bid discounts when very small businesses bid as a prime contractor should afford emerging businesses an opportunity to be more competitive. For construction contracts based on low bid, a bid discount of 5% should be applied to the VSLBE prime contractor. The discount would only apply in the bid evaluation. The award amount would be the bid price. For professional services prime contracts, 5% of the preference points should be applied to proposals from VSLBE prime contractors that meet a 50% subcontractor goal.

According to the L/SLBE Program a VSLBE should meet all the residency requirements of a SLBE. However, the average annual gross receipts should be at or below \$375,000.



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11. Establish Compliance Standards for Deposition and Development Agreements

A Disposition and Development Agreement (DDA) allows the City to require a buyer/developer to follow a development schedule and build on an approved site. The DDA requires the preparation of a report that includes: 1) cost of the agreement to the city; 2) estimated value of the interest at the highest and best use; 3) estimated value of the interest with the conditions of the DDA; and 4) explanation of why the sale or lease of the property will assist in the creation of economic opportunity.

The developer should be required to submit a schedule of the projected award of construction and construction-related agreements. All construction and construction-related professional service agreements should include the L/SLBE Program requirements. To monitor L/SLBE compliance, and other important equity data within the development agreement the City should maintain a database to track and monitor payments and other community commitments.

12. Limit the Use of Cooperative Agreements

The City's cooperative agreement policy allows departments to award contracts to businesses using agreements executed by another entity that employs similar procurement standards. These awards are made without a competitive process.

There were 6,275 contracts identified in the Oracle Financial System that referenced cooperative agreement. Payments under these cooperative agreements for the study period totaled \$135,867,370. Cooperative purchases represented a notable portion of the City's contract expenditures.

Before executing a cooperative agreement the department should be required to confirm that the needed goods or service are not offered by an L/SLBE. Contracts and Compliance should concur with the department's finding in writing, and thereby authorize the use of a cooperative agreement. When the use of a cooperative agreement is authorized the first preference should be with a business in the City of Oakland.

13. Augment Contracts and Compliance Division Staff

Implementation of an expanded L/SLBE policy and a new M/WBE policy would increase the current administrative functions and the scope of services required of the Contracts and Compliance Division. The proposed policy and administrative recommendations that include expanding certification services, verifying monthly compliance reports, reviewing pre-award M/WBE and L/SLBE compliance, handling requests for authorization to use cooperative agreements, solicitation of contracts under \$250,000, and implementing a modified trucking program will require extensive staff time and technical skills. An expanded staff would be necessary to effectively fulfill the increased responsibility.



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The existing staffing levels in the Contracts and Compliance Division should be augmented to increase the personnel in at least three functional areas: certification, data management, and contract compliance. Additionally, the services of an ombudsperson should be added to the staff.

a. Assistant Contract Compliance Officer

The Assistant Contract Compliance Officer should advise applicants regarding suitable completion of their certification applications, perform desk and site audits, and participate in business outreach activities to increase the applicant pool. The Assistant Contract Compliance Officer should demonstrate business record auditing skills, knowledge of construction and construction-related procurement processes, and the ability to work with businesses with diverse interests and backgrounds.

b. Business Analyst

The Business Analyst should implement compliance systems for tracking certification, verifying and reporting monthly subcontractor payments, recording exemptions to program requirements in a digital format, producing utilization reports, and querying the Oracle Financial System. The Business Analyst should manage all solicitations received from the user departments and develop comprehensive outreach strategies and communication with businesses using digital media vehicles. iSupplier redesign and data management should be a critical responsibility.

The Business Analyst's information technology capabilities, experience, and knowledge of databases, including the design, data collection and manipulation functions, should support the department and the Contracts and Compliance staff management of records and generation of their reports. This role would also require the ability to work with businesses with diverse interests and backgrounds.

c. Contract Compliance Officer

The Contract Compliance Officer should monitor L/SLBE and M/WBE contract compliance, including subcontractor pre-award goal fulfillment, commercially useful function review, certification site visits and desk audits, compliance investigations, and dispute resolution.

d. Ombudsperson

The Ombudsperson should provide dispute resolution services and direct investigations of complaints from user departments, as well as from prime contractors and subcontractors. The Ombudsperson should demonstrate knowledge of mediation techniques, knowledge of procurement processes, and the ability to work with businesses with diverse interests and backgrounds.



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14. Create a Business Advisory Task Force

To support the Contracts and Compliance Division in meeting its L/SLBE prime contract and subcontract goals, the City should establish a Business Advisory Council, appointed by the Mayor and the City Council, to advocate for the L/SLBE program. The Business Advisory Council would serve as advisors to the Contracts and Compliance Division and be responsible for:

- Increasing access to contracting opportunities for L/SLBEs
- Reviewing and advancing initiatives that impact L/SLBE participation
- Enhancing the notification process regarding prospective contract opportunities

The Business Advisory Council membership and guidelines should be published on the Contracts and Compliance Division's webpage. The Business Advisory Council should include 10, but not more than 15, members and a member should not serve more than two terms. Members should serve for staggered terms of three years.

15. Enhance Mentor-Protégé Program

The City's mentor-protégé program enables small local businesses to benefit directly from the experience and training of much larger, well-established firms. The program allows established firms to assist in developing the capacity and capability of small businesses located in Oakland. The mentor-protégé program can support the growth of more SLBEs and thereby increase the availability to bid on City contracts as prime contractors. The mentor protégé program should be expanded to supplement the existing efforts and foster SLBE growth.

The current mentor protégé program allows for a 5% preference for Mentor-Protégé teams on construction and professional services contracts. This preference should be increased to 10% to more adequately compensate mentors for their time and expertise. The case-by-case basis requirement should be eliminated. To ensure that the program is robust, the City's acceptance of the mentor protégé agreement should be the only requirement for receiving the preference points. Additionally, there should be no credit against City goals resulting from being a mentor. The protégé's certification status should be counted against any L/SLBE contract goals.

16. Apply the L/SLBE Requirements to Grants

The L/SLBE Program applies to grants awarded to non-profits and for-profits. During the July 1, 2011 to June 30, 2016 study period, 847 grants were awarded to 359 grant recipients. The grant dollars awarded totaled \$456,597,956. Furthermore, 480 grants valued at \$100,000 or less were awarded. Grants, while subject to the L/SLBE Program, are not being awarded in accordance with the requirements of the program. Steps should be taken to ensure compliance with the L/SLBE Program because the small contracts awarded as grants represent significant contracting opportunities for L/SLBEs.



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B. Administrative Enhancements

1. Implement Uniform Staff Training Procedures

Routine training should be conducted with the City departments to ensure all personnel are knowledgeable about L/SLBE Program requirements and capable of supporting its policies and objectives. Annual training should be conducted by the Contracts and Compliance Division.

a. Conduct Annual Training Seminar

Annual training seminars should be held to inform staff of changes to the L/SLBE Program and to promote program enhancements. An online, interactive portal should be developed for the Contracts and Compliance Division staff to give and receive requests for assistance and information, and to provide responses to questions.

b. Develop a Program Training Manual

An L/SLBE Program Training Manual describing the L/SLBE Program mission, policy, and procedures should be available to all staff electronically and accessible from the Contracts and Compliance Division's webpage. The Training Manual should include a Frequently Asked Questions section.

2. Implement Mobilization Payments for Subcontractors

Mobilization payments on construction projects are authorized under the Oakland Code of Ordinances, Title 2, Chapter 2.06, Article 1, §2.06.050, to cover site location costs including equipment, supplies, trailers, and other operations which must be performed, or cost incurred, prior to beginning work on the project site. Whenever a mobilization payment is made to a prime contractor as the first payment of its bid amount, the subcontractor should be paid the appropriate share of its bid when directed to mobilize, prior to commencing work. Subcontractors should also receive the mobilization payment in a timely manner because project start-up costs are also significant for a subcontractor. All solicitations, prime contracts and subcontracts should be required to include this requirement.

3. Evaluate the Impediments to Bidding

Bidders are necessary to have true competition in government contracting, because multiple respondents offer the City options in: 1) pricing, 2) methods to fulfill the scope of work, and 3) qualification of both the companies and their staff. The City has had a chronic problem of attracting contractors to respond to its solicitations. In times like the present where there are considerable private contract opportunities, the absence of bidders can increase the cost of services and commodities and decrease the quality of those received.

The number of bidders is no doubt adversely affected by the City's long-standing practice of issuing large, multi-year contracts and contract modifications for new services without



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competition. The analysis performed in this disparity study of the highly used contractors is an indication that only a few contractors have received most of the contract dollars for both large and small contracts. This trend is a deterrent for potential bidders that have no relationship with department managers.

There is also statistical evidence that contracts that are awarded for small construction and design projects are amended to add additional services unrelated to the original award. Additionally, the L/SLBE procurement standard to limit competition for informal construction and professional service contracts to SLBEs appears to be ignored. While L/SLBE policy states that construction and construction-related professional services contracts \$250,000 and under require competition among L/SLBEs, there are no procedures in place to implement this requirement.

Greater attention should be directed to addressing the policies, procedures, and practices that deter Oakland businesses from bidding on city contracts. Addressing the impediments might also serve to increase the number of Oakland businesses that apply for certification.

4. Conduct Targeted Outreach to L/SLBEs

The number of L/SLBEs awarded both prime contracts and subcontracts should reflect the availability of Oakland small businesses. Increases in the number of contracts awarded to L/SLBEs requires both an increase in the number of bidders and modifications to the procurement practices. Standardized solicitation practices would be one of several strategies that might increase the number of Oakland businesses bidding. City departments should adhere to the following affirmative steps as a formal effort to increase the number of bids received from Oakland businesses:

- Request lists of certified businesses from the Contracts and Compliance Division when soliciting response to solicitations.
- Ensure that L/SLBEs and the gender and ethnic groups with statistically significant underutilization are invited to respond to solicitations.
- Perform targeted outreach to L/SLBEs before the solicitation is released to notify the business community of the upcoming opportunity.
- Where economically and technically feasible, encourage the formation of joint ventures, partnerships, and other similar arrangements among the ethnic and gender groups with a statistically significant underutilization.
- Unbundle large contracts to create more opportunities for L/SLBEs.
- Limit the practice of extending contracts through no bid change orders to conditions where the modification is necessary to complete the original scope of work.

5. Modify Certification Application to Capture Vendor's NAICS Codes

The certification application should be modified to capture all of a vendor's North American Industry Classification System (NAICS) codes. For each NAICS code listed, the vendor should specify the number of years the good or service has been provided and a reference from at least



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two clients. The on-site certification review should verify the vendor's capacity to perform the services or provide the goods within the NAICS codes. Contracts and Compliance distributes contract opportunity announcements based on the vendor's NAICS codes. A comprehensive list of each vendor's NAICS codes will enable the Contracts and Compliance Division to be more inclusive when distributing their notices.

6. Create a Prime Contractor Payment Verification Program

The City should publish prime contractor payments on a weekly basis so subcontractors will know when prime contractors have received payments and when prime contractors are required to pay their invoices. An online subcontractor payment verification program should be established that allows subcontractors to notify the City in real time the status of the invoice payments received from their prime contractor. Prime contractors should be required to submit verification of subcontractor payments on the Contract's and Compliance Division webpage. The electronic verification of payments made to subcontractors should include information on certified subcontractors. The prime contractor's compliance with the payment verification program should be mandatory. In addition, the prime contractor should be required to include subcontractors' invoices as part of its regular billing to the City. Each subcontractor listed as paid for the previous billing cycle should be contacted electronically by the Contracts and Compliance Division to verify that the payment was received. This verification procedure would eliminate reliance on self-reporting by the prime contractors.

Any discrepancy in the payment reported by the prime contractor and subcontractors should be resolved before additional prime contractor payments are made. The payment verification requirements should be published on the City's webpage and in the solicitation and contract documents.

7. Modify the Schedule E Project Consultant Team Listing Form

Schedule E must be submitted with every proposal or statement of qualifications. The form captures the name, address, type of work, certification, ethnicity, and gender for each subcontractor proposed to be used on the contract. The form should be modified to require the listing of NAICS(s) for type of work each subcontractor is proposed to perform. The timeline for the subcontract work to be performed also should be stated for each subcontractor by month or phase of the work.

8. Modify the Schedule R Subcontractor, Supplier, Trucking Listing Form

Schedule R must be submitted with each bid. The form captures the name, address, type of work, contractor's license, certification, ethnicity, and gender for each L/SLBE subcontractor proposed to be used on the contract. The form should be modified to require listing of every subcontractor, regardless of contract value, and the NAICS code(s) for the type of work each subcontractor is to



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perform. In addition, the timeline for performing the subcontractor, supplier, or trucker's item(s) of work should be stated by month or phase of the scope work.

9. Prepare an Annual Contracting Forecast

Each department should prepare an annual contract forecast identifying upcoming solicitations for a 12- to 24-month period. The forecast should be published on the Contracts and Compliance Division webpage and emailed to certified businesses and vendors registered on iSupplier. A hyperlink to the Capital Improvement Program (CIP) should also be posted on the webpage. The CIP, like the other contract forecasts should include anticipated advertisement dates. The forecast should identify the contract opportunities and the departments within which each contract is anticipated to be awarded. The forecast should be distributed to business and trade associations and incorporated in the City's outreach events. Certification workshops should be held throughout the year to explain the process and assist interested businesses with the certification process.

The Contracts and Compliance Division, in cooperation with the user departments should also host informational meetings semi-annually to inform the business community of upcoming contracts and Development and Disposition Agreement opportunities.

10. Provide Debriefing Sessions for Unsuccessful Bidders

Debriefing sessions can provide vital information to help small businesses prepare more competitive submittals. A debriefing session should be offered to all unsuccessful bidders. The option should be published on the Contracts and Compliance Division's webpage and included in the Notice of Intent to Award. The Notice of Intent to Award should be sent to all bidders before the contract is authorized for award. The solicitation should state that a debriefing session is optional. The procedures for scheduling the debriefing session should be set forth in the solicitation and the Intent to Award notice. The debriefing session should be scheduled no later than 30 days from the date of the request.

The debriefing session should be managed by the Contracts and Compliance Division and the project manager with the user department should provide the debriefing. The reviewers scores should be made available at the debriefing or before, if requested.

11. Track and Verify Subcontractor Participation with Each Payment Application

Subcontractor goal attainment should be tracked with each payment application submitted by the prime contractor. The goal attainment tracking process should be electronic and require prime contractors to submit with their payment application a monthly L/SLBE utilization reports through an electronic compliance monitoring module.



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12. Give Five-day Notice of Invoice Disputes

Invoice disputes can be a source of delayed invoice payments. Currently, the invoice dispute resolution process requires a five (5) day notice of receiving a disputed invoice. In addition to this rule, the department should provide the contractor with an Invoice Dispute Notification detailing all items in dispute. Further, undisputed invoice amounts should be paid timely, but no later than fifteen (15) days of receipt. Disputed items should be resolved in a timely manner and thereafter paid promptly.

Also, the prime contractor should have the same obligation to give notice to the subcontractor within five (5) days of receiving a disputed invoice. The prime contractor should pay the subcontractor within five (5) days of receiving payment from the City for both disputed and non-disputed invoices.

13. Institute a Subcontractor Payment Verification Program

Payments that prime contractors make to subcontractors should be verified by the subcontractors to substantiate the L/SLBE Program and enhance the current prompt payment policy. The Contracts and Compliance Division should ensure that any tracking system that is implemented has the capability to monitor compliance with Schedules R and E and the prompt payment policy. An effective tool would allow subcontractors to notify the City of late payments or non-payments in real time. In addition, each subcontractor listed as paid for the previous billing cycle should be contacted electronically to verify that payment was received. This verification procedure should eliminate reliance on self-reporting by the prime contractors.

If a subcontractor reports a discrepancy in the amount received from the prime contractor, the discrepancy should be resolved before any additional payments are made to the prime contractor. The simplest resolution would be to have the prime contractor submit with each invoice proof of payment, such as an image of the cancelled check written to the subcontractor to pay for the relevant invoice. The particulars of the payment verification program should be published on the Contracts and Compliance webpage in solicitation documents, and in the contract. The prime contractors' compliance with the payment verification program should be a mandatory provision of the prime contract.

14. Publish Quarterly Utilization Reports

Utilization reports that measure the effectiveness of the L/SLBE and MWBE programs should be published quarterly and minimally include year-to-date payments made to L/SLBEs and M/WBEs, the original award amounts, and contract modifications. For each awarding department the report should include the number and amount of the awards to L/SLBE, M/WBE, and non-minority, male-owned businesses.

The fourth-quarter report should include an assessment of program activities as well as the departments' exemplary practices and achievements. The utilization report should be posted on the Contracts and Compliance's webpage and provided to the City Council.



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15. Maintain L/SLBE Participation After Contract Award

The Contracts and Compliance Division should approve any proposed change in the L/SLBE participation listed on Schedules R and E after contract award. Approval should be granted before any L/SLBE participation is reduced or a L/SLBE is removed from a contract. A contractor that reduces a L/SLBE's scope of work without adhering to the City's substitution provision, should be subject to liquidated damages equal to the value of the L/SLBE's scope reduction. If the reduction of L/SLBE participation is approved Contracts and Compliance will assist the department to find an additional L/SLBE to maintain the participation listed on the Schedules R and E.

16. Monitor L/SBES Participation After Contract Award

Each prime contract should contain a project work plan or schedule of values that stipulates the phase of the work and the item of work to be performed or supplies to be delivered, by each L/SLBE listed in the Schedule R and E. The prime contractor, in each invoice or request for payment should report the L/SLBE year to date invoice amount and percent of participation. The subcontractor should verify payment. Utilization of an electronic tracking system would allow the reporting to occur in real time and enable Contracts and Compliance to monitor participation through the payments to L/SLBE in accordance with the project delivery schedule.

C. Data Monitoring and Enforcement Recommendations

The City should update the standards for recording and maintaining prime contract and subcontract records. The process of securing the City's prime and subcontract data for the statistical analysis evidenced decentralized and fragmented management of the contract data. The records needed to track and verify prime contracts and subcontracts awarded during the study period were not complete. The City's Oracle Financial System used to capture prime contract data should be centralized to improve the management of contracts and compliance with the L/SLBE Program. Additionally, the system should have the capacity to interact with each City department's accounting database for City-wide uniformity.

The recommendations for modifications to the existing procurement process should reduce the City's reliance on paper records. Improvements in the use of digital documents will increase efficiency and transparency in the contracting process. There are several significant steps that should be part of the initial transition from paper to a greater reliance on electronic documents.

1. Enhance the City's Financial Management System

The City should assign one unique identifier to each solicitation and use that number in the Oracle Financial System. Currently, each solicitation can be assigned a project number, contract number, purchase order number, and resolution number. Having four numbers for each solicitation creates confusion in tracking and monitoring contracts. The contract record should minimally include the unique contract number, the contract name, award amount and date, payment amounts and dates, modification amounts and dates, task order numbers, amount and dates, type of procurement, and vendor name and address.



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Critical information was missing from the prime contract dataset maintained in the Oracle Financial System. Task order numbers, contract modifications, total payment, ethnicity, and gender and industry codes are a few of the critical data fields that were not captured, although they are important in determining the total value of a prime contract. The information is also necessary to identify change orders and amendments to the original contract amount.

Several modifications are recommended to track comprehensive prime contractor and subcontractor data:

- Standardize critical fields in the prime contract record.
- Develop a subcontractor payment verification program to include complete contact information for each subcontractor and the subcontractor award and payments on the first two tiers.
- Implement a cloud-based contract compliance reporting system to track the participation of all subcontractors, subconsultants, suppliers, and truckers for the duration of each contract.

2. Establish a Subcontracting Tracking System

A subcontract monitoring system should be incorporated into a relational database application to allow for linking the subcontractor data to the appropriate prime contract. The prime contract's industry classification should be captured in the solicitation using NAICS code and entered into the financial system.

A data-tracking application with a cloud-based interface should be implemented to allow virtual submission of the required subcontract data by both the prime contractors and subcontractors, thereby eliminating the need for the City to enter the information into the system. Automated data entry forms should be designed to capture all of the necessary information required to produce utilization reports. The required information should be entered into the tracking system directly by the prime contractor and subcontractor. Customized queries designed in the contract monitoring system would analyze the data to identify any omissions in the forms or contradictions in the subcontract data entered by the prime contractor and subcontractor.

Standard reports should be designed to meet the remedial programs reporting requirements. Queries necessary to generate the reports should be designed to run automatically. The reporting module could list the different reports. The user would simply have to select and print the named report.

3. Enhance Subcontractor Tracking

The City's current L/SLBE contract tracking system is largely manual and does not allow for accurate, verifiable, and seamless tracking and reporting of contracting activity. An electronic system that tracks all subcontracts from prime contract award through contract close out would support a more reliable tracking process. The certification status of the prime contractors and all



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first-tier subcontractors, the subcontract award, payment amounts, and change orders would be captured in real time through the term of the project. Tracking payments and change orders are essential to ensuring the reliability and integrity of the City's remedial programs.

The software that the City selects to monitor subcontractor compliance should be compatible with the City's Oracle Financial System. The integration should link both platforms using the prime contract number as the common field. The subcontract record should minimally include the unique prime contract number, the subcontractor name, award amounts and dates, payment amounts and dates, modifications and task order numbers.

4. Modify iSupplier Platform

iSupplier portal is an enterprise application that structures vendor communication through a secure Internet-based portal. The iSupplier portal is an efficient platform that allows vendors to access procurement information including purchase orders, certification status, and payment status. The portal gives the City immediate access to vendor information and a platform to publish contract opportunities.

All businesses that want to contract with the City should register with iSupplier to receive bid notifications, apply for certification, and view purchase orders and payment status. While this platform increases efficiency and allows the City to exchange information with contractors, the current system is not reaching its potential. A number of modifications to the structure are needed to create a more robust vendor platform.

The current system has 47,953 records and 35,252 unique companies, thereby indicating the existence of many duplicate records. The implementation of a unique vendor identification system and required contact information fields enforced by proper data validation is essential in order to prevent duplicate records from being recorded in the database or incomplete records saved in iSupplier. The required information for vendors should include commodity codes and website. The inclusion of this information will provide complete and thorough records for vendors in the City of Oakland.

D. Website Enhancement Strategies

The Contracts and Compliance webpage (<https://www.oaklandca.gov/departments/contracts-compliance>) was evaluated in October 2019 to assess its usability, functionality, and informational value for contractors inquiring about doing business with the City. The goal of the review was to assess the presentation of the content, information relevant to businesses, and ease of use. The webpage was found to be visually appealing, professionally formatted, and informative. There was good use of color and a consistent layout. The webpage loaded quickly within five seconds using Google Chrome, Mozilla Firefox, Microsoft Internet Explorer, Safari, and mobile applications' equivalents. The webpage was error-free, with no spelling or grammatical issues detected. Additionally, the webpage offered a mobile-optimized view.



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1. Structural Enhancements

a. Improve Accessibility for Persons with Disabilities

While the webpage provides users with disabilities an accessible telephone line, consideration should be given to offering a text-to-speech feature to provide immediate access to the webpage without staff assistance. The text-to-speech feature reads aloud text on the webpage, thereby removing a barrier for visually impaired individuals. A text-to-speech feature would also reduce the need for staff to respond to inquiries regarding accessibility.

2. Functionality

a. Enhance the Intuitive Navigation

The structure of the webpage allows users to quickly locate procurement information. A business can arrive at the *City's Contracting Opportunities* webpage by clicking on the *City's Contracting Opportunities* button near the top of the City's webpage. The *Contracting Opportunities* webpage provides a list of bid postings with links to access each bid's details. The webpage is vaguely titled *Abstract*, however, and does not offer any function to search or sort the listed bids. The title of the page should be informative and provide navigational tools for users to find relevant procurement details and avoid undue confusion.

After clicking the *City's Contracting Opportunities*, finding the details of the contracts and selecting one, there is little information about each contract. A description of the contracts within the relevant industries would be helpful for prime contractors to determine if the solicitation is within their capability. Logging in to see the contract requires an account. There should be log-in directions on the page to facilitate access for prospective bidders.

3. Content Enhancements

a. Publish Prime Contractor Payments

Prime contractor payment should be posted on the webpage to allow subcontractors to track payment of their prime contractor's invoices. Payment data should be updated on a weekly or bi-weekly basis on the same day of the week. The reported prime contract payment information should be searchable by contract number, project name, and prime contractor name. This system will enable subcontractors, suppliers, and truckers to track the disbursements to their prime contractors. Informing subcontractors of the payments to their prime contractors would eliminate their need to contact the City for the status of the prime contractor's payment. An automatic payment notification system would inform the subcontractor at the time the prime payment is issued.



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b. Publish Utilization Reports

The quarterly utilization reports should be posted on the *Contracting Opportunities* webpage. They should also be downloadable in both PDF and CSV formats.



CHAPTER 11: Grant Analysis

I. Introduction

This chapter is an analysis of the City of Oakland’s award of grant funds during the July 1, 2011 to June 30, 2016 study period. Public grants are one avenue to ensure the social benefits of development are widespread and have a positive impact on all residents. While public contracts are awarded to procure goods and services that benefit the government, public grants are awarded to provide goods and services that benefit the community.³²¹ Grants awarded to further community-initiated social programs encourage the development of sustainable community projects and often fund initiatives that would not occur without government support.

The City’s Oracle Financial System captures grant dollars and grantee information within the prime contractor database. Grants were identified from the prime contract dataset by conducting a key word query in the different fields. Three types of grantees were awarded grants during the study period: nonprofits, for-profits, and government agencies.

The City’s grant funding came from various public and private sources. Most of the largest 25 grants awarded during the study period were from three departments: Capital Improvement Projects, Housing and Community Development, and Human Services. Most of the 25 smallest grants awarded during the study period were from three departments: Human Services, Oakland Public Library, and Housing and Community Development.

Information describing the City’s process for allocating grant funds was not readily available. It is unclear what criteria the City uses to award grants or where the City receives the funds allocated for grants. According to the City of Oakland Ordinance 2.07.020, there is a budgeting procedure that all agencies must follow to receive a grant; furthermore, the City does receive grant funds from both private and public sources. According to the City of Oakland Ordinance 15.18.220, the City distributes grants to the districts based on an assessment rating created by each district for fire suppression, prevention and preparedness; however, the process for allocating grants to all nonprofits, for-profits, and government agencies remains unclear.

II. Grant Analysis Overview

During the July 1, 2011 to June 30, 2016 study period, the City of Oakland awarded 847 grants, totaling \$456,597,956. Table 11.1 shows the total number and grant dollars to grantees located inside and outside of the City. During the study period, Oakland-based grantees were awarded \$423,188,274, or 92.68% of the total grant dollars. Organizations located outside the City of Oakland were awarded \$33,409,682, or 7.32% of the total grant dollars. Most of the City’s grant dollars were awarded to Oakland-based organizations.



³²¹ Oakland, California – Code of Ordinances. *City of Oakland*. 2019. https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT2ADPE_CH2.06PRPA_2.06.010DE.

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Table 11.1: Total Number and Grant Dollars by Location

Geographic Area	Number of Grants	Percent of Grants	Number of Dollars	Percent of Dollars
Oakland	694	81.94%	\$423,188,274	92.68%
Outside Oakland	153	18.06%	\$33,409,682	7.32%
TOTAL	847	100.00%	\$456,597,956	100.00%

Table 11.2 shows the total number and grant dollars by type of grantee: nonprofits, for-profits, and government agencies. A total of \$239,483,693, or 52.45% of the total grant dollars, was awarded to nonprofit organizations. For-profit organizations received \$181,874,636, or 39.83% of the total grant dollars. Government agencies received \$35,239,627, or 7.72% of the total grant dollars.

Table 11.2: Total Number and Grant Dollars by Grantee Type

Grantee Type	Number of Grants	Percent of Grants	Number of Dollars	Percent of Dollars
Nonprofit	614	72.49%	\$239,483,693	52.45%
For-Profit	177	20.90%	\$181,874,636	39.83%
Government	56	6.61%	\$35,239,627	7.72%
TOTAL	847	100.00%	\$456,597,956	100.00%

Table 11.3 shows the total number and grant dollars made to each grantee type by year. The data show no discernable trend in the annual grant dollars, though the data suggest that grant funding peaked in 2013-2014 and decreased in subsequent years. Data are presented for all three types of grantees: nonprofits, for-profits, and government agencies. There are no records indicating that grants were awarded to nonprofits or for-profits in 2011.

Table 11.3: Total Number and Grant Dollars by Grantee Type and Year

Grantee Type	Year	Number of Grants	Grant Dollars
Nonprofit	2011	0	\$0
	2012	61	\$13,887,593
	2013	163	\$95,643,982
	2014	155	\$56,922,637
	2015	195	\$61,609,482
	2016	40	\$11,419,999
For-Profit	2011	0	\$0
	2012	17	\$404,589
	2013	39	\$3,176,101
	2014	35	\$175,196,522
	2015	65	\$2,053,591
	2016	21	\$1,043,833



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Grantee Type	Year	Number of Grants	Grant Dollars
Government	2011	1	\$940,000
	2012	4	\$1,615,000
	2013	12	\$13,462,344
	2014	18	\$14,309,860
	2015	14	\$3,180,723
	2016	7	\$1,713,000
TOTAL		847	\$456,597,957

A. Grants to Nonprofits

Grants to nonprofit organizations account for over half of all grant dollars. Table 11.4 shows the total number and grant dollars made to nonprofit organizations by category of service. Nonprofit organizations provide services in 13 major categories: aging and adult services, anti-poverty, arts, children/youth, city beautification/clean-up, community development, community redevelopment, education, housing, recreation, transportation, violence prevention, and workforce.³²² Two hundred and nine nonprofit organizations received a total of 645 grants during the study period.

Table 11.4: Total Number and Grant Dollars to Nonprofits by Category

Category	Number of Grants	Grant Dollars
Aging and Adult Services	13	\$1,068,297
Anti-Poverty	92	\$64,717,275
Arts	79	\$6,757,129
Children/Youth	178	\$59,278,815
City Beautification/Clean Up	4	\$35,748
Community Development	25	\$3,482,868
Community Redevelopment	15	\$2,435,929
Education	25	\$37,575,632
Housing	40	\$15,947,540
Recreation	10	\$1,994,375
Transportation	2	\$760,000
Violence Prevention	91	\$29,257,686
Workforce	40	\$16,172,401
TOTAL	614	\$239,483,695



³²² The category designations were made by Mason Tillman to group the nonprofit grants dollars to grantees.

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B. Grants to For-Profits

For-profit organizations received almost 40% of the total grant dollars. These organizations have been classified into four industries: construction, professional services, services, and goods and commodities.³²³ Table 11.5 shows the total number and grant dollars made to for-profit organizations by industry. A total of 177 grants worth \$181,874,636 were awarded to 142 organizations. Construction companies received \$176,331,745, or 96.95% of the total for-profit grant dollars. The construction contracts were awarded to 73 construction companies; however, one contractor received \$173,041,000, or 98.93% of the construction grant dollars. The grant was awarded to an Oakland-based firm for a capital improvements project to improve the infrastructure of the Oakland Army Base located in District 3.

Table 11.5: Total Number and Grant Dollars to For-Profits by Industry

Industry	Number of Grants	Grant Dollars
Construction	73	\$176,331,745
Professional Services	28	\$3,597,694
Services	40	\$622,962
Goods and Commodities	36	\$1,322,234
TOTAL	177	\$ 181,874,636

C. Grants to Governmental Agencies

A total of 56 grants worth \$35,239,627 were awarded to 20 government agencies. Table 11.6 shows the total number and grant dollars made to government agencies. Twenty agencies received a total of 56 grants during the study period. The City of Oakland was awarded \$17,057,707, or 48.40% of the total government grant dollars.

Table 11.6: Total Number and Grant Dollars to Government Agencies by Agency

Agencies	Number of Grants	Grant Dollars
City of Oakland	18	\$17,057,707
Other Government Agencies	14	\$18,181,920
TOTAL	56	\$35,239,627



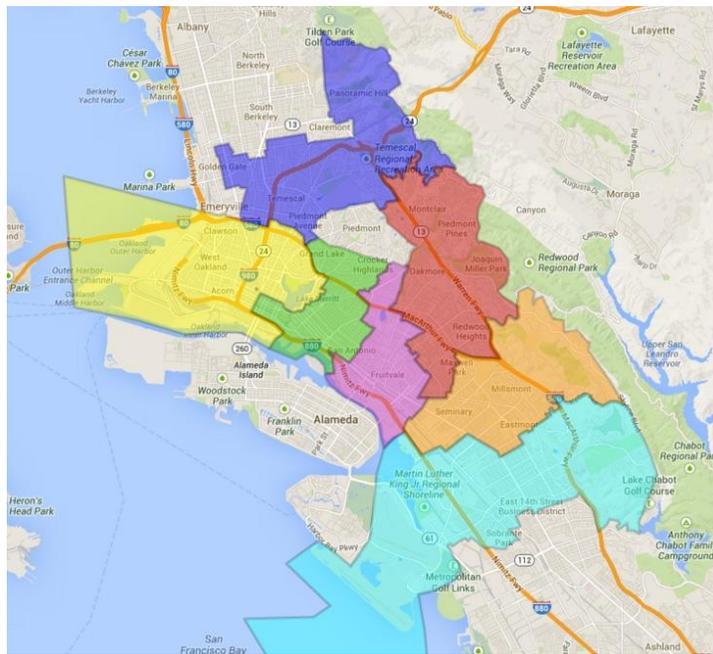
³²³ The industry designations follow the same industries in the Disparity Study.

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III. Grant Analysis by City Council District

Oakland has seven City Council districts, as shown in Illustration 11.1. The district boundaries are set forth in Chapter 3.04 of the Oakland Municipal Code. Each district elects one City Council member and one Oakland Unified School Board member.³²⁴ Table 11.7 shows the distinct zip codes within each district. Each district has nonprofit, for-profit, and government agencies that received grant dollars. However, the type of grants and amount of grant dollars differ from district to district. Determining where the grant dollars were awarded is important in determining the beneficiaries of the grant dollars. Given the differences in the districts, it is instructive to evaluate the distribution of grant dollars.

Illustration 11.1: City Council District Map



³²⁴ Oakland, California – Code of Ordinances. *City of Oakland*. 2019. https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT3MUEL_CH3.04CICODI_3.04.010DIINSEDI&showChanges=true.

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Table 11.7: Oakland City Council Districts

District	Zip Code	Population
1 Purple	94608 ³²⁵	30,041
	94609	22,339
	94618	16,556
	94705	13,235
2 Green	94610	31,354
	94606	38,441
3 Yellow	94612	16,027
	94607	26,904
4 Red	94602	30,098
	94611 ³²⁶	38,684
5 Pink	94601	50,763
6 Orange	94613	864
7 Blue	94621	33,557
	94603	33,952
	94605	44,260
TOTAL		427,075

Table 11.8 shows the total number and grant dollars awarded during the study period by district. The neighborhoods in each district, as described on the City of Oakland website, are also included.³²⁷ District 3, which encompasses much of West Oakland, was awarded the majority of grants and grant dollars, receiving \$258,539,237, or 56.62% of the total grant dollars. Districts 1 and 4 were both awarded less than \$10,000,000 over the study period.

Table 11.8: Total Number and Grant Dollars by District

District	Number of Grants	Grant Dollars
1 North Oakland	30	\$2,888,949
2 Eastlake/San Antonio/Chinatown	121	\$78,378,585
3 West Oakland	314	\$258,539,237
4 Central Oakland	30	\$5,907,931
5 Fruitvale/San Antonio	89	\$37,074,863
6 Central East Oakland	26	\$18,188,872
7 Elmhurst	85	\$22,239,838
Out of Market Area	152	\$33,379,682
TOTAL	847	\$456,597,957



³²⁵ This zip code also extends into district 3 but has been captured in district 1 for this analysis.

³²⁶ This zip code also extends into district 1 but has been captured in district 4 for this analysis.

³²⁷ Maps of the Seven Community Development Districts. *Community and Economic Development Agency*. 2010. <https://cao-94612.s3.amazonaws.com/documents/oak071241.pdf>.

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Table 11.9 shows the total number and grant dollars by grantee type in each district. The data reveal that nonprofit organizations received the largest amount of dollars in every district except for District 3. Additionally, government grants were awarded to grantees in Districts 2, 3, 5, and 6. District 3 received \$174,895,960, or 38.30% of the total grant dollars during the study period. A single grantee received \$173,041,000, or 98.93% of the total for-profit grant dollars to complete a construction project on the Oakland Army Base.

Table 11.9: Total Number and Grant Dollars by Grantee Type and District

District	Grantee Type	Number of Grants	Grant Dollars
1	Nonprofit	15	\$2,545,955
	For-Profit	15	\$342,994
	Government	0	\$0
2	Nonprofit	93	\$68,074,104
	For-Profit	13	\$2,807,871
	Government	15	\$7,496,610
3	Nonprofit	231	\$64,894,760
	For-Profit	59	\$174,895,960
	Government	24	\$18,748,517
4	Nonprofit	21	\$5,783,959
	For-Profit	9	\$123,972
	Government	0	\$0
5	Nonprofit	81	\$36,158,516
	For-Profit	7	\$316,347
	Government	1	\$600,000
6	Nonprofit	19	\$17,211,180
	For-Profit	5	\$113,432
	Government	2	\$864,260
7	Nonprofit	71	\$21,635,166
	For-Profit	14	\$604,672
	Government	0	\$0
Out of Market Area	Nonprofit	83	\$23,180,055
	For-Profit	55	\$2,669,387
	Government	14	\$7,530,240
TOTAL		847	\$456,597,957

A. *Nonprofit Organization Grants by District*

Table 11.10 shows the total number and grant dollars made to nonprofit organizations that offer services that contribute to fostering a healthy community, as described by their mission statement. According to the World Health Organization, the determinants of a healthy community are the social and economic environment, the physical environment, and a person's individual



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characteristics and behaviors.³²⁸ Given these determinants, grants for anti-poverty, children/youth services, education, and violence prevention are shown in Table 1.10. Nonprofits with a focus in one of these four categories received \$190,829,408, or 79.68% of total nonprofit grant dollars. Districts 2 and 3 received \$106,977,266, or 44.67% of the total nonprofit grant dollars, awarded to nonprofits that focus on the four categories. Nonprofit organizations in District 1 received less than \$5,000,000 over the study period for these four categories.

Table 11.10: Total Number and Grant Dollars to Nonprofits by Category and District

District	Anti-Poverty		Children/Youth		Education		Violence Prevention	
	Number of Grants	Grant Dollars	Number of Grants	Grant Dollars	Number of Grants	Grant Dollars	Number of Grants	Grant Dollars
1	0	\$0	7	\$2,172,114	0	\$0	7	\$1,533,065
2	8	\$32,281,440	30	\$6,182,060	4	\$5,132,750	1	\$150,000
3	40	\$25,513,331	50	\$15,780,627	6	\$484,352	13	\$8,737,753
4	0	\$0	6	\$1,590,712	0	\$0	45	\$12,864,952
5	5	\$836,702	26	\$11,848,569	9	\$16,621,162	5	\$2,204,140
6	2	\$205,000	6	\$1,472,690	3	\$14,900,143	11	\$2,065,953
7	18	\$2,652,735	19	\$5,662,712	2	\$362,225	3	\$225,000
Out of Market Area	19	\$3,228,066	34	\$14,569,331	1	\$75,000	6	\$1,476,823
TOTAL	92	\$64,717,275	178	\$59,278,815	25	\$37,575,632	91	\$29,257,686

B. For-Profit Organization Grants by District

Table 11.11 shows the total number and grant dollars made to for-profit organizations located in each district by industry. For-profit organizations that received grants were classified into four industries: Construction, Professional Services, Services, and Goods and Commodities.³²⁹ These industries represent all for-profit grants that were awarded during the study period. A total of 177 grants were awarded to 142 for-profit organizations. The four industries of for-profit organizations received \$181,874,636 in grant dollars. Construction companies received \$176,331,745, or 96.95% of the total for-profit grant dollars. The construction contracts were awarded to 73 construction companies; however, a single contractor received \$173,041,000, or 98.93% of the construction grant dollars. The grant was awarded to an Oakland-based firm for a capital improvements project to improve the infrastructure of the Oakland Army Base located in District 3.

Excluding the single large construction contract, the other for-profit industries received less than \$5,000,000 over the study period. The service contractors received the least grant dollars at \$622,962, or 0.34% of the total for-profit grant dollars. Districts 2 and 3 and contractors located

³²⁸ The Determinants of Health. *World Health Organization*. 2019. <https://www.who.int/hia/evidence/doh/en/>.

³²⁹ These designations were made by Mason Tillman to group the for-profit grants awarded to grantees.

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outside the market area received the greatest amount of for-profit grant dollars. Districts 4 and 6 received just \$237,404, or 0.13% of the total for-profit grant dollars.

Table 11.11: Total Number and Grant Dollars to For-Profits by Industry and District

District	Construction		Professional Services		Services		Goods and Commodities	
	Number of Grants	Grant Dollars	Number of Grants	Grant Dollars	Number of Grants	Grant Dollars	Number of Grants	Grant Dollars
1	8	\$310,500	0	\$0	7	\$32,494	0	\$0
2	5	\$14,124	3	\$2,772,501	5	\$21,245	0	\$0
3	33	\$174,104,627	14	\$483,723	9	\$94,975	3	\$212,635
4	1	\$70,000	1	\$3,900	7	\$50,072	0	\$0
5	3	\$120,000	0	\$0	4	\$196,347	0	\$0
6	4	\$109,183	0	\$0	1	\$4,249	0	\$0
7	10	\$391,323	0	\$0	4	\$213,349	0	\$0
Out of Market Area	9	\$1,211,988	10	\$337,570	3	\$10,230	33	\$1,109,599
TOTAL	73	\$176,331,745	28	\$3,597,694	40	\$622,962	36	\$1,322,234

C. Government Agency Grants by District

Table 11.12 shows the total number and grant dollars made to government agencies by City Council district. A total of \$35,239,627 of grant dollars were awarded to government agencies. Districts 2 and 3 received \$26,245,127, or 74.48% of the total government grant dollars. Districts 1, 4 and 7 did not receive any government grant dollars.

Table 11.12: Total Number and Grant Dollars to Government Agencies by District

District	Number of Grants	Grant Dollars
1	0	\$0
2	15	\$7,496,610
3	24	\$18,748,517
4	0	\$0
5	1	\$600,000
6	2	\$864,000
7	0	\$0
Out of Market Area	14	\$7,530,240
TOTAL	56	\$35,239,627



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IV. Socioeconomic and Environmental Overview of Oakland City Council Districts

A socioeconomic and environmental profile of the City Council districts provides a perspective for assessing the resource needs of each district. The data creates a framework for assessing the equity of the grants awarded.

The Gini Index summarizes income inequality as a single number that considers the dispersion of incomes within a region. By reviewing the wages of a population, a coefficient is determined, which succinctly summarizes the inequality present within a specific population. The coefficients range from 0, which signifies a perfectly equal city where all residents earn the same wages, to 1, which signifies a perfectly unequal city where a single resident earns all of the wages.³³⁰ Oakland's coefficient measures at 0.51 on the Gini Index, which is higher than the national average of 0.48.³³¹ A review of the socioeconomic status (SES) of Oakland residents provides strong insight into the seven City Council districts. SES factors are also helpful in building a concise equity profile of a city.

This section focuses on social, economic, and environmental factors in each district. The factors highlighted have been deemed important indicators of the well-being and preparedness of Oakland residents.

A. Social Factors by District

The factors in this section highlight the social status of residents in each district. Five factors were analyzed for each district: race, education, primary language, crime, and homelessness.

1. Racial Composition

Table 11.13 shows the racial composition of each district. The U.S. Census Bureau, 2013-2017 American Community Survey (ACS) 5-Year Estimates Districts provided the race data.³³² 1 and 4 have the largest proportion of white residents. Districts 3 and 7 have the highest proportion of minority residents, as compared to the City at large.



³³⁰ Income Inequality – Gini Index. *United States Census Bureau*. <https://www.census.gov/topics/income-poverty/income-inequality/about/metrics/gini-index.html>.

³³¹ Poverty. *United States Census Bureau*. <https://www.census.gov/topics/income-poverty/income-inequality/data/data-tables/acs-data-tables.html>.

³³² American Fact Finder – ACS Demographic and Housing Estimates 2013-2017 American Community Survey 5 Year Estimates: Race and Hispanic Origins. *The United States Census Bureau*. <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

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Table 11.13: Racial Composition by District

District	Zip Code	White	Black	American Indian ³³³	Asian	Pacific Islander ³³⁴	Other Race(s)	Two or More	Hispanic or Latino
1	94608	43%	28%	1%	15%	1%	6%	7%	13%
	94609	51%	25%	0%	9%	0%	5%	10%	14%
	94618	74%	4%	0%	12%	0%	3%	7%	9%
	94705	79%	3%	0%	11%	0%	2%	4%	8%
2	94610	54%	18%	0%	15%	0%	4%	8%	11%
	94606	28%	18%	2%	37%	1%	10%	5%	21%
3	94612	34%	28%	1%	26%	0%	5%	6%	11%
	94607	26%	32%	1%	28%	1%	7%	5%	14%
4	94602	44%	17%	1%	22%	0%	7%	9%	16%
	94611	68%	7%	0%	15%	1%	2%	7%	7%
5	94601	29%	18%	2%	17%	1%	27%	6%	52%
6	94613	43%	6%	0%	31%	1%	11%	9%	25%
7	94621	18%	31%	0%	2%	1%	42%	4%	60%
	94603	23%	32%	1%	5%	1%	33%	5%	56%
	94605	24%	44%	1%	6%	0%	14%	10%	25%

2. High School Graduation Rates

Table 11.14 shows the high school graduation rates by district. According to the Center on Education and the Workforce at Georgetown University, education is positively correlated with the ability to earn income and access to jobs with higher salaries.³³⁵ The U.S. Census Bureau, 2013-2017 American Community Survey (ACS) 5-Year Estimates Districts provided the education data.³³⁶ Districts 1, 4, and 6 have high graduations rates.³³⁷ Districts 3, 5, and 7 have relatively low graduation rates.

Table 11.14: High School Graduation Rate by District

District	Zip Code	High School Graduation Rate
1	94608	92.50%
	94609	92.60%
	94618	96.50%
	94705	97.90%
2	94610	94.50%
	94606	72.60%

³³³ Includes American Indians and Alaska Natives.

³³⁴ Includes Native Hawaiians and Pacific Islanders.

³³⁵ Carnevale, Anthony, Stephen J. Rose, and Ban Cheah. The College Payoff. *Georgetown University Center on Education and the Workforce. 2011.* <https://cew.georgetown.edu/cew-reports/the-college-payoff/>.

³³⁶ American Fact Finder – ACS Demographic and Housing Estimates 2013-2017 American Community Survey 5 Year Estimates: Race and Hispanic Origins. *The United States Census Bureau.* <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

³³⁷ District 6 is dominantly composed of Mills College, a woman’s college, which requires high school graduation to matriculate.



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District	Zip Code	High School Graduation Rate
3	94612	80.40%
	94607	79.70%
4	94602	86.10%
	94611	97.00%
5	94601	64.60%
6	94613	100.00%
7	94621	54.30%
	94603	65.80%
	94605	83.90%

3. Primary Language

Table 11.15 shows the percentage of residents in each district five years and over that speak a language other than English at home. According to the U.S. Census Bureau, 2013-2017 American Community Survey (ACS) 5-Year Estimates, 166,363 Oakland residents over five years old speak a language other than English at home.³³⁸ Districts 5 and 7 have the highest percentage of individuals that speak a language other than English at home, while District 1 has the lowest.

Table 11.15: Non-English Primary Language by District

District	Zip Code	Non-English Primary Speaker
1	94608	26.59%
	94609	23.25%
	94618	17.82%
	94705	19.67%
2	94610	25.31%
	94606	52.93%
3	94612	36.33%
	94607	37.70%
4	94602	31.37%
	94611	17.63%
5	94601	60.22%
6	94613	39.81%
7	94621	53.08%
	94603	53.30%
	94605	26.74%

4. Crime Rate

Table 11.16 shows the crime rates in each district. The local crime index rate is based on a national score that represents the combined risks of rape, murder, assault, robbery, burglary, larceny, and vehicle theft compared to the national average of 100. A score of 200 indicates that criminal acts



³³⁸ American Fact Finder – ACS Demographic and Housing Estimates 2013-2017 American Community Survey 5 Year Estimates: Origins and Language. The United States Census Bureau. <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

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occur twice as often and a score of 50 indicates that criminal acts occur half as often, as compared to the national average. The different types of criminal activity are given equal weight in this score.³³⁹ Districts 1 and 7 have the highest crime index rates, as reported by American District Telegraph (ADT). The crime rate in Districts 1 and 7 are high, and roughly 1.5 times more likely to have a criminal act occur compared to the national average. District 5 has the lowest crime rate of districts that were recorded.³⁴⁰

Table 11.16: Crime Index Score by District

District	Zip Code	Crime Index Score
1	94608	155
	94609	172
	94618	184
	94705	--
2	94610	--
	94606	87
3	94612	114
	94607	140
4	94602	155
	94611	103
5	94601	110
6	94613	--
7	94621	157
	94603	154
	94605	147

* A dash "--" signifies that not enough data is available to retrieve a reliable percentage.

5. Homelessness

Illustration 11.2 shows the density of homelessness in the City. The EveryOne Counts! 2017 Homeless Count and Survey enumerated unsheltered and publicly sheltered homeless persons in Alameda County by zip code.³⁴¹ The countywide survey revealed that nearly half (49%) of the individuals experiencing homelessness in Alameda County were located in the City of Oakland. Every two years, communities across the county conduct comprehensive counts of the local homeless populations in order to measure the prevalence of homelessness. This effort is known in Alameda County as the Point-in-Time Count. The entire county was canvassed by teams of volunteers and guides with lived experience. In the weeks following the street count, a survey was administered to 1,228 unsheltered and sheltered homeless individuals, in order to profile their experience and characteristics.³⁴²



³³⁹ American District Telegraph. ADT Crime Map. 2019. <https://www.adt.com/crime>.

³⁴⁰ Lowest crime rate of the City Council districts that have crime rates for all zip codes within the district.

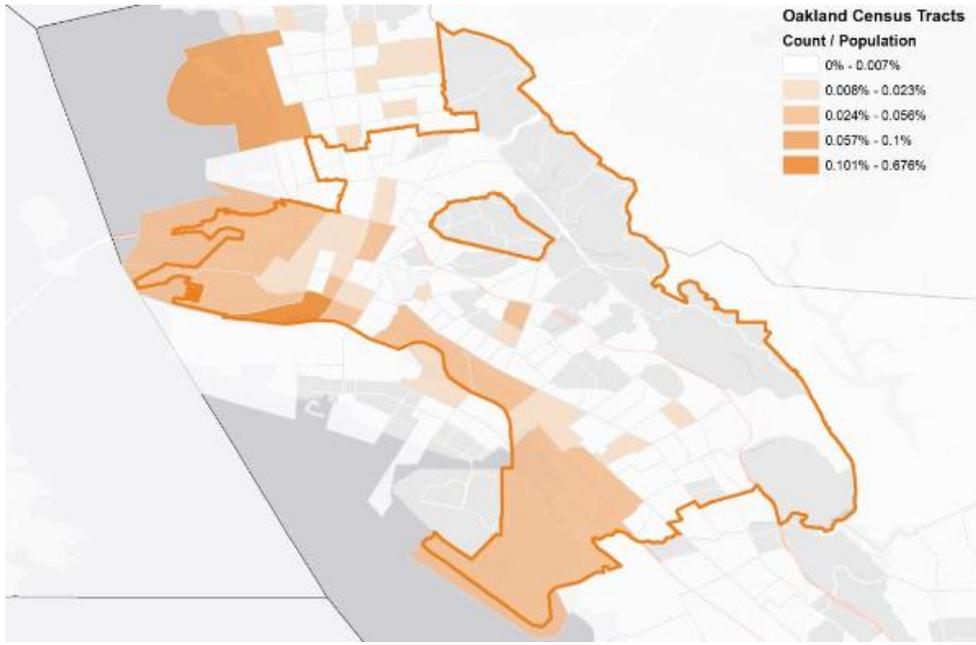
³⁴¹ ASR. Alameda County Homeless County & Survey Comprehensive Report 2019. *Applied Survey Research*. http://everyonehome.org/wp-content/uploads/2019/07/2019_HIRDRReport_Alameda_FinalDraft_8.15.19.pdf.

³⁴² Homeless Point-In-Time Count & Report. *Homelessness Solution in Alameda County*. <https://homelessness.acgov.org/reports.page?>

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A map of the Point-in-Time count population clearly illustrates the districts with the highest count of individuals experiencing homelessness. Districts 3 and 7 have the highest percentage of homeless individuals. Districts 1 and 4 have the lowest percentage of homeless individuals.

Illustration 11.2: Map of Homelessness in Oakland



B. Economic Factors by District

There are economic factors that highlight the economic status of residents in each district. Four factors were analyzed for each district: poverty, SNAP or public assistance, income, and median home value.

1. Poverty Rate

Table 11.17 shows the poverty rate in each district, according to the U.S. Census Bureau, 2013-2017 American Community Survey (ACS) 5-Year Estimates.³⁴³ The federal poverty level for a family of four is \$25,750.³⁴⁴ All zip codes in Districts 1 and 4 have poverty rates below 20%. Districts 3, 5, and 7 have zip codes with poverty rates above 25%.



³⁴³ American Fact Finder – ACS Demographic and Housing Estimates 2013-2017 American Community Survey 5 Year Estimates: Poverty. *The United States Census Bureau*. <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

³⁴⁴ Poverty Guidelines: HHS Poverty Guidelines for 2019. *Office of the Assistant Secretary for Planning and Evaluation* <https://aspe.hhs.gov/poverty-guidelines>

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Table 11.17: Poverty Rate by District

District	Zip Code	Poverty Rate
1	94608	15.50%
	94609	15.60%
	94618	5.20%
	94705	10.10%
2	94610	7.20%
	94606	24.00%
3	94612	26.10%
	94607	29.60%
4	94602	11.50%
	94611	6.70%
5	94601	27.40%
6	94613	--
7	94621	30.70%
	94603	21.60%
	94605	16.50%

* A dash "--" signifies that not enough data is available to retrieve a reliable percentage.

2. Public Assistance Recipients

Table 11.18 shows the number of Supplemental Nutrition Assistance Program (SNAP) or public assistance recipients by district, according to the U.S. Census Bureau's 2013-2017 American Community Survey 5-Year Estimates.³⁴⁵ Public assistance refers to government funded programs that provide either cash assistance or in-kind benefits to individuals and families. There are two major types of public assistance programs: social welfare programs and social insurance programs. Benefits received from social welfare programs are usually based on a low income means-tested eligibility criterion. Benefits received from social insurance programs are usually based on eligibility criteria such as age, employment status, and veteran status.³⁴⁶

One of the major federal programs providing subsidizes to low income families is the Supplemental Nutrition Assistance Program (SNAP). It provides a monthly supplement to the food budget of low-income families to purchase nutritious food and help push the families to self-sufficiency.³⁴⁷ SNAP recipients must meet resource limits, income limits, and work requirements. The federal gross income eligibility limit to receive SNAP benefits for a family of four is \$2,790 per month or a net income of \$2,146.³⁴⁸

³⁴⁵ American Fact Finder – ACS Demographic and Housing Estimates 2013-2017 American Community Survey 5 Year Estimates: Public Assistance Income or Foods Stamps/SNAP. *The United States Census Bureau.* https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_B19058&prodType=table.

³⁴⁶ Public Assistance. *United States Census Bureau.* <https://www.census.gov/topics/income-poverty/public-assistance/about.html>.

³⁴⁷ Supplemental Nutrition Assistance Program (SNAP). *United States Department of Agriculture.* <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program>.

³⁴⁸ Supplemental Nutrition Assistance Program (SNAP). *United States Department of Agriculture.* <https://www.fns.usda.gov/snap/recipient/eligibility>.



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In Oakland, Districts 3, 5, and 7 have the highest percentage of SNAP or public assistance recipients. Districts 1 and 4 have the lowest percentage of residents that received SNAP or public assistance.

Table 11.18: Percent of SNAP or Public Assistance Recipients by District

District	Zip Code	Recipients
1	94608	--
	94609	3.85%
	94618	0.63%
	94705	0.57%
2	94610	1.99%
	94606	5.91%
3	94612	6.20%
	94607	7.43%
4	94602	2.57%
	94611	1.08%
5	94601	6.32%
6	94613	--
7	94621	7.51%
	94603	6.05%
	94605	5.16%

* A dash "--" signifies that not enough data is available to retrieve a reliable percentage.

3. Household Income

Table 11.19 shows the average household income in each district. Household income is an economic measure that represents the financial position of a family unit. Household income is a strong determinant of consumption and saving. Families with higher incomes tend to save more and put themselves in a more advantageous economic position.³⁴⁹ Increased income also grants households greater opportunities for educational attainment, job placement, and other success drivers.

Districts 1 and 4 have the highest average household income, with half of their zip codes having an average household income of over \$100,000. Districts 3, 5, and 7 have significantly lower average household incomes.



³⁴⁹ The Review of Economics and Statistics: Effect of Income Changes on the Rate of Saving. *The MIT Press*. 1949. <https://www.jstor.org/stable/i333274>.

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Table 11.19: Household Income by District

District	Zip Code	Average Household Income
1	94608	\$68,352
	94609	\$73,765
	94618	\$133,125
	94705	\$116,250
2	94610	\$87,059
	94606	\$48,421
3	94612	\$42,880
	94607	\$41,870
4	94602	\$78,347
	94611	\$120,601
5	94601	\$44,666
6	94613	--350
7	94621	\$34,566
	94603	\$49,793
	94605	\$66,211

* A dash "--" signifies that not enough data is available to retrieve a reliable percentage.

4. Median Home Value

Table 11.20 shows the median home value for zip codes within the seven City Council districts. The median home value was compiled from Zillow's Home Value Index. Zillow collects and analyzes home price data to provide the median home value in various areas. The median home value in the City of Oakland is \$737,900 and is increasing.³⁵¹ Median home values in the four zip codes that comprise District 1 range from \$713,200 to \$1,699,900. District 1 has the highest median home value. Districts 5 and 7 have the lowest median home value. The median home value in the four zip codes that comprise these two districts range from \$420,200 to \$645,500.



³⁵⁰ District 6 is dominantly composed of Mills College, a woman's college. College students are not considered in the average household income analysis.

³⁵¹ Oakland Home Prices and Value. Zillow. 2019. <https://www.zillow.com/oakland-ca/home-values/>.

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Table 11.20: Median House Value by District

District	Zip Code	Home Value
1	94608	\$713,200
	94609	\$1,066,800
	94618	\$1,522,000
	94705	\$1,699,900
2	94610	\$1,268,700
	94606	\$649,300
3	94612	--
	94607	\$634,200
4	94602	\$961,800
	94611	\$1,267,600
5	94601	\$546,800
6	94613	--
7	94621	\$420,200
	94603	\$467,400
	94605	\$645,500

* A dash "--" signifies that not enough data is available to retrieve a reliable percentage.

C. Environmental Factors

Factors in this section highlight the environmental conditions in each district. Two factors were analyzed for each district: industry and business density and air quality.

1. Industry and Business Density

Industrial density is important to consider when assessing the City's environmental conditions. Residents in districts with dirty industries have more exposure to toxins and pollution than residents residing in predominantly residential districts.

Illustration 11.3 below shows the distribution of industrial areas in the City of Oakland. The majority of industrial areas, coded in purple, are located in West and East Oakland, which are indicated by red stripes, and are located along the waterfront of the San Francisco Bay to the west and the Alameda Estuary and San Leandro Bay to the south.³⁵²

In comparing this map to the City Council map in Illustration 1.1, District 3 (West Oakland) and District 7 (Elmhurst) contain the largest concentration of industrial areas. The Port of Oakland is located in District 3, and the Oakland International Airport is located in District 7.

Oakland's central business district is referred to as CBD on the map. The central business district extends from the eastern edge of District 3 (West Oakland) and comprises much of District 2

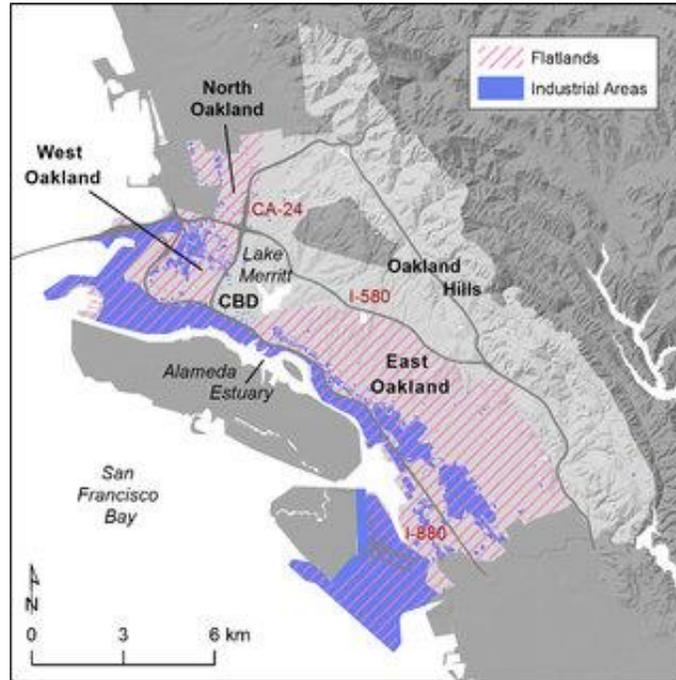


³⁵² McClintock, Nathan, Jenny Cooper, and Snehee Khandeshi. Assessing the Potential Construction of Vacant Land to Urban Vegetable Production and Consumption in Oakland, California". *Department of Geography, University of California, Berkeley*. 2012. https://www.researchgate.net/publication/259756731_Assessing_the_potential_contribution_of_vacant_land_to_vegetable_production_and_consumption_in_Oakland_California#pf2.

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(Chinatown/Eastlake/San Antonio). The majority of the city's commercial office space is located in these two districts and many of the Oakland-based organizations that received City grants are headquartered in these areas.

Illustration 11.3: Map of Industrial Areas in Oakland



2. Air Quality

Research shows that communities of color in the Bay Area, specifically communities characterized by low wealth and income, and a large population of immigrants are subject to worse environment conditions than others.³⁵³

In 2013, Communities for a Better Environment (CBE) conducted a community-level inventory study of stationary and mobile air pollution sources in the Hegenberger Corridor, located in District 7 (Elmhurst). The CBE report, guided by community members with academic partners, indicates that East Oakland is exposed to air toxins and cancer risk that is above the average for the Bay Area. The poor air quality in the Hegenberger Corridor is attributed to the transportation activities on the freeway, the Port of Oakland, and the other industrial sites.³⁵⁴



³⁵³ Pastor, Manuel, James Sadd, Rachel Morello-Frosch. Still Toxic After All These Years: Air Quality and Environmental Justice in the San Francisco Bay Area. *Center for Justice, Tolerance, and Community, University of California, Santa Cruz*. February 2007. https://cjtc.ucsc.edu/docs/bay_final.pdf.

³⁵⁴ Cumulative Impacts in East Oakland: Findings from a Community-based Mapping Study. *University of Southern California Program for Environmental and Regional Equity*. September 2008. http://www.cbecal.org/wp-content/uploads/2013/01/cumulative_impacts_final.pdf.

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The California Air Resources Board conducted a health risk assessment for the West Oakland community to evaluate the emissions impacts and the potential public health risk to both residents of West Oakland and the broader Bay Area from exposures to diesel particulate matter.³⁵⁵ The sources of diesel particulate matter include activities at the Maritime Port of Oakland, the Union Pacific Railyard, and other significant industry and transportation systems in and near the West Oakland community, such as local freeways with traffic and marine vessels in the San Francisco Bay. The West Oakland community is located in District 3. As noted above, the greatest concentration of industrial areas is located in Districts 3 and 7.

V. Conclusion

In summary, organizations located within of the City of Oakland were awarded 92.68% of the total grant dollars, showing that most of the City’s grant money remained in Oakland. Table 11.21 shows the total number and grant dollars by grantee type. Nonprofits received \$239,483,693, or 52.45% of the total grant dollars. For-profit organizations received \$181,874,636, or 39.83% of total grant dollars. Government agencies received \$35,239,693, or 7.72% of total grant dollars.

Table 11.21: Total Number and Grant Dollars by Grantee Type

Grantee Type	Number of Grants	Grant Dollars
Nonprofit	614	\$239,483,693
For-Profit	177	\$181,874,636
Government	56	\$35,239,627
TOTAL	847	\$456,597,956

Nonprofit grantees received the most grant dollars in every district, except District 3, where for-profit grantees received the most grant dollars. Organizations addressing poverty alleviation, children/youth services, education, and violence prevention received the most nonprofit grant dollars. These four categories received \$190,829,408, or 79.68% of total nonprofit grant dollars. Among the four industries that received for-profit grants, the total dollars to construction contractors were the highest by a considerable margin. A total of 73 grants, valued at \$176,331,744.76, were awarded to for-profit construction contractors. Governments received a total of 56 grants valued at \$35,239,627.

The City of Oakland awarded a total \$456,597,956 for 847 grants during the July 1, 2011 to June 30, 2016 study period. Districts 2 and 3 received \$336,917,822, or 73.79% of the total grant dollars. The largest grant during the study period was awarded to a for-profit organization in District 3, which received \$173,041,000, or 37.90% of all grant dollars. The grant was awarded to an Oakland-based firm for a capital improvements project to improve the Oakland Army Base’s infrastructure.



³⁵⁵ Diesel Particulate Matter Health Risk Assessment for the West Oakland Community. *Air Resources Board*. December 2008. <https://ww3.arb.ca.gov/ch/communities/ra/westoakland/documents/westoaklandreport.pdf>.

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Social factors presented include race, education, primary language, crime rate, and homelessness. In terms of racial composition, Districts 3 and 7 have the highest proportion of minority residents. High school graduation rates are the lowest in Districts 3, 5, and 7. Districts 5 and 7 have the highest percentage of individuals that speak a language other than English at home. The highest local crime index rates of all districts are centered in Districts 1 and 7. Districts 3 and 7 have the highest percentage of homeless individuals.

Economic factors presented include poverty rate, public assistance recipients, household income, and median home value. Districts 3, 5, and 7 contain zip codes with poverty rates above 25%. The greatest percentage of residents who received SNAP benefits or public assistance live in Districts 3, 5 and 7. Districts 1 and 4 have the highest average household income, with half of the zip codes in the district having an average household income of over \$100,000. Districts 3, 5, and 7 have significantly lower average household incomes. District 1 has the highest median home value of all seven districts. Districts 5 and 7 have the lowest median home value.

Environmental factors presented include industry and business density and air quality. The greatest industrial density is located in Districts 3 and 7. The central business area of the city is located in Districts 2 and 3. Studies have shown that air quality in Oakland is poor in Districts 3 and 7, which contain the most industrial spaces.

A socioeconomic and environmental profile was prepared by City Council districts to provide context for the grants data. While the distribution of grants dollars could be tracked by district and the socioeconomic profile described the districts, it was difficult to draw conclusions about the benefits of grants to community members because of insufficient data regarding how and where each grant recipient spent their grant dollars. The data did not allow for conclusions regarding the impact of the grants on each district.

The process employed by the City of Oakland to allocate grants lacks transparency. The source of grant dollars and impact of the grants on the health of the communities aren't easily available. More detailed data should be gathered for grant awards in general—such as grant money source, the community the grantee serves (rather than only where the grantee is located), criteria the City uses to award grants, the duration of each grant, and the intended social impact of the grant—enabling the City to better track grant dollars and determine where grant money is most needed in Oakland in the context of socioeconomic and environmental factors. The grant award process should more closely align with the City's Contracts and Compliance.



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