

REPORT

Alameda County Availability Study

**Submitted to:
The County of Alameda**

**Submitted by:
Mason Tillman Associates, Ltd.**

OCTOBER 2004



**MASON TILLMAN
ASSOCIATES, LTD**

ACKNOWLEDGMENT

In 2003, the County of Alameda (County) commissioned Mason Tillman Associates, Ltd., to perform an Availability Study. The purpose of the Study was to analyze the County's use of local, small emerging, minority and women business enterprises on County construction, architecture and engineering, professional services, and goods and other services contracts. The study period covered July 1, 2000 to June 30, 2003.

Mason Tillman Associates was assisted by an eleven-member Community Task Force. Task Force members conducted outreach to the County's ethnic businesses. In addition, some of the members provided recommendations presented in this report. Task Force members for this Study included:

- *Terry Alderete*, Vice-President of the Hispanic Chamber of Commerce of Alameda County
- *Cecilia Chang*, Executive Director of Justice for New Americans
- *Jeanne Chiang*, Board Member with the Oakland Chinatown Chamber of Commerce
- *Vintage Foster*, Former Publisher of East Bay Business Times
- *Sally Gallegos*, Director of United Indian Nations, Inc.
- *Tom O'Malley*, President of the Tri-Valley Business Council
- *Anna Marks*, Publisher of Bay Area Business Woman News
- *Geoffrey Pete*, Former President of the Oakland Black Caucus
- *Sylvia Rosales-Fike*, President of the New America Foundation
- *Garrett Yee*, Ohlone College Trustee and Former President of Citizens for Better Community
- *Jeevan Zutshi*, Director of the Indo-American Federation.

Three local subconsultants also assisted Mason Tillman in the performance of the Study:

- *Jungle Communications* translated community outreach materials
- *Rodz Consulting* performed outreach to the business community
- *Watson Enterprises* performed data collection activities.

The Study could not have been conducted without the cooperation of the local chambers of commerce and business organizations and the many County business owners who demonstrated their commitment to the Study by participating in community meetings and interviews. In addition, Alameda County staff played a critical role in making available documents needed to perform the Study and in assisting with the data collection. This Study could not have been completed without their extraordinary effort.



Finally, Sal Morales, the County's Diversity Program Manager, managed the completion of this Study and Jacqueline Joseph-Veal, Assistant Diversity Program Manager, supervised the Study's operations. Their leadership and guidance helped keep the study process focused and on target.



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STUDY OVERVIEW

I. STUDY PURPOSE AND SCOPE

Over the past years, the County of Alameda (County) has demonstrated its commitment to advance the economic growth and development of local businesses through the implementation of several programs: the Minority and Women Business Enterprise (M/WBE) Construction Outreach Program, the Disadvantaged Business Enterprise (DBE) Program, required of U.S. Department of Transportation (USDOT) fund recipients, and the race and gender neutral Small Local Emerging Business (SLEB) Program for all industries, except construction. In 2002, the County had an interest in determining the impact of their programs on the local business community. In December 2002, the County initiated a services agreement for an Availability Study with Mason Tillman Associates, Ltd.¹ The Availability Study was launched on May 1, 2003.

The purpose of the Availability Study was to examine the County's procurement activities to ensure that contracting opportunities were accessible to the entire local business community. Included in the Study were the County's construction, architecture and engineering, professional services, and goods and other services contracts issued during the July 1, 2000 to June 30, 2003 study period. Examples of the types of companies included in each industry are the following:

- **Construction:** general contractors, plumbing, electrical, and paving
- **Architecture and Engineering:** engineering, architecture, construction management
- **Professional Services:** consulting, advertising, legal, and computer training
- **Goods and Other Services:** computer equipment, office supplies, construction supplies, security services, and janitorial services

Contracts were analyzed at the following dollar thresholds: Contracts under \$500,000, \$25,001 to \$100,000, and \$25,000 and under. The draft Availability Study was submitted to the County on August 24, 2004.



¹ Alameda County's study is called an Availability Study. However, the common term is disparity study. These terms are therefore used interchangeably in the report.

II. COUNTY CONTRACTING SCOPE

The Availability Study analysis was performed using the County's purchase order payment data. Before those payment records could be used for the study, it was necessary to understand the County's accounting system and contracting procedures. Interviews were conducted with County managers to gain an understanding of the accounting procedures. A review of the County's contracting and procurement procedures was conducted to determine how those procedures relate to the County's programs for local, minority, and women-owned businesses.

The County's records were then used for the Study. Records totaled 11,722 contracts issued during the July 1, 2000 to June 30, 2003 study period. Included were 1,325 for construction, 442 for architecture and engineering, 1,692 for professional services, and 8,263 for goods and other services. The dollar value of the contracts totaled \$552,096, with \$141,092,348 for construction, \$53,684,539 for architecture and engineering, \$96,130,144 for professional services, and \$261,189,123 for goods and other services.

III. STUDY METHODOLOGY

The review of *Croson* and related case law provide the legal framework for conducting disparity studies. A review of *Croson* and its progeny is the **first step** in a disparity study. Case law sets standards for the methodology employed in disparity studies. The **next step** is to describe the agency's contracting and procurement policies and procedures to identify any that may serve as barriers to businesses having equal access to contracting and procurement opportunities. **Step three** is to collect agency records and determine the extent to which an agency has used minority, women-owned, and other businesses to secure its

needed services and commodities. Utilization records are used to determine the geographical area where companies receiving the agency contracts are located. Identification of the agency market area is **step four**. Once the market area is identified, in the **fifth step**, availability analysis, businesses willing and able to provide a service or commodity needed by the agency are identified. In the **sixth step**, the utilization and availability analyses are used to determine whether there is disparity or statistically significant underutilization by industry. In **step seven**, anecdotal analysis, the contemporary experiences of business owners in the agency's market area are reviewed. In **step**

Disparity Study: Critical Components

- Legal Framework
- Contracting and Procurement Policies and Procedures
- Utilization Analysis
- Market Area Analysis
- Availability Analysis
- Disparity Analysis
- Anecdotal Analysis
- Race Neutral Assessment
- Recommendations



eight, the agency's race-neutral efforts are reviewed to determine their scope and effectiveness in including all the agency businesses in their contracting. Finally, in **step nine**, the statistical, anecdotal, and the agency's policies and procedures are reviewed and recommendations are written to enhance the agency's efforts in contracting with businesses in its market area.

IV. STUDY CHAPTERS

The Availability Study findings were issued in eleven chapters. The contents of each chapter is briefly described below:

- *Chapter 1:* Legal Analysis presents legal cases applicable to business affirmative action and the methodology based on those cases required for the Study
- *Chapter 2:* Contracting and Procurement Policies and Procedures presents a description of the County's policies and procedures related to its programs for minority and women-owned businesses
- *Chapter 3:* Prime Contractor Utilization Analysis presents the distribution of contracts by industry, ethnicity, and gender
- *Chapter 4:* Subcontractor Utilization Analysis presents the distribution of subcontracts by industry, ethnicity, and gender
- *Chapter 5:* Market Area Analysis presents the legal basis for geographical market area determination and the County's market area
- *Chapter 6:* Availability Analysis presents the distribution of available businesses in the County's market area
- *Chapter 7:* Prime Contractor Disparity Analysis presents prime contractor utilization, compared to prime contractor availability, by industry, ethnicity and gender, and whether the comparison is statistically significance
- *Chapter 8:* Subcontractor Disparity Analysis presents subcontractor utilization, compared to subcontractor availability, by industry, ethnicity and gender, and whether the comparison is statistically significance
- *Chapter 9:* Anecdotal Analysis presents the County business community's opinions about whether barriers exist in their contracting with the County or attempting to do so



- *Chapter 10: Race and Gender Neutral Program Assessment* presents the impact of the County's Small Local Emerging Business Enterprise Program
- *Chapter 11: Recommendations* presents County program enhancements and best management practices

V. NOTABLE FINDINGS

A. Race and Gender Neutral Findings

The County's race and gender neutral program enacted to promote equity in its contracting practices was assessed. The assessment examined the level of SLEB use on County contracts during the study period July 1, 2000 to June 30, 2003. Some notable findings include:

Local Businesses

- Received 57.78 percent of the prime contract dollars
- In the cities of Oakland and Hayward received 64.09 percent of the local dollars

Small Local Emerging Businesses

- Received 6.8 percent of the prime contract dollars over \$100,000
- Received 4.5 percent of the prime contract dollars \$25,000 and under
- Received 5.7 percent of the subcontracted prime contract dollars

Emerging Local Businesses

- Received 1.16 percent of the prime contract dollars over \$25,000
- Received 1.31 percent of the prime contract dollars \$25,000 and under

B. Race and Gender Conscious Findings

- Statistically significant prime contract race and gender disparity was identified in construction, architecture and engineering, professional services, and goods and other services.
- Statistically significant subcontract disparity was identified in construction, architecture and engineering, and professional services.



C. Anecdotal Findings

Sixty-one local business owners were interviewed about their experiences during the study period. The following are a selection of their anecdotes:

- The interviewees expressed concern about the County's preference for utilizing the same few contractors
- Many of the SLEBs expressed frustration at what they believe is the County's failure to reach out to small local and emerging businesses
- Some business owners expressed that it was difficult obtaining responses to inquiries from County employees
- Other business owners believe that the County's practice of outsourcing management of their construction projects to outside consultants can be detrimental to prime contractors, which trickles down to subcontractors

In conclusion, it should also be noted that many business owners described the County's SLEB and M/WBE programs as valuable and a major factor in keeping their businesses solvent. Additionally, numerous positive comments were made praising County employees for their helpfulness and hard work.

VI. RECOMMENDATIONS

Race Neutral Recommendations

- The County should consider revising its Small Local Emerging Business Program, by creating a Local and Small Local Business Enterprise (SLBE) program that applies to all County contracts, including construction contracts.
- The County should define small local business size as a firm with 20 or fewer employees, reflecting the local business demographics.
- The County should create a Local Businesses Enterprise (LBE) category. A requirement that the firms' officers must be domiciled in the County should also be included. Moreover, the County should certify firms as LBEs.
- Goals should be established as a target for the participation of LBEs and SLBEs in the County's contracts.



Race Conscious Recommendations

- Evaluation credits should be given to statistically significant underutilized groups on architecture and engineering and professional services contracts. Targeted firms would receive 15 percent of the assigned evaluation points. The points would be applied to formally awarded contracts under \$500,000.
- A Sheltered Market program should be established for informal contracts. The Sheltered Market would limit competition to firms from the statistically significant underutilized groups and other firms of comparable capacity.
- An overall goal should be established as a target for the participation of the underutilized groups in the County's subcontracts. The goal should reflect the availability of the statistically significant underutilized groups as calculated in the Study.
- Contract specific M/WBE subcontracting goals should be set on all construction, architecture and engineering, and professional service contracts.

General Recommendations

- Large contracts should be unbundled to maximize small business participation.
- The use of County-wide contracts should be assessed to divide these purchases into units accessible to small businesses.
- Construction support services should be awarded as direct contracts.
- Prime contractors should be required to list the local, small, minority, and women-owned businesses in their submissions. This requirement should be applicable to all contracts in all industries.
- Routine and rigorous contract compliance monitoring should be conducted to ensure local, small, minority, and women-owned businesses participation goals are met throughout the duration of a contract.
- A County-wide contract compliance office should assume responsibility for the design, implementation, and operation of all of the County's business enterprise programs. Currently contract compliance is decentralized. The contract compliance office should be under the jurisdiction of the County Administrator and separate from any agency with purchasing authority.



- A County-wide Purchasing Manual should be developed.
- The ALCOLINK system used to record contract and payment information could be enhanced to perform contract compliance functions.



1

LEGAL ANALYSIS

I. INTRODUCTION

The purpose of this Legal Analysis is to present the basis for the disparity study methodology. The state of the law applicable to affirmative action programs in the area of public contracting is examined. Two United States Supreme Court decisions, *City of Richmond v. J.A. Croson Co.*¹ (*Croson*) and *Adarand v. Peña*² (*Adarand*), raised the standard by which federal courts will review such programs. In those decisions, the Court announced that the constitutionality of affirmative action programs that employ racial classifications would be subject to “strict scrutiny.” An understanding of *Croson*, which applies to state and local governments, is necessary in developing sound Minority Owned Business (MBE) and Woman Owned Business (WBE) programs. Broad notions of equity or general allegations of historical and societal discrimination against minorities are insufficient to meet the requirements of the Equal Protection clause of the Constitution. Instead, governments may adopt race-conscious programs only as a remedy for identified discrimination, and this remedy must impose a minimal burden upon unprotected classes.

An affirmative action program by a public entity in California will not only have to meet the requirements of federal law, it will also have to meet any Proposition 209 challenge. Courts have made it clear, however, that while Proposition 209 may have narrowed the reach of permissible affirmative action programs, it did not eliminate them altogether. Specifically, where Federal law does not just permit, but requires race-conscious steps, Proposition 209 does not, and cannot stand as an obstacle.

A caveat is appropriate here. Because the review under strict scrutiny is fact specific, it is difficult to predict with certainty whether private sector evidence gathered about the surrounding business community will pass constitutional muster. Nevertheless, three post-

¹ City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).

² Adarand Constructors, Inc. v. Federico Pena, 115 S.Ct. 2097 (1995).



Croson Federal Court of Appeals opinions do provide guidelines for the evidence that should be adduced if race-conscious remedies are put in place. The Third, Eleventh, and Tenth Circuits assessed the disparity studies in question on the merits instead of disposing of the cases on procedural issues.³

II. STANDARDS OF REVIEW

The standard of review represents the measure by which a court evaluates a particular legal issue. This section discusses the standard of review that the Supreme Court set for state and local programs in *Croson* and, potentially, federal programs in *Adarand*. It also discusses lower courts' interpretations of these two Supreme Court cases, and evaluates the implications for program design that arise from these decisions.

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 race-based programs is strict scrutiny.⁴ Specifically, the government must show that the classification is narrowly tailored to achieve a compelling state interest.⁵ The Court recognized that a state or local entity may take action, in the form of a MBE Program, to rectify the effects of *identified, systemic racial discrimination* within its jurisdiction.⁶ Justice O'Connor, speaking for the majority, 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.⁷ The specific evidentiary requirements are detailed in Section IV.

³ Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia, 6 F.3d 990 (3d Cir. 1993), on remand, 893 F. Supp. 419 (E.D. Penn. 1995), aff'd, 91 F.3d 586 (3d Cir. 1996); Engineering Contractors of South Florida v. Metropolitan Dade County, 943 F. Supp. 1546 (S.D. Fla. 1996), aff'd, 122 F. 3d 895 (11th Cir. 1997); and Concrete Works of Colorado v. City and County of Denver, 823 F. Supp. 821 (D. Colo. 1993), rev'd 36 F.3d 1513 (10th Cir. 1994) ("Concrete Works I"), on remand, 86 F.Supp. 2d 1042 (D. Colo. 2000), rev'd (10th Cir. Feb. 10, 2003) ("Concrete Works II"). In the federal court system, there are primarily three levels of courts: the Supreme Court, appellate courts, and district courts. The Supreme Court is the highest ranking federal court and its rulings are binding on all other federal courts. Appellate courts' rulings are binding on all district courts in their geographical area, and are used for guidance in other circuits. District court rulings, while providing insight into an appropriate legal analysis, are not binding on other courts at the district, appellate, or Supreme Court levels.

⁴ *Croson*, 488 U.S. at 493-495.

⁵ *Id.* at 493.

⁶ *Id.* at 509.

⁷ *Id.* at 501-502. 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 provide fairly detailed guidance on how those concepts are to be treated in contracting. In education and employment, the concepts are not explicated to nearly the same extent. Therefore, references in those cases to "compelling governmental interest" and "narrow tailoring" for purposes of contracting are essentially generic, and of little value in determining the appropriate methodology for disparity studies.



B. Woman-Owned Business Enterprise

Since *Croson*, the Supreme Court has remained silent with respect to the appropriate standard of review for WBE and Local Business Enterprise (LBE) programs. *Croson* was limited to the review of a race-conscious plan. In other contexts, however, the Supreme Court has ruled that gender classifications are not subject to the rigorous strict scrutiny standard applied to racial classifications. Instead, gender classifications are subject only to an “intermediate” level of review, regardless of which gender is favored.

Notwithstanding the Supreme Court’s failure thus far to rule on a WBE program, the consensus among the Circuit Courts of Appeals is that these programs are subject only to intermediate scrutiny, rather than the more exacting strict scrutiny to which race-conscious programs are subject.⁸ Intermediate review requires the governmental entity to demonstrate an “important governmental objective” and a method for achieving this objective which bears a fair and substantial relation to the goal.⁹ The Court has also expressed the test as requiring an “exceedingly persuasive justification”¹⁰ for classifications based on gender.

In *Mississippi University for Women v. Hogan*, the Supreme Court acknowledged that in limited circumstances a gender-based classification favoring one sex can be justified if it intentionally and directly assists the members of that sex which are disproportionately burdened.¹¹

The Third Circuit, in *Contractors Association of Eastern Pennsylvania v. City of Philadelphia (Philadelphia)*, ruled in 1993 that the standard of review that governs WBE programs is different than the standard imposed upon MBE programs.¹² The Third Circuit held that whereas MBE programs must be “narrowly tailored” to a “compelling state interest,” WBE programs must be “substantially related” to “important governmental objectives.”¹³ An MBE program would only survive constitutional scrutiny by

⁸ See e.g., *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991); *Philadelphia*, 91 F.3d 586 (3d Cir. 1996); *Engineering Contractors Association of South Florida Inc., et al. v. Metropolitan Dade County et al.*, 122 F.3d 895 (11th Cir. 1997). *Concrete Works of Colorado, Inc. v. City and County of Denver*, (Concrete Works II) (Slip Opinion United States District Court of Appeals, 10th Cir. 2003) is in accord, page 6.

⁹ *Craig v. Boren*, 429 U.S. at 198-199 (1976).

¹⁰ *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982). See also *Michigan Road Builders Ass’n., Inc. v. Milliken*, 834 F.2d 583 (6th Cir. 1987).

¹¹ *Mississippi University for Women*, 458 U.S. at 728.

¹² *Philadelphia*, 6 F.3d at 1000-1001.

¹³ *Id.* at 1009.



demonstrating a pattern and practice of systemic racial exclusion or discrimination in which a state or local government was an active or passive participant.¹⁴

The Ninth Circuit in *Associated General Contractors of California v. City and County of San Francisco* (AGCC I) held that classifications based on gender require an “exceedingly persuasive justification.”¹⁵ The justification is valid only if members of the gender benefitted by the classification actually suffer a disadvantage related to the classification and the classification does not reflect or reinforce archaic and stereotyped notions of the roles and abilities of women.¹⁶

The Eleventh Circuit also applies intermediate scrutiny.¹⁷ The district court in *Engineering Contractors Association of South Florida v. Metropolitan Dade County (Dade County)*, which was affirmed by the Eleventh Circuit U.S. Court of Appeals, cited the Third Circuit’s 1993 formulation in *Philadelphia*: “[T]his standard requires the [county] to present probative evidence in support of its stated rationale for the gender preference, discrimination against women-owned contractors.”¹⁸ Although the *Dade County* District Court applied the intermediate scrutiny standard, it queried whether the Supreme Court decision in *United States v. Virginia*,¹⁹ finding the all male program at Virginia Military Institute unconstitutional, signaled a heightened level of scrutiny: parties who seek to defend gender-based government action must demonstrate an “exceedingly persuasive justification” for that action.²⁰ The *Dade County* appellate court echoed that speculation but likewise concluded that “[u]nless and until the Supreme Court tells us otherwise, intermediate scrutiny remains the applicable constitutional standard in gender discrimination cases, and a gender preference may be upheld so long as it is substantially related to an important governmental objective.”²¹

The *Dade County* appellate court noted that thus far, by articulating the “probative evidence” standard, the Third Circuit in *Philadelphia* was the only federal appellate court that explicitly attempted to clarify the evidentiary requirement applicable to gender-

¹⁴ Id. at 1002.

¹⁵ *Associated General Contractors of California v. City and County of San Francisco*, 813 F.2d 922, 940 (9th Cir. 1987).

¹⁶ Id. at 940.

¹⁷ *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548, 1579-1580 (11th Cir. 1994).

¹⁸ *Dade County*, 122 F.3d 895 at 909 (11th Cir. 1997), (citing *Philadelphia*, 6 F.3d at 1010 (3d Cir. 1993)).

¹⁹ *United States v. Virginia*, 116 S.Ct. 2264 (1996).

²⁰ *Dade County*, 943 F.Supp. at 1556 (S.D. Fla.1996).

²¹ *Dade County*, 122 F.3d at 908 (11th Cir. 1997).



conscious programs.²² It went on to interpret that standard to mean that “evidence offered in support of a gender preference must not only be ‘probative’ [but] must also be ‘sufficient.’”²³ It also reiterated two principal guidelines of intermediate scrutiny evidentiary analysis: (1) under this test, a local government must demonstrate some past discrimination against women, but not necessarily discrimination by the government itself,²⁴ and (2) the intermediate scrutiny evidentiary review is not to be directed toward mandating that gender-conscious affirmative action is used only as a “last resort”²⁵ but instead ensuring that the affirmative action is “a product of analysis rather than a stereotyped reaction based on habit.”²⁶ This determination turns on whether there is evidence of past discrimination in the economic sphere at which the affirmative action program is directed.²⁷ The court also stated that “a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”²⁸

C. Local Business Enterprise

The Ninth Circuit Court of Appeals applied the rational basis standard when evaluating LBE programs, holding that a local entity may give a preference to local businesses to address the economic disadvantages those businesses face in doing business within the city or county.²⁹ In *AGCC I*, a pre-*Croson* case, the City and County of San Francisco conducted a detailed study of the economic disadvantages faced by San Francisco-based businesses versus businesses located outside the City and County boundaries. The study showed a competitive disadvantage in public contracting for businesses located within the City versus businesses from other areas.

San Francisco-based businesses had higher administrative costs of doing business within the City. Such costs included higher taxes, higher rents, higher wages, higher insurance rates, and higher benefits for labor. In upholding the LBE Ordinance, the Ninth Circuit held

²² Id. at 909.

²³ Id.

²⁴ Id. at 910 (citing *Ensley Branch*, 31 F.3d at 1580).

²⁵ Id. (citing *Hayes v. North State Law Enforcement Officers Ass’n*, 10 F.3d at 217 (4th Cir. 1993), racial discrimination case).

²⁶ Id. (citing *Philadelphia*, 6 F.3d at 1010 (quoting *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 582-583 (1990)).

²⁷ Id. (citing *Ensley Branch*, 31 F.3d at 1581).

²⁸ *Dade County*, 122 F.3d at 929. However, Judge Posner, in *Builders Ass’n of Greater Chicago v. County of Cook* (7th Cir. July 6, 2001), questioned why there should be a lesser standard where the discrimination was against women rather than minorities.

²⁹ *AGCC I*, 813 F.2d 922 at 943 (9th Cir. 1987).



that “. . . the city may rationally allocate its own funds to ameliorate disadvantages suffered by local business, particularly where the city itself creates some of the disadvantages.”³⁰

Federal constitutional issues do not end the inquiry, however. State statutes may impose their own restrictions.

1. California Case Law-Assembly Bill 1084

The recent changes in the California Public Contract Code allowed by Assembly Bill 1084 provides local governments a legal basis for extending preferences to local small businesses.

Assembly Bill 1084 became law in January 2002. Assembly Bill 1084 amended Sections 14836, 14837, 14838.5, 14839, 14839.1, 14840, 14842, and 14842.5 of the Government Code, and repeals and adds Section 14838 of the Code. The Bill also amended Sections 2000 and 2001 of, and to add Sections 2002 and 10116 to, the Public Contracting Code, relating to public contracts.

The law as it stands requires state agencies to give small businesses³¹ a 5% preference in contracts for construction, the procurement of goods, or the delivery of services. AB 1084 includes microbusinesses³² and revises annual goals for the program. Further, the Bill also authorizes a local agency to provide for a small business preference in construction, the procurement of goods, or the delivery of services, and to establish a subcontracting participation goal for small businesses on contracts with a preference for those bidders who meet the goal.

The Bill requires all State awarding departments to report to the Governor and the Legislature on the level of participation by business enterprises, by race, ethnicity, and gender of owner, in specified contracts.

2. Public Contracting Code Section 2002

Assembly Bill 1084 added Section 2002 to the Public Contracting Code allowing for the following:

³⁰ Id. at 943.

³¹ Small business is defined as “an independently owned and operated business, which is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with its affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.

³² Microbusiness is defined as “a small business that, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars or less over the previous three years, or is a manufacturer, as defined in subsection (c), with 25 or fewer employees.



- Provide for a small business preference in construction, the procurement of goods, or the delivery of services where responsibility and quality are equal. The preference to a small business allowed is up to 5 percent of the lowest responsible bidder
- Establish a subcontracting participation goal for small businesses on contracts and grant a preference up to a maximum of 5 percent to bidders who meet the goal
- Require Good Faith Efforts to meet a subcontracting participation goal for small business contracts. Bidders who fail to make the goal must demonstrate their Good Faith Efforts.
- A small business shall be defined by each local agency

D. Disadvantaged Business Enterprise Programs

Adarand, decided in June 1995, applied the strict scrutiny standard to federal programs. The U.S. Department of Transportation amended its regulations to focus on outreach to disadvantaged businesses. While the Supreme Court heard argument in *Adarand* in the October 2001 Term, it subsequently decided that it had improvidently granted *certiorari*. Thus, the amended DOT regulations continue in effect.

Effective March 1999, the U. S. Department of Transportation (USDOT) replaced 49 CFR part 23 of its Disadvantaged Business Enterprise Program (DBE) rules, with 49 CFR part 26. The new regulation revises provisions of the DBE rules in response to the decision of the United States Supreme Court in *Adarand*. The goal of promulgating the new rule is to modify the DBE program consistent with the “narrow tailoring” requirement of *Adarand*. The new provisions apply only to the airport, transit, and highway financial assistance programs of the USDOT. See Appendix A for the main components of the Rules.

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:³³

³³ These were the issues on which the District Court in Philadelphia reviewed the disparity study before it.



- the disparity exists due to race-neutral reasons;
- the methodology is flawed;
- the data is statistically insignificant; and
- controverting 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.³⁴

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.³⁵ The issue of whether or not the government has produced a strong basis in evidence is a question of law.³⁶ 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.³⁷

The adequacy of the government’s evidence is “evaluated in the context of the breadth of the remedial program advanced by the [jurisdiction].”³⁸ The onus is upon the jurisdiction to provide a factual predicate which is sufficient in scope and precision to demonstrate that contemporaneous discrimination necessitated the adoption of the MBE program. The various factors which must be considered in developing and demonstrating a strong factual predicate in support of MBE programs are discussed in Section IV.

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.³⁹ The plaintiff must persuade the court that the program

³⁴ Richmond v. J.A. Croson Co. 488 U.S. 469 (1989).

³⁵ 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 at 292 (1986); see Richmond v. JA Croson Co. 488 U.S. 469 at 509 (1989).

³⁶ Concrete Works of Colorado v. City and County of Denver, 36 F.3d 1513 at 1522 (10th Cir. 1994) (citing Associated General Contractors v. New Haven, 791 F.Supp. 941, 944 (D.Conn 1992)).

³⁷ Concrete Works I, 36 F.3d at 1522.

³⁸ Id. (citing Croson at 498).

³⁹ Id. (citing Wygant v. Jackson Board of Education, 476 U.S. 267, 277-278 (1986)).



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 burden of proof borne by the plaintiff in her concurring opinion in *Wygant v. Jackson Board of Education (Wygant)*.⁴⁰ 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.”⁴¹

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.⁴² That court wrote that the significance of the allocation of the burden of persuasion depends on the theory of constitutional invalidity that is being considered.⁴³ If the plaintiff’s theory is that an agency has adopted race-based preferences with a purpose other than remedying past discrimination, the plaintiff has the burden of convincing the court that the identified remedial motivation is a pretext and that the real motivation was something else.⁴⁴

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.⁴⁵

⁴⁰ *Wygant v. Jackson Board of Education*, 476 U.S. 267, 293 (1986).

⁴¹ *Id.*

⁴² *Philadelphia*, 91 F.3d at 597.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 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. That court said the inquiry was factual and would be reversed only if it was “clearly erroneous.” However, the difference in formulation may have to do with the angle from which the question is 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.



Concrete Works II made clear that 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.” pg.21

IV. CROSON EVIDENTIARY FRAMEWORK

Government entities must construct a strong evidentiary framework to ensure that the adopted M/WBE programs comport 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 critical elements follows.

A. Active or Passive Participation

Croson requires that the local entity seeking to adopt an MBE program must have somehow 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.⁴⁶

An entity will be considered an “active” participant if the evidence shows that it has created barriers that actively exclude MBEs from contracting opportunities. In addition to examining the government’s contracting process, MBEs who have contracted, or attempted to contract, with that entity can be interviewed to relay their experiences in pursuing contracting opportunities with that entity.⁴⁷

Alternatively, if discriminatory practices can be shown in the private sector, an entity can demonstrate that it is a “passive” participant in a private system of discriminatory exclusion where it infuses tax dollars into that discriminatory industry.⁴⁸ As the *Croson* Court stated, “It 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.”⁴⁹

⁴⁶ *Croson*, 488 U.S. at 509.

⁴⁷ *Wygant v. Jackson Board of Education*, 476 U.S. 267 at 275 (1985).

⁴⁸ *Croson*, 488 U.S. at 492; *Coral Construction*, 941 F.2d at 916.

⁴⁹ *Croson*, 488 U.S. at 492.



For some time, this inquiry focused on the subcontracting practices of government prime contractors. Since no government funds were involved in the contracts analyzed in *Concrete Works I*, the Tenth Circuit questioned whether purely private sector discrimination is likely to be a fruitful line of inquiry.⁵⁰ On remand, the District Court rejected the three disparity studies offered to support the continuation of Denver's M/WBE program; each focused on purely private sector discrimination. Indeed, that focus may account for what seemed to be a shift by the court from the standard *Croson* queries of (1) whether there was a firm basis 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 that the chosen methodologies failed to address the following six questions:

- 1) whether there was pervasive discrimination throughout the Denver MSA;
- 2) were all designated groups equally affected;
- 3) was such discrimination intentional;
- 4) would Denver's use of such firms constitute "passive participation";
- 5) would the proposed remedy change industry practices;
- 6) was the burden of compliance—which was on white male prime contractors in an intensely competitive, low profit margin business—a fair one.⁵¹

Therefore, there was not a firm basis of identified discrimination derived from the statistics submitted.⁵²

The Tenth Circuit in *Concrete Works II* completely rejected that analysis. The District Court's queries required Denver to *prove* the existence of discrimination. Moreover, in *Concrete Works II*, the Tenth Circuit explicitly held that "passive" participation included

⁵⁰ *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 "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."

⁵¹ *Concrete Works*, 86 F.Supp.2d 1042 (D. Colo 2000)

⁵² *Id.* at 61.



private sector discrimination in the marketplace. The court, relying on *Shaw v. Hunt*⁵³, a post-*Croson* Supreme Court decision, 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. The City can satisfy this condition by identifying the discrimination ‘*public or private, with some specificity.*’ Id. (quoting *Croson*, 488 U.S. at 504>44 (*emphasis added*)). The governmental entity must also have a ‘strong basis in evidence to conclude that remedial action was necessary.’ Id.

Thus, *Shaw* specifically stated that evidence of either public or private discrimination could be used to satisfy the municipality’s burden of producing strong evidence. 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.”⁵⁴

B. Systemic Discriminatory Exclusion

Croson clearly establishes 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).⁵⁵ Mere statistics and broad assertions of societal

⁵³ 517 U.S. at 519.

⁵⁴ Slip opinion, pg. 20. However, the judicial scrutiny of remedies derived from only private sector transactions may be more stringent than the analysis applied to whether a remedial framework based on public sector contracting is narrowly tailored.. See the December 29, 2003 U.S. District Court opinion in *Builders Association of Greater Chicago v. City of Chicago*. In that case, which turned on MBE treatment in the private sector, the court found that the remedial scheme was not narrowly tailored. It said that there was no “meaningful individualized review” (slip opinion at pg. 23), citing Justice O’Connor opinion in *Gratz v. Bollinger*, 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 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.

⁵⁵ *Croson*, 488 U.S. 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



discrimination will not suffice to support a race or gender conscious program. Thus, it is essential to demonstrate a pattern and practice of such discriminatory exclusion in the relevant market area to establish the necessary factual predicate required by *Croson*.⁵⁶ That showing must cover each racial group to whom a remedy would apply.⁵⁷

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 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.⁵⁸ 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."⁵⁹

Such a showing should include subcontracting data. The *Croson* 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."⁶⁰ Subcontracting data is also an important means by which to assess suggested future remedial actions. Since the decision makers are different for the awarding of prime and subcontracts, the remedies for discrimination identified at a prime versus subcontractor level might also be different.

Second, "evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader

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 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 available. 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.

⁵⁶ Id. at 509.

⁵⁷ Id. 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."

⁵⁸ Id. at 509.

⁵⁹ Id. at 501 (citing *Hazelwood School District v. United States*, 433 U.S. 299, 307-308 (1977)).

⁶⁰ *Croson*, 488 U.S. at 502-503.



remedial relief is justified.”⁶¹ 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.⁶² 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.⁶³ 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.⁶⁴

Likewise, anecdotal evidence, standing alone, is unlikely to establish a systemic pattern of discrimination.⁶⁵ Nonetheless, anecdotal evidence is important because the individuals who testify about their personal experiences bring “the cold numbers convincingly to life.”⁶⁶

1. Market Participation

Croson did not speak directly to market participation. In *Coral Construction*, the Court of Appeals held that “an MBE program must limit its geographical scope to the boundaries of the enacting jurisdiction.”⁶⁷ 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.⁶⁸

In *Coral Construction*, the Court held that the definition of “minority business” used in King County’s MBE program was over-inclusive.⁶⁹ The Court reasoned that the definition was overbroad because it included businesses other than those who were discriminated

⁶¹ Id. at 509.

⁶² Id.

⁶³ *Coral Construction*, 941 F.2d at 919.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id. (quoting *International Brotherhood of Teamsters v. United States* (Teamsters), 431 U.S. 324, 339 (1977)).

⁶⁷ *Coral Construction*, 941 F.2d at 925.

⁶⁸ *Concrete Works*, 823 F.Supp. 821, 835-836 (D.Colo. 1993); rev’d on other grounds, 36 F.3d 1513 (10th Cir. 1994).

⁶⁹ *Coral Construction*, 941 F.2d at 925.



against in the King County business community.⁷⁰ 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 must show that it previously sought business, or is currently doing business, in the market area.

Read together, these cases support a definition of market area that is reasonable rather than dictating a specific formula. Since *Croson* and its progeny did not provide a bright line rule for local market area, that determination should be fact-based. An entity may limit consideration of evidence of discrimination within its own jurisdiction.⁷¹ Extra-jurisdictional evidence may be permitted where doing so is reasonably related to where the jurisdiction contracts.

2. Current versus Historical Evidence

In assessing the existence of identified discrimination through demonstration of a disparity between M/WBE utilization and availability, it is important to examine disparity data both prior to and after the entity's current M/WBE 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.⁷² 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 M/WBE program based upon outdated evidence.⁷³ Therefore, the most recent two or three years of an entity's utilization data would suffice to determine whether a statistical disparity exists between current M/WBE utilization and availability.⁷⁴

⁷⁰ Id.

⁷¹ *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).

⁷² See *Croson*, 488 U.S. at 509-510.

⁷³ Id. at 499 (stating that "[i]t is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination").

⁷⁴ See AGCC II, 950 F.2d 1401 at 1414 (consultant study looked at City's MBE utilization over a one year period).



Pre-program data regarding an entity's utilization of M/WBEs prior to enacting the M/WBE program may be relevant to assessing the need for the agency to keep such a program intact. A 1992 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"),⁷⁵ set forth the possible significance of statistical data during an entity's "pre-program" years. Judge Henderson opined that statistics that provide data on a period when no M/WBE goals were operative are 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."⁷⁶ 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 absent M/WBE goals. That this may be the case 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.

Similarly, the Eleventh Circuit Court of Appeals 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."⁷⁷

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 absent an M/WBE program.

3. Statistical Evidence

To determine whether statistical evidence is adequate to give rise to an inference of discrimination, courts have looked to the "disparity index" which consists of the percentage of minority (or women) contractor participation in local contracts divided by the percentage of minority (or women) contractor availability or composition in the population of available firms in the local market area.⁷⁸ Disparity indexes have been found highly probative

⁷⁵ See November 25, 1992 Order by Judge Thelton Henderson (on file with Mason Tillman Associates).

⁷⁶ *Id.*

⁷⁷ *Dade County*, 122 F.3d at 912.

⁷⁸ Although the disparity index is a common category of statistical evidence considered, other types of statistical evidence can also be 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



evidence of discrimination where they ensure that the “relevant statistical pool” of minority (or women) contractors is being considered.

The Third Circuit Court of Appeals, in *Philadelphia*, 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 where 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 particular statistical disparity did not satisfy *Croson*.⁷⁹

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 give rise to an inference of discriminatory exclusion.

Second, M/WBE dollar participation can be compared to M/WBE availability. This 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 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.⁸⁰

Whether a disparity index supports an inference that there is discrimination in the market turns 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

in Dade County were compared with the sales and receipts of all Dade County construction firms).

⁷⁹ Philadelphia, 91 F.3d 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.

⁸⁰ 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.



or practice of discrimination.”⁸¹ However, the Court has not assessed nor attempted to cast bright lines for determining if a disparity index is sufficient 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.⁸²

Following the dictates of *Croson*, courts may carefully examine whether there is data that shows that M/WBEs are ready, willing, and able to perform.⁸³ *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 market place 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 nonminority 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.⁸⁴

Notwithstanding that explicit 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. They were focused on the private sector, using census-based data and Dun & Bradstreet statistical extrapolations.

Of the three appellate opinions that have reviewed disparity studies on the merits, *Philadelphia*⁸⁵ and *Dade County*⁸⁶ are instructive in defining availability.

In *Philadelphia*, contractors’ associations challenged a city ordinance which created set-asides for minority subcontractors on city public works contracts, and summary judgment was granted for the contractors.⁸⁷ The Third Circuit upheld the third appeal, affirming that there

⁸¹ *Croson*, 488 U.S. at 501 (quoting *Hazelwood School District v. United States*, 433 U.S. 299, 307-308 (1977)).

⁸² *Concrete Works*, 36 F.3d at 1522.

⁸³ The *Philadelphia* study was vulnerable on this issue.

⁸⁴ *Concrete Works*, 36 F.3d at 1528.

⁸⁵ *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).

⁸⁶ *Dade County*, 943 F.Supp. 1546.

⁸⁷ *Id.*



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.⁸⁸

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.”⁸⁹ It was unnecessary to make this determination because the court found that even if there was a strong basis in evidence for the program, the program was not narrowly tailored to remedy the discrimination.

The court also looked at subcontracting and found that a firm basis in evidence did not exist. The only subcontracting evidence presented was a review of a random 25-30 percent of project engineer logs on projects over \$30,000. The consultant reviewer determined that no MBEs were used during the study period based upon the consultant’s recollection 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.

In assessing whether the City’s program was narrowly tailored, the court noted that its program provisions were overbroad because they focused almost entirely on subcontracting, and thus were not narrowly tailored to address discrimination by the City on prime contracts.⁹⁰ 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.”⁹¹ The court also found the program flawed because it did not provide sufficient waivers and exemptions, as well as consideration of race neutral alternatives.⁹²

4. Bidding

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 were taken into

⁸⁸ 91 F.3d 586 (3rd Cir. 1996).

⁸⁹ Id. at 605.

⁹⁰ Id. at 606-607.

⁹¹ Id. at 608.

⁹² Id. at 608-609.



account.⁹³ 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. The results will be biased if the solicitation of bidders is biased, or if the perception of potential bidders is that selection is biased.⁹⁴ In addition, the source is dependent on the diligence of the agencies' record keeping.⁹⁵

In any case, whether *Dade County* stands for the proposition that bidding is a mandatory measure of availability in *all* procurements must be judged in light of the program that was the subject of the litigation. The case involved construction contracts where competitive bidding was the method of selection for prime contractors. Consequently, it was not unreasonable to limit availability in those instances to firms that had bid. Indeed, given the comments of the Eleventh Circuit in upholding the district court decision in *Dade County*,⁹⁶ it would be difficult to assert that the lower court opinion established substantive bright line rules in reviewing affirmative action programs:

Both the Supreme Court and this Court have held that a district court makes a *factual* determination when it determines whether there exists a sufficient evidentiary basis justifying affirmative action on the basis of race or ethnicity (emphasis added) . . . We review a district court's factual findings only for clear error.⁹⁷

The Supreme Court has explained with unmistakable clarity our duty in evaluating the district court's factfinding in this case. That duty most emphatically is *not* to decide whether we agree with the district court's view of the evidence. Instead, we must determine only whether the district court's view of the evidence, as reflected in its fact findings, is a permissible one, i.e., a plausible one in light of the entire record.⁹⁸

⁹³ Engineering Contractors Association of South Florida, Inc. et al. v. Metropolitan Dade County, 943 F. Supp. 1546 (S.D. Florida 1996).

⁹⁴ 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).

⁹⁵ 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).

⁹⁶ *Dade County*, 122 F.3d 895 (1997).

⁹⁷ *Dade County*, 122 F.3d at 903.

⁹⁸ *Id.* at 904.



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

In *Dade County*, subcontractors were identified as M/WBEs that had filed a subcontractors' release of lien on at least one Dade County contract during the study period. The number of such firms was compared to the sales and receipts claimed by such firms. That district court rejected the comparison as inappropriate because the income received was not limited to Dade County subcontractors.

For the Tenth Circuit in *Concrete Works II*, the issue of bidding is clear: it is not required. "[W]e do not read *Croson* to require disparity studies that measure whether construction firms are able to perform a particular contract. The studies must only determine whether the firms are capable of 'undertak[ing] prime or subcontracting work in public construction projects' *Croson*, 488 at 502."⁹⁹

5. Capacity

The Third Circuit has recognized that the issue of qualifications can be approached at different levels of specificity, and some consideration of the practicality of various approaches is required. 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 it was a "reasonable choice" under the circumstances to use a list of certified contractors as a source for available firms.¹⁰⁰ An analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach.

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."¹⁰¹

In addition, the Court found that a program certifying MBEs for federal construction programs satisfied the determination of capability of MBE firms included in the study.¹⁰² The

⁹⁹ Pg. 24,

¹⁰⁰ Philadelphia, 91 F.3d at 603.

¹⁰¹ Philadelphia, 91 F.3d 586.

¹⁰² Id.



certification program required potential firms to detail their bonding capacity, prior experience, the size of prior contracts, number of employees, financial integrity, and equipment owned before being qualified to bid on federally funded city contracts as an MBE. The Court stated that “the process by which the firms were certified appears to suggest that, as a general proposition, those firms were both qualified and willing to participate in public work projects.”¹⁰³ Moreover, the Court not only found the process to be adequate, but may have been on the conservative side, possibly even “underinclusive in terms of firms capable of performing some portion of City projects.”¹⁰⁴

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.”¹⁰⁵ Anecdotal evidence should be gathered demonstrating that minority contractors are systematically being excluded from contracting opportunities in the relevant market area. 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 contract despite being the low bidder – *Philadelphia*¹⁰⁶
- Prime contractors showing MBE bids to non-minority subcontractors to find a non-minority to underbid the MBEs – *Cone Corporation v. Hillsborough County*¹⁰⁷
- M/WBEs’ inability to obtain contracts for private sector work – *Coral Construction*¹⁰⁸

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ *Croson*, 488 U.S. at 509. The Court specifically cited to *Teamsters*, 431 U.S. at 338.

¹⁰⁶ *Philadelphia*, 6 F.3d at 1002.

¹⁰⁷ *Cone Corporation v. Hillsborough County*, 908 F.2d at 916 (11th Cir.1990).

¹⁰⁸ For instance, where a small percentage of an MBE or WBE’s business comes from private contracts and most of its business comes from race or gender-based set-asides, this would demonstrate exclusion in the private industry. *Coral Construction*, 941 F.2d 910 at 933 (WBE’s affidavit indicated that less than 7 percent of the firm’s business came from private contracts and that most of its business resulted from gender-based set-asides).



- M/WBEs told they were not qualified although they were later found to be qualified when evaluated by outside parties – *AGCC*¹⁰⁹
- Attempts to circumvent M/WBE project goals – *Concrete Works I*¹¹⁰
- Harassment of MBW/WBEs by an entity's personnel to discourage them from bidding on entity's contracts – *AGCC*¹¹¹

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. Set-asides are at the other end of the spectrum. Race-neutral measures, by definition, 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.¹¹²

Courts must assess the extent to which relief disrupts settled “rights and expectations” when determining the appropriate corrective measures.¹¹³ 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 this 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 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.”¹¹⁴

¹⁰⁹ *AGCC* II, 950 F.2d at 1415.

¹¹⁰ *Concrete Works*, 36 F.3d at 1530.

¹¹¹ *AGCC* II, 950 F.2d at 1415.

¹¹² Cf. *AGCC* II, 950 F.2D at 1417-1418 (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.]”)

¹¹³ *Wygant*, 476 U.S. at 283.

¹¹⁴ *Croson*, 488 U.S. at 509, citing *Teamsters*, 431 U.S. at 338.



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.”¹¹⁵

This was not the situation confronting the Ninth Circuit in *Coral Construction*. There, the 700-plus page appellate record contained the affidavits of “at least 57 minority or women contractors, each of whom complains in varying degree of specificity about discrimination within the local construction industry. These affidavits certainly suggest that ongoing discrimination may be occurring in much of the King County business community.”¹¹⁶ 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.”¹¹⁷ 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:

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.¹¹⁸

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.”¹¹⁹

Two other Circuit Courts also suggested that anecdotal evidence might be dispositive, while rejecting it in the specific case before them. For example, speaking 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

¹¹⁵ Id. at 480.

¹¹⁶ *Coral Construction*, 941 F.2d at 917-918.

¹¹⁷ Id. at 918 (emphasis added) (additional statistical evidence gathered after the program had been implemented was also considered by the court and the case was remanded to the lower court for an examination of the factual predicate).

¹¹⁸ Id. at 919.

¹¹⁹ Id.



evidence to be “impermissible” for consideration under *Croson*.¹²⁰ The Circuit 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.¹²¹ “Yet,” the Circuit stated,

given *Croson*’s emphasis on statistical evidence, even had the district court credited the City’s anecdotal evidence, we do not believe this amount of anecdotal evidence is sufficient to satisfy strict scrutiny [quoting *Coral*, supra]. Although anecdotal evidence alone may, in an exceptional case, be so dominant or pervasive that it passes muster under *Croson*, it is insufficient here.¹²²

The D.C. 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*. 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 evidence is most useful as a supplement to strong statistical evidence—which the Council did not produce in this case.¹²³

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 factfinder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality’s institutional practices carry more weight due to the systemic impact that such institutional practices have on market conditions.”¹²⁴ The Court noted that the City had provided such systemic evidence.

¹²⁰ Philadelphia, 6 F.3d 990, 1002.

¹²¹ Id. at 1003.

¹²² Id.

¹²³ O’Donnell Construction v. District of Columbia, 963 F.2d at 427 (D.C. Cir.1992).

¹²⁴ Concrete Works I, 36 F.3d at 1530.



The Ninth Circuit Court of Appeals has articulated what it deems to be permissible anecdotal evidence in *AGCC II*.¹²⁵ 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; that an “old boy network” still exists; and that racial discrimination is still prevalent within the San Francisco construction industry.¹²⁶ Based on *AGCC II*, it would appear that the Ninth Circuit’s standard for acceptable anecdotal evidence is more lenient than other Circuits which 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 particular requirements.¹²⁷ These requirements are that the accounts:

- are gathered from minority contractors, preferably those that are “qualified;”¹²⁸
- concern specific, verifiable instances of discrimination;¹²⁹
- involve the actions of governmental officials;¹³⁰
- involve events within the relevant jurisdiction’s market area;¹³¹
- discuss the harm that the improper conduct has inflicted on the businesses in question;¹³²
and

¹²⁵ *AGCC II*, 950 F.2d 1401.

¹²⁶ *Id.* at 1415.

¹²⁷ *Philadelphia*, 6 F.3d at 1003. The anecdotal evidence must be “dominant or pervasive.”

¹²⁸ *Philadelphia*, 91 F.3d at 603.

¹²⁹ *Coral Construction*, 941 F.2d at 917-918. But see *Concrete Works II* at pg. 29. “There is no merit to [plaintiff’s] argument that the witnesses accounts must be verified to provide support for Denver’s burden.”

¹³⁰ *Croson*, 488 U.S. at 509.

¹³¹ *Coral Construction*, 941 F.2d at 925.

¹³² *O’Donnell*, 963 F.2d at 427.



- collectively reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic.¹³³

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 accounts will not suffice.¹³⁴ While the matter is not free of countervailing considerations, 57 accounts, many of which appeared to be of the type called for 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 139.¹³⁵ 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.

V. CALIFORNIA’S PROPOSITION 209

A public entity in California seeking to adopt an MBE Program must comply with Proposition 209 requirements.

The U.S. Supreme Court in *Croson* held that the 14th Amendment authorized state and local governments to employ race-conscious remedies when they are based on a properly conducted disparity study. Proposition 209’s strictures against racial preferences aside, the Ninth Circuit

¹³³ *Coral Construction*, 941 F.2d at 919.

¹³⁴ *Philadelphia*, 6 F.3d. at 1002-03.

¹³⁵ 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 of this 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.



made clear in *Monterey Mechanical v. Wilson* that findings and a narrowly tailored remedy are essential.¹³⁶

Proposition 209 prohibits the State from discriminating “against, or grant[ing] preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” However, Proposition 209 also states that “if any parts [of Proposition 209] are found to be in 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. . . .”

As for the reach of Proposition 209, the leading California cases are *Hi-Voltage v. City of San Jose*¹³⁷ and *Ward Connerly v. State Personnel Board*.¹³⁸ In *Hi-Voltage*, the California Supreme Court held that Proposition 209 prohibited the City 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. (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 Proposition 209 applied to the five California statutory programs before that court.¹³⁹ However, neither do *Hi-Voltage* nor *Ward Connerly* speak directly to what would happen should the findings of Alameda County’s disparity study point to a race-conscious remedy.

There are two discussions in *Ward Connerly* that one might argue bar the County from taking such action:

It can be seen that Proposition 209 overlaps, but is not synonymous with the principles of equal protection that we have described in Part II. A, *ante*. Under equal protection principles all state actions that rely upon suspect classifications must be tested under strict scrutiny, but those actions which can meet the rigid strict scrutiny test are constitutionally permissible. Proposition 209, on the other hand, prohibits discrimination against or preferential treatment to individuals or groups regardless of whether the governmental action could be justified under strict scrutiny.

¹³⁶ *Monterey Mechanical v. Wilson*, 125 F. 3d 702, 713-14 (1997). Plaintiff had not complied with a state statutory requirement that it meet specified MBE and WBE goals, or show Good Faith Efforts to do so. The court agreed that its low bid could not be rejected.

¹³⁷ 101 Cal Rptr 2d 653 (2000).

¹³⁸ 92 Cal. App. 4th16 (2001).

¹³⁹ State Lottery, Professional Bond Services, State Civil Service, Community Colleges, State Contracting (reporting requirements).



In this respect the distinction between what the federal Constitution permits and what it requires becomes particularly relevant.¹⁴⁰ To the extent that the federal Constitution would permit, but not require, the state to grant preferential treatment to suspect classes, Proposition 209 precludes such action.. In fact, Proposition 209 contains no compelling interest exception.

The trial court indicated that where federal equal protection principles permit a state entity to utilize race and gender classification, Proposition 209 must yield. This confuses what the federal Constitution permits with what it requires. Proposition 209 yields where federal law requires the state to engage in particular action, but not where it would merely permit such action.¹⁴¹

The second is:

In a related vein, the City and its amici curiae argue that equal protection does not preclude race-conscious programs. While true, this point has no bearing on our construction of section 31. Equal protection allows discrimination and preferential treatment whenever a court determines they are justified by a compelling state interest and are narrowly tailored to address an identified remedial need. (See, e.g., *United States v. Paradise*, *supra*, 480 U.S. at pp. 185-186, 107 S.Ct. 1053 [approving racial quotas].) It does not, however, preclude a state from providing its citizens greater protection against both. (Cf. *Shaw v. Reno* (1993) 509 U.S. 630, 654, 113 S.Ct. 2816, 125 L.Ed.2d 511 [with respect to equal protection, "courts must bear in mind the difference between what the law permits and what it requires"].) Unlike the equal protection clause, section 31 categorically prohibits discrimination and preferential treatment. Its literal language admits no "compelling state interest" exception; we find nothing to suggest the voters intended to include one sub silentio.

Both quotes point out that Proposition 209 does not include a ‘compelling interest’ exception. The import of those observations is that had there been such an exception, there would have been no conflict between Proposition 209 and a use of race that would have been merely permissible under the 14th Amendment. However, the *Croson* test has a second prong: the remedy has to be ‘narrowly tailored’. Note then the following language in *Ward Connerly*:

The statutory scheme [re professional bond services] does not arguably withstand strict scrutiny. No justification has been shown. There was no specific finding of identified prior discrimination in the contracting for

¹⁴⁰ See *Shaw v. Reno*, *supra*, 509 U.S. at p. 654 {113 S.Ct/ at pp. 2830-2831, 125 L.Ed.2d at p. 533} (maj.opn.)

¹⁴¹ *Hi-Voltage*, *supra*, 24 Cal.4th at p. 567.



professional bond services. There was no effort to limit recovery to those who actually suffered from prior discrimination. There was no showing that non-race-based and non-gender-based remedies would be inadequate or were even considered. The scheme is unlimited in duration. And, except for its limitation to citizens and lawfully admitted aliens, the scheme is unlimited in reach.¹⁴²

Hi-Voltage also refers to the impact of a disparity study-based remedy. 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. . .” 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.” 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 need to decide whether Proposition 209 as applied conflicts with the Equal Protection Clause of the 14th Amendment

This issue could be raised by a court challenge, a narrowly tailored remedy growing out of a disparity study process specifically sanctioned by the U.S. Supreme Court in the *Croson* Case, in accordance with *Marbury v. Madison* in 1803, the answer to that question is for the federal courts to decide, not California. *Croson* said such race-conscious contracting remedies are appropriate.

There is also the matter of the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964 attaching to the receipt of federal funds.¹⁴³ Whether it trumps Proposition 209 is still in litigation. San Francisco is appealing on that ground the July 26, 2004 Superior Court decision in *Coral Construction v. San Francisco* that Proposition 209 barred its race-conscious program.¹⁴⁴

The application of Title VI to Sacramento Municipal Utility District is also on appeal in *C&C Construction v. SMUD*. The recent majority Court of Appeals opinion began with the point that race neutral programs are the only ones Proposition 209 permits in California, but acknowledged that its provisions were subject to federal law. It viewed the regulations of the Departments of Energy, Defense, and Transportation as not *requiring* recipients of federal funds to use conscious remedial programs for identified discrimination. Moreover, its reading of the regulations themselves was that SMUD’s actions had to be consistent with Proposition

¹⁴² Connerly, 92 Cal. App. 4th at 54.

¹⁴³ The 1987 Civil Rights Restoration Act reversed court decisions that restricted its reach.

¹⁴⁴ It is also challenging the procedural propriety of the court granting plaintiff summary judgment because the factual record did not support one.



209.¹⁴⁵ Also, SMUD’s 1998 update of its 1993 disparity study, both of which found *Croson*-level discrimination against MBEs, did not look at whether race neutral remedies would suffice to meet its federal nondiscrimination obligations.¹⁴⁶ Indeed, the majority observed that the update consultant was specifically instructed not to consider that factor. Finally, under its reading of the regulations, the burden was on SMUD to show that it would *lose* funds if it did not put in place the race-conscious program it did.

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 not suffice. It cited *S.J. Groves & Sons v. Fulton County*, an 11th Circuit opinion¹⁴⁷, as support. The required ‘affirmative action’ did not refer only to race-neutral programs; it includes race-conscious ones.¹⁴⁸ It was for the Department Secretary to determine whether SMUD is 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, it 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.

SMUD has indicated that it intends to appeal the Court of Appeal’s ruling.

¹⁴⁵ “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].”

¹⁴⁶ By implication, we note, if SMUD had, it could have move to a race-conscious program.

¹⁴⁷ 920 F.2d 752 (1991).

¹⁴⁸ The applicable regulation “condone[s], and in some cases *require[s]*, race-conscious regulations and/or action”. (*italics added*) 920 F.2d at 764-765



VI. CONSIDERATION OF RACE-NEUTRAL OPTIONS

A remedial program must address the source of the disadvantage faced by minority or woman owned 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.¹⁴⁹

On the other hand, an M/WBE program cannot stand if the sole barrier to minority or woman business participation is a barrier which is faced by all new businesses, regardless of ownership.¹⁵⁰ If the evidence demonstrates that the sole barrier to M/WBE participation is that M/WBE's disproportionately lack capital, or cannot meet bonding requirements, then only a race-neutral program of financing for all small firms would be justified.¹⁵¹ In other words, if the barriers to minority participation are race-neutral, then the program must be race-neutral or contain race-neutral aspects. 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 in addition to capital and bonding requirements, which are race-neutral, M/WBEs also face race discrimination in the awarding of contracts, then a race-conscious program will stand, so long as it also includes race-neutral measures to address the capital and bonding barriers.¹⁵²

The Ninth Circuit Court of Appeals in *Coral Construction* ruled that there is no requirement that an entity exhaust every possible race-neutral alternative.¹⁵³ Instead, an entity must make a serious, good faith consideration of race-neutral measures in enacting an MBE program. Thus, in assessing low MBE utilization, it is imperative to examine barriers to MBE participation that go beyond "small business problems." The impact on the distribution of contracts of programs that have been implemented to improve MBE utilization should also be measured.¹⁵⁴

¹⁴⁹ AGCC II, 950 F.2d at 1404.

¹⁵⁰ *Croson*, 488 U.S. at 508.

¹⁵¹ *Id.* at 507.

¹⁵² *Id.* (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses).

¹⁵³ *Coral Construction Co. v. King County*, 941 F.2d 910 (9th Cir. 1991).

¹⁵⁴ *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."



In particular, the County should examine the success of its small business program. If (1) there are findings of statistically significant underutilization of minority businesses, and (2) such a race neutral response has fallen demonstrably short as a remedy, such facts may add impetus to the necessity for race-conscious remedies, concerns about Proposition 209 notwithstanding.¹⁵⁵

VII. CALIFORNIA'S SMALL AND MICRO BUSINESS PROGRAM (AB 1084)

AB 1084, enacted in October 2001, authorized counties to establish small and micro business programs. The legislation authorized up to a five percent bid preference for such firms, subcontracting participation goals, and up to a five percent preference for bidders who meet those goals. Bidders are required to make Good Faith Efforts to meet the goals and, if they fail to do so, to demonstrate that they made Good Faith Efforts to do so.

AB 1084 defined small businesses as those with their principal place of business in California, with 100 employees or less and annual gross receipts of \$10,000,000 or less. Micro businesses are those that together with affiliates whose gross receipts over three do not exceed \$2,500,000.

AB 1084 was amended last year to authorize local agencies, which include counties, to further define what is a small business, thereby permitting lower thresholds.

VIII. SUMMARY

The decision of the U.S. Supreme Court in the *Croson* case changed the legal landscape for business affirmative action programs and altered the authority of local governments to institute remedial race and gender conscious public contracting programs. This chapter examined what *Croson* and its progeny require of a disparity study if it is to serve as legal justification for a race and gender conscious affirmative action programs. The County will also need to comply with Proposition 209.

¹⁵⁵ See discussion above about *C&C Construction v. SMUD*. The majority opinion does not bar race-conscious programs if race neutral programs have been considered.



IX. LIST OF CASES

Cases

Adarand Constructors, Inc. v. Federico Pena, 115 S.Ct. 2097 (1995).

Associated General Contractors of America v. City of Columbus, 936 F. Supp. 1363 (S.D. Ohio 1996).

Associated General Contractors of California v. City and County of San Francisco, 813 F.2d 922 (9th Cir. 1987).

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

Associated General Contractors of California v. San Francisco Unified School District, 616 F.2d 1381 (9th Cir. 1980).

Associated General Contractors of Connecticut v. City of New Haven, 791 F.Supp. 941 (D. Conn. 1992).

Associated General Contractors of Ohio v. Drabik, 50 F.Supp. 741 (S.D. Ohio 1999).

Capeletti Brothers, Inc v. Metropolitan Dade County, 776 F.Supp. 1561 (S.D. Fla. 1991).

Chicago Firefighters Local 2 et al. v. City of Chicago, Nos. 00-1272, 00-1312 to 00-1314 & 00-1330 (7th Cir. May 3, 2001) available at <http://laws.findlaw.com/7th/001272>.

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

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“Concrete Works I”

Concrete Works of Colorado v. City and County of Denver, on remand, 86 F.Supp.2d 1042 (D. Colo 2000)

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Concrete Works of Colorado, Inc. v. The 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).

Cone Corporation v. Florida Dept. of Transportation, 921 F.2d 1190 (11th Cir. 1991).

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

Conlin v. Blanchard, 890 F.2d 811 (6th Cir. 1989).

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Eisenberg v. Montgomery County Public Schools, 19 F.Supp.2d 449, *rev'd* 197 F.3d 123 (4th Cir. 1999).

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Harrison & Burrowes Bridge Constructors, Inc. v. Mario M. Cuomo, 981 F.2d 50 (2nd Cir. 1992).

Hayes v. North State Law Enforcement Officers Ass'n, 10 F.3d at 217 (4th Cir. 1993).

Hazelwood School District v. United States, 433 U.S. 299 (1977).

High-Voltage Wire Works, Inc. v. City of San Jose, 24 Cal.4th 537 (2000).

International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977).

L.D. Mattson, Inc. v. Multnomah County, 703 F.Supp. 66 (D. Or. 1988).



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).

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Mainline Paving v. Board of Education, 725 F.Supp. 1349 (E.D.Pa. 1989).

Maryland Minority Contractors Association v. Maryland Stadium Authority, 198 F.3d 237 (1999).

M.G.M. Construction Co. v. Alameda County, 615 F.Supp. 149 (D.C. Cal. 1985).

Michigan Road Builders Association v. Milliken, 834 F.2d 583 (6th Cir. 1987).

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Mississippi University for Women v. Hogan, 458 U.S. 718 (1982).

Monterey Mechanical Co. v. Pete Wilson et al., 125 F.3d 702 (9th Cir. 1997).

O'Donnell Construction Company v. District of Columbia, 963 F.2d 420 (D.C. Cir. 1992).

Ohio Contractors Association v. City of Columbus, 733 F.Supp. 1156 (S.D. Ohio 1990).

Podberesky v. Kirwan, 38 F.3d 147 (1994).

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Stuart v. Roache, 951 F.2d 446 (1st Cir. 1991).

United States v. Virginia, 116 S.Ct. 2264 (1996).

Webster v. Fulton County, 51 F.Supp. 1354 (1999).

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



Statutes

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



Appendix A

The main components of the new U.S. Department of Transportation rules are as follows:

1. Meeting Overall Goals

Section 26.51 requires that the “maximum feasible portion” of the overall DBE goal be met through the use of race/gender-neutral mechanisms. To the extent that these means are insufficient to meet overall goals, recipients may use race/gender-conscious mechanisms, such as contract goals. However, contract goals are not required on every USDOT-assisted contract, regardless of whether they were needed to meet overall goals.

If during the year it becomes apparent that the goals will be exceeded, the recipient is to reduce or eliminate the use of goals. Similarly, if it is determined that a goal will not be met, an agency should modify the use of race and gender neutral and race and gender conscious measures in order to meet its overall goals.

Set-asides may not be used for DBEs on USDOT contracts subject to part 23 except, “in limited and extreme circumstances when no other method could be reasonably expected to address egregious instances of discrimination.”

2. Good Faith Efforts

The new regulation emphasizes that when recipients use contract goals, they must award the contract to a bidder that makes Good Faith Efforts to meet the goal. The contract award cannot be denied if the firm has not attained the goal, but has documented Good Faith Efforts to do so. Recipients must provide administrative reconsideration to a bidder who is denied a contract on the basis of a failure to make Good Faith Efforts.

3. DBE Diversification

Section 26.33 is an effort to diversify the types of work in which DBEs participate, as well as to reduce perceived unfair competitive pressure on non-DBE firms attempting to work in certain fields. This provision requires that if agencies determine there is an over-concentration of DBEs in a certain type of work, they must take appropriate measures to address the issue. Remedies may include incentives, technical assistance, business development programs, and other appropriate measures.

4. Alternative Programs

Section 26.15 allows recipients to obtain a waiver of the provisions of the DBE program requirements if they demonstrate that there are, “special or exceptional circumstances, not



likely to be generally applicable, and not contemplated in connection with the rulemaking that establish this part.”





2

CONTRACTING AND PROCUREMENT POLICIES AND PROCEDURES

I. INTRODUCTION

This chapter describes the policies and procedures that governed Alameda County's (County) procurement process during the study period of July 1, 2000 to June 30, 2003. The purpose of this description was to identify policies and procedures that may serve as barriers to businesses having equal access to County contracting and procurement opportunities. The four industries included in the study are construction, architecture and engineering, professional services, and goods and other services.

The County operates several business development programs: the Minority and Women Business Enterprise (M/WBE) Construction Outreach Program, the Disadvantaged Business Enterprise (DBE) Program required of U.S. Department of Transportation (USDOT) fund recipients, and the Small Local Emerging Business (SLEB) Program for all industries, except construction. These Programs are also described in this chapter.

Procurement documents were provided by the General Services Agency (GSA), Public Works Agency (PWA), and the Auditor. Mason Tillman received a total of 22 separate documents describing the procurement policies, procedures and business development programs utilized in the three agencies between July 1, 2000 to June 30, 2003. The documents provided by the GSA are listed below:

- Alameda County Administrative Code
- Alameda County Affirmative Action Program for Construction Contracts Over \$100,000
- Alameda County General Services Agency Disaster Response Purchasing Procedures for County Departments
- Alameda County Purchase Order Types and Payment Procedures
- Alameda County Sheriff's Office General Order



- California Administrative Code
- General Services Agency, Purchasing Department, Purchasing Card Policies and Procedures Manual
- General Services Agency Purchasing Goods and Services Contracting Policies and Procedures
- Technical Services Department, Architecture and Engineering Selection Procedures
- Technical Services Department Three Quote Procedure for Labor and Materials Purchases
- Technical Services Department Check List for Construction Contract Bid Process
- Technical Services Department Specifications and other Bidding and Contract Documents

PWA provided the following documents:

- Alameda County Public Works Agency Consultant Services Handbook
- Alameda County Public Works Agency Specifications, Volume 1, Instructions to Bidders and Alameda County Standard General Procedures
- County of Alameda, Construction Division, Contract Administration Office, Office Procedures Manual
- Legal and/or Policy References for Contract Administration Procedures
- Public Contract Code (relevant sections)

The Auditor's Office provided one document:

- Financial, Accounting, BACIS Auditor Manual

The GSA and PWA provided the following documents describing the County's M/WBE, DBE, Local and SLEB Programs:

- Minority/Woman-Owned Business Enterprise Affirmative Action Program for Construction Contracts Over \$100,000
- Public Works Agency Disadvantaged Business Enterprise (DBE) Program
- Small, Local Emerging Business Program, Small/Emerging Certification Instructions
- Small Local Emerging Business Program Policy Manual

II. COUNTY CONTRACTING PROCESS

The following process was used to determine the industries for vendors in the Availability Study. The County provided purchase order and contracting records for the Study from its ALCOLINK accounting system. Each record in ALCOLINK contained a Category Field Description used by GSA and the auditor to categorize purchase orders and contracts by type of work. The categories the County used were often not specific enough for the Availability Study, which is focused on the four industries of construction, architecture and engineering, professional services, and goods and other services. In addition, in some instances, the



categories were inaccurate. For example, Mason Tillman’s long term Alameda County contract entitled *Alameda County Clean Creeks* was categorized in ALCOLINK as a landscape service, while that contract is for a social marketing service. To verify each vendor’s industry, the vendor’s company name was cross-referenced with the company’s business description appearing in various certification lists and business directories.¹ This information was used to ensure that industry codes were accurately assigned in one or more of the four industries being considered in the Availability Study.

A. Construction

Alameda County has three agencies responsible for letting construction contracts, GSA, Zone 7, and PWA. There are three procurement levels: informal contracts \$25,000 and under and \$25,001 to \$100,000, and formal contracts over \$100,000. There are also sole source and emergency procurement.² Table 2.01 below summarizes the requirements for construction contracts.

Table 2.01 Construction Contract Requirements

Contract Process	Dollar Threshold	Quote Solicitation	Media Advertisement	Board Approval
Informal	\$25,000 and Under	Yes	No	No
Informal	\$25,001 to \$100,000	Yes	Optional	Yes
Formal	Over \$100,000	Yes	Yes	Yes
Emergency Purchases	None	No	No	No

¹ The certification and business lists are described in the Availability Chapter of this report.

² Additional categories are purchase cards, on-the-spot purchases, and direct claims. The department may use a County purchase card if the price of the commodity or service, including tax and shipping, does not exceed \$3,000. A department approves authorized purchase card users who submit an approved request to GSA to participate in the purchase card program. Purchase card purchases are excluded from the Availability Study because of the difficulty tracking vendors from whom purchases were made. On-the-spot purchases are not so marked in the County’s accounting system and are assumed to be counted in the County’s purchase orders. The Board of Supervisors has vested the County’s Auditor-Controller with the power to purchase through direct claims when the purchasing process would not be enhanced by GSA’s participation. The Auditor-Controller maintains a list of items that are suitable for direct claim. The list includes items such as postage, post office box rentals, Bay Area Rapid Transit (BART) and Alameda County transit tickets, magazine subscriptions, memberships, books, honorariums, election expenses, arbitration fees, and government forms and publications. These types of procurement are also excluded from the Study.



1. Informal Contracts \$25,000 and under

- Contracts are awarded without public advertising.
- Solicitation for these small contracts is informal.
- Project managers are required to obtain three quotations.

2. Informal Contracts \$25,001 to \$100,000

- Contracts are formally advertised.
- Contracts are advertised on the County's web site, in local plan rooms, and in various media outlets.
- Recommendation to award a contract must be approved by the Board of Supervisors.

3. Formal Contracts over \$100,000

- Board of Supervisors approval is required prior to advertising the bid
- Contracts are formally advertised.
- Contracts are advertised on the County's web site, in local plan rooms, and in various media outlets.
- There is a mandatory "bid walk" or pre-bid briefing where the project specifications are discussed
- Recommendation to award a contract must be approved by the Board of Supervisors.
- Contracts are subject to the Construction Outreach Program, requiring prime contractors to make a good faith effort to subcontract 20 percent of the contract value with minority and women-owned firms.³

4. Bidders Security

Pursuant to the Public Contract Code section 20129 all bids for construction services must be accompanied by one of the following forms of bidder security:

- 1) A cashier's check made payable to the County
- 2) A certified check made payable to the County
- 3) A bidder's bond

After award to the lowest responsible bidder, the security of the unsuccessful bidders must be returned within 60 days of the contract award.⁴



³ In November 2003, the County revised its Construction Outreach Program. The new Enhanced Construction Outreach Program had a 65 percent Local Business Enterprise goal and 30 percent Small Local Business Enterprise goal.

⁴ Ibid sections 20129, 20392 and 20404.

5. Bid Advertising

The notice requesting bids must be advertised in a daily newspaper or weekly newspaper of general circulation in the County. If there is no such periodical available, the notice must be posted in three public areas for at least two weeks. For County highway work, notices must be published ten consecutive times prior to bid opening in a daily general circulation newspaper or at least twice in a weekly newspaper. The County announces the contract opportunity by sending a Notice to Bidders by e-mail, advertising the bid on GSA's website and in plan rooms, and advertising projects in local ethnic and trade organization publications. Before bids are submitted, they host a Bid Walk and a bidders conference.

Any addendums to the bid are posted to GSA's website, and the bidders conference attendees are notified by e-mail. The departments receive the bids, identify the two lowest bidders, and forward them to the County's Contract Compliance Officer (CCO) to review. The CCO then forwards the bids to the County's Good Faith Effort Consultant to review. Once the Good Faith Effort Consultant reviews the bids, the department makes a recommendation for award and drafts a board letter and a fact sheet for presentation to the Board of Supervisors. These must be approved by the department's Director. Once the Director approves and signs the letter, the department issues a Notice of Bid Acceptance to the selected contractor and a Non-Acceptance Letter to all other bidders. PWA publishes its formal bids in the Inter-City Express newspaper on Wednesdays and Fridays, with regular projects being advertised twice, one week apart and with second advertisement ten days in advance of the opening.

6. Subcontractors

On construction contracts subcontractors whose subcontract value is greater than one-half of one percent of the total prime contract value must be listed in the bid.⁵ Once listed, a prime contractor may not substitute a subcontractor without the consent of the awarding agency and then only under specific circumstances. Prior to the awarding agency's approval of the substitution, the prime contractor must notify the subcontractor of the substitution in writing and allow for the subcontractor's objections.⁶

7. Bid Opening

Bids submitted must be sealed and publicly opened by the County. The contract is awarded to the lowest responsible bidder by the Board of Supervisors.⁷

⁵ Ibid section 4104.

⁶ Ibid section 4107.

⁷ Ibid sections 20128, 20393 and 20405(a).



8. Exceptions: Emergency Contracts

The County issues construction contracts without formal bidding in emergencies pursuant to the Public Contract Code Section 22050.

B. Architecture and Engineering

GSA's Technical Services and Building Maintenance departments and the County's Public Works Agency, Community Development, and Zone 7 each contract for architecture and engineering services. While these offices are authorized to administer their own procurement processes for architecture and engineering, they follow GSA's policies and procedures. Therefore, this section reports GSA's policies and procedures as the standard for architecture and engineering contracting.

There are three procurement levels: informal contracts \$25,000 and under and \$25,001 to \$100,000, and formal contracts over \$100,000. Informally bid contracts do not require publication of the bid notice. Formal contracts require publication of the contract opportunities. Sealed bids are solicited by a notice placed at least once in a newspaper printed and published in the County.⁸ (See Table 2.02 below.)

Competitive contracts are awarded based on a combination of factors, including qualifications and price.⁹ Pursuant to Alameda County Administrative Code § 4.12.010, architecture and engineering contracts must be competitively bid, whenever possible.

Table 2.02 summarizes the requirements for contracts at each of the three levels previously identified. Requirements for sole source and emergency are also detailed.

⁸ These definitions of informal and formal bids apply to all of the industries considered in the Study. The publication guidelines are consistent with Alameda County Administrative Codes § 4.12.020 and § 4.12.040 for Architecture and Engineering, Professional Services, and the Procurement of Goods and Other Services and with California Public Contract Code § 22034 and § 22037, for Construction.

⁹ These definitions of competitive and noncompetitive apply to all of the industries considered in the Study with the exception of Construction.



Table 2.02 Architecture and Engineering Contract Requirements

Contract Process	Dollar Threshold	Quote Solicitation	Media Advertising	Board Approval
Informal	\$25,000 and Under	Yes	No	No
Informal	\$25,001 to \$100,000	Yes	Yes	Yes
Formal	Over \$100,000	Yes	Yes	Yes
Sole Source	None	No	No	Yes
Emergency	None	No	No	No

1. Architecture and Engineering Contracts \$25,000 and Under

Pursuant to Alameda County Administrative Code 4.12.010, departments are required to utilize a competitive contracting process with awards based on a combination of factors including qualifications and price.

The informal competitive process requires departments to minimally contact three vendors and select the best qualified proposer.

2. Architecture and Engineering Contracts \$25,001 to \$100,000

Architecture and engineering contracts \$25,001 to \$100,000 require Board approval. These contracts are formally advertised awards based on selection criteria listed in the request for proposals or request for qualifications. Selection criteria can include, but not be limited to: project team qualifications, past experience, project management capability, and design expertise. Recommendations for award must be approved by the Board of Supervisors.

3. Formal Architecture and Engineering Contracts Over \$100,000

Architecture and engineering contracts over \$100,000 require Board approval.¹⁰ Pursuant to Alameda County Administrative Code Section 4.12.020, contracts over \$100,000 must be awarded according to a formal contracting process. The formal process is competitive, with

¹⁰ GSA Goods and Services Contracting Policies and Procedures.



the vendor responding to a Request for Qualifications/Request for Proposals (RFQ/RFP).¹¹

- Announcing the Contract Opportunity

In the formal contracting process, a Request for Interest (RFI) is issued. An RFI is a short summary of the upcoming contracting opportunity with a brief description of the contract's intent, scope of work, minimum requirements and qualifications, a calendar of events, contact information, and a vendor application. The RFI is also distributed to a pool of firms, including firms in the SLEB database. The RFI is advertised on GSA's media outlet list and it is posted on GSA's website.¹²

Potential proposers respond to the RFI by returning a completed vendor application.

- RFP/Q from Interested Vendors

The RFP is released after the RFI. GSA works with the department to develop an RFP/Q, which must be approved by GSA and the department head or a department contact. In some cases, the RFP/Q must be approved by County Counsel.

The RFP/Q provides more comprehensive information than the RFI, including the terms of the contract, instructions for responding, evaluation criteria, and an opportunity to submit written questions. Questions are answered at the Networking/Bidders Conference, organized after the release of the RFP/Q but before the proposals/quotations are due. In addition to answering questions, the conference is designed to provide further networking opportunities for SLEBs and opportunities for the County to get feedback on the project.

Firms that submit a vendor application in response to the RFI are sent the RFP/Q, when issued. Pursuant to Alameda County Administrative Code Section 4.12.020, the RFP/Q is minimally advertised for one day in a local newspaper at least five days before bids are due. The RFP/Q is also advertised on GSA's website.¹³

- Evaluation of Responses to a Request for Proposals/Qualifications¹⁴

Proposals are reviewed at two levels. At the first level, the buyer reviews the proposals to determine if the administrative requirements have been met. At the second level, the buyer

¹¹ Alameda County Administrative Code § 4.12.010.

¹² SLEB is the County's Small Local Emerging Business Program. It requires participation on all County contracts (except Construction). The program is detailed in section five of this chapter.

¹³ GSA Goods and Services Contracting Policies and Procedures.

¹⁴ Vendors submit responses to an RFP—Request for Proposals—when the contracting process is noncompetitive, i.e. based on a combination of factors including qualifications and price.



distributes copies of the complete responses to members of a selection committee chosen to evaluate the proposal. The committee evaluates and numerically scores the proposals according to the RFP specifications. It must reach a consensus for ranking the proposals.

From this evaluation process, a short list of qualified firms is generated. The firms are interviewed before a final determination is made. The committee members submit questions to the buyer, who leads the interview. The committee makes a final selection after the interview phase.

Recommendations for award are subject to the Board of Supervisors' approval.

4. Exemptions

a. Sole Source Purchases

Alameda County Administrative Code Section 4.12.010 allows for the purchase of architecture and engineering services without competitive bidding if the service is proprietary in nature.¹⁵ The department must submit a Sole Source Justification Waiver to GSA explaining in detail the service, its unique function, similar services, and the shortcomings of those services. GSA must approve all sole source contracting, and additional approval by the Board of Supervisors is required when the purchase is over \$25,000.

The procedures for sole source procurement applies to all of the products and services in all of the industries considered in this study except construction.

b. Emergency Contracts¹⁶

The County defines an emergency as an unforeseeable present, immediate, and existing occurrence for which the purchase of supplies or services is necessary for the protection, safety, and well-being of both people and property. The procedures for purchasing in emergency conditions require departments to attempt a purchase through blanket purchase order first. The purchase may be made through a purchase card if the commodity or service is not available through blanket purchase order and costs \$3,000 or less. Finally, the purchase may be made through emergency purchase order if it is not available through the first two methods.

When a department procures by blanket purchase order to contract with a vendor, it can have a term of up to one year. Departments do not need to submit a requisition to GSA Purchasing

¹⁵ This section of the Code states that a competitive process should be utilized *whenever possible*. A sole source scenario necessitates abandonment of the competitive process.

¹⁶ This section is based on GSA's Disaster Response Purchasing Procedures for County Departments.



when they have an assigned blanket purchase order for architecture and engineering services.

If the necessary purchases are not available through the blanket purchase order method, the department may procure supplies or services up to \$3,000 by using the County purchase card. If the purchase card, however, is not feasible because of spending limits or restrictions on the types of purchases that can be made, the emergency purchase order method can be utilized. Purchases can be made by this method without submitting a requisition to GSA. GSA completes an emergency purchase order, checks the budget, and forwards the request to the vendor. Departments must consider the two previous options—Blanket Purchase Order and County Purchase Card—before utilizing the Emergency Purchase Order method.

As an alternative to these methods, the petty cash or personal expense claim may be utilized. Departments can authorize their employees to make department purchases with personal funds. Those employees are reimbursed out of their department's petty cash or by submitting an expense claim to the auditor.

Emergency purchases do not require the Board of Supervisors' approval. In the event that a local emergency is declared, however, the Board may establish additional guidelines to regulate expenditure limits and bidding procedures.

Pursuant to Alameda County Administrative Code Section 4.12.060, if the amount of the purchase exceeds \$100,000, an account of the circumstances must be submitted in writing to GSA, which must concur that an emergency actually exists that warrants the expenditure.

C. Professional Services

All County departments are authorized to administer their own procurement processes for professional services contracts. Departments, however, follow GSA's procurement documents. Therefore, this section reports GSA's standards for professional services contracting.¹⁷

There are three procurement levels: informal contracts \$25,000 and under and \$25,001 to \$100,000, and formal contracts over \$100,000.

Table 2.03 summarizes the requirements for contracts at each of the three levels previously identified. Requirements for sole source and emergency purchases are also detailed.



¹⁷ The policies and procedures for procuring professional services contracts are the same as those for procuring architecture and engineering contracts.

Table 2.03 Professional Services Contract Requirements

Contract Process	Dollar Threshold	Quote Solicitation	Media Advertising	Board Approval
Informal	\$25,000 and Under	Yes	No	No
Informal	\$25,001 to \$100,000	Yes	No	Yes
Formal	Over \$100,000	Yes	Yes	Yes
Sole Source	None	No	No	Yes
Emergency	None	No	No	No

1. Informal Professional Services Contracts

a. Professional Services Contracts \$25,000 and Under

Professional services are required to be procured at this level through a competitive contracting process, whenever possible.¹⁸ If there are no contracts in GSA’s database to meet the department’s need, the informal competitive contracting process will be completed. However, departments are expected to make every effort to publicize contracts and quotations. Departments can contact a minimum of three vendors and select the lowest bidder.

The department may also make a purchase on the spot if they deem it to be in the best interest of the County or if prior experience indicates that a specific vendor is the best choice.¹⁹

b. Professional Services Contracts \$25,001 to \$100,000

Departments are required to procure professional services contracts at this level through the same informal competitive contracting process or on the spot purchase used for contracts \$25,000 and under. The difference at this level is that contracts require approval by the Board of Supervisors.²⁰

¹⁸ Alameda County Administrative Code § 4.12.010.

¹⁹ Alameda County Administrative Code § 4.12.040.

²⁰ GSA Goods and Services Contracting Policies and Procedures.



2. Formal Professional Services Contracts Over \$100,000

Professional services contracts over \$100,000 require Board of Supervisor approval.²¹ Pursuant to Alameda County Administrative Code Section 4.12.020, contracts over \$100,000 must be awarded according to a formal contracting process. Whenever possible, the formal process is competitive.²²

3. Exemptions

a. Sole Source Purchases

The procedures for sole source purchases that apply to architecture and engineering also apply to professional services.

b. Emergency Contracts²³

The emergency procedures that apply to architecture and engineering also apply to professional services.

D. Goods and Other Services

All County departments are authorized to administer their own processes for goods and other services. Departments, however, follow GSA's policies and procedures. Therefore, this section reports GSA's policies and procedures as the standard for goods and other services.²⁴

There are three procurement levels: informal contracts \$25,000 and under and \$25,001 to \$100,000, and formal contracts over \$100,000.

Table 2.04 summarizes the requirements for goods and Table 2.05 summarized the requirements for other services. Requirements for sole source and emergency purchases are also detailed.

²¹ GSA Goods and Services Contracting Policies and Procedures.

²² Alameda County Administrative Code § 4.12.010.

²³ This section is based on GSA's Disaster Response Purchasing Procedures for County Departments.

²⁴ The policies and procedures for goods and other services contracts are the same as those for procuring architecture and engineering and professional services contracts.



Table 2.04 Goods Contract Requirements

Contract Process	Dollar Threshold	Quote Solicitation	Media Advertisement	Board Approval
Informal	\$25,000 and Under	Yes	No	No
	\$25,001 to \$100,000	Yes	Yes	No
Formal	Over \$100,000	Yes	Yes	No
Sole Source	None	No	No	Yes
Emergency	None	No	No	No

Table 2.05 Other Services Contract Requirements

Contract Process	Dollar Threshold	Quote Solicitation	Media Advertisement	Board Approval
Informal	\$25,000 and Under	Yes	No	No
	\$25,001 to \$100,000	Yes	Yes	Yes
Formal	Over \$100,000	Yes	Yes	Yes
Sole Source	None	No	No	Yes
Emergency	None	No	No	No



1. Informal Goods and Other Services Contracts

a. Goods and Other Services Contracts \$25,000 and Under

Goods and other services are required to be procured at this level through a competitive contracting process whenever possible.²⁵ If there are no contracts in GSA's database to meet the department's need that were previously competitively bid, the informal competitive process will be completed. Departments make every effort to publicize contracts and allow a reasonable amount of time for vendors to submit their quotations. Departments contact a minimum of three vendors and select the lowest bidder.

b. Goods Contracts \$25,001 to \$100,000

Departments are required to procure goods contracts at this level through the competitive contracting process or on the spot purchase used for contracts \$25,000 and under. Contracts for goods must be approved by GSA's Purchasing Manager and/or Deputy Director. Contracts for goods do not have to be approved by the Board of Supervisors.

c. Other Services Contracts \$25,001 to \$100,000

Departments are required to procure other services contracts at this level through the informal competitive contracting process or on the spot purchase used for contracts \$25,000 and under. Contracts for other services must be approved by the Board of Supervisors.

2. Formal Goods and Other Services Contracts over \$100,000

Contracts on goods and other services must be awarded according to a formal contracting process. Contracts for other services must be approved by the Board of Supervisors.

3. Exemptions

a. Sole Source Purchases

The procedures for sole source purchases that apply to architecture and engineering also apply to goods and other services.



²⁵ Alameda County Administrative Code § 4.12.010.

b. Emergency Contracts²⁶

The emergency procedures that apply to architecture and engineering also apply to goods and other services.

III. RISK MANAGEMENT

The County's Risk Management Unit determines the type of insurance coverage required for contracts. Risk Management maintains a list that matches contract type with coverage requirement. This list is available on the County's Intranet. Departments can download the list, choose the appropriate coverage type for the contract they are letting, and print a description of that coverage to attach to their contract. Waivers are available on a case-by-case basis and are subject to review and approval by the Risk Management Unit.

While coverage differs by contract, all contractors' insurance coverage must meet the following conditions:²⁷

- The coverage must name the County, the Board, all County officers, agents, employees, and representatives as additional insured parties;
- The coverage must be maintained during the entire term of the contractor's agreement with the County;
- Insurance policies and coverages written on a claims-made basis must be maintained during the entire term and three years following the termination and acceptance of all work provided under the agreement.
- The coverage must serve as the primary insurance for all insured parties;
- The contractor must make the determination of possible risk in securing adequate coverage because claims against the contractor will consider neither the limits of the coverage nor the minimum coverage required by the County;
- The coverage must be maintained with an insurer who has an A.M. Best Rating of no less than A:VII;
- Subcontractors must provide their own coverage, unless they are included with the prime contractor coverage;

²⁶ This section is based on GSA's Disaster Response Purchasing Procedures for County Departments.

²⁷ Alameda County Minimum Insurance Requirements (Exhibit C).



- If the contract is with an association or joint venture, the association or joint venture must be named in the coverage as the insured; if not, each entity that makes up the association or joint venture must maintain individual coverage; and
- The County must be notified in writing 30 days in advance should the coverage be canceled and/or modified.

A Certificate of Insurance that is approved by either the contracting department, GSA Purchasing Department, or the Risk Management unit must be sent to the contracting department before any notice to proceed can be issued.

IV. DISPUTE RESOLUTION

GSA has written policies and procedures for resolving disputes surrounding contract terms and payment issues. This section reports these policies and procedures for departments that use GSA’s standards. This section does not discuss departments that administer their own processes and do not have written policies and procedures.²⁸

Contractors who wish to protest the contracting process or the awarding of a contract must do so in writing to GSA’s Deputy Director. This written statement must contain the basis for the protest. The statement must be submitted by 5:00 p.m. on the fifth business day following the notice of contract award. It must also be submitted to all parties who have a direct financial interest in the outcome of the protest.

In response to the written statement, GSA’s Deputy Director must either schedule a meeting or issue a written response within five business days. Contractors may subsequently appeal to GSA’s Director if they are not satisfied with the Deputy Director’s decision. GSA’s Director makes the final determination. The Director, along with the Deputy Director and GSA Purchasing decide if documents to the Board of Supervisors should include information about the protest.²⁹



²⁸ Those departments include the Community Development Agency, Public Works Agency, and Zone 7.

²⁹ The written policies and procedures do not have any guidelines for making this decision.

V. ALAMEDA COUNTY PROGRAMS

The County operates several business development programs: the Minority and Women Business Enterprise (M/WBE) Construction Outreach Program, the Disadvantaged Business Enterprise (DBE) Program required of U.S. Department of Transportation (USDOT) fund recipients, and the Small Local Emerging Business (SLEB) Program for all industries, except construction. The summary of the Programs and their covered industries, related contract thresholds, goals, and bid preferences is presented in the table below.

Table 2.06 Summary of County Program Characteristics

Programs	Industries Included	Preferences
<ul style="list-style-type: none"> Minority and Women Business Enterprise Construction Outreach Program 	<ul style="list-style-type: none"> Construction 	<ul style="list-style-type: none"> Over \$100,000 Average annual Goals: 15% Minority Business Enterprises and 5% Women Business Enterprises
<ul style="list-style-type: none"> U.S. Department of Transportation Disadvantaged Business Enterprise Program 	<ul style="list-style-type: none"> All industries 	<ul style="list-style-type: none"> Over \$100,000 Overall annual goal set annually for Disadvantaged Business Enterprises
<ul style="list-style-type: none"> Small Local Emerging Business (SLEB) Program 	<ul style="list-style-type: none"> Architecture and Engineering Professional Services Goods and Other Services (Construction is excluded) 	<ul style="list-style-type: none"> Sealed bids over \$25,000: 5% bid evaluation preference to Local Businesses and 5% bid evaluation preference to Small or Emerging Businesses, for a maximum total of 10% bid evaluation preference* Non-SLEBs do not receive bid evaluation points and are required to partner a minimum of 20% with certified SLEBs

* Small and emerging businesses must meet the definition of a local business to become certified. The SLEB program certifies local small and local emerging businesses. There is no certification for local large businesses.



A. Minority and Women Business Enterprise Construction Outreach Program

Construction contracts that exceed \$100,000 require compliance with goals established for M/WBEs or demonstrating a Good Faith Effort to do so, pursuant to the County's Construction Outreach Program. The purpose of the Program is to ensure that M/WBEs are afforded an equal opportunity to participate in the County's construction contracting opportunities.

1. Program Certification

The County's Construction Outreach Program sets forth specific standards to determine whether a firm is eligible for consideration as an M/WBE. A firm must demonstrate the following:

- At least 51 percent ownership by one or more socially or economically disadvantaged persons;³⁰
- Daily operational control by one or more socially or economically disadvantaged persons.

While the County does not certify firms, it does accept M/WBE certification from a number of local agencies. Acceptable certifications are obtained through the following agencies:³¹

- Bay Area Rapid Transit
- City of Oakland
- City of Richmond
- City of San Jose
- Contra Costa County Transit Authority
- Port of Oakland
- San Francisco Human Rights Commission
- San Francisco Redevelopment Agency
- Santa Clara Transit Authority

³⁰ Socially and economically disadvantaged persons include women, African Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific American (including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other group of natural persons determined by the State Department of Transportation to be so disadvantaged.

³¹ *Construction Outreach Program for Contracts Greater than \$100,000.*



- U.S. Small Business Administration
- California Department of Transportation

2. Program Participation Goals

Pursuant to the expressed provisions of the Construction Outreach Program for construction contracts over \$100,000, there are M/WBE goals of 20 percent participation. The various prescribed methods by which to achieve the goals include the following:

- A prime contractor subcontracting a minimum of 15 percent of the estimated contract award to an MBE and five percent to a WBE;
- A prime contractor demonstrating Good Faith Efforts to meet the 15 and five percent goals.

Prime contractors, including those certified as M/WBEs, may not apply their own participation in the contract towards the goals. Goals must be met through the use of M/WBE subcontractors, suppliers, and/or truckers.³²

When a non-M/WBE prime contractor subcontracts with an M/WBE, only the M/WBE's participation may count towards the M/WBE goal.

3. Good Faith Effort Standards

Prime contractors who fail to meet the participation goal may comply by demonstrating Good Faith Efforts in accordance with the provisions of the Public Contracting Code. Good Faith Efforts are evidenced by the following factors:

- Attending pre-solicitation or pre-bid meetings;
- Identifying items of work on the contract suitable for performance by M/WBEs;
- Advertising in at least one daily or weekly newspaper, trade association publication, minority or trade publication, trade journal, or other media;³³
- Providing written notice of intent to bid to at least three M/WBEs for each item of work specified as suitable for M/WBEs at least three days before bid opening;

³² Prime contractors may not count the full percentage of participation by suppliers who are not manufacturers. They may only count for 60 percent of their participation, so, for example, even if they count for 10 percent of the contract, they may only be counted as meeting 6 percent of the M/WBE goal. Suppliers who are also manufacturers would count for the entire percentage of participation which, in the case of the example offered here, would be the full 10 percent.

³³ Advertisement must occur at least 10 days before bid opening.



- Following up with the M/WBEs that were contacted;
- Providing the contacted M/WBEs with information about plans, specifications, and requirements;
- Requesting assistance from organizations with access to M/WBEs;
- Negotiating in good faith with M/WBEs and rejecting their bids only when there is a justifiable reason; and
- Assisting interested M/WBEs in obtaining bonds, lines of credit, and insurance.

Bids from prime contractors who do not meet the goal and do not sufficiently demonstrate Good Faith Efforts will be rejected. Contractors may contest a decision of noncompliance before the Board of Supervisors, who will either uphold or strike down GSA's decision. When a judgment of noncompliance is upheld, the contract is awarded to the next lowest bidder.

4. Program Enforcement

The GSA and the Board of Supervisors are jointly vested with the responsibility and authority to oversee and enforce the Construction Outreach Program. GSA is responsible for administration, outreach, program development, conducting pre-award conferences, verifying certification of firms as bona fide M/WBEs, determining contractor and subcontractor compliance, and investigating alleged violations. The Board of Supervisors administers appeals if GSA finds a contractor noncompliant and the contractor disagrees. The Board also assesses penalties and sanctions.

5. Substitution Standards

Contractors are required to maintain the M/WBE percentages effective at the time of the contract award for the duration of the contract. Substitutions may be made only with prior approval of the County.

6. Penalties and Sanctions

The Director of GSA makes the initial determination regarding noncompliance with the policies and requirements of the Construction Outreach Program. Upon making that determination, its Director presents the decision to the Board of Supervisors for final disposition. The Board may impose any or all of the following sanctions and penalties:

- Withholding 10 percent of all future payments on the contract until the contractor provides satisfactory evidence of compliance;



- Suspension of the contract until the contractor provides satisfactory evidence of compliance;
- Termination of the contract and collection of damages; and
- Debarment for a stated period of time or until the contractor provides satisfactory evidence of compliance.

7. Appeals Process

A contractor, upon being deemed noncompliant by the Director of GSA, may appeal to the Board of Supervisors. The Board makes the final determination of compliance.

B. Disadvantaged Business Enterprise Program

The County's PWA receives funds from the USDOT Federal Highway Administration. Agencies that receive USDOT funds must develop and implement a DBE program in accordance with 49 Code of Federal Regulations Part 26 to ensure a level playing field for DBEs. This section describes the elements of PWA's DBE Program.

1. Program Certification

USDOT has articulated specific standards to determine whether a firm is eligible to meet the participation requirements of the DBE Program. A firm must demonstrate that it is at least 51 percent owned by one or more socially and economically disadvantaged individuals. Firms must be certified as a DBE in order to comply with the County's DBE Program. The County accepts certifications from the California Department of Transportation Unified Certification Program.

2. Program Participation Goals

The County sets both contract-specific goals and an overall goal for participation by DBEs in its USDOT-assisted contracts. Contract-specific goals may be achieved by any of the following circumstances:

- A certified DBE who bids as a prime contractor;
- A non DBE prime contractor subcontracting with a DBE-certified business;
- A non DBE prime contractor joint venturing with a DBE-certified firm; and



- A prime contractor subcontracting with a DBE-certified vendor of materials and supplies. (Note: Only 60 percent of the participation of a supplier can be counted towards the DBE goal.)

The County sets overall goals annually and they are approved by the California Department of Transportation. The County follows the two-step process set forth in 49 CFR Part 26 to set goals:

Step One: The County determines a base-figure for the relative availability of DBEs that are ready, willing, and able to participate in a DBE program. They use the following formula:

$$Availability = \frac{DBEBidder}{AllBidders}$$

Step Two: The County adjusts the base figure to account for other evidence of DBE presence in the market area. Acceptable evidence includes past levels of utilization as a more accurate representation of capacity, the percentage of actual dollars (as opposed to the percentage of contracts) commanded by DBEs out of all dollars expended by the County, findings from a disparity study, demonstration of statistical disparity in financing, bonding and insurance for DBEs, employment data, and history of bidders' inability to meet goals.

The County must also determine what percentage of their goal will be met by race-conscious methods and what percentage will be met by race-neutral methods. The maximum percentage possible must be met through race-neutral means before applying race-conscious means. Race-neutral methods involve activities like outreach and technical assistance to DBEs. Race-conscious methods involve setting a contract specific goal and requiring contractors to either meet the goal or demonstrate a Good Faith Effort to do so.

For contracts with specific goals, contractors are required to submit information concerning the DBEs participating on their bid or offer by 4:00 p.m. on the fourth business day following bid opening. The information must contain the name and address of the listed DBE, the work they will perform, and the dollar amount of their participation. A written confirmation from both the prime contractor and the DBE selected to meet the goal must be provided with the bid. This statement must contain documentation of Good Faith Efforts made, if the goal is not met.

3. Good Faith Effort Standards

Contractors who fail to meet the contract goal may comply by demonstrating Good Faith Efforts in accordance with the provisions of 49 CFR Part 26. Contractors replacing a DBE on a contract must also make a Good Faith Effort to replace that firm with another DBE. Good Faith Effort is evidenced by factors including the following:



- Publications, including names and dates, in which the contractor requested DBE participation
- Notices, including names and dates, sent to DBEs to solicit bids
- Items of work made available to DBEs
- Rejected DBEs, including the reason for rejection
- Evidence of technical assistance and support provided to DBEs
- Requests for assistance from organizations that are concerned with supporting DBEs

Bids from prime contractors who do not meet the contract goal or fail to sufficiently demonstrate a Good Faith Effort will be rejected. The Contract Compliance Officer from the Public Works Agency (PWA) determines the sufficiency of Good Faith Efforts. Contractors can contest a decision of noncompliance before the Director of Public Works, who will either uphold or overturn the Contract Compliance Officer's decision.

4. Program Enforcement

PWA is vested with the authority to oversee and enforce the DBE Program. PWA is responsible for crafting and disseminating a policy statement that explains the Program and its purpose. PWA appoints its own Contract Compliance Officer to serve as the DBE Liaison Officer, whose primary responsibility is to oversee the Program. PWA's Contract Compliance Officer fulfills this position as Liaison Officer. Duties include data collection and reporting, compliance monitoring, goal setting, outreach to DBEs, and Program evaluation. PWA's director is responsible for administering appeals when a contractor contests a judgment of noncompliance.

The PWA also holds pre-construction conferences with contractors before work begins to discuss the intended work for the DBE subcontractors. The subcontractors and their items of work must match the information submitted by the contractor after bidding. Discrepancies must be resolved with the Resident Engineer or Construction Manager. Conflicting information must be deleted or otherwise addressed through a substitution request.

The Contract Compliance Officer is the lead in DBE Program monitoring and enforcement. Inspectors are responsible for onsite monitoring. They report violations to the Resident Engineer or Construction Manager. The Resident Engineer or Construction Manager is responsible for following up with the contractor, investigating the violation and, if necessary, withholding payments to the contractor.



5. Substitution Standards

Contractors must list in their bid all subcontractors performing work valued at more than one-half of one percent of the total bid or at \$10,000, whichever is greater. Contractors are required to maintain the DBE percentages effective at the time of contract for the duration of the contract. They are to maintain records that reflect the work performed by their subcontractors and the dates and dollar amounts of all subcontractor payments. Contractors are to provide a summary of these records when the contract is complete. They must also provide explanations when the summary reflects information that is different from the information presented in the bid.

Substitutions may be made only with the prior written approval of PWA. When substitutions result in the goal not being met, the contractor must provide proof of a Good Faith Effort to replace the subcontractor with another DBE subcontractor.

6. Penalties and Sanctions

There are no penalties or sanctions associated with the DBE Program. However, if contractors do not meet the specified goals or make a Good Faith Effort to do so, they are not awarded the contract.

7. Appeals Process

A contractor, upon being judged noncompliant by the Contract Compliance Officer, may appeal to the Director of PWA. The Director makes the final determination of compliance.

C. Local Business Preference

An ordinance was approved by the Board of Supervisors on January 29, 1991 providing a local five percent preference on sealed bids to Alameda County vendors.³⁴ There was no residency requirement.³⁵ Local businesses were required to have a street address within the County for at least one year prior to the date upon which sealed bids will be received and hold a valid business license issued by the County or a city within the County. The local business preferences were subsequently incorporated into the Small Local Emerging Business Program.

³⁴ Alameda County Administrative Code 4.12.150.

³⁵ The Board of Supervisors approved a six month residency requirement on October 9, 2003.



D. Small Local Emerging Business Program

1. Program Background

The Board of Supervisors adopted the Small Local Emerging Business (SLEB) Program on September 12, 2000. The purpose of the Program is to identify local, small, and emerging businesses to ensure that they are afforded equal opportunity to participate in County contracting opportunities. The County recognizes certain obstacles that either hinder or preclude SLEBs from participating in its contracting opportunities. As such, the Program aims to help local, small, and emerging businesses learn new business skills, refine existing ones, and grow in order to competitively bid for various contracting opportunities.

The provisions of this Program apply to all County departments and agencies. They are not applicable, however, to all industries. The provisions apply to professional services, including architecture and engineering and goods and other services only. They do not apply to construction.

2. Program Certification

Two certification standards apply to the SLEB Program: local small and local emerging. To be considered a local business, a firm must demonstrate that it maintains a physical presence within the geographical limits of Alameda County. That presence may be evidenced by commercial advertising, a telephone book listing, and other materials such as letterhead and marketing materials. Firms must hold a valid business license issued by the County or a city within the County.³⁶

A firm applying for certification as a small business must demonstrate that it meets the U.S. Federal Small Business Administration's size standard for a small business. Emerging businesses must meet one-half of the small business standard. Firms can also be certified as a local small business or local emerging business.

3. Program Graduation

A business certified as an local emerging business can hold that classification for a maximum of five years.

4. Program Bid Preference Points

Pursuant to the express provisions of the Program, up to a ten percent SLEB bid preference points in all contracts except construction is given to a certified SLEB (five percent for local

³⁶ However, the County reports not certifying a business as local.



small businesses and five percent for local emerging business). A large business must subcontract 20 percent with a small business, but no preference is given.

In order to promote increased business opportunities for Alameda County's emerging businesses, the County is developing an Emerging Business Contracts Program. An Emerging Business, for purposes of this program, is a firm that meets the above definition of small and local business, with the exception that the business has, or if in business for less than three years, expects to average annual gross receipts of one-half or less of the SBA standard. A business can remain an Emerging Business for a period not to exceed five years.

All County departments and agencies are encouraged to utilize emerging businesses for all contracting opportunities under \$25,000 to the extent permitted by applicable law. If a department or agency is unable to locate an emerging business that can meet its needs, assistance is available through the GSA Purchasing Department. If there is no business available for the contract, the awarding department or agency can seek a waiver of the requirement from the GSA.

If a potential bidder fails to achieve the SLEB evaluation bid preference, they are not considered for an award. If the bidder is not a SLEB, the bidder must partner 20 percent of the award amount to be considered for an award. Bidders are considered non-responsive and ineligible for an award if they do not meet the requirements.

5. Good Faith Effort Standards

There are no Good Faith Efforts associated with the SLEB Program. A contractor must either be an SLEB or partner with an SLEB. Contractors who do not meet at least one of these requirements are not considered for contract awards over \$25,000.

6. Waiver of SLEB Program Participation

The County may waive the SLEB standard if its utilization will result in additional costs to the County that exceed five percent of the contract award or \$10,000. The County may also waive the standard if its utilization is not prudent.³⁷

7. Penalties and Sanctions

There are no penalties or sanctions associated with the SLEB program. However contractors must comply with the general overall terms of their contracts, which incorporates SLEB requirements. Contractors not meeting the general overall terms could be in violation of those requirements.

³⁷ The specific procedures for waiver are not set forth in the SLEB Program manual.



8. Program Enforcement

Four separate entities are vested with responsibilities associated with the SLEB Program: the Board of Supervisors, the County Administrator, the Director of GSA, and GSA staff. The Board is responsible for policy and goals. The County Administrator and the GSA Director are both responsible for program monitoring. The GSA staff has an extensive list of responsibilities. They include:

- Recommending changes to policies and procedures
- Certifying businesses as either small or emerging
- Conducting outreach, training, and Program development
- Assisting County departments in meeting goals
- Data collection and reporting
- Publicizing contract opportunities and information about the Program
- Managing the Program and providing technical support to SLEBs

9. Local Employment Standards

The First Source Program is a component of the SLEB Program. The program serves County residents by connecting the unemployed to job opportunities. It serves contractors by connecting them to qualified workers. The goal of the program is to create more opportunities, particularly for unemployed and underemployed County residents.

Contractors selected for architectural and engineering, professional services, and goods and other services contracts over \$100,000 must use the First Source Program to fill open positions associated with the work on their contract. Vendors agree to give the County ten business days to provide pre-screened, qualified applicants for the open positions. While vendors must agree to make every effort to hire the referred applicants, they are not obligated to employ the referrals.

Vendors who hire referred applicants receive the following benefits:

- Tax credits
- Enterprise zone credits
- Access to the fidelity bond program
- A subsidy to provide on-the-job training

10. Subcontracting/Joint Venture Program for Local Small and Local Emerging Businesses

Firms participating in the County's contracting and procurement are required to subcontract, joint venture, or partner a specific amount of work to either a local small or local emerging



business when selected as a County prime contractor or service provider. An exception are construction contracts governed by California.

The contracting agency or department can set an appropriate threshold, usually not less than 20 percent for local small and/or emerging business participation when letting the bid. The GSA reserves the right to waive the participation level in the event that the contractor can show the absence of available local firms, or if the additional estimated costs to the County that may result from inclusion of the requirement exceeds five percent of the total estimated amount or \$10,000, whichever is less.





3

PRIME CONTRACTOR UTILIZATION ANALYSIS

I. INTRODUCTION

As set forth in *Croson*, a disparity study must document minority business enterprise contracting in the jurisdiction under review. The objective of the prime contractor analysis was to determine the level of minority and women business enterprise (M/WBE) utilization compared to non-M/WBE utilization on Alameda County (County) contracts. The first step in a disparity analysis is the review of prime contracts.

County prime contracts awarded between July 1, 2000 and June 30, 2003 in four industries: construction, architecture and engineering, professional services, and goods and other services were analyzed.

II. PRIME CONTRACTOR UTILIZATION DATA SOURCES

The analysis was performed using the County's purchase order payment data. Purchase orders are authorizations for the auditor to issue a vendor payment. Purchase order and payment data was provided by the County's Information Technology Department. Some purchase orders were issued against a contract, and some were single procurements for which no contract was issued. To determine which purchase orders were issued against a contract, the originating departments reviewed the list of their purchase orders and, as appropriate, classified them by contract. Direct claims, credit card purchases, and nonprofits are three types of transactions which were excluded from the analysis. Direct claims is a procurement process which the Departments use to make occasional purchases for specifically designated types of goods and services, without placing an order through Purchasing. Credit card



payments were excluded because neither the name of the vendors which provided the goods and services nor the cost of the goods and services were available in the payment records. Purchase orders to nonprofits were excluded because according to the *Crososn* standard, a disparity study is an analysis of local government use of minority owned businesses. After the exclusions were made, the payments for the remaining contracts were analyzed.

The County auditor does not code contracts by industry. However, industry classifications are coded in the County's vendor file. The vendor file and contract file were compared to identify the industry for each vendor. Examples of the types of contracts in each industry include:

Construction:

- General Contractors
- Plumbing
- Painting
- Electrical
- Paving

Construction Related (subcontractors):

- Construction Supplies
- Trucking

Architecture and Engineering:

- Engineering
- Architecture
- Construction Management

Professional Services:

- Consulting
- Environmental Testing
- Advertising (advertising agencies)
- Legal/Lawyers
- Computer Training

Goods and Other Services:

- Computer Equipment
- Janitorial
- Security Services
- Office Supplies
- Tree pruning services
- Food
- Auto Parts
- Construction Supplies



Some of the records included in the purchase order records the County provided were missing the ethnicity and gender information. This information is critical to a disparity study. To secure complete ethnicity and gender information, company names were cross-referenced with directories and lists providing such data. The sources included certification lists, trade association membership lists, and chamber membership lists.¹ Additionally, telephone calls were made to businesses to collect ethnicity and gender information.

III. PRIME CONTRACTOR UTILIZATION THRESHOLDS

Contracts in the four industries were analyzed at different size thresholds. One threshold was the informal level. At the informal level, one threshold is the \$25,000 and under, and the other is \$25,001 to \$100,000. Informal contracting opportunities do not have to be advertised and where the contract is \$25,000 or under, Board of Supervisors approval is not required. Another threshold was at the formal level where advertising is always required. The third level was at \$500,000, the threshold used to cap the formal contracts in order to ensure the disparity analysis of formal contracts was within the capacity level of the available businesses.²

Prime utilization at the informal and formal levels is presented in the tables and charts below. There is also a description of all of the contract dollars and the number of contracts awarded for combined industries.

IV. PRIME CONTRACTOR UTILIZATION: ALL CONTRACTS

As depicted in Table 3.01 below, the County issued 11,722 contracts during the July 1, 2000 to June 30, 2003 study period. These included 1,325 for construction, 442 for architecture and engineering, 1,692 for professional services, and 8,263 for goods and other services.

Also, the County expended \$552,096,155 dollars during the study period, with \$141,092,348 for construction, \$53,684,539 for architecture and engineering, \$96,130,144 for professional services, and \$261,189,123 for goods and other services.



¹ A complete list of the sources is presented in Chapter 6 of this report.

² This issue of capacity is discussed further in Chapter 6: Availability Analysis.

Table 3.01 Prime Contracts and Dollars Expended Between July 1, 2000 and June 30, 2003

Industry	Total Number of Contracts	Total Dollars Expended
Construction	1,325	\$141,092,348
Architecture and Engineering	442	\$53,684,539
Professional Services	1,692	\$96,130,144
Goods and Other Services	8,263	\$261,189,123
Total	11,722	\$552,096,155



A. Prime Contractor Utilization: All Contracts and All Industries

Table 3.02 summarizes all contract dollars expended by the County on prime contracts, across all industries. Minority Business Enterprises received 8.01 percent of the construction prime contract dollars, Women Business Enterprises received 13.06 percent, and Caucasian Male Business Enterprises received 78.93 percent.

African Americans received 258 or 2.2 percent of all contracts during the study period, representing \$6,051,853 or 1.1 percent of the contract dollars.

Asian Americans received 704 or 6.01 percent of all contracts during the study period, representing \$12,867,675 or 2.33 percent of the contract dollars.

Hispanic Americans received 499 or 4.26 percent of all contracts during the study period, representing \$25,225,634 or 4.57 percent of the contract dollars.

Native Americans received 15 or 0.13 percent of all contracts during the study period, representing \$68,944 or 0.01 percent of the contract dollars.

Minority Business Enterprises received 1,476 or 12.59 percent of all contracts during the study period, representing \$44,214,105 or 8.01 percent of the contract dollars.

Women Business Enterprises received 1,281 or 10.93 percent of all contracts during the study period, representing \$72,106,736 or 13.06 percent of the contract dollars.

Minority and Women Business Enterprises received 2,757 or 23.52 percent of all contracts during the study period, representing \$116,320,841 or 21.07 percent of the contract dollars.

Caucasian Male Business Enterprises received 8,965 or 76.48 percent of all contracts during the study period, representing \$435,775,314 or 78.93 percent of the contract dollars.



Table 3.02 Prime Contractor Utilization: All Contracts and All Industries

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	258	2.20%	\$6,051,853	1.10%
Asian Americans	704	6.01%	\$12,867,675	2.33%
Hispanic Americans	499	4.26%	\$25,225,634	4.57%
Native Americans	15	0.13%	\$68,944	0.01%
Caucasian Females	1,281	10.93%	\$72,106,736	13.06%
Caucasian Males	8,965	76.48%	\$435,775,314	78.93%
TOTAL	11,722	100.00%	\$552,096,155	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	104	0.89%	\$1,959,918	0.35%
African American Males	154	1.31%	\$4,091,935	0.74%
Asian American Females	180	1.54%	\$2,458,100	0.45%
Asian American Males	524	4.47%	\$10,409,575	1.89%
Hispanic American Females	76	0.65%	\$2,039,091	0.37%
Hispanic American Males	423	3.61%	\$23,186,543	4.20%
Native American Females	4	0.03%	\$10,275	0.00%
Native American Males	11	0.09%	\$58,669	0.01%
Caucasian Females	1,281	10.93%	\$72,106,736	13.06%
Caucasian Males	8,965	76.48%	\$435,775,314	78.93%
TOTAL	11,722	100.00%	\$552,096,155	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	364	3.11%	\$6,467,383	1.17%
Minority Males	1,112	9.49%	\$37,746,722	6.84%
Caucasian Females	1,281	10.93%	\$72,106,736	13.06%
Caucasian Males	8,965	76.48%	\$435,775,314	78.93%
TOTAL	11,722	100.00%	\$552,096,155	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	1,476	12.59%	\$44,214,105	8.01%
Women Business Enterprises	1,281	10.93%	\$72,106,736	13.06%
Minority and Women Business Enterprises	2,757	23.52%	\$116,320,841	21.07%
Caucasian Male Business Enterprises	8,965	76.48%	\$435,775,314	78.93%
TOTAL	11,722	100.00%	\$552,096,155	100.00%



B. Construction Prime Contractor Utilization: All Contracts

Table 3.03 summarizes all contract dollars expended by the County on construction prime contracts. Minority Business Enterprises received 9.05 percent of the construction prime contract dollars, Women Business Enterprises received 3.26 percent, and Caucasian Male Business Enterprises received 87.69 percent.

African Americans received 26 or 1.96 percent of the construction contracts during the study period, representing \$558,036 or 0.4 percent of the contract dollars.

Asian Americans received 13 or 0.98 percent of the construction contracts during the study period, representing \$1,114,628 or 0.79 percent of the contract dollars.

Hispanic Americans received 229 or 17.28 percent of the construction contracts during the study period, representing \$11,055,972 or 7.84 percent of the contract dollars.

Native Americans received eight or 0.6 percent of the construction contracts during the study period, representing \$45,439 or 0.03 percent of the contract dollars.

Minority Business Enterprises received 276 or 20.83 percent of the construction contracts during the study period, representing \$12,774,076 or 9.05 percent of the contract dollars.

Women Business Enterprises received 172 or 12.98 percent of the construction contracts during the study period, representing \$4,599,238 or 3.26 percent of the contract dollars.

Minority and Women Business Enterprises received 448 or 33.81 percent of the construction contracts during the study period, representing \$17,373,314 or 12.31 percent of the contract dollars.

Caucasian Male Business Enterprises received 877 or 66.19 percent of the construction contracts during the study period, representing \$123,719,034 or 87.69 percent of the contract dollars.



**Table 3.03 Construction Prime Contractor Utilization: All
Contracts July 1, 2000 to June 30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	26	1.96%	\$558,036	0.40%
Asian Americans	13	0.98%	\$1,114,628	0.79%
Hispanic Americans	229	17.28%	\$11,055,972	7.84%
Native Americans	8	0.60%	\$45,439	0.03%
Caucasian Females	172	12.98%	\$4,599,238	3.26%
Caucasian Males	877	66.19%	\$123,719,034	87.69%
TOTAL	1,325	100.00%	\$141,092,348	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	0.08%	\$59,096	0.04%
African American Males	25	1.89%	\$498,940	0.35%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	13	0.98%	\$1,114,628	0.79%
Hispanic American Females	5	0.38%	\$318,572	0.23%
Hispanic American Males	224	16.91%	\$10,737,400	7.61%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	8	0.60%	\$45,439	0.03%
Caucasian Females	172	12.98%	\$4,599,238	3.26%
Caucasian Males	877	66.19%	\$123,719,034	87.69%
TOTAL	1,325	100.00%	\$141,092,348	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	6	0.45%	\$377,668	0.27%
Minority Males	270	20.38%	\$12,396,409	8.79%
Caucasian Females	172	12.98%	\$4,599,238	3.26%
Caucasian Males	877	66.19%	\$123,719,034	87.69%
TOTAL	1,325	100.00%	\$141,092,348	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	276	20.83%	\$12,774,076	9.05%
Women Business Enterprises	172	12.98%	\$4,599,238	3.26%
Minority and Women Business Enterprises	448	33.81%	\$17,373,314	12.31%
Caucasian Male Business Enterprises	877	66.19%	\$123,719,034	87.69%
TOTAL	1,325	100.00%	\$141,092,348	100.00%



C. Architecture and Engineering Prime Contractor Utilization: All Contracts

Table 3.04 summarizes all contract dollars expended by the County on architecture and engineering prime contracts. Minority Business Enterprises received 6.1 percent of the architecture and engineering prime contract dollars, Women Business Enterprises received 5.62 percent, and Caucasian Male Business Enterprises received 88.29 percent.

African Americans received 19 or 4.3 percent of the architecture and engineering contracts during the study period, representing \$1,283,028 or 2.39 percent of the contract dollars.

Asian Americans received 64 or 14.48 percent of the architecture and engineering contracts during the study period, representing \$979,988 or 1.83 percent of the contract dollars.

Hispanic Americans received two or 0.45 percent of the architecture and engineering contracts during the study period, representing \$1,010,188 or 1.88 percent of the contract dollars.

Native Americans received none of the architecture and engineering contracts during the study period.

Minority Business Enterprises received 85 or 19.23 percent of the architecture and engineering contracts during the study period, representing \$3,273,204 or 6.1 percent of the contract dollars.

Women Business Enterprises received 87 or 19.68 percent of the architecture and engineering contracts during the study period, representing \$3,014,473 or 5.62 percent of the contract dollars.

Minority and Women Business Enterprises received 172 or 38.91 percent of the architecture and engineering contracts during the study period, representing \$6,287,677 or 11.71 percent of the contract dollars.

Caucasian Males Business Enterprises received 270 or 61.09 percent of the architecture and engineering contracts during the study period, representing \$47,396,862 or 88.29 percent of the contract dollars.



**Table 3.04 Architecture and Engineering Prime Contractor
Utilization: All Contracts July 1, 2000 to June 30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	19	4.30%	\$1,283,028	2.39%
Asian Americans	64	14.48%	\$979,988	1.83%
Hispanic Americans	2	0.45%	\$1,010,188	1.88%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	87	19.68%	\$3,014,473	5.62%
Caucasian Males	270	61.09%	\$47,396,862	88.29%
TOTAL	442	100.00%	\$53,684,539	100.00%
Ethnicity 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	19	4.30%	\$1,283,028	2.39%
Asian American Females	16	3.62%	\$451,929	0.84%
Asian American Males	48	10.86%	\$528,059	0.98%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	2	0.45%	\$1,010,188	1.88%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	87	19.68%	\$3,014,473	5.62%
Caucasian Males	270	61.09%	\$47,396,862	88.29%
TOTAL	442	100.00%	\$53,684,539	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	16	3.62%	\$451,929	0.84%
Minority Males	69	15.61%	\$2,821,274	5.26%
Caucasian Females	87	19.68%	\$3,014,473	5.62%
Caucasian Males	270	61.09%	\$47,396,862	88.29%
TOTAL	442	100.00%	\$53,684,539	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	85	19.23%	\$3,273,204	6.10%
Women Business Enterprises	87	19.68%	\$3,014,473	5.62%
Minority and Women Business Enterprises	172	38.91%	\$6,287,677	11.71%
Caucasian Male Business Enterprises	270	61.09%	\$47,396,862	88.29%
TOTAL	442	100.00%	\$53,684,539	100.00%



D. Professional Services Prime Contractor Utilization: All Contracts

Table 3.05 summarizes all contract dollars expended by the County on professional services prime contracts. Minority Business Enterprises received 7.67 percent of the prime contract dollars for professional services, Women Business Enterprises received 12.37 percent, and Caucasian Male Business Enterprises received 79.95 percent.

African Americans received 78 or 4.61 percent of the professional services contracts during the study period, representing \$2,165,068 or 2.25 percent of the contract dollars.

Asian Americans received 105 or 6.21 percent of the professional services contracts during the study period, representing \$4,242,497 or 4.41 percent of the contract dollars.

Hispanic Americans received 50 or 2.96 percent of the professional services contracts during the study period, representing \$947,095 or 0.99 percent of the contract dollars.

Native Americans received four or 0.24 percent of the professional services contracts during the study period, representing \$20,375 or 0.02 percent of the contract dollars.

Minority Business Enterprises received 237 or 14.01 percent of the professional services contracts during the study period, representing \$7,375,035 or 7.67 percent of the contract dollars.

Women Business Enterprises received 294 or 17.38 percent of the professional services contracts during the study period, representing \$11,894,751 or 12.37 percent of the contract dollars.

Minority and Women Business Enterprises received 531 or 31.38 percent of the professional services contracts during the study period, representing \$19,269,787 or 20.05 percent of the contract dollars.

Caucasian Male Business Enterprises received 1,161 or 68.62 percent of the professional services contracts during the study period, representing \$76,860,358 or 79.95 percent of the contract dollars.



**Table 3.05 Professional Services Prime Contractor
Utilization: All Contracts July 1, 2000 to June 30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	78	4.61%	\$2,165,068	2.25%
Asian Americans	105	6.21%	\$4,242,497	4.41%
Hispanic Americans	50	2.96%	\$947,095	0.99%
Native Americans	4	0.24%	\$20,375	0.02%
Caucasian Females	294	17.38%	\$11,894,751	12.37%
Caucasian Males	1,161	68.62%	\$76,860,358	79.95%
TOTAL	1,692	100.00%	\$96,130,144	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	33	1.95%	\$1,131,142	1.18%
African American Males	45	2.66%	\$1,033,926	1.08%
Asian American Females	22	1.30%	\$425,690	0.44%
Asian American Males	83	4.91%	\$3,816,807	3.97%
Hispanic American Females	23	1.36%	\$358,945	0.37%
Hispanic American Males	27	1.60%	\$588,150	0.61%
Native American Females	2	0.12%	\$10,000	0.01%
Native American Males	2	0.12%	\$10,375	0.01%
Caucasian Females	294	17.38%	\$11,894,751	12.37%
Caucasian Males	1,161	68.62%	\$76,860,358	79.95%
TOTAL	1,692	100.00%	\$96,130,144	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	80	4.73%	\$1,925,778	2.00%
Minority Males	157	9.28%	\$5,449,257	5.67%
Caucasian Females	294	17.38%	\$11,894,751	12.37%
Caucasian Males	1,161	68.62%	\$76,860,358	79.95%
TOTAL	1,692	100.00%	\$96,130,144	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	237	14.01%	\$7,375,035	7.67%
Women Business Enterprises	294	17.38%	\$11,894,751	12.37%
Minority and Women Business Enterprises	531	31.38%	\$19,269,787	20.05%
Caucasian Male Business Enterprises	1,161	68.62%	\$76,860,358	79.95%
TOTAL	1,692	100.00%	\$96,130,144	100.00%



E. Goods and Other Services Prime Contractor Utilization: All Contracts

Table 3.06 summarizes all contract dollars expended by the County on goods and other services prime contracts. Minority Business Enterprises received 5.66 percent of the prime contract dollars for goods and other services, Women Business Enterprises received 20.14 percent, and Caucasian Male Business Enterprises received 74.2 percent.

African Americans received 135 or 1.63 percent of the goods and other services contracts during the study period, representing \$2,045,721 or 0.78 percent of the contract dollars.

Asian Americans received 522 or 6.32 percent of the goods and other services contracts during the study period, representing \$6,530,561 or 2.5 percent of the contract dollars.

Hispanic Americans received 175 or 2.12 percent of the goods and other services contracts during the study period, representing \$6,214,264 or 2.38 percent of the contract dollars.

Native Americans received three or 0.04 percent of the goods and other services contracts during the study period, representing \$3,130 or less than 0.001 percent of the contract dollars.

Minority Business Enterprises received 835 or 10.11 percent of the goods and other services contracts during the study period, representing \$14,793,676 or 5.66 percent of the contract dollars.

Women Business Enterprises received 728 or 8.81 percent of the goods and other services contracts during the study period, representing \$52,598,273 or 20.14 percent of the contract dollars.

Minority and Women Business Enterprises received 1,563 or 18.92 percent of the goods and other services contracts during the study period, representing \$67,391,949 or 25.8 percent of the contract dollars.

Caucasian Male Business Enterprises received 6,700 or 81.08 percent of the goods and other services contracts during the study period, representing \$193,797,174 or 74.2 percent of the contract dollars.



**Table 3.06 Goods and Other Services Prime Contractor
Utilization: All Contracts July 1, 2000 to June 30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	135	1.63%	\$2,045,721	0.78%
Asian Americans	522	6.32%	\$6,530,561	2.50%
Hispanic Americans	175	2.12%	\$6,214,264	2.38%
Native Americans	3	0.04%	\$3,130	0.00%
Caucasian Females	728	8.81%	\$52,598,273	20.14%
Caucasian Males	6,700	81.08%	\$193,797,174	74.20%
TOTAL	8,263	100.00%	\$261,189,123	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	70	0.85%	\$769,680	0.29%
African American Males	65	0.79%	\$1,276,041	0.49%
Asian American Females	142	1.72%	\$1,580,480	0.61%
Asian American Males	380	4.60%	\$4,950,081	1.90%
Hispanic American Females	48	0.58%	\$1,361,574	0.52%
Hispanic American Males	127	1.54%	\$4,852,690	1.86%
Native American Females	2	0.02%	\$275	0.00%
Native American Males	1	0.01%	\$2,855	0.00%
Caucasian Females	728	8.81%	\$52,598,273	20.14%
Caucasian Males	6,700	81.08%	\$193,797,174	74.20%
TOTAL	8,263	100.00%	\$261,189,123	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	262	3.17%	\$3,712,009	1.42%
Minority Males	573	6.93%	\$11,081,667	4.24%
Caucasian Females	728	8.81%	\$52,598,273	20.14%
Caucasian Males	6,700	81.08%	\$193,797,174	74.20%
TOTAL	8,263	100.00%	\$261,189,123	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	835	10.11%	\$14,793,676	5.66%
Women Business Enterprises	728	8.81%	\$52,598,273	20.14%
Minority and Women Business Enterprises	1,563	18.92%	\$67,391,949	25.80%
Caucasian Male Business Enterprises	6,700	81.08%	\$193,797,174	74.20%
TOTAL	8,263	100.00%	\$261,189,123	100.00%



**V. PRIME CONTRACTOR UTILIZATION:
CONTRACTS UNDER \$500,000**

As depicted in Table 3.07 below, the County issued 11,653 prime contracts under \$500,000 during the July 1, 2000 to June 30, 2003 study period. These included 1,303 for construction prime contracts, 434 for architecture and engineering, 1,682 for professional services, and 8,234 for goods and other services.

Also, the County expended \$255,201,966 prime contract dollars on contracts under \$500,000 during the study period, with \$44,912,676 for construction, \$21,530,108 for architecture and engineering, \$61,319,006 for professional services, and \$127,440,176 for goods and other services.

Table 3.07 Prime Contracts and Dollars Under \$500,000 Expended Between July 1, 2000 and June 30, 2003

Industry	Total Number of Contracts	Total Dollars Expended
Construction	1,303	\$44,912,676
Architecture and Engineering	434	\$21,530,108
Professional Services	1,682	\$61,319,006
Goods and Other Services	8,234	\$127,440,176
Total	11,653	\$255,201,966



A. Construction Prime Contractor Utilization: Contracts Under \$500,000

Table 3.08 summarizes dollars expended by the County on construction prime contracts under \$500,000. Minority Business Enterprises received 16.17 percent of the construction prime contract dollars, Women Business Enterprises received 4.41 percent, and Caucasian Male Business Enterprises received 79.42 percent.

African Americans received 26 or 2 percent of the construction contracts under \$500,000 during the study period, representing \$558,036 or 1.24 percent of the contract dollars.

Asian Americans received 13 or 1 percent of the construction contracts under \$500,000 during the study period, representing \$1,114,628 or 2.48 percent of the contract dollars.

Hispanic Americans received 226 or 17.34 percent of the construction contracts under \$500,000 during the study period, representing \$5,546,056 or 12.35 percent of the contract dollars.

Native Americans received eight or 0.61 percent of the construction contracts under \$500,000 during the study period, representing \$45,439 or 0.1 percent of the contract dollars.

Minority Business Enterprises received 273 or 20.95 percent of the construction contracts under \$500,000 during the study period, representing \$7,264,160 or 16.17 percent of the contract dollars.

Women Business Enterprises received 170 or 13.05 percent of the construction contracts under \$500,000 during the study period, representing \$1,979,517 or 4.41 percent of the contract dollars.

Minority and Women Business Enterprises received 443 or 34 percent of the construction contracts under \$500,000 during the study period, representing \$9,243,676 or 20.58 percent of the contract dollars.

Caucasian Male Business Enterprises received 860 or 66 percent of the construction contracts under \$500,000 during the study period, representing \$35,669,000 or 79.42 percent of the contract dollars.



**Table 3.08 Construction Prime Contractor Utilization:
Contracts Under \$500,000 July 1, 2000 to June 30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	26	2.00%	\$558,036	1.24%
Asian Americans	13	1.00%	\$1,114,628	2.48%
Hispanic Americans	226	17.34%	\$5,546,056	12.35%
Native Americans	8	0.61%	\$45,439	0.10%
Caucasian Females	170	13.05%	\$1,979,517	4.41%
Caucasian Males	860	66.00%	\$35,669,000	79.42%
TOTAL	1,303	100.00%	\$44,912,676	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	0.08%	\$59,096	0.13%
African American Males	25	1.92%	\$498,940	1.11%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	13	1.00%	\$1,114,628	2.48%
Hispanic American Females	5	0.38%	\$318,572	0.71%
Hispanic American Males	221	16.96%	\$5,227,484	11.64%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	8	0.61%	\$45,439	0.10%
Caucasian Females	170	13.05%	\$1,979,517	4.41%
Caucasian Males	860	66.00%	\$35,669,000	79.42%
TOTAL	1,303	100.00%	\$44,912,676	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	6	0.46%	\$377,668	0.84%
Minority Males	267	20.49%	\$6,886,492	15.33%
Caucasian Females	170	13.05%	\$1,979,517	4.41%
Caucasian Males	860	66.00%	\$35,669,000	79.42%
TOTAL	1,303	100.00%	\$44,912,676	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	273	20.95%	\$7,264,160	16.17%
Women Business Enterprises	170	13.05%	\$1,979,517	4.41%
Minority and Women Business Enterprises	443	34.00%	\$9,243,676	20.58%
Caucasian Male Business Enterprises	860	66.00%	\$35,669,000	79.42%
TOTAL	1,303	100.00%	\$44,912,676	100.00%



B. Architecture and Engineering Prime Contractor Utilization: Contracts Under \$500,000

Table 3.09 summarizes all dollars expended by the County on architecture and engineering prime contracts under \$500,000. Minority Business Enterprises received 10.53 percent of the architecture and engineering prime contract dollars, Women Business Enterprises received 14 percent, and Caucasian Male Business Enterprises received 75.47 percent.

African Americans received 19 or 4.38 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$1,238,028 or 5.96 percent of the contract dollars.

Asian Americans received 64 or 14.75 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$979,988 or 4.55 percent of the contract dollars.

Hispanic Americans received one or 0.23 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$3,500 or 0.02 percent of the contract dollars.

Native Americans received none of the architecture and engineering contracts under \$500,000 during the study period.

Minority Business Enterprises received 84 or 19.35 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$2,266,516 or 10.53 percent of the contract dollars.

Women Business Enterprises received 87 or 20.05 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$3,014,473 or 14 percent of the contract dollars.

Minority and Women Business Enterprises received 171 or 39.4 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$5,280,989 or 24.53 percent of the contract dollars.

Caucasian Male Business Enterprises received 263 or 60.6 percent of the architecture and engineering contracts under \$500,000 during the study period, representing \$16,249,119 or 75.47 percent of the contract dollars.



**Table 3.09 Architecture and Engineering Prime Contractor
Utilization: Contracts Under \$500,000 July 1, 2000 to June 30,
2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	19	4.38%	\$1,283,028	5.96%
Asian Americans	64	14.75%	\$979,988	4.55%
Hispanic Americans	1	0.23%	\$3,500	0.02%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	87	20.05%	\$3,014,473	14.00%
Caucasian Males	263	60.60%	\$16,249,119	75.47%
TOTAL	434	100.00%	\$21,530,108	100.00%
Ethnicity 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	19	4.38%	\$1,283,028	5.96%
Asian American Females	16	3.69%	\$451,929	2.10%
Asian American Males	48	11.06%	\$528,059	2.45%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	1	0.23%	\$3,500	0.02%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	87	20.05%	\$3,014,473	14.00%
Caucasian Males	263	60.60%	\$16,249,119	75.47%
TOTAL	434	100.00%	\$21,530,108	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	16	3.69%	\$451,929	2.10%
Minority Males	68	15.67%	\$1,814,587	8.43%
Caucasian Females	87	20.05%	\$3,014,473	14.00%
Caucasian Males	263	60.60%	\$16,249,119	75.47%
TOTAL	434	100.00%	\$21,530,108	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	84	19.35%	\$2,266,516	10.53%
Women Business Enterprises	87	20.05%	\$3,014,473	14.00%
Minority and Women Business Enterprises	171	39.40%	\$5,280,989	24.53%
Caucasian Male Business Enterprises	263	60.60%	\$16,249,119	75.47%
TOTAL	434	100.00%	\$21,530,108	100.00%



C. Professional Services Prime Contractor Utilization: Contracts Under \$500,000

Table 3.10 summarizes dollars expended by the County on professional services prime contracts under \$500,000. Minority Business Enterprises received 12.03 percent of the prime contract dollars for professional services, Women Business Enterprises received 16.95 percent, and Caucasian Male Business Enterprises received 71.02 percent.

African Americans received 78 or 4.64 percent of the professional services contracts under \$500,000 during the study period, representing \$2,165,068 or 3.53 percent of the contract dollars.

Asian Americans received 105 or 6.24 percent of the professional services contracts under \$500,000 during the study period, representing \$4,242,497 or 6.92 percent of the contract dollars.

Hispanic Americans received 50 or 2.97 percent of the professional services contracts under \$500,000 during the study period, representing \$947,095 or 1.54 percent of the contract dollars.

Native Americans received four or 0.24 percent of the professional services contracts under \$500,000 during the study period, representing \$20,375 or 0.03 percent of the contract dollars.

Minority Business Enterprises received 237 or 14.09 percent of the professional services contracts under \$500,000 during the study period, representing \$7,375,035 or 12.03 percent of the contract dollars.

Women Business Enterprises received 293 or 17.42 percent of the professional services contracts under \$500,000 during the study period, representing \$10,395,059 or 16.95 percent of the contract dollars.

Minority and Women Business Enterprises received 530 or 31.51 percent of the professional services contracts under \$500,000 during the study period, representing \$17,770,094 or 28.98 percent of the contract dollars.

Caucasian Male Business Enterprises received 1,152 or 68.49 percent of the professional services contracts under \$500,000 during the study period, representing \$43,548,912 or 71.02 percent of the contract dollars.



**Table 3.10 Professional Services Prime Contractor
Utilization: Contracts Under \$500,000 July 1, 2000 to June
30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	78	4.64%	\$2,165,068	3.53%
Asian Americans	105	6.24%	\$4,242,497	6.92%
Hispanic Americans	50	2.97%	\$947,095	1.54%
Native Americans	4	0.24%	\$20,375	0.03%
Caucasian Females	293	17.42%	\$10,395,059	16.95%
Caucasian Males	1,152	68.49%	\$43,548,912	71.02%
TOTAL	1,682	100.00%	\$61,319,006	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	33	1.96%	\$1,131,142	1.84%
African American Males	45	2.68%	\$1,033,926	1.69%
Asian American Females	22	1.31%	\$425,690	0.69%
Asian American Males	83	4.93%	\$3,816,807	6.22%
Hispanic American Females	23	1.37%	\$358,945	0.59%
Hispanic American Males	27	1.61%	\$588,150	0.96%
Native American Females	2	0.12%	\$10,000	0.02%
Native American Males	2	0.12%	\$10,375	0.02%
Caucasian Females	293	17.42%	\$10,395,059	16.95%
Caucasian Males	1,152	68.49%	\$43,548,912	71.02%
TOTAL	1,682	100.00%	\$61,319,006	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	80	4.76%	\$1,925,778	3.14%
Minority Males	157	9.33%	\$5,449,257	8.89%
Caucasian Females	293	17.42%	\$10,395,059	16.95%
Caucasian Males	1,152	68.49%	\$43,548,912	71.02%
TOTAL	1,682	100.00%	\$61,319,006	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	237	14.09%	\$7,375,035	12.03%
Women Business Enterprises	293	17.42%	\$10,395,059	16.95%
Minority and Women Business Enterprises	530	31.51%	\$17,770,094	28.98%
Caucasian Male Business Enterprises	1,152	68.49%	\$43,548,912	71.02%
TOTAL	1,682	100.00%	\$61,319,006	100.00%



D. Goods and Other Services Prime Contractor Utilization: Contracts Under \$500,000

Table 3.11 summarizes contract dollars expended by the County on goods and other services prime contracts under \$500,000. Minority Business Enterprises received 7.8 percent of the prime contract dollars for goods and other services, Women Business Enterprises received 8.68 percent, and Caucasian Male Business Enterprises received 83.52 percent.

African Americans received 135 or 1.64 percent of the goods and other services contracts under \$500,000 during the study period, representing \$2,045,721 or 1.61 percent of the contract dollars.

Asian Americans received 521 or 6.33 percent of the goods and other services contracts under \$500,000 during the study period, representing \$5,395,217 or 4.23 percent of the contract dollars.

Hispanic Americans received 174 or 2.11 percent of the goods and other services contracts under \$500,000 during the study period, representing \$2,496,225 or 1.96 percent of the contract dollars.

Native Americans received three or 0.04 percent of the goods and other services contracts under \$500,000 during the study period, representing \$3,130 or less than 0.001 percent of the contract dollars.

Minority Business Enterprises received 833 or 10.12 percent of the goods and other services contracts under \$500,000 during the study period, representing \$9,940,292 or 7.8 percent of the contract dollars.

Women Business Enterprises received 726 or 8.82 percent of the goods and other services contracts under \$500,000 during the study period, representing \$11,063,475 or 8.68 percent of the contract dollars.

Minority and Women Business Enterprises received 1,559 or 18.93 percent of the goods and other services contracts under \$500,000 during the study period, representing \$21,003,768 or 16.48 percent of the contract dollars.

Caucasian Male Business Enterprises received 6,675 or 81.07 percent of the goods and other services contracts under \$500,000 during the study period, representing \$106,436,408 or 83.52 percent of the contract dollars.



**Table 3.11 Goods and Other Services Prime Contractor
Utilization: Contracts Under \$500,000 July 1, 2000 to June 30,
2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	135	1.64%	\$2,045,721	1.61%
Asian Americans	521	6.33%	\$5,395,217	4.23%
Hispanic Americans	174	2.11%	\$2,496,225	1.96%
Native Americans	3	0.04%	\$3,130	0.00%
Caucasian Females	726	8.82%	\$11,063,475	8.68%
Caucasian Males	6,675	81.07%	\$106,436,408	83.52%
TOTAL	8,234	100.00%	\$127,440,176	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	70	0.85%	\$769,680	0.60%
African American Males	65	0.79%	\$1,276,041	1.00%
Asian American Females	142	1.72%	\$1,580,480	1.24%
Asian American Males	379	4.60%	\$3,814,737	2.99%
Hispanic American Females	48	0.58%	\$1,361,574	1.07%
Hispanic American Males	126	1.53%	\$1,134,651	0.89%
Native American Females	2	0.02%	\$275	0.00%
Native American Males	1	0.01%	\$2,855	0.00%
Caucasian Females	726	8.82%	\$11,063,475	8.68%
Caucasian Males	6,675	81.07%	\$106,436,408	83.52%
TOTAL	8,234	100.00%	\$127,440,176	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	262	3.18%	\$3,712,009	2.91%
Minority Males	571	6.93%	\$6,228,284	4.89%
Caucasian Females	726	8.82%	\$11,063,475	8.68%
Caucasian Males	6,675	81.07%	\$106,436,408	83.52%
TOTAL	8,234	100.00%	\$127,440,176	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	833	10.12%	\$9,940,292	7.80%
Women Business Enterprises	726	8.82%	\$11,063,475	8.68%
Minority and Women Business Enterprises	1,559	18.93%	\$21,003,768	16.48%
Caucasian Male Business Enterprises	6,675	81.07%	\$106,436,408	83.52%
TOTAL	8,234	100.00%	\$127,440,176	100.00%



**VI. PRIME CONTRACTOR UTILIZATION:
CONTRACTS \$25,001 to \$100,000**

As depicted in Table 3.12 below, the County issued 1,458 prime contracts \$25,001 to \$100,000 during the July 1, 2000 to June 30, 2003 study period. These included 99 construction, 91 architecture and engineering, 362 professional services, and 906 goods and other services prime contracts.

Also, the County expended \$106,266,701 dollars on prime contracts \$25,001 to \$100,000 during the study period, with \$8,589,795 for construction, \$8,582,375 for architecture and engineering, \$29,871,261 for professional services, and \$59,223,270 for goods and other services.

Table 3.12 Prime Contracts \$25,001 to \$100,000 Expended Between July 1, 2000 and June 30, 2003

Industry	Total Number of Contracts	Total Dollars Expended
Construction	99	\$8,589,795
Architecture and Engineering	91	\$8,582,375
Professional Services	362	\$29,871,261
Goods and Other Services	906	\$59,223,270
Total	1,458	\$106,266,701



**A. Construction Prime Contractor Utilization:
Contracts \$25,001 to \$100,000**

Table 3.13 summarizes dollars expended by the County on construction prime contracts \$25,001 to \$100,000. Minority Business Enterprises received 25.86 percent of the construction prime contract dollars, Women Business Enterprises received 6.03 percent, and Caucasian Male Business Enterprises received 68.11 percent.

African Americans received four or 4.04 percent of the construction contracts \$25,001 to \$100,000 during the study period, representing \$304,665 or 3.55 percent of the contract dollars.

Asian Americans received two or 2.02 percent of the construction contracts \$25,001 to \$100,000 during the study period, representing \$253,215 or 2.95 percent of the contract dollars.

Hispanic Americans received 15 or 15.15 percent of the construction contracts \$25,001 to \$100,000 during the study period, representing \$1,663,594 or 19.37 percent of the contract dollars.

Native Americans received none of the construction contracts \$25,001 to \$100,000 during the study period.

Minority Business Enterprises received 21 or 21.21 percent of the construction contracts \$25,001 to \$100,000 during the study period, representing \$2,221,474 or 25.86 percent of the contract dollars.

Women Business Enterprises received eight or 8.08 percent of the construction contracts \$25,001 to \$100,000 during the study period, representing \$517,755 or 6.03 percent of the contract dollars.

Minority and Women Business Enterprises received 29 or 29.29 percent of the construction contracts \$25,001 to \$100,000 during the study period, representing \$2,739,230 or 31.89 percent of the contract dollars.

Caucasian Male Business Enterprises received 70 or 70.71 percent of the construction contracts \$25,001 to \$100,000 during the study period, representing \$5,850,566 or 68.11 percent of the contract dollars.



**Table 3.13 Construction Prime Contractor Utilization:
Contracts \$25,001 to \$100,000 July 1, 2000 to June 30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	4	4.04%	\$304,665	3.55%
Asian Americans	2	2.02%	\$253,215	2.95%
Hispanic Americans	15	15.15%	\$1,663,594	19.37%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	8	8.08%	\$517,755	6.03%
Caucasian Males	70	70.71%	\$5,850,566	68.11%
TOTAL	99	100.00%	\$8,589,795	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	1.01%	\$59,096	0.69%
African American Males	3	3.03%	\$245,569	2.86%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	2	2.02%	\$253,215	2.95%
Hispanic American Females	1	1.01%	\$43,050	0.50%
Hispanic American Males	14	14.14%	\$1,620,545	18.87%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	8	8.08%	\$517,755	6.03%
Caucasian Males	70	70.71%	\$5,850,566	68.11%
TOTAL	99	100.00%	\$8,589,795	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	2	2.02%	\$102,146	1.19%
Minority Males	19	19.19%	\$2,119,329	24.67%
Caucasian Females	8	8.08%	\$517,755	6.03%
Caucasian Males	70	70.71%	\$5,850,566	68.11%
TOTAL	99	100.00%	\$8,589,795	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	21	21.21%	\$2,221,474	25.86%
Women Business Enterprises	8	8.08%	\$517,755	6.03%
Minority and Women Business Enterprises	29	29.29%	\$2,739,230	31.89%
Caucasian Male Business Enterprises	70	70.71%	\$5,850,566	68.11%
TOTAL	99	100.00%	\$8,589,795	100.00%



B. Architecture and Engineering Prime Contractor Utilization: Contracts \$25,001 to \$100,000

Table 3.14 summarizes all dollars expended by the County on architecture and engineering prime contracts \$25,001 to \$100,000. Minority Business Enterprises received 10.73 percent of the architecture and engineering prime contract dollars, Women Business Enterprises received 13.27 percent, and Caucasian Male Business Enterprises received 76 percent.

African Americans received three or 3.3 percent of the architecture and engineering contracts \$25,001 to \$100,000 during the study period, representing \$451,288 or 5.26 percent of the contract dollars.

Asian Americans received six or 6.59 percent of the architecture and engineering contracts \$25,001 to \$100,000 during the study period, representing \$469,928 or 5.48 percent of the contract dollars.

Hispanic Americans received none of the architecture and engineering contracts \$25,001 to \$100,000 during the study period.

Native Americans received none of the architecture and engineering contracts \$25,001 to \$100,000 during the study period.

Minority Business Enterprises received nine or 9.89 percent of the architecture and engineering contracts \$25,001 to \$100,000 during the study period, representing \$921,216 or 10.73 percent of the contract dollars.

Women Business Enterprises received 12 or 13.19 percent of the architecture and engineering contracts \$25,001 to \$100,000 during the study period, representing \$1,138,767 or 13.27 percent of the contract dollars.

Minority and Women Business Enterprises received 21 or 23.08 percent of the architecture and engineering contracts \$25,001 to \$100,000 during the study period, representing \$2,059,983 or 24 percent of the contract dollars.

Caucasian Male Business Enterprises received 70 or 76.92 percent of the architecture and engineering contracts \$25,001 to \$100,000 during the study period, representing \$6,522,392 or 76 percent of the contract dollars.



**Table 3.14 Architecture and Engineering Prime Contractor
Utilization: Contracts \$25,001 to \$100,000 July 1, 2000 to June
30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	3	3.30%	\$451,288	5.26%
Asian Americans	6	6.59%	\$469,928	5.48%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	12	13.19%	\$1,138,767	13.27%
Caucasian Males	70	76.92%	\$6,522,392	76.00%
TOTAL	91	100.00%	\$8,582,375	100.00%
Ethnicity 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	3	3.30%	\$451,288	5.26%
Asian American Females	2	2.20%	\$253,678	2.96%
Asian American Males	4	4.40%	\$216,251	2.52%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	12	13.19%	\$1,138,767	13.27%
Caucasian Males	70	76.92%	\$6,522,392	76.00%
TOTAL	91	100.00%	\$8,582,375	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	2	2.20%	\$253,678	2.96%
Minority Males	7	7.69%	\$667,539	7.78%
Caucasian Females	12	13.19%	\$1,138,767	13.27%
Caucasian Males	70	76.92%	\$6,522,392	76.00%
TOTAL	91	100.00%	\$8,582,375	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	9	9.89%	\$921,216	10.73%
Women Business Enterprises	12	13.19%	\$1,138,767	13.27%
Minority and Women Business Enterprises	21	23.08%	\$2,059,983	24.00%
Caucasian Male Business Enterprises	70	76.92%	\$6,522,392	76.00%
TOTAL	91	100.00%	\$8,582,375	100.00%



**C. Professional Services Prime Contractor
Utilization: Contracts \$25,001 to
\$100,000**

Table 3.15 summarizes dollars expended by the County on professional services prime contracts \$25,001 to \$100,000. Minority Business Enterprises received 11.47 percent of the prime contract dollars for professional services, Women Business Enterprises received 15.85 percent, and Caucasian Male Business Enterprises received 72.68 percent.

African Americans received 18 or 4.97 percent of the professional services contracts \$25,001 to \$100,000 during the study period, representing \$1,505,053 or 5.04 percent of the contract dollars.

Asian Americans received 20 or 5.52 percent of the professional services contracts \$25,001 to \$100,000 during the study period, representing \$1,308,551 or 4.38 percent of the contract dollars.

Hispanic Americans received eight or 2.21 percent of the professional services contracts \$25,001 to \$100,000 during the study period, representing \$612,385 or 2.05 percent of the contract dollars.

Native Americans received none of the professional services contracts \$25,001 to \$100,000 during the study period.

Minority Business Enterprises received 46 or 12.71 percent of the professional services contracts \$25,001 to \$100,000 during the study period, representing \$3,425,989 or 11.47 percent of the contract dollars.

Women Business Enterprises received 62 or 17.13 percent of the professional services contracts \$25,001 to \$100,000 during the study period, representing \$4,734,164 or 15.85 percent of the contract dollars.

Minority and Women Business Enterprises received 108 or 29.83 percent of the professional services contracts \$25,001 to \$100,000 during the study period, representing \$8,160,153 or 27.32 percent of the contract dollars

Caucasian Male Business Enterprises received 254 or 70.17 percent of the professional services contracts \$25,001 to \$100,000 during the study period, representing \$21,711,108 or 72.68 percent of the contract dollars.



**Table 3.15 Professional Services Prime Contractor
Utilization: Contracts \$25,001 to \$100,000 July 1, 2000 to
June 30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	18	4.97%	\$1,505,053	5.04%
Asian Americans	20	5.52%	\$1,308,551	4.38%
Hispanic Americans	8	2.21%	\$612,385	2.05%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	62	17.13%	\$4,734,164	15.85%
Caucasian Males	254	70.17%	\$21,711,108	72.68%
TOTAL	362	100.00%	\$29,871,261	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	10	2.76%	\$878,469	2.94%
African American Males	8	2.21%	\$626,584	2.10%
Asian American Females	4	1.10%	\$251,867	0.84%
Asian American Males	16	4.42%	\$1,056,684	3.54%
Hispanic American Females	3	0.83%	\$251,306	0.84%
Hispanic American Males	5	1.38%	\$361,080	1.21%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	62	17.13%	\$4,734,164	15.85%
Caucasian Males	254	70.17%	\$21,711,108	72.68%
TOTAL	362	100.00%	\$29,871,261	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	17	4.70%	\$1,381,641	4.63%
Minority Males	29	8.01%	\$2,044,348	6.84%
Caucasian Females	62	17.13%	\$4,734,164	15.85%
Caucasian Males	254	70.17%	\$21,711,108	72.68%
TOTAL	362	100.00%	\$29,871,261	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	46	12.71%	\$3,425,989	11.47%
Women Business Enterprises	62	17.13%	\$4,734,164	15.85%
Minority and Women Business Enterprises	108	29.83%	\$8,160,153	27.32%
Caucasian Male Business Enterprises	254	70.17%	\$21,711,108	72.68%
TOTAL	362	100.00%	\$29,871,261	100.00%



**D. Goods and Other Services Prime
Contractor Utilization: Contracts \$25,001
to \$100,000**

Table 3.16 summarizes contract dollars expended by the County for goods and other services prime contracts \$25,001 to \$100,000. Minority Business Enterprises received 7.73 percent of the prime contract dollars for goods and other services, Women Business Enterprises received 8.47 percent, and Caucasian Male Business Enterprises received 83.8 percent.

African Americans received 17 or 1.88 percent of the goods and other services contracts \$25,001 to \$100,000 during the study period, representing \$1,360,388 or 2.3 percent of the contract dollars.

Asian Americans received 42 or 4.64 percent of the goods and other services contracts \$25,001 to \$100,000 during the study period, representing \$2,616,635 or 4.42 percent of the contract dollars.

Hispanic Americans received 13 or 1.43 percent of the goods and other services contracts \$25,001 to \$100,000 during the study period, representing \$598,620 or 1.01 percent of the contract dollars.

Native Americans received none of the goods and other services contracts \$25,001 to \$100,000 during the study period.

Minority Business Enterprises received 72 or 7.95 percent of the goods and other services contracts \$25,001 to \$100,000 during the study period, representing \$4,575,643 or 7.73 percent of the contract dollars.

Women Business Enterprises received 78 or 8.61 percent of the goods and other services contracts \$25,001 to \$100,000 during the study period, representing \$5,019,096 or 8.47 percent of the contract dollars.

Minority and Women Business Enterprises received 150 or 16.56 percent of the goods and other services contracts \$25,001 to \$100,000 during the study period, representing \$9,594,739 or 16.2 percent of the contract dollars.

Caucasian Male Business Enterprises received 756 or 83.44 percent of the goods and other services contracts \$25,001 to \$100,000 during the study period, representing \$49,628,531 or 83.8 percent of the contract dollars.



**Table 3.16 Goods and Other Services Prime Contractor
Utilization: Contracts \$25,001 to \$100,000 July 1, 2000 to June
30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	17	1.88%	\$1,360,388	2.30%
Asian Americans	42	4.64%	\$2,616,635	4.42%
Hispanic Americans	13	1.43%	\$598,620	1.01%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	78	8.61%	\$5,019,096	8.47%
Caucasian Males	756	83.44%	\$49,628,531	83.80%
TOTAL	906	100.00%	\$59,223,270	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	7	0.77%	\$448,791	0.76%
African American Males	10	1.10%	\$911,597	1.54%
Asian American Females	12	1.32%	\$632,335	1.07%
Asian American Males	30	3.31%	\$1,984,300	3.35%
Hispanic American Females	3	0.33%	\$113,346	0.19%
Hispanic American Males	10	1.10%	\$485,275	0.82%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	78	8.61%	\$5,019,096	8.47%
Caucasian Males	756	83.44%	\$49,628,531	83.80%
TOTAL	906	100.00%	\$59,223,270	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	22	2.43%	\$1,194,471	2.02%
Minority Males	50	5.52%	\$3,381,172	5.71%
Caucasian Females	78	8.61%	\$5,019,096	8.47%
Caucasian Males	756	83.44%	\$49,628,531	83.80%
TOTAL	906	100.00%	\$59,223,270	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	72	7.95%	\$4,575,643	7.73%
Women Business Enterprises	78	8.61%	\$5,019,096	8.47%
Minority and Women Business Enterprises	150	16.56%	\$9,594,739	16.20%
Caucasian Male Business Enterprises	756	83.44%	\$49,628,531	83.80%
TOTAL	906	100.00%	\$59,223,270	100.00%



**VII. PRIME CONTRACTOR UTILIZATION:
CONTRACTS \$25,000 AND UNDER**

As depicted in Table 3.17 below, the County issued 10,019 prime contracts \$25,000 and under during the July 1, 2000 to June 30, 2003 study period. These included 1,151 for construction prime contracts, 322 for architecture and engineering, 1,277 for professional services, and 7,269 for goods and other services contracts.

Also, the County expended \$63,020,097 prime contract dollars on contracts \$25,000 and under during the study period. These included \$8,666,957 for construction, \$2,863,379 for architecture and engineering, \$10,464,413 for professional services, and \$41,025,348 for goods and other services.

Table 3.17 Prime Contracts \$25,000 and Under Expended Between July 1, 2000 and June 30, 2003

Industry	Total Number of Contracts	Total Dollars Expended
Construction	1,151	\$8,666,957
Architecture and Engineering	322	\$2,863,379
Professional Services	1,277	\$10,464,413
Goods and Other Services	7,269	\$41,025,348
Total	10,019	\$63,020,097



**A. Construction Prime Contractor Utilization:
Contracts \$25,000 and Under**

Table 3.18 summarizes dollars expended by the County on construction prime contracts \$25,000 and under. Minority Business Enterprises received 21.73 percent of the construction prime contract dollars, Women Business Enterprises received 13.48 percent, and Caucasian Male Business Enterprises received 64.79 percent.

African Americans received 22 or 1.91 percent of the construction contracts \$25,000 and under during the study period, representing \$253,371 or 2.92 percent of the contract dollars.

Asian Americans received nine or 0.78 percent of the construction contracts \$25,000 and under during the study period, representing \$45,276 or 0.52 percent of the contract dollars.

Hispanic Americans received 204 or 17.72 percent of the construction contracts \$25,000 and under during the study period, representing \$1,539,228 or 17.76 percent of the contract dollars.

Native Americans received eight or 0.7 percent of the construction contracts \$25,000 and under during the study period, representing \$45,439 or 0.52 percent of the contract dollars.

Minority Business Enterprises received 243 or 21.11 percent of the construction contracts \$25,000 and under during the study period, representing \$1,883,315 or 21.73 percent of the contract dollars.

Women Business Enterprises received 161 or 13.99 percent of the construction contracts \$25,000 and under during the study period, representing \$1,168,682 or 13.48 percent of the contract dollars.

Minority and Women Business Enterprises received 404 or 35.1 percent of the construction contracts \$25,000 and under during the study period, representing \$3,051,997 or 35.21 percent of the contract dollars.

Caucasian Male Business Enterprises received 747 or 64.9 percent of the construction contracts \$25,000 and under during the study period, representing \$5,614,960 or 64.79 percent of the contract dollars.



**Table 3.18 Construction Prime Contractor Utilization:
Contracts \$25,000 and Under July 1, 2000 to June 30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	22	1.91%	\$253,371	2.92%
Asian Americans	9	0.78%	\$45,276	0.52%
Hispanic Americans	204	17.72%	\$1,539,228	17.76%
Native Americans	8	0.70%	\$45,439	0.52%
Caucasian Females	161	13.99%	\$1,168,682	13.48%
Caucasian Males	747	64.90%	\$5,614,960	64.79%
TOTAL	1,151	100.00%	\$8,666,957	100.00%
Ethnicity 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	22	1.91%	\$253,371	2.92%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	9	0.78%	\$45,276	0.52%
Hispanic American Females	3	0.26%	\$9,134	0.11%
Hispanic American Males	201	17.46%	\$1,530,095	17.65%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	8	0.70%	\$45,439	0.52%
Caucasian Females	161	13.99%	\$1,168,682	13.48%
Caucasian Males	747	64.90%	\$5,614,960	64.79%
TOTAL	1,151	100.00%	\$8,666,957	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	3	0.26%	\$9,134	0.11%
Minority Males	240	20.85%	\$1,874,181	21.62%
Caucasian Females	161	13.99%	\$1,168,682	13.48%
Caucasian Males	747	64.90%	\$5,614,960	64.79%
TOTAL	1,151	100.00%	\$8,666,957	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	243	21.11%	\$1,883,315	21.73%
Women Business Enterprises	161	13.99%	\$1,168,682	13.48%
Minority and Women Business Enterprises	404	35.10%	\$3,051,997	35.21%
Caucasian Male Business Enterprises	747	64.90%	\$5,614,960	64.79%
TOTAL	1,151	100.00%	\$8,666,957	100.00%



B. Architecture and Engineering Prime Contractor Utilization: Contracts \$25,000 and Under

Table 3.19 summarizes all dollars expended by the County on architecture and engineering prime contracts \$25,000 and under. Minority Business Enterprises received 21.22 percent of the architecture and engineering prime contract dollars, Women Business Enterprises received 21.41 percent, and Caucasian Male Business Enterprises received 57.37 percent.

African Americans received 15 or 4.66 percent of the architecture and engineering contracts \$25,000 and under during the study period, representing \$94,071 or 3.29 percent of the contract dollars.

Asian Americans received 58 or 18.01 percent of the architecture and engineering contracts \$25,000 and under during the study period, representing \$510,060 or 17.81 percent of the contract dollars.

Hispanic Americans received one or 0.31 percent of the architecture and engineering contracts \$25,000 and under during the study period, representing \$3,500 or 0.12 percent of the contract dollars.

Native Americans received none of the architecture and engineering contracts \$25,000 and under during the study period.

Minority Business Enterprises received 74 or 22.98 percent of the architecture and engineering contracts \$25,000 and under during the study period, representing \$607,631 or 21.22 percent of the contract dollars.

Women Business Enterprises received 72 or 22.36 percent of the architecture and engineering contracts \$25,000 and under during the study period, representing \$612,994 or 21.41 percent of the contract dollars.

Minority and Women Business Enterprises received 146 or 45.34 percent of the architecture and engineering contracts \$25,000 and under during the study period, representing \$1,220,625 or 42.63 percent of the contract dollars.

Caucasian Male Business Enterprises received 176 or 54.66 percent of the architecture and engineering contracts \$25,000 and under during the study period, representing \$1,642,754 or 57.37 percent of the contract dollars.



**Table 3.19 Architecture and Engineering Prime Contractor
Utilization: Contracts \$25,000 and Under July 1, 2000 to June
30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	15	4.66%	\$94,071	3.29%
Asian Americans	58	18.01%	\$510,060	17.81%
Hispanic Americans	1	0.31%	\$3,500	0.12%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	72	22.36%	\$612,994	21.41%
Caucasian Males	176	54.66%	\$1,642,754	57.37%
TOTAL	322	100.00%	\$2,863,379	100.00%
Ethnicity 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	15	4.66%	\$94,071	3.29%
Asian American Females	14	4.35%	\$198,252	6.92%
Asian American Males	44	13.66%	\$311,808	10.89%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	1	0.31%	\$3,500	0.12%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	72	22.36%	\$612,994	21.41%
Caucasian Males	176	54.66%	\$1,642,754	57.37%
TOTAL	322	100.00%	\$2,863,379	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	14	4.35%	\$198,252	6.92%
Minority Males	60	18.63%	\$409,379	14.30%
Caucasian Females	72	22.36%	\$612,994	21.41%
Caucasian Males	176	54.66%	\$1,642,754	57.37%
TOTAL	322	100.00%	\$2,863,379	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	74	22.98%	\$607,631	21.22%
Women Business Enterprises	72	22.36%	\$612,994	21.41%
Minority and Women Business Enterprises	146	45.34%	\$1,220,625	42.63%
Caucasian Male Business Enterprises	176	54.66%	\$1,642,754	57.37%
TOTAL	322	100.00%	\$2,863,379	100.00%



C. Professional Services Prime Contractor Utilization: Contracts \$25,000 and Under

Table 3.20 summarizes dollars expended by the County on professional services prime contracts \$25,000 and under. Minority Business Enterprises received 17.61 percent of the prime contract dollars for professional services, Women Business Enterprises received 14.22 percent, and Caucasian Male Business Enterprises received 68.17 percent.

African Americans received 60 or 4.7 percent of the professional services contracts \$25,000 and under during the study period, representing \$660,015 or 6.31 percent of the contract dollars.

Asian Americans received 82 or 6.42 percent of the professional services contracts \$25,000 and under during the study period, representing \$827,283 or 7.91 percent of the contract dollars.

Hispanic Americans received 42 or 3.29 percent of the professional services contracts \$25,000 and under during the study period, representing \$334,710 or 3.2 percent of the contract dollars.

Native Americans received four or 0.31 percent of the professional services contracts \$25,000 and under during the study period, representing \$20,375 or 0.19 percent of the contract dollars.

Minority Business Enterprises received 188 or 14.72 percent of the professional services contracts \$25,000 and under during the study period, representing \$1,842,384 or 17.61 percent of the contract dollars.

Women Business Enterprises received 222 or 17.38 percent of the professional services contracts \$25,000 and under during the study period, representing \$1,488,463 or 14.22 percent of the contract dollars.

Minority and Women Business Enterprises received 410 or 32.11 percent of the professional services contracts \$25,000 and under during the study period, representing \$3,330,847 or 31.83 percent of the contract dollars.

Caucasian Male Business Enterprises received 867 or 67.89 percent of the professional services contracts \$25,000 and under during the study period, representing \$7,133,566 or 68.17 percent of the contract dollars.



**Table 3.20 Professional Services Prime Contractor
Utilization: Contracts \$25,000 and Under July 1, 2000 to June
30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	60	4.70%	\$660,015	6.31%
Asian Americans	82	6.42%	\$827,283	7.91%
Hispanic Americans	42	3.29%	\$334,710	3.20%
Native Americans	4	0.31%	\$20,375	0.19%
Caucasian Females	222	17.38%	\$1,488,463	14.22%
Caucasian Males	867	67.89%	\$7,133,566	68.17%
TOTAL	1,277	100.00%	\$10,464,413	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	23	1.80%	\$252,673	2.41%
African American Males	37	2.90%	\$407,342	3.89%
Asian American Females	18	1.41%	\$173,824	1.66%
Asian American Males	64	5.01%	\$653,460	6.24%
Hispanic American Females	20	1.57%	\$107,640	1.03%
Hispanic American Males	22	1.72%	\$227,070	2.17%
Native American Females	2	0.16%	\$10,000	0.10%
Native American Males	2	0.16%	\$10,375	0.10%
Caucasian Females	222	17.38%	\$1,488,463	14.22%
Caucasian Males	867	67.89%	\$7,133,566	68.17%
TOTAL	1,277	100.00%	\$10,464,413	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	63	4.93%	\$544,137	5.20%
Minority Males	125	9.79%	\$1,298,247	12.41%
Caucasian Females	222	17.38%	\$1,488,463	14.22%
Caucasian Males	867	67.89%	\$7,133,566	68.17%
TOTAL	1,277	100.00%	\$10,464,413	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	188	14.72%	\$1,842,384	17.61%
Women Business Enterprises	222	17.38%	\$1,488,463	14.22%
Minority and Women Business Enterprises	410	32.11%	\$3,330,847	31.83%
Caucasian Male Business Enterprises	867	67.89%	\$7,133,566	68.17%
TOTAL	1,277	100.00%	\$10,464,413	100.00%



D. Goods and Other Services Prime Contractor Utilization: Contracts \$25,000 and Under

Table 3.21 summarizes contract dollars expended by the County on goods and other services prime contracts \$25,000 and under. Minority Business Enterprises received 9.35 percent of the prime contract dollars for goods and other services, Women Business Enterprises received 10.19 percent, and Caucasian Male Business Enterprises received 80.46 percent.

African Americans received 118 or 1.62 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$685,333 or 1.67 percent of the contract dollars.

Asian Americans received 477 or 6.56 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$2,206,032 or 5.38 percent of the contract dollars.

Hispanic Americans received 159 or 2.19 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$940,554 or 2.29 percent of the contract dollars.

Native Americans received three or 0.04 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$3,130 or 0.01 percent of the contract dollars.

Minority Business Enterprises received 757 or 10.41 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$3,835,048 or 9.35 percent of the contract dollars.

Women Business Enterprises received 642 or 8.83 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$4,182,159 or 10.19 percent of the contract dollars.

Minority and Women Business Enterprises received 1,399 or 19.25 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$8,017,207 or 19.54 percent of the contract dollars.

Caucasian Male Business Enterprises received 5,870 or 80.75 percent of the goods and other services contracts \$25,000 and under during the study period, representing \$33,008,141 or 80.46 percent of the contract dollars.



**Table 3.21 Goods and Other Services Prime Contractor
Utilization: Contracts \$25,000 and Under July 1, 2000 to June
30, 2003**

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	118	1.62%	\$685,333	1.67%
Asian Americans	477	6.56%	\$2,206,032	5.38%
Hispanic Americans	159	2.19%	\$940,554	2.29%
Native Americans	3	0.04%	\$3,130	0.01%
Caucasian Females	642	8.83%	\$4,182,159	10.19%
Caucasian Males	5,870	80.75%	\$33,008,141	80.46%
TOTAL	7,269	100.00%	\$41,025,348	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	63	0.87%	\$320,889	0.78%
African American Males	55	0.76%	\$364,444	0.89%
Asian American Females	129	1.77%	\$665,144	1.62%
Asian American Males	348	4.79%	\$1,540,888	3.76%
Hispanic American Females	43	0.59%	\$291,178	0.71%
Hispanic American Males	116	1.60%	\$649,376	1.58%
Native American Females	2	0.03%	\$275	0.00%
Native American Males	1	0.01%	\$2,855	0.01%
Caucasian Females	642	8.83%	\$4,182,159	10.19%
Caucasian Males	5,870	80.75%	\$33,008,141	80.46%
TOTAL	7,269	100.00%	\$41,025,348	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	237	3.26%	\$1,277,486	3.11%
Minority Males	520	7.15%	\$2,557,563	6.23%
Caucasian Females	642	8.83%	\$4,182,159	10.19%
Caucasian Males	5,870	80.75%	\$33,008,141	80.46%
TOTAL	7,269	100.00%	\$41,025,348	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	757	10.41%	\$3,835,048	9.35%
Women Business Enterprises	642	8.83%	\$4,182,159	10.19%
Minority and Women Business Enterprises	1,399	19.25%	\$8,017,207	19.54%
Caucasian Male Business Enterprises	5,870	80.75%	\$33,008,141	80.46%
TOTAL	7,269	100.00%	\$41,025,348	100.00%



VIII. SUMMARY

The County's prime contractor utilization analysis included contracts awarded between July 1, 2000 and June 30, 2003. The contracts analyzed were in four industries: construction, architecture and engineering, professional services, and goods and other services. The County issued 11,722 contracts during the study period. These included 1,325 for construction, 442 for architecture and engineering, 1,692 for professional services, and 8,263 for goods and other services. Also, the County expended \$552,096,155 dollars during the study period, with \$141,092,348 for construction, \$53,684,539 for architecture and engineering, \$96,130,144 for professional services, and \$261,189,123 for goods and other services.

A utilization analysis was performed for payments on contracts at different size thresholds. The two informal levels: \$25,000 and under, and \$25,001 to \$100,000 were analyzed. Formal contracts under \$500,000 were also analyzed. In addition, there was an analysis on the utilization of M/WBEs and non-M/WBEs on all contracts.





4

SUBCONTRACTOR UTILIZATION ANALYSIS

I. INTRODUCTION

The *Croson* 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.”¹ The objective of the subcontractor utilization analysis was to determine the level of minority and women business enterprise (M/WBE) subcontractor utilization, compared to non-M/WBE subcontractor utilization on Alameda County (County) contracts. A finding of subcontractor disparity is required to implement a subcontractor remedy for M/WBE contractors. The subcontractor data is also a source for understanding the choices made by prime contractors in the selection of subcontractors on contracts funded by the County.

The methodology employed was to analyze County subcontracts during the July 1, 2000 to June 30, 2001 study period in three industries: construction, architecture and engineering, and professional services.

II. SUBCONTRACTOR UTILIZATION DATA SOURCES

An extensive effort was undertaken to compile subcontractor records on the County’s prime contractor construction, architecture and engineering, and professional services contracts.²

¹ *Croson*, 488 U.S. at 502-503.

² Goods and other services subcontracting is not studied because a large number of purchases are for commodities from manufacturers and suppliers. This limits subcontracting opportunities. However, goods and other services subcontracts were collected for the SLEB program analysis reported in Chapter 10: Race and Gender Neutral Program Assessment.



Because the County did not have complete subcontractor records available, one approach was to provide the County buyers with a list of prime contracts they awarded. The buyers were asked to provide subcontractors for the referenced contracts. They complied with this request by providing the subcontractor information or identifying the project files for review.

Subcontractor records available in the County's project files were collected by Mason Tillman's staff. A mail survey was conducted with 188 prime contractors receiving construction, architecture and engineering, and professional services contracts over \$100,000. Follow-up telephone calls were made to encourage them to respond. The purpose of the telephone calls were to identify all subcontractors and to determine the award and payment amounts for each. County officials sent a letter to prime contractors requesting that they provide the subcontractor information. The County executive staff and personnel from the general services agency contacted prime contractors in an effort to identify subcontractors who worked on the County's contracts. In an additional post-survey effort, County department heads assisted in identifying subcontractors.

Identified subcontractors were contacted to verify their subcontract dollars. As a result of this intensive effort to collect subcontracting, a total of 746 subcontracts were identified in the three industries.

III. SUBCONTRACTOR UTILIZATION ANALYSIS: ALL SUBCONTRACT DOLLARS

As depicted in Table 4.01 below, 746 subcontracts were analyzed for the July 1, 2000 to June 30, 2003 study period. These included 500 for construction, 154 for architecture and engineering, and 92 for professional services.

The subcontract awards totaled \$87,478,997 subcontract dollars, with \$73,294,664 for construction, \$9,523,909 for architecture and engineering, and \$4,660,424 for professional services.



Table 4.01 Subcontracts and Dollars Expended Between July 1, 2000 and June 30, 2003

Industry	Total Number of Subcontracts	Total Dollars Expended
Construction	500	\$73,294,664
Architecture and Engineering	154	\$9,523,909
Professional Services	92	\$4,660,424
Total	746	\$87,478,997



A. Subcontractor Utilization: All Subcontracts and All Industries

Table 4.02 depicts utilization for all subcontractors, across all industries (construction, architecture and engineering, and professional services). Minority business enterprises received 11.85 percent of the subcontract dollars and women business enterprises received 16.21 percent. Caucasian males received 71.94 percent of the subcontract dollars.

African Americans received 44 or 5.9 percent of the subcontracts during the study period, representing \$2,779,148 or 3.18 percent of the subcontract dollars.

Asian Americans received 43 or 5.76 percent of the subcontracts during the study period, representing \$3,321,327 or 3.8 percent of the subcontract dollars.

Hispanic Americans received 65 or 8.71 percent of the subcontracts during the study period, representing \$3,985,050 or 4.56 percent of the subcontract dollars.

Native Americans received 12 or 1.61 percent of the subcontracts during the study period, representing \$281,720 or 0.32 percent of the subcontract dollars.

Minority Business Enterprises received 164 or 21.98 percent of the subcontracts during the study period, representing \$10,367,245 or 11.85 percent of the subcontract dollars.

Women Business Enterprises received 104 or 13.94 percent of the subcontracts during the study period, representing \$14,177,295 or 16.21 percent of the subcontract dollars.

Minority and Women Business Enterprises received 268 or 35.92 percent of the subcontracts during the study period, representing \$24,544,541 or 28.06 percent of the subcontract dollars.

Caucasian Male Business Enterprises received 478 or 64.08 percent of the construction subcontracts during the study period, representing \$62,934,456 or 71.94 percent of the subcontract dollars.



Table 4.02 Subcontractor Utilization: All Subcontracts and All Industries

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	44	5.90%	\$2,779,148	3.18%
Asian Americans	43	5.76%	\$3,321,327	3.80%
Hispanic Americans	65	8.71%	\$3,985,050	4.56%
Native Americans	12	1.61%	\$281,720	0.32%
Caucasian Females	104	13.94%	\$14,177,295	16.21%
Caucasian Males	478	64.08%	\$62,934,456	71.94%
TOTAL	746	100.00%	\$87,478,997	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	16	2.14%	\$873,032	1.00%
African American Males	28	3.75%	\$1,906,117	2.18%
Asian American Females	7	0.94%	\$207,500	0.24%
Asian American Males	36	4.83%	\$3,113,827	3.56%
Hispanic American Females	25	3.35%	\$1,166,020	1.33%
Hispanic American Males	40	5.36%	\$2,819,030	3.22%
Native American Females	9	1.21%	\$259,188	0.30%
Native American Males	3	0.40%	\$22,532	0.03%
Caucasian Females	104	13.94%	\$14,177,295	16.21%
Caucasian Males	478	64.08%	\$62,934,456	71.94%
TOTAL	746	100.00%	\$87,478,997	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	57	7.64%	\$2,505,740	2.86%
Minority Males	107	14.34%	\$7,861,506	8.99%
Caucasian Females	104	13.94%	\$14,177,295	16.21%
Caucasian Males	478	64.08%	\$62,934,456	71.94%
TOTAL	746	100.00%	\$87,478,997	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	164	21.98%	\$10,367,245	11.85%
Women Business Enterprises	104	13.94%	\$14,177,295	16.21%
Minority and Women Business Enterprises	268	35.92%	\$24,544,541	28.06%
Caucasian Males	478	64.08%	\$62,934,456	71.94%
TOTAL	746	100.00%	\$87,478,997	100.00%



B. Construction Subcontractor Utilization

Table 4.03 depicts construction subcontractors. Minority business enterprises received 10.23 percent of the construction subcontract dollars and women business enterprises received 17.38 percent. Caucasian males received 72.39 percent of the subcontract dollars.

African Americans received 28 or 5.6 percent of the construction subcontracts during the study period, representing \$2,063,085 or 2.81 percent of the subcontract dollars.

Asian Americans received 18 or 3.6 percent of the construction subcontracts during the study period, representing \$1,606,549 or 2.19 percent of the subcontract dollars.

Hispanic Americans received 51 or 10.2 percent of the construction subcontracts during the study period, representing \$3,545,523 or 4.84 percent of the subcontract dollars.

Native Americans received 12 or 2.4 percent of the construction subcontracts during the study period, representing \$281,720 or 0.38 percent of the subcontract dollars.

Minority Business Enterprises received 109 or 21.8 percent of the construction subcontracts during the study period, representing \$7,496,877 or 10.23 percent of the subcontract dollars.

Women Business Enterprises received 68 or 13.6 percent of the construction subcontracts during the study period, representing \$12,736,348 or 17.38 percent of the subcontract dollars.

Minority and Women Business Enterprises received 177 or 35.4 percent of the construction subcontracts during the study period, representing \$20,233,255 or 27.61 percent of the subcontract dollars.

Caucasian Male Business Enterprises received 323 or 64.6 percent of the construction subcontracts during the study period, representing \$53,061,439 or 72.39 percent of the subcontract dollars.



Table 4.03 Construction Subcontractor Utilization

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	28	5.60%	\$2,063,085	2.81%
Asian Americans	18	3.60%	\$1,606,549	2.19%
Hispanic Americans	51	10.20%	\$3,545,523	4.84%
Native Americans	12	2.40%	\$281,720	0.38%
Caucasian Females	68	13.60%	\$12,736,348	17.38%
Caucasian Males	323	64.60%	\$53,061,439	72.39%
TOTAL	500	100.00%	\$73,294,664	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	11	2.20%	\$712,379	0.97%
African American Males	17	3.40%	\$1,350,707	1.84%
Asian American Females	4	0.80%	\$179,000	0.24%
Asian American Males	14	2.80%	\$1,427,549	1.95%
Hispanic American Females	17	3.40%	\$842,690	1.15%
Hispanic American Males	34	6.80%	\$2,702,833	3.69%
Native American Females	9	1.80%	\$259,188	0.35%
Native American Males	3	0.60%	\$22,532	0.03%
Caucasian Females	68	13.60%	\$12,736,348	17.38%
Caucasian Males	323	64.60%	\$53,061,439	72.39%
TOTAL	500	100.00%	73,294,664	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	41	8.20%	\$1,993,256	2.72%
Minority Males	68	13.60%	\$5,503,620	7.51%
Caucasian Females	68	13.60%	\$12,736,348	17.38%
Caucasian Males	323	64.60%	\$53,061,439	72.39%
TOTAL	500	100.00%	\$73,294,664	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	109	21.80%	\$7,496,877	10.23%
Women Business Enterprises	68	13.60%	\$12,736,348	17.38%
Minority and Women Business Enterprises	177	35.40%	\$20,233,225	27.61%
Caucasian Males	323	64.60%	\$53,061,439	72.39%
TOTAL	500	100.00%	\$73,294,664	100.00%



C. Architecture and Engineering Subcontractor Utilization

Table 4.04 depicts architecture and engineering subcontracts. Minority business enterprises received 10.33 percent of the architecture and engineering subcontract dollars, women business enterprises received 6.95 percent, and Caucasian males received 82.71 percent.

African American Businesses received 4 or 2.6 percent of the architecture and engineering subcontracts during the study period, representing \$68,447 or 0.72 percent of the subcontract dollars.

Asian American Businesses received 14 or 9.09 percent of the architecture and engineering subcontracts during the study period, representing \$305,086 or 3.2 percent of the subcontract dollars.

Hispanic American Businesses received 11 or 7.14 percent of the architecture and engineering subcontracts during the study period, representing \$610,682 or 6.41 percent of the subcontract dollars.

Native American Businesses received none of the subcontract dollars.

Minority Business Enterprises received 29 or 18.83 percent of the architecture and engineering subcontracts during the study period, representing \$984,215 or 10.33 percent of the subcontract dollars.

Women Business Enterprises received 25 or 16.23 percent of the architecture and engineering subcontracts during the study period, representing \$662,260 or 6.95 percent of the subcontract dollars.

Minority and Women Business Enterprises received 54 or 35.06 percent of the architecture and engineering subcontracts during the study period, representing \$1,646,475 or 17.29 percent of the subcontract dollars.

Caucasian Male Business Enterprises received 100 or 64.94 percent of the architecture and engineering subcontracts during the study period, representing \$7,877,434 or 82.71 percent of the subcontract dollars.



Table 4.04 Architecture and Engineering Subcontractor Utilization

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	4	2.60%	\$68,447	0.72%
Asian Americans	14	9.09%	\$305,086	3.20%
Hispanic Americans	11	7.14%	\$610,682	6.41%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	25	16.23%	\$662,260	6.95%
Caucasian Males	100	64.94%	\$7,877,434	82.71%
TOTAL	154	100.00%	\$9,523,909	100.00%
Ethnicity 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	2.60%	\$68,447	0.72%
Asian American Females	2	1.30%	\$27,603	0.29%
Asian American Males	12	7.79%	\$277,484	2.91%
Hispanic American Females	6	3.90%	\$500,769	5.26%
Hispanic American Males	5	3.25%	\$109,912	1.15%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	25	16.23%	\$662,260	6.95%
Caucasian Males	100	64.94%	\$7,877,434	82.71%
TOTAL	154	100.00%	9,523,909	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	8	5.19%	\$528,372	5.55%
Minority Males	21	13.64%	\$455,843	4.79%
Caucasian Females	25	16.23%	\$662,260	6.95%
Caucasian Males	100	64.94%	\$7,877,434	82.71%
TOTAL	154	100.00%	\$9,523,909	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	29	18.83%	\$984,215	10.33%
Women Business Enterprises	25	16.23%	\$662,260	6.95%
Minority and Women Business Enterprises	54	35.06%	\$1,646,475	17.29%
Caucasian Males	100	64.94%	\$7,877,434	82.71%
TOTAL	154	100.00%	\$9,523,909	100.00%



D. Professional Services Subcontractor Utilization

Table 4.05 depicts professional services subcontracts. Minority business enterprises received 44.90 percent of the professional services subcontract dollars, women business enterprises received 12.28 percent, and Caucasian males received 42.82 percent.

African American Businesses received 12 or 13.04 percent of the professional services subcontracts during the study period, representing \$647,616 or 13.9 percent of the subcontract dollars.

Asian American Businesses received 11 or 11.96 percent of the professional services subcontracts during the study period, representing \$1,409,692 or 30.25 percent of the subcontract dollars.

Hispanic American Businesses received four or 4.35 percent of the professional services subcontracts during the study period, representing \$35,341 or 0.76 percent of the subcontract dollars.

Native American Businesses received none of the professional services subcontract dollars.

Minority Business Enterprises received 27 or 29.35 percent of the professional services subcontracts during the study period, representing \$2,092,649 or 44.9 percent of the subcontract dollars.

Women Business Enterprises received 10 or 10.87 percent of the professional services subcontracts during the study period, representing \$572,192 or 12.28 percent of the subcontract dollars.

Minority and Women Business Enterprises received 37 or 40.22 percent of the professional services subcontracts during the study period, representing \$2,664,841 or 57.18 percent of the subcontract dollars.

Caucasian Male Business Enterprises received 55 or 59.78 percent of the professional services subcontracts during the study period, representing \$1,995,583 or 42.82 percent of the subcontract dollars.



Table 4.05 Professional Services Subcontractor Utilization

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	12	13.04%	\$647,616	13.90%
Asian Americans	11	11.96%	\$1,409,692	30.25%
Hispanic Americans	4	4.35%	\$35,341	0.76%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	10	10.87%	\$572,192	12.28%
Caucasian Males	55	59.78%	\$1,995,583	42.82%
TOTAL	92	100.00%	\$4,660,424	100.00%
Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	5	5.43%	\$160,653	3.45%
African American Males	7	7.61%	\$486,963	10.45%
Asian American Females	1	1.09%	\$898	0.02%
Asian American Males	10	10.87%	\$1,408,794	30.23%
Hispanic American Females	3	3.26%	\$29,056	0.62%
Hispanic American Males	1	1.09%	\$6,285	0.13%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	10	10.87%	\$572,192	12.28%
Caucasian Males	55	59.78%	\$1,995,583	42.82%
TOTAL	92	100.00%	4,660,424	100.00%
Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	9	9.78%	\$190,607	4.09%
Minority Males	18	19.57%	\$1,902,042	40.81%
Caucasian Females	10	10.87%	\$572,192	12.28%
Caucasian Males	55	59.78%	\$1,995,583	42.82%
TOTAL	92	100.00%	\$4,660,424	100.00%
Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Business Enterprises	27	29.35%	\$2,092,649	44.90%
Women Business Enterprises	10	10.87%	\$572,192	12.28%
Minority and Women Business Enterprises	37	40.22%	\$2,664,841	57.18%
Caucasian Males	55	59.78%	\$1,995,583	42.82%
TOTAL	92	100.00%	\$4,660,424	100.00%



IV. SUMMARY

The County's subcontractor utilization analysis included subcontracts awarded between July 1, 2000 and June 30, 2003. Subcontracts were analyzed in three industries: construction, architecture and engineering, and professional services. The County's prime contractors issued 746 subcontracts during the study period. These included 500 for construction, 154 for architecture and engineering, and 92 for professional services. Also, \$87,478,997 was expended on those subcontracts during the study period, with \$73,294,664 for construction, \$9,523,909 for architecture and engineering, and \$4,660,424 for professional services.

A utilization analysis, by ethnicity and gender, was performed within each of the three industries for all subcontracts.





5

MARKET AREA ANALYSIS

I. INTRODUCTION

Croson established that a local government should identify discrimination within its own jurisdiction.¹ The objective of the market area analysis was to determine where Alameda County (County) is conducting its business. The methodology employed was to use the prime contractor utilization data to identify where the County's utilized firms were located. Only then were the boundaries for identifying available firms specified.

A. Legal Criteria for Geographic Market Area

The Supreme Court's decision in *Richmond v. Croson*² firmly established that programs which set aside a certain percentage of state and local contracts for minority and woman-owned firms must be supported by *evidence of past discrimination in the award of their contracts*.

Prior to the *Croson* decision, many agencies and jurisdictions implementing race-conscious programs had done so without developing a detailed public record to document discrimination in their award of contracts. Instead, they relied upon common knowledge and widely-recognized patterns of discrimination, both local and national.³

Croson established that a local government should not rely on society-wide discrimination as the basis for a race-based program, but should instead identify discrimination within its own jurisdiction.⁴ In *Croson*, the Court found the City of Richmond's Minority Business

¹ Croson, 488 U.S. at 497.

² City of Richmond v. J.A. Croson, 488 U.S. 469 (1989).

³ United Steelworkers v. Weber, 433 U.S. 193, 198, n. 1 (1979).

⁴ Croson, 488 U.S. at 497.



Enterprise (MBE) construction program to be unconstitutional due to insufficient evidence of its 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 the statistical comparison of business availability and business utilization. Therefore, the identification of the local market area is particularly important as it establishes the parameters within which to conduct a disparity study.

B. Application of The Croson Standard

While *Croson* did much to emphasize the importance of local market area, it provided little assistance in defining its parameters. However, it is informative to review the Court's definition of market area in the City of Richmond context. In discussing the scope of the constitutional violation that must be investigated, the Court interchangeably used the terms "relevant market,"⁵ "Richmond construction industry,"⁶ and "city's construction industry"⁷ to define the proper scope of the examination of the existence of discrimination. This substitution of terms lends support to a definition of market area that coincides with the boundaries of a jurisdiction.

In analyzing the cases following *Croson*, a pattern emerges which provides us with additional guidance. The body of cases examining market area support a definition of market area that is reasonable.⁸ In *Cone Corporation v. Hillsborough County*,⁹ the Eleventh Circuit Court of Appeals considered a study in support of Hillsborough County's MBE program which used minority contractors located in the County as the measure of available firms. The program was found to be constitutional under the compelling governmental interest prong of strict scrutiny.

Hillsborough's program was based on statistics indicating that specific discrimination existed in the construction contracts awarded by the County, not in the construction industry in general. Hillsborough County had extracted data from within its own jurisdictional boundaries and assessed the percentage of minority businesses available in Hillsborough

⁵ *Croson*, 488 U.S. at 471.

⁶ *Id.* at 500.

⁷ *Id.* at 470.

⁸ See, e.g., *Concrete Works of Colorado v. City of Denver*, Colorado, 36 F.3d 1513, 1528 (10th Cir. 1994).

⁹ *Cone Corp. v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990).



County. The court stated that the study was properly conducted within the “local construction industry.”¹⁰

Similarly, in *Associated General Contractors v. Coalition for Economic Equity (AGCCII)*,¹¹ the Ninth Circuit Court of Appeals found the City and County of San Francisco’s MBE program to have the factual predicate necessary to survive strict scrutiny. The MBE program was supported by a 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.¹²

In *Coral Construction v. King County*, the 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.”¹³ In support of its MBE program, King County offered studies compiled by other jurisdictions, including entities completely within the County or coterminous with the boundaries of the County, as well as a separate jurisdiction completely outside of the County. The plaintiffs contended that *Croson* required King County to compile its own data and cited *Croson* to prohibit data sharing.

The court found that data sharing could potentially lead to the improper use of societal discrimination data as the factual basis for a local MBE program and that innocent third parties could be unnecessarily burdened if an MBE program were based on outside data. However, the court found the data from entities within the County and from coterminous jurisdictions to be relevant to discrimination in the County and to pose no risk of unfairly burdening innocent third parties. As for data gathered by a neighboring county, the court concluded that this data 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 legitimately 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.”¹⁴ However, the court did acknowledge that the “world of contracting does not conform itself neatly to jurisdictional boundaries.”¹⁵

¹⁰ *Id.* at 915.

¹¹ *Associated General Contractors v. Coalition for Economic Equity*, 950 F.2d 1401 (9th Cir. 1991).

¹² *Id.* at 1415.

¹³ *Coral Construction v. King County*, 941 F.2d 910, 916 (9th Cir. 1991).

¹⁴ *Id.* at 917.

¹⁵ *Ibid.*



In other situations courts have approved a definition of market area that extends beyond a jurisdiction's boundaries. In *Concrete Works v. City and County of Denver*,¹⁶ the court directly addressed the issue of whether extra-jurisdictional evidence of discrimination can be used to determine "local market area" for a disparity study. In *Concrete Works*, the defendant relied on evidence of discrimination in the six-county Denver Metropolitan Statistical Area (MSA) to support its MBE program. Relying on *Croson*, plaintiffs argued that the extra jurisdictional evidence should not be considered. The court disagreed, finding that *Croson*'s concern was that cities not use vaguely defined societal discrimination as the factual predicate for a disparity study. The court explained that evidence of discrimination should be specific so that race-conscious programs are designed to minimize burdens upon nonculpable third parties.

Critical to the court's acceptance of the Denver MSA as the relevant local market was the finding that over 80 percent of construction and design contracts awarded by Denver were awarded to contractors within the MSA. Another consideration was that Denver's analysis was based on U.S. Census data, which was available for the Denver MSA, but not for the city itself. There was no undue burden placed on nonculpable parties as Denver had conducted a majority of its construction contracts within the area defined as the local market. Citing *AGCCII*,¹⁷ the court noted "that any plan that extends race-conscious remedies beyond territorial boundaries must be based on very specific findings that actions that the city has taken in the past have visited racial discrimination on such individuals."¹⁸

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 which receive more than 90 percent of the dollar value of all contracts awarded by the agency.¹⁹

It is clear from *Croson* that 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 individuals or qualified minority business owners in the government's marketplace.²⁰ The text of *Croson* itself suggests that the geographical boundaries of the government entity are an appropriate market area and other courts have agreed with this finding. In addition, other cases have approved the use of a percentage of the dollars spent by an agency on contracting.

¹⁶ *Concrete Works of Colorado v. City of Denver, Colorado*, 36 F.3d 1513 , 1528 (10th Cir. 1994).

¹⁷ *AGCCII*, 950 F.2d at 1401.

¹⁸ *Concrete Works*, 36 F.3d at 1528.

¹⁹ *Opportunity Denied! New York State's Study*, 26 *Urban Lawyer* No. 3, Summer 1994.

²⁰ *Croson*, 488 U.S. at 501.



It is clear that an entity may limit consideration of evidence of discrimination within its own jurisdiction. It is also clear that under certain circumstances, extra-jurisdictional evidence may be permitted. However, any consideration of extra-jurisdictional discrimination must consider those concerns enunciated in *Croson*: that innocent third parties not be burdened by an MBE program. Taken collectively, these cases support a definition of market area that is reasonable rather than dictating a specific formula. Since *Croson* and its progeny did not provide a bright line rule for local market area, that determination should be fact-based and case specific.

II. STUDY'S MARKET AREA

The clear implication of the market area cases is that in applying the test of reasonableness, one can limit the area to that of the jurisdiction if the facts support it. The following table depicts the overall number of contracts and dollar value of contracts awarded by the County during July 1, 2000 to June 30, 2003. As depicted in the table, the County awarded 11,722 prime contracts valued at \$552,096,155. Of these contracts, 6,679 or 57.98 percent were awarded to Alameda County-based companies.

The dollar value of the prime contracts was \$318,894,512 or 57.76 percent of all dollars. More particularly, construction and goods and other services involved \$402,281,471 or 72.8 percent of the total prime contract dollars, and 9,588 or 81.7 percent of the contracts. Of the construction and goods and other services, \$267,051,598 or 83.7 percent of the dollars and 5,621 or 84.2 percent of the contracts were awarded to Alameda County firms. Given that geographical distribution, Alameda County is determined to be this study's geographical market area.



**Table 5.01 Alameda County Market Area: July 1, 2000 to
June 30, 2003**

Market Area	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Combined Types of Work				
Local	6,679	56.98%	\$318,894,512	57.76%
Non-Local	5,043	43.02%	\$233,201,643	42.24%
Total	11,722	100.00%	\$552,096,155	100.00%
Construction				
Local	1,033	77.96%	\$111,624,207	79.11%
Non-Local	292	22.04%	\$29,468,141	20.89%
Total	1,325	100.00%	\$141,092,348	100.00%
Architecture and Engineering				
Local	330	74.66%	\$15,914,980	29.65%
Non-Local	112	25.34%	\$37,769,559	70.35%
Total	442	100.00%	\$53,684,539	100.00%
Professional Services				
Local	728	43.03%	\$35,927,933	37.37%
Non-Local	964	56.97%	\$60,202,211	62.63%
Total	1,692	100.00%	\$96,130,144	100.00%
Procurement of Goods and Other Services				
Local	4,588	55.52%	\$155,427,391	59.51%
Non-Local	3,675	44.48%	\$105,761,731	40.49%
Total	8,263	100.00%	\$261,189,123	100.00%





6

AVAILABILITY ANALYSIS

I. INTRODUCTION

According to *Croson*, availability is defined as businesses in the jurisdiction's market area that are willing and able to provide goods or services.¹ The objective of the availability analysis is to identify businesses in Alameda County's (County) market area willing and able to perform a service or provide a commodity procured by the County.

To determine availability the County's minority business enterprises, woman business enterprises (M/WBE) and non-M/WBEs business enterprises that are willing and able to perform local government contracts need to be enumerated. When considering sources for determining the number of willing and able M/WBEs and non-M/WBEs, the selection must be based on whether two significant aspects about the population in question can be gauged from the sources: 1) A firm's interest in doing business with the local government, as implied by the term "willing," and 2) A firm's ability or capacity to provide a service or item, as implied by the term "able."

The determination of availability must follow from the definition of an entity's market area. The market area analysis presented in Chapter 5 defined the County as the market area for this Study because the majority of businesses the County utilized are generated within the County's jurisdiction.

The compiled list of available businesses includes minority, women, and Caucasian male-owned businesses in the areas of construction, architecture and engineering, professional services, and the goods and other services. Separate availability lists were compiled for prime contractors and subcontractors in those industries.



¹ *Croson*, 488 U.S. at 509.

II. SOURCES OF POTENTIALLY WILLING AND ABLE PRIME CONTRACTORS

A. Prime Contractor Sources

M/WBEs and non-M/WBEs willing and able to do business with the County were identified from various sources. Sources included businesses that had demonstrated the willingness to provide the goods and services procured by the County. For others, this willingness had to be determined. Table 6.01 lists the sources used.

Table 6.01 Prime Contractor Availability Data Sources

Source of Record	Type of Information
Alameda County and Other Government Records	
• Alameda County: ALCOLINK Vendors	• M/WBEs and non-M/WBEs
• Alameda County: Utilized businesses	• M/WBEs and non-M/WBEs
• Alameda County: Unsuccessful businesses	• M/WBEs and non-M/WBEs
Agency Certification Lists	
• Alameda County: Small, Local, and Emerging Business Program	• M/WBEs and non-M/WBEs
• Alameda County Transportation Improvement Authority: Local Business Enterprise/Small Local Business Enterprise Program	• M/WBEs and non-M/WBEs
• Bay Area Rapid Transit District: Database of Certified Disadvantaged Business Enterprises (DBE)	• DBEs and non-DBEs
• California Department of Transportation: Unified Certification Program Database	• DBEs and non-DBEs
• East Bay Municipal Utility District: Contract Equity Program Business Directory 2000	• M/WBEs and non-M/WBEs
• City of Oakland: Small, Local Business Enterprise Directory	• M/WBEs and non-M/WBEs
• Port of Oakland: Certification Outreach Database	• M/WBEs and non-M/WBEs



Table 6.01 Prime Contractor Availability Data Sources

Source of Record	Type of Information
<ul style="list-style-type: none"> U.S. Small Business Administration: Procurement Marketing and Access Network 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
Business Outreach Events	
<ul style="list-style-type: none"> Alameda County Public Works: Business Outreach Bureau Meetings Attendee Lists 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> Alameda County Availability Study: Community Meetings Sign-In Sheets and Business Surveys 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
Trade Association Membership Lists	
<ul style="list-style-type: none"> American Institute of Architects: East Bay Chapter 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> Associated Builders and Contractors 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> Associated General Contractors 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> Black Contractors Association 	<ul style="list-style-type: none"> M/WBEs
<ul style="list-style-type: none"> Builders' Exchange of Alameda County 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> East Bay Asian Design Professional 	<ul style="list-style-type: none"> M/WBEs
<ul style="list-style-type: none"> National Association of Women Business Owners 	<ul style="list-style-type: none"> WBEs
<ul style="list-style-type: none"> Northern California Supplier Development Council 	<ul style="list-style-type: none"> MBEs
Chamber Membership Lists	
<ul style="list-style-type: none"> Alameda County Chamber of Commerce 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> Dublin Chamber of Commerce 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> East Bay Filipino Chamber of Commerce 	<ul style="list-style-type: none"> M/WBEs
<ul style="list-style-type: none"> Fremont Chamber of Commerce 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> Hayward Chamber of Commerce 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> Hispanic Chamber of Commerce 	<ul style="list-style-type: none"> M/WBEs



Table 6.01 Prime Contractor Availability Data Sources

Source of Record	Type of Information
• Livermore Chamber of Commerce	• M/WBEs and non-M/WBEs
• Newark Chamber of Commerce	• M/WBEs and non-M/WBEs
• Oakland Chamber of Commerce	• M/WBEs and non-M/WBEs
• Oakland Chinatown Chamber of Commerce	• M/WBEs
• Union City Chamber of Commerce	• M/WBEs and non-M/WBEs

B. Determination of Willingness

The term “willingness” refers to a firm’s indicated interest in doing government contracting. This term, as it has been used in *Croson* and its progeny, is addressed in detail in the Legal Framework chapter of this report. Companies secured through Alameda County and other governmental agencies, listed in Table 6.01, have demonstrated their willingness to perform on public contracts. These businesses had either bid on County projects, sought government contracts, secured government certification, or responded to the outreach campaign conducted in conjunction with this Availability Study and other County outreach programs. It is therefore presumed that companies that sought government contracts are willing to provide the goods and services needed by the County.

Companies from the non-governmental agency membership lists in Table 6.01 were not presumed to be willing, based on the *Croson* criteria. The lists include companies not previously bidding on government contracts. These companies were surveyed to determine their willingness to bid on County contracts. The businesses that indicated a willingness, when surveyed, were added to the database used to create a unique list of businesses in the County’s market area. The surveyed businesses that indicated an interest in contracting with the County were combined with the businesses from the County and other government lists, certification lists, and outreach lists to compile this unique list of willing businesses.

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

Tables 6.02 through 6.06 represent the distribution of willing prime contractors. The sources are ranked from prime contractors utilized by a local public agency to companies identified during disparity study outreach activities. Each company in the distribution of sources is *counted only once*. For example, a utilized prime contractor is counted once in the prime contractor utilization source and will not be counted a second time as a bidder, as certified, or as identified during outreach.



As noted in Table 6.02, 95.14 percent of the prime contractors available in the four industries combined were obtained from public agencies, certification lists, and business outreach events. Companies identified through trade associations and chamber membership lists were 4.86 percent of the firms.

Table 6.02 Prime Contractor Availability Data Sources, All Industries

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
• Alameda County and Other Government Records	55.17	52.93	54.27
• Agency Certification Lists	37.43	44.74	40.38
• Business Outreach Events	00.57	00.40	00.50
Subtotal	93.17	98.07	95.14
• Trade Association Membership Lists	1.54	0.89	1.28
• Chamber Membership Lists	5.29	1.04	3.58
Subtotal	6.83	1.93	4.86
Total	100.00	100.00	100.00

Note: The percentages may not total 100 percent due to rounding.



The distribution of available businesses by source was performed for each industry. As noted in Table 6.03, 93.98 percent of the construction prime contractors identified were derived from public agencies, certification lists, and business outreach sources.

Table 6.03 Construction Prime Contractor Availability Sources

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
• Alameda County and Other Government Records	61.57	62.92	62.16
• Agency Certification Lists	30.13	32.58	31.20
• Business Outreach Events	01.09	00.00	00.61
Subtotal	92.79	95.51	93.98
• Trade Association Membership Lists	05.90	04.21	05.16
• Chamber Membership Lists	01.31	00.28	00.86
Subtotal	07.21	04.49	06.02
Total	100.00	100.00	100.00

Note: The percentages may not total 100 percent due to rounding.



Table 6.04 depicts the data sources for architecture and engineering prime contractors. As noted, 96.98 percent of the prime contractors were obtained from public agencies, certification lists, and business outreach sources.

Table 6.04 Architecture and Engineering Prime Contractor Availability Sources

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
• Alameda County and Other Government Records	62.69	55.46	58.70
• Agency Certification Lists	31.61	43.28	38.05
• Business Outreach Events	00.52	00.00	00.23
Subtotal	94.82	98.74	96.98
• Trade Association Membership Lists	03.63	00.00	01.62
• Chamber Membership Lists	01.55	01.26	01.39
Subtotal	05.18	01.26	03.02
Total	100.00	100.00	100.00

Note: The percentages may not total 100 percent due to rounding.



Table 6.05 depicts the data sources for professional services prime contractors. As noted, 92.55 percent of the professional services prime contractors were obtained from public agencies, certification lists, and business outreach sources.

Table 6.05 Professional Services Prime Contractor Availability Sources

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
• Alameda County and Other Government Records	47.01	54.98	51.12
• Agency Certification Lists	38.81	42.36	40.64
• Business Outreach Events	00.90	00.70	00.80
Subtotal	86.72	98.04	92.55
• Trade Association Membership Lists	01.19	00.28	00.72
• Chamber Membership Lists	12.09	01.68	06.72
Subtotal	13.28	01.96	07.45
Total	100.00	100.00	100.00

Note: The percentages may not total 100 percent due to rounding.



Table 6.06 depicts the data sources for goods and other services prime contractors. As noted, 97.35 percent of the prime contractors were obtained from public agencies, certification lists, and business outreach sources.

Table 6.06 Goods and Other Services Prime Contractor Availability Sources

Sources	M/WBEs Percentage	Non-M/WBEs Percentage	Source Percentage
• Alameda County and Other Government Records	59.56	53.31	57.39
• Agency Certification Lists	36.44	45.80	39.69
• Business Outreach Events	00.26	00.30	00.27
Subtotal	96.26	99.41	97.35
Trade Association Membership Lists	00.21	00.10	00.17
Chamber Membership Lists	03.53	00.49	02.47
Subtotal	03.74	00.59	02.65
Total	100.00	100.00	100.00

Note: The percentages may not total 100 percent due to rounding.



III. CAPACITY

The second component of the availability requirement set forth in *Croson* is a firm's capacity or ability to perform the contracts the agency awarded.² However capacity requirements are not delineated in *Croson*. In fact a standard for capacity has only been addressed in a few subsequent cases. Each case where capacity has been considered has involved large, competitively bid construction prime contracts. Therefore, four approaches have been employed in this Study to compile a list of willing and able firms:

- the size of the County's awarded prime contracts is analyzed to determine the capacity needed to perform the average awarded contract;
- the largest contracts M/WBEs were awarded are identified to determine demonstrated ability to win large competitively bid contracts;
- the M/WBE certification process is assessed to determine if it meets the standard set in *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia (Philadelphia)*,³ which found certification to be a measure of capacity; and
- the disparity study is restricted to an examination of the prime contract awards \$500,000 and under to limit the capacity required to perform the contracts subjected to the statistical analysis.

This methodology was sufficient to assess the capacity of willing market area firms to do business with the County.



² City of Richmond v. J.A. Croson, 488 U.S. 469 (1989).

³ Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia, 6 F.3d 990 (3d Cir. 1993), on remand, 893 F. Supp. 419 (E.D. Penn. 1995), affd, 91 F.3d 586 (3d Cir. 1996).

A. Size of Purchase Orders Analyzed

In *Associated General Contractors of California v. City of Columbus* and *Engineering Contractors Ass'n of South Florida v. Metropolitan Dade County*, the courts were primarily concerned with the capacity analysis of available bidders for large, competitively bid contracts. It should also be noted that the focus in both cases was on the bidding company's size and ability to perform on large competitively bid construction contracts.⁴

The County's construction, architecture and engineering, professional services, and goods and other services contracts were analyzed to determine the capacity required to perform the contracts and the capacity demonstrated by prime contractors regarding ethnic and gender groups. In order to assess whether the difference is attributable to chance, a P-value was calculated. The P-value takes into account the number of contracts, the 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 of less than 0.05, the difference is statistically significant.⁵

1. All Prime Contracts by Size: All Industries

Table 6.07 depicts all of the County's prime contracts within dollar ranges, all industries combined. The percent of contracts valued at \$25,000 and under was 85.47, the percent \$100,000 and under was 95.21, and the percent under \$500,000 was 98.86.

The P-value of >0.05 denotes an insignificant difference in the size of the County's prime contracts for all industries combined across ethnic/gender groups.

2. Construction Prime Contracts by Size

Table 6.08 depicts the County's construction prime contracts awarded within dollar ranges. The percent of contracts valued at \$25,000 and under was 86.87, those \$100,000 and under was 92.23 percent, and those under \$500,000 was 96.68 percent.

The P-value of <0.05 denotes a significant difference in the size of construction prime contract dollars across ethnic/gender groups.

⁴ *Associated General Contractors of California v. City of Columbus*, 936 F. Supp. 1363 (S.D. Ohio 1996) and *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).

⁵ The study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.



3. Architecture and Engineering Prime Contracts by Size

Table 6.09 depicts the County's architecture and engineering prime contracts within dollar ranges. The percent of contracts valued at \$25,000 and under was 72.85 percent, those \$100,000 and under was 85.52, and those under \$500,000 was 96.61 percent.

The P-value of <0.01 denotes a significant difference in the size of architecture and engineering prime contract dollars across ethnic/gender groups.

4. Professional Services Prime Contracts by Size

Table 6.10 depicts professional services prime contracts within dollar ranges. The percent of contracts valued at \$25,000 and under was 75.47 percent, those below \$100,000 was 90.78 percent, and those below \$500,000 was 98.29 percent.

The P-value cannot be calculated because of an insufficient number of professional services prime contracts.

5. Goods and Other Services Prime Contracts by Size

Table 6.11 depicts goods and other services prime contracts within dollar ranges. The percent of contracts valued at \$25,000 and under was 87.97 percent, those below \$100,000 was 97.12 percent and those below \$500,000 was 99.45 percent.

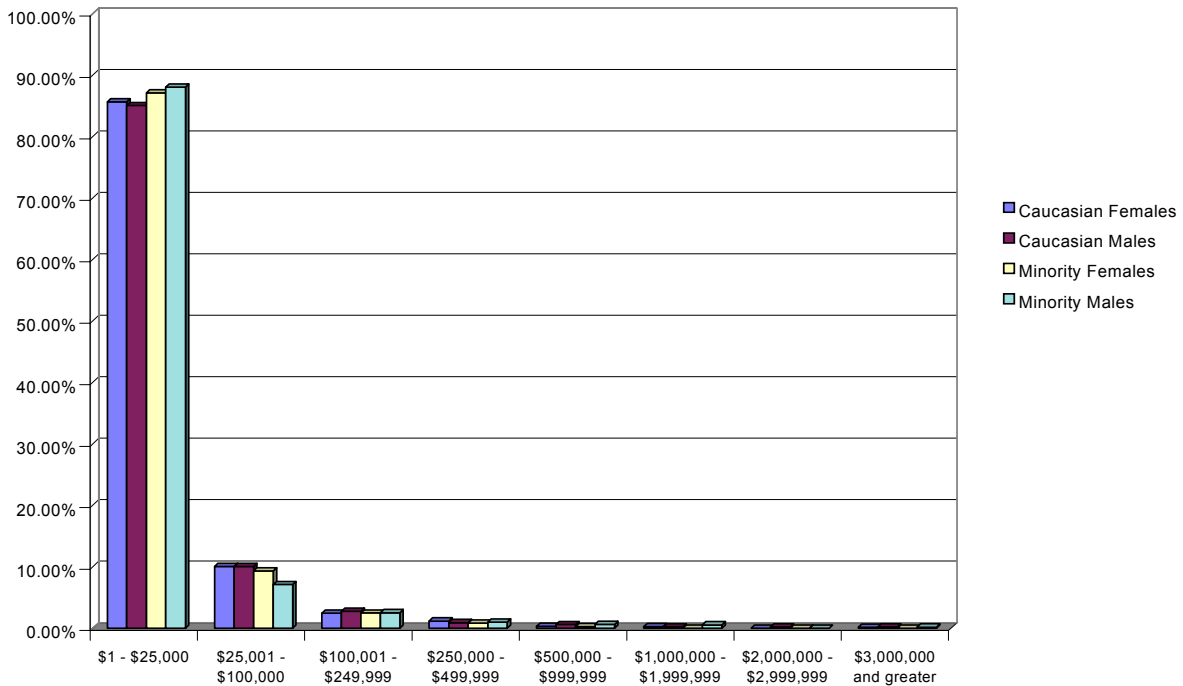
The P-value of >0.05 denotes a insignificant difference in the size of goods and other services prime contract dollars across ethnic/gender groups.



**Table 6.07 Prime Contracts by Size: All Industries July 1,
2000 to June 30, 2003**

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$25,000	1097	85.64%	7,626	85.06%	317	87.09%	979	88.04%	10,019	85.47%
\$25,001 - \$100,000	129	10.07%	900	10.04%	34	9.34%	79	7.10%	1,142	9.74%
\$100,001 - \$249,999	31	2.42%	248	2.77%	9	2.47%	28	2.52%	316	2.70%
\$250,000 - \$499,999	15	1.17%	82	0.91%	3	0.82%	11	0.99%	111	0.95%
\$500,000 - \$999,999	4	0.31%	53	0.59%	1	0.27%	7	0.63%	65	0.55%
\$1,000,000 - \$1,999,999	3	0.23%	20	0.22%	0	0.00%	6	0.54%	29	0.25%
\$2,000,000 - \$2,999,999	0	0.00%	18	0.20%	0	0.00%	0	0.00%	18	0.15%
\$3,000,000 and greater	2	0.16%	18	0.20%	0	0.00%	2	0.18%	22	0.19%
Total	1281	100.00%	8965	100.00%	364	100.00%	1112	100.00%	11722	100.00%

P-Value > 0.05



**Table 6.08 Construction Prime Contracts by Size: July 1,
2000 to June 30, 2003**

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$25,000	161	93.60%	713	85.49%	3	50.00%	274	87.54%	1,151	86.87%
\$25,001 - \$100,000	7	4.07%	52	6.24%	2	33.33%	10	3.19%	71	5.36%
\$100,001 - \$249,999	1	0.58%	16	1.92%	0	0.00%	11	3.51%	28	2.11%
\$250,000 - \$499,999	1	0.58%	19	2.28%	1	16.67%	10	3.19%	31	2.34%
\$500,000 - \$999,999	0	0.00%	19	2.28%	0	0.00%	3	0.96%	22	1.66%
\$1,000,000 - \$1,999,999	2	1.16%	8	0.96%	0	0.00%	4	1.28%	14	1.06%
\$2,000,000 - \$2,999,999	0	0.00%	2	0.24%	0	0.00%	0	0.00%	2	0.15%
\$3,000,000 and greater	0	0.00%	5	0.60%	0	0.00%	1	0.32%	6	0.45%
Total	172	100.00%	834	100.00%	6	100.00%	313	100.00%	1325	100.00%

P-Value < 0.05

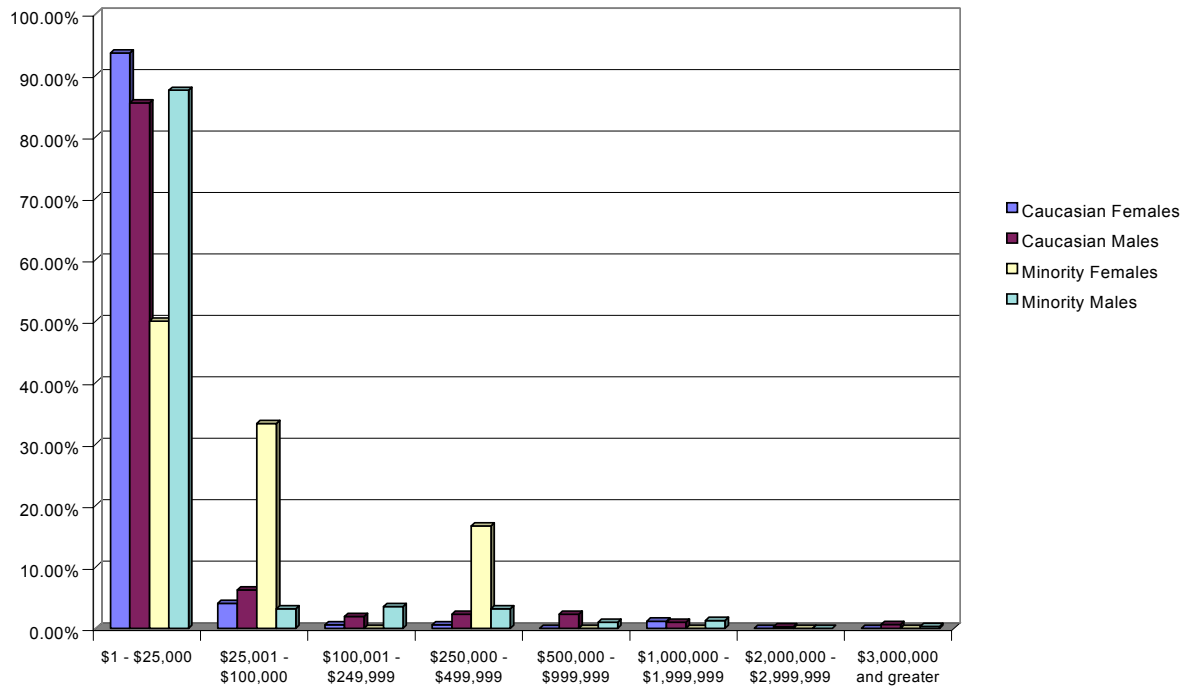
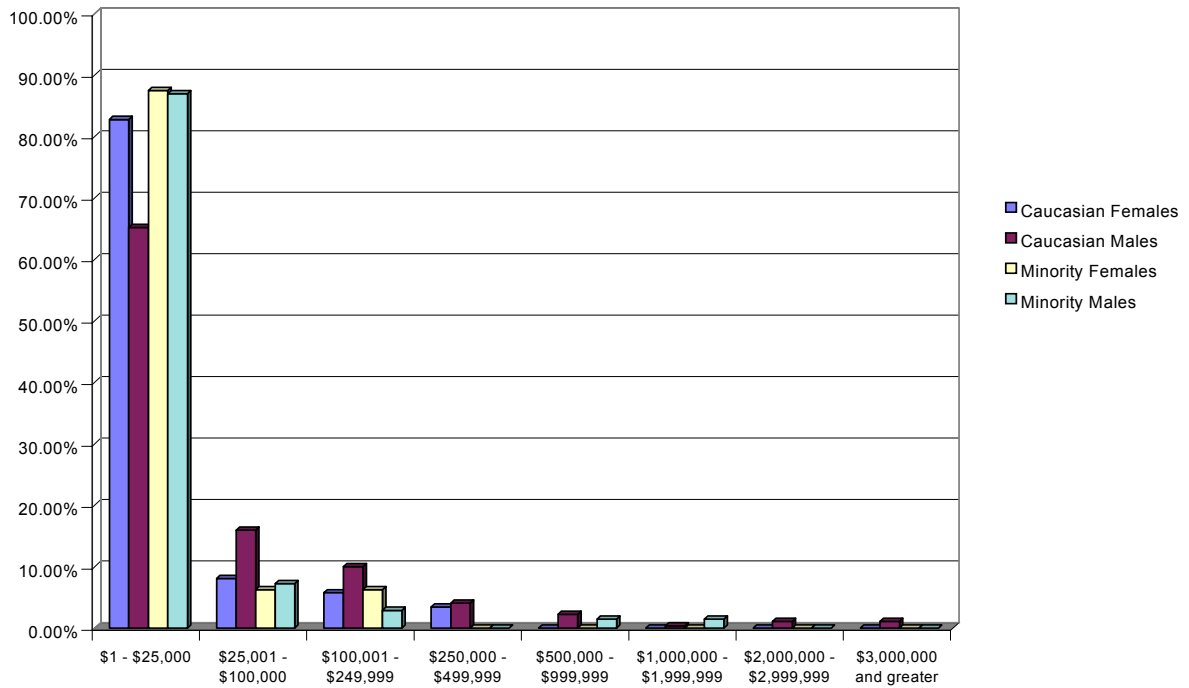


Table 6.09 Architecture and Engineering Prime Contracts by Size: July 1, 2000 to June 30, 2003

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$25,000	72	82.76%	176	65.19%	14	87.50%	60	86.96%	322	72.85%
\$25,001 - \$100,000	7	8.05%	43	15.93%	1	6.25%	5	7.25%	56	12.67%
\$100,001 - \$249,999	5	5.75%	27	10.00%	1	6.25%	2	2.90%	35	7.92%
\$250,000 - \$499,999	3	3.45%	11	4.07%	0	0.00%	0	0.00%	14	3.17%
\$500,000 - \$999,999	0	0.00%	6	2.22%	0	0.00%	1	1.45%	7	1.58%
\$1,000,000 - \$1,999,999	0	0.00%	1	0.37%	0	0.00%	1	1.45%	2	0.45%
\$2,000,000 - \$2,999,999	0	0.00%	3	1.11%	0	0.00%	0	0.00%	3	0.68%
\$3,000,000 and greater	0	0.00%	3	1.11%	0	0.00%	0	0.00%	3	0.68%
Total	87	100.00%	270	100.00%	16	100.00%	69	100.00%	442	100.00%

P-Value < 0.01



**Table 6.10 Professional Services Prime Contracts by Size:
July 1, 2000 to June 30, 2003**

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$25,000	222	75.51%	867	74.68%	63	78.75%	125	79.62%	1,277	75.47%
\$25,001 - \$100,000	50	17.01%	174	14.99%	12	15.00%	23	14.65%	259	15.31%
\$100,001 - \$249,999	12	4.08%	80	6.89%	5	6.25%	6	3.82%	103	6.09%
\$250,000 - \$499,999	5	1.70%	19	1.64%	0	0.00%	0	0.00%	24	1.42%
\$500,000 - \$999,999	4	1.36%	12	1.03%	0	0.00%	3	1.91%	19	1.12%
\$1,000,000 - \$1,999,999	1	0.34%	4	0.34%	0	0.00%	0	0.00%	5	0.30%
\$2,000,000 - \$2,999,999	0	0.00%	3	0.26%	0	0.00%	0	0.00%	3	0.18%
\$3,000,000 and greater	0	0.00%	2	0.17%	0	0.00%	0	0.00%	2	0.12%
Total	294	100.00%	1161	100.00%	80	100.00%	157	100.00%	1692	100.00%

Insufficient Data

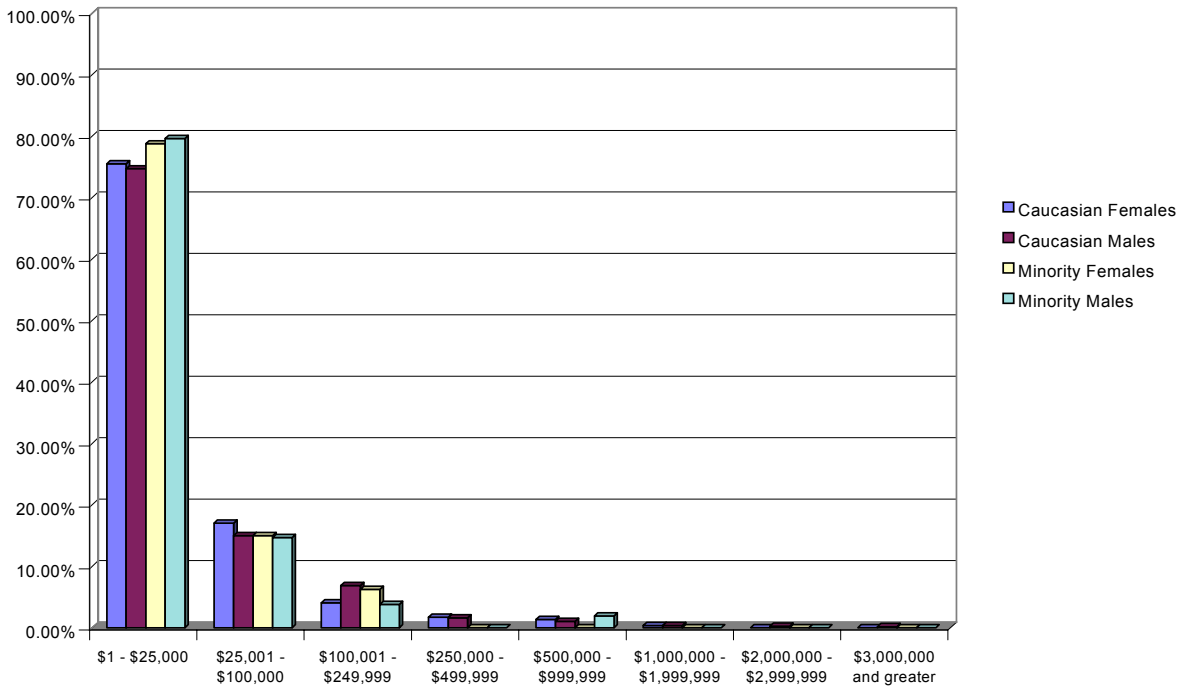
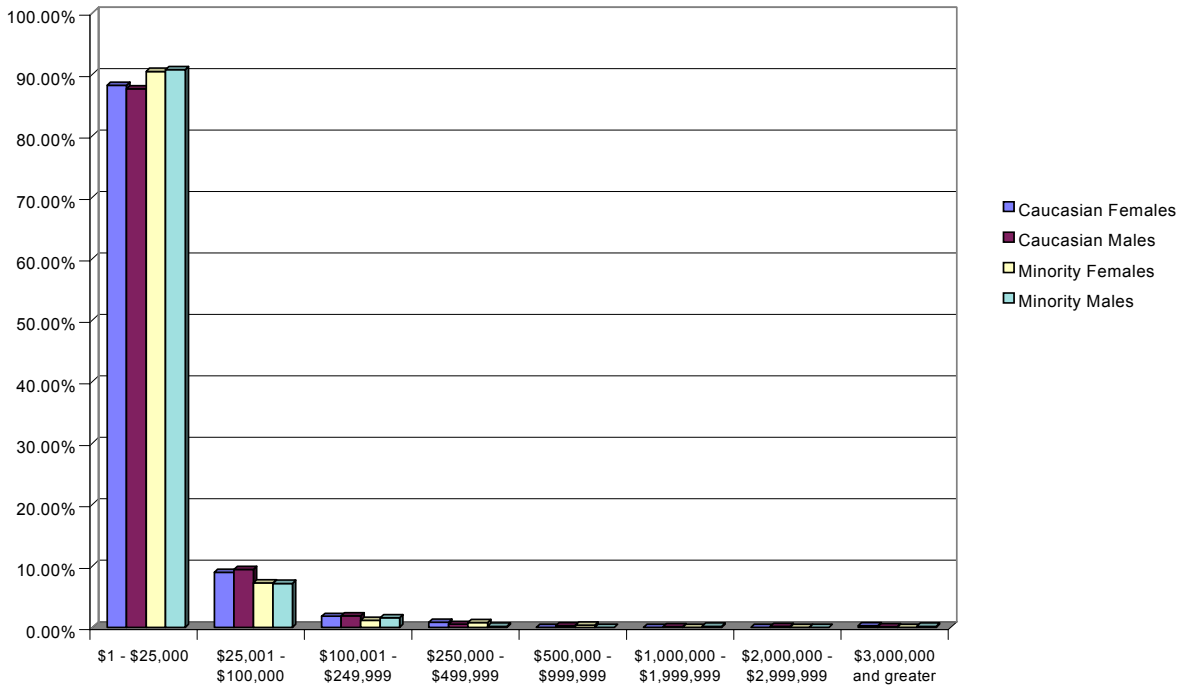


Table 6.11 Goods and Other Services Prime Contracts by Size: July 1, 2000 to June 30, 2003

Size	Caucasian				Minority				Total	
	Females		Males		Females		Males			
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
\$1 - \$25,000	642	88.19%	5,870	87.61%	237	90.46%	520	90.75%	7,269	87.97%
\$25,001 - \$100,000	65	8.93%	631	9.42%	19	7.25%	41	7.16%	756	9.15%
\$100,001 - \$249,999	13	1.79%	125	1.87%	3	1.15%	9	1.57%	150	1.82%
\$250,000 - \$499,999	6	0.82%	33	0.49%	2	0.76%	1	0.17%	42	0.51%
\$500,000 - \$999,999	0	0.00%	16	0.24%	1	0.38%	0	0.00%	17	0.21%
\$1,000,000 - \$1,999,999	0	0.00%	7	0.10%	0	0.00%	1	0.17%	8	0.10%
\$2,000,000 - \$2,999,999	0	0.00%	10	0.15%	0	0.00%	0	0.00%	10	0.12%
\$3,000,000 and greater	2	0.27%	8	0.12%	0	0.00%	1	0.17%	11	0.13%
Total	728	100.00%	6700	100.00%	262	100.00%	573	100.00%	8263	100.00%

P-Value > 0.05



B. Largest M/WBE Prime Contract Awards, by Industry

M/WBEs were awarded large prime contracts in every industry. The distribution of the largest M/WBE prime contracts awarded is depicted in Table 6.12 below. In each industry, M/WBEs were awarded very large competitively bid contracts. The utilization analysis shows that M/WBEs demonstrated the capacity to successfully compete for contracts as large as \$3 million in construction, \$1 million in architecture and engineering, \$800,000 in professional services, and \$3.7 million in goods and other services.

Table 6.12 Largest M/WBE Prime Contracts Awarded

Largest Prime Contract Value				
	Construction	Architecture and Engineering	Professional Services	Goods and Other Services
African Americans				
• Males	\$83,916	\$737,668	\$143,359	\$220,943
• Females	\$59,096	no contracts	\$196,168	\$174,191
Asian Americans				
• Males	\$462,159	\$89,178	\$821,769	\$1,135,344
• Females	no contracts	\$203,355	\$137,903	\$283,001
Hispanic Americans				
• Males	\$3,017,713	\$1,006,688	\$189,338	\$3,718,039
• Females	\$266,388	no contracts	\$134,012	\$689,108
Native Americans				
• Males	\$11,987	no contracts	\$10,000	\$2,855
• Females	no contracts	no contracts	\$5,000	\$212
Caucasian				
• Females	\$1,362,215	\$478,217	\$1,499,692	\$28,240,857



WBEs were awarded contracts over \$1.3 million in construction, over \$400,000 in architecture and engineering, over \$1.4 million in professional services, and over \$28 million in goods and other services.

C. Alameda County Certification Standards

Philadelphia is the only appellate court decision concerning the merits of certification as a measure of capacity.⁶ The court found that programs certifying MBEs for the City of Philadelphia construction projects funded by the United State Department of Transportation (USDOT) satisfied the determination of a firm's capability. Thus, a certification process which reviews the qualifications of an applicant using the USDOT regulations, 49 Code of Federal Regulations Part 26, would be sufficient to establish the capability of MBEs to be included in a disparity study.

The County is a USDOT grantee and therefore, is required to adhere to the certification standards set forth in USDOT regulations. While the County's Public Works Agency does not certify, it only accepts certifications of the agencies that meet the USDOT standard. Firms within the market area certified by agencies using the USDOT certification standard would therefore, be a source of businesses with the capacity to perform.

IV. PRIME CONTRACTOR AVAILABILITY ANALYSIS

The availability analysis above demonstrates that the capacity needed to perform on most of the County's contracts is limited because more than 85 percent of the County's prime contracts were \$25,000 and under. Furthermore, M/WBE firms in the County's market area do in fact have the capacity to bid on contracts over \$1 million in each of the industries studied.

The prime contractor availability findings are summarized below.

⁶ Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia, 6 F.3d 990 (3d Cir. 1993), on remand, 893 F. Supp. 419 (E.D. Penn. 1995), affd, 91 F.3d 586 (3d Cir. 1996).



A. Construction Prime Contractor Availability

The distribution of available construction prime contractors is summarized in Table 6.13.

African Americans account for 15.32 percent of the construction firms in the County's market area.

Asian Americans account for 7.36 percent of the construction firms in the County's market area.

Hispanic Americans account for 14.23 percent of the construction firms in the County's market area.

Native Americans account for 0.72 percent of the construction firms in the County's market area.

Minority Business Enterprises account for 37.64 percent of the construction firms in the County's market area.

Women Business Enterprises account for 6.51 percent of the construction firms in the County's market area.

Minority and Women Business Enterprises account for 44.15 percent of the construction firms in the County's market area.

Caucasian Male Business Enterprises account for 55.85 percent of the construction firms in the County's market area.



Table 6.13 Construction Prime Contractor Availability

Ethnicity	Percent of Businesses
African Americans	15.32%
Asian Americans	7.36%
Hispanic Americans	14.23%
Native Americans	0.72%
Caucasian Females	6.51%
Caucasian Males	55.85%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	2.90%
African American Males	12.42%
Asian American Females	1.09%
Asian American Males	6.27%
Hispanic American Females	0.72%
Hispanic American Males	13.51%
Native American Females	0.12%
Native American Males	0.60%
Caucasian Females	6.51%
Caucasian Males	55.85%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	4.83%
Minority Males	32.81%
Caucasian Females	6.51%
Caucasian Males	55.85%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	37.64%
Women Business Enterprises	6.51%
Minority and Women Business Enterprises	44.15%
Caucasian Male Business Enterprises	55.85%
TOTAL	100.00%



B. Architecture and Engineering Prime Contractor Availability

The distribution of available architecture and engineering prime contractors is summarized in Table 6.14.

African Americans account for 11.34 percent of the architecture and engineering firms in the County's market area.

Asian Americans account for 22.22 percent of the architecture and engineering firms in the County's market area.

Hispanic Americans account for 6.25 percent of the architecture and engineering firms in the County's market area.

Native Americans account for 0.46 percent of the architecture and engineering firms in the County's market area.

Minority Business Enterprises account for 40.28 percent of the architecture and engineering firms in the County's market area.

Women Business Enterprises account for 14.81 percent of the architecture and engineering firms in the County's market area.

Minority and Women Business Enterprises account for 55.09 percent of the architecture and engineering firms in the County's market area.

Caucasian Male Business Enterprises account for 44.91 percent of the architecture and engineering firms in County's market area.



Table 6.14 Architecture and Engineering Prime Contractor Availability

Ethnicity	Percent of Businesses
African Americans	11.34%
Asian Americans	22.22%
Hispanic Americans	6.25%
Native Americans	0.46%
Caucasian Females	14.81%
Caucasian Males	44.91%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	2.08%
African American Males	9.26%
Asian American Females	6.02%
Asian American Males	16.20%
Hispanic American Females	0.46%
Hispanic American Males	5.79%
Native American Females	0.00%
Native American Males	0.46%
Caucasian Females	14.81%
Caucasian Males	44.91%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	8.56%
Minority Males	31.71%
Caucasian Females	14.81%
Caucasian Males	44.91%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	40.28%
Women Business Enterprises	14.81%
Minority and Women Business Enterprises	55.09%
Caucasian Male Business Enterprises	44.91%
TOTAL	100.00%



C. Professional Services Prime Contractor Availability

The distribution of available professional services prime contractors is summarized in Table 6.15.

African Americans account for 15.18 percent of the professional services firms in the County's market area.

Asian Americans account for 12.65 percent of the professional services firms in the County's market area.

Hispanic Americans account for 5.71 percent of the professional services firms in the County's market area.

Native Americans account for 0.29 percent of the professional services firms in the County's market area.

Minority Business Enterprises account for 33.84 percent of the professional services firms in the County's market area.

Women Business Enterprises account for 17.72 percent of the professional services firms in the County's market area.

Minority and Women Business Enterprises account for 51.55 percent of the professional services firms in the County's market area.

Caucasian Male Business Enterprises account for 48.45 percent of the professional services firms in the County's market area.



Table 6.15 Professional Services Prime Contractor Availability

Ethnicity	Percent of Businesses
African Americans	15.18%
Asian Americans	12.65%
Hispanic Americans	5.71%
Native Americans	0.29%
Caucasian Females	17.72%
Caucasian Males	48.45%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	4.99%
African American Males	10.20%
Asian American Females	3.69%
Asian American Males	8.97%
Hispanic American Females	1.30%
Hispanic American Males	4.41%
Native American Females	0.07%
Native American Males	0.22%
Caucasian Females	17.72%
Caucasian Males	48.45%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	10.05%
Minority Males	23.79%
Caucasian Females	17.72%
Caucasian Males	48.45%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	33.84%
Women Business Enterprises	17.72%
Minority and Women Business Enterprises	51.55%
Caucasian Male Business Enterprises	48.45%
TOTAL	100.00%



D. Goods and Other Services Prime Contractor Availability

The distribution of available goods and other services prime contractors is summarized in Table 6.16.

African Americans account for 8.25 percent of the goods and other services firms in the County's market area.

Asian Americans account for 9.86 percent of the goods and other services firms in the County's market area.

Hispanic Americans account for 4.95 percent of the goods and other services firms in the County's market area.

Native Americans account for 0.31 percent of the goods and other services firms in the County's market area.

Minority Business Enterprises account for 23.37 percent of the goods and other services firms in the County's market area.

Women Business Enterprises account for 11.37 percent of the goods and other services firms in the County's market area.

Minority and Women Business Enterprises account for 34.74 percent of the goods and other services firms in the County's market area.

Caucasian Male Business Enterprises account for 65.26 percent of the goods and other services firms in the County's market area.



Table 6.16 Goods and Other Services Prime Contractor Availability

Ethnicity	Percent of Businesses
African Americans	8.25%
Asian Americans	9.86%
Hispanic Americans	4.95%
Native Americans	0.31%
Caucasian Females	11.37%
Caucasian Males	65.26%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	2.65%
African American Males	5.60%
Asian American Females	2.51%
Asian American Males	7.35%
Hispanic American Females	1.07%
Hispanic American Males	3.88%
Native American Females	0.03%
Native American Males	0.27%
Caucasian Females	11.37%
Caucasian Males	65.26%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	6.25%
Minority Males	17.11%
Caucasian Females	11.37%
Caucasian Males	65.26%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	23.37%
Women Business Enterprises	11.37%
Minority and Women Business Enterprises	34.74%
Caucasian Male Business Enterprises	65.26%
TOTAL	100.00%



V. **SOURCES OF POTENTIALLY WILLING AND ABLE SUBCONTRACTORS AND AVAILABILITY**

All available prime contractors were also included in the subcontractor availability. Additional subcontractors in the County’s market area were identified using sources in Table 6.17.

Table 6.17 Unique Subcontractor Availability Data Sources

Type Record	Type Information
<ul style="list-style-type: none"> Subcontracting records provided by the County 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> Prime contractor survey which identified subcontractors utilized by the city 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs
<ul style="list-style-type: none"> Subcontract bidders culled from County files 	<ul style="list-style-type: none"> M/WBEs and non-M/WBEs

Since the prime contractor has the discretion to select its subcontractor, subcontracts are neither advertised nor competitively bid. Furthermore, *Crososn* does not require a measure of subcontractor capacity. Therefore, it is not necessary to address capacity issues in the context of subcontractors.

The subcontracting availability numbers are slightly lower than the prime contractor availability numbers and are provided in the tables below for your review. The tables are presented without further discussion.



Table 6.18 Construction Subcontractor Availability

Ethnicity	Percent of Businesses
African Americans	14.49%
Asian Americans	7.73%
Hispanic Americans	7.61%
Native Americans	0.72%
Caucasian Females	7.37%
Caucasian Males	62.08%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	2.90%
African American Males	11.59%
Asian American Females	1.45%
Asian American Males	6.28%
Hispanic American Females	0.85%
Hispanic American Males	6.76%
Native American Females	0.12%
Native American Males	0.60%
Caucasian Females	7.37%
Caucasian Males	62.08%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	5.31%
Minority Males	25.24%
Caucasian Females	7.37%
Caucasian Males	62.08%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	30.56%
Women Business Enterprises	7.37%
Minorities and Women Business Enterprises	37.92%
Caucasian Males	62.08%
TOTAL	100.00%



Table 6.19 Architecture and Engineering Subcontractor Availability

Ethnicity	Percent of Businesses
African Americans	10.02%
Asian Americans	20.94%
Hispanic Americans	6.01%
Native Americans	0.45%
Caucasian Females	15.81%
Caucasian Males	46.77%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	1.56%
African American Males	8.46%
Asian American Females	5.35%
Asian American Males	15.59%
Hispanic American Females	0.89%
Hispanic American Males	5.12%
Native American Females	0.00%
Native American Males	0.45%
Caucasian Females	15.81%
Caucasian Males	46.77%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	7.80%
Minority Males	29.62%
Caucasian Females	15.81%
Caucasian Males	46.77%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	37.42%
Women Business Enterprises	15.81%
Minorities and Women Business Enterprises	53.23%
Caucasian Males	46.77%
TOTAL	100.00%



Table 6.20 Professional Services Subcontractor Availability

Ethnicity	Percent of Businesses
African Americans	17.34%
Asian Americans	13.46%
Hispanic Americans	4.87%
Native Americans	0.33%
Caucasian Females	18.25%
Caucasian Males	45.75%
TOTAL	100.00%
Ethnicity and Gender	Percent of Businesses
African American Females	6.11%
African American Males	11.23%
Asian American Females	3.96%
Asian American Males	9.50%
Hispanic American Females	1.65%
Hispanic American Males	3.22%
Native American Females	0.08%
Native American Males	0.25%
Caucasian Females	18.25%
Caucasian Males	45.75%
TOTAL	100.00%
Minority and Gender	Percent of Businesses
Minority Females	11.81%
Minority Males	24.19%
Caucasian Females	18.25%
Caucasian Males	45.75%
TOTAL	100.00%
Minority and Females	Percent of Businesses
Minority Business Enterprises	36.00%
Women Business Enterprises	18.25%
Minorities and Women Business Enterprises	54.25%
Caucasian Males	45.75%
TOTAL	100.00%



VI. SUMMARY

An availability list of M/WBE and non-M/WBE prime contractors in the County's market area, willing and able to provide goods or services to the County, was compiled using records from the County and other public agencies, outreach efforts, certification organizations, and trade associations. The enumerated businesses met the *Croson* criteria regarding willingness and ability to perform.

The capacity of the willing businesses in the market area was analyzed in terms of the size of the County's contracts awarded, the size of the largest M/WBE prime contract, and the County's certification standards for determining M/WBE and DBE status. The size analysis demonstrated that the majority of the County's contracts were small, with more than 53 percent valued at \$25,000 and under. Therefore, to perform on most County contracts, even the competitively bid construction projects, the available firms only required minimal capacity. While most contracts awarded by the County were small, M/WBEs received some of the largest contracts.

One additional step was taken to ensure that the willing businesses had the capacity required to compete for the contracts subject to statistical analysis in the Disparity chapter. The size of the contracts examined in the statistical analysis of disparity is limited to contracts under \$500,000. Since the evidence is substantial that the willing firms have the capacity to perform contracts at the under \$500,000 level and greater, the available firms analyzed in this chapter meet both the willing and able *Croson* standard.

Subcontractor availability was limited to the prime contractor availability, utilized subcontractors, and bidders, therefore, the demonstration of willingness was achieved. The capacity issue for subcontractors was moot because the contracts are neither advertised nor competitively bid.





7

PRIME CONTRACTOR DISPARITY ANALYSIS

I. INTRODUCTION

The objective of the disparity analysis is to determine if minority and women business enterprises (M/WBEs) were underutilized at a statistically significant level on County contracts. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to MBEs and WBEs would be equal to the proportion of available MBEs¹ and WBEs in the relevant market area. If a disparity exists between these proportions, a statistical test could determine the probability that the disparity is due to chance. If there is a very low probability that the disparity is due to chance,² *Croson* states that an inference of discrimination can be made. This analysis should be applied to both MBEs and WBEs by ethnicity and gender.

The first step in conducting a statistical test of disparity is to calculate the contract value that each ethnic/gender group is expected to receive, based on each group's respective availability in the market area. This value shall be referred to as the **expected contract amount**. The next step is to compute the difference between the expected contract amount of a given ethnic/gender group and the **actual contract amount** received by that group.

A disparity ratio less than 0.80 indicates a relevant degree of disparity. This disparity may be detectable with a parametric analysis when the number of contracts is sufficiently large and the variation of the contract amount is not too large. When the variation in contract dollar

¹ Availability is defined as willing and able firms. The methodology for determining willing and able firms is detailed in Chapter 6.

² When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95 percent confidence level is considered by the courts to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analyzed here was done within the 95 percent confidence level.



amounts is high, the disparity may not be detectable. Under these conditions where the variation in contract dollar amounts is high, a non-parametric analysis would be employed to analyze the contracts ranked by dollar amount.

In order to assess whether the difference is attributable to chance, a P-value is calculated. The P-value takes into account the number of contracts, the 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 of less than 0.05, the difference is statistically significant.³

There are two critical constraints in performing statistical tests of significance. First, the size of the population affects the reliability of the results. In other words, a relatively small population size, whether in terms of the total number of contracts or the total number of available businesses, decreases the reliability of the statistical results. Second, although an inference of discrimination cannot be made if statistical significance is not obtained from the test, one cannot infer from the results that there was no discrimination. Thus, the results of the statistical disparity analysis are necessarily influenced by the size of the population in each contracting and ethnic/gender category, and where the results are not statistically significant, the existence of discrimination cannot be ruled out. Given these limitations, the anecdotal data has an especially important role in explaining the conditions of discrimination that might exist in the market area.

The analysis of the value of prime contract dollars for each ethnic and gender group incorporates the number of prime contracts awarded. Hence, the disparity for the value of prime contract dollars awarded reflects an analysis of both the number of prime contracts awarded and the value of the prime contract dollars received by each ethnic/gender group.

II. DISPARITY ANALYSES

Prime contractor disparity analyses were performed on construction, architecture and engineering, professional services, and goods and other services contracts awarded by the County between July 1, 2000 and June 30, 2003.

As demonstrated in Chapter 6, the majority of the County's contracts are small with 98.86 percent under \$500,000 and 85.47 percent \$25,000 and under. The fact that the majority of the County's contracts are small suggests that the capacity needed to perform most of the contracts awarded during the study period was minimal. Furthermore, the evidence is substantial that the willing firms have the capacity to perform contracts in excess of the \$500,000 level. A threshold of \$500,000 was set for the prime contract disparity analysis to ensure the willing firms had the capacity to perform contracts included in the analysis. The

³ The study does not test statistically the overutilization of M/WBEs or the underutilization of Caucasian males.



prime contract disparity findings in the industries under consideration are summarized in the sections below.

A. Disparity Analysis: Construction Prime Contracts Under \$500,000 July 1, 2000 to June 30, 2003

The disparity analysis of construction prime contract dollars under \$500,000 is depicted in Table 7.01 and Chart 7.01.

African Americans represent 15.32 percent of the available construction firms and received 1.24 percent of the construction prime contracts under \$500,000. This underutilization is statistically significant.

Asian Americans represent 7.36 percent of the available construction firms and received 2.48 percent of the construction prime contracts under \$500,000. This underutilization is statistically significant.

Hispanic Americans represent 14.23 percent of the available construction firms and received 12.35 percent of the construction prime contracts under \$500,000. This underutilization is not statistically significant.

Native Americans represent 0.72 percent of the available construction firms and received 0.1 percent of the construction prime contracts under \$500,000. While this group was underutilized, there were too few contracts to determine statistical significance.

Minority Business Enterprises represent 37.64 percent of the available construction firms and received 16.17 percent of the construction prime contracts under \$500,000. This underutilization is statistically significant.

Women Business Enterprises represent 6.51 percent of the available construction firms and received 4.41 percent of the construction prime contracts under \$500,000. The underutilization is not statistically significant.

Minority and Women Business Enterprises represent 44.15 percent of the available construction firms and received 20.58 percent of the construction prime contracts under \$500,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 55.85 percent of the available construction firms and received 79.42 percent of the construction prime contracts under \$500,000. This overutilization is statistically significant.



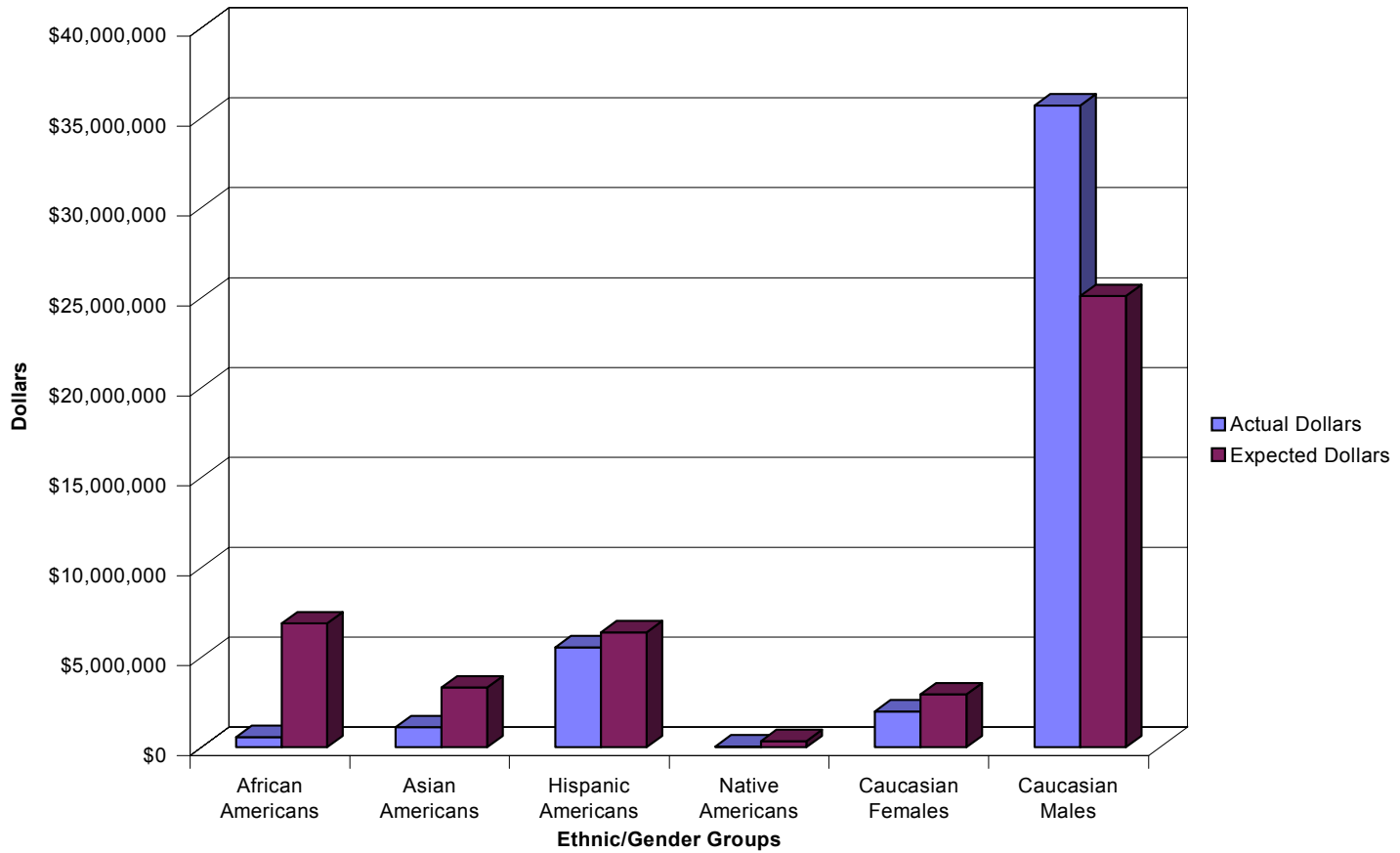
Table 7.01 Disparity Analysis: Construction Prime Contracts Under \$500,000 July 1, 2000 to June 30, 2003

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$558,036	1.24%	15.32%	\$6,880,470	-\$6,322,434	0.08	< .05 *
Asian Americans	\$1,114,628	2.48%	7.36%	\$3,304,793	-\$2,190,164	0.34	< .05 *
Hispanic Americans	\$5,546,056	12.35%	14.23%	\$6,392,878	-\$846,822	0.87	not significant
Native Americans	\$45,439	0.10%	0.72%	\$325,062	-\$279,622	0.14	----
Caucasian Females	\$1,979,517	4.41%	6.51%	\$2,925,554	-\$946,038	0.68	not significant
Caucasian Males	\$35,669,000	79.42%	55.85%	\$25,083,919	\$10,585,080	1.42	< .05 †
TOTAL	\$44,912,676	100.00%	100.00%	\$44,912,676			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$59,096	0.13%	2.90%	\$1,300,246	-\$1,241,150	0.05	< .05 *
African American Males	\$498,940	1.11%	12.42%	\$5,580,224	-\$5,081,284	0.09	< .05 *
Asian American Females	\$0	0.00%	1.09%	\$487,592	-\$487,592	0.00	< .05 *
Asian American Males	\$1,114,628	2.48%	6.27%	\$2,817,200	-\$1,702,572	0.40	< .05 *
Hispanic American Females	\$318,572	0.71%	0.72%	\$325,062	-\$6,490	0.98	----
Hispanic American Males	\$5,227,484	11.64%	13.51%	\$6,067,816	-\$840,332	0.86	not significant
Native American Females	\$0	0.00%	0.12%	\$54,177	-\$54,177	0.00	----
Native American Males	\$45,439	0.10%	0.60%	\$270,885	-\$225,445	0.17	----
Caucasian Females	\$1,979,517	4.41%	6.51%	\$2,925,554	-\$946,038	0.68	not significant
Caucasian Males	\$35,669,000	79.42%	55.85%	\$25,083,919	\$10,585,080	1.42	< .05 †
TOTAL	\$44,912,676	100.00%	100.00%	\$44,912,676			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$377,668	0.84%	4.83%	\$2,167,077	-\$1,789,410	0.17	< .05 *
Minority Males	\$6,886,492	15.33%	32.81%	\$14,736,125	-\$7,849,633	0.47	< .05 *
Caucasian Females	\$1,979,517	4.41%	6.51%	\$2,925,554	-\$946,038	0.68	not significant
Caucasian Males	\$35,669,000	79.42%	55.85%	\$25,083,919	\$10,585,080	1.42	< .05 †
TOTAL	\$44,912,676	100.00%	100.00%	\$44,912,676			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$7,264,160	16.17%	37.64%	\$16,903,202	-\$9,639,043	0.43	< .05 *
Women Business Enterprises	\$1,979,517	4.41%	6.51%	\$2,925,554	-\$946,038	0.68	not significant
Minority and Women Business Enterprises	\$9,243,676	20.58%	44.15%	\$19,828,757	-\$10,585,080	0.47	< .05 *
Caucasian Male Business Enterprises	\$35,669,000	79.42%	55.85%	\$25,083,919	\$10,585,080	1.42	< .05 †

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.

---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

Chart 7.01 Disparity Analysis: Construction Prime Contracts Under \$500,000 July 1, 2000 to June 30, 2003



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B. Disparity Analysis: Architecture and Engineering Prime Contracts Under \$500,000 July 1, 2000 to June 30, 2003

The disparity analysis of architecture and engineering prime contract dollars under \$500,000 is depicted in Table 7.02 and Chart 7.02.

African Americans represent 11.34 percent of the available architecture and engineering firms and received 5.96 percent of the architecture and engineering prime contracts under \$500,000. This underutilization is statistically significant.

Asian Americans represent 22.22 percent of the available architecture and engineering firms and received 4.55 percent of the architecture and engineering prime contracts under \$500,000. This underutilization is statistically significant.

Hispanic Americans represent 6.25 percent of the available architecture and engineering firms and received 0.02 percent of the architecture and engineering prime contracts under \$500,000. This underutilization is statistically significant.

Native Americans represent 0.46 percent of the available architecture and engineering firms and received none of the architecture and engineering prime contracts under \$500,000. While this group was underutilized, there were too few contracts to determine statistical significance.

Minority Business Enterprises represent 40.28 percent of the available architecture and engineering firms and received 10.53 percent of the architecture and engineering prime contracts under \$500,000. This underutilization is statistically significant.

Women Business Enterprises represent 14.81 percent of the available architecture and engineering firms and received 14.00 percent of the architecture and engineering prime contracts under \$500,000. This underutilization was not statistically significant.

Minority and Women Business Enterprises represent 55.09 percent of the available architecture and engineering firms and received 24.53 percent of the architecture and engineering prime contracts under \$500,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 44.91 percent of the available architecture and engineering firms and received 75.47 percent of the architecture and engineering prime contracts under \$500,000. This overutilization is statistically significant.



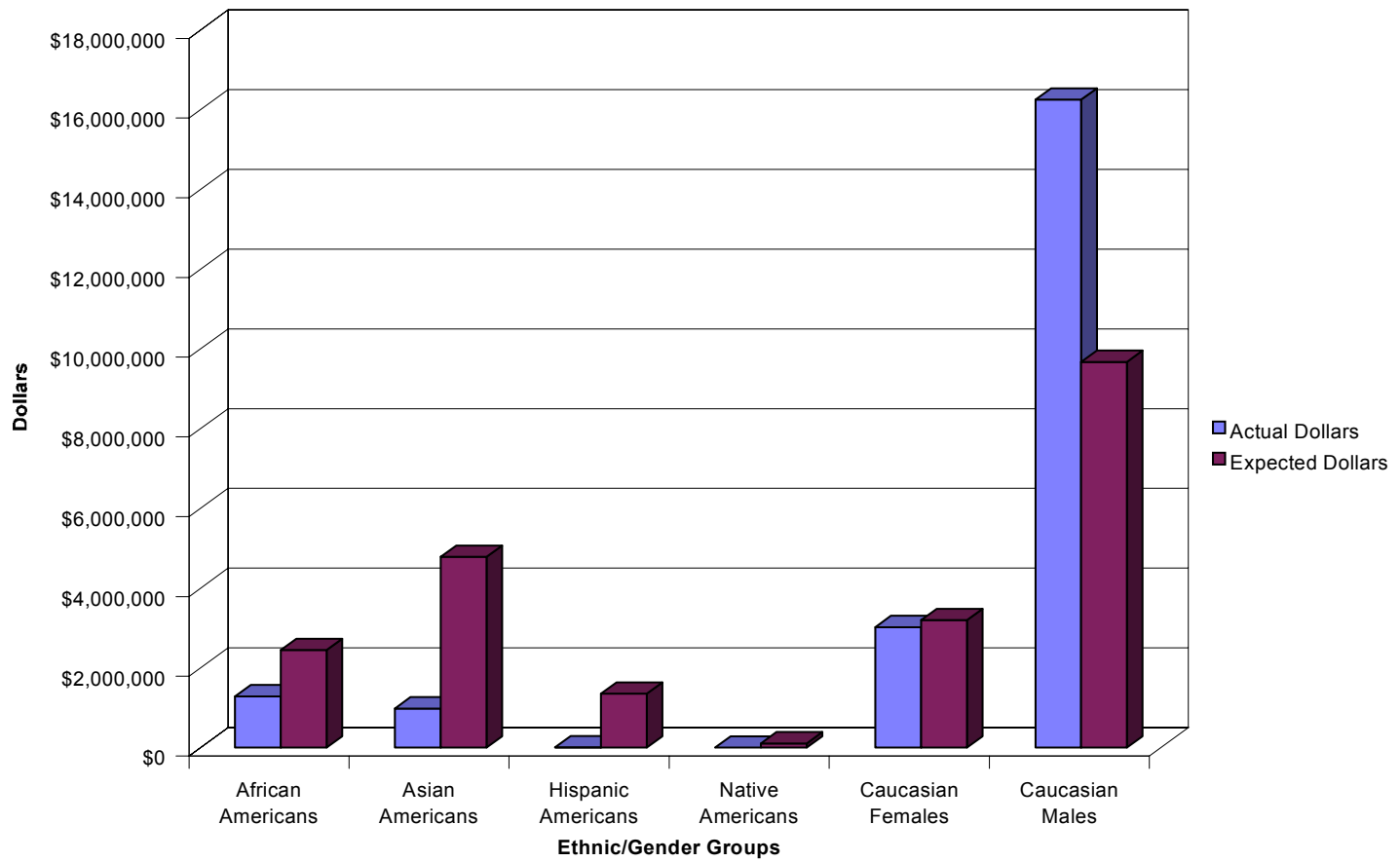
**Table 7.02 Disparity Analysis: Architecture and Engineering Prime Contracts Under \$500,000
July 1, 2000 to June 30, 2000**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$1,283,028	5.96%	11.34%	\$2,442,072	-\$1,159,045	0.53	< .05 *
Asian Americans	\$979,988	4.55%	22.22%	\$4,784,469	-\$3,804,480	0.20	< .05 *
Hispanic Americans	\$3,500	0.02%	6.25%	\$1,345,632	-\$1,342,132	0.00	< .05 *
Native Americans	\$0	0.00%	0.46%	\$99,676	-\$99,676	0.00	----
Caucasian Females	\$3,014,473	14.00%	14.81%	\$3,189,646	-\$175,172	0.95	not significant
Caucasian Males	\$16,249,119	75.47%	44.91%	\$9,668,614	\$6,580,506	1.68	< .05 †
TOTAL	\$21,530,108	100.00%	100.00%	\$21,530,108			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$0	0.00%	2.08%	\$448,544	-\$448,544	0.00	< .05 *
African American Males	\$1,283,028	5.96%	9.26%	\$1,993,529	-\$710,501	0.64	< .05 *
Asian American Females	\$451,929	2.10%	6.02%	\$1,295,794	-\$843,864	0.35	not significant
Asian American Males	\$528,059	2.45%	16.20%	\$3,488,675	-\$2,960,616	0.15	< .05 *
Hispanic American Females	\$0	0.00%	0.46%	\$99,676	-\$99,676	0.00	----
Hispanic American Males	\$3,500	0.02%	5.79%	\$1,245,955	-\$1,242,455	0.00	< .05 *
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.46%	\$99,676	-\$99,676	0.00	----
Caucasian Females	\$3,014,473	14.00%	14.81%	\$3,189,646	-\$175,172	0.95	not significant
Caucasian Males	\$16,249,119	75.47%	44.91%	\$9,668,614	\$6,580,506	1.68	< .05 †
TOTAL	\$21,530,108	100.00%	100.00%	\$21,530,108			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$451,929	2.10%	8.56%	\$1,844,014	-\$1,392,085	0.25	< .05 *
Minority Males	\$1,814,587	8.43%	31.71%	\$6,827,835	-\$5,013,249	0.27	< .05 *
Caucasian Females	\$3,014,473	14.00%	14.81%	\$3,189,646	-\$175,172	0.95	not significant
Caucasian Males	\$16,249,119	75.47%	44.91%	\$9,668,614	\$6,580,506	1.68	< .05 †
TOTAL	\$21,530,108	100.00%	100.00%	\$21,530,108			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$2,266,516	10.53%	40.28%	\$8,671,849	-\$6,405,333	0.26	< .05 *
Women Business Enterprises	\$3,014,473	14.00%	14.81%	\$3,189,646	-\$175,172	0.95	not significant
Minority and Women Business Enterprises	\$5,280,989	24.53%	55.09%	\$11,861,495	-\$6,580,506	0.45	< .05 *
Caucasian Male Business Enterprises	\$16,249,119	75.47%	44.91%	\$9,668,614	\$6,580,506	1.68	< .05 †

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.

---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

**Chart 7.02 Disparity Analysis: Architecture and Engineering Prime Contracts Under \$500,000
July 1, 2000 to June 30, 2003**



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C. Disparity Analysis: Professional Services Prime Contracts Under \$500,000 July 1, 2000 to June 30, 2003

The disparity analysis of professional services prime contract dollars under \$500,000 is depicted in Table 7.03 and Chart 7.03.

African Americans represent 15.18 percent of the available professional services firms and received 3.53 percent of the professional services prime contracts under \$500,000. This underutilization is statistically significant.

Asian Americans represent 12.65 percent of the available professional services firms and received 6.92 percent of the professional services prime contracts under \$500,000. This underutilization is statistically significant.

Hispanic Americans represent 5.71 percent of the available professional services firms and received 1.54 percent of the professional services prime contracts under \$500,000. This underutilization is statistically significant.

Native Americans represent 0.29 percent of the available professional services firms and received 0.03 percent of the professional services prime contracts under \$500,000. While this group was underutilized, there were too few contracts to determine statistical significance.

Minority Business Enterprises represent 33.84 percent of the available professional services firms and received 12.03 percent of the professional services prime contracts under \$500,000. This underutilization is statistically significant.

Women Business Enterprises represent 17.72 percent of the available professional services firms and received 16.95 percent of the professional services prime contracts under \$500,000. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 51.55 percent of the available professional services firms and received 28.98 percent of the professional services prime contracts under \$500,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 48.45 percent of the available professional services firms and received 71.02 percent of the professional services prime contracts under \$500,000. This overutilization is statistically significant.



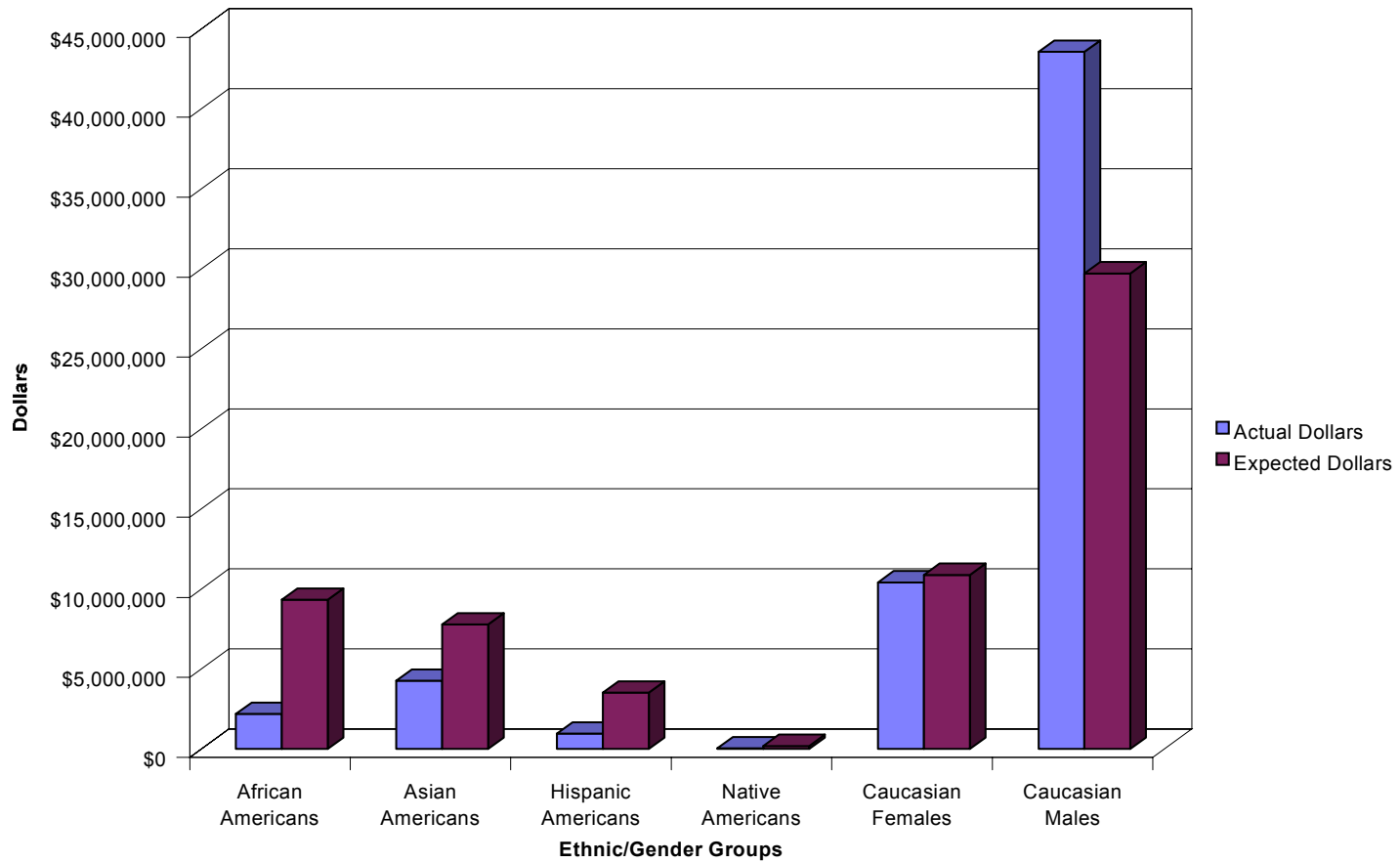
Table 7.03 Disparity Analysis: Professional Services Prime Contracts Under \$500,000 July 1, 2000 to June 30, 2003

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$2,165,068	3.53%	15.18%	\$9,310,912	-\$7,145,844	0.23	< .05 *
Asian Americans	\$4,242,497	6.92%	12.65%	\$7,759,093	-\$3,516,596	0.55	< .05 *
Hispanic Americans	\$947,095	1.54%	5.71%	\$3,502,676	-\$2,555,581	0.27	< .05 *
Native Americans	\$20,375	0.03%	0.29%	\$177,351	-\$156,976	0.11	----
Caucasian Females	\$10,395,059	16.95%	17.72%	\$10,862,731	-\$467,672	0.96	not significant
Caucasian Males	\$43,548,912	71.02%	48.45%	\$29,706,243	\$13,842,669	1.47	< .05 †
TOTAL	\$61,319,006	100.00%	100.00%	\$61,319,006			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$1,131,142	1.84%	4.99%	\$3,059,300	-\$1,928,157	0.37	< .05 *
African American Males	\$1,033,926	1.69%	10.20%	\$6,251,612	-\$5,217,687	0.17	< .05 *
Asian American Females	\$425,690	0.69%	3.69%	\$2,261,221	-\$1,835,531	0.19	< .05 *
Asian American Males	\$3,816,807	6.22%	8.97%	\$5,497,872	-\$1,681,065	0.69	< .05 *
Hispanic American Females	\$358,945	0.59%	1.30%	\$798,078	-\$439,133	0.45	not significant
Hispanic American Males	\$588,150	0.96%	4.41%	\$2,704,598	-\$2,116,448	0.22	< .05 *
Native American Females	\$10,000	0.02%	0.07%	\$44,338	-\$34,338	0.23	----
Native American Males	\$10,375	0.02%	0.22%	\$133,013	-\$122,638	0.08	----
Caucasian Females	\$10,395,059	16.95%	17.72%	\$10,862,731	-\$467,672	0.96	not significant
Caucasian Males	\$43,548,912	71.02%	48.45%	\$29,706,243	\$13,842,669	1.47	< .05 †
TOTAL	\$61,319,006	100.00%	100.00%	\$61,319,006			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$1,925,778	3.14%	10.05%	\$6,162,937	-\$4,237,159	0.31	< .05 *
Minority Males	\$5,449,257	8.89%	23.79%	\$14,587,096	-\$9,137,838	0.37	< .05 *
Caucasian Females	\$10,395,059	16.95%	17.72%	\$10,862,731	-\$467,672	0.96	not significant
Caucasian Males	\$43,548,912	71.02%	48.45%	\$29,706,243	\$13,842,669	1.47	< .05 †
TOTAL	\$61,319,006	100.00%	100.00%	\$61,319,006			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$7,375,035	12.03%	33.84%	\$20,750,033	-\$13,374,997	0.36	< .05 *
Women Business Enterprises	\$10,395,059	16.95%	17.72%	\$10,862,731	-\$467,672	0.96	not significant
Minority and Women Business Enterprises	\$17,770,094	28.98%	51.55%	\$31,612,763	-\$13,842,669	0.56	< .05 *
Caucasian Male Business Enterprises	\$43,548,912	71.02%	48.45%	\$29,706,243	\$13,842,669	1.47	< .05 †

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.

---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

Chart 7.03 Disparity Analysis: Professional Services Prime Contracts Under \$500,000 July 1, 2000 to June 30, 2003



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D. Disparity Analysis: Goods and Other Services Prime Contracts Under \$500,000 July 1, 2000 to June 30, 2003

The disparity analysis of goods and other services prime contract dollars under \$500,000 is depicted in Table 7.04 and Chart 7.04.

African Americans represent 8.25 percent of the available goods and other services firms and received 1.61 percent of the goods and other services prime contracts under \$500,000. This underutilization is statistically significant.

Asian Americans represent 9.86 percent of the available goods and other services firms and received 4.23 percent of the goods and other services prime contracts under \$500,000. This underutilization is statistically significant.

Hispanic Americans represent 4.95 percent of the available goods and other services firms and received 1.96 percent of the goods and other services prime contracts under \$500,000. This underutilization is statistically significant.

Native Americans represent 0.31 percent of the available goods and other services firms and received none of the goods and other services prime contracts under \$500,000. While this group was underutilized, there were too few contracts to determine statistical significance.

Minority Business Enterprises represent 23.37 percent of the available goods and other services firms and received 7.8 percent of the goods and other services prime contracts under \$500,000. This underutilization is statistically significant.

Women Business Enterprises represent 11.37 percent of the available goods and other services firms and received 8.68 percent of the goods and other services prime contracts under \$500,000. This underutilization is statistically significant.

Minority and Women Business Enterprises represent 34.74 percent of the available goods and other services firms and received 16.48 percent of the goods and other services prime contracts under \$500,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 65.26 percent of the available goods and other services firms and received 83.52 percent of the goods and other services prime contracts under \$500,000. This overutilization is statistically significant.



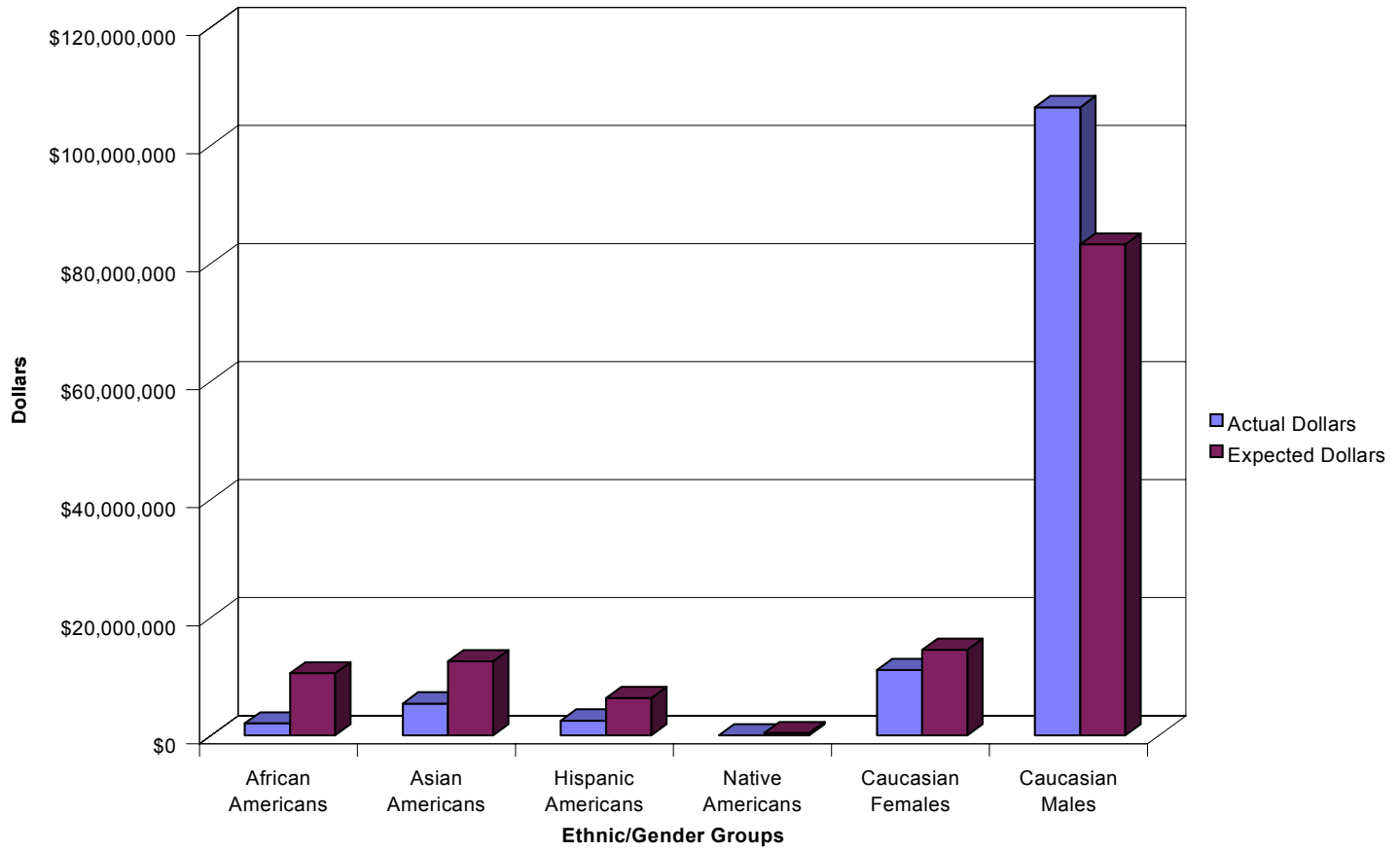
Table 7.04 Disparity Analysis: Goods and Other Services Prime Contracts Under \$500,000 July 1, 2000 to June 30, 2003

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$2,045,721	1.61%	8.25%	\$10,510,530	-\$8,464,809	0.19	< .05 *
Asian Americans	\$5,395,217	4.23%	9.86%	\$12,568,842	-\$7,173,625	0.43	< .05 *
Hispanic Americans	\$2,493,275	1.96%	4.95%	\$6,306,318	-\$3,813,043	0.40	< .05 *
Native Americans	\$3,130	0.00%	0.31%	\$394,145	-\$391,015	0.01	----
Caucasian Females	\$11,063,475	8.68%	11.37%	\$14,495,773	-\$3,432,297	0.76	< .05 *
Caucasian Males	\$106,439,358	83.52%	65.26%	\$83,164,568	\$23,274,790	1.28	< .05 †
TOTAL	\$127,440,176	100.00%	100.00%	\$127,440,176			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$769,680	0.60%	2.65%	\$3,372,128	-\$2,602,448	0.23	< .05 *
African American Males	\$1,276,041	1.00%	5.60%	\$7,138,402	-\$5,862,360	0.18	< .05 *
Asian American Females	\$1,580,480	1.24%	2.51%	\$3,196,953	-\$1,616,473	0.49	< .05 *
Asian American Males	\$3,814,737	2.99%	7.35%	\$9,371,889	-\$5,557,152	0.41	< .05 *
Hispanic American Females	\$1,361,574	1.07%	1.07%	\$1,357,610	\$3,964	1.00	**
Hispanic American Males	\$1,131,701	0.89%	3.88%	\$4,948,708	-\$3,817,007	0.23	< .05 *
Native American Females	\$275	0.00%	0.03%	\$43,794	-\$43,519	0.01	----
Native American Males	\$2,855	0.00%	0.27%	\$350,351	-\$347,496	0.01	----
Caucasian Females	\$11,063,475	8.68%	11.37%	\$14,495,773	-\$3,432,297	0.76	< .05 *
Caucasian Males	\$106,439,358	83.52%	65.26%	\$83,164,568	\$23,274,790	1.28	< .05 †
TOTAL	\$127,440,176	100.00%	100.00%	\$127,440,176			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$3,712,009	2.91%	6.25%	\$7,970,485	-\$4,258,477	0.47	< .05 *
Minority Males	\$6,225,334	4.88%	17.11%	\$21,809,350	-\$15,584,016	0.29	< .05 *
Caucasian Females	\$11,063,475	8.68%	11.37%	\$14,495,773	-\$3,432,297	0.76	< .05 *
Caucasian Males	\$106,439,358	83.52%	65.26%	\$83,164,568	\$23,274,790	1.28	< .05 †
TOTAL	\$127,440,176	100.00%	100.00%	\$127,440,176			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$9,937,342	7.80%	23.37%	\$29,779,835	-\$19,842,493	0.33	< .05 *
Women Business Enterprises	\$11,063,475	8.68%	11.37%	\$14,495,773	-\$3,432,297	0.76	< .05 *
Minority and Women Business Enterprises	\$21,000,818	16.48%	34.74%	\$44,275,607	-\$23,274,790	0.47	< .05 *
Caucasian Male Business Enterprises	\$106,439,358	83.52%	65.26%	\$83,164,568	\$23,274,790	1.28	< .05 †

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.
 ---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

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Chart 7.04 Disparity Analysis: Goods and Other Services Prime Contracts Under \$500,000 July 1, 2000 to June 30, 2003



*Mason Tillman Associates, Ltd. October 2004
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E. Disparity Analysis: Construction Prime Contracts \$25,001 to \$100,000 July 1, 2000 to June 30, 2003

The disparity analysis of construction prime contract dollars \$25,001 to \$100,000 is depicted in Table 7.05 and Chart 7.05.

African Americans represent 15.32 percent of the available construction firms and received 3.55 percent of the construction prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Asian Americans represent 7.36 percent of the available construction firms and received 2.95 percent of the construction prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Hispanic Americans represent 14.23 percent of the available construction firms and received 19.37 percent of the construction prime contracts \$25,001 to \$100,000. The underutilization is not statistically significant.

Native Americans represent 0.72 percent of the available construction firms and received none of the construction prime contracts. While this group was underutilized, there were too few contracts to determine statistical significance.

Minority Business Enterprises represent 37.64 percent of the available construction firms and received 25.86 percent of the construction prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Women Business Enterprises represent 6.51 percent of the available construction firms and received 6.03 percent of the construction prime contracts \$25,001 to \$100,000. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 44.15 percent of the available construction firms and received 31.89 percent of the construction prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 55.85 percent of the available construction firms and received 68.11 percent of the construction prime contracts \$25,001 to \$100,000. This overutilization is statistically significant.



Table 7.05 Disparity Analysis: Construction Prime Contracts \$25,001 to \$100,000 July 1, 2000 to June 30, 2003

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$304,665	3.55%	15.32%	\$1,315,928	-\$1,011,263	0.23	< .05 *
Asian Americans	\$253,215	2.95%	7.36%	\$632,060	-\$378,845	0.40	< .05 *
Hispanic Americans	\$1,663,594	19.37%	14.23%	\$1,222,673	\$440,921	1.36	***
Native Americans	\$0	0.00%	0.72%	\$62,170	-\$62,170	0.00	----
Caucasian Females	\$517,755	6.03%	6.51%	\$559,528	-\$41,773	0.93	not significant
Caucasian Males	\$5,850,566	68.11%	55.85%	\$4,797,437	\$1,053,129	1.22	< .05 †
TOTAL	\$8,589,795	100.00%	100.00%	\$8,589,795			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$59,096	0.69%	2.90%	\$248,679	-\$189,583	0.24	not significant
African American Males	\$245,569	2.86%	12.42%	\$1,067,248	-\$821,679	0.23	< .05 *
Asian American Females	\$0	0.00%	1.09%	\$93,255	-\$93,255	0.00	not significant
Asian American Males	\$253,215	2.95%	6.27%	\$538,805	-\$285,590	0.47	< .05 *
Hispanic American Females	\$43,050	0.50%	0.72%	\$62,170	-\$19,120	0.69	----
Hispanic American Males	\$1,620,545	18.87%	13.51%	\$1,160,503	\$460,041	1.40	**
Native American Females	\$0	0.00%	0.12%	\$10,362	-\$10,362	0.00	----
Native American Males	\$0	0.00%	0.60%	\$51,808	-\$51,808	0.00	----
Caucasian Females	\$517,755	6.03%	6.51%	\$559,528	-\$41,773	0.93	not significant
Caucasian Males	\$5,850,566	68.11%	55.85%	\$4,797,437	\$1,053,129	1.22	< .05 †
TOTAL	\$8,589,795	100.00%	100.00%	\$8,589,795			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$102,146	1.19%	4.83%	\$414,465	-\$312,320	0.25	not significant
Minority Males	\$2,119,329	24.67%	32.81%	\$2,818,365	-\$699,036	0.75	< .05 *
Caucasian Females	\$517,755	6.03%	6.51%	\$559,528	-\$41,773	0.93	not significant
Caucasian Males	\$5,850,566	68.11%	55.85%	\$4,797,437	\$1,053,129	1.22	< .05 †
TOTAL	\$8,589,795	100.00%	100.00%	\$8,589,795			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$2,221,474	25.86%	37.64%	\$3,232,830	-\$1,011,356	0.69	< .05 *
Women Business Enterprises	\$517,755	6.03%	6.51%	\$559,528	-\$41,773	0.93	not significant
Minority and Women Business Enterprises	\$2,739,230	31.89%	44.15%	\$3,792,358	-\$1,053,129	0.72	< .05 *
Caucasian Male Business Enterprises	\$5,850,566	68.11%	55.85%	\$4,797,437	\$1,053,129	1.22	< .05 †

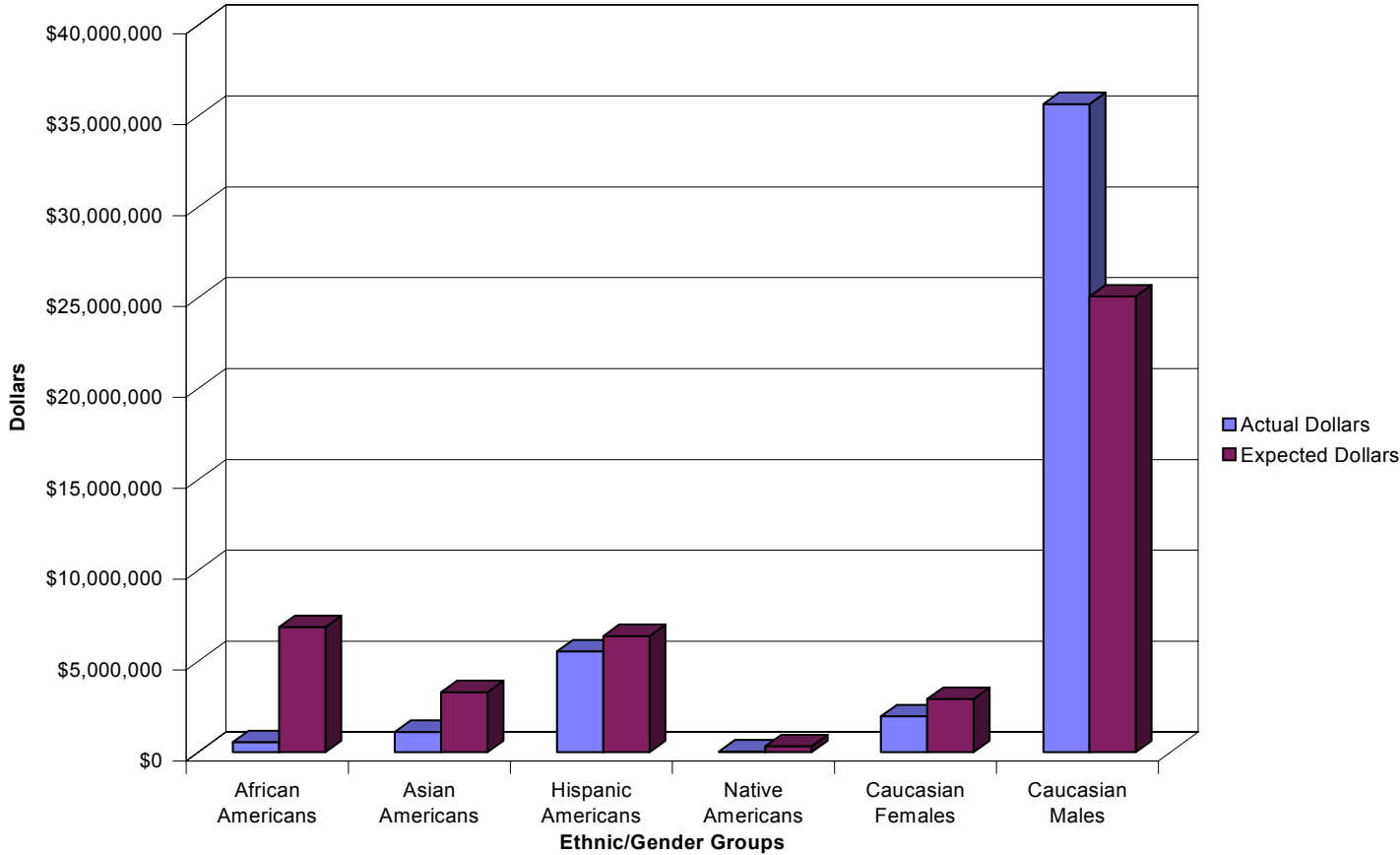
An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.

** = This study does not test statistically the overutilization of M/W BEs.

---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

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Chart 7.05 Disparity Analysis: Construction Prime Contracts \$25,001 to \$100,000 July 1, 2000 to June 30, 2003



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F. Disparity Analysis: Architecture and Engineering Prime Contracts \$25,001 to \$100,000 July 1, 2000 to June 30, 2003

The disparity analysis of architecture and engineering prime contract dollars \$25,001 to \$100,000 is depicted in Table 7.06 and Chart 7.06.

African Americans represent 11.34 percent of the available architecture and engineering firms and received 5.26 percent of the architecture and engineering prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Asian Americans represent 22.22 percent of the available architecture and engineering firms and received 5.48 percent of the architecture and engineering prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Hispanic Americans represent 6.25 percent of the available architecture and engineering firms and received none of the architecture and engineering prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Native Americans represent 0.46 percent of the available architecture and engineering firms and received none of the architecture and engineering prime contracts \$25,001 to \$100,000. While this group was underutilized, there were too few contracts to determine statistical significance.

Minority Business Enterprises represent 40.28 percent of the available architecture and engineering firms and received 10.73 percent of the architecture and engineering prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Women Business Enterprises represent 14.81 percent of the available architecture and engineering firms and received 13.27 percent of the architecture and engineering prime contracts \$25,001 to \$100,000. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 55.09 percent of the available architecture and engineering firms and received 24 percent of the architecture and engineering prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 44.91 percent of the available architecture and engineering firms and received 76 percent of the architecture and engineering prime contracts \$25,001 to \$100,000. This overutilization is statistically significant.



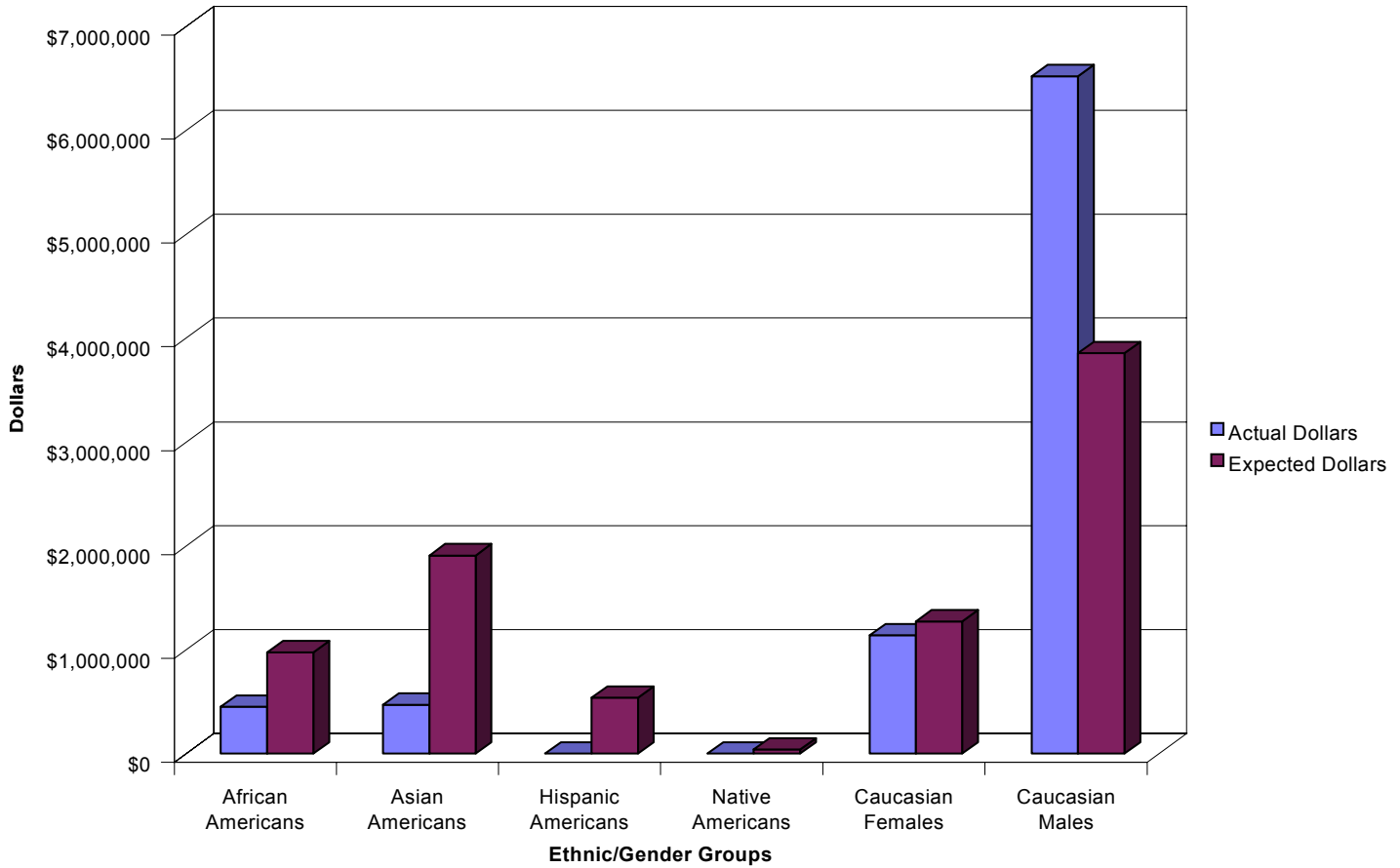
Table 7.06 Disparity Analysis: Architecture and Engineering Prime Contracts \$25,001 to \$100,000 July 1, 2000 to June 30, 2003

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$451,288	5.26%	11.34%	\$973,464	-\$522,176	0.46	< .05 *
Asian Americans	\$469,928	5.48%	22.22%	\$1,907,195	-\$1,437,266	0.25	< .05 *
Hispanic Americans	\$0	0.00%	6.25%	\$536,398	-\$536,398	0.00	< .05 *
Native Americans	\$0	0.00%	0.46%	\$39,733	-\$39,733	0.00	----
Caucasian Females	\$1,138,767	13.27%	14.81%	\$1,271,463	-\$132,696	0.90	not significant
Caucasian Males	\$6,522,392	76.00%	44.91%	\$3,854,122	\$2,668,270	1.69	< .05 †
TOTAL	\$8,582,375	100.00%	100.00%	\$8,582,375			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$0	0.00%	2.08%	\$178,799	-\$178,799	0.00	not significant
African American Males	\$451,288	5.26%	9.26%	\$794,664	-\$343,376	0.57	< .05 *
Asian American Females	\$253,678	2.96%	6.02%	\$516,532	-\$262,854	0.49	not significant
Asian American Males	\$216,251	2.52%	16.20%	\$1,390,663	-\$1,174,412	0.16	< .05 *
Hispanic American Females	\$0	0.00%	0.46%	\$39,733	-\$39,733	0.00	----
Hispanic American Males	\$0	0.00%	5.79%	\$496,665	-\$496,665	0.00	< .05 *
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.46%	\$39,733	-\$39,733	0.00	----
Caucasian Females	\$1,138,767	13.27%	14.81%	\$1,271,463	-\$132,696	0.90	not significant
Caucasian Males	\$6,522,392	76.00%	44.91%	\$3,854,122	\$2,668,270	1.69	< .05 †
TOTAL	\$8,582,375	100.00%	100.00%	\$8,582,375			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$253,678	2.96%	8.56%	\$735,065	-\$481,387	0.35	< .05 *
Minority Males	\$667,539	7.78%	31.71%	\$2,721,726	-\$2,054,187	0.25	< .05 *
Caucasian Females	\$1,138,767	13.27%	14.81%	\$1,271,463	-\$132,696	0.90	not significant
Caucasian Males	\$6,522,392	76.00%	44.91%	\$3,854,122	\$2,668,270	1.69	< .05 †
TOTAL	\$8,582,375	100.00%	100.00%	\$8,582,375			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$921,216	10.73%	40.28%	\$3,456,790	-\$2,535,574	0.27	< .05 *
Women Business Enterprises	\$1,138,767	13.27%	14.81%	\$1,271,463	-\$132,696	0.90	not significant
Minority and Women Business Enterprises	\$2,059,983	24.00%	55.09%	\$4,728,253	-\$2,668,270	0.44	< .05 *
Caucasian Male Business Enterprises	\$6,522,392	76.00%	44.91%	\$3,854,122	\$2,668,270	1.69	< .05 †

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.
 ---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

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Chart 7.06 Disparity Analysis: Architecture and Engineering Prime Contracts \$25,001 to \$100,000 July 1, 2000 to June 30, 2003



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**G. Disparity Analysis: Professional Services
Prime Contracts \$25,001 to \$100,000
July 1, 2000 to June 30, 2003**

The disparity analysis of professional services prime contract dollars \$25,001 to \$100,000 is depicted in Table 7.07 and Chart 7.07.

African Americans represent 15.18 percent of the available professional services firms and received 5.04 percent of the professional services prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Asian Americans represent 12.65 percent of the available professional services firms and received 4.38 percent of the professional services prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Hispanic Americans represent 5.71 percent of the available professional services firms and received 2.05 percent of the professional services prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Native Americans represent 0.29 percent of the available professional services firms and received none of the professional services prime contracts \$25,001 to \$100,000. While this group was underutilized, there were too few contracts to determine statistical significance.

Minority Business Enterprises represent 33.84 percent of the available professional services firms and received 11.47 percent of the professional services prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Women Business Enterprises represent 17.72 percent of the available professional services firms and received 15.85 percent of the professional services prime contracts \$25,001 to \$100,000. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 51.55 percent of the available professional services firms and received 27.32 percent of the professional services prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 48.45 percent of the available professional services firms and received 72.68 percent of the professional services prime contracts \$25,001 to \$100,000. This overutilization is statistically significant.



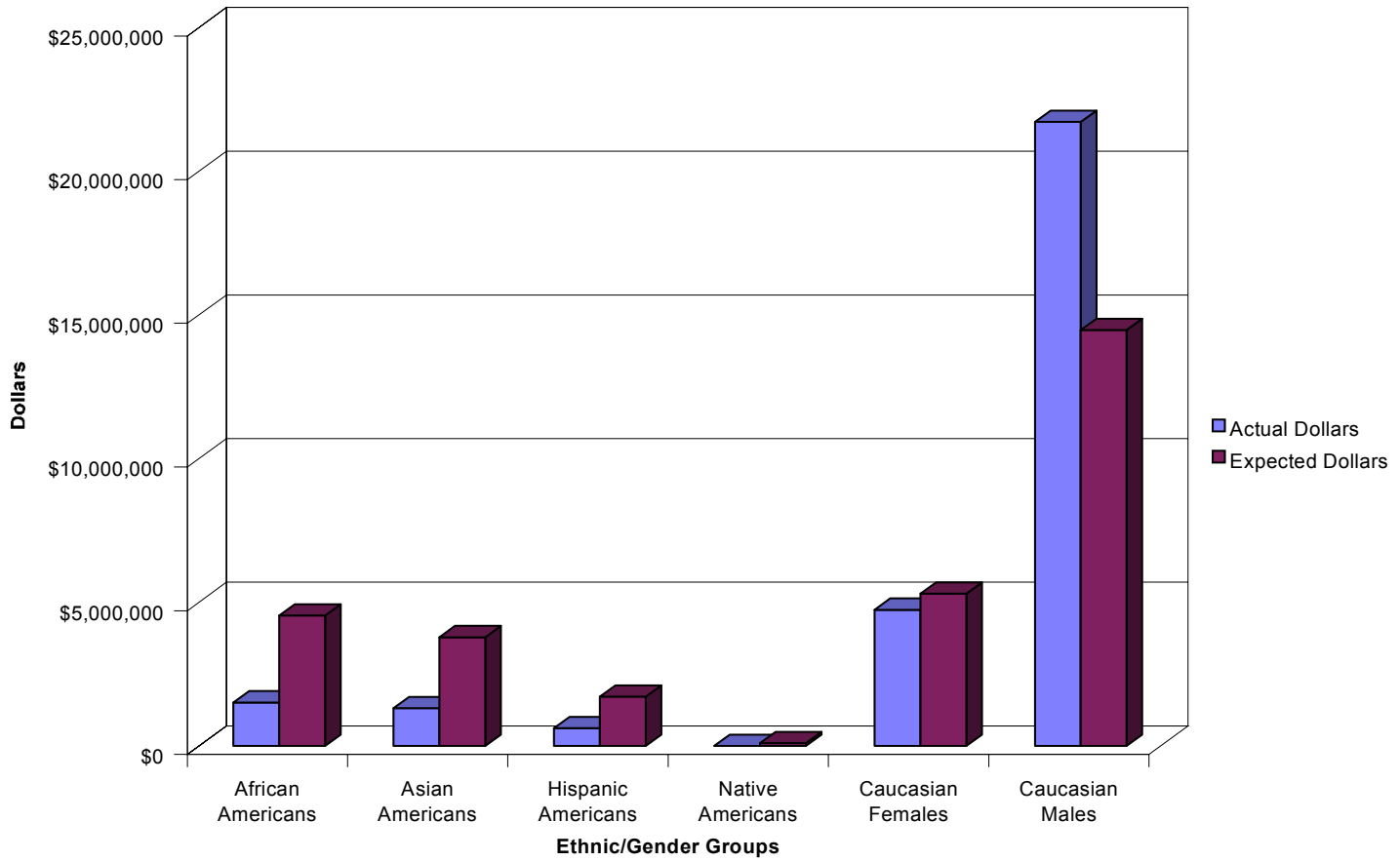
Table 7.07 Disparity Analysis: Professional Services Prime Contracts \$25,001 to \$100,000 July 1, 2000 to June 30, 2003

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$1,505,053	5.04%	15.18%	\$4,535,766	-\$3,030,713	0.33	< .05 *
Asian Americans	\$1,308,551	4.38%	12.65%	\$3,779,805	-\$2,471,254	0.35	< .05 *
Hispanic Americans	\$612,385	2.05%	5.71%	\$1,706,312	-\$1,093,927	0.36	< .05 *
Native Americans	\$0	0.00%	0.29%	\$86,396	-\$86,396	0.00	----
Caucasian Females	\$4,734,164	15.85%	17.72%	\$5,291,727	-\$557,564	0.89	not significant
Caucasian Males	\$21,711,108	72.68%	48.45%	\$14,471,254	\$7,239,854	1.50	< .05 †
TOTAL	\$29,871,261	100.00%	100.00%	\$29,871,261			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$878,469	2.94%	4.99%	\$1,490,323	-\$611,854	0.59	< .05 *
African American Males	\$626,584	2.10%	10.20%	\$3,045,443	-\$2,418,859	0.21	< .05 *
Asian American Females	\$251,867	0.84%	3.69%	\$1,101,543	-\$849,677	0.23	< .05 *
Asian American Males	\$1,056,684	3.54%	8.97%	\$2,678,262	-\$1,621,578	0.39	< .05 *
Hispanic American Females	\$251,306	0.84%	1.30%	\$388,780	-\$137,474	0.65	not significant
Hispanic American Males	\$361,080	1.21%	4.41%	\$1,317,532	-\$956,452	0.27	< .05 *
Native American Females	\$0	0.00%	0.07%	\$21,599	-\$21,599	0.00	----
Native American Males	\$0	0.00%	0.22%	\$64,797	-\$64,797	0.00	----
Caucasian Females	\$4,734,164	15.85%	17.72%	\$5,291,727	-\$557,564	0.89	not significant
Caucasian Males	\$21,711,108	72.68%	48.45%	\$14,471,254	\$7,239,854	1.50	< .05 †
TOTAL	\$29,871,261	100.00%	100.00%	\$29,871,261			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$1,381,641	4.63%	10.05%	\$3,002,245	-\$1,620,604	0.46	< .05 *
Minority Males	\$2,044,348	6.84%	23.79%	\$7,106,034	-\$5,061,686	0.29	< .05 *
Caucasian Females	\$4,734,164	15.85%	17.72%	\$5,291,727	-\$557,564	0.89	not significant
Caucasian Males	\$21,711,108	72.68%	48.45%	\$14,471,254	\$7,239,854	1.50	< .05 †
TOTAL	\$29,871,261	100.00%	100.00%	\$29,871,261			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$3,425,989	11.47%	33.84%	\$10,108,279	-\$6,682,290	0.34	< .05 *
Women Business Enterprises	\$4,734,164	15.85%	17.72%	\$5,291,727	-\$557,564	0.89	not significant
Minority and Women Business Enterprises	\$8,160,153	27.32%	51.55%	\$15,400,006	-\$7,239,854	0.53	< .05 *
Caucasian Male Business Enterprises	\$21,711,108	72.68%	48.45%	\$14,471,254	\$7,239,854	1.50	< .05 †

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.

---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

**Chart 7.07 Disparity Analysis: Professional Services Prime Contracts \$25,001 to \$100,000
July 1, 2000 to June 30, 2003**



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H. Disparity Analysis: Goods and Other Services Prime Contracts \$25,001 to \$100,000 July 1, 2000 to June 30, 2003

The disparity analysis of goods and other services prime contracts \$25,001 to \$100,000 is depicted in Table 7.08 and Chart 7.08.

African Americans represent 8.25 percent of the available goods and other services firms and received 2.3 percent of the goods and other services prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Asian Americans represent 9.86 percent of available goods and other services firms and received 4.42 percent of the goods and other services prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Hispanic Americans represent 4.95 percent of the available goods and other services firms and received 1.01 percent of the goods and other services prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Native Americans represent 0.31 percent of the available goods and other services firms and received none of the goods and other services prime contracts \$25,001 to \$100,000. While this group was underutilized, there were too few contracts to determine statistical significance.

Minority Business Enterprises represent 23.37 percent of the available goods and other services firms and received 7.73 percent of the goods and other services prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Women Business Enterprises represent 11.37 percent of the available goods and other services firms and received 8.47 percent of the goods and other services prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Minority and Women Business Enterprises represent 34.74 percent of the available goods and other services firms and received 16.2 percent of the goods and other services prime contracts \$25,001 to \$100,000. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 65.26 percent of the available goods and other services firms and received 83.8 percent of the goods and other services prime contracts \$25,001 to \$100,000. This overutilization is statistically significant.

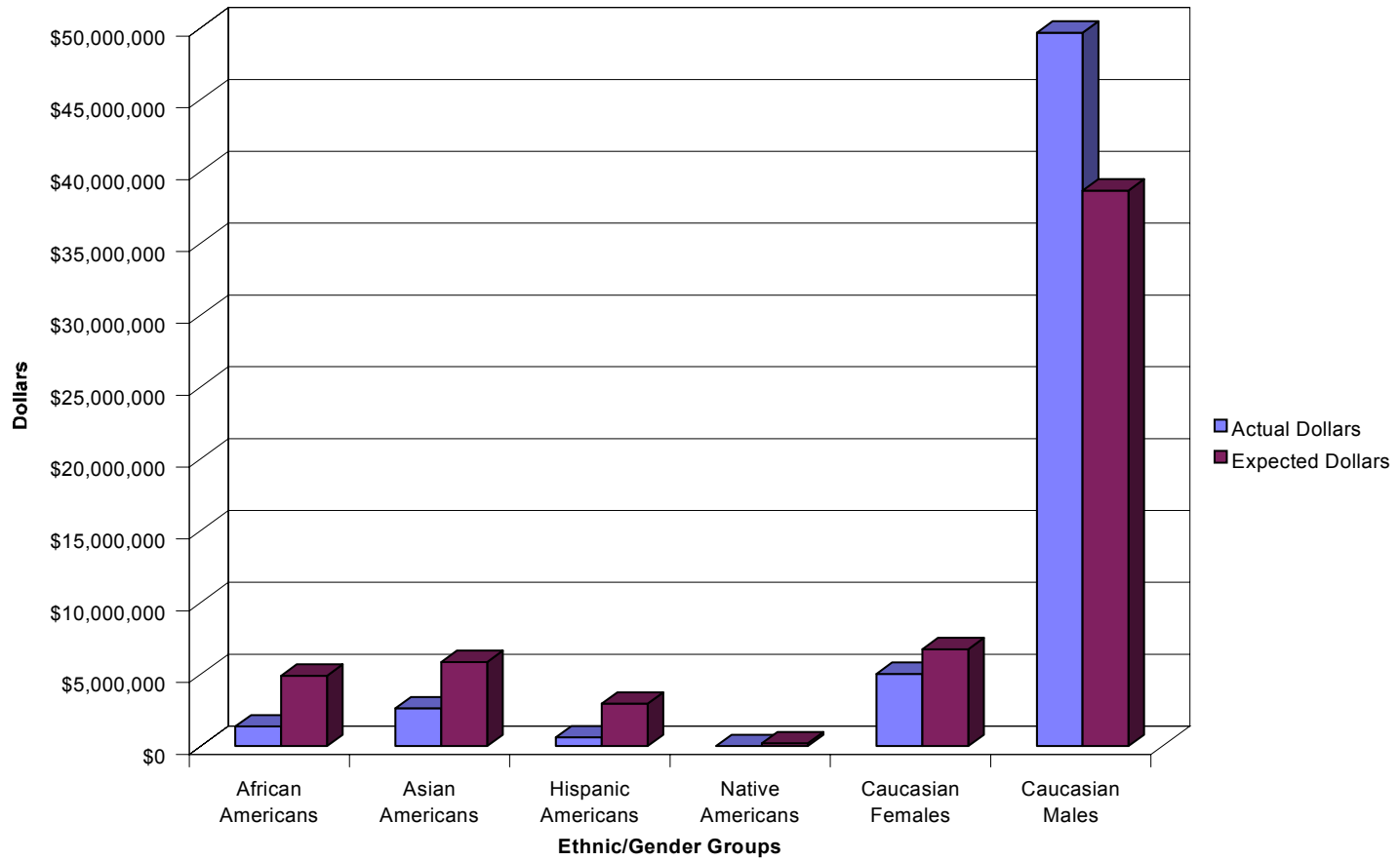


**Table 7.08 Disparity Analysis: Goods and Other Services Prime Contracts \$25,001 to \$100,000
July 1, 2000 to June 30, 2003**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$1,360,388	2.30%	8.25%	\$4,884,393	-\$3,524,005	0.28	< .05 *
Asian Americans	\$2,616,635	4.42%	9.86%	\$5,840,920	-\$3,224,286	0.45	< .05 *
Hispanic Americans	\$598,620	1.01%	4.95%	\$2,930,636	-\$2,332,016	0.20	< .05 *
Native Americans	\$0	0.00%	0.31%	\$183,165	-\$183,165	0.00	----
Caucasian Females	\$5,019,096	8.47%	11.37%	\$6,736,393	-\$1,717,297	0.75	< .05 *
Caucasian Males	\$49,628,531	83.80%	65.26%	\$38,647,763	\$10,980,768	1.28	< .05 †
TOTAL	\$59,223,270	100.00%	100.00%	\$59,223,270			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$448,791	0.76%	2.65%	\$1,567,076	-\$1,118,285	0.29	< .05 *
African American Males	\$911,597	1.54%	5.60%	\$3,317,317	-\$2,405,720	0.27	< .05 *
Asian American Females	\$632,335	1.07%	2.51%	\$1,485,670	-\$853,335	0.43	< .05 *
Asian American Males	\$1,984,300	3.35%	7.35%	\$4,355,251	-\$2,370,951	0.46	< .05 *
Hispanic American Females	\$113,346	0.19%	1.07%	\$630,901	-\$517,555	0.18	< .05 *
Hispanic American Males	\$485,275	0.82%	3.88%	\$2,299,735	-\$1,814,461	0.21	< .05 *
Native American Females	\$0	0.00%	0.03%	\$20,352	-\$20,352	0.00	----
Native American Males	\$0	0.00%	0.27%	\$162,813	-\$162,813	0.00	----
Caucasian Females	\$5,019,096	8.47%	11.37%	\$6,736,393	-\$1,717,297	0.75	< .05 *
Caucasian Males	\$49,628,531	83.80%	65.26%	\$38,647,763	\$10,980,768	1.28	< .05 †
TOTAL	\$59,223,270	100.00%	100.00%	\$59,223,270			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$1,194,471	2.02%	6.25%	\$3,703,998	-\$2,509,527	0.32	< .05 *
Minority Males	\$3,381,172	5.71%	17.11%	\$10,135,116	-\$6,753,944	0.33	< .05 *
Caucasian Females	\$5,019,096	8.47%	11.37%	\$6,736,393	-\$1,717,297	0.75	< .05 *
Caucasian Males	\$49,628,531	83.80%	65.26%	\$38,647,763	\$10,980,768	1.28	< .05 †
TOTAL	\$59,223,270	100.00%	100.00%	\$59,223,270			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$4,575,643	7.73%	23.37%	\$13,839,115	-\$9,263,471	0.33	< .05 *
Women Business Enterprises	\$5,019,096	8.47%	11.37%	\$6,736,393	-\$1,717,297	0.75	< .05 *
Minority and Women Business Enterprises	\$9,594,739	16.20%	34.74%	\$20,575,507	-\$10,980,768	0.47	< .05 *
Caucasian Male Business Enterprises	\$49,628,531	83.80%	65.26%	\$38,647,763	\$10,980,768	1.28	< .05 †

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.
---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

**Chart 7.08 Disparity Analysis: Goods and Other Services Prime Contracts \$25,001 to \$100,000
July 1, 2000 to June 30, 2003**



Mason Tillman Associates, Ltd. October 2004
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I. Disparity Analysis: Construction Prime Contracts \$25,000 and Under July 1, 2000 to June 30, 2003

The disparity analysis of construction prime contract dollars \$25,000 and under is depicted in Table 7.09 and Chart 7.09.

African Americans represent 15.32 percent of the available construction firms and received 2.92 percent of the construction prime contracts \$25,000 and under. This underutilization is statistically significant.

Asian Americans represent 7.36 percent of the available construction firms and received 0.52 percent of the construction prime contracts \$25,000 and under. This underutilization is statistically significant.

Hispanic Americans represent 14.23 percent of the available construction firms and received 17.76 percent of the construction prime contracts \$25,000 and under. This study does not test statistically the overutilization of minority groups.

Native Americans represent 0.72 percent of the available construction firms and received 0.52 percent of the construction prime contracts \$25,000 and under. While this group was underutilized, there were too few contracts to determine statistical significance.

Minority Business Enterprises represent 37.64 percent of the available construction firms and received 21.73 percent of the construction prime contracts \$25,000 and under. This underutilization is statistically significant.

Women Business Enterprises represent 6.51 percent of the available construction firms and received 13.48 percent of the construction prime contracts \$25,000 and under. This study does not test statistically the overutilization of the women business enterprise groups.

Minority and Women Business Enterprises represent 44.15 percent of the available construction firms and received 35.21 percent of the construction prime contracts \$25,000 and under. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 55.85 percent of the available construction firms and received 64.79 percent of the construction prime contracts \$25,000 and under. This overutilization is statistically significant.



Table 7.09 Disparity Analysis: Construction Prime Contracts \$25,000 and Under July 1, 2000 to June 30, 2003

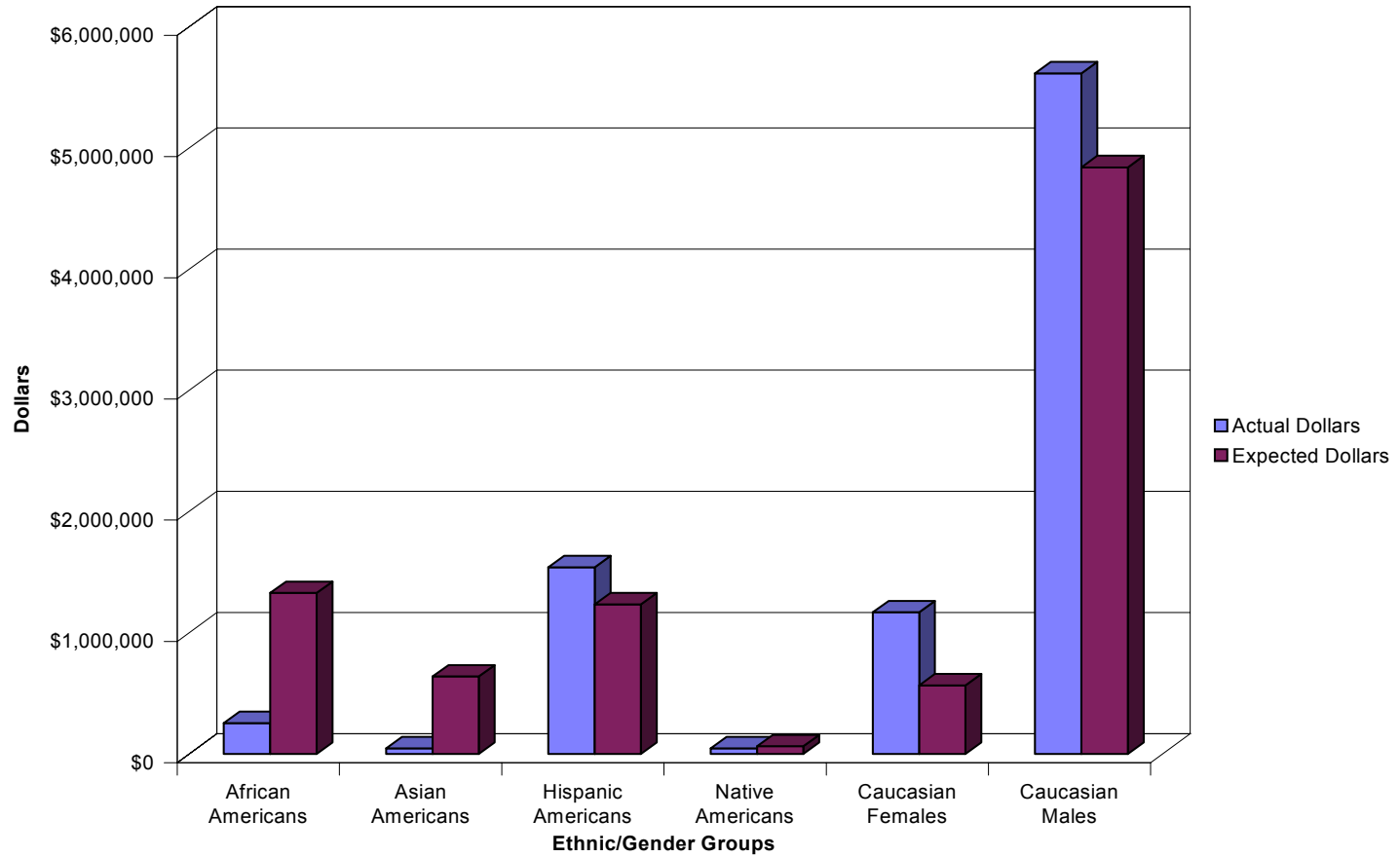
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$253,371	2.92%	15.32%	\$1,327,749	-\$1,074,377	0.19	< .05 *
Asian Americans	\$45,276	0.52%	7.36%	\$637,737	-\$592,461	0.07	< .05 *
Hispanic Americans	\$1,539,228	17.76%	14.23%	\$1,233,656	\$305,572	1.25	**
Native Americans	\$45,439	0.52%	0.72%	\$62,728	-\$17,289	0.72	----
Caucasian Females	\$1,168,682	13.48%	6.51%	\$564,554	\$604,127	2.07	**
Caucasian Males	\$5,614,960	64.79%	55.85%	\$4,840,532	\$774,428	1.16	< .05 †
TOTAL	\$8,666,957	100.00%	100.00%	\$8,666,957			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$0	0.00%	2.90%	\$250,913	-\$250,913	0.00	< .05 *
African American Males	\$253,371	2.92%	12.42%	\$1,076,835	-\$823,464	0.24	< .05 *
Asian American Females	\$0	0.00%	1.09%	\$94,092	-\$94,092	0.00	< .05 *
Asian American Males	\$45,276	0.52%	6.27%	\$543,645	-\$498,369	0.08	< .05 *
Hispanic American Females	\$9,134	0.11%	0.72%	\$62,728	-\$53,594	0.15	----
Hispanic American Males	\$1,530,095	17.65%	13.51%	\$1,170,928	\$359,167	1.31	**
Native American Females	\$0	0.00%	0.12%	\$10,455	-\$10,455	0.00	----
Native American Males	\$45,439	0.52%	0.60%	\$52,274	-\$6,834	0.87	----
Caucasian Females	\$1,168,682	13.48%	6.51%	\$564,554	\$604,127	2.07	**
Caucasian Males	\$5,614,960	64.79%	55.85%	\$4,840,532	\$774,428	1.16	< .05 †
TOTAL	\$8,666,957	100.00%	100.00%	\$8,666,957			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$9,134	0.11%	4.83%	\$418,189	-\$409,055	0.02	< .05 *
Minority Males	\$1,874,181	21.62%	32.81%	\$2,843,682	-\$969,501	0.66	< .05 *
Caucasian Females	\$1,168,682	13.48%	6.51%	\$564,554	\$604,127	2.07	**
Caucasian Males	\$5,614,960	64.79%	55.85%	\$4,840,532	\$774,428	1.16	< .05 †
TOTAL	\$8,666,957	100.00%	100.00%	\$8,666,957			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$1,883,315	21.73%	37.64%	\$3,261,870	-\$1,378,555	0.58	< .05 *
Women Business Enterprises	\$1,168,682	13.48%	6.51%	\$564,554	\$604,127	2.07	**
Minority and Women Business Enterprises	\$3,051,997	35.21%	44.15%	\$3,826,425	-\$774,428	0.80	< .05 *
Caucasian Male Business Enterprises	\$5,614,960	64.79%	55.85%	\$4,840,532	\$774,428	1.16	< .05 †

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.

** = This study does not test statistically the overutilization of M/W BEs.

---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

Chart 7.09 Disparity Analysis: Construction Prime Contracts \$25,000 and Under July 1, 2000 to June 30, 2003



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J. Disparity Analysis: Architecture and Engineering Prime Contracts \$25,000 and Under July 1, 2000 to June 30, 2003

The disparity analysis of architecture and engineering prime contract dollars \$25,000 and under is depicted in Table 7.10 and Chart 7.10.

African Americans represent 11.34 percent of the available architecture and engineering firms and received 3.29 percent of the architecture and engineering prime contracts \$25,000 and under. This underutilization is statistically significant.

Asian Americans represent 22.22 percent of the available architecture and engineering firms and received 17.81 percent of the architecture and engineering prime contracts \$25,000 and under. This underutilization is not statistically significant.

Hispanic Americans represent 6.25 percent of the available architecture and engineering firms and received 0.12 percent of the architecture and engineering prime contracts \$25,000 and under. This underutilization is statistically significant.

Native Americans represent 0.46 percent of the available architecture and engineering firms and received none of the architecture and engineering prime contracts \$25,000 and under. While this group was underutilized, there were too few contracts to determine statistical significance.

Minority Business Enterprises represent 40.28 percent of the available architecture and engineering firms and received 21.22 percent of the architecture and engineering prime contracts \$25,000 and under. This underutilization is statistically significant.

Women Business Enterprises represent 14.81 percent of the available architecture and engineering firms and received 21.41 percent of the architecture and engineering prime contracts \$25,000 and under. This study does not test statistically the overutilization of the women business enterprise groups.

Minority and Women Business Enterprises represent 55.09 percent of the available architecture and engineering firms and received 42.63 percent of the architecture and engineering prime contracts \$25,000 and under. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 44.91 percent of the available architecture and engineering firms and received 57.37 percent of the architecture and engineering prime contracts \$25,000 and under. This overutilization is statistically significant.



Table 7.10 Disparity Analysis: Architecture and Engineering Prime Contracts \$25,000 and Under July 1, 2000 to June 30, 2003

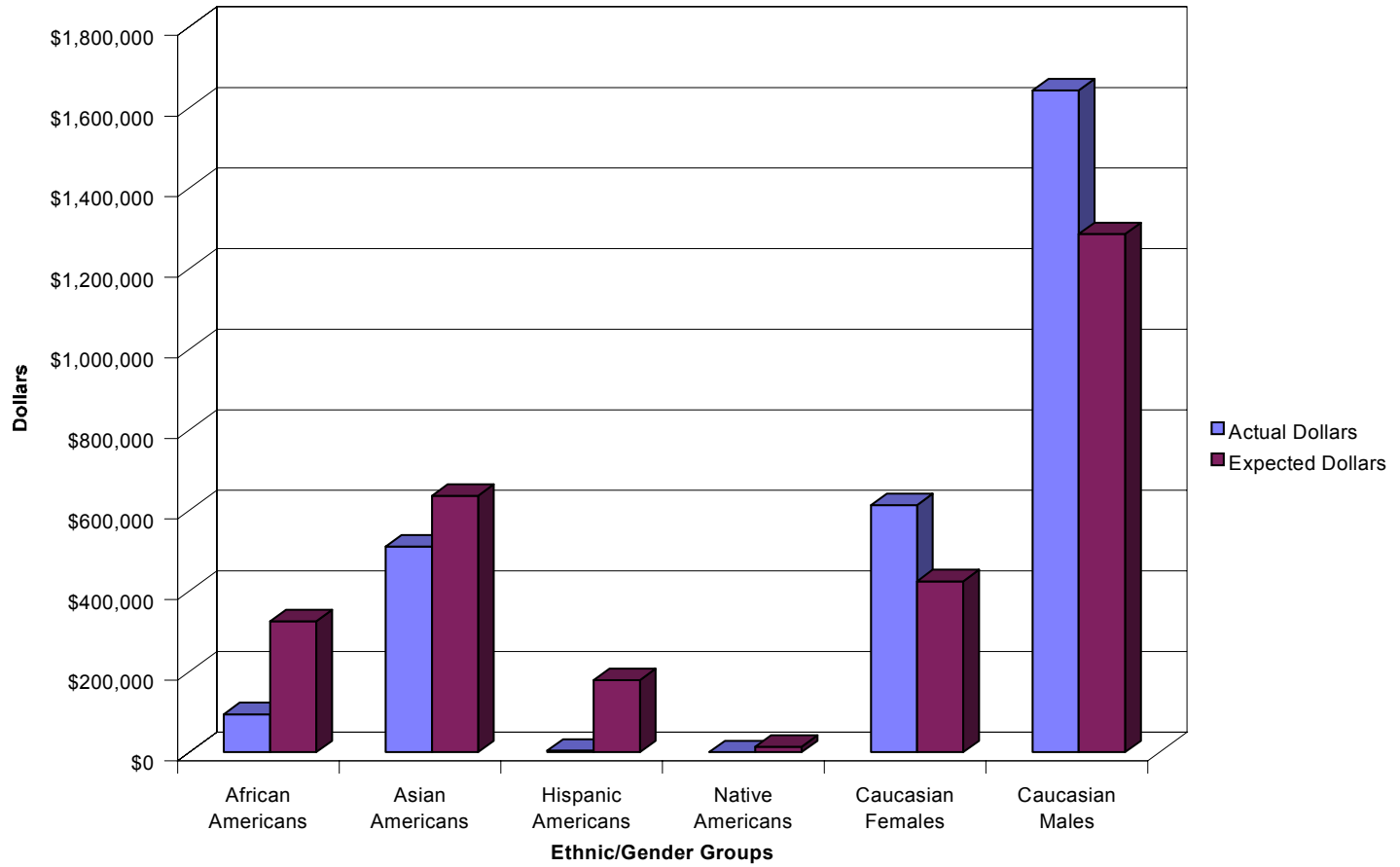
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$94,071	3.29%	11.34%	\$324,781	-\$230,710	0.29	< .05 *
Asian Americans	\$510,060	17.81%	22.22%	\$636,307	-\$126,247	0.80	not significant
Hispanic Americans	\$3,500	0.12%	6.25%	\$178,961	-\$175,461	0.02	< .05 *
Native Americans	\$0	0.00%	0.46%	\$13,256	-\$13,256	0.00	----
Caucasian Females	\$612,994	21.41%	14.81%	\$424,204	\$188,790	1.45	**
Caucasian Males	\$1,642,754	57.37%	44.91%	\$1,285,869	\$356,884	1.28	< .05 †
TOTAL	\$2,863,379	100.00%	100.00%	\$2,863,379			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$0	0.00%	2.08%	\$59,654	-\$59,654	0.00	< .05 *
African American Males	\$94,071	3.29%	9.26%	\$265,128	-\$171,057	0.35	< .05 *
Asian American Females	\$198,252	6.92%	6.02%	\$172,333	\$25,919	1.15	**
Asian American Males	\$311,808	10.89%	16.20%	\$463,974	-\$152,165	0.67	< .05 *
Hispanic American Females	\$0	0.00%	0.46%	\$13,256	-\$13,256	0.00	----
Hispanic American Males	\$3,500	0.12%	5.79%	\$165,705	-\$162,205	0.02	< .05 *
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.46%	\$13,256	-\$13,256	0.00	----
Caucasian Females	\$612,994	21.41%	14.81%	\$424,204	\$188,790	1.45	**
Caucasian Males	\$1,642,754	57.37%	44.91%	\$1,285,869	\$356,884	1.28	< .05 †
TOTAL	\$2,863,379	100.00%	100.00%	\$2,863,379			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$198,252	6.92%	8.56%	\$245,243	-\$46,991	0.81	not significant
Minority Males	\$409,379	14.30%	31.71%	\$908,062	-\$498,683	0.45	< .05 *
Caucasian Females	\$612,994	21.41%	14.81%	\$424,204	\$188,790	1.45	**
Caucasian Males	\$1,642,754	57.37%	44.91%	\$1,285,869	\$356,884	1.28	< .05 †
TOTAL	\$2,863,379	100.00%	100.00%	\$2,863,379			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$607,631	21.22%	40.28%	\$1,153,306	-\$545,675	0.53	< .05 *
Women Business Enterprises	\$612,994	21.41%	14.81%	\$424,204	\$188,790	1.45	**
Minority and Women Business Enterprises	\$1,220,625	42.63%	55.09%	\$1,577,510	-\$356,884	0.77	< .05 *
Caucasian Male Business Enterprises	\$1,642,754	57.37%	44.91%	\$1,285,869	\$356,884	1.28	< .05 †

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.

** = This study does not test statistically the overutilization of M/W BEs.

---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

Chart 7.10 Disparity Analysis: Architecture and Engineering Prime Contracts \$25,000 and Under July 1, 2000 to June 30, 2003



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K. Disparity Analysis: Professional Services Prime Contracts \$25,000 and Under July 1, 2000 to June 30, 2003

The disparity analysis of professional services prime contract dollars \$25,000 and under is depicted in Table 7.11 and Chart 7.11.

African Americans represent 15.18 percent of the available professional services firms and received 6.31 percent of the professional services prime contracts \$25,000 and under. This underutilization is statistically significant.

Asian Americans represent 12.65 percent of the available professional services firms and received 7.91 percent of the professional services prime contracts \$25,000 and under. This underutilization is statistically significant.

Hispanic Americans represent 5.71 percent of the available professional services firms and received 3.2 percent of the professional services prime contracts \$25,000 and under. This underutilization is statistically significant.

Native Americans represent 0.29 percent of the available professional services firms and received 0.19 percent of the professional services prime contracts \$25,000 and under. While this group was underutilized, there were too few contracts to determine statistical significance.

Minority Business Enterprises represent 33.84 percent of the available professional services firms and received 17.61 percent of the professional services prime contracts \$25,000 and under. This underutilization is statistically significant.

Women Business Enterprises represent 17.72 percent of the available professional services firms and received 14.22 percent of the professional services prime contracts \$25,000 and under. This underutilization is statistically significant.

Minority and Women Business Enterprises represent 51.55 percent of the available professional services firms and received 31.83 percent of the professional services prime contracts \$25,000 and under. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 48.45 percent of the available professional services firms and received 68.17 percent of the professional services prime contracts \$25,000 and under. This overutilization is statistically significant.



Table 7.11 Disparity Analysis: Professional Services Prime Contracts \$25,000 and Under July 1, 2000 to June 30, 2003

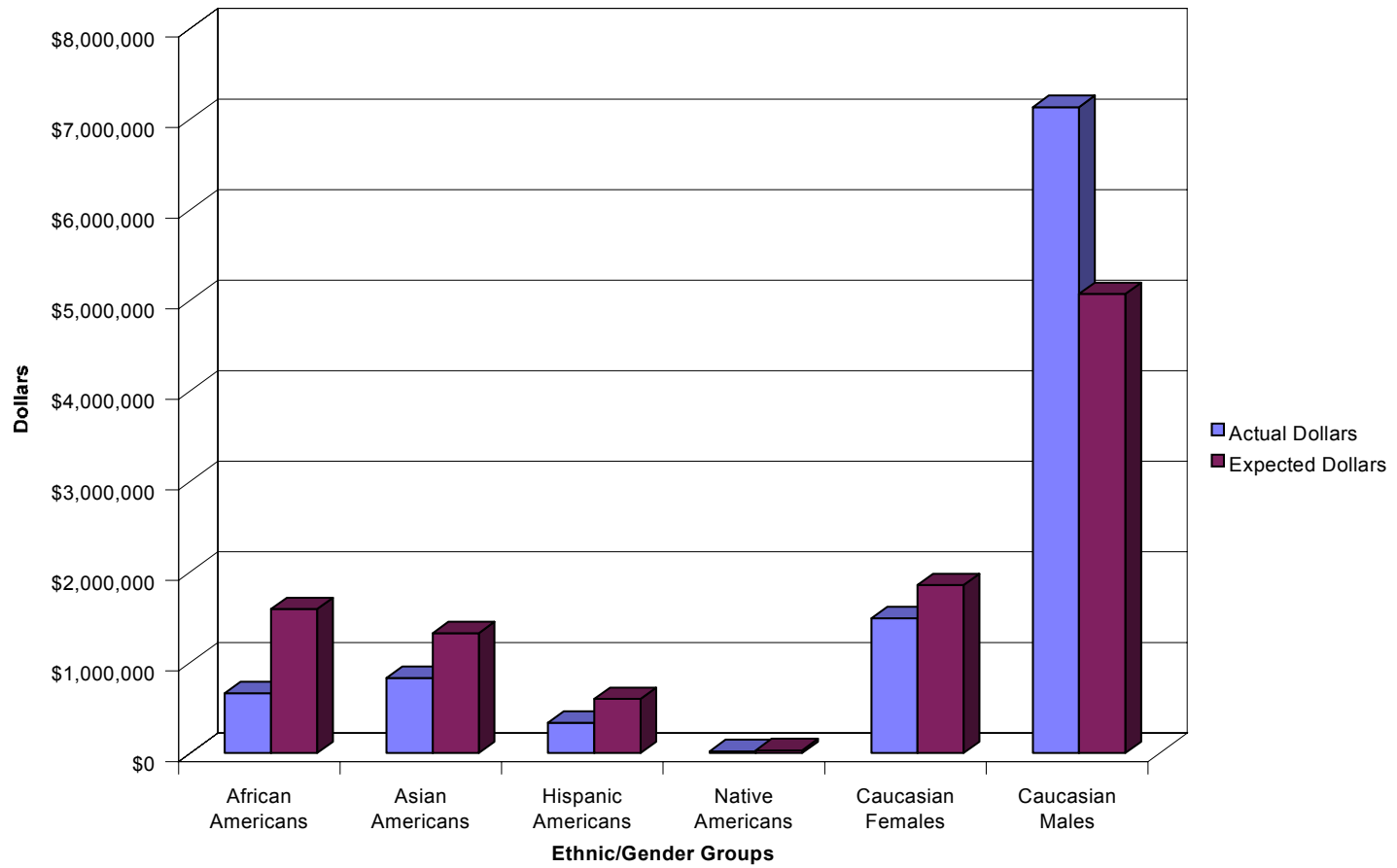
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$660,015	6.31%	15.18%	\$1,588,956	-\$928,941	0.42	< .05 *
Asian Americans	\$827,283	7.91%	12.65%	\$1,324,130	-\$496,847	0.62	< .05 *
Hispanic Americans	\$334,710	3.20%	5.71%	\$597,750	-\$263,040	0.56	< .05 *
Native Americans	\$20,375	0.19%	0.29%	\$30,266	-\$9,891	0.67	----
Caucasian Females	\$1,488,463	14.22%	17.72%	\$1,853,782	-\$365,319	0.80	< .05 *
Caucasian Males	\$7,133,566	68.17%	48.45%	\$5,069,528	\$2,064,039	1.41	< .05 †
TOTAL	\$10,464,413	100.00%	100.00%	\$10,464,413			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$252,673	2.41%	4.99%	\$522,086	-\$269,412	0.48	< .05 *
African American Males	\$407,342	3.89%	10.20%	\$1,066,871	-\$659,529	0.38	< .05 *
Asian American Females	\$173,824	1.66%	3.69%	\$385,889	-\$212,066	0.45	< .05 *
Asian American Males	\$653,460	6.24%	8.97%	\$938,241	-\$284,781	0.70	< .05 *
Hispanic American Females	\$107,640	1.03%	1.30%	\$136,196	-\$28,557	0.79	not significant
Hispanic American Males	\$227,070	2.17%	4.41%	\$461,554	-\$234,484	0.49	< .05 *
Native American Females	\$10,000	0.10%	0.07%	\$7,566	\$2,434	1.32	**
Native American Males	\$10,375	0.10%	0.22%	\$22,699	-\$12,324	0.46	----
Caucasian Females	\$1,488,463	14.22%	17.72%	\$1,853,782	-\$365,319	0.80	< .05 *
Caucasian Males	\$7,133,566	68.17%	48.45%	\$5,069,528	\$2,064,039	1.41	< .05 †
TOTAL	\$10,464,413	100.00%	100.00%	\$10,464,413			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$544,137	5.20%	10.05%	\$1,051,738	-\$507,601	0.52	< .05 *
Minority Males	\$1,298,247	12.41%	23.79%	\$2,489,365	-\$1,191,118	0.52	< .05 *
Caucasian Females	\$1,488,463	14.22%	17.72%	\$1,853,782	-\$365,319	0.80	< .05 *
Caucasian Males	\$7,133,566	68.17%	48.45%	\$5,069,528	\$2,064,039	1.41	< .05 †
TOTAL	\$10,464,413	100.00%	100.00%	\$10,464,413			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$1,842,384	17.61%	33.84%	\$3,541,103	-\$1,698,719	0.52	< .05 *
Women Business Enterprises	\$1,488,463	14.22%	17.72%	\$1,853,782	-\$365,319	0.80	< .05 *
Minority and Women Business Enterprises	\$3,330,847	31.83%	51.55%	\$5,394,885	-\$2,064,039	0.62	< .05 *
Caucasian Male Business Enterprises	\$7,133,566	68.17%	48.45%	\$5,069,528	\$2,064,039	1.41	< .05 †

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.

** = This study does not test statistically the overutilization of M/WBEs.

---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

**Chart 7.11 Disparity Analysis: Professional Services Prime Contracts \$25,000 and Under
July 1, 2000 to June 30, 2003**



Mason Tillman Associates, Ltd. October 2004
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L. Disparity Analysis: Goods and Other Services Prime Contracts \$25,000 and Under July 1, 2000 to June 30, 2003

The disparity analysis of goods and other services prime contracts \$25,000 and under is depicted in Table 7.12 and Chart 7.12.

African Americans represent 8.25 percent of the available goods and other services firms and received 1.67 percent of the goods and other services prime contracts \$25,000 and under. This underutilization is statistically significant.

Asian Americans represent 9.86 percent of the available goods and other services firms and received 5.38 percent of the goods and other services prime contracts \$25,000 and under. This underutilization is statistically significant.

Hispanic Americans represent 4.95 percent of the available goods and other services firms and received 2.29 percent of the goods and other services prime contracts \$25,000 and under. This underutilization is statistically significant.

Native Americans represent 0.31 percent of the available goods and other services firms and received 0.01 percent of the goods and other services prime contracts \$25,000 and under. While this group was underutilized, there were too few contracts to determine statistical significance.

Minority Business Enterprises represent 23.37 percent of the available goods and other services firms and received 9.35 percent of the goods and other services prime contracts \$25,000 and under. This underutilization is statistically significant.

Women Business Enterprises represent 11.37 percent of the available goods and other services firms and received 10.19 percent of the goods and other services prime contracts \$25,000 and under. This underutilization is statistically significant.

Minority and Women Business Enterprises represent 34.74 percent of the available goods and other services firms and received 19.54 percent of the goods and other services prime contracts \$25,000 and under. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 65.26 percent of the available goods and other services firms and received 80.46 percent of the goods and other services prime contracts \$25,000 and under. This overutilization is statistically significant.

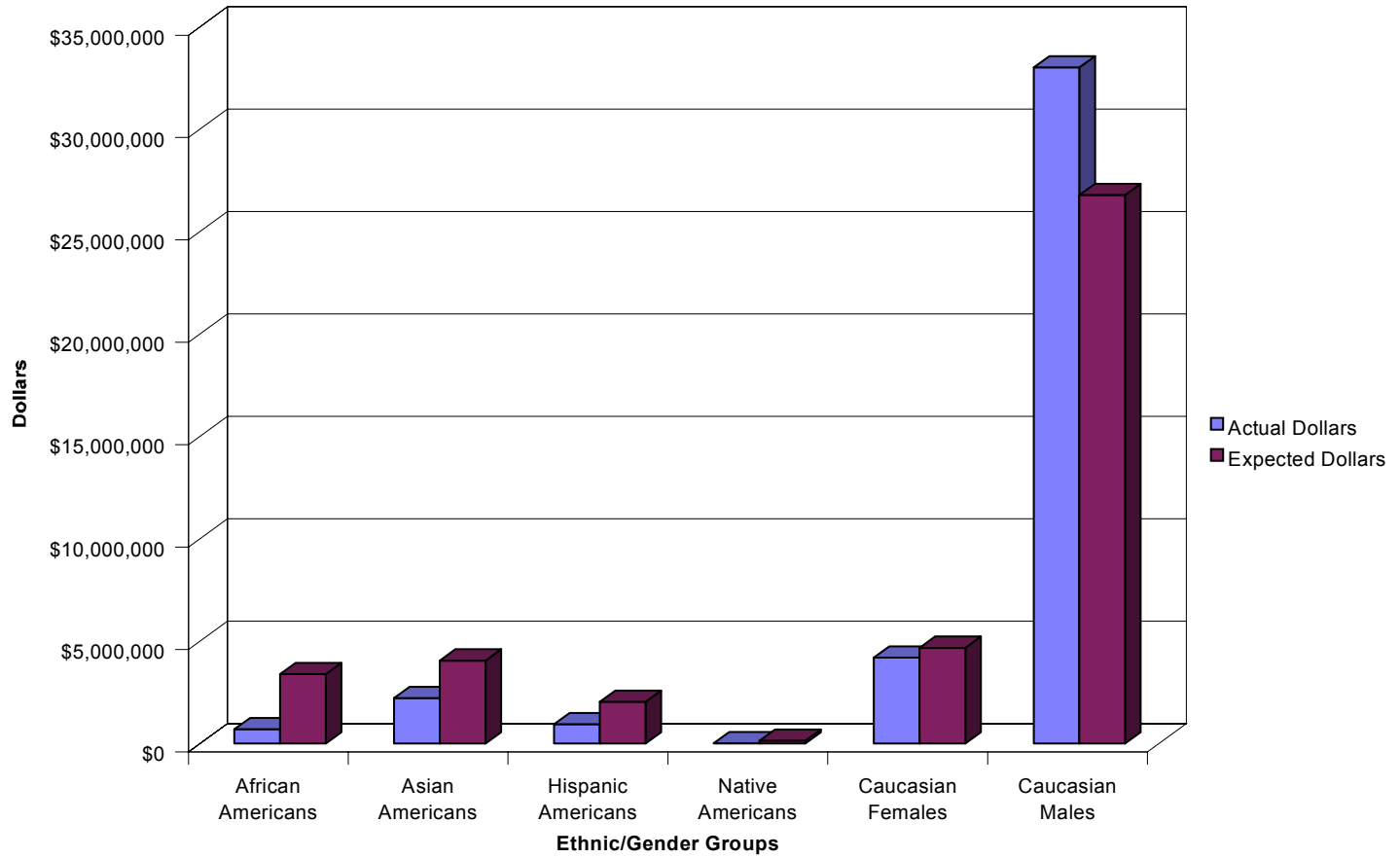


**Table 7.12 Disparity Analysis: Goods and Other Services Prime Contracts \$25,000 and Under
July 1, 2000 to June 30, 2003**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$685,333	1.67%	8.25%	\$3,383,534	-\$2,698,201	0.20	< .05 *
Asian Americans	\$2,206,032	5.38%	9.86%	\$4,046,143	-\$1,840,111	0.55	< .05 *
Hispanic Americans	\$937,604	2.29%	4.95%	\$2,030,120	-\$1,092,516	0.46	< .05 *
Native Americans	\$3,130	0.01%	0.31%	\$126,883	-\$123,753	0.02	----
Caucasian Females	\$4,182,159	10.19%	11.37%	\$4,666,457	-\$484,298	0.90	< .05 *
Caucasian Males	\$33,011,091	80.47%	65.26%	\$26,772,211	\$6,238,879	1.23	< .05 †
TOTAL	\$41,025,348	100.00%	100.00%	\$41,025,348			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$320,889	0.78%	2.65%	\$1,085,550	-\$764,661	0.30	< .05 *
African American Males	\$364,444	0.89%	5.60%	\$2,297,983	-\$1,933,540	0.16	< .05 *
Asian American Females	\$665,144	1.62%	2.51%	\$1,029,158	-\$364,014	0.65	< .05 *
Asian American Males	\$1,540,888	3.76%	7.35%	\$3,016,984	-\$1,476,097	0.51	< .05 *
Hispanic American Females	\$291,178	0.71%	1.07%	\$437,040	-\$145,862	0.67	< .05 *
Hispanic American Males	\$646,426	1.58%	3.88%	\$1,593,081	-\$946,655	0.41	< .05 *
Native American Females	\$275	0.00%	0.03%	\$14,098	-\$13,823	0.02	----
Native American Males	\$2,855	0.01%	0.27%	\$112,784	-\$109,929	0.03	----
Caucasian Females	\$4,182,159	10.19%	11.37%	\$4,666,457	-\$484,298	0.90	< .05 *
Caucasian Males	\$33,011,091	80.47%	65.26%	\$26,772,211	\$6,238,879	1.23	< .05 †
TOTAL	\$41,025,348	100.00%	100.00%	\$41,025,348			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$1,277,486	3.11%	6.25%	\$2,565,846	-\$1,288,361	0.50	< .05 *
Minority Males	\$2,554,613	6.23%	17.11%	\$7,020,833	-\$4,466,220	0.36	< .05 *
Caucasian Females	\$4,182,159	10.19%	11.37%	\$4,666,457	-\$484,298	0.90	< .05 *
Caucasian Males	\$33,011,091	80.47%	65.26%	\$26,772,211	\$6,238,879	1.23	< .05 †
TOTAL	\$41,025,348	100.00%	100.00%	\$41,025,348			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$3,832,098	9.34%	23.37%	\$9,586,679	-\$5,754,581	0.40	< .05 *
Women Business Enterprises	\$4,182,159	10.19%	11.37%	\$4,666,457	-\$484,298	0.90	< .05 *
Minority and Women Business Enterprises	\$8,014,257	19.53%	34.74%	\$14,253,136	-\$6,238,879	0.56	< .05 *
Caucasian Male Business Enterprises	\$33,011,091	80.47%	65.26%	\$26,772,211	\$6,238,879	1.23	< .05 †

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.
 ---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

**Chart 7.12 Disparity Analysis: Goods and Other Services Prime Contracts \$25,000 and Under
July 1, 2000 to June 30, 2003**



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III. SUMMARY

In construction, contracts under \$500,000 are included in the disparity analysis. The disparity findings are summarized in the tables below.

A. Construction Prime Contracts

As indicated in Table 7.13, with the exception of Hispanic American firms, minority construction primes were determined to be underutilized at all three contract levels. Neither Hispanic American firms nor Women Business Enterprises were underutilized at any of the contract levels.

It is notable that five out of 22 Hispanic American businesses received 91.9 percent of all construction dollars received by Hispanic American owned firms.

Table 7.13 Disparity Summary: Construction Prime Contract Dollars

Ethnicity/Gender	Construction		
	Contracts Under \$500,000	Contracts \$25,001 to \$100,000	Contracts \$25,000 and Under
African Americans	Yes	Yes	Yes
Asian Americans	Yes	Yes	Yes
Hispanic Americans	No	No	No
Native Americans	---	---	---
Minority Business Enterprises	Yes	Yes	Yes
Women Business Enterprises	No	No	No
Minority and Woman Business Enterprises	Yes	Yes	Yes

Yes = Statistically significant disparity.

No = Not statistically significant disparity.

--- = The records were not sufficient to determine statistically significant disparity.



B. Architecture and Engineering Prime Contracts

As indicated in Table 7.14, with the exception of Asian American firms, all minority architecture and engineering primes were determined to be underutilized at all three contract levels. Asian American firms were determined to be underutilized at the under \$500,000 and the \$25,001 to \$100,000 contract levels. Women Business Enterprises were not underutilized at any of the contract levels.

Table 7.14 Disparity Summary: Architecture and Engineering Prime Contract Dollars

Ethnicity/Gender	Architecture and Engineering		
	Contracts Under \$500,000	Contracts \$25,001 to \$100,000	Contracts \$25,000 and Under
African Americans	Yes	Yes	Yes
Asian Americans	Yes	Yes	No
Hispanic Americans	Yes	Yes	Yes
Native Americans	---	---	---
Minority Business Enterprises	Yes	Yes	Yes
Women Business Enterprises	No	No	No
Minority and Women Business Enterprises	Yes	Yes	Yes

Yes = Statistically significant disparity.

No = Not statistically significant disparity.

--- = The records were not sufficient to determine statistically significant disparity.



C. Professional Services Prime Contracts

As depicted in Table 7.15, all minority professional services primes were determined to be underutilized at all three contract levels. Women Business Enterprises were only determined to be underutilized at the \$25,000 and under contract level.

Table 7.15 Disparity Summary: Professional Services Prime Contract Dollars

Ethnicity/Gender	Professional Services		
	Contracts Under \$500,000	Contracts \$25,001 to \$100,000	Contracts \$25,000 and Under
African Americans	Yes	Yes	Yes
Asian Americans	Yes	Yes	Yes
Hispanic Americans	Yes	Yes	Yes
Native Americans	---	---	---
Minority Business Enterprises	Yes	Yes	Yes
Women Business Enterprises	No	No	Yes
Minority and Women Business Enterprises	Yes	Yes	Yes

Yes = Statistically significant disparity.

No = Not statistically significant disparity.

--- = The records were not sufficient to determine statistically significant disparity.



D. Goods and Other Services Prime Contracts

As depicted in Table 7.16, all minority, as well as women goods and other services primes were determined to be underutilized at all three contract levels.

Table 7.16 Disparity Summary: Goods and Other Services Prime Contracts Dollars

Ethnicity/Gender	Goods and Other Services		
	Contracts Under \$500,000	Contracts \$25,001 to \$100,000	Contracts \$25,000 and Under
African Americans	Yes	Yes	Yes
Asian Americans	Yes	Yes	Yes
Hispanic Americans	Yes	Yes	Yes
Native Americans	---	---	---
Minority Business Enterprises	Yes	Yes	Yes
Women Business Enterprises	Yes	Yes	Yes
Minority and Women Business Enterprises	Yes	Yes	Yes

Yes = Statistically significant disparity.

No = Not statistically significant disparity.

--- = The records were not sufficient to determine statistically significant disparity.

In conclusion, there is documented disparity in each of the industries studied. Remedies to address the observed prime contractor disparities are presented in the Recommendations Chapter.





8

SUBCONTRACTOR DISPARITY ANALYSIS

I. INTRODUCTION

The objective of this analysis is to determine if minority and women business enterprise (M/WBE) subcontractors were underutilized at a statistically significant level. A detailed discussion of the statistical procedures for conducting a disparity analysis is set forth in Prime Contractor Disparity Analysis Chapter 7. The same procedures were used in the subcontractor disparity analysis. In sum, under a fair and equitable system of awarding subcontracts, the proportion of subcontracts and subcontract dollars awarded to M/WBEs should be equal to the proportion of M/WBEs in the relevant market area. If the proportions are not equal, and a disparity exists between these proportions, the probability that the disparity is due to chance can be determined using a statistical test. If there is a low probability that the disparity is due to chance, *Crosby* states that an inference of discrimination can be made.¹

II. SUBCONTRACTOR DISPARITY FINDINGS

As detailed in the Subcontractor Utilization Analysis Chapter 4, extensive efforts were undertaken to obtain subcontract records for the County's construction, architecture and engineering, and professional services prime contracts.² Records were compiled for the three

¹ When conducting statistical tests, a level of confidence must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95 percent confidence level is considered by the Courts as an acceptable level in determining whether an inference of discrimination can be made. Thus the data analyzed here was done within the 95 percent confidence level.

² Goods and other services subcontracting is not studied because a large number of purchases are for commodities from manufacturers and suppliers. This limits subcontracting opportunities. However, goods and other services subcontracts were collected for the SLEB program analysis reported in the Local Study chapter of this report.



industries within the July 1, 2000 to June 30, 2003 study period. A subcontractor disparity analysis was performed for the three industries.

A. Construction Subcontracts Disparity Analysis

The disparity analysis of construction subcontract dollars is depicted in Table 8.01 and Chart 8.01.

African Americans represent 14.09 percent of the available construction subcontractors and received 2.81 percent of the construction subcontract dollars. This underutilization is statistically significant.

Asian Americans represent 7.20 percent of the available construction subcontractors and received 2.19 percent of the construction subcontract dollars. This underutilization is statistically significant.

Hispanic Americans represent 12.84 percent of the available construction subcontractors and received 4.84 percent of the construction subcontract dollars. This underutilization is not statistically significant.

Native Americans represent 0.63 percent of the available construction subcontractors and received 0.38 percent of the construction subcontract dollars. While this group is underutilized, there are too few contracts to determine statistical significance.

Minority Business Enterprises represent of 34.76 percent the available construction subcontractors and received 10.23 percent of the construction subcontract dollars. This underutilization is statistically significant.

Women Business Enterprises represent 6.68 percent of the available construction subcontractors and received 17.38 percent of the construction subcontract dollars. The study does not test statistically the overutilization of the women business enterprise group.

Minority and Women Business Enterprises represent 41.44 percent of the available construction subcontractors and received 27.61 percent of the construction subcontract dollars. This underutilization is not statistically significant.

Caucasian Male Business Enterprises represent 58.56 percent of the available construction subcontractors and received 72.39 percent of the construction subcontract dollars. This overutilization is not statistically significant.



Table 8.01 Disparity Analysis: Construction Subcontracts July 1, 2000 to June 30, 2003

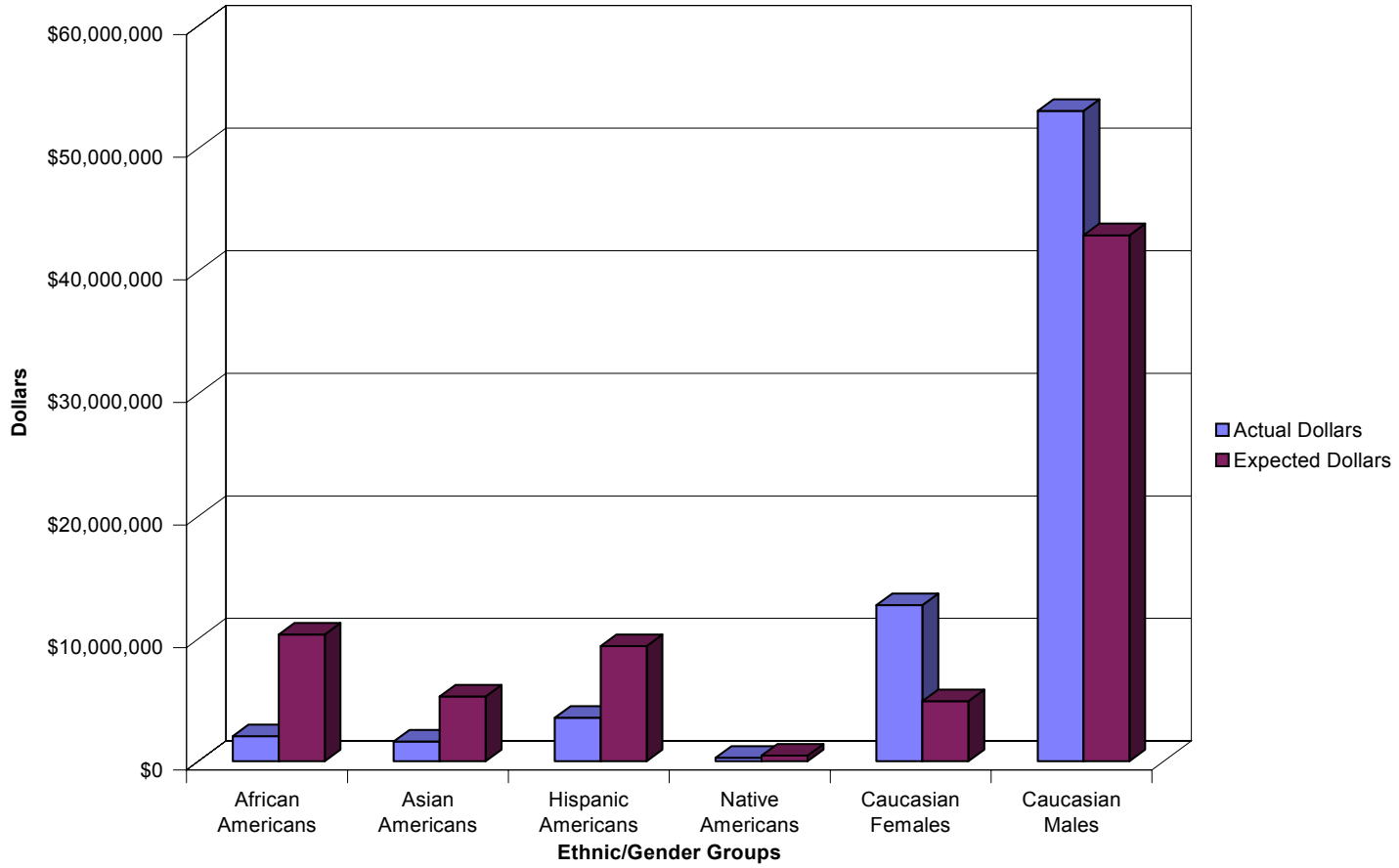
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$2,063,085	2.81%	14.09%	\$10,328,580	-\$8,265,495	0.20	< .05 *
Asian Americans	\$1,606,549	2.19%	7.20%	\$5,279,052	-\$3,672,503	0.30	< .05 *
Hispanic Americans	\$3,545,523	4.84%	12.84%	\$9,410,484	-\$5,864,961	0.38	not significant
Native Americans	\$281,720	0.38%	0.63%	\$459,048	-\$177,328	0.61	----
Caucasian Females	\$12,736,348	17.38%	6.68%	\$4,896,512	\$7,839,836	2.60	**
Caucasian Males	\$53,061,439	72.39%	58.56%	\$42,920,988	\$10,140,451	1.24	not significant
TOTAL	\$73,294,664	100.00%	100.00%	\$73,294,664			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$712,379	0.97%	2.71%	\$1,989,208	-\$1,276,830	0.36	not significant
African American Males	\$1,350,707	1.84%	11.38%	\$8,339,372	-\$6,988,665	0.16	< .05 *
Asian American Females	\$179,000	0.24%	1.25%	\$918,096	-\$739,096	0.19	not significant
Asian American Males	\$1,427,549	1.95%	5.95%	\$4,360,956	-\$2,933,407	0.33	< .05 *
Hispanic American Females	\$842,690	1.15%	0.73%	\$535,556	\$307,134	1.57	----
Hispanic American Males	\$2,702,833	3.69%	12.11%	\$8,874,928	-\$6,172,095	0.30	< .05 *
Native American Females	\$259,188	0.35%	0.10%	\$76,508	\$182,680	3.39	----
Native American Males	\$22,532	0.03%	0.52%	\$382,540	-\$360,008	0.06	----
Caucasian Females	\$12,736,348	17.38%	6.68%	\$4,896,512	\$7,839,836	2.60	**
Caucasian Males	\$53,061,439	72.39%	58.56%	\$42,920,988	\$10,140,451	1.24	not significant
TOTAL	\$73,294,664	100.00%	100.00%	\$73,294,664			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$1,993,256	2.72%	4.80%	\$3,519,368	-\$1,526,112	0.57	not significant
Minority Males	\$5,503,620	7.51%	29.96%	\$21,957,796	-\$16,454,176	0.25	< .05 *
Caucasian Females	\$12,736,348	17.38%	6.68%	\$4,896,512	\$7,839,836	2.60	**
Caucasian Males	\$53,061,439	72.39%	58.56%	\$42,920,988	\$10,140,451	1.24	not significant
TOTAL	\$73,294,664	100.00%	100.00%	\$73,294,664			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$7,496,877	10.23%	34.76%	\$25,477,164	-\$17,980,287	0.29	< .05 *
Women Business Enterprises	\$12,736,348	17.38%	6.68%	\$4,896,512	\$7,839,836	2.60	**
Minority and Women Business Enterprises	\$20,233,225	27.61%	41.44%	\$30,373,676	-\$10,140,451	0.67	not significant
Caucasian Male Business Enterprises	\$53,061,439	72.39%	58.56%	\$42,920,988	\$10,140,451	1.24	not significant

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.

** = This study does not test statistically the overutilization of M/W BEs.

---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

Chart 8.01 Disparity Analysis: Construction Subcontracts July 1, 2000 to June 30, 2003



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B. Architecture and Engineering Subcontracts Disparity Analysis

The disparity analysis of architecture and engineering subcontract dollars is depicted in Table 8.02 and Chart 8.02.

African Americans represent 10.58 percent of the available architecture and engineering subcontractors and received 0.72 percent of the architecture and engineering subcontract dollars. This underutilization is statistically significant.

Asian Americans represent 20.33 percent of the available architecture and engineering subcontractors and received 3.2 percent of the architecture and engineering subcontract dollars. This underutilization is statistically significant.

Hispanic Americans represent 6.22 percent of the available architecture and engineering subcontractors and received 4.24 percent of the architecture and engineering subcontract dollars. This underutilization is not statistically significant.

Native Americans represent 0.41 percent of the available architecture and engineering subcontractors and received none of the architecture and engineering subcontract dollars. While this group is underutilized, there are too few contracts to determine statistical significance.

Minority Business Enterprises represent 37.55 percent of the available architecture and engineering subcontractors and received 8.17 percent of the architecture and engineering subcontract dollars. This underutilization is statistically significant.

Women Business Enterprises represent 15.35 percent of the available architecture and engineering subcontractors and received 9.12 percent of the architecture and engineering subcontract dollars. This underutilization is not statistically significant.

Minority and Women Business Enterprises represent 52.90 percent of the available architecture and engineering subcontractors and received 17.29 percent of the construction subcontract dollars. This underutilization is statistically significant.

Caucasian Male Business Enterprises represent 47.10 percent of the available architecture and engineering subcontractors and received 82.71 percent of the architecture and engineering subcontract dollars. This overutilization is statistically significant.



Table 8.02 Disparity Analysis: Architecture and Engineering Subcontracts July 1, 2000 to June 30, 2003

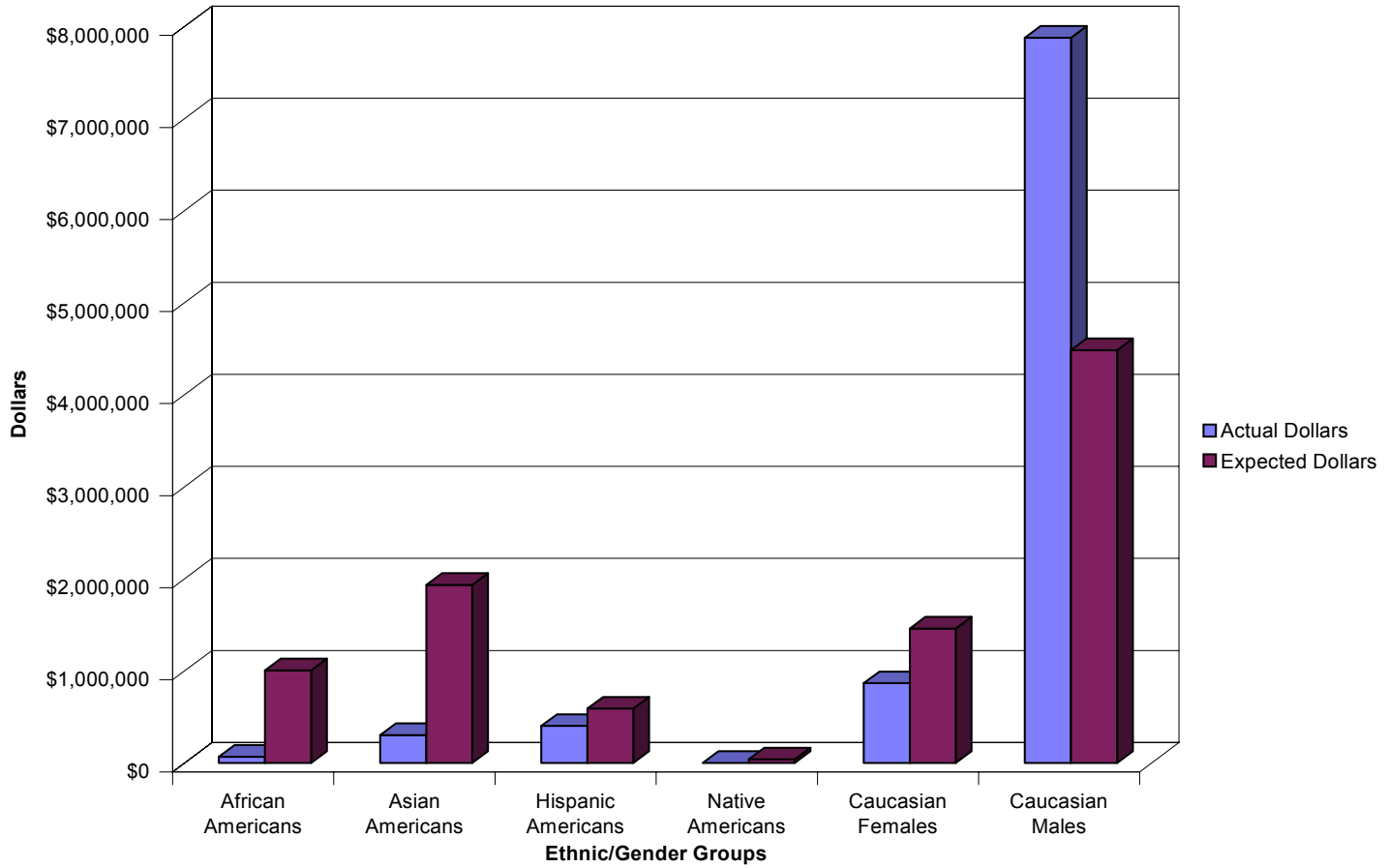
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African Americans	\$68,447	0.72%	10.58%	\$1,007,717	-\$939,269	0.07	< .05 *
Asian Americans	\$305,086	3.20%	20.33%	\$1,936,396	-\$1,631,310	0.16	< .05 *
Hispanic Americans	\$404,187	4.24%	6.22%	\$592,774	-\$188,588	0.68	not significant
Native Americans	\$0	0.00%	0.41%	\$39,518	-\$39,518	0.00	----
Caucasian Females	\$868,755	9.12%	15.35%	\$1,462,177	-\$593,422	0.59	not significant
Caucasian Males	\$7,877,434	82.71%	47.10%	\$4,485,326	\$3,392,108	1.76	< .05 †
TOTAL	\$9,523,909	100.00%	100.00%	\$9,523,909			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
African American Females	\$0	0.00%	1.87%	\$177,832	-\$177,832	0.00	not significant
African American Males	\$68,447	0.72%	8.71%	\$829,884	-\$761,437	0.08	< .05 *
Asian American Females	\$27,603	0.29%	5.60%	\$533,497	-\$505,894	0.05	< .05 *
Asian American Males	\$277,484	2.91%	14.73%	\$1,402,899	-\$1,125,416	0.20	< .05 *
Hispanic American Females	\$294,274	3.09%	1.04%	\$98,796	\$195,479	2.98	**
Hispanic American Males	\$109,912	1.15%	5.19%	\$493,979	-\$384,066	0.22	not significant
Native American Females	\$0	0.00%	0.00%	\$0	\$0	----	----
Native American Males	\$0	0.00%	0.41%	\$39,518	-\$39,518	0.00	----
Caucasian Females	\$868,755	9.12%	15.35%	\$1,462,177	-\$593,422	0.59	not significant
Caucasian Males	\$7,877,434	82.71%	47.10%	\$4,485,326	\$3,392,108	1.76	< .05 †
TOTAL	\$9,523,909	100.00%	100.00%	\$9,523,909			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Females	\$321,877	3.38%	8.51%	\$810,125	-\$488,248	0.40	not significant
Minority Males	\$455,843	4.79%	29.05%	\$2,766,281	-\$2,310,438	0.16	< .05 *
Caucasian Females	\$868,755	9.12%	15.35%	\$1,462,177	-\$593,422	0.59	not significant
Caucasian Males	\$7,877,434	82.71%	47.10%	\$4,485,326	\$3,392,108	1.76	< .05 †
TOTAL	\$9,523,909	100.00%	100.00%	\$9,523,909			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Disparity in Dollars	Disp. Ratio	P-Value
Minority Business Enterprises	\$777,720	8.17%	37.55%	\$3,576,406	-\$2,798,686	0.22	< .05 *
Women Business Enterprises	\$868,755	9.12%	15.35%	\$1,462,177	-\$593,422	0.59	not significant
Minority and Women Business Enterprises	\$1,646,475	17.29%	52.90%	\$5,038,583	-\$3,392,108	0.33	< .05 *
Caucasian Male Business Enterprises	\$7,877,434	82.71%	47.10%	\$4,485,326	\$3,392,108	1.76	< .05 †

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.

** = This study does not test statistically the overutilization of M/W BEs.

---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

Chart 8.02 Disparity Analysis: Architecture and Engineering Subcontracts July 1, 2000 to June 30, 2003



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C. Professional Services Subcontracts Disparity Analysis

The disparity analysis of professional services subcontract dollars is depicted in Table 8.03 and Chart 8.03.

African Americans represent 15.97 percent of the available professional services subcontractors and received 13.9 percent of the professional services subcontract dollars. This underutilization is not statistically significant.

Asian Americans represent 12.71 percent of the available professional services subcontractors and received 30.25 percent of the professional services subcontract dollars. The study does not test statistically the overutilization of minority groups.

Hispanic Americans represent 5.69 percent of the available professional services subcontractors and received 0.76 percent of the professional services subcontract dollars. This underutilization is not statistically significant.

Native Americans represent 0.28 percent of the available professional services subcontractors and received none of the professional services subcontract dollars. While this group is underutilized, there are too few contracts to determine statistical significance.

Minority Business Enterprises represent 34.65 percent of the available professional services subcontractors and received 44.9 percent of the professional services subcontract dollars. The study does not test statistically the overutilization of minority groups.

Women Business Enterprises represent 17.64 percent of the available professional services subcontractors and received 12.28 percent of the professional services dollars. This underutilization is statistically significant.

Minority and Women Business Enterprises represent 52.29 percent of the available professional services subcontractors and received 57.18 percent of the construction subcontract dollars. This underutilization is not statistically significant.

Caucasian Male Business Enterprises represent 47.71 percent of the available professional services subcontractors and received 42.82 percent of the professional services subcontract dollars. The study does not test statistically for the underutilization of the non-minority group.



Table 8.03 Disparity Analysis: Professional Services Subcontracts July 1, 2000 to June 30, 2003

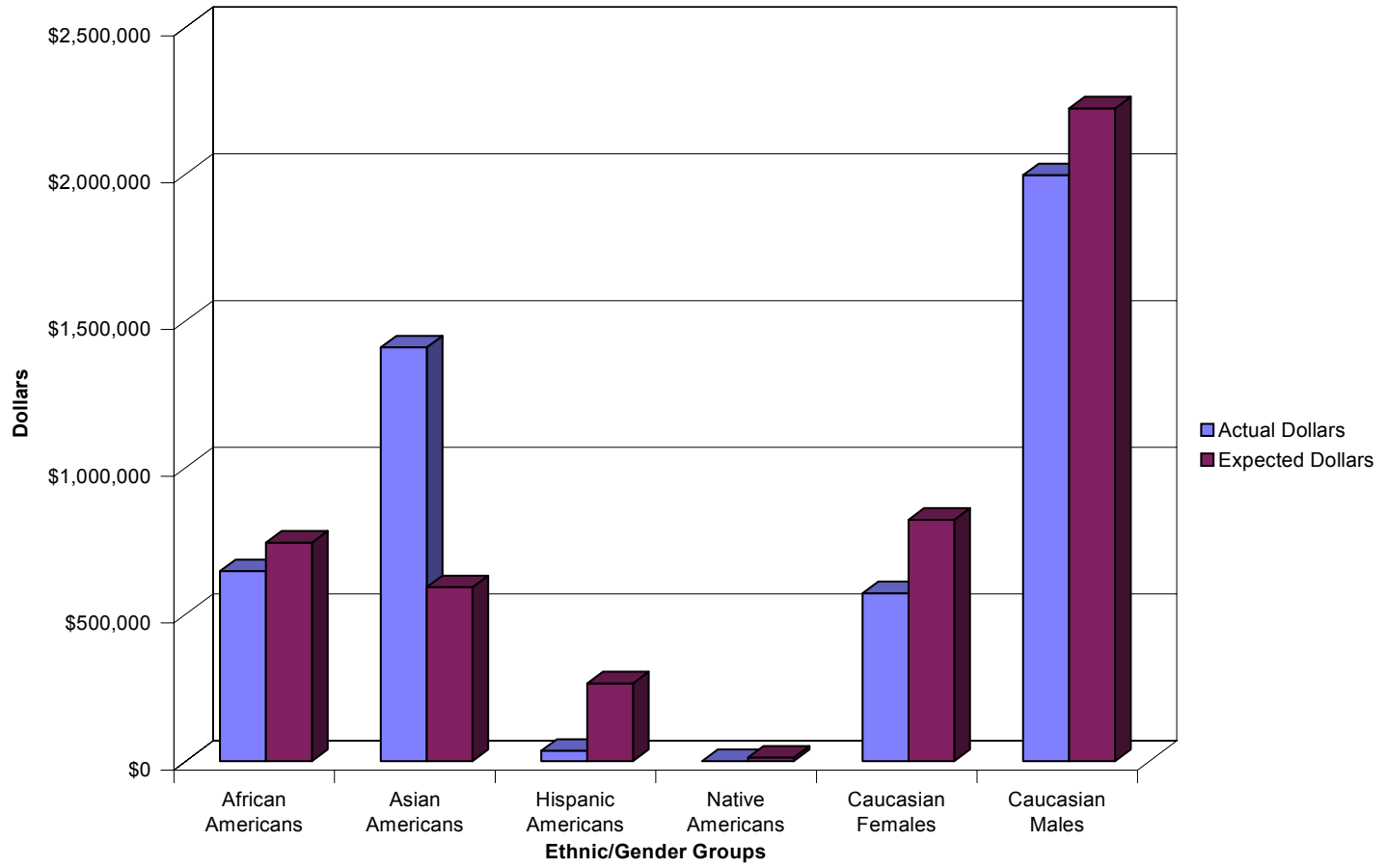
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African Americans	\$647,616	13.90%	15.97%	\$744,373	-\$96,757	0.87	not significant
Asian Americans	\$1,409,692	30.25%	12.71%	\$592,262	\$817,430	2.38	**
Hispanic Americans	\$35,341	0.76%	5.69%	\$265,385	-\$230,044	0.13	not significant
Native Americans	\$0	0.00%	0.28%	\$12,946	-\$12,946	0.00	----
Caucasian Females	\$572,192	12.28%	17.64%	\$822,047	-\$249,855	0.70	< .05 *
Caucasian Males	\$1,995,583	42.82%	47.71%	\$2,223,410	-\$227,828	0.90	**
TOTAL	\$4,660,424	100.00%	100.00%	\$4,660,424			
Ethnicity and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
African American Females	\$160,653	3.45%	5.49%	\$255,676	-\$95,023	0.63	not significant
African American Males	\$486,963	10.45%	10.49%	\$488,697	-\$1,734	1.00	not significant
Asian American Females	\$898	0.02%	3.68%	\$171,529	-\$170,632	0.01	not significant
Asian American Males	\$1,408,794	30.23%	9.03%	\$420,733	\$988,062	3.35	**
Hispanic American Females	\$29,056	0.62%	1.46%	\$67,965	-\$38,909	0.43	not significant
Hispanic American Males	\$6,285	0.13%	4.24%	\$197,421	-\$191,136	0.03	not significant
Native American Females	\$0	0.00%	0.07%	\$3,236	-\$3,236	0.00	----
Native American Males	\$0	0.00%	0.21%	\$9,709	-\$9,709	0.00	----
Caucasian Females	\$572,192	12.28%	17.64%	\$822,047	-\$249,855	0.70	< .05 *
Caucasian Males	\$1,995,583	42.82%	47.71%	\$2,223,410	-\$227,828	0.90	**
TOTAL	\$4,660,424	100.00%	100.00%	\$4,660,424			
Minority and Gender	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Females	\$190,607	4.09%	10.69%	\$498,406	-\$307,800	0.38	not significant
Minority Males	\$1,902,042	40.81%	23.96%	\$1,116,560	\$785,482	1.70	**
Caucasian Females	\$572,192	12.28%	17.64%	\$822,047	-\$249,855	0.70	< .05 *
Caucasian Males	\$1,995,583	42.82%	47.71%	\$2,223,410	-\$227,828	0.90	**
TOTAL	\$4,660,424	100.00%	100.00%	\$4,660,424			
Minority and Females	Actual Dollars	Utilization	Availability	Expected Dollars	Dollars Lost	Disp. Ratio	P-Value
Minority Business Enterprises	\$2,092,649	44.90%	34.65%	\$1,614,966	\$477,683	1.30	**
Women Business Enterprises	\$572,192	12.28%	17.64%	\$822,047	-\$249,855	0.70	< .05 *
Minority and Women Business Enterprises	\$2,664,841	57.18%	52.29%	\$2,437,013	\$227,828	1.09	not significant
Caucasian Male Business Enterprises	\$1,995,583	42.82%	47.71%	\$2,223,410	-\$227,828	0.90	**

An (*) denotes a statistically significant underutilization and a (†) denotes a statistically significant overutilization.

** = This study does not test statistically the overutilization of M/WBEs or underutilization of non-M/WBEs.

---- = While the groups was underutilized, there are too few contracts to determine statistical significance.

Chart 8.03 Disparity Analysis: Professional Services Subcontracts July 1, 2000 to June 30, 2003



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III. SUMMARY

The subcontractor disparity findings are summarized in Table 8.04 below. Minorities were underutilized at a statistically significant level in construction and architecture and engineering subcontracts, and women business enterprises were underutilized at a statistically significant level in professional services.

Table 8.04 Subcontractor Disparity Summary

Ethnicity/Gender	Construction	Architecture & Engineering	Professional Services
African Americans	Yes	Yes	No
Asian Americans	Yes	Yes	No
Hispanic Americans	No	No	No
Native Americans	--	--	--
Minority Business Enterprises	Yes	Yes	No
Women Business Enterprises	No	No	Yes
Minority and Women Business Enterprises	No	Yes	No

Yes = There is statistically significant disparity.

No = There is no statistically significant disparity.

-- = While this group is underutilized, there are too few contracts to determine statistical significance

Subcontracting data is an important means by which to assess 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 might also be different. In addition, subcontracting is the only level where goals can be implemented.





9

ANECDOTAL ANALYSIS

I. INTRODUCTION

The United States Supreme Court, in its 1989 decision *City of Richmond v. J.A. Croson Co.*, specified the use of anecdotal testimony as a means to determine whether remedial race and gender-conscious relief may be justified in a particular market area. In its *Croson* decision, the Court stated that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proofs, lend support to a [local entity’s] determination that broader remedial relief [is] justified.”¹

The objective of this analysis is to report anecdotes provided by Alameda County (County) businesses concerning their business experiences during the July 1, 2000 to June 30, 2003 study period.

Anecdotal testimony of individual discriminatory acts can, when paired with statistical data, document the routine practices by which minority and female-owned companies and small local emerging businesses are excluded from business opportunities within a given market area. The statistical data can quantify the results of discriminatory practices, while anecdotal testimony provides the human context through which the numbers can be understood. Anecdotal testimony from business owners provides information on the kinds of barriers that the business owners believe exist within the market area, including the means by which those barriers occur, who perpetrates them, and their effect on the development of minority and woman-owned business enterprises (M/WBEs) and small local emerging business enterprises (SLEBs).



¹ *Croson*, 488 U.S. at 509.

A. Anecdotal Evidence of Active and Passive Participation

Croson authorizes anecdotal inquiries along two lines. The first approach, which investigates active participation, delves into “official” or formal acts of exclusion that are undertaken by representatives of the local government entity. The purpose of this examination is to determine whether the entity has committed acts designed to bar minority and women business owners from opportunities to contract with the jurisdiction.

The second line of inquiry examines not the direct actions of civil servants, but the government’s “passive” support of a private system of prime contractors and other entities that use their power and influence to bar minority and woman-owned businesses from benefitting from opportunities originating with the government. This “passive” support includes tolerance of exclusionary conditions that occur in the market area where the government infuses its funds. Under *Croson*, “passive” governmental exclusion results when: 1. Government officials knowingly use public monies to contract with private-sector companies that discriminate against minority and women business owners; or 2. Government officials knowingly fail to take positive steps to prevent discrimination by contractors who receive public funds.²

Anecdotal accounts of passive discrimination necessarily delve, to some extent, into the activities of purely private-sector entities. In a recent opinion, the Tenth Circuit Court of Appeals has cautioned that anecdotal accounts of discrimination are entitled to less evidentiary weight, to the extent that the accounts concern more private than government-sponsored activities.³ Nonetheless, when paired with appropriate statistical data, anecdotal evidence that the entity has engaged in either active or passive forms of discrimination can support the imposition of a race or gender-conscious remedial program. Anecdotal evidence that is not sufficiently compelling, either alone or in combination with statistical data, to support a race or gender-conscious program is not without utility in the *Croson* framework. As *Croson* points out, jurisdictions have at their disposal “a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races.”⁴ Anecdotal accounts can paint a finely detailed portrait of the practices and procedures that generally govern the award of public contracts in the relevant market area. These narratives can thus identify specific generic practices that can be implemented, improved, or eliminated in order to increase contracting opportunities for businesses owned by all citizens.

² *Croson*, 488 U.S. at 491-93, 509.

³ *Concrete Works*, 36 F.3d at 1530: “while a fact finder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality’s institutional practices carry more weight due to the systemic impact that such institutional practices have on market conditions.”

⁴ 488 U.S. at 509.



This chapter presents anecdotal accounts excerpted from interviews of Alameda County small local emerging businesses (SLEBs) and minority and woman-owned business enterprises (M/WBEs) in 2003. The anecdotes provide the perceived barriers encountered by those businesses in conducting business with the County or attempting to do so.⁵

B. Anecdotal Methodology

A survey was not conducted, nor was a standardized questionnaire used. In this study, the method of gathering anecdotal testimony was the oral history interview. Oral history is defined by the *American Heritage Dictionary* as “historical information obtained in tape-recorded interviews with individuals having firsthand knowledge.” This type of in-depth interview has been determined by Mason Tillman Associates to be superior to other forms of gathering anecdotal evidence, such as the mail or telephone survey, or public hearing testimony, because it affords the researcher a greater opportunity to assess not only the effects of public and private business practices on minority, female, small, and emerging businesses but also the means by which those practices occur. It also affords the business owner interviewees a protected setting in which their anonymity can be preserved.

By allowing interviewees to describe in detail and in their own words the barriers they have experienced in conducting business, information can be collected as to how barriers occur, who creates them, and how they affect the development of small local emerging businesses (SLEBs) and minority and women business enterprises (M/WBEs). Thus, the information obtained not only sheds light on the County’s present SLEB and M/WBE programs but offers vital insights on future program needs and changes.

The interviewees were solicited using the list of available businesses compiled for the Availability Study. Interviewers were pre-screened to determine whether they operated within the defined market area and were willing to commit to the interview process. A set of screener questions were used to determine if the interviewee had information to share specifically related to the County’s contracting and procurement practices and to private sector business practices in the market area. One out of every 9 businesses called agreed to an in-depth interview.

For the 61 in-depth interviews, an extensive set of questions were used to probe all aspects of business development, from start-up to growth issues and both public and private sector experiences. The in-depth interviews lasted one hour, on average.

Once completed, the interviews were transcribed and analyzed for patterns and practices, which are assumed to constitute barriers to an open business environment in the County’s market area. From this analysis of the transcripts, the anecdotal report was completed. The

⁵ County officials and employees were not interviewed to verify these accounts. The anecdotal accounts represent the beliefs and opinions of County business owners.



anecdotal report describes general market conditions, business institutional barriers, prime contractor barriers, and the range of experiences of interviewees in attempting to do business in the County's market generally, and with the County specifically.

C. Anecdotal Interviewee Profile

Table 9.01 presents a profile of the business owners interviewed for this Availability Study.

Table 9.01 Anecdotal Interviewee Profile

Ethnicity	Number
African American	20
Asian American	15
Hispanic American	11
Native American	1
Caucasian	14
Total	61

Gender	Number
Male	31
Female	30
Total	61

Industry	Number
Construction and Construction Related Services	24
Architecture and Engineering	13
Professional Services	10
Goods and Other Services	14
Total	61



II. BUSINESS BARRIERS

A. Barriers Based On Race

Some of the interviewees described instances where they were denied access to public contracts by agency managers and private clients once it became apparent that they were minority business owners. Examples are provided of private and public sector experiences.

An African American owner of a professional services firm recounts an incident where a County manager demonstrated a biased reaction to her race:

. . . We had an outreach officer walk us into [an] agency [to] make an introduction . . . to the IT manager, and it was a definite change in demeanor when he met us. I don't think he was expecting to see two professional Black women. And he pretty much shut down in terms of conversation. Because he was so uncomfortable we were forced to give a very quick spiel and out we went.

An African American owner of a professional services company believes some County administrators intentionally set up roadblocks to unfairly keep minority businesses from competing for contracts with the County:

I think additional roadblocks are put up for Black businesses [and] for minority businesses. I think these roadblocks are intentionally [set] up to keep [minorities] out. Almost all of the Black businesses that I network with, or just people in general, feel that the County is difficult to do business with. [They feel] that they don't want to do business with Blacks [and] other minorities. I think the study that's [currently being conducted] . . . really won't make that much difference. I don't mean [to have] a pessimistic type attitude. But, based on what has occurred in the past they won't [use the study or] follow through with it. From a historical perspective they won't follow through. And many times you wonder if it's just simply done for documentation. I need to be clear, I think there are some staff and administrators who do want to do business. And I know that there are some supervisors who want to see the County do business with Blacks and minorities. I guess what I'm trying to say is that if you're not in their system and if you're not one of their fair-headed people, then you don't get any business. I hate to say that—no I don't hate to say it—[but] probably [we] need to take a legalistic and an adversarial approach. [If you] don't do business with us then we're going to file lawsuits. Maybe the Board of Supervisors need[s] to force the major companies to do business with Black firms and minority firms like mine.



An Asian American owner describes an incident where the owner was treated differently by a County inspector because of the race of the business owner's staff:

On [our] last contract, the gentlemen we hired [was] an African American inspector. And the inspector from the County that he worked with was in my opinion not qualified to be in that job. And he had our inspector, who basically [had] a field job, sit in the office. He asked him numerous times to sit in the office and clean up his paperwork, [which] was not in his scope of work. If it was our inspector's paperwork, I would expect him to do that. [But it was the County's inspector's] field reports, diary reports, and so forth.

This went on for about three or four weeks. And our inspector brought it to my attention and I called the project manager and told him that . . . there's a personality conflict. This is when things turned bad because that's when they basically told [our inspector] that there was not enough work for him, and there's no need for him to come in for the next two to three weeks. And those two to three weeks ended up being permanent.

This African American professional services business owner describes working with the County as challenging:

Every penny that we get from the County we have to fight for. Whereas there are other agencies, such as the City, that we do business with, where we don't feel that's it is going to be a bloodbath to get the work. Or the work goes extremely smoothly, as opposed to having to battle on every minor issue. I feel that we are invariably under additional scrutiny, and held to a higher standard.

An African American owner of a professional services firm believes that race is more of a barrier in private sector dealings than with public sector clients:

There [have] been times when we were short listed – evaluated as one of the highest firms and should have received an award. But, when we went in to do the [interview or] kick-off meeting for a project, we have had [our work] scaled back or canceled. I thought it was due to race. But that has actually been more so in the private sector as opposed to the public sector.

In another private sector incident, an African American owner of a construction company believes that customers appeared to be uncomfortable having their African American technicians in their homes:

We have had customers that distrusted our technician because he's Black. They don't really have any complaints on the service, they just feel



uncomfortable having a Black person in their house. We have had a couple of incidents. We basically told them, as long as there [are] no issues with our service there's not much we can do.

This African American owner of a services company believes that race has had a negative impact on the owner's company:

Overall I think [my race] has impacted my business negatively. I say that begrudgingly. But I think that if I were a different race, historically, I may have had other opportunities made available to me and I may have been in a very different financial position.

An African American owner of a services firm believes that minority businesses are generally held to higher standards of review than majority-owned businesses:

The reason I feel that we have [experienced racism] is because, I have clients who have spent millions and millions of dollars [for substandard work]. In one case, \$18 million dollars [was spent] for a project that [was not properly completed]. [In] another case it was \$5 million dollars for a project that is still not working to the client's satisfaction. [These were] large corporations, yet [these clients] seem to be very forgiving . . . It's like, okay let's give them one more chance. And by the way they need another million to fix what they didn't make right the first time. [But] I will have a \$50,000 project [and] if there's one tiny little thing [wrong] I start getting calls from the mayor [whose] throwing a tantrum or whatever official is raising hell because we didn't get something done. [If] we [are] a day late or something, we are not paid until we are [finished]. But meanwhile you've got literally millions of good money thrown after bad [work].

Previously, some municipalities enacted ordinances and regulations setting goals for minority and woman-owned business subcontracting. This African American construction contractor reported that his company received more contracts prior to the passage of Proposition 209, now part of the State of California's constitution prohibiting government agencies from such practices:

. . . The most positive impact [our company experienced was] before . . . [Proposition] 209. All of the . . . jobs had M/WBE [participation] percentages. That was very positive for us because we had a lot of people contacting us. [Now] there is work [but] less contracts.

On the other hand, this African American owner of a professional services firm believes that race is not an issue:



I think [my ethnicity] helped at one point . . . because some agencies had set-asides. I have benefitted [from the set-asides] in the past. . . . Rather than a sense of obligation [that] we [have to work with] this Black or woman-owned business. I strongly feel that who you are or who I am as a person is what it came down to. And not because of the color of my skin.

B. Barriers Based On Gender

Female business owners describe instances where they believe their gender negatively affected their ability to get business in the County. This African American female owner of a services firm describes an incident where she believes her qualifications were questioned because of her gender:

[In] the public and private sector men are very prejudiced against me, in that they think I don't understand my business, my industry, [or] the administration of my industry. . . . I remember going into a bid meeting and the woman who was the project manager working with the school district turned around as I walked into the meeting, [where] there was a round table of contractors who were there to bid on the project. The men were representing the various disciplines that were needed from digging ditches to laying pipes to lighting. [When] I walked in, she and I were the only two women in the room at that moment. She looked at me and she said, 'Where is [name withheld]?' [He] is my vice president and he had been with me at previous meetings with the other vendors who were potential bidders. I said he had another appointment. She said, 'Well you go back and you get him right now, I need him to be at this meeting.' I'm more knowledgeable from an administrative perspective and that's critical when you're bidding. And he's equally knowledgeable from an operational perspective and that's what he does. He's my vice president, he runs operations.

A Hispanic American female owner of a professional services firm describes a technique she employs to counteract sexism:

If I have [to meet with a] project manager [who may] be a bit tough, I [will] bring my token white male with me to partner on the [project]. In some instances you have to understand your client and . . . send the right person into the meeting.

According to this female Asian American owner of an architectural firm, discrimination against women still exists in the construction industry:

Very early on, I had a private client whose parents were paying for a remodeling [project] tell me that her parents didn't want a female architect.



[In] construction I've worked for non-profit developers and every once in a while you run into a contractor where [I] have to prove that [I] know what [I am] talking about before they start taking [me] seriously.

A Caucasian female owner of a professional services firm believes that oftentimes information concerning upcoming contracting opportunities are discussed at events typically involving men only:

I can tell you that a woman cannot, even today, network with a man the same way a man can network with a man. Last year, five men in our industry, including [my male employee], went down to Mexico on a fishing trip. There was no way I could have gone on that fishing trip. They were discussing jobs that were coming up. They had a men's only golf game and women don't play golf at the same level as men. The most we can do as women is maybe go to lunch.

However, this Caucasian female owner of a professional services firm reports that her gender had positively affected her business:

I think [my gender has had a] positive impact [on my business] in the sense that there are opportunities that are given to me because I am a woman-owned business. When certain government agencies recognize [female-owned businesses], it does feel like [I] have a little bit of an edge.

III. BARRIERS CREATED BY THE COUNTY

A. Barriers Created by Public Agency Managers

Public agency managers are charged with the responsibility of managing programs to aid minority and women business owners in building and maintaining their businesses. Most of these managers have succeeded in their efforts to increase the participation of minority and women businesses on public contracts. However, interviewees believed that the practices of some County managers have created barriers for minority and women-owned businesses.

An African American owner of a construction services company reported losing over \$60,000 on a County project while County representatives stood by and allowed construction managers to mismanage the project:

I was involved in a project at [project name withheld]. I did not like the way any of us were treated on that project. It had to deal with the construction management. Alameda County . . . never tried to intervene to resolve any of



the problems that were going on between the construction manager and the general contractor. And ultimately it almost [caused] me to go out of business. The general [contractor] was fired and then I was in turn terminated. I was beaten out of about \$60,000 dollars. Some of the work I did I never got paid for. I was just kicked out by the construction manager. I did not have the resources to hire an attorney to go after the County. So I just had to let it go and settle with the new company that they brought in. Out of about \$90,000 [of work that I performed], I received \$30,000.

This same business owner went on to explain the extent of a County construction manager's mismanagement:

The construction manager for that project terminated their original prime contractor who had hired me as a subcontractor. And in terminating them, they retained my contract and gave it over to the new management team that they hired. There was [a change order] for \$60,000 or \$70,000 dollars, and the [manager] never wanted to sign it, and I refused to do the work. Because [I knew] once I did it, I [would be] stuck. [So] I would not commit to it until he signed the change order. He signed the change order . . . and [for] six to eight weeks of [additional] work. [But] he gave me four-and-one-half [to] five weeks to do the work. I did everything I could to get it done. And then about two weeks before I would have been finished he kicked me off the job.

The majority of the work had been done. Maybe there were two items [left] that were from the original contract and [the balance was] with the change order that I didn't get signed until the end. He brought in another contractor to finish up this little piddley work that I was supposed to do. A non-minority contractor; in fact, he's a very well-established [Caucasian-owned] firm in Oakland. They brought him on, and this guy was supposed to take over my work. I would have taken two weeks to finish. He took another four to five months. It was in August that I was terminated and in November or December the work still was not done. This is the money I did not receive. Some of the work I had done, they came back and said this wasn't accepted. But I had inspector's reports that said it was signed off, that it had been approved and they were to pay me for it. But this was their way of taking that money I should have gotten and giving it to the new guy. And on top of that they gave him change order work, which I would not have [gotten] because I wasn't onsite. But I got backcharged for it anyway. So that wasn't a very good experience with the County. The County's representative was in all the meetings that I attended, and I went to just about every one of them. And he never had anything to say and he never intervened. For a long time, I would not bid anything with the County for any of the County's work. Because I'm



a small minority-owned woman business and \$68,000 dollars is a lot of money to lose.

A Caucasian female owner of a professional services firm believes that it is difficult to forge relationships with County managers. She also believes that prime contractors are sometimes selected before the bid is released:

There's [very little opportunity] to engage contract managers or decision-makers within the County. There's a big wall there. [It's] like filling out a form, throwing it in [the pile] and kind of hoping it's the lowest bid or whatever. There's sort of a mystery sometimes behind it. [I] get the impression that there's a prime contractor already and they're just doing this because they're required to do it. Because [it's hard to develop a] true relationship or good communication with a real person to say who's in there and what are the odds.

A Caucasian male construction contractor describes a situation where the project he worked on was managed by a construction manager hired by the County as a consultant. He believes that the County's project manager allowed the consultant to create barriers preventing his company from completing their project:

Our feeling is that the County basically let the construction manager and the attorneys dictate their business dealings. We were brought onboard at the [name of work site withheld] to do a small scope of work valued at about a million dollars. And it was a scope of work that we believed was originally part of the new [work site name withheld], which I think was about a \$60 or \$70 million dollar project. We found out that the County was having issues with the general contractor on the [project]. We believe that instead of giving them [the new] scope of work, they put it out to bid, and we were the unfortunate people to be the low bidder on the project, and we were awarded the contract.

Our contract started off on the wrong foot when the County wasn't able to procure timely permits from the state agency that regulates . . . construction. And the construction manager just kept hammering on us that we needed to finish on time or early. He would negotiate change orders or direct us to do change orders on time and material, only to come back later and not issue the change order or not timely issue the change order. The whole thing just got to be a battle between ourselves trying to protect our interests, and our subcontractor's interests, and the County's representative, [who] was a construction manager. And ultimately the County came in and had their attorneys terminate our contract. They hired another contractor to finish the work, and that contractor had about \$1 million dollars worth of work or



somewhere around that neighborhood. The contractor charged four-and-a half million to finish and completed the project way late. We've learned that the County spent somewhere between \$600,000 and a million dollars in attorneys' fees on this small issue. In my opinion it's the way [department name withheld] is handling their contracts. I know that in my case I had a construction manager that was completely unreasonable. It appeared that possibly he was giving marching orders that were unrealistic. The County Official, [name withheld] was in attendance at every meeting that I had with the construction manager and just sat there and listened.

This same business owner further describes difficulties he encountered while working on the same County project. He believes the County could help alleviate problems caused by unreasonable construction managers with increased involvement in their projects:

For example, the construction manager would say, 'Hey, we've got this change order and we don't have time for you to quote it. You go forward and do it on time and material. I'll sign every ticket everyday.' As soon as we were done with the work we turned in the billing based on the daily tickets, and then he would say, 'I'm not going to pay all that money and I'm not going to give you any extra time to do it.' Even though we just documented that we've been spending the last two weeks on this extra work, preventing us from going forward with the contract work.

This Asian American owner of a construction firm described an instance where the company's contract was unfairly canceled by the County:

One of the reasons why we accepted the terms [of the contract] is because we wanted to break into the market. We provided them with a couple of good inspectors and surveyors. After a while they decided they wanted, in my opinion, to take us out of the contract. So . . . one of the surveyors that we provided [who was] in charge of surveying for the County, was hired directly by the County. [So they did] not pay us anything. It was done with malice more than good faith.

Finally, an African American owner of a professional services firm reports that very little contract monitoring was performed on the project he worked on with the County. Change orders were approved but, as a subcontractor, there was no increase in the subcontract award:

No one from the Contract Compliance Office, or anyone [else] came to check the job [site]. On a weekly or monthly basis, certified payrolls [were submitted] and that was it. I never had any action with anyone checking to make sure that we were doing what we were supposed to be doing, [or if] there were [any] problems. [For example], if we were getting our fair share



of money [contracted]. What you bid is what you get. [Even though] change orders [were] issued. [The prime contractor] did not subcontract [the change orders] when [I was] the trade onsite. So my experience with the County [was] not very pleasant. There's got to be a balance, and I think that could be achieved by more accurate and streamlined monitoring and computerized payroll overview.

B. Difficulty Obtaining Responses to Inquiries from County Employees

Many business owners reported that they found it challenging and in some cases, impossible, to make contact with County representatives in order to obtain information concerning upcoming contracts.

An African American owner of a professional services firm found it very difficult to market the company's services to the County in hopes of eventually securing a contract:

[With the County] there's a wall, despite the talk, there's a wall. It's not very easy to get the ear of the right people. First to find out who the right people are to market to, and then to get the ear of those people. As a matter of fact, we were trying to identify the IT [department] of the County. And it wasn't until probably just a few weeks ago that we had any success after having tried for the last year. [I] . . . understand about BOB and outreach, but [we are] never able really to penetrate beyond that.

When I talk to other people, peers or other businesswomen like myself in the same kind of field— computers, [I hear] similar stories and that its been very difficult or nothing happens when you try to work or market to the County. It's a dead end. What I'm trying to say is that its [like] a black hole.

A Caucasian female owner of a professional services firm recounted the sentiments others share concerning the County and the difficulties many encounter trying to make contact with County representatives:

I attended a meeting a couple months ago and [we] ended up talking to a couple of people there that also were trying to [receive] work from the County. I would say that it was a general consensus that it's difficult to get people [from the County] to really talk to you.

An African American owner of a professional services firm found it difficult to determine which agency within the County procures the company's services:



We never got through the maze within Alameda County. For example, when we contacted Berkeley and Fremont, we never really identified who buys our service. Now, in this search, we did finally determine [the contact person] in San Francisco, which is why we ultimately received a contract from San Francisco. But within the individual cities in the East Bay, in Alameda County, we never identified who within the Department of Public Works buys our service.

This African American professional services owner believes that attempts to obtain a contract to provide insurance services to the County has been barred by their unfair notification procedures for informing potential bidders of their insurance contract renewals:

Over the years, part of the problem that we have had in terms of trying to do business with Alameda County is the fact that [we] don't know when their insurance is coming up for renewal. There are no notifications [disseminated] to provide us with an opportunity to participate. Generally, those contracts are long-term and can run anywhere from three to five years. And in fact, they [include] clauses in these contracts that allow them to be automatically extended for a period of time.

Because of this practice, this same business owner believes that the County is not committed to increasing the percentage of minority businesses on their contracts:

I think they build relationships over the years and they want to maintain those relationships for whatever reasons. And they won't do it unless they are forced to do or they're called on the carpet to do it. There has to be some repercussion. I don't think they are committed. I think they give a lot of talk. If they were committed, they could make it happen. I mean, [they should] do business [with minority companies] and report on the business that they are doing. But I don't think they're committed. I don't think the County is aggressive. I think they take a very passive position. I don't think they really care whether they do business with Black businesses or not. I don't see any advertisements to do business with the County. I don't really see any advertisement, other than probably what they are required to do because they have to meet certain federal or state requirements.

This African American owner of a services firm believes that direct purchasing with manufacturers by the County has been the biggest barrier to the company receiving work from the County:

[They] had a new building where they put up 200 workstations. I know [this] because Alameda County has direct contracts with the manufacturers. That's how they work. So it's pretty difficult for small dealers like us to compete



with that. Because we happen not to be one of those dealers. People do business with those that they know and feel comfortable with.

C. County's Preference for Utilizing the Same Contractors

Most interviewees reported that they believe some County managers have forged relationships with established businesses and prefer to continue working with those companies. Availability Study analysis of the County's utilization records support this view. Unfortunately, the intent and objectives of business enterprise programs, such as the County's M/WBE and SLEB programs, are undermined when public agency managers utilize the same few businesses as prime contractors on public contracts.

This Asian American owner of an engineering services firm believes that the County utilizes the same few companies for their projects:

If a project manager [does not] say something good about your firm or has never done work with you, it's almost impossible to get in the door. In Alameda County, I believe the project managers work with certain offices they feel comfortable [with]. And they keep going back to those two or three firms and ask for a proposal. Therefore, the rest of the other firms in the area may not get the same treatment.

Similarly, this African American owner of a professional services firm believes the County prefers to use the same few companies for their supplies:

One of the folks [at a meeting] was somebody from the fire department and I spoke with him after the meeting and he suggested that I call a certain person at the fire department. I did call the person at the fire department, but he said that they already had a contract with another company for [the product I provide] and they automatically renew with that company every year because they keep getting good deals from that company. And I asked, Does this work ever go out to bid? And he said, 'No, we just renew it because they give us good prices.' So that was a big disappointment for me. It was not even a local business. It was a big business. I think I could be just as competitive as them and maybe even better because I've actually beat that business in other competitive bids with different cities. [The fact that] I did not have an opportunity to even submit a bid to Alameda County for products that I know they use a lot is rather disheartening. They have been doing business with this company for about seven years.

A Native American owner of a professional services firm also believes that the County prefers to use the same vendors before trying an unknown vendor:



I was given a Request for Proposal. I followed-up on it and put a lot of time into it. Especially for my firm, which is a small firm. They asked a huge amount of questions [that required a lot] of preparation. I formed a team and we submitted the proposal. They called us back for an interview, which was great. And again we put a lot of time into preparing for the interview, in terms of preparing ideas and preparing the presentation. We went for the presentation and the interviewers seemed to really like our ideas. They were writing them down as fast as they could because we had some really good ideas. Then they asked us, ‘Well, what did you find wrong with the last [report] we did?’ I gave them a long list of things that were inherently wrong. And we felt that the effort that was put in it was somewhat mediocre. Anyway, we gave them a great proposal. [When] we got the results of the interview, we came in second, which is fine. I mean it’s not great, [but] it’s better than zip. Anyway we came in second, and found out that they had hired the same people they used before. Even though they had done many things wrong, and made a lot of mistakes in their report. When I told the results to other members of our team, each one of them had the exact same reaction, which was, ‘We’ve been setup.’ And I said, you know I didn’t want to say it, but I think you’re right.” Because there were so many things wrong with what they had done before, and then they hire them again after going through this very lengthy process to find somebody new. If I looked at their report that they did this year, it would probably be full of our ideas. We wouldn’t have been feeling bad if somebody else received the contract. It’s like, okay, fine. We came in second somebody else got the contract. Maybe they had better ideas. They did a mediocre job of it, and by the way our prices were fine. There was nothing outlandish about them or anything like that.

This African American owner of a professional services firm also believes that the County prefers larger, more established companies over smaller businesses:

I think the perception of some project managers is that bigger is always better. And that if you’re not a company that has been around 50-plus years or has thousands of employees, why should I take a chance on you. If I hire a firm that has that type of scale, I’m less apt to get scolded from my superiors. [Even though] the County may only require four or five people to be placed on a project. The County has the mindset that majority firms should be the prime [contractor] and the local, woman, or minority-owned firm should be the subconsultant. That is how they are set up and that is how their mindset is.

Another African American owner of a services firm believes that larger majority-owned firms are utilized more often by the County than smaller firms:



We are the prime [contractors] for most of the jobs that we do, but the way the County positioned the [proposal] we couldn't. As a matter of fact when [company name withheld] was the prime contractor, [they] did zero percent of the work and we did 100 percent of the work [as the subcontractor]. And their office was out of [state]. I guess there's a feeling within the County or the GSA that bigger firms or big majority firms [are better] than local firms.

As mentioned above, many interviewees shared a common belief that the County prefers to work with larger established businesses rather than smaller firms. This African American owner of a services firm believes that it is harder for smaller businesses to compete because most agencies prefer working with larger, established companies:

The major challenge that we have is that there seems to be a bias by many organizations to use large companies. I was a branch manager for IBM before starting this business. If there is a project where IBM, Dell, Toshiba or anyone else is bidding directly, particularly for services contracts, there is truly a bias in favor of those companies. [Certain agencies] think that they're going to get better service is just a myth. But that's the bias and therefore if you are a small company you have a very hard time getting anyone to look at you. First of all they want to know where have you done [similar projects] before. If you don't have the opportunity to do it, how can you build a resume.

A preference for working with larger companies by governmental agencies was also described as a hurdle for small business owners by this Caucasian female business owner of a professional services firm:

Sometimes they want to work with larger companies that can promise to do greater volumes with them. And so I have to take a pass on working with those types of suppliers. I guess I've learned over the years how to find a key group of suppliers who are willing to work with me and grow with me. And I've pretty much given up hope on some of the larger companies. I don't have the same opportunities as large companies to do large volumes. I don't get the same kind of pricing that the big companies will get.

This Asian American owner of an architectural firm believes if the County diversified its selection panel, minority and female business owners' participation would increase on their contracts:

We answer RFP's, and they accept them, and they are friendly to us. They have job fairs, and other initiatives. But we never get the job. [They were] all white males [at the interview]. There's never a person of color on the panel. Sometimes there's a white woman. You don't feel like you have an even shot. One of the first things I would recommend is that they diversify their selection



panels to reflect the population of the County and reflect the population of the small, local businesses that they want to attract. They're kind of like cowboys. And there is a certain air of arrogance, and it shouldn't be like that. You know they're public servants, they're supposed to be serving us, not disserving us.

Even though this African American owner of a construction company has experienced difficulty receiving an award from the County, he is optimistic:

To be frank with you, a lot of the big projects that come up for bid, I call them first [when] the letters [are] sent out. They have a 10 percent DBE or minority participation. And I say well I'm going to go after this work. Not only for the DBE, [but] just for the trucking dollars, period. And I put together [my bid package] and send it in and I don't get it. And I look at the project when it's awarded, it's like the same people doing all of the work all of the time. I think [contractors are chosen] even before the [project] comes up for bid. . . . In the backroom, or in closed door meetings. They put the team together before [the bid is let]. I sit back and take it with a grain of salt and say hopefully one day there will be a change.

D. County's Failure to Monitor Programs

The County's Small Local Emerging Business (SLEB) Program was adopted as a pilot program by the Board of Supervisors on September 12, 2000. The purpose of the program is to identify local and small or emerging businesses to ensure that they are afforded equal opportunity to participate in County contracting opportunities. In 1998, the County established an M/WBE Construction Outreach Program with goals to ensure that M/WBEs are afforded an equal opportunity to participate in the County's construction contracting opportunities.⁶ Finally, County agencies receiving funds from the U.S. Department of Transportation must develop and implement a disadvantaged business enterprise (DBE) program to level the playing field for DBEs. Interviewees commented on one or more of these County programs.

An African American owner of a professional services firm explains how a management system based on checks and balances could help ensure that prime contractors are meeting their SLEB requirements:

If I were to pick and choose a tool to aid small businesses, I would put milestones in a contract. Let's just say I'm working on a bid now where it looks like we want to negotiate 15 percent to meet the [project preference] .

⁶ In October 2003 the program was renamed the Enhanced Construction Outreach Program.



. . . If I could have a checks and balances system, I would put milestones at [the] 25 percent, 50 percent, and 75 percent stages of the process. [If]the project is 50 percent complete and the subcontractor was in for 15 percent, we'll just say it was a \$100,000 contract and we were in for \$15,000. At the 50 percent stage we should be in it for \$7,500. So you look at that milestone and say, well, gosh these guys have only received \$1,700, or \$1,500, or whatever it might be. Then you say okay, well, it looks like at this point they're not going to meet their goal. So by the 75 percent milestone, the prime contractor would have to step it up a little bit. And then take a look at it at the end. But prior to paying final retention to the prime contractor, [the manager would] take a look at it and say, "Well it doesn't look like you met your goals for this project." What are you going to do about it?

An Hispanic American owner of a construction services firm believes that laws concerning prevailing wages are not being adequately monitored by contract compliance officers. Non compliant companies can bid lower than those paying prevailing wages. He states that clear categories of prevailing wages must be established and monitored to address this problem:

It's very frustrating to see contracts let by counties and cities [without] enforcing the prevailing wage [laws]. I see a lot of bid plans and I know darn well that these people are not paying the prevailing wage. Somehow they're getting around it either by only reporting an eight hour day and making them work ten hours or vice versa. Something's happening here. When you see bids reflecting non-prevailing wages, it's frustrating to see these bids being awarded. This happens a lot where you see six bidders and then one bidder is 50 percent less. And that's frustrating for people like us who try to do it by the book.

When you start following the prevailing wage rates, if I have a guy on a tractor, he needs to be under the Operating Engineers Union, or operating engineer part of the prevailing wage. It's not very clear because some jobs enforce that. I pay that higher wage, it goes up to \$50 per hour. And other people argue saying well he's just doing landscaping. So now you're talking \$20 or \$24 per hour. And then some guy's pushing a broom, say he's just doing cleanup work. But then workers think they're all doing landscaping making \$24 an hour and really you only have to pay them \$12 an hour. So there [are] all these different categories of prevailing wages that [are] very unclear, and the State or the County need to really clean that up.



This African American business owner of a construction services firm believes that agency managers should monitor contracts to ensure that the disadvantaged business enterprise goals are being met:

I would recommend that, once jobs come up for bid and there's a DBE goal, some research and follow through [is performed] after the job is awarded to see if the [DBEs] did the work.

This Asian American business owner in professional services believes that the County's Good Faith Effort requirements provide some prime contractors with a means to avoid meeting M/WBE and DBE goals:

The County decided that . . . the requirements don't have to be met as long as the bidder made a Good Faith Effort [by] trying to meet the requirements. And to me that's kind of a double standard . . . because in reality the successful bidder does not have to meet the [M/WBE and DBE goals].

This Hispanic American who owns a professional services firm described a situation where one of the County's requests for proposals was not clear on how points were to be awarded for SLEB requirements and the County in acknowledging the problem did not rectify the matter:

The bid information was very misleading because it said you had to use a SLEB, but it didn't say you would not get points if you [were] a SLEB. If we had known that, I would have just gone in as a prime [contractor] and then we would have gotten twenty-five or thirty points. The SLEB could go in as a prime [contractor] and get extra brownie points. But what happened is we assumed and thought we asked the question rightly at the bidder's conferences that if you're using a SLEB, you get the points for using the SLEB. It was very vague, and when we went back and read the bid again, and asked again we never really got a clear answer. And even the Purchasing Department agreed that it was kind of vague. So if we had known that, I would have bid as a prime [contractor] because I'm a SLEB. We had the most points. Then we went to the final bidder's conference, and we said okay what changed. All of a sudden we were like five points behind or ten points behind and we never really got a good explanation. So we went and reviewed all the data and looked at all the information, and were still baffled. I had the opportunity to speak with [name withheld] from Alameda concerning the scoring matrix from the RFP. I pointed out the lack of points [we received concerning the] the SLEB and local [requirements]. He indicated that those points were only



awarded if the SLEB was a prime [contractor]. The RFP did not say that, and he did indicate that this had been a problem in the past.

IV. BARRIERS CREATED BY THE CONTRACTOR COMMUNITY

A. Good Old Boys Network

Several businesses described the “good old boys network” as the main factor that hinders their business from obtaining contracting opportunities. This African American owner of a professional services firm believes that the County prefers to award contracts to businesses in Livermore and Dublin rather than firms located in Oakland:

The County [was] giving [work] to [businesses] located in Livermore and in Dublin. But they were not giving it to the inner-city Alameda County firms, [and] . . . African American firms. We raised the question and it was changed. It was adversarial because they preferred not to give us the work, they were very comfortable with the majority-owned firms out of the suburban portions of Alameda County that they had been [getting] the work [from] for years. But why give it to an Oakland firm, when you’re comfortable with the Dublin and Livermore firms? This is more of a concern to the policymakers, [who] are the elected officials, than the elected staff. The commitment is at the top, but it hasn’t filtered down. The project managers had developed a certain relationship with people, and they wanted to keep working with them. The good old boy network, as we all know. But when it comes down to the departmental level [I] found, at least in my experience, exclu[sion] of Oakland businesses, particularly African American businesses.

This Caucasian owner of a professional services firm believes that the good old boys network still exists within the County’s fire department:

I think my gender has [impacted my business] positive and in some ways negative. I stand out in a male dominated industry, and that kind of makes me unique in this field. In other ways, like . . . the fire department, I feel like it’s an old boys network. Because I’m not into that network as much as the bigger more established old boys type of [companies]. I would not stand a chance. I am able to only do business with certain companies because I don’t have the old boys network going for me.



The good old boys network is still a barrier to the survival of smaller companies according to this African American owner of a services firm:

I certainly have encountered individuals who are less interested in [doing] business with [small companies because] we don't fall into the old boys club. I try to [establish] a good long history providing excellent products, great service, and customer satisfaction. [But I] continue getting the little jobs and not the really big deals. What [I] need to survive are the really big [jobs].

An African American professional services business owner employs the following tactic to combat the good old boys network:

We're not complaining without having done everything we need to do [to meet the County's bid requirements]. We carry \$5 million dollars in general liability insurance, \$2 million dollars in Errors & Omission insurance, and we keep our certifications current. Anything that's required we do. Our contractor's license is in good standing. So we make sure there's no area where someone could come in and say, 'You're disqualified.' With the exception of us not being part of the good old boys network.

This Asian American owner of an architectural firm also believes that the good old boys network exists within the County:

On a scale of one to 10, I would [rate] the [County's] staff and the management as a three or four. . . . The supervisors are more committed than the management and the staff. . . . I think its an old boys network.

An African American owner of a professional services firm believes that the good old boys network still exists, particularly in the area of insurance brokerage contracts:

It's very difficult for Black businesses to get [work] with public entities because of the good old boy system. And it is particularly difficult for an insurance brokerage firm because risk managers and human resource [managers] generally call the shots. And normally you are not notified when opportunities are coming up to bid on insurance. It's kind of a closed issue. Risk managers deal with people they know. Human resource personnel managers do the same thing. So it's difficult to break in.

This Caucasian female owner of a professional services firm believes that the good old boys network is more prevalent in the private sector than the public sector:



I have felt in some cases, [more so] in the private sector, [the existence of] the good old boys network. To be a woman in that kind of environment you feel like you have to prove yourself even more. I don't feel that as much in the public sector.

An African American owner of a services firm believes that some business owners use tactics to circumvent the County's lowest responsible bidder requirement, which can make it difficult for small businesses to break into the contracting network. As a good old boy, a business can lowball their price with the expectation of recovering actual costs through change orders or amendments:

It's frustrating [because] we basically have an opportunity to bid, but have not realized any business from it. They talk about the lowest responsible bidder and as we looked through historical data, a lot of times the lowest bidder is not necessarily the lowest responsible bidder. We found that the lowest bidder gets the contract and then through the course of the work, their prices increase. If they had put those prices down initially they would not have been the lowest bidder. So sometimes low-balling comes into effect.

B. Primes Avoiding Program Requirements

Most business enterprise programs require prime contractors to demonstrate Good Faith Efforts if they are unable to meet the particular requirements for subcontracting with M/WBEs. Many M/WBEs reported that prime contractors have purposely used tactics to circumvent the requirements. For example, some prime contractors will seek to obtain their business name and certification number without intending to use them on their projects. This issue is compounded because most governmental agencies do not have adequate staff to verify whether the waivers submitted by prime contractors are accurate.

This African American owner of a services firm reports that she was often contacted by prime contractors who only intended to fulfill the County's SLEB program preferences, not subcontract with her firm:

Contractors [who did] business with the County [would call because] they needed minority suppliers. I have about three books of [those call records]. [They were] inquiries for Good Faith Efforts—that's all.

An African American owner of a professional services firm also reports having contracted with prime contractors who were are trying to meet SLEB preferences . Once the contract was awarded, they did not receive the full scope of work initially negotiated:



Oftentimes, we get propositioned by a larger firm who [wants to] use our name to get their foot in the door on a contract, and then we don't get our full percentage [once the award is made]. [This happens] about 50 percent of the time. But if we're coming towards the end of the contract, chances are if you are . . . three quarters of the way through the contract, you are probably not going to achieve your goal at the end. Or, if money gets tight on the project, they will look for ways to [use] their own people to [control] their costs . . . [Sometimes I say] hey, we're not getting our percentage. It looks like we're going to get our scope of work cut 50 percent, or we're not going to get anything. Sometimes we would not say [anything]. If it's a big prime [contractor] that we hope to do business with in the future, we don't want to taint a goodwill that we might have with that company.

This African American owner of a services business eventually learned which prime contractors were genuinely interested in listing the company as a subcontractor and which were not:

I had [prime contractors] bid on projects and name [my company] as a subcontractor [or] to provide promotional products. But most of those [offers] never materialized to anything. They just call and get your name and number. I got smart after a while. You know which [prime contractors] . . . are just wasting your time, and the ones who are genuinely going to call you back.

Another African American owner of a services company reports that her firm was listed to meet a SLEB preference, but encountered a substantially reduced scope of work, each time:

What I found is that in a couple of cases we were actually listed [as a subcontractor] and then not engaged in the final analysis. We were listed . . . in order to meet a goal [preference]. But when it came down to which portion of the contract we were actually going to do, you saw them sort of whittle away at what they were really looking for us to do.

The following African American trucker is dismayed by contractors who list subcontractors without the intent of utilizing their services:

The system doesn't work because [I] bid to the generals as a subcontractor, and when [they] do get the job, the generals don't give [any work] to me.



An Hispanic American owner of a construction firm believes that some prime contractors engage in bid shopping to avoid meeting M/WBE requirements, but believes that this is very difficult to prove:

I've heard of one [lady] out in Pleasanton [who] lost five jobs, and all [of her bids] were very close to what their winning bid was. I said, they must have shopped. She said, "They shopped our bid." They were too close to the figure. It is very difficult to prove. They say it's illegal to do that, but how are they going to catch these contractors, the generals that do this? There's no way. I mean you can arbitrate them.

We belong to the National Electrical Contractor's Association. If you feel that there is a problem you can go to them, and see if they can do anything about it. But usually they can't prove it. And the generals are not going to tell you.

V. DIFFICULTIES IN BID PROCESS THROUGH THE LIFE OF A CONTRACT

A. Difficulty Obtaining Bid Information

One barrier mentioned by many of the M/WBEs was the difficulty in obtaining County bid information. Despite using appropriate contacts to obtain bid notices, many minority and women business owners could not secure timely information about upcoming contract opportunities. Many interviewees expressed disappointment that they were unable to obtain bid notices despite the various efforts made to acquire the information from the County.

This Asian American owner of a services company has not received any bid requests from the County despite various efforts to learn about the County's upcoming contracting opportunities:

I have not received any mail or bid requests. I have [not] been able to get any responses [to my] voice-mail [messages] for individuals in various departments. The County of Alameda has eliminated its central warehousing facility and each buying entity has gone to their own separate sources; [it's] very scattered. It has affected [our relationship with the County]. I really miss the relationship with [the] County of Alameda. I had a very vibrant relationship at one time. It just faded, it's unfortunate. I've looked up various addresses. I've tried to make contacts. I've printed out a list of contact people [who] used to buy [our products]. I think information is helpful. If I knew of



[upcoming] opportunities, I would participate. It's hard to participate when the information is not available. I get written bids from as far away as Arizona. [But], I have not [received] any from Alameda County. Isn't that ironic? I have bids from Indiana, [but] not from Alameda County.

A Caucasian female owner of a professional services firm complains that the County has been nonresponsive to her e-mails and calls regarding RFPs:

The County's bid information generally lists the contact manager and I e-mail that person directly. Sometimes I get a response but not very often. I certainly understand that there are a lot of people requesting information . . . but oftentimes the information on the website is not updated or [I may] just have questions. And there doesn't really seem to be, if there are general questions, a person to contact for support. No one ever picks up [the telephone], and I generally don't [receive] a response [to my e-mails].

This same business owner reported spending an inordinate amount of time seeking the County's RFP information. The owner stresses the need for systematic improvements in communication:

It takes a lot of time to answer these bids. And that's lost opportunity [and] time to us. It isn't just a template where you fill something out and send it back. It takes time to identify the correct resources and to put together a draft of the information as they want to see it. If you're involved as a SLEB or subcontractor with a prime contractor, then you spend a lot of time working with them trying to coordinate so that the RFP that goes back looks like it should and everything is working together On top of just doing the bids, the lack of communication—continuously having to ask questions and follow up and try to verify information . . . with no response is ridiculous. I think that there needs to be some internal requirement that when a contract manager is in charge of an RFQ or RFP, that they are required to respond within a timely fashion. I think processes need to be put in place to improve that communication process. Whether it is a better use of the website, something has to be done to improve the communication process.

This African American owner of a services company reports receiving bid information from several local agencies, but nothing from the County:

Even though we have submitted documentation [to the County], I don't remember ever receiving an Alameda County request for proposal or request



for bid, either formal or informal. We get flyers and e-mails from East Bay Municipal Utilities District, the Port of Oakland, and from organizations like that inviting small businesses to come in and learn how to do business with their agency. I don't [receive] those things from the County of Alameda. I think that they are missing an opportunity to have a larger variety of really excellent companies to choose from.

An Asian American owner of an engineering firm describes the various methods the firm uses to learn about the County's requests for proposals:

Most of the time the [requests for proposals] go directly to the architectural firms to solicit bids. And unless we have a good working relationship with the architectural firms, we seldom get calls or requests for proposals directly from the County. We rely on information available from the Internet, trade magazines, or trade publications to get the information. Sometimes we talk to the architectural firms and express our interest in doing work with them. It's very seldom that we get calls directly from the General Services [Agency].

This African American owner of a construction company believes the County's requests for proposals cater to larger companies, making it difficult for smaller firms to respond:

I would characterize their bid packages as very confusing. I would suggest that the bid packages be a little less voluminous. For a small consulting firm, the sheer size of some of the packages that I reviewed in the past tend to lead me not to want to even try to participate It just seems to me, they are looking for larger companies. As a small company, the amount of resources that I spend on trying to go after bids, I need to be very selective in the ones that I choose to make sure that I have a better chance of getting the work. And the work that I've looked at, at Alameda County, has tended not to lead me to do so.

An African American owner of a services firm expressed difficulty determining the correct County office to market and obtain feedback from County representatives:

On the GSA website it was difficult to know what classification we actually fell under so initially I was calling the wrong guy who just simply never called me back. [Now] we are on the County's [list].

When this same interviewee was asked if her company has received any requests for proposals since being placed on the County's list, the response was:



No, never.

This Asian American owner of a services business has not received bid information despite the fact that the owner registered with the County:

I have not [been] able to get [any] further than just calling and trying to get bid [information]. I have not been successful in receiving them. I [got] discouraged, I was registered as a minority business and if you register as a minority business [I thought] they would send something in the mail. But I never [received] anything.

An African American owner of a professional services firm believes that the County is selective in who is given information concerning the County's various insurance contract opportunities:

. . . Hundreds of millions of dollars of property in Alameda County is insured by some majority [owned company]. Thousands of vehicles in Alameda County are being insured and some insurance brokerage firm is covering those vehicles. That information needs to be made available. There should not be a discriminatory process where they only make [proposal information] available to those large brokerage firms. They should also make it available when they send out [proposal] notices. It should be made available to small insurance brokerage firms like myself.

An Asian American owner of a construction services firm recommends a method of disseminating bid information that has been used by other public agencies:

I don't recall receiving notices from the County. It is basically our job to find out about the work. They do have a website, but in my opinion it's not well organized. And unless you have plenty of time every week to go in and search it we wouldn't know anything about what jobs the County might have. [With] a lot of other public agencies you register the types of work by category and that automatically kicks in a response. So when an RFP that fits your category has been issued . . . they notify you by e-mail that there is an RFP or RFQ. Then you can go back to the website and find that RFP, and read the detailed information. A lot of public agencies are switching to [this system] in order to make sure that everybody knows what they have. And the benefit of that system is to increase the response for construction [projects]. For example, they would have more bidders aware of their jobs, so it lowers the overall cost for the [agency]. Instead of having one or two bidders, you know you have



five or six or even ten bidders because more people would know about the jobs.

According to this same minority business owner, the bid dissemination system used by other agencies is especially beneficial when information is hard to come by otherwise:

[This system is beneficial because] when you make a phone call to an [agency they do] not return your phone call. That's extremely common with the County. And if you cannot reach that person that represents the County, there's absolutely no way you can find out what the County has, so that's obstacle number one. Obstacle number two is . . . they will not volunteer any kind of information for you. Basically, you are on your own unless you know someone within the circle at the County.

Visibility to jobs is lacking to this African American owner of a professional services firm. The owner believes that the County's website could be more user-friendly to find upcoming contracting opportunities:

I think [the County] needs to do something about their website. [It could be] a little bit more straightforward. It is a little difficult sometimes to find the right opportunities, particularly in our area . . . I have yet to get a notice that says we're having a bidder's conference, please attend, other than an outreach [meeting or] a feasibility study. Every contract that a company like mine would be looking at is not a million dollar contract. It [could be] below the \$25,000 threshold . . . But the visibility to those jobs seems non-existent to me.

This African American owner of a services firm stated that she receives bid information from the County regarding small projects, but not large projects, and is eager to learn how selections for larger projects are made:

[Receiving bid information from the County] has been an alright experience for smaller projects. It hasn't been a good experience for larger projects. [I] don't [hear] about the [larger] projects until they are over. But for the everyday business we do alright with them. They have several departments [that] know about us, and they call us for their small needs. My concern is how do we [learn about] the larger projects

[For example] I'm going to talk about Highland. [They] just put up a new hospital. Highland broke away from general contracting about three years ago.



A lot of product went into that hospital, and I tried to get in three years ago when I heard about it. I wrote letters saying I would be interested in bidding on the project. I don't know how in the world they selected the vendors to supply that product. I know I was not one of the vendors that they asked. They [built] a new hospital, [and] they bought [lots] of furnishings and I'd just like to know how they arrived at what dealers they used to supply the furnishings. I mean it would just be interesting to know how the selections were made.

This African American owner of a professional services firm also reports rarely receiving RFPs from the County:

I've gotten one RFP from the County. I don't normally get any. . . I would assume [that I am on their mailing list]. I am a small and local business enterprise, but I don't get RFPs from Alameda County. I've only seen one [RFP] in three years.

This African American owner of a construction services firm receives information concerning County contracts from trade organizations and general contractors, not directly from the County:

I belong to Local Builders Exchanges, and I get solicitations from different general contractors . . .[but] not from the County.

This African American owner of an architectural firm has had to use a service to find out about upcoming contracting opportunities with the County:

We use a lead service . . . these companies go and find [requests for bids/proposals] in advance. They send us notices. Then we call the County or one of our engineering consultants. Generally speaking, we've found out about a good number of things. We pay [for their services and] we subscribe to them.

B. Inadequate Lead Time

Inadequate lead time was another reason given by minority and women business owners as a barrier to receiving work with government agencies. Some agencies and prime contractors often send out notices at the last minute, preventing prospective bidders from a chance to submit a competitive bid or proposal.



A representative for an Asian American male owner of a construction company describes the impact that inadequate lead time can have on a small business:

The short turnaround time is very vendor unfriendly. If the County is under a time constraint, I can understand that. If there is a two-week turnaround time, a vendor such as myself would say, okay, you are really not interested in anybody bidding on this. You already know who is going to do the service. It takes a tremendous amount of preparation and research, and document preparation, and so forth [to respond to a bid]. It takes a heck of a long time and effort to put [a bid package] together.

This Caucasian female owner of a professional services firm explains that she must set aside most of her responsibilities in order to timely respond to the County's request for bids:

I have been able to respond to [the bids] because I put most everything [else] aside. It takes time, concentration, and oftentimes communication with a prime contractor or follow up with the County. It hasn't been a big stumbling block, but probably a little more time would be helpful.

This African American owner of a professional services firm believes that the County provides adequate lead time for businesses to prepare for their bids and that building relationships within the industry complements the bidding process:

When the bids hit the street, if you do not have a relationship with either a prime contractor on the project or have some indication of the project before it hits the street, [then usually] the notification process... isn't out soon enough. I think the County has been pretty good about letting you know what projects are coming up.

A Hispanic American owner of a construction company explains that the County provides enough notice regarding upcoming projects, but more lead time should be given once the bid has been advertised:

It would be nice to have more [lead] time [to prepare a bid]. I think they give ample notification of their projects. [But to respond to bids, I would suggest] a two-week notice to attend a pre-bid conference, and then another three weeks to a month after that to submit the bid. So overall a month and a half. I see that half of the time.



An Asian American owner of an engineering firm reports that his company usually receives a one-week notice to respond to a bid from the County:

Most of the time, the [bid notices] are very short. When they call us directly, we get a very short time frame for response. I would say about a week.

This Asian American owner of an architectural firm believes that the lead time is too inadequate to prepare a bid:

It's [normally] one or two weeks. And no way we can run around and get those things done. Three weeks, a month, [or] six weeks for most of [their] projects [would be adequate].

This African American owner of a services firm believes that the lead time for responding to a bid or proposal should depend on the complexity of the project:

It depends on the scope of the project. In some cases it's truly adequate if the project is simple in terms of complexity. And other times, we may need four weeks. I think it depends on the scope of the services. [Responding to a bid] absorbs a lot of human resources and other resources.

C. Excessive Delays or Problems with Certification

Programs for small, minority and women businesses establish certification eligibility standards. The County's SLEB certification process is a method to determine the status of small local emerging business enterprises. Oftentimes, minority and women-owned businesses are SLEBs. The County's M/WBE Construction Outreach Program sets forth standards for demonstrating eligibility. However, many business owners reported difficulties making contact with the County concerning the certification processes and their application.

A Hispanic American female owner of a professional services company was frustrated because it took six months for her company to be SLEB certified by the County:

It took me six months to get certified. First of all I registered with the County, then I wanted to get certified, so I filled out all the paperwork. I submitted it in a nice binder because I'm very organized. [I] did not hear anything. So three weeks went by, and I said well let me just make a call. So I called [name withheld]. [I] left a voice message and did not hear anything. I called again and did not hear anything back. Sent an e-mail and did not hear anything back.



Sent another e-mail and did not hear anything back. This went on for about three or four months, and I thought okay, what's going on. So, finally I called and was referred to another number, and I left a voice-mail, and then the following Tuesday I got a call back. [I did get certified], but I mean e-mail after e-mail, and I kept a record. [It was] ridiculous.

An African American owner of a services firm also stated that he/she encountered difficulties trying to make contact with the County regarding the company's SLEB certification application:

The application wasn't excessive but if you don't send everything that [is] needed . . . it is impossible to get any feedback to find out how to submit it. I faxed it over [but their] fax never worked. It was really awful. I [had to] take it up there.

An African American business owner of a services company also described experiencing difficulties with the County's SLEB certification process, believing that the County's application requirements were more costly and time consuming than that of other agencies:

The County has specific documentation that requires notarization that most other [agencies] don't [require]. That was a bit of a detriment because you've got to have time to get the [documents] notarized. I did finally get that done. Part of their application . . . requires . . . an affidavit with your application to be considered for the small, local emerging business. It is a time issue. We certainly don't have a notary on site. We had to go get one and pay ten bucks to do it. Normally you can simply fax in your information.

This African American owner of a professional services company believes the County's SLEB certification requirements allowing businesses headquartered outside the county with a local office in Alameda County to determine the validity of local businesses are not adequate:

The only problem that I have with Alameda County's certification process is the fact that all you need is a telephone number, an address, and a \$35.00 dollar business license within the County to qualify as a local business enterprise. So what happens is a firm out of Santa Rosa that is actually headquartered in Santa Rosa but has an office in Livermore, Hayward, or one of the areas in the County can qualify as a local business. Or if they had a business in Shreveport, Louisiana with a temporary office at the Executive Suites in Downtown Oakland or in Livermore or in Dublin, then bought a business license and had a phone number, they would qualify as well. So I



have a problem with that. I feel that if you're going to use the small, local disadvantaged business certification, use those of us that really have to deal within the County. And then particularly those of us in Oakland. I pay \$180 dollars a month per vehicle to park our cars [in Oakland]. I pay a higher inner-city rent, and I pay higher insurance.

An African American owner of a professional services company questions whether the time required to recertify as a SLEB will be beneficial to his firm:

It's timely and costly to fill out those certification forms and to continue to be recertified annually or every couple of years. But if there are no opportunities being presented, it's kind of hard to justify going through that entire process. I assume they do business with more than just small emerging businesses. So if I'm knocking at their door all the time and no opportunities are ever presented, I know that they're making awards to all types of firms.

However, when these minority business owners were asked about the County's SLEB certification process, their responses were positive:

I think that [the County's certification process] was one of their easier processes. They were fairly easy to work with. I think it's a benefit to people who want to work with a certified SLEB. I think it was helpful in getting [work from] other [agencies]. [If] they won't certify you, they will accept someone else's certification.

I don't think [the certification process] was excessive.

Actually, the certification process itself wasn't too bad. I had to go through some paperwork, but as I recall they accelerated the turn-around time [because I was] involved in an RFP. I don't think it was a hassle, I've gone through worse.

This African American female owner of a services company recently submitted a certification application to the County, and she is hopeful that her firm's status as a certified SLEB improves her chances of winning a large contract:

It's been about two months [since we submitted our application]. I haven't [received a response yet]. Certification is not important if you have to go through the process, and then [are not given] the opportunity [to work on] the



larger projects. It's not worth it because the [majority-owned companies] don't have to certify.

This Asian American owner of a construction firm explains the time-consuming process required to get questions answered concerning his M/WBE certification application:

To get people on the phone, or to get some questions answered [has been difficult]. They ask for information that is not very clear as to what they are asking for. And then to get that clarification is hard. You're not able to get the people on the phone, so it becomes quite challenging. It takes up so much time, and one tends to get frustrated with the whole process.

A Hispanic American owner of a construction services company reports that some certified M/WBEs are not bona fide small local businesses:

I think [some] companies should be looked into to find out if they [are bona fide small local businesses]. Some of the companies that have been awarded bids are not small local companies, they are phony companies. They are multimillion dollar companies that are actually owned by construction companies. I don't think this is fair.

Finally, this Caucasian female professional services business owner found the certification process for reciprocal applications quite easy:

I thought that it was very easy. We were already a contractor and [were] certified [so] we [submitted a reciprocal [certification application]. That made it easy.

VI. FINANCIAL BARRIERS

A. Difficulty Obtaining Financing and Bonding

According to interviewees, limited access to capital limits their growth potential. The inability to obtain a bond has prevented this African American female owner of a services firm from bidding on contracts that require bonds valued higher than \$10,000:

I have to decline to bid on contracts that require really large bonds. I have not [received] more than a \$10,000 bond. Anything beyond that I cannot do. When you get beyond that amount, it's very expensive to get the bond.



An Asian American owner of a construction company believes trying to obtain financing can be a catch 22 for small emerging businesses:

[Most financial institutions] want to make sure that the companies they are bonding have a past history of doing business. So, it's the chicken or the egg thing. You can't really get the business until you start doing it, but you can't do it until you're bonded. But you can't get bonded until you start doing the business. So, it's sort of like a cycle that way. It's really been hard for my company to break out of this cycle.

This Hispanic American owner of a construction services firm reports that it took four years to obtain bonding:

It took us four years to get bonding. Usually as a subcontractor we don't need it depending on the job. But then a couple of jobs came up, and we needed it. It was a long time before we could find a company that would bond us. The bigger companies naturally can get bonding quicker.

A Caucasian female construction contractor explains the hardships on subcontractors who are unable to securing financing for their companies:

We are not bonded and we are undercapitalized. So we don't qualify for loan or grant programs. So we've been declined by the Small Business Administration, of course the general banks, and loan institutions won't even look at us. We're strictly managed by management of cash flow. The bonding issue in the construction industry, especially for subcontractors, is we are still required to be bonded. We need to have a good relationship upfront with the general contractor whose team we're on. Many times, they [will post a] bond for us. So we either ride their coat tail, or our bid is turned down because we couldn't [obtain the required] bonding. It just eliminates us from an opportunity to bid work that we are qualified to do. Because without being able to come to the table with a bond, we're not even able to submit the bid.

Another Caucasian female owner of a services company has experienced difficulties trying to grow her business because of her inability to obtain financing:

It has impeded our ability to grow and impeded our ability to compete for larger contracts without the resources to secure bonding. They required a \$5 million bond and five years of experience. Those are the things that really kicked us out. We weren't able to apply with companies like PG&E and East



Bay MUD and AC Transit because they have very similar requirements. So the bonding issue is tremendous and without the cash reserves or the financial fortitude, we simply are not able to compete. This has prevented us from securing very large accounts that would have changed us as a company. We are still relying on our own personal assets and fortunately we were able to develop the client base that we are now generating some profit. It's marginal and small, but we're grateful for that.

B. Difficulty Meeting Insurance Requirements

Liability insurance is a common requirement for contractors working for government agencies. The County requires their consultants to obtain professional liability errors and omissions insurance. Many of the interviewees described the impact that meeting these insurance requirements can have on their small businesses.

This Caucasian female owner of a professional services firm believes the County should waive the errors and omissions insurance requirement for small business owners. She believes the insurance requirement should apply only to contractors whose work poses a potential hazard or physical liability threat:

I find that as a consultant it's difficult for me, particularly as a small woman-owned business to meet the professional liability insurance requirements. It is extremely expensive. I had [insurance] when I first [started my business] but I dropped it last year because it went up from \$35,000 to \$40,000 a year and it was required by cities and counties. I have to [ask agencies] to waive it for me now. It's called Errors and Omissions Insurance. It's related to engineers and contractors and for people who build things. But for people who do [not do that] kind of work, [we are still required to obtain] professional liability insurance. We are not building anything where people are going to get hurt. So it's [difficult] on small businesses. Especially for the dollar amount that a lot of the public sector clients [require]. [Public agencies] should have a fairly simple process to allow [their insurance requirement] to be waived.

An African American owner of a professional services firm believes that insurance requirements should be adjusted depending on the project:

Insurance requirements are sometimes daunting for small firms. Especially the liability insurance—the million-dollar coverage which I have. I think if they really want to encourage small firms they need to reconsider these requirements. The insurance requirements are really set up for big contracting



assignments. But they don't change their requirements when it's a \$7,000 project for an economic analysis. And that could be hard for small firms. So those insurance requirements are great for the big firms, but for the small firms they are not necessary. They need to [adjust] the insurance requirements to the specific assignment. Most small firms often have trouble getting the professional liability insurance. And I can obtain it because I have twenty-two years of experience in this business. But if you're starting up, then it can be prohibitive.

An African American construction contractor details the problem subcontractors encounter trying to meet expensive insurance requirements. He believes prime contractors purposefully delegate the insurance requirements to their subcontractors:

Insurance issues are a huge problem now. When we work for [name of large construction company withheld] or any of these big contractors they are the ones that are the generals and contract with the public agencies. And we have to provide them with insurance. And they want general liability insurance, which is fine. We should all be insured. We have no problem with that, with \$1 million limits. Then we have to name the contractor, let's call it [name withheld]. We also may have to name the [agency] like the City of San Leandro, the State of California, or the County of Alameda. So we have to name everybody on our policy. This policy provides everything in the world. It has bodily injury, property damage, and personal injury, with the standard cross liabilities and cancellation clauses. Then we have automobile liability with minimum limits of \$1 million. We also have automobile liability insurance and worker's compensation because you can't work without worker's compensation [insurance]. They also want cancellation clauses mailed to the additional insured that are very specific. [The] primary insurance clause [stipulates] that [the prime contractor] shall become the primary on the policy and that our policy will become the primary for this project and no other insurance may contribute. Now what that says is if there's a problem out on the job, they come after the lowest man on the totem pole who is covering everybody else in the world. In other words, we're covering [the prime contractor] and the State of California. So who pays for whatever happens to [us].

We decided that we're not going to pay for [the prime contractor's] problems on the job or the State's problems on the job. We're going to only pay for our own problems on the job. If they don't like that, we negotiate everything with them. We decided to protect ourselves. But what happens is you have this



kind of onerous insurance that the generals are putting on the subcontractors. Of course we know why they're doing it. They don't want to handle those claims. Let the other guy handle them if they want to work for us. And we find that objectionable since we've had close experience with it. And we almost had to close our doors because we could not get insurance we could afford.

C. Late Payment by Prime Contractors

According to interviewees, limited access to capital is compounded when the County's prime contractors pay their subcontractors in an untimely manner. Many minorities, women, and small business enterprises reported a lag time between when prime contractors receive payment from a public agency and when the prime contractor pays its subcontractor. Payment delays cause a myriad of problems for these firms, ranging from cash flow restraints, difficulty paying employees and creditors, and personal financial hardships.

A Hispanic American owner of an architectural and engineering firm reports that a prime contractor waited 195 days after receiving payment from the County to pay the firm's invoice:

Our biggest complaint is getting paid in a timely manner. We have heard and have verified that [prime contractors] are paid, and then we are not paid. We've even asked in a lot of cases if the County could issue a joint check [to me and my prime contractor]. As a subconsultant to an architectural firm who might have a bigger piece of the action than a smaller consultant, we do find that there is too much opportunity for a subconsultant to be taken advantage of during the payment process. The prime contractor is the one that has the contract and can hold the money of the subconsultant for as long as they feel that they can get away with it. And that's been one of our biggest complaints. Certain client's, which I will not mention any names, and GSA knows who they are, have basically held their consultants money for a considerable amount of time after being paid. It's like pulling teeth to get paid by these architectural firms. A good turnaround from our bills is typically 45 to 50 days on average, with our best client. Our worse client, which happens to also be a large account, has taken sometimes as long as 195 days. We verified that the County had paid [the prime], and then our payment was held for an additional 100 days before they paid us.

A method to verify payments made to subconsultants within the specific time frame is suggested by this same business owner:



A lot of small consulting firms like myself really get hurt when we are involved in a project where we have to wait over 60 days for payment. And we don't have a lucrative business where our overhead is such that we can afford to finance this other company's business. There should be some way that GSA can institute an accounting practice that [requires] invoices to be approved and payment made . . . on such and such a date. This basically acknowledges that the check went to the prime contractor, and that the subconsultant be paid within so many days after the check clears. I'm not asking to [be] paid like my employees expect to be paid every two weeks. I'm just expecting to be paid within a reasonable amount of time and not have someone who is not responsible have the ability to hurt my company financially. I'm saying that our debt hurts our ability to borrow. Excessive debt hurts our financial reputation. The financial suffering that we've [encountered] has made my partner and myself not take home a paycheck for two and three months at a time.

An Asian American owner of an engineering company reports the County's prime contractors routinely paid late. However, the business owner refuses to complain to the prime contractor for fear of compromising future jobs:

On a couple of jobs where we were subcontractors, we were told by the prime contractor that they had not [received] payment from Alameda County or from another agency. We don't want to fight with the prime contractors because we don't want to burn the bridge. It has caused some cash flow problems. And let's say the project is [valued at] \$2,000, it's not a big deal. But if it's a job that's \$15,000 to \$20,000, that always causes some financial hardship on smaller offices like us. I would say [this happens] 50 to 60 percent of the time.

This African American owner of a professional services firm reports that waiting at least 50 days for payment from a County prime contractor is not uncommon. Furthermore, he adds that slow payment can be detrimental to a small business:

I would assume that our payment [history] is like everybody else's. The prime contractor is supposed to pay us on time, [which is] 30 [days]. [But], it averages about 50 [days]. That's not uncommon. We have always dealt with slow pay environments on County contracts. It's something that I wouldn't complain about. But, as you know in any small business an additional slowdown in payment will put you out of business. A prime contractor can put you out of business by not paying you or being slow to pay.



An African American owner of a construction services company reports that in one instance, he never received payment from a prime contractor:

I had one contractor just skip off and not even pay. I can't find the guy and don't know what to do. Dragging him into court takes time and you're just chasing pennies. Time is valuable, I need to put my time into finding work and getting work. The guy who [didn't] pay me said the [agency] did not pay him. [But] he got the money and he used [it], and he didn't pay me.

This African American construction contractor believes small business owners learn by experience which prime contractors to avoid because of late payments:

Well, [there] always is an issue [regarding] how we are going to get paid. A small subcontractor learns the hard way. There are contractors that screw you and you learn not to bid to them. There are agencies that are slow to pay which makes it hard [in] general, which filters down to the subcontractor. I just learn to avoid those jobs if I can.

D. Late Payments by Public Agency

Based upon the County's procurement regulations specifying the methods and timing of payments to its contractors, many minority and woman-owned businesses reported receiving late payments from the County.

An African American owner of a services firm reports that she has waited a year-and-one-half to receive payment from the County on an invoice. This delay, she states, discourages other business owners like herself from pursuing County contracts:

A lot of people [in my line of work] don't go after County business. They pay so slow and the dollar profit is just not worth [the wait]. [They are] slow, anywhere from 45 to 60 days is the norm. [The longest I've waited for a payment] is a year-and-a-half. They just don't pay. They just say they're working on it. They have to wait until they get it from this person or that person. If I deliver to [name withheld], she has to sign off, and then it goes to another person. It goes through all these hands before it gets to the accounting people to pay. You just constantly have to stay on them. I haven't had one [where] I haven't been able to collect. But the time frame is painful. [And the profit margin] is small.



A Caucasian female representative of an Asian American-owned construction company reports that they also waited one year to receive payment from the County. Within that year, she wrote letters, explained invoices, and spoke to a county official:

[We experienced] non-payment for one year [with the County]. . . . Alameda County was withholding money from [our prime contractor] because they didn't think they were doing the proper job as the general. They were going to throw them out. I wrote letter after letter [to the County] and wrote letters to the bonding company trying to collect our money. A year later, we finally collected our money. They owed us \$200,000. That really put us in a bind for a long time. I mean, I did everything. They lost my certified payroll. I resent the payrolls. I explained every change order on additional costs that we had. I had to go through everything with a fine tooth comb with them people. And like I kept telling them, I did the work for you, you still need to pay me. They kept saying, when I get paid, you get paid. And after jumping through hoops and analyzing all the certified payroll and change orders, a year later, we got our money. They referred me to a County official. I called the County official. I let them know what was happening. I really didn't get a lot of response out of [the official].

Subcontractors must wait for prime contractors to receive payment before their invoices are paid. This African American owner of a professional services firm explains that her business is affected when a prime contractor is paid late by the County:

. . . the assignment [with the County has been] very, very slow pay. Extremely slow pay. Some [invoices have lapsed] over 90 days. [I currently have some that] date back to January. The problem is I'm a subcontractor. The prime [contractor] has to be paid, and then I get paid. And unless you go around the prime [contractor], you never know exactly what the schedule is on paying the prime [contractor]. And that's a disadvantage for a small business.

This African American owner of a professional services company expects to wait an average of 30 to 40 days before receiving payment on County invoices:

It would [be] nicer if [the County [paid] faster. But I've grown comfortable knowing that it [will be] 45 days before [I] get any money. [It usually] takes 30 to 45 [days] to anytime in between [before] we see a check. Lately it's gotten better. It's always nice if they could pay a little sooner. There was a situation where I said, okay, I'm not using my line of credit, I'm waiting until the check comes in. And that check did not come in [until] 30 days, [or it]



might have hit 40 days. If a small business like mine was starting out, it would be very hard for them. So paying on time would help.

This Hispanic American owner of a construction services company reports that late payments are extremely hard on trucking firms and that their services are viewed as dispensable:

I would say [it takes] between 60 and 90 days [before we receive payment]. It makes it difficult [for us] to pay our bills, we can't pay our subhaulers that work for us. Truckers are always the last ones to get paid because we are dispensable.

An Asian American owner of a services company explains the benefits to small business owners when the County purchases products with its purchasing card:

I have had very good results when Alameda County entities buy with their purchasing card, such as the Santa Rita jail. That is one of the most efficient ways of minimizing all the paperwork and the time in cutting a check. Even though we take a hit from the bank, I think they take about 2-1/2 percent. But the time savings more than compensates for that [loss].

This Hispanic American-owned construction services firm offers discounts as an incentive for agencies to pay invoices in a timely manner. The discount is an attempt to avoid the monetary loss the firm incurs when a payment is late by more than 30 days:

It's just the nature of the beast, you do the work in one month and at the end of that month you do a progress payment and sometimes 30 to 60 days later, you receive payment for work that was done two to three months earlier. [When] payment gets 30 to 60 days [late] we [offer] a discount if paid within ten days of our invoice. And I don't believe the County takes the discount. We asked [the County] if they would take a two or three percent discount if paid within ten days of invoice and they said no, that's not their procedure. It's difficult to do work when you're out over 30 days. A lot of our vendors like to be paid [within] 30 [days]. And of course payroll on prevailing wage jobs has to be done on a weekly basis. So put all that together, you're out a lot of money for more than 30 days. Normally, we submit an invoice and we don't see payment until at least 30 days on County jobs. On some jobs they seem to be faster depending on the superintendent or the inspector. So there's a lot of factors.



An African American owner of a services company believes government and public sector agencies disregard timely payment procedures to small businesses. The owner describes a painstaking process of asking for payments that are usually 30 to 60 days late:

Most small businesses experience the same problem. I think that public sector agencies think it's okay to pay in 45 to 60 days instead of 30 [days]. I often [need] someone on my staff to spend a lot of time trying to collect money. And it's like, send us another copy of the invoice, we don't know what we did with the first one. There's just a total disregard once the product has been received. I call and say are you happy with the product, is everything good. Normally a lot of end-user departments will say, we sent [the invoice] to accounts payable, we can't help you. I say well, what do you mean you can't help me? You have the product. You should have some responsibility for helping me get paid. The whole payment situation is just atrocious and I do think that it is a pervasive problem. It is not one that I have personally observed in my tenure at IBM or at other large companies because they have large contracts and there are huge amounts of money that need to be paid up-front, when they pay millions of dollars at a time from whatever funds they're coming out of. That seems to happen more readily than the smaller invoices. Let me not deliver something in the time frame that you're supposed to deliver it and people are on the phone bugging you daily.

An African American owner of a firm that provides construction services also discusses the hardships to small businesses as a result of late payments:

We [waited] 90 days without seeing a paycheck. And it made no sense when it came to service. I can understand if you had inventory supplies that had to be accounted for, but we're just looking at time, eight hours a day, how difficult can that be to understand? On one of my jobs I [had to] process 25 payment applications in two days, and I had all the back criteria to deal with. And they couldn't do a simple timecard in 90 days. It went through so many layers of approval and it sat on somebody's desk for two weeks. I had to spend more money because there were interest payments drawing from my line of credit [and I had] to make payroll. I could not tell people, oh well they didn't give me my check so you have to wait. You can't do that because it's against the law not to pay someone at least bi-weekly. So you have to make that payroll and of course, for incentive reasons too.

This Hispanic American construction prime contractor explains how late payments from the County affect the firm's business and its subcontractor relationships:



Typically, the [County] is not prompt. On private sector [projects] if I [submit] a billing on the first, I can expect something by the end of the month. On County projects I usually have to [wait] 60 days. They said that's the way the system works. They are qualified to expedite [invoices] as quickly as they can but to get all the people to sign, review, and approve [the invoice] takes some time. We just try and deal with it the best we can. It limits our resources and our relationships with our subcontractors. Typically, we do the job and the subcontractor performs his duty, he give us his billing, and we process it. So now it's anywhere from two to three weeks from the time he bills us to when it gets processed and back out to the County. And then the County could take anywhere from 30 or 60 [days]. I've had things extend out in excess of 90 days. So that subcontractor is out there for four months to five months before he gets a first check. That causes a lot of stress on him because he's calling us, and we're calling the County. And, what happens is you get a lot of people [who]are frustrated over it because it's a snowball effect. It works all the way down the line.

The County also pays late according to this Caucasian male owner of a services company:

First of all [the County] pays in arrears. Most of the normal business we do is paid in advance. But they pay in arrears to start with and sometimes it's 30 or 60 days after that.

An Asian American owner of an architectural firm reports that the County usually sends payments on his invoices in about two months:

Typically, they take about two months to pay. Two months is okay, generally speaking. But beyond that it gets to be late. But they owe us from May. So they have been slow to pay recently. It puts a strain on our cash flow and finances. We have to pay our staff and other expenses.

This Caucasian male owner of a construction company describes an incident where a subcontractor nearly filed bankruptcy because of the impact of late payment by the County:

Local enterprises working for the County know that they don't get paid, and they end up in a fight. This problem was illustrated through the experience of a minority subcontractor in one of his County jobs.

One of my subcontractor's on [project name withheld] is a local minority business owner, and she is a construction contractor. She came to every single



meeting that we had with the County during the project. She saw what happened to me after I [was] terminated. They took over her contract and assigned it to the new contractor. They had her finish her work and forced her to do the work without issuing a change order, and she refused. They finally issued the change order, and then demanded that she finish the job. They told her she was already six weeks behind the day she got the change order. They had her finish the change order work, terminated her, and then didn't pay her. I talk to her occasionally, and she's on the edge of filing bankruptcy. When we called the construction manager, he came up with a list of reasons why he did not process the billing. Yet she is still being demanded upon to continue with the work and pay her labor on a weekly basis. A lot of local businesses can't afford to do that.

An African American female owner of a services company explains that, oftentimes, contractors are required to complete their project regardless of how late payments are issued by an agency. This business owner defines when payment is considered late by her company:

We define late payment as anything after 30 days because our payrolls are due every two weeks. So 30 days is two payrolls out. We define that as a late payment. We don't penalize for it in preservation of client morale, but that's when it starts to get a little stressful for us because we have to start using our own funds. It works out well in the private sector. In the public sector, our hands are tied.

Contractors report late payment by the County as routine. Both of these minority business owners have also received late payments from the County.

An Asian American business owner reports:

Our payments are often late. Sometimes more than 60 days.

A Hispanic American construction contractor reports payment as late as six months. This practice of paying late, the contractor reports, has been a long standard practice over 12 years:

Pay is slow . . . but it's not uncommon to go four, five, or six months without being paid. We've just waited, and over the ten or 12 years [of working with the County they] have always come through with their money.



VII. PUBLIC VS. PRIVATE

Some of the interviewees expressed a preference for working in the public sector, mainly because the bulk of their business comes from public contract work. These African American business owners reported that public sector work has been an important factor in their businesses remaining solvent:

I'd say [the public sector] has been good for me because that's where [we receive] the majority of our work.

[Public sector work has] been essential to my company.

I do far more [work] with the public sector than I do with the private sector. I'm going to say maybe 75 percent [public and] 25 percent [private]. I actually enjoy working with the counties and the cities. I enjoy it, [so] I go after [public work]. I find that they are just more receptive of me. When I went to the counties and the governmental agencies their [responses] were [better] and they would call me back when they needed me.

In general, working with the public sector can be a more enjoyable experience because people tend to be friendly and a little less stressed than the private [sector]. But we have done a fair amount of business with the public sector and once the relationship is built there is probably a little more loyalty and more openness to having a relationship. I do think that's why we've continued doing business in the public sector. Private is a little more competitive in a different way and doesn't seem to have the same loyalty. They also tend to have a higher turnover. The public sector agencies usually don't have as high a turnover. You can really build a relationship with them. So they are different.

... 70 percent of our maintenance [projects are from] public works contracts. About 50 percent of our landscape construction projects are from public works contracts. [Our] maintenance [work] is about 75 percent of our income and [our] landscape [work] is about 25 percent of our income.

Ninety percent of our business is from governmental agencies like Alameda County, Contra Costa County, the City of Oakland, and other cities in the area, as well as the State of California.



This representative of an Asian American-owned construction firm prefers working in the public sector because they are believed to have more internal controls and commitment to working with local businesses:

Obtaining public sector work is actually a little more straightforward, even though it has its weird turns and so forth. It's actually more straightforward because of the processes that are in place, such as the publication of opportunities and the certifications. I believe they have a commitment to community development and social responsibility. That's why I'm primarily focused right now on government or public sector contracting.

However, this Caucasian female professional services business owner believes that it is much more difficult to work with the public sector because of its formal processes:

It's been very difficult to deal with the public sector versus the private sector. I found the private sector to be easier. It is less formal. I don't have to go through all the paperwork of qualifying and re-qualifying every year to do business with them. It's informal in that I don't have to do competitive bids.

Excessive paperwork and monitoring is described as the major difference between the public and private sector, as reported by this Caucasian female construction contractor:

The private [sector] is much easier, less paperwork. And the public [sector requires] a lot of paperwork and a lot of monitoring, the certified payrolls and stuff like that. There is a lot more to the job if it's a public entity than a private.

Similarly, this Hispanic American female owner of a services firm singles out voluminous paperwork as the major distinction between public and private sector projects:

The public sector is paper intensive and it's very expensive to respond to public sector RFPs. I responded to one for the State of California to become one of their preferred suppliers, and that was a seven-month process. It cost me a lot of money and manpower. My response ended up being 500 pages. I had to do a draft first, and then had to do a final version. So I spent a lot of money on just paper and binder [materials].

Governmental policies to utilize minority contractors in the public sector are described as an important distinction between the public and private sector by this Asian American owner of a professional services business:



It's very different because there are all kinds of compliance issues that the public sector has that the private sector does not have. Also, the private sector tends to rotate people in and out more, whereas the public sector looks at that as almost a negative. It's a real different ball game just because of all the compliance issues that the government has. For example, the [utilization] of . . . minority firms . . .

However, these Asian American business owners believe the private sector is easier to work with compared to the public sector:

The public sector is more rigid in terms of requirements. But the private sector is easier to negotiate [with] and more flexible in terms of requirements for selecting [contractors].

The private sector is a lot more simple. Sometimes I get a phone call and I send them my menu and they will come right back with yes or no. More paperwork is involved in the public sector. And then calling trying to get the right person [on the phone]. Sometimes the people [in the public sector] do not know where to direct me to the correct person.

This representative from an Asian-owned engineering firm, however, prefers working in the private sector because there are fewer decision makers in the chain of command:

It's a lot harder [working] in the public sector. In the private [sector] it's easy because the decision making is streamlined compared to the public sector. [There are] many tiers of decision makers [in the public sector]. In the private sector they are more flexible.

Similarly, this African American female owner of a professional services firm intentionally seeks more work in the private sector because she believes the line of communication is more accessible:

[I do] a lot of work with the private sector. It's intentional because it's a lot easier in the private sector to determine who's buying your service. You can call and get a receptionist, a live voice, and get connected directly to who we want to talk to. Whereas sometimes when we're dealing with County and [other] government agencies, we get lost in the voice-mail system.

This African American female owner of a professional services firm also prefers working in the private sector:



In the private sector, it seems less about who you know than it is about what you can do and what you offer. [Its about] your ability to get the job done. Also in the private sector there are far more opportunities and trade associations that are conducive to broadening your customer base and broadening your market share. Certainly the private sector is not bureaucratic in nature, but there are hoops you have to jump through prior to really being deemed as a qualified vendor.

VIII. COMMENTS ABOUT THE COUNTY'S PROGRAMS

Many minority business owners described the County's SLEB Program as valuable and instrumental in growing and sustaining their businesses. Conversely, some business owners believe that the County's Program lacks adequate monitoring, staff, and authority.

A representative from an Asian American-owned architectural and engineering firm believes the County's SLEB Program is a benefit to small and local businesses:

I think the [SLEB Program] encourages the participation of small and local businesses because of its goals and the [fact that they] honor them.

This Caucasian female business owner of a professional services firm also describes the County's SLEB Program as valuable:

I think [the SLEB Program] is extremely valuable . . . to help level the playing field for small local businesses and women-owned [businesses].

A Hispanic American owner of a professional services firm explains that the lack of diversity in the County's upper management tier could be a barrier against selecting more diverse prime contractors:

It was obvious that in higher levels of management, Alameda County Government isn't terribly diverse. That's no surprise to anybody. And when you don't have diverse managers, chances are those managers will not select diverse contractors.

An African American owner of a construction services firm expresses frustration concerning the County's M/WBE outreach meetings:



We go to the [outreach] meetings and . . . it seems that nothing ever transpires from it. It gets me very frustrated, and I'm sure everybody else also. Because it's like they're blowing smoke, and when it comes down to action there is none. So I look at it like why am I wasting my time?

This African American owner of a professional services firm believes that the County's SLEB Program is not valuable because it does not provide technical assistance to small business owners:

For my company, [the SLEB Program] has not really held much value. That's not to say that the Program itself doesn't have merit. But for our purposes of outreach, education, and how to do business with the County it hasn't been much value. [However], on the national level there are several programs that we involve ourselves with. We're invited to different outreach forums and networking environments where we can actually talk about the projects and meet potential customers. At the federal level I would certainly say the National Association of Small Disadvantaged Businesses is valuable in terms of exposure.

A Caucasian female owner of a professional services firm suggests that the contract dollar threshold counted toward SLEB preferences be lowered because most SLEB contracts are relatively small projects:

There's sort of a disconnect between the SLEB Program and the [County's] general purchasing population. [They] have two contractors handling certain RFPs. There doesn't seem to be a lot of connection between the SLEB list and some of the decision makers. [I wonder] what number of dollars are being spent with small local emerging businesses, or minorities. [I was told] there wasn't anyway of doing that. So when we invoice the County for service that we provide, there's no recognition that this invoice is for money [for a SLEB]. [Which] seems pointless to me. Maybe the dollar amount [for monitoring] should be lowered a little bit, [if you] really want to promote small, local and emerging businesses. The only place we really get acknowledgment is with large RFQs or RFPs where we have to work with a prime [contractor] because the bid is hundreds of thousands of dollars. They don't give us credit for the \$10,000 and the \$20,000 [projects].

However, this Caucasian female owner of a construction services company believes the M/WBE Program is valuable because it provides a venue for smaller businesses to network with larger companies:



I think the [M/WBE Program] is valuable [because] smaller businesses can network with . . . larger companies. Otherwise they would not know that the [smaller businesses] were around.

A Hispanic American owner of a construction services firm believes that small minority businesses should not be required to meet M/WBE goals when they are bidding as a prime contractor:

I'd like the [County] to simplify their [M/WBE requirements]. It's frustrating when I have to advertise or I have to prove that I'm spending 20 percent of my money on an [M/WBE] and I'm one myself. Or I'm a minority business and I have to spend 20 percent of my money on minorities and I am 100 percent of the job. But as far as a local business enterprise, I think that if you're in the County and your place of business is in that County, then I think there should be a preference [over] somebody who's bidding jobs from Redding. But I think it should be a very simplified plan. [To meet the County's goals] we advertise in the Daily Construction Service, the Daily Review, and the Chronicle. [The cost] is in the neighborhood of \$250.00 an ad at four per week.

A Caucasian male construction contractor believes that it would be easier to abide by the County's Good Faith Effort requirements if there were more qualified minority and women-owned businesses to choose from:

There is an added expense [to complying with] the Good Faith Effort [requirements] and the fear that our Good Faith Efforts are not going to be considered good enough. As far as the actual utilization, the problem that we have is finding qualified minority or women-owned businesses for the scope of work [for the County's] project. It would be a lot easier if there were more qualified minority and women-owned businesses available, if there [was] a program where they get pre-qualified for projects in certain [trades]. When I get pre-qualified I feel like I have an obligation to bid the job because the client is counting me, and it's kind of a reciprocal arrangement there. The County should do outreach to educate these businesses. . . . I don't want to classify this as all minority or women-owned businesses, all I'm saying is that we don't get enough participation from qualified minority and women businesses to meet those goals.

This Asian American owner of an architectural firm describes the County's SLEB Program as understaffed and lacking real commitment to small business owners:



There's no staffing, monitoring, and contract compliance. They are understaffed and under committed, it's a joke. No one person can do it alone. I would say on a scale of one to ten they're probably a two or one-and-a-half, real low. Once again no real commitment. We're the taxpayers, we live and work here, we employ people here, we're part of this economy, but we're not sharing in their procurements. So, I think there's a lot of unhappy people here because of that.

According to this African American owner of a professional services firm, the County's SLEB Program is not valuable because his firm has not reaped any benefits from it:

I can't say it's valuable unless its has brought us revenue. . . . So it doesn't make sense for us because it hasn't made any dollars for us. [I would suggest they] select minority and women-owned businesses for projects. I mean it's really that simple.

This African American services business owner believes that the average small, local business is unable to compete with larger vendors in the firm's industry and believes more informational meetings and networking opportunities between agency representatives and program participants are needed to create a viable SLEB Program:

It's not valuable for a company like mine in Alameda County because there's one vendor that is used for all of the services [we provide]. They only use that one company. So you're completely out of luck until it comes up for bid again. When it comes up for bid and if you're fortunate enough to get notified, then there's the bonding issue that is absolutely critical. And we are not able to [get] bonded. In terms of the SLEB Program . . . it would be really great if they had incremental meetings or networking opportunities that reduce the size of the agency down to something manageable, tangible and human. So participants in the Program have a chance to network with the buyers of the services and various departments. Otherwise its just a list online or on paper. [The County should] make people more available by having quarterly gatherings with the people who are responsible for buying the services. Give them a chance to present themselves so they can have one-on-one conversations. That could be very beneficial because the process of getting to the buyer is so big and so impersonal. One thing about being an emerging business is that you're constantly having to put your best foot forward and not everybody does that over the phone. It would give people who have a better presentation in person a chance to do that.



However, this Asian American professional services business owner believes that the SLEB Program provides small businesses with an opportunity to compete with majority-owned companies:

It gives an opportunity to the small business [owner] to be able to competitively compete for work which would probably not otherwise be available to them.

Finally, an Asian American owner of a construction company believes the County's M/WBE Program needs more authority to implement their program objectives. An example was provided of another agency that has shown a commitment to their business enterprise program:

[The business outreach office] needs to have more authority, more funds and more personnel to track projects once they've been implemented. In order to confirm that the subcontractors are getting the work that the prime [contractor] has [subcontracted]. A couple of weeks ago I went to Los Angeles for a couple of meetings with the Los Angeles Department of Power and Water. The general manager came to the pre-proposal meeting and made it clear, and I could tell he meant what he was saying. He identified who the large firms were and he said to each one of them, 'You can come back and submit your proposal [without] the 20 percent local requirements, but I will assure you that you will not get selected.' When prime [contractors] hear it from the general manager or the assistant general manager, they will think twice about coming up with creative ways to circumvent the requirements.

IX. POSITIVE STATEMENTS

Although interviewees were solicited for barriers they experienced with Alameda County, many business owners shared their sentiments regarding the positive experiences and relationships they have developed with County managers and staff. This Caucasian female owner of a professional services firm gives kudos to two of the County's employees:

When I saw the bid opportunity on-line, I made a bid inquiry via e-mail. And it did take him a while to get back to me from my initial contact, but once he did, we had a series of e-mails back and forth. He gave me as much information as he could. He emphasized that I should attend the bidder's conference to get my specific questions answered. He was really helpful. And I felt like he was really inviting of my company to participate in the bid.



Another person who was very helpful was [name withheld]. She's the business outreach officer, and she was great. She was very responsive. She got me all the paperwork that I needed and she answered my questions, processed my application, and sent me my certification notice. Even though it took a long time, she was great, very helpful and encouraging.

An African American owner of a services firm gave praises to the County's Public Works Department staff:

Alameda County's Public Works [Department] was very accessible and progressive thinking. [They were] willing to recognize their shortcomings and were able to say that they needed outside support. They integrated outside support so that they could improve their efficiencies. Our relationship with County staff and supervisors has been superb. The staff members and the supervisors consistently make themselves available. They listen, they follow-up, and they certainly have a genuine concern about the welfare of Alameda County firms and their ability to sustain themselves as viable entities. The Public Works people are very accessible, but the GSA folks are not.

An African American owner of a professional services firm has positive reports on working with the GSA and an authority:

[It was nice working with] the General Services Agency and the Surplus Land Authority. Those assignment went just fine.

This African American professional services business owner credits the County's mentorship program as a major factor in helping grow their business:

The County recommended a mentorship program to help small businesses benefit from the experience of [a] larger corporation. For example, we're working for [company name withheld] as a subcontractor and they are a big firm. We stand to gain a lot from them by working with them. The County [requires], by contract, [participation in their] mentorship program to mentor small businesses. It gives us an opportunity to grow and [learn] from somebody that's been in our shoes and has grown to a very sizable corporation, and does a lot public work with large agencies. This relationship I must admit has been not just a fruitful one, but an extremely good [one].

This same business owner speaks about a County employee who provided helpful information concerning the County's procurement process when the business first started:



I remember meeting with [name withheld] in her office and she walked me through [their procurement process like I was] a child because I was totally naïve about dealing with the County's system. And she showed me how to go through the maze and fill out all the forms. Alameda County [has been good] to me. If they didn't do business with me, I wouldn't be in business. It would be very hard, and I hope this relationship continues.

This Caucasian female owner of a construction services company describes a positive relationship she developed with a County representative in the Department of Public Works:

[Name withheld] with Alameda County in the Public Works Department has been very helpful in [informing me about] business outreach bureau meetings, e-mailing me and calling me personally to let me know what's going on. She's been really great [over] the last year-and-a-half.

This Asian American construction contractor gives the County kudos for drafting clear specifications:

The [Department of Public Work's staff] were responsive to my phone calls and their specifications were clear.

This Hispanic American owner of an engineering firm describes a positive relationship with the County's General Services Administration, especially its project management staff:

We are very pleased to be involved with GSA. We find that the management concept that GSA uses is above average when compared with other municipalities regarding the design and construction of the projects. The management that GSA hires are involved in the day-to-day project management and has been good to work with. At least to our experience and our knowledge, all have good experience in what they're doing—they are not rookies. You don't have to go in and answer a lot of questions to help them gain experience. One thing that we really appreciate from the GSA project management team is that they don't let any particular trade run the project. They want to hear from all the individual players. They want to hear from us on the air conditioning, heating, and the plumbing upgrade requirements. GSA also involves their energy conservation experts and their mechanical department in trying to make the right decision as to what needs to be upgraded and how energy efficient the building should be. When we as consulting engineers can get into a discussion like that with someone on the



owner's side and basically have a rapport or an open discussion without any outside influences, that usually helps the project become successful.

These minority business owners praised several individuals they worked with at the County:

The best ambassador for the County is [name withheld]. He was very good. He was sincere and very focused on what [his job was] in terms of outreach for the Public Works agency. He is in contracts compliance. And he drives the Business Outreach Bureau, they call it BOB.

There was someone that we worked with at the County who is a manager. He works in the community development group. His name is [name withheld] and he's been supportive and tried to help us directly when we were having difficulties. I've called him on occasion to ask him if he would be a reference. He is always very professional and always tells me when he can do something or when he can't do it, or if he needs us to talk to somebody else.

I've had managers call me and say, I didn't see your name on the bidder's list. Here's how you can get a copy of the RFP. I've had some staff try to ensure that we are able to compete [by keeping us] aware.

I talked to one of the buyers from Public Works and he was really kind. He said, 'I buy professional services, but not your service. The professional services that you're offering falls under training . . . He pointed me in the direction of the person I needed to talk to.

An African American representative of an architecture and engineering company reports on their positive relationship with County staff:

We have a great relationship with the County. On a weekly basis we provided them with progress . . . [reports]. They liked the way we conducted business, and they have been happy with us. I have [received] at least a couple of letters from the County thanking me for my hard work and appreciating what I have done for them. [They] made sure that the costs that they were paying to do the work was fair and reasonable.

A Hispanic American owner of a professional services firm reports having received helpful assistance regarding purchase orders from staff at the County's Purchasing Department:



[Names withheld] were very helpful [in the] Purchasing [Department]. If I had a question or some problem [with] purchase orders or a bid they bent over backwards to help [me]. [I] always got satisfaction from them.

This Asian American owner of a professional services firm speaks of the positive experience his firm had working with the Sheriff and District Attorney's offices:

[Everything,] from receiving the [SLEB] application to filling out the minority form and becoming a part of that pool [of business owners] . . . has been extremely positive. We feel that it's been very beneficial to our firm and [it has] also [helped] to build a very strong relationship with the County. The Sheriff's office was [both] formal and informal and we have established a pretty good repertoire with them. The managers at the D.A.'s office and the Sheriff's office were really spectacular and they were helpful. It started from a phone call setting up time frames to come out and do the work. In addition to making space available for us to do the work and making sure staff will be available to answer our questions.

X. RECOMMENDATIONS

The interviewees listed a number of ways the County could improve its programs, which included breaking up larger contracts into smaller ones and establishing better communication systems. Their recommendations are relevant to one or more of the County's programs.

Breaking up large contracts into smaller projects is suggested by this African American female construction business owner:

[The County should] break up some of their contracts into smaller [projects] so that the smaller companies and minorities can get a share of the pie. I've been in business for 18 years and I can't get a bond.

An African American owner of a professional services firm recommended that change orders be issued by percentage rather than by dollar amount:

If a contract is extended . . . in terms of change orders . . . and let's just say we're a construction management firm and we've hired out a subcontractor or we're a subcontractor hired by a larger firm, and due to some engineering discrepancy or unforeseen conditions [the contract is increased] another 25 percent, the prime would benefit from that, but [the subcontractor who] signed



on for a \$100,000 contract [with] the prime contractor [would not]. [If the change orders] were by percentages . . . instead of by dollar amount, the prime and the subcontractor would benefit from the [change order] or extension of the contract. I would also suggest a pre-conference [meeting] a month or so before the actual bid hits the street, or give some kind of a notification that it's coming up.

An African American female owner of a professional services firm suggests that County representatives who are responsible for negotiating public contracts be required to attend business fairs to meet small and minority contractors:

Those departments that have the largest laundry list of jobs to be contracted out should have representatives at the [business fairs]. Please come talk to us about these opportunities. Let's find out who you are and what needs to be done and if there's a match.

This Hispanic American male owner of a construction firm explains why the County's maintenance contracts are not reasonable or beneficial to the contractor:

The part that's very discouraging for me is the length of the maintenance [contracts]. Some of the County's mitigation jobs [require] three-year maintenance contracts, and those contracts really drag the project out. Landscapers like to get in, get [finished], and be done with the job. And they see a three-year maintenance [contract requirement] on it and shy away from wanting to bid on that job. It's difficult to maintain a job site for three years, especially if you're at a site that doesn't have any irrigation. Then you have to do reports on why these trees or bushes have died. So there's a lot of paperwork involved. And when you've experienced that on one of these jobs, you tend to want to shy away from doing that type of work again. It just seems to be very time consuming to do a walk through every three months and then do a follow-up report. In our industry, it's difficult to sit in an office and do all this paperwork, however that's one of the requirements of the project.

This same business owner recommends that maintenance contracts be limited to 60 or 90 days:

My recommendation would be to first complete the initial construction project because that's what landscapers like to do, put in the plants and put in the drain tubes or whatever. Then [the County should] issue a maintenance bid. We have two entities in my own company and I end up having landscape



crews put in the plants and then we turn it over to maintenance and it's another entity of our company that maintains it. So it's difficult for a landscaper to be responsible for the job for three years.

Additionally, this same business owner recommends that the County simplify its project specification plans to help alleviate liability to the contractor:

The contracts these days seem to really benefit the County instead of the contractor. If there's a discrepancy regarding the plan, [they say] please refer to the specifications. Everything falls back to cover itself, and therefore it's kind of leaving the contractor wide open for problems. I'm referring to that because some of the City and County maintenance contracts are having [us] include irrigation damage. How do you bid that? That's risky. What if a car drives through it during our maintenance period? It's on us. [If] you have a three-year maintenance period during that time and there's an accident or just an act of nature, we're still responsible for that project. There's too much liability.

Providing bidders with information on the previous awardee was recommended by this Caucasian female owner of a professional services firm:

My recommendation is that [with] each and every bid that comes out, the purchasing manager should be very open with the information from the last winner. For me to be successful, I need to know what I'm competing against. So just let me know what the last price was, the items that went out to bid. I would love that. [Give] SLEB's a chance.

An African American male owner of a services company believes the County needs to make changes within it's GSA department to reach out to SLEBs:

I think the GSA needs to do its own internal upgrades to meet their mission and gain clarity on how they can interface with other Alameda County departments. Once that's been accomplished, they will be in a much better position to identify how they're going to reach out to the consulting industry to supplement what they have from a core staff.

This African American male owner of a professional services firm recommends that the County's GSA and IT departments be evaluated to determine the percentage of contracts awarded to Oakland-based firms:



There should be an evaluation of GSA staff and then the IT department. There should be a performance evaluation [to determine] . . . how much business they actually give to businesses within the urban core . . . meaning Oakland, then how much of that business is really going to African American firms.

Auditing the County's contracts to determine the percentage awarded to minority firms was recommended by this Asian American male owner of an architectural firm:

I would recommend that ethnic organizations [form] a coalition and demand auditing from the [County] in terms of [the percentage of] contracts to minority businesses. [Basically], who's getting [contracts] inside and outside the County. [Also], subcontracts should be audited. A report [should be given] to the supervisors for contracts \$10,000 dollars and above by product service category, ethnicity, and gender.

Dividing larger contracts into smaller projects is suggested by this African American female owner of a services company:

In my industry [the contracts] need to be divided up. They should be divided up like the City of Oakland. Or, the County could proactively encourage collective bidding. If this was [implemented] by the County, that would be an awesome way to get more SLEBs in the program.

This Asian American female owner of a services firm suggests the County sponsor classes on how to package proposals:

Even though my English is pretty good, when it comes to actually writing a proposal, I lack the technical experience. I tried to find out what [agencies] are looking for in their proposals. Maybe [the County] could have a class on how to write proposals.

An African American male owner of a professional services firm suggests the County use federal and state laws regarding funding requirements to increase the participation of African American and minority businesses on their contracts:

I think that the majority [-owned] firms that do business with Alameda County must be put on notice that they need to do business with . . . Black and minority businesses. I believe that Alameda County needs to utilize federal laws and state laws to encourage and force those major firms to do business with Black and minority businesses. There are strings attached with receiving



federal funds and where those federal funds are being received [should] be used as a leverage . . . to get the majority [-owned] firms to participate.

An Asian American female owner of an architectural firm recommends the County make presentations at women business organizations to inform the business community about their contracting opportunities:

One recommendation I have is that if [the County] is interested in [encouraging] more women and minorities [to bid for their] work, they [should] make a presentation yearly or monthly at the Organization of Women Architects [meetings]. That might give us a little bit more insight on how things work and how people who have not been involved may be [able to] get [involved].

Finally, a bonding assistance program for small business owners was recommended by this Hispanic American male construction contractor:

It would be good if they had a bonding assistance program [for] companies that don't quite have enough bonding capacity to meet the [bond requirements]. [Because] they may have the capacity to do the work.

XI. SUMMARY

The interviewees expressed a myriad of opinions regarding the County's procurement practices—both pros and cons. However, there was one issue that was mentioned by all ethnic and gender groups as a barrier to obtaining County contracts—a preference for utilizing the same few contractors. Many of the SLEBs expressed frustration at what they believe is the County's failure to reach out to small local and emerging businesses.

Difficulty obtaining responses to inquiries from County employees was another common barrier. This was described as encountering a wall when they try to make contact. The inquiries included seeking information regarding bids, renewal deadlines for the County's insurance contracts, and information or status on M/WBE and SLEB applications. There were several anecdotes describing the frustration of business owners trying to make contact with County representatives, to no avail.

Some business owners reported on the hardship for small businesses trying to meet the County's insurance requirements, especially professional liability and worker's compensation insurance. Other business owners believe that the County's practice of outsourcing



management of their construction projects to outside consultants can be detrimental to prime contractors, which trickles down to subcontractors. There were several instances where prime contractors and subcontractors believe they were unfairly treated by management consultants while agency managers failed to intervene.

In conclusion, it should also be noted that many business owners described the County's SLEB and M/WBE programs as valuable and a major factor in keeping their business solvent. Additionally, numerous positive comments were made praising County employees for their helpfulness and hard work. Table 9.02 lists a summary of findings concerning business barriers encountered by minorities, women and small business enterprises.



Table 9.02 Summary of Findings Concerning Barriers Against Minorities, Women, and Small Business Enterprises

Type of Evidence	African Americans	Asian Americans	Hispanic Americans	American Indians	Caucasian Females
RACE AND GENDER BARRIERS					
Race-Based Barriers	✓	✓			
Gender-Based Barriers	✓	✓	✓		✓
BARRIERS CREATED BY THE COUNTY					
Barriers Created By County Managers	✓	✓			✓
Difficulty Obtaining Responses to Inquiries from County Employees	✓				✓
County's Preference for Utilizing the Same Contractors	✓	✓	✓	✓	✓
Agency Failure To Monitor SLEB Program Requirements	✓	✓	✓		
BARRIERS CREATED BY THE CONTRACTOR COMMUNITY					
Good Old Boys Network	✓	✓			✓

Table 9.02 Summary of Findings Concerning Barriers Against Minorities, Women, and Small Business Enterprises

Type of Evidence	African Americans	Asian Americans	Hispanic Americans	American Indians	Caucasian Females
Primes Avoiding SLEB and M/WBE Requirements and Listing Them Without Their Permission	✓		✓		
DIFFICULTIES IN BID PROCESS					
Difficulty Obtaining Bid Information	✓	✓			✓
Inadequate Lead Time	✓	✓	✓		✓
FINANCIAL BARRIERS					
Difficulty Obtaining Financing or Bonding	✓	✓	✓		✓
Difficulty Meeting Insurance	✓				✓
Late Payment by Prime Contractor	✓	✓	✓		✓
Late Payment by Public Agency	✓	✓	✓		✓

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Table 9.02 Summary of Findings Concerning Barriers Against Minorities, Women, and Small Business Enterprises

Type of Evidence	African Americans	Asian Americans	Hispanic Americans	American Indians	Caucasian Females
CERTIFICATION ISSUES					
Excessive Paperwork or Problems With Certification Procedures	✓	✓	✓		✓



10

RACE AND GENDER NEUTRAL PROGRAM ASSESSMENT

I. INTRODUCTION

This chapter assesses the local small business program that Alameda County (County) enacted to promote equity in its contracting practices. The assessment examined the level of local small emerging business use on County contracts during the study period July 1, 2000 to June 30, 2003. The capacity of County businesses is also described for purposes of reconsidering the County's small business definition. Finally, County business owners were interviewed to determine if they encountered impediments when contracting with the County or attempting to do so.

II. DESCRIPTION OF COUNTY PROGRAM

The County has two program initiatives established to strengthen the local economy and establish equity in the award of contracts. The programs are the Local Business Program (LBE) and the Small Local Emerging Business Program (SLEB). The first of the programs authorized by the County Board of Supervisors was the Local Business Preferences. The local business statute was approved in 1991 and nine years later the Small Local Emerging Business Program was promulgated. This Program incorporated the local business preferences.

A. Local Business Preferences

In 1990, the Alameda County Board of Supervisors adopted the Resolution which amended the Purchasing Provisions of the County Administrative Code by adding Section 4-3.15 entitled "Preference for Local Products and Vendors." An Ordinance amending the



purchasing provisions was enacted in 1991. The amendment granted a five percent preference to Alameda County vendors providing goods and services using sealed bids, except those contracts which state law required be awarded to the lowest responsible bidder. The Program had no certification requirements. To qualify, businesses only needed to provide a business license issued by the County or a city within the County and proof of residency.

B. Small Local Emerging Business Program

The Board of Supervisors adopted the SLEB Program in 2000 as a pilot. The local business preferences were incorporated into the SLEB Program. The SLEB Program, which is an economic incentive-based program, was implemented to provide small Alameda County businesses equal access to contracting opportunities regardless of race, color, gender, age, religion, national origin, or disability. The Program applies to the procurement of goods and services, except construction. An additional five percent bid preference is applied to the sealed bids of SLEB vendors for a total of ten percent. There is also a SLEB subcontracting requirement on all contracts over \$25,000, except construction. Non-SLEB prime contractors are required to subcontract 20 percent of their contract amount to one or more SLEBs, unless the County grants a waiver.

To participate in the SLEB Program, businesses must be domiciled in Alameda County and be certified as either a small or an emerging business. To be classified as local, a business must demonstrate that it maintains a physical presence within the geographical limits of Alameda County. That presence may be evidenced by commercial advertising, a telephone book listing, or other documents such as letterhead and marketing materials. Firms must hold a valid business license issued by the County or a city within the County.

The small business certification standard used by the County is the U.S. Federal Small Business Administration's (SBA) size standard for a small business. That small business standard uses gross receipts and number of employees for the last three tax years, which vary by commodity and service. For example, the standard for architecture and engineering is \$4 million, civil engineering is \$6 million, general and heavy construction is \$28.5 million, special trades is \$12 million, and business and personal services is \$6 million.¹

The County's certification standard for emerging businesses is one-half of the SBA small business size standard. The business must also have been in the Program for less than five years. The General Services Agency (GSA) is responsible for the certification process. Compliance is conducted on all contracts being renewed or extended. Annual SLEB reports are submitted to the County Administrator.

¹ www.sba.gov.



The summary of the County’s local business program and its covered industries, procurement thresholds, and bid preferences is presented in the table below.

Table 10.01 Summary of County Program Characteristics

Programs	Industries Included	Preferences
<ul style="list-style-type: none"> • Small Local Emerging Business (SLEB) Program 	<ul style="list-style-type: none"> • Architecture and Engineering • Professional Services • Goods and Other Services • (Construction is excluded) 	<ul style="list-style-type: none"> • Sealed bids over \$25,000: 5% bid evaluation preference to Local Businesses and 5% bid evaluation preference to Small or Emerging Businesses, for a maximum total of 10% bid evaluation preference* • Non-SLEBs do not receive bid evaluation points and are required to partner a minimum of 20% with certified SLEBs

* Small and emerging businesses must meet the definition of a local business to become certified. The SLEB program certifies local small and local emerging businesses. There is no certification for local large businesses.

III. LOCAL BUSINESS UTILIZATION

A. Data Sources

Records for local companies were extracted from ALCOLINK, the County’s financial and procurement system. Companies in Alameda County cities were deemed to be local companies. The County does not conduct a local business certification procedure, nor do they mark local companies as such in their procurement system. However, external certifications sources, such as Caltrans and the City of Oakland are accepted. While large firms do not go through the certification process, they must provide all of the residency proof documents, such as a lease agreement, property deed, and utility bill to prove they are local in order to receive the 5 percent bid preference. Small and emerging business owners who do not want to certify must go through the same documentation as the local businesses. Firms with Alameda



County addresses are assumed to be local firms for purposes of the local business utilization described below.

Purchase order and payment data was provided for the Availability Study by the County’s Information Technology Department. Some of the records were missing ethnicity and gender information. To secure complete ethnicity and gender information, company names were cross-referenced with directories and lists providing such data.² Additionally, telephone calls were made to the businesses to collect ethnicity and gender information. This information was then placed in a relational database and used for all chapters of the Availability Study.

B. Local Business Utilization by Industry

The total contract dollars awarded to local businesses, by industry, is depicted in Table 10.02. Local businesses received contracts totaling \$318,894,512, representing 57.76 percent of all dollars. The highest percentage of local contract dollars were awarded to construction firms, at 79.11 percent. The percentage of local contract dollars was 59.51 for goods and other services, 37.37 for professional services, and 29.65 for architecture and engineering.

Table 10.02 Local Business Utilization by Industry

Industry	Amount of Local Dollars	Percent of Local Dollars
Construction	\$111,624,207	79.11%
Architecture and Engineering	\$15,914,980	29.65%
Professional Services	\$35,927,933	37.37%
Goods and Other Services	\$155,427,391	59.51%
Total Local Dollars	\$318,894,512	57.76%
Total All Dollars	\$552,096,155	100.00%

² The directory and list sources are in the Availability Chapter 6, Table 6.01.



C. Local Business Utilization by Ethnicity and Gender

Local business utilization by ethnicity and gender is presented in Table 10.03. Caucasian males received 73.71 percent of the local dollars. The minority groups and Caucasian women businesses received the balance of 26.29 percent of these dollars.

Table 10.03 Local Business Utilization by Ethnicity

Ethnicity	Amount of Local Dollars	Percent of Local Dollars
African Americans	\$4,940,905	1.55%
Asian Americans	\$5,882,227	1.84%
Hispanic Americans	\$12,493,078	3.92%
Native Americans	\$45,714	0.01%
Caucasian Females	\$60,499,344	18.96%
Caucasian Males	\$235,146,562	73.71%
Total Local Dollars	\$318,894,512	57.76%
Total All Dollars	\$552,096,155	100.00%

D. Local Business Utilization by Alameda County Cities, Incorporated Areas, and Towns

There are 14 cities, two unincorporated areas, and three towns in Alameda County. Table 10.04 depicts the percentage of dollars awarded to companies in these areas. Businesses in Oakland received the largest percentage, or 63.3 percent of the local dollars. Hayward received the next largest amount at 10.79 percent, and San Leandro and Pleasanton received 4.58 percent and 4.56 percent, respectively. The balance of cities received 16.77 percent of the local contract dollars. The population size and percentages for each jurisdiction is also included in the table.



**Table 10.04 Local Business Utilization by Alameda County Cities ,
Incorporated Areas, and Towns**

Alameda County Cities, Incorporated Areas, and Towns	Population Size	Percent of County Population	Local Dollars	Percent of Local Dollars
Oakland	398,844	27.61	\$201,866,180	63.30%
Hayward	141,336	9.78	\$34,418,509	10.79%
San Leandro	80,139	5.55	\$14,614,744	4.58%
Pleasanton	65,982	4.57	\$14,529,912	4.56%
Berkeley	102,049	7.06	\$10,755,027	3.37%
Emeryville	6,882	0.48	\$9,148,480	2.87%
Fremont	204,525	14.16	\$8,520,523	2.67%
San Lorenzo*	22,400	1.55	\$6,127,156	1.92%
Dublin	35,581	2.56	\$6,113,630	1.92%
Livermore	77,744	5.38	\$5,685,665	1.78%
Union City	69,309	4.80	\$2,421,240	0.76%
Alameda	71,805	4.97	\$1,632,401	0.51%
Newark	43,042	2.98	\$1,403,064	0.44%
Albany	16,444	1.14	\$941,263	0.30%
Castro Valley*	60,000	4.15	\$706,899	0.22%
Piedmont	10,952	0.76	\$8,190	0.00%
Sunol**	1,332	0.09	\$1,629	0.00%
Ashland**	22,300	1.54	None	0.00%
Cherryland**	13,837	0.96	None	0.00%
Totals	1,444,503	100.00%	\$318,894,512	100.00%

* Unincorporated Areas

** Towns

Source: U.S. Census Bureau, 2000 Census; ePodunk.



IV. SMALL LOCAL EMERGING BUSINESS UTILIZATION

A. Data Sources

1. Prime Contracts

Prime contract records were extracted from ALCOLINK, the County's financial and procurement system. ALCOLINK did not code the certification status of the prime contractors. The only electronic source of SLEB contractor utilization was an Access database maintained by General Services Agency (GSA). This database was designed to assist GSA-Purchasing with tracking contract award information. This database, however, could not be used as it did not contain links to ALCOLINK records. Alternatively, the County's Small Local Emerging Business Certification database was used to determine the utilized vendors that were certified. The unique list of utilized vendors was queried against the list of certified small local emerging businesses. The query identified all of the prime contractors in the ALCOLINK database that were certified as small local emerging businesses. The analysis of the informal and formal contracts awarded to these businesses is described below.

2. Subcontracts

Subcontracts were not recorded in ALCOLINK. It was determined that County Board Resolution Letters were a source of SLEB subcontractor records. The Board Resolution Letters submitted to the Board of Supervisors for approval to award a contract required the naming of proposed SLEB subcontractors.

Mason Tillman identified 45 Board Resolutions Letters on file with GSA requesting approval of contracts \$25,000 or greater for services, excluding construction. There were also some high-profile goods contracts that required Board approval. Some of the Board Resolution letters only stated that the prime contractors intended to subcontract the required 20 percent with unnamed subcontractor(s). Other Board Resolution Letters approved SLEB participation waivers.

In each instance where the Board Resolution Letter stated that the SLEB bid preference would be met, the prime contractor was contacted to verify the SLEB subcontractor and the payment amount. This research was conducted by GSA, in cooperation with staff from Mason Tillman and the County Administrator's Office (CAO). Additional research was conducted by GSA and CAO in an effort to compile a comprehensive account of the contracts that met the 20 percent SLEB requirement.



The utilization of SLEBs as subcontractors on professional services, architectural and engineering, and goods and other services contracts awarded between July 1, 2000 and June 30, 2003 was analyzed using data compiled from the various sources described above. The findings from the analysis is detailed below.

B. Small Local Emerging Business Prime Contractor Utilization Analysis: Contracts Over \$100,000

1. Small Local Emerging Business Prime Contractor Utilization On Contracts Over \$100,000

As indicated in Table 10.05, there were 561 prime contracts over \$100,000 during the July 1, 2000 to June 30, 2003 study period totaling \$303,345,432.³ SLEBs received 36 or 6.8 percent of the contracts representing \$9,102,112 or 9.98 percent of these dollars.

Table 10.05 Small Local Emerging Business Prime Contractor Utilization On Contracts Over \$100,000

Type of Business	Utilization Dollars	Percent of Dollars	Number of Contracts	Percent of Contracts
SLEB	\$9,102,112	9.98%	36	6.8%
Non-SLEB	\$294,243,320	90.02%	525	93.2%
Total Prime Contracts Over \$100,000	\$303,345,432	100.00%	561	100.00%

³ Contracts were counted as a SLEB contract if the vendor was a certified SLEB. The SLEB program was implemented in October 20, 2000, so the utilization analysis in this Chapter is an overestimate of SLEB use because it assumes currently certified SLEBs were certified in the three months before the SLEB program was fully operational, between July 1, 2000 and October 20, 2000.



2. Small Local Emerging Business Prime Contractor Utilization by Industry On Contracts Over \$100,000

Prime contract dollars over \$100,000 totaled \$303,345,432 during the July 1, 2000 to June 30, 2003 study period. SLEB prime contract dollars over \$100,000 is presented in Table 10.06. SLEBs received \$9,102,112 of those dollars. Architecture and engineering firms received \$946,771, professional services firms received \$4,011,731 and goods and other services received \$4,143,610. The distribution of SLEB dollars by ethnicity and gender is presented in the following sections.

Table 10.06 Small Local Emerging Business Prime Contractor Utilization by Industry By Industry On Contracts Over \$100,000

Industry	Amount of SLEB Dollars	Percent of SLEB Dollars	Number of SLEB Contract	Percent of SLEB Contracts
Architecture and Engineering	\$946,771	1.98%	5	7.81%
Professional Services	\$4,011,731	5.59%	19	12.18%
Goods and Other Services	\$4,143,610	2.26%	12	5.04%
Total SLEB	\$9,102,112	3.00%	36	7.86%
Total Prime Contracts Over \$100,000	\$303,345,432		561	



3. Small Local Emerging Business Architecture and Engineering Prime Contractor Utilization by Ethnicity On Contracts Over \$100,000

As shown in Table 10.07, SLEBs received \$946,771 of the total architecture and engineering prime contract dollars over \$100,000, during the July 1, 2000 to June 30, 2003 study period. Caucasian male businesses received all of the SLEB prime contract dollars in this category.

Table 10.07 Small Local Emerging Business Architecture and Engineering Prime Contractor Utilization by Ethnicity On Contracts Over \$100,000

Ethnicity	Amount of SLEB Dollars	Percent of SLEB Dollars	Number of SLEB Contracts	Percent of SLEB Contracts
African Americans	\$0	0.00%	0	0.00%
Asian Americans	\$0	0.00%	0	0.00%
Hispanic Americans	\$0	0.00%	0	0.00%
Native Americans	\$0	0.00%	0	0.00%
Caucasian Females	\$0	0.00%	0	0.00%
Caucasian Males	\$946,771	1.98%	5	7.81%
Total SLEB	\$946,771	1.98%	5	7.81%

Total Prime Contracts Over \$100,000 \$47,859,013 64



**4. Small Local Emerging Business Professional Services Prime Contractor
Utilization by Ethnicity On Contracts Over \$100,000**

As shown in Table 10.08, SLEBS received \$4,011,731 of the total professional services prime contract dollars over \$100,000, during the July 1, 2000 to June 30, 2003 study period. Caucasian females received \$1,963,200 of those dollars, and Caucasian males received \$1,329,881. The minority groups received less than \$800,000.

**Table 10.08 Small Local Emerging Business Professional Services Prime Contractor
Utilization by Ethnicity On Contracts Over \$100,000**

Ethnicity	Amount of SLEB Dollars	Percent of SLEB Dollars	Number of SLEB Contracts	Percent of SLEB Contracts
African Americans	\$429,156	0.60%	3	1.29%
Asian Americans	\$100,156	0.14%	1	0.64%
Hispanic Americans	\$189,338	0.26%	1	0.64%
Native Americans	\$0	0.00%	0	0.00%
Caucasian Females	\$1,963,200	2.73%	7	4.49%
Caucasian Males	\$1,329,881	1.85%	7	4.49%
Total SLEB	\$4,011,731	5.59%	19	12.18%
Total Prime Contracts Over \$100,000	\$71,788,453		156	



5. Small Local Emerging Business Goods and Other Services Prime Contractor Utilization by Ethnicity On Contracts Over \$100,000

As shown in Table 10.09, SLEBs received \$4,143,610 of the total goods and other services prime contract dollars over \$100,000. Caucasian males, females, and Hispanic American firms received all of the SLEB dollars in this category.

Table 10.09 Small Local Emerging Business Goods and Services Prime Contractor Utilization by Ethnicity On Contracts Over \$100,000

Ethnicity	Amount of SLEB Dollars	Percent of SLEB Dollars	Number of SLEB Contracts	Percent of SLEB Contracts
African Americans	\$0	0.00%	0	0.00%
Asian Americans	\$0	0.00%	0	0.00%
Hispanic Americans	\$957,051	0.52%	2	0.84%
Native Americans	\$0	0.00%	0	0.00%
Caucasian Females	\$872,316	0.47%	4	1.68%
Caucasian Males	\$2,314,243	1.26%	6	2.52%
Total SLEB	\$4,143,610	2.26%	12	5.04%
Total Prime Contracts Over \$100,000	\$183,697,966		238	



C. Small Local Emerging Business Prime Contractor Utilization: Contracts \$25,000 and Under

There were \$54,353,140 prime contract dollars \$25,000 and under, represented by 8,868 contracts. SLEBs received \$2,364,853 of those dollars, represented by 263 contracts. The distribution of those dollars by ethnicity and gender is presented in the following sections.

Table 10.10 Small Local Emerging Business Prime Contractor Utilization On Contracts \$25,000 and Under by Industry

Ethnicity	Amount of SLEB Dollars	Percent of SLEB Dollars	Number of SLEB Contracts	Percent of SLEB Contracts
Architecture and Engineering	\$311,892	10.89%	28	8.70%
Professional Services	\$1,061,696	10.15%	99	7.75%
Goods and Other Services	\$991,264	2.42%	136	1.87%
Total SLEB	\$2,364,853	4.35%	263	2.97%
Total Prime Contracts \$25,000 and Under	\$54,353,140		8,868	
SLEB Percent	4.5%		2.96%	



1. Small Local Emerging Business Architecture and Engineering Prime Contractor Utilization By Ethnicity On Contracts \$25,000 and Under

As shown in Table 10.11, SLEBS received \$311,892 of the total architecture and engineering prime contract dollars \$25,000 and under. Caucasian male-owned firms received \$193,939 of the dollars in this category. Caucasian females and Asian Americans received the balance of dollars.

Table 10.11 Small Local Emerging Business Architecture and Engineering Prime Contractor Utilization On Contracts \$25,000 and Under

Ethnicity	Amount of SLEB Dollars	Percent of SLEB Dollars	Number of SLEB Contracts	Percent of SLEB Contracts
African Americans	\$0	0.00%	0	0.00%
Asian Americans	\$68,911	2.41%	5	1.55%
Hispanic Americans	\$0	0.00%	0	0.00%
Native Americans	\$0	0.00%	0	0.00%
Caucasian Females	\$49,043	1.71%	2	0.62%
Caucasian Males	\$193,939	6.77%	21	6.52%
Total SLEB	\$311,892	10.89%	28	8.70%

Totals Prime Contracts \$25,000 and Under

\$2,863,379

322



2. Small Local Emerging Business Professional Services Prime Contractor Utilization by Ethnicity On Contracts \$25,000 and Under

As shown in Table 10.12, SLEBs received \$1,061,696 of the total professional services prime contract dollars \$25,000 and under. Caucasian males and Asian Americans received most of those dollars.

Table 10.12 Small Local Emerging Business Professional Services Prime Contractor Utilization By Ethnicity On Contracts \$25,000 and Under

Ethnicity	Amount of SLEB Dollars	Percent of SLEB Dollars	Number of SLEB Contracts	Percent of SLEB Contracts
African Americans	\$114,472	1.09%	10	0.78%
Asian Americans	\$353,260	3.38%	29	2.27%
Hispanic Americans	\$69,463	0.66%	4	0.31%
Native Americans	\$0	0.00%	0	0.00%
Caucasian Females	\$95,951	0.92%	13	1.02%
Caucasian Males	\$428,549	4.10%	43	3.37%
Total SLEB	\$1,061,696	10.15%	99	7.75%
Total Prime Contracts \$25,000 and Under	\$10,464,413		1,277	



3. Small Local Emerging Business Goods and Other Services Prime Contractor Utilization By Ethnicity On Contracts \$25,000 and Under

As shown in Table 10.13, SLEBs received \$991,264 of the total goods and other services prime contract dollars \$25,000 and under. Caucasian males received \$532,507, or more than one-half of those dollars.

Table 10.13 Small Local Emerging Business Goods and Other Services Prime Contractor Utilization By Ethnicity On Contracts \$25,000 and Under

Ethnicity	Amount of SLEB Dollars	Percent of SLEB Dollars	Number of SLEB Contracts	Percent of SLEB Contracts
African Americans	\$37,503	0.09%	4	0.06%
Asian Americans	\$63,183	0.15%	12	0.17%
Hispanic Americans	\$158,072	0.39%	10	0.14%
Native Americans	\$0	0.00%	0	0.00%
Caucasian Females	\$199,998	0.49%	32	0.44%
Caucasian Males	\$532,507	1.30%	78	1.07%
Total SLEB	\$991,264	2.42%	136	1.87%

Total Prime Contracts \$25,000 and Under

\$41,025,348

7,269



**D. Small Local Emerging Business
Subcontractor Utilization: Contracts Over
\$100,000**

Non-SLEB prime contractors are required to subcontract 20 percent of their contracts over \$100,000 to SLEBs. An analysis was conducted to determine what percentage of those dollars SLEBs received. Table 10.14 presents SLEB subcontractor use on prime contracts over \$100,000 awarded by non-SLEB contractors, by industry. SLEBs received 5.7 percent of the dollars overall. SLEB architecture and engineering firms received 2.94 percent, professional services firms 6.3 percent, and goods and other services firms 6.29 percent.

**Table 10.14 Small Local Emerging Business Subcontractor Utilization by Industry
On Contracts Over \$100,000**

Industry	Non-SLEB Prime Contracts Over \$100,000	SLEB Subcontractor Dollars	Percent Dollars To SLEB Subcontractors
Architecture and Engineering	\$46,912,242	\$1,378,108	2.94%
Professional Services	\$151,030,498	\$9,513,254	6.30%
Goods and Other Services	\$67,776,722	\$4,260,153	6.29%
Totals	\$265,719,462	\$15,151,515	5.70%



**E. Local Emerging Business Utilization:
Contracts Over \$25,000**

The County provides a 10 percent bid evaluation preference to local emerging businesses on Contracts over \$25,000. An analysis was conducted to determine what percentage of the contracts over \$25,000 was awarded to local emerging businesses. As noted in Table 10.15, local emerging businesses were awarded 1.16 percent of the contract dollars over \$25,000. For architecture and engineering, the percentage is 0.29, for professional services it is 3.97, and for goods and other services it is 0.27.

Table 10.15 Local Emerging Business Utilization On Contracts Over \$25,000

Industry	Total Contract Dollars Over \$25,000	Local Emerging Business Dollars	Local Emerging Business Percent
Architecture and Engineering	\$50,821,160	\$148,175	0.29%
Professional Services	\$85,665,731	\$3,399,038	3.97%
Goods and Other Services	\$220,188,775	\$585,868	0.27%
Totals	\$356,675,666	\$4,133,081	1.16%



**F. Local Emerging Business Utilization:
Contracts \$25,000 and Under**

An analysis was conducted to determine what percentage of the contracts \$25,000 and under was awarded to local emerging businesses. As noted in Table 10.16, local emerging businesses were awarded 1.31 percent of the contract dollars \$25,000 and under. For architecture and engineering, the percentage is 0.94, for professional services it is 3.05, and for goods and other services it is 0.89.

Table 10.16 Local Emerging Business Utilization On Contracts \$25,000 and Under

Industry	Total Contract Dollars \$25,000 and Under	Local Emerging Business Dollars	Local Emerging Business Percent
Architecture and Engineering	\$2,863,379	\$27,015	0.94%
Professional Services	\$10,464,413	\$319,608	3.05%
Goods and Other Services	\$41,000,347	\$365,501	0.89%
Totals	\$54,328,140	\$712,125	1.31%

V. ALAMEDA COUNTY BUSINESS CAPACITY

A. Capacity Sources

In order to evaluate the level of local business utilization on County contracts, the capacity of local businesses should be examined. The County requested a profile of the businesses in Alameda County by ethnicity, gender, and industry. The profile would define, for each ethnic and gender group, the number of employees and gross receipts averaged over three tax reporting years.

A number of methods were used in an attempt to compile the profile according to the County’s specifications. The most comprehensive and current data source for the three-year period is the business license records. Each city in the County requires businesses within its jurisdiction to secure a business license issued annually by the municipality. Businesses



operating in the unincorporated areas of the County are required to secure a business license from the County. The business license application requires the disclosure of annual gross receipts, industry classification, and business location. Business license information collected by cities and the County may be a source for assessing the gross receipts for each Alameda County business over the three-year period, even given some under reporting of income by some businesses.

A concerted effort was made to secure the business license data from the cities and the County. The County Administrator's office made a written request to each of the entities. One city provided the number of employees for each business in its jurisdiction, but not the gross receipts or business name. Two of the cities provided lists of businesses only, while another two provided only a list of the current month of business licenses. None of the other cities provided either gross receipts or number of employees. Since the data set was incomplete, a capacity analysis could not be performed.

Certification records were also considered as a potential source of the data. Applications for small, minority and woman-owned business certification require the submission of three years of tax returns and information on number of employees. Eight agencies certify small, minority and women business enterprises. The certification process is voluntary and businesses report during anecdotal interviews that it is quite complex, thus it is not utilized by some of the County's potentially eligible businesses. It was determined that, during the study period, 3,439 of the County's businesses were identified as a local business. Companies owned by a woman or minority number 14,086,⁴ yet less than 25 percent of the businesses are certified by any one of the eight certification agencies.

There was the additional problem of access to this data set. The certifying agencies contacted indicated that the information in the certification applications was confidential. Therefore it was not available to outside agencies.

A request was made to EDAB to secure gross income and number of employees for each Alameda County business. EDAB's database does not include gross income. While it does include number of employees, the database does not indicate the ethnicity and gender of each vendor. Because ethnicity and gender was a critical variables in the Availability Study research, methods for cross-referencing the Study's availability list with the EDAB's list was investigated with EDAB staff. However, EDAB had an agreement with the list provider to keep the information confidential. Because of confidentiality issues on the part of EDAB, it

⁴ U.S. Census, 1997. Census numbers are an overcount of minorities and women. Hispanic American businesses may be counted in more than one ethnic group and women-owned businesses may be counted both in their respective ethnic group and in the women-owned business group. However, while the census information may be an overcount of businesses, it is the best available and should be considered an estimate.



was suggested that Mason Tillman could give them the Study's availability list, which EDAB staff would cross-reference with the EDAB list. However, they could only return the collated list with vendor names purged from the list. EDAB also indicated that that process was very complex and time consuming, and therefore very demanding on EDAB's staff. Mason Tillman concluded that the end product would be incomplete and not sufficient to use in the Availability Study.

Dun and Bradstreet (D&B) vendor database was identified as another potential source for information on number of employees and gross receipts of County businesses, by ethnicity and gender. This source was tested for comprehensiveness and reliability. A random sample of 20 utilized vendors, representing non-M/WBE firms, and a random sample of 20 Caltrans-certified small and M/WBE firms were selected. The samples were then compared with information available from D&B to determine whether D&B is an equally representative source of M/WBEs and non-M/WBEs, as well as of large and small businesses. It was determined that while 80 percent of utilized vendors were listed in D&B, only 55 percent of M/WBEs were listed. This shows that D&B underrepresents minority and women-owned businesses. In addition, a concern was raised regarding completeness and reliability of the records. Fourteen percent of the sample D&B records did not have information on number of employees or gross receipts. Mason Tillman's own record in D&B was incomplete and outdated. In addition, D&B acknowledge that their ethnic identification was not complete. Based on this analysis, it was determined that this source did not meet the requirement.

The U.S. Census report on the *Statistics of United States Businesses, 2001* was determined to be the only source for answering the questions of County business capacity. This was the only source that could provide the number of businesses in Alameda County within each industry category by given gross receipts or employment size range. A special report on the gross receipts and number of employees for County businesses was requested from the Census. The limitation of the Census data was that it did not include ethnicity and gender ownership of the businesses by industry. It also does not reflect businesses during the July 1, 2000 to July 1, 2003 study period. It therefore should be considered an estimate of the County's business characteristics during the study period.

Census reports on Small Minority-Owned Business Enterprises (SMOBEs) and Small Women-Owned Business Enterprises (SWOBEs) were also used. One limitation of SMOBE/SWOBE reports is that they do not show industry at the county level. These reports were used to show the number of businesses and the total gross revenues within each ethnic/gender category. Another limitation in these reports is that they do not report non-minority business information. The numbers for non-minorities were estimated by subtracting the minority number from the Census count of total businesses in the County.



As indicated above, business Census data is dated. For that reason, Census data should not be used, and is not used in this report as availability percentages in the disparity analysis. However, it is the most current information on County business characteristics and, is therefore used in the next section to describe the characteristics of Alameda County businesses. This description should be considered an estimate only.

B. Profile of Alameda County Businesses

The capacity of a local business can be defined by the number of employees and the gross receipts. For many industries, the number of employees is a significant indicator of the capacity of a business to perform work. The presence of many employees suggests that the business is capable of performing management, administrative, and technical work. Gross receipts indicate the magnitude of work the business has already undertaken and the resources that might be available to operate a business. As discussed, the available data did not permit the performance of cross tabulations.

1. Gross Receipts for County Businesses by Industry

As listed in Table 10.17, according to the 1997 U.S. Census, more than 70 percent of the County's businesses had average gross receipts of less than \$1 million during the previous three fiscal years and 57.4 percent had gross receipts under \$500,000.⁵

While the Census did not provide ranges within industries exactly consistent with the Small Business Administration's service or commodity size standards,⁶ more than 97 percent of the County's construction companies had gross receipts under \$25 million, 73.4 percent were under \$1 million, and 57.6 percent were under \$500,000. For professional services, 91.8 percent were under \$5 million, 79.6 percent were under \$1 million, and 65.8 percent were under \$500,000.⁷ This gross receipts data suggest that most of the companies in the County are small, with gross receipts under 1 million dollars and more than one-half with gross receipts under \$500,000.

⁵ The Census could only provide aggregate data, so the data includes some companies not used by the County, for example nail salons and beauty shops. This is the most recent business statistics available from the census.

⁶ SBA has a complex definition of a small business. It is defined as number of employees for some industries and by gross income for others. Also, the gross income threshold is different for different Standard Industrial Classification Categories. Therefore, the Census data was insufficient to determine exactly how many businesses in the County fit the SBA definition of a small business. However, a size breakdown, by gross receipts is provided, within industries.

⁷ Note: Industry categories are not mutually exclusive, therefore the totals in each category do not add up to the overall total number of firms in Alameda County. The "other categories" include agricultural services, forestry, fishing, hunting, mining pipelines, electric, gas, sanitary services, and non-classifiable establishments. These categories are not included in the current study.



Table 10.17 Gross Receipts for County Businesses by Industry

Industry	Total	Gross Receipts						
		0-49,999	50,000-99,999	100,000-499,999	500,000-999,999	1,000,000-4,999,999	5,000,000-24,999,999	25,000,000+
Total	30,577	2,736	2,972	11,858	3,967	4,995	1,957	2,092
Percentage		8.9%	9.7%	38.8%	13.0%	16.3%	6.4%	6.8%
Construction	2,572	195	226	1,059	406	466	148	72
Percentage	8.4%	7.6%	8.8%	41.2%	15.8%	18.1%	5.8%	2.8%
Professional Services	8,811	823	989	3,994	1,217	1,075	333	380
Percentage	28.8%	9.3%	11.2%	45.3%	13.8%	12.2%	3.8%	4.3%
Goods	9,144	383	460	2,437	1,247	2,247	1,124	1,246
Percentage	29.9%	4.2%	5.0%	26.7%	13.6%	24.6%	12.3%	13.6%
Other Services	9,584	1,154	1,213	4,132	1,015	1,181	379	510
Percentage	31.3%	12.0%	12.7%	43.1%	10.6%	12.3%	4.0%	5.3%
Others	660	181	84	237	87	44	7	20
Percentage	2.2%	27.4%	12.7%	35.9%	13.2%	6.7%	1.1%	3.0%

Source: U.S. Census, Statistics of United States Businesses, 1997



2. Gross Receipts for County Businesses by Ethnicity and Gender, All Industries Combined

According to the 1997 U.S. Economic Census, County businesses had sales and receipts totaling \$132 million. The data could not be provided by industry and ethnicity and gender, therefore, this number includes sales and receipts for industries not used by the County.

As indicated in Table 10.18, the average sales and receipts for County firms was \$4.4 million. Average sales and receipts for Caucasian male-owned firms was \$5.9 million. For minority and women-owned firms the average sales and receipts were under \$1.5 million. This gross receipts data suggest that most companies in the County are small and those owned by minorities and women are very small.

Table 10.18 Gross Receipts for County Businesses by Ethnicity and Gender, All Industries Combined*

Firms in Alameda County	Firms with Paid Employees		
	Number of Firms	Sales and Receipts (\$1,000)	Average Sales and Receipts** (\$1,000)
All Firms	29,647	\$132,185,597	\$4,459
Caucasian Firms	20,052	\$119,980,996	\$5,983
Total Minorities	9,595	\$12,204,601	\$1,272
African Americans	864	\$256,140	\$296
Asian Americans	6,999	\$10,383,123	\$1,484
Hispanic Americans	1,621	\$1,500,573	\$926
Native Americans	119	\$72,182	\$607
Women-Owned ⁸	4,491	\$6,633,589	\$1,477

Sources:

* 1997 U.S. Economic Census

** Calculated from 1997 U.S. Economic Census data

⁸ Women-owned businesses are double counted to an unknown degree in the Census because some minority women are counted in their respective minority category and in the women-owned business category.



3. Number of Employees for County Businesses by Industry

As listed in Table 10.19, according to the 1997 U.S. Census, there were more than 30,000 businesses with paid employees in Alameda County, most of which were small. As indicated below, 90 percent of those businesses had fewer than 500 employees, and 80 percent had fewer than 20 employees. A total of 52 percent of the businesses had fewer than five employees. This number of employees data suggest that most of the companies in the County are small, with fewer than 20 employees.

Table 10.19 Number of Employees for County Businesses by Industry

Industry	Total	Number of Employees						
		0	1-4	5-9	10-19	20-99	100-499	500+
Total	31,523	3,348	13,180	5,118	3,555	3,626	1,179	1,517
Percentage		10.6%	41.8%	16.2%	11.3%	11.5%	3.7%	4.8%
Construction	2,760	308	1,138	467	367	356	77	47
Percentage	8.8%	11.2%	41.2%	16.9%	13.3%	12.9%	2.8%	1.7%
Professional Services	11,139	1,238	5,365	1,684	1,052	958	343	499
Percentage	35.3%	11.1%	48.2%	15.1%	9.4%	8.6%	3.1%	4.5%
Goods	8,604	721	2,786	1,469	1,099	1,320	511	698
Percentage	27.3%	8.4%	32.4%	17.1%	12.8%	15.3%	5.9%	8.1%
Other Services	8,817	863	3,664	1,458	1,034	1,028	311	459
Percentage	28.0%	9.8%	41.6%	16.5%	11.7%	11.7%	3.5%	5.2%
Others	632	218	232	45	11	20	21	85
Percentage	2.0%	34.5%	36.7%	7.1%	1.7%	3.2%	3.3%	13.4%

Source: U.S. Census, Statistics of United States Businesses, 2001



4. Number of Employees for County Businesses by Ethnicity and Gender

According to the 1997 U.S. Economic Census, County businesses employed 580,952 people. However, the data could not be provided by industry and ethnicity and gender, therefore, this number includes industries not used by the County.

As indicated in Table 10.20, the average number of persons employed by Alameda County firms was 19.6. For most minority and women-owned firms the average number was less than ten. The table below reflects that most companies in the County are small and those owned by minorities and women are very small.

Table 10.20 Number of Employees for County Businesses by Ethnicity and Gender*

Firms in Alameda County	Firms with Paid Employees		
	Number of Firms	Number of Employees	Average Number of Employees**
All Firms	29,647	580,952	19.6
Caucasian Male-Owned	20,052	526,412***	26.3
Total Minority-Owned	9,595	54,540	5.7
African Americans	864	5,061	5.9
Asian Americans	6,999	37,719	5.4
Hispanic Americans	1,621	11,240	6.9
Native Americans	119	619	5.2
Women-Owned****	4,491	44,173	9.8

Sources:

* 1997 U.S. Economic Census

** Calculated from 1997 U.S. Economic Census data

*** This number reflects the relatively few large businesses in the County which are usually owned by Caucasian males.

**** Women-owned businesses are double counted to an unknown degree in the Census because some minority women are counted in their respective minority category and in the women-owned business category.



5. Size of County Prime Contracts All Industries

The Availability Study's prime contract utilization database was analyzed to determine the overall size of County contracts for all industries combined during the July 1, 2000 to June 30, 2003 study period. As noted in Table 10.21, the size of County contracts are small, with more than 85 percent under \$25,000.

Table 10.21 Size of County Prime Contracts All Industries

Size	Total Contracts	
	Number	Percent
\$1 - \$10,000	7,829	66.79%
\$10,001 - \$25,000	2,189	18.67%
\$25,001 - \$100,000	1,143	9.75%
\$100,001 - \$249,999	316	2.70%
\$250,000 - \$499,999	111	0.95%
\$500,000 - \$999,999	65	0.55%
\$1,000,000 - \$1,999,999	29	0.25%
\$2,000,000 - \$2,999,999	18	0.15%
\$3,000,000 and greater	22	0.19%
Total	11,722	100.00%



6. Certified Small Local Emerging Business Availability

The General Services Agency certifies architecture and engineering, professional services, and goods and other services firms as SLEBs. To be certified, firms must submit a one- page Vendor Application which requests the business type, name, address, telephone number, start date, number of employees, and gross business receipts for the last three years. Current business license information and Standard Industrial Classification or North American Industry Classification System Codes are also requested, as is ethnicity and gender, which is collected for information purposes only. Businesses are required to submit the following documents with their vendor application:

- copies of signed federal tax returns showing gross business receipts
- copies of business licenses
- copy of current identification (i.e., driver's license, identification card)
- copies of deed, rental, or lease agreement showing business address
- copies of last three completed contracts and proposals including name of contact person (optional)
- personal network statement (if the business has ever filed taxes)
- notarized affidavit

Documents are submitted to GSA's Business Outreach Officer, who processes the vendor applications, approves certifications, whether small local or emerging local, and maintains an electronic list of certified SLEBs.

The distribution of the all SLEBs certified during the Study period is depicted in Table 10.22. As noted, there were 304 companies certified as a SLEB in that period. Minority business enterprises accounted for 131 of those certifications and women business enterprises accounted for 52. SLEB certifications for Caucasian male business enterprises numbered 121. Comparing these numbers to the Census count of County businesses suggests that there are a large pool of businesses that are not being certified.⁹

⁹ Since the study period, the County has certified as SLEBs an additional 218 companies.



Table 10.22 Certified Small Local Emerging Business Availability by Ethnicity

Ethnicity	Architecture & Engineering	Professional Services	Goods & Other Services	Total
African Americans	7 9.72%	29 21.48%	13 13.40%	49 16.11%
Asian Americans	17 23.61%	25 18.52%	22 22.68%	64 21.05%
Hispanic Americans	6 8.34%	8 5.93%	1 1.03%	15 4.93%
Native Americans	0 0.00%	2 1.48%	1 1.03%	3 1.01%
Women Business Enterprises	16 22.22%	23 17.04%	13 13.40%	52 17.11%
Caucasian Male Business Enterprises	26 36.11%	48 35.56%	47 48.45%	121 39.80%
Total	72	135	97	304*
Total Percent	100.00%	100.00%	100.00%	100.00%

* GSA's SLEB vendor list included 40 additional SLEB-certified firms, however the SIC/NAICS codes for those firms indicate they are construction companies, which are not included in the SLEB Program.

According to the 1997 Census, there were 9,595 minority-owned businesses, 4,491 women-owned businesses, and 20,052 Caucasian male-owned businesses in the County. While this may be an over count of businesses because minority, women, and Hispanic-owned businesses are double counted, these numbers suggest that there is a large pool of businesses available for SLEB certification.

VI. ANECDOTAL ACCOUNTS

During the Availability Study, in-depth anecdotal interviews were conducted with 61 County businesses-owners. Interviewees were allowed to describe in their own words the barriers they have experienced in conducting business in the County and with County officials. Those



interviews are reported in the Anecdotal Chapter 9.¹⁰ Statements related to the County's SLEB program were abstracted from the Anecdotal Chapter and are reported below.

Interviewees identified the following barriers to their success in obtaining contract awards under County Programs and preferences:

- lengthy, complex, and costly certification process
- complex certification forms
- time consuming document notarization
- vague and misleading SLEB bid information
- lack of systematic SLEB tracking and record-keeping procedures
- inaccessible County decision makers
- ineffective local business definition

Interview participants shared the following comments about the County's procedures and requirements.

Small Local Emerging Business Program

- “It took me six months to get [SLEB] certified.”
- “It's timely and costly to fill out those [SLEB] certification forms and to continue to be re-certified annually or every couple of years. But if no opportunities are presented, it's kind of hard to justify going through that entire process.”
- “The [SLEB] application is excessive I faxed it over [but their] fax never worked. It was really awful. I [had to] take it there.”
- “The County has specific documentation that requires notarization that most other [agencies] don't [require]. That was a bit of a detriment because you've got to have time to get the documents notarized.”
- “The bid information was very misleading because it said you had to use a SLEB, but it did not say you would not get points if you [were] a SLEB . . . we thought we asked the question right at the bidder's conference . . . even the Purchasing Department agreed that it was kind of vague”

¹⁰ Mason Tillman does not conduct surveys to collect anecdotal information, rather the firm conducts indepth interviews with a representative sample of the County's business owners. The data collection methodology is detailed in the Anecdotal Chapter.



- “There’s sort of a disconnect between the SLEB Program and [the County’s] general purchasing population . . . [I wonder] what number of dollars are being spent with small local emerging businesses, or minorities. [I was told] that there wasn’t any way of doing that. So when we invoice the County for services that we provide, there is no recognition that this invoice is for money [for a SLEB], [which] seems pointless to me.”
- “Oftentimes, we get propositioned by a larger firm who [want to] use our name to get their foot in the door on a contract, and then we don’t get our full percentage [once the award is made]”
- “No one from the Contract Compliance Office, or anyone [else] came to check the job [site]. On a weekly or monthly basis, certified payrolls [were submitted] and that was it. I never had any action with anyone checking to make sure that we were doing what we were suppose to be doing [or if] there were [any] problems”
- “It’s [SLEB] is not valuable for a company like mine in Alameda County because there’s one vendor that is used for all of the services [we provide]. They only use that one company, so you’re completely out of luck until it comes up for bid again”
- “. . . In terms of the SLEB Program . . . it would be really great if they had incremental meetings or networking opportunities that reduce the size of the agency down to something manageable, tangible, and human.”

Local Requirements

- “. . . all you need is a telephone number, an address, and a \$35 dollar business license within the County to qualify as a local business enterprise . . . if they had a business in Shreveport, Louisiana and a temporary office at the Executive Suites in Downtown Oakland . . . they would qualify as well. . . . I feel that if you’re going to use the small, local disadvantaged business certification, use those of us that really have to deal with the County . . . I pay \$180 a month per vehicle to park my vehicles [in Oakland]. I pay a higher inner-city rent, and I pay higher insurance.”

Minority and Women Business Enterprise Program

- “[The M/WBE business outreach office] needs to have more authority, more funds and more personnel to track projects once they’ve been implemented, in order to confirm that the subcontractors are getting the work that the prime [contractor] has subcontracted.”



- “I’d like the County to simplify their [M/WBE requirements]. It’s frustrating when I have to advertise or I have to prove that I’m spending 20 percent of my money on an [M/WBE] and I’m one myself”

County Manager’s Inaccessibility

- “There is [very little opportunity] to engage contract managers or decision-makers within the County. There’s a big wall there . . . [I] get the impression that there’s a prime contractor already and they’re just doing this [RFP solicitation] because they’re required to do it”
- “. . . there’s a wall. It’s not easy to get the ear of the right people . . . I understand about BOB and outreach, but [we are] never able to penetrate beyond that.”
- “I attended a meeting a couple of months ago and [we] ended up talking to a couple of people there that also were trying to [receive] work from the County. I would say that there is was a general consensus that it’s difficult to get people [from the County] to really talk to you.”

VII. SUMMARY

Local businesses, including SLEBs are being underutilized in County contracting. The majority of the County’s contracts, or 85.46 are \$25,000 and under, a contract size most County businesses have the capacity to perform.

In addition, the SBA certification size standard used by the County does not reflect the profile of County businesses. Given the business profile in the County and data collected for this study demonstrating the small size of contracts, there exist compelling reasons for creating a small business definition individualized to the profile of Alameda County businesses and expanding the existing preferences for small businesses.

Based on the business owner anecdotes, County businesses report that the County’s managers are inaccessible, expressing it as “There is a big wall there.” The County needs to improve communication with the business community.





11

RECOMMENDATIONS

I. INTRODUCTION

Race and gender conscious and race and gender neutral recommendations are offered to remedy the statistically significant underutilization of minorities identified in the four industries studied. The race and gender neutral recommendations are offered as a strategy to increase equity in contracting without regard to race. Continuing small business policies are also recommended in order to enhance existing County programs. Local small business policies could mitigate the difficulties faced by all Alameda County businesses, including Minority and Woman Business Enterprises (M/WBEs). The race and gender conscious measures include prime contracting and subcontracting remedies for the ethnic and gender groups, where disparities were found.

This chapter is organized as follows:

Section II reviews the study findings

Section III provides the race and gender neutral recommendations.

Section IV provides the race and gender conscious recommendations

Section V provides contracting best management practices

Section VI offers administrative recommendations



II. STUDY FINDINGS

A. Summary of Prime Contract Disparity Findings

Statistically significant prime contract disparity was identified in construction, architecture and engineering, professional services, and goods and other services. Disparities were found for informal contracts \$25,000 and under and \$25,001 to \$100,000, and formal contracts under \$500,000. The table below delineate the dollar thresholds where these disparities were identified in the County's prime contracting.

Table 11.01 Prime Contract Disparity Findings

Ethnicity and Gender	Construction			Architecture and Engineering		
	Contracts \$25,000 and under	Contracts \$25,001 to \$100,000	Contracts under \$500,000	Contracts \$25,000 and under	Contracts \$25,001 to \$100,000	Contracts under \$500,000
African Americans	Yes	Yes	Yes	Yes	Yes	Yes
Asian Americans	Yes	Yes	Yes	No	Yes	Yes
Hispanic Americans	No	No	No	Yes	Yes	Yes
Native Americans	---	---	---	---	---	---
MBEs	Yes	Yes	Yes	Yes	Yes	Yes
WBEs	No	No	No	No	No	No
M/WBEs	Yes	Yes	Yes	Yes	Yes	Yes
Professional Services				Goods and Other Services		
African Americans	Yes	Yes	Yes	Yes	Yes	Yes
Asian Americans	Yes	Yes	Yes	Yes	Yes	Yes



Hispanic Americans	Yes	Yes	Yes	Yes	Yes	Yes
Native Americans	---	---	---	---	---	---
MBEs	Yes	Yes	Yes	Yes	Yes	Yes
WBEs	Yes	No	No	Yes	Yes	Yes
M/WBEs	Yes	Yes	Yes	Yes	Yes	Yes

Yes = Statistically significant disparity was found

No = Statistically significant disparity was not found

--- = There were insufficient records to determine statistical disparity



B. Summary of Subcontract Disparity Findings

Statistically significant subcontract disparity was identified in construction, architecture and engineering, and professional services.

The table below delineates the identified subcontract disparity.

Table 11.02 Subcontract Disparity Findings

Ethnicity and Gender	Construction	Architecture and Engineering	Professional Services
African Americans	Yes	Yes	No
Asian Americans	Yes	Yes	No
Hispanic Americans	No	No	No
Native Americans	---	---	---
Caucasian Females	No	No	Yes
MBEs	Yes	No	---
WBEs	No	No	Yes
M/WBEs	No	Yes	No

Yes = Statistically significant disparity was found

No = Statistically significant disparity was not found

--- = There were insufficient records to determine statistical disparity



C. Summary of Small Local Emerging Business Program

The County has a race and gender neutral program designed to promote the use of small local emerging businesses. The characteristics of the program is depicted in the table below.

Table 11.03 Summary of County Program Characteristics

Program	Industries Included	Preferences
<ul style="list-style-type: none"> Small Local Emerging Business (SLEB) Program 	<ul style="list-style-type: none"> Architecture and Engineering Professional Services Goods and Other Services (Construction is excluded) 	<ul style="list-style-type: none"> Sealed bids over \$25,000: 5% bid evaluation preference to Local Businesses and 5% bid evaluation preference to Small or Emerging Businesses, for a maximum total of 10% bid evaluation preference* Non-SLEBs do not receive bid evaluation points and are required to partner a minimum of 20% with certified SLEBs

* Small and emerging businesses must meet the definition of a local business to become certified. The SLEB program certifies local small and local emerging businesses. There is no certification for local large businesses.



III. RACE AND GENDER-NEUTRAL RECOMMENDATIONS

Race and gender-neutral recommendations are strategies designed to improve access for local small businesses to the County's contracts. This section proposes an overhaul of the County's Small Local Emerging Business Program.

A. Reconsideration of the County's Small Business Definition

The small business definition used by Alameda County is based on the United States Small Business Administration (SBA) size standard. On the national level, the small business definition is currently undergoing close scrutiny in the process of re-evaluating what characteristics define a business as small. In Alameda County, there are important lessons to be drawn from the national experience in establishing an appropriate small business size standard. In County contracting, a firm applying for certification as a small business must demonstrate that it meets SBA's size standards for small businesses in its industry, which includes classification based on gross receipts for the most recent three tax years. The County's definition of small business must serve to better differentiate between types of industry and size segments to ensure that County firms are competing with firms of like size, a necessary condition to achieve the County's equity goals. The number of small local businesses in the County and small size of County contracts, provide compelling reasons for creating a small business definition individualized to the profile of Alameda County businesses and expanding the existing preferences for small business.

According to the 1997 U.S. Census, 80 percent of the 30,577 businesses with paid employees in the County had fewer than 20 employees, creating a large pool of potentially available firms. For all industries, 66.79 percent of the County's contracts were under \$10,000, 85.46 percent were \$25,000 and under, and more than 95 percent were under \$100,000. Therefore, small and emerging businesses would have the capacity to provide services on the average County contract. However, analysis of awarded contracts shows that local small and local emerging firms are not being utilized. The data indicates that small contracts were consistently awarded to firms with a capacity that exceeded what was necessary to execute the contract.

In addition, County-wide contracts and multi-year contracts have increased contract size and diminished the number of firms winning County contracts. Table 11.04, shows that six contractors received 24 of the 11,722 contracts awarded by the County. The value of these 24 contract account for 25.67 percent of all contract dollars.



Table 11.04 Frequently Used Alameda County Vendors

Firm	Industry	No. of Contracts	Total Dollars Paid
a	Construction	1	\$53,523,784
b	Goods and Other Services	2	\$41,534,798
c	Goods and Other Services	8	\$13,732,856
d	Architecture & Engineering	1	\$11,219,346
e	Professional Services	11	\$10,985,108
f	Professional Services	1	\$10,738,903
Totals		24	\$141,734,795
Grand Total		11,722	\$552,096,155
Percentage the six firms received		0.20%	25.67%

There exists a threshold at the 20-employee level at which businesses are truly small and have sufficient capacity to perform contract work in the County. At this level, firms are able to perform with other like firms and responsibly perform contract work, which strengthens the overall economic health of the County and allows individual firms to build experience and become better equipped to provide services to the County in the future.

The County should define small local business size as a firm with 20 or fewer employees, reflecting the local business demographics.

B. Proposed Local and Small Local Business Enterprise Program

Both the statistical data and anecdotal evidence shows that the SLEB program could be more effective. Recent changes in the Public Contract Code section 2002, enacted by Assembly Bill 1084 in January 2001, allows local agencies the award construction contracts to be contingent upon the Good Faith Effort of meeting small business goals. Furthermore, local agencies can offer a five percent bid discount to small businesses, and create their own definition of a small business.

The County should consider revising its SLEB program, by creating a Local and Small Local Business Enterprise program that applies to all County contracts, including construction



contracts. A revised program will streamline the County's efforts to promote diversity in its contracting, increase effectiveness, and simplify program implementation, operation, and compliance.

This proposed Local and Small Local Business Enterprise Program should have two categories. The County should create a Local Businesses Enterprise (LBE) category. An LBE is a firm that has had a fixed office and street address within the County of Alameda for at least six months¹ and has a verifiable business license, issued, by the County of Alameda or a City within the County. The additional requirement that the firms officers must be domiciled in the County should also be included. Moreover, the County should certify firms as LBEs.

A Small Local Business Enterprise (SLBE) category should also be created. An SLBE would be a firm that meets the local requirement mentioned above and the 20 employees or less size standard.

1. Program Participation Goals

Goals should be established as a target for the participation of LBEs and SLBEs in the County's contracts. This will ensure that the County's procurement dollars are circulated back into the local tax base.

a. Contracts over \$100,000

Contracts over \$100,000 should have a 60 percent LBE goal and a 20 percent SLBE goal.²

b. Contract \$100,000 and Under

Contracts \$100,000 and under should have a 60 percent SLBE goal and a 20 percent LBE goal.

c. Contracts \$25,000 and Under

All contracts \$25,000 and under should be targeted to SLBEs.

¹ Section 4.12.150 of the Alameda County Administrative Code, revised October 2003

² Note: the current Enhanced Contract Outreach Program operated by GSA already has this requirement.



2. Local and Small Local Business Enterprise Good Faith Efforts

Bidders and proposers on County contracts should be required to meet the LBE and SLBE goals or demonstrate a Good Faith Effort. Good Faith Efforts would be applicable to any County contract with LBE and SLBE goal, regardless of industry. A waiver provision must be available to address circumstances where LBE or SLBE goals can not be met. The County will be able to qualitatively assess a bidder's or proposer's efforts to meet the LBE and SLBE goal.

Good faith criteria would explicitly state the requirement, identify the necessary level of effort, and the documentation necessary to demonstrate compliance. The evaluation of the Good Faith Effort would be based on points scored. Bidders and proposers failing to meet the LBE or SLBE goal or demonstrate a Good Faith Effort would be deemed non-responsive.

IV. RACE AND GENDER-CONSCIOUS RECOMMENDATIONS

Several remedies are proposed to address both the statistically significant prime contractor and subcontractor underutilization of minority groups. It is critical that race and gender-conscious remedies are narrowly tailored to correct documented statistically significant underutilization.

A. Prime Contractor Remedies

The prime contractor remedies apply to both formal and informal contracts. Remedies for formal contracts are limited to architecture and engineering, professional services, and other services contracts. Architecture and engineering contracts are awarded based on qualification. Professional services contracts can be awarded based on price, qualification, or a combination of both. Construction and goods awards are based on low bid. Remedies for informal contracts apply to all industries since awards are based on quotations and the selection need not be determined by price. The recommendations below apply only to those groups with identified disparity.

1. Formal Prime Contract Remedies: Evaluation Credits

Evaluation credits should be given to statistically significant underutilized groups on architecture and engineering and professional services contracts. The evaluation credits can counterbalance the competitive disadvantage experienced by these groups. Offsetting the comparative disadvantage will mitigate the disparity in these industries.



Targeted firms would receive 15 percent of the assigned evaluation points. The points would be applied to the rating for formally awarded contracts under \$500,000.

2. Informal Prime Contract Remedies

a. Sheltered Market

A Sheltered Market program should be established for informal contracts. The Sheltered Market would limit competition to firms from the statistically significant underutilized groups and other firms of comparable capacity. A Sheltered Market program would ensure that quotations for informal contracts are solicited from a diverse pool of firms. Because the Sheltered Market program awards prime contracts it is a means for building the capacity of small businesses. Sheltered Market Programs are currently used in Portland, Oregon and Seattle, Washington.

Firms would pre-qualify for the program. The statistically significant underutilized groups would be presumptive members of the program. The eligibility of any other groups would be determined through a certification process. The existence of the small contracts rotation should be widely advertised to the target ethnic and gender groups in each industry.

An approved pre-qualified list should be developed for each industry and as needed specialized lists would be compiled within industries. The businesses would be randomly ranked on each list, and twice each year there would be open enrollment. When the open enrollment closed, a random list of the new pre-qualified businesses would be appended to the existing list. The lists of pre-qualified vendors would be posted for public review. Sheltered Market contract awards, like other current County contract awards, should be posted for public review.

Departments should be deterred from issuing change orders on the contracts under \$25,000 and instead select a contractor from the pre-qualified list. Maximal use of the pre-qualified contractors should be encouraged.

Financial and technical assistance should also be made available to firms that participate in the Sheltered Market program. Such assistance should include automatic participation in the County's existing Surety Bond and Insurance Procurement Program. Finally, the Sheltered Market program should require that firms graduate once they reach a certain size threshold or after participating in the program over a specified time period.



b. County Staff Good Faith Efforts

County staff with informal contract purchasing authority should be required to document a Good Faith Effort to solicit quotes from the statistically significant underutilized groups. Informal contracts do not require public bidding and therefore the solicitation and selection are under the discretion of staff. Good Faith Efforts would standardize the solicitation of statistically significant underutilized groups for informal contracts.

The Good Faith Effort documentation could be a checklist required of buyers to demonstrate their efforts to solicit quotes from the statistically significant underutilized groups. The checklist would outline the Good Faith Effort criteria, detail the level of effort required, and list the documentation required to demonstrate that effort. Whenever there is an intent to award an informal contract to a business other than one from a statistically significant underutilized group a manager's review and approval of the Good Faith Effort would be required to award the contract.

B. Subcontractor Remedies

The subcontractor remedies apply to formal contracts funded by local and federal dollars. M/WBE remedies are proposed for construction, architecture and engineering and professional services, where there was disparity. The M/WBE remedies apply only to the statistically significant underutilized groups. The Disadvantaged Business Enterprise (DBE) remedies apply to the four industries and are determined by the regulatory requirements of the County's federal funding.

1. Overall M/WBE Subcontracting Goals

An overall goal should be established as a target for the participation of the underutilized groups in the County's subcontracts. The goal should reflect the availability of the statistically significant underutilized groups as calculated in the Study. Table 11.05 depicts construction subcontractor availability of the statistically underutilized groups by ethnicity. Following the examples below, the overall construction subcontract goals would 14.49% for African Americans and 7.73 % for Asian Americans.

Table 11.05 Construction Subcontractor Availability

Underutilized Group	Percent Availability
African Americans	14.49%
Asian Americans	7.73%



The availability of architecture and engineering sub-consultants is depicted in Table 11.06. The subconsulting goals should reflect the availability of these underutilized groups.

Table 11.06 Architecture and Engineering Subconsultant Availability

Underutilized Group	Percent Availability
African Americans	10.02%
Caucasian Women	20.94%

The professional services subconsultant availability is depicted in Table 11.07. The subconsulting goals should reflect the availability of the underutilized groups.

Table 11.07 Professional Services Subconsultant Availability

Underutilized Group	Percent Availability
Caucasian Women	18.25%

The overall goal should be reviewed every three to five years. It should be noted that the certifications the County accepts are Minority Business Enterprise and Women Business Enterprise. The certifications the County accepts do not report firms by specific ethnic or gender category (e.g. Asian American Female-owned business).

2. Contract-Specific M/WBE Subcontracting Goals

Contract specific M/WBE subcontracting goals should be set on all construction, architecture and engineering, and professional service contracts. Goals will address the identified disparity not corrected by either the County’s race specific or race neutral programs. Setting goals narrowly tailored to the availability of the businesses to perform the identified subcontracting opportunities is the most prudent method to remedy the disparity. This contract specific goal setting method also ensures that M/WBE goals are reasonably attainable.

These goals should reflect the actual availability for each contract that is advertised. Both the items of work in the contract and the availability of M/WBEs to perform the work items must be determined in order to set a contract-specific goal. To set contract specific goals the County will need to maintain a current database with available M/WBE and non-M/WBE firms willing and able to perform contracts.



3. Weighted Good Faith Efforts

Detailed and quantifiable Good Faith Effort criteria should be developed. Each criterion, like negotiation in good faith with potential subcontractors should define and quantify the minimum behavior required to demonstrate an attempt to meet the subcontracting goal. In setting goals, a waiver provision is necessary to address the circumstances when the goals cannot be met. Good Faith Efforts should measure a prime contractor's efforts to meet the M/WBE subcontracting goals.

There would be a minimum score for the prime contractor to demonstrate a Good Faith Effort, as shown in the example below.

Criterion	Effort	Documentation
Advertising (5 points)	Advertise in the general circulation media, minority focused media, or trade related publications at least twice, 10 days prior to submission.	Dated copies of the advertisement or an affidavit from the periodical.

Prime contractors failing to meet the M/WBE subcontractor goal or make a Good Faith Effort to do so would be deemed non-responsive.

4. Disadvantaged Business Enterprise Programs

Federal DBE subcontracting goals should be utilized whenever federal dollars are used to procure products or services. Federal affirmative action programs, specifically the U.S. Department of Transportation's Disadvantaged Business Enterprise Program and the U.S. Environmental Protection Agency's Fair Share Program require subcontracting goals to achieve disadvantaged businesses participation which includes M/WBEs. These programs, used in combination with local programs, will help to alleviate the identified disparity. These federal programs do not require a factual finding of disparity.

V. CONTRACTING AND PROCUREMENT RECOMMENDATIONS

The purpose of these recommendations is to identify the best management practices that have been established by other jurisdictions, such as the federal government, the State of



California, the City of Seattle, Washington, and the District of Columbia. These practices can serve as a guide for County contracting and procurement efforts. These recommendations incorporate an examination of a number of best management practices of similarly-situated local and national jurisdictions. These recommendations can be classified into two broad categories, pre-award, and post-award.³

A. Pre-award Activities

1. Unbundle Large Procurements Into Smaller Contracts Where Feasible

Bundling is when a procurement consolidates small purchases into one contract, or when goods and services previously purchased individually are grouped together in a single solicitation.

Large contracts should be unbundled to maximize small business participation. During the data collection process for this study, some County staff reported that there were many large contracts that were annually renewed and therefore not re-bid for many years. Unbundling large procurements will increase the opportunity for small businesses to compete for County contracts.

In determining whether projects should be divided, the following criteria should be reviewed:

- Whether the project takes place in more than one location
- Size and complexity of the procurement
- Similarity of the goods and services procured
- Sequencing and delivery of the work
- Public safety issues and convenience
- Procurement segmentation options

The federal government has made contract unbundling a key element of its small business agenda. The Office of Federal Procurement Policy (OFPP) *Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business* provides several concepts that could be implemented by the County:

- Make senior agency management accountable for improving contracting opportunities for small business
- Ensure timely and accurate reporting of contract bundling information

³

The term bid is used as a generic reference to the business that responds to a Request for Proposals, a Request for Qualifications, as well as a Request for Bids.



- Require agency review of proposed acquisitions above specified thresholds for unnecessary and unjustified contract bundling
- Require identification of alternative acquisition strategies for the proposed bundling of contracts above specified thresholds and written justification when alternatives involving less bundling are not used
- Mitigate the effects of contract bundling by strengthening compliance with subcontracting goals
- Mitigate the effects of contract bundling by facilitating the development of small business teams and joint ventures
- Identify best practices for maximizing small business opportunities in other areas of procurement.

2. Assess the Use of County-wide Contracts Annually

The use of County-wide contracts should be assessed to divide these purchases into units accessible to small businesses. Determining ways to make these contracts more accessible to small businesses will increase competition. The County should weigh the following factors before using the County-wide contracts procurement method:

- Does size of the procurement prohibit competition from small businesses?
- Is the procurement truly a bulk purchase or actually several small purchases bundled into one contract?
- Is the procurement necessary for savings or is it primarily for convenience?

The County must decide if the benefit of the savings gained by fixed prices and economies of scale outweigh the costs of depressing local small business competition for a good and in effect granting a monopoly to a specific vendor. Prior to issuing a solicitation for a County-wide contract, a cost-benefit analysis should be conducted. Measurable benefits should be determined, such as significant cost savings, a reduction in procurement cycle time, or contractual terms and conditions advantageous to the County. Increase in personnel or administrative cost alone should not be a sufficient justification for using a County-wide contract. The use of a County-wide contract should require supervisory and contract compliance approval.

When it is determined that the use of County-wide contracts is both necessary and beneficial, the County should set standard criteria to be applied to County-wide contracts by taking the following steps:



- Include M/WBEs in the bid solicitation.
- Limit the amount of a commodity or service to be purchased under a County-wide contract. (For example, 80 percent of toner cartridges can be purchased under the County-wide contract and 20 percent can be purchased through informal contracts.)
- Purchase various goods and services specified in the solicitation from different vendors. (For example, a large national chain may provide the best prices for most office supplies, while a small local supplier may have the best price on other items.)
- Award County-wide contracts using competitive proposals in order to include other factors in addition to price in the selection process, where feasible. These factors could include, delivery schedule, proximity of office, or use of M/WBE subcontractors.
- Avoid overly complex or restrictive specifications.
- Bid the County-wide contracts annually.

By utilizing these criteria, the County can maximize cost savings and the diversity of its vendor pool.

3. Use Direct Contracting As a Means to Award Small Contracts

Direct contracting is when a public agency awards construction support services contracts that normally are included within the general contract. They include construction support services such as trucking, landscaping, demolition, site clearing, surveying, and site security.

Construction support services should be awarded as direct contracts. Direct contracting will increase the opportunities for, and build the capacity of, small firms by allowing them to work as prime contractors.

4. Revise Bonding and Insurance Requirements

Bonding and insurance requirements should be evaluated to ensure that smaller contracts do not carry a disproportionately high level of coverage. The risk manager should apply the standards consistently on all solicitations. Prohibitive bonding and insurance requirements can be a disincentive to bidders, constitute a barrier to small business, and increase the costs of goods and services. Revised bonding and insurance requirements will attract more small firms as bidders, thus increasing competition and reducing costs.



The revised bonding and insurance requirements should address bid, performance and payment bonds, general and professional liability, and errors and omissions insurance. Risk management standards could be developed that are applicable to the industry and associated liability. For example, a \$100,000 air conditioning chiller installation contract would have one set of bonding and insurance requirements while a \$1,000,000 overpass seismic retrofit contract would have another. Both would be based on the project's size, scope, scale, and risk to the County.

The County should consider requiring Errors and Omissions insurance for only those professional services where the negligence, mistakes, or failure in providing advice, expertise, or service would cause significant financial loss, property damage, or physical injury. The revised standards should consider waiving bonds for construction contracts less than \$100,000.

5. Phase Bonding and Retainage Requirements

a. Bonding

Prime contractors' bonds should be rolled over into the next portion and proportionally released as goods and services are accepted. Subcontractors' bonds should be released upon completion and acceptance of their portion of work.

b. Retainage

Retainage is the percent of the contract value withheld until the successful completion of a contract.

Subcontractors' portion of the retainage should be released once work has been completed and accepted. Retainage should be eliminated for small subcontracts and reduced for all certified M/WBEs and SLBE contractors. This will reduce the cash flow burdens experienced by small construction subcontractors. Increased cash flow will allow these small firms to build capacity.

6. Review Bids and Proposals for Goal Attainment

Prime contractors should be required to list the LBE, SLBE and M/WBE firms in their submissions. This requirement should be applicable to all contracts in all industries. LBE, SLBE and M/WBE goal attainment should be reviewed at the time the submission is opened to determine responsiveness. Submissions that do not meet the LBE, SLBE and M/WBE goals, or make a Good Faith Effort to do so should be deemed non-responsive. The County



will be able to reject non-responsive bids and proposals during the submission review process, avoiding the administrative issues of handling non-compliance at the time the Board Resolution Letter is under review.

B. Post-award Activities

1. Develop an Expedited Payment Program

An expedited payment program for LBEs, SLBEs and M/WBEs should be developed. Expedited payments will remove a major barrier to small business participation in public contracting.

In an expedited payment program, LBEs, SLBEs, and M/WBEs would be paid on an accelerated schedule. Non-certified prime contractors who meet LBE, SLBE and M/WBE participation goals would also be eligible for the expedited payment program. When a participating firm submits an invoice, they would include an identification number that marks it for a 15-day expedited payment. County staff would date stamp invoices immediately upon receipt. If an invoice is not date stamped, the 15-day cycle would begin on the date specified in the invoice. Prime contractors who elect not to participate in the expedited payment program will be subject to the normal contractual prompt payment clauses and penalties for non-compliance.

Alternative to a 15-day expedited payment, firms participating in the expedited payment program could be permitted to submit invoices for progress payment at two-week intervals. Firms will be paid according to the normal County schedule, but because they are allowed to invoice more frequently, they will be paid more frequently.

The County should consider assessing an interest penalty for late payments to certified firms. Penalties would be assessed the day after the contractual payment due date. If there is no payment due date stipulated in the contract, penalties would be assessed on the 31st day after receipt of the invoice. The penalty would be a nominal percentage of the invoice amount assessed daily until a check is issued.

2. Pay Mobilization for SLBE firms

Mobilization is the start-up funds paid to a construction prime contractor to commence work on a project.

Mobilization funds should be paid to all SLBE and M/WBE prime contractors regardless of industry. Project start-up can be very tenuous for a small firm with limited resources and



access to credit. Payment for mobilization would mitigate the start-up cost barriers faced by small businesses.

The amount of the mobilization could be a nominal percentage of the contract. A five percent mobilization payment would recognize that even non-construction firms may have to purchase equipment, employ staff, or otherwise shift resources to commence work.

3. Give five-day notice of invoice disputes and grant project managers line item approval for submitted invoices.

Project managers and buyers should be required to notify a firm within five days of receiving an invoice of any items in dispute. Project managers should be granted line item approval authority. This would allow undisputed invoice amounts to be paid promptly and disputed items to be resolved timely. Small businesses that contract with the County would be able to maintain positive cash flow while providing goods or services to the County.

4. Develop Formal Subcontractor Substitution Standards

Formal subcontractor substitution standards should be developed that apply to all contracts in all industries. Eliminating a subcontractor from a project or reducing their scope of work can pose a significant hardship on small contractors. Formalizing subcontractor substitution standards ensures that prime contractors are accountable to commitments made to LBEs, SLBEs, and M/WBEs at the time of bid or proposal submission.

The subcontractor substitution requirements should mirror those outlined in the California Public Contract Code⁴ that apply to construction contracts. A subcontractor should be notified in writing of the intended substitution and afforded the opportunity to respond. Substitutions should only be allowed after the subcontractor's response and only with the approval of the County. Any reduction in the scope of work or contract value of a subcontractor should be considered as a substitution.

5. Implement Construction Project Management Best Practices

Best practices of construction project management should be implemented to mitigate the barriers faced by prime contractors, which in turn would provide more opportunities for small subcontractors. These practices will ensure on-time and on-budget project delivery. These practices will encourage small firms to submit bids to the County and promote their success on contracts.

⁴ CA Public Contract Code Section 4107



- **Ensure that inspections are timely.** Delays in inspection idle labor and equipment, and they can be costly. Inspections should be conducted according to the written schedule. The cost of inspectors' overtime should be paid by the County if it is required to meet the inspection schedule after the contractor has provided sufficient notice.
- **Avoid the use of Critical Path Method Schedules on smaller projects.** Critical Path Method (CPM) schedules require specialized software and expertise that may be beyond the capacity of small contractors. For small projects, the logic and timing of the CPM can be replicated with the use of spreadsheets or other simple and readily available computer software.
- **Answer Requests for Information (CRFIs) promptly.** Invariably, questions arise during the construction process. Timely responses to RFI must be provided to prevent project delays and cost overruns. If an RFI requires an unavoidably time-consuming response, the County must provide a reasonable time extension for the project.
- **Provide timely feedback and constructive criticism.** Open communication between project manager and contractor is critical in effective project management. Identifying potential problems before they reach the level of a crisis ensures a harmonious work environment for both project manager and contractor. For small contractors, timely information can reduce project cost.

6. Post Prime Contract and Subcontract Awards on the Internet

Prime contract and subcontract awards should be posted to the County's website. This is currently being done by the State of California. Posting contract awards will inform the general public of the results of County solicitations.

7. Conduct Routine Post-Award Contract Compliance

Routine and rigorous contract compliance monitoring should be conducted to ensure LBE, SLBE, and M/WBE goals are met throughout the duration of a contract. This will verify prime contractor's commitments prior to and after the contract award. Consistent contract compliance should minimize the hardships experienced by small firms with limited resources.

The following contract compliance methods are recommended:

- Periodically collect copies of the canceled checks to subcontractors to verify payment information.



- Penalize prime contractors and subcontractors for non-compliance with program requirements.
- Fine prime contractors for non-approved substitutions.
- Include a provision for liquidated damages if a contract is breached due to non-compliance with LBE, SLBE or M/WBE requirements.

8. Assess the Use of Sole Source Contracts

The sole source contracts should be assessed to maximize the use of small businesses. Determining ways to make these contracts more accessible to small businesses will increase competition.

All sole source contracts should be reviewed to determine if LBE, SLBE or M/WBE goals can be applied. Sole source contracts should be tracked by industry. Sole source contract awards should be posted to the County's website on the same day each week.

9. Conduct a Utilization Analysis of Purchase Card Procurement

Purchase card procurement should be analyzed to determine SLBE utilization. These small purchases are well within the capacity of small firms. Analyzing utilization at this level will help the County to direct these dollars to small businesses.

VI. ADMINISTRATIVE RECOMMENDATIONS

The following recommendations present strategies to enhance the County's organizational structure, administrative practices, and data management procedures.

These recommendations address the manner in which the County organizes its staff resources to implement policy and procure goods and services. They include the development of a central office for administering the County's business enterprise programs and centralizing County procurement. They also include some objective measures of staff performance in fulfilling program requirements.

A. Organizational Structure

1. Establish a Centralized or County-wide Contract Compliance Office

A County-wide contract compliance office should assume responsibility for the design, implementation, and operation of all of the County's business enterprise programs. Currently



contract compliance is decentralized. There is a Diversity Program Office under the supervision of the County Administrator, the General Services Agency oversees the current Small Local Emerging Business Program, the Technical Service Division of GSA administers the Enhanced Construction Outreach Program, and the Public Works Agency administers the County's DBE program. Consolidating all of these units into one office will ensure that all business enterprise programs are uniformly implemented and monitored County-wide.

The contract compliance office should be under the jurisdiction of the County Administrator and separate from any agency with purchasing authority. This will relieve the natural tension between the deliberation required to ensure contract compliance and the need to expediently procure products and services. The contract compliance office will need the authority to approve solicitations, reject bids or proposals, and enforce penalties to contractors and staff for non-compliance to business enterprise program requirements. The County Administrator as the chief executive appointed by the Board of Supervisors would be the final arbitrator of the competing interest between contract compliance and procurement.

2. Staff the Contract Compliance Office

The new contract compliance office should be adequately staffed with experienced professionals capable of fulfilling the new responsibilities. Adequate staffing is necessary to promote the smooth implementation of the County new business enterprise programs. The number of staff currently assigned to handle the existing programs could be adequate to fulfill the functions of the new office. A sample of the staffing of other local agencies is shown below in table 11.08. The County has similar numbers of staff dedicated to contract compliance, but they are located in different units in the County.



Table 11.08 Local Contract Compliance Programs

Jurisdiction	Name of Program	Program Staffing
City of Oakland	Small Local Business Enterprise Program	<ul style="list-style-type: none"> • 1 Manager, office of Contract Compliance • 8 program staff
East Bay Municipal Utility District	Contract Equity Program	<ul style="list-style-type: none"> • 1 Contract Equity Administrator • 3 full time program staff • 1 part time program staff
Port of Oakland	Office of Social Responsibility	<ul style="list-style-type: none"> • 1 Program Director • 15 program staff

Personnel staffing the contract compliance office should have knowledge about procurement procedures, public contracting law, and affirmative action programs. The personnel should have education or professional experience in public administration and be knowledgeable about current business types and the operation of a small business. The following table is the recommended staff education and experience for the contract compliance office.

Table 11.09 Proposed Contract Compliance Office Staff

Title	Education and Experience
Contract Compliance Office Director	<ul style="list-style-type: none"> • Ten or more years experience • BA/BS degree
Contract Compliance Office Coordinators	<ul style="list-style-type: none"> • Five or more years of experience • BA/BS degree
Contract Compliance Program Assistant	<ul style="list-style-type: none"> • Two or more years of experience • BA/BS degree

3. Centralize All County Procurement Through the General Services Agency

Procurement of goods and services should be centralized under the General Service Agency. A uniform procurement manual should be developed to replace the number of purchasing and procurement manuals and instructional memoranda currently used in the different agencies. Contract solicitation language is currently not uniform, nor is the application of



the various local business programs. This lack of uniformity can be a barrier to small businesses seeking information, or contracting opportunities. Additionally, County staff does not have guidance on all the procurement requirements and therefore may not apply them in a consistent manner. Consolidating all County procurement under the General Service Agency will better ensure efficiency and uniformity of the procurement process.

The General Service Agency has developed or is developing procedures to better streamline the procurement process. The General Service Agency has the infrastructure and institutional knowledge to conduct procurement for all County agencies. It is not necessary for all County buyers to be housed in the General Service Agency's offices. Those buyers located at different agencies throughout the County should remain located at the agency they serve. This will allow them the necessary interaction with agency staff to ensure that procurement needs are met. Additionally, those agencies with special needs can have some oversight of their assigned procurement staff. But ultimately, all County procurement staff will follow the same standards, have access to the same information, and be accountable to the same supervisory structure.

All County buyers, under the jurisdiction of the General Service Agency, should receive periodic training on procurement requirements. This will ensure that regulations are followed. The General Service Agency should also hold monthly staff meetings of all County buyers to ensure that information is disseminated to all buyers in a uniform manner.

Some agencies in the County have special procurement needs that should not fall under the jurisdiction of the General Service Agency. The following areas should be assigned to other agencies.

- The design, construction, and maintenance of public works assets such as roadways, bridges, and waterways should remain under the jurisdiction of Public Works Agency.
- The purchase and development of real estate should fall under the jurisdiction of Community Redevelopment Agency.

These types of procurement require specialized knowledge of the product, service, or end use and should be managed by the agencies assigned to these fields.

4. Develop a County-wide Purchasing Manual

A County-wide Purchasing Manual should be developed. There are several manuals between the four agencies with procurement authority. Creating one uniform Purchasing Manual, used County-wide, will help streamline the procurement process. A uniform Purchasing



Manual will provide staff with clear guidance on their responsibilities and requirements. Furthermore, a Purchasing Manual will be cognizant of the County requirements because there will be one source applicable to all County contracting.

The recommendations in this report should be included in drafting the Purchasing Manual. Training should be provided when the manual is approved. Staff compliance should be evaluated through both department-level reports of LBE, SLBE and M/WBE utilization and staff performance reviews.

5. Conduct Outreach and Implement Marketing Strategies

The contract compliance office should have an outreach component. The outreach component should have at least three elements.

- Promoting new programs enacted by the County
- Soliciting firms to certify in the County's programs
- Advertising contracting opportunities to increase the number of businesses responding to informal and formal solicitations

Effective outreach will attract more bidders and proposers and inform them of new requirements.

The table below lists the strategies and tactics used to market County programs, to inform the business community of new requirements, attract LBE, SLBE, and M/WBE firms to certify with the County, and to bid on County contracts.



Table 11.10 Outreach and Marketing Strategies

Strategy	Tactics	Expected Outcome
Design tagline and display banner.	<ul style="list-style-type: none"> • Develop tagline • Design banner with placement of existing logo and new tagline 	Create a new identity for the County's contract compliance office and procurement process.
Define design standards for the organization, layout, and appearance of procurement documents.	<ul style="list-style-type: none"> • Revise all procurement materials to include the program logo and tagline to have a uniform appearance 	Uniform appearance and readability of program materials.
Develop collateral print material for outreach campaign.	<ul style="list-style-type: none"> • Revise brochure to reflect program changes • Develop articles and media packets 	Develop materials to educate the businesses, attract bidders, and attract LBEs, SLBEs and M/WBEs to certify.
Launch outreach campaign.	<ul style="list-style-type: none"> • Distribute media packets and press releases • Place public service announcements • Pitch campaign to broadcast media 	Gain local recognition for the County's revamped business programs. Provide information to LBEs, SLBEs, and M/WBEs.
Host semi-annual contractors' open house and other networking events.	<ul style="list-style-type: none"> • Plan and coordinate open house events • Send out invitations via mail, fax, and e-mail. • Include buyers in outreach events • Make informal contract opportunities available • Distribute contract forecasts and certification forms 	Provide LBEs, SLBEs, and M/WBEs networking opportunities. Increase LBE, SLBE, and M/WBE certification.
Distribute forecasts of contracting opportunities via facsimile and e-mail.	<ul style="list-style-type: none"> • Distribute contract forecast • Post to website • Distribute through fax and e-mail 	Increase competition. Promote County interest in contracting with LBEs, SLBEs, and M/WBEs.
Partner with agencies and organizations to disseminate program information.	<ul style="list-style-type: none"> • Continue current agency partnerships • Develop local business and trade group partners 	Increase interest and participation in County contracting.
Revise website.	<ul style="list-style-type: none"> • Use tagline and logo • Implement design standards • Design Web page 	Centralized information source will streamline contracting process.
Conduct an annual program evaluation.	<ul style="list-style-type: none"> • Establish measurable outcomes • Conduct surveys • Examine bidding history 	Enhance and re-focus outreach tactics in the future.



6. Recognize Buyers that Utilize LBEs, SLBEs, and M/WBEs.

Staff who comply with the Program requirements to utilize LBEs, SLBEs, and M/WBEs on informal contract solicitations should be recognized. Such acknowledgment could be in the form of a letter from the contract compliance office. The County Administrator or Board of Supervisors could also formally recognize County departments that meet LBE, SLBE and M/WBE targets. Formal recognition will provide County staff and department managers additional incentives to meet business enterprise program requirements, and reward those that consistently demonstrate a commitment to diversity.

7. Publish LBE, SLBE and M/WBE Utilization Reports

Prime contractor and subcontractor utilization should be reported on a regular basis. Reporting will measure the success of the Programs' efforts and determine if they require modification. These reports should include verified payment in addition to award data. The verification process should be standardized. The reports should also include change orders and substitutions.

Monthly reports should be prepared and submitted to the County Administrator for review. Quarterly reports should be prepared and submitted to the Board of Supervisors. Quarterly reports should also be posted to the County's website and circulated to local chambers of commerce and trade organizations. Annually, the utilization reports should include an assessment of business enterprise program activities and recommendations for improvement.

B. Data Management

Recommendations in this section are presented as strategies to enhance the County's management of its prime contract and subcontract records. During the data collection process, Mason Tillman identified aspects of the County's information technology systems which could be enhanced in order to track and monitor prime and subcontract awards more efficiently. The recommended enhancements would support a more accurate assessment of the effectiveness and compliance with any business enterprise programs implemented, given the findings of this Study. The prime contract records analyzed in the Study were extracted from ALCOLINK. ALCOLINK is the financial and purchasing system which the County uses to manage phases of the procurement process and the vendor payments. Authorized staff throughout the county have access to ALCOLINK to manage the various financial and procurement functions.

The ALCOLINK system used to record contract and payment information could be enhanced to perform contract compliance functions.



1. ALCOLINK Dormant Contract Module

The ALCOLINK contract module, which is currently dormant, should be utilized. This module could track the basic prime contract information, which is not currently being captured in the ALCOLINK database except in the memo text field. If this information were captured in the contract record, it would be possible to track and monitor modifications to the original contract award amount during the term of the contract without regard to the number of annual renewals.

Data to be recorded in the contract module include a contract number, name, description, and award amount. All purchase orders and contract modifications would tie to the contract number.

2. Code Contracts by Description and Industry Classification in ALCOLINK

Contracts should be coded by industry, provide a description that would be included in the Board Resolution Letter, and be entered into ALCOLINK at the time of award. Coding each record by industry would facilitate the compliance reporting because the contract records could be queried by industry type and the utilization could be reported by industry. The description would be information that could be used to verify the classification.

3. Include Contract Award Amount in ALCOLINK

The contract award amount should be included in the contract record when it is entered into ALCOLINK to establish a “not to exceed amount” for the purchase orders issued against a contract. According to the current procedure, there are instances when a purchase order is set up as the contract record for an amount which might be less than the contract award. This will ensure that the total vendor payments do not exceed contract amount plus modifications.

The original contract amount is sometimes listed in an ALCOLINK memo field and is always available in hard copy on the Board Resolution Letter. The data in a memo field is not calculable and cannot be used to establish the limit on the amount of the purchase order or any amendments. ALCOLINK has an audit procedure to ensure that vendor payments cannot be greater than the amount of the purchase order. In the instances when the Purchase Order is not encumbered for the full amount of the original award, it is difficult to ensure that the payments will not exceed original contract award as the audit is manual and is at risk to human errors. This problem can be avoided by recording both the award amount and the encumbered amount.



4. Establish Procedure for Purchase Orders

A standard procedure for creating Purchase Orders should be established. There are currently two agencies that are authorized to issue Purchase Orders, the Auditor's Agency and GSA Purchasing Department. However, the two departments do not have a consistent procedure for issuing Purchase Orders. Establishing a standard that can be followed by both agencies will ensure consistency and accuracy between the two agencies. This would assist the County in tracking procurement spending.

5. Digitally Record Bidders

Bids, proposals, and qualifications submitted to the County should be recorded in a database. A bid tracking module should be implemented in ALCOLINK. Since the procurement standards require that the solicitations be recorded, the information should be entered directly into an electronic system. The system should be used by all departments with authorization to award contracts. The uniform collection of the bid tabulations will also provide information that can be used to identify available businesses. Information on available businesses could be helpful in increasing the pool of certified LBE, SLBE and M/WBE firms.

6. Design a Utilization Tracking Database

The design of a utilization tracking database should be engineered to provide a tool to track LBE, SLBE, and M/WBE utilization. The current design of the SLEB database does not fully utilize the functionality of a relational database. A comprehensive utilization tracking database should also be linked to ALCOLINK by the unique contract number. This tool will be critical in monitoring utilization and conducting contract compliance.

VII. CONCLUSION

The County has both the statistical findings and the legal basis to support race and gender conscious and race and gender neutral programs. The recommendations offered in this chapter provide remedies to address the identified disparity of M/WBEs and the low utilization of both SLEB-certified firms and local businesses. Recommendations culled from model programs around the country were provided to ensure the success of the County's remedial programs. Finally, best management practices to enhance the County's organizational, administrative, and data management systems were provided to streamline those processes. The sum of these recommendations will help eliminate the barriers



experienced by all firms, including SLEBs and M/WBEs, in contracting with the County and ultimately improve the County service delivery to its citizens.

The County has made several enhancements to its business enterprise programs in recent months. Most of these improvements took place after the study period for this report. These recommendations offer additional enhancements to the County's continued efforts to improve its business enterprise policies and programs.

County decision-makers should carefully examine the recommendations offered as a result of this study to establish measurable objectives, set definitive time lines, and determine incremental costs to maximize the opportunities for the local and small business community.

