

Webinar Presenters



Webinar on Contracting Barriers and Factors Affecting Minority Business Enterprises



Albert K. Shen, National Deputy Director
Minority Business Development Agency



Lee Upton III, Senior Consultant
Premier Quantitative Consulting, Inc.



Emma Broming, Associate
Premier Quantitative Consulting, Inc.



Contracting Barriers and Factors Affecting Minority Business Enterprises

*Minority Business Development Agency
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Research Design

- Critical Research Questions
 - What factors create barriers and cause disparities in public contracting for Minority Business Enterprises (MBEs)?
 - What information do existing studies provide stakeholders in assisting agencies address observed disparities?
 - What areas warrant further investigation and policy research with respect to contracting disparities experienced by MBEs?
- Focus on Existing “Disparity Studies”
 - Selected studies include 100 disparity studies, summaries and reports that are publicly available, with a particular focus on more recent studies (e.g., past 15 years)

Research Design

- Set of Selected Studies:
 - Do NOT represent the entire population of all disparity studies or a random, statistically significant sample
 - Do provide a basis for analyzing contracting disparities in public procurement
 - Do provide insight into the different contracting barriers facing MBEs
 - Many studies contained a wealth of data pertaining to the legal, legislative and contracting environment facing MBEs in a particular jurisdiction
 - Each study is unique to the facts and circumstances of the particular jurisdiction that it examined

What is a Disparity Study?

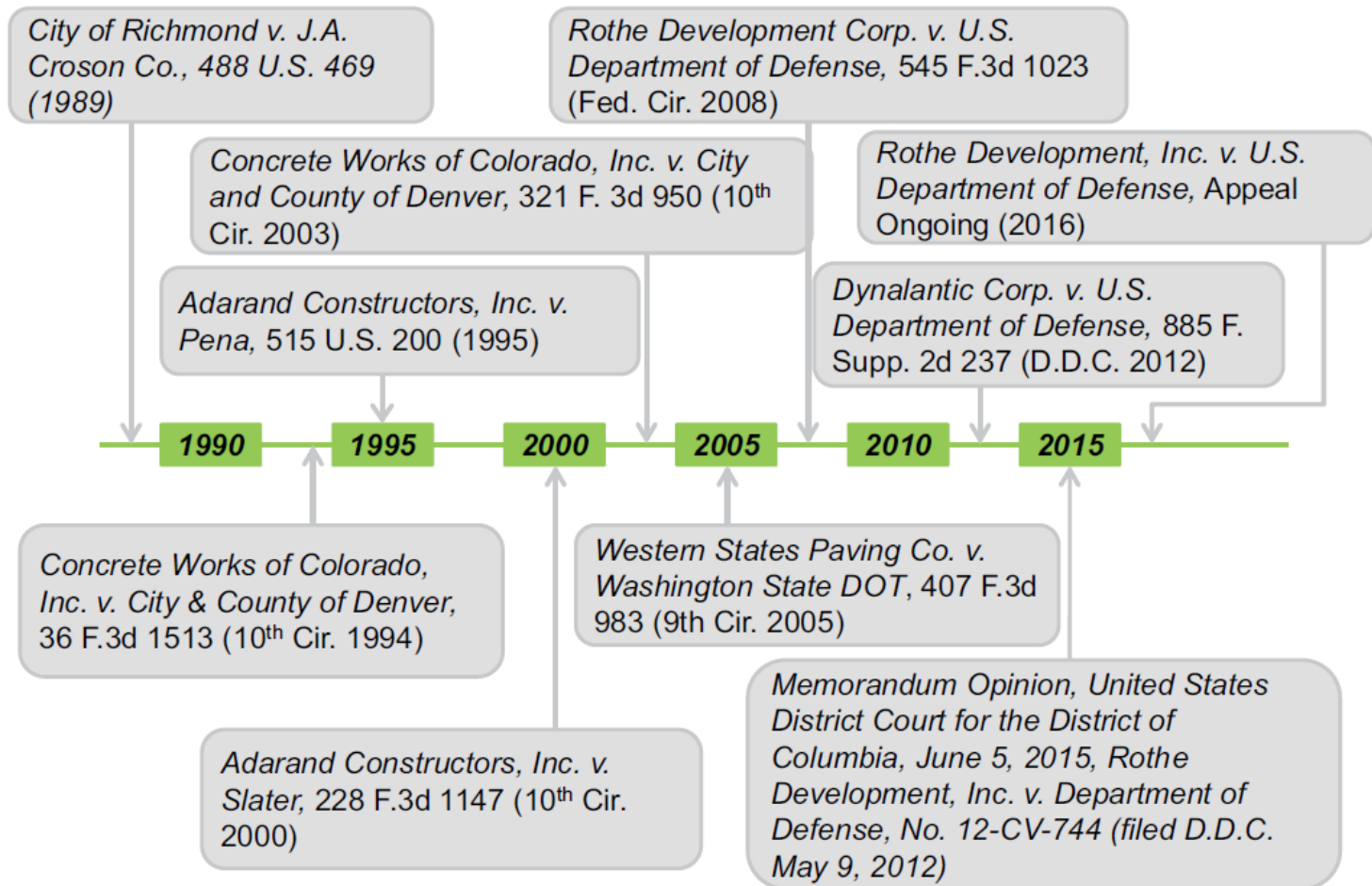
- Purpose:
 - Examines the extent to which minority contractors are underutilized in public procurement in a particular industry and geography
 - Can be necessitated by litigation, complying with existing regulations or when considering implementing a new contracting program (or changing an existing program)
- Study Design and Authorship
 - Contracting agency or government organization contracts with disparity study consultants
 - Can be a resource-intensive undertaking (financial and human capital)

What is a Disparity Study?

- Typical Contents:
 - Legal precedent
 - Applicable laws, regulations, rules
 - Market definition
 - Disparity index computation
 - Utilization analysis
 - Availability assessment
 - Discrimination Assessment
 - Regression analysis
 - Anecdotal evidence
- Can cover multiple time periods, agencies, source of funds, level of contracting activity (prime or sub)

Legal Precedent

TIMELINE OF KEY LEGAL CASES BY DECISION DATE



Strict Scrutiny

- Race-Conscious Program
 - To remedy past discrimination or its present effects
- Compelling Governmental Interest
- Narrowly Tailored
 - To specific geographic and product markets
 - To specific affected groups
 - Consideration of race-neutral remedies
- Federal Department of Transportation (DOT)
Disadvantaged Business Enterprise (DBE) Program

Market Definition

- Geographic
- Product
- Data Defining the Market
 - Where are the contractors located that are bidding / receiving awards?
 - Where are services being provided?
 - What specific products or services are being provided (e.g., what industry classifications)?
- Threshold Measures
 - Usually state, Metropolitan Statistical Areas (MSAs), county or city are starting points

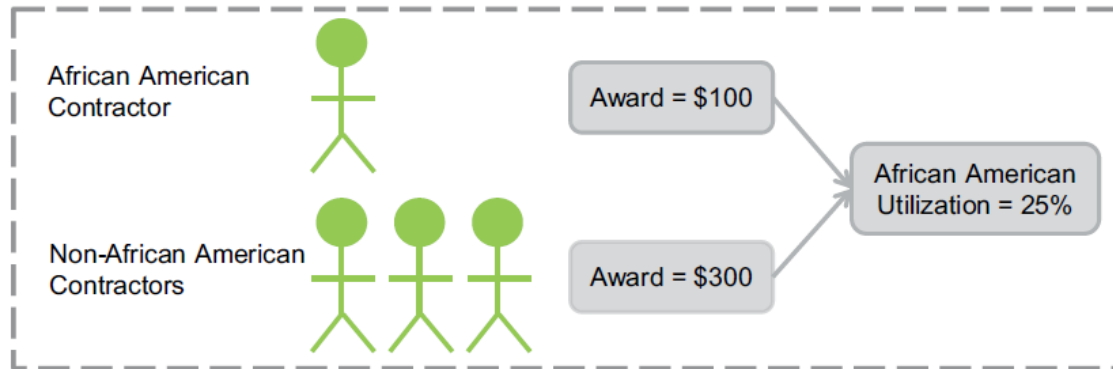
Disparity Index

- Mathematical Calculation
 - Utilization divided by Availability
 - In specific geographic and product markets
 - Often expressed as a decimal, or alternatively multiplied by 100
- Parity
 - When disparity ratio equals 1.0 (if expressed as decimal) or 100 (if multiplied by 100)
 - Less than 1.0 indicates a disparity
 - Less than 0.80 typically indicates a substantial disparity

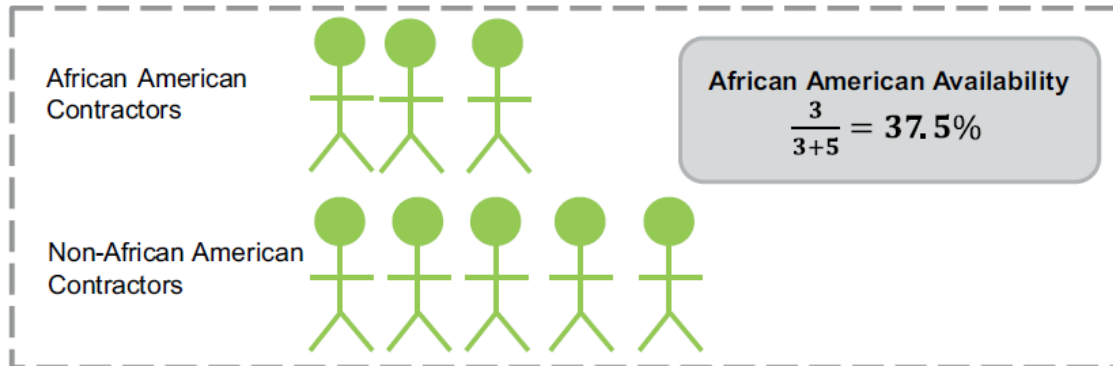
Disparity Index

DISPARITY COMPUTATION EXAMPLE

Utilization Calculation



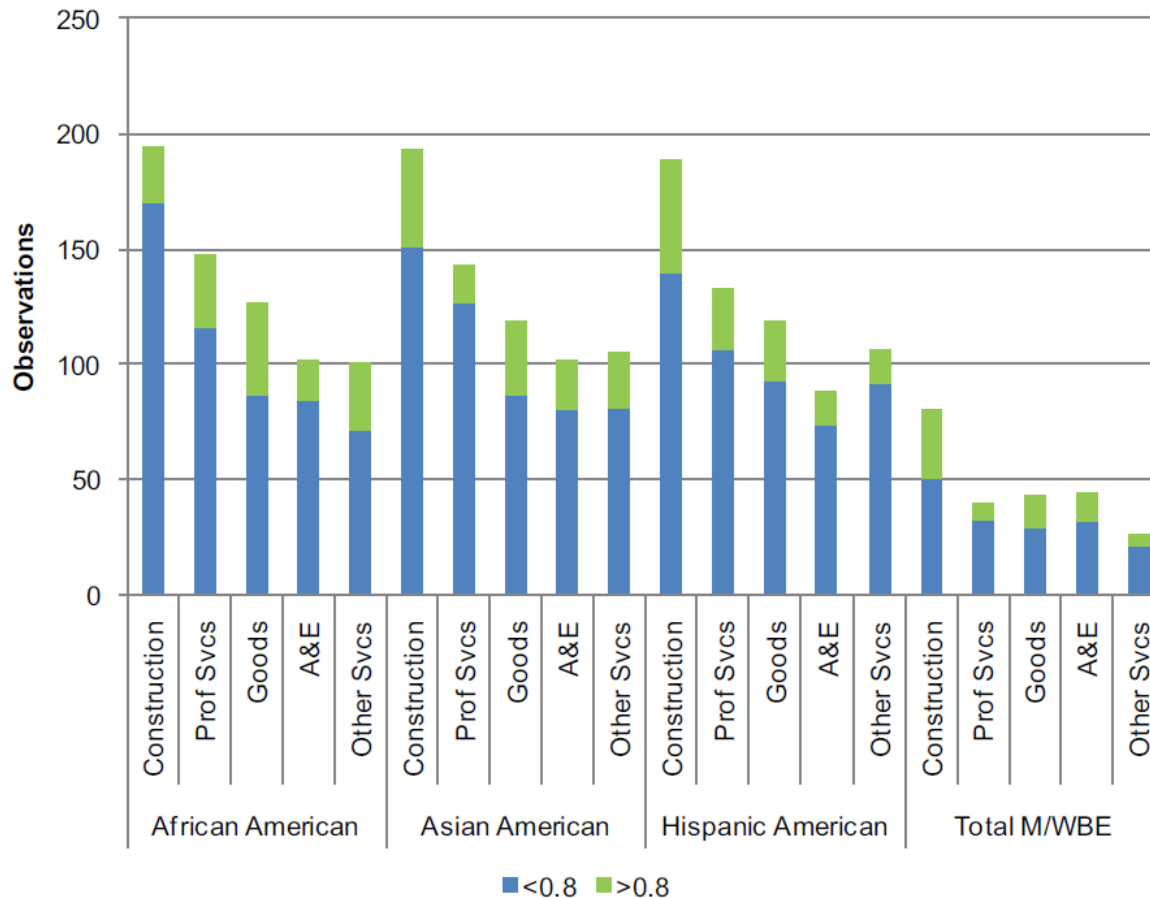
Availability Calculation



$$\text{Disparity Ratio} = \frac{\text{Utilization}}{\text{Availability}} = \frac{25\%}{37.5\%} = 0.67$$

Results of Existing Studies

DISPARITY RATIO OBSERVATIONS BY INDUSTRY AND MINORITY CATEGORY



Results of Existing Studies

- Pervasive and Widespread
 - Over many jurisdictions and time periods
 - For multiple ethnic and racial groups
 - Across numerous industry classifications
- Statistically Significant
- Evident for Prime and Subcontracting
- However...
 - The existence of a numerical disparity drawn from public contracting data does not equate to a conclusion of discrimination on a stand-alone basis

Private Sector Analyses

- Regression Analysis
 - Business formation rates
 - Self-employment or business earnings
 - Analysis of commercial loan denial rates
 - Employment representation and position in certain industries
 - Home ownership rates and mortgage denial rates
- Findings
 - Consultants typically find statistically significant differences based on race and ethnicity in the aforementioned analyses specific to the jurisdiction being analyzed

Anecdotal Evidence

- Focusing on the “Why”

Some courts and other observers have asserted that [anecdotal] findings such as [these] tell us nothing about discrimination against M/WBEs since, even though they are current, even though they come directly from the businesses alleging disparate treatment, even though they are restricted to the relevant geographic and product markets, even though they are disaggregated by procurement category, and even though they are disaggregated by race and sex, they still do not compare firms of similar size, qualifications, or experience... Size, qualifications, and experience are precisely the factors that are adversely impacted by discrimination. [emphasis added]

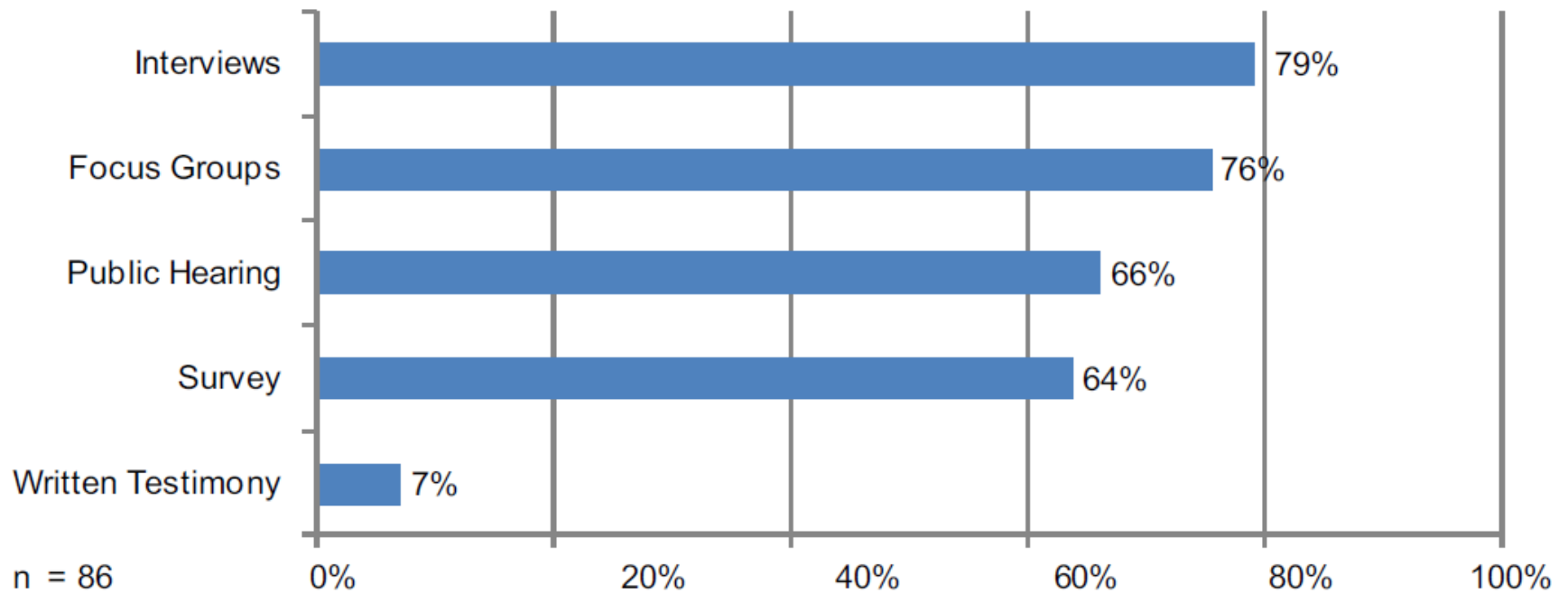
NERA, The State of Minority- and Women-Owned Business Enterprise: Evidence from Cleveland, Prepared for the City of Cleveland, December 24, 2012, p. 274.

Anecdotal Evidence

- Complementary
 - Insufficient as a stand-alone analysis in justifying race-conscious programs
- Criticisms
 - Accounts not sufficiently verified
 - Respondents providing perceptions as opposed to actual accounts of discrimination
- Collecting Anecdotal Evidence
 - Courts recognize utility and value
 - Requires a systematic and reliable data collection process
 - Qualitative data from MBEs and non-MBEs

Anecdotal Evidence

DISTRIBUTION OF ANECDOTAL DATA COLLECTION MECHANISMS



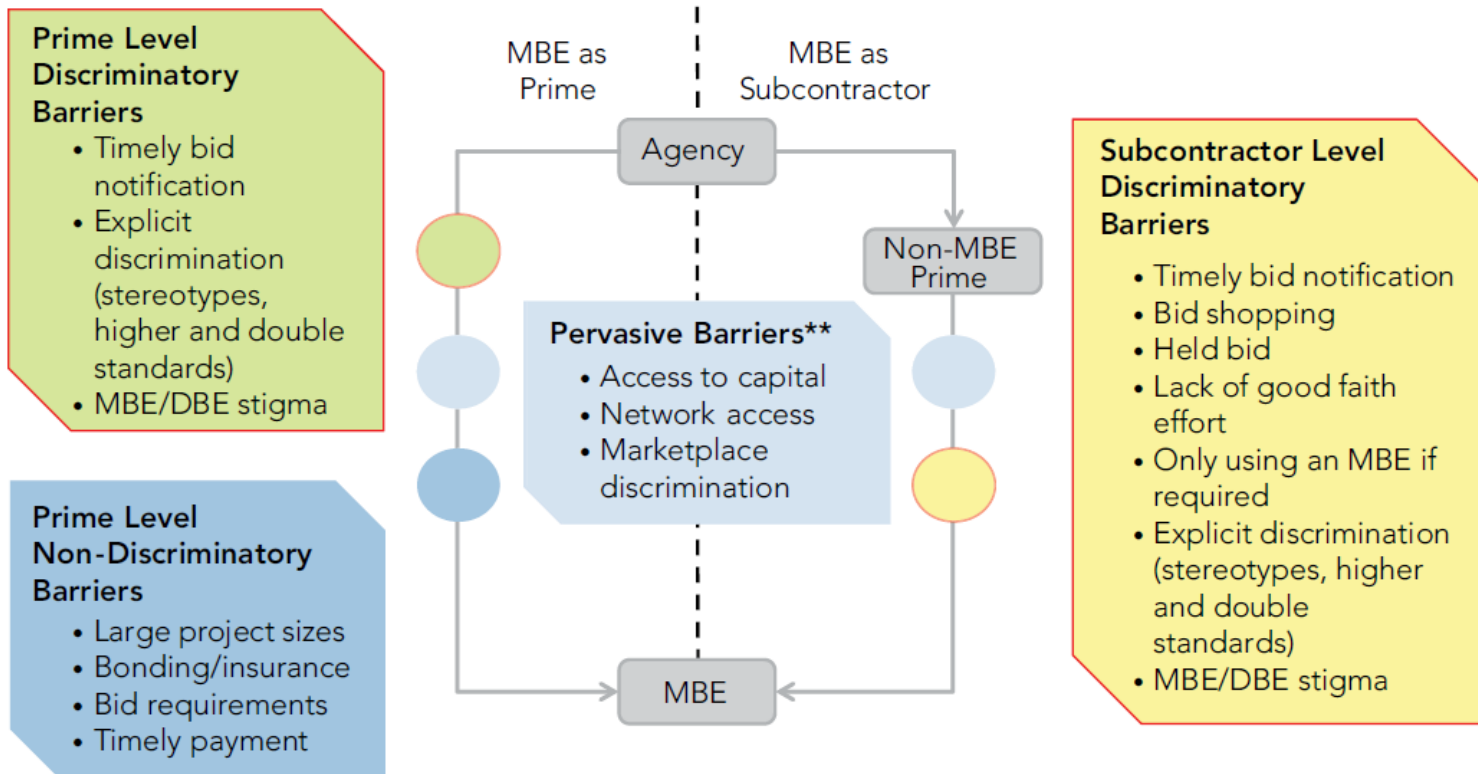
Anecdotal Evidence

SUMMARY OF ANECDOTAL EVIDENCE COLLECTION METHODS

Method	Advantages	Disadvantages
<i>Personal Interviews</i>	Anonymity First-hand Personal Account Allows Discussion	Small Sample Size Resource Intensive
<i>Surveys</i>	Anonymity Large Sample Size Provides Quantitative Results	Resource Intensive No Additional Discussion Statistical Rigor Issues
<i>Focus Groups</i>	Accessible to Multiple Participants Can Select Specific Participants Can Control Discussion	Less Anonymity Subject to Bias (Groupthink) Resource Intensive
<i>Public Hearings</i>	Accessible to Everyone Can Solicit Numerous Viewpoints Relatively Resource Efficient	Can Lack Control of Discussion Lack of Anonymity

Contracting Barriers

MOST FREQUENTLY CITED CONTRACTING BARRIERS FACING MBES



***Access to Capital and Network Access barriers can arise due to both discriminatory and non-discriminatory reasons and also influence non-discriminatory barriers such as bonding and insurance*

Networking Barriers

- Discriminatory or Non-Discriminatory?
 - “We like to work with contractors we like”
 - General lack of market access (race-neutral)
 - But also instances of unjust or prejudicial treatment
- Separating Causal Factors
 - Very difficult to prove discrimination and also remedy
 - Issue about how companies build trust, relationships and social capital
 - The most robust disparity studies consider this issue from both a discriminatory and non-discriminatory perspective

Process-Based Barriers

- Bonding and Insurance
 - Common issue but not limited to MBEs
 - However, access to capital issues rife with potential for discrimination
- Large Project Sizes
 - Can affect numerous small businesses (not just MBEs)
- Bid Specific Issues
 - Bid shopping and held bids often driven by discrimination or attempts to circumvent race-conscious programs

Discrimination-Based Barriers

- Discriminatory Attitude
- Capability Stereotypes
- Double Standards
- Higher Standards
- Prevalent in Most Studies
 - Verified accounts
 - Goes beyond an n=1 issue

Key Takeaways

- Needle Has Not Moved
- Retread Policy “Solutions”
 - Unbundling large contracts
 - Improving payment processes
- Race-Conscious Programs Have Helped ...
 - Evaluate race-neutral remedies first
 - Comply with strict scrutiny standard / narrowly tailored
- ... But Lack of Enforcement and Accountability
- Resource Constraints Are a Major Agency-Level Issue

Key Takeaways

- A Need for Innovative Policies
 - Determining capacity of firms
 - Dispute tracking for municipalities and agencies
 - Enforcement and accountability
 - Overcoming information asymmetries
 - Federal government as a leader and role model
 - Disparity study fact sheets – knowledge is power
 - Better feedback on failed bids
 - Assessing the economic impact of discrimination
- Strong Business Case for Diverse Supplier Base

Questions



- ❖ Please *1 to ask a question
- ❖ Questions in the Q&A or Chat modules will be answered by the presenters

**Thanks for joining
the webinar.**



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